

**ANX13-001 / RZ13-002 Annexation / Rezoning
West Airport**

COMMUNITY DEVELOPMENT – PLANNING AND ZONING DIVISION
PLANNING AND ZONING COMMISSION for May 9, 2013

STAFF REPORT

TO: City of Prescott Planning and Zoning Commission

FROM: Tom Guice, Community Development Director
George Worley, Planning Manager *(GW)*
Ruth Hennings, Community Planner

DATE: May 9, 2013

SUBJECT: Study Session for the West Airport Annexation and Rezoning

ZONING: (County) R1L-18 and R1L-70

APNs: 102-05-032C / 102-05-324L / 102-04-010A / 102-04-010B

OWNER: James Deep Well Ranches #1
8400 N US Hwy 89
Prescott, AZ 86301

APPLICANT: City of Prescott
201 S. Cortez St.
Prescott, AZ 86303

REQUEST: This request initiates the annexation and rezoning of ± 247 acres in Yavapai County, located west of the Prescott Municipal Airport (Attachment 1). The property is bounded on the south by Pioneer Parkway, on the east by North State Route 89, and for a distance on the west by Willow Creek Road. It is currently vacant and is zoned in the county for single-family uses. A rezoning to commercial (Business Regional) and industrial (Industrial Light) zoning districts is also proposed.

The purpose of this request is to initiate annexation prior to development to assure that infrastructure improvements will be made to City standards. It is also timely given the plans to improve and widen North State Route 89 and realign Willow Creek Road. No specific developments are proposed at this time.

PROJECT BACKGROUND: The long-term planning processes required to initiate this annexation began in 2008, and involved changes to the General Plan, the Airport Specific Area Plan, and the Airport Master Plan.

The General Plan was adopted in 2003, and is the guide for land use and related decisions in the City. The Plan specifically recognizes the Prescott Municipal Airport for its importance in regional economic development and encourages airport area growth (General Plan Chapters 3.3.1, 3.3.10, 6.2, and 7.6). At the time the plan was written, areas east of the airport were targeted as potential areas for growth, and have since been annexed and plans for development are underway (Granite Dells Estates).

In 2008, there was recognition of potential development beyond what was planned to the east of the airport, and the General Plan was amended to establish appropriate land uses for the areas west and north of the airport (Attachment 2). By including these areas in the General Plan Land Use Map, it was possible for the City to begin planning for infrastructure in those areas. After adoption of the amendment, the City completed detailed water, sewer, and transportation master plans for this area, in conjunction with Deep Well Ranches and the State Land Department.

The Airport Master Plan was also updated in 2009 to better reflect new FAA design standards related to airport impacts. The map associated with the Master Plan designates Airport Impact Zones, which restrict residential uses in the areas most likely to be affected by airport noise and approach and departure zones (Attachment 3). In consideration of the updated Master Plan the City recently completed a Runway Safety project that effectively moved the main runway towards the northeast, away from the subject property. The City is currently updating the Airport Specific Area Plan to reflect the aforementioned changes to both the General Plan and Airport Master Plan.

In 2009, a Procedural Pre-Annexation Agreement was signed by the City and James Deep Well Ranches, which set terms for future annexations, north and west of the airport (Resolution 3996-1026, Attachment 4). The agreement required the City to initiate the annexations should they choose to move forward and to jointly submit for rezonings. It also addressed water and settled the obligation of the City to provide water based on the 1967 grant of an easement for the City's current water transmission pipeline. Because the water obligation exists, it is a benefit to the City to annex to assure that the infrastructure is built to City standards and that the City is able to provide a sewer system to take the wastewater needed for aquifer recharge purposes.

CITY SERVICES AND FINANCIAL IMPACTS: A formal cost-benefit analysis will be presented to City Council. Impacts to City services are listed below.

Water and sewer: The Utilities Master Plans guide infrastructure development for the area. All improvements will be built to City standards. Water has been allocated to the property from the City's Assured Water Supply portfolio based on the requirements set forth in the Pre-Annexation Agreement.

Transportation: The Airport Area Transportation Plan guides transportation decisions for the area. All improvements will be built to City standards.

Police: There will be a positive impact, as it will connect patrol beat 22. Currently the County area separates this patrol beat into two pieces.

Fire: There will be no additional impact to the City's Fire Department. The Prescott Fire Department has a joint partnership with the Central Yavapai Fire District, United States Forest Service, and Yavapai-Prescott Indian Tribe to provide automatic aid.

Airport: Airport is supportive of the annexation and proposed non-residential uses.

Archaeology: A Class III Archeological Survey will be required prior to development.

ZONING: The Yavapai County zoning designations are R1L-18 and R1L-70, which permit single family uses on minimum lot sizes of 18,000 and 70,000 square feet. Arizona State Statute 9-471.L requires that the City, at the time of annexation, adopt a zoning classification that permits densities no greater than those permitted by the County. Thus, the appropriate City zoning designations are SF-18 and RE-2, which permit single family uses on minimum lot sizes of 18,000 square feet and 2 acres, respectively.

After the City has adopted the zoning classification required by State statutes, a rezoning may be heard and voted on. The General Plan Land Use Map designates this area as appropriate for high-density residential, commercial, and industrial development (Attachment 2). The proposed rezoning to Industrial Light (Phase 1) and Business Regional (Phase 2) zoning districts are compatible with the General Plan, the Airport Specific Area Plan, and the Airport Master Plan (Attachment 5).

REVIEW CRITERIA: The City of Prescott's adopted Annexation Policy (Resolution 2739) describes factors to be considered, including impacts to services, ability to provide services, revenue generated by the City, costs incurred by the City, and potential uses of the property. Stated annexation priorities are property with potential commercial or industrial uses and property located in relationship to long-term goals of the City. A formal cost-benefit analysis will be presented at the City Council Public Hearing on June 11, 2013.

UPCOMING MEETINGS:

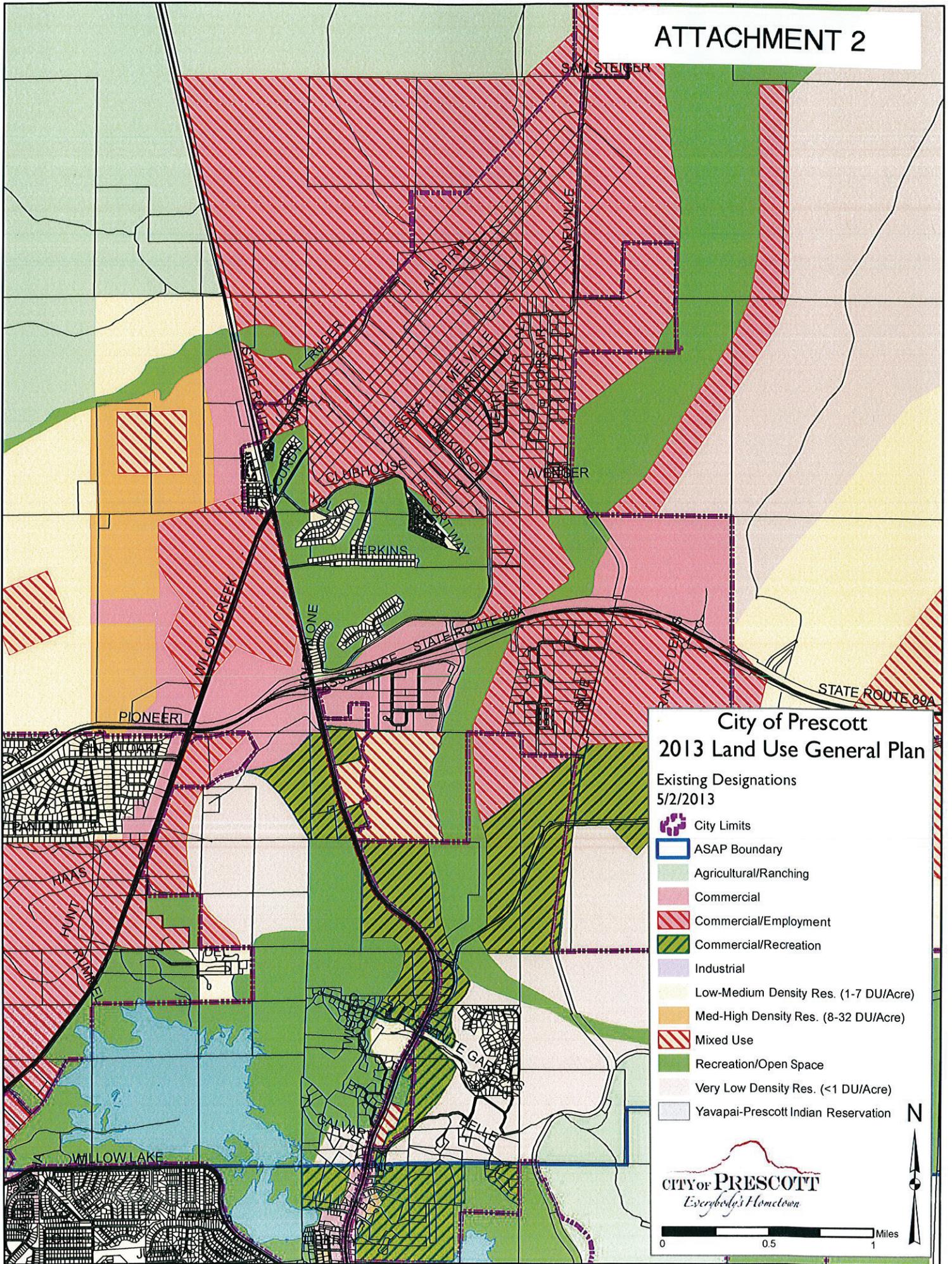
May 30, 2013: Planning and Zoning Commission to hold Public Hearing and Voting Session to make recommendations on annexation and rezoning.

June 11, 2013: City Council to hear presentation on cost-benefit analysis and to hold Public Hearing for annexation and rezoning.

Attachments:

- 1) Annexation map
- 2) General Plan Land Use Map
- 3) Airport Impact Zones Map
- 4) Procedural Pre-Annexation Agreement
- 5) Rezoning Map

ATTACHMENT 2



City of Prescott 2013 Land Use General Plan

Existing Designations
5/2/2013

-  City Limits
-  ASAP Boundary
-  Agricultural/Ranching
-  Commercial
-  Commercial/Employment
-  Commercial/Recreation
-  Industrial
-  Low-Medium Density Res. (1-7 DU/Acre)
-  Med-High Density Res. (8-32 DU/Acre)
-  Mixed Use
-  Recreation/Open Space
-  Very Low Density Res. (<1 DU/Acre)
-  Yavapai-Prescott Indian Reservation

N

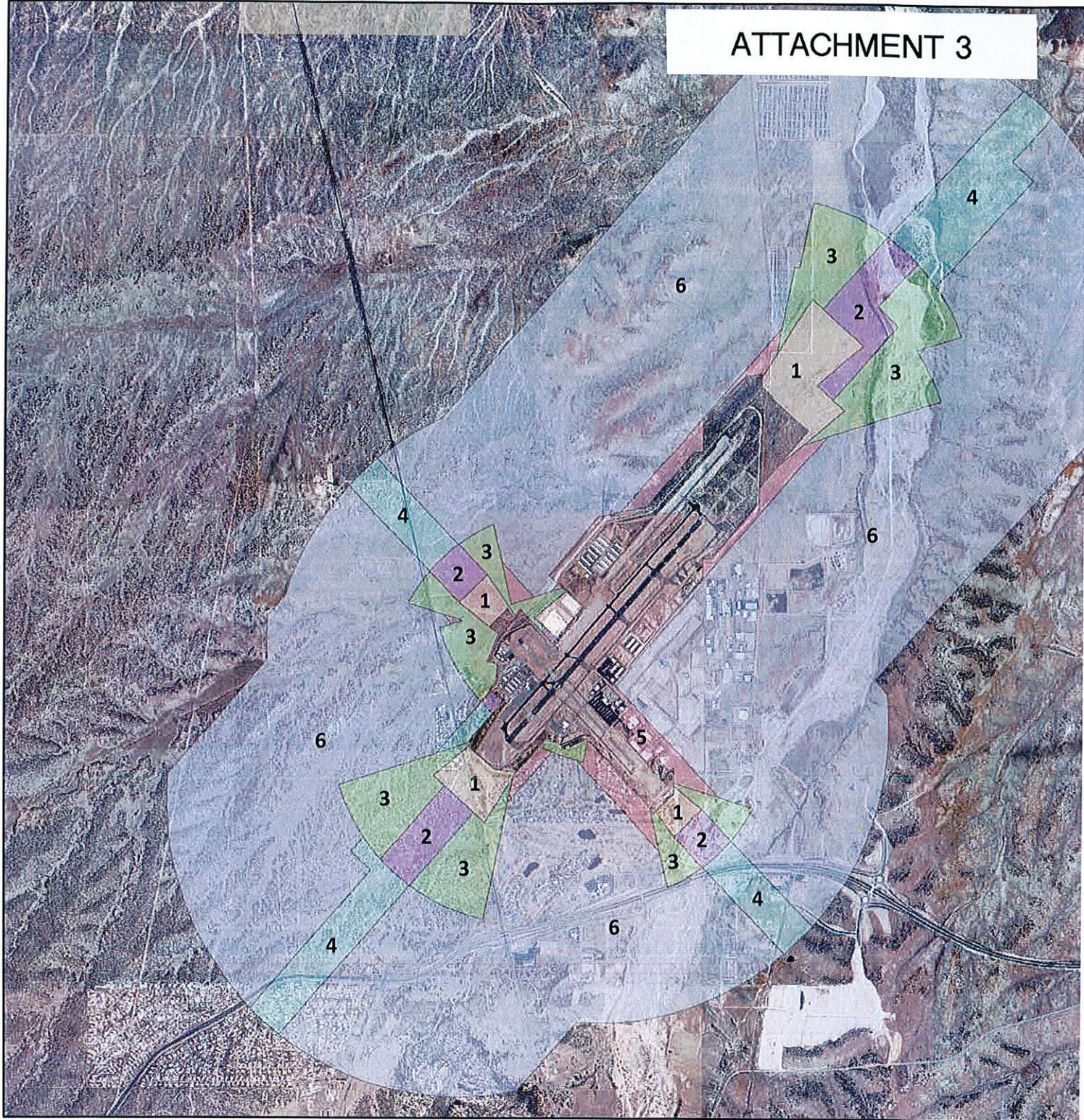


CITY OF PRESCOTT
Everybody's Hometown

0 0.5 1 Miles



ATTACHMENT 3





PROCEDURAL PRE-ANNEXATION AGREEMENT
James Deep Well Ranches #1 and #2

This Procedural Pre-Annexation Agreement (the "Agreement") is entered into this 24th day of November, 2009, by and between the CITY OF PRESCOTT, Arizona, an Arizona municipal corporation (the "City"), and James Deep Well Ranches #1, LLC, an Arizona Limited Liability Company, and James Deep Well Ranches #2, LLC, an Arizona Limited Liability Company, their successors in interest and assigns (collectively, the "Owner"), (collectively, the "Parties").

RECITALS

A. Owner holds fee simple title to approximately 1900 acres of land (the "Property"), located in Yavapai County, Arizona (the "County"), within the boundaries of that certain larger area (the "West Airport Annexation Area") depicted in attached Exhibit "A". The Property is generally situated north of Pioneer Parkway and west of Ernest A. Love Field, the City airport, which Property is only a portion of Owner's property. Owner intends to develop the Property incrementally in phases yet to be determined.

B. Subject to the terms and conditions of this Agreement, and in express reliance upon the interest and action of the City in initiating annexation of the Property, Owner desires to use its reasonable best efforts to incrementally annex the Property into the City's municipal limits and jointly process with the City any applications for Minor and/or Major General Plan Amendment(s) (the "GPAs") and/or rezoning(s) ("Rezoning(s)") as may be necessary or desired for each phase in coordination with the City and taking into consideration the economic factors and concerns of the City and the Owner at the time such annexations are proposed.

C. The Parties understand and mutually acknowledge that the City and Arizona State Land Department are discussing similar annexation of certain other contiguous lands identified by Exhibit "A". To assure effective coordination and consistency, and compliance with state statutes prohibiting the creation of County unincorporated "islands", such lands must of necessity be included by the City in the planning, development of transportation and utilities infrastructure, and other activities and actions mentioned herein, provided, however, that the City anticipates that in most cases annexation applications regarding lands under the jurisdiction of the Arizona State Land Department will be filed, if at all, separately and apart from those pertaining to the Property.

D. The City, having communicated to Owner its interest in annexing the Property in accordance with A.R.S. § 9-471, is willing to process annexations, GPAs, and Rezoning(s) in accordance with applicable law and the terms and conditions of this Agreement.

E. The Parties have determined it may be in their best mutual interest to annex the Property into City's municipal limits and, subject to the final and effective adoption of the proposed annexation(s) and translational zoning ordinance(s), for Owner to seek GPAs and Rezoning(s), if any, as may be desired by the Owner in conjunction with annexation(s) of the Property, in its entirety or incrementally, in the City rather than the County. The parties contemplate as to such annexation(s) that there may be more specific development agreements addressing more detailed planning, development, and zoning components as to each incremental annexation of the Property.



F. The Parties are entering into this Agreement pursuant to the provisions in A.R.S. § 9-500.05 in order to facilitate annexation(s) of the Property for future development and to provide for a procedure to prevent the proposed annexation(s) from becoming effective if applications for such GPAs and Rezonings are not approved subject to conditions that are acceptable to the Owner.

G. The Parties neither desire nor intend that this Agreement shall in any way affect, hinder or interfere with the ability of City's governing body (the "City Council") (i) to approve or deny applications for the annexation(s) and/or GPAs and Rezonings and/or (ii) to impose reasonable conditions of approval similar to the conditions of approval for other General Plan amendments and rezonings which have been and continue to be applied to properties of other parties, in connection with the approval of applications for such GPAs and Rezonings.

H. In anticipation of the annexation(s), the City on November 8, 2008, amended its General Plan via a General Plan Major Amendment (the "Major GPA") to designate future land uses for the majority of the Property, completed the Airport Area Transportation Plan (the "Transportation Plan") to identify a future street network within the Property and proximate lands, and prepared water and wastewater utilities master plans (the "Utilities Master Plans") for the majority of the Property.

I. In consideration for the enhancement of the value of the Property which may be realized by the Owner due to the creation of said future street network and provision of City utilities and other municipal services, Owner will make available to the City, and where applicable other public agencies of jurisdiction, subject to Owner's approval, certain real property and easement interests as more particularly identified hereinafter.

J. The Parties further desire to settle as part of this Agreement any and all obligations of the City accruing to the Owner, as successor owner, by virtue of the granting in 1967 of an easement by Harold James and Jean Butz James to the City (the "Easement"), traversing Section 27, T15N, R2W for the 18-inch water transmission pipeline of the City, which Easement is recorded in Book 463, Pages 31-34, Records of Yavapai County, Arizona, and which Section 27 is contained within the Property. It is also the intent of the Parties to settle and set forth the rights accruing to the Owner pursuant to this Easement by setting forth the agreement of the Parties concerning the provision of water in that agreement herein. It is understood and agreed that Owner shall use its reasonable best efforts to facilitate and cooperate with the City to accomplish any and all annexations, incremental or otherwise, as may be undertaken by the City, provided that the timing of such annexation(s) are intended to be mutually agreed upon by the parties, and are to consider the economic impacts, costs and effects of each. The Parties agree to meet and confer and to utilize their reasonable best efforts to resolve and address any such timing issues to their mutual satisfaction, and that in the event the City for whatever reasons chooses not to pursue any annexation(s), then and in that event the City shall nevertheless be required to provide water as set forth herein. However, it is understood and acknowledged that it is the desire of the Parties that the water to be provided herein be provided to residents within the City at the time that the water is served to customers by the City and that the Parties agree that they shall use their reasonable best efforts to facilitate the serving of such water to residents of the City.

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm and agree as follows:



AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as though fully restated.
2. Annexation Processes.
 - a. Initiation of annexation. City agrees to initiate proceedings to annex the Property or portions thereof (the "Annexation Property") into City's municipal limits and to issue, for the Annexation Property, an annexation petition to Owner. In recognition of the benefits which will accrue to the public from annexation of lands identified by Exhibit "A", pursuant to City Council Resolution No. 3761, passed and adopted August 29, 2006, application and review fees for annexations of the Property, or portions thereof, are hereby waived.
 - b. Boundaries. By mutual agreement between the Parties the boundaries of the Property indicated by Exhibit "A" may from time to time be amended.
 - c. Annexation and zoning ordinances. Concurrent with an annexation ordinance for all or a portion of the Annexation Property (the "Annexation Ordinance") being introduced by the City for consideration by its City Council, the City will also introduce for consideration by the City Council an ordinance for City's proposed initial zoning classification for the Annexation Property (the "Equivalency Zoning Ordinance") (collectively, the "Annexation and Equivalency Ordinances"). The "Equivalency Ordinance" is also referred to as translational zoning and will be adopted pursuant to A.R.S. § 9-471(L).
3. GPA's and Rezoning; Applications and Effectiveness. The Parties agree to jointly submit applications for GPA's and Rezoning, if any, to City for approval. City agrees to process such applications in accordance with applicable law and the terms and conditions of this Agreement. In the event an application for rezoning is made prior to the Annexation and Equivalency Ordinances being introduced to the City Council for its consideration, then City shall schedule, advertise and conduct hearings before the City's Planning & Zoning Commission and the City Council so that any such application is considered by the City Council concurrent with or immediately following the Annexation and Equivalency Ordinances. If the City Council approves the applications and finally adopts the GPA and Rezoning Ordinances, then the effective date of the GPA and Rezoning Ordinances shall be established as being after the effective date of the Annexation and Equivalency Ordinances, as determined by reference to paragraph 4 below.
4. Annexation and Equivalency Ordinances; Adoption and Effectiveness. City agrees that at any time prior to the City Council's adoption of any Annexation Ordinance(s) covering the Property, Owner may withdraw the annexation petition(s) for the Annexation Property. In the event the City Council adopts the Annexation and Equivalency Ordinances and such Ordinances are not timely rescinded by the City Council or challenged by referendum, the Annexation and Equivalency Ordinances will become effective thirty (30) calendar days after being adopted by the City Council as outlined in A.R.S § 9-471. In the event (a) the Owner withdraws its annexation petition, and/or (b) the City Council denies Owner's Rezoning Application before the Annexation and Equivalency Ordinances have become final and effective, or (c) the Annexation Ordinance, the Equivalency Zoning Ordinance and/or the Rezoning Ordinance are challenged by reconsideration or referendum, the City Council shall (by Motion



for Reconsideration or other appropriate means) schedule, advertise and conduct a City Council hearing to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; provided that (I) in the case of (c) above (a challenge by reconsideration or referendum), nothing herein shall prohibit Owner and City from mutually agreeing to jointly oppose any such challenge, but absent such mutual agreement, the City Council shall move to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; and (II) in the case of (b) above, the City Council will not consider rescission of the Annexation and Equivalency Ordinances if Owner formally objects to such rescission. Other than as specifically set forth in the immediately preceding sentence, the City agrees that at such hearing (for reconsideration or otherwise), City shall use all best efforts to ensure its legislative repeal of the Annexation Ordinance and the Equivalency Zoning Ordinance.

5. GPA's and Rezoning's; Applications. The Parties agree that nothing in this Agreement shall affect the ability of the City Council to approve or deny any GPAs and Rezoning's Applications, and/or to impose reasonable conditions on the City's approval of such applications.

6. No Requirement to Proceed. The Parties agree that nothing in this Agreement shall require any of the Parties to proceed with a proposed annexation, proposed GPA and/or Rezoning, and/or development of the Property. However, the Parties agree that it is their intent to use their reasonable best efforts to mutually facilitate such annexations and to cooperatively work together to agree to mutually satisfactory timing and planning to help further such annexations.

7. Proposition 207 Waiver. On or before the Annexation and Equivalency Ordinances are placed on the City Council's agenda for introduction and tentative approval, Owner shall provide to City a completed "Proposition 207 Waiver" applicable to the Annexation and Equivalency Ordinances in form acceptable to the City Attorney. Owner shall also provide to City a separate completed Proposition 207 Waiver form acceptable to the City Attorney in connection with a GPA and Rezoning. In the event the Annexation and Equivalency Ordinances and/or the GPA and Rezoning Ordinances are not approved, or are rescinded, repealed or otherwise of no effect, the Parties shall take such steps as are required to release or rescind any applicable Proposition 207 Waiver. However, such release or rescission shall not apply to the annexation, development agreement and equivalency processes undertaken pursuant to this Agreement.

8. Proposition 400. Article 1, Section 4, Subsection b. of the City Charter, commonly referred to as Proposition 400, will apply to annexation of lands comprising the Property at such time as the cumulative area of such annexed lands equals or exceeds 250 acres. Proposition 400 requirements include permanent recharge of all effluent generated by new development upon such lands; the City shall be responsible for assuring satisfaction of this requirement.

9. Agreement to Provide Rights Of Way, Temporary Construction Easements, and other Property.

a. Temporary Construction Easements. As and when required by the City to accomplish construction of public streets and utilities, at its sole cost and expense, Owner and



the City shall execute and deliver temporary construction easements granting to City and its contractors and agents the right to enter upon designated areas of the Property subject to reasonable conditions and without monetary consideration to Owner.

b. Rights of Way for Public Streets and Highways. Subject to Owner's approval, which shall not be unreasonably withheld, Owner shall grant rights of way for the public streets and highways within the Property identified by the General Plan and Transportation Plan of the City, and as may be more specifically contained within and necessary for any subdivision and/or site development plans submitted to the City for approval. Rights of way for City streets, which streets shall be developed according to the uniform standards set forth by the Land Development Code of the City, shall be granted by Owner without monetary consideration, as set forth in a Right Of Way Agreement to be entered into between the Parties. Rights of way for highways under the jurisdiction of public agencies other than the City will be provided via separate agreement(s) between the Owner and said other public agencies, which agreements may include the City as an additional party.

c. Easements for City Utilities. Subject to Owner's approval, which shall not be unreasonably withheld, Owner shall grant easements to the City, without monetary consideration, for water and wastewater transmission, distribution, and collection infrastructure, and associated access, identified by the Utilities Master Plans.

d. Intermediate Pump Station, Reservoirs, and APS Substation Site. The Owner agrees to sell upon request by the City, and City agrees to use its best efforts to purchase, for appraised value, as determined by Robert C. Huck, MAI, 724 Gail Gardner Way, Prescott, Arizona, or such other mutually satisfactory MAI appraiser, property for the Intermediate Pump Station, Reservoirs, and APS Substation Site, and an access easement extending from Willow Creek Road to these facilities, all as more particularly described by the "City of Prescott Public Works Big Chino Water Ranch Water Delivery Project, Bid Package No. 2, Pump Stations & Reservoirs (90% submittal, June 2007) designed by Black and Veatch Corporation, Phoenix, Arizona", a copy of which has been provided to the Owner. The parties acknowledge and agree that the landscaping and aesthetic design features indicated on said design plans and to be implemented by a construction project, are material to the willingness of the Owner to sell to the City the aforementioned property, and further, that although governmental communications facilities for City water operations, public safety, and/or other public operational purposes may be placed on the above described property consistent with applicable City codes and procedures, no communications towers or other facilities for private sector commercial communications purposes shall be permitted on this property. The parties shall in good faith endeavor to negotiate a mutually acceptable sales agreement pertaining to the subject property.

10. Agreement to Provide Water to the Property. The City will set aside from its Assured Water Supply portfolio and make available separate from its water management budget(s) the quantities of potable water set forth hereinafter for the sole use of the Owner, its successors in interest and assigns, on the Property, subject to the terms of this Agreement, and in accordance with the adopted water management policies, codes, and regulations of the City including, where applicable, approval of water service agreements separate from this Agreement. The capability of the City to provide water to lands outside its present corporate limits is acknowledged and understood by the Parties to be limited, therefore, the total quantity of water which may be required for development of the entirety of the Property may exceed the total of the increments identified in this paragraph. The City makes no representation regarding the



future availability of water beyond the quantities specified herein and makes no representations regarding any sources for water or supply of water other than those identified herein.

a. **First Increment.** Four hundred and fifty (450) acre-feet per year upon execution of this Agreement (the "**First Increment**"). The Owner agrees to meet with City representatives and to utilize its reasonable best efforts to cooperate and assist with any City initiated annexation(s) pertaining to the Property consistent with the intent of the Parties that any such annexation(s), and the making available of water by the City to the Owner to support the annexation(s) as set forth herein, shall be timed and planned in a manner that is mutually undertaken, and that owner shall continue to meet and engage in joint planning of the Property with the City.

b. **Second Increment.** Upon issuance of a final decision and order by the Arizona Department of Water Resources ("**ADWR**") pertaining to the City's Application for Modification of Designation of Assured Water Supply filed with said agency on October 12, 2007, final resolution of all associated legal actions which may arise, if any, and subject to the approval by ADWR of a sufficient quantity of water, an additional 500 acre-feet (the "**Second Increment**"), which increment shall be the first allocation by the City from the quantity approved by ADWR. The Owner agrees to meet with City representatives and to utilize its reasonable best efforts to cooperate and assist with any City initiated annexation(s) pertaining to the Property consistent with the intent of the Parties that any such annexation(s), and the making available of water by the City to the Owner to support the annexation(s) as set forth herein, shall be timed and planned in a manner that is mutually undertaken, and that owner shall continue to meet and engage in joint planning of the Property with the City.

c. **Third Increment.** At such time as the City's Big Chino Water Ranch Project has been constructed and water is being delivered into the Prescott Active Management Area by said project, 900 acre-feet (the "**Third Increment**"), which quantity shall be in addition to and separate from the quantities specified in Paragraphs 10.a and 10.b hereinabove. The Owner agrees to meet with City representatives and to utilize its reasonable best efforts to cooperate and assist with any City initiated annexation(s) pertaining to the Property consistent with the intent of the Parties that any such annexation(s), and the making available of water by the City to the Owner to support the annexation(s) as set forth herein, shall be timed and planned in a manner that is mutually undertaken, and that owner shall continue to meet and engage in joint planning of the Property with the City.

d. **Other Allocations.** Nothing shall preclude the Owner from applying, now or in the future, for additional water from any sources of the City made available for development within the City.

e. **Entitlement.** The Owner, successors in interest and assigns, shall be entitled to the quantities of water identified herein pursuant to this agreement and to use such quantities on the Property, which entitlement shall remain in force notwithstanding any decision by the City to not proceed with or consummate annexation and/or rezoning of the Property or any portion thereof. However, in the event that the City proceeds with annexing any portion or all of the Property as it exists now or as it may exist in the future by mutual agreement of the Parties to redefine the boundaries delineated, the Owner agrees that it shall use its best efforts to cooperate



and agree to such annexation(s), subject to the Parties working together on mutual timing, planning of the areas and with due consideration to any adverse financial impacts such annexations might entail. Further, Owner agrees and represents that it shall ensure that such agreement(s) are made binding upon any and all of Owner's successors or assigns having an interest in such property(ies). The Parties further acknowledge that pending any annexation(s) of portions of the Property, some water provided pursuant to this agreement may be used, at the determination of the Owner, on lands of the Owner which have not yet been annexed into the limits of the City. All water service provided by the City shall be furnished in accordance with the Prescott City Code, and specific provisions of this Agreement.

f. Transmission Line Taps. That upon request of the Owner to the City and payment by the Owner of any and all meter and other applicable fees and/or charges set forth by the Prescott City Code necessary for the establishment of water service (but not including those fees described in Paragraph 10.f below), the City will install, at City expense, two (2) taps (connections) to its 18" transmission line, each with a pressure reducing station resulting in water service at not more than 75 psi on the discharge side of the pressure reducing station, and 6" diameter service line, all in specific fulfillment of the City's contractual obligation. Until the lands upon which this water is used are annexed into the Prescott city limits, the Owner shall be solely responsible for providing, operating, and maintaining any water system (the "**Owner's System**"), beyond the meter(s), including backflow prevention devices which shall be required and must be approved by the City. All water delivered to the Owner's System by the City will meet current and future water quality requirements for municipal uses. Nothing herein shall preclude the City from providing water service to the Property, or portions thereof, from other transmission and distribution facilities in addition to the aforementioned 18" transmission line and taps on it.

g. Payment for Services. Each customer (the "**Water Customer**") to whom water service is provided shall be billed for such service as provided by the Prescott City Code; as such, the Water Customer shall timely pay all such billings.

h. Water Development and Water System Impact Fees. As development of the lands upon which said water is used proceeds, the Owner, its successors in interest and assigns, shall remit, and/or otherwise assure remittance of, to the City all water development and water system impact fees which may be prescribed, and in the amounts specified by the Prescott City Code at such time of development, for each residential and nonresidential unit on the Property which receives water service, at the time construction permits are issued by the applicable governmental unit of jurisdiction.

i. Fire Flows. Design and construction of the City's public water system providing service to the Property shall be accomplished in compliance with all applicable codes, including those for fire protection. The City makes no representation and cannot provide any assurance as to the sufficiency of fire flows within any part of the Owner's System.

j. Wells. Upon annexation into the City of any lands for which water has been provided pursuant to this Agreement, no new wells shall be permitted to be developed on the Property by the Owner or any other party, with the sole exceptions of: (a) wells which may be permitted by the State of Arizona and developed by the City for municipal water utility purposes, including recovery of recharged effluent; and (b) wells necessary for the continuation of



agriculture and/or livestock ranching on undeveloped portions of the Property. Existing wells may be used to continue agriculture and/or livestock ranching on undeveloped portions of the Property.

11. Agreement to Provide Wastewater Services. The City will provide wastewater (sewer) services to the Property pursuant to the Land Development Code, City Code, and all other applicable governmental codes, regulations, policies, and procedures.

a. Payment for Services. Each customer (the "Wastewater Customer") to whom wastewater service is provided shall be billed for such service as provided by the Prescott City Code; as such, the Wastewater Customer shall timely pay all such billings.

b. Wastewater System Impact Fees. As development of the Property proceeds, the Owner, its successors in interest and assigns, shall remit, and/or otherwise assure remittance of, to the City all wastewater system impact fees which may be prescribed, and in the amounts specified by the Prescott City Code at such time of development, for each residential and nonresidential unit on the Property which receives wastewater service, at the time construction permits are issued by the applicable governmental unit of jurisdiction.

12. Miscellaneous.

a. Good Standing: Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

b. Default and Remedies. In the event City is in default hereunder, Owner shall be entitled to withdraw its Proposition 207 Waiver, and shall then and in that event have those remedies available at law or in equity (including expedited equitable relief) as they pertain to Proposition 207, and notwithstanding any suggestion to the contrary in, or by virtue of Owner's execution of, the Proposition 207 Waiver. As to all other legal issues, claims and lawsuits, Sections 12 through 18, inclusive, shall be applicable.

c. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Yavapai County, Arizona.

d. Development Agreement. This Agreement is intended to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

e. Waiver. No waiver by any Party of a breach of any of the terms or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term or condition contained herein.

f. Severability. In the event that any phrase, clause, sentence, paragraph, or other portion of the Agreement shall be illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law and the Parties will negotiate



diligently in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

g. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States Mail, postage prepaid, by Certified Mail, return receipt requested, addressed as follows:

To City:
City Manager
City of Prescott
P.O. Box 2059
Prescott, AZ 86302

Copy to:
City Attorney
City of Prescott
221 S. Cortez St.
Prescott, AZ 86302

To Owner:
James Deep Well Ranches #1, LLC
8400 N. US 89
Prescott, AZ 86301

Copy to:
Selmer D. Lutey, Esq.
P.O. Box 591
Prescott, AZ 86302

148 N. Summit Ave.
Prescott, AZ 86301

Notice of address may be changed by any Party by giving notice to the other Parties in writing of a change of address. Such change shall be deemed to have been effectively noticed five days after mailed by the Party changing address.

h. Time of Essence. Time is of the essence of this Agreement.

i. Effective Date. This Agreement is entered into effective as of the date of full execution by the Parties.

j. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

k. Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties.



13. Waiver Of Jury Trial. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

14. Applicable Laws and Attorneys' Fees. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys' fees, either pursuant to the Agreement, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

15. Indemnification.

a. That Owner hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, appeals, expenses or lawsuits (including the costs of defense of any lawsuits or appeals) asserted by third parties which either (a) challenge the validity of this Agreement or any GPA or Rezoning approved hereunder, or (b) allege negligent acts or negligent omissions on the part of Owner to the extent that such claims and lawsuits pertain to and allege negligent acts or negligent omissions in relationship to any actions undertaken or allegedly undertaken by Owner pursuant to this agreement. Owner covenants to defend any and all claims, lawsuits, and appeals challenging this agreement at its sole cost and expense, including but not limited to attorneys fees, and costs, including any attorneys fees and costs incurred by the City should it elect or be required to defend itself, its employees agents, officers or assigns for any acts taken pursuant to this agreement.

b. That City hereby agrees to indemnify and hold harmless the Owner, its officers, employees, members, and agents and assigns, from any and all claims, liabilities, appeals, expenses or lawsuits (including the costs of defense of any lawsuits or appeals) asserted by third parties to the extent that such claims and lawsuits pertain to and allege negligent acts or negligent omissions pertaining to acts alleged to have occurred by City, or its officers, employees agents or assigns in relationship to any actions undertaken or allegedly undertaken by City, or its officers, employees agents or assigns pursuant to this agreement. City covenants to defend any and all claims, lawsuits, and appeals challenging this agreement at its sole cost and expense, including but not limited to attorneys fees, and costs, including any attorneys fees and costs incurred by the City should it elect or be required to defend itself, its agents, officers or assigns for any acts by City, its officers, agents, employees, or assigns, taken pursuant to this agreement.

16. Remedies. The parties further agree that there shall be no monetary damage remedy for breach of any provisions of this agreement and that the sole remedies for any breach shall be specific performance and/or declaratory judgment. The parties agree to meet and attempt to resolve any dispute in good faith prior to initiating any legal process, to participate in accelerated arbitration and to make good faith efforts to expeditiously resolve any dispute during such process, which process is set forth in exhibit in order to promptly and expeditiously to resolve any disputes. Further, in the event of an appeal from such arbitration process, the parties agree to utilize all good faith efforts to ensure expeditious resolution of any litigation, including participation in expeditious provisional remedies if available.



17. This Agreement shall be binding upon the Parties hereto, their administrators, heirs, successors or assigns and can be changed only by written agreement signed by all parties.

18. In the event that as a result of any legal proceeding all or any portion of this Agreement is determined to be invalid, contrary to existing laws, null and void, or without legal effect, the Parties agree to meet in good faith and to utilize all good faith reasonable efforts to redraft and/or renegotiate such portions of the agreement to comport with the intent of the Parties and to rectify such provisions to ensure the continued legal validity and effect of this agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

SEAL

CITY OF PRESCOTT, an Arizona municipal corporation

By: [Signature]
Mayor

Date: 12.3.09

ATTESTED TO:

[Signature]
City Clerk

APPROVED BY CITY COUNCIL

RES # 3996-1026 ORD # -
DATE: 12/24/09 EFF: 12/24/09

APPROVED BY:

[Signature]
City Attorney
MATTHEW POORACAY
Acting City Attorney

JAMES DEEP WELL RANCHES #1, LLC,
an Arizona Limited Liability Company

By: [Signature]

Its: Managing Member

Date: 12/1/2009

