



# PRESCOTT CITY COUNCIL VOTING MEETING AGENDA \*AMENDED

**PRESCOTT CITY COUNCIL  
PUBLIC MEETING  
TUESDAY, MARCH 25, 2008  
3:00 P.M.**

**Council Chambers  
201 S. Cortez Street  
Prescott, AZ 86303  
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its Regular Voting Meeting pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

◆ **CALL TO ORDER**

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Pastor John Perry of Alliance Bible Church.

◆ **PLEDGE OF ALLEGIANCE:** Mayor Wilson

◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

Mayor Wilson

Councilman Bell

Councilman Lamerson

Councilwoman Lopas

Councilman Luzius

Councilman Roecker

Councilwoman Suttles

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

**NOTE:** Anyone wishing to speak regarding an item on the agenda must address the Council using the microphone at the podium. **PLEASE NOTE:** Comments from the public regarding any item on the agenda will be limited to five (5) minutes. Please refer to the Clerk's desk for the timing sequence of the lighting signals: **GREEN** at the beginning of comments, **YELLOW** with one minute remaining and **RED** when time has ended.

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. WITH 48 HOURS ADVANCE NOTICE, SPECIAL ASSISTANCE CAN BE PROVIDED FOR SIGHT AND/OR HEARING IMPAIRED PERSONS AT PUBLIC MEETINGS. PLEASE CALL 777-1272 OR 777-1100 (TDD) TO REQUEST AN ACCOMMODATION TO PARTICIPATE IN THIS MEETING.

**I. PUBLIC COMMENT**

- A. Wayne Daniel re discount for City employees at Golf Course and Manzanita Grille.
- B. Michael Golden re (1) sidewalk/street accessibility and (2) new park on Sarafina.
- C. Jeannine Guardalabene re City's paving requirements for alleyways.

**II. PROCLAMATION**

- A. *April 2008 as Substance Abuse Awareness Month.*

**III. PRESENTATION**

- A. Introduction of new businesses.

**IV. CONSENT AGENDA**

**CONSENT ITEMS A THROUGH G LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.**

- A. Approve contract with UNICO Universal for the Dexter Neighborhood Sidewalk Improvements/Merritt in an amount not to exceed \$100,587.70.
- B. Adopt Ordinance No. 4644-0846 - An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the granting of certain underground power line easement rights to Arizona Public Service Company (APS) to provide for the installation of updated electrical facilities for 21 portable hangars to be relocated by 2251 Ruger L.L.C. to a new location of the Prescott Municipal Airport and authorizing the Mayor and staff to execute all necessary sale and conveyance documents.
- C. Approve an engineering services agreement with Ninyo & Moore for quality assurance testing services for City streets and utilities projects, in an amount not to exceed \$100,000.00.
- D. *Accept proposal and approval of contract with Horizon Airlines for airline service between Prescott Municipal Airport and Los Angeles International Airport.*
- E. Approve purchase of the Tyson property located on Cortez (next to City Hall) in the amount an amount of \$257,000.00.

- F. Approve contract for outside counsel in the Mason/Griffin v. City of Prescott case.
- G. Approve the Minutes of the Prescott City Council Workshop of February 26, 2008, the Study Session of March 4, 2008, and the Special Meeting of March 11, 2008.

**V. REGULAR AGENDA**

- A. Public Hearing of Draft FY 2008 Annual Action Plan associated with the City's Community Development Block Grant (CDBG) Program.
- B. Approval of purchase agreement for the Hazelwood property in the Granite Dells in the amount of \$2,900,000.00.
- C.\* Recess into Executive Session.

**VI.\* EXECUTIVE SESSION**

- A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting, pursuant to A.R.S. 38-431.03(A)(1).
  - 1. Possible amendment to City Manager contract.

**VII. ADJOURNMENT**

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on \_\_\_\_\_, at \_\_\_\_\_ .m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

\_\_\_\_\_  
Elizabeth A. Burke, MMC, City Clerk

**"SUBSTANCE ABUSE AWARENESS MONTH"**

**April 2008**

**WHEREAS**, few citizens of the City of Prescott are unaffected by substance abuse; and

**WHEREAS**, substance abuse is directly associated with crimes against persons and property, domestic violence, physical illness, child abuse, driving while impaired and drug-related vehicular collisions; and

**WHEREAS**, the resources and capacity of the courts and detention system, hospital emergency rooms and providers of behavioral health services are severely stretched by the proliferation of methamphetamine and other substances within the City of Prescott; and

**WHEREAS**, the City of Prescott has united against methamphetamine and drugs and alcohol abuse to form MATForce, the Yavapai County Substance Abuse Coalition; and

**WHEREAS**, MATForce views substance abuse as a community problem that is best addressed through a variety of strategies that bring together education, treatment and criminal justice resources in a coordinated, individualized approach; and

**WHEREAS**, MATForce has declared April 2008, as "Substance Abuse Awareness Month" to heighten public awareness of the dangers of substance abuse and of available treatment options.

**NOW THEREFORE**, the City of Prescott proclaims the month of April 2008 as:

**"SUBSTANCE ABUSE AWARENESS MONTH"**

IN WITNESS THEREOF, I have hereunto set my hand and caused the Seal of the City of Prescott to be affixed this 25<sup>th</sup> day March 2008.



**JACK.D. WILSON, MAYOR**  
City of Prescott

**ATTEST:**

**ELIZABETH A. BURKE, CITY CLERK**  
City of Prescott

<b>COUNCIL AGENDA MEMO – March 25, 2008</b>
<b>DEPARTMENT: Economic Development</b>
<b>AGENDA ITEM: Approval of Contract No. _____ with Horizon Airlines</b>

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Jane Bristol</b> <i>J.B.</i>	<b>03/21/08</b>
<b>Finance Director:</b>	
<b>City Manager: Steve Norwood</b> <i>S. Norwood</i>	<b>3/18/08</b>

Council discussed this item last week and placed it on the consent agenda for March 21<sup>st</sup>. Attached is Contract No. \_\_\_\_\_ for your review and action.

## **AIR SERVICE AGREEMENT**

**THIS AGREEMENT** ("Agreement") made and entered into as of the \_\_\_ day of March, 2008 by and between and the City of Prescott, a political subdivision of the State of Arizona ("City") and Horizon Air Industries, Inc. (Horizon Air), a corporation organized under the laws of the State of Washington, having its principal offices located at 19521 International Boulevard, Seattle, Washington 98188

### **W I T N E S S E T H**

**WHEREAS**, City, is the owner and proprietor of the City of Prescott Airport ("hereafter City") located in Prescott, Arizona and operates the Airport for the promotion, accommodation, and development of air transportation and commerce; and

**WHEREAS**, City has adopted Ordinances to establish policies to guide future growth and development of aviation activity and airport facilities in the City; and

**WHEREAS**, City has adopted Airport Ordinances, Airport Rules and Regulations and is subject to applicable FAA requirements that also govern and impact its airport operations and which ordinances, rules and regulations and federal requirements govern the operation of the Airport and set City policy for the conduct of aeronautical activities at the Airport; and

**WHEREAS**, Horizon Air is a regional air transportation carrier serving the Western United States, Canada and Mexico and:

**WHEREAS**, Horizon Air is willing to and has submitted an RFP and has been selected through that process by the City to provide scheduled air service between Prescott, Arizona and Los Angeles, California (LAX), utilizing a minimum of two (2) departures per day (one flight originating and terminating in Flagstaff, Arizona) with the schedules listed in the following exhibit A, on the terms and conditions set forth herein; and

**WHEREAS**, the City and Horizon Air will enter into a more detailed License Agreement that will contain relevant terms, , from this Agreement. ;

**NOW, THEREFORE**, for and in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree to enter into an Air Service Agreement with at least the following terms:

1. Scheduled Service. Horizon Air shall provide scheduled service between Prescott Arizona and Los Angeles and between Prescott Arizona and Flagstaff Arizona with the schedules in Exhibit A, using Bombardier Q400 aircraft equipment (each round-trip flight scheduled for a single day is hereinafter referred to as a “Scheduled Flight” and all such round-trip flights are hereinafter referred to collectively as “Scheduled Flights”).

The schedule times will be based upon, but not limited to, aircraft, staff, crew, gate availability, weather, and season changes. Horizon Air will schedule flights at reasonable times. Flight schedules will be posted in advance and are subject to change.

2. Minimum Revenue Requirement.

(a) Duration. For the first year of service, City will agree to guarantee that Horizon Air shall receive an aggregate minimum revenue requirement of \$7,539.00 for each day’s scheduled flight between Prescott and Los Angeles including one flight originating and terminating in Flagstaff, Arizona (“Minimum Revenue Requirement”). The maximum Minimum Revenue Requirement that the City guarantees for the first year of service is \$142,000 (“Maximum Cap”), City does not make any revenue guarantees of any kind beyond the first year of service.

(b) Calculation. Horizon Air shall calculate the aggregate minimum revenue for the Minimum Revenue Requirement by comparing (1) the aggregate actual revenue<sup>1</sup> Horizon Air receives for all scheduled flights during the payment period to (2) the agreed-upon Minimum Revenue Requirement \$7,539 (per day). If the aggregate actual revenue equals or exceeds the agreed upon minimum revenue for the payment period, the City shall owe nothing.

(c) Payment. The payment period shall be applied to this service, as is set forth in Exhibit B. Upon the completion of all Scheduled Flights at the end of the pay period, if aggregate actual revenue is less than the aggregate Minimum Revenue Requirement for all flights to which the Minimum Revenue Requirement applies, City shall remit the difference to Horizon Air within forty-five (45) days of receipt of Horizon Air’s statement. Horizon Air shall provide its statement no later than forty-five (45) days after the end of the pay period. Calculation of the total amount due shall be binding and conclusive, provided that City shall have the right, upon reasonable notice, to examine the business records of Horizon Air relating to such calculation and to dispute the amount within thirty (30) days if this examination reveals errors or irregularities in Horizon Air’s accounting practices.

3. Award tickets and Airline employee travel. All of Horizon Air employee pass agreements are valid for these flights (except for company business, all pass agreements are based on space available travel). Horizon Air and partner airline customers booking peak awards will have full access to all seat inventories. Saver awards will be offered on a controlled basis. City will get credit for the Alaska Mileage Plan customers booking

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<sup>1</sup> The aggregate actual revenue means all revenue generated by the flight including passenger, cargo, and other income.

these awards at the end of the agreement term. The value of the frequent flyer awards will be valued at 50% of the average ticket price for these flights and added to the total revenue generated by the completed flights listed in the following exhibits. Average ticket price is defined as the total revenue received from passengers traveling on the flights listed above divided by total number of revenue passengers traveling on the flights listed above.

4. Fuel costs. Horizon Air 's current average domestic system-wide cost per gallon of jet fuel is \$2.55. If there is a twenty-five percent (25%) change (either an increase or decrease) in the average domestic system-wide cost per gallon of jet fuel, Horizon Air shall provide written notice of the change and the amount of the change to City. In the event of a twenty-five percent (25%) change (either an increase or decrease) in the average domestic system-wide cost per gallon of jet fuel, any party hereto may request a renegotiation of the Minimum Revenue Requirement. The parties hereto agree to meet and to use their best reasonable efforts to negotiate in good faith to allocate the additional cost of service factors directly relating to the percentage increase or decrease in fuel costs to renegotiate any new Minimum Revenue Requirement. The parties agree that any such fair renegotiated Minimum Revenue Requirement is intended to be predicated solely upon the direct impact of any increase or decrease in fuel costs and will be applied in formula for minimum revenue requirements set forth in this contract to arrive at a mutually acceptable Mutual Revenue Requirement, If these negotiations do not produce the establishment of a new Minimum Revenue Requirement acceptable to City and Horizon Air within Fourteen (14) days, either party may terminate this Agreement upon five (5) days written notice to the other party, at which time all parties' obligations hereunder shall cease and this Agreement shall automatically terminate.

5. Fare. The average one-way fare will be determined at the end of the contracted service period by non-directional route.

6. Tariffs, rules and regulations. All travel covered by this Agreement is subject to applicable tariffs and other rules and regulations.

7. Termination of Agreement. The Parties agree to make their best efforts to start service by September 7, 2008, as is set forth in Exhibit A. Horizon Air may terminate or modify the start of service date of this Agreement in writing 60 days prior to the start of service for any reason including, but not limited to, aircraft shortage, competing service on either proposed route, failure to fund this revenue guarantee fully, labor disputes (either between Horizon Air and its employees or another party), weather, acts of God, any act or inaction of government, government priorities, act of terrorism, or any other acts, matters or things, whether or not of similar nature, beyond the reasonable control of Horizon Air. City may terminate this Agreement in writing if Horizon Air fails to announce the start of service, as contemplated by this Agreement, 60 days prior to the agreed upon start of service date.

8. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may be modified or

amended only by a writing signed by the party against whom enforcement of the modification or amendment is sought.

9. No Assumption of Liability and No Third Party Beneficiaries. With the exception of the requirements set forth in Paragraph 2 of this Agreement, City and all affiliated entities hereby disclaim any and all liability to passengers or other third parties associated with the Scheduled Flights. Such liability is solely the responsibility of the Carrier and this Agreement may not be construed as an assumption of liability on the part of City. There are no third party beneficiaries to this Agreement nor do the parties intend for there to be any third party beneficiaries to this Agreement.

10. Best Efforts in Promotional Activities. The parties hereto agree that they will use their best efforts to promote the Scheduled Flights in such a way as to maximize the public awareness of the availability of the Scheduled Flights.

Minimum Insurance Requirements. Horizon Air shall obtain and maintain during this agreement, at Horizon Air's expense, the following minimum insurance. All insurance must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to the applicable insurance policy or binder.

1. Commercial General Liability Insurance against claims for bodily injury, death, and property damage occurring on, in or about the Premises, related to or arising out of Lessee's activities, in an amount not less than \$ 5,000,000.00 million dollars per occurrence. The policy must be written on an "occurrence basis" and name the City as an additional insured.
2. Fire and Extended Coverage to protect against loss or damage to any Improvements located on any Premises utilized by the operator. resulting from fire, lightning, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage". The insurance shall be maintained in an amount of not less than 100% of the full replacement value of all Improvements constructed on the Premises, subject to a deductible clause not to exceed ten thousand dollars (\$10,000.00). The proceeds paid to Horizon Air from any loss under this policy(s) shall be used to replace or repair any loss or damage to the premises.

B. Annual Delivery of Certificates. Horizon Air shall furnish to the Airport Manager prior to occupancy of the Premises and annually during the term of this Lease, certificates of insurance showing that the insurance requirements of this agreement have been met and that the City is named as an additional insured under the required Commercial General Liability policy. New Certificates of Insurance shall be resubmitted to the City whenever changes or revisions occur. Each policy of insurance shall contain the following clause:

It is agreed that this policy shall not be canceled nor the coverage reduced until thirty (30) days after the City's Airport Manager has received written notice of the cancellation or reduction.

- C. Modification Of Coverage Requirements. The City shall have the right from time-to-time to require Lessee to obtain increases in insurance coverage if the City reasonably determines that increases are necessary to provide adequate protection to Horizon Air or the City, but only to the extent that the increased coverages are in amounts that are commonly required by other airports for operations similar to those performed by Lessee.
- D. Self Help By City. Should Lessee fail to obtain or keep the required insurance in effect during this agreement, the City may purchase the required insurance and Horizon Air shall reimburse the City for the cost thereof within ten (10) days of the City sending an itemized statement showing the cost incurred.

Indemnity Obligations. Horizon Air shall indemnify and hold harmless City, its officers, agents, employees and assigns from and against any and all claims arising from Horizon Air use of the premises or from the conduct of Horizon Air business or from any activity, work, or things done, permitted, or suffered by Horizon Air in or about the premises or elsewhere and shall further indemnify and hold harmless City from and against any and all claims arising from any breach or default in the performance of any obligation on Horizon Air's part to be performed under the terms of the lease or arising from any negligent act or negligent omission of the Horizon Air, or any of the Horizon Air's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against City by reason of any such claim.

M. City's Indemnity Obligations. City shall indemnify and hold harmless Horizon Air from and against any and all claims arising from any breach or default in the performance of any obligation on City's part to be performed under the terms of the agreement or arising from any negligent acts or omissions of the City, or any of the City's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Horizon Air by reason of any such claim.

Q. Attorneys Fees. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys' fees, either pursuant to the Lease, pursuant to ARS Section 12-341.01 (A) and (B), or pursuant to any other State or Federal Statute.

S. A.R.S. Section 38-511. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this agreement, without penalty or further obligation, if any person

significantly involved in initiating, negotiating, securing, drafting or creating **the** agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City of Prescott from any other party to the agreement arising as a result of this agreement.

I. **APPLICABILITY OF FEDERAL REGULATIONS.**

Applicability of Federal Regulations. Horizon Air and City acknowledge that this agreement and the activities intended to occur on the Prescott Airport premises are, or may be subject to certain Federal regulations which regulations are acknowledged by and intended by the parties to be controlling in the event of a conflict between this agreement and such applicable regulations. **NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO WAIVE, MODIFY OR SUPERCEDE ANY SUCH FEDERAL REGULATIONS.**

**IN WITNESS WHEREOF**, the parties hereto have caused their undersigned, duly authorized representatives to execute this Agreement as of the day and year first above written.

**Horizon Air Industries, Inc.**

**By:** \_\_\_\_\_

**City of Prescott**

**By:** \_\_\_\_\_

\_\_\_\_\_  
City Attorney

APPROVED AS TO FORM FOR \_\_\_\_\_:

\_\_\_\_\_  
By:

Its:

Printed Name:

## **EXHIBIT A**

### **Scheduled Service between:**

Flagstaff Pulliam Airport and Los Angeles International Airport and Prescott Airport

### **Schedule and Frequency**

**Effective September 7, 2008**

Proposed schedule – subject to changes based upon operational considerations and further negotiations

**Prescott to Los Angeles (PRC-LAX)**

0645-08 20

**Los Angeles to Prescott (LAX-PRC)**

1940-2115 Daily

**To Flagstaff from Prescott (FLG – PRC)**

2135-2159

**From Flagstaff to Prescott (PRC – FLG)**

0600-0625

### **Service Period:**

September 7, 2008 – June 22, 2009

**Minimum Revenue Requirement Daily: \$7,539.00**

**Startup and ongoing costs: The City agrees in addition to the revenue guarantee that there will be no charges associated with Horizon Air's use of the airport for the initial term (September 7, 2008 – June 22, 2009) and will reimburse Horizon Air's station start-up expenses related to acquiring equipment and facility upgrades and IT resources in an amount not to exceed \$30,000.**

**Thirty days after the commencement of service Horizon Air may submit invoices to City for costs incurred for station start up expenses. City will pay the invoices within 30 days of receipt. The Horizon Air \_\_\_\_\_ invoices will have sufficient detail to support the submitted invoice.**

## **EXHIBIT B**

### **PAYMENT SCHEDULE**

**Maximum Cap for all routes combined for the entire scheduled service period:**  
\$142,000 as agreed plus waivers for all landing fees and lease payments for the initial term, to be addressed in final Airline Operating Agreement.

Payment period is to be addressed in Airline Operating Agreement.

Proposed Payment Periods

Payment Period A: Start of Service – September 7, 2008 – June 22, 2009

## **EXHIBIT C**

### **MARKETING AND PROMOTIONAL SUPPORT**

#### **(City) Cooperative Advertising Commitment**

The Airport will make an advertising commitment of \$41,000 for the first initial term of service. This amount includes a local cooperative advertising commitment, which includes the in-kind value of advertising offered by various local groups.

Thirty days after the commencement of service Horizon Air may submit invoices to City for costs incurred for marketing expenses. City will pay the invoices within 30 days of receipt. The Horizon Air invoices will have sufficient detail to support the submitted invoice.

PRESCOTT CITY COUNCIL  
 WORKSHOP  
 PRESCOTT, ARIZONA  
 FEBRUARY 26, 2008

A WORKSHOP OF THE PRESCOTT CITY COUNCIL WAS HELD ON TUESDAY, FEBRUARY 26, 2008, in the Prescott Municipal Building, 201 S. Cortez Street, Prescott, Arizona.

◆ CALL TO ORDER

Mayor Wilson called the Work Session to order at 1:30 p.m.

◆ ROLL CALL

MAYOR AND CITY COUNCIL:

Present:

Absent:

Mayor Wilson  
 Councilman Bell  
 Councilman Lamerson  
 Councilwoman Lopas  
 Councilman Luzius  
 Councilman Roecker  
 Councilwoman Suttles

None

1. Discussion of Rosser Street Traffic Calming Project.

Ian Mattingly, City Traffic Engineer, presented a resident-requested proposal for traffic calming on Rosser Street in the Meadows Subdivision. He said that the presentation will provide some history on the request, the process by which it was pursued, the conditions on the roadway, the proposed plan and the budget impact.

He then indicated the proposed location on Rosser Street in the Meadows Subdivision, extending from west of Eagle Mountain Drive to east of Eagle View Drive. He said that it is the first area of residential homes proceeding west from the new section of Rosser Street and then continues west for approximately 1700 feet to the existing median island in the Meadows Subdivision.

Mr. Mattingly said that Rosser is classified as a major collector and is an important east/west link. Currently 3,500 to 4,000 vehicles travel on this segment of Rosser daily. Volume on the roadway is expected to increase dramatically in

the future as limited alternate facilities are available. Smoketree and Willow Lake Road are the other two east/west routes that serve a similar function.

He said that with 50 feet of paved width and only a double yellow centerline currently, traffic has a wide-open roadway that encourages speeding. Additionally, because of the roadway's numerous curves, many drivers travel close to the curb face and they cut the corners. He said that this creates difficulty for people living along the roadway who must enter and exit driveways, many times without optimal sight distance.

**Traffic Calming Process History** - He said that because of the conditions, beginning in the fall of 2006 local homeowners and the HOA board approached the City to request that traffic calming be considered, using the City Council adopted Traffic Calming Policy to guide the procedures. Many meetings were held neighborhood representatives, the Transportation Coordinating Committee and staff to review and refine the Traffic Calming Plan into its final version. The design being presented today is a result of that effort. Because of the scale of the improvements and the costs associated with them, TCC voted to approve the design and forward the plans to Council for discussion and informal direction.

**Project objectives** – He said that the plan attempts to reduce speeds from the current levels, redirect vehicles out and away from the curb faces allowing additional space near the driveways and cross-streets, clearly defining where vehicles should be by providing improved lane lines and edge lines, and create continuity on Rosser by providing traffic calming measures over the entire length.

**Traffic Calming Features** – Mr. Mattingly said that this would be the third piece of five planned calming installations if they were to be completed; the first being the new section that connected Rosser and made it a through street, which currently has bike lanes and a center-island median; the west end of Rosser which was recently completed and as part of that was narrowed; this would be the third; the fourth would be the Cliff Rose Reconstruction Plan and Traffic Calming that is currently under design as part of Phase 2; and the final being the area west to Campbell, known as Rosser Phase 3.

Mr. Mattingly then reviewed some schematics which indicated the different types of calming methods that would be used.

Councilwoman Suttles asked if when Rosser was opened and that construction was finished any foresight was given to calming at that time. Mr. Mattingly said that it is his understanding that all of the phases of Rosser Street were intended to have traffic calming; this is Phase 3 which is the final phase, and they are just now in design of Phase 2. The traffic calming measures to be implemented here are most likely years out, especially in light of the budget situation. While the neighbors have been very patient and are willing to wait and go through the process, they do want something to go forward.

Councilwoman Suttles asked if she understood correctly that it was \$125,000.00 for those improvements. Mr. Mattingly said that was correct. She said that there is a 25 mph speed limit posted in the area and she asked if they have repeat offenders, and if the police are out there. Mr. Mattingly said that he is positive that the Police Department has been there. Engineering has done recorded studies and they are consistent with a major collector, with approximate speeds of mid 30's to high 30's, in the 85<sup>th</sup> percentile.

Councilman Luzius thanked Mr. Mattingly for the present. He asked how close it was to Blooming Hills. Mr. Mattingly said that it was at least one half mile, or 2500 feet. Councilman Luzius asked about the speed abatement efforts on Phase 2 in the Cliff Rose area. Mr. Mattingly said that currently that design is with Olssen and it has a traffic calming component. He said that they have been meeting with area residents along with staff. Councilman Luzius said that he knows that the people on Pacific have had problems with the traffic coming down the hill toward 89 is coming at a rate of speed making it difficult for them to come out.

Councilman Luzius asked about the old part of Rosser, from Eagle Ridge to Campbell, Phase 3, and when that would be done. Mr. Mattingly said that he did not know the details of that project.

Councilman Roecker said that he thinks they need to get the project done as soon as possible.

Mayor Wilson said that he lives in Eagle Ridge and he can substantiate the presence of the police. Also, he has had two people pass him and it is common for people to tailgate. He said that he supports this project.

Councilman Lamerson asked if he understood that this was going to take several years. Mr. Mattingly said that this specific project is so large that the TCC felt it was important to bring it before Council to inform them and get any direction they would like to give. They can move forward relatively quickly.

Councilman Lamerson asked if he heard correctly that there are 4,000 cars a day. Mr. Mattingly said that was correct. Councilman Lamerson said that he agrees with Councilman Roecker and they need to fix the road and take care of it.

Mayor Wilson said that he thinks the reference was to Phases 4 and 5, Cliff Rose and the portion between Eagle Ridge and that's the one he would like to see done because people blow the stop sign all the time.

Councilwoman Lopas thanked Mr. Mattingly for bringing this forward. She said that she has been in the car with clients trying to show property. She said that

the traffic hurts the property value in the neighborhood and people don't want to see homes in that area.

Councilman Luzius said that he supported the traffic calming outlined. He said that what is disturbing to him is that the City spent so much money to make it so wide, and now they are making it narrower.

Councilman Bell said that he drives that area every day and can attest to the tailgaters. He said that they certainly need to move ahead on it.

Jerome F. Kennedy, 1479 Rosser Street East, said that he has been a resident since 1993. His family lives east of Pacific in the Rosser Street area. Just east of Pacific there is a blind driveway and the house that is set up on the right side of the road 100+ feet is his house. He and his wife are very afraid that with the good intentions of the Council and Mr. Mattingly, their situation is going to get lost in the cracks.

He said that Mr. Mattingly has been cooperative with his efforts in getting a mirror installed so they can somewhat see to make turns. He said that the average of mid 30's for the speed limit is unrealistic; it is more like mid 40's by his house and sometimes it exceeds 50, and almost always violates the bike lane.

Mr. Kennedy said that he didn't know if the Cliff Rose HOA was present, but he would like to hear some comments if they are regarding the areas over and above what was just discussed. He knew it was a thoroughfare and knew it was busy when they moved in, but the "animals" have to slow down their vehicles. He does not believe that this project is going to slow the drivers down. They need constant, everyday, attention by the Prescott Police Department. He is not pointing his finger at them. There has been talk of "Blood Alley" being a serious situation, and it is still a serious situation. He thinks that in their situation they need a speed bump.

Mr. McConnell said that prior to the Rosser Street extension, the latest part of Rosser west of Blooming Hills with the median, the City created a Rosser Street traffic calming project anticipating the increased traffic on Rosser. That project, extending from Willow Creek Road on the west end to State Route 89 on the east end, was broken into several phases and Mr. Mattingly described those phases.

Under design now is a project for the reconstruction of Rosser Street through the Cliff Rose Subdivision, because the road has deteriorated. Additionally, there have been concerns as stated with regard to traffic, speed, proximity, etc. through the Cliff Rose area. That is a fundamental part of the project which is now under design. That project and the alternatives for constructing the project will be brought not only to the neighborhood, to the property owners association, and also to the people most directly affected—those people whose driveways

connect to the street and have to back out or pull into traffic. Also, that will be brought to the City Council for a public discussion about what is in the alternatives and what may not be in them, and the reasons why.

Mr. McConnell said that several years ago a tentative scope for traffic calming through Cliff Rose was brought to the HOA and because of the perceived impact, they did not concur with it. Instead of killing the project, they are embarking with a reconstruction project and bringing that back because now they have several more years of experience.

He said that Mr. Mattingly mentioned the 85<sup>th</sup> percentile speed. That is identified by traffic studies that find that 85 percent of the traffic is going at or below that speed, and that is in the 30's. Traffic calming projects are formulated to address what happens to the 15% that has gone over the 30 mph. There are issues with people speeding and blowing through stop signs and they will all be taken into account in the design of the Cliff Rose project.

Councilman Lamerson said that they have trained people in the community that it is okay to speed, to break the law. For some reason they don't seem to want to put it in the budget to give the Police Department what they need to do their job.

Bill Bonewitz, 1743 State Street, said that they have been trying to do something on Rosser through Cliff Rose since it opened and the speeding continues. The City has done quite a bit. They had a temporary plan and the HOA turned down the early plans for calming, and he is not happy with the HOA; he thinks they have been detrimental in getting something accomplished. He thinks now they are on the right track to improve the road and he hopes their HOA will take a positive approach.

Patricia Sanders, 215 West Rosser, said that she cannot back up from her driveway or turn to get in without getting rear-ended. She said that she is hearing a lot of talk about Cliff Rose, but there is a problem down in the Meadows as well.

2. Discussion of policy framework for extending City service into unsewered developed areas.

Mr. McConnell said that this is a workshop to discuss a policy framework for extending City service into existing or platted or developed areas which are on City water, but rely upon septic or other systems for wastewater treatment and disposal. As a workshop item and examining elements of a policy framework, staff is looking for comments and discussion, but not necessary any formal selection or direction.

The City has had difficulty in getting sewer in to some areas, mainly because of the magnitude of cost, and the City does not and has not had a uniform policy on how to deal with the issue. It does require a policy because of equity issues, cost issues, etc. There are varying opinions on who should pay for it.

Mr. McConnell said that on January 29 they had a brief workshop and there were three maps of the unsewered areas within City limits and outside. What they have done since then is go through all of those areas and ask themselves which are having problems when it rains, and have residents/property owners address the City Council and out of the 12 or 13 areas, they came up with only four areas—White Oak Circle, off of Iron Springs Road; White Cloud Lane, which has not been before the Council in recent years but when they had heavy rains in the past they had some real issues; Antelope Hills; and Prescott North (all listed on Table A attached hereto). He said these are listed as “Unsewered Developed Areas on City Water within the City Limits—Candidates for Sewer Retrofit Projects and Sequence.”

He said that in some ways a retrofit program may be similar to the unpaved streets program, where they go through a list in some planning time frame and retrofit sewers. This is a much shorter list, but they are the top candidates. At the bottom of the form there is an \$8 million estimated cost. He said that this is not a detailed estimate, but based on more specific work done over the years. It is a mix of recent information and other work done in July 2006. The point is not whether it is \$8 million or \$7.7 million, but that it is not \$80 million.

Table B (Unsewered Developed Areas Not on City Water within the City Limits) has one project, Mullen Way, which has been a difficult one to address because of the expectation of water and sewer service by the City. When the engineering was done it became unaffordable. It is listed to keep track of it and to indicate that since it is not on City water, it is in a class by itself.

Table C (Unsewered Developed Areas on City Water within the City Limits) includes projects that are not recommended for sewer retrofit at this time. That is because a lot of the lots are larger and they don't have issues. There are no documented septic tank failures. It is not to say they could not be sewered in the future, but if they don't have a problem at this time, they would ask why spend the money on it. They would like to maximize the recharge, but on the other hand for the \$8 million it might be nice to have everyone on sewer and all of the waste goes to a treatment plant and gets recharged, but the cost benefit is questionable.

Mayor Wilson said that he likes his approach of segregating the projects into what they need to do versus the whole area. He asked if those listed on Table C should be monitored as they go along. Mr. McConnell said that they absolutely should, and one way would be through the County Health Department that issues septic tank permits.

He said, in referring to Table D (Unsewered Developed Areas on City Water outside the City Limits) some residents may not know that the City provides water outside of the City limits. Most of the time the water goes to development which does not have return flow of wastewater to a treatment plant. There are exceptions, but this list has projects not recommended for retrofit because (1) it is outside the City limits, and (2) there is an absence of septic tank failures.

Mr. McConnell said that is the first piece of the puzzle. He said that they have been made aware of another area near the Meadowridge area for which the septic tanks are failing and they have to pump their septic tanks and have it hauled to the sewage treatment plant until something happens. He said that it is not a lot of lots, but it is in the same rocky area and when they get into those areas and have small lots, they have problems.

He then reviewed time frames for a sewer retrofit program; start and duration of a program would be five years at a minimum; financing of capital expenditures are normally a 25-year term and the property owner connections will depend on the policy to be determined.

Mr. McConnell said that **Exhibit 1** is a listing of items that the Council may want to consider in formulating a policy. In looking at various policies, there are different ways of doing it, but it comes down to either mandatory or nonmandatory connection.

He then reviewed the various mandatory scenarios, noting the first on the list that requires that when service is available to property they have to connect, and that can either specify a certain time frame or distance. Councilman Luzius asked how they would finance that connection. Mr. McConnell said that in the absence of any other policy, the property owner would have to borrow the money. He said that some communities make monies available, but in order to do that, they have to have them. He said that most of the time they finance.

He said that in terms of mandatory connection it is very typical that if sewer is available and the on-site septic fails, they go to the Health Department for a permit and they say they cannot get a permit to replace it—they will connect to the sewer.

He said that mandatory connection is important if there is a project that contemplates using bonding, such as an improvement district. If they go out and sell bonds, but have no mandatory connection, then there is no revenue stream.

He said that in some areas they require connection when a property is sold, if sewer is available. He said that whatever mechanism is used has to be legally enforceable.

He said that there is also a problem with a nonmandatory system because sewer systems do not work if there are only a few connections. Depending on what type of system it is, there are specific design and performance criteria. They have to be aware of what kind of system they are going to go with, and think about it in terms of whether it will operate depending on the connection policy.

Mayor Wilson asked if it is possible to have a nonmandatory system and upgrade it to a mandatory. Mr. McConnell said that the Prescott North 30% design has alternatives and those compare mandatory versus nonmandatory; they have configured the system for either scenario. There is a need to change some things, but it is possible.

(1) He said that if there was a policy adopted that did not require connection, they have to think about the funding source. If there is no revenue to pay the bonds, they will not be sold. Typically a nonmandatory scenario would require a funding source from other than an improvement district.

(2) Uncertain capital recovery for system building cost due to uncertain rate of connections. They don't know how many connections they are ever going to get at one time frame so there is no way to recover their capital.

(3) Typically the property owner has to secure their own financing for a system. The City goes in and puts in sewer mains down the street, and no one is mandated to hook up, there is no improvement district, and there is no mechanism for financing the on-site cost on the property, so each time a person comes in they have to go out and get their own financing for the on-site costs and buy-in or impact fee.

(4) The operational cost to the system is not recovered; they have created a new system, but they don't have anyone on it, yet they have to operate it. There is no one paying the rates on the new system, which means that the other sewer customers have to pay.

(5) He said that they need to think about the scenario that if a system is created that the hook-ups are not mandatory and only properties with failing septic or other disposal systems are required by Health Department to connect, the public health and safety, including water quality in creeks and lakes, will continue to be an issue. That is one of the driving forces for a sewer retrofit program because when they have failing septic tanks then the quality of water in Watson and Willow Lakes is an issue.

Councilwoman Suttles asked if Yavapai County could come in and fine a property owner or shut a system down if it is failing. Mr. McConnell said that the City of Prescott does not have a health department; it relies upon the County Health Department for these types of items. When someone has a failing system and they go to Yavapai County Health Department for a permit to replace it,

Yavapai County Health is first going to ask if there is a public sewer system available. If so, they will have to connect. If not, then typically, unless something else is going on, they will issue a permit for either a conventional septic system or an alternative system. Sometimes it will mean that they will have to have their tank pumped out frequently at great expense.

Discussion then turned to **Item III** of the outline, **Funding and Financing**. Mr. McConnell said that primary funding sources available to the City at the present time are sewer rates and sewer impact fees. Sewer rates are user charges and are seen on the water bill, calculated as some percentage of a customer's water consumption. Sewer impact fees are paid for by new demand which can be a new subdivision that includes the building of a new sewer system and the houses that connect pay a buy-in fee, which is calculated by the number of fixture units at the present time. It is \$1,600 for an average house, but it depends on the size.

The second type of impact fee is still a buy-in fee, but it would also apply to a sewer retrofit area, North Prescott as an example. If the City runs a City sewer system into North Prescott and properties connect to it, they create a demand just like someone in a new subdivision. The system has to have adequate capacity from that house in the retrofit area all the way to the wastewater treatment plant and out to the recharge facility. There is an increment of additional demand for impact on the City's wastewater facility.

Mr. McConnell said that **Exhibit II** is a summary of financing mechanisms that might be considered for a retrofit program. The options are a community facilities district, improvement district, reimbursement district, zoned impact fees, and the sewer fund.

He said that it does not look like a community facilities district has great applicability to a program of the type they are discussion. Typically it is used for large areas with few owners, and it does require an election. It is a separate political subdivision. A lot of huge developments might use a community facilities district to create a funding mechanism for very expensive utilities and transportation infrastructure. The City has a policy for the use of community facilities district, adopted in the past.

Mr. McConnell said that the next option is an improvement district. It is a one-step formation process whereby the Council adopts a resolution of intent to form a district. No vote is required to form it; however, the formation of the district can be protested out, meaning there is a public hearing process prescribed by statutes where property owners have very specific opportunities to appear at a public hearing before the Council and formally protest. If the number of protests is sufficient, then the district cannot go forward. He said that one of the benefits of an improvement district is they get long-term financing availability, such as 25

years. More affordable financing is available to the property owners, although “affordable” is a relative term.

He said that they have reimbursement districts in the City and it does not require a vote; a resolution is adopted by the Council. For policy consideration, this may be an option the Council may want to consider if eventually the Council does not opt for an improvement district, or if an improvement district fails.

Mayor Wilson said that both Prescott Valley and Chino Valley did sewer retrofit projects and asked what mechanism they used. Mr. McConnell said that in Prescott Valley it was improvement district mandatory connection.

Mr. McConnell said that in a reimbursement district there is no obligation to connect at any time, consequently they get into the issue of financing it, how they make it financial feasible and how that would impact the operation of the system. Additionally, the property owner has to obtain their own financing.

Mr. McConnell said that it did not look like zoned impact fees would be very workable in this case. In addition to the complexity of impact fees, there are studies that have to be done and updated periodically, and there are real issues with legal questions and assaults on impact fees in the Legislature. There are always active bills in the Legislature to tie the cities’ hands.

The Sewer Fund consists of 16,800 customers. The Sewer Fund is an enterprise fund of the City, accounted for separately, and has two funding sources—user rates and impact fees. He said that if it was decided to create a system in one of the unsewered areas and finance it through the Sewer Fund, the sewer retrofit projects would be included with other sewer projects in an annual capital improvement program. There would be no separate accounting required for new customers versus existing funds, but basically other sewer customers that receive no direct benefit contribute to the sewer extension cost and it becomes an issue of equity.

Councilwoman Suttles said that they have had five different financing mechanisms and two have been scratched, so three are the ones being looked at. Mr. McConnell said that was correct.

Councilman Luzius said that he understands that in North Prescott they are building homes right now and they are going on septic tanks. He asked why they continue that if ultimately they have to go into sewer. He asked if there would be any advantage to charge people that are not on sewer the same rate of those that are on sewer. Also, if they install a septic tank he is hearing that they do not pay an impact fee unless they hook up to the sewer system.

Mr. McConnell said to answer the first question, he is not an attorney but he believes the attorney would say that they have no basis for denying those

building permits. They are being applied for and issued pursuant to the City Code and state law. This scenario may be a consideration in formulating a timeframe for connection. Also, they cannot levy a sewer rate if they do not get City sewer; there is no such thing as an in-lieu fee. The same thing would apply to impact fees as they are very carefully regulated and specified by state law. In order to collect an impact fee there must be an impact.

Mayor Wilson asked if there is any relief from the Arizona Department of Environmental Quality or the Federal government in terms of some of the retrofits. Mr. McConnell said that they can investigate that and the Council would probably want that investigated as they go forward. A lot of the 208 monies, grants, for sewer systems have dried up. If there are grants available, many times they are targeted for low income or disadvantaged and they have a difficulty with meeting the requirements for that.

Councilman Roecker said that if they cannot charge someone that is not currently hooked up for sewer, he asked how they charge someone that is hooked up but receives no benefit from the retrofit. Mr. Kidd said that is a good question. One of the ways they could look at it is they don't receive a direct benefit, but as a citizen they don't have septic seeping. Mr. McConnell said that it depends on how they define community. Perhaps "community" is that everyone doesn't get direct benefit all the time, but there are other more general benefits, such as improving the water quality in Watson Lake. If the problem of water quality is not dealt with and ADEQ requires them to deal with it, then it will come back on the entire City of Prescott.

Councilman Roecker asked if the nonsewered people would get assessed whatever fines ADEQ is assessing the City. Mr. McConnell said that there is no distinction; it is the City of Prescott and everyone pays. Mr. Kidd said that everyone would pay on a consent decree.

Councilman Luzius said that what he understands is that there are 16,800 sewer customers and it is okay for them to be levied a fee to build a sewer fund for those that need sewage; however, it is not okay for those that need sewer to be assessed anything at all. Mr. McConnell said that is pretty accurate.

Mr. McConnell said that **Item IV (Supplemental Funding Sources for Sewer Retrofit Projects)** shows that if there was an improvement district, then the Sewer Fund could contribute, calling it supplemental funding. In that scenario the One Cent Streets Fund could theoretically contribute for street restoration work. If they go in and cut up the streets and put in sewers, restoring the streets, that would be a street expense and would supplement the sewer project.

In referring to **Item V (Financial Plan)** of the outline, Mr. McConnell said that what he was trying to do is summarize the steps on the formulation of policy and

look at how they may go forward with a financial plan. He then reviewed a couple of examples.

Mr. McConnell said that they have said many times that the formulation of an unsewered areas policy and its implementation cannot be done by itself. They also have to consider budgets and they are now in the budget process for Fiscal Year 2009. They are now in water and wastewater rate and fee setting process, and the largest area for consideration is North Prescott. He then reviewed **Exhibit IV**.

Councilwoman Suttles asked if there would be any public input when they come back in March. Mr. McConnell said that is the Council's prerogative, but the public usually does better if they see something to which they can react. His suggestion would be that the public input would happen in late March, but more realistically in April. By the next workshop they want to have narrowed it, formulated some specific alternatives and then get to the public.

Mayor Wilson thanked Mr. McConnell for all of his hard work; he thought it was a great approach. He said that the Council made a commitment at the Goals Retreat to move forward on development of a policy. He thinks they have eliminated some of the options.

Peter Busciano, 2260 Alta Vista, brought to Mr. McConnell's attention that there was no mention about effluent water and the money the City stands to gain from the selling of that effluent as recovered through the sewer system. Mr. McConnell said that the reason they have sewer rates and impact fees is because the City does not make money in collecting, treating, recharging and recovering effluent. There is no credit that any sewer customer receives at the present time. To the extent that they do sell effluent in the summer time, and there are contracts for that, then that is simply a revenue to a fund which still requires people to pay into for it work financially.

Mr. Busicano said that he is the author of a June 25, 2007 letter that was sent to each of the Council people, and he provided a copy today to Mayor Wilson and Councilwoman Lopas. He said that the letter brought up several issues, including what would happen if the City paid for part of the sewer installation. He said that he is representing the North Prescott Improvement District. The attempt was to have a sewer improvement district and it was voted down by 56%, and he then read a part of his letter.

Gary Worob, 1638 White Oak Circle, said that he was before the Council in May of 2006, and the information he is hearing now is different than he heard then. He thinks it is grossly lacking in facts and he encourages the public to come to the workshops and do input. He has asked to be on the 2050 Committee because there are some of them that have done a lot of research in the future sewers and what they do with their waste, and he believes they have some input

that is valid. He said that the price they were told for White Oak Circle was \$66,000 not \$44,000.

3. Adjournment.

There being no further discussion, the Prescott City Council Workshop of February 26, 2008, adjourned at 3:02 p.m.

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JACK D. WILSON, Mayor

ATTEST:

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ELIZABETH A. BURKE, City Clerk

PRESCOTT CITY COUNCIL  
STUDY SESSION  
PRESCOTT, ARIZONA  
MARCH 4, 2008

A STUDY SESSION OF THE PRESCOTT CITY COUNCIL WAS HELD ON TUESDAY, MARCH 4, 2008, in the Prescott Municipal Building, 201 S. Cortez Street, Prescott, Arizona.

**CALL TO ORDER**

Mayor Wilson called the meeting to order at 3:00 p.m.

**INTRODUCTIONS**

**INVOCATION:** Major Trimmer of the Salvation Army

Major Trimmer of the Salvation Army gave the invocation.

**PLEDGE OF ALLEGIANCE:** Councilman Lamerson

Councilman Lamerson led the Council and audience in the Pledge of Allegiance.

**ROLL CALL:**

**PRESENT:**

Mayor Wilson  
Councilman Bell  
Councilman Lamerson  
Councilwoman Lopas  
Councilman Luzius  
Councilman Roecker  
Councilwoman Suttles

**ABSENT:**

None

**SUMMARY OF CURRENT OR RECENT EVENTS**

City Manager Steve Norwood reported that Chad McDowell, Field Operations Manager, will be applying for a \$20,000 grant from the Arizona Department of Environmental Quality that would help offset the costs of the Household Hazardous Waste Day.

Mr. Norwood then introduced Mark Nietupski, who, in turn, introduced the new City Engineer, Scott Tkach, who was replacing Dale Wachs who recently retired. He said that Mr. Tkach brings with him nine years of experience with the City of Avondale.

## I. PROCLAMATION

### A. March 2008 – *American Red Cross Month*

Councilman Luzius read the proclamation proclaiming March 2008 as *American Red Cross Month*, and invited all of the Red Cross volunteers with the Grand Canyon Chapter forward.

### B. March 2008 – *Red Light Running Awareness Month*

Mayor Wilson read the proclamation proclaiming March 2008 as *Red Light Running Awareness Month*.

## II. DISCUSSION ITEMS

### A. Acceptance of bid from U.S. Transportation Services and purchase of 20 six-yard and 20 eight-yard front-loading refuse containers for the amount of \$34,433.14.

Mr. McDowell said that the department went out for bid and received four bids, with U.S. Transportation Services submitting the lowest responsive bid, and these are budgeted in this fiscal year.

### B. Approval of an engineering services agreement on behalf of the Central Yavapai Metropolitan Planning Organization (CYMPO) with Civiltec Engineering, Inc., in association with HDR, Inc., for the SR 169 Connector to Fain Road and Chino Valley Extension corridor studies, in an amount not to exceed \$538,552.00.

Deputy City Manager Craig McConnell said that this item is to approve an engineering services agreement for preparation of two planning-level corridor studies, one is the SR169 to Fain Road Connector and the other is the Chino Valley Extension, and these are both in the CYMPO Plan.

He said that the City does provide personnel, purchasing and accounting services for CYMPO. This is an agreement which is being routed through the City as the City is the purchasing entity. Jodi Rooney is present today for any questions. The scope of work for these consists of traffic analysis for purpose of identifying a half-mile wide corridor in which these future facilities could be located. These two are contemplated and identified by the CYMPO 2030 Regional Transportation Plan which was completed about two years ago.

Mr. McConnell said that at their meeting of February 20, 2008, the CYMPO Executive Board did approve by motion entering into this agreement with Civiltec/HDR and approved a request that the agreement be routed to the City for approval, pursuant to the MOU for purchasing services.

He said that the project itself will be managed by the Yavapai County Department of Public Works. They were also project manager on the CYMPO 2030 Plan. A timeline of about 12 months is anticipated. With respect to funding and budgeting, during the annual budget process CYMPO comes to the City and fills out a capital projects list like all City departments do. This is one project listed and it is also listed in the CYMPO annual reporting document.

He said that there is a project within the City of Prescott system for this work. The cost of the agreement, \$538,552.00, does exceed the amount budgeted; however, the City does have appropriation authority in the one-cent sales tax fund to award this contract.

There is a local match for this project; on projects of this type each of the CYMPO participating entities allocate for local matches. The local match is \$134,660.00 and of that Prescott's portion is \$49,824.00.

He said that some may question why the City would participate since these facilities are not within the City. CYMPO acts as a region; some projects will be located in Prescott, Prescott Valley, and the unincorporated County. They all participate as a region. At the next CYMPO TAC meeting the City will ask them to program two years of construction money for participation in the Side Road Interchange. Looking at this regionally, they understand they're in it for the long-haul.

Councilman Luzius said that he appreciates the explanation of the regional aspect. He said that looking at the schematic, it looks like the 169 to Fain Road would also service Dewey-Humboldt, and he asked why they are not a contributor. Mr. McConnell said that there have been various discussions with Dewey-Humboldt in the past, but they have not been ready. They just recently incorporated and do not have a lot of financial abilities. They are included in the planning; they are just not at the table yet.

Councilman Luzius said that if they are doing highways to improve their flow as well as the rest of the area, it would be proper for them to participate. He said that he will bring it to the Board.

Councilman Roecker asked if there is any legal requirement that Dewey-Humboldt participate financially. Mr. McConnell said that he did not believe so. In the past three to four years there was an interest in bringing them onto the Board. Councilman Roecker said that he was there when it was formed and he recalls that they wanted them to participate. He believes it would be appropriate to ask them again.

- C. Approval of Revision of Plat for Lot 8, Block 10 Fleury's Addition, dividing the existing lot into three lots, located at the northeast corner of Willow Street and Western Avenue; Applicant Mike Terry & Patricia Munson, Gary Green, Aspen Creek Engineering (RP08-001).

Community Development Director Tom Guice said that this is a revision of plat for Lot 8 of Block 10 of the Fleury's Addition. It is located one block north of Planned Parenthood, at Willow and Western Avenue. He said that the various reviewing departments have reviewed this and approved it.

- D. Adoption of Ordinance No. 4643-0845 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona abandoning a portion of unused and unimproved Lorraine Drive located north of Willow Creek Road and authorizing the Mayor and City staff to take all necessary steps to effectuate such abandonment.

Engineering Services Director Mark Nietupski said that this is a request to abandon a portion of Lorraine Drive located north of Willow Creek Road and east of Crossings Drive. It was initiated by Mr. Ty Myers, the developer of the Crossings Business Park. A portion of Lorraine Drive was abandoned previously, to the north, and this would be consistent with that as well. The segment in the middle is being discussed by the adjacent property owners for the same purposes. Through the abandonment the City would retain public utility easements all along the length and the City would receive \$24,165.00.

- E. Adoption of Resolution No. 3884-0852 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona authorizing the City of Prescott to enter into an Assignment Agreement Pertaining to the Amended Effluent Sales Agreement Contract No. 97-162A with Hassayampa Golf Club, L.L.C., thereby assigning the rights and obligations under the existing agreement, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Assistant City Attorney Tom Lloyd said that this is an item for the adoption of a resolution to approve an assignment of a contract with regard to the Hassayampa Golf Club. There is an attachment to the agenda item that

is the assignment and the original document is attached as well. The new entity would take over the obligations, with regard to the effluent, of the old Hassayampa entity. Councilwoman Suttles asked why this was brought forward.

Jim Atkinson, attorney for the Golf Club at Hassayampa, Inc., the new entity, said they are comprised of over 170 golfing members, many of which are residents of the Hassayampa Golf Club. He said that for over a year they have been negotiating with Hassayampa Golf Club LLC (Troon), the developer of the club, to take over management and ownership of the club. As part of those negotiations, this has been a key element because without the effluent, the golf club does not exist.

He said that the purchase is now to the point where it is going to happen this week, with a contingency that the assignment is assigned. It is freely assignable as long as the entity acquiring it has the financial ability to operate and maintain it, and assumes that obligation in writing. The assignment document is what is needed to accomplish that, and there are assurances that have been provided to the City as well as copies of the financial data regarding the new entity and they are prepared to take over management and operation of the golf club this week, assuming the closing happens this week.

Mr. Atkinson said that the entire infrastructure was built back in 1997 and the new entity will take over their obligation to maintain and operate. As part of that, the amended agreement of 2000 required a sinking fund be established in the amount of \$250,000.00, but that has not been done to date. The new owners will, upon closing, contribute that \$250,000.00 account. There was also an accounting issue that they have helped resolve.

Councilwoman Suttles asked if everything stays the same with the new group taking over, and everyone has signed on to make the move. Mr. Atkinson said that there are some that do not agree with it, but they believe this new entity will be better able, as a local entity, to make sure it succeeds and the development continues to be a real asset of the community.

Councilman Luzius asked how this could be finalized if the Council would not be voting on the assignment for another week. Mr. Atkinson said that it is contingent upon the vote, but it would not happen without it.

Councilman Luzius asked the city manager if a cost for the effluent had been established. Mr. Norwood said that it does not change the contractual obligation that the City has with Hassayampa. Mr. Atkinson said that it changes nothing in the agreement; it is a clear assignment and

assumption. Councilman Luzius asked what that rate was. Mr. Woodfill said that believed it was a flat rate of \$25,000. He said that Hassayampa pulls the effluent off and pays for the treatment, so it not a per gallon item.

Councilman Luzius said that what he was getting at was that Prescott Valley has already determined the price of an acre foot of effluent credits as being somewhere around \$25,000 and he was wondering how much effluent the City is providing to the golf course for \$25,000 a year.

Ms. Tucker said that they average between 250 and 300 ac. ft. a year. One thing to keep in mind is that Prescott Valley's acre foot of effluent is a 100-year supply; this is a one-year supply.

Councilman Bell asked Mr. Woodfill if he was comfortable with the financial commitment of the LLC. Mr. Woodfill said that it complies with the existing agreement.

Councilman Bell asked who the principals of the LLC are. Mr. Atkinson said that it is an Arizona non-profit corporation. The principals are the members, comprised of approximately 170 members. He said that Ed Patterman is the President.

Mayor Wilson said that he discussed this with the City Attorney regarding this and he believes it is a win/win with the situation of Troon never being able to fund their sinking fund.

Jim Musgrove, office at 1135 Iron Springs Road, asked if the effluent agreement being assigned was the one of 1995 and amended in 2005. Mr. Lloyd said that he was not involved, so he could not say. Ms. Tucker said that it looks as if it is the amended agreement of 2000.

Mr. Musgrove said that he represents Steven Shenefiel and Amy Hurst, who own Lot 21 Conifer Ridge in the Hassayampa community. There is a problem of long standing of which the City, all of the Troon entities, the Golf Club and the new golf club acquisition committee have been aware of for over two years. Yesterday he drafted and mailed it to eight addresses, one of which was Mayor Wilson, with a copy to Gary Kidd, in the form of a demand that certain problems existing with the sewer line be addressed, or the addressees are going to suffer the consequences.

Mr. Musgrove said that as of his phone calls this morning to the Mayor's office and Mr. Kidd's office, the letter had not yet been received so a copy was faxed to each. Mayor Wilson indicated that he had a copy.

He said that he listened to Mr. Atkinson's delivery and the questions from Councilwoman Suttles and Councilman Bell. Taking off his attorney's hat

and putting on the taxpayer's hat, he has some questions and concerns regarding the economic consequences to the citizens and taxpayers of the City of Prescott. They have gone some 15 years without the \$250,000 sinking fund, and he was surprised at the discussion that they don't have a financial statement as to when, and the capability of, the \$250,000 being put up.

Speaking on behalf of his clients, they are aware that this problem doesn't exist only on his client's property, but also on other properties. Their problem is that they have been told by all the entities that there is a forced sewer main under pressure and various types of electric power lines that have been installed across his client's property in a non-easement area.

Mr. Musgrove said that it should not come as a surprise to anyone in the room, especially those in the engineering department because they have been aware of this. He is bringing to this Council's attention that this is something to think about. The City has some responsibility because under the 1995 and 2000 effluent agreement, and various plats on file, they have the ownership of the sewer lines. His clients have been told for two years that nothing is going to be done.

Mayor Wilson asked who told them that. Mr. Musgrove said that Troon and the City of Prescott both told them that. He said that he was bringing this to the attention of the Council because this is a Study Session, for them to study the issue. The Council needs to look at this further before going forward, and he was surprised that the Mayor had not said anything about receiving his letter.

Mayor Wilson asked Mr. Lloyd to comment on what had just been said. Mr. Lloyd said that he did not think the existence of lines, if there is an encroachment, affects the assignment; the new entity will inherit the problem. The City is still the beneficiary, and nothing changes. He said that the new parties need to solve the problem.

Councilwoman Suttles asked that this item be pulled from the Consent Agenda to have a week to look at it further.

Councilman Lamerson asked why the \$250,000.00 account was never required to be developed, as lined out in the original agreement. He said that he was not aware that the sewer had been causing problems in that area and he agreed to not have this item on the Consent Agenda. He said that they did not have adequate information.

Councilman Luzius said that he agreed to pull it from the Consent Agenda.

Councilwoman Suttles asked if they will have more information when it is pulled. Mr. Norwood said that Mr. McConnell has some more information now, but they will wait and get fully prepared for next week's meeting.

F. Update on Interim Arsenic Treatment Project.

Utilities Director Jim Ciaffoni said that with respect to the last item, he recently became aware of the problem with the force main, but he does not have all of the facts on it. Councilman Roecker said that he does not believe they should be discussing this any further as they have moved on to the next agenda item and the principals have let the meeting. Mayor Wilson agreed and asked Mr. Ciaffoni to continue with his update, and bring back his other information to next week's meeting.

Mr. Ciaffoni said that he is pleased to report on the City's ongoing efforts to install interim arsenic treatment at six of the City's well sites in the Town of Chino Valley. He said the Conditional Use Permit process for Well Sites 3 and 6 have been delayed for a couple of months now over disputed litigation, and the Conditional Use Permit application for Well Site 1 and 2 was rejected early by Chino Valley in September 2007 under the premise that the Big Chino Water Ranch project would go ahead, and it would have been preferable on Chino Valley's part to consider the accumulative visual impact of both of those projects at the same time. It was not recognized until recently that the timing of that project is uncertain and the processing of Well Site 1 and 2 should not be delayed as a result of that. Thanks to recent efforts of the mayors and councils of Prescott and Chino Valley, as well as department heads, those obstacles have been overcome and they are moving ahead on this.

Mr. Ciaffoni said that he spoke with Layne Christensen, the city's interim arsenic equipment manufacturer, and they are telling him that they expect to submit the building permit for Well 6 on March 17, which should allow them to begin installation of equipment by May 1. In the Council memo he had listed that date as April 1, but after conversations with them they have had to remobilize some of their people and organize their schedule and resources as a result of this delay. They will begin on May 1 and have the last site installed by October 30.

He said that the City is also working on processing a request for an exemption from ADEQ and EPA so that the compliance deadline for the entire effort would be postponed until January 23 of 2009. In trade for that, the City has to develop a work plan, and he expects that to go forward with no problems.

Councilwoman Suttles asked if this was to be completed in January of 2007. Mr. Ciaffoni replied that it was. Councilwoman Suttles asked if they

were that far behind because of dealing with Chino Valley and trying to get the Conditional Use Permit. Mr. Ciaffoni said that was correct.

Councilwoman Suttles asked if Layne Christensen was asking to be paid for interest because they were waiting for the City, and she asked how much they were talking. Mr. Ciaffoni said that in initial discussions with Layne Christensen, they fabricate all of the equipment on site at their yard in California, so all the pieces have been procured and assembled. The capital investment was around \$1.5 million, and they have had some preliminary discussions on what the rate of interest should be and 8.5% was discussed. Since that discussion, Layne Christensen has been able to take some of that equipment and move it to another project, which does not delay the City's project, and that will be a savings. They are looking at something around \$8,000 to \$10,000 a month.

Councilwoman Suttles said that the City has to pay the contractor because of the continual delays with Chino Valley trying to get this going. Mr. Ciaffoni said that the interest charges would only continue until they actually start installing the equipment and get back on their normal schedule. They have not come to terms yet on what the beginning date should be. Under the terms of the original contract, their first payment would have been due around the end of February, and it would be logical to have that as a beginning point, so they would be looking at two or three months' worth of interest. Mayor Wilson said that he would recommend they consider around \$33,000 because he had heard the number \$11,000/month.

Councilwoman Suttles asked if the money comes from the arsenic budgeted amount. Mr. Ciaffoni said that it would come from the operations budget under wastewater. Councilwoman Suttles said that it gnaws at her. Mayor Wilson said that the original number was higher and he had a conversation with Gary Kidd about this, and through some intervention on the part of the City they were able to reduce the number. He said that he understands why it gnaws at her, because he does not like the position they were put in either, but he wanted to get it off dead center, and there were not a lot of alternatives.

Councilwoman Suttles said that they knew it was coming. The Council has been appraised of the delays, but she questioned where "regional cooperation" was with the City having to pay additional interest because they could not get a Conditional Use Permit to do what they were told to do by the Feds.

Mr. McConnell said that the City entered into a contract with Layne Christensen and that payment consists of two components, one is an equipment lease, and the other is the cost of actually treating the water.

If the City and Layne Christensen treated no water, there would still be the cost of equipment lease. Mr. McConnell clarified that the deadline was January of 2008, not 2007. Layne Christensen has a contract with the City of Prescott and Layne Christensen expended capital to fabricate the equipment with the expectation that they would be able to start billing the City effective January 1, 2008 at \$50,000 per month, or whatever the equipment rental amount was. They were unable to do that because of the permitting issues, so instead of the City incurring the \$50,000 lease for the equipment, they have been unable to install that equipment, and all they are asking for is the interest on that capital which is much less than the \$50,000 a month. It is an additional expense because the City is not getting the benefit of that equipment; on the other hand, it is not the full \$50,000 which they would have had to pay for the equipment lease.

Councilwoman Suttles said that she appreciates the negotiation with them in getting them where they are now.

Councilman Lamerson said that he understands they have to do this; he is not aggravated at Layne Christensen, nor at Mr. Ciaffoni, but the issue of "regional cooperation" is horse manure when a City like Prescott cannot be in compliance with Federal regulations because they have another organization holding them hostage. He said that "regional cooperation" is not in his vocabulary at this point.

Councilman Bell said that he assumed that they will be billing the Town of Chino Valley for the interest expense. Mr. Norwood said that they can bill them. Councilman Bell said that then they could follow it up with collection procedures. They have caused this expense and it is only right.

Councilman Luzius asked if there is any recourse. Mr. Lloyd said that he did not know what the basis was for the resolution of the problem between City of Prescott and Chino Valley and what the basis was for reaching an agreement. With a resolution of this matter, he can pretty much guarantee that that resolution has not taken as long as it would have to litigate the matter of obtaining the permits.

Councilman Luzius said that he appreciated that fact, but the fact is that Chino Valley still caused us undue financial harm.

Mayor Wilson said that it is a situation of whether they move forward or move backward. He appreciates the situation where Chino Valley has caused the City some problems, but they have a negotiated settlement by discussions to avoid litigation, and now they are going to put the treatment in place. They can get stuck there or look to the future and see how they can try to improve the relationship.

- G. Approval of the Minutes of the Prescott City Council Regular Voting Meeting of February 26, 2008, the Workshop of March 4, 2008, and the Study Session of March 4, 2008.
- H. Selection of Items to be placed on the Regular Voting Meeting Agenda of March 11, 2008.

Councilwoman Suttles said that everything would be on the Consent Agenda, other than Item E (Items A, B, C, D and G); F was a report.

### III. ADJOURNMENT

There being no further business to come before the Council, the Prescott City Council Study Session of March 4, 2008 adjourned at 4:02 p.m.

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JACK D. WILSON, Mayor

ATTEST:

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ELIZABETH A. BURKE, City Clerk

PRESCOTT, ARIZONA  
SPECIAL COUNCIL MEETING  
MARCH 11, 2008

A SPECIAL COUNCIL MEETING OF THE PRESCOTT CITY COUNCIL WAS HELD ON TUESDAY, March 11, 2008, in the Prescott Municipal Building, 201 Cortez Street, Prescott, Arizona.

1. Call to Order

Mayor Wilson called the meeting to order at 2:45 p.m.

2. Roll Call

Present:

Absent:

Mayor Wilson  
Councilman Bell  
Councilman Lamerson  
Councilwoman Lopas  
Councilman Luzius (waited in the parking lot)  
Councilwoman Suttles

Councillman Roecker

3. Demonstration of new enforcement vehicle and scales used by Prescott Police Department for weighing commercial vehicles by Officer Garry Grahlmann.

Officer Garry Grahlmann gave a demonstration in the City Hall parking lot of the new enforcement vehicle and scales used by Prescott Police Department for weighing commercial vehicles.

A break was held between 2:55 p.m. and 3:00 p.m. at which time the meeting reconvened back in the Council Chambers. The audience was asked if anyone had questions regarding the demonstration; no questions were raised.

4. Adjournment.

There being no further discussion, the Special Meeting of the Prescott City Council of March 11, 2008, adjourned at 3:02 p.m.

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JACK D. WILSON, Mayor

ATTEST:

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ELIZABETH A. BURKE, City Clerk

<b>COUNCIL AGENDA MEMO – (March 25, 2008)</b>	
<b>DEPARTMENT:</b> Legal	
<b>AGENDA ITEM:</b> Approval of purchase agreement for the Hazelwood property in the Granite Dells in the amount of \$2,900,000.00.	

<b>Approved By:</b>		<b>Date:</b>
<b>Department Head:</b> Gary D. Kidd		
<b>Finance Director:</b> Mark Woodfill		
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>		03/18/08

**Item Summary:**

Consideration and possible purchase of approximately 35 acres of real property, commonly referred to as the Hazelwood property, located in the Granite Dells for open space purposes.

**Background:**

The Open Space Acquisition Committee and Councilwoman Lopas have pursued acquisition of real property in the Granite Dells. The Hazelwood property consists of approximately thirty five (35) acres located on Highway 89 in the Granite Dells area, identified by Council as one of its priority areas for open space consideration. This proposed agreement provides for a purchase price of Two Million Nine Hundred Thousand Dollars (\$2,900,000.00), payable in two installments, with the first due 60 days after the opening of escrow, and the second due on or before July 31, 2008. An initial payment of \$10,000.00 is required at the inception of escrow.

The property is currently the subject of a mitigation plan required by the Army Corps of Engineers, to be completed under the terms of the agreement by the seller, initially, by April 15, 2008, and which is being done pursuant to a contract the seller has with Biozone, Inc. Once the City obtains title to the property, the contract with Biozone will be assigned to the City, and that contract provides for continued plant maintenance and satisfaction of other requirements of the Corps of Engineers. There are additional terms of the contract which allow the Council to purchase, for the same per acre price as the original purchase, three additional parcels commonly referred to as the Weatherhead, the Scheid and the Oasis parcels, provided boundary and title issues are cleared up in favor of the seller, Mr. Hazelwood. These parcels total approximately 0.79 acres. The City is entitled to an inspection period until May 20, 2008, for examination of the property and has the right to cancel the purchase in its discretion during this period. The other terms of the purchase agreement are standard, incorporating our customary City language and provisions for such transactions.

**Agenda Item:** Approval of purchase agreement for the Hazelwood property in the Granite Dells in the amount of \$2,900,000.00.

**Budget**

Sufficient funding has been budgeted in the current fiscal year (FY08) and is available to enable this purchase in the amount of \$2,900,000.00 (source: One Cent Sales Tax for Streets and Open Space).

**Attachments** - Proposed Real Estate Purchase Agreement and attachments

**Recommended Action:** **MOVE** to approve the purchase agreement for the Hazelwood property in the Granite Dells, and authorize the Mayor and City staff to take steps necessary to complete the purchase of this property.

**REAL ESTATE PURCHASE AGREEMENT  
AND ESCROW INSTRUCTIONS  
(Vacant Land)**

THIS REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS (“Agreement”) is made and entered into by and between The Richard L. Hazelwood Revocable Living Trust (“Seller”), and the City of Prescott, an Arizona municipal corporation, (“Buyer”).

**WITNESSETH:**

WHEREAS, Seller owns certain real property consisting of approximately thirty five (35) acres located on Highway 89, Yavapai County, Arizona, in the area commonly known as Granite Dells.

WHEREAS, Seller desires to sell and Buyer desires to purchase such real property in accordance with the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties hereby agree as follows:

1. DESCRIPTION OF PROPERTY.

The real property which is the subject of this Agreement consists of approximately thirty five (35) acres located on Highway 89, Yavapai County, Arizona in the area commonly known as Granite Dells (the “Property”) as more fully described in Exhibit “A” attached hereto.

2. AGREEMENT TO SELL AND PURCHASE.

Subject to the terms of this Agreement, Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, on the terms and conditions herein set forth, the Property, together with all privileges, rights-of-way, easements, licenses, water rights, and other rights and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such real property; excepting, however, three (3) small parcels as herein described on Exhibit B attached hereto and commonly referred to as the Weatherhead parcel, the Scheid parcel and the Oasis parcel shall be excluded from this sale at this time for the reason that said parcels are involved in a dispute as to ownership. Such parcels total approximately .79 acres. In connection herewith, Seller agrees that it will pursue the boundary dispute on each parcel, and, in the event that Seller prevails in the dispute(s) and obtains clear title to the parcel(s), then, in that event, Seller shall offer to sell the parcel(s) to Buyer based on the appraised sum of \$84,000.00 per acre. This offer shall be exclusive to Buyer for a period of 60 days after the title is cleared, and upon written

notice by the seller that the 180 days is commencing. The Property, less the within referenced small parcels, for purposes of the purchase provided for herein, is sometimes hereinafter referred to as the Initial Purchase Parcel.

3. ESCROW.

Promptly following the execution of this Agreement by both parties, they shall establish an escrow with Yavapai Title Agency with Jan Gallagher as the Escrow Officer (the "Escrow Agent"), at its office located at 123 N. Montezuma., Prescott, Arizona 86301. Upon delivery to the Escrow Agent of a fully executed copy of this Agreement, together with the Initial Earnest Money Deposit, the Escrow Agent is instructed to open an escrow and to deliver copies of the fully executed Agreement to Seller and Buyer. This Agreement shall constitute escrow instructions to Escrow Agent in connection with this transaction. Should the Escrow Agent require, in addition to this Agreement, the execution of its standard form printed Escrow Instructions, the Escrow Agent shall prepare such Escrow Instructions in accordance with the directions contained herein and in a form mutually acceptable to the parties and the parties hereto shall execute such Escrow Instructions on receipt from the Escrow Agent. The Escrow Instructions shall not supersede, modify or amend any of the terms of this Agreement, and in the event of any conflict or ambiguity between any of the terms of this Agreement and those of the Escrow Instructions, this Agreement shall govern and control.

4. PROPERTY INSPECTION CONTINGENCY.

Buyer shall be permitted to exercise its good faith efforts in a timely manner, to conduct an inspection of the Property as hereinafter provided in Section 7 as it deems necessary for its intended use of the Property, including making such application(s) as necessary to the appropriate federal, state and local governmental agencies (the "Agencies") as soon as practicable following execution of this Agreement. Buyer shall be solely responsible for all expenses incurred in connection with the application. If any such agency disapproves the application, or if such approval is not granted within thirty five (35) days of Opening of Escrow but not later than May 15, 2008, Buyer, at its option, may terminate this Agreement without liability and the Earnest Money Deposit shall be immediately returned by Escrow Agent to Buyer in the event that the approved mitigation heretofore required by the Army Corps of Engineers (the Corps) per the existing agency order has not been completed in accordance with the approved plans, except for such mitigation changes as is specifically agreed to between the parties and approved by the Corps. The Seller agrees that any warranty and contractual rights of the Seller pertaining to work performed to satisfy the mitigation shall be assigned and transferred to the Buyer. Furthermore, in connection herewith, Seller agrees to cooperate with Buyer in its inspection and application with regard to the Property. This includes executing such documents, applications, etc. as are required by the Agencies to process and approve the purchase. Any and all costs associated with these efforts shall be the sole responsibility of the Buyer. In the event this Agreement is terminated for any reason other than Seller's default, or if Buyer purchases less than all of the Property, then all such work done on the Property on behalf of Buyer under this Paragraph and the rights thereto shall transfer to Seller, including, but not limited to all maps, plats, studies, photographs, drawings and warranties.

5. OPENING AND CLOSING DATES.

“Opening of Escrow” shall occur when Escrow Agent accepts this Agreement as provided at the end of this Agreement. Subject to the satisfaction of all contingencies as set forth herein, the closing of this transaction (the “Closing” or the “Close of Escrow”) shall take place at the office of the Escrow Agent on or before June 31, 2008 ( the” Scheduled Closing Date”).

6. PURCHASE PRICE.

The purchase price for the Initial Purchase Parcel is Two Million Nine Hundred Thousand Dollars and No/100 (\$2,900,000.00) The purchase price shall be paid as follows:

(A) The sum of Ten Thousand Dollars (\$10,000.00)(the “Earnest Money Deposit”) shall be deposited with the Escrow Agent, in cash or certified funds, within three (3) days from the Opening of Escrow, and shall be disbursed to the Seller upon the Close of Escrow. The Earnest Money Deposit shall be refundable until expiration of the Examination Period, at which time, if Buyer has failed to terminate this Agreement, it shall become non-refundable and shall be forfeited to Seller upon Buyer’s failure to perform, subject only to (a) the conditions of Section 4 hereof and (b) to performance by Seller of its obligations hereunder. Immediately upon receipt of the Earnest Money Deposit, the Escrow Agent shall deposit the funds in a short-term interest-bearing account at a financial institution mutually acceptable to Buyer and Seller. The interest earned on such deposit shall accrue to the benefit of the Buyer, except in the event Seller becomes entitled to retain the Earnest Money Deposit by reason of Buyer’s failure to perform, in which event said interest shall accrue to the benefit of the Seller.

(B) The balance of the purchase price in the sum of Two Million Eight Hundred Ninety Thousand Dollars and No/100 (\$2,890,000.00) shall be paid as follows:

(1.) Buyer shall pay the sum of \$1,440,000 to Escrow Agent for the benefit of Seller plus or minus pro-rations as hereinafter provided, in cash or certified funds or by wire, on or before the Scheduled Closing Date and shall be disbursed to the Seller upon the Close of Escrow.

(C) The remaining balance of the Purchase Price in the sum of \$1,450,000.00 shall be paid on or before July 31, 2008 in the manner and on the terms as set forth in the Promissory Note attached hereto as Exhibit C, which said Promissory Note shall be secured by a Deed Of Trust And Assignment Of Rents as against the Property in the form and on the terms contained therein as attached hereto as Exhibit D.

7. EXAMINATION PERIOD.

(A) Buyer shall have a period commencing on the date of Opening of Escrow and ending at 5:00 p.m. on the sixtieth (60<sup>th</sup>) day after the Opening of Escrow but not later than May 20, 2008 (the "Examination Period") during which to make its examination and investigation of the Property, and this Agreement is subject to and conditioned upon Buyer's approval of same in Buyer's sole and absolute discretion. Buyer's activities during the Examination Period shall include, without limitation, investigation of all aspects of the Property that Buyer deems advisable to confirm that the Property is suitable for Buyer's intended use, including, but not limited to investigation and inquiry regarding the Mitigation Plan and the mitigated area.

(B) Within fifteen (15) days from the Opening of Escrow, Seller shall obtain, at its cost, and deliver to Buyer and Escrow Agent a survey of the Property (the "Survey") prepared by an Arizona licensed civil engineer. The Survey shall be certified to Buyer, Seller and Escrow Agent and shall meet the minimum ALTA/ASCM standards for issuance by Escrow Agent of a standard coverage owner's policy of title insurance. The Survey shall contain a legal description of the Property. In addition, Seller agrees to reasonably cooperate with Buyer during the Examination Period and to furnish Buyer such other documents, instruments and information in Seller's possession concerning the Property or its operation as Buyer may, from time to time, reasonably request.

(C) Buyer acknowledges that it is aware that the Seller and Property have been cited for violating (i) certain Yavapai County, Arizona, grading regulations and (ii) certain federal regulations regarding the disturbance of a riparian area; and, in connection therewith, Buyer further acknowledges that Seller has (i) complied with the Yavapai County regulations by obtaining a Grading Permit and has performed grading pursuant to the Permit and County specifications and, (ii) has filed a Mitigation Plan with Corps, which Plan has been approved by the Corps. It is recognized that the Mitigation, per the dictates of the Corps is to be completed by April 15, 2008 and is being performed by Biozone, Inc. per a contract with Seller. A copy of the Contract with Biozone, Inc. is attached hereto as Exhibit E.

(D) Following the Opening of Escrow, Buyer, its agents and employees may enter upon the Property at any time for the purpose of conducting any and all tests, investigations, inspections, studies, and surveys which Buyer in its discretion may deem advisable. If Buyer desires an environmental report or any other reports of any kind with respect to the Property, Buyer shall obtain such reports at its expense during the Examination Period. Buyer hereby agrees to indemnify Seller and the Property and holds Seller and the Property free and harmless from any and all loss or liability resulting from the activities of Buyer, its agents and employees upon the Property, and from any and all mechanics', material man's and other liens resulting from such conduct of Buyer, its agents and employees upon the Property. The foregoing indemnification shall survive the termination of this Agreement.

(E) At any time prior to the expiration of the Examination Period, if

Buyer determines, for any reason whatsoever, that it does not desire to complete the transaction contemplated herein, Buyer may terminate this Agreement by so notifying Seller and Escrow Agent in writing. Upon termination of this Agreement pursuant to this paragraph, the escrow provided for herein shall be immediately canceled, the Earnest Money Deposit and all earnings thereon shall be returned to Buyer, and Buyer shall pay all fees in connection with the escrow or the cancellation thereof. Notwithstanding anything to the contrary contained in this subsection E, it is agreed that Buyer's failure to give notice to Seller on or before the expiration of the Examination Period of its approval of the property shall signify Buyer's decision to terminate this Agreement and cancel the escrow provided for herein.

8. TITLE REVIEW PERIOD.

(A) Escrow Agent is hereby instructed to deliver to Buyer and Seller, as soon as practicable after the Opening of Escrow, a title commitment for an ALTA standard coverage Owner's title insurance policy (the "Title Report"), together with full, complete and legible copies of all instruments of record referred to therein. Seller shall pay the premium for the standard portion of the title insurance policy, and Buyer shall pay all costs for the extended coverage and/or endorsements in excess of the cost of a standard coverage policy, if so desired by Buyer.

(B) Buyer shall have ten (10) days after receipt of the last to be received of the Title Report and the Survey (the "Title Review Period") to give written notice of objection to any matter shown on the Title Report or the Survey. In the event an amended Title Report is issued or an amended Survey is prepared, Buyer shall have ten (10) days from Buyer's receipt of the amended Title Report or Survey within which to give written notice of objection to any matter shown on the amended Title Report or amended Survey. Seller will, within ten (10) days after timely notification of any objection, advise Buyer in writing whether or not Seller will attempt to eliminate or cure any matter to which Buyer has objected. In the event that Seller advises Buyer that Seller will not attempt to eliminate or cure the matter to which Buyer has objected, Buyer, at its option exercisable in writing within five (5) days after receipt of Seller's notice, may elect to (i) waive the objection; or (ii) terminate this Agreement and the escrow. If Buyer fails to give written notice of its election within the time period provided, Buyer will be deemed to have waived the objection. If Seller advises Buyer that Seller will attempt to eliminate any matter to which Buyer has objected, Seller shall use its best efforts to cure such matters on or before the Scheduled Closing Date, provided, however, Seller shall have no liability to Buyer for failure to cure such matters, and in the event such matters are not cured on or before the Scheduled Closing Date, Buyer shall at its option have the right to either (i) terminate this Agreement, or (ii) waive its objections to such matters. Upon termination of this Agreement pursuant to the terms of this paragraph, the escrow provided for herein shall be immediately canceled, the Earnest Money Deposit, together with all earnings thereon, shall be returned to the Buyer, and Seller and Buyer shall each pay one-half (1/2) of the fees in connection with the escrow or the cancellation thereof.

(C) If Buyer fails to give written notice of any objection to the Title Report or the Survey within the time provided above, Buyer will be deemed to have approved all

matters shown on the Title Report and the Survey, and the Property shall be conveyed to the Buyer subject to all such matters. All matters shown on the Title Report and the Survey, except those to which Buyer timely objects, are hereinafter referred to as "Permitted Title Exceptions".

(D) Notwithstanding anything to the contrary in the preceding subparagraphs, Seller shall be obligated to remove any financial liens and monetary obligations without the necessity of Buyers' objecting to said matters. If any monetary liens or encumbrances have not been removed on or before the Scheduled Closing Date, the Escrow Agent is hereby irrevocably authorized and instructed to apply so much of the purchase price as is necessary to cause said liens and encumbrances to be removed at the Closing. If the purchase price is insufficient to satisfy all monetary liens and encumbrances, Seller shall deposit with the Escrow Agent, on or before the Scheduled Closing Date, any additional funds required to cause said liens and encumbrances to be removed at the Closing.

#### 9. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller represents, warrants and covenants to Buyer those matters set forth below, with the understanding that Buyer shall rely upon said representations, warranties and covenants. All representations and warranties shall survive the Closing for a period of five (5) years after the entire Property is paid.

(A) Seller and all persons acting for and on behalf of Seller have the full power, capacity and authority to enter into and deliver this Agreement, to perform all obligations of Seller hereunder, to complete and close this transaction in accordance with this Agreement and to sign, deliver and perform any documents and instruments in connection herewith on behalf of Seller. No consents to, for or concerning this transaction, Seller's performance hereof or the Closing of this transaction are required from any public or private entities, excepting, however, those consents and permits as required by Agencies with regard to the Mitigation Property.

(B) Seller is not aware of any liens, encumbrances, claims of liens or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report, and Seller shall protect Buyer against or remove as a lien or encumbrance any such matter arising prior to the Closing except those caused by Buyer.

(C) The Property is not subject to any written or oral agreement which grants to any person or entity other than the Buyer an option, right of first refusal or other right to acquire any interest in the Property.

(D) Seller has no knowledge of any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking of all or any portion of the Property.

(E) Seller has not authorized any work on the Property which could result in any mechanics' liens, claims of lien or other claims against the Property, and all bills for

work done or material supplied to the Property have been paid. Seller shall indemnify, defend, protect and hold Buyer harmless from any unrecorded mechanics', surveyors' or engineers' liens, claims of lien or other claims against the Property occurring or arising for work or services performed at Seller's request to or for the Property prior to the Closing, except for work performed by or on behalf of Buyer.

(F) To Seller's knowledge, there are not any adverse claims of adjoining property owners against the Property; there are no adverse parties in possession of the Property or any part thereof; and there are no encroachments by Seller on the Property of others or by others in the Property, except as disclosed in the Title Report.

(G) To Seller's knowledge, but without any investigation or inquiry of any kind, the Property has not been used by Seller or any of Seller's predecessors in title, nor by anyone else, to generate, manufacture, refine, transport, treat, store, handle, discharge or dispose of hazardous or toxic wastes or substances, except for insecticides, pesticides, chemicals, and other substances used in connection with the growing and harvesting of agricultural products or the preparation or use of the land for agricultural purposes. Seller is not aware of any proceeding or inquiry by any governmental authority with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from or to other property.

10. DISCLAIMER.

(A) Except as herein specifically set forth, Seller makes no representations or warranties, express or implied, with respect to, and shall have no liability for: (1) the condition of the Property or the suitability of the Property for Buyer's intended use or for any use whatsoever; (2) any applicable building or zoning laws or regulations or with respect to compliance therewith or with respect to the existence of or compliance with any required permits, if any, of any governmental agency; (3) the availability of water, sewer or other utilities; (4) water, sewer or other utility districts; (5) access to any public or private sanitary sewer system; or (6) the presence of any hazardous substances on or under the Property. Without limiting the generality of the foregoing, but subject to the representations set forth in Section 9, Seller shall have no liability to Buyer with respect to the condition of the Property under common law, or any federal, state, or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C.A. §9601 et seq., or any similar state statutes in Arizona, including but not limited to the Arizona State Superfund Act, as codified in A.R.S. §49-281 through 287, and Buyer hereby waives any and all claims which the Buyer has or may have against the Seller with respect to the condition of the Property (except claims for a breach of Seller's representations and warranties set forth in Section 10), including any private causes of action arising under the foregoing statutes concerning the Property and any conditions in the Property.

(B) Buyer's failure to terminate this Agreement during the Examination Period shall act as an acknowledgment by Buyer that: (i) during the Examination Period Buyer has had the opportunity to review the Property to determine if the Property is in violation of any federal, state or local environmental law, rule or regulation or otherwise contains levels or

concentrations of “hazardous substances”, “hazardous materials”, “toxic substances” or “hazardous waste”, as such terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. §9601 et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., or the Toxic Substances Control Act, as amended, 15 U.S.C. §2601 et seq., or analogous provisions of state law; (ii) Buyer is purchasing the Property “as is” in its present condition, subject only to the representations and warranties contained in this Agreement; and (iii) Buyer has fully inspected the Property and assumes the responsibility and risks of all defects and conditions, including such defects and conditions, if any, that cannot be observed by casual inspection.

(C) By closing the transaction hereunder, Buyer agrees that (i) Buyer shall be deemed to have accepted all risks associated with adverse physical characteristics and existing environmental conditions that may or may not have been revealed by the Buyer’s investigation of the Property, (ii) as between the Buyer and the Seller, Buyer shall be deemed to have accepted all costs and liability associated in any way with the physical and environmental condition of the Property, and (iii) the Buyer hereby waives any and all objections, setoffs, claims, or causes of action (whether under a statute or common law) concerning the physical characteristics and existing conditions of the Property, including, without limitation, any environmental hazards.

(D) Notwithstanding the foregoing disclaimers, waivers and releases, nothing in this Section 10 shall be deemed to relieve Seller of any liability to Buyer for release of hazardous materials or other environmental contamination on the Property caused by Seller or Seller’s officers, directors, shareholders, employees, agents, contractors, or invitees; nor shall this Section be deemed to release Seller from liability for breach of any express representations or warranties contained in this Agreement.

11. POSSESSION.

Possession of the Initial Purchase Parcel and risk of loss will be delivered to the Buyer at Close of Escrow.

12. CONDEMNATION.

If any condemnation or eminent domain proceedings are commenced with respect to the Property, or any part thereof, prior to the Closing, Seller shall promptly give Buyer written notice thereof, and Buyer shall have the option, to be exercised within fifteen (15) days after receipt of such notice, to (i) close the purchase of the Property on the Scheduled Closing Date subject to such proceedings, whereupon any award paid or to be paid in connection therewith shall be paid to or assigned to Buyer by Seller at the Closing, or (ii) terminate this Agreement and receive a return of the Earnest Money Deposit, whereupon the rights and obligations of the parties to this Agreement shall cease and terminate, except for rights and obligations which by the express terms of this Agreement survive its termination.

13. CLOSING MATTERS.

(A) On or before the Scheduled Closing Date, Seller shall deposit with Escrow Agent, for delivery to Buyer at the Closing, the following items, which shall be in form satisfactory to Buyer and be duly executed and acknowledged (where applicable): (i) a Special Warranty Deed conveying fee simple title to the Property to Trustee, subject only to the Permitted Title Exceptions; (ii) an Affidavit of Real Property Value; (iii) an affidavit of Seller's non-foreign status, as required pursuant to Section 20; and (iv) such other documents as may be required by Escrow Agent.

(B) On or before the Scheduled Closing Date, Buyer shall deposit with Escrow Agent, for delivery to Seller at the Closing, (i) the sum of One Million Four Hundred Forty Thousand Dollars and No/100 (\$1,440,000.00) in cash or certified funds, (ii) a Promissory Note duly executed by Buyer in the form attached hereto as Exhibit C and (iii) a Deed of Trust and Assignment of Rents in the form attached hereto as Exhibit D.

(C) All real property taxes and assessments shall be prorated as of the Closing Date on the latest information available to the Escrow Agent. Escrow fees shall be borne one-half by each party, and, unless provided elsewhere in this Agreement to the contrary, all other closing costs shall be charged and allocated to the parties in the manner customary for commercial real estate transactions in Yavapai County, Arizona. If any tax or assessments affects the property and any additional land not a part of the Property, only that portion of the tax or assessment attributable to the Property shall be prorated between Buyer and Seller, and the remainder of said tax or assessment shall remain the sole obligation of the Seller. The determination of the portion of the tax or assessment attributable to the Property shall take into account the value of improvements (if any) made to the Initial Purchase Parcel and/or any other property covered by the tax bill to properly account for differences in the valuation of, and resulting tax or assessment levied against the Property covered by the bill.

14. BROKERS' COMMISSIONS.

Buyer and Seller warrant, each to the other, that, there are no fees or commissions owing to any broker or other party for bringing about the sale contemplated hereunder. If any other person shall assert a claim to a fee, commission or other compensation on account of alleged employment as a broker or finder or for performance of services as a broker or finder in connection with this transaction, the party hereto under whom the broker or finder is claiming shall indemnify and hold harmless the other party against and from any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought thereon (including, but without limitation, counsel and witness fees and court costs in defending against such claim).

15. NOTICES.

All notices, requests and other communications hereunder shall be given in writing and either (i) personally served on the party to whom it is given, or (ii) mailed by

registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as Federal Express or Airborne, or (iv) sent by facsimile to the number set forth below, as long as such facsimile transmission is confirmed as received by the transmission equipment, and is followed the next business day by another permissible means of notice hereunder, addressed as follows:

If to Seller:

Richard L. Hazelwood, Trustee  
3330 North Manor Drive West  
Phoenix, AZ 85014-5529

With a copy to:

James B. Musgrove  
Musgrove, Drutz & Kack, P.C.  
1135 Iron Springs Road  
Prescott, AZ 86305  
Fax (928) 445-5980  
Phone (928) 778-7360

If to Buyer:

City Attorney  
City of Prescott  
201 S. Cortez  
Prescott, AZ 86303  
Phone (928) 777-1274  
Fax (928) 777-1325

If to Escrow Agent:

Yavapai Title Agence  
Attn: Jan Gallagher  
123 N. Montezuma Str.  
Prescott, Arizona 86301  
Fax No. (928) 778-6170  
Tel No. (928) 445-2528

All notices shall be deemed given when delivered or, if mailed as provided above, on the second day after the day of mailing, and if sent by overnight courier, on the next day after the date of deposit with the courier, and if sent by facsimile, upon machine confirmation of receipt. Any

party may change his address for the receipt of notices at any time by giving written notice thereof to the other parties in accordance with the terms of this section. The inability to deliver notice because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

16. SELLER'S REMEDIES.

Provided Seller is not in default hereunder, in the event the escrow hereunder fails to close because of a breach by the Buyer, Seller shall not be entitled to specifically enforce this Agreement. In that event, the Earnest Money Deposit that has been deposited into escrow, together with all earnings thereon, shall be released to Seller, free of all claims of Buyer. Seller's sole remedy shall be to retain the Earnest Money Deposit and earnings thereon as liquidated damages. The parties expressly agree that the damages to be suffered by Seller as a result of Buyer's failure to perform under this Agreement would be difficult to calculate and that the amount of the Earnest Money Deposit and earnings thereon is a reasonable estimate of the amount of Seller's damages as a result of Buyer's failure to perform. Notwithstanding the foregoing, if Buyer's default consists of a breach of any of its obligations or indemnities which expressly survive the termination of this Agreement, or in the event Buyer files a lis pendens or an action for specific performance against Seller or otherwise clouds Seller's title to the Property and fails to prevail in a final, non-appealable judgment, Seller shall be entitled to pursue any remedies available at law or in equity with respect thereto, including, but not limited to, suit for damages (excluding punitive, exemplary or special damages), reasonable attorneys' fees and court costs.

17. BUYER'S REMEDIES.

Provided Buyer is not in default hereunder, in the event the escrow hereunder fails to close because of a breach by the Seller or Seller's inability to satisfy any of the conditions precedent set forth herein, Buyer shall have all remedies provided by law or equity and those, if any, set forth in this Agreement, including without limitation the right to specific performance and damages (including without limitation a recovery of its out of pocket costs, fees and expenses, but excluding punitive, exemplary or special damages).

18. RIGHT TO CURE.

The breach by either party of any representation or warranty under this Agreement or such party's failure to perform any covenant, condition or obligation hereunder shall constitute a default hereunder, and the non-breaching party may exercise its remedies, including termination of this Agreement, only if such breach or nonperformance continues more than five (5) business days following the date of notice by the other party specifying such breach or nonperformance.

19. AFFIDAVIT OF NON-FOREIGN STATUS; IRS FORM 1099B.

Seller shall deliver or cause to be delivered to Escrow Agent at the Close of Escrow an affidavit executed by Seller under penalty of perjury setting forth Seller's taxpayer identification number and stating that Seller is not a foreign person, in accordance with Internal Revenue Code Section 1445(b)(2). Seller shall also execute and deliver to Escrow Agent at the Close of Escrow a copy of IRS Form 1099B for filing by Escrow Agent with the Internal Revenue Service (the "IRS"). Escrow Agent, as the party responsible for closing the transaction contemplated hereby within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "code"), is instructed to file all necessary information reports, returns and statements (collectively the "reports") regarding the transaction required by the Code, including, but not limited to, the reports required pursuant to Section 6045 of the Code.

20. CLOSING PROTECTION LETTER.

If Escrow Agent acts as an agent for an underwriter and does not issue policies of title insurance, Escrow Agent agrees that, as a condition to acting as the escrow agent for this transaction, it shall cause its underwriter (the "title insurer") to issue to Seller and Buyer, within twenty (20) days after the Opening of Escrow, an escrow and closing protection letter, insured escrow and closing service, or statement of service responsibility in written form satisfactory to both Seller and Buyer.

21. MISCELLANEOUS.

(A) This Agreement and the exhibits attached hereto embody the entire agreement between the parties in connection with this transaction, and there are no oral agreements existing between the parties relating to this transaction that are not expressly set forth herein and covered hereby; this Agreement may not be modified except in a writing signed by all parties.

(B) Time is of the essence of this Agreement.

(C) In the event either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable counsel fees.

(D) The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.

(E) This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

(F) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest and assigns; provided, however, that no assignment of this Agreement shall in any way relieve the assignor of its obligations hereunder. Buyer may assign its rights pursuant to this Agreement by giving written notice of such assignment to Seller and the Escrow Agent.

(G) This Agreement shall be construed and interpreted under, governed and enforced according to the laws of the State of Arizona.

(H) **Cancellation in the Event of Conflict.** The parties hereby note that either party hereto may cancel this agreement in the event of a conflict of interest as defined by A.R.S. § 38-511, the provisions of which are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date set forth below their respective signatures.

**SELLER:**

RICHARD L. HAZELWOOD  
REVOCABLE LIVING TRUST

By \_\_\_\_\_  
Richard L. Hazelwood  
Its Trustee

**BUYER:**

CITY OF PRESCOTT

By \_\_\_\_\_  
Its Mayor

Attest: \_\_\_\_\_  
Elizabeth A. Burke, City Clerk

Approved as to form:

By \_\_\_\_\_  
Gary L. Kidd, City Attorney

AGREEMENT AND CONSENT BY ESCROW AGENT

The undersigned, First American Title Company, hereby agrees to (i) accept the foregoing Real Estate Purchase Agreement and Escrow Instructions as instructions to the undersigned, (ii) act as Escrow Agent under said Agreement in consideration of its fees normally charged in such transactions, and (iii) be bound by said Agreement in the performance of its obligations as the Escrow Agent.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Yavapai Title Agency

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**

LEGAL DESCRIPTION OF PROPERTY

[To Be Attached]

**EXHIBIT "B"**

EXCLUDED PARCELS

[To Be Attached]



**M • HAYWOOD • ASSOCIATES • INC**  
REGISTERED LAND SURVEYORS

**PROPERTY DESCRIPTION**

All that portion of Section 12, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows;

Commencing at the northwest corner of Lot 5, GRANITE GARDENS, Unit One, as recorded in Book 17 of Maps and Plats, Page 46, on file in the office of the Yavapai County Recorder, Yavapai County, Arizona;

Thence, South 82°01'30" East, 50.13 feet along the north line of said Lot 5 to the **POINT OF BEGINNING**;

Thence, North 02°58'43" West, 8.38 feet;

Thence, North 87°01'17" East, 13.55 feet;

Thence, South 02°58'43" East, 9.00 feet;

Thence, South 87°01'17" West, 10.37 feet to a point on said north line;

Thence, North 82°01'30" West, 3.23 feet to the **POINT OF BEGINNING**.

Containing 121.0 square feet, more or less.

6/27/07  
06-030  
Lot 5 encroachment



**M • HAYWOOD • ASSOCIATES • INC**  
REGISTERED LAND SURVEYORS

PROPERTY DESCRIPTION  
PARCEL 1

All that portion of Section 12, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows;

**BEGINNING** at the southeasterly corner of that parcel described in Book 1507 of Official Records, Page 140 on file in the office of the Yavapai County Recorder, Yavapai County, Arizona;

Thence, North 22°11'34" East, 159.46 feet along the easterly line of said parcel

Thence, South 67°48'26" East, 77.26 feet;

Thence, South 27°17'12" West, 208.59 feet;

Thence, North 58°51'20" West, 279.32 feet to a point on the southerly line of said parcel described in Book 1507 of Official Records, Page, 140;

Thence, South 69°05'00" East, 217.23 feet to the southeast corner of said parcel to the **POINT OF BEGINNING.**

Containing 18,096 square feet, more or less.

Rev 5/29/07  
06-030  
Parcel 1 add.





**M • HAYWOOD • ASSOCIATES • INC**  
REGISTERED LAND SURVEYORS

**PROPERTY DESCRIPTION**  
**PARCEL 2**

All that portion of Section 12, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows;

Commencing at the northeast corner of GRANITE GARDENS SUBDIVISION as recorded in book 17 of Maps and Plats, Page 58 and Book 17 of Maps and Plats, Page 46 all on file in the office of the Yavapai County Recorder, Yavapai County, Arizona;

Thence, North 00°33'57" East, 31.37 feet;

Thence, North 87°36'24" West, 1672.90 feet;

Thence, South 22°11'34" West, 786.52 feet to the southeast corner of that parcel described in Book 1507 of Official Records, Page, 140 on file in the office of the Yavapai County Recorder, Yavapai County, Arizona;

Thence, North 69°05'00" West, 217.23 feet, 217.23 feet along the southerly line of said parcel to the **POINT OF BEGINNING**;

Thence, South 28°38'00" West, 147.26 feet;

Thence, North 69°05'00" West, 176.86 feet to a point on the easterly right-of-way or Arizona State Highway 89;

Thence, North 28°38'00" East, 50.45 feet along said right-of-way;

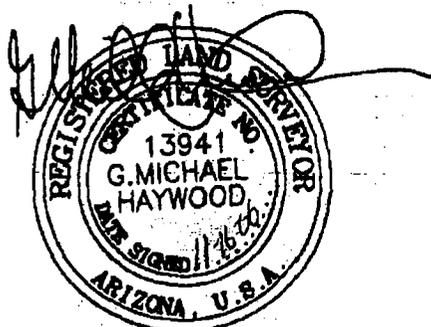
Thence, South 69°05'00" East, 101.18 feet;

Thence, North 28°38'00" East, 96.80 feet;

Thence, South 69°05'00" East, 75.68 feet to the **POINT OF BEGINNING**.

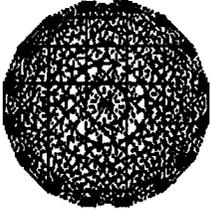
Containing 16,103 square feet, more or less.

06-030  
Parcel 2 add.



**Exhibit “C”**

**US Army Corps of Engineers Approved Mitigation Plan**



Biological Assessments, U S Army Corps Issues,  
T & E Surveys, Riparian Restoration

## **BIOZONE, INC.**

ARCHIE M. DICKEY, Ph.D., owner-d  
P.O. Box 13027, Prescott, Arizona 86304-3027  
(928)541-1266 Fax (928) 541-1134  
email: biozone@ cableone.net

February 13, 2008

TO: Mr. Richard L. Hazelwood  
3330 N. Manor Drive West  
Phoenix, AZ 85014  
C/o Mr. William Bohannon

FROM: Archie M. Dickey  
President, Biozone

**SUBJECT: Restoration of Hazelwood Property, Granite Dells, Prescott, AZ**

Biozone, Inc. will take responsibility for the mitigation/revegetation project and will oversee and complete all revegetation associated with the Richard Hazelwood project (2006-00616-DE). The revegetation area contains four basic regions as described in documents and maps submitted to Ms. Daisy Eldridge, Army Corps of Engineers.

The goal of this revegetation is to match the density of the riparian corridor on the southern banks of Granite Creek. The total revegetated area will be approximately 3.2 acres.

The road access to the project from the southeast is dependent on weather (because of the mud and the lack of a culvert and a graded road bed at that location). This may affect the timing of the project- both starting and during restoration.

### **Plants**

Total plants to be planted are listed in the following:

- 535 riparian trees, and
- 62 upland species.

The list of each species and their size and planting area are described in the Hazelwood Property Restoration Plan (July 24, 2007). All species included in the plan will be used; any exceptions to the plan will be cleared through the Army Corps of Engineers prior to planting. Currently, the only exception to the original plan is that all plants will be container stock; there will be no pole cuttings done at this time to ensure the best possible survival of all plants.

**Irrigation**

**NOTE:** Prior to commencement of irrigation installation, owner must provide a suitable well pump, storage tank (approximately 2000-gallon capacity), and flow pump capable of delivering at least 20 gallons per minute of flow at 30 psi minimum. This provision can be overseen and/or arranged by Biozone upon request for an additional fee plus the cost of installation. (Should there be a failure in the well portion of the system, water can be hauled in and the storage tank kept full for irrigation.)

From the point of connection, the mainline will be a 2-inch Schedule 40 PVC pipe to 1-inch battery-operated valves. From the valves, there will be 3/4-inch flexible poly irrigation line in a grid to deliver water via 2 GPH pressure-compensating emitters and 1/4-inch tubing to the plant material. Small plants will receive 1 emitter, 5 gallon plants will receive 2 emitters, and larger material will receive 4 emitters. Even though this system is only temporary, all mainlines, valves, and poly lines will be buried to a depth that ensures minimal damage from animals, human interference, and freezing. The system should only have to be shut down during the coldest months when watering will most likely not be necessary.

Upon completion of the project, the irrigation system will be monitored for functionality approximately every two to three weeks for the first season. During the winter months, the area will be checked periodically for problems and manual operation of the system as necessary. In the spring, as temperatures begin to climb, the system will again be checked and monitored during the growing season.

**Monitoring**

Monitoring will be of all plantings once a year for four years by Biozone, Inc. Photo points will be established at the beginning of the project. An annual report will be submitted to document progress. This report will include color photographs from each of the established photo points.

During the first two years of monitoring, all dead plants will be replaced. During the third year, only those plants which are necessary to maintain the desired survival rate will be replaced. **This excludes acts of nature such as fire or flood.**

**PRICE BREAK DOWN:**

1. Plants, planting, all equipment needs and labor.....	\$86,000.00	54000 plants / AQ
2. Monitoring, including irrigation, annual reports...	\$7,000.00	2000 months / AQ
3. Replanting and irrigation maintenance.....	\$3,500.00	2500 months / AQ
<b>Total</b>	<b>\$96,500.00</b>	<b>92500 months / AQ</b>

**Payment Schedule:** 50% down, 25% two weeks into project and final payment when planting is done and report is submitted to Corps.

**TIMELINE:** Once notice to proceed has been signed and down payment is received, Project should be started within 2 weeks (possibly the 1<sup>st</sup> of March, depending on weather).

## Notice to proceed

The above proposal is acceptable to both parties. Biozone, Inc. will start on this project as soon as possible after signatures are obtained.

### SIGNATURES

For: Mr. Richard L. Hazelwood:

 Date: 2/13/08  
*For RL Hazelwood Living Trust*

For BIOZONE:

  
Archie M. Dickey, Ph.D.

Date: 02/13/2008

BIOZONE, INC.  
P.O. Box 13027  
Prescott, AZ 86304-3027  
928-541-1266  
928-541-1134 FAX

12 ..

**Tax Number 86-0707298**