



PRESCOTT CITY COUNCIL VOTING MEETING AGENDA

**PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, FEBRUARY 24, 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 Regular Voting Meeting pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION:** Chaplain Larry Gotfredson, Prescott Police Department.
- ◆ **PLEDGE OF ALLEGIANCE:** Mayor Wilson
- ◆ **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. PUBLIC COMMENT

- A. Lettie Irons Connell re Wreaths for Prescott National Cemetery.
- B. Carol Friedman of Yavapai Symphony Guild re Music Memory Concert.
- C. Frank Creelman re issues relating to the Prescott Police Department.

II. PRESENTATIONS

- A. Introduction of new businesses.

- B. Presentation by the Prescott Area Arts & Humanities Council on 2008 grants and the economic impact of the Arts.
- C. Update by representatives of the Elks Opera House Foundation.
- D. Presentation on the 2008 Comprehensive Annual Financial Report (CAFR).
- E. Presentation on Debt Financing and Market Update.

III. CONSENT AGENDA

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

- A. Approve an expenditure of \$58,355.53 to Arizona Emergency Products, for emergency vehicle equipment builds.
- B. Approve a Management Agreement with Prescott Downtown Partnership.
- C. Adopt Resolution No. 3936-0942 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving a Sewer Service Reimbursement Agreement between Linda Johnson and the City of Prescott, and authorizing the Mayor and staff to take any and all steps deemed necessary to accomplish the above.
- D. Award a contract with Thatcher Company of Arizona for the purchase of gas chlorine in 2000 pound cylinders at \$850.00 each, 100 or 150 pound cylinders at \$1.13 per pound; and granulated calcium hypochlorite in 100 pound containers at \$174.00 each for wastewater treatment and collections.
- E. Award a bid to Balar Equipment Corporation, Phoenix Arizona for the purchase of two solids dewatering boxes in the amount of \$80,280.08 for wastewater treatment.
- F. Approve the Minutes of the Prescott City Council Workshop of February 3, 2009, the Study Session of February 3, 2009, the Workshop of February 10, 2009, and the Regular Voting Meeting of February 10, 2009.

IV. REGULAR AGENDA

- A. [Appointment of members to the Advisory & Appeals Board.](#)
- B. [Approval of an agreement with Prescott Community Access Channel.](#)

- C. Approval of a Comprehensive Sign Plan for The Bradshaws located at 133 Bradshaw Drive, CC08-002.
- D. Recess into Executive Session.

V. EXECUTIVE SESSION

- A. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to A.R.S. §38-431.03(A)(4).
 - 1. Allen vs. City of Prescott
 - 2. Raber vs. City of Prescott
 - 3. Bennett vs. City of Prescott
 - 4. Big Chino Transportation Tax issue
 - 5. Brighton Patio Homes vs. City of Prescott
 - 6. Seastrand vs. City of Prescott
 - 7. Brogdon vs. City of Prescott
 - 8. Salt River Valley Water Users' Association vs. City of Prescott

VI. 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, MMC

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COUNCIL AGENDA MEMO – 02/24/2009	
DEPARTMENT:	City Council
AGENDA ITEM:	Appointment of Members to the Advisory & Appeals Board

Approved By:	Date:
Council Appointment Committee: Mayor Wilson, Councilwoman Suttles, Councilman Luzius	02/12/2009
Finance Director: Mark Woodfill	
City Manager: Steve Norwood <i>SNorwood</i>	<i>02/20/09</i>

Item Summary

As you know, there have been vacancies on the Advisory and Appeals Board for some time. After a media blitz, several applications were received and the Council Appointment Committee interviewed each, and is recommending appointments as indicated below.

Advisory and Appeals Board

Member:	David Kramer	Expires 02/2011	(Electrical)
	Marc Forman	Expires 03/2011	(Mechanical)
	Gene Nelson	Expires 02/2011	(Plumbing)

The Advisory and Appeals Board was established by Ordinance No. 1650 in December of 1983, and consists of nine members to pass on matters pertaining to the Building, Electrical, Mechanical, and Plumbing Codes of the City. The Board members are required to meet specific criteria, representing the following sections: General Building (2), Electrical (2), Mechanical (2) and Plumbing (2) and serve for three-year terms.

All of the applicants had a great deal of experience and although they were not all able to be selected at this time, their applications will remain on file for not only this Board, but others that may be applicable.

Recommended Action: **MOVE** to accept the Council Appointment Committee's recommendation to appoint David Kramer (Electrical) and Gene Nelson (Plumbing) to the Advisory & Appeals Board, terms to expire 02/2011, and appoint Marc Forman (Mechanical), to the Advisory & Appeals Board, term to expire 03/2011.

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 City will pay 25% of the Cable One fees it receives for Public Access Broadcasting to P.C.A.C., not to exceed the sum of \$82,000.00 annually. In the event the 25% amount is less than \$82,000.00, the City's annual fee for each such year shall be such lesser sum.

(b) The City's obligation to pay all funds herein shall be subject to the City's receipt of funds from Cable one in an amount sufficient to cover the City's funding obligations under 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. Notwithstanding the foregoing, this Agreement may be terminated by the City upon sixty (60) days written notice, with or without cause. It may also be terminated by the City in the event that budget funding for the City's payments hereunder is not approved by the Prescott City Council.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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

28. 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.

29. 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.

30. 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.

31. 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 _____, 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 _____, 2009.

CHAIRMAN OF THE BOARD

ATTEST:

Secretary of the Board

**CITY OF PRESCOTT/
PRESCOTT COMMUNITY ACCESS CHANNEL
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(a) The sum of \$82,000.00 annually, payable in equal monthly installments. Payments shall be issued no later than the 10th 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.

(c) The City's obligation to pay all funds herein shall be subject to the City's receipt of funds from Cable one in an amount sufficient to cover the City's funding obligations under 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.

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(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.

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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. Notwithstanding the foregoing, this Agreement may be terminated by the City upon sixty (60) days written notice, with or without cause. It may also be terminated

by the City in the event that budget funding for the City's payments hereunder is not approved by the Prescott City Council.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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

28. 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.

29. 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.

30. 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.

31. 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 _____, 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 _____, 2009.

CHAIRMAN OF THE BOARD

ATTEST:

Secretary of the Board