

**MEMORANDUM OF UNDERSTANDING
BETWEEN
TAPADERO DOMESTIC WASTEWATER IMPROVEMENT DISTRICT
AND
TOWN OF PRESCOTT VALLEY, ARIZONA
FOR ANNEXATION AND DELIVERY OF SEWER SERVICE**

Date: _____

Recitals

(A) The La Fiesta package sewer treatment plant (“Package Plant”) is believed to have been installed by a developer on an unknown date but at least 25 years ago on Parcel No. 402-16-384K for use of owners of property. The Package Plant was believed to have been initially connected to residential structures on Tapadero Drive and structures on the Old Chisholm Trail in the Prescott Country Club (“PCC”), as well as to the La Fiesta restaurant located on SR 69. The Package Plant and related leach fields, pipeline connections and other infrastructure (“Old Sewer System”) is believed to have initially serviced 44 parcels with approximately 26 owners. [Exhibit “A” attached hereto and expressly made a part hereof.] Over the years it is believed that some of the original users on the Old Sewer System disconnected from the system, and the specific identities of all current users of the Old Sewer System are unknown.

(B) For many years, no statutory district was formed to operate the Old Sewer System and the developer and successor operators had to do their best with inadequate funding (due to inability to ultimately enforce payments by system users).

(C) According to a February 22, 2000, news article appearing in the Arizona Republic and other available communications in the late 1990s (as the limitations of the Old Sewer System became increasingly apparent) system users and others discussed potential fixes to the system such as connecting to other more viable package plants. Unfortunately, estimated costs were prohibitive.

(D) In 1999 and 2000, a letter from the Arizona Department of Environmental Quality (“ADEQ”) and the Yavapai County Environmental Services Department (“YCES”) notified the Package Plant owner about concerns over a number of issues, noting in particular that the leach fields had failed and that effluent was rising to the surface in violation of AAC R18-9-803(A) and R18-9-808(A) (a potential nuisance per ARS §49-141(A)(3)).

(E) In December 1999, the operators of the Package Plant sent a letter to the former developer (and system users’ representative) as well as to the Package Plant property owner that they would cease managing the Package Plant by the end of that year. This required other voluntary operators of the Package Plant to step forward.

(F) According to letters dated December 19, 2000 and January 11, 2001, on January 4, 2001, representatives of ADEQ and YCES met with system users and the Plant property owner to

discuss ongoing violations at the Package Plant and potential solutions. According to the January 11, 2001 letter, the focus was on creation of a statutory district to fund a connection to another package plant.

(G) By letter dated January 11, 2001, ADEQ informed the system users that the Package Plant continued to pose a public health hazard and that new regulations would likely make it difficult for the users to disconnect from the Old Sewer System and install on-site septic systems as a solution. ADEQ included in the letter that some users still were not paying their share to properly operate the system and, if a resolution was not found, ADEQ and YCES would have to consider enforcement actions to end discharges to the Plant. Another meeting with users was proposed to consider formation of a statutory district, application for grants and loans from the Arizona Water Infrastructure Finance Authority (“WIFA”), and potential connection to the expanding sewer system of the Town of Prescott Valley (“Prescott Valley”). Unfortunately, these efforts did not bear fruit.

(H) On September 20, 2007, the Package Plant property owner filed a lawsuit in Yavapai County Superior Court against those users (believed known at the time of filing the lawsuit) of the Old Sewer System for damages and equitable relief (TDH Investments, LLC vs DAL, P-1300-CV-20071058) (“Litigation”). As the Litigation worked its way through the court system, the parties thereto sought to avoid forced disconnection from (and abandonment of) the Old Sewer System. However, obtaining the consensus needed to form a statutory district in order to finance and construct a connector line and to meet the annexation requirements for connecting to the Prescott Valley sewer system remained elusive.

(I) On November 6, 1990, the electors of Prescott Valley had voted to allow Prescott Valley to engage in the business of providing sewer collection and treatment service (“Sewer Service”). In 1992, Prescott Valley began construction of a collection system in three phases and a treatment facility in two phases in order to provide such services (“PV Sewer System”).

(J) In 2003, Prescott Valley embarked on a phased project to finance and construct an extension of the PV Sewer System southeast along the SR 69 corridor towards Dewey in furtherance of Prescott Valley’s (i) management authority under Section 208 of the Water Pollution Control Act Amendments of 1972 (as amended by the Clean Water Act of 1977) for an area outside its corporate boundaries that included PCC, and (ii) economic development, health and safety purposes (“SR 69 Sewer Project”).

(K) On April 10, 2003 (as part of the SR 69 Sewer Project) Prescott Valley entered into a development agreement with landowners and developers of the Quailwood Meadows development located east of SR 69 (“Quailwood”) to, among other things, design and construct sewer facilities sufficient for Quailwood and other anticipated users along the SR 69 corridor (“Combined Sewer Project”). Said agreement provided that Prescott Valley would reimburse Quailwood for the costs not associated with Quailwood’s own needs in anticipation that Prescott Valley would (in turn) be reimbursed through charges applied to potential customers as a condition of any future annexation or zoning (“Buy-in Charges”). The area of PCC served by the Old Sewer System was ultimately assigned \$320,905 of the Combined Sewer Project costs.

(L) On January 22, 2004, Prescott Valley adopted Ordinance No. 578 annexing 150 acres that included Quailwood and certain commercial areas along SR 69 (including the parcels on which the Package Plant and La Fiesta restaurant were located).

(M) On June 29, 2006, Prescott Valley adopted Resolution No. 1446 forming the Southside Community Facilities District No. 1 (“SCFD No. 1”) to finance and construct sewer and water facilities that would serve residential and commercial properties along the SR 69 corridor by connecting to the Combined Sewer Project. In turn, SCFD No. 1 adopted its Resolution No. 4 on January 10, 2008 to award a construction contract to (among other things) upsize a sewer main to accommodate future annexation of portions of PCC. Prescott Valley financed the upsizing with the expectation that it would be reimbursed through future Buy-in Charges. The cost of the upsizing attributable to the Old Sewer System was estimated to be \$18,683.

(N) On August 30, 2001, Prescott Valley adopted a one-time Wastewater System Capacity Charge for connection to the PV Sewer System (“Capacity Charge”) to pay for expansion of the treatment facility. Today, that Capacity Charge is \$3,162 for each residential equivalent unit that connects.

(O) On November 2, 2009, Yavapai County approved an application by the believed known users of the Old Sewer System to form the Tapadero Domestic Wastewater Improvement District under Title 48, Chapter 6 of the Arizona Revised Statutes (“Tapadero DWWID”). [Exhibit “B” attached hereto and expressly made a part hereof] Among other things, the purpose in creating the District was to finance and construct a connection to the PV Sewer System as a solution to ongoing problems with the Old Sewer System.

(P) Unfortunately, about this time the world-wide economic recession was in full swing and substantially diminished the prospects of Tapadero DWWID obtaining any financing which could be the basis for imposing and collecting assessments against property owners within the district.

(Q) Now, however, as the recession begins to ease and property values stabilize the Board of Tapadero DWWID has collected voluntary payments from the believed known users of the Old Sewer System in an amount sufficient to construct a mainline connection to bypass the Package Plant and connect the Tapadero Drive portion of the Old Sewer System directly to the PV Sewer System (“PV System Connection”). [Exhibit “C” attached hereto and expressly made a part hereof] The Tapadero DWWID Board has published a call for bids for construction of the PV System Connection, said bids to be submitted and the winning bid to be publicly announced in early November, 2013.

(R) In anticipation that the PV System Connection is imminent (and based on an indication that the Tapadero DWWID Board will take measures to collect and remit to Prescott Valley the required Buy-In Charges and Capacity Charge), it is believed that now is the time for Prescott Valley to annex the parcels and public right-of-way included within Tapadero DWWID and provide Sewer Service to those users of the Old Sewer System. In so doing, however, Prescott Valley will leave the Old Sewer System to be owned, managed and operated by Tapadero DWWID until such time as funds are available to upgrade needed portions of the infrastructure

and make arrangements to decommission the Package Plant and unneeded portions of the infrastructure.

(S) It is believed that this initial annexation by Prescott Valley may be a catalyst for settling the Litigation and decommissioning the Package Plant. And, it is hoped that additional annexations may result based on agreements between Tapadero DWWID and other landowners. Such agreements would provide funds for upgrading the remainder of the Old Sewer System so that it may be accepted for ownership and maintenance by Prescott Valley as part of the PV Sewer System.

Purpose

The purpose of this Memorandum of Understanding (“MOU”) between Tapadero DWWID and Prescott Valley is to provide for (1) annexation by Prescott Valley of the parcels and right-of-way located within Tapadero DWWID, and (2) delivery by Prescott Valley of Sewer Service to the believed known users of the Old Sewer System.

Tapadero DWWID will:

(1) Bid out, pay for and oversee final construction of the PV System Connection in accordance with required engineering design and applicable law on or before June 30, 2014.

(2) Adopt on or before June 30, 2014 such fees per ARS §48-910 to be charged to each believed known user of the Old Sewer System sufficient to pay in full the applicable Buy-in Charges and Capacity Charge for connection to the PV Sewer System no later than June 30, 2017. [Exhibit “D” attached hereto and expressly made a part hereof]

(a) In making the payment, Tapadero DWWID shall remit to Prescott Valley those fees collected each calendar quarter within ten working days after the end of said quarter (from the date Tapadero DWWID begins collecting the fees). The district shall also take reasonable steps to timely collect any unpaid fees in accordance with applicable law. However, nothing herein shall preclude Prescott Valley from assisting in collection of any unpaid fees to the extent it has legal authority to do so (in its sole discretion).

(3) Reasonably cooperate with Prescott Valley in its efforts to annex parcels and right-of-way located within Tapadero DWWID in accordance with applicable law.

(4) Reasonably cooperate with Prescott Valley in its efforts to establish, upon annexation, individual sewer accounts for (and bill under its then-current utility regulations) the believed known users of the Old Sewer System who receive Sewer Service.

(a) In the event it is discovered that there are other users of the Old Sewer System on the Old Chisholm Trail or elsewhere, the parties shall reasonably cooperate in an effort to apply the provisions of this MOU to those properties.

(5) Continue to own, operate and maintain the Old Sewer System (not including the PV System Connection) in accordance with applicable law until such time as the system is repaired, replaced or decommissioned (as the case may be) in accordance with applicable Prescott Valley, state and federal standards so that the Old Sewer System may reasonably be accepted by Prescott Valley for integration into the PV Sewer System.

(a) Nothing herein shall preclude Tapadero DWWID from entering into separate agreements with other parties to connect their property to the Old Sewer System and thereby share in funding the repair, replacement or decommissioning of the Old Sewer System prior to its acceptance by Prescott Valley. Provided, however, that any such agreements shall be contingent upon annexation of such other properties into Prescott Valley (which annexation shall be at the sole discretion of Prescott Valley and subject to applicable development standards and fees).

(b) Tapadero DWWID shall reasonably cooperate with the Package Plant property owner to timely decommission the Plant in accordance with applicable law (and in cooperation with YCES and ADEQ) after acceptance of the PV System Connection and commencement of Sewer Service by Prescott Valley.

Prescott Valley will:

(1) Reasonably accept for operation and maintenance the PV System Connection upon its final construction in accordance with required engineering design and applicable law. Such acceptance shall be as determined by Prescott Valley but shall not be unreasonably withheld.

(2) Within a reasonable period after acceptance of the PV System Connection and adoption by Tapadero DWWID of the necessary fees per ARS §48-910 to pay the Buy-in Charges/Capacity Charge for connection of the Old Sewer System, complete the initial annexation of the parcels and right-of-way located within Tapadero DWWID.

(a) It is understood that this initial annexation shall, by operation of law, result in Tapadero Drive becoming a Prescott Valley roadway for purposes of ownership, maintenance and traffic enforcement. This will include all existing curbs, gutters, sidewalks, signage, striping and storm drains. However, it is expressly understood that annexation does not automatically accept for purposes of ownership, operation, or maintenance by Prescott Valley the sewer utility facilities (or any other utility facilities not previously accepted by Prescott Valley) in or under Tapadero Drive. Any such acceptance in the future shall only be by a separate writing issued by authorized Prescott Valley personnel in accordance with standard Prescott Valley procedures. These same restrictions will apply in the event of an annexation of any portion of the Old Chisholm Trail.

(b) It is further understood that any annexation shall be completed as determined by Prescott Valley but shall also be in accordance with applicable law. To the extent reasonably possible (in its sole determination) Prescott Valley shall avoid annexing parcels outside of Tapadero DWWID whose owners do not support annexation. Nothing herein shall preclude

separate agreements between Prescott Valley and owners of any parcel annexed into Prescott Valley in accordance with Proposition 207 (“Private Property Rights Protection Act”, November 7, 2006).

(3) Upon annexation, provide Sewer Service to any parcels shown to be connected to the Old Sewer System for which the terms of this MOU have been met. In so doing, Prescott Valley shall administer the sewer accounts in accordance with applicable utility regulations and shall only apply those fees, rates, charges and penalties to Old Sewer System customers as are applied to similar customers of the PV Sewer System.

(4) Reasonably accept for ownership, operation and maintenance the Old Sewer System only at such time as the Old Sewer System is repaired, replaced or decommissioned (as the case may be) in accordance with applicable Prescott Valley, state and federal standards. Such acceptance shall be as determined by Prescott Valley but shall not be unreasonably withheld.

(a) Prescott Valley shall reasonably provide the services of its personnel and agents (without cost to Tapadero DWWID) as consultants to assist Tapadero DWWID in obtaining any financing through WIFA that Tapadero DWWID may seek for repair, replacement or decommissioning of the Old Sewer System (or any related purpose).

(b) Nothing herein shall require Prescott Valley to accept for ownership, operation or maintenance the Package Plant or any related pipelines, leach fields or similar infrastructure (whether or not the same has been decommissioned in place according to law).

MOU Term

The overall term of this MOU shall be twelve (12) years after the date shown above.

This MOU may only be amended upon approval of all parties.

This MOU has been duly approved by appropriate action of the governing bodies of each of the parties hereto.

This MOU complies with the requirements of ARS §38-511.

APPROVED:

**Larry Walz, Board member
Tapadero Domestic Wastewater Improvement
District**

**Harvey C. Skoog, Mayor
Town of Prescott Valley**

Date: _____

**Ann Naughton, Board member
Tapadero Domestic Wastewater Improvement
District**

APPROVED AS TO FORM:

**Radovan Pletka, Chairman
Tapadero Domestic Wastewater Improvement
District**

Ivan Legler, Town Attorney

Date: _____

Date: _____

, Deputy County Attorney

Date: _____

EXHIBIT "A"
Old Sewer System

EXHIBIT “B”

Tapadero DWWID

EXHIBIT “C”

PV System Connection

EXHIBIT “D”

Calculation Buy-in Charges/Capacity Charge Per System User