

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is made this 25th day of June, 2015 ("Effective Date"), by and between Town of Prescott Valley, a municipal corporation of Arizona (the “Town”), and The Fain Signature Group, LLC, an Arizona limited liability company (“FSG”) (each, a “Party” and collectively, the “Parties”).

BACKGROUND

The Parties desire to exchange and review information related to certain water rights owned by FSG or its Affiliates (the “Purpose”). In the process, FSG will divulge to the Town certain of its technical and business information, financial information, and proprietary and confidential information of FSG relating to the Purpose, as well as work product which may include studies, surveys and financial projections (collectively, "Confidential Information"). As a condition of FSG disclosing such Confidential Information to the Town, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Confidentiality. During the course of the discussions and activities contemplated by this Agreement, unless specifically authorized in writing by FSG, the Town will (a) use such Confidential Information solely for the Purpose; and (b) hold such Confidential Information in confidence in accordance with reasonably prudent standards (specifically not disclosing the Confidential Information to any person, organization, body, committee, commission, tribunal or similar entity except as set forth herein below).

2. Exceptions. The restrictions in this Agreement on use and disclosure of Confidential Information shall not apply to information that:

(a) Is now or becomes generally known to the public through no act of the Town or is in the public domain or subsequently enters the public domain other than through unauthorized disclosure by the Town;

(b) Was disclosed to the Town on a non-confidential basis by a third party having lawful possession of such Confidential Information and the right to make such disclosure, who was not under an obligation of confidence regarding the Confidential Information, and who the Town would not reasonably expect to have obtained such information in a confidential manner from FSG;

(c) Was in lawful and legitimate possession of the Town prior to its disclosure hereunder by FSG;

(d) Is independently developed by the Town after the signing date of this Agreement without use of or knowledge of the Information;

(e) Is specifically released in writing from obligations of confidentiality by FSG for use by the Town according to the terms set out in such written approval; or

(f) Is required to be released by law, regulation or binding order of a government agency or a court to disclose any of FSG's Confidential Information, provided that, prior to disclosing any Confidential Information, it will (i) notify FSG in writing in order to facilitate FSG seeking a protective order or other appropriate remedy from the proper authority; (ii) cooperate with FSG to lawfully limit and/or obtain any such protective orders or other appropriate remedy; and (iii) permit FSG to review the form and content of any Confidential Information that will be disclosed pursuant to such legal requirement.

3. Disclosure to Permitted Parties. Notwithstanding anything to the contrary herein, either party shall be free to disclose the Confidential Information to its Affiliates, employees, officers, directors, owners, and professional advisors (collectively, the "Permitted Parties") who need to know such information in order to evaluate or fulfill the Purpose, provided that such Permitted Parties are first advised of the confidentiality obligations contained herein and agree to be bound by such obligations. Each party shall assume responsibility for any wrongful disclosure of such Confidential Information by its Permitted Parties. An "Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with a Party hereto.

4. Survival. The Parties' respective obligations hereunder shall terminate two (2) years from the Effective Date.

5. Injunctive Relief. In the event of a breach or threatened breach of any term of this Agreement, the Parties agree that the harm suffered by the injured Party would not be compensable by monetary damages. Accordingly, the injured Party shall be entitled to issuance of immediate injunctive relief, without proof of actual damages, enjoining any breach or threatened breach of the other Party's obligations hereunder.

6. Miscellaneous.

(a) Nothing contained in this Agreement shall be construed, by implication or otherwise, as an obligation on the part of either Party hereto to enter into any future agreement with the other Party hereto.

(b) In the event that any court shall determine that any provision of this Agreement is invalid, such determination shall not affect the validity of any other provision of this Agreement, each of which shall remain in full force and effect and shall be construed so as to be valid under applicable law.

(c) Failure of a Party to insist upon strict adherence to any term of this Agreement on any occasion or the waiver of a breach of this Agreement in any instance shall not deprive the Party of the right thereafter to insist on strict adherence to that term or any other term in this Agreement or be construed as a waiver of any subsequent breach, whether or not similar. A waiver shall not be effective hereunder unless in writing and signed by the Party against whom enforcement is sought.

(d) This Agreement shall be binding upon and inure to the benefit of each Party hereto and to each of their respective successors and permitted assigns.

(e) Neither Party may transfer, assign, pledge, sub-contract or hypothecate its rights, duties or any interest in or under this Agreement without prior written consent of the other Party, in its sole discretion.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to conflicts of law principles. Any claim or action brought hereunder shall be brought exclusively in the federal or state courts located in Yavapai County, Arizona, and each party hereto consents to the jurisdiction and venue of such courts.

(g) This Agreement contains and constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof. This Agreement may not be amended or modified except by a subsequent writing signed by each of the Parties hereto.

(h) The Parties do not intend that any agency or partnership be created among them by this Agreement.

(i) This Agreement may be executed in any number of counterparts with the same effect as if the parties signed the same document. All counterparts will be construed together and will constitute one and the same Agreement. This Agreement may be executed by the Parties and transmitted by facsimile transmission or electronic mail and will be for all purposes effective as if the parties executed and delivered one original Agreement.

(j) Each Party warrants that it has all requisite authorization to enter into this Agreement and that it has the right to make the disclosures under this Agreement. Each individual signing below warrants that he or she has authority to bind the respective entity.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Agreement on the date first above written.

**The Town of Prescott Valley, a
municipal corporation of Arizona**

By: _____
Name: Harvey C. Skoog
Its: Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

**The Fain Signature Group, LLC, an
Arizona limited liability company**

By: The Fain Companies, LLC,
an Arizona limited liability company, its Manager

By: _____
Name: S. Brad Fain
Its: Member