



PRESCOTT CITY COUNCIL JOINT SPECIAL MEETING STUDY SESSION AGENDA

**PRESCOTT CITY COUNCIL
JOINT SPECIAL MEETING/STUDY SESSION
TUESDAY, MAY 19, 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 Joint Special Meeting/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:** Reverend Julia McKenna, Spiritual Architect
- ◆ **PLEDGE OF ALLEGIANCE:** Councilman Lamerson
- ◆ **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**

SPECIAL MEETING

- A. Ratification of action taken at 5/12/09 Council Meeting and (re)adoption of Resolution No. 3959-0965 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the ballot language regarding the City's transaction privilege tax to be presented to the voters of the City of Prescott at the Special Election to be held on September 1, 2009.
- B. Adjournment.

STUDY SESSION

I. PROCLAMATION

- A. *May 17-23, 2009 as National Public Works Week*

II. PRESENTATION

- A. Presentation of Native American Tee Pee Eagle Scout Project.

III. DISCUSSION ITEMS

- A. Approval of Substantial Amendment to the 2008 Annual Action Plan (CDBG-R funding).
- B. Award of a three-part Construction Manager at Risk, pre-construction services contract with the City of Prescott, Haley Construction Company, and the Elks Opera House Foundation, for historic restoration and renovation of the Elks Opera House not to exceed \$62,564.00.
- C. Approval of application for a \$35,000.00 technical assistance grant through the Arizona Water Infrastructure Finance Authority.
- D. Award of contract to Vellutini Corporation dba Royal Southwest in the amount of \$115,000.00 (City Share \$11,500.00) and approval of Authorization for Services No. 4 to Z&H Engineering in the amount of \$30,630.00 (City Share \$3,063.00) for construction of the new Airport Beacon and further authorizing the Mayor and City staff to execute any and all related documents.
- E. Authorization to enter into a no-cost, long-term license agreement with ITT Corporation for the installation of an FAA Automatic Dependant Surveillance – Broadcast Navigation System in accordance with FAA prime contract number DTFWA-07-C-00067 at Ernest A. Love Field and further authorizing the Mayor and City staff to execute any and all related documents.
- F. Authorization to enter into a month-to-month License Agreement with Guidance Helicopters for use of airport property at Ernest A. Love Field and further authorize the Mayor and City staff to execute any and all related documents.
- G. Approval of a professional services agreement with Southwest Ground-Water Consultants, Inc. in the amount of \$30,000.00 for technical and hydrological support at Administrative Hearings on ADWR's Preliminary Decision and Order regarding Prescott's Application for Modification of its Designation of Assured Water Supply.

- H. Approval of the Minutes of the Prescott City Council Joint Special Meeting/Study Session of May 5, 2009; the Special Council Meeting of May 7, 2009, the Special Council Meeting of May 11, 2009, and the Regular Voting Meeting of May 12, 2009.
- I. Selection of items to be placed on the Regular Voting Meeting Agenda of May 26, 2009.

IV. 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 – 05/19/09
DEPARTMENT: City Manager
AGENDA ITEM: Ratification of action taken at 5/12/09 Council Meeting to clarify language in Resolution No. 3959-0965

Approved By:	Date:
Department Head: Laurie Hadley, Deputy City Manager	May 13, 2009
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	05/14/09

Background

At the May 12, 2009, Council Meeting suggested wording changes to the ballot language contained in Resolution No. 3959-0965 were made by Mr. Peters that were accepted by the City Council. In the actual motion adopting that resolution the ballot language was read but a few words were inadvertently left out. Due to the nature of this item, staff felt it was necessary to ratify that action so the record was clear as to the Council's intention.

Recommended Action: MOVE to adopt Resolution No. 3959-0965 as presented.

RESOLUTION NO. 3959-0965

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE BALLOT LANGUAGE REGARDING THE CITY'S TRANSACTION PRIVILEGE TAX TO BE PRESENTED TO THE VOTERS OF THE CITY OF PRESCOTT AT THE SPECIAL ELECTION TO BE HELD ON SEPTEMBER 1, 2009

RECITALS:

WHEREAS, the City of Prescott currently imposes a one-cent tax for streets and open space acquisition that will expire on December 31, 2015; and

WHEREAS, the Prescott City Council adopted Ordinance Number 4695-0934 which authorizes a Special Election on September 1, 2009, to determine whether a portion of the transaction privilege tax levied by the City shall be continued to fund street maintenance and repair; and,

WHEREAS, the City of Prescott's street system has been estimated to have a replacement value of more than \$256,550,000 and;

WHEREAS, numerous evaluations have consistently shown a deterioration of pavement conditions throughout the City's street network; and

WHEREAS, annual revenues available to the City's Streets Fund from fuel and other taxes levied and distributed to counties and municipalities by the State of Arizona are vastly insufficient to stabilize or reverse the continued degradation of Prescott's street system; and

WHEREAS, to preserve its investment in street system infrastructure, and adequately support recurring maintenance and construction of its street system, the City is compelled to take immediate action.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Prescott, Yavapai County, Arizona, that the following ballot language will be presented to the voters of Prescott, Arizona, at their September 1, 2009, Special Election:

"Shall the City of Prescott provide for a transaction privilege tax for streets only, of three-fourths (¾) of one percent for a term of twenty (20) years, beginning January 1, 2016, the proceeds of which are to be used for the costs of planning, design, right-of-way acquisition and improvements, and other costs associated with the construction, rehabilitation and maintenance of City streets, highways, alleys and roadways; including but

not limited to curbs, gutter, drainage, bridges, sidewalks, shoulders and medians. The accumulation of such tax proceeds to be in accordance with Article IX, Section 20 of the Arizona State Constitution."

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 19th day of May, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

PROCLAMATION

PROCLAMATION

"NATIONAL PUBLIC WORKS WEEK"

MAY 17 – 23rd, 2009

WHEREAS the Congress of the United States per Joint Resolution 68 and President John F. Kennedy Presidential Proclamation 3484, first designated a National Public Works Week on July 18, 1962; and

WHEREAS public works facilities and services are of vital importance to the health and well-being of the citizens of the City of Prescott; and

WHEREAS such facilities and services could not be provided without the dedicated efforts of public works staff representing the City of Prescott Government, who are responsible for and must design, build, operate, and maintain the roads, drainage facilities, water supply, sewage and refuse disposal systems, public buildings, and other structures and facilities essential to serve our citizens; and

WHEREAS it is in the public interest for the citizens and civic leaders of this city to gain knowledge of and to maintain a progressive interest in the public works needs and programs of their community; and

WHEREAS this year's theme "Revitalize, Reinvest, Renew", signals a change in thinking and a new direction for public works, which is further defined as:

Revitalizing our infrastructure means finding new ways to sustain performance, using new materials and increasing efficiency.

Reinvesting in our infrastructure will ensure safety, longevity and a positive quality of life.

Renewing our infrastructure means replacing and reinvigorating the systems and structures on which we depend.

NOW, THEREFORE, the Mayor and Council of the City of Prescott, do hereby proclaim the week of May 17, 2009, through May 23, 2009 as National Public Works Week in the City of Prescott, and call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our community adequate public facilities and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.

IN WITNESS HEREOF, I hereunto set my hand and cause the Great Seal of the City of Prescott to be affixed this 19th day of May, 2009.



JACK D. WILSON, MAYOR
City of Prescott

ATTEST:

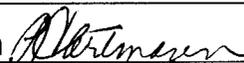
COUNCIL AGENDA MEMO – May 19 & 26, 2009

DEPARTMENT: City Manager - Grants

AGENDA ITEM: Substantial Amendment to the 2008 Annual Action Plan (CDBG-R funding)

Approved By:

Date:

Department Head: Linda Hartmann 

May 11, 2009

Finance Director:

City Manager: Steve Norwood 

Background:

City of Prescott is eligible to receive \$78,860 in Community Development Block Grant-Recovery (CDBG-R) funding from the United States Department of Housing and Urban Development (HUD through the American Recovery and Reinvestment Act of 2009) (ARRA or "the Recovery Act") The administering department for these funds is City Manager's Department, Grants Administration Division. The departmental contact is Linda Hartmann as noted above.

This funding, referred to as "CDBG-R", is separate from the regular, annual CDBG funds that the City receives every Year. Prescott received \$290,372.00 for Federal Fiscal Year 2008 (July 01, 2008 – June 30, 2009). And has received notice for Federal Fiscal Year 2009 \$294,666 (July 01, 2009- June 30, 2010).

The City of Prescott is required to amend its existing 2008 Annual Action Plan to include the CDBG-R funds. The Annual Action Plan provides specific information about projects that are currently being funded as CDBG eligible activities and it is expected that similar activities will be eligible for CDBG-R funding. The existing Annual Action 08 plan be found at City Hall, Located at 201 S. Cortez St.; the City of Prescott Library at 215 E. Goodwin St.; and Public Works 433 N. Virginia Street.

The CDBG program enables local governments to undertake a wide range of activities intended to create suitable living environments, provide decent affordable housing and create economic opportunities, primarily for persons of low and moderate income. The full range of CDBG-eligible activities and projects will be considered for CDBG-R funds based on further guidance as provided by HUD; however the Recovery Act directs that priority be given to projects that can award contracts based on bids within 120 days from the date the funds are made available.

Proposed Projects included in this amendment:

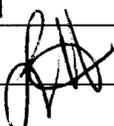
Renovation of a low income multi-family housing duplex, to include replacement of flooring, energy efficient heating and cooling, ADA compliant ramps/rails, ADA compliant bathrooms/fixtures, weatherization, kitchen repairs and replacement, re-plumb water gas and electrical hookups. The complete renovation and modernization of this multi family low income unit meet the national objective of Decent Housing with an outcome of Availability/Accessibility. Additionally, this project provides for job creation/retention. When funds are available this project can be completed within 90 days of release of funds. (\$67,031)

Meals on Wheels program support. This program serves the elderly population through its homebound program. Approximately 80% of the clientele are low to moderate income. The program is supported through fund raising efforts, USDA Long Term Care, (this agency is going to reduce by .25 cents the reimbursement for the meals), and Northern Arizona Council of Governments (NACOG). (This agency also is expected to reduce its rates of reimbursement) donations from citizens, etc. There are private clientele that also pay for their meals.

This is a public service and therefore only 15% of the total grant amount can be dedicated to this project. Supporting this public service for the elderly meets a National Objective: Limited Clientele with an Outcome: Accessibility (\$11,829.)

Recommended Action:

COUNCIL AGENDA MEMO – 05/19/09 & 05/26/09
DEPARTMENT: ADMINISTRATIVE SERVICES
AGENDA ITEM: Award of a three party Construction Manager at Risk, pre-construction services contract with the City of Prescott, Haley Construction Company, and the Elks Opera House Foundation, for historic restoration and renovation of the Elks Opera House not to exceed \$62,564.00

Approved By:	Date:
Department Head: Mic Fenech, Administrative Services	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	

BACKGROUND

Council has previously approved a contract with the Elks Opera House Foundation and Otwell Associates Architects to produce the restoration plans for this project. The City of Prescott and the non-profit Elks Opera House Foundation have again joined together to select and hire a contractor for this project.

The "Construction Manager at Risk" selection process in accordance with Arizona Revised Statutes and the City of Prescott Procurement Code was used to determine the most qualified contractor for this project. The selection committee included City staff, Foundation board members, Otwell Associates Project Architect and a local general contractor. The Committee received, evaluated and scored nine contractor responses to the advertised Request for Qualifications.

The three most qualified contractors were selected, invited to give presentations to the Selection Committee and were subsequently ranked 1 through 3. Haley Construction Company of Prescott received the #1 ranking.

Negotiations with Haley Construction have resulted in a 'cost plus 10%' proposal for pre-construction services. The subsequent contract with Exhibit 'A' proposal (includes pricing and scope of work) is attached for Council review and approval.

ITEM SUMMARY

In preparation for the construction phase of the historical restoration and renovation to the Elks Opera House, Haley Construction Company of Prescott has been selected to provide pre-construction services for the project. During this phase Haley will work with the City, the Foundation and Otwell Associates Architects to develop pricing (known as the Guaranteed Maximum Price - GMP) for the entire scope of work. Due to the long lead times and short construction schedule Haley will also hire three of the most important subcontractors to produce "shop drawings" or plans, for the fire sprinkler system, full size stencils for the interior paint scheme, and plans for the new stage

Agenda Item: Award of a three party Construction Manager at Risk, pre-construction services contract with the City, Haley Construction Company, and the Elks Opera House Foundation, for historic restoration and renovation of the Elks Opera House in the amount not to exceed \$62,564.00

lighting. With these items done early in the project we will be better prepared to start construction when the theater closes in July. Haley will also assist the Architect in evaluating the constructability of the plans and investigate the facility for possible hidden and unforeseen items.

The City will manage this contract and the Elks Opera House Foundation will pay the entire cost of this preconstruction contract.

After Haley has determined pricing (GMP) for the construction phase and we are satisfied with the scope of work and that the GMP is within available funds, we will bring the construction phase contract to Council for approval.

Recommended Action: MOVE to award a three party Construction Manager at Risk, pre-construction services contract with the City of Prescott, Haley Construction Company and the Elks Opera House Foundation for historical restoration and renovation of the Elks Opera House in the amount not to exceed \$62,564.00



For

**HISTORIC RESTORATION AND RENOVATION
OF THE ELKS OPERA HOUSE**

**CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION SERVICES**

CONTRACT NO. _____

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EXHIBIT A - PROJECT ITEMIZED COST SUMMARY

**City of Prescott
Purchasing Division**

**HISTORIC RESTORATIONS AND RENOVATIONS TO THE ELKS OPERA HOUSE
CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION SERVICES**

THIS AGREEMENT, made and entered into this contract agreement on 5-26-09, by and between the City of Prescott, an Arizona municipal corporation, hereinafter designated the "CITY", the Elks Opera House Foundation, hereinafter designated the "Foundation" and Haley Construction Company, an Arizona corporation, hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk "

RECITALS

- A. The Mayor of the City of Prescott, Arizona, is authorized and empowered by provisions of the City Charter to execute Agreements for professional services and construction services.
- B. The City and the Elks Opera House Foundation intend to construct improvements to the Elks Opera House as described in Scope of Work, hereinafter referred to as the "Project". The City is the Owner of the facility and as such will administer and manage the project according to the laws of the State of Arizona and the City of Prescott.
- C. To undertake the design of said Project, the City and Foundation have entered into an Agreement with Otwell Associates Architects of Prescott, hereinafter referred to as the "Design Professional."
- D. The City and Foundation intend to enter into an Agreement with the CM@Risk for the Pre-Construction services identified in this Agreement. At the end of the Pre-Construction, at the City's and Foundation's discretion, they may enter into a separate construction Agreement with the CM@Risk for construction phase services.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City, Foundation and CM@Risk as follows:

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement ("Contract") – This written document signed by the City and CM@Risk covering the Pre-Construction of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope of work considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order – A written order signed by an authorized representative of the City and which approves changes in the total compensation or time allowed for completion of services.

City ("Owner" or "OWNER") - The City of Prescott

CM@Risk ("CONSTRUCTION MANAGER AT RISK" or "CONTRACTOR") - The person, firm, corporation, or other approved legal entity with whom the City has entered into this Agreement.

Contingency, CM@Risk – An agreed upon amount, either lump sum or a percentage of the Cost of the Work, that is included in the GMP and to be used by the CM@Risk in accordance with the General Provisions in the construction services Agreement. Generally, CM@Risk Contingency recognizes that the Drawings and Specifications may still be less than 100% complete after the City's final acceptance of the GMP.

Contingency, Owner's – The Owner may, at its discretion, order changes in the scope of the Project. The Owner's Contingency is an amount to cover changes initiated by the Owner, which may be incorporated into the GMP as an allowance at the Owner's discretion.

Construction Documents – The plans, specifications, and drawings prepared by the design professional after correcting for permit review requirements and incorporating addenda and approved change orders.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

Contract Amount - The final approved not-to-exceed budget for this Agreement as identified in paragraph 4.1.

Contract Documents - This Agreement, exhibits, attachments, the Notice to Proceed for Pre-Construction services, all Written Amendments and Change Orders to this Agreement and any other documents so designated in this Agreement.

Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion and/or completion of the construction Work so that it is ready for final payment.

Cost of the Work - The direct costs necessarily incurred by the CM@R in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk's construction fee, general conditions fee, taxes, bonds, or insurance costs.

Day - Calendar day(s) unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM@Risk in performing the scope of work described in this Agreement. Major deliverables to be prepared and provided by the CM@Risk during the Pre-Construction may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team.

Design Professional - The qualified, licensed person, firm or corporation referenced in the recitals, who furnishes design services required under the Contract Documents.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. Drawings include such documents that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%), but "not for construction". Drawings do not include shop drawings.

Effective Date of this Agreement - The date specified in this Agreement on which the Agreement becomes effective, but if no such date is so specified, the date on which the City executes this agreement.

Elks Opera House Foundation (Foundation) – A not-for-profit corporation responsible for payment under the terms of this agreement. The City and Foundation have partnered to contract for design and construction services for this project.

General Conditions Costs – Costs incurred by the CM@Risk during the construction phase includes, but is not limited to the following types of costs; payroll costs for project manager or construction manager but not both for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the CM@Risk or Subcontractors, fees for permits and licenses.

GMP Plans and Specifications – The plans and specifications provided pursuant to paragraph 2.7.3 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Agreement.

Laws and Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Notice to Proceed - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Agreement.

Payment Request - The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

Project - The scope of work as described in the Recital above and those certain documents entitled "Historic Restoration and Renovations to the Elks Opera House, construction plans and specifications developed by the Design Professional, Otwell Associates Architects and documents attached as the Pre –Construction Phase proposal by the CM@Risk.

Project Manager – The Project Manager designated by the City will be the primary project manager for the City and the Foundation. The Project Manager will manage the work in the best interests of the City. The Project Manager will approve all pay applications and changes to the project from the CM@Risk and recommend payment by either the City or the Foundation.

Project Team – Pre-Construction services team consisting of the Design Professional, CM@Risk, Project Manager, City representatives and other stakeholders who are responsible for making decisions regarding the Project.

Samples - Physical examples of materials, equipment, or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be evaluated.

Schedule of Values – A work breakdown structure of the project into each category of work to be performed.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CM@Risk and submitted by the CM@Risk to illustrate some portion of the Work.

Specifications - The section(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor - An individual, firm or corporation having a direct contract with the CM@Risk or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the Pre-Construction services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in section 2.8 of this Agreement.

Subconsultant - A person, firm or corporation having an Agreement with the CM@Risk to furnish services required as its independent professional associate or consultant with respect to the Project.

Substantial Completion - When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (a) approval by City Fire Marshall and local authorities (Certificate of Occupancy); (b) issuance of elevator permit; (c) demonstration to the City that all systems in place, functional, and displayed to the City or its representative; (d) installation of all materials and equipment; (e) City review and acceptance of all systems; (f) City review and acceptance of draft O&M manuals and record documents; (g) City operation and maintenance training completed; (h) HVAC test and balance completed [provide minimum 30 days prior to projected substantial completion]; (i) completed landscaping and site work; and (j) final cleaning.

Supplier - A manufacturer, fabricator, supplier, distributor, vendor or any company or individual having a direct contract with the CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Total Float - Number of Days by which the Pre-Construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

Work - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

ARTICLE 2 – BASIC PRE-CONSTRUCTION SERVICES

2.1 GENERAL

- 2.1.1 The CM@Risk, to further the interests of the City and Foundation, will perform the services required by, and in accordance with this Agreement, to the satisfaction of the Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Prescott, Arizona would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice.
- 2.1.2 **Initial Program Evaluation:** An initial written evaluation of the Project with recommendations as to the consistency and appropriateness of the project and the project's budget. City and CM@Risk shall identify acceptable time frame by which CM@Risk shall provide initial program evaluation. The CM shall recommend all necessary changes to ensure the design is within the Project budget. The CM shall regularly review and update projected Project costs during design as to their conformance to the Project's budget.
- 2.1.3 **Project Meetings:** The CM@Risk will attend Project Team meetings which may include, but are not limited to, bi-monthly Project management meetings, Project workshops, special Project meetings, Construction Documents rolling reviews.

- 2.1.4 The CM@Risk will provide Pre-Construction services, described in article 2, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@Risk, when requested by the City, will attend, make presentations and participate as may be appropriate in public or community meetings, related to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which includes but is not limited to the CM@Risk's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate sub agreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) any Intergovernmental Agreements (IGA's), (f) permitting strategy, (g) safety and training programs, (h) construction quality control, (i) a commissioning program, (j) the cost estimate and basis of the model, and (k) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM@Risk will add detail to its previous version of the CMP to keep it current throughout the Pre-Construction, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the CM@Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule is subject to City approval. The Project Schedule will be consistent with the most recent revised/updated Critical Path Method (CPM). The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in paragraph 2.5.1.
- 2.3.2. The CM@Risk will include and integrate in the Project Schedule the services and activities required of the City, Design Professional and CM@Risk including all construction phase activities based on the input received from the City and the Design Professional. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design and various Pre-

Construction documents, (b) separate long-lead procurements, if any, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) City's acceptance of the completed Work. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between the activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

- 2.3.3 The Project Schedule will be updated and maintained by the CM@Risk throughout this agreement such that the schedule will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.3.1 **Project Phasing:** At the City's direction, CM@Risk will review design and make recommendations for phased construction. If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, quality, labor and materials availability, the City's budget, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM@Risk will recommend, with City approval, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. After completion of Pre-Construction services, the CM@Risk may provide additional investigations to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents. The City's budget allows for up to \$4,000 for geotechnical investigations during this phase.
- 2.4.3 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will familiarize itself with the evolving documents through the various Pre-Constructions. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.
- 2.4.4 The CM@Risk will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

- 2.4.4.1 **Constructability Reviews:** The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, co-use of the site with existing City activities, lay down and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 **Bidability Reviews:** The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.
- 2.4.5 **Notification of Variance or Deficiency:** It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 **Alternate Systems Evaluations:** The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, or design changes that have the potential to reduce Project costs while still delivering a quality and functional product. Throughout this agreement and upon the City's instruction the CM@Risk will provide value engineering at various stages throughout the project. The Project Team with approval by the City will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

- 2.5.1 CM@Risk shall provide a Schedule of Values acceptable to the City including a detailed cost estimate and written review of the documents, within 14 days after CM@Risk receipt of the documents required for the various phases of design. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- 2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that he believes will bring the project back into the Project budget. Major

milestones on the project include 30, 60, 90% submittals consistent with the current design, budget goals and in preparation of the GMP.

- 2.5.3 In between these milestone estimates, the CM@Risk shall periodically provide a tracking report, which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.
- 2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.6.1 The CM@Risk will present the proposed GMP for the entire Work (or portions thereof) in a format acceptable to the City. The City may request a GMP Proposal for all or any portion of the Project and at any time during the Pre-Construction. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the current updated/revised cost estimate and City budget at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 2.6.2 GMP Proposals for the entire Project will be the sum of the maximum Cost of the Work, and also include the CM@Risk's Construction Fee, General Conditions Costs, Taxes, Insurance, Bonds and Contractor's Contingency. The CM@Risk guarantees to complete the Project at a Cost that shall not exceed the final approved GMP Proposal amount, and the CM@Risk assumes the responsibility for paying any difference between the actual Cost of the Work and that amount.
- 2.6.3 The CM@Risk, in preparing any GMP Proposal, will obtain from the Design Professional, three sets of signed, sealed, and dated plans and specifications (including all addenda). The CM@Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk will mark the face of each document of each set upon which its proposed GMP is based. The CM@Risk will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Design Professional.
- 2.6.4 The CM@Risk shall include an updated/revised Project Schedule with any GMP Proposal(s) that reflects the Scope of Work shown in the current set of design documents upon which the GMP Proposal(s) is based. Any such Project Schedule updates/revisions will continue to comply with the requirements of article 2.3.
- 2.6.5 In the event the CM@Risk elects, at its sole discretion, to maintain a Contractor's Contingency allowance within the GMP, the criteria for development of that allowance must be acceptable to the City. In addition, the terms and conditions regarding use of that allowance during the construction phase will be established by the City and reflected in the contract for that phase of the Project.
- 2.6.6 If the construction Agreement is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk will revert to City.

2.7 GUARANTEED MAXIMUM PRICE (GMP) REVIEW AND APPROVAL

- 2.7.1 The CM@Risk will meet with the City and Design Professional to review any GMP Proposal(s) and the written statement of its basis. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis, or both.
- 2.7.2 Upon receipt of any GMP proposal from the CM@Risk, the City may submit the same documents that were used by the CM@Risk in developing its GMP to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an

independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.

- 2.7.3 If the CM@Risk GMP Proposal is greater than that of the independent third party or Design Professional's estimate, the City may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of its GMP or present a report identifying, explaining and substantiating the differences within seven days of the City's request. The CM@Risk may then be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time the City may do one of the following:
- (a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment.
 - (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
 - (c) Reject the CM@Risk's original or revised GMP Proposal in which event, the City may terminate this Agreement and/or elect to not enter into a separate Agreement with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.
- 2.7.4 If design changes are required during the review and negotiation of GMP Proposals, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.
- 2.7.5 CM@Risk Contingency will be a separate line item in each GMP package submitted to the City in an amount to be negotiated by the City and the CM@Risk with input from the Design Professional.
- 2.7.5.1 CM@Risk's Contingency will be used by the CM@Risk and at the sole discretion of the CM@Risk. The CM@Risk will inform the City at the time of use of the CM@Risk's Contingency funds by making the appropriate changes to the schedule of values with the next regular progress payment request by deducting the amount of contingency funds used from the contingency line item and adding the same amount to the line item on the schedule of values where the increased funds were used. If the CM@Risk Contingency funds are used for a new line item that was not given with the original Schedule of Values, that will be so indicated.
- 2.7.5.2 At the time that contingency funds are used by the CM@Risk, the appropriate markups for overhead and profit will be applied at that time.
- 2.7.5.3 When all of the funds in the CM@Risk's Contingency are expended, the CM@Risk then is at risk to cover any additional increases in project costs.
- 2.7.6 Owner's Contingency will be used at the sole discretion of the City. At the time that the CM@Risk submits its GMP proposal to the City for approval, the City may add an additional amount to the sum of the GMP proposals for approval by Council to cover any increases in Project costs that result from City directed changes or unforeseen site conditions. The total Project cost approved by Council will be the sum of the CM@Risk's GMP proposals and the City's Contingency.
- 2.7.6.1 City's Contingency may be outside of the Control Price agreed to with the CM@Risk. If the city decided to utilize some of its contingency funds, that amount will be added to the CM@Risk's Contract Price through the change Order process.

2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 2.8.1 Qualifications based on competitive bidding shall be used to select Subcontractors and major suppliers (hereinafter referred to as Subcontractors) prior to submission of a GMP.
- 2.8.2 Selection by qualifications only - The City may approve the selection of a Subcontractor(s) based only on their qualifications when the City agrees that it is in the best interest of the Project.
 - 2.8.2.1 Qualification based selection of a Subcontractor(s) should only occur prior to the submittal of the GMP Proposal.
 - 2.8.2.2 The CM@Risk will prepare a Subcontractor qualifications selection plan and submit the plan to the City for approval. The CM@Risk shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) and provide the City with its review and recommendation.
 - 2.8.2.3 The CM@Risk must receive City approval of the selected Subcontractor(s).
 - 2.8.2.4 The CM@Risk will negotiate costs for services/supplies from each Subcontractor selected under this method.
- 2.8.3 Selection by competitive bid and qualifications - All Work shall be competitively bid unless a Subcontractor was selected pursuant to section 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).
 - 2.8.3.1 The CM@Risk will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors for each trade in the Project for approval by the City and solicit sealed bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written approval by the City, no change in the City-approved Subcontractors will be allowed.
 - 2.8.3.2 If the City objects to any nominated Subcontractor or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor.
 - 2.8.3.3 The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.
 - 2.8.3.4 If the CM@Risk desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM@Risk's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to insure compliance with the Project Schedule and/or cost, the CM@Risk may self perform Work without bidding or re-bidding the Work.
 - 2.8.3.5 The CM@Risk shall receive, open, record and evaluate the bids and interview apparent low bidders to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM@Risk, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the work. The final evaluation of subcontractor bids will be done with the City Representative in attendance to observe and witness the process. The CM@Risk will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
 - 2.8.3.6 Within five Days after Subcontractor bid opening, the CM@Risk will prepare a list of recommended Subcontractors for each category of work, for the City's review and approval. The list will detail (a) for each sub agreement, the amount of the Subcontractor bid and the corresponding Subcontractor, (b) the sum of Subcontractor bids received for all intended sub agreements, (c) trade work and its cost that the CM@Risk intends to self-perform, if any.

- 2.8.4 Prior to City approval of all Subcontractors, the CM@Risk shall submit a summary report to the City of the selection process. The report will indicate the Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received/costs negotiated, and the recommended Subcontractors for each category of work.
- 2.8.5 The approved Subcontractors will provide a schedule of values with their bid proposals, which will be used to create the overall project Schedule of Values.
- 2.8.6 If after receipt of Sub-Bids or after award of Subcontractors, the City objects to any nominated Subcontractor or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, from those who submitted Subcontractor bids for the Work affected if such option is still available. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.8.7 Promptly after receipt of the notice of intent to award, the CM@Risk will conduct a pre-award conference with other Project Team members. At the pre-award conference, the CM@Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM@Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining Contractor's Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of import. Following the pre-award conference the CM@Risk shall issue a notice of award.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The CM@Risk will complete Pre-Construction services in this Agreement and submit the GMP no later than June 26, 2009, approximately 30 days from the date of contract execution. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Agreement by the City.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Local time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the Pre-Construction services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM@Risk a fee not to exceed \$62,564.00 as described in attached Exhibit 'A'.

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM@Risk for Pre-Construction services will be submitted to the Project Manager on the City's "Payment Request" form and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding

month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

- 4.2.2 The fees for the CM@Risk and any Subconsultants will be based upon and in accordance with the Project Itemized Cost Summary Pre-Construction Services proposal reviewed and accepted by the Fee Negotiating Committee 1-11-06 and attached to this Agreement as Exhibit A.
- 4.2.3 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay CM@Risk more than 90 percent of the Contract Amount until final acceptance of all Pre-Construction services and award of the final approved GMP. Upon City Council award of the CM@Risk for Construction Services Agreement, final payment will be made to the CM@Risk for the remaining 10% of the contract amount.
- 4.2.4 The CM@Risk agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- 4.2.5 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL PRE-CONSTRUCTION SERVICES

- 4.3.1 The following Additional Services will be required for the successful completion of this Project at no additional cost to the City.
 - 4.3.1.1 If not available within the CM@Risk's staff, CM@Risk will secure services of a qualified individual or firm to provide design plan and specifications review as required.
 - 4.3.1.2 The CM@Risk will secure the services of a qualified cost estimating person or firm to provide cost estimating services required under this Agreement.
 - 4.3.1.3 The CM@Risk will provide services related to evaluations of and recommendations for long-lead time procurements in order to meet the Project Schedule requirements.

ARTICLE 5 - CITY'S RESPONSIBILITIES

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information:
 - 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
 - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
 - 5.1.3 The name of the City employee or City's representative who will serve as the Project Manager during the term of this Agreement. The Project Manager has the authority to administer this Agreement and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will:

- 5.2.1 Contract separately with one or more design professionals to provide Design Professional and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.
- 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.
- 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.
- 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.
- 5.2.5 Notify the CM@Risk of changes affecting the budget allocations.
- 5.3 The City's Project Manager, will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the Project Manager deems appropriate to the CM@Risk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Agreement (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.
- 6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subconsultants or personnel, during the course of performing this Agreement or arising out of the Project will belong to the CM@Risk.
- 6.1.3 License to City for Reasonable Use: The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Agreement. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then paragraph 6.1.1 applies.
- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Subconsultants will endorse by an Arizona professional seal all plans, works, and Deliverables prepared by them for this Agreement.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and all other Pre-Construction Deliverables prepared or compiled pursuant to its obligations under this Agreement and will at its sole own expense correct its work or Deliverables. The fact that the City has accepted or approved the CM@Risk's work or Deliverables will in no way

relieve the CM@Risk of any of its responsibilities under the Agreement, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Agreement to the City. Consistent with Section 2.4.4 correction of errors, omissions and acts discovered on Design Professional or Drawings and Specifications shall be the responsibility of the Design Professional.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the City and the CM@Risk. Such Change Order or Amendment will not be effective until approved by the City.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole responsibility, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this Agreement.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Agreement are confidential and proprietary information belonging to the City.
- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Agreement. These prohibitions will not apply to the following data:
 - 6.4.3.1 Data which was known to the CM@Risk prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City;
 - 6.4.3.2 Data which was acquired by the CM@Risk in its performance under this Agreement and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or
 - 6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court.
- 6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other Agreement with the City, the CM@Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

- 6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Agreement.
- 6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

- 6.5.1 Prior to the start of any work or Deliverable under this Agreement, the CM@Risk will submit to the City an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), who will be involved in performing the services described in the Agreement. Unless otherwise informed, the City hereby acknowledges its acceptance of personnel to perform such services under this Agreement. In the event the CM@Risk desires to change such key personnel from performing such services under this Agreement, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning. City shall approve all key personnel.
- 6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Agreement throughout the period of those services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace and or add with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

- 6.6.1 The CM@Risk is and will be an independent contractor and not an employee or agent to the City and whatever measure of control the City exercises over the work or Deliverable pursuant to the Agreement will be as to the results of the work only. No provision in this Agreement will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

- 6.7.1 Prior to beginning the work or Deliverable, the CM@Risk will furnish the City for approval, the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of the City.

6.8 TERMINATION

- 6.8.1 The City has the right to terminate this Agreement or abandon any portion of the project for which services have not been performed by the CM@Risk.
- 6.8.2 Termination for Convenience: City reserves the right to terminate this Agreement or any part hereof for its sole convenience with ten (10) days written notice. In the event of such termination, the CM@Risk shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and Subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the CM@Risk shall receive a fee for the percentage of services actually completed.

This fee shall be in the amount to be mutually agreed upon by the CM@Risk and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Project Manager shall determine the percentage of completion of each task detailed in the Scope of Work and the CM@Risk's compensation shall be based upon such determination. The City shall make this final payment within sixty (60) days after the Design Professional has delivered the last of the partially completed items. CM@Risk shall not be paid for any work done upon receipt of the notice of termination, or for any costs incurred by CM@Risk's suppliers or Subcontractors, which CM@Risk could reasonably have avoided.

Termination for Cause: City may also terminate this Agreement or any part hereof with seven (7) days notice for cause in the event of any default by the CM@Risk, or if the CM@Risk fails to comply with any of the terms and conditions of this Agreement. Unsatisfactory performance notwithstanding a reasonable opportunity to cure as judged by the Project Manager, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this Agreement for cause. In the event of termination for cause, City shall not be liable to CM@Risk for any amount, and CM@Risk shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

In the event CM@Risk is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this Agreement immediately upon giving notice to the CM@Risk.

In the event the City shall terminate this Agreement or any part of the services as herein provided, the City shall notify the CM@Risk in writing, and immediately upon receiving such notice, the CM@Risk shall discontinue advancing the work under this Agreement and proceed to close said operations.

Upon such termination or abandonment, the CM@Risk shall deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data shall be the City's sole responsibility.

The CM@Risk shall appraise the work it has completed and submit its appraisal to the City for evaluation.

If through any cause, the CM@Risk shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the CM@Risk shall violate any of the covenants, agreements, or stipulations of this Agreement, the City may withhold any payments to the CM@Risk for the purpose of setoff until such time as the exact amount of damages due the City from the CM@Risk is determined by a court of competent jurisdiction.

- 6.8.3 The City and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Agreement, or abandon any portion of the Project for which services have been performed by the CM@Risk.
- 6.8.4 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Agreement and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 6.8.5 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.
- 6.8.6 The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.
- 6.8.7 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of

such termination. The fee will be paid in accordance with Article 4 of this Agreement, and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with section 6.10, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty Days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Agreement and pay for charges hereunder, the City may terminate this Agreement at the end of the current fiscal period. The City agrees to give written notice to the Design Professional at least thirty (30) days prior to the end of its current fiscal period and will pay the CM@Risk for all approved charges incurred through the end of such period.

6.10 DISPUTES

6.10.1 In any unresolved dispute arising out of an interpretation of this Agreement or the duties required therein, the final determination at the administrative level will be made by the Project Manager.

6.11 WITHHOLDING PAYMENT

6.11.1 The City, pursuant to Title 34 of the Arizona Revised Statutes, reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

6.12 RECORDS/AUDIT

6.12.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Agreement and any Change Orders. The City reserves the right to decrease the Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data. If an audit in accordance with this article, discloses overcharges, of any nature, by the CM@Risk to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the CM@Risk. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CM@Risk's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to the CM@Risk.

6.12.2 The CM@Risk will include a provision similar to section 6.12 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Agreement to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Agreement if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

6.13 INDEMNIFICATION

6.13.1 To the fullest extent permitted by law, the CM@Risk, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City of Prescott, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions,

claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CM@Risk relating to work or services in the performance of this Agreement, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of the CM@Risk employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

6.14 NOTICES

6.14.1 Unless otherwise provided herein, demands under this Agreement will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	Mic Fenech City of Prescott PO Box 2059 Prescott, Arizona 86302 And: Ron Miller City of Prescott Facilities Construction Project Manager 201 S. Cortez St. Prescott, AZ 86302
To CM@Risk	Tom Haley Haley Construction Company PO Box 831 Prescott, AZ 86302
To Design Professional:	Wayne Sanford Ottwell Associates Architects 121 E. Goodwin St. Prescott, AZ 86303

6.15 CONFLICT OF INTEREST

6.15.1 The CM@Risk warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CM@Risk, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person or persons, other than a bona fide employee working solely for CM@Risk any fee, commission, percentage, brokerage fee, gifts or any consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee, together with costs and attorney's fees.

The City may cancel any Agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the City's departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from the City is received by all other parties to the Agreement, unless the

notice specifies a later time (A.R.S. 38-511).

The CM@Risk shall reveal fully in writing any financial or compensatory agreement, which it has with a Design Professional retained by the City for this project prior to the publication of documents for bidding.

6.16 CONTRACTOR'S LICENSE

6.16.1 Prior to award of the Agreement, the CM@Risk must provide to the City's Capital Project Management Office, its Contractor's License Classification and number and its Federal Tax I.D. number and Federal W-9 Form.

6.17 SUCCESSORS AND ASSIGNS

6.17.1 This Agreement shall extend to and be binding upon the CM@Risk, its successors and assigns, including any individual, company, partnership, or other entity with or into which the CM@Risk shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the CM@Risk shall sell its assets. No right covered by this agreement shall be assigned in whole or in part without the prior written consent of the City. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.18 FORCE MAJEURE

6.18.1 Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

6.19 TAXES

The fee listed in this Agreement includes any and all taxes applicable to the activities hereunder. The City shall have no obligation to pay additional amounts for taxes of any type.

6.20 NON-WAIVER PROVISION

6.20.1 The failure of either party to enforce any of the provisions of this Agreement or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

6.21 JURISDICTION

6.21.1 This Agreement will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Agreement or to obtain any remedy with respect hereto will be brought in the Superior Court, Yavapai County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

6.22 SURVIVAL

6.22.1 All warranties, representations and indemnifications by the CM@Risk will survive the completion or termination of this Agreement.

6.23 MODIFICATION

6.23.1 Any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only after approval of all parties signing the original Agreement.

6.24 SEVERABILITY

- 6.24.1 If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

6.25 INTEGRATION

- 6.25.1 This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

6.26 TIME IS OF THE ESSENCE

- 6.26.1 Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

6.27 THIRD PARTY BENEFICIARY

- 6.27.1 All duties and responsibilities undertaken pursuant to this Agreement are the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

6.28 COOPERATION AND FURTHER DOCUMENTATION

- 6.28.1 The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Agreement.

6.29 CONFLICT IN LANGUAGE

- 6.29.1 All work or Deliverables performed will conform to all applicable City of Prescott codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and any Exhibits, the provisions in this Agreement will prevail.

6.30 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach of default hereof, each party shall be responsible for their own attorneys' fees, costs and expenses.

6.31 CONTRACTOR IMMIGRATION WARRANTY

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.

ARTICLE 7 - INSURANCE

The CM@Risk will procure and maintain for the duration of the Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work or Deliverables hereunder by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. Insurance requirements related to any construction Work done during the Pre-Construction or during the construction phase will be defined in a separate Agreement associated with the construction phase. The CM@Risk will cause all Subcontracts to contain identical terms and conditions to those included in this Article.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants that might arise out of the performance of the work or Deliverables under this Agreement by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, or Suppliers and CM@Risk is free to purchase such additional insurance as it may determine necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form (Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate/per project	\$2,000,000
Products-Completed Operations Aggregate (Warranty Coverage)	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 500,000

7.1.1.2 Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles (Form CA 0001, Ed 12/93 or any replacement thereof)

Combined Single Limit per Accident For Bodily Injury and Property Damage	\$1,000,000
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7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability:	
Each Accident	\$ 100,000
Disease-Policy Limit	\$ 500,000

Disease-Each Employee

\$ 100,000

7.1.2 Policy Deductibles and or Self-Insured Retentions: The policies set forth in these requirements may provide coverage which contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City of Prescott and any self-insured retentions or deductibles greater than \$10,000 must be declared to and approved by City. CM@Risk shall be solely responsible for any such deductible or self-insured retention amount. City of Prescott, at its option, may require CM@Risk to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

7.2 OTHER INSURANCE REQUIREMENTS

7.2.1 Contractors Professional Liability: If applicable as deemed necessary solely by Owner in the project planning process, CM@Risk shall carry Contractors Professional Liability insurance to cover the residual, contingent and passive design exposures of the CM@Risk.

7.2.1.1 The City of Prescott, its officers, officials, agents, and employees, are to be named as additional insured with respect to liability arising out of: activities performed by or on behalf of the CM@Risk, including the City's general supervision of the CM@Risk; products and completed operations of the CM@Risk; and automobiles owned, leased, hired or borrowed by the CM@Risk. Vehicle Liability CM@Risk shall maintain Business Automobile Liability with coverage at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof.

7.2.1.2 The Commercial General Liability Insurance will contain broad form contractual liability coverage and will not exclude liability arising out of the explosion, collapse or underground hazard ("XCU").

7.2.1.3 The City, its officers, officials, agents, and employees will be additional insured to the full limits of liability purchased by the CM@Risk, even if those limits of liability are in excess of those required by this Agreement. The Commercial General Liability policy will be at least as broad as the Insurance Service Office, Inc.'s CG 0 0 01 07 98.

7.2.2 Contractors Professional Limits of Liability: Upon written notice from the Owner that such coverage shall be required as a part of the subject project, CM@R shall carry limits of \$5,000,000 each project and \$5,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. CM@R, its successors and or assigns, is required to maintain this Professional Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions as required herein shall be submitted for the three-year period.

7.2.2.1 The CM@Risk's insurance coverage will be primary insurance with respect to the City, its officers, officials, agents, and employees. Insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the CM@Risk's insurance and will not contribute to it.

7.2.2.2 The CM@Risk's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The coverage provided by the CM@Risk and its Subcontractors will not be limited to the liability assumed under the indemnification provisions of this Agreement.

7.2.2.3 The policies will contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed for the City.

7.2.2.4 Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer will agree to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed for the City.

7.2.2.5 Claims Made: In the event any insurance policies required by this Contract are written on a "claims

made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

7.2.2.6 The CM@Risk shall also name the co-owner of the building as additionally insured: Prescott Elks Building LLC.

7.3 NOTICE OF CANCELLATION

7.3.1 Each insurance policy required by the insurance provisions of this Agreement will provide the required coverage and not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to the City's Risk Manager at:

City of Prescott
PO Box 2059
Prescott, AZ 86302

7.4 ACCEPTABILITY OF INSURERS

7.4.1 Insurance is to be placed with insurers duly licensed or City approved unlicensed companies in the State of Arizona, and with an A.M. Best's rating of no less than Btt6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.5 VERIFICATION OF COVERAGE

7.5.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) with original endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsement(s) that restricts or limits coverages will be clearly noted on the certificate of insurance.

7.5.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to the earlier of commencement of work under this Agreement or signing of this Agreement, and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of Agreement.

7.5.3 All Certificates of Insurance required by this Agreement will be sent directly to the Capital Project Management for this Project. The Project Number and Project description will be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement, at any time.

7.6 APPROVAL

7.6.1 Any modification or variation from the insurance requirements in this Agreement must be approved by the City of Prescott Risk Management Office, whose decision will be final. Such action will not require a formal contract amendment, but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 27th day of May, 2009.

JACK D. WILSON
Mayor, City of Prescott

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE
City Clerk

GARY D. KIDD
City Attorney

Elks Opera House Foundation



John Olsen
Resident

Haley Construction Company

Name Bill Haley
Title: Vice President

EXHIBIT A

PROJECT ITEMIZED COST SUMMARY
PRE-CONSTRUCTION SERVICES



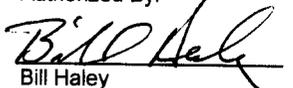
GENERAL BUILDING CONTRACTOR

POST OFFICE BOX 831 • PRESCOTT, ARIZONA 86302

EXHIBIT "A"

CATEGORIES DESCRIPTION	ALLOWANCE	QUOTE	TOTAL
Pre Construction Project Work and General Conditions			
500 Plans	1,000		1,000
510 GMP Development: Project Mgr & Estimator - 80 Hours	8,320		8,320
520 Job Discovery : (3 Men 60 Hours)	6,300		6,300
530 Project Mgmt & Schedule : (1Man 40 Hours)	1,400		1,400
540 Lead and Asbestos Report Review : (2 Men 8 Hours)	560		560
550 Evergreene Architectural Arts			
Develop Finish Schedule		3,500	3,500
Shop Drawings (Low 12000, High 15000)	15,000		15,000
560 Aten Fire Sprinkler Design & Engineering		8,900	8,900
570 Lighting Shop Drawings	5,000		5,000
	Direct Costs		
	37,580	12,400	49,980
610 Builders Risk Insurance	0.00%		0
620 Performance & Payment Bond	1.80%		900
630 Liability Insurance	1.00%		500
	Cost Subtotal		51,379
640 Overhead & Profit	10.00%		5,138
650 Sales Tax If Required (8.35%)	8.35%		3,067
	GMP		59,585
Owners Contingency	5.00%		2,979
	Grand Total		62,564

Authorized By:


 Bill Haley
 Haley Construction Co.
 PO Box 831
 Prescott, AZ 86302
 Date 5/12/09

COUNCIL AGENDA MEMO – May 19, 2009	
DEPARTMENT:	Water Conservation/Safe Yield Committee
AGENDA ITEM:	Approval of application for technical assistance grant from the Arizona Water Infrastructure Finance Authority

Approved By:	Date:
City Manager: Steve Norwood 	

Item Summary

Chuck Budinger, Chair of the Water Conservation/Safe Yield Committee, will present the Committee’s request that the City apply for a \$35,000 technical assistance grant through the Arizona Water Infrastructure Finance Authority (WIFA).

The grant proposal (overview attached) is to evaluate the feasibility of using vegetated detention basins with drywells to collect and treat stormwater, for subsequent discharge into subsurface soils. Principal objectives are to improve the quality of runoff into creeks, and assess water resource implications with respect to possible recharge credits. Site selection for locating a pilot project is included in the scope of work.

Upon Council approval, Committee members have volunteered to complete the grant application, which is due by June 1, 2009.

Budget

The maximum grant award is \$35,000. A 50% local match is required (up to \$17,500), which would be satisfied by in-kind services of current City personnel and/or volunteers. No net additional City expense would be involved.

Attachment - Water Conservation/Safe Yield Committee grant proposal overview

Recommended Action: MOVE to authorize application for a \$35,000 technical assistance grant through the Arizona Water Infrastructure Finance Authority, and the Mayor and staff to take any and all steps necessary to accomplish the foregoing.

**PRESENTATION TO PRESCOTT CITY COUNCIL
APPLICATION FOR TECHNICAL ASSISTANCE GRANT**

The Water Conservation and Safe Yield Committee Funding Task Force have identified a funding source through the Technical Assistance Grant Program of the Water Infrastructure Finance Authority (WIFA) that we would like the Council to consider. This grant will award up to \$35,000 for pre-design of a sustainable, low-impact, and environmentally innovative project that proposes to improve water quality and that will support water conservation. The TA Grant is available for municipalities that provide drinking water and wastewater services for the public. The money will go towards engineering planning and design review for a specific project. The filing deadline is midnight June 1.

The WC&SY Committee is coming to City Council to propose a conceptual model that would be applicable for this Technical Assistance grant criteria. The initial concept for the proposed grant was developed by the local group, Ecosa Institute, with review and interest from City staff about two years ago. It was used as a class project for urban environmental planning. The Committee has taken the initial design and modified it to fit the criteria for the WIFA grant.

The proposal for the grant application is to evaluate the feasibility of using vegetated stormwater detention ponds with a drywell to collect and treat the stormwater and then discharge it to suitable soils underlying the Prescott area. It is readily recognized that certain areas of the city are not conducive to recharge of stormwater. The recharged water would be stored in the subsurface soils and/or rock and slowly released to the area's streams. The study would evaluate site conditions conducive to recharge, vegetation suitable for removal of urban stormwater pollutants, rate or availability of soils to receive and store water, and the costs associated with construction and long-term maintenance.

The use of drywells for this purpose is permitted by ADEQ and has guidelines in place for drywell design, construction, and maintenance.

Benefits:

1. Allow the City to obtain funds for projects where resources are limited;
2. Plan for sustainable projects without committing funding for engineering design or feasibility studies;
3. Allow the City to contribute **50%** matching funds through services rather than cash;
4. Provide the opportunity for City Staff to evaluate innovative technologies without long-term commitments or extended work efforts;
5. Initiate programs to evaluate infrastructure methods to improve water quality based on lessons learned from this grant project;
6. Involve the community and community organizations with the expertise to conduct these types of studies without committing funds;

7. Provides an opportunity for ADWR to review sustainable and innovative technologies that have groundwater recharge potential for recharge credits;
8. Improve quality and quantity of base flow to streams rather than discharges of polluted stormwater in large, intense events;
9. Provides the opportunity for Prescott to cooperate with other agencies, institutions and professional groups to develop a comprehensive approach to water resource management.

Objectives:

1. Assess the criteria to develop a practical combination of storm run-off treatment and groundwater recharge system with a street enhancement design;
2. assess the basin size necessary to determine the capacity of the system to effectively recharge groundwater;
3. develop the siting criteria necessary to maximize groundwater recharge using treated stormwater throughout the city;
4. assess the feasibility to use this system to achieve recharge credits in cooperation with ADWR;
5. evaluate the potential to improve water quality in the area's streams.

Several members of the WC&SY Committee are available to volunteer to write the grant and fill out the application if the City Council were to approve this initiative. The administration of the grant money would have to be delegated to city staff.

The Committee would ask the Council to approve this initiative to allow City staff to proceed with the grant application and to provide the technical oversight of the study and review the results. Staff can then present the results of the study to Council and the Committee. It is possible, depending on the results of this feasibility study, that a the City could apply for another grant or loan State Revolving Funds for a pilot project paid for by the SRF.

COUNCIL AGENDA MEMO – 05/19/09 & 05/26/09

DEPARTMENT: AIRPORT

AGENDA ITEM: Award of contract to Vellutini Corporation dba Royal Southwest in the amount of \$115,000.00 (City Share \$11,500.00) and approval of Authorization for Services No. 4 to Z&H Engineering in the amount of \$30,630.00 (City Share \$3,063.00) for construction of the new Airport Beacon and further authorizing the Mayor and City staff to execute any and all related documents.

Approved By:

Date:

Department Head: Benjamin Vardiman, Airport Manager	June 12, 2009
Finance Director: Mark Woodfill	
City Manager: Steve Norwood	

This is a request to award a contract to Vellutini Corporation (dba Royal Southwest) for construction of the new airport beacon and associated work. This project was designed by Z&H Engineering under Authorization for Services #1 approved by the City Council in July of 2007. This project was bid by the City in March of 2009 and two bids were received and opened on April 2, 2009. The high bid was Rural Electric, Inc. at \$121,368.00 and Royal Southwest was determined to be the qualified low bidder in the amount of \$115,000.00. ADOT Aeronautics has reviewed the bid tabulation and concurs with the recommendation to award the contract to Royal Southwest. The Airport is also requesting approval of Authorization of Services #4 with Z&H Engineering, Inc. for the construction administration, management, and oversight of the new airport rotating beacon in the amount of \$30,630.00.

The total project cost is \$145,630.00 and is 90% grant funded (\$131,067.00) by the ADOT Aeronautics Division. The City matching portion to this grant project is \$14,563.00 (10% of the project). There is \$148,303.00 remaining in the budgeted amount for this project.

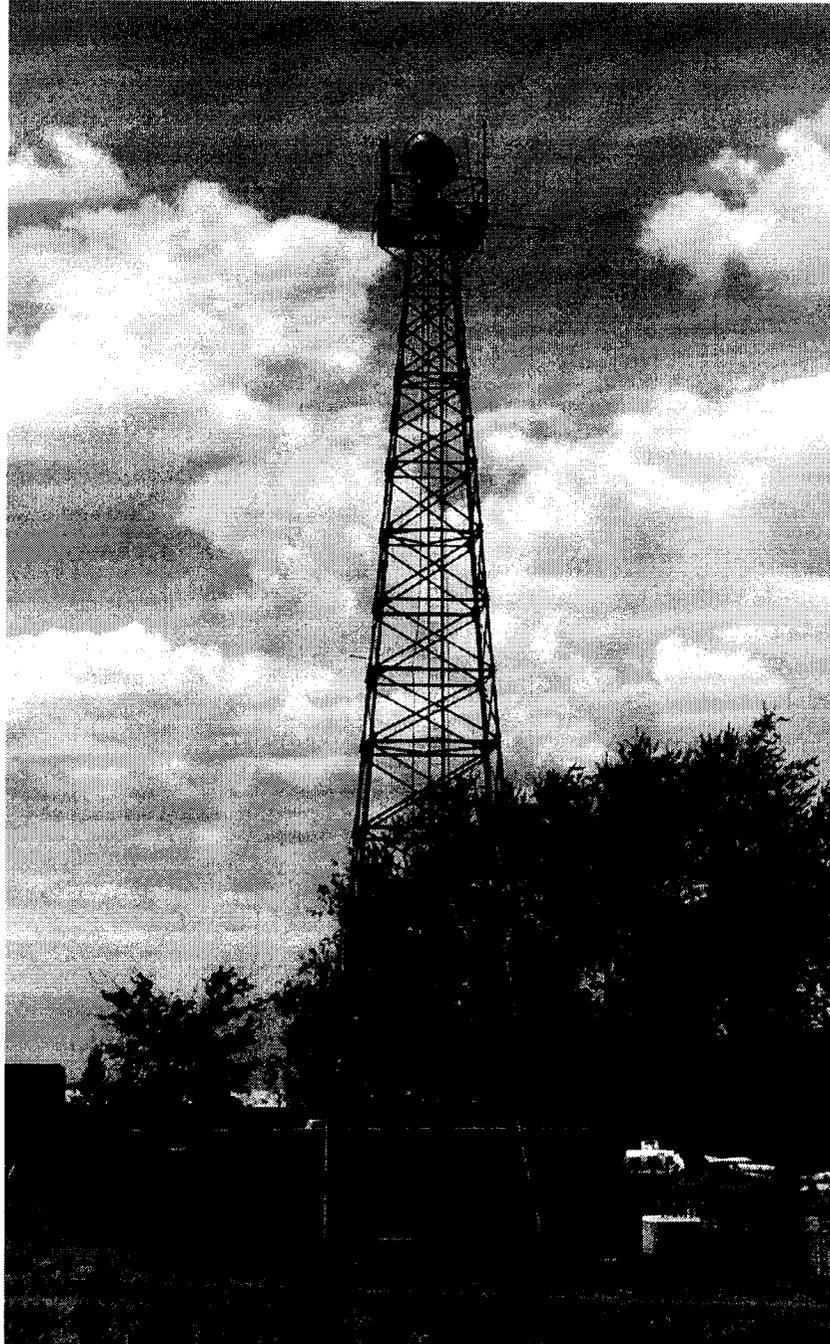
The airport rotating beacon is used by pilots as a visual aid to identify the location of the airport. In clear weather, at night, the beacon is visible to pilots over 20 miles away. The rotating beacon is an FAA required component of the airport navigational system for public airports that are equipped with runway lighting. The existing airport beacon was constructed in the 1950's and is in need of replacement to meet modern reliability and safety standards. The construction will relocate the new beacon away from the residential areas that surround the southern portion of the Airport and provide for an emergency power supply to the parallel runway and associated taxiway. Due to the complex nature of this critical airfield system and the stringent requirements specified by the FAA for bringing a new system on line, the replacement and relocation of the airport beacon is an intensive undertaking requiring continuous oversight and weekly updates to the FAA and coordination with ADOT. Once installed, the new system will be incorporated into the existing airfield lighting control system without interruption to the existing system.

Recommended Action: MOVE to award of contract to Vellutini Corporation dba Royal Southwest in the amount of \$115,000.00 (City Share \$11,500.00) and approval of Authorization for Services No. 4 to Z&H Engineering in the amount of \$30,630.00 (City Share \$3,063.00) for construction of the new Airport Beacon and further authorizing the Mayor and City staff to execute any and all related documents.

Agenda Item:

Award of Contract to Velluntini Corporation dba Royal Southwest and Approval of Authorization for Services No. 4 to Z&H Engineering.

Existing Airport Beacon



Agenda Item:

Award of Contract to Velluntini Corporation dba Royal Southwest and Approval of Authorization for Services No. 4 to Z&H Engineering.

Airport Electrical Mini-Vault showing Airfield lighting control computer



Airport Electrical Mini-Vault showing Constant Current Regulators and monitoring systems for 2 circuits



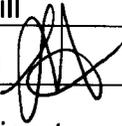
COUNCIL AGENDA MEMO – 05/19/09 & 05/26/09

DEPARTMENT: AIRPORT

AGENDA ITEM: Authorization to enter into a no-cost, long-term license agreement with ITT Corporation.

Approved By:

Date:

Department Head: Benjamin Vardiman, Airport Manager	May 12, 2009
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	

This is a request for authorization to enter into a long term no-cost license agreement with ITT Corporation for the installation and operation of a Federal Aviation Administration Automatic Dependant Surveillance – Broadcast (ADS-B) system at the airport. As part of accepting Federal Grants for the Airport, the Airport is required under grant assurance #28 to provide at no cost to the Federal Government any areas of land for the construction, operation and maintenance at Federal expense of space of facilities for air traffic control or air navigation activities.

The system will be installed, operated, and maintained on airport property by ITT in accordance with their FAA prime contract at no cost to the City. The license agreement is on the standard City License Agreement with language modifications to Clauses B1 and C1. This agreement is a month-to-month agreement until the end of the FAA prime contract (8/31/2025) and can be terminated at anytime by either party with 30-days written notice. Comments were requested last week from airport tenants and users. Two comments of support for this system at the airport have been received as of the date of this memo, one from the FAA Tower Manager and one from the Chief Flight Instructor for Embry-Riddle.

The ADS-B system is a crucial component of the Next Generation Air Transportation System (NextGen) providing surveillance and situational awareness simultaneously to pilots and air traffic control facilities. ADS-B is designed to improve the safety, capacity and efficiency of the National Airspace System while providing a flexible expandable platform to accommodate future air traffic growth and enhanced Air Traffic Control (ATC) services. Users employ the surveillance and broadcast services capability to support their flight operations. These services help to prevent accidents by providing Air-to-air surveillance capability, surveillance to areas that do not currently have surveillance coverage, Real-time in-the-cockpit, traffic and aeronautical information such as weather, Temporary Flight Restrictions, and special use airspace information to air traffic controllers and pilots.

Recommended Action: MOVE to authorize entering into a no-cost, long-term license agreement with ITT Corporation for the installation of an FAA Automatic Dependant Surveillance – Broadcast navigation system in accordance with FAA prime contract number DTFAWA-07-C-00067 at Ernest A. Love Field and further authorizing the Mayor and City Staff to execute any and all related documents.

AGENDA ITEM:

Authorization to enter into a no cost long term license agreement with ITT corporation for the installation of an FAA Automatic Dependant Surveillance – Broadcast navigation system

ADS-B Automatic Dependant Surveillance Broadcast TIS-B Traffic Information Services Broadcast FIS-B Flight Information Services Broadcast

Surveillance and Broadcast Services

Traffic Information Service - Broadcast (TIS-B)

TIS-B broadcasts surveillance data to equipment in the aircraft and provides ADS-B equipped aircraft with position reports from secondary surveillance sources for non-ADS-B equipped aircraft.

Flight Information Service - Broadcast (FIS-B)

FIS-B Transmits graphical National Weather Service products, Temporary Flight Restrictions (TFRs) and special use airspace information.

Automatic Dependent Surveillance - Broadcast (ADS-B)

Automatic - Periodically transmits information with no pilot or operator input required

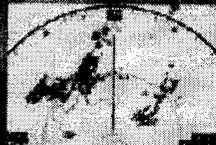
Surveillance - A method of determining position of aircraft, vehicles, or other asset

Dependent - Position and velocity vector are derived from the Global Positioning System (GPS) or a Flight Management System (FMS)

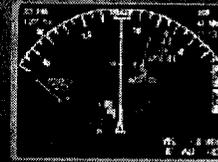
Broadcast - Transmitted information available to anyone with the appropriate receiving equipment

The ADS-B system is a crucial component of the Next Generation Air Transportation System (NextGen). It provides surveillance and situational awareness simultaneously to pilots and air traffic control facilities. ADS-B is designed to improve the safety, capacity and efficiency of the National Airspace System while providing a flexible expandable platform to accommodate future air traffic growth. ADS-B provides improved situational awareness with the following information in the cockpit:

- Heading
- Altitude
- Speed
- Aircraft category
- Call sign
- Distance

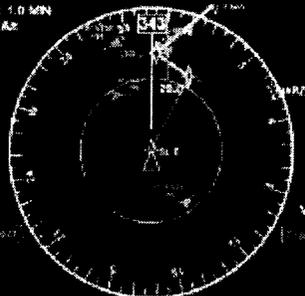


FIS-B display



TIS-B display

VECTOR 1.0 MIN
ALL REL AT



ADS-B display

Capacity and Efficiency

Airspace can be better utilized by providing the capability for both reduced separation as well as greater predictability in departure and arrival times. Benefits include:

- Radar-like separation procedures in remote or non-radar areas, possibly decreasing travel time
- Support for common separation standards (horizontal and vertical) in all classes of airspace
- Improved ability to manage traffic and aircraft fleets
- Improved air traffic controller ability to plan arrivals and departures for aircraft far in advance
- Infrastructure necessary to operate the National Airspace System at reduced cost

Benefits and Safety

ADS-B/TIS-B/FIS-B services provide several new or greatly improved operational capabilities. Service providers will use the new surveillance capability to enable enhanced Air Traffic Control (ATC) services. Users employ the surveillance and broadcast services capability to support flight operations. These services help to prevent accidents by providing increased situational awareness to air traffic controllers and pilots by providing:

- Air-to-air surveillance capability
- Surveillance to areas that do not currently have surveillance coverage
- Real-time, in-the-cockpit, traffic and aeronautical information (i.e. weather, Temporary Flight Restrictions (TFRs), and special use airspace information)

COUNCIL AGENDA MEMO – 05/19/09 & 05/26/09

DEPARTMENT: AIRPORT

AGENDA ITEM: Authorization to enter a month-to month License agreement with Guidance Helicopters for use of airport property at Ernest A. Love Field and further authorizing the Mayor and City Staff to execute any and all related documents.

Approved By:

Date:

Department Head: Benjamin Vardiman, Airport Manager	May 12, 2009
Finance Director: Mark Woodfill	
City Manager: Steve Norwood	

This is a request to authorize entering into a standard month-to-month City License Agreement with Guidance Helicopters for the Quonset Hut and adjacent land located at 6524 Janine Dr in the amount of \$750.78 per month (\$9,009.36 annually) exclusive of applicable taxes. Guidance Helicopters has signed onto the standard month-to-month City License Agreement without modification and the agreement awaits City approval and execution.

While the approval of standardized month-to-month City License Agreements is a function which the Airport Manager can sign on behalf of the City, Guidance Helicopters wishes to make use of the property for establishing a state certified child care facility for the benefit of students and staff of Guidance Helicopters. This request is coming before Council due to the nature of the operation proposed for the facility. Use of airport property is limited to aviation, affiliated, and related activities per City Code 2-12-5 which states:

2-12-5: AIRPORT USE LIMITED TO AVIATION RELATED ACTIVITIES:

Airport premises shall be used for aviation and affiliated and related industries, pursuits and businesses except where specifically authorized for other use by the city council. Whenever a question arises, the council shall finally determine whether an industry, pursuit or business may be regarded as being affiliated or related to aviation. (Ord. 2069, 5-9-1989; amd. Ord. 4210, 3-26-2002)

Since this type of use is not part of the uses previously authorized by the Council, the Airport staff is seeking a determination by the Council per the City Code as to whether this business may be regarded as being affiliated or related to aviation. Airport staff believes that the proposed use of the property by Guidance Helicopters is an aviation related business for the following reasons:

1. The services being conducted are in support of and ancillary to the approved aviation activities (flight training) conducted by Guidance Helicopters.
2. The services will be made available to students and staff of Guidance Helicopters and provides for added.

Previous Council approved uses of the airport generally include:

Agenda Item: Authorization to enter a month-to month License agreement with Guidance Helicopters for use of airport property at Ernest A. Love Field.

- (1) Aircraft box style hangars, aircraft parking aprons, aircraft maintenance buildings.
- (2) Automobile parking lots and related structures.
- (3) Aviation flight and ground school, including pilot and student equipment sales.
- (4) Aircraft sales, including radio and navigational equipment, parts, supplies and accessory equipment.
- (5) Aircraft hangar, ramp space and tie-down rental.
- (6) Aircraft leasing, rental and charter.
- (7) Airframe, engine, radio, navigational and accessory equipment repair, maintenance and modification.
- (8) Aircraft ground support equipment repair, maintenance and modification.
- (9) Aircraft cleaning services.
- (10) Aircraft painting, on condition that facilities conforming to fire, air pollution and environmental requirements are provided.
- (11) Non-retail aviation fuel service for Lessee's own aircraft on condition that city requirements are met to conform to fire and environmental protection and the payment of flowage fees.
- (12) Aircraft and engine mechanic schools.
- (13) Air taxi and air ambulance services.
- (14) Aerial photography and surveying.
- (15) Office, retail and service uses related or ancillary to other uses permitted herein.
- (16) Rental Car and Food catering services for fly-in customers subject to any City permit requirements and payment of fees.
- (17) Identification, directional and safety signs.

Recommended Action: MOVE to authorize entering into a month-to month License agreement with Guidance Helicopters for use of airport property at Ernest A. Love Field and further authorizing the Mayor and City staff to execute any and all related documents.

COUNCIL AGENDA MEMO – May 19, 2009

DEPARTMENT: Water Resource Management

AGENDA ITEM: Approval of an agreement with Southwest Ground-water Consultants, Inc., for hydrological and technical support services re the 2009 administrative hearing on the City's Application for Modification of Designation of Assured Water Supply

Approved By:

Date:

Department Head: James Holt	<i>James L. Holt</i>	5/14/09
Deputy City Manager: Craig McConnell	<i>Craig McConnell</i>	5-14-09
City Manager: Steve Norwood		

Item Summary

This agreement formalizes and ratifies provision of expert professional services by Southwest Ground-water Consultants, Inc., for the administrative proceedings convened to hear protests of the Arizona Department of Water Resources (ADWR) draft decision and order in the matter of the City of Prescott's Application for Modification of Designation of Assured Water Supply (AWS). The principal focus of this application is to obtain quantified recognition of the City's legal authorization to import groundwater from the Big Chino Sub-basin into the Prescott Active Management Area (AMA). The administrative hearing commenced in February 2009, and is presently scheduled to continue in June.

Background

In December 2004 the City, in partnership with the Town of Prescott Valley, purchased lands north of the Prescott Active Management Area in the Big Chino Sub-basin of the Verde River Groundwater Basin referred to as the Big Chino Water Ranch (BCWR). The BCWR is comprised of 4,582.1 acres of deeded lands and 1,948.6 acres of Arizona State Land within Yavapai County located in Townships 19 and 20 North-Range 4 West and Township 20 North-Range 5 West, G&SRB&M.

The City and Town are 54.1% / 45.9% project partners, respectively, in the cost and quantity of water to be made available from the BCWR. The communities intend to develop the infrastructure necessary to transport this water from the Big Chino Sub-basin for use inside the Prescott AMA pursuant to A.R.S. § 45-555(E).

In October 2007 the City filed its Application for Modification of Designation of AWS with ADWR to recognize the imported Big Chino groundwater. ADWR subsequently issued a draft decision and order in November 2008, finding that the City's application satisfied all of the requirements for a Designation of Assured Water Supply. More specifically, ADWR confirmed the City's right to withdraw 8,067 acre-feet per year of groundwater from the Big Chino Sub-basin and transport it for use within the Prescott AMA. ADWR's draft decision and order further confirmed the groundwater to be physically, continuously and legally available for at least 100 years, and importation consistent with the long-term water management goal of the Prescott AMA.

Agenda Item: Approval of an agreement with Southwest Ground-water Consultants, Inc., for hydrological and technical support services re 2009 administrative hearing on the City's Application for Modification of Designation of Assured Water Supply

As the result of appeals by three resident objectors, the Center for Biological Diversity, and the Sierra Club, three days of hearings were scheduled in February 2009 on the draft decision by the Arizona Office of Administrative Hearings. This procedural step will continue on June 16, 2009, encompassing at least eight days of hearings.

Southwest Ground-water Consultants has performed extensive professional services for the City in the past, particularly hydrological investigations within the Big Chino Sub-basin. The scope of work for preparation and participation in this ongoing administrative hearing includes the following:

1. Review documents, exhibits and reports prepared by other parties (e.g., SRP, ADWR, USGS) anticipated to be presented or referenced in the hearings
2. Prepare testimony including meetings and telephone conferences with City legal counsel, Maguire & Pearce, City staff and other technical advisers
3. Attend the hearing and provide testimony
4. Review and critique testimony and materials submitted by the appellants
5. Prepare and present rebuttal testimony
6. Provide additional hydrologic support to the City and its attorneys, as necessary

It was initially believed that three (3) days would be required for the administrative appeal. The hearing, twice extended by the hearing officer, is now expected to be concluded after a duration of eight (8) days. Given the uncertain nature of the information presented and the length of the proceedings themselves, the extent and cost of support services required from Southwest Ground-water Consultants could not be accurately predicted in advance.

Budget

The total cost of services to date by Southwest Ground-water Consultants under this authorization is approximately \$27,850.00. Since the administrative hearings have yet to be concluded, there remains some uncertainty of the eventual total. Accordingly, it is recommended that this agreement be approved in an amount not to exceed \$30,000.00.

Funding for these services is available in the Alternate Water – Water Ranch account. Pursuant to Agreement #04-255 (12-7-04), Intergovernmental Agreement for the Sale of Water and Cost Participation, the City share (based on \$30,000.00) will be \$16,230.00 (54.1%), and the Town of Prescott Valley share \$13,770 (45.9%).

Attachment - Scope of Work (Exhibit A)

Recommended Action: MOVE to approve an agreement with Southwest Ground-water Consultants, Inc., in an amount not to exceed \$30,000.00 for hydrological and technical support services necessary for the 2009 administrative hearing on the City's Application for Modification of Designation of Assured Water Supply.



April 7, 2009

Jim Holt
Water Resources Manager
City of Prescott
433 N. Virginia Street
Prescott, AZ 86301

**SUBJECT: SCOPE AND COST
HYDROLOGIC SUPPORT FOR MODIFICATION OF
DESIGNATION OF ASSURED WATER SUPPLY
ADMINISTRATIVE HEARING**

Dear Mr. Holt:

Southwest Ground-water Consultants, Inc. (SGC) is pleased to provide this revision to the scope and cost presented in our January 28, 2009 letter. That letter assumed that SGC's involvement in the Designation of Assured Water Supply administrative hearings would be completed by February 12, 2009. As you know the hearings originally scheduled for February 9-11 have been extended to April 13-15 and perhaps beyond. In addition, SGC has been asked to provide a review and critique of testimony and documents submitted by the appellants and to provide rebuttal testimony.

This letter summarizes the scope and cost of our participation to-date and provides an estimate of future activities and cost. The scope of work is based, in part, on discussions with Michael Pearce of Maguire and Pearce, PLLC.

SCOPE OF WORK

The scope of work consists of the following work tasks to prepare for and participate in the administrative hearing:

1. Review documents prepared by others (SRP, ADWR, USGS, etc)
2. Preparation for testimony including meetings and telephone conferences with Maguire and Pearce and City staff.
3. Attend the hearing and provide testimony.
4. Review and critique testimony and materials submitted by the appellants. Provide memoranda and participate in meetings with attorneys
5. Provide rebuttal testimony.
6. Additional hydrologic support to the City and its attorney's, as requested.

SCHEDULE AND COST

Work is expected to take place between January 27 and April 15, 2009. It is also possible that the hearings could be extended by the Administrative Law Judge beyond this date.

Estimated hours and costs are given below.

Task ¹	Hours	Cost
1. Review Documents	20	\$3,000
2. Pre-Hearing Preparation	25	\$3,750
3. Participation in Hearing	18	\$2,700
4. Critique testimony and meetings	60	\$9,000
5. Rebuttal Testimony	36	\$5,400
6. Additional hydrologic support	20	\$3,000
Expenses		\$1,000
Total	179	\$27,850

1. Tasks 1 through 3 and part of 4 are complete. The remainder of Task 4 and Tasks 5 and 6 are estimated costs.

It is difficult to predict the development and progress of legal proceedings. If fewer hours are required costs will be reduced proportionately. If hours in addition to those described above are needed, they will be billed at a rate of \$150/hr.

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SGC appreciates the opportunity to be of service. If you have any questions, do not hesitate to call us at 602-995-5547.

Sincerely,

Southwest Ground-water Consultants, Inc.



William M. Greenslade, P.E., R.G.
Principal/Senior Hydrogeologist

