

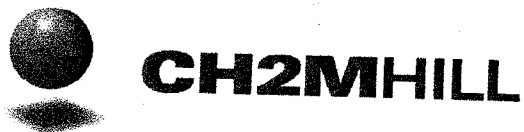
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# **Cave Creek and Desert Hills – Water Company**

## **Master Plan – Cost Estimate**

### **Cave Creek and Desert Hills, AZ**

#### **BASIS OF ESTIMATE**



Estimate ID: 2008.0041

Project Name: Cave Creek and Desert Hills – Master Plan

Class Estimate: Class 4 – (+50% to -30%)

Requested By: Fair Yeager

Estimated By: Pete Bredehoeft

Estimator Phone: 770-604-9182 x54050

Estimate Date: Rev #2 March 23, 2008

CCI Index: 8,094.28 (March 2008)

Material Index: 2,578.50 (March 2008)

Pete Bredehoeft  
ESTIMATOR

## Purpose of Estimate

Master Plan – conceptual cost estimates for improvements in 2008, 2010 and 2030.

## General Project Description

Water Pipelines – 8", 12", 16" and 24" dia, booster pump station, fire protection system, water storage tanks (250,000 to 2MG), pressure control valves. Water Treatment Plant capacity improvements. New Improvements for new pressure zones, and potential growth of the communities.

## Overall Costs

The following is a summary breakdown of the costs. See attached breakdown for additional detailed information.

Low Range	ESTIMATE RANGE	High Range
-30%	Total \$72,241,000	50%
\$50,569,000	Construction Only	\$108,362,000

Note – These costs do not include Design, Engineering, Permitting and Services during construction costs, plus any additional owner costs, such as legal fee. Land purchase or easements costs are not included. These costs could add an additional 15% to 25% to these construction costs.

## Markups

The following typical contractor markups where applied to the Cost Estimate:

Contractor Overhead	10%
Profit	5%
Mobilization/Bond/Insurance	5.7%
Estimate Contingency	30%
Escalation Rate	See Below
Market Adjustment Factor	5% (for 2008 cost only)

## Escalation Rate

Escalation is based upon specific commodity, labor and equipment index information from Global Insight data. This was used to determine an overall index factor forecast, which ranged from 6.3% to 4.0%. Assumed a the average project would require a 10 month design period and 12 month construction period, with 6 months for Bid and

Award. Escalation was only applied to 2008 and 2010 Project, since 2030 projects are too far in advance to be able to forecast escalation properly.

The following is the overall escalation factor applied to the estimates:

2009 Improvements = 17.5% (2010 mid-point)

2011 Improvements = 32.61% (2012 mid-point)

2030 Improvements = 0%

## Market Conditions

The current market conditions are drastically impacting the construction market, across the country. This is based upon recent bids and comparisons with Engineer's Estimates. Bids are coming in between 10% to 20% and even 30% higher than the current engineer's estimates. Despite the estimator's best practices and adjustments, bids are being driven by current market conditions. Currently at CH2M HILL, the estimating policy is to include a 5% to 15% Market adjustment factor, which may be higher in some regions of the county. A detailed analysis of local market conditions should be made. This could be performed by a review of upcoming and current similar projects around the region of this project site. This market adjustment factor is above and beyond the typical contractor mark-ups, normal estimating contingency and current but normal escalation factors listed above. The Market Adjustment Factor covers:

- Busy Contractors.
- Contractors selectively bidding jobs.
- Contractors selectively choosing which Owners they want to do jobs for.
- Premium Wages to keep skilled workers and management staff.
- Availability of crafts/trades.
- Immigration impacts and uncertainty.
- Abnormal Fuel impacts and uncertainty - Oil = \$75 barrel, Gas \$3.00/Gal
- Abnormal material impacts of the last two years - when will it stop.
- Katrina impacts and other unplanned natural disasters.

A 5% Market Adjustment Factor was only applied to project associated with the 2008 short term improvements.

## Estimate Classification

This cost estimate prepared is considered an Order of Magnitude or Class 4 as defined by the American Association of Cost Engineering (AACE). It is considered accurate to +50% to - 30%, based upon conceptual information.

The cost estimates shown have been prepared for guidance in project evaluation and implementation from the information available at the time of the estimate. The final cost of the project will depend upon the actual labor and material costs, competitive market conditions, final project costs, implementation schedule and other variable factors. As a

result, the final project costs will vary from the estimates presented herein. Because of this, project feasibility and funding needs must be carefully reviewed prior to making specific financial decisions to help ensure proper project evaluation and adequate funding. Our estimate is based on material, equipment, and labor pricing as of April 2007. The Owner or Client should be cautioned that such prices are highly subject to variation as a result of shortages resulting from recent natural disasters.

## **Cost Resources**

The following is a list of the various cost resources used in the development of the cost estimate.

- R.S. Means
- Mechanical Contractors Association - Labor Manual
- CH2M HILL Historical Data
- Estimator Judgment

Labor unit prices reflect a burdened rate, including: workers compensation, unemployment taxes, Fringe Benefits, and medical insurance.

## **Estimate Methodology**

This cost estimate is considered a bottom rolled up type estimate with detailed cost items and breakdown of Labor, Materials and Equipment. Some quotations were obtained for various items. The estimate may include allowance cost and dollars per SF cost for certain components of the estimate.

## **Labor Costs**

The estimate has been adjusted for local area labor rates, based upon the Phoenix area, using the Means City Cost Indexes.

## **Sales Tax**

The estimate has been adjusted for local area sales tax of average of 5.6%.

## **Allowance Costs**

The cost estimate includes the following allowances within the cost estimate:

- Miscellaneous allowances.

## **Quotations**

- WTP Capacity Upgrades allowance cost \$0.90/gal plus markups.

## Major Assumptions

The estimate is based on the assumption the work will be done on a competitive bid basis and the contractor will have a reasonable amount of time to complete the work. All contractors are equal, with a reasonable project schedule, no overtime, constructed as under a single contract, no liquidated damages.

This estimate should be evaluated for market changes after 90 days of the issue date. It is assumed that much of the fabricated equipment will be shipped from the mainland USA.

- Assumed Pavement Restoration – 20% of LF requires Pavement Restoration = Desert Hills Projects.
- Assumed Pavement Restoration – 40% of LF requires Pavement Restoration = Cave Creek Projects.
- Assumed Fire Hydrants required approximately every 1,500 LF
- Assumed Drive Way Restoration required every 200 LF in paved area, on both sides of street and each location is 15' x 15' (225 SF) of restoration.
- Assumed no sodding or seeding is required throughout the projects.
- Assumed no planting is required throughout the projects.
- Assumed no specialty canal crossings are required throughout the projects.
- Assumed normal erosion control for pipeline work.
- Assumed booster pumps and fire pumps are exposed with 15' x 15' slab area. Includes a metal canopy frame to protect pump. Includes NEMA 4 X panel allowances. Includes small generator set for emergency power. Assumed 6' high chain link fence around perimeter of booster or fire pumps.
- Assumed no interior buildings for booster pumps or fire pumps.
- Assumed water tanks are metal above ground tanks. Assumed 6' high chain link fence around perimeter of storage tank.
- Assumed \$0.90 plus markups for WTP capacity upgrades.
- No sidewalks are required in the Desert Hills project per the Project Manager.
- No gravel fill, used for surface restoration is required for the pipelines.

## Excluded Costs

The cost estimate excludes the following costs:

- Non-construction or soft costs for design, services during construction, land, legal and owner administration costs.

- Material Adjustment allowances above and beyond what is included at the time of the cost estimate.

## Reference Documents

GIS Information rev 4, dated February 21, 2008.



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**BEFORE THE DIRECTOR OF THE  
MARICOPA COUNTY  
ENVIRONMENTAL SERVICES DEPARTMENT**

IN THE MATTER OF:  
Desert Hills Water Company  
Owner: Town of Cave Creek  
37622 N. Cave Creek Road  
Cave Creek, AZ 85331

Cause No. 07-0017713  
Public Water System Permit 07-026

**STIPULATED SETTLEMENT AGREEMENT**

The Maricopa County Environmental Services Department ("MCESD"), and Town of Cave Creek, owner of Desert Hills Water Company, hereby enter into this Stipulated Settlement Agreement ("Agreement") regarding the settlement of existing enforcement action by MCESD against Desert Hills Water Company.

In consideration of the mutual covenants contained in this Stipulated Settlement Agreement, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

**I. RECITALS AND LEGAL AUTHORITY**

1. MCESD, acting under the authority of A.R.S. §49-106 and Delegation Agreement #00-0026 between the Arizona Department of Environmental Quality and Maricopa County, is responsible for enforcing the Safe Drinking Water Requirements contained in Title 18, Chapter 4 of the Arizona Administrative Code (AAC) in Maricopa County and the requirements of the Maricopa County Environmental Health Code.
2. On June 11, 2007, MCESD issued a Notice of Violation and Demand for Compliance to Desert Hills Water Company, demanding the water system be brought into compliance with the Maricopa County Environmental Health Code and the Arizona Administrative Code.
3. On August 8, 2007, representatives from MCESD and Town of Cave Creek met to discuss a settlement of the Notice of Violation and Demand for Compliance.
4. Desert Hills Water Company acknowledges that no promise of any kind or nature whatsoever, was made to induce it to enter into this Settlement Agreement, and Town of Cave Creek does so voluntarily.
5. Desert Hills Water Company, without admitting to any of the allegations, desires to settle all matters without any further enforcement action.

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6. Town of Cave Creek admits to the jurisdiction of MCESD in the matter stated herein and waives all rights to a hearing of these matters and further, waives its right to judicial review of these matters.

## II. SETTLEMENT OF ENFORCEMENT ACTION

1. In full settlement of all claims made or arising out of the facts alleged in the June 11, 2007 Notice of Violation and Demand for Compliance, Town of Cave Creek agrees to the following timeline:
  - a. Within 15 days of signature of this agreement, Town of Cave Creek will submit the Master Plan for Town of Cave Creek Water System(s), with all required paperwork and expedited review fees. If it is found during the review process that Town of Cave Creek will be required to make any system corrections to address the pressure, storage, and/or supply issues that are not already submitted for approval to MCESD, MCESD will relay all issues in writing to Town of Cave Creek. Town of Cave Creek shall incorporate all required modifications, changes or other alterations, as requested by MCESD, within a reasonable time specified by MCESD.
  - b. By November 30, 2007, Desert Hills Water Company will remove the temporary interconnection between Anthem Water system and Desert Hills Water System.
  - c. Town of Cave Creek shall submit a written status report to MCESD every thirty (30) calendar days beginning thirty (30) days from the effective date of the Agreement, until termination of this Agreement. The written status report shall include updates on all ongoing improvement projects and milestones for Desert Hill Water System and Cave Creek Water System including updates on work to remove the Anthem interconnection and upgrades to storage and treatment on both systems.
  - d. Beginning with the effective date of this Agreement, Desert Hills Water Company shall not allow any subdivision to connect to and obtain water from Desert Hills Water Company until the developer has demonstrated sufficient well service capacity to supply an adequate quantity of clean and safe water to the residents within the subdivision.
  - e. In full settlement of all claims made or arising out of the facts alleged in the Notice of Violation and Demand for Compliance, Town of Cave Creek shall cause to be paid to MCESD a monetary penalty of \$7,078.50 within 15 days of signature of this agreement.

## III. COMPLIANCE WITH OTHER LAWS

This Agreement does not relieve Desert Hills Water Company in any manner of its obligation to apply for, obtain, and comply with all applicable permits. Nothing in this Agreement shall in any way

alter, modify or revoke federal, state, or local law, or relieve Desert Hills Water Company in any manner of the obligation to comply with such laws. Compliance with the terms of this Agreement shall not be a defense to any action to enforce any such permits or laws.


**IV. CORRESPONDENCE**

All documents, materials, plans, notices, or other items submitted as a result of this Agreement shall be submitted to the attention of:

Aimee Upton  
Enforcement Manager  
1001 N. Central Avenue, Suite #721  
Phoenix, AZ 85004.

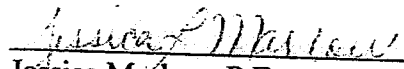
**V. SIGNATURES**

**MARICOPA COUNTY**

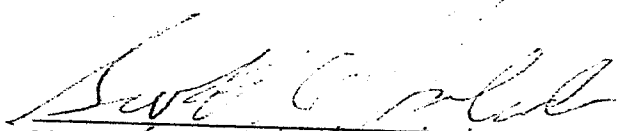
 Date 8-14-07  
John A. Power, PE, MPA  
Director, Environmental Services Department

**TOWN OF CAVE CREEK**

The undersigned representative of Town of Cave Creek certifies that he/she is fully authorized to execute this Settlement Agreement on behalf of Desert Hills Water Company and to legally bind Desert Hills Water Company to this Agreement.

 Date 8/31/07  
Jessica Marlow, P.E.  
Utilities Manager, Town of Cave Creek

**ATTEST:**

 Date 8/31/07  
Name: Scott A. Holcomb



RECEIVED  
AUG 31 2007

Division of Water and Waste Management  
Subdivision Infrastructure & Planning  
(602) 506-105  
FAX (602) 506-581

Application for Approval to Construct (ATC) and/or  
Provisional Verification of General Permit Conformance \*\*

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Page 1 of 3

Water/Wastewater Facilities

☐ On-Site ☐ Off-Site > Use separate applications for on site and off site.

<input type="checkbox"/> Water	<input type="checkbox"/> Gravity Sewer	<input type="checkbox"/> Storage Tank	<input type="checkbox"/> Pressure Tank	<input type="checkbox"/> Reuse
<input type="checkbox"/> Well	<input type="checkbox"/> Force Main	<input type="checkbox"/> Booster Station	<input type="checkbox"/> Chlorination	<input type="checkbox"/> Lift Station
<input type="checkbox"/> Reissue	<input checked="" type="checkbox"/> Master Plan	<input type="checkbox"/> Soils	<input type="checkbox"/> Other	

"On-site, Off-site, Master Plan, and Soils projects require separate applications"

1. Project Name: Town of Cave Creek Water Master Plan

(Physical location of Project)

Project Address

City Cave Creek, AZ

Zip Code

85331

Site

Section

TWN 05N, 06N

Range 02, 03, 04E

Project Description:

Master Plan report prepared for Town of Cave Creek

2. System information required

Box A

Public Water Supply Provider (PWS)  
See page 2 of 3

07010, 07026 - Desert Hills Water

Box B

Sewage Collection System Name

Sewage Treatment Facility Name (if different)

3. Quantity: Number of water connections

Number of sewer connections

Water Line			Sewer Line			Reuse Line		
L.F. _____	Size _____	in.	L.F. _____	Size _____	in.	L.F. _____	Size _____	in.
L.F. _____	Size _____	in.	L.F. _____	Size _____	in.	L.F. _____	Size _____	in.
L.F. _____	Size _____	in.	L.F. _____	Size _____	in.	L.F. _____	Size _____	in.
L.F. _____	Size _____	in.	L.F. _____	Size _____	in.	L.F. _____	Size _____	in.
Total Water L.F. _____			Total Sewer L.F. _____			Total Reuse L.F. _____		

\*\* This application constitutes the Notice of Intent to Discharge referenced by R18-9-A301.B.  
"NO APPLICATION WILL BE ACCEPTED UNLESS FULLY COMPLETED"



Application for Approval to Construct (ATC) and/or  
Provisional Verification of General Permit Conformance \*\*  
for  
Water/Wastewater Facilities

Public Water Supply number (PWS) Signature Form

Page 2 of 3

PWS number 0407 0 1 6  
0 2 6 (Public Water Supply number)

WATER SERVICE AGREEMENT - An unconditional agreement which is effective this date has  
been made between the owners of:

Project Name Town of Cave Creek Water Master Plan

(Physical location of Project)

Project Address Cave Creek, Desert Hills Service Areas

City Cave Creek

Zip Code 85331

and the Cave Creek, Desert Hills Water Systems  
(Public Water Supply Provider "PWS")

The undersigned hereby agrees to provide water to the above project with the Public Water  
Supply (PWS) number and they agree that the PWS is in compliance and on file with  
Maricopa County Environmental Services Department (MCESD).

Date 08/20/07

Print Name clearly Jessica Marlow

Job Title

Utilities Manager

Address

37622 N Cave Creek Rd.

City

Cave Creek, AZ 85331

Signature

Jessica L Marlow

- > This agreement MUST be signed by the Public Water System Representative NOT the Engineer or Project owner.
- > Failure to provide a Public Water Supply (PWS) number that is in compliance will result in immediate rejection of your project.

\*\*\* The Department reserves the right to request any other information \*\*\*  
<http://www.maricopa.gov/envsvc/wwmd.asp>



Application for Approval to Construct and/or  
\*\* Provisional Verification of General Permit Conformance \*\*  
for  
Water/Wastewater Facilities

Page 3 of 3

4. Name of Registered Engineer: Fair Yeager

Phone Number 480-377-6249 Ext - Fax Number 480-784-6245

Email address Fair.Yeager@CH2M.com

Name of Engineer's Firm as Registered

With The AZ Board of Technical Registration CH2M Hill

Mailing Address 2625 S. Plaza Drive, Suite 300

City Tempe State AZ Zip Code 85282

5. Project Owner: Town of Cave Creek Job Title Utilities Manager  
(Please print legibly) (The information provided will be used on the ATC Certificate)

(Must be a person with fiduciary responsibilities associated with the Company)

Company Name Town of Cave Creek

Mailing Address 37622 N. Cave Creek Rd.

City Cave Creek State AZ Zip Code 85331

Phone Number 480-488-6618 Ext - Fax Number 480-488-6627

Email address j.marlow@cavecreek.org

6. Authorization

The Project Owner hereby authorizes the review of project plans as described for approval to construct and/or provisional verification of conformance under General Aquifer Protection Permit 4.01.

Jessica L Marlow | Jessica Marlow  
Signature of Project Owner | Please print name

08/20/07  
Date

\*\* This application constitutes the Notice of Intent to Discharge referenced by R18-9-A301.B.

**"NO APPLICATION WILL BE ACCEPTED UNLESS FULLY COMPLETED"**

Department use only

Water	_____	Gravity Sewer	_____	Storage Tank	_____
Well	_____	Force Main	_____	Booster Station	_____
Reissue	_____	Master Plan	<u>023651</u>	Other	_____
Reuse	_____	Pressure Tank	_____		_____
Lift Station	_____	Chlorination	_____		_____

Check number (s) 00000000

Amount Paid \$0.00



# Approval To Construct Cover Page

## Approval to Construct (ATC) (PLEASE PRINT CLEARLY)

RECEIVED  
007

Date Submitted: August 31, 2007  
Registered Engineer's name: Fair Yeager  
Email address of engineer working on project: Fair.Yeager@CH2M.com  
Registered Engineering Firm Name: CH2M Hill  
(the engineering firm must be registered with the AZ Board of Technical Registration to submit projects to MCESD)  
Phone number: 480-377-6249 Ext: - Fax Number: 480-784-6249  
Address: 2625 S. Plaza Drive, Suite 300  
City: Tempe State: AZ Zip Code: 85282  
Project Name: Town of Cave Creek Water Master Plan

### Application check list for Approval to Construct

- ☒ Cover Page for MCESD Projects – this page  
We need to know on the cover page what you are requesting from us
- ☒ ATC Fee's – list attached
- ☒ Approval to Construct application pages 1 of 3, 2 of 3 and 3 of 3 (attached)
- ☐ Full size set of plans with every page sealed and signed by engineer.
- ☐ water design report (must be sealed & signed by a registered engineer)
- ☐ sewer design report (must be sealed & signed by a registered engineer)
- ☐ sewer capacity letter (must be issued by the sewer utility provider, NOT the engineer)
- ❖ If you are submitting for sewer, projects will not be accepted without a sewer capacity letter.
- Sewer Capacity Letter - a statement, signed by the owner or operator of the sewage treatment facility and/or down stream collection system affirming compliance in accordance with R18-9-E301.C.
- Operation and Maintenance Plan – there must be verification of an O&M Plan. Submittal of the O&M Plan will be upon request.

### Application check list for on-site Sewage Disposal/Septic Subdivision submittal

<input type="checkbox"/>	Approval To Construct Application	Check the box Soils Report / other on application
<input type="checkbox"/>	Cover Page	This cover page must be submitted with the Approval To Construct application.
<input type="checkbox"/>	Soils Test Plan	The plan must include the following <ul style="list-style-type: none"><li>location on the plat where the soils testing will be performed (percolation tests and soil borings)</li><li>the method of testing</li><li>person/firm performing tests</li><li>depth to seasonal high groundwater level</li><li>site specific geology and topography</li><li>information that will be included in the final soils testing report (field notes, soils boring logs, etc.)</li></ul>
<input type="checkbox"/>	Percolation test methodology	Must be specified and comply with the Arizona Administration Code R18-9-A310.E or F, depending on the proposed method of effluent disposal. (No mere reference to AAC Code)
<input type="checkbox"/>	All Soil Borings must be a minimum of 50 feet in depth	Unless disposal pits deeper than 50 feet are proposed.
<input type="checkbox"/>	Statement on the plans:	This will allow coordination for a site visit during the field activities. "At least five (5) working days notice will be provided to Mr. Wesley A. Shonerd, Senior Civil Engineer for MCESD".
<input type="checkbox"/>	Provide documentation showing water has been submitted for.	No project can be approved without an approved water system that will safely support the proposed project.

\*\*\* The Department reserves the right to request any other information \*\*\*

<http://www.maricopa.gov/envsvc/wwmd.asp>



# Approval To Construct Fee List

RECEIVED  
AUG 3 2003

**Make check payable to MCESD**

**Check or cash only**

- Double the fee for expedited review
- A \$25.00 fee for all returned checks

Public water supply system				Sewer collection system	
\$600.	150 or less connections		Gravity Sewer only, including manholes		
\$1200.	151 to 300 connections		\$500.	Serving 50 connections or less	
\$1800.	301 to 450 connections		\$1000.	Serving 51 to 300 connections	
\$2400.	451 to 600 connections		\$1500.	Serving 301 or more connections	
\$3000.	601 to 750 connections		Force Mains + Gravity Sewer		
\$3600.	751 to 900 connections		\$800.	Serving 50 connections or less	
(every 150 add \$600.)			\$1300.	Serving 51 to 300 connections	
> A \$25.00 fee for all returned checks			\$1800.	Serving 301 or more connections	
Other Components					
\$675.	Storage Tank	\$600.	Sewer Lift Station	\$150.	Re-issue (each component)
\$675.	Well	\$250.	Reuse lines	\$150.	Other
\$675.	Pressure Tank	\$150.	Chlorination	X \$500.	Master Plans (each component)
\$675.	Booster Station	> Any fee questions contact MCESD			

**\*\* An approval of plans and specifications can be renewed for one year if an application for renewal is submitted within 180 days of expiration. A fee equal to one-half (1/2) of the flat fee or initial plan review fee is paid. The approval will be effective for one year from the date of expiration. Regulation 4.95f.**

## Geological and Hydrology Report

\$525.	50 lots or less
\$1050.	51 to 100 lots
\$1575.	101 to 150 lots
\$2100.	151 to 200 lots
(every 50 lots add \$525.)	

**Fees**    ☐ Regular Fees    ☒ Expedited Fees

**Break down fees (fees for more than 1 component on the same project can be put on one (1) check)**

Type of component (ie: water, sewer, etc)	Fee per component	Check number(s)
Water Master Plan	\$ 1000.00	40684
		Total Fee \$ 1000.00

\*\*\* The Department reserves the right to request any other information \*\*\*  
<http://www.maricopa.gov/envsvc/wwmd.asp>



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Water and Waste Management  
Division  
Subdivision Infrastructure &  
Planning Program  
1001 N. Central Avenue #150  
Phoenix, Arizona 85004  
Phone: (602) 506-0376  
Fax: (602) 506-5813  
TDD 602 506 6704

September 17, 2007

Ms. Jessica Marlow, PE  
Utilities Manager  
Town of Cave Creek  
37622 North Cave Creek Road  
Cave Creek, AZ 85331

RE: Town of Cave Creek Water Master Plan (MCESD #073681)

Dear Ms. Marlow:

The Maricopa County Environmental Services Department (MCESD) has completed our review of the *Town of Cave Creek Water Master Plan, Final Report* (Master Plan), prepared by CH2MHill, and dated July 2007. This document was submitted to MCESD for review and comment in response to the Stipulated Settlement Agreement that addressed a Notice of Violation issued by MCESD. As we all know, the Desert Hills Water Company (which is owned by the Town of Cave Creek) was, for some time, unable to provide water to all of its residents due to a variety of causes. This Master Plan evaluated both the Desert Hills Water Company (DHWC) and the Cave Creek Water Company (CCWC) to determine the short-term and long-term facilities that will be required to adequately provide sufficient quantities of potable water to all of the current and projected customers of the two systems. MCESD appreciates the opportunity to comment on the Master Plan.

MCESD recognizes that this Master Plan is the result of a large-scale evaluation of the two water systems. By necessity, it is focusing on the "big picture" in terms of evaluating the required infrastructure needs for the future. The Master Plan is NOT attempting to itemize all of the deficiencies that may exist in the system such as defective valves or a broken pump. These types of issues are most appropriately handled by the water operations staff through normal maintenance and repair strategies. MCESD understands that Arizona-American Water Company (AAWC) personnel operate both of these water systems under a contract with the Town.

The Master Plan evaluated the DHWC and the CCWC independently, even though the two systems are interconnected. According to the Master Plan, the DHWC serves approximately 4,000 people in a 6,800-acre area. The CCWC serves approximately 4,500 residents including residents of the nearby Maricopa County and some residents within Carefree. In addition, the Town of Cave Creek (Town) now operates the Sabrosa water system. Sabrosa is located approximately 3.5 miles north of the DHWC on 7<sup>th</sup> Street and has an estimated 113 maximum number of customers. The Master Plan did not discuss, in detail, the water requirements for Sabrosa and how those water needs might impact DHWC or CCWC.

Water and Waste Management  
Division  
Subdivision Infrastructure &  
Planning Program  
1000 N. Central Avenue #150  
Phoenix, Arizona 85004  
Phone: (602) 506-0376  
Fax: (602) 506-5813  
DD 602 506 6704

September 17, 2007  
Cave Creek Water Master Plan  
2

The Master Plan describes the existing and proposed infrastructure for DHWC and CCWC. The Plan also examines the projected water demands and how those demands will be met. Currently, DHWC obtains its water from groundwater wells and through an interconnection with the Anthem water system, also operated by AAWC. CCWC obtains its water from a CAP allocation and from eight groundwater wells.

5/21/07  
MCESD has reviewed  
the Master Plan and  
has comments.

MCESD understands that a separate effort is being made to upgrade the existing CAP water treatment plant from 3 million gallons/day (mgd) to 5 mgd. This letter does not address that regulatory process, but assumes that the CAP water treatment plant will be expanded. In addition, the review of the Master Plan did not include a review of the costs for the two capital improvement programs.

MCESD's review of this Master Plan raised the following issues that should be resolved prior to final approval of this water master plan and are listed below generally in the order found during the review:

1. Section 1.1: The second sentence states that the CC&N boundaries for DHWC, CCWC and Sabrosa were provided by the ADWR. Is this correct? The Arizona Corporation Commission (ACC) is the entity that approves CC&N boundaries.
2. Tables 1-2 and 1-3 present the existing storage tanks and booster pump stations for DHWC. However, the third line of the heading states *Town of Cave Creek Water Master Plan*. It would be clearer if the actual water system was placed in that location rather than the name of the document. This same comment can be applied to all of the tables in the report.
3. Please provide a copy of the existing infrastructure maps for each water system. These should be in a large format (2' X 3' or similar) so that the line locations/sizes can be easily read.
4. Figure 1-4. The lines interconnecting the various zone diagrams are very faint and hard to read.
5. Figure 1-5. The legend appears incomplete for this figure. Is the purple-colored line running along Cave Creek Road the CAP water supply pipeline? Some of these key features should be noted in the legend for the figure.
6. Section 2.1.2: The second sentence states "The sewer master plan projections were also used to project growth for DHWC." Please provide

Corrected

Name changed

Not on the map -  
Appendix to the final

Unchanged

Map line labeled

Capacity Summary

Estimate future growth for DHWC. I'm not sure they are doing.

additional details on this report. Virtually all of the Desert Hills residents are served by individual septic systems.

*Hauled water, no  
new hook ups  
to distribution system to  
All in future*

7. Section 2.1.4: This section discusses the customer projections for Sabrosa. It is recognized that the Sabrosa system is much smaller than either DHWC or CCWC. What has not been discussed to this point is how the Town proposes to "operate" this system and what demands this system will present to the other two water systems. If water is to be hauled from DHWC or CCWC, this could present some problems if they are not adequately anticipated. Additional discussion on this issue is required at some point in the Master Plan.

*The Anthem "Supply"  
Anthem removed*

8. Section 3: Water Resource Evaluation. The existence of the 'temporary interconnection' with the Anthem water system has been mentioned in various locations of the Master Plan. In Figure 3-1, the largest supply of water for DHWC comes from the Supplemental Water Supply Agreement, which promises up to 2 MGD of water through 2010. Yet, the interconnect between Anthem and DHWC will be removed by November, 2007, as part of the Stipulated Agreement. The project to obtain an Approval to Construct to install a permanent interconnection line has been withdrawn. So, how will DHWC get water from Anthem without a temporary or permanent interconnection? *Now gone*

*Revised language  
"full capacity"*

9. Section 3.3, page 3-5. This section discusses DHWC's water demand vs. water supply. It states that a new well for Cielo Grande is included and that the supply assumes that the "groundwater wells are operating at full capacity at all times." This is not a reasonable assumption. Even large irrigation wells do not operate 24-hours a day/ 7-days a week for 365 days. If that is attempted, early failure of the pump should be expected. Given this, I think that the water supply for DHWC may be overstated.

*Supply from Anthem  
removed*

10. Section 3.3, page 3-6. This paragraph discusses options to further augment its future supply and references the 2 mgd of water that is available from Anthem. Again, how will that water be provided without any pipeline connections? This paragraph states that "the Town may elect to negotiate agreements with developers by which they provide additional supplies by drilling new wells and constructing storage facilities, ..." MCESD's understanding is that this is required not only by the Stipulated Agreement but had been a requirement of the previous owners of the DHWC. This section of the report should be revised.

11. Section 4.1.1 discusses the development of a computerized water model. Yet, I don't find any modeling results to show that the near future (2008)

water system will provide adequate pressure throughout either of the water systems. MCESD requests that modeling results be performed for the average day, maximum day, and maximum day with fire flow scenarios be run to show that the system will function adequately.

12. Section 4.3, Storage Assessment. The storage equation at the bottom of page 4-6 has the following "(3)" notation at the end. What does this notation refer to? On page 4-7 is a fireflow equation that I am not familiar with. Where did this equation originate? Please provide some documentation on the source of this equation. I do note that this equation apparently provides for a 10-hour fire duration which I would support for Cave Creek. Some parts of the Town are in a forest/brush fire area and the water system should be able to provide large quantities of water for an extended time to fight these types of fires.

13. Section 4.3, page 4-7. The paragraph below the fireflow equation discusses the "County's method" of projecting the water storage volume? What is this? Typical residential water storage equations typically use 30% of the maximum daily flow plus fire flows (2 hours at 1500 gpm or 180,000 gallons). I am not sure what calculation is being referenced here; perhaps an appendix should be added to the report to provide typical calculations and a bibliography of the source of any equations used. Further down this page, the report cites several new developments that will require additional storage and include Cahava Springs and Gold Mountain.

14. Of special concern is the Gold Mountain project. This project has obtained an initial entitlement through the County. MCESD did not support that entitlement due to concerns with both the proposed methods of supplying water and managing sanitary sewage from the lots. I note that a water storage tank (0.30 million gallons) is proposed for the Gold Mountain project. MCESD has some concerns about any proposed water system for the Gold Mountain project. This project proposes that the lots be located along a ridgeline that goes into the adjoining mountains and which is susceptible to brush/forest fires. There is only one ingress/egress road, which is narrower and steeper than County standards, that provides access to these lots. The purpose of this discussion is any water system serving this project will have to provide large amounts of water for an extended duration so that any fires can be fought to allow for the protection of human life and property. These standards may be well in excess of those normally required for an urban subdivision. Approval of this Master Plan does not constitute a specific approval of the proposed water system for Gold Mountain or any other specific project.

Water and Waste Management  
Division  
Subdivision Infrastructure &  
Planning Program  
1001 N. Central Avenue #150  
Phoenix, Arizona 85004  
Phone: (602) 506-0376  
Fax: (602) 506-5813  
TDD 602 506 6704

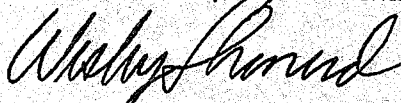
September 17, 2007  
Cave Creek Water Master Plan  
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15. Section 4.4; Capital Improvement Program. Table 4-7, page 4-11, - lists \$1.15 million estimated cost for the permanent Anthem connection pipeline. My understanding is that this project has been withdrawn. In addition, the costs for items 1-3 have been listed twice which would not appear to be appropriate.

MCESD recognizes that this Master Plan is an initial start to developing a comprehensive plan for water services in this area. MCESD's review finds that this Master Plan appears to be generally technically feasible and proposes a system that can provide potable water services to the study area. MCESD is requiring a revised plan to address the issues listed above. The requested revisions will, in our opinion, increase the viability of the proposed solution to provide potable water.

If you have any questions concerning this letter, please contact Mr. Wesley A. Shoner, P.E. at 602-506-0376 (email at [Wshoner@mail.maricopa.gov](mailto:Wshoner@mail.maricopa.gov)).

Sincerely,  
Maricopa County Environmental Services Department



Wesley A. Shoner, P.E.  
Engineering Program Manager  
Subdivision Infrastructure & Planning Program

Cc: Aimee Upton, MCESD (by email)



10

Water and Waste Management  
Division  
Subdivision Infrastructure &  
Planning Program  
1001 N. Central Avenue #150  
Phoenix, Arizona 85004  
Phone: (602) 506-0376  
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March 27, 2008

Ms. Jessica Marlow, PE  
Utilities Manager  
Town of Cave Creek  
37622 North Cave Creek Road  
Cave Creek, AZ 85331

RE: Town of Cave Creek Water Master Plan (MCESD #073681)

Dear Ms. Marlow:

The Maricopa County Environmental Services Department (MCESD) has completed our review of the Updated Final Version of the *Town of Cave Creek Water Master Plan* (Master Plan), prepared by CH2MHill and dated February 2008. This document was submitted to MCESD by electronic mail on March 3, 2008, and was prepared in response to MCESD comments on the initial draft of the Master Plan as presented in our letter dated September 17, 2007. The requirement of an approved Master Plan is part of a Stipulated Settlement Agreement that addressed a Notice of Violation issued by MCESD to Cave Creek.

MCESD had raised 14 separate issues in our September 17, 2007 letter. MCESD is pleased that the submitted revised Master Plan has satisfactorily addressed virtually all of the issues. MCESD believes that the remaining issues can be satisfactorily addressed in the Final approved Master Plan report submittal.

MCESD believes that the Master Plan provides a technically supportable system for guiding future water system improvements so that the water shortage events experienced in the Desert Hills Water Company and the Town of Cave Creek last summer should not reoccur. The Master Plan shows that the systems should provide water to all parts of the Town and to the Desert Hills area for all reasonably foreseeable events, including fire flows.

One of the remaining deficiencies that must be corrected in the final Master Plan is the submittal of larger figures (item 3 in our previous letter). The figures, when printed in 8.5X11 format, were very difficult to read due to the small print size. MCESD requests that these figures be made larger so that the print is easily read. The final Master Plan will be used by MCESD technical staff during the review of projects in the Cave Creek/Desert Hills area to determine if the projects are in general compliance with the Master Plan.

As a corollary, MCESD requests that summary tables for each of the two modeled water systems be placed into the text for each of the modeled conditions (average

ter and Waste Management  
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TDD 602 506 6704

March 27, 2008  
Cave Creek Water Master Plan  
2

day, maximum day, maximum day plus fire flow) and show the locations of the highest and lowest pressures along with node location identifier.

As part of this review, I contacted Mr. Ken James, Senior Civil Engineer, Water and Waste Treatment Program for the current status on the water treatment facility upgrade. Mr. James told me that the initial plan submittal had been reviewed and comments supplied to the design engineer on February 11, 2008. Mr. James is awaiting a resubmittal in response to those comments. The review of this Water Master Plan assumes that the upgrades to the water treatment facility will be approved and constructed.

Based on the satisfactory progress in preparing this water Master Plan, MCESD will be approving three water projects that have been submitted for Approval to Construct. These projects are:

1. Rockaway Offsite Waterline, MCESD Project # 080084
2. Carol Heights Booster Station, MCESD Project # 074873
3. Neary Offsite Waterline, MCESD Project # 074956

Based on the revised draft of the Master Plan, MCESD believes that the document is approvable assuming that the changes noted above are reflected in the final document. MCESD appreciates the time and effort that Cave Creek has made in preparing this Master Plan. If you have any questions concerning this letter, please contact me at [wshonerd@mail.maricopa.gov](mailto:wshonerd@mail.maricopa.gov) or by telephone at 602-506-0376.

Sincerely,



Wesley A. Shonerd, P.E.,  
Engineering Program Supervisor  
Subdivision Infrastructure and Planning Program

Cc: Kevin Chadwick, PE, MCESD, by email  
Almee Upton, MCESD, by email.



Approval Date: 5/28/08

MCESD Project: 073681

**CERTIFICATE OF APPROVAL  
WATER MASTER PLANS  
(WITH STIPULATIONS)**

//

**PROJECT DESCRIPTION:** Town of Cave Creek Water Master Plan – Water Master Plan for the Town of Cave Creek and service areas for Cave Creek Water Company and for Desert Hills Water Company.

**WATER SYSTEM:**

Cave Creek Water Company,  
(PWS No. 0407016),  
Desert Hills Water Company,  
(PWS No. 0407026)

**LOCATION:**

Town of Cave Creek, Maricopa County;  
Township 5N, 6N, Range 2E, 3E, 4E

**PROJECT OWNER:**

Jessica Marlow, Utilities Manager  
Town of Cave Creek  
37622 N. Cave Creek Road  
Cave Creek, AZ 85331

Pursuant to Arizona Administrative Code (AAC) Title 18: Chapter 4, Article 5 and the Maricopa County Environmental Health Code: Chapter V. The sanitation facilities, as represented in approved plan documents on file with the Maricopa County Environmental Services Department for the above described subdivision are hereby approved subject to the following stipulations: **None**

**WATER AND WASTE MANAGEMENT DIVISION**

By Wesley A. Shoner  
Wesley A. Shoner, PE, Program Manager  
Subdivision Infrastructure & Planning Program

August 23, 2008

David Smith, County Manager  
Maricopa County  
301 W. Jefferson, 10<sup>th</sup> Floor  
Phoenix, AZ 85003

Re: Town of Cave Creek Water Master Plan

Dear David:

I wish to bring a matter of potential import to your attention.

A Town of Cave Creek Water Master Plan prepared by CH2MHill dated April 2008 was submitted to the Maricopa County Environmental Services Department on April 25, 2008 by Cave Creek Town staff. That submission was accepted and certified by the County on May 28, 2008. This WMP is being used by the County for subdivision and water system approvals for Cave Creek, Desert Hills and environs.

The April 2008 Cave Creek WMP has never been before or adopted by the Cave Creek Town Council. Nor has it been subjected to a public participation/public vetting process as required by law. At least that would be my professional experience.

The only Water Master Plan adopted by the Cave Creek Town Council was done at the Council's April 16, 2007 Council Meeting.

There have been at least three known iterations of the Cave Creek Water Master Plan submitted to the County by Town staff since Council adoption on April 16, 2007 – one dated July 2007, another dated February 2008, and still another dated April 2008. None of these was ever presented to Town Council for adoption or subjected to a public involvement process.

There are major changes, amendments and additions in the three subsequent versions of the WMP from the one adopted by Town Council on April 16, 2007. One of the changes, the addition of a water storage tank and appurtenant facilities for Gold Mountain Development scheduled in 2010, has major implications for the Town's publicly ratified 2005 General Plan and for the Town's water utility. There are other changes as well.

I respectfully suggest these changes to the WMP and the policy implications associated with them, deserve a public airing at a properly agendaed Cave Creek Town Council meeting in order for any governmental entity, including the County, to use this WMP for any official purpose.

Enclosed are comments I made to that effect at the August 4, 2008 Cave Creek Council Meeting. Please let me know if you have questions. I would appreciate the courtesy of a response.

Sincerely,

Terry Zerkle  
41200 N. Echo Canyon Drive  
Cave Creek, AZ 85331  
Tel: 480-437-9103  
E-mail: [TerryLZerkle@aol.com](mailto:TerryLZerkle@aol.com)

c. Jennifer Pollock, Arizona Assistant Attorney General



# Maricopa County

County Manager's Office

301 West Jefferson Street  
10th Floor  
Phoenix, AZ 85003-2143  
Phone: 602-506-1950  
Fax: 602-506-3328  
www.maricopa.gov

13

September 8, 2008

Mr. Terry Zerkle  
41200 N. Echo Canyon Drive  
Cave Creek, AZ 85331

Dear Terry:

Environmental Services approved the Town of Cave Creek Master Plan prepared by CH<sub>2</sub> M Hill on May 28, 2008. Environmental Services approval process deals with technical issues within the water system. The review process looks at how the water system will supply safe and sufficient water to meet the Safe Drinking Water Rules and engineering requirements. The approval of the Master Plan is not based on any requirements from the town to later adopt or approve the document. It is important that Cave Creek fund the projects identified in the Master Plan, but how the Town of Cave Creek chooses to do that is a decision for the Town Council.

Environmental Services does have recent correspondence from Jessica Marlow, P.E., Utilities Manager, Town of Cave Creek, stating that the town is moving forward on their internal approval process so the May 2008 is the final plan adopted by the town. Specifically, the Master Plan will be presented to the town's Water Advisory Committee on September 10 and will be on the town council agenda for September 15. The town council has reviewed and adopted previous draft versions but not the final approved version.

I hope this update provides answers to your question.

Sincerely,

A handwritten signature in cursive script that reads "Dave".

David R. Smith  
County Manager

September 12, 2008

14

David Smith, County Manager  
Maricopa County  
301 W. Jefferson Street, 10<sup>th</sup> Floor  
Phoenix, AZ 85003

Re: Cave Creek Water Master Plan

Dear Dave:

Thank you for the response to my August 23, 2008 letter.

Perhaps a few additional comments will shed added perspective to the concerns I'm bringing to your attention. Unfortunately, the information you were provided for your September 8 response letter to me was not entirely accurate in several respects.

Your letter states that County Environmental Services only has interest in Cave Creek's Water Master Plan for technical review purposes. I would point out that County Planning and Zoning also uses this plan for land use and subdivision review and approval purposes outside the Town's boundaries. So, there is a multi-faceted interest within the County administrative and decision making machinery on how this plan is used.

Under any scenario, a Water Master Plan is an official expression of governmental policy having major land use, service, sustainability, and cost implications for a municipality and its citizens.

The April 2008 version of the Cave Creek Water Master Plan submitted to the County by Town staff, which the County certified on May 28, 2008 and is currently using for water system and subdivision approvals in Cave Creek, Desert Hills and environs, **has never been before the Town Council or adopted by them.** Nor has it been through a public involvement/public vetting process as required by law.

The Town Council has seen and adopted only one Water Master Plan and that was on April 16, 2007.

As noted in my previous letter, there are **major changes and additions** in the April 2008 WMP version, which the County has accepted and certified, from the plan the Council adopted on April 16, 2007.

One of the changes is the addition of a water storage tank outside the Town's corporate boundaries on Continental Mountain to service Gold Mountain Development. (See enclosure.) There are numerous other changes and additions as well. The addition of the tank for Gold Mountain Development to the WMP has never been before the Council or the public at an open Council meeting. The prospect of the Town potentially using its water and wastewater utilities to facilitate development on Continental Mountain is a very contentious public policy issue locally.

Moreover, the Council has received no information on or been briefed on the scope of the projects and dollar costs contained in the April 2008 WMP, nor, for that matter, the July 2007 and February 2008 versions. With the exception of one or two Council members, the Council is essentially clueless of what's in these documents and the magnitude of dollars involved. Yet each of these versions has been presented to the County by Town staff as if they were official expressions of town policy and a commitment by the Town Council to move forward with the projects contained therein.

Again, I wish to reiterate that the Town Council has never been presented any of these documents, let alone consider what is in them and act on them.

As long-time local government professionals, you and I both know that staff cannot make policy. With the exception of our bringing policy recommendations forward, policy-making is the exclusive province of the elected governing body. You and I also know Town staff does not have the power or authority to commit the Council to fund these projects or to represent that the Council is prepared to move forward with them, unless the Council itself has acted. That hasn't happened.

For well over a year, there has been an enormous non-transparent shell game being played out here to hide projects and costs in which Town staff does not want the public to be involved in the WMP. Town staff has even gone so far as to tell the Council that the WMP is not a policy document, that is a strategic plan that can be amended administratively by Town staff without being taken before the Council for input and adoption.

For your awareness, I previously filed an open meeting law/open government complaint with the Arizona Attorney General's Office over this and other matters. There is currently an investigation under way. I am not privy to the status of that investigation.

Also for your awareness per your September 8 letter, there was no presentation or discussion of the WMP at the Water Advisory Committee's September 10, 2008 meeting. Nor is the WMP on the Town Council agenda for September 15, 2008.

I'm told several members of the Water Advisory Committee are deeply distressed that the Committee has been completely shut out of the Water Master Plan update process.

In conclusion, I respectfully suggest the only version of the Cave Creek Water Master Plan that can lawfully be used by any governmental entity for any official purpose is the plan that was adopted by Town Council on April 16, 2007. This is the only WMP the Council has ever seen. And, it is the only plan the Council has acted on. Even then, there were numerous maps and technical documents missing from the plan that would have to be acted on in the same manner as the plan's adoption in order for these items to be included.

So you are aware, I sought professional advice from the ICMA Range Riders for Arizona on how to handle the WMP issue at least as it relates to Maricopa County. Lloyd Harrell suggested I contact you personally and make you aware of what's happening.

I would welcome the opportunity to meet with you to provide further background information concerning these matters as I believe you have a vested interest in knowing what's taking place out here. Is that possible? I look forward to hearing from you.

Sincerely,

Terry Zerkle  
41200 N. Echo Canyon Drive  
Cave Creek, AZ 85331  
Tel: 480-437-9103  
E-mail: TerryLZerkle@aol.com

DRAFT

15

Summary of Meeting w Maricopa County Officials

October 3, 2008 - 9:00AM

Location: Zerkle/Kincel home, 41200 N. Echo Canyon Dr, Cave Creek, AZ

Persons present:

Joy Rich, Assistant County Manager, Maricopa County  
John Power, Director, Environmental Services Department, Maricopa County  
Gilbert Lopez, Vice-Mayor, Town of Cave Creek  
Grace Meeth, Councilmember, Town of Cave Creek  
Terry Zerkle, Cave Creek citizen

Grace & Gilbert,  
This is a summary  
of our meeting this a.m.  
Ballet points only. Please  
review for accuracy.  
Feel free to add to or  
modify or correct anything  
you think is not stated  
accurately. I'll modify  
and get it back to you  
✓

Purpose of meeting: Discuss Cave Creek Water Master Plan as follow up to letters written by Zerkle to County Manager David Smith re April 2008 WMP version the County is using to grant water system and subdivision approvals in Cave Creek, Desert Hills and environs not having been presented to or adopted by Cave Creek Town Council

Matters discussed:

- History of adoption of Cave Creek WMP - April 16, 2007
- Iterations since adoption - none brought before Council
- Grace not knowledgeable of or been briefed on the citation and stipulation agreement entered into by the Town with the County
- Many changes and additions to WMP since April 16, 2007 - projects unknown and not committed to by Council, never been brought to them for consideration
- April 2008 WMP not brought to the Water Advisory Committee before submittal to County, WAC closed out of WMP update process
- No current CIP approved by Council per Grace, latest CIP expired w end of 2007/08 FY
- Town staff can't commit Council to fund projects the Council hasn't seen or committed to
- Open meeting law/open government complaint to AZ AG over WMP and other issues, investigation in process
- Suspected unconstitutional delegation of legislative authority to administrative official - utility service development agreements entered into solely on basis of TM signature, not brought back to Council for approval
- Improper taking and use of private commercial property for Neary Tank.
- Rockaway Hills tank not in adopted WMP, location moved from Spur Cross to Rockaway Hills by unilateral action of TM
- Rockaway Hills tank site misrepresented as being in adopted WMP by Town staff
- Grace and Gilbert provided insight into questionable activities that they have recently become aware of
- Ms. Rich and Mr. Power voiced surprise and amazement at the magnitude of the questionable activities going on; assumed Town staff had the authority and was speaking for the Council on the matters presented to the County by Town staff.

Follow up:

Joy will brief County Manager on matters discussed at today's meeting and seek counsel from County Attorney on what, if anything, the County should do as a follow up. She will consider TZ as point person on this end and be back in touch, probably during week of October 13.

Comments

Cave Creek Council Mtg

August 4, 2008

Water Master Plan

Hon. Mayor and Council

Name

Address

- Speak to the issue of the Town's Water Master Plan
- Master Plans of whatever type are, by definition, policy documents requiring Council approval and adoption at a public meeting allowing for public comment and participation.
- Please do not be confused. Policy making represented in the form of a master plan is the exclusive province of the Town Council.
- What you've heard tonight is intended to confuse the issue and obfuscate serious managerial misdeeds by Town staff as relates to misrepresenting the status of the Town's Master Water Plan to others.
- Most contemporary MWP adopted by Council – April 16, 2007
- At least 3 subsequent iterations of the Town's MWP **have not** been bought before or adopted by the Town Council, but have been submitted by Town staff to at least one other governmental agency (Maricopa County ESD), perhaps more, and represented as official Town policy. Also note these iterations have never been subjected to a public review and involvement process as required by law.
- Please note there are **major changes and additions** to the subsequent versions of the WMP from the version you approved on April 16, 2007.
- Town staff would have you believe they can make major changes and additions to the Council approved WMP without going back to Council. That is not only incorrect. It is disingenuous, contrary to state law, and an anathema to the practice and art of open, accountable, democratic local self government.
- You are encouraged not to take my word for it. Consider enlisting expert help and advice from the ASU School of Public Affairs. The School of Public Affairs faculty are among the foremost educators, scholars and published writers nationally on the subject of city council policy-making.

- The Arizona State Constitution, the Arizona Revised Statutes and the Cave Creek Town Code all reside final policy-making and legislative responsibility of whatever nature exclusively in the Town's elected governing body, not the Town Manager or staff.
- It is important the Mayor and Council take control of its policy-making responsibilities and be the driver for energizing, reviewing, vetting, and adopting Master Plan and other policy documents. That's what you were elected to do. By Town Code and state law that's what you have a legal duty to do.
- In the interim, you need to clean up the MWP fiasco and make it right. The Council and the public have been seriously disenfranchised and kept in the dark about what has and is going on here. It's time to let the sunshine in.
- Thank you.

October 1, 2008

Ms. Jennifer Pollock, Assistant Attorney General  
State of Arizona  
Office of the Attorney General  
Education and Health Section  
1275 West Washington Street  
Phoenix, AZ 85007

Re: Cave Creek Open Meeting Law Investigation

Dear Ms. Pollock:

In an earlier letter dated April 12, 2008 to Attorney General Terry Goddard (copy enclosed), I apprised the AG's Office of a possible unconstitutional delegation of legislative authority to an administrative official by the Cave Creek Town Council on July 16, 2007 via approval of a "model utility services development agreement".

At the time of writing the April 12 letter, I did not have a copy of the model utility services development agreement. Enclosed is a copy of the model agreement along with a Log of the utility service development agreements entered into by the Town Manager since approval of the model agreement form on July 16, 2007 and the delegation of authority granted to him at that time by the Council to enter into such agreements.

While I have no evidence of wrongdoing, it goes almost without saying that the potential for dishonesty or worse, in the absence of governing body oversight and approval of these types of development agreements, is staggering. Not to mention all this activity, past and future, taking place in the dark, totally outside public and media view.

I respectfully suggest this matter warrants review and corrective action by the AG's Office, if in fact it is not already in process.

Sincerely,

Terry Zerkle  
41200 N. Echo Canyon Drive  
Cave Creek, AZ 85331  
Tel: 480-437-9103

c. Terry L. Corbett, Assistant Attorney General w/o enclosures

Enclosures:

1. April 12, 2008 letter to Terry Goddard, Attorney General re possible unconstitutional delegation of legislative authority.
2. July 16, 2007 Town Council Minutes approving model utility services development agreement and delegating authority to Town Manager to enter into such agreements.
3. Copy of model agreement form.
4. Copy of Log showing agreements entered into pursuant to delegated authority.

April 12, 2008

Terry Goddard, Arizona Attorney General  
Office of the Attorney General  
1275 West Washington Street  
Phoenix, AZ 85007

Dear Mr. Goddard:

This letter is intended to supplement the April 5, 2008 letter I was a signatory to asking for a formal investigation into actions of the Town of Cave Creek and its public officials.

There is reason to believe the Town Council engaged in an unconstitutional delegation of legislative authority to an administrative official on July 16, 2007.

Please reference item #9 of the enclosed Minutes of the July 16, 2007 Cave Creek Town Council Meeting titled Discussion and Possible Approval of the Utility Service Agreement. This "model" agreement was approved by action of the Council at said meeting.

During the discussion on this item, the Town Manager referred to the agreement as a Development Agreement and as a model Agreement. According to the Minutes, "Abujbarah stated this is a model Agreement and we are asking Council to authorize staff to interpret this Agreement." He also stated, according to the Minutes, "These are separate Development Agreement to allow customer outside the Town limits to acquire the services for water and sewer in return for payment made to the utility."

In introducing this agenda item at the July 16 meeting, the Minutes have the Town Attorney stating, "The intent with this document before Council is that it will be approved substantially in this form and then the Manager would be able to enter these agreements as he believes there are multiple potential customers that come forward and we need to move quickly on these items." In other words, these individual development agreements would not be brought forward to Council for approval. They would be entered into and approved administratively by the Town Manager.

Based on my limited knowledge of municipal law, this action would seem to be an unconstitutional delegation of legislative prerogative to an administrative official. Admittedly, I am not an attorney. However, I was a local government administrative official my entire professional career.

The City Attorneys I worked with throughout my career advised that development agreements (actually any agreement) between a municipality and a private individual, entity or corporation were policy actions requiring approval of the elected governing body. They could not be lawfully entered into solely on the basis of administrative action.

If the Attorney General's Office determines there has been an unconstitutional delegation of legislative authority resulting from the Town Council's July 16, 2007 action, I suggest that a comprehensive audit be required to ascertain how many such agreements have been entered into, the nature and extent of the obligations taken on by the Town as a result of these actions, and what action is necessary to make these actions and obligations legal and to cure lawfully any impropriety.

Respectfully,

Terry Zerkle  
41200 N. Echo Canyon Drive  
Cave Creek, AZ 85331  
Tel: 480-437-9103

c. Grace Meeth  
Mike Shepston  
Charlie Spitzer  
Nina Spitzer  
Dr. Kees Rietsema  
Katya Kincel

**MINUTES  
REGULAR TOWN COUNCIL MEETING  
TOWN OF CAVE CREEK, ARIZONA  
MONDAY, JULY 16, 2007**

**CALL TO ORDER:** Mayor Vincent Francia called the meeting to order at 7:02 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

**ROLL CALL:** Town Clerk Carrie A. Dyrek

**Council Present:** Mayor Vincent Francia, Vice Mayor Gilbert Lopez, Council Members Ernie Bunch, Dick Esser, Thomas McGuire and Grace Meeth

**Council Absent:** Kim Brennan

<b>Staff Present:</b>	Town Manager	Usama Abujbarah
	Town Clerk	Carrie A. Dyrek
	Town Engineer	Wayne Anderson
	Director of Planning	Ian Cordwell
	Town Accountant	Marian Groeneveld
	Town Attorney	Cliff Mattice

**PLEDGE OF ALLEGIANCE** Everyone stood and gave Pledge to the flag.

**PUBLIC ANNOUNCEMENTS** Francia thanked the Arts Festival Committee who put together such a grand event at Harold's. A very nice tradition was established.

**CALL TO THE PUBLIC**

Dave Karsten, Carefree/Cave Creek Chamber of Commerce, gave an update on what the Chamber has been working on, specifically within Cave Creek. They have been working on the concept of the Cave Creek Visitor Information Center and moving forward. The idea is to create a Visitors Center that the Chamber would operate and supply information staffed with volunteers. Some of the criteria would be that it would be visible on the main street to visitors and easily accessible. We are looking for location and will bring more information when he comes back.

The second item they have been working on is the Restaurant Association. Some committee member of the Chamber has identified 47 eating/drinking establishments between Carefree and Cave Creek and down to Carefree Highway. They are offering all restaurants a 3-month trial membership within the Chamber to get them on the website, with 3000 hits per day on the Restaurant Page.

They have some initial meetings with developers and the leasing agents of Stage Coach Village on how the Chamber can be of service to them and bring visibility to their project and act as a liaison between them and the businesses.

## **9. DISCUSSION AND POSSIBLE APPROVAL OF THE UTILITY SERVICE AGREEMENT**

**Mattice** clarified that this is an agreement that has been created to allow for the Town to contract with customers that are outside the Town boundaries but are within the different service areas for the utilities of the Town, namely residents who are in the Cave Creek Water Company service area but are not within the Town boundaries. It also includes customers or potential customers in the Desert Hills service area but not within the Town boundaries. The intent with this document before Council is that it will be approved substantially in this form and then the Manager would be able to enter these agreements as he believes there are multiple potential customers that come forward and we need to move quickly on these items.

Ultimately the goal of this Utilities Service Agreement is to allow the Town to collect a Water Development Fee from water customers that are outside the Town boundaries and on whom we cannot impose our standard Development Fee, which covers water, sewer, parks, etc.

**Mattice** stated that these are the Utility Rate Fees, not Development Fees so they would not encompass the Development Fee that a Town resident would have. There will merely be rates that are charged equivalent to what is charged within Town for those utility services but not for other Development Impact Fees.

**Esser** asked if this is for just the 15,000 hookups. **Mattice** wasn't sure but stated the rate exhibit would be attached to each Agreement.

**Abujbarah** stated that we will be treating the water customers and the sewer customers outside of Town limits, the same way we are treating the customers within the Town limits so there will be no discrimination. And to correct the record, these are not Utilities. These are separate Development Agreement to allow the customer outside the Town limits to acquire the services for water and sewer in return for payment made to the Utility. It is not a Development Impact Fee.

**Mattice** agreed with **Lopez** that it is correct that this Agreement is entered into and that 'owner' refers to any owner that the Town does business with or that requires the services of the Town in the way of waste water or water. It would be specific to that entity, it could be a developer or a legal entity such as an LLC or it could be an individual owner. It would refer to whoever the potential customer is outside of the Town.

**Abujbarah** stated that this is a model Agreement and we are asking Council to authorize Staff to interpret this Agreement.

**PUBLIC COMMENT** None

**COUNCIL COMMENTS**

**M/Bunch, S/McGuire to approve the Utility Service Agreement.**

Bunch commented that this is a good way to enable Staff to make Agreements for the hookups for services outside the boundary on an as-needed basis with each person that comes. It is a great form.

McGuire agreed.

M/C 6-0 by roll call vote with Brennan absent.

#### **10. DISCUSSION AND POSSIBLE APPROVAL OF THE AMENDMENT TO THE ASSET TRANSFER AGREEMENT**

Mattice reported on the process. This is an item that will have components that will occur after this Council adjourns tonight and move into more actions and share holder action after that. These provisions essentially allow for clarification for tax purposes and to make it abundantly clear that the Town is accepting the obligations as well as the assets from the Desert Hills Water Company. That is the purpose of the Asset Transfer Agreement Amendment. The plan is for dissolution of the corporate legal entity. So these are necessary cleanup items after the Corporation Commission has approved the transfer and these items must be done to dissolve the company's legal entity and to affirm that the Town takes on all the obligations of the corporation.

In adopting the plan we do have a minor modification requesting that Council consider by separate motion to add four words to the plan that was previously submitted to Council.

**PUBIC COMMENTS** None

#### **COUNCIL COMMENTS**

Mattice read for the record. This Amendment for the plan would be the addition of four words in the first paragraph of the plan, for liquidation and dissolution, so that the second sentence of that first paragraph would read as follows:

*Shareholder purchased the stock of the Corporation for immediate dissolution, and for the sole purpose of acquiring the assets of the Corporation, subject to the liabilities and obligations of the Corporation.*

So we have inserted, "for immediate dissolution, and" into that sentence.

**M/Esser, S/McGuire to approve the Amendment as read into the record.**

**M/C 6-0 by roll call vote with Brennan absent..**

Francia stated that now we are back to the original document.

**M/Bunch, S/Esser to approve the amendment to the Asset Transfer Agreement and authorize Usama Abujbarah as authorized representative of the Town as sole shareholder**

## UTILITY SERVICE AGREEMENT

This Agreement is entered into by and between the Town of Cave Creek, Arizona, an Arizona municipal corporation ("Town"), and \_\_\_\_\_ ("Owner").

### RECITALS

A. The Town is an Arizona municipal corporation located in Maricopa County, Arizona, authorized to provide public water and wastewater services pursuant to A.R.S. §§ 9-511; 9-516; 9-521; 9-522 and the Arizona Constitution ("Utilities").

B. Owner is the fee owner of real property located outside of the Town's corporate limits at \_\_\_\_\_, in Maricopa County, Arizona, and legally described in attached **Exhibit A** ("Property").

C. Owner has applied to the Town for extension of and/or to make connection to Utilities beyond the Town's corporate limits to the Property.

D. Owner acknowledges that the Town is not obligated to provide Utilities to Owner but may do so upon application and under conditions established by the Town and agreed to by Owner.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Town and Owner state, confirm and agree as follows:

#### 1. DEFINITIONS, AGREEMENT TERM

1.1 Definition of Owner. The term "Owner" shall have the definition ascribed to it in the introductory paragraph of this Agreement and shall include all grantees, purchasers, assignees, lessees, transferees, and any other successors in interest thereof.

1.2 Initial Term. The initial term of this Agreement shall begin on the date of execution of this agreement by the Town Manager and shall continue in full force and effect for twenty years, unless terminated sooner by written agreement signed by both parties, or under the termination clauses set forth in paragraph 7.6 of this Agreement.

1.3 Renewal of Agreement. So long as neither party is in breach of the Agreement and the Agreement has not been terminated pursuant to the provisions set forth in this Agreement, then this Agreement shall be automatically renewed for successive one-year terms after the Initial Term. In the event of a breach of this Agreement within any renewal term of this Agreement, either party may give written notice of termination of this Agreement at least sixty (60) days prior to the expiration of the then current renewal term of the Agreement.

## 2. OBLIGATIONS OF THE TOWN

2.1 Provision of Utilities. Conditioned upon the Owner meeting, and continuing to meet, the requirements of this Agreement and the requirements set forth in the Town's Code provisions concerning Utilities and Town ordinances, resolutions and written policies concerning Utilities, as modified from time to time, Town agrees to provide Utilities to the Owner for the Property.

## 3. OBLIGATIONS OF OWNER

3.1 Compliance with Town Requirements. Owner Agrees to comply with all applicable Town Code provisions concerning Utilities and Town ordinances, resolutions and written policies concerning Utilities whether in existence now, or as may be adopted or amended by the Town during the term of this Agreement. Owner agrees that all requirements concerning Utilities set forth in the Town Code, Town ordinances, resolutions and written policies, as currently in existence or later adopted, modified or amended from time to time, are incorporated herein with this reference.

3.2 Compliance with Development Standards. Owner shall cause the Property to meet the same development standards, related to the connection, extension, provision and maintenance of Utilities, required of properties within the Cave Creek Town limits to the maximum extent reasonably possible as determined solely by the Town in accordance with applicable Town Code provisions concerning Utilities and Town ordinances, resolutions and written policies.

## 4. PAYMENT OF FEES, RATES AND CHARGES

4.1 Utility Fees. Owner shall pay to the Town all Utility Fees, Rates and Charges identified in **Exhibit B**, including fees, rates and charges currently existing and later adopted and as may be amended from time to time ("Schedule of Fees, Rates and Charges"). Payment of said fees, rates and charges shall be a condition to be met prior to the Owner receiving connection to, and service from, Utilities. Owner shall pay said amount in full or shall enter into a payment agreement with the Town to provide for the timely payment of said amount. The payment agreement shall provide for the accrual of interest and for installment payments. Owner shall pay such fees, rates and charges in accordance with the Town Code, ordinances, resolutions and written policies related to Utilities as currently in effect and as later adopted and as the same may be amended from time to time.

## 5. COVENANTS RUN WITH THE LAND

5.1 Intention of Covenants to Run with the Land. Town and Owner acknowledge and agree that the provisions, covenants, and conditions of this Agreement shall

run with the land and shall be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. By acceptance of a deed or by acquiring any interest in the Property, each person or entity, for himself or itself, his/its heirs, personal representatives, successors, transferees and assigns, binds himself/itself, his/its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, covenants, and conditions of this Agreement.

## 6. NOTICES

6.1 Manner of Serving. Any notice, request, demand or other communication ("Notice") required by this Agreement or otherwise given in respect of any matter with which this Agreement is concerned shall be in writing and served (i) by personal delivery, (ii) by delivery by recognized national or international courier service or (iii) by deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed and directed to the party to receive the same as follows.

If to the Town:

TOWN OF CAVE CREEK  
37622 N. Cave Creek Road  
Cave Creek, AZ 85331  
Attn: Town Manager

With a copy to:

Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 N. Central Avenue, Suite 200  
Phoenix, AZ 85012  
Attn: Town Attorney

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.2 Notice Effective. Except as otherwise specifically stated in this Agreement, any Notice shall be effective upon its delivery and shall be deemed delivered on the date when actually received; provided, however, that any notice delivered by United States Postal Service shall be deemed delivered on the earlier of the date of actual receipt or the second business day after deposit for mailing. Notices by telefacsimile or email are not permitted forms for notice pursuant to this Agreement. Any party may designate a different person or entity or change the place to which any Notice shall be given, by providing Notice as herein provided. Any such change will be effective once the Notice of such change is received by the other party.

## 7. MISCELLANEOUS

7.1 Incorporation of Recitals. The recitals to this Agreement are hereby affirmed by the parties as true and correct, and are incorporated in and made a part of this Agreement by this reference.

7.2 Exhibits. All exhibits attached to and referenced in this Agreement are incorporated herein by this reference.

7.3 Entire Agreement. This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, understandings, negotiations and representations of the parties, oral or written, are hereby superseded by this Agreement.

7.4 Waiver. No waiver by any party of a breach of this Agreement will be construed as a waiver of a succeeding breach of the same or any other covenant of this Agreement. No delay in exercising any right granted by this Agreement will constitute a waiver of that right.

7.5 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.

7.6 Default; Remedies. Failure by any party to perform any term or provision of this Agreement for a period of thirty (30) days after written notice of such failure from the other party shall constitute a Default (herein so called) under this Agreement. The notice shall specify the nature of the alleged default and the manner in which the Default may be satisfactorily cured. In the event of a Default by any party, the non-defaulting party shall be entitled to any remedy specified in this Agreement in addition to all remedies at both law and in equity, including without limitation, specific performance and the right to cure the Default, the right to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such Default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the Default to the date such sums are repaid in full, and termination of this Agreement.

7.7 Captions. The captions or descriptive headings of the Sections of this Agreement are inserted for convenience in reference only and shall not define, limit or otherwise control or affect the scope, meaning or construction of any of the provisions of this Agreement.

7.8 Further Acts. Each party agrees to execute and deliver such further agreements, documents, instruments and other writings and to perform such further acts as either party may reasonably request in order to fully effectuate the purpose of this Agreement.

7.9 Time of Essence. Time is of the essence of each and every provision of this Agreement.

7.10 No Joint Venture or Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Owner and the Town. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or

corporation not a party to this Agreement, and no such other person, firm, organization or corporation shall have any right or cause of action under this Agreement.

7.11 Good Standing; Authority. Each of the parties represents and warrants to the other: (i) that it is duly formed and validly existing under the laws of the state of Arizona, with respect to Owner, or a municipal corporation within the state of Arizona, with respect to the Town; (ii) that it is duly qualified to do business in the state of Arizona and is in good standing under applicable state laws; and (iii) that the individual (s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

7.12 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable (or is construed as requiring the Town to do any act in violation of any constitutional provision, law, regulation, Town code or Town charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect, provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement provides essentially the same rights and benefits (economic and otherwise) to the parties as if such severance and reformation were not required. The parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

7.13 Governing Law. This Agreement is made and is to be performed in the State of Arizona and shall be governed by the internal, substantive laws of the State of Arizona without regard to any conflict of law principles. Any action brought to interpret, enforce or construe any provision of this Agreement or to declare the rights of the parties under this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action. The parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section

7.14 Cooperation in Event of Legal Challenge. In the event of any legal action or proceeding instituted by a third party challenging the validity of any provision of this Agreement, the parties agree to cooperate in diligently defending this action or proceeding.

7.15 Compliance With Laws. Owner shall conduct only lawful operations and activities on or about the property in accordance with all applicable federal, state, county and local laws, ordinances, regulations and rules. Owner acknowledges that this Agreement does not constitute, and the Town has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Owner with regard to) any law, ordinance, power, tax regulation, assessment or other legal requirement now or hereafter imposed by the Town or any other governmental body upon or affecting Owner, the Property or Owner's use of the property, except as expressly provided in this Agreement. Owner acknowledges that all of its obligations under this Agreement are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of) all laws and regulations applicable to Owner. Owner further agrees that this Agreement is not intended to diminish any obligations

Owner to the Town that would be required of Owner by law in the absence of this Agreement. By entering into this Agreement, the Town has not relinquished or restricted any right of condemnation or eminent domain with respect to the Property, or to form an improvement or similar district, exercisable currently or at any time in the future. In the event of any condemnation or eminent domain by the Town involving any property interests of Owner, Owner shall not be entitled to compensation for any value attributable to Owner's rights under this Agreement.

7.16 Conflict of Interest Statutes. This Agreement is subject to, and may be terminated by the Town in accordance with, the provisions of A.R.S. § 38-511.

7.17 Nonliability of Town Officials and Employees. No official, representative, agent, attorney or employee of the Town shall be personally liable to Owner, or to any successor or interest to Owner, in the event of any Default by the Town or any amount which may become due to Owner or successor, or with respect to any obligation of the Town under the terms of this Agreement.

7.18 Construction. Whenever the context of this Agreement requires the singular shall include the plural, and the masculine, neutral or feminine shall include each of the other. This Agreement is the result of negotiations among the parties and their respective counsel and shall not be construed for or against any party as a consequence of its role or the role of its counsel in the preparation or drafting of this Agreement or any of its Exhibits.

7.19 Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement, or to declare the rights of the parties to this Agreement, the party which does not prevail shall pay to the prevailing party all costs and expenses of such action, suit or proceeding, together with such sum as the court (and not the jury) may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

7.20 Indemnity. Owner hereby agrees to indemnify, protect, defend and hold harmless the Town, its Council members, officers, employees and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by the Owner.

7.21 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Owner and the Town. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the Town and the Owner shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least (5) years' experience in mediating or arbitrating disputes relating to development of property and/or utility services by municipalities.

The cost of any such mediation shall be divided equally between the Town and Owner. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

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

OWNER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOWN

TOWN OF CAVE CREEK

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of Arizona

) ss

County of Maricopa

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2007, by \_\_\_\_\_ on behalf of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

State of Arizona

) ss

County of Maricopa

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2007, by \_\_\_\_\_ on behalf of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

**EXHIBIT "B"**

**EXHIBIT "B" Cave Creek Service Area**

**Residential Water Service Fee PER WATER METER:**

<b>Water Meter Size (Inches)</b>	<b>Type</b>	<b>Water Meter</b>
5/8" & 3/4"	Displacement	\$8,248
1.00	Displacement	\$14,015
1.50	Displacement	\$27,228
2.00	Compound/Turbine	\$45,534
3.00	Compound	\$87,983
3.00	Turbine	\$98,676
4.00	Compound	\$140,147
4.00	Turbine	\$169,055
6.00	Compound	\$272,199
6.00	Turbine	\$339,836
8.00	Compound	\$439,643
8.00	Turbine	\$496,557

**Residential New Meter Start-Up Fees PER WATER METER**

5/8" & 3/4"	\$75.00
1.00	\$125.00
1.50	\$225.00
All other sizes	At Cost
Establishment Fee	\$20 per account

**EXHIBIT "B" Desert Hills Service Area**

**Residential Water Service Fee PER WATER METER:**

<b>Water Meter Size (inches)</b>	<b>Type</b>	<b>Per Meter</b>
5/8" & 3/4"	Displacement	\$8,248
1.00	Displacement	\$14,015
1.50	Displacement	\$27,228
2.00	Compound/Turbine	\$45,534
3.00	Compound	\$87,983
3.00	Turbine	\$98,676
4.00	Compound	\$140,147
4.00	Turbine	\$169,055
6.00	Compound	\$272,199
6.00	Turbine	\$339,836
8.00	Compound	\$439,643
8.00	Turbine	\$496,557

**Residential New Meter Start-Up Fees PER WATER METER**

5/8" & 3/4"	\$250.00
3/4"	\$275.00
1"	\$300.00
1 1/2"	\$450.00
2"	\$625.00
All other sizes	See Desert Hills Tariff
Establishment Fee	\$15 per account

Case No.	Case Name	Case Address	Case Description	Case Status	Case Date	Case Amount	Case Fee	Case Total	Case Due Date
211-24-012E	Frank W. Stubbs, III	Trail			8/30/2007	\$ 8,248.00	\$ 8,248.00	\$	
211-28-103	Chino Lane, LLC	35202 N. Chino Lane (Lot 17)			7/20/2007	\$ 14,015.00	\$ 14,015.00	\$	7/20/2007
211-67-064A	Hsing-Chien Chen	36322 N. 26th Street			8/2/2007	\$ 8,248.00	\$ 8,248.00	\$	4/28/2008
211-67-059A	Rancho Arroyo of Carefree, LLC	26th Street			8/2/2007	\$ 8,248.00	\$ 8,248.00	\$	4/22/2008
211-67-059B	Rancho Arroyo of Carefree, LLC	26th Street			8/2/2007	\$ 8,248.00	\$ 8,248.00	\$	
216-19-055	John Feagler	Ocotillo Ridge Estates, Unit 2 Lot 3			10/4/2007	\$ 14,015.00	\$ 14,015.00	\$	11/13/2007
211-54-031K	Ket Talley	35618 N. 11th Avenue			10/4/2007	\$ 14,015.00	\$ 14,015.00	\$	1/28/2008
211-67-024A-E	RPW Delta Development, LLC	27th Place & Maddock			9/5/2007	\$ 41,240.00	\$ 41,240.00	\$	9/5/2007
211-28-135	Elbert G. Blume, Jr.	6335 E. Old Paint Trail			9/26/2007	\$ 14,015.00	\$ 14,015.00	\$	9/26/2007
211-006H	Lowe's Home Improvement Warehouse	NW Corner CC Rd & Carefree Hwy				\$ 91,068.00	\$	\$	
211-49-028B	Craig B. Frank	37822 N. 12th Street			10/24/2007	\$ 1,115.00	\$	\$ 1,115.00	
211-23-135	John L. Newcomb	130 E. Adamanda Drive			11/9/2007	\$ 8,248.00	\$ 8,248.00	\$	11/9/2007
211-23-039G	Town & Country Homes	38218 N. Central Avenue			11/20/2007	\$ 8,248.00	\$ 8,248.00	\$	11/20/2007
211-74-092G	Cheryl Polyard	1425 E. Red Range Way			11/28/2007	\$ 8,248.00	\$ 8,248.00	\$	2/25/2008
211-74-119	Timothy & Ana Woods	14th St. & Red Range Way			11/28/2007	\$ 8,248.00	\$	\$ 8,248.00	
211-74-120	Timothy & Ana Woods	14th St. & Red Range Way			11/28/2007	\$ 8,248.00	\$	\$ 8,248.00	
211-74-121	Woodford & Kathie Hensley	14th St. & Red Range Way			11/28/2007	\$ 8,248.00	\$	\$ 8,248.00	
211-74-092F	Scott & Lisa Hensley	14th St. & Red Range Way			11/28/2007	\$ 8,248.00	\$	\$ 8,248.00	
211-74-092H	Ryan & Carrie McCoy	1411 E. Red Range Way			2/25/2008	\$ 8,248.00	\$	\$ 8,248.00	
211-74-092J	Paul & Lori Schlenker	1431 E. Red Range Way			2/25/2008	\$ 8,248.00	\$ 8,248.00	\$	
211-74-092V	Saryn Johnson	1443 E. Red Range Way			2/22/2008	\$ 8,248.00	\$ 8,248.00	\$	
211-49-015C	Alan Abrams & Marsha Carey	1506 E. Red Range Way			4/16/2008	\$ 8,248.00	\$ 8,248.00	\$	2/21/2008
211-74-012B	Hamzo Kosovrasti	917 E. Paseo Nuevo			7/28/2008	\$ 8,248.00	\$ 8,248.00	\$	4/16/2008
		SE Corner 7th Street & CF HWY				\$	\$	\$ 14,015.00	



18

Terry Goddard  
Attorney General

Office of the Attorney General  
State of Arizona

Jennifer Pollock  
Assistant Attorney General  
Jennifer.Pollock@azag.gov

May 1, 2009

Reid 5/6/09

Mr. Clifford Mattice  
Mariscal Weeks McIntyre & Friedlander P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012-2705

*Re: Open Meeting Law Complaint Against Cave Creek Town Council and Mayor*

Dear Mr. Mattice:

This Office's Open Meeting Law Enforcement Team ("OMLET") has concluded its review of the complaint alleging the Cave Creek Town Council (the "Town Council") and Mayor Vincent Francia (the "Mayor") violated the Open Meeting Law. Specifically, the investigation addressed the following concerns: 1) whether the Mayor improperly contacted council members outside of a public meeting regarding the removal of Mr. Bob Moore from the Cave Creek Planning Commission and 2) whether the Mayor and the Town Council failed to make all pertinent decisions related to the construction of a water tank at the Rockaway Hills site during properly noticed public meetings. The allegations and findings are summarized below.

**Allegation 1:** The Mayor violated the Open Meeting Law by contacting members of the Town Council outside of properly noticed public meetings to discuss the removal of Mr. Bob Moore from the Cave Creek Planning Commission.

**Allegation 2:** The Mayor and Town Council did not make all pertinent decisions related to the construction of a 2 million gallon water tank located at the Rockaway Hills site during properly noticed public meetings.

**Findings**

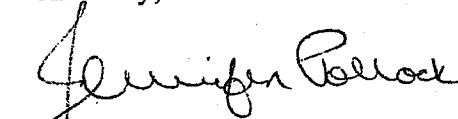
We received your written correspondence and supporting documentation responding to our Open Meeting Law inquiry as well as copies of the pertinent meeting agendas and written minutes. We also received materials from the complainant. We have reviewed the meeting agendas, minutes and other materials and have conducted depositions of the various Town Council Members and the Mayor. Based upon a review of this information, we are unable to substantiate a violation of the Open Meeting Law with regard to allegations 1 and 2.

Mr. Clifford Mattice  
May 1, 2009  
Page Two

During the course of the investigation, we learned that the Mayor and members of the Town Council may occasionally discuss issues that could potentially come before the Town Council at a future date. As a best practice, we strongly recommend that the Town Council and the Mayor refrain from such discussions as they may lead to an Open Meeting Law violation. In addition, we would recommend that the Mayor and Town Council refrain from engaging in any conversations between less than a quorum of the members regarding items that could foreseeably come before the Town Council because such actions could be perceived as an attempt to circumvent the Open Meeting Law.

We intend to close this file at this time. If you have any questions regarding this letter, please feel free to contact me at (602) 542-8349.

Sincerely,

  
Jennifer Pollock  
Assistant Attorney General  
Education & Health Section

JP:ab

cc: Terry Zerkle

#452921