

DEPARTMENT: City Manager
AGENDA ITEM: Resolution No. 3996-1026 approving a Procedural Pre-Annexation Agreement with James Deep Well Ranches #1 and #2

Approved By:	Date:
Regional Programs Director: Craig McConnell <i>Craig McConnell</i>	11-10-09
Finance Director: Mark Woodfill	
City Manager: Steve Norwood	

Item Summary

This Agreement, presented for approval via Resolution No. 3996-1026 (Attachment 1), accomplishes two important objectives: (1) it lays the groundwork for future annexation into the City of Prescott of up to 1,900 acres of Deep Well Ranch property located west of the airport and north of Pioneer Parkway (see Exhibit "A", the map appended to the Agreement, Attachment 2) according to the cohesive vision set forth by the 2008 West Airport Area General Plan Major Amendment; and (2) quantifies, fulfills, and settles the obligation of the City to provide water to Deep Well Ranch pursuant to a 1967 grant of easement for the City's 18" Chino Valley to Prescott water transmission pipeline.

Other significant benefits of the Agreement are as follows:

- Granting of rights-of-way for public streets and highways, including a new, more efficient direct connection ("Relocated Willow Creek Road") between SR 89 north of the airport and Pioneer Parkway which will reduce congestion at the intersection of SR89 and MacCurdy Drive, the present airport entrance
- Location of the new Intermediate Pump Station, three (3) three-million gallon reservoirs, and a new APS substation on Deep Well Ranch, together comprising an important public health and safety improvement, well removed from existing residential areas
- Granting of easements for other major City utilities infrastructure to serve the entire airport vicinity
- Precludes proliferation of new exempt wells within annexed lands
- Provides for siting of municipal wells in the future which may be needed for water utility purposes, including recovery of recharged effluent

The easement entitles James/Deep Well Ranches availability to water from the City subject to payment of all impact fees, charges, and rates required per City Code, not free water. The attached Agreement may be viewed as initiating a long term, "win-win" partnership with Deep Well Ranch whereby lands are brought into the City in an orderly manner for quality development, generating extensive beneficial economic activity; and water made available by the settlement is used on these annexed lands, with the additional value of return flow to the City's treatment plant, and recharge.

The West Airport Annexation Area

On November 25, 2008, Council approved the West Airport Area General Plan Major Amendment (Resolution No. 3921-0927). The application for this amendment, a significant step toward fulfillment of the Council's key policy goal of proactive airport area annexation, was City-initiated, and followed formulation of a conceptual land use plan (Attachment 3) in concert with Deep Well Ranch and the Arizona State Land Department, together controlling nearly all of the defined 2,600 acre West Airport Area.

This agreement with Deep Well Ranch directly implements both the Council's policy goal mentioned above, and the City's General Plan approved by voters in 2004 from which that goal arose:

"The airport and the manufacturing, industrial, and commercial uses associated with it have long been recognized as an important economic engine for the City. Based on this recognition the City developed and adopted several plans ... to assure the economic vitality of the airport, and to establish appropriate land use designations for the surrounding acreage.

... A new City annexation policy was adopted in 1994 with the objective to 'utilize annexation as a means to help ensure cost effective and orderly service delivery, provide for a balance of land uses and tax base, protect against undesirable development adjoining the City, and plan for the long term interests of Prescott.'

... Create quality job opportunities for Prescott area residents within employment sectors which complement Prescott's demographics, labor force, available sites, and quality of life. Establish suitable locations for employment centers and participate in development/expansion of infrastructure to support the designated sites."

City planning for the eventual resumption of quality growth in proximity to the airport has extended well beyond the updated land uses established by the West Airport Area General Plan Major Amendment, in order to provide the means for streamlining future annexation and development applications.

Using the CYMPO 2030 Regional Transportation Plan and several studies focused on "The Triangle" comprised of Willow Creek Road, Pioneer Parkway, and SR 89, in coordination with Yavapai County and major property owners (Deep Well Ranch, Cavan Real Estate Investments, Arizona State Land Department), the City has completed its Airport Area Transportation Plan (June 2009) to identify the locations and classes of streets, existing and future, needed not only to serve the West Airport Annexation Area, but lands on the north, east, and south side of the airport as well as regional traffic.

Further, water and sewer master plans (July 2009) have been created for the West Airport Annexation Area, linked to the City-wide Water and Sewer Models, to set forth how services will be provided. These street and utilities plans now provide the basis from which detailed development agreements, including infrastructure requirements and cost responsibilities, can be determined for the purpose of future annexations.

1967 Easement for the City's 18" Chino Valley to Prescott Transmission Pipeline

The easement was granted by Harold James and Jean Butz James to the City of Prescott in 1967; and is contained in Book 463, Pages 31-34, records of the Yavapai County Recorder (see Attachment 4). The City is obligated to provide two (2) taps on its 18" Chino Valley to Prescott high pressure water transmission pipeline, each with pressure reducing equipment and a 6" pipe, in order to deliver water to Deep Well Ranch at not more than 75 psi.

The existence of this easement was previously mentioned in conjunction with a separate, similar grant involving Deep Well Ranch property in Chino Valley, for which the Council approved an agreement with three subsidiary LLCs of CFCREI Investments on December 9, 2008. Both of these easements were found during a search of public records occasioned by settlement of a James family estate. Following the December 2008 agreement approval, the City conducted its own search, confirming that the 1967 easement described above was the only other one pertaining to the City's three (36", 18" and 12") transmission pipelines. With respect to the City Code and Water Management Policy, this 1967 easement comprises a preexisting contractual commitment by which Deep Well Ranch is entitled to water service from the City.

Quantifying the 1967 Easement for Settlement

Since the easement (Attachment 4) did not quantify the City's obligation to Deep Well Ranch, it was necessary for the Public Works Department to perform an engineering analysis. Given the operating pressure of the 18" transmission pipeline, the total quantity which could be supplied by the two 6" taps is enormous, ranging from 4,400 acre-feet/year at 75 psi to 3,600 acre-feet/year at 15 psi.

Recognizing the scarcity of water in this region, and limitations of the City's Water Portfolio, Deep Well Ranch has agreed to the following settlement quantities which are identified in the Agreement (Attachment 1):

950 acre-feet/year	not contingent on the Big Chino Project, to be made available in two increments: a <u>First Increment of 450 acre-feet</u> upon approval of this agreement; plus a <u>Second Increment of 500 acre-feet</u> upon final approval by the Arizona Department of Water Resources (ADWR) of the 2008 Draft Decision and Order for Prescott's Application for Modification of Assured Water Supply, and after resolution of any related appeals
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900 acre-feet/year	a <u>Third Increment</u> , an additional minimum quantity from the Big Chino Project when online (from the City 54% project share currently estimated at 4,364 acre-feet)
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The 950 acre-feet/year, which can be described as the short-term component of water to be made available, comprises 22-26% of the aforementioned range of 4,400 to 3,600 acre-feet/year for the two taps identified by the easement.

It is also important to point out that a considerable portion of the 1,393 acre-feet of "Alternate Water" identified in the ADWR 2008 Draft Decision and Order has been anticipated to be allocated to major annexations, hence, this Agreement, providing agreed upon settlement water quantities as well as establishing a framework for annexation of significant Deep Well Ranch lands very favorably located for that purpose and subsequent development, can be viewed as accomplishing just that.

This Agreement and the Alternate Water Portfolio

Attachment 5 demonstrates how the settlement quantities of the First and Second Increments will be accommodated from the City's Alternate Water Portfolio. As mentioned, the Third Increment is dependent upon the delivery of Big Chino Project water into the Prescott Active Management Area.

Since a reservation has been made for all unwatered vacant residentially-zoned parcels within the current City limits, and the City's Water Management Policy sets aside an increment for commercial development (0.1 acre-feet) for each residential unit (0.25 acre-feet) to which water is allocated, the increase in the Alternate Water component of the City's Assured Water Supply anticipated upon final approval of the Arizona Department of Water Resources (ADWR) 2008 Draft Decision and Order can be viewed as primarily available for major annexations. As indicated by Attachment 5, the projected availability after this settlement and ADWR approval is 825 acre-feet, plus any unallocated balance from the 287 acre-feet currently remaining within the 2006-2010 Water Management Budget.

Finally, to provide some perspective, with estimated buildout water demand of the West Airport Annexation Area in the range of 3,000 - 5,000 acre-feet, depending upon actual development density, and the likelihood of other desirable annexations east and south of the airport, it is clear that the inventory of well situated developable land in proximity to the City vastly exceeds the availability from currently identified sources, both renewable (Alternate Water) and imported (Big Chino Project). Even so, with the major annexations contemplated by this agreement and others completed in recent years, and the inventory of other approved but unbuilt commercial, industrial, and residential subdivisions, the long term development and economic prospects for the City are positive.

The Procedural Pre-Annexation Agreement

With respect to format, the Agreement has been drafted with City of Prescott template provisions, similar to those used for the pre-annexation agreement for the first Granite Dells Ranch annexation (Ordinance No. 4704-1008) and development agreement (Resolution No. 3969-1014) approved by Council July 28, 2009; and the previously approved development agreement for the Ponderosa Hotel and Conference Center (since lapsed).

The Agreement contemplates incremental annexations of "the Property" triggered by market demand, and availability of infrastructure and agreements on associated financing. Each such incremental annexation will involve a separate development agreement and annexation ordinance in compliance with all applicable state and local requirements, including Proposition 400 (November 2005), as well as the prohibition of creating any new "county islands."

- Attachments**
- 1 - Resolution No. 3996-1026
 - 2 - Agreement (with Exhibit "A" map)
 - 3 - West Airport Area Major General Plan Amendment Land Use Map
 - 4 - 1967 Easement
 - 5 - Alternate Water Portfolio Analysis

Recommended Action: MOVE to approve Resolution No. 3996-1026.

RESOLUTION NO. 3996-1026

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A PROCEDURAL PRE-ANNEXATION AGREEMENT WITH JAMES DEEP WELL RANCHES #1 AND #2, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, James Deep Well Ranches #1, LLC, and James Deep Well Ranches #2, LLC, are the owners of certain real property generally situated north of Pioneer Parkway and west of Ernest A. Love Field, the City Airport; and

WHEREAS, the parties wish to enter into a Procedural Pre-Annexation Agreement to provide for orderly, City-initiated annexations of portions of said property pursuant to all applicable state and municipal requirements; and

WHEREAS, the parties further desire to settle the obligations of the City to provide water to the owners by virtue of the granting in 1967 of an easement for the 18-inch Chino Valley to Prescott water transmission pipeline of the City.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT the City of Prescott hereby approves the Procedural Pre-Annexation Development Agreement attached hereto as Exhibit "A".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached Pre-Annexation Development Agreement and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 24th day of November, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

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 “**GPA**s”) 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 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, 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 GPA's 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.

CITY OF PRESCOTT, an Arizona municipal corporation

By: _____
Mayor

Date: _____

ATTESTED TO:

City Clerk

APPROVED BY:

City Attorney

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

By: _____

Its: _____

Date: _____

**JAMES DEEP WELL RANCHES #2, LLC,
an Arizona Limited Liability Company**

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, in his capacity as Mayor of the City of Prescott, Arizona.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, on behalf of James Deep Well Ranches #1, LLC, by _____, its _____.

SUBSCRIBED AND SWORN to me this _____ day of _____, 2009, by _____, the _____ of _____.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, on behalf of James Deep Well Ranches #2, LLC, by _____, its _____.

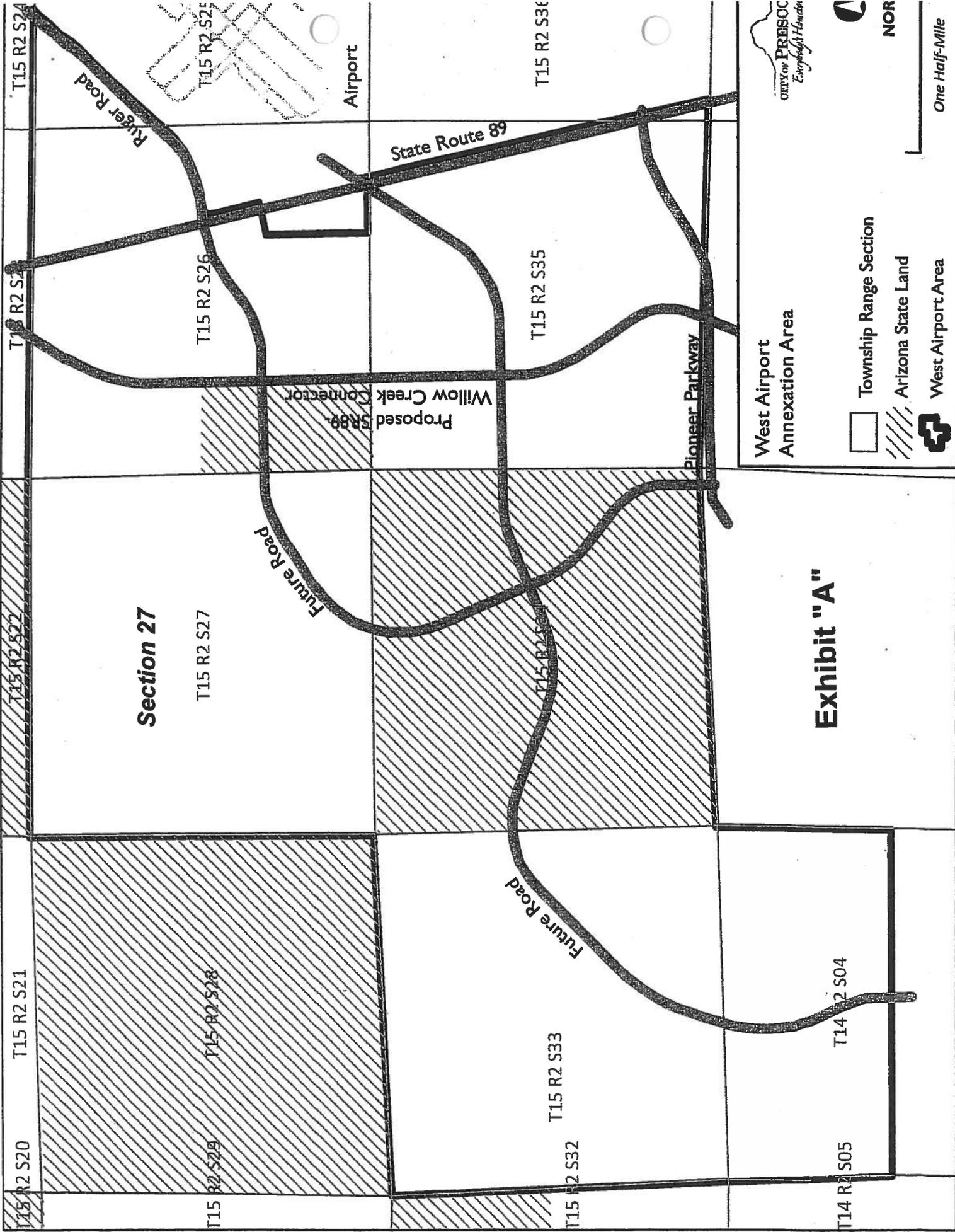
SUBSCRIBED AND SWORN to me this _____ day of _____, 2009, by _____, the _____ of _____.

Notary Public

My Commission Expires:

List of Exhibits

Exhibit "A" Map of West Airport Annexation Area



Section 27

Exhibit "A"

West Airport Annexation Area



Township Range Section
 Arizona State Land
 West Airport Area

NOR

One Half-Mile

T15 R2 S20
T15 R2 S21
T15 R2 S22
T15 R2 S23
T15 R2 S24

T15 R2 S27
T15 R2 S28
T15 R2 S29
T15 R2 S30

T15 R2 S31
T15 R2 S32
T15 R2 S33
T15 R2 S34
T15 R2 S35
T15 R2 S36

T14 R2 S04

Airport

State Route 89

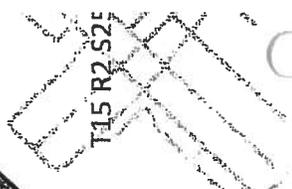
Proposed SR89- Willow Creek Connector

Pioneer Parkway

Rieger Road

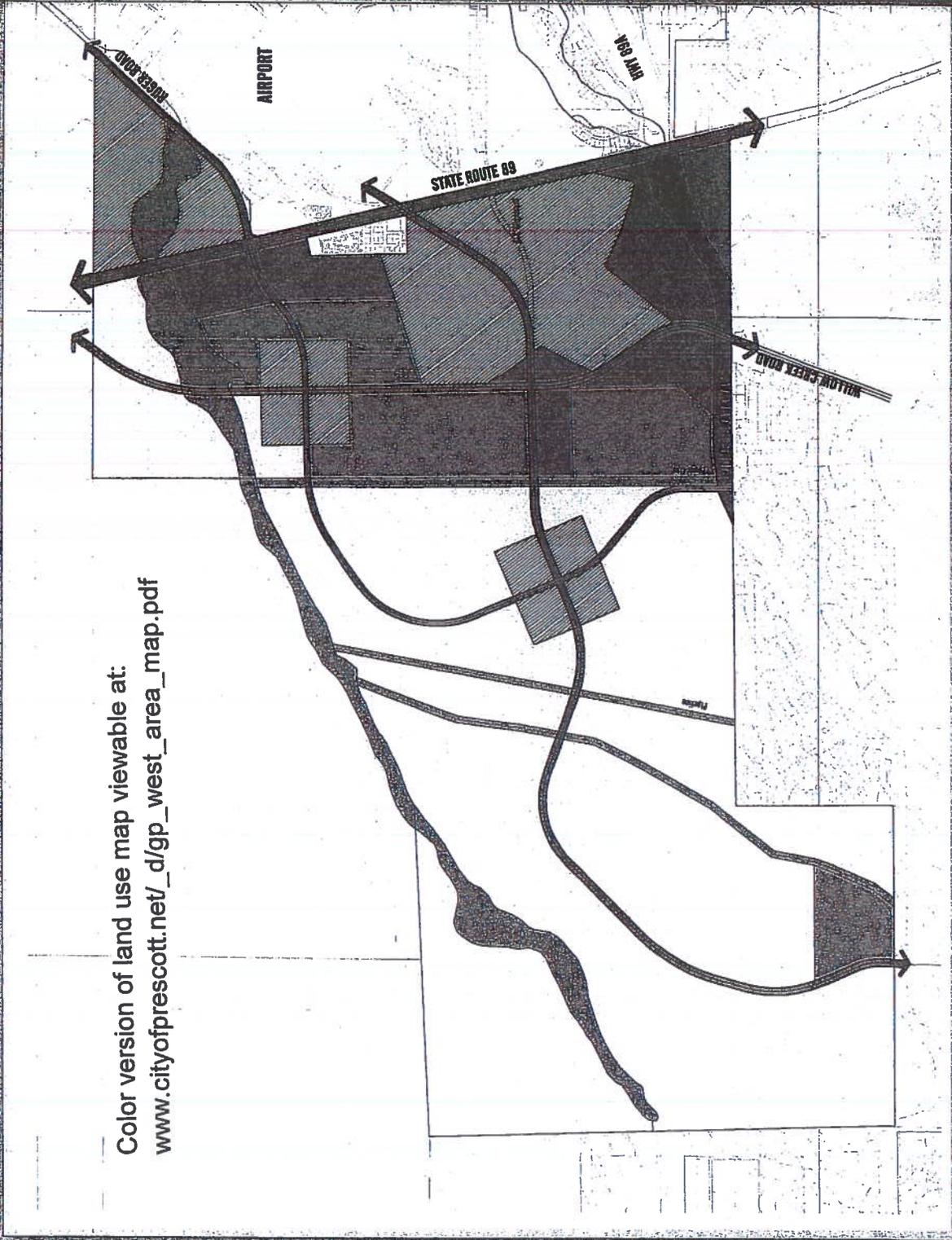
Future Road

Future Road



General Plan Land Use Map
(West Airport Area Major Arterials)

Color version of land use map viewable at:
www.cityofprescott.net/d/gp_west_area_map.pdf



- LEGEND**
- Commercial
 - Commercial/Employment
 - Low Medium Density Residential 1-7 DU/AC
 - Medium High Density Residential 8-32 DU/AC
 - Mixed Use
 - Recreation/Open Space
 - Roads



DATE: JULY 24TH 2008
JOB: 0710228001

STATE OF ARIZONA
County of Yavapai

1-12-51

I do hereby certify that the within instrument was filed and recorded at request of
City of Prescott on April 27 A.D. 1951
at 2:12 o'clock P. M., Book 463 Official Records, Page 31-34 Prescott
Records of Yavapai County, Arizona.

WITNESS my hand and official seal the day and year first above written.

FRANK C. BAUER, County Recorder

By Earl J. ... Deputy

EASEMENT

KNOW-ALL MEN BY THESE PRESENTS:

HAROLD JAMES and JEAN-BUTZ JAMES, his wife, of the County of Yavapai, State of Arizona, herein called "Grantors", for and in consideration of the sum of ONE (\$1.00) DOLLAR, and other good and valuable considerations, hereinafter appearing, the receipt of which is hereby acknowledged, hereby grants to the CITY OF PRESCOTT, a Municipal Corporation of the State of Arizona, hereinafter called "Grantee", and its successors and assigns, an easement for the purpose of clearing, trenching for, laying, constructing, maintaining and repairing an eighteen inch (18") water pipeline over, under and across that certain parcel of land situated in Yavapai County, Arizona, and being thirty (30) feet in width as shown in red on the attached map and more particularly-being fifteen (15) feet lying each side of the following described centerline, to-wit:

BEGINNING at a point on the North line of Section ~~27~~ Seven, Township Fifteen North, Range Two West, of the Gila and Salt River Base and Meridian, said point being 1,780 feet more or less West of the Northeast corner of said Section 27, (said corner being a stone with a cross on top); thence South 10° 47' 48" West, 730 feet more or less to Station 56 plus 47.9, at which point there is a deflection in the centerline 0° 02' 12" right; thence South 11° 0' 0" West, 4,580 feet more or less to the South line of said Section 27, containing 3.726 acres more or less; also that the City of Prescott, its successors and assigns, shall have temporary use for initial construction purposes only, of two additional 15-foot strips, lying adjacent to and on each side of the above described 30-foot easement, for the full length thereof.

463 on 31

TOGETHER with the right to reconstruct and operate said pipeline and the right of ingress and egress to and from the same for such purposes, subject, however, to the limitations hereinafter set forth.

IN FURTHER CONSIDERATION of the grant of this easement, the Grantee hereby agrees to install at its expense two (2) water sources from the pipeline on the above described property; both sources shall be, by the Grantee at its expense, equipped with pressure reducing equipment to deliver water at not more than 75 pounds per square inch from a six inch (6") diameter pipe, and shall be completed and ready for hook-up. Grantors shall be responsible for any and all costs for meters, piping and water delivered beyond the pressure reducing stations. The two (2) locations shall be designated by Grantors and referenced by stationing indicated on the plan and profile prepared by John Carollo Engineers.

Nothing herein contained shall be construed as a grant to the Grantee of any kind or character whatsoever to make use of any lands owned by the Grantors which are not embraced within the right of way of easement hereinabove described and set forth.

Grantors shall not erect or construct, or permit to be erected or constructed, any building or other similar structure within the limits of said right of way.

Grantors reserve the right to cultivate, use and occupy said premises for any purpose consistent with the rights hereinabove granted, and which will not interfere with or endanger any of the equipment or other property of the Grantee or the use thereof.

The right to construct and erect fences within the limits of said easement in a manner which will not reasonably interfere with the Grantee's access to its lines and facilities is reserved by the Grantors, together with the right to

place surfacing upon said premises. In the event Grantee shall disturb any surfacing so placed on the premises in connection with the repair and maintenance of its said water line, Grantee shall repair and replace said surfacing.

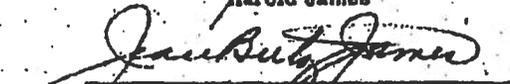
Grantee shall have the right to erect, maintain and use gates in all fences which now cross or shall hereafter cross said right of way and to trim, cut and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted to Grantee. With respect to fences which presently cross the aforementioned easement, gates shall be constructed and completed prior to commencement of the project. All gates shall be of steel construction, and a minimum of sixteen feet (16') in length, and shall be designed, constructed and installed in accordance with current specifications of the Highway Department of the State of Arizona.

The easement herein granted and the rights appurtenant thereto, shall not be assignable by Grantee.

In the event the above described lands or any portion thereof, shall cease to be used for the purpose set forth herein, then and in that event the rights hereby given shall cease to the extent of the use so abandoned or discontinued and Grantors shall have the right to re-enter thereon and resume possession thereof.

IN WITNESS WHEREOF, the Grantors have executed this instrument this, the 11th day of August, 1967.


Harold James


Jeanette James

STATE OF ARIZONA)
) ss.
County of Yavapai)

On this, the 22nd day of August, 1967, before me, the undersigned Notary Public, personally appeared HAROLD JAMES and JEAN BUTZ JAMES, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Charles L. ...
Notary Public

My Commission expires:

Aug. 17, 1971

ACCEPTANCE

The terms of the foregoing Easement are hereby accepted by the City of Prescott, Arizona, this 25th day of September, 1967.

Howard D. Jorgenson
MAYOR

ATTEST:

James Hancock
CITY ATTORNEY-CITY CLERK

STATE OF ARIZONA)
) ss.
County of: YAVAPAI)

Before me, the undersigned Notary Public, personally appeared HOWARD D. JORGENSON and JAMES HANCOCK, Mayor and Attorney-Clerk respectively, of the City of Prescott, a Municipal Corporation of the State of Arizona, known to me to be the persons whose names are subscribed to the foregoing Acceptance, and they, as such officers and being authorized so to do, acknowledged to me that they executed said instrument.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 25th day of September, 1967.

Eggy L. ...
Notary Public

My Commission Expires:
My Commission Expires Aug. 20, 1971

-4-
BOOK 463 PAGE 34

Attachment 5
Alternate Water Portfolio Analysis (10-13-09)

The 2005 Decision and Order granting Prescott's Assured Water Supply (AWS) identified 5,480 acre-feet (AF) annually of alternate water resources (Alternate Water) available to the City for allocation:

Stored and recovered effluent credits	2,178 AF
Direct use of effluent credits	1,796 AF
Annual surface water storage and recovery	1,391 AF
Long term storage credits	115 AF

Of the Alternate Water above 5,184 AF have been allocated or reserved:

1999-2010 Water Management Budget Allocations	1,570 AF
Direct use of effluent credits	1,796 AF
Reservations	
o CVID agreement	505 AF
o Other agreements	57 AF
o Unwatered vacant residentially-zoned parcels within the City limits	1,296 AF

3587-3703 = 184
1,296 AF ÷ 0.35 = 3703
meaning 184 lots have been developed
→ put in to WSAs

The current 2005 Alternate Water portfolio balance available for new allocations, reservations, or other agreements is the difference: $5,480 - 5,184 = 296$ AF.

Review of the reservation for unwatered vacant residential parcels established that it was overly conservative. Considering the location and slope of each such parcel, the reservation can be adjusted to 70% of maximum density allowed by current zoning. This adjustment would reduce the reservation from 1,296 AF to 672 AF, increasing availability by the difference of 584 AF.

With this adjustment the 2005 Alternate Water portfolio balance available for new allocations, reservations, or other agreements is 296 AF + 584 AF = 880 AF.

The following subtractions from this amount apply:

Remainder of 2006-2010 Water Management Budget	287 AF
Granite Dells Estates reservation (balance)	33 AF
First Increment to Deep Well Ranch per agreement	<u>450 AF</u>
	770 AF

After these subtractions the 2005 Alternate Water Portfolio balance available for new allocations, reservations, or other agreements is 880 AF - 770 AF = 110 AF.

It is important to note that this quantity (110 AF) assumes all 287 AF presently remaining in the 2006-2010 Water Management Budget will be allocated to new development by the end of the water budget period (end of calendar year 2010).

Expected approval of the 2008 Draft Decision and Order for Prescott's AWS would increase the Alternate Water Portfolio by 1,215 AF annually, for a total availability of $1,215 + 110 \text{ AF} = 1,325 \text{ AF}$.

Applying the Second Increment for Deep Well Ranch per the agreement would reduce this availability to $1,325 \text{ AF} - 500 \text{ AF} = 825 \text{ AF}$.

It is important to note again that this amount (825 AF) assumes all 287 AF presently remaining in the 2006-2010 Water Management Budget will be allocated to new development by the end of the water budget period (end of calendar year 2010). Any unallocated quantity from this budget will be added to/increase the 825 AF.