

AGREEMENT

THIS AGREEMENT, entered into this 22nd day of May, 2014, by and among the Town of Prescott Valley, a municipal corporation of Arizona ("Prescott Valley"); PLP Prescott Valley, LLC, a limited liability company of Arizona ("PLP"); and Prescott Valley Shopping Center, LP, an Arizona limited partnership ("Fain");

WITNESSETH:

WHEREAS, in 1980 an entity related to Fain conveyed sixty (60) acres of land to Town and Country Properties ("Town & Country") for the purpose of developing (among other things) a commercial shopping center in Prescott Valley; and

WHEREAS, between 1980 and 1985, Town & Country began operating a private wastewater collection and treatment system ("T&C System") which ultimately included a 150,000 GPD aeration plant consisting of two (2) 75,000 GPD aeration tanks with a clarifier or final tank and sludge handling facilities ("T&C WWTP"); and

WHEREAS, on November 6, 1990, the electors of Prescott Valley voted to authorize operation of a public wastewater collection and treatment system ("PV System"); and

WHEREAS, in May 1992, Town & Country and Prescott Valley began discussions about Prescott Valley acquiring the T&C WWTP and certain collection lines in the T&C System, then contracting with Town & Country to operate the same as an initial part of the PV System; and

WHEREAS, Town & Country and Prescott Valley entered into a Development Agreement dated July 8, 1993 to allow a residential development known as Victorian Estates to connect to the T&C System as a means of temporarily providing wastewater services to said development until the PV System was constructed to a point where it could provide services without the T&C WWTP; and

WHEREAS, by Resolution No. 530 (February 10, 1994) the Prescott Valley Town Council ("Town Council") declared its intent to create Improvement District Phase 1A ("ID 1A") to finance (among other things) construction of trunk and collection lines for the PV System and dismantling the T&C WWTP. By Resolution No. 539 (March 10, 1994) the Town Council subsequently created ID 1A and the work financed thereby was essentially completed as of December 9, 1994; and

WHEREAS, by letter dated September 16, 1994, the Prescott Valley Engineer identified the collection lines and other fixtures in the T&C System which Prescott Valley was accepting for operation and maintenance as part of the PV System (Exhibit A attached hereto and expressly made a part hereof). Said letter indicated that the remaining collection lines in the T&C System served individual property owners and would remain private; and

WHEREAS, in accordance with said letter Town & Country and Prescott Valley subsequently entered into an Agreement dated April 13, 1995, whereby Town & Country formally granted, transferred, conveyed and donated portions of the T&C System (including certain real property interests, personal property and fixtures) to Prescott Valley; and

WHEREAS, on November 1, 1998, Shamrock Water Company (which owned public utility easements in which portions of the T&C System were located) was acquired by the Prescott Valley Water District (a community facilities district ("CFD") formed by Prescott Valley). In turn, said CFD was later liquidated so that ownership of the easements passed to Prescott Valley; and

WHEREAS, Fain owns an empty parcel adjacent to the shopping center which is being developed with a new commercial use which must connect to an eight inch diameter wastewater collection line in the T&C System which runs east and west in front of Safeway ("Safeway Line" shown in Exhibit B attached hereto and expressly made a part hereof) in order to have necessary wastewater service; and

WHEREAS, Fain and PLP (being successors-in-interest to Town & Country) desire that ownership and maintenance responsibility for the Safeway Line" be assumed by Prescott Valley (as part of the PV System) to facilitate development of the new commercial use on the parcel; and

WHEREAS, in consideration for said transfer, PLP has agreed to make needed repairs to the Safeway Line prior thereto; and

WHEREAS, in consideration for said transfer, Fain has agreed to arrange for a related entity to convey to Prescott Valley a parcel of real property adjacent to Prescott Valley's wastewater treatment plant ("PV WWTP") for future expansion (said parcel

shown in Exhibit C attached hereto and expressly made a part hereof); and

WHEREAS, the Prescott Valley Town Council finds that this transaction furthers the health, safety and welfare interests of the community;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION 1. PLP shall repair, at its sole expense, damages to the Safeway Line as shown in a previous line video by exposing said line, removing the damaged section, replacing it with new 8in. SDR-35, backfilling the parking lot, and replacing the asphalt. All work is subject to Prescott Valley inspection and approval in accordance with applicable engineering standards.

SECTION 2. Fain shall arrange for a related entity to convey to Prescott Valley by Quit Claim deed certain real property located adjacent to the PV WWTP described in Exhibit C.

SECTION 3. Upon completion of the performances set forth in Sections 1 and 2 above, Prescott Valley shall accept through the Town Manager by appropriate Bill of Sale (Exhibit D attached hereto and expressly made a part hereof) the Safeway Line for incorporation into the PV System and on-going operation and maintenance. Said acceptance shall include all related fixtures (including manholes and main-line cleanouts but not service laterals).

SECTION 4. It is expressly acknowledged by the parties that the remaining portions of the T&C System not hereby transferred to Prescott Valley shall remain the responsibility of any applicable successors-in-interest to Town & Country and any service laterals shall remain the responsibility of the property served.

SECTION 5. This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between or among Prescott Valley, PLP and Fain.

SECTION 6. This Agreement is in no way intended to benefit any persons other than the parties to it, and is not entered into with the intent to benefit any other person, either directly or

indirectly.

SECTION 7. Each party to this Agreement shall perform all acts and execute and deliver all documents as may be necessary and proper under the circumstances to accomplish the intents and purposes of this Agreement and carry out its provisions.

SECTION 8. This Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the parties hereto.

SECTION 9. Failure or unreasonable delay of any party to act in accordance with any material provision of this Agreement within the time established therein for performance is a default hereunder. After written notice mailed regular mail, postage prepaid, to the defaulting party specifying the nature of the alleged default, if said default is not cured within ten (10) calendar days of the date of the notice the non-defaulting party shall have the right to terminate this Agreement by written notice effective the date of mailing.

In addition, if any default is not cured within the cure period, the non-defaulting party may exercise all rights and remedies available to it at law or in equity, including without limitation the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages.

SECTION 10. Notices shall be in writing and shall be given by personal or air courier service delivery to a responsible person, by telephone facsimile, or by deposit in the United States mail (postage prepaid). Notices shall be delivered or addressed at the addresses set forth below or at such other address as a party may designate in writing. If notice is sent through the United States mail, the date of notice shall be two (2) days following the date of deposit in the mail.

Prescott Valley: Town of Prescott Valley
 c/o Utilities Director
 7501 E. Civic Circle
 Prescott Valley, Arizona 86314

PLP: PLP, Prescott Valley, LLC
 c/o Amy D. Howland
 Burch & Cracchiolo, PA

702 E. Osborn Road, #200
Phoenix, Arizona 85014

Fain: Prescott Valley Shopping Center, LP
c/o Brad Fain
3001 Main Street #2B
Prescott Valley, Arizona 86314

SECTION 11. In the event any action shall be instituted between any of the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party or parties all of its costs, including reasonable attorney fees.

SECTION 12. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach or the continuance of any existing breach.

SECTION 13. If any term or provision of this Agreement is at any time during the term of this Agreement determined by a court of competent jurisdiction to be in conflict with applicable federal law, state law, federal or state administrative agency rule or regulation, federal or state judicial decision, or local law, then the remaining provisions of this Agreement shall remain in full force and effect and the Agreement shall be enforced and interpreted to the extent possible without said conflicting provision(s).

SECTION 14. This Agreement may not be changed, modified, or rescinded, except in a writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

SECTION 15. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. No representations, warranties, inducements, or oral agreements have been made by any party except as expressly set forth herein or in contemporaneous written agreements.

SECTION 16. Pursuant to ARS §38-511, Prescott Valley may

cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of Prescott Valley is an employee, agent, or consultant to any other party to the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives the day and year first-above written.

Town of Prescott Valley, a
municipal corporation of Arizona
("Prescott Valley")

By _____
Harvey C. Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

EXHIBIT A

Previously Accepted T&C System Collection Lines and Fixtures

EXHIBIT B

Safeway Line

EXHIBIT C

Real Property Adjacent to PV WWTP

EXHIBIT D

Form Bill of Sale