



# PRESCOTT CITY COUNCIL STUDY SESSION AGENDA

**PRESCOTT CITY COUNCIL  
STUDY SESSION  
TUESDAY, JANUARY 20, 2009  
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 Study Session 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:** Jason Price, Prescott Christian Church
- ◆ **PLEDGE OF ALLEGIANCE:** Councilman Bell
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

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

- ◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

**I. PRESENTATION**

- A. Presentation of Mid-Year Budget Report by Finance Director Mark Woodfill.

**II. DISCUSSION ITEMS**

- A. Authorization of payment to Dell, Inc. in the amount of \$60,340.52 to purchase 45 new computers for the Prescott Public Library.
- B. Authorization of payment to SirsiDynix for maintenance costs associated with the automated library system operated by the City on behalf of the Yavapai Library Network in the amount of \$81,352.22.

- C. Approval of a Grant Participant Agreement with Arizona State Parks to accept a Trails Heritage Fund grant in the amount of \$64,570.00.
- D. Adoption of Resolution No. 3930-0936 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a new Delegation Agreement (Development Agreement) with Arizona Department of Environmental Quality (ADEQ) authorizing the Prescott Fire Department to continue issuing open burn permits within the City, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- E. Approval of a five-year funding Agreement with Prescott Community Access Channel.
- F. Granite Dells Ranch Holdings:
  - 1. Introduction of Annexation of a portion of the Granite Dells Ranch, and associated rezoning and minor General Plan Amendment; Owner: Granite Dells Ranch Holdings (Cavan Real Estate Investments); Agent: Mark Reddle, LVA Urban Design Studio, Tempe, Arizona.
  - 2. Adoption of Resolution No. 3932-0938 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona approving a Procedural Pre-Annexation Agreement and Agreement to Provide Temporary Construction Easement and Dedicate Right-of-way with Granite Dells Ranch Holdings, LLC, and authorizing the Mayor and staff to take any and all necessary steps to accomplish the above.
  - 3. Adoption of Resolution No. 3934-0940 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona accepting a Temporary Construction Easement and Mining Easement from Granite Dells Ranch Holdings, LLC, and authorizing the Mayor and staff to take any and all necessary steps to accomplish the above.
- G. Approval of a professional services agreement with Granite Basin Engineering, Inc. for design of the FY09 Small Water Main Upgrades and Sewer Mainline Replacement Project, in an amount not to exceed \$325,000.00.

H. Tax Code Changes:

1. Adoption of Resolution No. 3933-0939 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, declaring as a public record that certain document filed with the city clerk and entitled “THE 2008 AMENDMENTS TO THE TAX CODE OF THE CITY OF PRESCOTT.”
  2. Adoption of Ordinance No. 4690-0933 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, relating to the privilege license tax; adopting “THE 2008 AMENDMENTS TO THE TAX CODE OF THE CITY OF PRESCOTT” by reference; establishing an effective date; providing for severability and providing penalties for violations.
- I. Public Hearing (January 27, 2009) and consideration of a liquor license application from Andrea Dahlman Lewkowitz, Applicant for N and D Restaurants, Inc., for a Series 12, Restaurant, License for the Olive Garden Italian Restaurant, Inc. located at 3060 Highway 69.
- J. Approval of the Minutes of the Prescott City Council Study Session of January 6, 2009; the Workshop of January 13, 2009; the Regular Voting Meeting of January 13, 2009; and the Study Session of January 20, 2009.
- K. Selection of items to be placed on the Regular Voting Meeting Agenda of January 27, 2009.

III. 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, City Clerk

**COUNCIL AGENDA MEMO – (01/20/09 & 01/27/09)**

**DEPARTMENT:** Parks, Recreation and Library

**AGENDA ITEM:** Authorization to purchase library computers

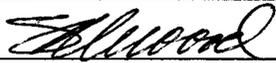
**Approved By:**

**Date:**

**Department Head:** Debbie Horton

**Finance Director:** Mark Woodfill

**City Manager:** Steve Norwood



12/30/08

**Background**

Staff has developed a 4-year replacement cycle for library computers. The 4-year plan means library patrons and staff rarely use outmoded hardware and outdated software, fewer models of computers are in use at any one time, time required for maintenance is reduced, and computer aesthetics are similar throughout the library.

The FY2009 plan calls for replacement of ½ the computers in public areas of the library. These include computers at Prescott Gateway Branch, at the Rowle P. Simmons Community Center and in the KidSpace and TeenZone areas of the Downtown Library. The average age of computers being replaced is 6 years. Once the new computers are in place, the library will be on track with the four year replacement program implemented three years ago.

**Financial**

This FY2009 computer purchase is off the WSCA Contract (#NASPOWSCA #A63307) and will be paid from funds in 1-82004 (Yavapai County Library District property tax moneys designated for library automation and special projects). Total cost for the 45 Dell computers is \$60,340.52.

**Recommended Action:** Should Council approve, **MOVE** to authorize payment to Dell, Inc. in the amount of \$60,340.52 to purchase 45 new computers for Prescott Public Library.

**DELL****QUOTATION**

QUOTE #: 466603540

Customer #: 11587987

Contract #: N39913786

Customer Agreement #: NASPOWSCA # A63307

Quote Date: 12/22/08

Date: 12/22/08 8:37:37 AM

Customer Name: CITY OF PRESCOTT

<b>TOTAL QUOTE AMOUNT:</b>	<b>\$12,997.77</b>		
<b>Product Subtotal:</b>	<b>\$12,079.71</b>		
<b>Tax:</b>	<b>\$918.06</b>		
<b>Shipping &amp; Handling:</b>	<b>\$0.00</b>		
<b>Shipping Method:</b>	<b>Ground</b>	<b>Total Number of System Groups:</b>	<b>1</b>

GROUP: 1	QUANTITY: 9	SYSTEM PRICE: \$1,264.80	GROUP TOTAL: \$11,383.20
<b>Base Unit:</b>	OptiPlex 960 Small Form Factor Base Up to 88 Percent Efficient PSU (224-2258)		
<b>Processor:</b>	OptiPlex 960, Core 2 Duo E8400/3.0GHz, 6M, 1333FSB (311-9533)		
<b>Memory:</b>	4.0GB, Non-ECC, 800MHz DDR2 4x1GB, OptiPlex 960 (311-9613)		
<b>Keyboard:</b>	Dell, USB, Quiet KYBD, No Hot Keys, Opti, Black (330-1989)		
<b>Monitor:</b>	Dell UltraSharp 1908FP, Wide Flat Panel w/Height Adjustable Stand, 19.0 Inch VIS, OptiPlex Precision and Latitude (320-6137)		
<b>Video Card:</b>	256MB ATI RADEON HD 3450 Graphics dual DVI and VGA and TV Out, LP, OptiPlex (320-7429)		
<b>Hard Drive:</b>	320GB 3.5 inch SATA 3.0Gb/s and 16MB Data Burst Cache Dell OptiPlex 960 (341-8100)		
<b>Floppy Disk Drive:</b>	No Floppy Drive with Optical Filler Panel, Dell OptiPlex 960 Small Form Factor (341-8103)		
<b>Operating System:</b>	Windows XP PRO SP3 with Windows Vista Business License English, Dell OptiPlex (420-9570)		
<b>Mouse:</b>	Dell USB 2 Button Optical Mouse with Scroll, Black OptiPlex (330-2733)		
<b>TBU:</b>	vPro Secure Advanced Hardware Enabled Systems Management Dell OptiPlex (330-2626)		
<b>CD-ROM or DVD-ROM Drive:</b>	8X DVD-ROM, OptiPlex Small Form Factor (313-6090)		
<b>CD-ROM or DVD-ROM Drive:</b>	Cyberlink Power DVD 8.1, with Media, Dell OptiPlex/Precision (420-9179)		
<b>Sound Card:</b>	Mainstream Pentium Dual Core Dell OptiPlex 960 Small Form Factor (311-9612)		
<b>Speakers:</b>	Internal Chassis Speaker Option, Dell OptiPlex 960 Small Form Factor (313-7073)		
<b>Cable:</b>	OptiPlex 960 Small Form Factor Up to 88 Percent Efficient Power Supply (330-2015)		
<b>Documentation Diskette:</b>	Documentation, English, Dell OptiPlex (330-1710)		
<b>Documentation Diskette:</b>	Power Cord, 125V, 2M, C13, Dell OptiPlex (330-1711)		
<b>Controller Option:</b>	No RAID, Dell OptiPlex 960 (341-8036)		
<b>Factory Installed Software:</b>	Energy Star 4.0 Category B (less than 65W Idle), EPEAT Gold, Dell ESMART Settings OPTIPLEX (330-2606)		
<b>Feature</b>	Resource DVD contains Diagnostics and Drivers for Dell OptiPlex 960 Vista (330-2236)		
<b>Service:</b>	Dell Hardware Limited Warranty Plus Onsite Service Extended Year(s) (992-5878)		
<b>Service:</b>	Dell Hardware Limited Warranty Plus Onsite Service Initial Year (992-5877)		
<b>Service:</b>	Thank you choosing Dell ProSupport. For tech support, visit <a href="http://support.dell.com/ProSupport">http://support.dell.com/ProSupport</a> or call 1-866-516-31 (989-3449)		
<b>Service:</b>	ProSupport for IT: Next Business Day Parts and Labor Onsite Response 3 Year Extended (988-0123)		
<b>Service:</b>	ProSupport for IT: Next Business Day Parts and Labor Onsite Response Initial Year (991-4230)		
<b>Service:</b>	ProSupport for IT: 7x24 Technical Support for certified IT Staff, 3 Year Extended (981-3863)		

<b>Service:</b>	ProSupport for IT: 7x24 Technical Support for certified IT Staff, Initial (984-6640)
<b>Misc:</b>	Chassis intrusion switch, DellOptiPlex 960 (330-2234)
<b>Misc:</b>	Shipping Material for System Small Form Factor, Dell OptiPlex 960 (330-2031)
	Vista Premium Downgrade Relationship Desktop (310-9161)
	You have chosen a vPro System (310-9490)

SOFTWARE & ACCESSORIES			
Product	Quantity	Unit Price	Total
NEO-FLEX ALL IN ONE STAND (A1464723)	9	\$77.39	\$696.51
Number of S & A Items: 1		S&A Total Amount: \$696.51	

<b>SALES REP:</b>	Jason Woody	<b>PHONE:</b>	1-800-357-3355
<b>Email Address:</b>	jason_woody@dell.com	<b>Phone Ext:</b>	795-7043

For your convenience, your sales representative, quote number and customer number have been included to provide you with faster service when you are ready to place your order. Orders may be faxed to the attention of your sales representative to 1-866-607-6914. You may also place your order online at <http://www.dell.com/qto>.

This quote is subject to the terms of the agreement signed by you and Dell, or absent such agreement, to Dell's Terms of Sale.

*Prices and tax rates are valid in the U.S. only and are subject to change. Taxes reflected on quotes are estimates and may vary from tax shown at invoicing based on the actual ship to address.*

**\*\*Sales/use tax is a destination charge, i.e. based on the "ship to" address on your purchase order. Please indicate your taxability status on your PO. If exempt, please fax exemption certificate to Dell Tax Department at 1-888-863-8778, referencing your customer number. If you have any questions regarding tax please call 800-433-9019 or email Tax\_Department@dell.com.\*\***

All product and pricing information is based on latest information available. Subject to change without notice or obligation.

LCD panels in Dell products contain mercury, please dispose properly. Please contact Dell Financial Services' Asset Recovery Services group for EPA compliant disposal options at [US\\_Dell\\_ARS\\_Requests@dell.com](mailto:US_Dell_ARS_Requests@dell.com). Minimum quantities may apply.

Dell has a 30 day return policy for new products purchased directly from Dell. Dell's Total Satisfaction Return Policy may be found at [http://www.dell.com/us/en/hied/misc/policy\\_010\\_policy.htm](http://www.dell.com/us/en/hied/misc/policy_010_policy.htm).

Shipments to California: For certain products, a State Environmental Fee of up to \$10 per item may be applied to your invoice as early as Jan 1, 2005. Prices in your cart do not reflect this fee. More Info: Refer to URL [www.dell.com/environmentalfee](http://www.dell.com/environmentalfee).

**DELL****QUOTATION**

QUOTE #: 466602290

Customer #: 11587987

Contract #: N39913786

Customer Agreement #: NASPOWSCA # A63307

Quote Date: 12/22/08

Date: 12/22/08 8:37:36 AM

Customer Name: CITY OF PRESCOTT

<b>TOTAL QUOTE AMOUNT:</b>	<b>\$47,342.75</b>		
<b>Product Subtotal:</b>	<b>\$43,998.84</b>		
<b>Tax:</b>	<b>\$3,343.91</b>		
<b>Shipping &amp; Handling:</b>	<b>\$0.00</b>		
<b>Shipping Method:</b>	<b>Ground</b>	<b>Total Number of System Groups:</b>	<b>1</b>

GROUP: 1	QUANTITY: 36	SYSTEM PRICE: \$1,144.80	GROUP TOTAL: \$41,212.80
<b>Base Unit:</b>	OptiPlex 960 Small Form Factor Base Up to 88 Percent Efficient PSU (224-2258)		
<b>Processor:</b>	OptiPlex 960, Core 2 Duo E8400/3.0GHz, 6M, 1333FSB (311-9533)		
<b>Memory:</b>	2GB, Non-ECC, 800MHz DDR2, 2X1GB OptiPlex (311-7374)		
<b>Keyboard:</b>	Dell, USB, Quiet KYBD, No Hot Keys, Opti, Black (330-1989)		
<b>Monitor:</b>	Dell UltraSharp 1908FP, Wide Flat Panel w/Height Adjustable Stand, 19.0 Inch VIS, OptiPlex Precision and Latitude (320-6137)		
<b>Video Card:</b>	Integrated Video, GMA 4500, Dell OptiPlex 760 and 960 (320-7407)		
<b>Hard Drive:</b>	320GB 3.5 inch SATA 3.0Gb/s and 16MB Data Burst Cache Dell OptiPlex 960 (341-8100)		
<b>Floppy Disk Drive:</b>	No Floppy Drive with Optical Filler Panel, Dell OptiPlex 960 Small Form Factor (341-8103)		
<b>Operating System:</b>	Windows XP PRO SP3 with Windows Vista Business License English, Dell OptiPlex (420-9570)		
<b>Mouse:</b>	Dell USB 2 Button Optical Mouse with Scroll, Black OptiPlex (330-2733)		
<b>TBU:</b>	vPro Secure Advanced Hardware Enabled Systems Management Dell OptiPlex (330-2626)		
<b>CD-ROM or DVD-ROM Drive:</b>	8X DVD-ROM, OptiPlex Small Form Factor (313-6090)		
<b>CD-ROM or DVD-ROM Drive:</b>	Cyberlink Power DVD 8.1, with Media, Dell OptiPlex/Precision (420-9179)		
<b>Sound Card:</b>	Mainstream Pentium Dual Core Dell OptiPlex 960 Small Form Factor (311-9612)		
<b>Speakers:</b>	Internal Chassis Speaker Option, Dell OptiPlex 960 Small Form Factor (313-7073)		
<b>Cable:</b>	OptiPlex 960 Small Form Factor Up to 88 Percent Efficient Power Supply (330-2015)		
<b>Documentation Diskette:</b>	Documentation, English, Dell OptiPlex (330-1710)		
<b>Documentation Diskette:</b>	Power Cord, 125V, 2M, C13, Dell OptiPlex (330-1711)		
<b>Controller Option:</b>	No RAID, Dell OptiPlex 960 (341-8036)		
<b>Factory Installed Software:</b>	Energy Star 4.0 Category B (less than 65W idle), EPEAT Gold, Dell ESMART Settings OPTIPLEX (330-2606)		
<b>Feature</b>	Resource DVD contains Diagnostics and Drivers for Dell OptiPlex 960 Vista (330-2236)		
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<b>Service:</b>	ProSupport for IT: 7x24 Technical Support for certified IT Staff, 3 Year Extended (981-3863)		

Service:	ProSupport for IT: 7x24 Technical Support for certified IT Staff, Initial (984-6640)
Misc:	Chassis intrusion switch, DellOptiPlex 960 (330-2234)
Misc:	Shipping Material for System Small Form Factor, Dell OptiPlex 960 (330-2031)
	Vista Premium Downgrade Relationship Desktop (310-9161)
	You have chosen a vPro System (310-9490)

SOFTWARE & ACCESSORIES			
Product	Quantity	Unit Price	Total
NEO-FLEX ALL IN ONE STAND (A1464723)	36	\$77.39	\$2,786.04
Number of S & A Items: 1		S&A Total Amount: \$2,786.04	

SALES REP:	Jason Woody	PHONE:	1-800-357-3355
Email Address:	jason_woody@dell.com	Phone Ext:	795-7043

For your convenience, your sales representative, quote number and customer number have been included to provide you with faster service when you are ready to place your order. Orders may be faxed to the attention of your sales representative to 1-866-607-6914. You may also place your order online at <http://www.dell.com/qto>.

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**\*\*Sales/use tax is a destination charge, i.e. based on the "ship to" address on your purchase order. Please indicate your taxability status on your PO. If exempt, please fax exemption certificate to Dell Tax Department at 1-888-863-8778, referencing your customer number. If you have any questions regarding tax please call 800-433-9019 or email Tax\_Department@dell.com.\*\***

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**COUNCIL AGENDA MEMO – (01/20/09 & 01/27/09)**

**DEPARTMENT:** Parks, Recreation & Library

**AGENDA ITEM:** Maintenance Billing from SirsiDynix for the Yavapai Library Network's shared automation system.

**Approved By:**

**Date:**

**Department Head:** Debbie Horton

**Finance Director:** Mark Woodfill

**City Manager:** Steve Norwood



12/30/08

Background

The Yavapai Library Network (YLN) is a consortium of over 40 libraries that have come together to share resources, expertise, and expenses. The management group of the Yavapai Library Network includes a voting representative from the Yavapai County Library District, as well as from each school district, academic institution and incorporated town represented in the Network. Each year Yavapai Library Network members review their commitment to the library automation software developed, distributed and maintained by SirsiDynix.

The software the Network has purchased from SirsiDynix has allowed the consortium to integrate resources and services. It enables circulation of member libraries' books, DVDs, CDs and other materials. It also allows residents access from home and work to the library catalog and other shared resources. Ease of use for library patrons and time savings afforded library staff have made possible the over 100% increase in check out numbers experienced by YLN member libraries over the last two decades.

Prescott Public Library has managed the Yavapai Library Network since the partnership began in the late 80s. Each December software and hardware costs associated with maintenance of the Network's shared library automation system are distributed to the participating libraries as per the Intergovernmental Agreements (IGA) entered into by each member of the Network with the City of Prescott. Per the IGA, the formula used to determine a library's share is updated each year based on that library's "licenses" or seats and on their holdings. As the Network has grown, the City's share of bills has steadily declined.

Financial

This year the SirsiDynix hardware and software maintenance bill is for \$81,352.22. Prescott Public Library's share (including the Prescott Gateway Branch Library) is 17.5% or \$14,196. The remaining 82.5% will be charged to the member libraries. In addition to the SirsiDynix maintenance bill, the City's annual billing of Network libraries will include their share of other Network operating costs, including subscription databases, telecommunications and personnel.

**Recommended Action:** Should Council approve, **MOVE** to authorize payment to SirsiDynix for maintenance costs associated with the automated library system operated by the City on behalf of the Yavapai Library Network in the amount of \$81,352.22.



# Invoice

Invoice	INVMT000000015387
Date	12/8/2008
Page	1

Federal Tax ID # 63-1233771  
 Phone: (801) 223-5200  
 FAX: (801) 223-5202

**Bill To:**

Prescott Public Library - Yavapai Librar  
 Yavapai Library Network  
 215 East Goodwin Street  
 Prescott AZ 86303

**Ship To:**

Prescott Public Library - Yavapai Librar  
 Prescott Public Library  
 172 East Merritt Street Suite E  
 Prescott AZ 86301-2029

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.	
MAINTENANCE	D467		NLT	Net 30	12/8/2010	60,793	
Ordered	Shipped	B/O	Item Number	Description	Discount	Unit Price	Ext. Price
1.000	1.000	0.000	30-95002-000	Annual Horizon Software Maintenance	\$0.00	\$1,182.00	\$1,182.00
1.000	1.000	0.000	30-95004-000	Annual Dynix Software Maintenance	\$0.00	\$32,526.54	\$32,526.54
1.000	1.000	0.000	30-95005-000	Annual Software Maintenance for Other SirsiDynix P	\$0.00	\$1,147.56	\$1,147.56
1.000	1.000	0.000	30-95006-000	Annual Third-Party Software Maintenance	\$0.00	\$19,381.92	\$19,381.92
1.000	1.000	0.000	30-95008-000	Annual Hardware Maintenance	\$0.00	\$8,686.92	\$8,686.92
1.000	1.000	0.000	30-95009-000	Annual Hardware Peripheral Maintenance	\$0.00	\$2,191.75	\$2,191.75
1.000	1.000	0.000	30-95010-000	Annual Third-Party Subscription Maintenance	\$0.00	\$6,204.48	\$6,204.48
1.000	1.000	0.000	30-95011-000	Annual Subscription Maintenance for Other SirsiDyn	\$0.00	\$4,600.00	\$4,600.00
				Effective Period: Nov. 1, 2008 - Oct. 31, 2009			
				Tax Analysis:	Taxable Amt	Tax Amount	
				T Arizona State Taxable Rate: 5.60000%	\$65,042.50	\$3,642.38	
				T AZ, Prescott City Sales Tax Rate: 2.00000%	\$65,042.50	\$1,300.85	
				T AZ, Yavapai County Sales Tax Rate: 0.75000%	\$65,042.50	\$487.82	

Please remit payment to:  
 SirsiDynix  
 #774271  
 4271 Solutions Center  
 Chicago, IL 60677-4002

<b>Subtotal</b>	\$75,921.17
<b>Misc</b>	\$0.00
<b>Tax</b>	\$5,431.05
<b>Freight</b>	\$0.00
<b>Trade Discount</b>	\$0.00
<b>Total</b>	\$81,352.22

For questions, Please Contact:  
 Barbara M Caradine @ 800-288-8020 ext 5566  
 or barbara.caradine@sirsidyndynix.com

Payment of this invoice shall constitute acceptance of the agreement excuted by both parties as the sole governing terms & conditions for the items herein.



**SCHEDULE/EXHIBIT "A"**

**Prescott Public Library - Yavapai Librar**

Item Number	Item Description	Serial Number	Qty	Coverage Effective Dates From To	EOL Date	Price
M-1814	OFFCIRC LIC ENHAN 101-200		1	11/1/2008 - 10/31/2009		1,182.00
<b>Annual Horizon Software Maintenance</b>						<b>1,182.00</b>
M-1018	Account - Additional ACQ		6	11/1/2008 - 10/31/2009		363.60
M-1021	ACQ Electronic Ordering Interf		4	11/1/2008 - 10/31/2009		1,940.16
M-1022	ACQ Module User Based		1	11/1/2008 - 10/31/2009		2,058.84
M-1052	CIRC Module (User based)		1	11/1/2008 - 10/31/2009		1,197.00
10109	Dynix ILS Add'L Cat, Circ, and PAC Acco		23	11/1/2008 - 10/31/2009		3,622.50
M-1083	DYNIX ILS SIP LIC LOC ADDL		6	11/1/2008 - 10/31/2009		900.00
M-1128	DYNIX LIC CATWIN UX 05-16		1	11/1/2008 - 10/31/2009		1,800.00
M-1143	DYNIX LIC DEBTCOLLECT 02-04		1	11/1/2008 - 10/31/2009		228.00
M-1162	DYNIX LIC HOMEBOUND 101-200		1	11/1/2008 - 10/31/2009		1,147.56
M-1179	DYNIX LIC RECEIPT PR 11-25		1	11/1/2008 - 10/31/2009		247.32
M-1208	DYNIX SIP LIC LOC FIRST		1	11/1/2008 - 10/31/2009		450.00
M-1210	Dynix User Lic Fees		296	11/1/2008 - 10/31/2009		14,208.00
M-1219	Dynix Z39.50 Server Set up		1	11/1/2008 - 10/31/2009		149.64
M-1232	HIP LIC TIER E 201-500 DYNIX		1	11/1/2008 - 10/31/2009		1,800.00
M-1239	Independent Patron Privileges		10	11/1/2008 - 10/31/2009		0.00
M-1285	Reserve Book Room (User based)		4	11/1/2008 - 10/31/2009		1,454.88
10110	Dynix ILS Add'L Circ and PAC Accounts	Yavapai College	24	11/1/2008 - 10/31/2009		959.04
<b>Annual Dynix Software Maintenance</b>						<b>32,526.54</b>
M-0926	RPA LIC 101-200		1	11/1/2008 - 10/31/2009		1,147.56
M-0979	SIP SVC ENHANCED UPGR	NeedSN-338651	1	11/1/2008 - 10/31/2009		0.00
<b>Annual Software Maintenance for Other SirsiDynix Products</b>						<b>1,147.56</b>
10116	IBM UniVerse Additional User License for	20011290	298	11/1/2008 - 10/31/2009		19,381.92
<b>Annual Third-Party Software Maintenance</b>						<b>19,381.92</b>
M-0046	DELL SERVER WEBREPT PER QUOTE	8X52T91	1	11/1/2008 - 10/31/2009	3/31/2011	1,054.80
M-0048	Dell Server, Per Quote	9YDVC91; 5YDVC91	2	11/1/2008 - 10/31/2009	1/31/2011	7,632.12
<b>Annual Hardware Maintenance</b>						<b>8,686.92</b>
M-0414	TALLY PRINTER T6212 CAB PSN	H21L227767	1	1/1/2009 - 10/31/2009		1,671.67
M-0383	PSC DATA FALCON PT40 256	P403470061	2	11/1/2008 - 10/31/2009		520.08
<b>Annual Hardware Peripheral Maintenance</b>						<b>2,191.75</b>
10382	Enriched Content Basic Public Subscriptic		1	11/1/2008 - 10/31/2009		6,204.48
<b>Annual Third-Party Subscription</b>						<b>6,204.48</b>
11331	SirsiDynix Operating System Support per	OS for 8X52T91	1	11/1/2008 - 10/31/2009	3/31/2011	1,000.00
M-0720	SirsiDynix Tier II OS Support	OS for 9YDVC91-5YI	2	11/1/2008 - 10/31/2009	1/31/2011	3,600.00
<b>Annual Subscription for Other SirsiDynix Products</b>						<b>4,600.00</b>

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<b>COUNCIL AGENDA MEMO – January 20 &amp; 27, 2009</b>
<b>DEPARTMENT: Parks, Recreation &amp; Library</b>
<b>AGENDA ITEM: Accepting an Arizona State Parks Trails Heritage Fund Grant in the amount of \$64,570</b>

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Debbie Horton</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> <i>SNorwood</i>	<i>01/15/09</i>

**BACKGROUND:**

In February 2008, Mayor and Council approved an application to the Arizona State Parks Board for a Heritage Fund Trails Grant in the amount of \$64,570. The City's cash match will be \$37,270, to be paid from the 1% Streets & Open Space fund with the support and approval of the Open Space Acquisition Advisory Committee. Staff and volunteer labor will also be used as part of the City's grant match.

The purpose of the grant is to purchase of an additional section of State Trust Land to complete another section of the 50-mile Prescott Circle Trail. Application to the State Land Department for a right-of-way easement was filed in December 2006, and is being considered by the State Land Department for approval. Final location of the section of State Trust Land available for purchase has not yet been determined.

**BUDGET: FY 09**

\$64,570 of Arizona State Parks Trails Heritage Funds and \$37,270 - the City's matching cash – have been approved in #59-88503-731, \$101,840 to purchase an easement from the State Land Department

**STATUS:**

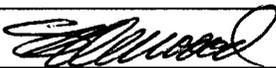
The Arizona State Parks Board approved the City's grant application at their annual appropriations meeting. City Attorney Gary Kidd has reviewed the Grant Participant Agreement and found it to be acceptable. The remaining step is for Council to approve the acceptance of the grant and execute the Participant Agreement with Arizona State Parks. After the document has been authorized by both City and State, the City will have three years to complete the work on the trail.

**Recommended Action: MOVE** to approve Grant Participant Agreement with Arizona State Parks to accept a Trails Heritage Fund grant in the amount of \$64,570.

**COUNCIL AGENDA MEMO – (1/20/09 & 1/27/09)**

**DEPARTMENT: Fire**

**AGENDA ITEM: Approval of a Delegation Agreement (DA) #06-069 between the City of Prescott (COP) and Arizona Dept. of Environmental Quality (ADEQ) for COP to issue open Burn Permits within the COP and abide by the requirements of the International Fire Code, the DA and Arizona Administrative Code [A.A.C. R18-2-602].**

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Darrell Willis</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> 	01/05/09

**Background**

On Feb. 17, 1998 the City Council entered into an Intergovernmental Agreement (IGA) No. 98-0035 with ADEQ to authorize the PFD to perform those activities necessary to issue open burn permits as described in the IGA and the Arizona Open Burning Guidelines.

ADEQ now wishes to replace the old IGA with a new DA, to be signed by the COP, in order for the City to legally permit all residential and commercial burning to continue, within the City, under the oversight of the PFD per A.R.S. 49-501, 13-1706 and [A.A.C. R18-2-602.D.3p].

PFD reasons for wanting to continue to issue regulated burn permits within the COP, (under ADEQ's authority / guidelines), are to:

- Continue to maintain an accurate paper and/or electronic trail,
- always have the Prescott Regional Communication Center / PFD be informed of all outdoor residential / commercial burning and its location,
- provide citizens an opportunity to burn off excessive vegetation fuels,
- minimize or eliminate residents potential to burn during non-burning high risk periods and
- collect a 30-day or 90-day commercial burn permit fee to off-set inspection costs.

City options are for the PFD to issue burn permits, per ADEQ requirements, or have ADEQ regulate and issue all commercial and residential permits for and within the COP.

**Financial Impact**

Currently there are no residential Burn Permit fees. However, we do have a commercial burn permit fee of \$50 for a 30-day permit or a \$100 fee for a 90-day permit. Annually this may generate between \$500 and \$700 or more.

Attachments: Resolution  
Proposed New Delegation Agreement  
Burn Permit Form

**Recommended Action: Move to adopt Resolution No. 3930-0936.**

**RESOLUTION NO. 3930-0936**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A NEW DELEGATION AGREEMENT (DEVELOPMENT AGREEMENT) WITH ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ) AUTHORIZING THE PRESCOTT FIRE DEPARTMENT TO CONTINUE ISSUING OPEN BURN PERMITS WITHIN THE CITY, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE**

**RECITALS:**

WHEREAS, on February 17, 1998 the City of Prescott entered into an IGA, Contract No. 98-0035 with ADEQ to authorize the Prescott Fire Department ("PFD") to perform those activities necessary to issue residential and commercial open burn permits as described in the IGA and the Arizona Open Burning Guidelines; and

WHEREAS, the parties wish to enter into a new Delegation Agreement to be completed and signed by the City in order for the City to legally permit all residential and commercial burning to continue within the City under the oversight of the PFD, per ARS 49-501, 13-1706 and [A.A.C. R18-2-602.D.3p].

**ENACTMENTS:**

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT the City of Prescott hereby approves the new Delegation Agreement (Development Agreement) with ADEQ, attached hereto as Exhibit "A".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached Delegation Agreement and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27<sup>th</sup> day of January, 2009.

---

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • www.azdeq.gov



Stephen A. Owens  
Director

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**December 9, 2008**

Bruce Martinez, Deputy Fire Chief  
Prescott Fire Department  
2086 Willow Creek Road  
Prescott, AZ 86305

Re: Delegation Agreement #06-069

Dear Mr. Martinez:

Enclosed, please find an original of Delegation Agreement # 06-069 ("DA"), containing the terms delegated by the Director of the Arizona Department of Environmental Quality ("ADEQ") as accepted by the Prescott Fire Department.

This DA requires signatures of the Local Agency (LA) authorized public officer(s), the LA Clerk and the LA Attorney on the original. As evidence of approval as to form, an Assistant Attorney General's signature is on the original enclosed.

Upon execution and approval by all LA parties, please send the original back to ADEQ for my signature and filing with the Secretary of State. ADEQ will return a copy of the original for filing with the LA Recorder.

The delegation agreement will become effective only after all required parties have signed and it has been filed with the Secretary of State.

If you have any questions or concerns, you may contact Trevor Baggione, Air Quality Permits Section Manager, at (602) 771-2321 or me at (602) 771-2308.

Sincerely,

Nancy C. Wrona, Director  
Air Quality Division

Encl.: Original of delegation agreement for signatures; return envelope to Henry Darwin's attention

cc: Henry Darwin; ADEQ Office of Administrative Counsel

Northern Regional Office  
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

**Delegation Agreement**

**Between**

**Arizona Department of Environmental Quality**

**And**

**Prescott Fire Department**

Whereas, A.R.S. § 49-107 generally authorizes the Director of ADEQ (Director) to delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers, or duties, hereinafter Functions and Duties, which the Director believes can be competently, efficiently, and properly performed by the local agency, and

Whereas A.R.S. § 49-501(E) specifically permits the Director to delegate authority for the issuance of open burn permits to a county, city, town, fire district, or its assigned private fire protection service provider, and

Whereas the Prescott Fire Department ("local agency," hereinafter LA) meets the delegation qualification, as set forth in A.R.S. § 49-501(E), and

Whereas, the LA is required by A.R.S. § 49-106 to enforce and observe rules adopted by ADEQ and laws of the State of Arizona pertaining to the preservation of public health and protection of the environment, and

Whereas the Director of ADEQ believes the LA will competently, efficiently, and properly perform the Functions and Duties covered by this Agreement, and the LA deems that it is in its best interests to accept such Functions and Duties,

Therefore, the Director of ADEQ delegates to the LA, and the LA agrees to accept the delegation of authority to abide by the terms of this document and A.A.C. R18-2-602 and perform those Functions and Duties on behalf of ADEQ and in accordance with the terms and conditions contained herein.

## **DELEGATED FUNCTIONS AND DUTIES**

The Functions and Duties delegated to the LA by this Agreement are identified by A.R.S. § 49-501 and A.A.C. R18-2-602 pertaining to issuing permits for open burning.

## **STANDARDS OF PERFORMANCE**

### **1) RECORDS AND INSPECTIONS:**

- a) The LA agrees to prepare records relating to each of the Open Burn permits issued under this agreement. The LA agrees to maintain each of these records for a period of five years after issuance of the respective permit and make them available for inspection by the Director as required by A.A.C. R18-2-602(G).
- b) The LA agrees to annually provide to ADEQ by May 15 copies of open burn permits and a record of daily burn activity, excluding household waste burn permits as required by A.A.C. R18-2-602(G).
- c) ADEQ representatives may accompany employees of the LA on inspections and review all records relating to the performance of the activities set forth in this Agreement. Where practicable, ADEQ will provide prior notice to the LA of its intent to accompany the Fire Department employees on inspections.

### **2) OPERATING GUIDANCE:**

ADEQ will provide the LA with a copy of the requirements in A.A.C R18-2-602, application forms, and a copy of permit forms. Additional guidance may be provided on an as-required basis. This additional guidance may include other material that may assist the LA in making decisions necessary to carry out the activities covered by this Agreement. The LA is encouraged to contact ADEQ at any time to request clarification or to request that guidance be provided to cover a particular topic.

### **3) ENFORCEMENT:**

- a) In carrying out its duties under this Agreement, the LA shall comply with the provisions of A.R.S. § 49-501, and observe and enforce the rules of ADEQ and the laws of the State of Arizona pertaining to the preservation of public health and protection of environment.
- b) The LA shall initiate timely and appropriate enforcement actions against individuals and facilities to resolve violations of statutes and rules applicable to this Agreement. ADEQ retains complete authority to take enforcement action against any individual, facility or violator covered by this Agreement or, at its sole discretion, to refrain from exercising such authority if enforcement action taken by the LA is timely, appropriate and effective.

- c) The LA shall respond to imminent health hazards which fall under the LA's area of jurisdiction. ADEQ also retains authority to respond to, abate, or eliminate an imminent and substantial danger to public health or the environment.
- d) The LA shall not adopt any rules, procedures or policies that are in conflict with State law or are less restrictive than the rules of ADEQ.

**TERMS AND CONDITIONS OF AGREEMENT**

**1) TERM OF AGREEMENT:**

The initial term of this Agreement shall be five years from the effective date and may be extended by mutual written agreement of the parties, as permitted by applicable law.

**2) TERMINATION:**

- a) This Agreement may be terminated in whole or in part by either party, upon providing 30 days advance written notice by certified mail to the other party.
- b) The LA shall, prior to the termination of all or part of the Agreement, forward to the Director all files, public documents and pending applications received by the LA for those Functions and Duties being terminated, a summary status report for the same, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by such termination.

**3) FEES AND LEGAL AUTHORITY FOR IMPOSITION:**

The LA may not assess any fee, tax or other assessment in the exercise of its delegated Functions and Duties of this Agreement, pursuant to A.R.S. § 41-1083, unless the LA is otherwise authorized by law.

**4) PERSONNEL QUALIFICATIONS:**

In order to assure ADEQ's delegation is competently, efficiently and properly performed by qualified personnel the LA agrees to authorize only fire service providers performing fire protection services within that county, city, town or fire district to issue open burning permits, pursuant to A.R.S. § 49-501 and A.A.C. R18-2-602.

**5) AMENDMENT:**

This Agreement may be amended at any time upon mutual written agreement of the parties. No amendment of any of the terms of this Agreement shall be effective unless it is in writing and signed by the Director and the LA or their respective representatives, or designees.

**6) CONFLICT RESOLUTION PROCEDURES:**

The parties may resolve a conflict arising from this Agreement through arbitration. If a party seeks to invoke this provision the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

**7) CANCELLATION OF AGREEMENT:**

Arizona Department of Environmental Quality and the Local Agency each have the authority to cancel this Agreement without penalty or further obligation pursuant to provisions of A.R.S. § 38-511.

**8) DELEGATION TO OTHER LOCAL AGENCIES AND SUBDELEGATION**

- a) ADEQ's delegation to another jurisdiction within LA's boundaries shall in no way infringe upon, reduce or usurp a LA's right, authority and responsibility to implement non-delegated locally authorized activities and programs.
- b) ADEQ shall provide LA a copy of any delegation agreement with another jurisdiction located within the LA's boundaries.
- c) LA may not subdelegate the Functions and Duties of this Agreement to another local government agency or political subdivision without first obtaining the prior written approval of the Director. Pursuant to A.R.S. § 49-501(E), with the prior written approval of the Director, LA may assign the issuance of Open Burn permits to a private fire protection service provider that performs fire protection services within the LA's jurisdiction.

**9) AGENCY CONTACT PERSONS:**

The following Fire Department employee has been designated as responsible for administering the Functions and Duties pursuant to this Agreement. The Fire Department shall provide written notice to any successor.

Name: Bruce Martinez  
Title: Deputy Fire Chief  
Address: 2086 Willow Creek Road, Prescott, AZ 86305  
Phone: (928) 777-1760  
E-mail: [bruce.martinez@cityofprescott.net](mailto:bruce.martinez@cityofprescott.net)

The following ADEQ employee has been designated as responsible for administering the Functions and Duties pursuant to this Agreement. ADEQ shall provide written notice of any successor.

Name: Trevor Baggio  
Title: Manager, Air Quality Permits Section  
Address: 1110 W. Washington Street  
Phoenix, AZ 85007  
Phone: (602) 771-2321  
E-mail: [tb4@azdeq.gov](mailto:tb4@azdeq.gov)

The naming of a successor to either of the above individuals shall not require the re-execution of or an amendment to this agreement.

**10) EFFECTIVE DATE OF AGREEMENT:**

The effective date of this Agreement is the thirty (30) days from the Director's written final decision to enter into this Agreement with the LA.



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**COUNCIL AGENDA MEMO – 01/20/09 & 01/27/09**

**DEPARTMENT: ADMINISTRATIVE SERVICES**

**AGENDA ITEM: COUNCIL APPROVAL OF A FIVE YEAR FUNDING AGREEMENT WITH PRESCOTT COMMUNITY ACCESS CHANNEL**

**Approved By:**

**Date:**

<b>Department Head: Mic Fenech</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> <i>[Signature]</i>	<i>01/15/09</i>

**BACKGROUND:**

Attached is the proposed contract renewal with the Prescott Community Access Channel (PCAC), the independent entity that operates Access 13 – cable channel 13. The City's prior contract with Access 13 was a three year agreement.

The City's agreement with CableOne is the funding source for PCAC. In the prior agreement, PCAC received 25% of the fees paid to the City by CableOne.

Staff recommends a substantive change to the way funding contributions are made to PCAC. Because the funding source (CableOne) agreement is up for renewal in August of 2009, staff recommends the new agreement not be associated with the CableOne agreement, and that the new agreement be a 5-year contract, with one 5-year option. The new agreement calls for an annual amount to be paid in twelve (12) monthly installments with no escalation in the payments. The new contract calls for Access 13 to coordinate with CableOne and implement a Government-only Channel 15 within 90 days of the contract's execution. Government programming on Channel 13 will then be phased out. The contract also has some additions which were requested by our legal department to protect the interests of the City, and which puts the agreement in standard contract form. There were some clarifications requested by PCAC as well. These additions have been approved by the Board of PCAC.

**FINANCIAL:**

The payments made to PCAC for the last 4 years have been:

<b>2005</b>	\$76,378
<b>2006</b>	\$77,263
<b>2007</b>	\$81,657
<b>2008</b>	\$82,916 plus \$5,000/year for equipment

The new agreement has a cap of \$82,000 per year plus \$5,000 per year as funded by Cableone for the purchase of equipment, software, or facility enhancements.

**Recommended Action: MOVE** to approve the attached 5-year funding agreement with Prescott Community Access Channel with one five year option.

**CITY OF PRESCOTT/  
PRESCOTT COMMUNITY ACCESS CHANNEL  
AGREEMENT**

THIS AGREEMENT is made by and between the CITY OF PRESCOTT, a municipal corporation of the State of Arizona (hereinafter referred to as "CITY"), and PRESCOTT COMMUNITY ACCESS CHANNEL, an Arizona not-for-profit corporation (hereinafter referred to as "P.C.A.C.").

WHEREAS, P.C.A.C. has been formed pursuant to §4-124 of the Prescott City Code to promote and develop community involvement in and use of cable television for public, educational, governmental purposes;

NOW, THEREFORE, in consideration of the terms and covenants herein, the parties agree as follows:

1. The term of this Agreement shall be from January 1, 2009 until December 31, 2013. The parties may, by mutual consent, extend this contract for an additional five-year period, under the same terms and conditions as contained herein.

2. In consideration of P.C.A.C. continuing to provide cable television access for public, educational, governmental and other nonprofit purposes, which the CITY hereby acknowledges are of benefit to the public, the CITY agrees to provide to P.C.A.C. the following funding:

(a) The sum of \$82,000.00 annually, payable in equal monthly installments. Payments shall be issued no later than the 10<sup>th</sup> day of the month following the month in which services were rendered.

(b) The CITY receives \$5,000.00 annually from Cable One for the purchase of hardware. The CITY will thereafter provide funds in an equivalent amount to P.C.A.C. which P.C.A.C. agrees shall be used solely for the purchase of hardware, software, equipment and facilities improvements within one (1) year of receipt of said funds for the duration of this Agreement

3. P.C.A.C. hereby covenants and warrants that any and all monies received pursuant to Paragraph 2(b) above shall be expended solely for the purchase of equipment directly related to P.C.A.C. and improvements to P.C.A.C. facilities.

4. With respect to any equipment purchased by P.C.A.C. with funds received pursuant to section 2(b), P.C.A.C. further agrees:

(a) Not to dispose of, sell, convey or otherwise transfer any such property or equipment without the consent of the City Manager.

(b) That in the event that P.C.A.C. dissolves, liquidates, ceases operations, or fails to remain the designated provider of an access channel in accordance with PCC § 442-I, that all equipment and other assets purchased by P.C.A.C. with funds received pursuant to section 2(b) shall revert to and become the property of the CITY.

5. That P.C.A.C. shall provide monthly financial reports as approved by the PCAC Board of Directors to the City Manager during the term of this Agreement; and further that said financial reports shall separately identify the specific expenditures of monies received pursuant to this Agreement including those funds received pursuant to section 2(b).

6. P.C.A.C. shall provide copies of its approved annual budget to the City Manager at the time of its adoption.

7. P.C.A.C. shall provide an annual report to the City Manager that outlines P.C.A.C. activities for the previous year, including but not limited to membership status, number of new and existing programs produced and cablecast, community participation in programming, fundraising activity and goals and objectives for the coming year.

8. A CITY representative appointed by the Mayor or his designee shall serve as a liaison to the Prescott Community Access Channel Board of Directors.

9. While the CITY continues to cablecast on Channel 13, P.C.A.C. shall allow the CITY to have access to the Community Access Channel at not charge or cost to the CITY. Said access shall consist of not less than 56 programming hours per week, including not less than 14 of the prime-time programming hours, i.e. 5 p.m. through 12 p.m. per week. The P.C.A.C. Station Manager shall work with the CITY to develop a government programming schedule that reflects the potential for exceptionally long meetings to prevent the preemption of non-government programs. On the rare occasions when total programming and/or primetime programming exceed the contract limits and non-government programming is preempted, the CITY shall work with P.C.A.C. to adjust subsequent weeks' programming schedules to make additional time available for preempted, non-government programming.

10. That in further consideration of this Agreement and unless other arrangements are made in advance between the City of Prescott Communications Director and P.C.A.C., P.C.A.C. shall provide the necessary personnel to produce live broadcasts of all regularly scheduled City Council study and voting sessions, Planning

and Zoning Commission meetings and Prescott Preservation Commission meetings. P.C.A.C. may also be asked to produce live broadcasts of Council and Commission workshops and intermittent special public meetings and community programs and CITY sponsored Special Events with a minimum of 48 hours advanced notice, 24 hours under special circumstances.

11. That in further consideration of this Agreement, P.C.A.C. shall cablecast during prime-time hours all programming described in Section 10 above at times to be determined by mutual Agreement of the CITY and P.C.A.C.

12. That P.C.A.C. shall dedicate 15 notice (Video Bulletin Board) pages for City of Prescott public communication purposes to cablecast on the video bulletin board. Video Bulletin Board notices of special events, City of Prescott meetings or other announcements shall be posted within one (1) business day of receipt of said notices.

13. P.C.A.C. shall:

(a) Upon request by the CITY, provide the CITY with up to 10 (ten) total copies (dubs) per month of videotaped meetings and other CITY-produced or sponsored programs at no cost to the CITY.

(b) Continue work toward the goal of developing, recruiting and maintaining an audio/visual volunteer and/or student internship program to aid P.C.A.C. personnel in meeting the contract obligations to the CITY.

(c) Provide City of Prescott staff, P.C.A.C. volunteers and/or student interns with video production training and technical assistance as needed to aid P.C.A.C. personnel in meeting the channel's contract obligations to the CITY.

(d) Make P.C.A.C.'s personnel available 24 hours a day to assist with emergency communications in the event of flood, fire or other natural or manmade disasters.

(e) Train City of Prescott Communications staff to assist with emergency broadcasts.

(f) Work with Cable One and CITY toward the development and implementation of an emergency communications protocol.

(g) Subject to availability, make any and all of its video production equipment available to the CITY at no cost; provided, however, that the CITY provide P.C.A.C. with a minimum of forty-eight (48) hours notice of equipment needs and in accordance with P.C.A.C. rules and procedures.

(h) P.C.A.C. shall coordinate with Cable One to broadcast "government only" programming via Channel 15. The completion date shall be no later than ninety calendar days following the execution of this agreement. Content shall consist of those programs identified in Section 10 and CITY produced programming. CITY may request assistance from P.C.A.C. to produce content for Channel 15 with advance, written notice. Additional content may include: public service announcements, video billboards, and city news and features. CITY reserves the right to continue running video billboards, CITY promotions, and select programming on Channel 13.

14. P.C.A.C. will include a disclaimer pertaining to any underwriting on Channel 15, mutually agreed upon by the City Manager or his designee, that will be cablecast at the beginning and the end of City government programs that carry

underwriting in order to prevent any public misperception that such ads are governmentally endorsed, sponsored or approved.

15. To maximize the security of the remote video studio within Prescott City Hall, P.C.A.C. agrees to comply with security procedures as follows:

(a) P.C.A.C. will provide the Prescott Communications Director a list of all P.C.A.C. staff and volunteers authorized to operate the remote video studio and produce City Council and other public meetings in the studio.

(b) P.C.A.C. staff members and/or volunteers assigned by P.C.A.C. to produce a public meeting from the remote video audio within City Hall will, on the day of the meeting assignment, request a studio key either from the City Hall reception desk, from the Communications Director or a City Manager's office staff member. The key will be given to the P.C.A.C. staff member/volunteer provided that his or her name appears on the staff list provided by P.C.A.C. and further provided that he or she displays proper identification, i.e., a driver's license or CITY volunteer badge. The key holder is required to return the key the same day and before leaving the CITY Hall building.

16. To ensure sufficient, trained personnel to operate the remote video studio within City Hall, P.C.A.C. agrees to conduct training sessions with its own staff and volunteers and with CITY of Prescott staff and volunteers. P.C.A.C. will work with the CITY in the scheduling of those training sessions.

17. P.C.A.C. may continue to occupy allocated CITY space in the Prescott Activity Center at no cost to P.C.A.C. during the term of this agreement.

18. That P.C.A.C., its Board, employees and agents shall strictly conform to all duly adopted bylaws of the Corporation.

19. P.C.A.C., with regard to its operations of a Community Access Channel, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the provision of services or charging of fees. P.C.A.C. will not participate either directly or indirectly in discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, or Executive Order 994. Notwithstanding this section, P.C.A.C. shall be allowed to charge additional rates or fees for services to residents or entities not within the Prescott Cable Television Franchise Area.

20. P.C.A.C. hereby agrees to provide any and all information to the CITY to resolve any complaints received by the CITY regarding the Community Access Channel within ten days of receiving notice from the CITY of said complaint, except where PCAC has a policy or obligation to not release information. Nothing in such policy or obligation is intended to affect records of the City of Prescott which are public records and the City will provide such public records to the public in accordance with applicable laws. P.C.A.C. shall further attempt to resolve any such complaint, and in any event shall contact the complainant within twenty (20) days in an attempt to resolve such complaint.

21. Pursuant to A.R.S. 38-511, the CITY may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the CITY is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other

party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the foregoing event, the CITY may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of the CITY from any other party to the contract, arising as a result of this contract.

22. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to binding arbitration.

23. 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 Contract, pursuant to A.R.S. Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

24. It is expressly agreed and understood by and between the parties that P.C.A.C. is an independent contractor, and as such P.C.A.C., its employees, officers, agents and assigns P.C.A.C. shall not become CITY employees, and are not entitled to payment or compensation from the CITY or to any fringe benefits to which other CITY employees are entitled. As an independent contractor, P.C.A.C. further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, P.C.A.C. further agrees that it will conduct itself in a manner consistent with such status, and that it, its officers, employees, agents or assignees will neither hold itself or themselves out,

nor claim to be officers or employees of the CITY by reason thereof, and that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

25. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

26. This Agreement shall be construed under the laws of the State of Arizona.

27. This Agreement represents the entire and integrated Agreement between the CITY and P.C.A.C. and supersedes all prior negotiations, representations, or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CITY and P.C.A.C. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

28. PCAC hereby agrees to save and hold harmless the CITY, or any of its departments, agencies, officers or employees whatsoever, from any and all claims, liabilities, expenses or lawsuits as a result of the City's participation pursuant to this Agreement, which are caused by the negligent acts or omissions willful or intentional misconduct of the PCAC, or its officers, employees, agents or assigns. The CITY hereby agrees to save and hold harmless PCAC, or any of its departments, agencies, officers or employees whatsoever, from any and all claims, liabilities, expenses or lawsuits as a result of PCAC's participation pursuant to this Agreement which are caused by the negligent acts or omissions, willful or intentional misconduct of City, or its officers, employees, agents or assigns. The costs incurred by either party, any of its departments, agencies, employees or assigns, include but are not limited to actual punitive damages, special or consequential damages, and any and all expenses of litigation, except for any such claims that arise or relate to this agreement pursuant to contractual issues between the parties, which shall be governed by the provisions of Section 23 and the other terms of this agreement.

29. No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

30. The Contractor understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the

Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, as amended, "Residence Requirements for Employees."

Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractor's employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of its Subcontractors to ensure compliance with the Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed

by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214 Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this \_\_\_\_ day of January, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE  
City Clerk

\_\_\_\_\_  
GARY D. KIDD  
City Attorney

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Prescott Community Access Channel this \_\_\_\_\_ day of January, 2009.

\_\_\_\_\_  
CHAIRMAN OF THE BOARD

ATTEST:

\_\_\_\_\_  
Secretary of the Board

**COUNCIL AGENDA MEMO – January 20, 2009**

<b>DEPARTMENT:</b> Community Development - Planning	
<b>AGENDA ITEM:</b> Introduction of Annexation of a Portion of the Granite Dells Ranch, and Associated Rezoning and Minor General Plan Amendment. <b>Owner:</b> Granite Dells Ranch Holdings (Cavan Real Estate Investments) <b>Agent:</b> Mark Reddie, LVA Urban Design Studio, Tempe, Arizona	
<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Tom Guice <i>TAG</i>	
<b>Finance Director:</b>	
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>	<i>01/15/09</i>

**REQUEST:**

The applicant is proposing a commercial and industrial subdivision totaling 450 acres. No residential uses are proposed. The prospective annexation of 387 acres located east of Side Road/Peavine Trail at SR 89A is subject to the requirements of Proposition 400. The project also includes the area of the Hanson aggregate plant, already within the city limits. A partial change of zoning is requested from residential to Business General/Business Regional (BG/BR). These zoning districts allow for the proposed commercial uses. A minor General Plan amendment is proposed from residential to commercial in a small area in the northeast portion of the project.

The applicant is not submitting a preliminary plat at this time. A Master Development Plan has been provided proposing a commercial/industrial subdivision (attached). The applicants must eventually go through the City of Prescott commercial subdivision plat and site plan review process which will address infrastructure, parking, lighting, landscaping and other issues before building permits may be issued. A traffic impact analysis and cost/benefit study have been completed and submitted for review as part of the annexation requirements.

The property owner and professionals engaged for the project will make a presentation at the January 20th Council meeting.

**PUBLIC NOTIFICATION / PROPOSITION 400 REQUIREMENTS:**

Notices will be mailed regarding the subject annexation, zoning change and General Plan amendment applications to the surrounding property owners of record. The mailing will include a vicinity map and a description of the request. Also, the application will be advertised and posted according to State requirements.

Proposition 400 establishes additional local requirements for annexations over 250 acres, including Council approval by a three-fourths majority. A public comment period of 60 days is required beginning at the time of a formal recommendation by the Planning & Zoning Commission regarding the Master Development Plan. Further, all effluent generated by this project must be reserved for permanent aquifer recharge.

**Agenda Item:** Introduction of Annexation of a Portion of the Granite Dells Ranch, and Associated Rezoning and Minor General Plan Amendment.

The public process has been refined to encompass concurrent review and approval of the annexation, rezoning and General Plan amendment applications (separate rezoning and General Plan amendment public hearings were formerly held in such cases). The Planning and Zoning Commission will conduct public hearings and is anticipated to make recommendations regarding the annexation application and Master Development Plan at their February 12 and 26, 2009, meetings. Adoption and transmittal of these formal recommendations to Council will begin the 60 day public review period required by Proposition 400. Formal approval of the annexation, rezoning, and General Plan amendment applications will occur thereafter.

**RELATED AGENDA ITEMS:**

Both a Procedural Pre-annexation Agreement, and Temporary Construction Easement (TCE) granting to the City access to the property for construction of the SR 89A/Granite Dells Parkway (Side Road relocated) traffic interchange, will also be presented separately for Council consideration/approval at the January 20 and 27, 2009, meetings.

Attachment - Master Development Plan

**Recommended Action:** This item is only for introduction of the proposed annexation; no Council action is required.

# GRANITE DELLS RANCH, INC.

CITY OF PRESCOTT, ARIZONA

## MASTER DEVELOPMENT PLAN

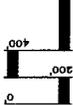
### LEGEND

-  INDUSTRIAL LIGHT
-  COMMERCIAL/EMPLOYMENT
-  OPEN SPACE
-  ACCESS POINTS
-  PEAVINE TRAIL

### NOTES

1. GRANITE CREEK OPEN SPACE IS APPROXIMATE. ACTUAL OPEN SPACE LIMITS WILL BE DETERMINED AT THE TIME OF DEVELOPMENT.
2. GROSS ACREAGE FOR DEVELOPMENT PARCELS ARE APPROXIMATE.

SCALE: 1"=400'



NORTH

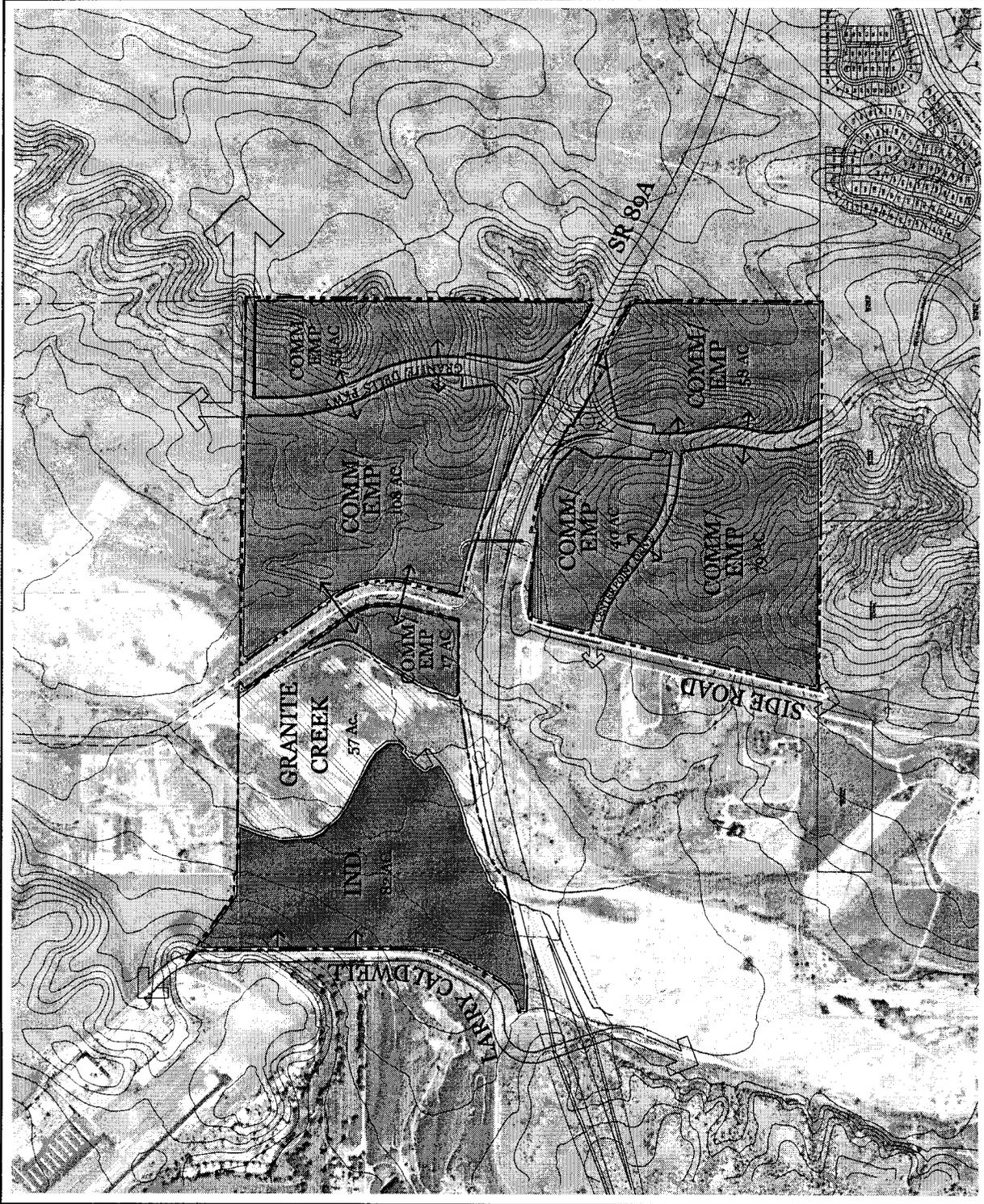


DATE: 02-28-08  
JOB: 04/75  
BY: FR  
REV: 08-12-08

**LVA** urban design studio  
land planning - landscape architecture

178 north oak avenue - tempe, arizona 85281 phone: 480.944.8994

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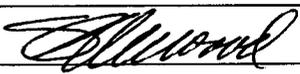
## COUNCIL AGENDA MEMO – January 20, 2009

**DEPARTMENT:** Public Works

**AGENDA ITEM:** (1) Approval of Procedural Pre-Annexation Agreement and Agreement to Provide Temporary Construction Easement and Dedicate Right-of-way with Granite Dells Ranch Holdings, LLC; and (2) Acceptance of Temporary Construction and Mining Easement from Granite Dells Ranch Holdings, LLC

**Approved By:**

**Date:**

<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood 	01/15/09

### Item Summary

This item is for approval of two documents pertaining to property owned by Granite Dells Ranch Holdings, LLC (Cavan Real Estate Investments): (1) Procedural Pre-Annexation Agreement and Agreement to Provide Temporary Construction Easement and Dedicate Right-of-way; and (2) Temporary Construction and Mining Easement. The documents set forth certain understandings between the property owner and City with respect to potential annexation of 387 acres located north and south of the SR 89A/Granite Dells Parkway (Side Road relocated) traffic interchange; and access to and limited use of the property for construction of the interchange.

### Background

In November 2006 Council awarded an engineering services contract to Parsons Transportation Group (Parsons) for a grade separated traffic interchange in the vicinity of the Side Road intersection with SR 89A. Plans and specifications for the project have been completed and delivered to the City; advertisement for bids is anticipated within the next few weeks.

The attached Procedural Pre-annexation Agreement defines a process by which annexation, General Plan amendment and rezoning of the property (see attached map) may occur subject to the owner's desire to proceed. The Agreement neither obligates the owner to proceed with annexation, nor the City to approve it.

The owner will dedicate approximately 37 total acres (26 acres to the State of Arizona and 11 acres to the City of Prescott) for construction of the interchange and related street improvements. The dedication is to be finalized upon completion and acceptance of the project by ADOT and City Public Works.

The Temporary Construction and Mining Easement (TCE) is a grant by the owner to the City for project access, staging equipment, and excavating fill material for use on the project. The TCE recites the obligations of the City, and its agents, for use, grading, stabilization, and revegetation of the property upon completion of the project. A Mining and Finished Plan (Plan) will be required of the contractor for borrow areas, and is

**Agenda Item:** Approval of (1) Procedural Pre-Annexation Agreement and Agreement to Provide Temporary Construction Easement and Dedicate Right-of-way with Granite Dells Ranch Holdings, LLC; and (2) grant of Temporary Construction and Mining Easement by Granite Dells Ranch Holdings, LLC

subject to City review/approval prior to commencement of work. The TCE will also comprise an exhibit to the Procedural Pre-Annexation Agreement.

### **Budget**

No monetary compensation is required from the City for either the dedication of right-of-way or the TCE. Should the owner determine to proceed with annexation of the property, the General Plan amendment, and rezoning, the City will process the associated applications in good faith and in a timely manner.

### **Attachments**

- Location map
- Resolution No. 3932-0938 approving the Procedural Pre-Annexation Agreement and Agreement to Provide Temporary Construction Easement and Dedicate Right-of-Way
- Resolution No. 3934-0940 accepting the Temporary Construction and Mining Easement
- Procedural Pre-Annexation Agreement
- Temporary Construction and Mining Easement

**Recommended Action:** (1) **MOVE** to adopt Resolution No. 3932-0938; and (2) **MOVE** to adopt Resolution No. 3934-0940.

**RESOLUTION NO. 3932-0938**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A PROCEDURAL PRE-ANNEXATION AGREEMENT AND AGREEMENT TO PROVIDE TEMPORARY CONSTRUCTION EASEMENT AND DEDICATE RIGHT OF WAY WITH GRANITE DELLS RANCH HOLDINGS, LLC FOR THE GRANITE DELLS PARKWAY/STATE ROUTE 89A TRAFFIC INTERCHANGE PROJECT, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE**

**RECITALS:**

WHEREAS, Granite Dells Ranch Holdings, LLC is the owner of certain real property located north and south of the SR 89A/Granite Dells Parkway (Side Road relocated) traffic interchange; and

WHEREAS, the parties wish to enter into a Procedural Pre-Annexation Agreement and Agreement to Provide Temporary Construction Easement and Dedicate Right of Way pursuant to ARS Section 9-500.05 relating to the development of the Granite Dells Parkway/State Route 89A traffic interchange project. The owner will dedicate approximately 37 total acres (26 acres to the State of Arizona and 11 acres to the City of Prescott) for construction of the interchange improvements and said dedication of right-of-way to occur upon completion and acceptance of the project by ADOT and City Public Works.

**ENACTMENTS:**

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT the City of Prescott hereby approves the Procedural Pre-Annexation Development Agreement and Agreement to Provide Temporary Construction Easement and Dedicate Right of Way with Granite Dells Ranch Holdings, LLC, attached hereto as Exhibit "A".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached Pre-Annexation Development Agreement and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27<sup>th</sup> day of January, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney

**RESOLUTION NO. 3934-0940**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ACCEPT A TEMPORARY CONSTRUCTION AND MINING EASEMENT FROM GRANITE DELLS RANCH HOLDINGS, LLC FOR PROJECT ACCESS, STAGING EQUIPMENT AND EXCAVATING FILL MATERIAL FOR USE ON THE GRANITE DELLS PARKWAY/ STATE ROUTE 89 A TRAFFIC INTERCHANGE PROJECT AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE**

**RECITALS:**

WHEREAS, Granite Dells Ranch Holdings, LLC is the owner of certain real property located north and south of the SR 89A/Granite Dells Parkway (Side Road relocated) traffic interchange; and

WHEREAS, Granite Dells Ranch Holdings, LLC wishes to grant, and the City of Prescott wishes to accept, a Temporary Construction and Mining Easement relating to the owner granting project access, staging equipment, and excavating fill material for use on that property with respect to the potential annexation of 387 acres located north and south of the SR 89A/Granite Dells Parkway (side Road relocated) traffic interchange.

**ENACTMENTS:**

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT the City of Prescott hereby accepts the Temporary Construction and Mining Easement from Granite Dells Ranch Holdings, LLC, attached hereto as Exhibit "A".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached Temporary Construction and Mining Easement and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27<sup>th</sup> day of January, 2009.

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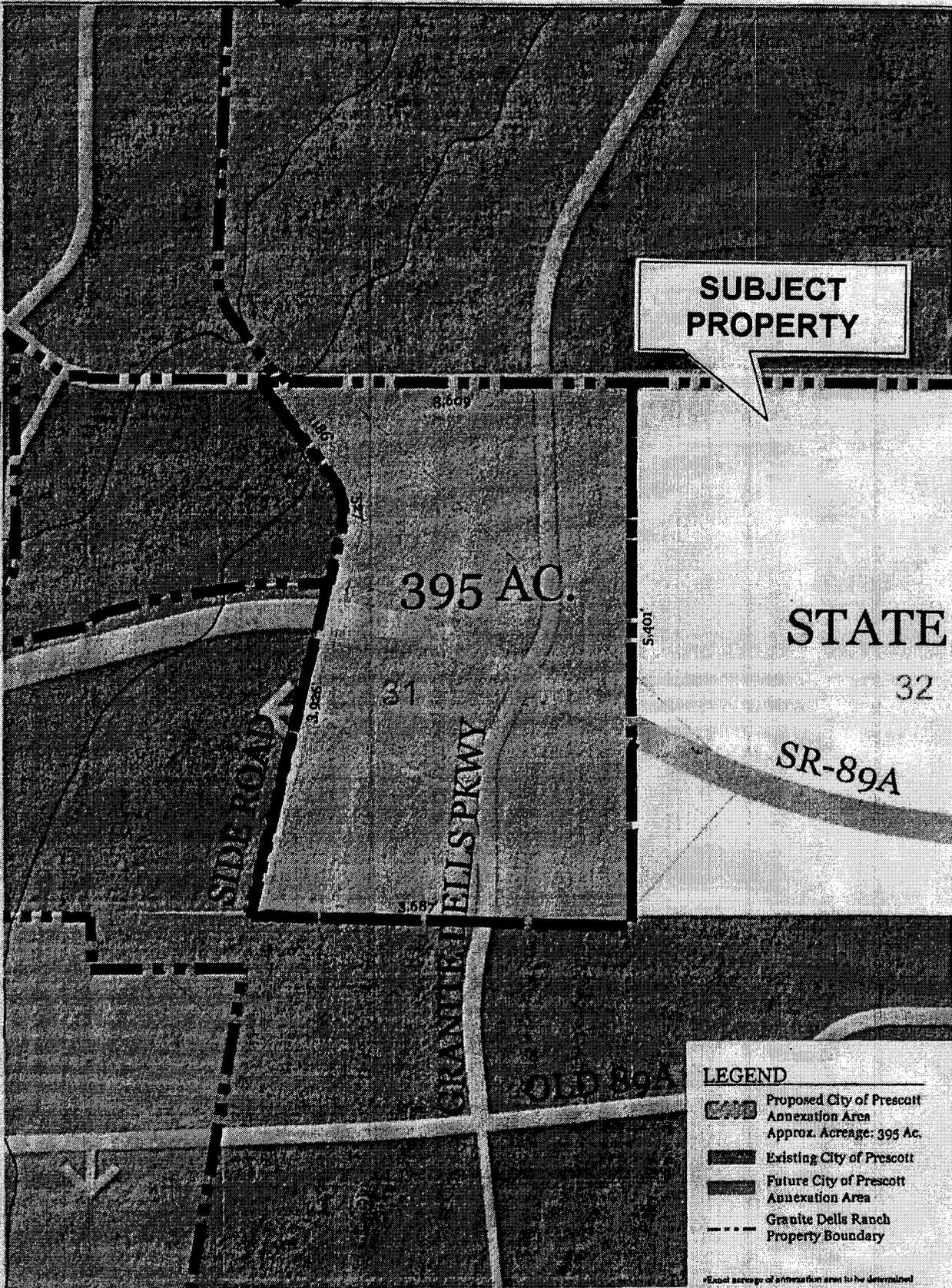
JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney



**SUBJECT  
PROPERTY**

395 AC.

STATE

32

SR-89A

SIDE ROAD

GRANITE DELLS PKWY

OLD 89A

**LEGEND**

-  Proposed City of Prescott Annexation Area  
Approx. Acreage: 395 Ac.
-  Existing City of Prescott
-  Future City of Prescott Annexation Area
-  Granite Dells Ranch Property Boundary

\*Exact acreage of annexation area to be determined

**PROPOSED ANNEXATION (SHEET 2 of 2)**  
**GRANITE DELLS RANCH, INC.**  
 CITY OF PRESCOTT, ARIZONA

SCALE: (1"=1')



NORTH



**PROCEDURAL PRE-ANNEXATION AGREEMENT  
AND AGREEMENT TO PROVIDE TEMPORARY CONSTRUCTION EASEMENT  
AND DEDICATE RIGHT OF WAY**

This Procedural Pre-Annexation Agreement And Agreement to Dedicate Right Of Way (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF PRESCOTT, Arizona, an Arizona municipal corporation (“**City**”), GRANITE DELLS RANCH HOLDINGS, LLC., an Arizona limited liability company (“**Owner**”), and \_\_\_\_\_, (“**Lienholder**”) (collectively, the “**Parties**”).

**RECITALS**

A. Owner holds fee simple title to approximately 387.26 net acres of land (“**Annexation Property**”), which is located in Yavapai County, Arizona (“**County**”), and is legally described in the attached **Exhibit “A”**, and depicted in attached **Exhibit “A-1”**. The Annexation Property is situated at the planned intersection of State Highway 89A and Granite Dells Parkway. Owner intends to develop the Annexation Property together with certain adjacent property owned by Owner and already within the City, which, together with the Annexation Property is hereinafter referred to as the “**Property**.” The Property is encumbered by a Deed of Trust recorded at Book \_\_\_\_\_, Page \_\_\_ in the official records of Yavapai County (the “**Deed of Trust**”) in favor of the lienholder identified in the Consent appearing at the end of this Agreement (“**Lienholder**”) ~~Lienholder as security for Owner’s obligations to Lienholder under the documentation pursuant to which Owner acquired the Property from Lienholder.~~

B. Subject to the terms and conditions of this Agreement, Owner may desire to annex the Annexation Property into the City’s municipal limits and process applications in the City requesting a General Plan Amendment (the “**GPA**”) and rezoning (“**Rezoning**”) with respect to the Property.

C. City may desire to annex the Annexation Property in accordance with A.R.S. § 9-471 and is willing to process Owner’s request for annexation and applications for the GPA and Rezoning (the “**GPA & Rezoning Applications**”) in accordance with applicable law and the terms and conditions of this Agreement.

D. The Parties have determined it may be in their best mutual interest to annex the Annexation Property into City’s municipal limits and, subject to the final and effective adoption of the proposed annexation and translational zoning ordinance(s), for Owner to concurrently process the GPA & Rezoning Applications in the City rather than the County.

E. The Parties are entering into this Agreement pursuant to the provisions in A.R.S. ~~§ 9-500.05~~ in order to facilitate annexation of the Annexation Property for future development and to provide for a procedure to prevent the proposed annexation from becoming effective if the Owner’s GPA & Rezoning Applications are not approved subject to conditions that are acceptable to the Owner and Lienholder.

F. The prospective annexation is subject to City of Prescott Proposition 400 (November 2005) and subsequent City council policy as set forth in Resolution 3735 (February

14, 2006). Proposition 400 requires a ¾ majority vote of the City Council for annexation approval, a 60 day public comment period which commences at the time of a formal by the City Planning and Zoning Commission on the master plan for the proposed development, and that all effluent (treated wastewater) go to permanent recharge of the groundwater aquifer.

F.G. The Parties neither desire, nor intend, that this Agreement shall in any way affect, hinder or interfere with the ability of City's governing body (the "**City Council**") (i) to approve or deny the annexation and/or GPA & Rezoning Applications and/or (ii) to impose reasonable conditions of approval in connection with the approval of the GPA & Rezoning Applications.

G.H. In anticipation of completing the Annexation, GPA and Rezoning, the Owner had previously agreed to dedicate 25 acres of the Property a portion of the Property to the State of Arizona (the "State") and the City (without the payment of financial consideration by the State or the City) as in the preferred location of the Highway 89A/ Granite Dells Parkway interchange ("Interchange") and related roadway improvements south of Highway 89A (together, the "Interchange Improvements"). Final plans for the Interchange Improvements now require dedication of approximately 37 acres and Owner has agreed to dedicate the additional acreage with out financial consideration as well. The property to be dedicated by Owner within that portion of the Property (hereinafter, the "**Dedication Area**") is comprised of comprising the 89A ROW and City ROW described below. In addition, Owner has agreed, and to grant to the City and its contractor(s) a temporary construction easement and right of entry over and across that larger portion of the Property (inclusive of the Dedication Area) legally described in the attached **Exhibit "B"**, and depicted in attached **Exhibit "B-1"** (the "**TCE Area**").

H.I. The Dedication Area is comprised of two (2) components depicted on **Exhibit "C"** and referred to herein as: (1) the "**89A ROW**" (being the area to ultimately be dedicated to the State of Arizona ("**State**") for incorporation into its managed system of state highways), which is legally described in the attached **Exhibit "C-1"**, and (2) the "**City ROW**" (being the area to be dedicated to the City to accommodate the southerly extension of Granite Dells Parkway, the easterly extension of Centerpointe Drive East, and additions to the Peavine Trail), which is legally described in the attached **Exhibit "C-2"**.

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm and agree as follows:

### AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as though fully restated.

2. Initiation of Annexation Processes. Upon Owner's request, City agrees to initiate proceedings to annex the Annexation Property into City's municipal limits and to issue an annexation petition to Owner. Concurrent with an annexation ordinance for the Annexation Property (the "**Annexation Ordinance**") being introduced for consideration by the City Council, City will also introduce for consideration by the City Council an ordinance for City's proposed initial zoning classification for the Property (the "**Equivalency Zoning Ordinance**")

(collectively, the “**Annexation and Equivalency Ordinances**”). The “Equivalency Ordinance” is also referred to as translational zoning and will be adopted pursuant to A.R.S. § 9-471(L).

3. GPA & Rezoning Application and Effectiveness. Owner agrees to submit the GPA & Rezoning Applications to City for the GPA & Rezoning approval. City agrees to process such applications in accordance with applicable law and the terms and conditions of this Agreement. If Owner makes application for the Rezoning prior to the Annexation and Equivalency Ordinances being introduced to the City Council for its consideration, then City shall schedule, advertise and conduct hearings before the City’s Planning & Zoning Commission and the City Council so that the GPA and Rezoning Applications are considered by the City Council concurrent with or immediately following the Annexation and Equivalency Ordinances. If the City Council approves the GPA & Rezoning Applications and finally adopts the GPA and Rezoning Ordinance, then the effective date of the GPA and Rezoning Ordinance shall be established as being after the effective date of the Annexation and Equivalency Ordinances, as determined by reference to paragraph 4 below.

4. Annexation and Equivalency Ordinances Adoption and Effectiveness. City agrees that at any time prior to the City Council’s adoption of the Annexation Ordinance, Owner may withdraw the annexation petition for the Annexation Property. In the event the City Council adopts the Annexation Ordinance and Equivalency Ordinances and such Ordinances are not timely rescinded by the City Council or challenged by referendum, the Annexation and Equivalency Ordinances will become effective thirty (30) calendar days after being adopted by the City Council as outlined in A.R.S § 9-471. In the event (a) the Owner withdraws its annexation petition, (b) the City Council denies Owner’s Rezoning Application before the Annexation and Equivalency Ordinances have become final and effective, or (c) the Annexation Ordinance, the Equivalency Zoning Ordinance and/or the Rezoning Ordinance are challenged by reconsideration or referendum, the City Council shall (by Motion for Reconsideration or other appropriate means) schedule, advertise and conduct a City Council hearing to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; provided that (I) in the case of (c) above (a challenge by reconsideration or referendum), nothing herein shall prohibit Owner and City from mutually agreeing to jointly oppose any such challenge, but absent such mutual agreement, the City Council shall move to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; and (II) in the case of (b) above, the City Council will not consider rescission of the Annexation and Equivalency Ordinances if Owner formally objects to such rescission. Other than as specifically set forth in the immediately preceding sentence, the City agrees that at such hearing (for reconsideration or otherwise), City shall use all best efforts to ensure its legislative repeal of the Annexation Ordinance and the Equivalency Zoning Ordinance.

5. No Effect on GPA & Rezoning Applications. The Parties agree that nothing in this Agreement shall affect the ability of the City Council to approve or deny the GPA & Rezoning Applications and/or to impose conditions on the City’s approval of the GPA & Rezoning Applications.

6. No Requirement to Proceed. The Parties agree that nothing in this Agreement shall require any of the Parties to proceed with the proposed annexation, the proposed GPA & Rezoning and/or development of the Property.

7. Proposition 207 Waivers. On or before the Annexation and Equivalency Ordinances are placed on the City Council's agenda for introduction and tentative approval, Owner shall provide to City a completed "Proposition 207 Waiver" applicable to the Annexation and Equivalency Ordinances in ~~form acceptable to the City's legal counsel~~ the form attached hereto as Exhibit "D". Owner shall also provide to City a separate completed Proposition 207 Waiver form acceptable to City's legal counsel in connection with the GPA & Rezoning. In the event the Annexation and Equivalency Ordinances and/or the GPA and Rezoning Ordinance are not approved, or are rescinded, repealed or otherwise of no effect, the Parties shall take such steps as are required to release or rescind any applicable Proposition 207 Waiver, and such waiver shall be deemed null and void and of no further force or effect. However, such release or rescission shall not apply to the annexation, development agreement and equivalency processes undertaken pursuant to this Agreement.

8. Temporary Construction Easement and Agreement to Dedicate Right Of Way.

a. Temporary Construction Easement. As and when required by the City in order for it to prosecute construction of the Interchange Improvements, Owner and the City shall execute and deliver a temporary construction easement granting to the City and its contractors and agents the right to enter upon the TCE Area for purposes of (i) constructing the Interchange Improvements, (ii) staging equipment and materials for such construction, and (iii) to the extent available in sufficient quantities and qualities, mining fill dirt, sand and aggregate for use in such construction, all in accordance with an easement agreement in the form attached hereto as Exhibit "DE" (the "TCE Easement").

b. Agreement To Dedicate to State. Subject to paragraph 8.(c) below, Upon completion of the Interchange Improvements and the Arizona Department of Transportation's acceptance of that portion thereof constructed with the 89A ROW, Owner shall grant a transportation easement to the State over, under and across said 89A ROW without consideration from the State beyond those agreements of the State set forth in the Right Of Way Agreement to be entered into between the State and Owner in the form presently agreed to between such parties ("**ROW Agreement**"), which among other things, contemplates no monetary consideration being paid to Owner by the State for the transportation easement, or for Owner's subsequent agreement to dedicate fee title to the State upon the satisfaction of certain conditions set forth in such ROW Agreement.

c. Agreement to Dedicate to City. Subject to paragraph 8.(c) below, Upon completion of the Interchange Improvements and the acceptance by the City's Public Works Department of that portion thereof constructed within the proposed City ROW, Owner shall dedicate in fee title to the City fee title the City ROW, subject to completion of the Annexation.

d. Consideration From City. The City shall not be required to pay any monetary or other consideration to Owner for the TCE Easement or the dedications to be provided pursuant to subparagraphs b. and c. immediately above, other than the non-monetary

performances required by City under the TCE Easement and the City's agreement to process the Annexation, GPA and Rezoning described herein in good faith and without undue delay.

Undue Delay in Commencement or Completion of Interchange Improvements. In the event the City has not commenced construction of the Interchange Improvements by 2009, or following commencement, fails to diligently prosecute the Interchange Improvements to completion in accordance with the final plans and specifications, Owner shall have the right to terminate the TCE Easement, whereupon it shall be relieved of any further obligations under paragraphs 8. (b) and (c) above

~~e. Dedication Value To Owner. In consideration of the Owner's dedication of the State ROW and the City ROW, the City shall credit to the owner a sum (the "Dedication Value") to be determined by subtracting (1) the Owner's fair share of the overall cost of the of the State ROW and Interchange Improvements as identified in the final Cost Benefit Analysis prepared by Applied Economics, from (2) the current fair market value of the Dedication Property as determined by an appraisal to be conducted by John Loper by March 2009. The Dedication Value shall be credited by the City to the Owner under any development agreement entered into by Owner and City in connection with a successful completion of the Annexation, GPA and Rezoning, which development agreement shall provide that the sole source of repayment of the Dedication Value shall be through future credits to Owner or its successors against transportation related fees or contributions otherwise owing by Owner or its successors with respect to the development of the Property or any other property subsequently annexed into the City by Owner; to the extent that such crediting is legally permitted.~~

9. Miscellaneous.

a. Good Standing; Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

b. Default and Remedies. In the event City is in default hereunder, Owner shall have all remedies available at law or in equity (including expedited equitable relief); or under this Agreement, and notwithstanding any suggestion to the contrary in, or by virtue of Owner's execution of, the Proposition 207 Waivers.

c. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Yavapai County, Arizona.

~~d. Development Agreement. This Agreement is intended to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.~~

~~e. d. Waiver. No waiver by any Party of a breach of any of the terms or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term or condition contained herein.~~

f.e. Severability. In the event that any phrase, clause, sentence, paragraph, or other portion of the Agreement shall be illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

f.f. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States Mail, postage prepaid, by Certified Mail, return receipt requested, addressed as follows:

To City: City Manager  
City of Prescott  
P.O. Box 2059  
Prescott, AZ 86302

Copy to: City Attorney  
City of Prescott  
221 S. Cortez  
Chandler, AZ 86302

To Owner: Granite Dells Ranch Holdings, LLC  
1533 North Pima Road, Suite 305  
Scottsdale, AZ 85260  
Attn: Jeff Market

Copy to: Gregory W. Huber, P.C.  
3031 Dollar Mark Way, Suite A  
Prescott, AZ 86305  
Attn: Gregory W. Huber

Copy to Lienholder

\_\_\_\_\_

\_\_\_\_\_

~~Notice of address may~~ Any parties' address for purposes of notice hereunder may be changed by such party ~~be changed by any Party by~~ giving notice of such new address to the other Parties ~~parties in writing of a change of address.~~ Such change shall be deemed to have been effectively noticed five days after mailed by the Party changing address.

f.g. Time of Essence. Time is of the essence of this Agreement.

i.h. Effective Date. This Agreement is entered into effective as of the date of full execution by the Parties.

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

k.j. Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties.

10. Waiver Of Jury Trial. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

11. A-Applicable Laws and 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 Agreement, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

12. Indemnification. ~~That The~~ Owner hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, appeals, expenses or lawsuits (including the costs of defense of any lawsuits or appeals) asserted by third parties which either (a) challenge the validity of this Agreement or any GPA or Rezoning approved hereunder, or (b) allege negligent acts or negligent omissions on the part of Owner in relationship to any actions undertaken or allegedly undertaken by Owner pursuant to this agreement. Owner covenants to defend any and all claims, lawsuits, and appeals challenging this agreement at its sole cost and expense, including but not limited to attorneys fees, and costs, including any attorneys fees and costs incurred by the City should it elect or be required to defend itself, its agents, officers or assigns for any acts taken pursuant to this agreement.

13. Remedies. The parties further agree that there shall be no monetary damage remedy for breach of any provisions of this agreement and that the sole remedies for any breach shall be specific performance and/or declaratory judgment. The parties agree to meet and attempt to resolve any dispute in good faith prior to initiating any legal process, to participate in accelerated arbitration and to make good faith efforts to expeditiously resolve any dispute during such process, which process is set forth in exhibit in order to promptly and expeditiously to resolve any disputes. Further, in the event of an appeal from such arbitration process, the parties agree to utilize all good faith efforts to ensure expeditious resolution of any litigation, including participation in expeditious provisional remedies if available.

14. Successors. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto, provided, however, the Owner's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof. Upon transfer of the Property by Owner, the new owner shall

automatically become the Owner hereunder and the old Owner shall be released from this Agreement for that portion of the Property that has been transferred.

~~14. — Lienholder. Lienholder has joined this Agreement for the limited purposes of~~

~~(a) evidencing (i) its consent to this Agreement, (ii) its agreement to assume and perform the TCE Easement and dedication obligations described in Section 8 above in the event Lienholder has succeeded Owner in title to the Property at any time prior to full performance of Owner's obligations hereunder, (iii) its agreement to subordinate the lien of the Deed of Trust to the rights of the City under the TCE Easement, and (iv) its agreement to be bound by Section 7 above; and~~

~~(b) stipulating that, other than its undertakings pursuant to part (a) of this Section 13, Lienholder is not assuming or otherwise agreeing to be bound by the obligations of Owner hereunder or under any other agreement or instrument related to the Property and to which the Owner and City are or may become parties, absent an express written assumption of such obligations signed by Lienholder.~~

~~The City acknowledges and agrees to the foregoing with respect to Lienholder.~~

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written above.

CITY OF PRESCOTT, an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor  
Date: \_\_\_\_\_

ATTESTED TO:

\_\_\_\_\_  
City Clerk

APPROVED BY:

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

\_\_\_\_\_  
Granite Dells Ranch Holdings, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2008~~2009, by \_\_\_\_\_, in his capacity as Mayor of the City of Prescott, Arizona.

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

My Commission Expires:

\_\_\_\_\_

Granite Dells Ranch Holdings, LLC,  
an Arizona limited liability company

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

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

Date: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, ~~2008~~2009, on behalf of the Granite Dells Ranch Holdings, LLC, by \_\_\_\_\_, its \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA \_\_\_\_\_)  
\_\_\_\_\_) ss.  
County of Yavapai \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, on behalf of the Granite Dells Ranch Holdings, LLC, by \_\_\_\_\_, its \_\_\_\_\_.

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

My Commission Expires:  
\_\_\_\_\_

| List ~~Of~~ of Exhibits

**Exhibit "A"** Legal Description of Annexation Property

**Exhibit "A-1"** Map Depicting Annexation Property

**Exhibit "B"** Legal Description of TCE Area

**Exhibit "B-1"** Map Depicting TCE Area

**Exhibit "C"** Map Depicting 89A ROW & City ROW

**Exhibit "C-1"** Legal Description of 89A ROW

**Exhibit "C-2"** Legal Description of City ROW

| **Exhibit "D"** Prop 207 Waiver

| Exhibit "E" TCE Easement





Point of Rocks Ranch Company, Inc., an Arizona corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ARIZONA )

) ss.

County of Yavapai )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, on behalf of Point of Rocks Ranch Company, Inc., an Arizona corporation, by \_\_\_\_\_, its \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

## **EXHIBIT "A"**

### **ANNEXATION OF A PORTION OF SECTION 31-15N-1W**

A portion of Section 31, Township 15 North, Range 1 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at an aluminum disk marked "AZTEC ENGINEERING - 2001," at the northeast corner of said Section 31;

THENCE South  $00^{\circ}20'39''$  West, along the east line of said Section 31, a distance of 5304.59 feet to a 1 inch capped pipe, RLS number 33861 at the southeast corner of said Section 31;

THENCE North  $89^{\circ}36'51''$  West, along the south line of said Section 31, a distance of 3657.18 feet to a point on the westerly right of way line of Side Road, as described in Book 4545 Official Records, Page 558, Yavapai County Records Office;

THENCE North  $13^{\circ}39'12''$  East, along said westerly right of way line, a distance of 2717.38 feet to a point on the east-west quarter line of said Section 31, as shown in Book 47 Maps and Plats, Page 95, Yavapai County Records Office;

THENCE North  $89^{\circ}34'12''$  West, along the right of way line of said Side Road, a distance of 51.36 feet;

THENCE North  $13^{\circ}39'12''$  East, along said right of way line of Side Road, a distance of 89.55 feet to a point on the southerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Records Office;

THENCE South  $88^{\circ}46'35''$  East, along said southerly right of way line, a distance of 102.40 feet;

THENCE North  $13^{\circ}39'12''$  East, a distance of 562.93 feet to a point on the northerly right of way line of said State Route number 89A;

THENCE along a non-tangential curve, along said northerly right of way line, concave to the south, having a radius of 4275.00 feet, a central angle of  $01^{\circ}22'06''$ , an arc length of 102.09 feet, a chord bearing North  $87^{\circ}58'01''$  West

and a chord length of 102.09 feet to a point on said westerly right of way line of Side Road;

THENCE North 13°39'12" East, along said westerly right of way line, a distance of 82.54 feet to a point on the westerly abandoned railroad right of way line of the Atchison, Topeka and Santa Fe Railway, also known as the Peavine Trail, as described in Book 4545 Official Records, Page 558, Yavapai County Recorders Office;

THENCE continuing North 13°39'12" East, along said westerly abandoned railroad right of way line, a distance of 488.21 feet;

THENCE along a non-tangential curve, along said westerly abandoned railroad right of way line, concave to the west, having a radius of 615.65 feet, a central angle of 49°03'33", an arc length of 527.15 feet, a chord bearing North 10°49'01" West and a chord length of 511.19 feet;

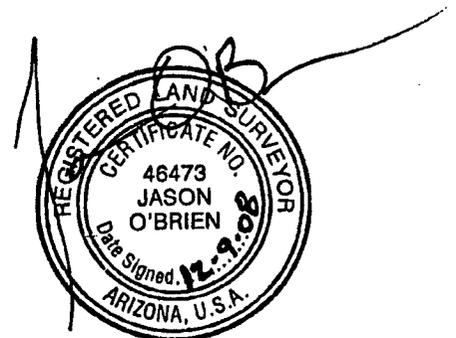
THENCE North 35°19'36" West, along said westerly abandoned railroad right of way line, a distance of 1138.06 feet;

THENCE North 54°40'24" East, along said westerly abandoned railroad right of way line, a distance of 70.00 feet;

THENCE North 35°20'20" West, along said westerly abandoned railroad right of way line, a distance of 20.79 feet to a point on the north line of said Section 31;

THENCE South 89°21'39" East, along said north line, a distance of 3518.94 feet to the POINT OF BEGINNING.

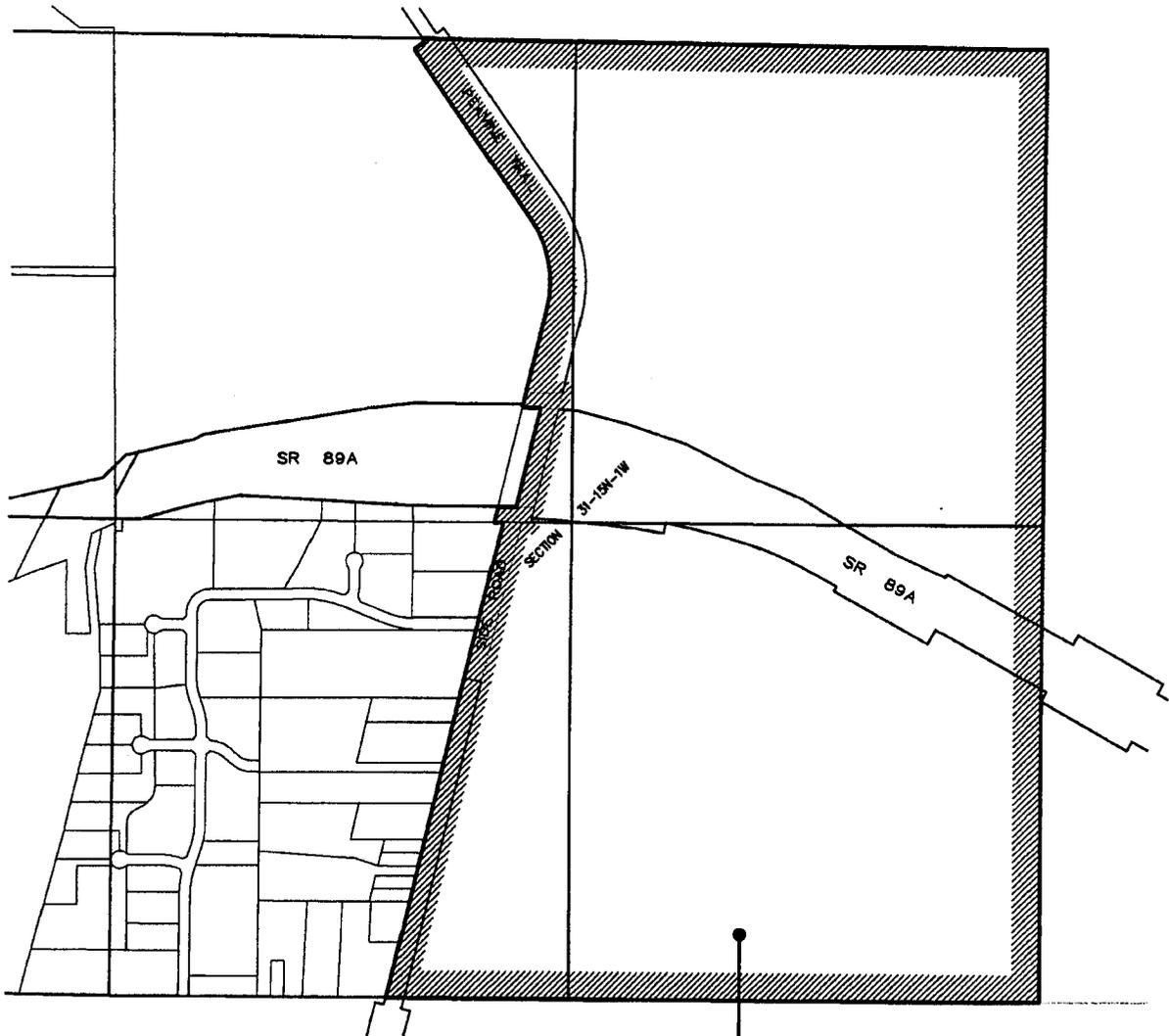
Containing 16,869,113.01 square feet or 387.26 acres, more or less.



Expires: 6-30-10

MAP TO ACCOMPANY  
LEGAL DESCRIPTION

**EXHIBIT A-1**  
ANNEXATION OF A PORTION OF SECTION 31-15N-1W



THIS  
DESCRIPTION

**EXHIBIT B**  
**Temporary Construction Easement**

**TCE NORTH**

An easement for temporary construction purposes lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 2088.55 feet to the northerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Recorders Office and the TRUE POINT OF BEGINNING;

Thence North 60°42'57" West, along said northerly right of way line, a distance of 599.78 feet;

Thence South 29°30'31" West, along said northerly right of way line, a distance of 21.12 feet;

Thence North 64°54'48" West, along said northerly right of way line, a distance of 300.75 feet;

Thence North 59°38'47" West, along said northerly right of way line, a distance of 611.74 feet;

Thence North 68°10'34" West, along said northerly right of way line, a distance of 336.22 feet;

Thence North 63°36'34" West, along said northerly right of way line, a distance of 395.83 feet;

Thence North 71°41'21" West, along said northerly right of way line, a distance of 355.71 feet;

Thence North 75°51'13" West, along said northerly right of way line, a distance of 205.94 feet;

Thence North 75°58'26" East, a distance of 265.34 feet;

Thence South 50°49'27" East, a distance of 203.07 feet;

Thence North 70°06'45" East, a distance of 1402.14 feet;

Thence North 78°44'24" East, a distance of 717.68 feet;

Thence South 89°39'22" East, a distance of 111.02 feet to the east line of said Section 31;

Thence South 00°20'38" West, along said east line, a distance of 1727.17 feet to the TRUE POINT OF BEGINNING.

Containing 1,998,315.40 square feet or 45.88 acres, more or less.

### **TCE SOUTH**

An easement for temporary construction purposes lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 1339.53 feet to the TRUE POINT OF BEGINNING;

Thence North 89°39'22" West, a distance of 325.95 feet;

Thence South 55°57'49" West, a distance of 1118.62 feet;

Thence North 80°45'58" West, a distance of 454.73 feet;

Thence North 34°59'39" West, a distance of 581.58 feet;

Thence North 54°02'26" West, a distance of 1287.31 feet to a point on the easterly right of way line of Side Road, as shown in Book 47 Maps and Plats, Page 95, Yavapai County Records Office;

Thence North 13°38'14" East, along said right of way line, a distance of 662.37 feet;

Thence South 89°48'18" East, along said right of way line, a distance of 51.42 feet;

Thence North 13°30'04" East, along said right of way line, a distance of 25.25 feet to the southerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Recorders Office;

Thence along a non-tangential curve, along said southerly right of way line, concave to the south, having a radius of 3665.00 feet, a central angle of 04°06'13", an arc length of 262.49 feet, a chord bearing South 85°30'01" East and a chord length of 262.43 feet;

Thence along a non-tangential curve, along said southerly right of way line, concave to the south, having a radius of 3840.00 feet, a central angle of 07°18'18", an arc length of 489.59 feet, a chord bearing South 82°52'42" East and a chord length of 489.25 feet;

Thence North 10°54'08" East, along said southerly right of way line, a distance of 60.06 feet;

Thence along a non-tangential curve, along said southerly right of way line, concave to the southwest, having a radius of 3907.88 feet, a central angle of 08°55'42", an arc length of 608.95 feet, a chord bearing South 74°45'10" East and a chord length of 608.34 feet;

Thence along a non-tangential curve, along said southerly right of way line, concave to the southwest, having a radius of 3791.17 feet, a central angle of 05°55'30", an arc length of 392.04 feet, a chord bearing South 63°37'53" East and a chord length of 392.04 feet;

Thence South 60°58'18" East, along said southerly right of way line, a distance of 41.54 feet;

Thence South 29°15'12" West, along said southerly right of way line, a distance of 30.01 feet;

Thence South 60°44'03" East, along said southerly right of way line, a distance of 599.99 feet;

Thence North 29°17'08" East, along said southerly right of way line, a distance of 90.01 feet;

Thence South 60°43'09" East, along said southerly right of way line, a distance of 665.72 feet to the east line of said Section 31;

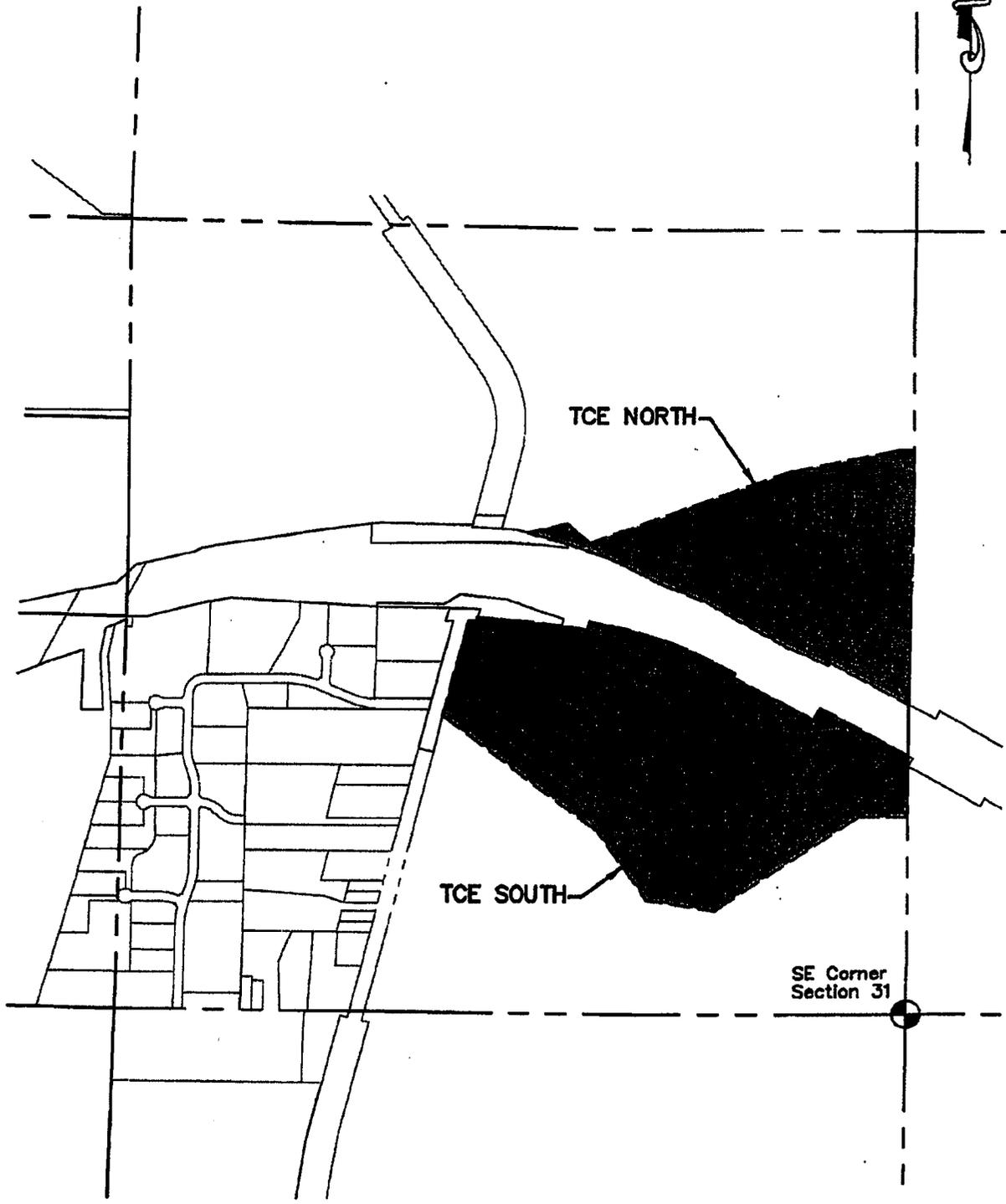
Thence South 00°20'38" West, along said east line, a distance of 406.20 feet to the TRUE POINT OF BEGINNING.

Containing 3,489,130.03 square feet or 80.10 acres, more or less.



Expires 6-30-10

EXHIBIT B1  
MAP TO ACCOMPANY  
LEGAL DESCRIPTION



TCE NORTH

TCE SOUTH

SE Corner  
Section 31

EXHIBIT C-1  
89A ROW  
LEGAL DESCRIPTIONS

**EXHIBIT ROW 4**  
**Arizona Department of Transportation Right of Way**

A parcel of land lying within a portion of Section 31, Township 15 North Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

**Commencing** at the Northeast corner of Section 31 from which the Southeast Corner bears South  $00^{\circ}20'39''$  West, 5,304.14 feet;

Thence South  $00^{\circ}20'39''$  West, 3,215.92 feet, along the East line of Section 31, to the Northerly Right of Way line of Highway 89A;

Thence North  $60^{\circ}42'57''$  West, 13.95 feet, along said Right of Way, said point also being the **POINT OF BEGINNING**;

Thence North  $60^{\circ}42'57''$  West, 585.84 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 440+00 150 LT;

Thence South  $29^{\circ}30'31''$  West, 21.12 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 440+00 130 LT;

Thence North  $64^{\circ}54'48''$  West, 300.75 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 437+00 106.98 LT;

Thence North  $59^{\circ}38'47''$  West, 611.74 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 431+00 135 LT;

Thence North  $68^{\circ}10'34''$  West, 336.22 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 427+74.65 135 LT;

Thence North  $63^{\circ}36'34''$  West, 395.83 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 424+00 200.98 LT;

Thence North  $71^{\circ}41'21''$  West, 287.03 feet;

Thence North  $03^{\circ}08'20''$  West, 136.42 feet;

Thence South  $50^{\circ}49'27''$  East, 203.07 feet;

Thence South  $78^{\circ}43'21''$  East, 336.59 feet;

Thence South  $72^{\circ}08'19''$  East, 264.49 feet;

Thence South  $79^{\circ}20'30''$  East, 400.12 feet;

Thence South 79° 20' 30" East, 230.30 feet;  
Thence North 52° 38' 54" East, 218.01 feet;  
Thence North 10° 01' 16" West, 226.72 feet;  
Thence South 83° 04' 57" East, 117.94 feet;  
Thence South 83° 04' 57" East, 2.00 feet;  
Thence South 83° 04' 57" East, 116.04 feet;  
Thence South 83° 04' 57" East, 2.00 feet;  
Thence South 83° 04' 57" East, 106.31 feet;  
Thence South 25° 41' 39" West, 236.12 feet;  
Thence South 17° 07' 51" East, 125.31 feet;  
Thence South 17° 03' 09" East, 487.21 feet;  
Thence South 54° 46' 18" East, 262.17 feet;  
Thence South 34° 47' 04" East, 249.44 feet to the **POINT OF BEGINNING**;

Said described parcel contains 628,291 square feet or 14.42 acres, more or less, subject to any and all easements, reservations, restrictions and conveyances of record.



**EXHIBIT ROW 9**  
**Arizona Department of Transportation Right of Way**

A parcel of land lying within a portion of Section 31, Township 15 North Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

**Commencing** at the Northeast corner of Section 31 from which the Southeast Corner bears South 00°20'39" West, 5,304.14 feet;

Thence South 00° 20' 39" West, 3,215.92 feet, along the East line of Section 31, to a point on the northerly line of the ADOT Right of Way of Highway 89A;

Thence South 60° 42' 57" East, 200.20 feet, along said Right of Way to a found Aluminum Cap in Concrete stamped ADOT STA 448+00 150 LT;

Thence South 29° 17' 28" West, 300.01 feet, to a point on the southerly line of the ADOT Right of Way of Highway 89A;

Thence North 60° 43' 09" West, 206.57 feet, said point also being the **POINT OF BEGINNING**;

Thence North 86° 39' 16" West, 153.84 feet;

Thence North 52° 28' 05" West, 146.07 feet;

Thence South 83° 32' 31" West, 283.93 feet;

Thence North 80° 47' 35" West, 374.45 feet;

Thence South 43° 38' 26" West, 94.54 feet;

Thence South 08° 14' 59" West, 270.94 feet;

Thence North 81° 28' 29" West, 50.02 feet;

Thence North 81° 28' 29" West, 2.00 feet;

Thence North 81° 28' 29" West, 116.04 feet;

Thence North 81° 28' 29" West, 2.00 feet;

Thence North 81° 28' 29" West, 141.77 feet;

Thence North 02° 45' 09" East, 427.87 feet;

Thence North 02° 45' 09" East, 67.61 feet;

Thence North 49° 48' 13" West, 279.63 feet;

Thence North 49° 48' 13" West, 324.65 feet;

Thence North 68° 24' 10" West, 208.25 feet;

Thence North 10° 54' 08" East, 40.05 feet to the beginning of a non-tangential curve;

Thence Southeasterly along said curve 610.07 feet, having a radius of 3901.21 feet, through a central angle 08° 56' 37", and whose chord bears South 74° 45' 10" East, 608.96 feet, also the beginning of a non-tangential curve.

Thence Southeasterly along said curve 392.04 feet, having a radius of 3791.17 feet, through a central angle 05° 55' 30", and whose chord bears South 63° 37' 53" East, 391.87 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 434+58.66 210 RT, also the beginning of a non-tangential curve.

Thence South 60° 58' 18" East, 41.54 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 435+00 210 RT;

Thence South 29° 15' 12" West, 30.01 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 435+00 240 RT;;

Thence South 60° 44' 03" East, 599.99 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 441+00 240 RT;

Thence North 29° 17' 08" East, 90.01 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 441+00 150 RT;

Thence South 60° 43' 09" East a distance of 493.44 feet to the **POINT OF BEGINNING;**

Said described parcel contains 498,937 square feet or 11.45 acres, more or less, subject to any and all easements, reservations, restrictions and conveyances of record.



EXHIBIT C-2  
CITY ROW  
LEGAL DESCRIPTIONS

**EXHIBIT ROW 5**  
**City of Prescott Right of Way**

A parcel of land lying within a portion of Section 31, Township 15 North Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

**Commencing** at the Northeast corner of Section 31 from which the Southeast Corner bears South 00°20'39" West, 5,304.14 feet;

Thence South 00° 20' 39" West, 3,215.92 feet, along the East line of Section 31, to the Northerly Right of Way line of Highway 89A;

Thence North 60° 42' 57" West, 13.95 feet, along said Right of Way;

Thence North 34° 47' 04" West, 249.44 feet;

Thence North 54° 46' 18" West, 262.17 feet;

Thence North 17° 03' 09" West, 487.21 feet;

Thence North 17° 07' 51" West, 125.31 feet;

Thence North 25° 41' 39" East, 236.12 feet;

Thence North 83° 04' 57" West, 106.31 feet;

Thence North 83° 04' 57" West, 2.00 feet, said point also being the **POINT OF BEGINNING**;

Thence North 83° 04' 57" West, 116.04 feet to the beginning of a non-tangential curve said line being radial;

Thence northeasterly 283.68 feet along said curve having a radius of 1,442.45 feet, through a central angle of 11° 16' 05", and whose chord bears North 01° 17' 01" East for, 283.22 feet

Thence, North 85° 38' 58" East, 116.04 feet to the beginning of a non-tangential curve,

Thence southwesterly along a parallel curve 306.50 feet along said curve having a radius of 1,558.48 feet, through a central angle of 11° 16' 05", and whose chord bears South 01° 17' 01" West for, 306.01 feet to the **POINT OF BEGINNING**.

Said described parcel contains 34,241 square feet or 0.79 acres, more or less, subject to any and all easements, reservations, restrictions and conveyances of record.



**EXHIBIT ROW 8**  
**City Of Prescott Right of Way**

A parcel of land lying within a portion of Section 31, Township 15 North Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

**Commencing** at the Northeast corner of Section 31 from which the Southeast Corner bears South  $00^{\circ}20'39''$  West, 5,304.14 feet;

Thence South  $00^{\circ}20'39''$  West, 3,215.92 feet, along the East line of Section 31, to a point on the northerly line of the ADOT Right of Way of Highway 89A;

Thence South  $60^{\circ}42'57''$  East, 200.20 feet, along said Right of Way to a found Aluminum Cap in Concrete stamped ADOT STA 448+00 150 LT;

Thence South  $29^{\circ}17'28''$  West, 300.01 feet, to a point on the southerly line of the ADOT Right of Way of Highway 89A;

Thence North  $60^{\circ}43'09''$  West, 206.57 feet;

Thence North  $60^{\circ}43'09''$  West, 493.44 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 441+00 150 RT;

Thence South  $29^{\circ}17'08''$  West, 90.01 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 441+00 240 RT;

Thence North  $60^{\circ}44'03''$  West, 599.99 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 435+00 240 RT;

Thence North  $29^{\circ}15'12''$  East, 30.01 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 435+00 210 RT;

Thence North  $60^{\circ}58'18''$  West, 41.54 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 434+58.66 210 RT, to the beginning of a non-tangential curve;

Thence Northwesterly along said curve 392.04 feet, having a radius of 3791.17 feet, through a central angle  $05^{\circ}55'30''$  and whose chord bears North  $63^{\circ}37'53''$  West, 391.87 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 434+58.66 210 RT, to the beginning of a non-tangential curve.

Thence Northwesterly along said curve 608.96 feet, having a radius of 3901.21 feet, through a central angle of  $08^{\circ}56'37''$ , and whose chord bears North  $74^{\circ}45'10''$  West, 608.34 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 424+00 247.25 RT, to a point of intersection with a non-tangential line.

Thence South 10° 54' 08" West, 40.05 feet;

Thence South 10° 54' 08" West, 20.01 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 424+03.80 307.15 RT;

Thence Northwesterly along said curve 25.45 feet, having a radius of 3840.00 feet, through a central angle of 00° 22' 47", and whose chord bears North 79° 24' 57" West, 25.45 feet, to a point of intersection with a tangential curve, said point also being the **POINT OF BEGINNING**;

Thence South 60° 58' 46" West, 158.26 feet;

Thence North 85° 02' 32" West, 658.97 feet;

Thence North 13° 38' 14" East, 75.42 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 415+23.98 361.40 RT;

Thence South 89° 48' 18" East, 51.42 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 415+80.43 359.92 RT;

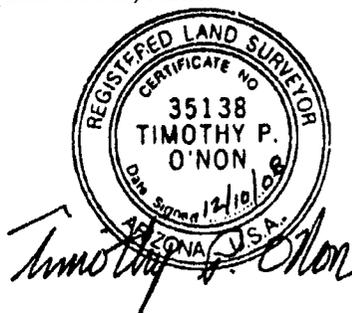
Thence North 13° 30' 04" East, 25.25 feet, to a found Aluminum Cap in Concrete stamped ADOT STA 415+85.85 355 RT to a point of intersection with a non-tangential curve;

Thence Southeasterly along said curve 262.49 feet, having a radius of 3665.00 feet, through a central angle of 04° 06' 13", and whose chord bears South 85° 30' 01" East, 262.43 feet, to a point of intersection with a non-tangential line;

Thence continuing along said curve 314.73 feet, having a radius of 3840.00 feet, through a central angle of 04° 41' 45", and whose chord bears South 84° 10' 58" East, 314.64 feet, to a point of intersection with a non-tangential curve, to a found Aluminum Cap in Concrete stamped ADOT STA 418+72.25 335 RT;

Thence continuing along said curve 149.41 feet, having a radius of 3840.00 feet, through a central angle of 02° 13' 45", and whose chord bears South 80° 43' 13" East, 149.40 feet, to a point of intersection with a tangential curve;

Said described parcel contains 74,173 square feet or 1.70 acres, more or less, subject to any and all easements, reservations, restrictions and conveyances of record.



**EXHIBIT ROW 10**  
**City of Prescott Right of Way**

A parcel of land lying within a portion of Section 31, Township 15 North Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

**Commencing** at the Northeast corner of Section 31 from which the Southeast Corner bears South 00°20'39" West, 5,304.14 feet;

Thence South 00° 20' 39" West, 3,215.92 feet, along the East line of Section 31, to a point on the northerly line of the ADOT Right of Way of Highway 89A;

Thence South 60° 42' 57" East, 200.20 feet, along said Right of Way to a found Aluminum Cap in Concrete stamped ADOT STA 448+00 150 LT;

Thence South 29° 17' 28" West, 300.01 feet, to a point on the southerly line of the ADOT Right of Way of Highway 89A;

Thence North 60° 43' 09" West, 206.57 feet;

Thence North 86° 39' 16" West, 153.84 feet;

Thence North 52° 28' 05" West, 146.07 feet;

Thence South 83° 32' 31" West, 283.93 feet;

Thence North 80° 47' 35" West, 374.45 feet;

Thence South 43° 38' 26" West, 94.54 feet;

Thence South 08° 14' 59" West, 270.94 feet;

Thence North 81° 28' 29" West, 50.02 feet;

Thence North 81° 28' 29" West, 2.00 feet, said point also being the **POINT OF BEGINNING**;

Thence Southwesterly 215.41 feet along said curve, having a radius of 1442.45 feet, through a central angle of 08° 33' 22" and whose chord bears South 04° 14' 50" West 215.21 feet to a point of intersection with a non-tangential line.

Thence North 89° 58' 09" East, 2.00 feet to the beginning of a non-tangential curve,

Thence Southeasterly 2.12 feet along said curve, having a radius of 1440.45 feet, through a central angle of  $00^{\circ} 05' 03''$  and whose chord bears South  $00^{\circ} 04' 23''$  East, 2.12 feet to a point of intersection with a non-tangential line.

Thence South  $00^{\circ} 06' 55''$  East, 388.91 feet;

Thence South  $89^{\circ} 53' 05''$  West, 120.04 feet;

Thence North  $00^{\circ} 06' 55''$  West, 222.55 feet;

Thence North  $45^{\circ} 06' 55''$  West, 48.09 feet;

Thence North  $83^{\circ} 24' 58''$  West, 300.24 feet to the beginning of a non-tangential curve,

Thence Northwesterly 559.26 feet along said curve, having a radius of 1050.32 feet, through a central angle of  $30^{\circ} 30' 28''$  and whose chord bears North  $68^{\circ} 09' 44''$  West, 552.67 feet to a point of intersection with a non-tangential line.

Thence North  $52^{\circ} 54' 30''$  West, 363.91 feet;

Thence North  $52^{\circ} 54' 30''$  West, 189.71 feet to the beginning of a curve,

Thence Northwesterly 389.54 feet along said curve, having a radius of 950.29 feet, through a central angle of  $23^{\circ} 29' 11''$  and whose chord bears North  $64^{\circ} 39' 05''$  West, 386.82 feet to a point of intersection with a non-tangential line.

Thence North  $76^{\circ} 23' 41''$  West, 81.06 feet to a point on Yavapai County Right of Way;

Thence North  $13^{\circ} 38' 14''$  East, 100.03 feet;

Thence South  $76^{\circ} 23' 41''$  East, 81.00 feet to the beginning of a non-tangential curve,

Thence Northwesterly 430.55 feet along said curve, having a radius of 1050.32 feet, through a central angle of  $23^{\circ} 29' 11''$  and whose chord bears South  $64^{\circ} 39' 05''$  East, 427.54 feet to a point of intersection with a non-tangential line.

Thence South  $52^{\circ} 54' 30''$  East, 169.70 feet;

Thence South  $52^{\circ} 54' 30''$  East, 383.91 feet to the beginning of a curve,

Thence Southeasterly 506.00 feet along said curve, having a radius of 950.29 feet, through a central angle of  $30^{\circ} 30' 28''$  and whose chord bears South  $68^{\circ} 09' 44''$  East, 500.04 feet to a point of intersection with a non-tangential line.

Thence South 83° 24' 58" East, 295.69 feet;

Thence North 44° 53' 05" East, 37.98 feet;

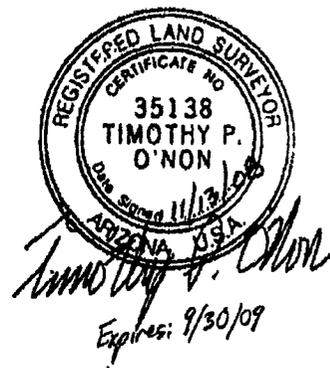
Thence North 00° 06' 55" West, 7.92 feet;

Thence North 89° 58' 09" East, 2.00 feet to the beginning of a non-tangential curve,

Thence Northeasterly 232.73 feet along said curve, having a radius of 1558.48 feet, through a central angle of 08° 33' 22" and whose chord bears North 04° 14' 50" East, 232.52 feet to a point of intersection with a non-tangential line.

Thence South 81° 28' 29" East, 116.04 feet to the **POINT OF BEGINNING**;

Said described parcel contains 264,513 square feet or 6.07 acres, more or less, subject to any and all easements, reservations, restrictions and conveyances of record.



**EXHIBIT ROW 11**  
**City of Prescott Right of Way**

A parcel of land lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence, North 89°36'53" West, along the South line of said Section 31, a distance of 1037.76 feet to the TRUE POINT OF BEGINNING;

Thence along a non-tangent curve, concave to the northeast, having a radius of 950.00 feet, a central angle of 00°19'28", an arc length of 5.38 feet, a chord bearing of North 37°44'57" West and a chord length of 5.38 feet;

Thence, North 09°40'30" East, a distance of 41.41 feet;

Thence, North 33°58'05" West, a distance of 60.00 feet;

Thence, North 77°36'39" West, a distance of 41.41 feet;

Thence along a non-tangent curve, concave to the northeast, having a radius of 950.00 feet, a central angle of 30°09'06", an arc length of 499.93 feet, a chord bearing of North 15°16'23" West and a chord length of 494.19 feet;

Thence, North 44°53'05" East, a distance of 56.57 feet;

Thence, North 00°06'55" West, a distance of 60.00 feet;

Thence, North 45°06'55" West, a distance of 42.43 feet;

Thence, North 00°06'55" West, a distance of 304.06 feet;

Thence, South 89°53'05" West, a distance of 120.00 feet;

Thence, South 00°06'55" East, a distance of 304.06 feet;

Thence, South 44°53'05" West, a distance of 42.43 feet;

Thence, South 00°06'55" East, a distance of 60.00 feet;

Thence, South 45°06'55" East, a distance of 56.57 feet;

Thence along a non-tangent curve, concave to the northeast, having a radius of 1050.00 feet, a central angle of 30°30'15", an arc length of 559.02 feet, a chord bearing of South 15°26'30" East and a chord length of 552.44 feet;

Thence, South 12°15'36" West, a distance of 43.33 feet;

Thence, South 33°58'05" East, a distance of 5.23 feet to a point in the south line of said Section 31;

Thence, South 89°36'53" East, a distance of 159.67 feet to the TRUE POINT OF BEGINNING.

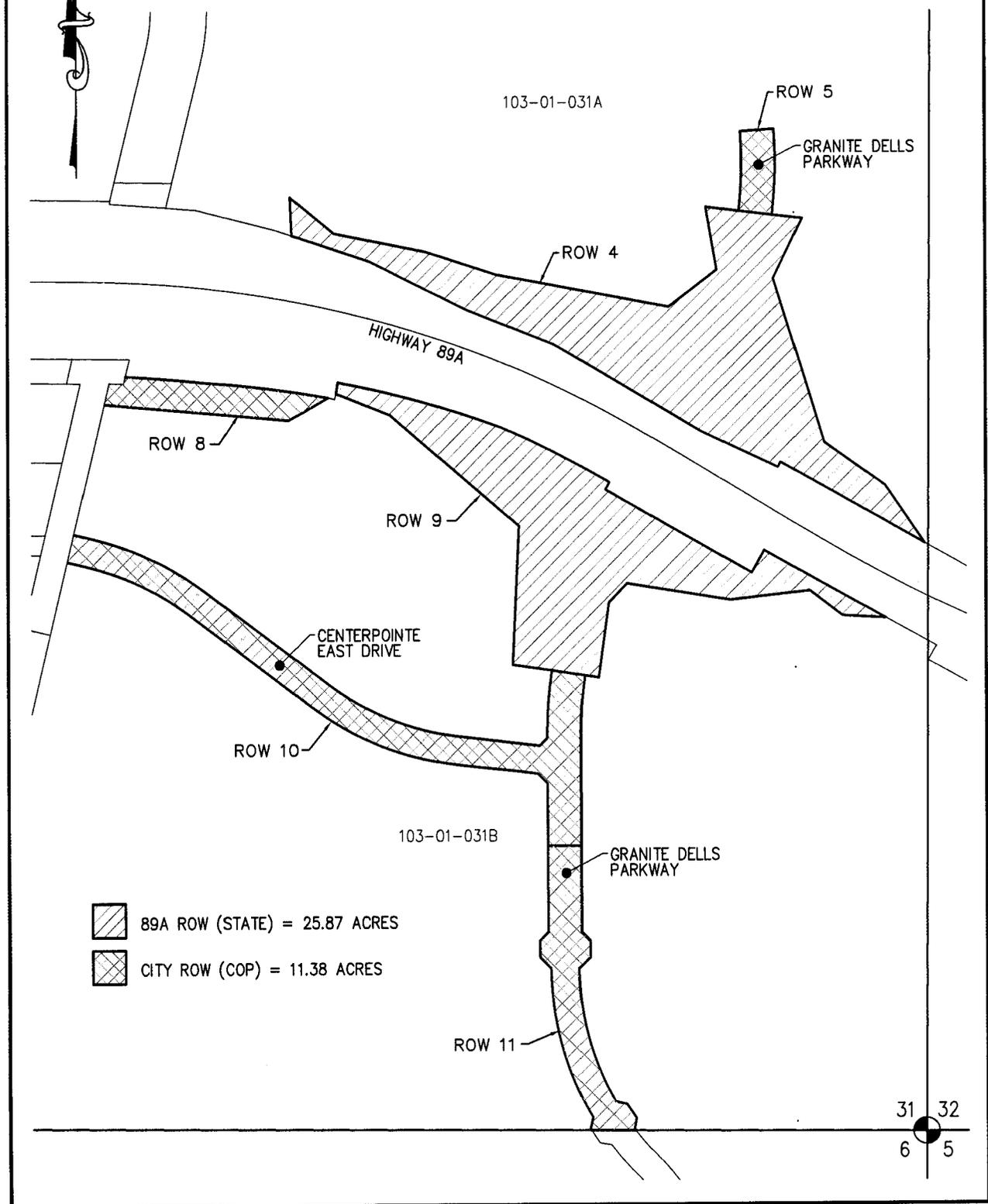
Containing 122,972.79 square feet or 2.82 acres, more or less.



Expires: 6-30-10

12/08/08  
LE #630-01  
Exhibit ROW11.doc

EXHIBIT C  
DEDICATION AREA  
GRANITE DELLS RANCH



**EXHIBIT "D"**

**CONSENT TO CONDITIONS/WAIVER FOR DIMINUTION OF VALUE**

Owner agrees and consents to all conditions imposed by the Prescott City Council, the Prescott Planning and Zoning Commission, and all agencies, officers and employees of the City of Prescott in conjunction with the approval of \_\_\_\_\_ the "Agreement") and the underlying annexation and re-zoning of the Property, and agrees to and does knowingly waive any and all rights to compensation for diminution in value of the Property pursuant to Arizona Revised Statutes § 12-1134 that may now or in the future exist as a result of the terms and conditions of the Agreement and the underlying annexation and rezoning of the Property by the City, as well as those contained in any subsequent preliminary and final plat or other governmental actions in effectuating such conditions, terms or agreements with respect to the Property. The scope of this waiver is limited to claims for compensation that might otherwise be asserted under A.R.S. Section 12-1134.

**WHEN RECORDED RETURN TO:**

Gregory W. Huber, P.C.  
3031 Dollar Mark Way, Suite A  
Prescott, Arizona 86305  
Attention: Gregory W. Huber

**TEMPORARY CONSTRUCTION AND MINING EASEMENT**

**THIS TEMPORARY CONSTRUCTION AND MINING EASEMENT (“Easement Agreement”)** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2009 by and between **GRANITE DELLS RANCH HOLDINGS, L.L.C.**, an Arizona limited liability company (“**Grantor**”) and **THE CITY OF PRESCOTT**, an Arizona municipal corporation (“**Grantee**”) (collectively, the “**Parties**” or “**parties**”).

**RECITALS:**

A. Grantor is the owner of that certain real property located in Yavapai County, Arizona, more particularly described and depicted on **Exhibit A** attached hereto (the “**TCE Parcel**”). The TCE Parcel is encumbered by a Deed of Trust in favor of the lienholder identified in the Consent and Subordination appearing at the end of this Easement Agreement (“**Lienholder**”). Lienholder is intended by the parties to be a third party beneficiary of this Easement Agreement.

B. Pursuant to that certain Procedural Pre-Annexation Agreement and Agreement To Dedicate dated \_\_\_\_\_, 2008 and recorded on \_\_\_\_\_, 2008 in Book \_\_\_\_, Page \_\_\_\_ of the Official Records of Yavapai County, Arizona (the “**Pre-Annexation Agreement**”), Grantor has agreed to make available to Grantee the TCE Parcel for purposes of (1) access over and across that portion of the TCE Parcel for the convenience of Grantee and its contractors and agents in the construction of the Highway 89A/ Granite Dells Parkway interchange, the southerly extension of Granite Dells Parkway and the easterly extension of Centerpointe Drive East as generally depicted on the map appearing as **Exhibit B** attached hereto (the “**Interchange**”), and (2) for the mining, extraction and export of fill dirt and aggregate from those portions of the TCE Parcel legally described and depicted as the “**Borrow Areas**” on **Exhibit C** attached hereto (the “**Borrow Areas**”) for the Grantee’s use in constructing the Interchange (the “**Extraction Activities**”). Capitalized terms used in this Easement Agreement and not otherwise defined shall have the meaning stated in the Pre-Annexation Agreement. The TCE Parcel and the Borrow Areas are sometimes referred to herein collectively as the “**TCE Parcel**”.

**NOW, THEREFORE**, in consideration of the premises above and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, covenant and agree for themselves and their successors and assigns as follows:

1. **Grant of Easements.** Grantor grants to Grantee, for the use and benefit of the Grantee,

and its employees, agents, contractors, subcontractors, invitees and licensees: (a) a non-exclusive temporary construction easement in, on, over, through, and across the TCE Parcel, for use in the construction of the Interchange and for temporary storage of construction vehicles, equipments and materials during the course of such construction (the "TC Easement"), together with (b) a temporary, non-exclusive easement in, on, over, through and across the Borrow Areas for the purpose of mining and extracting from the Grantor Property fill dirt and aggregate and the transportation of such fill dirt and aggregate to the Interchange for use in the completion thereof (the "Mining Easement"); in both instances, subject to the Grantee's continuing strict adherence to the terms, conditions and requirements of this Easement Agreement.

2. **Grantee's Use of TCE Parcel Generally.** Grantee's use of the TCE Parcel in exercising its rights under the TC Easement and the Mining Easement is subject to the following:

(a) **Legal Compliance.** Grantee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders, whether currently in effect, or effective after commencement of the term of this Easement Agreement and pertaining to its activities on the TCE Parcel. Specifically, Grantee shall comply with all applicable federal, state, and local laws, regulations, and permit requirements related to (i) Grantee's operations under this Agreement; (ii) wells, reservoirs, canals, ditches, washes, and streams; (iii) production, use, and storage of water; and (iv) environmental matters. Grantee shall immediately notify Grantor and, at Grantee's sole expense, promptly commence the remediation of any release or spill of a Hazardous Substance on the Easement Agreement to the satisfaction of Grantor and any interested governmental authority. As used herein, "Hazardous Substance" shall mean, without limitation, any flammable, explosive, corrosive, or ignitable material, characteristic waste, listed waste, solid waste, sludge, radon, radioactive material, asbestos, polychlorinated biphenyls, petroleum and petroleum-based wastes, methane gas, hazardous materials, hazardous wastes, hazardous or toxic substances or, related materials, mixtures or derivatives having the same or similar characteristics and effects, as defined in, listed under, or regulated by any federal, state, or local environmental statutes, ordinances, laws or regulations, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*), the Resource, Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), and the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), including all amendments, modifications, and successor legislation thereto.

(b) **Licenses and Permits.** Prior to initiating the operations contemplated by this Agreement, Grantee shall, at its sole cost and expense, acquire all licenses, permits, and other governmental approvals necessary to conduct the activities and operations hereunder, including, but not limited to, any required federal, state, and local permits with respect to air and water quality, reservations contained in any patent from the United States of America or the State of Arizona, or mineral materials under the jurisdiction of the U.S. Department of the Interior. Grantee shall be solely responsible for all royalties (if any), costs, expenses, and fees associated with any such licenses, permits, and other approvals. In connection with this Agreement, Grantee shall promptly provide to Grantor and Lienholder copies of all submittals to, and all licenses, permits, and other approvals from, governmental authorities.

(c) **Safety.** Grantee shall maintain all areas of operation, equipment, facilities, and storage areas in a reasonable and workmanlike manner in accordance with good construction and mining standards. Grantee shall take such other precautions as may be reasonably necessary in the industry to safeguard its activities and operations on the TCE Parcel and to prevent the occurrence of bodily harm and damage to property.

(d) **Dust Control.** Grantee shall use its best efforts to control dust on the TCE Parcel in commercially reasonable manner.

(e) **Flood Control; Water Quality.** To the extent related to Grantee's Extraction Activities on the TCE Parcel, Grantee shall be responsible for satisfying all federal, state, and local flood control requirements for the Borrow Areas and implementing additional measures to satisfy such rules and requirements. Grantee shall have no such responsibility with respect to flood control matters other than those caused by or relating to actions or inactions of Grantee. Grantee shall ensure that its activities and operations are carried out in manner that minimizes flood risk. Sediment release due to mining operations shall be minimized to mitigate downstream impact and any adverse impacts on water quality.

(f) **Reclamation Requirements.** Grantee shall be responsible for satisfying all federal, state, and local reclamation requirements including, without limitation, the requirements of Title 27 of the Arizona Revised Statutes, relating to all aggregate mining activities and operations on the TCE Parcel. Such obligations of Grantee shall include, without limitation, compliance with A.R.S. Title 27 regarding (i) filing all necessary plans of reclamation (and required updates thereto) with the Office of the Arizona State Mine Inspector, and providing Grantee with a copy of all items so filed; (ii) satisfaction of all reclamation requirements under all applicable laws; and (iii) financial assurances related to reclamation.

(g) **Waste.** Other than as provided herein, Grantee shall not harm, damage or destroy the TCE Parcel, commit waste, create nuisance, nor commit or allow any act that would injure the TCE Parcel. Grantee shall not cause or permit any hazardous or toxic materials or substances to be brought upon, stored, kept, used or discharged on or about the TCE Parcel, except in compliance with all applicable laws, rules, statutes and regulations.

(h) **No Unreasonable Interference.** Grantee shall conduct its mining and construction activities in such a way as to not unreasonably interfere with use of the TCE Parcel by Grantor. Grantor and Lienholder shall have the right to access the TCE Parcel at any time, provided they do not unreasonably interfere with the Grantee's mining and construction activities.

(i) **Right of Inspection.** Upon twenty-four (24) hours prior notice to Grantee, Grantor or Lienholder, or their authorized representatives (and if requested by Grantee, accompanied by an employee of Grantee) shall have the right, but not the obligation, to observe and inspect Grantee's activities and operations on the TCE Parcel during normal business hours, or at such other times with the consent of Grantee, which consent shall not be unreasonably withheld, provided that Grantor or Lienholder or their representatives shall comply with all safety-related requirements of the Mine Safety Health Administration and Grantee's rules and policies, and provided that Grantor and Lienholder and their authorized representative may not

conduct any inspection in a manner that interferes with or disrupts Grantee's operations on the TCE Parcel. Any such inspection shall be made by Grantor or Lienholder or their representatives at their sole risk.

(j) **Liens.** Grantee shall keep the TCE Parcel free and clear of all liens and encumbrances for labor done or work performed and for materials furnished in connection with all of Grantee's operations on the TCE Parcel.

(k) **Taxes.** Grantee shall be responsible for, and shall indemnify and hold Grantor and Lienholder harmless for, from, and against, any and all taxes and assessments attributable to Grantee's personal property situated on the TCE Parcel, and all gross proceeds taxes, privilege taxes, sales taxes, or like taxes now or hereafter levied or assessed by the United States, the State of Arizona, any municipal corporation, or any subdivision or instrumentality thereof, with respect to Grantee's property and operations situated or conducted on the TCE Parcel.

(l) **Records and Reports.** Grantee shall establish and maintain in the manner and for the term required by law, all records of exploration, development, excavation, processing, and refining activities and operations on the TCE Parcel, and shall provide access to such records to Owner and Lienholder upon five (5) business days prior written notice.

### 3. **Grantee's Rights And Obligations Under TC Easement.**

(a) **Scope of Grantee's Rights.** Grantee's activities under the TC Easement shall be limited to (a) any investigations, surveying and similar activities conducted within the TCE Parcel in connection with planning the construction of the Interchange, (b) construction activities pertaining to the Interchange, including without limitation installation of the Interchange Improvements within the TCE Parcel, (c) stabilization of disturbed areas, and (d) the temporary storage of construction vehicles, equipments and materials during the course of such construction.

(b) **Grantee's General Obligations.** Prior to commencement of any operation within the TCE Parcel, and at all times during the continuation of Grantee activities within the TCE Parcel, Grantee shall have secured and shall continuously maintain in force all insurance required pursuant to Section 8 hereof, and all licenses, permits, and other governmental approvals required with respect to the Grantee's activities within the TCE Parcel, including without limitation those licenses, permits and approvals required pursuant to Sections 2(a) and(b) hereof or any other provision of this Easement Agreement.

### 4. **Grantee's Rights And Obligations Under Mining Easement.**

(a) **Scope of Grantee's Rights.** Grantee's activities under the Mining Easement shall be limited to (a) any investigations, surveying and similar activities conducted within the Borrow Areas in connection with planning the mining operations or the rough grading operations to be conducted pursuant to sub-paragraph 4(c) below, and (b) activities pertaining to the purposes of the Mining Easement.

(b) **Grantee's General Obligations.** Prior to commencement of any operation within the Borrow Areas, and at all times during the continuation of Grantee activities within the

Borrow Areas, Grantee shall have secured and shall continuously maintain in force all insurance required pursuant to Section 8 hereof, and all licenses, permits, and other governmental approvals required with respect to the Grantee's activities within the Borrow Areas, including without limitation those licenses, permits and approvals required pursuant to Sections 2(a) and 2(b) hereof or any other provision of this Easement Agreement.

(c) **Mining and Finish Plan.**

(i) **Mining And Finish Plan.** As part of the Grantee's final contracting process with the contractor or contractors engaged to construct the Interchange Improvements, the contract documents shall include an agreed-to plan for the Extraction Activities within the Borrow Areas (the "**Mining And Finish Plan**") which (A) identifies in detail those areas within each of the Borrow Areas where actual Extraction Activities shall occur (each, an "**Extraction Area**"), (B) stipulates the approximate volume of fill dirt and aggregate to be removed from each such Extraction Area, and (C) stipulates the finished grade to be provided by Grantee within each Borrow Area following completion of the Extraction Activities, which in no event shall be lower than the minimum finish elevation stipulated on Exhibit "B" with respect to each such Borrow Area ("**Finished Area Grading Specifications**"). Grantee shall provide Grantor prior notice of, and the opportunity to participate in, all meetings with Grantee's contractor(s) regarding development of the Mining And Finish Plan.

(ii) **Activities Within Extraction Areas.** Grantee's activities on each extraction Area shall be in substantial conformance with the Mining And Finish Plan and in accordance with the City of Prescott Construction Site Erosion and Sediment Control (COP-CSESC) Ordinance and the Arizona Department of Transportation (ADOT) Statewide Permit under the Arizona Pollutant Discharge Elimination System (APDES) Program and satisfy all re-vegetation/remediation requirements in accordance with the Mining And Finish Plan (each a "**Finished Area**"), and in accordance with the COP-CSESC ordinance and the ADOT Statewide Permit under the APDES program and give written notice of each completion to Grantor and Lienholder (each a "**Completion Notice**").

(iii) **Objection Notice.** From its receipt of a Completion Notice, Grantor and Lienholder shall have fifteen (15) business days in which to inspect each such Finished Area, to acknowledge each Finished Area's compliance with the Mining And Finish Plan, and to accept the Finished Area and its condition, which acknowledgement and acceptance shall not be unreasonably withheld. If neither Grantor or Lienholder have provided to Grantee a written objection (each a "**Finished Area Objection**") to the subject Finished Area's compliance with the Mining And Finish Plan within such 15 business day period, Grantor and Lienholder shall be deemed to have acknowledged such Finished Area's compliance with the finish specifications in the Mining And Finish Plan and to have accepted the same.

(iv) **Reasonable Correction of Finished Area Defects.** Upon Grantee's receipt of each Finished Area Objection, Grantee shall use its reasonable and best efforts to correct any and all identified grading defects in the subject Finished Area.

5. **Term.** The term of the TC Easement and Mining Easement shall commence upon the date of recordation of this instrument in the official records of Yavapai County, Arizona, and shall terminate as and when provided in Section 6 below.

6. **Termination of Easement Agreement.** This Easement Agreement and the TC Easement and Mining Easement may be terminated by Grantor by recordation of a written notice of termination if the City has not commenced construction of the Interchange Improvements by \_\_\_\_\_, 2009. Absent a termination pursuant to the preceding sentence, this Easement Agreement shall terminate upon the earlier to occur of (a) completion of the Interchange, as evidenced by the opening of the Interchange to public traffic, or (b) June 30, 2011. Upon written request by Grantor or Lienholder at any time following such completion or other termination, Grantee will execute and acknowledge a termination of this Easement Agreement for recordation in the Yavapai County records; provided, however that such termination shall be exclusive to the Grantee's rights of access and use established hereunder, and shall in no way cause termination of any rights that Grantor or Lienholder may have against Grantee with respect to the Grantee's indemnity obligations hereunder.

7. **No Public Rights.** Nothing in this Easement Agreement is intended to create, nor shall be deemed or construed to create, any rights in the general public to use the TCE Parcel.

8. **Grantee Insurance Requirements.** Prior to commencing any mining, excavation and/or construction activities on the TCE Parcel, and continuing thereafter through the end of the term hereof, Grantee shall secure and continuously maintain and keep in force and effect: Commercial General Liability Insurance, including provisions for property damage and personal injury coverage, with a broad form of comprehensive general liability endorsement of single limits of no less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence, for bodily injury, death, personal liability, and property damage liability on an occurrence and not a claims-made basis.

In connection with the acquired insurance required under this Easement Agreement, Grantee shall:

- (1) purchase policies of insurance that shall include each of Grantor and Lienholder as an "Additional Insured";
- (2) deliver to Grantor and Lienholder a current Certificate of Insurance for all insurance carried by Grantee as required by or in connection with this Agreement;
- (3) purchase policies of insurance that require that the carrier not modify or terminate any coverage without thirty (30) days prior written notice to Grantor and Lienholder;
- (4) be responsible for paying any premiums, deductibles, or any other expenses associated with such coverage; and
- (5) carry insurance only with highly rated, reliable companies authorized to do business in the State of Arizona.

9. **Grantee General Indemnity.** Grantee shall fully indemnify, defend and hold Grantor

and Lienholder (and their successors and assigns) harmless for, from and against any and all claims, fines, penalties, actions, suits, proceedings, costs, expenses, losses, damages, judgments and liabilities, including reasonable attorneys' fees, which arise out of or are incurred in connection with the use of the TCE Parcel by Grantee (and its employees, contractors, agents, representatives, guests, invitees, tenants, licensees, visitors, successors and assigns), including, but not limited to any breach of any of the covenants set forth in Sections 2, 3 and 4 of this Easement Agreement and liabilities arising from claims of personal injury, wrongful death or property damage unless caused by or attributable to the negligence or wrongful act of Grantor or Lienholder, or their respective employees, contractors, affiliates, officers, directors, agents, or representatives. Grantee's obligations under this Section 9 shall continue in full force and effect regardless of termination of the Easement Agreement and shall not be limited by any insurance maintained hereunder. Grantee acknowledges that by virtue of its status as a third-party beneficiary of this Easement Agreement and its continuing interest in the Property, Lienholder shall have the right to independently enforce full performance of Grantee's obligations under this Agreement and the foregoing indemnity, regardless of whether or not it has acquired title to the TCE Parcel.

10. **Further Instruments.** Grantee and Grantor, at the request of the other party, shall promptly execute and deliver such additional documents or instruments as the other party shall reasonably request to carry out the intent and terms of this Easement Agreement.

11. **Waiver.** The waiver by any party of any right granted to it in this Easement Agreement shall not be deemed to be a waiver of any other right granted in this Easement Agreement, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

12. **Attorneys' Fees.** The prevailing party in any litigation arising out of this Easement Agreement shall be entitled to the recovery of its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding from the other party.

13. **Entire Agreement.** This Easement Agreement, together with any exhibits attached hereto, and together with the Pre-Annexation Agreement, is intended to be and constitutes the entire agreement between the parties with respect to the matters stated herein as of the date of execution and it may be amended only as provided herein. Evidence of prior negotiations or understandings between the parties shall not vary or contradict the provisions of this Easement Agreement.

14. **Notices.** All notices shall be in writing and delivered as provided in the Pre-Annexation Agreement.

15. **Headings.** The paragraph headings in this Easement Agreement are inserted for the purpose of reference only and shall not limit, define, or expand the provisions of this Easement Agreement or any one of them.

16. **Governing Law; Venue.** This Easement Agreement and any documents executed in connection with or pursuant to this Easement Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Grantor and Grantee agree that the proper

venue for any legal proceedings arising out of this Easement Agreement shall be Yavapai County, Arizona.

17. **Not Partners.** Neither this Easement Agreement, nor any other agreement referred to herein or entered into in connection herewith, and no activity of Grantor or Grantee in connection with this transaction shall constitute Grantor and Grantee as partners or joint venturers for any purposes whatsoever.

18. **Counterparts.** This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument.

19. **Construction.** This Easement Agreement is the result of negotiations between the parties and accordingly shall not be construed for or against either party regardless of which party drafted this Easement Agreement.

20. **Non-Waiver.** No delay or failure by either party to exercise any right under this Easement Agreement and no partial or single exercise of that right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

21. **Assignment.** Grantee, its successors and assigns as permitted in this Section, may assign its rights hereunder, in full, and delegate its obligations hereunder, in full, only to the licensed general contractor responsible for the construction of the Interchange. Immediately following an assignment hereunder, the assigning party shall provide notice to Grantor and Lienholder, along with a copy of the agreement under which the assignee assumes the obligations of Grantee hereunder. No such assignment and assumption (whether by the City or an intervening contractor), shall have the effect of releasing the City (or intervening contractor) from its obligations hereunder, including without limitation the indemnity obligations set forth in Section 9 hereof. Other than as stated herein, neither party shall assign all or any portion of its rights and or delegate its obligations under this Easement Agreement without the other party's prior written consent, which consent may not be unreasonably withheld, delayed or conditioned.

22. **Binding Effect; Enforcement.** As to the TC Easement and the Mining Easement, this Easement Agreement shall run with the land, shall be a burden upon the TCE Parcel and every part thereof, and shall be binding upon and enforceable against Grantor and any person or entity having any interest in the TCE Parcel, or any part thereof. This Easement Agreement shall inure to the benefit of Grantor, and any person or entity having any interest in the TCE Parcel or any part thereof, shall run to the benefit of the TCE Parcel and every part thereof, and shall be enforceable by Grantor and any person or entity having an interest in the TCE Parcel. Without limiting the foregoing, all persons or entities that hold fee title to the TCE Parcel or any portion thereof shall be subject to, bound by and benefited by the provisions of this Easement Agreement, without any requirement that the rights and obligations of the Grantor must be assigned and delegated to or assumed by such person or entity.

23. **NO REPRESENTATIONS OR WARRANTIES REGARDING QUALITY OR QUANTITIES OF FILL DIRT OR AGGREGATE.** GRANTEE ACKNOWLEDGES THAT GRANTOR HAS MADE NO REPRESENTATIONS OR WARRANTIES REGARDING THE

QUANTITIES OF FILL DIRT AND AGGREGATE AVAILABLE WITHIN THE BORROW AREAS, OR AS TO WHETHER SUCH MATERIALS WOULD MEET THE STANDARDS REQUIRED FOR INCORPORATION INTO THE CONSTRUCTION OF THE INTERCHANGE. GRANTEE COVENANTS AND AGREES THAT IN ADVERTISING THE INTERCHANGE CONSTRUCTION PROJECT FOR BIDS, A COPY OF THIS AGREEMENT SHALL BE INCLUDED IN ALL BID PACKAGES PROVIDED TO PROSPECTIVE BIDDERS, TOGETHER WITH AN EXPRESS DISCLAIMER OF ANY REPRESENTATIONS OR WARRANTIES AS TO AVAILABLE QUANTITIES OR QUALITY OF MATERIALS THAT MAY BE AVAILABLE FROM THE BORROW AREAS HEREUNDER.

---

Grantee's Initial

**IN WITNESS WHEREOF**, this Easement Agreement is executed as of the day and year first above written.

**GRANTEE:**

CITY OF PRESCOTT,  
an Arizona municipal corporation

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

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

Date: \_\_\_\_\_, 2009

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

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

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, in his capacity as Mayor of the City of Prescott, Arizona.

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

My Commission Expires:

\_\_\_\_\_

**GRANTOR:**

GRANITE DELLS RANCH HOLDINGS, LLC,  
an Arizona limited liability company

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

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

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, on behalf of the Granite Dells Ranch Holdings, LLC, by \_\_\_\_\_, its \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

**Consent & Subordination of Lienholder**

Granite Dells Ranch of Yavapai County, Arizona, Inc., an Arizona corporation and Point of Rocks Ranch Company, Inc., an Arizona corporation (collectively, "Lienholder") are collectively the beneficiary under a Deed of Trust recorded at Book \_\_\_\_, Page \_\_ in the official records of Yavapai County (the "**Deed of Trust**") which encumbers the Grantor Property as security for Grantor's obligations to Lienholder under the documentation pursuant to which Grantor acquired the Grantor Property from Lienholder.

Lienholder hereby consents to the foregoing Easement Agreement and agrees that its rights under the Deed of Trust shall be subordinate to the rights of the Grantee under the Easement Agreement. In furtherance of such subordination, Lienholder acknowledges and agrees that upon its exercise of any remedial rights under the Deed of Trust which result in Lienholder succeeding to the right of possession and/ or control of the Grantor Property, so long as Grantee is in compliance with its obligations under this Easement Agreement, Lienholder shall honor all rights of Grantee under the Easement Agreement.

Notwithstanding the foregoing, nothing herein shall prohibit Lienholder from exercising all rights and remedies available to Grantor under the terms of the Easement Agreement or at law or in equity upon the occurrence and continuation of a default by Grantee in the performance of its obligations under the Easement Agreement.

Lienholder acknowledges that Grantee is relying upon this Consent & Subordination in its entering into the Easement Agreement and commencing construction of the Interchange Improvements within the TCE Area.

Granite Dells Ranch of Yavapai County, Arizona, Inc., an Arizona corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Point of Rocks Ranch Company, Inc., an Arizona corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, on behalf of the Granite Dells Ranch of Yavapai County, Arizona, Inc., an Arizona corporation, by \_\_\_\_\_, its \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, on behalf of the Point of Rocks Ranch Company, Inc., an Arizona corporation, by \_\_\_\_\_, its \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

List of Exhibits

**A TCE Parcel**

**B Map Depicting Interchange and Minimum Finish Elevations Within Borrow Areas**

**C Map and Legal Descriptions of Borrow Areas**

**EXHIBIT A**  
**Temporary Construction Easement**

**TCE NORTH**

An easement for temporary construction purposes lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 2088.55 feet to the northerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Recorders Office and the TRUE POINT OF BEGINNING;

Thence North 60°42'57" West, along said northerly right of way line, a distance of 599.78 feet;

Thence South 29°30'31" West, along said northerly right of way line, a distance of 21.12 feet;

Thence North 64°54'48" West, along said northerly right of way line, a distance of 300.75 feet;

Thence North 59°38'47" West, along said northerly right of way line, a distance of 611.74 feet;

Thence North 68°10'34" West, along said northerly right of way line, a distance of 336.22 feet;

Thence North 63°36'34" West, along said northerly right of way line, a distance of 395.83 feet;

Thence North 71°41'21" West, along said northerly right of way line, a distance of 355.71 feet;

Thence North 75°51'13" West, along said northerly right of way line, a distance of 205.94 feet;

Thence North 75°58'26" East, a distance of 265.34 feet;

Thence South 50°49'27" East, a distance of 203.07 feet;

Thence North 70°06'45" East, a distance of 1402.14 feet;

Thence North 78°44'24" East, a distance of 717.68 feet;

Thence South 89°39'22" East, a distance of 111.02 feet to the east line of said Section 31;

Thence South 00°20'38" West, along said east line, a distance of 1727.17 feet to the TRUE POINT OF BEGINNING.

Containing 1,998,315.40 square feet or 45.88 acres, more or less.

### **TCE SOUTH**

An easement for temporary construction purposes lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 1339.53 feet to the TRUE POINT OF BEGINNING;

Thence North 89°39'22" West, a distance of 325.95 feet;

Thence South 55°57'49" West, a distance of 1118.62 feet;

Thence North 80°45'58" West, a distance of 454.73 feet;

Thence North 34°59'39" West, a distance of 581.58 feet;

Thence North 54°02'26" West, a distance of 1287.31 feet to a point on the easterly right of way line of Side Road, as shown in Book 47 Maps and Plats, Page 95, Yavapai County Recorders Office;

Thence North 13°38'14" East, along said right of way line, a distance of 662.37 feet;

Thence South 89°48'18" East, along said right of way line, a distance of 51.42 feet;

Thence North 13°30'04" East, along said right of way line, a distance of 25.25 feet to the southerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Recorders Office;

Thence along a non-tangential curve, along said southerly right of way line, concave to the south, having a radius of 3665.00 feet, a central angle of 04°06'13", an arc length of 262.49 feet, a chord bearing South 85°30'01" East and a chord length of 262.43 feet;

Thence along a non-tangential curve, along said southerly right of way line, concave to the south, having a radius of 3840.00 feet, a central angle of 07°18'18", an arc length of 489.59 feet, a chord bearing South 82°52'42" East and a chord length of 489.25 feet;

Thence North 10°54'08" East, along said southerly right of way line, a distance of 60.06 feet;

Thence along a non-tangential curve, along said southerly right of way line, concave to the southwest, having a radius of 3907.88 feet, a central angle of 08°55'42", an arc length of 608.95 feet, a chord bearing South 74°45'10" East and a chord length of 608.34 feet;

Thence along a non-tangential curve, along said southerly right of way line, concave to the southwest, having a radius of 3791.17 feet, a central angle of 05°55'30", an arc length of 392.04 feet, a chord bearing South 63°37'53" East and a chord length of 392.04 feet;

Thence South 60°58'18" East, along said southerly right of way line, a distance of 41.54 feet;

Thence South 29°15'12" West, along said southerly right of way line, a distance of 30.01 feet;

Thence South 60°44'03" East, along said southerly right of way line, a distance of 599.99 feet;

Thence North 29°17'08" East, along said southerly right of way line, a distance of 90.01 feet;

Thence South 60°43'09" East, along said southerly right of way line, a distance of 665.72 feet to the east line of said Section 31;

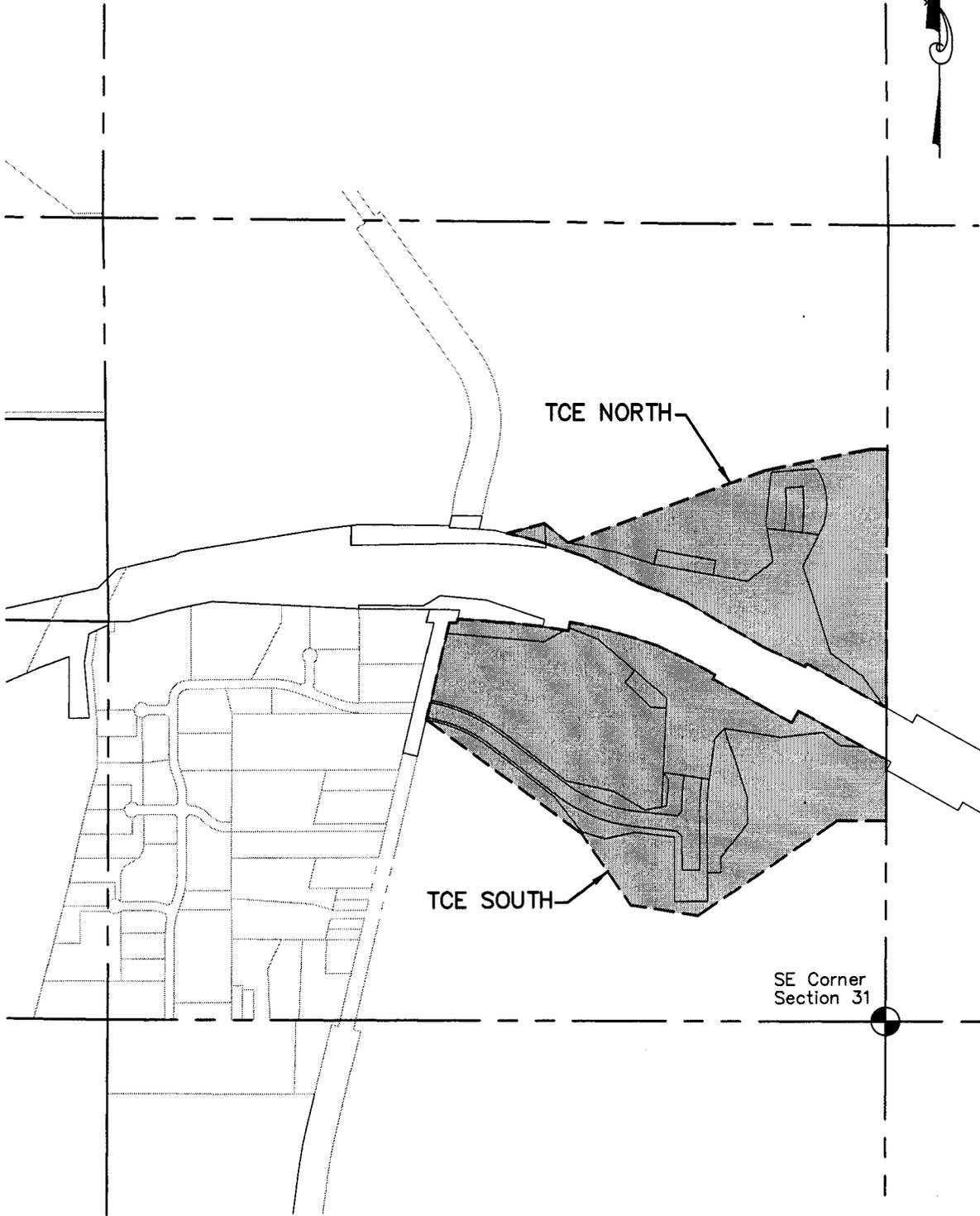
Thence South 00°20'38" West, along said east line, a distance of 406.20 feet to the TRUE POINT OF BEGINNING.

Containing 3,489,130.03 square feet or 80.10 acres, more or less.

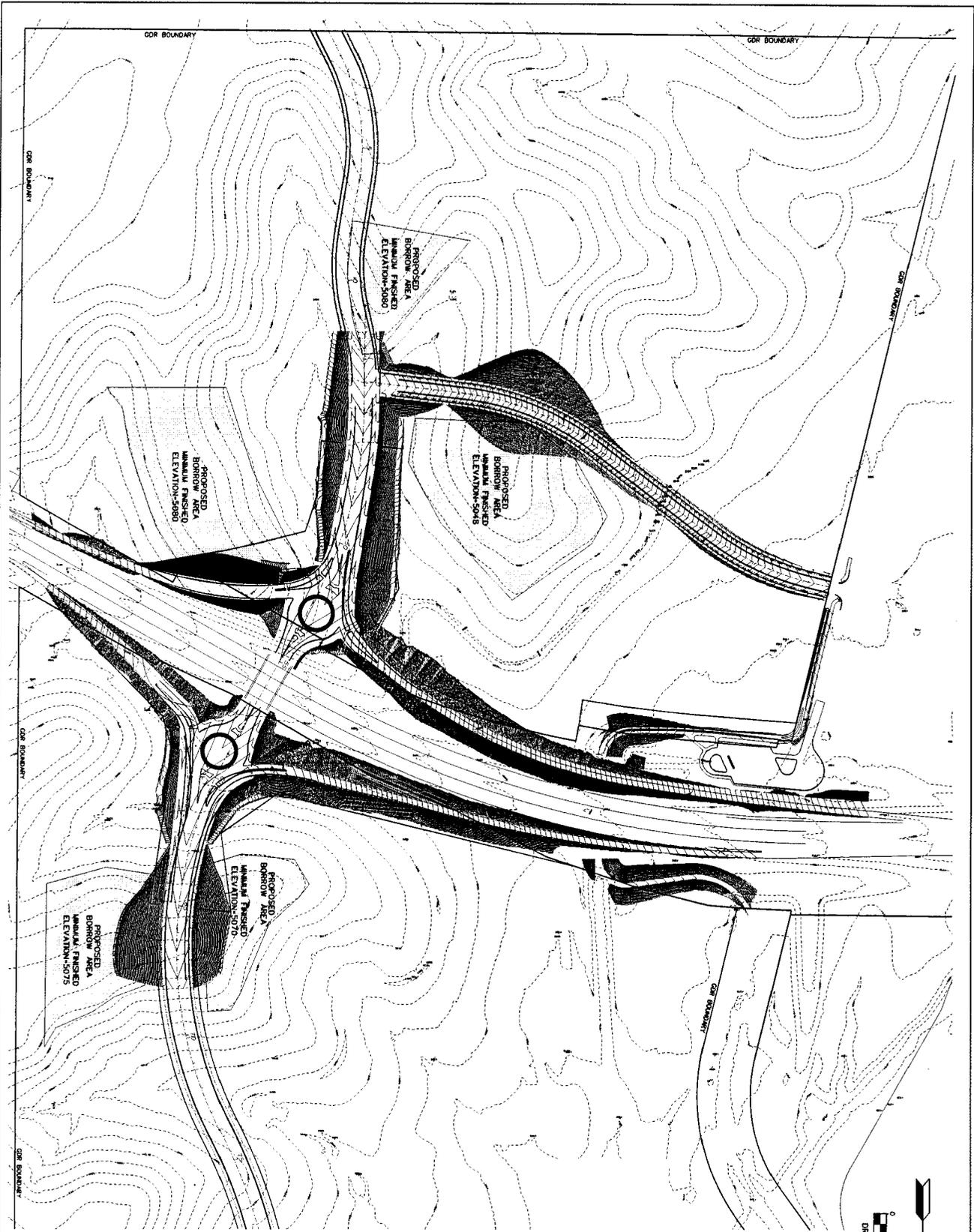


Expires 6-30-10

EXHIBIT A  
MAP TO ACCOMPANY  
LEGAL DESCRIPTION



SE Corner  
Section 31



FOR EXHIBIT ONLY USE ONLY

SHEET NO. 1 OF 1 SHEETS

GRAPHIC SCALE  
0 300  
1" = 300 FT

N

PROJECT	SHEET DESCRIPTION	NO.	DATE	REVISIONS
GRANITE DELLS RANCH	EXHIBIT B			

**LE LYON ENGINEERING**  
 Civil Engineers • Land Surveyors  
 3623 CROSSINGS DRIVE  
 PRESCOTT, AZ 86305  
 (92B) 776-1750



DATE: 9/8/08  
 DESIGNED BY: JXX  
 CHECKED BY: JXX  
 DRAWN BY: JXX  
 SHEET NO. 1 OF 1 SHEETS

**EXHIBIT C**  
**BORROW N-1**  
**Borrow Area Easement**

A borrow area easement lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 2088.55 feet to the northerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Records Office;

Thence North 60°42'57" West, along said northerly right of way line, a distance of 13.95 feet;

Thence North 04°55'42" West, a distance of 1111.17 feet;

Thence North 00°38'59" East, a distance of 613.97 feet;

Thence South 78°44'24" West, a distance of 717.68 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 78°44'24" West, a distance of 86.92 feet;

Thence South 29°37'40" West, a distance of 70.43 feet;

Thence South 22°45'49" West, a distance of 275.94 feet;

Thence South 46°54'51" West, a distance of 159.70 feet;

Thence South 39°00'43" West, a distance of 59.00 feet;

Thence South 31°29'15" East, a distance of 108.87 feet;

Thence South 84°09'24" East, a distance of 199.49 feet;

Thence North 73°21'34" East, a distance of 108.41 feet;

Thence North 20°10'14" East, a distance of 30.29 feet;

Thence North 07°43'53" East, a distance of 176.85 feet;

Thence North 00°21'50" West, a distance of 182.79 feet;

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Thence North 03°38'28" West, a distance of 183.59 feet to the TRUE POINT OF BEGINNING.

Containing 136,831.21 square feet or 3.14 acres, more or less.



Expires: 6-30-10

**EXHIBIT C**  
**BORROW N-2**  
**Borrow Area Easement**

A borrow area easement lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 2088.55 feet to the northerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Records Office;

Thence North 60°42'57" West, along said northerly right of way line, a distance of 13.95 feet;

Thence North 04°55'42" West, a distance of 1111.17 feet to the TRUE POINT OF BEGINNING;

Thence North 00°38'59" East, a distance of 613.97 feet;

Thence South 30°49'40" West, a distance of 83.79 feet;

Thence South 66°03'34" West, a distance of 153.01 feet;

Thence South 56°24'02" West, a distance of 101.71 feet;

Thence South 69°18'57" West, a distance of 121.57 feet;

Thence South 00°43'56" East, a distance of 181.64 feet;

Thence South 06°56'58" West, a distance of 235.00 feet;

Thence South 81°28'09" East, a distance of 176.03 feet;

Thence North 75°04'07" East, a distance of 234.21 feet to the TRUE POINT OF BEGINNING.

Containing 194,869.28 square feet or 4.47 acres, more or less.



**EXHIBIT C**  
**BORROW S-1**  
**Borrow Area Easement**

A borrow area easement lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 1745.73 feet to the southerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Recorders Office;

Thence North 60°43'09" West, along said right of way line, a distance of 172.28 feet;

Thence South 20°01'56" West, a distance of 519.96 feet;

Thence South 55°57'49" West, a distance of 1118.62 feet;

Thence North 80°45'58" West, a distance of 454.73 feet;

Thence North 34°59'39" West, a distance of 581.58 feet;

Thence North 54°35'58" East, a distance of 346.53 feet to the TRUE POINT OF BEGINNING;

Thence North 67°23'13" West, a distance of 380.30 feet;

Thence North 30°04'07" West, a distance of 242.05 feet;

Thence North 29°46'45" East, a distance of 120.34 feet;

Thence North 55°00'29" East, a distance of 368.32 feet;

Thence South 43°20'11" East, a distance of 395.71 feet;

Thence South 28°31'41" East, a distance of 257.58 feet;

Thence South 08°17'50" West, a distance of 168.89 feet;

Thence North 87°49'19" West, a distance of 259.57 feet to the TRUE POINT OF BEGINNING.

Containing 314,982.64 square feet or 7.23 acres, more or less.



Expires: 6-30-10

**EXHIBIT C**  
**BORROW S-2**  
**Borrow Area Easement**

A borrow area easement lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 1745.73 feet to the southerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Recorders Office;

Thence North 60°43'09" West, along said right of way line, a distance of 172.28 feet;

Thence South 20°01'56" West, a distance of 519.96 feet;

Thence South 55°57'49" West, a distance of 1118.62 feet to the TRUE POINT OF BEGINNING;

Thence North 80°45'58" West, a distance of 454.73 feet;

Thence North 39°58'27" East, a distance of 553.72 feet;

Thence North 87°21'06" West, a distance of 56.32 feet;

Thence South 14°22'53" East, a distance of 140.18 feet;

Thence South 07°19'35" East, a distance of 163.81 feet;

Thence South 05°20'35" West, a distance of 202.52 feet to the TRUE POINT OF BEGINNING.

Containing 132,157.37 square feet or 3.03 acres, more or less.



Expires: 6-30-10

**EXHIBIT C**  
**BORROW S-3**  
**Borrow Area Easement**

A borrow area easement lying within a portion of Section 31, Township 15 North, Range 1 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is South 89°36'53" East as measured between a found USGS brass cap at the Southwest corner of said Section 31 and a found 1" rebar at the Southeast corner of said Section 31.)

Commencing at a found 1" rebar at the Southeast corner of said Section 31;

Thence North 00°20'38" East, along the east line of said Section 31, a distance of 1745.73 feet to the southerly right of way line of State Route number 89A, as shown in Book 40 Maps and Plats, Page 2, Yavapai County Recorders Office;

Thence North 60°43'09" West, along said right of way line, a distance of 172.28 feet;

Thence South 20°01'56" West, a distance of 519.96 feet to the TRUE POINT OF BEGINNING;

Thence North 90°00'00" West, a distance of 451.45 feet;

Thence North 17°59'23" West, a distance of 330.67 feet;

Thence North 26°49'16" West, a distance of 406.39 feet;

Thence North 85°58'18" East, a distance of 82.60 feet;

Thence South 89°48'14" East, a distance of 169.44 feet;

Thence South 79°53'47" East, a distance of 221.62 feet;

Thence South 32°33'29" East, a distance of 146.64 feet;

Thence South 18°57'15" East, a distance of 303.70 feet;

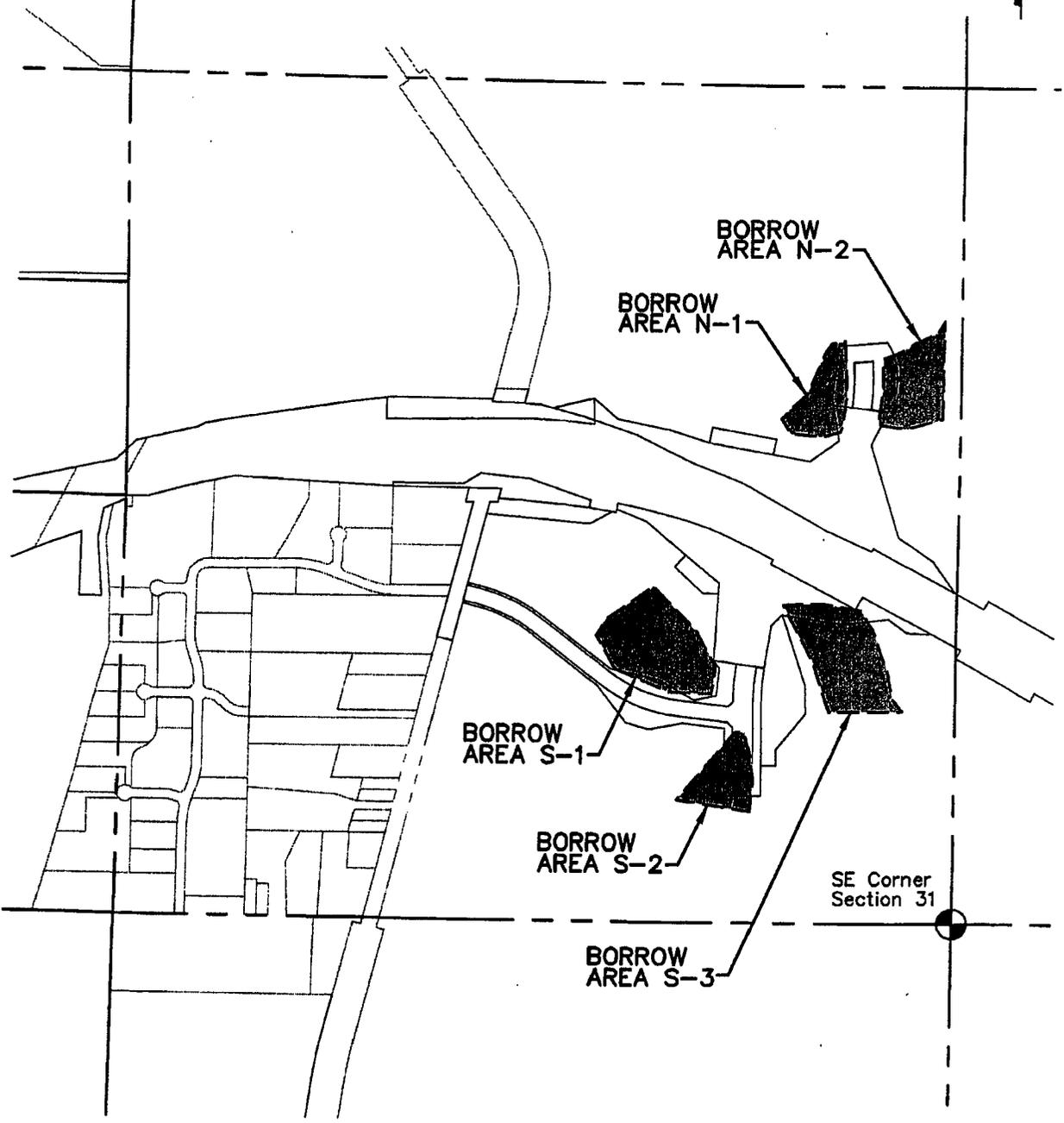
Thence South 10°18'17" East, a distance of 155.70 feet;

Thence South 37°43'48" East, a distance of 100.51 feet to the TRUE POINT OF BEGINNING.

Containing 299,199.43 square feet or 6.87 acres, more or less.



EXHIBIT C  
MAP TO ACCOMPANY  
LEGAL DESCRIPTION



# GRANITE DELLS RANCH, INC.

CITY OF PRESCOTT, ARIZONA

## EXHIBIT D PRELIMINARY DEVELOPMENT PLAN

### LEGEND

- INDUSTRIAL LIGHT
- COMMERCIAL/EMPLOYMENT
- OPEN SPACE
- ACCESS POINTS
- PEAVINE TRAIL

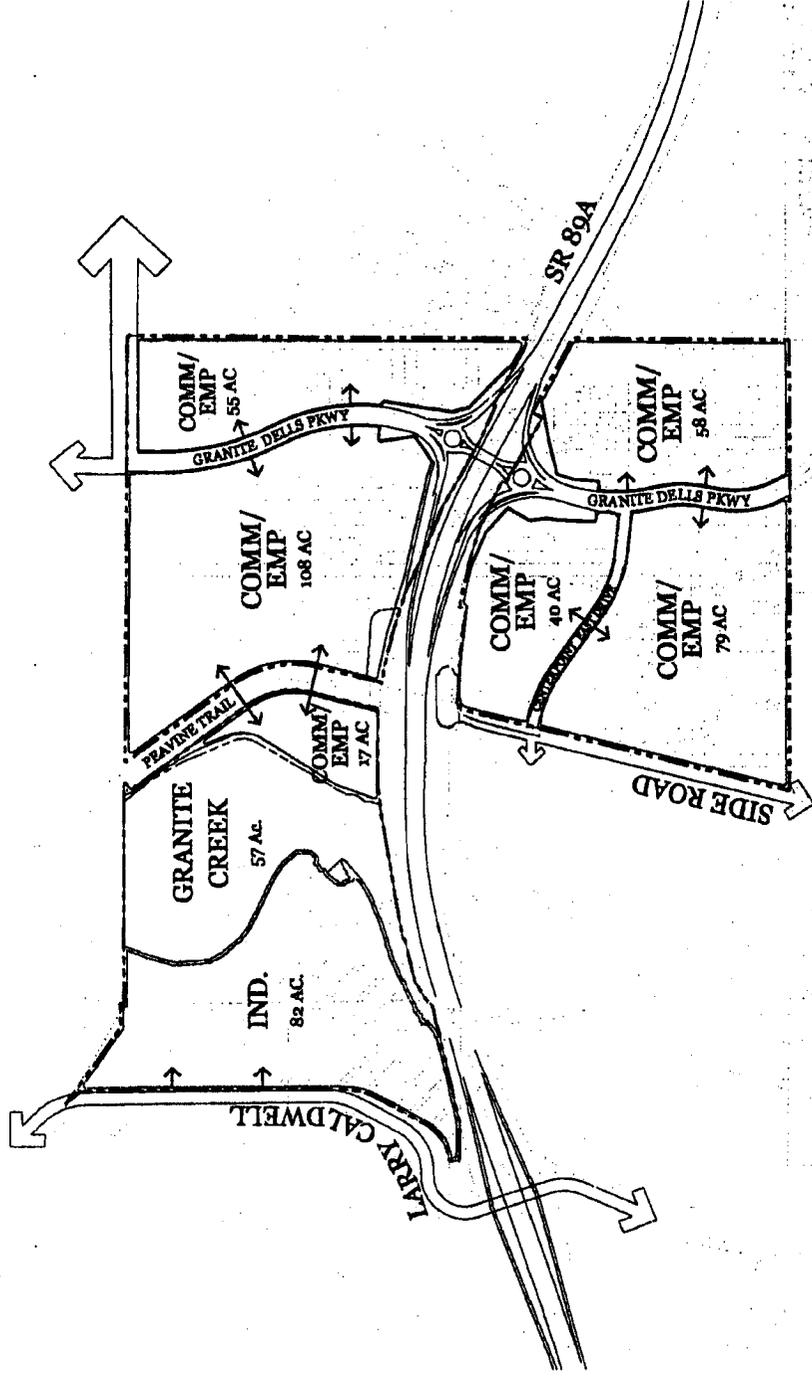
### NOTES

1. GRANITE CREEK OPEN SPACE IS APPROXIMATE. ACTUAL OPEN SPACE LIMITS WILL BE DETERMINED AT THE TIME OF DEVELOPMENT.
2. GROSS ACREAGE FOR DEVELOPMENT PARCELS ARE APPROXIMATE.

SCALE: 1"=400'  
NORTH  
DATE: 04-04-04  
JOB: 04-178  
BY: E.P.S.  
CHECKED: D.P.S.  
04-28-04

**urban design studio**  
land planning • landscape architecture

120 South 4th Avenue • Suite 100 • Prescott, AZ 86301  
908.227.1111



LOCATION MAP

II-G

M  
L  
S  
M

<b>COUNCIL AGENDA MEMO – January 20 &amp; 27, 2009</b>	
<b>DEPARTMENT:</b> Public Works	
<b>AGENDA ITEM:</b> Approval of a professional services agreement with Granite Basin Engineering, Inc., for design of the FY09 Small Water Main Upgrades and Sewer Mainline Replacement Project, in an amount not to exceed \$325,000.00	

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>Ellwood</i>	<i>01/15/09</i>

**Item Summary**

This item is to procure engineering services for design of the FY09 Small Water Main Upgrades and Sewer Mainline Replacement Project which is an ongoing program to replace deteriorated and undersized water and wastewater main lines and install new services within the City system.

**Background**

FY09 Small Water Main Upgrades

To meet the basic infrastructure needs of providing for safe, adequate drinking water for the City's residents and businesses, the City annually budgets funds for the replacement and upgrade of small, undersized and aging water mains. These mains are typically 3" or less in diameter, often constructed of galvanized steel and also a source of leaks. In some instances, looping of dead end segments is also included in the project to enhance both water quality and flow. Replacement of these lines improves the water system for our citizens, helps to reduce maintenance costs and water loss. Water main upgrades included in this project are:

- Rodeo Grounds - 1,500 LF of 8" water main Gail Gardner to Schemmer
- Flatau Drive and Overstreet Drive - 2,000 LF of 6" water main
- Leroux Street and South Granite Street - 300 LF of 6" water main
- Tolemac Drive to Wildwood Drive - 400 LF of 8" water main.
- Ute Road - 270LF of 6" water main.

FY 09 Sewer Mainline Replacement

The City annually budgets funds for the replacement and/or rehabilitation of sewer mains identified as failing or high-maintenance through sewer system investigations, work order tracking and mainline camera reports. Replacement of these sewer mains will reduce maintenance costs, service calls, and overflows. New sewer services will be installed with the new mains. Sewer system improvements included in this project are:

**Agenda Item:** Approval of a professional services agreement with Granite Basin Engineering, Inc., for design of the FY09 Small Water Main Upgrades and Sewer Mainline Replacement Project, in an amount not to exceed \$325,000.00.

- Virginia Street - 3,000 LF 8" sewer main Sheldon Street to Oak Street
- Alley east of Penn Avenue - 2,500LF of 8" sewer main Gurley Street to Hillcrest Drive

Trenchless technology, also known as pipe bursting, will be considered to avoid traffic impacts at Gurley and Sheldon Streets and to ease construction in the narrow Penn alley with many driveways and existing utilities.

### **Procurement**

On September 25<sup>th</sup>, 2008, the City received seventy one (71) proposals from seventeen (17) firms for twelve (12) publicly advertised engineering projects. Pursuant to professional services selection procedures, staff ranked the individual firms based on their Statements of Qualifications, and then interviewed the top ranked three firms to determine the final ranking for each project. Granite Basin Engineering, Inc. was the top ranked firm for this project. Subsequently, the scope of services and negotiation of fees were successfully completed.

### **Schedule**

Pending award of a contract design will begin in February, 2009, with final plans and bidding documents to be submitted by the end of July, 2009.

### **Budget**

Funding for the FY09 Small Water Main Upgrades is available from the Water Fund. (Account #2-91111; Amount \$700,000). Funding for the Sewer Mainline Replacement/ Rehabilitation is available from the Sewer Fund. (Account #13-92134; Amount \$1,000,000).

### **Attachments**

- Scope of Work    Exhibit A
- Fee Schedule    Exhibit B
- Location Map    Exhibit C

**Recommended Action:** **MOVE** to approve a contract with Granite Basin Engineering, Inc., for design of the FY09 Small Water Main Upgrades and Sewer Mainline Replacement Project, in an amount not to exceed \$325,000.00.



**Scope of Work**  
**FY09 Small Water Main Upgrades / Sewer Mainline Replacement / Rehabilitation**  
**January 9, 2009**

**Project Description**

The areas being considered for improvement are located in older areas of the city where existing infrastructure is antiquated and surface/subsurface conditions create unique design challenges. The projects will significantly impact both public areas and private residences. Upgrading utilities in these areas, while meeting current design standards, will require thorough evaluation of existing conditions, alternative analysis, cost evaluation and constructability review. Construction periods, scheduling and service interruptions will significantly impact public reaction to these projects.

Many of the areas experience a considerable amount of traffic congestion which will need to be addressed during the design process. The projects will significantly impact primary access routes, on-street parking and private driveways. Traffic control will play a large role in maintaining safe, continued access to these areas during construction. Extensive coordination of construction activity, phasing and scheduling will be incorporated into the project specifications.

Two separate sets of plans and specifications will be prepared for both the water and sewer projects. The water improvements include approximately 4,500 L.F. of water main along with 70 water service connections. The sewer improvements include approximately 5,500 L.F. of sewer main along with 110 service connections. The water improvements are top priority although plans and specifications may be submitted simultaneously for the sewer. A brief description of each project is included below.

o *Rodeo Grounds*

Design approximately 1,500 L.F. of 8" water main from Gail Gardner to Schemmer Drive, with all appurtenances including fire hydrants, water services and backflow prevention devices. Key issues include providing adequate fire protection for the recently acquired City property and providing needed capacity to the area along Schemmer Drive. Design will consider an underground drainage diversion for groundwater currently impacting the rodeo stands.

o *Flatau Drive and Overstreet Drive*

Design approximately 2,000 L.F. of 6" water main along Flatau Drive and Overstreet Drive, with all appurtenances including fire hydrants and water services. Consider a 300 L.F. cross-connection along Web Place. Key issues include providing adequate fire protection and transitioning the proposed waterline in Overstreet to a 12" waterline previously designed in Robinson Drive.

o *Leroux Street & South Granite Street*

Design approximately 300 L.F. of 6" water main along South Granite Street West, with all appurtenances including fire hydrants and water services. Key issues include working with property owners to relocate their water meters and yard plumbing. Water service will also be evaluated for a number of properties to the north and west of the project.



o *Tolemac Drive to Wildwood Drive*

Design approximately 400 L.F. of 8" water main along an unimproved easement between Tolemac Drive and Wildwood Drive. Key issues include an existing low water crossing inside the easement. The waterline is planned upstream from the low water crossing which will act as grade control for the streambed.

o *Ute Road*

Design approximately 270 L.F. of 6" water main along Ute Road from the intersection of Copper Basin Road, with all appurtenances including water services. Key issues include tying into the new line recently installed in Copper Basin Road. Recent as-built drawings from the Copper Basin Road project will be used to verify the connection point.

o *Virginia Street Sewer Main Replacement*

Design approximately 3,000 L.F. of 8" sewer main along Virginia Street between Sheldon Street and Oak Street, with all appurtenances including manholes, sewer services and backflow devices. Consider trenchless technology under Sheldon Street, Gurley Street and an existing drainage structure just north of Oak Street. Key issues include service interruption and traffic congestion during the construction.

o *Penn Alley Sewer Main Replacement*

Design approximately 2,500 L.F. of 8" sewer main along Penn Alley between Gurley Street and Hillcrest Drive, with all appurtenances including manholes, sewer services and backflow devices. Key issues include service interruption, low overhead utilities, depth of sewer, tight work site conditions, and driveway and parking access during construction. Pipe bursting technology will be considered from Gurley Street to Carleton Street.

**Assumptions**

- o The City will perform all water system analysis for the project. Results from the water modeling will be included with the Preliminary Water Design Report and the Water System Design Report to be submitted to ADEQ with the 'Approval to Construct' application.
- o Two separate sets of plans and specifications will be prepared for both the water and sewer projects.
- o Water system upgrades include approximately 4,500 L.F. of 6" to 8" water mains with all appurtenances including fire hydrants and service connections.
- o Sewer system upgrades include approximately 5,500 L.F. of 8" sewer mains with all appurtenances including manholes and service connections.
- o Engineer will coordinate all fire protection requirements including fire flows and hydrant distribution with the City of Prescott Fire Department.
- o The City of Prescott has an ADEQ approved Operation and Maintenance Manual for their sewer collection system.



## Scope of Work

### **100 Pre-Design**

- 101 *Project Kick-Off Meeting:* Prepare for and attend a kick-off meeting with City staff. Provide detailed design schedule, list of team members and organizational chart.
- 102 *Geotechnical Evaluation:* Partner with Engineering and Testing Consultants to prepare geotechnical reports for both water and sewer projects identifying subsurface conditions and the need for any special excavation equipment. Estimate includes 26 borings to 10' deep or refusal. Two borings at the fairgrounds will be done to 20' or refusal to understand groundwater depths impacting the grandstands.
- 103 *Pre-Design BLUESTAKE, Potholing & Sewer Video Recording:* Obtain pre-design BLUESTAKE and partner with Fann Environmental to pothole existing utilities and video the sewer mains in Virginia Street and Penn Alley. Estimate includes a conservative 80 potholes, 35 for the water and 45 for the sewer. Backfill potholes with pea gravel and replace asphalt with cold pavement patch. Estimate is based on time and materials with unit cost per pothole of approximately \$440. The cost for the sewer camera work is \$2,500.

### **200 Data Collection / Surveying**

- 201 *As-built and GIS Data Review:* Review all available as-built data and GIS information from the City of Prescott archives. Includes review of all gas, power, CATV, and phone company information.
- 202 *Record Boundary Research and Verification:* Research all record property information, perform necessary title searches and verify all boundaries relevant to the utility improvements.
- 203 *Benchmarks:* Establish project benchmarks based on the City's vertical datum and coordinate system.
- 204 *Topographic Mapping:* Provide topographic mapping for all areas relevant to the utility improvements. Includes measurement of all finish floor elevations along Virginia south of Gurley Street.
- 205 *Legal Descriptions:* Prepare legal descriptions for necessary public utility easements or temporary construction easements.

### **300 Preliminary Engineering**

- 301 *Preliminary Design Reports:* Prepare separate preliminary design reports for both water and sewer improvements. Report will cover basis of design assumptions, design calculations and results. Results from the City's water and sewer models will be included.
- 302 *Preliminary Alignment Plans:* Prepare two sets of preliminary alignment plans for water and sewer based on information obtained from pre-design BLUESTAKE, potholing, geotechnical report, boundary surveying and topographic mapping.
- 303 *Preliminary Cost Estimate:* Prepare two preliminary cost estimates for water and sewer based on the



preliminary alignment plans. Identify construction phasing to meet the City's CIP funding.

#### **400 Plans and Specifications**

- 401 *30% Plan Submittal:* Prepare two sets of 30% plans for water and sewer that include basic plan and profile views depicting existing features and proposed improvements. Submit plans to the City and affected utility companies for review. Update cost estimate.
- 402 *60% Plan Submittal:* Prepare two sets of 60% plans for water and sewer that include final plan and profile views depicting all existing features and proposed improvements. Plans will show all existing utilities, right-of-way limits, and utility easements. Submit plans to the City and affected utility companies for review. Update cost estimate.
- 403 *90% Pre-Final Plan Submittal:* Upon receiving 60% plan review comments, prepare two sets of 90% plans for water and sewer that have incorporated all changes, corrections and additions. Submit plans to the City and affected utility companies for review. Update cost estimate.
- 404 *100% Final Plans and Bidding Documents:* Prepare two sets of final plans for water and sewer incorporating any adjustments or corrections made during review of the pre-final plans. Prepare two sets of technical specifications, special provisions, final engineer's estimates and bidding schedules. Provide reproducible mylar plans and CAD files. Provide hard copies and digital files of technical specifications, special provisions, final engineer's estimate and bidding schedule.

#### **500 Regulatory Agency Submittals & Coordination**

- 501 *Regulatory Agency Review:* Prepare ADEQ "Approval to Construct" applications for the proposed water and sewer improvements. Prepare and submit a water system design report and a sewer system design report with the applications.
- 502 *Submittals and Coordination:* Coordinate all submittals with ADEQ and other reviewing authorities. Account for review time in the project schedule.

#### **600 Project Management & Coordination**

- 601 *Monthly Progress Meetings:* For the duration of the project, attend monthly meetings with City staff to discuss project status and pertinent design issues. Augment meeting dates as necessary to address key design issues.
- 602 *Public Information Presentations & Coordination:* Prepare for and conduct at least three public meetings. Prepare for and conduct meetings with individual property owners or groups of property owners as necessary.

#### **700 Sub-Consultants**

- 701 *Engineering and Testing Consultants:* Engineering and Testing Consultants will prepare geotechnical reports for both water and sewer projects identifying subsurface conditions and the need for any special excavation equipment. Estimate includes 26 borings to 10' deep or refusal. Two borings at the fairgrounds will be done to 20' or refusal to understand groundwater depths impacting the grandstands.



702 *Fann Environmental*: Fann Environmental will pothole existing utilities and video the sewer mains in Virginia Street and Penn Alley. Estimate includes a conservative 80 potholes, 35 for the water and 45 for the sewer. Backfill potholes with pea gravel and replace asphalt with cold pavement patch. Estimate is based on time and materials with unit cost per pothole of approximately \$440. The cost for the sewer camera work is \$2,500.

**800 Allowance Items**

801 *Reimbursable Expenses*: Includes allowances for mileage, plan and report production costs, shipping, etc.

802 *Utility Coordination*: Possibly employ Northern Arizona Utility Consultants to coordinate with the dry utility companies.

803 *Easement Negotiations*: Possibly employ Russ Briggs to negotiate any necessary temporary construction easements or public utility easements required for the project. Fee assumes a rate of approximately \$1,000.00 per temporary construction easement and \$2,500.00 per public utility easements.

**900 Construction Phase Services**

901 *Bidding Services*: Prepare for and attend the pre-bid and pre-construction meetings.

902 *Post Design Consultation*: Provide consultation assistance during construction to answer questions pertaining to the design.



# Preliminary Schedule - Various Water & Wastewater Projects

Task	2009											
	Jan	Feb	March	April	May	June	July	Aug	Sept			
Project Kick-Off Meeting												
Geotechnical Evaluation		◆										
Pre-Design BLUESTAKE, Potholing and Sewer Video		◆										
As-built and GIS Data Review		◆										
Record Boundary Research and Verification		◆										
Benchmarks		◆										
Topographic Mapping		◆										
Legal Descriptions		◆										
Preliminary Design Reports			◆									
Preliminary Alignment Plans			◆									
Preliminary Cost Estimates			◆									
30% Plan Submittal				◆								
60% Plan Submittal					◆							
90% Plan Submittal						◆						
100% Final Plans and Bidding Documents							◆					
Regulatory Agency Review							◆					
Submittals and Coordination							◆					
Monthly Progress Meetings							◆					
Public Information Presentations & Coordination								◆				



# Estimated Manhour Budget

Various Sewer Projects  
Project No.08071

Date 1/6/2009

Line Item	Task I.D.	TOTALS				Estimated Labor			
		Hours	Dollars	Professional Engineer	Registered Surveyor	Field Survey Crew	Designer/Drafter	Construction Inspector	
1	101	12	\$1,420	8	4				
2	102								
3	103								
4	201	24	\$3,000	24					
5	202	88	\$9,960		40	24	24		
6	203	8	\$1,200			8			
7	204	108	\$13,440		8	60	40		
8	205	40	\$4,120	8	16		16		
9	301	40	\$5,000						
10	302	96	\$9,200	16			80		
11	303	16	\$2,000	16					
12	401	120	\$12,200	40			80		
13	402	160	\$15,800	40			120		
14	403	64	\$6,600	24			40		
15	404	64	\$6,600	24			40		
16	501	40	\$5,000	40					
17	502	16	\$2,000	16					
18	601	24	\$3,000	24					
19	602	40	\$5,000	40					
20	701				\$5,000				
21	702				\$18,445				
22	801				\$5,000				
23	802				\$3,150				
24	803				\$5,000				
25	901	24	\$3,000	24					
26	902	24	\$3,000	24					
<b>TOTALS</b>									

Subcontractor Fee (701)				
Subcontractor Fee (702)				
<b>Billing Rate</b>	\$125	\$105	\$150	\$90
<b>Total Hours</b>	1008	68	92	440
<b>Total Labor</b>	\$111,540	\$7,140	\$13,800	\$39,600

Total Subcontractors **\$23,445**

Total Allowances **\$13,150**

Total Sewer Projects **\$148,135**

Total **\$299,740**



**FY09 Small Water Main Upgrades and Sewer Mainline Replacement/ Rehabilitation**

Tolemac  
Water Main

Rodeo Grounds  
Water Main

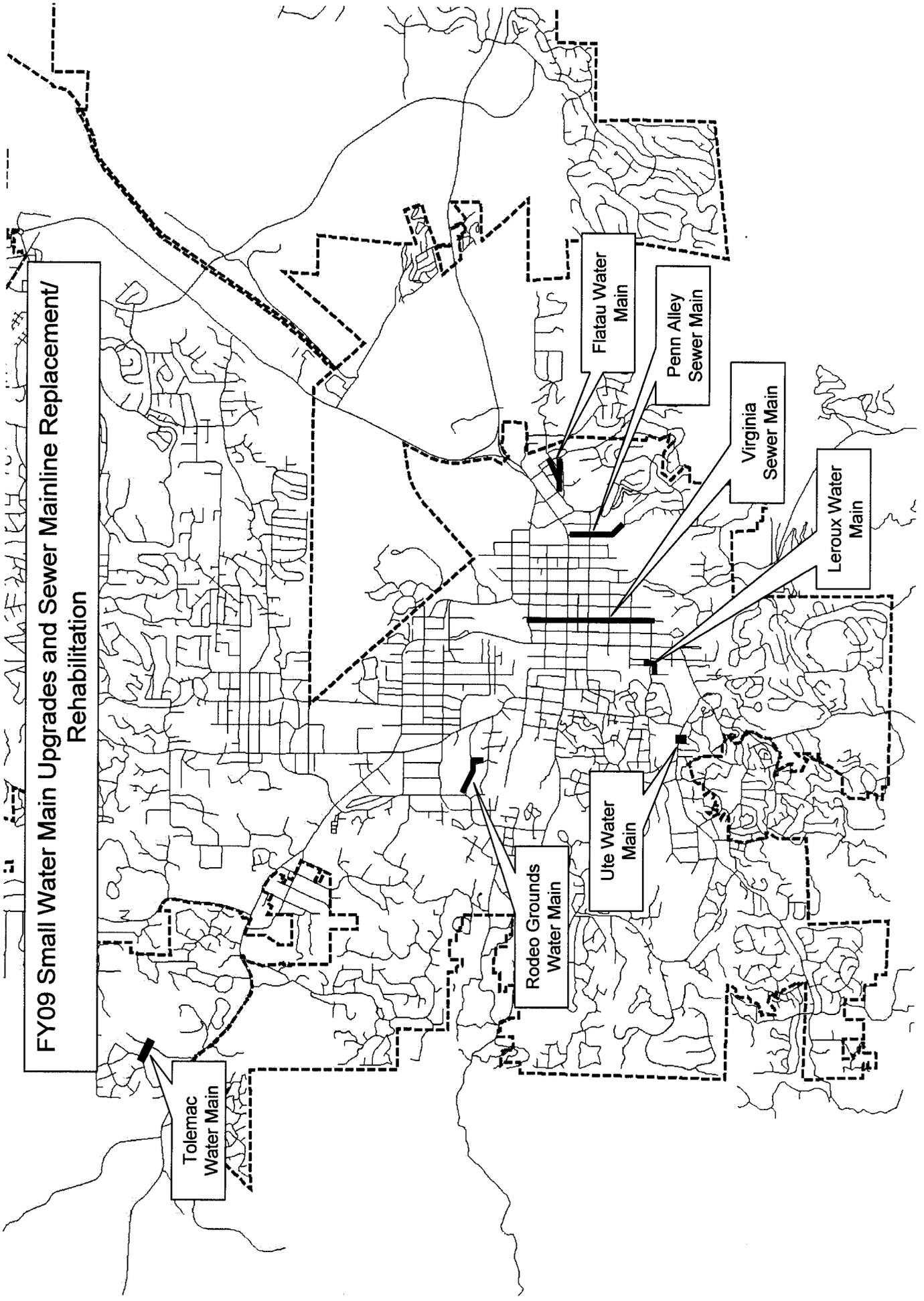
Ute Water  
Main

Flatau Water  
Main

Penn Alley  
Sewer Main

Virginia  
Sewer Main

Leroux Water  
Main



<b>COUNCIL AGENDA MEMO – January 20 &amp; 27, 2009</b>	
<b>DEPARTMENT:</b>	Budget and Finance
<b>AGENDA ITEM:</b>	Changes to Model City Tax Code

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Mark Woodfill	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>[Signature]</i>	<i>01/15/09</i>

**Background**

The City of Prescott adopted the Model City Tax Code which regulates the privilege tax for all cities in Arizona. In calendar year 2008 there were several proposed changes. All proposed changes to the code were reviewed by the Unified Audit Committee (UAC), Arizona Tax Research Association (ATRA), the League of Arizona Cities and Towns, and were approved by the Municipal Tax Code Commission (MTCC). The city is now required to enact these changes. The changes include the following:

- The definition of "Out-of-State Sales" is modified to more closely mirror Arizona Revised Statutes.
- The addition of definitions for "Solar Daylighting" and "Solar Energy Device".
- A new deduction added under the Construction, Owner Builder, and Speculative Builder tax classifications for the direct costs associated with installation of a "Solar Energy Device".
- A new deduction under the Retail tax classification for sales of a "Solar Energy Device".
- A new deduction added under the Construction, Owner Builder, and Speculative Builder tax classifications for the direct costs associated with architectural and engineering services.

**Item**

This action is house keeping in nature. The changes have already been made to the Model City Tax Code, and are currently being followed. The city is now required to officially accept the changes through resolution/ordinance. Due to the length of the document, the attached Resolution will adopt *The 2008 Amendments to the Tax Code of the City of Prescott* as a public record and the Ordinance will adopt this public record by reference.

<p><b>Recommended Action: (1) MOVE</b> to adopt Resolution No. 3933-0939; and <b>(2) MOVE</b> to adopt Ordinance No. 4690-0933.</p>
---

**RESOLUTION NO. 3933-0939**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2008 AMENDMENTS TO THE TAX CODE OF THE CITY OF PRESCOTT"**

**ENACTMENTS:**

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT certain document entitled 'THE 2008 AMENDMENTS TO THE TAX CODE OF THE CITY OF PRESCOTT,' three copies of which are on file in the office of the city clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the city clerk.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27<sup>th</sup> day of January, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney

## 2008 AMENDMENTS TO THE TAX CODE OF THE CITY OF PRESCOTT

**Section 1. Section 4-1-100 of the Tax Code of the City of Prescott is amended to read:**

**Sec. 4-1-100. General definitions.**

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" means all activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

**"Engaging"**, when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

**"Equivalent Excise Tax"** means either:

- (1) a Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or
- (2) an excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or
- (3) an excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

**"Federal Government"** means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

**"Food"** means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process.

**"Hotel"** means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

**"Jet Fuel"** means jet fuel as defined in A.R.S. Section 42-5351.

**"Job Printing"** means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

**"Lessee"** includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

**"Lessor"** includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

**"Licensing (for Use)"** means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

**"Lodging (Lodging Space)"** means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

**"Manufactured Buildings"** means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

**"Manufacturer"** means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

**"Mining and Metallurgical Supplies"** means all tangible personal property acquired by persons engaged in activities defined in Section 4-1-432 for such use. This definition shall not include:

- (1) janitorial equipment and supplies.
- (2) office equipment, office furniture, and office supplies.
- (3) motor vehicles licensed for use upon the highways of the State.

**"Modifier"** means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

**"Nonprofit Entity"** means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

**"Occupancy (of Real Property)"** means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

**"Out-of-City Sale"** means the sale of tangible personal property and job printing if all of the following occur:

- (1) transference of title and possession occur without the City; and
- (2) the stock from which such personal property was taken was not within the corporate limits of the City; and
- (3) the order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

**"Out-of-State Sale"** means the sale of tangible personal property and job printing if all of the following occur:

- (1) The order is placed from without the State of Arizona; and
- (2) ~~the order is placed by other than a resident of the State to be determined in a manner similar to "resides within the City"; and~~
- (3) the property is delivered to the buyer at a location outside the State; and
- (4) the property is purchased for use outside the State.

**"Owner-Builder"** means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

**"Person"** means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

**"Prosthetic"** means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

- (1) any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.
- (2) insulin, insulin syringes, and glucose test strips sold with or without a prescription.
- (3) hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.
- (4) drugs or medicine, including oxygen.
- (5) equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.
- (6) durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

**"Qualifying Community Health Center"**

- (1) means an entity that is recognized as nonprofit under Section 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:
  - (a) the sole provider of primary care in the community.
  - (b) a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this State.

(2) includes clinics that are being constructed as qualifying community health centers.

**"Qualifying Health Care Organization"** means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

**"Qualifying Hospital"** means any of the following:

- (1) a licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- (2) a licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.
- (3) a hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.
- (4) a facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

**"Receipt (of Notice) by the Taxpayer"** means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

**"Remediation"** means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

**"Rental Equipment"** means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

- (1) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (2) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

**"Rental Supply"** means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

- (1) the documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and
- (2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

**"Repairer"** means a person who restores or renews products, wares, or articles of manufacture.

**"Resides within the City"** means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

**"Restaurant"** means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

**"Retail Sale (Sale at Retail)"** means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

**"Retailer"** means any person engaged or continuing in the business of sales of tangible personal property at retail.

**"Sale"** means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

**"SOLAR DAYLIGHTING"** MEANS A DEVICE THAT IS SPECIFICALLY DESIGNED TO CAPTURE AND REDIRECT THE VISIBLE PORTION OF THE SOLAR BEAM, WHILE CONTROLLING THE INFRARED PORTION, FOR USE IN ILLUMINATING INTERIOR BUILDING SPACES IN LIEU OF ARTIFICIAL LIGHTING.

**"SOLAR ENERGY DEVICE"** MEANS A SYSTEM OR SERIES OF MECHANISMS DESIGNED PRIMARILY TO PROVIDE HEATING, TO PROVIDE COOLING, TO PRODUCE ELECTRICAL POWER, TO PRODUCE MECHANICAL POWER, TO PROVIDE SOLAR DAYLIGHTING OR TO PROVIDE ANY COMBINATION OF THE FOREGOING BY MEANS OF COLLECTING AND TRANSFERRING SOLAR GENERATED ENERGY INTO SUCH USES EITHER BY ACTIVE OR PASSIVE MEANS, INCLUDING WIND GENERATOR SYSTEMS THAT PRODUCE ELECTRICITY. SOLAR ENERGY SYSTEMS MAY ALSO HAVE THE CAPABILITY OF STORING SOLAR ENERGY FOR FUTURE USE. PASSIVE SYSTEMS SHALL CLEARLY BE DESIGNED AS A SOLAR ENERGY DEVICE, SUCH AS A TROMBE WALL, AND NOT MERELY AS A PART OF A NORMAL STRUCTURE, SUCH AS A WINDOW.

**"Speculative Builder"** means either:

- (1) an owner-builder who sells or contracts to sell, at anytime, improved real property (as provided in Section 4-1-416) consisting of:
  - A) custom, model, or inventory homes, regardless of the stage of completion of such homes; or
  - B) improved residential or commercial lots without a structure; or
- (2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:
  - A) prior to completion; or
  - B) before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

**"Substantially Complete"** means the construction contracting or reconstruction contracting:

- (1) has passed final inspection or its equivalent; or
- (2) certificate of occupancy or its equivalent has been issued; or
- (3) is ready for immediate occupancy or use.

**"Supplier"** means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

**"Tax Collector"** means the finance director or his designee or agent for all purposes under this Chapter.

**"Taxpayer"** means any person liable for any tax under this Chapter.

**"Taxpayer Problem Resolution Officer"** means the individual designated by the City to perform the duties

identified in Sections 4-1-515 and 4-1-516. In cities with a population of 50,000 or more, the Taxpayer Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

## **Section 2. Section 4-1-415 of the Tax Code of the City of Prescott is amended to read:**

### **Sec. 4-1-415. Construction contracting: construction contractors.**

- (a) The tax rate shall be at an amount equal to two percent (2%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.
- (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.
  - (2) (Reserved)
  - (3) gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 4-1-427.
  - (4) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS PROCEEDS OF SALES OR GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.
- (b) Deductions and exemptions.
- (1) Gross income derived from acting as a "subcontractor" shall be exempt from the tax imposed by this Section.
  - (2) All construction contracting gross income subject to the tax and not deductible herein shall be allowed a deduction of thirty-five percent (35%).
  - (3) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
    - (A) Section 4-1-465, subsections (g) and (p)
    - (B) Section 4-1-660, subsections (g) and (p)shall be exempt or deductible, respectively, from the tax imposed by this Section.
  - (4) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 4-1-110, that is deducted from the retail classification pursuant to Section 4-1-465(g) that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair,

maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:

- (A) to be incorporated into real property.
  - (B) to become so affixed to real property that it becomes part of the real property.
  - (C) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.
- (5) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
  - (6) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 4-1-465, subsection (g) shall be exempt from the tax imposed under this Section.
  - (7) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this State for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.
  - (8) The gross proceeds of sales or gross income received from a post construction contract to perform post-construction treatment of real property for termite and general pest control, including wood destroying organisms, shall be exempt from tax imposed under this Section.
  - (9) Through December 31, 2009, the gross proceeds of sales or gross income received from a contract for constructing any lake facility development in a commercial enhancement reuse district that is designated pursuant to A.R.S. § 9-499.08 if the contractor maintains the following records in a form satisfactory to the Arizona Department of Revenue and to the City:
    - (A) The certificate of qualification of the lake facility development issued by the City pursuant to A.R.S. § 9-499.08, subsection D.
    - (B) All state and local transaction privilege tax returns for the period of time during which the contractor received gross proceeds of sales or gross income from a contract to construct a lake facility development in a designated commercial enhancement reuse district, showing the amount exempted from state and local taxation.
    - (C) Any other information considered to be necessary.
  - (10) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.
  - (11) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(c) Subcontractor means a construction contractor performing work for either:

- (1) a construction contractor who has provided the subcontractor with a written declaration that he is liable for the tax for the project and has provided the subcontractor his City Privilege License number.
- (2) an owner-builder who has provided the subcontractor with a written declaration that:
  - (A) the owner-builder is improving the property for sale; and
  - (B) the owner-builder is liable for the tax for such construction contracting activity; and
  - (C) the owner-builder has provided the contractor his City Privilege License number.
- (3) a person selling new manufactured buildings who has provided the subcontractor with a written declaration that he is liable for the tax for the site preparation and set-up; and provided the subcontractor his City Privilege License number.

Subcontractor also includes a construction contractor performing work for another subcontractor as defined above.

**Section 3. Section 4-1-416 of the Tax Code of the City of Prescott is amended to read:**

**Sec. 4-1-416. Construction contracting: speculative builders.**

- (a) The tax shall be equal to two percent (2%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.
- (1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.
  - (2) "Improved Real Property" means any real property:
    - (A) upon which a structure has been constructed; or
    - (B) where improvements have been made to land containing no structure (such as paving or landscaping); or
    - (C) which has been reconstructed as provided by Regulation; or
    - (D) where water, power, and streets have been constructed to the property line.
  - (3) "Sale of Improved Real Property" includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, "sale" refers to the sale of the entire project or to the sale of any individual parcel or unit.
  - (4) "Partially Improved Residential Real Property", as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.
- (b) Exclusions.
- (1) In cases involving reconstruction contracting, the speculative builder may exclude from gross income the prior value allowed for reconstruction contracting in determining his taxable gross income, as provided by Regulation.
  - (2) Fair market value of land. Gross income from the sale of improved real property shall not include the "fair market value" of the land which is included in the real property sold, when a charge for such land is included in the total selling price of the real property sold.
    - (A) Except as provided in subsection (b)(2)(B) below, the taxpayer must document such "fair market value" to the satisfaction of the Tax Collector, and maintain and provide such documentation upon demand in addition to and in like manner to the books and records required in Article III.
    - (B) In lieu of the documented fair market value of land allowed in subsection (b)(2)(A) above, an amount equal to twenty percent (20%) of the total selling price may be used to estimate the "fair market value" of land.
  - (3) (Reserved)
  - (4) A speculative builder may exclude gross income from the sale of partially improved residential real property as defined in (a)(4) above to another speculative builder only if all of the following conditions are satisfied:
    - (A) The speculative builder purchasing the partially improved residential real property has a valid City privilege license for construction contracting as a speculative builder; and
    - (B) At the time of the transaction, the purchaser provides the seller with a properly completed written declaration that the purchaser assumes liability for and will pay all privilege taxes which would otherwise be due the City at the time of sale of the partially improved residential real property; and
    - (C) The seller also:
      - (i) maintains proper records of such transactions in a manner similar to the requirements provided in this chapter relating to sales for resale; and
      - (ii) retains a copy of the written declaration provided by the buyer for the transaction; and

- (iii) is properly licensed with the City as a speculative builder and provides the City with the written declaration attached to the City privilege tax return where he claims the exclusion.
- (5) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS PROCEEDS OF SALES OR GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.
- (c) Tax liability for speculative builders occurs at close of escrow or transfer of title, whichever occurs earlier, and is subject to the following provisions, relating to exemptions, deductions and tax credits:
- (1) Exemptions.
- (A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
    - (i) Section 4-1-465, subsections (g) and (p)
    - (ii) Section 4-1-660, subsections (g) and (p)
 shall be exempt or deductible, respectively, from the tax imposed by this Section.
  - (B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
  - (C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base of the retail classification pursuant to Section 4-1-465, subsection (g) shall be exempt from the tax imposed under this section.
  - (D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.
  - (E) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.
- (2) Deductions.
- (A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).
  - (B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 4-1-110, that is deducted from the retail classification pursuant to Section 4-1-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:
    - (i) to be incorporated into real property.
    - (ii) to become so affixed to real property that it becomes part of the real property.
    - (iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

- (C) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.
- (3) Tax credits.  
The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:
- (A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.
- (B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.
- (C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

**Section 4. Section 4-1-417 of the Tax Code of the City of Prescott is amended to read:**

**Sec. 4-1-417. Construction contracting: owner-builders who are not speculative builders.**

- (a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to two percent (2%) of:
- (1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 4-1-415(c)(2); and
- (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.
- (b) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008, THE PORTION OF GROSS PROCEEDS OF SALES OR GROSS INCOME ATTRIBUTABLE TO THE ACTUAL DIRECT COSTS OF PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES THAT ARE INCORPORATED IN A CONTRACT IS NOT SUBJECT TO TAX UNDER THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "DIRECT COSTS" MEANS THE PORTION OF THE ACTUAL COSTS THAT ARE DIRECTLY EXPENDED IN PROVIDING ARCHITECTURAL OR ENGINEERING SERVICES.
- (bC) The tax liability of this Section is subject to the following provisions, relating to exemptions, deductions and tax credits:
- (1) Exemptions.
- (A) The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from privilege or use tax under:
- (i) Section 4-1-465, subsections (g) and (p)
- (ii) Section 4-1-660, subsections (g) and (p)
- shall be exempt or deductible, respectively, from the tax imposed by this Section. (B) The gross proceeds of sales or gross income received from a contract for the construction of an environmentally controlled facility for the raising of poultry for the production of eggs and the sorting, or cooling and packaging of eggs shall be exempt from the tax imposed under this Section.
- (C) The gross proceeds of sales or gross income that is derived from the installation, assembly, repair or maintenance of cleanrooms that are deducted from the tax base

of the retail classification pursuant to Section 4-1-465, subsection (g) shall be exempt from the tax imposed under this Section.

- (D) The gross proceeds of sales or gross income that is derived from a contract entered into with a person who is engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state for the construction, alteration, repair, improvement, movement, wrecking or demolition or addition to or subtraction from any building, highway, road, excavation, manufactured building or other structure, project, development or improvement used directly and primarily to prevent, monitor, control or reduce air, water or land pollution shall be exempt from the tax imposed under this Section.
- (E) Development or impact fees included in a construction or development contract for payment to the state or local government to offset governmental costs of providing public infrastructure, public safety and other public services to a development.

(2) Deductions.

- (A) All amounts subject to the tax shall be allowed a deduction in the amount of thirty-five percent (35%).
- (B) The gross proceeds of sales or gross income that is derived from a contract entered into for the installation, assembly, repair or maintenance of income-producing capital equipment, as defined in Section 4-1-110, that is deducted from the retail classification pursuant to Section 4-1-465(g), that does not become a permanent attachment to a building, highway, road, railroad, excavation or manufactured building or other structure, project, development or improvement shall be exempt from the tax imposed by this Section. If the ownership of the realty is separate from the ownership of the income-producing capital equipment, the determination as to permanent attachment shall be made as if the ownership was the same. The deduction provided in this paragraph does not include gross proceeds of sales or gross income from that portion of any contracting activity which consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of the income-producing capital equipment. For purposes of this paragraph, "permanent attachment" means at least one of the following:
  - (i) to be incorporated into real property.
  - (ii) to become so affixed to real property that it becomes part of the real property.
  - (iii) to be so attached to real property that removal would cause substantial damage to the real property from which it is removed.
- (C) FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008 AND ENDING BEFORE JANUARY 1, 2011, THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT TO PROVIDE AND INSTALL A SOLAR ENERGY DEVICE. THE CONTRACTOR SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY CONTRACTOR. BY REGISTERING, THE CONTRACTOR ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND THE CITY, AS APPLICABLE, FOR EXAMINATION.

(3) Tax credits.

The following tax credits are available to owner-builders and speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the tax collector:

- (A) A tax credit equal to the amount of city privilege or use tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.
- (B) A tax credit equal to the amount of privilege taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.
- (C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

- (eD) The limitation period for the assessment of taxes imposed by this Section is measured based upon when such liability is reportable, that is, in the reporting period that encompasses the twenty-fifth (25th) month after said unit or project was substantially complete. Interest and penalties, as provided in Section 4-1-540, will be based on reportable date.

(dE) (Reserved)

**Section 5. Section 4-1-465 of the Tax Code of the City of Prescott is amended to read:**

**Sec. 4-1-465. Retail sales: exemptions.**

Income derived from the following sources is exempt from the tax imposed by Section 4-1-460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) out-of-City sales or out-of-State sales.
- (c) charges for delivery, installation, or other direct customer services as prescribed by Regulation.
- (d) charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.
- (e) sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.
- (f) sales of prosthetics.
- (g) sales of income-producing capital equipment.
- (h) sales of rental equipment and rental supplies.
- (i) sales of mining and metallurgical supplies.
- (j) sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
- (k) sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) sales made directly to the Federal government to the extent of:
  - (1) one hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.
  - (2) fifty percent (50%) of the gross income derived from retail sales made by any other person.
- (o) sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 4-1-455 or the equivalent excise tax upon such income.
- (p) sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in

gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

- (q) food purchased with food stamps provided through the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food.
- (r) (Reserved)
  - (1) (Reserved)
  - (2) (Reserved)
  - (3) (Reserved)
  - (4) (Reserved)
- (s) sales of groundwater measuring devices required by A.R.S. Section 45-604.
- (t) sales of paintings, sculptures or similar works of fine art, provided that such works of fine art are sold by the original artist; and provided further that sales of "art creations", such as jewelry, macrame, glasswork, pottery, woodwork, metalwork, furniture, and clothing, when such "art creations" have a dual purpose, both aesthetic and utilitarian, are not exempt, whether sold by the artist or by another.
- (u) sales of aircraft acquired for use outside the State, as prescribed by Regulation.
- (v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
- (w) (Reserved)
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)
- (aa) the sale of tangible personal property used in remediation contracting as defined in Section 4-1-100 and Regulation 4-1-100.5.
- (bb) sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
  - (1) printed or photographic materials.
  - (2) electronic or digital media materials.
- (cc) sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. § 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (dd) in computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 4-1-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

- (ee) for the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 4-1-470 is considered to be a sale for resale in the regular course of business.
- (ff) sales of alternative fuel as defined in A.R.S. § 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. § 49-426 or § 49-480.
- (gg) sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (hh) sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 4-1-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.
- (ii) For the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
- (jj) Sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (kk) sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. § 1-215.
- (ll) SALES OF SOLAR ENERGY DEVICES, FOR TAXABLE PERIODS BEGINNING FROM AND AFTER JULY 1, 2008. THE RETAILER SHALL REGISTER WITH THE DEPARTMENT OF REVENUE AS A SOLAR ENERGY RETAILER. BY REGISTERING, THE RETAILER ACKNOWLEDGES THAT IT WILL MAKE ITS BOOKS AND RECORDS RELATING TO SALES OF SOLAR ENERGY DEVICES AVAILABLE TO THE DEPARTMENT OF REVENUE AND CITY, AS APPLICABLE, FOR EXAMINATION.

**ORDINANCE NO. 4690-0933**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING "THE 2008 AMENDMENTS TO THE TAX CODE OF THE CITY OF PRESCOTT" BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS**

**ENACTMENTS:**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. That certain document known as "THE 2008 AMENDMENTS TO THE TAX CODE OF THE CITY OF PRESCOTT," three copies of which are on file in the office of the city clerk of the City of Prescott, Arizona, which document was made a public record by Resolution No. 3933-0939 of the City of Prescott, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

Section 2. Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4. The provisions of section 1 through 3 of this ordinance shall be effective from and after July 1, 2008.

PASSED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, on this 27th day of January, 2009.

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JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

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ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney

<b>COUNCIL AGENDA MEMO – (January 20 &amp; January 27, 2009)</b>	
<b>DEPARTMENT:</b> City Clerk	
<b>AGENDA ITEM:</b> Public Hearing and consideration of a liquor license application from Andrea Dahlman Lewkowitz, Applicant for N and D Restaurants, Inc., for a Series 12, Restaurant, License for the Olive Garden Italian Restaurant, Inc. located at 3060 Highway 69.	

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Elizabeth A. Burke	
<b>Finance Director:</b>	
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>	<i>01/12/09</i>

A Liquor License Application, City No. 09-075, State No. 12133432, has been received from Andrea Dahlman Lewkowitz, applicant for N and D Restaurants, Inc, for a Series 12, Restaurant, License for the **Olive Garden Italian Restaurant** located at 3060 Highway 69. This application is for a new license due to an ownership change, in accordance with State Statutes.

The public hearing will be held at the Regular Council Meeting of Tuesday, January 27, 2009. The applicant has been requested to attend the Regular Meeting to answer any questions Council may have.

A copy of the application is available for Council's review in the City Clerk's Office.

<p><b>Recommended Action:</b> (1) <b>MOVE</b> to close the Public Hearing. (2) <b>MOVE</b> to approve/deny State Liquor License Application No. 12133432, for a new Series 12, Restaurant, Liquor License for Andrea Dahlman Lewkowitz, Applicant for N and D Restaurants, Inc., for the Olive Garden Italian Restaurant located at 3060 Highway 69.</p>
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**ARIZONA STATE LIQUOR LICENSES  
TYPES / PURPOSES  
AS OF 04/07**

**License Types: Series 01 In-State Producer's License**

Allows an in-state producer to produce or manufacture spirituous liquor and sell the product to a licensed wholesaler.

**License Types: Series 02 Out-of-State Producer's License**

Allows an out-of-state producer, exporter, importer or rectifier to ship spirituous liquor into the state to a licensed Arizona wholesaler.

**License Types: Series 03 Domestic Microbrewery License**

Allows the licensee of a microbrewery to manufacture or produce not less than 5,000 gallons of beer in each calendar year following the first year of operation and not more than 620,000 gallons of beer in a calendar year.

**License Types: Series 04 Wholesaler's License**

Allows a wholesaler to warehouse and distribute for sale, spirituous liquor to a licensed retailer.

**License Types: Series 05 Government License**

Allows the holder of a government license to sell and serve spirituous liquor solely for consumption on the premises for which the license is issued. The license is issued in the name of a county, city, town or state university whose governing body has authorized its use.

**License Types: Series 06 Bar License – Transferable**

Allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

**License Types: Series 07 Beer and Wine Bar License - Transferable**

Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

**License Types: Series 08 Conveyance License (Airplanes, Trains, and Boats)**

Allows the owner or lessee of an operating airline, railroad or boat to sell all spirituous liquors in individual portions or in original containers for consumption *only* on the plane, train or boat.

**License Types: Series 09 Liquor Store License (All spirituous liquors) - Transferable**

Allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

**License Types: Series 10 Beer and Wine Store License (Beer and wine only)**

Allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

**License Types: Series 11 Hotel/Motel License (with Restaurant)**

Allows the holder of a hotel/motel license to sell and serve spirituous liquor solely for consumption on the premises of a hotel or motel that has a restaurant where food is served on the premises.

**License Types: Series 12 Restaurant License**

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

**License Types: Series 13 Domestic Farm Winery License**

Allows a domestic farm winery licensee to manufacture or produce more than two hundred (200) gallons, but less than seventy-five thousand (75,000) gallons of wine annually, from grapes or other agricultural products, of which at least seventy-five percent (75%) are grown in this state.

**License Types: Series 14 Club License**

Allows the holder of a club license to sell and serve spirituous liquor for consumption only on the premises owned, leased or occupied by the club, and only to bona fide members of the club and their guests.

**License Types: Series 15 Special Event License**

Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

**Non-transferable License Types: Series 16 Wine Festival/Wine Fair License (Temporary)**

1. Wine festival license: Allows a licensed domestic farm winery to serve samples of its products on the wine festival premises and the sale of such products in original containers for consumption off the wine festival premises.
2. Wine fair license: Allows a licensed domestic farm winery to serve samples of its products at a sanctioned county or state fair, and the sale of such products in original containers for consumption off the fair premises.

**License Types: Series 17 Direct Shipment License**

Allows an out-of-state producer, exporter, importer, or rectifier to take orders from retail customers by telephone, mail, catalog or the Internet. The orders must be shipped into the state to a licensed Arizona wholesaler. The wholesaler must sell the product to a licensed retailer. The retailer will deliver the spirituous liquor to the customer.

## R19-1-102. Granting a License for a Certain Location

Local governing authorities and the Department may consider the following criteria in determining whether public convenience requires and that the best interest of the community will be substantially served by the issuance or transfer of a liquor license at a particular unlicensed location:

1. Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in, own or lease property in close proximity.
2. The number and series of licenses in close proximity.
3. Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.
4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.
5. Residential and commercial population density in close proximity.
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers.
7. Effect on vehicular traffic in close proximity.
8. The compatibility of the proposed business with other activity in close proximity.
9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing by the Board.
11. Comparison of the hours of operation of the proposed premises to the existing businesses in close proximity.
12. Proximity to licensed childcare facilities as defined by A.R.S. § 36-881.

### **Historical Note**

Former Rule 2; Former Section R4-15-02 renumbered as Section R4-15-102 without change effective October 8, 1982 (Supp. 82-5). Repealed effective July 11, 1983 (Supp. 83-4). New Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-102 recodified from R4-15-102 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5119, effective January 9, 2006 (Supp. 05-4).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp