

AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES
Town of Prescott Valley, Arizona

THIS AGREEMENT, entered into this 8th day of July , 2010, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (hereinafter the "TOWN"), and the PRESCOTT VALLEY ECONOMIC DEVELOPMENT FOUNDATION, INC., an Arizona non-profit corporation (hereinafter the "FOUNDATION");

WITNESSETH:

WHEREAS, ARS §9-493 authorizes Arizona cities and towns with populations of 60,000 or less to annually appropriate from their general funds up to \$40,000.00 or three-tenths (3/10th) of one percent (1%) of the assessed valuation in the city or town (whichever sum is greater) for the purpose of encouraging new industries and investment in the city or town, and to pay such amounts to chambers of commerce, boards of trade, or other commercial organizations of the city or town for those purposes; and

WHEREAS, the TOWN has heretofore entered into agreements with the Prescott Valley Chamber of Commerce (Chamber) dated October 31, 1990; July 1, 1993, July 1, 1994, July 24, 1997, July 9, 1998, June 22, 2000, July 26, 2001, August 22, 2002, June 23, 2005 and June 29, 2006 for economic development and other services; and

WHEREAS, in early 1996, the TOWN Council began to explore with the Chamber and with a group of local business persons other options available for encouraging economic development in the TOWN; and

WHEREAS, in the course of such explorations, the Chamber indicated a desire to focus its attention and resources on the retention and development of existing businesses, rather than the encouraging of new industries and investment; and

WHEREAS, in the course of such explorations, local business persons incorporated the FOUNDATION as a non-profit corporation for the purpose of hiring an Executive Director and other employees to encourage new industries and investment in the TOWN; and

WHEREAS, on December 19, 1996, the TOWN Council first entered into an Agreement for Economic Development Services (Agreement) with the FOUNDATION for economic development activities intended to encourage new industries and investment in the TOWN; and

WHEREAS, the TOWN subsequently renewed the Agreement on June 22, 2000, July 26, 2001, September 22, 2002, September 4, 2003, and August 12, 2004, and May 24, 2007; and

WHEREAS, the TOWN desires to again renew the Agreement with the FOUNDATION;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

1. FUNDING. That the TOWN shall provide funding to the FOUNDATION during the term of this Agreement as follows:

A. \$150,000 paid in equal monthly payments during Fiscal Year 2010-2011;

B. Funding for Fiscal Year 2012 and Fiscal Year 2013 will remain at the Fiscal Year 2011 level unless revised by the Town Council. .

2. HIRING AN EXECUTIVE DIRECTOR. That the FOUNDATION shall hire and thereafter retain (in accordance with its Articles of Incorporation and Bylaws) an Executive Director and such other officers and employees as the FOUNDATION may determine appropriate, to carry out such duties as may be established from time to time in written job descriptions developed by the FOUNDATION.

It should be noted that, in the event an Executive Director is not expeditiously hired by the FOUNDATION as set forth herein, or if an Executive Director is not retained at all reasonable times in employment during the term of this Agreement, the amounts appropriated by the TOWN hereunder may be unilaterally reduced by the TOWN to account for reduced expenditures and reduced economic development efforts in the absence of such a Director.

3. ECONOMIC DEVELOPMENT SERVICES. The FOUNDATION's economic development services under this Agreement shall generally be encouragement of new industries, businesses, services, investments, and resources to come into the corporate limits of the TOWN. This involves cooperation and coordination with other economic development agencies of area cities, towns, counties, and special districts, as well as the State of Arizona. Such services are to be conscientiously and diligently pursued, guided by the Prescott Valley's General Plan and the responsibilities and expectations set forth in the "Prescott Valley Strategic Plan for Economic Development" found in Focused Future II (or any update thereof) shown in pertinent part in Exhibit "A" attached hereto and expressly made a part hereof.

In particular, the FOUNDATION's economic development services shall include the following:

- Maintaining a record of individuals requesting information from the FOUNDATION about starting or expanding a business in Prescott Valley;

Coordinating FOUNDATION business retention and expansion efforts with related TOWN efforts to attract new commercial and industrial businesses, including (but not limited to) (a) monitoring and reporting to the TOWN's Economic Development Manager plans by local businesses to expand or relocate, and (b) referring to the TOWN's Economic Development Manager any inquiries or leads regarding new retail, hospitality, entertainment, tourism or recreation-based businesses.

Continuing its efforts on behalf of the entire region to establish a regional economic development organization.

- Attracting or otherwise procuring new industries, businesses, services, investments and resources so that five hundred twenty-five (525) new jobs are created within Prescott Valley during the three (3) year period ending June 30, 2013. A qualified new job shall meet one or more of the following criteria:

- * the new job shall create new dollars for the local economy;
- * the new job shall be a full time equivalent to forty (40) hours per week with employee insurance coverage; and/or
- * the new job shall create capital investment for the local economy.

The aggregate number of new jobs that meet the qualifying criteria and have been created by the economic development efforts of PVEDF shall be calculated on the following ratios:

- * Any new job with a salary at or above \$34,000 per year shall be credited as one and five tenths (1.5) jobs;
- * Any new job with a salary between \$28,600 and \$34,000 shall be credited as one (1.0) job;
- * Any new job with a salary less than \$28,600 shall be credited as five tenths (0.5) of a job;
- * Any new job creating sales tax revenue that has been referred to the Town's Economic Development Manager, and for which PVEDF was the original procuring cause for the discovery of such businesses, shall be credited as 0.5 of a job; and

- * Any new job created from an expansion of existing Prescott Valley businesses that required assistance from the PVEDF shall be credited as one (1) job.

4. REPORTS; INFORMATION. That the FOUNDATION shall provide to the TOWN the following reports and information on a quarterly basis:

- The name and contacting information of individuals inquiring during the quarter about starting or expanding a business in Prescott Valley;
- A quarterly report of services rendered and indicate how the Town's financial contribution was utilized by this service contract to-date; and
- An annual financial report to the TOWN for current year ending. Agencies on a fiscal year shall submit a written financial report to the TOWN by the 1st of November, while agencies on a calendar year shall submit a written financial report to the TOWN by the 1st of March.

With regard to any information obtained from the TOWN by the Executive Director or other FOUNDATION officers, employees, agents, and assigns, that information shall not be disclosed by such officers, employees, agents, and assigns insofar as permitted by law, unless appropriate TOWN staff otherwise authorize disclosure.

5. TOWN EX OFFICIO MEMBERS. That, in accordance with the FOUNDATION's Articles of Incorporation and Bylaws, a representative of the TOWN Council and the TOWN Manager may serve as ex officio, liaison officers on the FOUNDATION's Board of Directors and the Executive Committee in order to (among other things) provide input and suggestions with regard to decisions on the hiring, performance, retention, and removal of the FOUNDATION's Executive Director.

6. AGREEMENT TERM. That, unless otherwise terminated as set forth in Section 8 hereinafter, the term of this Agreement shall be effective from July 1, 2010 through June 30, 2013.

7. TIME OF THE ESSENCE. That time is of the essence in this Agreement.

8. DEFAULT AND TERMINATION. That failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of sixty (60) days (the "cure period") after written notice thereof from the other party, shall constitute a default under this Agreement. Provided, however, that if the failure or delay is such that more than ninety (90) days would reasonably be

required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said 90-day period and diligently proceeds to complete such performance or fulfill such obligation. The notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible.

In the event such default is not cured within the cure period, the non-defaulting party shall have all rights and remedies which may be available under law or equity including, without limitation, the right to specifically enforce any term or provision hereof, the right to institute an action for damages, and/or the right to terminate this Agreement upon written notice and to receive in reimbursement any and all funds not properly expended for services rendered.

9. NOTICES AND DEMANDS. That, unless otherwise specifically provided herein, all notices, demands, or other communications relating to this Agreement shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

TOWN: Town of Prescott Valley
 c/o Town Manager
 7501 East Civic Circle
 Prescott Valley, AZ 86314

FOUNDATION: Prescott Valley Economic Development Foundation, Inc.
 c/o President
 7120 E. Pav Way, Suite 106
 Prescott Valley, AZ 86314

These addresses may be changed by either party by giving notice in writing. Such changes shall be deemed to have been effectively noticed five (5) days after being mailed by the party changing the address.

10. ACCOUNTING AND AUDITING. That the FOUNDATION shall keep accurate and complete records of its costs and expenditures in accordance with generally recognized accounting principles and practices. The TOWN (including its audit representatives) shall have the right at any reasonable time to examine, audit, and reproduce all records pertaining to such costs and expenditures, including (but not limited to) payrolls, employees' time sheets, invoices, and all other such evidences of costs and expenditures for the services provided hereunder. Such records shall be kept by the FOUNDATION and made available for 1 year after termination of this Agreement.

11. NO PARTNERSHIP OR JOINT VENTURE. That it is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other similar arrangement between the TOWN and the FOUNDATION. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

12. INDEPENDENT CONTRACTOR. That it is understood by the parties hereto that nothing in this Agreement is intended to make of the FOUNDATION, its officers, employees, agents, and assigns, officers or employees of the TOWN. Rather, the FOUNDATION, its officers, employees, agents, and assigns are independent contractors. As such, the FOUNDATION, its officers, employees, agents, and assigns are solely responsible for collection and payment of any applicable federal, state, or local taxes (including, but not limited to, employment taxes), and acquisition and maintenance of required insurance (including, but not limited to, medical and workers compensation insurance).

Except as may otherwise be provided in this Agreement, the FOUNDATION shall furnish all supervision, labor, and materials, and shall obtain any needed licenses and permits required to provide the services contemplated hereunder.

13. LAWS AND REGULATIONS. That the FOUNDATION, its officers, employees, agents, and assigns, shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances in their performance under this Agreement; including (without limitation) those governing wages, hours, employment discrimination, and safety. The FOUNDATION, its officers, employees, agents, and assigns, shall also comply with equal opportunity laws and regulations to the extent they are applicable.

14. INDEMNIFICATION AND HOLD HARMLESS. That the FOUNDATION specifically and expressly agrees to indemnify and hold harmless the TOWN, its officers, employees, agents, successors, and assigns for, from and against any and all claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, and liabilities of every kind and description (including, without limitation, costs and fees of litigation) to the extent such claims, demands, suits, settlements, judgments, losses, costs, expenses, damages, and liabilities result from, arise out of, or are in any way connected with any negligent act, error, or omission of the FOUNDATION, its officers, employees, agents, and assigns, in the performance or non-performance of the FOUNDATION's obligations under this Agreement. Notwithstanding any other provision of this Agreement, this Section 14 shall continue in full force and effect beyond any termination of the Agreement.

The indemnity obligations under this Section 14 include, without limitation:

- a. Loss or damage to any property of the TOWN, the FOUNDATION, or any third party; and
- b. Bodily or personal injury to, or death of, any person(s) including, without limitation, employees and officers of the TOWN while acting in their official capacity.

15. INSURANCE. That, without limiting any liabilities or other obligations of the FOUNDATION hereunder, the FOUNDATION shall, prior to commencing work hereunder, secure and continuously carry with insurers authorized to do business in Arizona the following insurance coverages:

- a. Commercial General Liability insurance with a minimum single limit of \$1,000,000.00. Said coverage shall include:
 - * Bodily Injury and Property Damage Liability
 - * Contractual Liability
 - * Products and Completed Operations

to protect against and from all loss by reason of injury to persons or damage to property, including the FOUNDATION's own workers and all third persons, as well as the property of the TOWN and all third parties, based upon and arising out of the negligent performance of the FOUNDATION's operations hereunder (including the operations of the FOUNDATION's agents and assigns).

- b. Business Automobile Liability insurance with a minimum single limit of \$1,000,000.00 for bodily injury and property damage with respect to the FOUNDATION's vehicles, whether owned, hired, or non-owned, assigned to or used in the performance of the services contemplated hereunder.

The insurance policies required hereunder shall include provisions or endorsements naming the TOWN as an additional-insured.

16. ONGOING OBLIGATION. That each of the parties hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary from time to time to carry out the matters contemplated by this Agreement. Furthermore, the parties shall at all times act reasonably with respect to any and all matters which require either party to review, consent to, or approve any act or matter hereunder.

17. NON-EXCLUSIVE AGREEMENT. That nothing in this Agreement shall be construed as granting to the FOUNDATION an exclusive right to engage in economic development activities in or on behalf of the TOWN. However, the TOWN shall endeavor

to ensure that any persons or entities involved in economic development in or on behalf of the TOWN cooperate with and coordinate with the FOUNDATION, its officers, employees, agents, and assigns.

18. WAIVER OF BREACH. That no waiver by either party of a breach of any of the terms, covenants, 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, covenant, or condition herein contained.

19. ASSIGNS, SUBCONTRACTORS, AND SUCCESSORS-IN-INTEREST. That the FOUNDATION shall not assign this Agreement, or any part thereof, without the prior written consent of the TOWN. Any attempted assignment in violation hereof shall be void. The FOUNDATION shall be fully responsible for the acts or omissions of any of its subcontractors and of all persons employed by it. Nothing herein shall be deemed to create any contractual relationship between any of the FOUNDATION's subcontractors and the TOWN.

Furthermore, all successors, executors, administrators, and assigns of the FOUNDATION and the TOWN, and their respective interests in this Agreement or the appropriations provided for herein, shall be bound to each other to the full legal extent the FOUNDATION and the TOWN are bound with respect to each of the covenants and promises of this Agreement.

20. CORPORATE STATUS AND AUTHORITY (FOUNDATION). That the FOUNDATION represents and warrants that (a) it is a nonprofit corporation fully organized, validly existing, and in good standing under the laws of the State of Arizona, and (b) the execution, delivery, and performance of this Agreement has been duly authorized by the responsible officers thereof.

21. CORPORATE STATUS AND AUTHORITY (TOWN). That the TOWN represents and warrants that (a) it is a validly existing and incorporated municipal corporation of the State of Arizona, and (b) its execution, delivery, and performance of this Agreement has been duly authorized and entered into in compliance with its Town Code and any applicable Arizona statutes.

22. AWARDING OF COSTS. That, in the event any action shall be instituted between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs, including reasonable attorneys' fees.

23. CONSTRUCTION OF AGREEMENT. That it is understood by the parties that this Agreement has been arrived at by mutual negotiation and shall not be construed against a party simply because it played the larger part in drafting the Agreement or because it prepared the final draft.

24. SEVERABILITY. That, in the event any phrase, clause, sentence, paragraph, section, or other portion of this Agreement shall become 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 force and effect to the fullest extent permissible by law.

25. CHOICE OF LAW AND VENUE. That this Agreement shall be governed by and construed under the laws of the State of Arizona, and shall be deemed made and entered into in Yavapai County.

26. CAPTIONS. That the captions used herein are for convenience only and are not a part of this Agreement. They do not in any way limit or amplify the terms and provisions hereof.

27. ENTIRE AGREEMENT. That 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.

28. AMENDMENTS TO AGREEMENT. That this Agreement may only be amended by a writing duly executed by an authorized representative of the parties hereto.

29. CONFLICT-OF-INTEREST. That this Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein by any person significantly involved in negotiating this Agreement on behalf of the Town.

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

TOWN OF PRESCOTT VALLEY, a
municipal corporation of Arizona ("TOWN")

Harvey C. Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

PRESCOTT VALLEY ECONOMIC
DEVELOPMENT FOUNDATION, INC., an
Arizona corporation ("FOUNDATION")

Steve Rutherford, President

ATTEST:

Michael Dailey, Secretary

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Harvey C. Skoog, known to me to be the Mayor of the Town of Prescott Valley, a municipal corporation of Arizona, who signed the same on behalf of said municipal corporation after being duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Steve Rutherford, known to me to be the President of the Prescott Valley Economic Development Foundation, Inc., an Arizona corporation, who signed the same on behalf of said corporation after being duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

Exhibit “A”

Excerpt from “Prescott Valley Strategic Plan for Economic Development”
Focused Future II

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2. Prescott Valley Economic Development Foundation (PVEDF)

The PVEDF comprises entities, individuals and/or companies that contribute in the way of information, resources, funding, or any other form of assistance to carry out the mission of the organization. Membership includes representation from the Town of Prescott Valley, banking, government, development, education, industry, Chamber, and the general population. The PVEDF receives a portion of its funding from the Town of Prescott Valley, private funds, and membership dues.

Responsibilities:

Business Recruitment. PVEDF is responsible for working with prospects and pursuing business leads, some of which are generated by Arizona Department of commerce, APS, etc. This activity includes participating in trade shows within industry cluster targets.

Business Retention and Expansion. The PVEDF, working with the Town of Prescott Valley, shall develop and implement a quality business retention and expansion program (B3).

Research and Data Collection. The PVEDF, working with the Town, will provide current and relevant economic data about the area to interested parties.

Business training. The PVEDF, working with the Chamber of Commerce, the college, the Town of Prescott Valley, and other entities shall provide business training seminars geared to the needs of local businesses.

Labor Force Development. The PVEDF, working with the college and other entities, will monitor, promote, and address the needs of the local labor force. On a regular basis, the workforce study will be updated and interviews with businesses will be conducted to ensure that the labor force is meeting the needs of current and future businesses.

Marketing. The PVEDF will market the community for business development and expansion. It is PVEDF’s responsibility to determine the most effective type(s) of marketing vehicles to utilize.

Communication. Effective, two-way communication is critical if economic development efforts are going to be successful. PVEDF must communicate regularly with all entities involved in Prescott Valley’s economic development.

Support. The PVEDF will support other organization’s local economic development efforts.

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