

**TOWN OF PRESCOTT VALLEY
REQUEST FOR COUNCIL ACTION
Date: October 16, 2014**

SUBJECT: Settlement Agreement Events Center Case

SUBMITTING DEPARTMENT: Legal

PREPARED BY: Ivan Legler, Town Attorney

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: a) Settlement Agreement, b) Industrial Development Authority Resolution, and c) Amendment to Deposit Only Account Agreement

SUMMARY/BACKGROUND: The Events Center litigation was settled on Sep 15, 2014. The Settlement Outline for the final settlement (in which the Town participated) was discussed with the Council at its Work-Study meeting on Sep 18, 2014.

The formal Settlement Agreement has now been drafted and is attached. It is proposed for formal ratification by the Town Council. Two related documents are also attached. One is a draft resolution by the governing board of the Industrial Development Authority of the County of Yavapai which amends the Indenture Agreement related to the Bond issue involved with the Events Center construction in order to accomplish the terms of the settlement. The other is an amendment to the Deposit Only Account Agreement (also related to the Bond issue in order to accomplish the same settlement term). No Council action is required in relation to these two documents.

In accordance with the Settlement Outline, the Settlement Agreement provides that the Town's insurer will make a payment of \$250,000 to guarantee no appeal in the case by Allstate/Wells Fargo. The Town's deductible will be \$10,000. The Agreement confirms that the Town will continue to make any payments under the original 2005 development agreement over the remaining term of that agreement (2031) even if the Events Center closes its doors during that term. In return, Allstate/Wells Fargo is allowing the money the Town pays each year to use the Events Center (currently approx \$116,000) to go towards Events Center needs instead of bondholders. The Fains will pay Allstate/Wells Fargo \$750,000 and commit to make reasonable efforts to cause hockey to be back in the Events Center by 2015 and to keep the Center open and operating (ultimately without Global). As a separate matter, Allstate/Wells Fargo agrees not raise any legal issues if the Fains eventually get Town approval to put a residential apt complex in the downtown. In that case, Allstate/Wells Fargo will also not raise legal issues if the Town applies a 2% surcharge against rents from that complex and applies the revenue towards the Events Center.

In order for Judge Snow to agree to vacate the trial that was scheduled to begin on Sep 16, 2014, it was necessary for legal counsel representing each of the remaining participants to commit to the provisions of the Settlement Outline. The Town's outside counsel (Arnold & Porter), at the direction of the Town Attorney, gave that commitment on Sep 15, 2014 based on the Town Attorney's authority in Town Code §3-02-050. By its own terms, this Settlement Agreement asks the Town Council to ratify that action and authorize the Mayor to sign the Agreement. [Note: since the Mayor signed the original Deposit Only

Account Agreement back around Nov 1, 2005 (based on authority in the Development Agreement) he is already authorized to sign this amendment to the Deposit Only Account Agreement.]

OPTIONS ANALYSIS: The Council may ratify the earlier approval by the Town Attorney of the terms of case settlement by approving the attached Settlement Agreement, OR not ratify said earlier approval by the Town Attorney.

ACTION OPTION: Motion to approve the Settlement Agreement which ratifies the earlier approval of the case settlement terms by the Town's legal counsel, OR Motion not to approve this Settlement Agreement. **VOTE**

RECOMMENDATION: Staff recommends approving this Settlement Agreement and ratifying the earlier approval of the case settlement terms by the Town's legal counsel.

FISCAL ANALYSIS: The only direct cost of this settlement to the Town is the \$10,000 deductible under its insurance agreement with the Arizona Municipal Risk Retention Pool. Such deductible payments are budgeted for each year by the Town Clerk. As for the Town's commitment to the contingent payments under the development agreement even if the Events Center closes during the term of the development agreement, the Town had previously anticipated the possibility of making those payments throughout the term of the agreement. This commitment simply removes the potential for arguing in the future that the payments should cease in the event the facility closes for periods of time. Staff believes the agreement by Allstate/Wells Fargo to allow the Town's annual rent payments for public use of the Center to go towards the needs of the Center (instead of to bondholders) will help the ongoing operational needs of the Center. It believes the same for any surcharges that may eventually be applied to rents for any new apartment complexes downtown. Finally, staff believes the renewed commitments by the Fain entities related to the current Center operator to continue operations are beneficial for the downtown and for the public at large.

REVIEWED BY:

Management Services Director _____

Town Clerk _____

Town Attorney _____

Town Manager _____

COUNCIL ACTION:

Approved Denied Tabled/Deferred Assigned to _____