American with Disabilities Act Notification: In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504), the Town of Cave Creek does not discriminate on the basis of disability in the admission of or access to, or treatment or employment in, its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in Town programs, activities, or services contact the Town Clerk, 37622 N. Cave Creek Rd., Cave Creek, AZ 85331; (480) 488-1400.

NOTICE AND AGENDA
REGULAR TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, OCTOBER 17, 2016

PLEASE NOTE: AN AUDIO RECORDING OF THE TOWN COUNCIL MEETING WILL BE AVAILABLE ONLINE WITHIN THREE BUSINESS DAYS OF THE MEETING.

The Town Council may recess the public meeting and convene in Executive Session for the purpose of discussion or consultation for legal advice with the Town Attorney regarding any item listed on this agenda pursuant to A.R.S. § 38-431.03 (A)(3).

The Chair reserves the right, with the consent of Council, to take items on the agenda out of order.

CALL TO ORDER 7:00 P.M. Vincent Francia, Mayor, 37622 N. Cave Creek Road, Cave Creek, AZ.

ROLL CALL Mayor Vincent Francia, Vice Mayor Steve LaMar, Council Members Ernie Bunch, Susan Clancy, Dick Esser, John Ford and Thomas McGuire. (one or more members may attend by technological means)
CALL TO THE PUBLIC

TOWN MANAGER REPORT

ACTION ITEMS:

A. CONSENT AGENDA

1. Approval of the September 26, 2016 Special Council Worksession Minutes.

   Council Action Needed:
   Motion to approve the Consent Agenda.

B. GENERAL AGENDA ITEMS

1. PRESENTATION BY ASHLEY SHIWARSKI OF UTILITY SERVICE PARTNERS, INC. REGARDING THE NATIONAL LEAGUE OF CITIES SERVICE LINE PROGRAM WITH THE TOWN OF CAVE CREEK.

   Presented by the Town Manager, Town of Cave Creek.

   Public Comment

   Council Action Needed: This is a presentation only. No action will be taken.

2. COUNCIL DISCUSSION AND APPROVAL OF A FINANCING REIMBURSEMENT AGREEMENT RELATING TO CAHAVA SPRINGS REVITALIZATION DISTRICT.

   Presented by the Town Attorney, Town of Creek.

   Public Comment

   Council Action Needed: Motion to approve the Financing Reimbursement Agreement relating to Cahava Springs Revitalization District.

3. COUNCIL DISCUSSION AND APPROVAL OF A LEASE AGREEMENT BETWEEN THE TOWN OF CAVE CREEK AND CAHAVA SPRINGS DEVELOPMENT CORPORATION
B. GENERAL AGENDA ITEMS

Presented by the Town Attorney, Town of Cave Creek.

Public Comment

Council Action Needed: Motion to approve a lease agreement between the Town of Cave Creek and Cahava Springs Development Corporation

4. COUNCIL DISCUSSION AND APPROVAL TO AMEND THE FISCAL YEAR 2016 BUDGET BY TRANSFERRING BUDGET AUTHORITY FROM THE GENERAL FUND CONTINGENCY ACCOUNT 01-013-100-2949 TO THE TOWN HALL DEBT SERVICE FUND 06-030-100-2201 IN THE AMOUNT OF $4,500.

Presented by the Finance Director, Town of Cave Creek.

Public Comment

Council Action Needed: Motion to amend the Fiscal Year 2016 Budget by transferring budget authority from the General Fund Contingency Account 01-013-100-2949 to the Town Hall Debt Service Fund 06-030-100-2201 in the amount of $4,500.

5. COUNCIL DISCUSSION AND AUTHORIZATION TO APPROVE THE EXPENDITURE OF FUNDS FOR AN AMOUNT UP TO $155,821.47 TO MARKHAM CONTRACTING COMPANY, INC. FOR THE WATER LINE PURCHASE & INSTALLATION PROJECT, IDENTIFIED AS THE “24TH STREET & CLOUD ROAD WATER MAIN—CAHAVA SPRINGS”, PROPOSAL DATED SEPTEMBER 22, 2016.

Presented by the Town Manager & Town Engineer.

Public Comment

Council Action needed: Motion to approve the expenditure of funds not to exceed one hundred and fifty five thousand eight hundred and twenty one dollars and forty seven cents ($155,821.47) for the water line purchase & installation project, identified as the “24th Street & Cloud Road Water Main—
B. GENERAL AGENDA ITEMS

Cahava Springs.

6. COUNCIL DISCUSSION AND APPOINTMENT OF ELEVEN (11), AT LARGE, CITIZENS TO THE “OPEN SPACE ADVISORY COMMITTEE” WITH MEMBERS SERVING TWO YEAR TERMS ON A STAGGERED BASIS.

Presented by the Town Manager

Public Comment

Council Action needed; motion to appoint citizens the “Open Space Advisory Committee” of eleven (11) members, at large, members serving two year terms on a staggered basis as follows:

six (6) members with terms ending December 31, 2017 (14 months)
and
five (5) members with terms ending December 31, 2018 (26 months)

COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

ADJOURNMENT

POSTED THIS _____ day of October, 2016
BY: ____________________________________________
Carrie A. Dyrek, Town Clerk
Mayor Vincent Francia convened at 7:00 pm at Cave Creek Town Hall Council Chambers, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Steve LaMar, Council Members Ernie Bunch, Susan Clancy, Dick Esser, John Ford and Thomas McGuire (via telephone)

Council Absent: NONE

Staff Present: Town Manager Peter Jankowski
Town Clerk Carrie Dyrek
Town Engineer/Utilities Manager Dave Peterson
Town Attorney Bill Sims

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The Chair reserves the right, with the consent of Council, to take items on the agenda out of order.

CALL TO ORDER 7:00 P.M. Vincent Francia, Mayor, 37622 N. Cave Creek Road, Cave Creek, AZ.

ROLL CALL Mayor Vincent Francia, Vice Mayor Steve LaMar, Council Members Ernie Bunch, Dick Esser, John Ford and Thomas McGuire (attended by telephone)
Absent: Susan Clancy

PLEDGE OF ALLEGIANCE

PUBLIC ANNOUNCEMENTS

CALL TO THE PUBLIC

Bob Morris, 6020 E Cielo Run South, Cave Creek. The Federal Government is responsible for insufficient CAP water available to support Desert Hills by their delay in approving the 386 acre feet presently under consideration. Just because the Town is loaning Desert Hills 400 acre feet does not
obligate the Town to support their growth. Cave Creek must not impair the town water to address an issue caused by the Feds. Desert Hills has far too many water and growth problems for Cave Creek to handle. The town already blends existing Desert Hills well water with low arsenic Cave Creek water to lower the arsenic concentration. The existing wells are drying up as ground water is depleted; this makes for a tsunami of water demands. As growth sky rockets and ground water diminishes, the town with no governmental authority cannot control growth or water consumption and receives no benefit from sales taxes, jobs, or property tax. And what happens if ETA lowers the arsenic standard? Arsenic is also a known carcinogen just as Hexavalent chromium that is in the news so much now; all of the wells would become unusable by us. This leads to the individual question before Council. Since the Council is a policy body and not a managerial body he suggests Council gets Staff a policy to assess Desert Hills water requests without burdening Council. Here are the proposed points:

- The Cave Creek allocation to handle the existing water requirements is on loan and no further water except the minimum amounts will be allocated to Desert Hills.
- Only new single-house meters will be approved; this will permit handling situations where you have a well running dry.
- Subdivisions, multi-family units, lot splits must bring their own water.
- Direct that no staff (and that includes everyone doing town business) has authority to make a verbal commitment on behalf of the Town.
- All commitments must be in writing.
- All water commitments must be in writing and are to have the following condition:
  - The commitment is for two years only.
  - A meter must be in place at the 2-year mark and monthly charges collected or the commitment is expired and void.
  - Maintain a file.
  - To deal with the random projects claiming a verbal commitment for water, advertise a 60-day period to have those claims verified and affirmed under the new policy. Verbal claims will not be accepted after that.

Kerry Smith, 7265 Continental Mountain Estates Drive. Mr. Smith gave a handout to Council which he had prepared after having access to the material that was prepared for this meeting; addressed the question “Can the town afford to authorize more CAP water for the development of Desert Hills?”

1. The analysis that you have before you combines several sets of information that estimates how the water is used. The first is the current CAP allocations, not counting the additional 386 acre feet that we are eligible to purchase at some point. So we have 2,606 acre feet that was reported in the summary that was available and to estimate the amount of use that is being made of that water, Mr. Jankowski took the schedule overview for 2016 from CAP water. I think we can do better than that.

2. Another way of estimating it is to actually look at the water use in 2015 and to look, and this is the important omitted category…what commitments have we already made to other developments? So under category 1 – how much water are we using and how many new activities have we committed to? He tried to assemble the information that was available based on various Council meetings to summarize it. If you look at the table on page 2, Town Manager’s Report on the number of accounts is 2,089. If you look at our reports to the Arizona Department of Water Resources it’s a bit higher than that…it’s 2,594. There is an additional 524 Carefree accounts that are serviced, not sure what category they fall under, but certainly we do service Carefree customers. And the Desert

Special Town Council Work Session
September 26, 2016
Page 2 of 12
Hill’s number based on reports to the Arizona Department of Water Resources and the estimates that you have before you are quite close…7,219…versus 1,703. What’s missing are the commitments that we have made so he has used the estimates that Peter had prepared approximately ½ acre per residential household to estimate how much water you are committed to. In addition, Kerry used the actual reports for commercial and industrial from the 2015 report to the Arizona Department of Water Resources estimate of those sources. If you go through systematically, that gives us 2,178 acre feet; that’s Y-C on page 2. Now, if you look at the commitments that we’ve made; we made a commitment to Cahava Springs for 230 units; we made a commitment to Hidden Rock Condos for 39 units. He is not sure how many commitments we will have made to the Windmill Apartments; their original application was 48, at the last meeting he thought it was 30, but he is not sure of that. So if you add that in to the other estimates we get 2327.5 acre feet using again the figure of the ½ acre foot per residential unit and including and assuming no growth in commercial and industrial.

In addition we have other applications before us that were initially denied but the builders involved have suggested that they may come back with amendments so he is not sure how we would treat those. Meritage Homes is one of those. There was certainly a discussion at a meeting with the public by the new owner of the Hogs and Horses suggesting a mid-market to luxury Hotel…estimates from the public record on that amounts to 100 to 120 gallons per unit per day. Assuming 20 to 30 units, they commit 25 that brings us up to a further addition of 30.8 acre feet to the 2327. None of this counts the water that we have committed to provide to the west side.

**Jankowski** – It’s typical to start a discussion at the end…let’s go through the beginning and then we can talk about the discussion points at the end. He feels it is unfair and not helpful to start the conversation at the end so let’s go through the discussion in order, have that discussion, then the recommendations from you and Mr. Morris. I think when you start the conversation at the end, it’s confusing.

**Francia** took control of the meeting at this point. Let’s stay to the agenda and Mr. Smith will be able to speak as we come to the items. As we review each of these things Mr. Morris is welcome to come back up as we review these items. The purpose of the meeting is for the Council to give direction to the Town Manager.

**Jankowski** stated he understands that the “call to the public” is for things that are not on the agenda and things that are on the agenda you speak up on them, at that time. It’s coherent that way.

**Tony Geiger**, 6050 E. Mountain Court, West Carefree, Chairman of Water Advisory Committee Chair. It’s very disappointing that the Water Advisory Committee has been out of the loop in the preparation for this discussion. We were never asked to do any research, we were never asked to provide any input. This is not the first time this has happened on critical water issues for this Town. We just went through a couple Council meetings discussing the west side water issue; the Water Advisory Committee was never asked to participate, to evaluate, to offer any input. Now, he has been beat up a little bit by some people in town suggesting that he go read the Ordinance that started the Water Advisory Committee. He doesn’t want to go there but he doesn’t understand why we are doing these things backwards.
Jankowski stated he does things in a methodical way. If he has questions regarding himself or staff, he brings those issues to Council. Council directs the WAC, staff or him on how to address those issues. His first impression is to bring those issues to Council, Council will instruct whomever on what needs to be done.

ACTION ITEMS:

GENERAL AGENDA ITEMS

1. COUNCIL DISCUSSION REGARDING THE ALLOCATION OF WATER RESOURCES FOR THE TOWN’S CAVE CREEK WATER SYSTEM AND DESERT HILLS WATER SYSTEM.

Presented by the Town Manager, Town of Cave Creek.

Jankowski reported on this issue. He and staff have some concerns about water allocation. He would like to present the issue to Council and Council can give direction to him and staff and the Water Advisory Committee as needed. He did a small, simple straight-forward sheet regarding water allocation; he is very concerned in general to where the town is going in our water allocation.

And we do send a lot of water to Desert Hills and we have two water systems as people know we have Cave Creek Water System and Desert Hills Water System. He has Cave Creek at 2,089 and the number goes up and down as people come and go and he has Carefree at 524; Desert Hills at 1703; those exact numbers are really meaningless other than to give us a sense of where our customer base is; where our water is going so if you are off by 10, 20, or 50 numbers really matters little.

We have one sewer system within the Town of Cave Creek; we have both residential and commercial accounts on that. Why that is important is because that water goes to the sewage treatment plant and then the effluent is used in part for the golf course and for a variety of other things which relieves pressure on our water system. He is concerned about the CAP; we have an allocation of 2606 acre feet per year; we’ve ordered about 2100 of that right now and we have an excess of 506 on paper. There is an allocation of 386 and he isn’t sure if that is going to be awarded. It’s been ear-marked for the Town but we haven’t paid for it; hasn’t been authorized and his understanding is that part of that is for the Desert Hills. Right now Desert Hills has a CAP supply about 55% and we also supply an additional 45%. We have one well in Cave Creek which we use and that is primarily Vermeersch which is very high in arsenic and we use that essentially for the golf course.

He also has concerns about the meters and the water rates themselves and there is a hand-out regarding the water rates. But the gist of the discussion is he would like guidance and direction from Council regarding daily operations for staff; what steps they want him to go down when looking at various scenarios; we have been at a loss on what to do about that. So he has given four scenarios we currently have that have come to us in the last six months and we are a little unclear on what to do with those. Maybe we did some things he can correct but the Council prefers it to be handled differently and he is willing to do that but wants input from Council on how they want to handle this. Water is critical to the growth of Cave Creek; it’s going to be critical to the growth of Desert Hills but Desert Hills is not our responsibility per se; so he just wants guidance from the Council.
Francia – You want direction from Council. He understands that (1) is Desert Hills and (2)...

Jankowski interrupted to say we treat them together but they are separate.

Francia – Well whether we treat them together or not they are part of the water jurisdiction and they are not a part of political jurisdiction.

Jankowski – Correct.

Francia – As Francia understands it we allocate 400 acre feet to Desert Hills. How did that come about? Is that something that has been granted by previous Town Manager?

Jankowski – Yes it has. Even going with his illustration here we have had growth up there and they’ve used more than…55% of their water is from our CAP but we’ve had growth and construction up there since we have owned the Water Company

Francia – But we are not under contractual obligation?

Jankowski responded he thought that is more of a legal question. He thinks Cave Creek is going to have some difficulties saying “No CAP water to Desert Hills” when over the last ten years or so we have been supplying water to Desert Hills.

Francia – Do you know if the IGA has a contract with them?

Jankowski – Well, we own the water system.

Francia – But I mean do we have contracts with them?

Jankowski – Just with Desert Hills.

Bill Sims, Town Attorney addressed the allocation of finite resources as water. He stated that right now this is the most difficult challenge for elected officials to allocate prime resources. And the law generally is structured in such a way as to make sure that you have documentation of the rates and that the rates are fair. The ACC doesn’t control this because you are a city or a town so you have to make sure you charge reasonable rates. In some cases, it is very difficult to charge different rates outside your jurisdiction; for example: I am in the Safford - City Attorney; Thatcher is right there and there are some instances where we provide water to Thatcher. If there is a household in Thatcher if it’s right across the street from Safford he wasn’t sure that they could…and we don’t charge more for that out-of-town customer because we have to be reasonable. But we are allowed to charge more if it costs more, and we do that both within the city of Safford and out in Thatcher…to answer your question.

The Case Law is - You have no duty to provide water outside your jurisdiction, political jurisdiction…the boundaries of Cave Creek. But once you do you can’t stop and that’s the problem so once you start serving then the other case again “what is the standard here to be impartial?” So if you are going to start reducing water to an out-of-town customer who you have been serving, you better figure ways to reduce to others. He thinks you can make a decent argument that it’s more expensive to serve out-of-town customers and therefore you can charge more but if you are going to start reducing, you are going to run into difficulties. So the benchmark is: you have to have documentation for the rates. Rates have to be dependent upon the cost. You don’t have to serve outside your jurisdiction but once you do you can’t stop unless you do that as part of an overall conservation effort. You have a duty to be impartial. And finally, you have much greater control once they start to subdivide. Once you start sub-dividing then you start requiring a Certificate of Assured Water Supply…you are not in an Eco-managing area so the State doesn’t require you to require that issuance of Assured Water Certificate.

Special Town Council Work Session
September 26, 2016
Page 5 of 12
LaMar wants to make sure what our terms are so we are comparing apples to apples, oranges to oranges. Theoretically we serve X number of customers in Desert Hills currently and have historically, depending on when we started maybe those numbers have gone up. Do we have to serve the entire political entity of Desert Hills regardless of growth, regardless of what they do with respect to growth and commercial or is it we just can’t take water away from the individuals that we are already serving?

Sims clarified that Case Law would be the latter. The way you control for others is you aren’t in an Eco-management area, therefore someone can establish a subdivision and it can be dropped without any water, be completely dry. The Town has no obligation to serve those in Desert Hills that are currently NOT receiving water.

LaMar stated he was glad that Mr. Smith spoke because on an issue this important that has been percolating for a year he would have thought that the Water Advisory Committee that has been very talented and put out some pretty good White Papers for us would have been consulted and we would have that input so that...it would really be nice to just once grapple with serious issues in this Town with something more than one page and actually have some meat on the scenarios and actually have some thought and some analysis and some answers to the problems rather than one piece of paper. Others may like that style but LaMar finds it very difficult to parse anything other than this.

Here is the other question…and anybody that has been involved in the Water Advisory Committee, particularly Dave our Engineer, Town Manager, anybody here that knows this answer and if there is a disagreement talk about it. Is there any operational down-side to either our sewer system or our water system in limiting or curtailing or stopping further expansion of supplying water to Desert Hills? Does that make the rest of our system inefficient, sewage harder to process, water…because there was a point in time a year ago where we were looking for sewer, not water, sewer customers because we have flow issues because our water is so dense and it’s hard to process. He asked again…So is there any operational down-side to our town and to the entity that we are obligated to protect if we voted to go serve whoever we are serving now but that we are not serving anybody else in Desert Hills because we have an issue? And until we can get to the bottom of what Cave Creek’s future looks like for CAP…he doesn’t want to sell any of it; it’s the most precious thing we have. Without water we don’t have a community. So is there an operational down-side of any kind…any issues, any down-side?

Tony Geiger argued the Town would be better off not adding new customers to Desert Hills.

Dave Peterson, Town engineer stated there is no down side to curtailing future allocation to Desert Hills. Right now our water feeding out to Desert Hills is running through a single 8 inch line so we are going to be looking long-term, we need to upgrade that, put in another parallel line, etc.

LaMar – My question is: If we stopped doing that, at least adding new customers out there in Desert Hills, is there any operational down-side? Peterson responded “no”. So we would have to do the 8 inch line whether we had 50 or more. Peterson responded “correct”. LaMar so the decision to stop, or curtail future expansion of water allocation to Desert Hills would not cause any operational problem for us and it’s not illegal, except for those individuals that we are already supplying to. That is the question.

Sims - But even then I think you could start curtailing use if you do it right.
LaMar responded if we do it right, have a factual basis for it, a reasonable factual basis for it and that could be money or curtailing it at least from revenue.

Sims – Well you could, one of the issues you can discuss here is the capacity. You can do it that way – financially.

LaMar stated we have one obligation and that is to do nothing that impacts the future of this Town’s ability to provide good, clean drinking water to its citizens. Nothing. So long as we do not inadvertently with unintended consequences hurt our ability to provide our citizens with good drinking water, then his view is, given the crisis we are all hearing about…he doesn’t need to hear more details of numbers. He stated we should stop it now…until we are sure that we don’t impact our ability to provide good drinking water to our citizens.

Bunch agreed that sending more CAP water out to Desert Hills is a bad idea. It’s unfortunate that we got this far done the road that we did. There are people out there who are going to be jumping up and down because all of a sudden we are going to quit giving them water and there is a demolition of value of their properties. So if we can charge more because it costs more. I guess the questions is - the wells that in that area that are high in arsenic, we’ve got some arsenic scrubbers, one that’s working out there that we’ve paid the WIFA loan off or retired it early, is there enough well water out there with arsenic that could be scrubbed that they could pay for that extra service so we’re not behind the eight ball regarding demolition of value of property and the consequences that could come because of that.

Sims stated that if you are saying that if you could figure out a way to document why those customers in that area would have to pay more because of the cost, that would be legal. That’s one way not to exhaust your CAP supply and you continue to provide service but you would have to document the justification for the rate increase; there would have to be a report; you have to have Notice; but yes you could do that.

Bunch – Do we have any idea about the amount of water for out there? He realizes the bigger wells are causing the smaller wells to go dry; shallower wells.

Dave Peterson stated he has spoken with several hydrologists and gets different answers. They can use test wells, but water levels are going lower and arsenic levels are up.

Ford stated his comments are similar to the Vice Mayor. We made the commitment to the ones we already have. We should not go any further until we know the situation we’re in right now. He also feels we need to protect our town’s water supply. Any new development we need to look at very closely.

McGuire – I think it is very important that we do nothing that places in jeopardy the water supply that is available to the citizens of Cave Creek as of now and in the future. If we have a legal obligation to supply a certain amount of water to Desert Hills, regardless of how we got into that, we need to fulfill that obligation but he would not go beyond that. We have to reserve all the water we can for Cave Creek so that we can support the needs of our citizens.
Esser – Couple points: – Regarding items on the agenda….on every scenario he either thinks there should be more information and others he says no. One in particular is what he perceives to be an exchange for a well when we know absolutely nothing about whether it might have arsenic and might not even be pumpable and it’s two miles away. And he doesn’t indicate here that he wants to contribute to that connection. On a couple others he just said “no deal.” What the Manager is asking for is direction.

Second point: His concern is about what Dr. Smith was trying to tell us and what Tony and Bob told us. His impression was that you guys were going to come up with something and somehow this has been lost in the shuffle so when you say you have these suggestions from staff, who are they from?

Jankowski – These are daily issues. For example: he has high-lighted one well that’s outside the district; there are some other folks who want to do the same type of scouring but that’s not what he is looking for. He is looking for those types of concerns of…do we want to consider those types of alternatives? If you need directions – no…fine with that; if direction is not to serve Desert Hills, he is fine with that too.

Esser stated his question is that when Peter did the internal investigation, you talked to staff. Esser assumes that means David and others…

Jankowski – yes, and Luke, and Ian and Mike Baxley and all the folks we have…

Esser – Would it have been appropriate to get some input from the Water Advisory Committee?

Jankowski stated yes there needs to be a discussion with WAC but he has immediate issues now so he needs direction from Council now, then we can work out more details. WAC is looking at the long term and they are looking at how to handle some things…maybe something with rates. That’s great but that is not what he needs right now.

LaMar – Yes, you have an immediate problem but we need to have somebody look at the long-term consequences and down sides and up sides of the solution of that problem before you bring it to Council to ask Council to make a decision on it. What Dick is saying is that you come with a problem and give us nothing to refer to.

Jankowski – With all due respect, he wants guidance from Council.

Esser – If you want guidance from Council then we have to know what the issues are that underlie these immediate problems.

Jankowski’s immediate issues: Do we want to keep sending water out to Desert Hills when we are looking at some immediate things right now? He puts that out to Council and he is fine with that and it gives the Town an opportunity to look at what we need short and long term.

Francia stated that the matter before the Council is that the Town Manager is to have direction on this matter. Before giving direction, he wants to go to the citizens.

Francia asked the citizens if they had anything to say on this specific matter as whether Council should direct the Town Manager to continue to give water to Desert Hills or should Council direct the Manager to curtail any further requests from Desert Hills.
Kerry Smith supports stop adding customers. He supports LaMar’s request that there should be more data, more than a one-piece of paper available to them so they could fully evaluate the situation.

Tony Geiger – Unfortunately, we didn’t get through all of Dr. Smith’s analysis but if we had what we would learn is “we are out of water.” We’re done; we have 100 acre feet left over; when you add up what we are using, our commitments, and that’s not before any cut backs from CAP, we’re done. Worse than that, we don’t know what our baseline is. How can we plan for the future when we don’t know what the present is? We don’t have consistent numbers on the number of accounts; how much water we took in; how much water we put out. That’s why the Rate Study Group has bogged done because until we know real numbers that we can all agree on, there is no point in going further. The point is we are about of water and we really don’t have good figures. Dr. Smith’s numbers are the best numbers we have.

Jankowski stated the Rate Study Group are putting those numbers together now.

David Smith stated that what Vice Mayor LaMar said is extremely pertinent to this whole issue. He asked the right questions and got the right answers. He would have the same reaction that Vice Mayor LaMar had when he looked at this material. Smith looked at the material and said to himself “if I were a sitting Councilman I would be unhappy with the quality and content of the materials provided.” Some of it is irrelevant; some of the numbers are bizarre…if you work the numbers on this you would say that the people in Desert Hills are very, very good in conserving water; people in Cave Creek are very, very bad in conserving water. The numbers say we use 50% more water than the people in Desert Hills per connection. As to what needs to be done, we need to cap any new connections including new lines going to Desert Hills. The opposite side is “should we cap things?” or if we don’t and we give more water we are also giving more obligation to supply water and that is not something we want to do now. He hopes the direction given to the Manager is to propose some policies that the Council could approve that would say this is what our policy is, this is what’s going to limit expansion in Desert Hills. We are probably going to have to take a look at the Town of Cave Creek, as well…we have no policies for the Town of Cave Creek.

Francia I think you’ve sensed the direction of Council…we have to honor the 400+ acre feet that we’re sending out there to Desert Hills. They are not a political jurisdiction under us. Francia repeated no more additional water is to be “given” to Desert Hills. McGuire agreed. And he agrees we should only meet our legal obligations to Desert Hills and we have a primary objective of protecting the water future of Cave Creek. Agreed that we need more data for long term planning but for the immediate time we need to protect our own citizens.

Jankowski confirmed the discussion is to not serve Desert Hills other than the folks that are existing and folks that have a will serve letter. Those have been pre-issued for this meeting. Those are the only ones that we have a legal obligation to serve. Francia asked if the will serves would increase the 400 acre feet. Jankowski responded that he doesn’t know how many will serves are out there but doesn’t believe there are very many. There are a couple of single-family homes that have will serve letters. Right now, the Town’s policy is that anyone who has a single-family residence or any commercial, gets water. The policy tomorrow will be that any single-family home, any subdivision or any commercial, will not be provided water.

Francia confirmed that is the direction of the Council…that which we are obligated to because of previous arrangements….but no more.
McGuire asked about supplying water to Desert Hill, they use our infrastructure. If we sell Desert Hills water system would they then have the right to use our infrastructure? And would they have the right to demand an increase in our infrastructure to meet the demands of the Desert Hills customers?

Jankowski – When you sell the water system you are selling the infrastructure.

McGuire - Part of that infrastructure is the water that comes up from the CAP canal that we had this problem with yesterday. That’s the part of the infrastructure that is privately supplying water to Desert Hills. Do we have an obligation to size or create our infrastructure so that we provide water to them? If the Desert Hills Water System is sold, do they still have a right to use our infrastructure and are we responsible for that?

Jankowski doesn’t think the question is that simple…if you look to see if the City of Phoenix, who can connect to Tramonto, you could have a negotiated agreement that they would not use our line and they would put a line into Tramonto; he’s helped through a third party that has no line existing or going there; he would have difficulty even negotiating that in a way that would have a right to use or utilize to come up through the 16 inch mainline. These are negotiated items whether you give them CAP water or not. He thinks you would have difficulty negotiating not giving them any CAP water because you have been providing that for a while. Generally, when you sell the water system you are selling the infrastructure and the use of the infrastructure; it depends who you are looking to sell it to if any.

Francia – Regarding WAC – he would like to see a meticulous and very detailed report regarding new developments in Town that are 90% certain they are coming in and will use CAP water allocation. Given that we have an X acre feet allotment and we are quickly approaching max, we have a request in for 386 acre feet but we don’t know whether we are going to receive that but that’s the type of data that would be of enormous value to the Council.

Geiger stated Kerry Smith provided that tonight.

Francia stated that is well and good and would there be a problem for WAC to review that?

Geiger responded that is not a problem.

LaMar asked to make one request to the Chair of the WAC. He stated if the WAC, for example has been tasked with doing the water rate study, and there are gaps in our data, the Town records, that make it impossible, he thinks Council would like to hear about that.

Geiger stated we have gaps but as Peter said, they have taken 60 days to go back to try to fill in those gaps, so we’re waiting in that period until they get that done. LaMar so it’s not an impasse, it’s a bump in the road. Geiger confirmed that it’s a bump in the road. Geiger stated the issue was that the citizens in that group did not feel it was a good idea to move forward with a RFP for a rate study consultant until we had good numbers that we could provide them for base line years and a finished capital improvement plan that is 100 percent needed for any rate study.

Francia reported on how this came before Council in this fashion. Two things:

1) Town Manager brought to his attention that he had a situation and needed direction. And the fact that Francia had met with two different development groups from Desert Hills and he sat and listened that is all he was going to do.

2) More of immediacy is to bring this to Council so staff can tell these development investments “you’re not getting the water.”

It wasn’t slighting WAC our our citizens.
Geiger stated it is not about him or the Committee, but it’s about getting it right for the town. Time and time again, due to lack of resources or whatever the reason is, we seem to be very reactive and we seem to make decisions that maybe, in hindsight, we would have rather taken a little more time to do a better job of it. We are trying to break that cycle and we have done that in the rate study group because we can’t move forward without good information. It’s about getting it right for the town.

Francia agreed with him 100 percent but some things have to be acted on immediately.

Bunch – What is the current policy within the Town for someone coming in to town requesting water within our jurisdiction boundaries?

Jankowski reported if it’s a single-family home or resident, they get that. If it’s one to three per exact subdivision, they automatically get it; if it is over 3 they have to have assured water supply for 400 years.

Bunch - And they must bring their water; must have the actual, not just a piece of paper, but....

Jankowski responded that we call it paper water because it’s a scenario when they have a well that’s active but can’t supply or connect to our system; so sometimes they come with paper water, that will give them assured water supply and that’s an issue because it is of no value to us. Or they bring in wells from outside the system and want us to use that as leverage for water; so right now end of policy has been raped, the previous managers either gave it or did not give it so he wanted clarification from Council.

Bunch – So the question for him is, can we require anything over 3 units to bring their water?

Sims stated the State Legislation…there is the opportunity and only about five cities in the State have done that. But you’d be like Yuma, they say if you want a subdivision you shall have water. He hasn’t talked with Peter about this and he doesn’t know what Cave Creek’s policies are but he thinks technically you could have a dry subdivision in this Town. He thinks you could change that and join the 5 or 6 cities and towns that require subdivisions to have water. It would require a different Ordinance; very few, not many subdivisions and cities in the State do that…they are Cochise County, Yuma County, Clarkdale, and Patagonia…they are cities who are acting as if they are in an AMA saying if you have a subdivision you shall have water. He suspects in this town you could have subdivisions that are dry is that true? So that’s the issue…do you as a Council want to change that?

Jankowski stated we don’t usually have large subdivisions. The more immediate concerns have been with Desert Hills. County operates in different subdivision rules than we do. We have existing areas that are subdivisions that are already built, like Rockaway whose wells are going dry.

Bunch – Can someone ask to opt out from our water district?

Sims responded a builder cannot start his own water system within our water service area. He wanted out. Sims stated you can let him out and probably be a good thing.

Francia – Desert Hills is the most immediate and you have the direction from Council. There are projects in Cave Creek where the developers are in different stages that are going to demand water.

Jankowski – Yes. Stage Coach Pass just came out of litigation and Jeff is working on that.

Council direction to the Town Manager to stop serving new customers in the Desert Hills area and only serve current customers and those who have already received a will-serve letter from the Town.
COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

ADJOURNMENT at 7:59 pm.

SUBMITTED BY:               APPROVED BY:

__________________________________  __________________________________
Carrie A. Dyrek     Vincent Francia
Town Clerk      Mayor
Financing Reimbursement Agreement
(Relating to Cahava Springs Revitalization District)

This Financing Reimbursement Agreement, dated as of October 3, 2016 (this “Agreement”), is entered into by and among the Town of Cave Creek, Arizona (the “Town”), a municipality duly incorporated and validly existing pursuant to the laws of the State of Arizona (the “State”), the Cahava Springs Revitalization District (the “District”), a tax-levying public improvement district and a political subdivision of the State, and Cahava Springs Development Corporation (“CSDC”), a Nevada corporation.

W I T N E S S E T H:

A. The District has been organized pursuant to Title 48, Chapter 39, Article 1 of the Arizona Revised Statutes (the “Act”) to serve as a financing mechanism for certain public infrastructure necessary for development of the land within the District as a residential master-planned community, including 651 net acres of land divided into 230 residential lots. In addition, the District may expend funds to reimburse the cost of infrastructure not in the District but benefiting land within the District.

B. On June 17, 2015, the Mayor and Council of the Town (the “Town Council”) adopted a resolution which formed the District and the Board of Directors of the District (the “District Board”) has adopted a resolution approving a feasibility report relating to the financing of a portion of the costs of certain public infrastructure projects (collectively, the “Public Infrastructure”) to be acquired and/or constructed initially by the District and thereafter transferred to the Town.

C. CSDC owns 562.89 acres of land within the District and approximately 2.5 miles of 12” waterline (the “CSDC Waterline”) extending along 26th Street from Joy Ranch Road to Saddle Mountain Road outside the District that was installed in or about 2008 but has not yet been dedicated to or accepted by the Town.

D. The CSDC Waterline has not been operating and requires removal of backflow devices, chlorination, testing, permits, and approvals, in order to become operational, at an
estimated not to exceed cost of approximately Sixty-three Thousand Two Hundred Eleven Dollars and Ninety Cents ($63,211.90) (collectively, the “CSDC Waterline Operational Costs”).

E. The Town owns a waterline existing in or around the intersection of Cloud Road and 24th Street (the “Town Waterline”) extending along 24th Street to Carlise Road through which water is delivered to Town residents adjacent to the Town Waterline (the “Residents”). The Town Waterline and the CSDC Waterline are each depicted on Exhibit A.

F. The Town Waterline has an impingement caused by undersized water lines and pressure reducing valves which reduces the flow of water through the waterline and significantly reduces the pressure in the Town's Waterline, such that the Residents do not receive adequate water pressure.

G. In order to repair the impingement in the Town Waterline so that the Town is able to provide the Residents water, including adequate emergency water resources, the Town must also service a ten-foot portion of the CSDC Waterline currently connected to the Town Waterline, identified on Exhibit A hereto (the “Public Connection” and, together with the Town Waterline, the “South Waterline”).

H. The Public Connection was constructed in accordance with plans and specifications of the Town and has previously been inspected and approved by the Town.

I. CSDC desires to dedicate the Public Connection to the Town on the date of execution of this Agreement.

J. The District and the Town desire to begin repairing, servicing and connecting the South Waterline, in order to provide the Residents domestic water, including adequate emergency water resources (the “Water Improvements”).

K. The District plans to finance the acquisition, construction and improvement of certain Public Infrastructure to and within the District, including the Water Improvements and the CSDC Waterline Operational Costs, with proceeds of the Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Special Assessment Bonds, Series 2016 (the “Bonds”).

L. Pursuant to the requirements for bidding and constructing public improvements pursuant to Title 34, Chapter 2, Article 1, Arizona Revised Statutes, as amended, the District has selected Markham Contracting Co., Inc., as construction manager at risk (the “General Contractor”), to repair, service and connect the South Waterline, pursuant to a Construction Manager at Risk Contract for Construction Phase Services (the “CMAR Agreement”), entered into by and between the District and the General Contractor. The amount to be paid to the General Contractor pursuant to the CMAR Agreement shall not exceed One Hundred Fifty-Five Thousand Eight Hundred Twenty-One Dollars and Forty-Seven cents ($155,821.47), (the “CMAR Contract Payments”), subject to adjustment upon the mutual agreement of the parties hereto.

M. The District, the Town and CSDC now desire to enter into this Agreement to provide for the (i) dedication of the Public Connection from CSDC to the Town, (ii) payment of the Water Improvements and the CSDC Waterline Operational Costs by the Town and
N. The District has included in the principal amount of the Bonds an amount equal to the estimated costs of the Water Improvements and the CSDC Waterline Operational Costs, which will be used to reimburse the Town when the Bonds are sold.

O. Contemporaneously with the execution of this Agreement, the Town, the District and CSDC will enter into a lease agreement in the form attached as Exhibit B, whereby the Town will lease from CSDC the portion of the CSDC Waterline remaining after the dedication of the Public Connection and undertake certain actions with respect to that portion of the CSDC Waterline necessary to further facilitate the provision of water, including adequate emergency water resources to the Residents, the costs of which are the CSDC Waterline Operational Costs.

P. Pursuant to the Act and Title 11, Chapter 7, Article 3 of the Arizona Revised Statutes, the District and the Town are entering into this agreement as an “intergovernmental agreement” for joint or cooperative action for services and to jointly exercise powers common to them for the purpose of financing public infrastructure.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration and subject to the conditions set forth herein, the parties hereto agree as follows:

ARTICLE 1
Terms of Financing and Reimbursement

1.1 Dedication. Upon the execution of this Agreement, CSDC must dedicate, and the Town will accept, the Public Connection, pursuant to a quitclaim bill of sale in form and substance acceptable to the Town.

1.2 Assignment of CMAR Agreement. Upon the execution of this Agreement the District must partially assign the CMAR Agreement to the Town. The Town may not amend the CMAR Agreement without the prior consent of the District, which consent may not be unreasonably withheld.

1.3 Scope of Water Improvements. The General Contractor shall construct the Water Improvements and related structures and accessories in accordance with the approved plans.

1.4 Reimbursement and Dedication. Subject to the provisions of subsections (a) and (b) below, in consideration of the payment of the CMAR Contract Payments to be paid by the Town to the General Contractor pursuant to the CMAR Agreement, and the amounts paid by the Town to repair the valve that serves the Town Waterline (estimated to be $8,082.57) and the payment of the CSDC Waterline Operational Costs by the Town (collectively, the “Town Reimbursement Amount”), ON THE DATE THE BONDS ARE ISSUED, THE DISTRICT WILL PAY TO THE TOWN THE TOWN REIMBURSEMENT AMOUNT PURSUANT TO THE SCHEDULE SET FORTH BELOW. ALL SUCH COSTS ARE ESTIMATED AS OF THE DATE HEREOF AND MAY ONLY BE ADJUSTED UPON THE MUTUAL AGREEMENT OF THE PARTIES. Absent such agreement, the District shall have no obligation to reimburse the Town in excess of the amount estimated herein. THE DISTRICT CERTIFIES THAT
AN AMOUNT EQUAL TO THE TOWN REIMBURSEMENT AMOUNT WILL BE INCLUDED IN THE PRINCIPAL AMOUNT OF THE BONDS AND, AS SUCH, PROCEEDS FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY AN AMOUNT EQUAL TO THE TOWN REIMBURSEMENT AMOUNT. FURTHER, THE DISTRICT WILL INCLUDE A DESCRIPTION OF THE TOWN REIMBURSEMENT AMOUNT IN ALL DISCLOSURES RELATING TO THE BONDS.

(a) If the Bonds are issued within ten (10) years from the date hereof, on the date the Bonds are issued, the District will pay to the Town an amount equal to the Town Reimbursement Amount, and CSDC shall dedicate the CSDC Waterline to the Town.

(b) If the Bonds are not issued within ten (10) years from the date of execution of this Agreement, CSDC will dedicate and convey the CSDC Waterline to the Town on or promptly following that date.

1.5 Timing. The General Contractor will begin the Water Improvements as soon as practicable following of the execution of this Agreement and, absent unforeseen conditions, will complete the Water Improvements, to the satisfaction of the District and the Town pursuant to the CMAR Agreement. Upon completion, the South Waterline will be operated and maintained by the Town; provided, however, that claims arising out of the General Contractor’s performance under the CMAR Agreement, including (without limitation) failure to meet the deadlines required by this Section 1.5 shall be claims solely against the General Contractor and not claims against either the Town or the District.

1.6 Assignment of CMAR Agreement. In the event the Bonds are issued prior to the completion of the Water Improvements, the Town will assign to the District the CMAR Agreement.

ARTICLE 2
Miscellaneous

2.1 Amendments. This Agreement may be amended only by a mutual agreement in writing executed by each of the parties hereto.

2.2 Severability. If any one or more sections, clauses, sentences and parts of this Agreement shall be adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remaining provisions hereof, but shall be confined to the specific sections, clauses, sentences and parts so determined.

2.3 Benefit and Binding Effect. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties.

2.4 Execution of Additional Documents. Each party agrees to execute such further or additional documents as may be reasonably necessary or appropriate in good faith to fully implement and carry out the intent and purpose of this Agreement.

2.5 Governing Law. This Agreement shall be governed by and construed according to State law.
2.6 **Headings.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any term or provision of this Agreement.

2.7 **Conflict of Interest.** Notice is hereby given that this Agreement is subject to cancellation in accordance with the provisions of A.R.S. §38-511.

2.8 **No Third-Party Beneficiary.** No term or provision of this Agreement is intended to be, 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 of cause of action hereunder.

IN WITNESS WHEREOF, the Town, the District and CSDC have entered into this Agreement as of the day and year first written above.

**TOWN OF CAVE CREEK, ARIZONA,** an Arizona municipal corporation

By ______________________________

MAYOR

Attest:

_________________________________

TOWN CLERK

Approved as to form:

_________________________________

Town Counsel

**CAHAVA SPRINGS REVITALIZATION DISTRICT,** a district organized pursuant to the provisions of Title 48, Chapter 39 of the Arizona Revised Statutes

By ______________________________

CHAIRMAN

Attest:

_________________________________

CLERK

APPROVED AS TO FORM:
DISTRICT COUNSEL
CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation

By ________________________________

PRESIDENT

Attest:

______________________________

SECRETARY

ACKNOWLEDGED, for the purposes of Section 1.3:

MARKHAM CONTRACTING CO., INC., an Arizona corporation

By ________________________________

[______________________]
LEASE AGREEMENT

BETWEEN

CAHAVA SPRINGS DEVELOPMENT CORPORATION, AS LESSOR

AND

TOWN OF CAVE CREEK, ARIZONA
AN ARIZONA MUNICIPAL CORPORATION,
AS LESSEE

DATED OCTOBER ____, 2016
LEASE AGREEMENT

This Lease Agreement, dated October ___, 2016 (this “Lease”), is by and between the TOWN OF CAVE CREEK, ARIZONA (the “Lessee” or the “Town”), a municipality duly incorporated and validly existing pursuant to the laws of the State of Arizona (the “State”) and CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation (the “Lessor”).

RECITALS:

A. Lessor owns 562.89 acres of land within the Cahava Springs Revitalization District (the “District”), a tax-levying public improvement district and a political subdivision of the State and approximately 2.5 miles of 12” waterline (the “Lessor Waterline”) extending along 26th Street from Joy Ranch Road to Saddle Mountain Road outside the District that was installed in or about 2008 but has not yet been dedicated to or accepted by the Lessee.

B. The Lessor Waterline has not been operating and requires, among other things, the removal of backflow devices, chlorination and testing in order to become operational (collectively, the “Waterline Operational Work”).

C. Lessee owns a waterline existing in or around the intersection of Cloud Road and 24th Street (the “Lessee Waterline”) through which water is delivered to Lessee residents adjacent to the Lessee Waterline (the “Residents”).

D. The Lessee Waterline has an impingement which reduces the flow of water through the waterline and significantly reduces the pressure in the Lessee Waterline, such that the Residents do not receive adequate emergency water resources.

E. In order to repair the impingement in the Lessee Waterline so that the Lessee is able to provide the Residents water, including adequate emergency water resources, Lessee must also repair a ten foot portion of the Lessor Waterline currently connected to the Lessee Waterline, depicted on Exhibit A-1 hereto (the “Public Connection” and, together with the Lessee Waterline, the “South Waterline”).

F. Lessor has agreed, pursuant to the Financing Reimbursement Agreement (relating to Cahava Spring Revitalization District), dated the same date as this Lease, among Lessor, Lessee and the District (the “Financing Reimbursement Agreement”), to dedicate the Public Connection to the Lessee on the date of execution of this Lease.

G. The District plans to finance the acquisition and construction of certain public infrastructure to and within the District, including the South Waterline and the Waterline Operational Work (the “Public Infrastructure”), with proceeds of the Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Special Assessment Bonds, Series 2016 (the “Bonds”).

H. Pursuant to the requirements for bidding and constructing public improvements pursuant to Title 34, Chapter 2, Article 1, Arizona Revised Statutes, as amended, the District has engaged Markham Contracting Co., Inc., as construction manager at risk (the “General Contractor”), to construct the Public Infrastructure, including the South Waterline and the
Waterline Operational Work, pursuant to a Construction Manager at Risk Contract for Construction Phase Services (the “GMP Contract”).

I. Lessor and Lessee desire to enter into this Lease, whereby the Lessor will lease to Lessee and Lessee will take and lease from Lessor the portion of the Lessor Waterline remaining after the dedication of the Public Connection, together with an area ten (10) feet on either side of the Lessor Waterline, as depicted on Exhibit A-2 hereto (the “Leased Premises”) and undertake certain actions with respect to that portion of the Lessor Waterline necessary to further facilitate the provision of water, including adequate emergency water resources to the Residents, the costs related to the Waterline Operational Work (the “Operational Costs”).

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE I.
CERTAIN DEFINED TERMS AND REFERENCES

Section 1.1 Definitions. In addition to any terms defined elsewhere in this Lease, the following terms have the meanings given below unless the context clearly requires otherwise:

“Appropriation” or “Appropriations” means a budgetary appropriation by the Mayor and Council of the Town.

“Authorized Officer”, when used:

(a) With respect to the Lessee, means the Chief Financial Officer of the Town, the Finance Director of the Town, or any other officer of the Lessee who is designated in writing by the Mayor or the Town Manager as its Authorized Officer for the purposes of this Lease; and

(b) With respect to the Lessor, means any person authorized to act on behalf of the Lessor pursuant to or with respect to this Lease as evidenced by a resolution confirming such authorization.

“Business Day” means any day that is not a Saturday, Sunday or legal holiday in any jurisdiction in which the Lessee or the Lessor has its principal or designated place of business.

“Event of Default” means an Event of Default described in Section 6.1** hereof.

“Rent” means the sum of the Base Rent and Additional Rent due at a state time or for a stated period pursuant to this Lease.

“Lease Term” means the period commencing on the date hereof and terminating upon the date of recordation of the dedication of the Lessor Waterline to the Town unless sooner terminated in accordance with this Lease.

“State” means the State of Arizona.
Section 1.2 References.

(a) References to sections or exhibits, unless otherwise indicated, are to sections of or exhibits to this Lease.

(b) Any reference to a section or provision of the United States Code or the Constitution of the State, or to the Arizona Revised Statutes, or to a section, provision or chapter of the Arizona Revised Statutes, will include such section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time, provided that no amendment, modification or revision, or supplemental or superseding section, provision or chapter will be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of Lessor or the Lessee pursuant to this Lease.

ARTICLE II.
REPRESENTATIONS, COVENANTS AND WARRANTIES;
DUTIES AND OBLIGATIONS

Section 2.1 Representations, Covenants and Warranties of the Lessee. The Lessee represents, covenants and warrants, as applicable, to Lessor as follows:

(a) Authority and Authorization.

(i) The execution, delivery and performance of this Lease on the part of the Town have been duly authorized by all necessary action on the part of the Town;

(ii) All necessary approvals of any State official or agency for the lease of the Leased Premises and subsequent dedication of the Leased Premises;

(iii) This Lease constitutes a legal, valid and binding obligation of the Town enforceable in accordance with its terms, except as such enforceability may be affected by matters of bankruptcy, insolvency, reorganization, moratorium or equity;

(iv) Subject to the provisions of Section 3.2 hereof, the Town will do or cause to be done all things necessary to preserve and keep this Lease in full force and effect during the Lease Term;

(v) The Town has complied with all requirements applicable to it, and has taken all steps for approval and adoption of this Lease as a valid obligation on its part; and

(vi) To the extent required, the Town has obtained or will obtain all permits, use agreements and governmental agency approvals necessary for its use and operation of the Premises and the Waterline Operational Work.
(b) **Need for Leased Premises.** The Lessee has an immediate need for, and expects to make immediate use of, the Leased Premises which need is not temporary or expected to diminish in the foreseeable future.

(c) **Foreseeable Need.** There are no circumstances presently affecting the Lessee that could reasonably be expected to alter its foreseeable need for the Leased Premises or adversely affect its ability or willingness to budget funds for the payment of Rent, Additional Rent and other payments due pursuant hereto.

(d) **Compliance With and Enforcement of Lease.** The Lessee will perform all obligations and duties imposed on it pursuant to this Lease. Immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting its interest in the Leased Premises, the Lessee will deliver the same, or a copy thereof, to Lessor.

### Section 2.2 Representations, Covenants and Warranties of the Lessor

The Lessor represents, covenants and warrants to the Lessee as follows:

(a) **Due Organization and Existence.** The Lessor, on the date of execution of this Lease, duly organized and validly existing in the State of Nevada, is authorized to transact business in the State, and has the requisite power to enter into and perform this Lease.

(b) **No Encumbrances.** The Lessor will not transfer, mortgage or encumber its interest in the Leased Premises, except as permitted pursuant to the terms of this Lease.

(c) **No Violations.** Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or will result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default pursuant to any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor, or upon the Leased Premises.

### Section 2.3 Indemnification

To the fullest extent permitted by the laws and Constitution of the State, each of the parties shall defend, indemnify, protect and hold harmless the other party for, from and against any and all suits, actions, liability, obligations, losses, claims and damages paid or incurred in connection with the Leased Premises, this Lease and the failure of the indemnifying party to comply with the terms hereof (except that neither party shall be obligated to protect, defend, hold harmless or indemnify the other party for the willful or wanton acts or omissions, mistakes, or negligence of the other party or its officers, officials, agents and employees) and pay expenses in connection therewith including reasonable attorneys’ fees, costs and expenses. Any amounts payable by Lessee pursuant to this Section 2.3 will be paid as Additional Rent pursuant to Section 3.2 hereof. The obligations of any party to protect, hold harmless, reimburse and indemnify the other party as set forth in this Section will survive any termination of this Lease.
ARTICLE III.
AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE
PAYMENTS; TITLE TO LEASED PREMISES

Section 3.1 Lease of Property.

(a) The Lessor hereby rents and lets to the Lessee, and the Lessee hereby rents, leases and hires from the Lessor, the Leased Premises in accordance with the provisions of this Lease, to have and to hold for the Lease Term.

(b) The Lessor covenants with the Lessee that, subject to the Lessee’s payment of Base Rent and Additional Rent as required pursuant hereto, and the performance and observance of the other covenants and agreements on its part to be performed and observed pursuant to this Lease, the Lessee will and may peaceably and quietly have, hold and enjoy the Leased Premises without hindrance from the Lessor, its assigns and successors or any person within the control of the Lessor.

Section 3.2 Rent; Additional Rent; Other Payments.

(a) The Lessee agrees to pay to the Lessor, when due during the Lease Term, the amount of $1.00 per year (herein “Base Rent”), receipt of payment for the initial year is hereby acknowledged

(b) Subject to Appropriations for such purpose, the Lessee agrees to pay subsequent installments of Base Rent and any Additional Rent (defined below) on the first day of the each fiscal year commencing July 1, 2017.

(c) The Lessee agrees to pay to the Lessor the following amounts, if and whenever applicable, in addition to Base Rent (herein, “Additional Rent” and together with Base Rent and any other amount due hereunder to be paid by the Lessee, collectively, “Rent”):

(i) If, during the Lease Term, the ownership, leasing, rental, sale, purchase, possession or use of the Leased Premises results in the imposition of any charges, assessments or taxes (local, State or Federal), exclusive of income taxes on or measured by the Lessor’s income, the Lessee shall promptly pay to the applicable taxing authorities, upon receipt of a statement therefor from the Lessor, as Additional Rent, an amount equal to those charges and taxes imposed on the Lessor.

(ii) The Lessee will pay to the Lessor as Additional Rent all amounts payable pursuant to Section 3.2.

(iii) All reasonable expenses incurred by the Lessor in connection with the enforcement of any rights pursuant to this Lease.

(d) The Lessee presently expects and reasonably believes that funds will be available to make all Rent during the Lease Term, and that each of the Chief Financial Officer and the Finance Director of the Town will use his or her best efforts to include appropriate
provision for payment of the full amount of the Rent coming due during the Lease Term in the budget requests presented to the Mayor and Council of the Town each year. However, the Lessor acknowledges that the Lessee’s obligation to make Rent is a current expense of the Lessee, payable only so long as this Lease is in effect and exclusively from Appropriations for such purpose, and is not a general obligation or indebtedness of the Lessee.

ARTICLE IV.
MAINTENANCE, OPERATION AND USE OF PROPERTY; TAXES; INSURANCE; OTHER MATTERS

Section 4.1 Maintenance, Operation and Use of Property.

(a) The Lessee, at its expense and during the Lease Term, will:

(i) Perform the Waterline Operational Work using the General Contractor and in accordance with the GMP Contract and pay all Operational Costs related thereto.

(ii) Maintain and repair the Leased Premises and the Public Infrastructure related thereto as may be required from time to time.

(iii) Keep or cause the Leased Premises to be kept in good order and condition (ordinary wear and tear excepted), and make all necessary, proper or appropriate repairs, replacements and renewals thereof, interior, exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen.

(iv) Comply with all laws, insurance policies and regulations relating to, and obtain and maintain any governmental licenses and permits required for, the use, maintenance, repair and operation of the Leased Premises.

(v) Pay all costs, claims, damages, fees and charges arising out of its possession, use, operation or maintenance of the Leased Premises, subject to reimbursement as set forth above and subject to Lessor’s obligation to pay for all costs, claims, damages, fees and charges arising out of the willful or wanton acts or omissions, mistakes, or negligence of the Lessor or its officers, officials, agents and employees.

(vi) Promptly comply with all privileges, franchises and licenses forming a part of the Leased Premises, and all instruments creating or evidencing the same, in each case, to the extent compliance therewith is required of the Lessee pursuant to the terms of this Lease.

(b) The Lessee will not do, or permit to be done, any act or thing that might materially impair the value of the Leased Premises.

(c) The Lessor agrees that, during the Lease Term, it will not impair the Lessee’s ability to use, operate or maintain the Leased Premises in sound operating condition so that the Lessee may use the Leased Premises to carry out its intended functions.
(d) The Lessor will have no responsibility for any maintenance of or repairs to the Leased Premises except for Lessor’s obligation to pay for all costs, claims, damages, fees and charges arising out of willful or wanton acts or omissions, mistakes, or negligence of the Lessor or its officers, officials, agents and employees.

(e) During the term hereof, the Lessee will use the Leased Premises for the purposes for which it is designed and used, and will take no action with respect thereto or make any improvements to the Leased Premises that would adversely affect its utility or value for such purposes.

Section 4.2 Additions, Modifications and Improvements. The Lessee, in its discretion and at its expense, may make from time to time any additions, modifications or improvements to the Leased Premises which it may deem desirable. All additions, modifications and improvements so made to the Leased Premises by the Lessee that become incorporated in or permanently affixed to the Leased Premises, or cannot be removed without causing material damage to the Leased Premises, will become and be deemed to constitute a part of the Leased Premises, except the saddles and corporation stops installed to serve Lessee customers.

Section 4.3 Inspection. Subject to reasonable security and safety regulations and upon reasonable notice, the Lessor and its agents will be entitled to inspect the Leased Premises during business hours, or to observe the use and operation of, the Leased Premises to the extent it does not compromise the Lessee’s ability to maintain confidentiality of records.

Section 4.4 Dedication. Except as otherwise provided in Section 6.1(d) hereof, upon the later of (i) completion of the Waterline Operational Work, (ii) issuance of the Bonds or (iii) completion of the work to be performed by the District with the proceeds of the Bonds, the Lessor Waterline will be dedicated to the Town in the customary manner.

Section 4.5 Liens and Encumbrances.

(a) The Lessee shall keep the Leased Premises free and clear of all liens and encumbrances. The Lessor will not create any liens or encumbrances on the Leased Premises or any portion thereof except as permitted by this Lease. The Lessor shall provide timely notice to the Lessee of any liens or encumbrances with regard to the Leased Premises or any portion thereof of which the Lessor receives notice. The Lessor shall cooperate with the Lessee with regard to removal of any lien or encumbrance with regard to the Leased Premises or any portion thereof.

(b) Supplementing and not limiting subsection (a) above, the Lessee shall not permit any mechanics’ or other liens to be filed or exist against the Leased Premises by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the maintenance or repair of the Leased Premises. If any such lien is filed at any time, the Lessee shall, within thirty (30) days after notice of its filing but subject to the right to contest set forth below, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Notwithstanding the foregoing, the Lessee shall have the right, at its own expense, and after prior notice to the Lessor, by appropriate proceedings duly instituted and diligently prosecuted, to contest in good faith the
validity or the amount of any such lien, provided that within thirty (30) days following the commencement of any such contest, the Lessee shall deliver to the Lessor an opinion of counsel to the effect that, by nonpayment of any such items, the interest created by this Lease will not be materially affected and the Leased Premises or any part thereof will not be subject to imminent loss or forfeiture. In the event no opinion is delivered to the Lessor within thirty (30) days following the commencement of any such contest of lien, the Lessee will promptly cause such lien to be discharged of record.

Section 4.6 Risk of Loss; Damage; Destruction.

(a) The Lessee assumes all risk of loss of or damage to the Leased Premises from any cause whatsoever. No loss of or damage to, or appropriation by governmental authorities of, or defect in or unfitness or obsolescence of, the Leased Premises will relieve the Lessee of the obligation to make Rent during the Lease Term or to perform any other obligation pursuant to this Lease.

(b) In case of any damage to or destruction of the Leased Premises that might exceed $25,000, the Lessee will promptly give or cause to be given written notice thereof to the Lessor, generally describing the nature and extent of such damage or destruction. There will be no abatement or diminution of Rent and the Lessee shall, whether or not the net proceeds of insurance, if any, received on account of such damage or destruction are sufficient for such purpose, promptly commence and complete, or cause to be commenced and completed, the repair or restoration of the Leased Premises as nearly as practicable to the value, condition and character thereof existing immediately prior to such damage or destruction, with such changes or alterations, however, as the Lessee deems necessary for proper operation of the Leased Premises.

Section 4.7 Compliance with Legal and Insurance Requirements.

(a) The Lessee, at its expense, shall promptly comply or cause compliance with all Legal Requirements and Insurance Requirements (both as defined below), and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Leased Premises then being made or anticipated to be made, and for the proper installation, operation and maintenance of the Leased Premises.

(b) As used in this Section:

(i) “Legal Requirements” means all laws, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental entities, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Leased Premises, or to any use, anticipated use or condition of the Leased Premises.

(ii) “Insurance Requirements” means all provisions of any insurance policy covering or applicable to the Leased Premises and all contractual requirements of the issuer of any such policy.
The Lessee may, at its expense and after prior notice to the Lessor, by any appropriate proceedings diligently prosecuted, contest in good faith any Legal Requirement and postpone compliance therewith pending the resolution or settlement of such contest, provided that such postponement does not, as reasonably determined by the Lessor, adversely affect the interest created by this Lease or subject the Leased Premises to imminent loss or forfeiture.

Section 4.8 Insurance.

(a) The Lessee shall keep the Leased Premises continuously insured during the Lease Term.

(b) Commercial insurance may be obtained with any loss deductible commonly used by the Lessee, provided that the Lessee will self-insure to the extent required to cover any loss deductible specified in such casualty insurance.

(c) Any required insurance policies (other than a program of self-insurance or insurance provided by a public agency risk retention pool) must be obtained from responsible commercial insurance companies qualified to do business in the State and rated “A” or better by Best or in one of the two highest rating categories of Moody’s and S&P. All policies must name the Lessee and the Lessor as insureds, as their interests appear. The required insurance (other than any program of self-insurance or insurance provided by a public agency risk retention pool) may be provided by blanket policies. Each policy of insurance must be written so as not to be subject to cancellation or substantial modification upon less than forty-five (45) days’ advance written notice to the Lessor. The Lessee shall deposit with the Lessor certificates demonstrating that the insurance or self-insurance required by this Lease has been obtained and is in full force and effect and that any applicable premiums on that insurance have been paid in full. Upon the expiration of any such insurance (except self-insurance), the Lessee shall furnish the Lessor with evidence satisfactory to the Lessor that such insurance has been renewed or replaced and that all premiums on that insurance have been paid in full.

(d) All property insurance policies must contain standard mortgage clauses, must be in amounts and with deductibles acceptable to the and must name the Lessor as an additional loss payee. All liability insurance policies must contain standard additional insured endorsements, must be in such amounts and with deductibles acceptable to the Lessor. Any proceeds of liability policies will be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid and any excess will be retained by the Lessee.

ARTICLE V.
ASSIGNMENT, SUBLLEASING AND AMENDMENT

Section 5.1 Assignments.

(a) Except as otherwise provided herein, the Lessee shall not, without the Lessor’s prior written consent, assign, transfer, pledge, hypothecate, sublease or grant any security interest in or otherwise dispose of this Lease, or the Leased Premises, or any part thereof, without the prior written consent of the Lessor. Any sublease or assignment will (i) not extend for a period longer than the Lease Term, (ii) be cancelable by the Lessor upon an Event of
Default or non-appropriation, and (iii) not allow the assignee or sublessee to encumber or dispose of the Leased Premises in any way.

(b) Subject to the preceding subsections, this Lease inures to the benefit of and is binding upon the successors or assigns of the parties to this Lease.

Section 5.2 Amendment of this Lease. Without the prior written consent of the other party, neither the Lessor or the Lessee may alter, modify or cancel, or agree or consent to alter, modify or cancel this Lease, without the written consent of the other party.

ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default.

(a) By the Lessee. The occurrence of any one or more of the following events constitutes “Lessee Event of Default” pursuant to this Lease:

(i) the Lessee’s failure to make any Rent as they become due in accordance with the terms of this Lease; or

(ii) the Lessee’s failure to perform or observe any other covenant, condition or agreement to be performed or observed by it pursuant to this Lease, which failure is not cured or steps satisfactory to the Lessor taken to cure the failure within ten (10) days after written notice of the failure to the Lessee by the Lessor.

(b) By the Lessor. The occurrence of any one or more of the following events constitutes a “Lessor Event of Default” pursuant to this Lease:

(i) the Lessor’s failure to make any payment required by Sections 4.1(a)(v) or 4.1(d) of this Lease; or

(ii) the Lessor’s failure to perform or observe any other covenant, condition or agreement to be performed or observed by it pursuant to this Lease, which failure is not cured or steps satisfactory to the Lessee taken to cure the failure within ten (10) days after written notice of the failure to the Lessor by the Lessee.

(c) Notwithstanding the foregoing, if, by reason of Force Majeure, a party is unable to perform or observe any agreement, term or condition of this Lease, such party shall not be deemed in default during the continuance of such inability. However, the nonperforming party shall promptly give notice to the other party of the existence of any event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other labor disturbances shall be entirely within the nonperforming party’s discretion.

(d) For the purpose of this section, the term “Force Majeure” means, without limitation: Acts of God; strikes, lockouts or other labor disturbances; acts of public enemies;
orders or restraints of any kind of the government of the United States or any of its departments, agencies, political subdivisions, courts or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation.

(e) In addition to any other available remedy, in the event the Bonds are not issued within ten (10 years from the date hereof, the Lessee may cancel this Lease and require the Lessor to dedicate the Leased Premised to the Town.

Section 6.2 Remedies.

(a) Upon the occurrence of either a Lessee Event of Default or a Lessor Event of Default (collectively, an “Event of Default”), and as long as the Event of Default is continuing, subject to the provisions of Section 6.1 hereof, the Lessor or the Lessee, as the case may be, may, at its option, exercise any one or more of the following remedies:

(i) By written notice to the other party, terminate this Lease and direct the such other party to (and the other party agrees that it will), at the its expense, promptly return possession of the Leased Premises to the non-defaulting party and, at the non-defaulting party’s option, enter upon the Leased Premises and take immediate possession of and remove any or all of such personal property; and

(ii) Exercise any other right, remedy or privilege which may be available to it pursuant to the applicable laws of the State or any other applicable law or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach of this Lease or to rescind this Lease.

(b) The defaulting party shall remain liable for all covenants and obligations pursuant to this Lease, and for all legal fees and other costs and expenses, including court costs awarded by a court of competent jurisdiction, incurred by the non-defaulting party with respect to the enforcement of any of the remedies pursuant to this Lease, when an Event of Default has occurred.

(c) No remedy conferred on or reserved to a party by this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy will be cumulative and in addition to every other remedy given pursuant to this Lease or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair or be construed to be a waiver of any such right or power, but any such right and power may be exercised from time to time and as often as is deemed expedient. In order to entitle the non-defaulting party to exercise any remedy reserved to it in this Lease, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Lease.

(d) If an Event of Default occurs and the non-defaulting party incurs expenses, including attorneys’ fees, in connection with the enforcement of or the collection of amounts due pursuant to this Lease, the defaulting party shall reimburse the non-defaulting party
for the expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount thereof, together with interest thereon from the date of demand for payment, to the extent permitted by law, will be reimbursed and in any action brought to collect such amounts, the non-defaulting party shall be entitled to seek recovery of those reasonable expenses in such action except as limited by law or by judicial order or decision.

(e) No failure by a party to insist upon strict performance by the other party of any provision of this Lease shall constitute a waiver of the non-performing party’s right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to exercise any remedy upon the failure by the non-performing party to observe or comply with any provision of this Lease.

(f) A defaulting party shall notify the other party immediately if it becomes aware of the occurrence of any Event of Default or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

ARTICLE VII.
MISCELLANEOUS

Section 7.1 Notices.

All notices to be given pursuant to this Lease will be made in writing and mailed by first class mail, postage prepaid, or by overnight delivery to the party at its address stated below or at such other address as the party provides in writing from time to time. All notices shall be effective upon the earlier to occur of actual receipt, one (1) Business Day following deposit with a nationally recognized overnight courier service, or three (3) days following deposit in the United States mail. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

If to the Lessor: Cahava Springs Development Corporation
c/o Timothy Martens
Gammage and Burnham
2 North Central Avenue, 15th Floor
Phoenix, Arizona 85004

If to the Lessee: Town of Cave Creek, Arizona
37622 North Cave Creek Road
Cave Creek, Arizona 85331

Section 7.2 Notice of Litigation. The Lessee shall give the Lessor prompt notice of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, or of any of the same which may be substantially threatened, which, if adversely determined, would materially impair the right or ability of the Lessee to carry out its obligations pursuant to this Lease or to renew this Lease, or which would materially and adversely affect the Lessee’s operations, properties, assets or condition.
**Section 7.3  Heads**. All section headings contained in this Lease are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

**Section 7.4  Conflicts of Interest**. All parties acknowledge that this Lease is subject to cancellation by the Lessee pursuant to Arizona Revised Statutes Section 38-511, the provisions of which are incorporated by reference herein. All parties represent that to the best of their knowledge, there is no basis for the Lessee’s cancellation of this Lease pursuant to Arizona Revised Statutes Section 38-511 as of the date hereof. No person involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of the Lessee was, is currently or will be (i) an employee of any other party to this Lease in any capacity or (ii) a consultant to any other party of this Lease with respect to the subject matter of this Lease.

**Section 7.5  Governing Law**. This Lease will be construed in accordance with and governed by the laws of the State. The venue for any proceedings on any and all controversies arising pursuant to this Lease will be Maricopa County, Arizona.

**Section 7.6  Delivery of Related Documents**. The Lessee will execute or provide, as requested by the Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

**Section 7.7  Entire Agreement; Severability**.

(a) This Lease, together with attachments, exhibits and other documents or instruments executed by the Lessee and the Lessor in connection with this Lease, and the Financing Reimbursement Agreement constitute the entire agreement between the parties with respect to the lease by the Lessor of the Leased Premises to the Lessee.

(b) This Lease may not be modified, amended, altered or changed except by a writing executed by the Lessor and the Lessee.

(c) If any provision of, or any covenant, obligation or agreement contained in, this Lease is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Lease. Any such invalidity or unenforceability will not affect any valid or enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 7.8  Conditions Precedent to the Effectiveness of this Lease**. The following are express conditions precedent to the effectiveness of this Lease:

(a) The dedication by the Lessor to the Town of the Public Connection;

(b) The execution and delivery by all required parties to the GMP Contract; and

(c) The execution and delivery of the Financing Reimbursement Agreement.
IN WITNESS WHEREOF, the parties have executed and delivered this Lease by their duly Authorized Officers as of the date first set forth above.

LESSEE:

TOWN OF CAVE CREEK, ARIZONA, AN ARIZONA MUNICIPAL CORPORATION

BY: ____________________________

MAYOR

ATTEST:

______________________________
TOWN CLERK

APPROVED AS TO FORM:

______________________________
TOWN COUNSEL

LESSOR:

CAHAVA SPRINGS DEVELOPMENT CORPORATION, A NEVADA CORPORATION

By ____________________________

Its ____________________________
ACKNOWLEDGED AND AGREED:

CAHAVA SPRINGS REVITALIZATION DISTRICT, a district organized pursuant to the provisions of Title 48, Chapter 39 of the Arizona Revised Statutes

BY __________________________
CHAIRMAN

ATTEST:

______________________________
CLERK

APPROVED AS TO FORM:

______________________________
DISTRICT COUNSEL
EXHIBIT A-2
LEASED PREMISES
Memorandum

To: Mayor and Council

CC: Peter Jankowski-Town Manager, Carrie Dyrek-Town Clerk,

From: Robert Weddigen-Finance Director

Date: 10/6/2016

Re: FY2015-16 Budget Amendment.

This budget appropriation transfer is needed to cover interest on the Town Hall Debt Service. The interest amortization was effected by a partial prepayment and the interest amount was underestimated for the budget. The original budget and estimated interest cost was $32,000.00, however, the actual cost was $36,381.25. The transfer request of $4,500 is therefore being requested to transfer budget authority from the general fund contingency account to the Town Hall Debt Service Fund in the amount of $4,500.00.
### Project: 24th Street & Cloud Water Main - Cahava Springs

**September 22, 2016**

#### Water System

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity / Unit</th>
<th>Unit Price</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Pothole Existing/Connection Points</td>
<td>1 LS</td>
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<td>$2,118.50</td>
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<td>2. Connect to Existing</td>
<td>4 EA</td>
<td>$1,166.20</td>
<td>$4,664.80</td>
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<tr>
<td>3. 8&quot; Gate Valves</td>
<td>4 EA</td>
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<td>4. 8&quot; C900 DR-14</td>
<td>740 LF</td>
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<td>5. Remove Existing 8&quot; Waterline</td>
<td>14 LF</td>
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<td>6. Fire Hydrant</td>
<td>1 EA</td>
<td>$4,085.00</td>
<td>$4,085.00</td>
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<tr>
<td>7. 8&quot; X 8&quot; Tagging Sleeve/VALV</td>
<td>3 EA</td>
<td>$2,165.00</td>
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<td>8. Remove/Restore Driveways</td>
<td>34 SY</td>
<td>$80.75</td>
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<tr>
<td>#REFI Remove/Restore Grade</td>
<td>1 LS</td>
<td>$5,612.00</td>
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**Water System Total** $97,535.70

#### General Conditions

<table>
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<tr>
<th>Description</th>
<th>Quantity / Unit</th>
<th>Unit Price</th>
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<tr>
<td>1. Mobilization</td>
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<td>2. Survey</td>
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<td>3. SWAP Implementation</td>
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<td>4. Compaction Testing</td>
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<td>5. Traffic Control</td>
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<td>6. NOI Permit</td>
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<td>7. County Permit</td>
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<td>8. Dust Permit</td>
<td>1 LS</td>
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<td>9. Construction Water</td>
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<td>10. OHP</td>
<td>1 LS</td>
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<td>$18,200.00</td>
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</table>

**General Conditions Total** $42,000.50

#### Wet Utility Notes:
- Prices are based on materials prices quoted through the date shown on the right. In order to hold our prices firm, Markham has to commit to our suppliers with purchase orders by that date.
- Water samples and tests are to be accomplished by the Town of Cave Creek. Markham Contracting will set up injection and sampling locations. Chlorinate the system to chlorine, blow off the high chlorine and coordinate final bacteria samples with the water company. If the town chooses not to do the BT tests and asks us to do it at an additional $500.
- Price is based on the plans from Huson-Ryan Revised 8-4-2016 With Various Dates. Sheet 1 has a date of 7/14/2015, Sheet 2 has a date of 7/20/2016, Sheet 3 has a date of 7/21/2016, and Sheet 4 has a date of 7/28/2016.
- Price includes the items specifically included in the proposal only and may not ensure that the system is operable.
- Prices are based on using ABC for bedding and Shoveling to 1' above the pipe, then using unscreened native soils for backfill.
- Water pressure tests are included to attain initial acceptance. Any subsequent testing required would be an additional cost.
- MCCCI is not responsible for conflicts between existing utilities and the proposed utilities.
- Bid assumes that the plans provide for the required minimum separation between water and sewer.

#### Pricing Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water System Total</td>
<td>$97,535.70</td>
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<tr>
<td>General Conditions</td>
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<td>Contingency 3%</td>
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<td>Bond</td>
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<td><strong>Subtotal</strong></td>
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<td><strong>Sales Tax</strong></td>
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<td><strong>Proposal Grand Total</strong></td>
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#### Project Exclusions
- Excludes City of Cave Creek permits.
- Repairs to the existing water system if needed. It is assumed the existing water system is operable. If repairs are needed work to be completed by negotiated change order.
- Slurry is included in the areas called out on the plans. Any additional slurry required outside 5’ of the edge of paving is not included.
- Hard Dig, hand dig is described as any soil that can be excavated with a 320 excavator with a rock bucket at a rate of 20 feet an hour.
- MCCCI has excluded any and all work associated with the PRV on the corner of 24th Street and Cloud Road.
- MCCCI has excluded any and all work associated with the Backflow and water system north of Joy Ranch Road.
### Project: 24th Street & Cloud Water Main - Cahava Springs

#### September 22, 2016

**General Notes and Conditions**

- This proposal must be accepted within the number of calendar days shown on the right or be subject to renegotiation and re-evaluation.
- If a Blanket Waiver of Subrogation is required, an additional cost of $2,000.00 will be required for this coverage.
- Customer shall be responsible for compliance with Maricopa County air pollution regulations at the site. MCCI will provide dust control for our operations only.
- Markham Contracting reserves the right to negotiate contract language.
- Bid is based on obtaining construction water from existing onsite hydrants in adequate volumes to maintain estimated productions and dust control for our work during normal working hours.
- This proposal is a Lump Sum proposal. Quantities and Unit Prices are shown for comparison and Additive change order purposes. Deductive change orders to be negotiated.
- All Change Orders are subject to 15% Markup for Overhead and Profit.
- MCCI cannot assume responsibility for uncompacted utility trenches installed by others or getting acceptance of our compaction over those trenches.
- MCCI cannot assume responsibility for damage to pipe installed without the appropriate amount of cover.
- MCCI is not responsible for interpreting or resolving conflicts between the construction plans and the requirements of the agency governing acceptance.
OPEN SPACE COMMITTEE APPLICANTS

Martha Arnold
Dan Baxley
Jim Bruce
Russell Carlson
Kaolin Cummens
Jackie Davis
Vincent Francia
Katya Kincel
Roberts Klienops
Steven LaMar
Janet Mohr
Reg Monachino
Jane Rhodes
Bob Williams
Melanie Williams