

**RENEWED
TYPE 2 GROUNDWATER LEASE AGREEMENT**

This Renewed Type 2 Groundwater Lease Agreement ("Agreement") between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona ("Town") and Arizona Eco Development LLC, an Arizona limited liability company ("Lessee").

WITNESSETH:

WHEREAS, the Town owns a Type 2 Non-Irrigation Grandfathered Groundwater Right in the Prescott Active Management Area in the amount of seventy-five (75) acre feet, which Right is evidenced by a certificate issued by the Arizona Department of Water Resources ("ADWR"), Certificate No. 58-111699.0004 ("Type 2 Right"); and

WHEREAS, the Type 2 Right is owned by the Town to provide operational flexibility for such things as establishing new service areas, developing wells, and other unusual circumstances; and

WHEREAS, on November 2, 2017, the Town's Council approved a lease agreement with Lessee to use the Type 2 Right for one year (with the option to continue the same on a month-by-month basis for a period of up to one additional year thereafter) as construction water for the proposed Jasper development; and

WHEREAS, the payment rate under the lease was based on the requirement in Subsection 12.15 of the Effluent Water Auction Agreement (November 19, 2007) ("Auction Agreement") between the Town and Water Property Investors that any such water be transferred for market value plus 10% (determined as \$24,650 per acre-foot for a 100-year supply or \$246.50 per acre-foot per year + 10% = \$271.15 per acre-foot per year); and

WHEREAS, on December 12, 2019, the Town's Council approved a second lease agreement with Lessee to use the Type 2 Right for one year (with the option to continue the same on a month-by-month basis for a period of up to one additional year thereafter) as construction water for the proposed Jasper development; and

WHEREAS, on March 10, 2022, the Town's Council approved a third lease agreement with Lessee to use the Type 2 Right for one year (with the option to continue the same on a month-by-month basis for a period of up to one additional year thereafter) as construction water for the proposed Jasper development; and

WHEREAS, the payment rate under the lease was based on the requirement in Subsection 12.15 of the Effluent Water Auction Agreement (November 19, 2007) ("Auction Agreement") between the Town and Water Property Investors that any such water be transferred for at least market value plus 10% (determined as \$35,000 per acre-foot for a 100-year supply or \$350.00 per acre-foot per year + 10% = \$385.00 per acre-foot per year); and

WHEREAS, Lessee again wishes to lease a portion of the Type 2 Right on roughly the same terms and conditions; and

WHEREAS, now that Resale Contracts have been sold under the Auction Agreement the payment rate under a renewed lease is at least the rate under the most recent Resale Contract plus 10%; and

WHEREAS, a Resale Contract dated December 10, 2018, between WPI and Lake Valley Office Condos, LLC has set the current price at \$35,000 per acre-foot for a 100-year supply or \$350.00 per acre-foot per year + 10% = \$385.00 per acre-foot per year; and

WHEREAS, the Town Council finds that such use of the Type 2 Right conforms to Arizona law and provides the Town an opportunity to exercise the right, reduce impacts to the Town's Service Area water rights (that would otherwise be impacted by use of construction water), and recover some costs for the purchase of this Type 2 Right;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other valuable consideration (the receipt and adequacy of which is acknowledged), the parties hereto agree as follows:

SECTION 1. Lease. The Town hereby leases exclusively to Lessee 75 acre-feet of its Type 2 Right annually for use as construction water ("Leased Rights") during the term hereof.

SECTION 2. Term. The term of this Agreement shall begin on the date signed by the Mayor of Prescott Valley as approved by Town Council and noted below ("Effective date"), shall be retroactive back to January 1, 2024, and shall continue through December 31, 2024 (unless sooner terminated in accordance with the provisions hereof). Notwithstanding any such early termination, the provisions of Section 9 hereof shall run with the land consisting of the Property (defined below) and shall be perpetual.

If, on December 31, 2024, Lessee's planned construction is not complete Lessee shall have the option to continue to receive construction water under this Agreement on a month-to-month basis for one additional year. Said option must be exercised in writing by Lessee no later than December 31, 2024.

SECTION 3. Payment. Lessee shall pay for the Leased Rights three hundred eighty-five dollars and 00 cents (\$385.00) per acre-foot, for a total of \$28,875 payable 30 days after the date invoiced by the Town. If this Agreement continues beyond December 31, 2024, Lessee shall pay the same amount per additional acre-foot needed to complete the construction, payable in advance. Lessee shall then have exclusive use of that additional portion of the Town's Type 2 Right as part of its Leased Rights hereunder.

SECTION 4. Withdrawal of Groundwater. Lessee may withdraw groundwater pursuant to the Leased Rights, subject only to the Town's rights specified below. Lessee may withdraw said groundwater from the well located on real property described in Exhibit "A" attached hereto and expressly made a part hereof ("Property"), or from any well(s) constructed to replace said well (collectively the "Wells") as Lessee shall select.

Lessee shall not withdraw groundwater pursuant to the Leased Rights beyond that set forth herein, apply said groundwater to any property other than the Property, or resell any part of the Leased Rights or the groundwater withdrawn thereunder to any other person or entity.

Lessee shall be responsible for drilling, operation, maintenance, or use (and all other costs associated with any) of the Wells (including both below-ground and above-ground facilities such as pumps and motors) used by Lessee to exercise the Leased Rights.

If any additional construction water is obtained by Lessee through the Town's Municipal Water System, Lessee's use of that water will be charged at the established rates and through established procedures.

SECTION 5. Indemnification by Lessee. To the extent permitted by law, Lessee hereby agrees to indemnify and hold the Town harmless for, from and against all reasonable demands, liabilities, losses, damages, expenses, costs of defense and attorney's fees arising directly out of or connected with any groundwater withdrawals made by Lessee (or Lessee's agents) pursuant to the Leased Rights hereunder.

SECTION 6. Interference with Leased Rights. The Town shall make no withdrawals of groundwater pursuant to the Type 2 Right (from the Effective Date until the termination or expiration of this Agreement) that interfere with Lessee's Leased Rights under this Agreement. If Lessee is permanently restricted or prevented from using any portion of the Leased Rights by applicable law or regulation, then such portion of the Leased Rights shall permanently revert to the Town, free of any provisions of this Agreement. The Town will refund to Lessee the rent paid for the portion of the Leased Rights that revert to the Town pursuant to this Section 6.

SECTION 7. Title and Encumbrances. The Town warrants that it has title to the Type 2 Right, and that the Leased Rights have not been previously conveyed, leased or otherwise encumbered.

SECTION 8. Option to Obtain Ownership of Well(s). Lessee hereby grants to the Town an option to obtain title to any one or more Wells that constitute the Property at such time as may be determined by Lessee and the Town through a development agreement or other separate agreement. This ownership option includes any of Lessee's pumps and motors installed at such Wells, provided that: (a) exercise of the Town's rights hereunder shall not unreasonably interfere with Lessee's use of the Property and shall be exercised so as to minimize any such interference, and (b) exercise of the Town's rights shall not unreasonably interfere with Lessee's ability to withdraw groundwater pursuant to the Leased Rights. If the Town exercises its option, it shall do so in writing and it shall first pay any expense associated with installation or maintenance of any necessary Town equipment, and shall thereafter pay any costs of the electric power or other utilities and other pumping costs associated with pumping groundwater from the Wells.

SECTION 9. Measuring Withdrawals; Access to Property; Additional Leased Rights; Record Keeping; Filings; Other Documents. Lessee agrees to install a water metering device to measure groundwater withdrawals from any Well(s) in compliance with Town specifications and ARS§ 45- 604. Town staff and/ or its contractors shall have access to any Well(s) to read the meter during normal business hours and upon notification to Lessee. Lessee shall notify the Town of any other Leased Rights from other Parties that may be withdrawn from such Well(s).

Lessee and the Town shall each, respectively, keep all records regarding water withdrawn by each of them pursuant to the provisions of this Agreement as are necessary to comply with applicable Arizona groundwater regulations. The Town shall be responsible for filing annual withdrawal reports for water withdrawn pursuant to the Leased Rights and payment of any fees (including groundwater withdrawal fees), connected therewith as required by ARS§ 45- 632 (or any successor statute or applicable regulation) for the term of this Agreement. Each party shall furnish copies of any such filings to the other party.

The Town shall execute a Notification of Lease of All or a Portion of a Type 2 Non- Irrigation Grandfathered Right ("Notification") to be filed with ADWR for the purpose of giving notice of this Agreement. Provided, however, that it is understood that such Notification shall not result in a change of title to the Type 2 Right but shall only reflect this Agreement. Lessee shall pay any fees associated with such Notification.

The Town shall otherwise execute any necessary documents, provide any necessary information, and otherwise cooperate with Lessee's efforts to fulfill any statutory or regulatory requirements concerning the Leased Rights hereunder (or any withdrawals made pursuant thereto).

This Agreement may be recorded by either Lessee or the Town with the Yavapai County Recorder, or filed with ADWR (or both).

SECTION 10. Default. In the event of any default under this Agreement that has not been cured within thirty (30) days after the Town has given Lessee written notice of the existence of such default specifying in detail the default claimed to exist), the Town may terminate this Agreement by giving Lessee written notice of such termination. Provided, however, that if such default is cured before the giving of such notice of termination the Town shall not be entitled to terminate this Agreement by reason of such default.

SECTION 11. Duties upon Termination or Expiration. Upon termination or expiration of this Agreement, Lessee shall provide the Town with copies of all records kept (up to the date of termination or expiration) which are necessary for the Town to comply with applicable statutes and regulations. Lessee shall also execute any documents necessary to return the Leased Rights to their status prior to the execution of this Agreement.

SECTION 12. Amendment. Both parties agree to execute any amendment to this Agreement (other than amendments regarding the amount of payment hereunder) required by ADWR to give effect to this Agreement.

SECTION 13. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties hereto, and shall run with and burden the land consisting of the Property. Notwithstanding Lessee's promise in Section 4 not to resell any part of the Leased Rights or the groundwater withdrawn thereunder to any other person or entity, Lessee may assign this Lease to the separate entity Jasper EcoDev LLC.

SECTION 14. Governing Law and Severability. This Agreement shall be governed by the laws of the State of Arizona. Any provision of this Agreement which is found to be invalid shall be severable and shall not invalidate the remainder of this Agreement.

SECTION 15. Notices. Any notice to be given or payment to be made hereunder shall have been properly given or made when received, or when deposited in the regular United States mail, postage prepaid, addressed as follows:

Lessee: Arizona Eco Development LLC
4700 N Stillwell Pkwy, Suite B
Prescott Valley, AZ 86314
Attn: Jason Gisi

Town: Town of Prescott Valley

7501 East Skoog Blvd
Prescott Valley, AZ 86314
Attn: Town Manager

or addressed to such other address as the party to receive such notice or payment shall have designated by another notice given as required by this Section.

SECTION 16. Captions. The captions used in this Agreement are for convenience only and do not modify or define any of the terms or conditions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona

Kell Palguta, Mayor

Date

ATTEST:

Fatima Fernandez, Town Clerk

APPROVED AS TO FORM

Ivan Legler, Town Attorney

ARIZONA ECO DEVELOPMENT LLC, an Arizona limited liability company

By: its Administrator, Cazador Consulting LLC, an Arizona limited liability company

Jason J. Gisi, Manager