

COUNCIL AGENDA MEMO – May 14, 2013	
DEPARTMENT: City Manager	
AGENDA ITEM: Adoption of Resolution No. 4172-1334 approving the First Amendment to City Contract No. 2010-086, Procedural Pre-Annexation Agreement, James Deep Well Ranches #1 and #2	

Approved By:		Date:
Finance Director: Mark Woodfill		
City Manager: Craig McConnell		5-7-13

Item Summary

This First Amendment adds the North Airport Annexation Area (Exhibit "B") northwest of Prescott Love Field to the West Airport Annexation Area (Exhibit "A") which was the subject of the Procedural Pre-Annexation Agreement, City Contract No. 2010-086, approved in November 2009. A complete copy of the Agreement is attached for reference.

By Resolution No. 4142-1302 (July 2012) the City's General Plan Map was amended to designate future land use (Exhibit "C") for the North Airport Annexation Area consisting of approximately 586 acres. Generally speaking, the mutual understandings and procedures set forth in the Procedural Pre-Annexation Agreement for the West Airport Annexation Area will remain in effect for annexations of property within the North Airport Annexation Area.

Adoption of the attached Resolution No. 4172-1334 will approve the First Amendment.

Background

The Procedural Pre-Annexation Agreement of November 2009 laid 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 (Exhibit "A") as a key step toward the cohesive vision set forth by the prior 2008 West Airport Area General Plan Major Amendment; and (2) settled 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. As such, the Agreement initiated a long term, "win-win" partnership between the City and Deep Well Ranch whereby lands are brought into the City in an orderly manner for quality development, generating 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.

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The West and North Airport Annexation Areas

The Agreement and this First Amendment represent significant steps toward fulfillment of the City's longstanding policy goal of proactive airport area annexation as expressed in the 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 significant quality growth in proximity to the airport has extended well beyond the updated land uses established by the West Airport Annexation Area and North Airport Annexation Area General Plan Map Amendments. Using the CYMPO 2030 Regional Transportation Plan, the City completed its Airport Area Transportation Plan (June 2009) to identify the locations and classes of streets, existing and future, to serve lands on all four sides of the Airport as well as regional traffic. Water and sewer master plans linked to the City-wide Water and Sewer Models have additionally been completed for both of these Annexation Areas. The streets and utilities plans provide an important framework enabling crafting of detailed development agreements, including infrastructure requirements and responsibilities.

The First Amendment to the Procedural Pre-Annexation Agreement

The Agreement and First Amendment contemplate incremental annexations and development of property triggered by market demand and supported by availability of infrastructure. Each such incremental annexation will involve a separate development agreement and annexation ordinance in compliance with all state and local requirements, including, when applicable, Proposition 400 (November 2005).

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In addition to those of the Procedural Pre-Annexation Agreement which remain in force, the First Amendment adds the following provisions specifically pertaining to the North Airport Annexation Area:

- Lands in the North Airport Annexation Area are treated the same as those in the West Airport Annexation Area for the purposes of future annexations.
- A master plan has been created for an initial annexation area consisting of approximately 499 acres (Exhibit "D").
- The parties agree that water, wastewater, and transportation infrastructure required to serve the North Airport Annexation Area is neither presently funded nor shall the City be obligated to pay for this infrastructure provided, however, that the City may, but is not obligated to, facilitate financing through means which may be available to the City.
- Deep Well Ranch will make available at no cost to the City mutually agreeable rights-of-way and easements necessary to accommodate City utilities, public streets, and highways.
- The First Amendment anticipates conveyance of a portion of the North Airport Annexation Area from Deep Well Ranch to Yavapai Regional Medical Center (Exhibits "D" and "E"); a separate pre-development agreement between the City and YRMC is further contemplated.
- A water credit of 29 acre-feet/year will be provided by Deep Well Ranch for the proposed YRMC development.
- Deep Well Ranch will pay an annexation fee in the amount of \$25,000 to the City as required by Resolution No. 3761 (August 2006); since the first annexation of approximately 499 acres is being initiated by the City, pursuant to the Procedural Pre-Annexation Agreement the fee will be refunded to Deep Well Ranch as provided by Resolution No. 3761.
- Due to the first North Airport annexation exceeding 250 acres, Proposition 400 will apply. The City will have primary responsibility for meeting the requirements thereof, which include a cost-benefit analysis.

Procedural Steps Going Forward

The City has initiated the first annexation within the North Airport Annexation Area. The associated process, in accordance with Proposition 400, will extend into Fall 2013 and include: a development agreement, annexation ordinance and map, and rezoning ordinance, for the aforementioned 499 acres. A separate development agreement and water service agreement for the YRMC portion of the initial annexation will also be required. All of these items will come before the Council in public session.

Attachments

- Resolution No. 4172-1334
- First Amendment to the Procedural Pre-Annexation Agreement with Exhibits "A" through "E"
- Procedural Pre-Annexation Agreement, City Contract No. 2010-086

Recommended Action: MOVE to adopt Resolution No. 4172-1334.

RESOLUTION NO. 4172-1334

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO THE FIRST AMENDMENT TO CITY CONTRACT NO. 2010-086, 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, on November 24, 2009, by Resolution No. 3996-1026, the City and James Deep Well Ranches #1, LLC, and James Deep Well Ranches #2, LLC, entered into that certain Procedural Pre-Annexation Agreement (the "Agreement"), City Contract No. 2010-086, pertaining to the West Airport Annexation Area as described therein; and

WHEREAS, the parties now wish to amend the Agreement to identify and provide for future annexation into the City of Prescott of additional lands identified as the North Airport Annexation Area.

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 First Amendment to the Procedural Pre-Annexation Development Agreement, which Amendment is attached hereto as Exhibit "1".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached First Amendment 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 14th day of May, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL, City Clerk

JON M. PALADINI, 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 "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 Rezoning 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 Rezoning and/or (ii) to impose reasonable conditions of approval similar to the conditions of approval for other General Plan amendments and rezoning which have been and continue to be applied to properties of other parties, in connection with the approval of applications for such GPAs and Rezoning.

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's; Applications and Effectiveness. The Parties agree to jointly submit applications for GPA's and Rezoning's, 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

SEAL

By: [Signature]
Mayor

Date: 12.3.09

ATTESTED TO:

[Signature]
City Clerk

APPROVED BY CITY COUNCIL

APPROVED BY:

[Signature]
City Attorney
MATTHEW PODRACZYK
Acting City Attorney

RES # 3996-1026 ORD # -
DATE: 11/24/09 EFF: 12/24/09

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

By: [Signature]

Its: Managing Member

Date: 12/1/2009



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

By: Ronald E. Loman

Its: Managing Member

Date: 12/1/2009



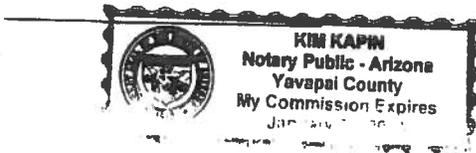
STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 3 day of December, 2009, by Jack Wilson, in his capacity as Mayor of the City of Prescott, Arizona.



Notary Public

My Commission Expires:



SEAL

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 1ST day of DECEMBER, 2009, on behalf of James Deep Well Ranches #1, LLC, by RONALD E. JAMES, its MANAGING MEMBER.

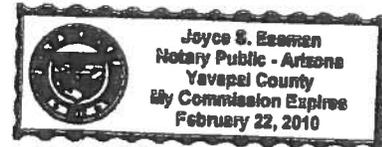
SUBSCRIBED AND SWORN to me this 1ST day of DECEMBER, 2009, by _____, the _____ of _____.



Notary Public

My Commission Expires:

FEBRUARY 22, 2010





STATE OF ARIZONA)
) ss.
County of Yavapai)

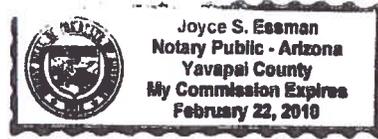
The foregoing instrument was acknowledged before me this 1ST day of DECEMBER, 2009, on behalf of James Deep Well Ranches #2, LLC, by RONALD E. JAMES, its MANAGING MEMBER.

SUBSCRIBED AND SWORN to me this 1ST day of DECEMBER, 2009, by RONALD E. JAMES, the MANAGING MEMBER of _____.

Joyce S. Easman
Notary Public

My Commission Expires:

FEBRUARY 22, 2010



SEAL

List of Exhibits



B-4714 P-699
Page: 16 of 17
AG 4364720

Exhibit "A" Map of West Airport Annexation Area



CITY OF PRESCOTT
Prescott's Heartland



NORTH

One Half Mile

Exhibit "A"

West Airport
Annexation Area

□ Township Range Section

▨ Arizona State Land



West Airport Area

RECORDERS MEMO- LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION

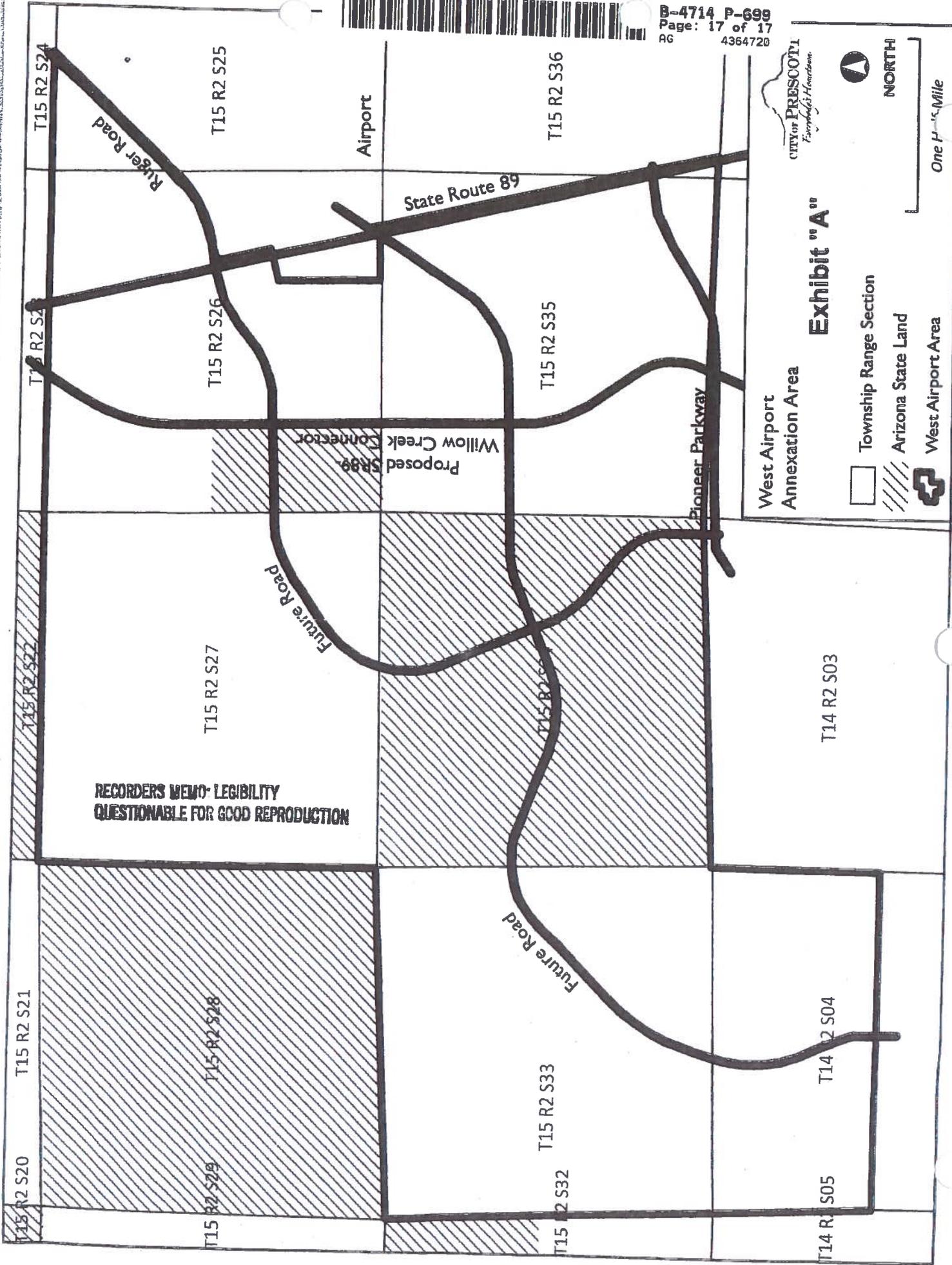


Exhibit "1"

PROCEDURAL PRE-ANNEXATION AGREEMENT

James Deep Well Ranches #1 and #2

First Amendment to City Contract No. 2010-086

WHEREAS, on November 24, 2009, the parties hereto entered into that Procedural Pre-Annexation Agreement, City Contract No. 2010-086 (the "Agreement"), providing for mutual understandings regarding future annexation into the City of Prescott (the "City") of up to 1,900 acres of real property owned by James Deep Well Ranches #1 and #2 (the "Owner), and quantifying, fulfilling, and settling the obligation of the City to provide water to Deep Well Ranches pursuant to a 1967 grant of easement for the City's 18" Chino Valley to Prescott water transmission pipeline; and

WHEREAS, Paragraph 2.b. of the Agreement provides that upon mutual agreement among the parties the boundaries of the Property depicted by Exhibit "A" thereto may from time to time be amended; and

WHEREAS, on July 24, 2012, the City Council of the City adopted Resolution No. 4142-1302, amending its General Plan Land Use Map to establish future land uses in the North Airport Annexation Area generally situated and bounded as shown by Exhibit "B" hereto, which land uses are depicted on Exhibit "C", also attached hereto; and

WHEREAS, the Owner and/or its assigns has entered into an agreement with Yavapai Regional Medical Center ("YRMC") for the conveyance from the Owner to YRMC of a tract of real property consisting of approximately 180 acres (the "YRMC Property"), which property is identified as the "YRMC Planning Area" by the preliminary development master plan of Exhibit "D", also attached hereto; and

WHEREAS, YRMC has prepared a preliminary development master plan for the YRMC Planning Area, Exhibit "E", and wishes to receive utilities and other municipal services from the City to support implementation of their master plan which will require that the YRMC Property be annexed into the City limits; and

WHEREAS, pursuant to Arizona Revised Statutes annexation of the YRMC Property will require prior or concurrent annexation of additional lands of the Owner to join the YRMC Property to the City limits; and

WHEREAS, the Owner wishes to receive utilities and other municipal services from the City through annexation of said additional lands depicted by Exhibit "D" into the City limits; and

WHEREAS, the exact area of the property consisting of the YRMC Property and additional lands of the Owner depicted by Exhibit "D" to be annexed (in sum the "Annexation Area") will be determined by preparation of an annexation map with legal description; and

WHEREAS, primary access to the Annexation Area will be from State Route 89 at intersections subject to approval by the Arizona Department of Transportation ("ADOT"); and

WHEREAS the parties hereto now wish to amend the Agreement to identify and provide for future annexation into the City of Prescott of the Annexation Area totaling approximately 499 acres as depicted by Exhibit "D".

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the others, the parties hereto agree as follows:

SECTION 1. THAT in addition to those lands of the Owner within the boundaries of the West Airport Annexation Area depicted by Exhibit "A" to the Agreement, the parties hereby add certain other lands, the Annexation Area, and designate said lands for annexation, which lands shall be treated equally as those of the Owner within the West Airport Annexation Area depicted by Exhibit "A".

SECTION 2. THAT in anticipation of annexation of the Annexation Area, the City has caused to be prepared water and wastewater utilities master plans (the "Utilities Master Plans") and cost estimates for the North Airport Annexation Area. The parties hereto expressly acknowledge and agree that the water, wastewater, and transportation infrastructure required to serve the North Airport Annexation Area is neither presently funded nor shall the City be obligated to pay for said infrastructure provided, however, that the City may, but is not obligated to, facilitate financing through means which may be available to the City. Said infrastructure will be configured for buildout of the entire Annexation Area, to be implemented in phases to support the locations and sequencing of land development proposed by the Owner and its successors in coordination and cooperation with the City.

SECTION 3. THAT Owner will make available at no cost to the City mutually agreeable rights-of-way and easements necessary to accommodate City utilities, public streets, and highways, and to ADOT any mutually agreeable rights-of-way and/or easements specifically necessary for intersections on State Route 89 created to provide access to the property depicted by Exhibit "D".

SECTION 4. THAT successor documents to this First Amendment, all which are to be considered concurrently, are anticipated to include: two separate development agreements, the first between the City and Owner pertaining to the entire Annexation Area, and the second between the City and YRMC pertaining to the YRMC Property; a water service agreement for the YRMC Property; an annexation ordinance and map, and rezoning ordinance, all pertaining to the entire Annexation Area.

SECTION 5. THAT the Owner will provide a water credit of 29 acre-feet/year to offset the potable water demand of the YRMC Property, which credit quantity is to be deducted from the 950 acre-feet/year total of the "First Increment of 450 acre-feet" and

"Second Increment of 500 acre-feet" settlement quantities set forth by the Agreement, and arose from a total credit of 58 acre-feet/year associated with the sale of certain other real property by the Owner to CFCHINO INVESTMENT, LLC, RCCHINO INVESTMENTS, LLC, AND BCCCHINO INVESTMENTS, LLC, and City Contract No. 2009-091 approved December 9, 2008, and recorded in Book 4637 Page 508, Records of Yavapai County, Arizona. Said credit of 29 acre-feet/year will be incorporated into and applied within the water service agreement for the YRMC Property identified in Section 4 herein.

SECTION 6. THAT pursuant to City Council Resolution No. 3761, adopted August 29, 2006, prior to consideration of an ordinance to annex the property depicted by Exhibit "D" into the City limits, the Owner shall first pay an annexation fee to the City in the amount of \$25,000.00. As provided by Resolution No. 3761, the parties agree that in recognition of the special economic and public health and other benefits to the City and its residents to be derived from development of the Annexation Area, this amount shall be refunded to the Owner by the City upon approval of the development agreement providing for said annexation.

*fee
to
reimb*

SECTION 7. The parties acknowledge that since the Annexation Area exceeds 250 acres, Proposition 400 will apply, the requirements of which are outlined in Article I Section 4 of the City of Prescott Charter. The City shall have primary responsibility for meeting said requirements, the fulfillment of which will affect the schedule for completing the items described in Section 4 herein.

SECTION 8. That except as provided herein, all terms and conditions of the Agreement shall continue in full force and effect, and be unmodified by this First Amendment.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of this _____ day of _____, 2013.

CITY OF PRESCOTT, an Arizona
municipal corporation

By:

MARLIN D. KUYKENDALL, Mayor

ATTESTED TO:

LYNN MULHALL, City Clerk

APPROVED BY:

JON M. PALADINI, City Attorney

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

By:

Its:

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

By:

Its:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, 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 _____, 2013, on behalf of James Deep Well Ranches #1, LLC, by _____, its _____.

SUBSCRIBED AND SWORN to me this _____ day of _____, 2013, 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 _____, 2013, on behalf of James Deep Well Ranches #2, LLC, by _____, its _____.

SUBSCRIBED AND SWORN to me this _____ day of _____, 2013, by _____, the _____ of _____.

Notary Public

My Commission Expires:

List of Exhibits

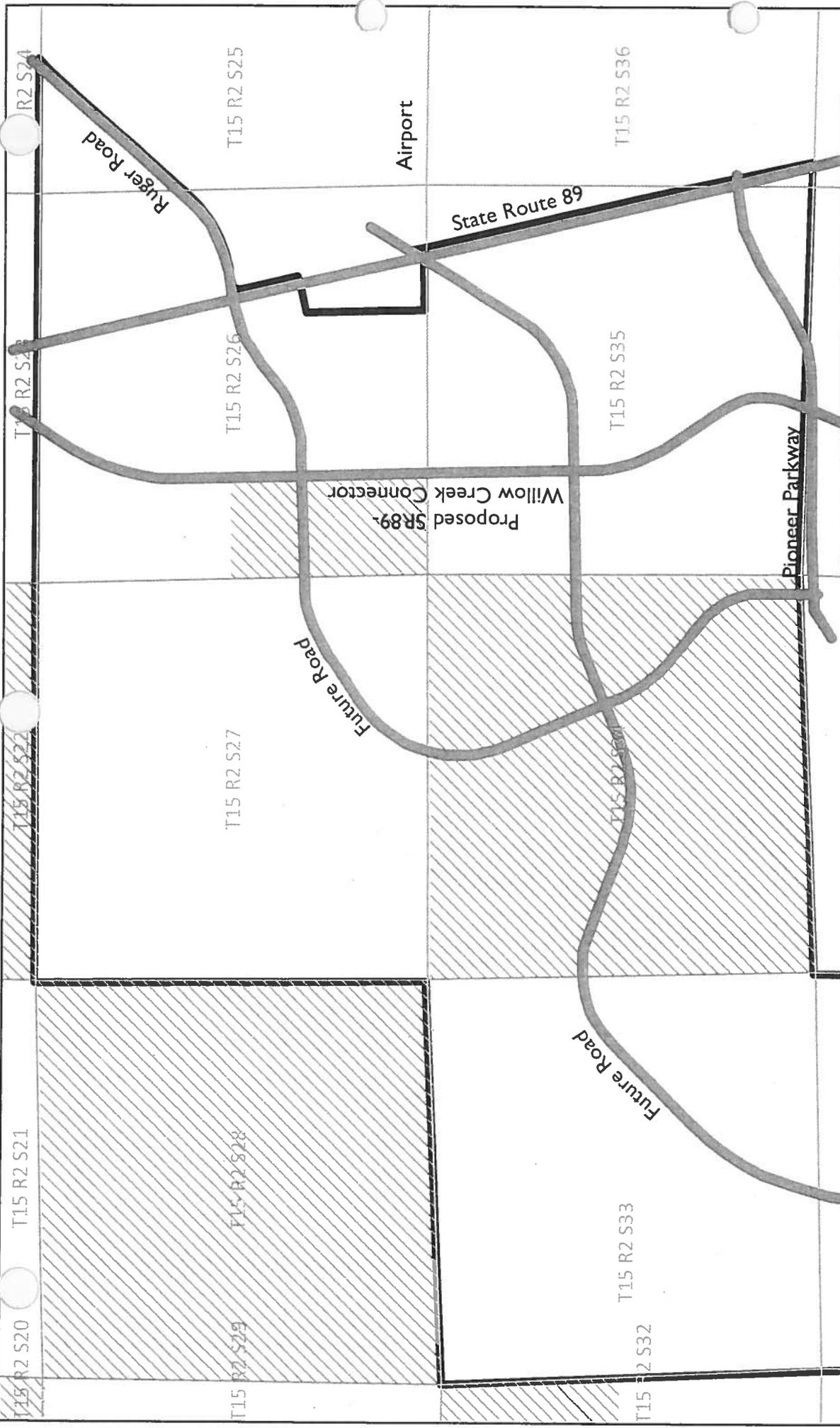
- Exhibit "A" Map of West Airport Annexation Area

- Exhibit "B" Location Map of North Airport Annexation Area

- Exhibit "C" Minor General Plan Land Use Map Amendment GP12-001
for North Airport Annexation Area

- Exhibit "D" Preliminary Development Master Plan for North Airport
Annexation Area - Lands of Deep Well Ranches #1 and #2

- Exhibit "E" Preliminary Development Master Plan for YRMC Property
(a portion of lands depicted by Exhibit "D")



West Airport Annexation Area

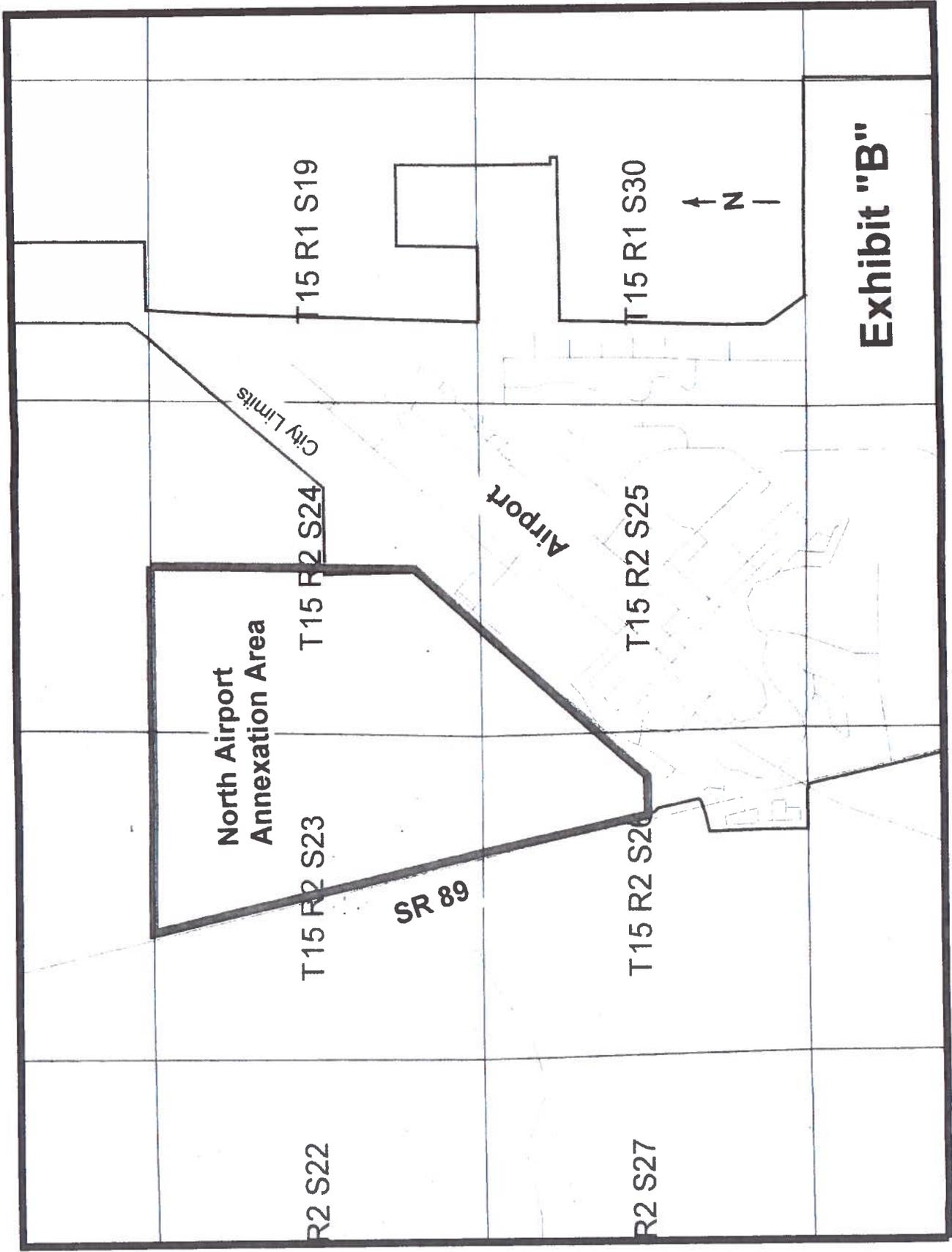
Exhibit "A"

CITY OF PRESCOTT
A Wonderful Place to Live

NORTH

Township Range Section
 Arizona State Land
 West Airport Area

One Half-Mile



Subject Property

Exhibit "C"

**Section 23 & 24
East SR 89**
City of Prescott
2013 Land Use General Plan

- City Limits
- ASAP Boundary
- Agricultural/Ranching
- Commercial
- Commercial/Employment
- Commercial/Recreation
- Industrial
- Low-Medium Density Res (8 U/Acre)
- Med-High Density Res (8 U/Acre)
- Mixed Use
- Recreation/Open Space
- Very Low Density Res (< 2 DU/Acre)
- Yavapai-Prescott Indian Reservation

0 0.5 1 Miles

Legend

-  Annexation Boundary
-  Airport Clear Zone
-  Commercial
-  Ranching (Interim Land Use)
-  YRMC Planning Area
-  City Limits

Total Acreage: 499

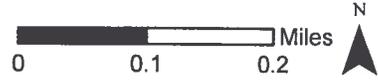


Exhibit "D"

YRMC Planning Area
180 Acres

**Ranching
(Interim Land Use)**
75 Acres

**Industrial/
Warehousing**
184 Acres

Commercial
56 Acres

State Route 89

Roundabout

Boulevard Entry (Divided)
Roundabout

Spine Road (Divided)

Deep Well Ranch Road

