

When recorded, return to:

Town of Prescott Valley
7501 E. Skoog Blvd.
Prescott Valley, Arizona 86314

DEVELOPMENT AGREEMENT
[Government Tank Rock Harvest Site]

This Development Agreement (“Agreement”) is entered into to be effective as of December 11, 2025 (“Effective Date”), by and between the TOWN OF PRESCOTT VALLEY, an Arizona municipal corporation (“Town”), FAIN FAMILY LIMITED PARTNERSHIP, an Arizona partnership (“FFLP”), FAIN MARITAL NON-EXEMPT TRUST, FAIN NANCY L SURVIVORS TRUST (“Trusts”), and FAIN ENTERPRISES INC, an Arizona corporation (“FEI”) (FFLP, Trusts, and FEI collectively referred to herein as “Fain Family” or “FF”), and Asphalt Paving and Supply, Inc., an Arizona corporation (“AP&S”). The Town, FF, and AP&S shall collectively be referred to herein as the “Parties” and individually as a “Party”.

RECITALS

- A. In 1996, the Town accepted a gift from a Fain Family affiliate of approximately 96 acres to develop a regional park and related recreational facilities (“Fain Park”), which is more particularly described and depicted on Exhibit “A-1”, attached hereto. In the process the FF retained ownership of property adjacent to the west and east of Fain Park that remained in unincorporated Yavapai County. Four parcels to the west (APNs 103-08-077, 22 acres, 103-08-077a, 2 acres, 103-08-076a, 66 acres, and 103-08-050f, 25 acres), are collectively referred to herein as the “West Fain Park Site” and are described and depicted on Exhibit “A-2”, attached hereto. Portions of the West Fain Park Site have since been used informally by Fain Park patrons for such things as viewing old mining artifacts and hiking.
- B. Currently, the Fain Family leases property to AP&S for rock harvest operations, including property adjacent to the east of Fain Park (APN 103-08-050z, 362 acres). AP&S currently conducts rock harvest operations on APN 103-08-050z (“AP&S Facility”). As harvesting of hard rock supplies winds down at the AP&S Facility, FF has intended to expand hard rock production on the designated portion of the West Fain Park Site as part of its lease with AP&S (described and depicted on Exhibit “A-3”, attached hereto).
- C. On January 6, 2021, FFLP and AP&S applied to the Town for a right-of-way permit to carry excavated materials from the West Fain Park Site across a portion of Fain Park for crushing and other processing at the AP&S Facility. Said permit was approved at the time but never used. Therefore, the permit was closed on April 16, 2021. When FFLP and AP&S applied for permit renewal on February 7, 2022, the application was denied as being inconsistent with the Town’s then-current strategic plan. On February 14, 2022, the Town issued a press release indicating opposition to any rock harvest operations at the West Fain Park Site.

- D. After discussions with the Town, the Fain Family and Town settled on an alternative site. On October 24, 2023, FEI filed an application with the Town for a General Plan Amendment (“GPA23-024”) and Zoning Map Change (“ZMC23-024”) for approximately 40 acres located inside the Town (“APN 402-14-004”), described and depicted on Exhibit “B” attached hereto and incorporated herein by this reference (“Property” or “Government Tank Rock Harvest Site”).
- E. FEI held multiple open houses to educate the public about the alternative site, produced a drone video, and took elected state and local officials out to the site. But beginning in December 2023, opponents of the Government Tank Rock Harvest Site circulated and eventually submitted a petition under Subsection 2.3.1 of the Prescott Valley General Plan 2035 (“General Plan”) to require GPA23-024 (a minor amendment) to be processed instead as a major amendment. Therefore, in consultation with Town staff FEI put the two applications on hold. On April 26, 2024, the Town Clerk issued a letter indicating that sufficient signatures had been submitted to require GPA23-024 to be processed as a major amendment. Under the General Plan and ARS 9-461.06, major amendments require certain additional public notices, time requirements, hearings, and Town Council vote percentages.
- F. On June 6, 2024, a Complaint was filed in Yavapai County Superior Court seeking a Special Action against procedures the Town had indicated it planned to follow per ARS 9-461.06 if FEI ever did pursue the public hearings required for GPA23-024. The Superior Court eventually agreed to require the Town to mail certain additional notices (and allow another 60 days to pass) before any such hearings might be held by the Planning and Zoning Commission. However, no hearings were ever scheduled.
- G. In accordance with ARS 9-461.06(H), on April 26, 2025, GPA23-024 lapsed.
- H. Focus has now renewed on the portion of the West Fain Park Site described in Exhibit A-3. As that focus has become public, meetings have been held by groups from the nearby StoneRidge neighborhood to discuss the pros and cons of the portion of the West Fain Park Site versus the Government Tank Rock Harvest Site. It has been noted that moving away from any gravel mine operations on the portion of the West Fain Park Site protects the long-term viability of Fain Park (and potentially provides for its expansion). Moreover, any Operations at the Government Tank Rock Harvest Site are farther from nearby homes than Operations at the described portion of the West Fain Park Site. This has highlighted the possibility of a development agreement per ARS 9-500.05 between the Fain Family, AP&S, and the Town to specifically address Fain Park protection and expansion and reduce proximity to nearby homes.
- I. In anticipation of such a development agreement, FEI (in consultation with Town staff) has applied again to the Town for approvals to allow location of rock harvest operations on the Government Tank Rock Harvest Site. Those applications include what is now a major General Plan Amendment from Village PAD A-1 to Industrial Land Use (“GPA25-001”, August 15, 2025), and a Zoning Map Change from R1L-70 (Residential; Single Family Limited) to IG (Industrial General) (“ZMC25-008”, August 15, 2025) (which includes a

request for a Conditional Use Permit for mining in accordance with Town Code 13-13-090 and 13-13-110) (together the “Approvals”).

- J. The planned operations on the Property would include on-site drilling, controlled detonation, crushing, and hauling of rock materials to support local and regional construction and roadway projects (“Operations”), together with construction, use, and maintenance of a private access road that crosses Old Black Canyon Highway (“Access Road”). The Operations on the Property and the construction, use, and maintenance of the Access Road together would constitute the “Project”.
- K. In accordance with ARS 9-500.05, the Parties desire now to enter into a Development Agreement that sets forth permitted uses of the Property, intensity of uses, phasing of development, restrictions, and other matters relating to development of the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS; VESTED RIGHTS; LAWS AND REGULATIONS.

1.1 Incorporation.

The Recitals are true and correct and are incorporated herein by this reference.

1.2 Vested Rights.

The Town agrees that, in accordance with the provisions and conditions of this Agreement, Fain Family shall have a vested right to develop the Property in accordance with the Agreement and applicable law. The determinations of the Town memorialized in this Agreement, together with the assurances provided to FF in the Agreement, are provided pursuant to and as contemplated by ARS 9-500.05 and other applicable law, bargained for and in consideration for the undertakings of FF set forth herein and contemplated by this Agreement.

In the event the Town Council adopts this Agreement and any of the Approvals if FF and AP&S determines for any reason that proceeding with the Operations at the Government Tank Rock Harvest Site may not be in its interest (and so indicates to the Town in writing in accordance with Section 5.16 below), the Town shall take necessary legal steps to rescind this Agreement and the Approvals. Upon rescission of the Agreement and any Approvals, this Agreement and any Approvals shall be null and void in their entirety. This rescission period shall expire within one (1) year of Approvals.

1.3 Laws and Regulations

The Town Code of Prescott Valley (“Town Code”), including laws, rules, regulations and standards of development for the Town, whether by ordinance or resolution, or official policies and procedures (all of the foregoing, collectively, referred to as the “Laws and Regulations”) in

effect as of the Effective Date shall apply to the Property. The Town reserves the right to adopt new Laws and Regulations, however, the Property or this Agreement shall not be subject to future changes to the Laws and Regulations. Notwithstanding the foregoing, future Laws and Regulations shall apply to the Property if such future Laws and Regulations are required or mandated by federal, state, or county law or regulation; required or imposed by judicial or regulatory action; or necessary to alleviate or otherwise contain threats to public health or safety.

2. TOWN OBLIGATIONS

2.1 Town Coordination with Other Permitting Entities.

Within 10 business days after adoption of this Agreement and Approvals necessary for the Project, Town staff shall so inform in writing the Arizona State Mine Inspector, the Arizona Attorney General, and legislative representatives (as appropriate), acknowledging and supporting the applicable Operations parameters set forth therein and providing information regarding personnel available for Town coordination.

2.2 No Rock Fees or Charges.

No rock or tonnage fees or charges related to the Project shall be adopted by the Town after the date of this Agreement (and during the term thereof). It is understood that this provision does not apply to ad valorem, transaction privilege, or excise taxes, or construction permit fees or utility charges that generally apply in the Town. [Note, however, Section 3.6 below.]

2.3 Permit Processing.

With regard to administrative processing and approvals of Town permits for the Project, the Town shall review, process, and approve or deny all complete permit applications submitted by Fain Family, AP&S, or their affiliates on an expedited basis not to exceed 30 calendar days from the date of complete submittal. If the Town fails to act upon a complete application within 30 days (or within any state or local-mandated permitting period, whichever is sooner), an automatic administrative appeal shall be deemed submitted to the Town Manager. The Town Manager shall issue a written determination within 7 calendar days. The Town acknowledges and agrees that the only Town permit anticipated for the Project is an encroachment permit for work within the Town right-of-way to cross Old Black Canyon Highway. If the Town later determines that any additional Town permit(s) are required for the Project, they shall be limited by the provisions in Sections 2.2 above and 3.3 below.

2.4 Fain Park Maintenance.

Without limiting the authority of future Town Councils to exercise budgeting authority in light of economic conditions, the Town shall maintain Fain Park so as to ensure essential Park functions in accordance with then-applicable Park standards.

2.5. Town Staff Assistance.

Town staff shall respond expeditiously to requests from Fain Family and/or AP&S to confer and provide information in reference to this Agreement and the Approvals and shall timely make available to FF and/or AP&S any Town consultants, engineers, or similar resources and direct the same to reasonably confer with respect to any studies, reports, or documentation related to the Project, the Approvals, and this Agreement.

2.6 Town Processing of Approvals.

The Town shall, in good faith, conduct procedures under Arizona law and the Town Code necessary to adopt the Approvals.

2.7 AP&S Leasehold.

The Parties recognize and acknowledge the role of the longstanding AP&S leasehold in the AP&S Facility as the basis for seeking to obtain material from the Property while protecting Fain Park in return for hard rock harvesting at the smaller Government Tank Rock Harvest Site.

2.8 Response to Operations at West Fain Park Site Due to Non-Adoption of Approvals.

As discussed in Section 4 below, in the event any necessary Approvals are ultimately denied by the Town Council or are referred and fail at the resulting public vote (as opposed to any voluntary rescission at the request of Fain Family per Section 1.2 above), then the options of the Town regarding any response to subsequent Operations on the defined portion of the West Fain Park Site shown in Exhibit “A-3” shall be limited to the following:

(a) taking reasonable actions to ensure Operations mitigations apply to the designated portion of the West Fain Park Site similar to those agreed to herein for the Government Tank Rock Harvest Site;

(b) taking reasonable actions to ensure applicable Operations safety conditions are adhered to;

(c) taking reasonable actions to protect any public roadways beyond reasonable wear and tear; and

(d) taking reasonable actions to ensure the traveling public is protected from access or safety concerns based on engineering standards.

3. FAIN FAMILY OBLIGATIONS

3.1 Allocation of Responsibilities.

For purposes of this Agreement, Fain Family and AP&S shall reasonably cooperate with one another. However, certain roles and obligations of FF and AP&S shall be distinct, as follows:

(a) Fain Family Responsibilities. FF shall be responsible for (i) obtaining and maintaining the Approvals, (ii) conveyance of the designated portion of the West Fain Park Site shown in Exhibit A-3, as set forth in Section 3.6 below, (iii) overall compliance with vested rights and obligations specific to FF under this Agreement, and (iv) ensuring no prohibited Operations occur on the designated portion of the West Fain Park Site during the forbearance period. FF shall not be responsible for day-to-day construction, operation, or maintenance obligations of AP&S.

(b) AP&S Responsibilities. AP&S shall be solely responsible for (i) design, construction, maintenance, and dust control of the Access Road referenced in Section 3.3 below, (ii) all mining, blasting, crushing, hauling, and related Operations activities, and (iii) compliance with any Federal, State, and County mining permits.

(c) No Imputed Liability. Except as expressly provided herein, neither FF nor AP&S as Parties shall be deemed a guarantor of the performance of the other. The Town shall not assert, and hereby waives, any claim that FF is liable for obligations of AP&S, or that AP&S is liable for obligations of FF, as set forth in this Section 3.1.

3.2 Operations Mitigations.

(a) Operations shall occur in phases as authorized by the Conditional Use Permit included with ZMC25-008.

(b) Drilling, controlled detonation, and crushing may occur no more often than 4 distinct blasting occasions per calendar year (a “blasting occasion” being defined as a separate blasting contract). Hauling may occur as needed. White noise backup alarms shall be used on all vehicles hauling material to the extent permitted by applicable state and national mining standards and other considerations of employee safety. For purposes of this Agreement, a blasting occasion may require multiple individual blasts.

(c) Hours of Operations shall be limited to Monday through Saturday, between 7:00 a.m. and 7:00 p.m.

(d) Despite Town utilities not being extended to the Project boundaries, adequate self-contained restrooms, dumpsters, and lighting shall be provided at all times during Operations.

(e) Operations shall comply with all applicable Federal, State, and Local laws, including (but not limited to) notice to residents within 1,000 feet prior to any controlled detonation, dark sky compliance, conformance to Town Code lighting standards, and signage to facilitate noise complaints and other public complaints/comment.

(f) Fain Family, AP&S, and their affiliates agree not to seek approvals to expand the Government Tank Rock Harvest Site (including any Operations therein) within 15 years from the Effective Date.

(g) No water well shall be drilled and operated on the Government Tank Rock Harvest Site during the term of this Agreement.

3.3 Private Access Road; Dust Control.

(a) The required Access Road and related infrastructure between the Government Tank Rock Harvest Site and the AP&S Facility (see Exhibit “C” attached hereto) shall be designed and constructed at no cost to the Town. Inasmuch as the Access Road is located on private property, it shall not be subject to Town permitting or other approvals beyond the requirements of Section 2.3 above. Nevertheless, Old Black Canyon Highway shall be reinforced where the Access Road crosses it (and damage to any utility lines over which the Access Road may pass shall be avoided) in accordance with the reasonable requirements of the Town Engineer.

(b) AP&S (and not FF) shall maintain the Access Road as needed for Operations.

(c) AP&S shall implement dust control measures for the Access Road in compliance with applicable law. In the event of dust complaints FF and AP&S shall timely respond to complainants and to the Town as to the actions, if any, needed to resolve the complaints.

3.4 Forbearance at West Fain Park Site

Inasmuch as a primary purpose of this Agreement is to provide incentives for the Fain Family to again apply for Approvals to conduct Operations at the Government Tank Rock Harvest Site instead of the designated portion of the West Fain Park Site shown in Exhibit A-3 (and thereby protect Fain Park and move Operations to the site farthest away from homes), FF and AP&S shall refrain from any rock harvesting at the designation portion of the West Fain Park Site while the Approvals are being processed (including during any referendum process up to the date of any canvassing of a vote). In the event the Approvals are adopted (and FF has not exercised its rescission right in Section 1.2 above), FF and AP&S (and any affiliates, successors, and assigns) shall forever refrain from Operations anywhere on the designated portion of the West Fain Park Site shown in Exhibit A-3.

3.5 Proposition 207 Waiver.

As part of good faith processing of any and each of the requested Approvals, Fain Family shall execute a Proposition 207 (regulatory takings) waiver limited to the Government Tank Rock Harvest Site on the Town’s customary form. Such waiver shall be executed only (i) after the Town Council’s approval of the applicable Approval(s), and (ii) if, in FF’s reasonable business judgment, any stipulations or conditions imposed in connection with such Approval(s) do not render operations at the Government Tank Rock Harvest Site uneconomical.

3.6 Land Donation.

Upon successful approval, passage, vesting, and final, non-appealable adoption of the Approvals (including any referendum period and related vote), the Fain Family (or appropriate affiliates) shall convey to the Town at no cost as a gift the designated portion of the West Fain Park Site shown in Exhibit A-3. Closing on such conveyance shall be within twelve (12) months after the last of the Approvals is fully vested, non-appealable, and beyond all challenge periods

(and after an appraisal is completed that evaluates the designated portion of the West Fain Park Site shown in Exhibit A-3 at the highest and best use as required for reporting the original gift value on IRS form f8283 for tax deduction purposes.

In recognition of the significant financial impact to FF involved with this land donation, the conveyance deed(s) shall be subject to the following conditions retained by FF (or appropriate affiliates):

(a) The Town shall not use any portion of the donated portion of the West Fain Park Site for purposes other than public park, public recreation, and open space uses; and

(b) If the Town chooses to adopt any new ad valorem taxes or any new transaction privilege (or excise) taxes on commercial leaseholds after November 2025 (excluding existing County taxes) that would apply to any real property of FF, its affiliates, successors, and assigns, then the Town shall quarterly take necessary steps to rebate any such taxes applied to properties owned by FF, its affiliates, successors, and assigns, within 10 days of payment, up to the value calculated by adjusting the original gift value as reported on IRS form f8283 for inflation using the CPI-U.

It is understood that any condition of zoning imposed on any real property of FF, its affiliates, successors, and assigns that imposes a charge that operates in substance as a tax is included in the rebate requirement herein.

Any conveyance deed(s) may mirror the same language reserving to the Fain Family or their affiliates water and mineral rights as set forth in that certain Special Warranty Deed dated June 24, 1997, recorded as Instrument No. 9735421 Official Records of Yavapai County, conveying Fain Park (including the exclusion of any right by FF their respective heirs, executors, personal representatives, successors, and assigns, to conduct rock, sand, or gravel mining operations in the designated portion of the West Fain Park Site shown in Exhibit A-3.).

4. NON-ADOPTION OF APPROVALS

4.1 Generally

A primary purpose of this Agreement is to provide incentives for the Fain Family to again apply for Approvals to conduct Operations at the Government Tank Rock Harvest Site. Thus, it is understood by the Parties that, in the event any necessary Approvals are ultimately denied by the Town Council or are referred and fail at the resulting public vote (as opposed to any voluntary rescission at the request of FF per Section 1.2 above), then the options of the Town regarding any response to any subsequent Operations on the designated portion of the West Fain Park Site shown in Exhibit “A-3” shall be limited as set forth in Section 2.8 above.

4.2 Ongoing Compliance Applicable Federal, State, and Local Laws

Subject to Section 1.3 above, any Operations at the Government Tank Rock Harvest Site or the designated portion of the West Fain Park Site shown in Exhibit “A-3” shall comply with Federal, State, and Local laws in effect and applicable to such Operations as of the date of the

Town's issuance of the relevant Approvals. No subsequently adopted Town codes, ordinances, or regulations shall apply to the Operations unless expressly agreed by the Parties in writing and in accordance with this Agreement.

5. GENERAL PROVISIONS

5.1 Conflicts of Interest.

The Parties acknowledge that this Agreement is subject to cancellation pursuant to ARS 38-511, as amended.

5.2 Cooperation and Alternative Dispute Resolution.

The Town, the Fain Family, and AP&S shall each designate a representative to act as liaison with each other Party in the administration of this Agreement and the resolution of disputes hereunder. The Town's initial representative shall be the Town Manager (or designee). FF's initial representative shall be Brad Fain. AP&S's initial representative shall be _____. The designated representatives may be changed by any Party in a writing mailed to the other Parties as provided in Section 5.16 below.

5.3 Defaults.

Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of 30 days after written notice thereof from any other Party ("Cure Period") shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform or comply so long as such Party commences performance or compliance within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, any non-defaulting Party shall have all rights and remedies that are set forth in Section 5.4 below.

5.4 Dispute Resolution Remedies.

If any default is not cured within the Cure Period, any non-defaulting Party may exercise all rights and remedies available to it at law or in equity, including (without limitation) the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages. Any dispute arising under this Agreement may be subject to arbitration in accordance with ARS 12-1501 et seq., but only if mutually agreed to by the Parties in dispute. All disputes shall be governed by Arizona law.

5.5 Duration.

Unless terminated earlier pursuant to the terms of this Agreement, this Agreement shall commence on the Effective Date and continue for an initial term of 20 years. Thereafter, this Agreement shall automatically renew without the necessity of any further action by the Parties, for successive 10-year periods, for so long as either site may contain commercially viable hard rock and is being actively used for rock/material harvesting (but not longer than a total of 50 years). In the event the Town is rebating any taxes in accordance with Section 3.6(b) above, the term of this Agreement shall be extended to the extent needed to reach the calculated value.

Upon the final expiration without renewal of this Agreement, no Party shall have any further obligations under the Agreement. However, such termination shall not affect any of the Approvals, permits, deeds, or site plans adopted or approved by the Town as of the date of such termination.

5.6 Indemnification and Hold Harmless.

Each of the Parties accepts responsibility for its own actions relating to this Agreement. Should any other person or entity assert a claim arising out of the Agreement, the Party whose actions or omissions gave rise to the claim shall defend, indemnify, and hold harmless the other Parties for, from, and against any and all such claims and costs, expenses, and liabilities incurred in connection therewith (including, but not limited to, reasonable counsel and witness fees and court costs).

5.7 No Agency or Partnership.

No Party is acting as the agent of the other Parties with respect to this Agreement, and this Agreement shall not be deemed to create a partnership, joint venture, or other business relationship between or among any of the Parties.

5.8 No Third-Party Beneficiary.

This Agreement shall not create any third-party beneficiary rights to any person or entity who is not a Party to this Agreement, including any lender, unless expressly provided to the contrary in this Agreement (and then only to the extent so provided).

5.9 Construction.

The provisions and exhibits of this Agreement shall be construed as a whole consistent with their plain meaning and intent, and they shall not be construed against one Party or the other based upon which Party prepared or influenced the drafting of any provision or exhibit of this Agreement.

5.10 Recording.

This Agreement shall be recorded in the Office of the Yavapai County Recorder no later than 10 days after its execution, pursuant to ARS 9-500.05(D).

5.11 Merger.

This Agreement constitutes the entire agreement between and among the Parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

5.12 Assignment.

Each of the Parties to this Agreement may assign all or any portion of its rights hereunder to any one or more persons or entities, on such terms and conditions as each may deem appropriate. Provided, however, that no Party may convey all or any portion of its rights hereunder unless either (a) the corresponding obligations of that Party are completely assumed by the assignee of the Party's rights, the assignee accepts such obligations and demonstrates its ability to perform them, and the obligations are specifically listed in the assignment, or (b) the Party remains personally obligated to perform said corresponding obligations after such assignment. Otherwise, any such assignment shall be void.

This Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the Parties hereto, pursuant to ARS 9-500.05(D).

5.13 Counterpart Signature.

This Agreement may be executed in counterpart, each of which shall be deemed an original, and all of which combined shall constitute one and the same instrument.

5.14 Amendment.

This Agreement may be amended only by a written agreement fully executed by each of the Parties. Any amendment shall be adopted by Town ordinance or resolution and recorded in the Office of the Yavapai County Recorder within 10 days of its execution by authorized representatives of the Parties.

5.15 Section Titles.

The Section titles in this Agreement are not part of this Agreement and are for convenience only.

5.16 Notices.

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

Town:

Town Manager
Town of Prescott Valley
7501 E. Skoog Blvd.
Prescott Valley, AZ 86314

With a copy to:

Town Attorney
Town of Prescott Valley
7501 E. Skoog Blvd.
Prescott Valley, AZ 86314

Fain Family:

President
Fain Enterprises Inc
Fain Family Limited Partnership
3001 N. Main Street, Suite #2B
Prescott Valley, Arizona 86314

Nancy L. Fain
Fain Marital Non-Exempt Trust
Fain Nancy L Survivors Trust
c/o Mark Drutz, Trustee, Fain Family Multi Generation Trust
Musgrove Drutz Kack & Flack
1135 W. Iron Springs Road
Prescott, Arizona 86305

With a copy to:

William E. Lally, Esq.
Tiffany & Bosco, P.A.
2525 E Camelback Road, 7th Floor
Phoenix, Arizona 85016
wel@tblaw.com

AP&S:

With a copy to:

These persons or addresses may be changed by the respective Parties by giving notice in writing. Such changes shall be deemed to have been effectively noticed 5 calendar days after being mailed to each other Party by the Party changing the person or address.

5.17 Governing Law.

This Agreement shall be governed by and construed under the laws of the state of Arizona, and any litigation shall take place only in Yavapai County, Arizona.

5.18 Attorney Fees.

The prevailing Party in any litigation in connection with this Agreement shall be entitled to its attorney fees and costs.

5.19 No Waiver of Rights or Remedies.

No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party of the breach of any term or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other term or condition of this Agreement.

5.20 Severability.

If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement (which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to achieve the practical and proportional benefits and obligations of the arrangements contemplated by this Agreement). Otherwise, any Party may terminate this Agreement.

5.21 Signature.

The Parties have executed this Agreement on the date first above written.

(Signatures on following pages)

TOWN:

TOWN OF PRESCOTT VALLEY, ARIZONA, a municipal corporation

BY: _____

Kell Palguta, Mayor

DATE: _____

ATTEST:

BY: _____

Fatima Fernandez, Town Clerk

DATE: _____

APPROVED AS TO FORM:

BY: _____

Ivan Legler, Town Attorney

DATE: _____

STATE OF ARIZONA)
) SS.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Kell Palguta, as Mayor of the TOWN OF PRESCOTT VALLEY, a municipal corporation, on behalf of said municipal corporation.

Notary Public

My Commission Expires:

FAIN FAMILY:

FAIN FAMILY LIMITED PARTNERSHIP, an Arizona partnership

BY: _____
S. Brad Fain, President

DATE: _____

FAIN ENTERPRISES INC, an Arizona corporation

BY: _____
S. Brad Fain, President

DATE: _____

STATE OF ARIZONA)
) SS.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by S. Brad Fain, as President of FAIN FAMILY LIMITED PARTNERSHIP, an Arizona partnership, on behalf of said partnership, and of FAIN ENTERPRISES INC, an Arizona corporation, on behalf of said company.

Notary Public

My Commission Expires:

FAIN FAMILY MULTI GENERATION TRUST

FOR AND ON BEHALF OF: FAIN MARITAL NON EXEMPT TRUST AND FAIN NANCY L SURVIVORS TRUST

BY: _____
Mark Drutz, Trustee

DATE: _____

STATE OF ARIZONA)
) SS.
County of Yavapai)

The foregoing instrument was acknowledged before me this_____ day of _____,
2025, by Mark Drutz, as Trustee of Fain Family Multi Generation Trust, for and on behalf of FAIN
MARITAL NON-EXEMPT TRUST and FAIN NANCY L SURVIVORS TRUST.

Notary Public

My Commission Expires:

AP&S:

BY: _____
Mike McCormick, President

DATE: _____

BY: _____
Greg McCormick, Secretary

DATE: _____

STATE OF ARIZONA)
) SS.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by Mike McCormick, as President of Asphalt Paving and Supply, Inc., an Arizona corporation, on behalf of said corporation.

Notary Public

My Commission Expires:

EXHIBIT “A-1”

Legal Description and Depiction
Fain Park

[To be provided]

EXHIBIT “A-2”

Legal Description and Depiction
West Fain Park Site

[To be provided]

EXHIBIT “A-3”

Description and Depiction Potential Fain Park Expansion Area
West Fain Park Site

[To be provided]

EXHIBIT “B”

Legal Description and Depiction
Government Tank Rock Harvest Site

[To be provided]

EXHIBIT “C”

Access Road

[To be provided]