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AGENDA
CITY COUNCIL WORK SESSION
AUGUST 20, 2018
6:00 P.M.

The items listed below are for discussion and possible action.

1. Discussion/possible action regarding license and agreement for crossing with the Apache Railway-City Attorney Pontrelli.
2. Discussion/possible action regarding filling Interim Manager Position.

Dated this 15th Day of August 2018


Cher Reyes, CMC, CPM, City Clerk

1 MINUTES OF THE HOLBROOK CITY COUNCIL SPECIAL MEETING/WORK
2 SESSION HELD ON
3 AUGUST 20, 2018

4 CALL TO ORDER:

5
6 Mayor Tyler called the meeting to order at 6:00 p.m.

7 Roll Call:

8 Councilmember Tim Dixon, Councilmember Earl Kester (telephonically),
9 Councilmember Adam Marsh, Councilmember Francie Payne, Councilmember C.J.
10 Wischmann, Vice Mayor Richard Peterson and Mayor Bobby Tyler.

11 CITY STAFF:

12 Director of Administration Pat Nichols, Facilities Maintenance Supervisor Tim Kelley,
13 Animal Control Officer Merrill Young, Fleet Maintenance Supervisor John Gerwitz,
14 Administrative Assistant Lisa Maestas and City Clerk Cher Reyes.

- 15 1. Discussion/possible action regarding license and agreement for crossing with the
16 Apache Railway:

17 A drone video of the area was shown. Discussion regarding the possibility of
18 other access points to the levee was discussed. The City's need for the crossing
19 because of emergency situations and maintenance was also discussed. After
20 discussion with Tim Kelley and Pat Nichols it was determined that the crossing was
21 necessary. Mayor Bobby Tyler requested that the minutes note that the BNSF gate to
22 the levee is open. Councilmember C.J. Wischmann made a motion to enter into the
23 contract with Apache Railway with the stipulation that the repairs would not exceed
24 the amount of \$20,000.00. Vice-Mayor Richard Peterson seconded the motion. The
25 motion carried with the following results: Councilmember Dixon "Aye", Councilmember
26 Kester "Aye", Councilmember Marsh "Aye", Councilmember Payne "Aye",

1 Councilmember Wischmann “Aye”, Vice Mayor Peterson “Aye” and Mayor Tyler “Aye”

2 2. Discussion/possible action regarding filling Interim Manager Position:

3 Vice Mayor Peterson made a motion to extend Randy Sullivan’s contract as
4 Interim City Manager until a new City Manager is hired, returning him to the same
5 salary with the stipulation that Randy Sullivan would attend the City Council
6 meetings. Councilmember Payne seconded the motion. The motion did not carry
7 with the following results: Councilmember Dixon “Nay”, Councilmember Kester
8 “Aye”, Councilmember Marsh “Nay”, Councilmember Payne “Aye”,
9 Councilmember Wischmann “Nay”, Vice-Mayor Peterson “Aye” and Mayor Tyler
10 “Nay”.

11 Councilmember Dixon made a motion to nominate City Clerk Cher Reyes as
12 the Interim City Manager with the salary to be negotiated between Director of
13 Administration Pat Nichols, the City Attorney, and Cher Reyes. Councilmember
14 Wischmann seconded the motion. There was discussion about whether Clerk
15 Reyes was eligible to fill the position. The City Attorney verified that she is
16 eligible. The motion carried with the following results: Councilmember Dixon
17 “Aye”, Councilmember Kester “Aye”, Councilmember Marsh “Aye”,
18 Councilmember Payne “Aye”, Councilmember Wischmann “Aye”, Vice-Mayor
19 Peterson “Aye” and Mayor Tyler “Aye”.

20
21 Adjournment:

22 There being no further business to come before the Council, the Special Meeting was
23 Adjourned at 6:39 p.m.

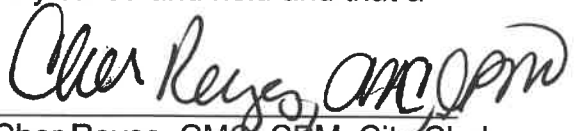
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25 Bobby Tyler, Mayor

1 CERTIFICATION:

2 I hereby certify that the foregoing minutes are a true and correct copy of the minutes of
3 the Special Meeting/Work session of the Holbrook City Council held on the 20th day of
4 August 2018. I further certify that the meeting was duly called and held and that a
5 quorum was present.

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Cher Reyes, CMC, CPM, City Clerk

MEMORANDUM

To: Cher Reyes, City Clerk
CITY OF HOLBROOK

From: Marlene A. Pontrelli, Esq.
City Attorney

Date: July 31, 2018

Re: Apache Railway Crossing Agenda Item

The Apache Railway Crossing Agreement will be on the August 14, 2018 agenda for Council discussion and potential approval or denial. Based upon concerns I had with respect to the Agreement, on July 23 2018, I spoke with Mr. Steve Brophy, President of Apache Railway. While I did not discuss the specific paragraphs of the Agreement that cause concern, I did raise with him three general issues:

1. There is exposure for unlimited costs to the City, and that this potentially has the effect of binding a future council to these costs.
2. There is potential liability imposed on the City for acts of negligence by Apache Railway.
3. Whether any other cities had similar railway crossings with Apache Railway so that I could confirm that this is the "standard agreement" used and to see how other municipalities addressed the first two issues above.

Mr. Brophy indicated that Apache Railway was not willing to make any additional changes. He suggested that if the cost was too high for any expense then the City could terminate the agreement and just incur the cost of restoration of the crossing. He also indicated that no other municipality has a railway crossing agreement with Apache Railway at this time. However, he did mention that the City of Holbrook has an agreement for Romero Road. The Romero Road agreement was executed on March 8, 1994. A copy is available from the City Clerk if you would like to review the Romero Road crossing agreement. Apache Railway has given the City until August 15, 2018 to advise whether it will enter into the Agreement.



The Apache Railway Company
PO BOX 857
Snowflake, AZ 85937
Tel: (928) 536-4696 Fax: (928) 536-4260

**City of Holbrook
Private Crossing Replacement
Or Crossing Repair
Estimate**

June 6, 2018

City of Holbrook
Attn: Randy Sullivan
465 N 1st Ave
Holbrook, AZ 86025

It has come to our attention that the 9" x 30" timber crossing located in the Holbrook rail yard 75 feet north of the levee gate just north of the Little Colorado River, which the City of Holbrook has used in the past has degraded and must be repaired or replaced. With its constant use, and years of inclement weather and blowing sand, a safety risk exists for both our equipment and employees.

Apache also received an inspection of its track and crossings on May 10, 2018 by the U.S Department of Transportation, Federal Railroad Administration and was told that the crossing was close to being out of regulatory compliance allowances and that the crossing was a safety risk.

Apache is therefore faced with either repairing the crossing or removing it.

We understand that the City of Holbrook wishes to continue to use the crossing and, if so, we are willing to accommodate that. Accordingly, we have prepared a License and Agreement pertaining to the crossing for the City's review and signature if acceptable.

Additionally, we have prepared and include below estimates for repair or replacement of the crossing. Because the existing crossing is a timber type crossing it will have to be pulled up to determine whether the crossing can be repaired or is need of replacement. Therefore I am including both cost estimates in this notice.

Currently the lead time for the materials for repair or replacement is 4 weeks out. The project would take 2 days and we would like to schedule this project for the first part of August 2018.

Crossing Replacement Cost Estimate

Project Timeline:	2 – 8 Hour Days	
1 st Day:	Removal of existing crossing and gage rail	
2 nd Day:	Install new crossing and cleanup	
Estimated Cost:		
Mobilization:	Mobilization of Equipment	\$1200
Labor:	2 – 8 Hour Days 5 employees at \$40 per hour per employee	\$3200
Equipment:	1 – 4 Hour Day Loader at \$70 per hour	\$ 560
	1 – 4 Hour Day Backhoe at \$70 per hour	\$ 560
Material:	20-131# Rail 32 TF set on 8'6" ties under track	\$4800
	8"x16.75"x8" Crossing Panel	
	25- 7"x9"x9'HW Tie w/creosote and end plates	\$1700
	150- Lag Screws	\$ 525
	Freight	\$1100
Disposal:	Disposal of existing crossing	<u>\$ 600</u>
	Total Cost of Replacing Crossing	\$14,245

Crossing Repair Cost Estimate

Project Timeline:	2 – 8 Hour Days	
1 st Day:	Removal of existing crossing and gage rail	
2 nd Day:	Replace existing crossing and cleanup	
Estimated Cost:		
Mobilization:	Mobilization of Equipment	\$1200
Labor:	2 – 8 Hour Days 5 employees at \$40 per hour per employee	\$3200
Equipment:	1 – 8 Hour Day Loader at \$70 per hour	\$ 560
	1 – 8 Hour Day Backhoe at \$70 per hour	\$ 560
Material:	150-Lag Screws	\$ 525
	Freight	<u>\$ 500</u>
	Total Cost of Repairing Existing Crossing	\$6,545

Please contact me at your convenience to answer any questions you may have and, assuming the City wishes to continue to use the crossing, payment options and scheduling times.

Very truly yours,

Shirley Cornett
Superintendent
The Apache Railway Company

LICENSE AND AGREEMENT FOR CROSSING

THIS AGREEMENT is made this 6th day of June, 2018, between THE APACHE RAILWAY COMPANY, and Arizona corporation (hereinafter the "Apache"), party of the first part; and the City of Holbrook, Arizona, party of the second part (hereinafter "Holbrook") pertaining to that certain crossing of the Apache's right-of-way and tracks, that being a 9" x 30" timber crossing located in the Holbrook rail yard 75 feet north of the levee gates on the north side of the Little Colorado River in the NESE of Section 1, T17N-R20E, Navajo County, Arizona (hereinafter the "Crossing").

RECITALS:

Holbrook has used the Crossing in the past, and has requested of the Railway Company permission to continue to use the Crossing for purposes of accessing, inspecting and maintaining its levee on the north bank of the Little Colorado River west of the Crossing, which permission the Railway Company is willing to grant upon the conditions hereinafter set forth.

AGREEMENT:

ARTICLE 1

In consideration of the covenants of Holbrook hereinafter set forth, the Apache hereby agrees to re-construct or repair the crossing at the location described hereinabove, and to maintain and install railroad crossing signs at the Crossing pursuant to the Apache's signage policies; and hereby grants Holbrook license and permission to enter upon and cross Apache's right-of-way and track or tracks at the Crossing, and to prepare and construct all approaches to such crossings including the laying of roadbed rock or gravel, or asphalt roadway, at Holbrook's discretion, on the Apache's right-of-way, but not on Apache's tracks or roadbed.

ARTICLE II

In consideration of the foregoing license and permission given by the Apache, Holbrook hereby agrees:

1. To pay to the Apache when billed the entire cost of re-construction or repair of the Crossing as set forth in Section 5 of Article III hereto, the cost so to be borne by Holbrook being hereby estimated at \$14,245.00. If the actual cost thereof shall prove more or less than such estimated cost, the difference shall be paid by Holbrook or refunded by Apache as the case may be.

2. To pay Apache from time to time within twenty (20) days after bills are rendered therefore for the cost of maintaining the Crossing in excess of \$1,200.00 per year.

3. That it will at all times indemnify and save harmless the Apache against all claims, demands, actions, or causes of action, arising or growing out of loss of or damage to property or injury to or death of person or livestock, resulting in any manner from the construction, maintenance, use, state of repair, or presence of the Crossing upon the Apaches premises, or the removal of said Crossing therefrom, and shall promptly pay to the Apache the full amount of any loss or damage which the Apache may sustain, incur, or become liable for, and all sums which the Apache may pay or be compelled to pay in settlement of any claim on account thereof whether or not such loss or damage is caused or contributed to by the negligence, or alleged negligence, of the Apache, its employees, agents or contractors.

4. In the event of the termination of this license and permission as hereinafter in Article III provided, the Apache may remove the Crossing and restore the adjoining fences and the right-of-way to their condition prior to initiation of use of the Crossing by Holbrook without thereby incurring any liability to Holbrook of any character whatever, and Holbrook shall within twenty (20) days after bill is rendered therefore, reimburse the Apache for all expenses which the Apache may incur in connection therewith.

5. While this license and permission is pertinent to Holbrook, the servants, employees and agents of Holbrook, it is recognized that there is likelihood of the Crossing being used by unauthorized persons, and Holbrook agrees that for the purposes of this agreement all persons using the Crossing shall be deemed the agents of Holbrook.

ARTICLE III

1. It is mutually agreed that this license and permission may be terminated by either party upon ten (10) days' notice in writing to be served upon the opposite party, stating therein the day of the month that such termination will take place and upon the expiration of the time specified in

such notice the existence of this license and permission, and all rights and privileges of Holbrook hereunder shall absolutely cease. No termination or cancellation hereof shall release Holbrook from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or cancellation or, if later, the date when the crossing is removed and the adjoining fences and right-of-way restored to their condition at the date of this agreement as in this agreement provided.

2. Any notice to be given by the Apache to Holbrook hereunder shall be deemed to be properly served if the same be delivered to Holbrook at Holbrook's main city office, or if left with any of the employees of Holbrook

3. All the covenants and provisions of this agreement shall be binding upon and inure to the benefit of the successors, legal representatives, and assigns of the parties to the same extent and effect as the same are binding upon and inure to the benefit of the parties hereto, but no assignment of this agreement by Holbrook may be made without written consent of the Apache in each instance.

4. Subject to Section 2 of Article II, Holbrook agrees to bear the entire cost of installation and maintenance of any Crossing protection devices required for the Crossing, as may be determined by the Apache or required by any governmental agency having jurisdiction, whether or not such agency allocates all or a portion of such costs to the Apache. If Apache pays all or a portion of such costs in the first instance, Holbrook shall reimburse Apache therefore within twenty (20) days after receipt of bill therefore. When installed, such Crossing protection devices shall become and are considered a part of the Crossing.

5. Holbrook agrees to carry and keep in force during the term of this agreement, insurance of the kinds and in the amounts not less than those specified below:

(a) Public liability insurance with limits of not less than Two Million Dollars (\$2,000,000) for all liability arising out of bodily injuries to or death of one person and, subject to that limit for each person, Four Million Dollars (\$4,000,000) for all liability arising out of bodily injuries to or death of two or more persons in any one accident or occurrence;

(b) Property Damage Insurance with limits of not less than One Million Dollars (\$1,000,000) for each occurrence for all liability arising out of damage to or loss or destruction of property; and;

(c) Contractual Liability Insurance insuring its indemnification of the Apache under the provisions contained in Article II, Section 3, of this agreement in amounts not less than those stated above as to deaths and bodily injuries and as to damage to or loss or destruction of

property; it being distinctly understood and agreed by Holbrook that its liability to the Apache under the provisions of said Section 3 of Article II hereof are not in any way limited to the amount of insurance obtained and carried by Holbrook pursuant to this paragraph (c).

6. Holbrook agrees to furnish the Apache certificates of insurance or, if requested, a certified copy of insurance policy and policies providing the aforesaid insurance coverage which shall, by proper endorsement, name the Apache as an additional assured. There shall be excluded from such policy or policies, by proper endorsement, any and all provisions which would exclude liability for death of or bodily injury to employees of the Apache or damage to or loss or destruction of property of the Apache, resulting in any manner from the construction, maintenance, use, state of repair or presence of the Crossing, or the removal thereof, or from operation of Holbrook there over. Certificates reflecting coverage required by paragraph 6 shall unqualifiedly require 30 days written notice to Apache of cancellation or modification of insurance referred to in such certificates.
7. In the event Holbrook sub-contracts any of its operations over the Crossing, it will require each and every one of its sub-contractors to provide insurance coverage as hereinabove outlined and furnish certificates of insurance or, if requested, a certified copy of policy of policies to the Apache.

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate the day and year first above written.

ATTEST:
("Apache")

THE APACHE RAILWAY COMPANY

By _____

Title _____

("Holbrook")

ATTEST:

THE CITY OF HOLBROOK

By _____

Title _____