

PRESCOTT CITY COUNCIL  
REGULAR STUDY SESSION  
TUESDAY, JULY 21, 2009  
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR STUDY SESSION OF THE PRESCOTT CITY COUNCIL held on TUESDAY, JULY 21, 2009 in the COUNCIL CHAMBERS located at CITY HALL 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

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

◆ **INTRODUCTIONS**

Mayor Wilson introduced and welcomed District 1 Representative Lucy Mason.

◆ **INVOCATION:** Pastor Eunice Webb, Genesis

Pastor Webb gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Luzius

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

◆ **ROLL CALL:**

PRESENT:

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

ABSENT:

None

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

Deputy City Manager Laurie Hadley reported that Prescott Fireman Jeff Moffitt's wife has been very ill and there was a great article in the Arizona Republic. She thanked the community and City employees; to date they have raised over \$10,000 to help offset medical assistance. She said that they are having a fundraiser tonight through Wednesday evening at Texas Roadhouse Restaurant and part of the proceeds will go to them as well.

## I. PRESENTATION

- A. Presentation by Barbara Gilliss, Chairman of the Prescott: Arizona's Centennial City Committee, on Committee activities.

Ms. Gilliss gave an update to the Council on the Committee's activities. She referred the Council members to the membership roster included in the packet, noting that at next week's meeting the Council Appointment Committee will be making a recommendation to replace John Langellier with Karen Churchill, both of the Sharlot Hall Museum, as Mr. Langellier has had to resign.

Chairman Gilliss said that the Committee meets on the third Monday of each month at 1:00 p.m. in the Council Chambers and invited the Council members and public to attend. She said that the official dates of the Centennial celebration around the State will be February 2011 through February 14, 2012.

She also noted that the updated mission statement of the Committee was included in the packet. She said that the charge of the Council was to 1) encourage people to be part of the Centennial; 2) begin helping them to develop and complete their projects; and 3) coordinate with other government groups/agencies.

With regard to encouraging people/groups, she said that right now they were developing an e-mail list, since they have no budget. They have prepared a flier that can be handed out to people for them to provide the name of their organization and contact person. They have also started making presentations to some organizations to get people interested, and will continue to do so throughout the process.

She said that, in accordance with the resolution adopted by the Council, they prepared a letter for Mayor Wilson to send to the Governor requesting that Prescott be named as Arizona's Centennial City. She said the letter was sent, but it has yet to be accomplished. It is currently in the hands of Secretary of State Ken Bennett, and there is a possibility that it would become a Legacy Project. She said that the Committee has developed a theme, which is "Prescott, where it all began."

She said that they are also working on a logo for the City and plan to have a contest throughout the designers and artists in the area. She said that there would be no prize, but they would receive recognition. The committee is currently putting together ideas of things they think the logo should include, and that should be released after their next meeting.

Chairman Gilliss said that the Committee was also involved in the Centennial Stamp. Although the State Committee is involved with its preparation, the release would take place in Phoenix since it has the largest population; however, the Committee is hoping there is a chance that the design could be revealed in Prescott.

She then gave some information on the Legacy Projects throughout the State. She said that contained in the packet information was an application form from the Arizona Historical Advisory Commission that included criteria for Legacy Projects. She said that for any project coming to Council for approval, they will need to adhere to the restrictions.

She said that yesterday the Committee set up a few different committees, one of which was a Legacy Review Committee, who will be screening projects. She said that they have a few ideas for citywide Legacy Projects for the City, but encouraged anyone with ideas to contact a member of the Committee.

In addition to the formal Legacy Projects, she indicated that they plan to contact different organizations and ask that any of their usual events held throughout the year try and focus on the Centennial as their theme.

She said that they are collaborating and cooperating with different agencies throughout the State, and she had included a list of them in the packet. She explained that the Arizona Historical Advisory Commission began under the State Library, and it is going to be the one that oversees the Legacy Projects. She said that Secretary of State Bennett is on that Commission, as well as John Langellier. She said that the Arizona Centennial Commission, which is now the Governor's Commission, comes out of the Arizona Office of Tourism, and AOT's Deputy Director is now the Director of the Commission and she is in contact with her all the time. In addition, Lindsey Mills, the Committee's PACT representative, works with AOT, so they are well represented.

Chairman Gilliss said that Elisabeth Ruffner is a member of the Committee and also is a member of the County Centennial Committee and she, along with Nancy Burgess and herself, attend those meetings and keep in touch with Ann Sterling, the Chairperson. She said that the Committee will be using the County's website, and will also have its own website.

She said that the Committee is also cooperating with the County in their stamp project, and will be looking to have all fourth grade classes throughout the County participate in making envelopes to be stamped that day.

To conclude, she said that they have been busy, and will be busier in the future, and they would be glad to have anyone visit their meetings.

B. Presentation of Fourth of July Activities Wrap-Up video.

Kim Kapin presented the video prepared by his department that wrapped up the Fourth of July activities in the City.

After its viewing, Councilwoman Suttles suggested that it be played on the television in the lobby. Mayor Wilson added that they were going to try and put it on some of the websites as well.

## II. DISCUSSION ITEMS

A. Award of \$85,299.51 to Fann Contracting, Inc. for the purchase of one new Mac transfer trailer per Fann Contracting specifications, for replacement of trailer destroyed in fire of June 23, 2009.

Councilman Bell declared a potential conflict of interest on this item, as well as Items K and O, and removed himself from the dais.

Field Operations Director Chad McDowell said that on June 23, 2009, a fire started in one of the transfer trailers at the Transfer Station. The Fire Department believes it was possibly a chemical fire, due to its intense heat and the materials that were burned.

He said that Paragraph 4.10 of the contract with Fann Contracting, states that all hazardous material collected or found will be the City's responsibility. Staff believes the materials which started the fire were of a hazardous material nature. The City's Risk Manager was called out to investigate and decided to process this as a claim.

He said that it has always been the City's policy that if the transfer trailer is still the yard, it is the City's responsibility; once it leaves the yard it is the Contractor's responsibility. He said that staff was recommending replacement of the trailer.

Councilwoman Suttles noted that this item, as well as K and O, would need to be pulled from the Consent Agenda due to Councilman Bell's potential conflict of interest.

She then asked if it was a brand new trailer. Mr. McDowell said that the trailer was purchased in April as they just started a new five-year contract with Fann. She asked what they were doing to ensure this does not happen again. Mr. McDowell said that he did not think they could prevent it from happening again. He said that they have three or four fires a year.

He said that they have policies and procedures in place, which they have worked on with Risk Management to eliminate what problems they can. He noted that a few years ago the City of Flagstaff lost their entire fleet.

Councilwoman Suttles said that it appears that it is the citizenry causing this because of the hazardous materials they place in their refuse. Mr. McDowell said that they see a lot of hazardous materials, such as paint thinners and aerosol cans. She asked if there was any way to get the information out. Mr. McDowell said that they have sent letters to all of the commercial businesses stating that they cannot throw those items in the dumpsters. They are also going to work with Mr. Kapin to do some public information.

Councilwoman Suttles asked if there is a fine if they were to find an offender. Mr. McDowell said that he did not believe there was, but it would be through Code Enforcement.

Councilman Roecker asked Mr. McDowell to explain that the City makes an effort to collect hazardous materials, but it is expensive. Mr. McDowell said that the City conducts a Household Hazardous Waste Day every other year, but it costs around \$60,000, which is not put on to the citizens. It is free to the citizens and County residents. He said that they could look at it full time, but they would have to increase fees. He said that if people have hazardous waste they can contact them at 777-1116 and they will help them get rid of it.

Mayor Wilson asked how many trailers they had. Mr. McDowell said that there were 14. Mayor Wilson asked if anyone every considered putting smoke detectors in the trailers. Mr. McDowell said that he did not know of any approved system, but he would research that possibility.

Councilman Luzius said that he understood that the reason the City was buying the truck was because they have a \$250,000 deductible on their insurance. He said that it is also important to educate the citizenry since a lot of the items they are putting in the trash are vulnerable to spontaneous combustion.

Councilman Lamerson asked where the money came from since they were self-insured. Mr. Woodfill said that the money is collected from different operating areas, based on the size of their budget and loss history, so it comes from the General Fund, water, sanitation, etc.

Michael Allan Peters, 640 West Lee Blvd., said that they saw the article in the newspaper that sales tax was dropping, and they need to keep their sales tax in Prescott. He said that they have \$5,500 worth of sales tax on

the line, plus the Federal Excise Tax, and they need to keep that in the City.

Mr. McDowell explained that no one builds the type of trailer in the City; in fact, it was coming from back east through a vendor in Phoenix. He said that Fann Contracting purchase the 14 trailers, and they will be getting the same type of trailer as before.

Mr. Peters asked if there was some way to have the trailer delivered in Prescott so they could collect the sales tax. Mr. Woodfill said that sales tax is based on where the business is located. He said that if the dealer was in Phoenix, it would be Phoenix sales tax; however, if it is coming in from out of state there would be no sales tax, but there would be use tax paid, and Fann would owe the City those taxes.

Councilman Luzius told Mr. Peters that they have attempted in the past to get delivery of certain vehicles for that purchase, but it does not work as it is not allowed by the State.

- B. Approval to purchase six 2010 Ford Crown Victoria Police Interceptor (CVPI) vehicles from Five Star Ford in the amount of \$155,875.32.

Police Chief Randy Oaks said that a request for bids was established by the City during June and five bids were received, with Five Star Ford coming in with the lowest bid. He explained that there were three ways to purchase these types of vehicles. In 2007 they looked at a Federal Program 1122 where manufacturers bid directly with the Federal Government and any government entity can purchase through them. The second way was through the State Contract process and the third way was to go out to bid themselves. He said that due to the Council's well-known preference to purchase locally when possible, they chose to go out themselves.

Chief Oaks said that they personally invited the local Ford dealer to bid, which they did, but their bids were significantly higher at \$6,935 per vehicle more than the low bid. He said that they compared the bid from Five Star with both the Federal and State programs and they were only dollars apart, so there was no advantage to using any other program.

He said that they consulted with the City's maintenance garage and they prefer the Crown Victoria, and believe they are the best vehicle to hold up to the riggers of police service. They also requested the silicon radiator hoses and extended warranties, which allows them to go to the local dealer for repairs.

Mayor Wilson asked what additional payments would be necessary to make the vehicles ready. Chief Oaks said that the next bid to come before the Council would be the upfitting of the vehicles. He said that there are only three vendors in the State and they are all in Phoenix. He said that the upfitting costs almost as much as the car itself.

Michael Allen Peters asked if it was essential that they purchase the Ford Crown Victoria versus getting a bid from other local car dealers, so they could keep the sales tax local. He asked what the difference was between a straight warranty and premium care warranty, and he also asked if any of the upfitting equipment from the old vehicles could be moved on to the new vehicles.

Chief Oaks said that they will look at the equipment to see if anything is able to be moved; however, the service life of some of that equipment is usually used up by the time the car is used up.

Chief Oaks explained that there are currently three manufacturers that certify vehicles for police service—the Chevy Impala, Dodge Charger and Ford Crown Victoria. Both the Impala and Charger have limited trunk space and limited cabin space. In his own experience, the Crown Victoria is the most durable for hauling people and equipment of any of the three. Additionally, the garage weighs in on the decision and they, too, are most confident with the Crown Victoria.

Mayor Wilson asked about the \$15,000 for extended warranty. Chief Oaks said that it was explained to him that in past years when the City did not purchase the extended warranties, the garage found that their repairs exceeded the amount that they could purchase the warranty for. He said that he has “no dog in that fight,” but he does listen to those that fix them.

- C. Adoption of Resolution No. 3981-1008 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona authorizing the application and acceptance of a Water Infrastructure Finance Authority of Arizona Project Technical Assistance Grant in the amount of \$34,500.00, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Management Analyst Connie Tucker said that a few months ago staff came to Council for a request to submit an application for a grant to locate a bioretention and dry well pond, to look at treating surface water runoff. She said that they were awarded the grant and since WIFA determined that the project met their green criteria, no local match was required.

Mayor Wilson said that it was good news, and it tied in with the efforts of the Upper Verde River Watershed Protect Coalition.

Michael Allan Peters said that when they discussed the issue previously, there was a requirement of \$17,500 in terms of service, materials or other matters. He said that the way the resolution had been recited, it was silent on the obligation and to sign it in the way presented was not correct.

Ms. Tucker said that when they applied for the grant there was a match of \$17,500 for in-kind services, but since it was found to meet the “green” criteria, they did not have to provide that match, although they would still be providing some in-kind services.

Mayor Wilson asked Mr. Kidd if the resolution was written correctly. Mr. Kidd said that as long as they were not required to provide the match the resolution was correct. He said that they were not required to provide in-kind services and the resolution sets out what the City is required to do.

Councilman Luzius thanked Ms. Tucker. He said that this was something they need; it was a good concept and is a green project, and the fact that they do not have to come up with matching dollars made it all the better. He said that he endorsed it fully.

- D. Adoption of Resolution No. 3982-1009 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Public Library to enter into a Participating Library Agreement with the Camp Verde Unified School District and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Library Director Toni Kaus said that the Camp Verde Unified School District has requested membership in the Yavapai Library Network, which was the network of over 40 county libraries housed at the Prescott Public Library, allowing libraries to share automation and resources. She said that the Council's approval was needed to formalize their partnership. She said that it was the same agreement approved in April for all of the existing members.

Councilman Luzius said that he saw their obligation was \$3,000, to be paid to the City. Ms. Kaus said that was an approximate, it will be based on annual bills and a formula agreed to by all the members, but there is no cost to the citizens.

- E. Adoption of Resolution No. 3979-1006 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement (“IGA”) with Chino Valley Fire District and Central Yavapai Fire District for the utilization of each party's emergency dispatch resource procedures and

policies in an automatic-aid capacity for the tri-city area and authority the Mayor and staff to take any and all steps necessary to accomplish the above.

Fire Chief Bruce Martinez said that this item deals with automatic aid with Central Yavapai Fire District (CYFD) and Chino Valley Fire District (CVFD). He said that they currently have automatic aid with CYFD, but in the past they have had a mutual aid agreement with Chino Valley because they did not have equal capabilities. He said that they now do have that capability and it makes sense to use automatic aid. He said that this allows predetermined response from dispatch, so there is no delay in asking for help from another agency. He said that it mostly affects the bordering agencies in the Outer Loop area, but it gives them better service to the citizens.

Councilman Luzius asked if it affected the fire department's overtime pay. Chief Martinez replied that it did not, but Councilman Luzius asked to have it pulled from the Consent Agenda.

- F. Adoption of Resolution No. 3980-1007 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Fire Department to enter into a Base Hospital Agreement with the Yavapai Regional Medical Center for medical control, direction and administrative oversight of all providers relating to paramedic level care (advanced life support) and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Chief Martinez said that this was coming to Council mid-year because of some minor changes in legislation that affected the agreement. He said that they made those changes and Legal has agreed to them. He said that there are no financial implications.

- G. Approval of renewal of Turf Paradise Off-track Pari-mutuel Wagering Permit for Matt's Saloon, located at 112 S. Montezuma Street.

Ms. Burke said that every three years Turf Paradise requests approval of their off-track pari-mutuel wagering permit for Matt's Saloon. She said that it expired in May of this year and they would like to renew it for their season beginning in September. She said that she checked with the Police Department and have they had no incidents at Matt's Saloon in regard to this for the past five years.

- H. Award of a three-party Construction Manager at Risk construction phase services contract with the City of Prescott, Haley Construction and the Elks Opera House Foundation for Historic Restorations and Renovations to the Elks Opera House in the amount of \$1,151,323.00.

Administrative Services Director Mic Fenech said that this was a three-party agreement between the City, Haley Construction and the Elks Opera House Foundation for the renovation improvements at the Elks Theater. He said that this is the second of two agreements with Haley; the first was for the pre-construction phase and they now arrived at a GMP (Guaranteed Maximum Price) for the construction phase.

He said that Haley has been working to develop subcontracting pricing, assist the architect with discovery of unknown items within the Theater and develop all final pricing for the Construction Manager at Risk contract. He said that the City's staff, Elks Opera House Foundation Board of Directors and Otwell Associates Architects have worked diligently over previous months to identify and agree on the work to be included in the restoration project and they are now satisfied that the scope of work can be accomplished within the GMP. Additionally, the City's Risk, Procurement and Legal departments have reviewed the contract.

He said that the contract identifies included and excluded items. Some are stand-alone and depend on future funding, such as the restoration of the Gurley Street marquee. During construction the Elks Opera House Foundation will attempt to get funds and if they do, they will be back to ask for additional restoration.

Mr. Fenech said that many of the City departments have helped out in the project, solid waste, public works, purchasing, etc. and he wanted to mention them and thank them. He said that the City and Elks Opera House Foundation will jointly finance the project. The City's current budget includes \$241,000 in capital improvements, to be used for the new fire sprinkler installation and associated items including building insulation, fire spread prevention, necessary structural supports and other life safety items.

He said that the discovery phase in the preconstruction services agreement did what they had hoped, and they were able to find out that the trusses that support the balconies added enough weight to stress them. As a result they have to be engineered and they will be installing additional support. On the other side of the theater, the ceiling that supports the tin is held in place with 2x4's and to support the fire sprinkler system they need a catwalk support system. Because of these added expenses, staff was asking that the \$67,377 that was budgeted for the marquee be available to use for these expenses.

Mr. Fenech said that the City would be contributing \$308,377 and the Foundation \$842,946. Additionally, the Foundation has or will be contributing an additional \$341,424 for the architect, pre-construction services and theater seating.

Councilwoman Suttles asked if the funds donated by the James Family Trust were part of those being expended. Mr. Fenech said that out of the \$1.2 million contribution from the Elks Opera House Foundation, approximately \$1 million is from their donation; the rest has been raised by the Foundation itself.

Councilwoman Suttles said that they would not be able to do this work without that donation and her concern is that it is an ongoing project. She asked if the Foundation had plans to continue raising funds.

Elisabeth Ruffner, 1403 Baranca Drive, said that the Foundation continues to raise money every day. They have already spent \$200,000 on the basement and equipment, to keep it operating since the City bought it. She said that they are committed as they want to own the building and operate it themselves at some point.

Councilwoman Suttles asked how much money the City has put into the project. Mr. Fenech said that the City has put in roughly \$100,000 a year for operations, over and above the revenues generated.

Councilwoman Suttles said that since the project was over \$1 million, she would like it pulled from the Consent Agenda, so it can be looked at more.

Mayor Wilson noted that in addition to the marquee, there is other work that needs to be done, such as additional plaster work. He said that there are a lot of citizens that are committed. He said that they need to look at it in a larger context as a way to sustain a vibrant downtown. He said that they are talking about getting to something that will keep shops and business open downtown in the evening, and he fully supports the project.

John Olsen, 15 Brookside, Chairman of the Elks Opera House Foundation said that he could speak to the Foundation's sincerity that they will continue with fundraising efforts. He said that they were told that the sprinkler system was not required, but from the standpoint of the City and the Foundation, they believed it to be in their best interest.

He said that they have been at it four about four years now. In the beginning there was a lot of skepticism but now they are sincere in their efforts. They are confident that they will make it work, and they appreciate everything that the City has done to make it work.

Councilman Lamerson thanked Mr. Olsen and Ms. Ruffner, as well as the Board of the Foundation. He said that one of the things that concerns him is the understanding that sales tax revenues are 14% down and many of their state shared revenues, impact fees, etc. are down. He appreciated Councilwoman Suttles requested that it not be on the Consent Agenda because they are at a time in history where priorities have to be revisited. While he was confident of the community's desire to keep it functional, he voted against the budget because it included such things. He felt it was his obligation, and he had difficulty spending hundreds of thousands not related to public safety, although he did appreciate the public safety issue of the sprinkler system itself.

Councilman Bell asked Mr. Fenech how much the City had spent to date on the Opera House. Mr. Fenech said that in terms of capital, not including the annual amounts for operations, it was around \$1.4 million. That did not include this \$308,000, but it does include the original purchase price.

Councilman Luzius thanked Ms. Ruffner and Mr. Olsen, as well as the Foundation. He said that having lived in Prescott in the past and gone to the Elks as a child, he thought it was a fantastic idea that they bring this "lady of the city" back to its original state. He believed it would become an economic engine for years to come and something the citizens will be proud of. He said that he would be hard pressed to approve the contract without the sprinkler system being included.

Councilwoman Lopas said that the City has their Grand Dame, Elisabeth Ruffner, and the Grand Dame of the downtown was the Elks Opera House. He said that it is an investment in the City and something that will be an income generator in the future. She said that there will always be projects ongoing, and she was glad they had the Foundation in place.

Councilman Roecker said that he had an undying gratitude to the Foundation; the Opera House was part of Prescott's history and it needed to be supported. He said that he thought they were smart enough to do that without jeopardizing the basic services to citizens.

Ms. Ruffner reminded everyone that sales tax in the downtown area was only down 7%. She said that they live on people coming to the City and this project will make it bigger and better.

Mr. Kidd noted that Article 10 of the contract had been amended, addressing the insurance requirements, and everyone had received a copy of the amendments, which provide broader and better insurance coverage.

- I. Authorization of a Thru-the-Fence Access Permit for Yavapai College at Ernest A. Love Field, in the amount of \$900.00 per year, subject to annual increases.

Airport Manager Ben Vardiman said that this was a request to approve a Thru-the-Fence Permit (TTF) with Yavapai College to provide for access to the airport from the property owned by Yavapai College at the Career and Technical Education Center located adjacent to the North Ramp.

He said that this would allow them to develop an aviation related training program, with specific discussions having centered on the potential development of a helicopter mechanic training program.

He said that, as written, the permit would be for a period of twenty years and could be extended for one additional ten-year period beyond that date.

Councilman Bell asked if there were any TTF permits at the airport. Mr. Vardiman said that they had one with Wolfsburg Engineering and also one with CVID through a development agreement, although it was not active at this time.

Councilman Bell asked how the \$900/year compared. Mr. Vardiman said that it was comparable. He explained that FAA requires that any agreement be fair market value and this was based on the amount of land used.

Councilwoman Suttles said that they have issues with TSA at the airport, and asked if Yavapai College had to adhere to those rules. Mr. Vardiman said that they did; any time their personnel wants to come through the fence line they would have to comply, and also with the badge requirements.

- J. Authorization to purchase new radio-read water meters from Mountain States Pipe and Supply Company, in an amount not to exceed \$1,186,112.43.

Mr. Nietupski said that the majority of meters purchased through this will be for Phase 3 of the meter replacement program on Routes One and Five, and a small portion will go to inventory. He said that using radio technology, a productivity increase of ten times or more is anticipated over that of the present manual read method, and the conversion would also facilitate a reduction of meter reading staffing requirements when completed in 2013.

He said that three bids were received and the lowest bid was from Mountain States Pipe & Supply. He noted that this was just for purchase of the materials. The installation and repair would come back in two separate contracts that are now out to bid. He said that this will be financed through the WIFA financing issued a few years ago. He said that the financing was for \$2.5 million and there is currently \$1.5 million remaining.

Councilwoman Suttles asked if this was a different company than the one they tried to go with earlier, through Flagstaff's contract. Mr. Nietupski said that it is the same company, but the bid actually came in a little lower than if they had gone through Flagstaff's contract. Councilwoman Suttles said that she appreciated the Council sending this back out for bid.

Councilwoman Suttles said that Mr. Nietupski mentioned that this would eliminate one position, and asked if that position would move somewhere else. Mr. Nietupski said that it would not occur until around 2013 and if there was an opportunity to reassign someone, they would do that.

Councilwoman Suttles requested that this item also be pulled from the Consent Agenda as it was over \$1 million.

- K. Award of bid and contract to Fann Contracting, Inc. for the Zone 39 Phase II and III Project in an amount not to exceed \$2,959,209.00.

Mr. Nietupski said that this item was to award a bid and contract for construction services for improvements within the water system Pressure Zone 39, in the south part of Prescott. He said that it consolidated separately budgeted projects which will be constructed concurrently, consisting of Country Club Drive Street, Utility Improvements and Indian Hill Reservoir Replacement.

He said that seven bids were received with Fann Contracting coming in with the low bid. He noted that because the City is receiving ARRA funding, this has become a Davis-Bacon contract. He also noted that there will also be a contract with another firm to address the archaeological monitoring and reporting required by SHPO.

He said that Phase II may begin in August 2009 pending award of this contract; Phase III cannot begin until Phase I is completed. He said that the ultimate completion date was January 2011.

Councilman Luzius said that the memo referenced "removal of the four top feet" and asked if that had been discussed before. Mr. Nietupski replied that it had. He said that had been revealed long ago during the design development process. He said that it would be lowered to provide enough

square foot area for the tank and roadway, excluding the archaeological site.

Councilman Luzius asked if the gravity would still work with that lowering. Mr. Nietupski said that the elevation of the tank would be appropriate for the service application.

Jerry Smith-Fornara, 405 Park Avenue, said that when they had the first public meeting they asked what the completion date would be and never got an answer. She said that they have asked 50 different questions and never received their answers. She said that she was concerned that they have decided that Mr. Fann would be the person doing the job. She said that as long as she has known Mr. Fann, he has acted like a two-year old and they all need to think long and hard before giving him a project that could collapse. She asked how many water tanks Mr. Fann had built; she would like to see pictures of them. She said that he has never come in on a project with what he has said.

Debra Kaukol, 432 Shalimar Drive, said that when she traveled when she was young, they knew what roads were good. She said that roads are important in Prescott. In the bad economy they are in, raising the sales tax  $\frac{3}{4}$  of one percent would be bad. She said that they should eliminate the  $\frac{3}{4}$  of one percent increase and take the water tank money for Indian Hills and apply it to the roads. She asked Mr. Fann how many water tanks he had built and what his credibility was.

Mayor Wilson said that the City does not award contracts to people who are not qualified. Mr. Nietupski said that Fann Contracting is properly licensed. He said that he could not recall off-hand, but he would probably have a subcontractor provide most of the installation of the tank.

Ms. Kaukol asked if Mr. Fann had the resources for 300+ lawsuits when the tank collapses and if he would have the proper coverage. Mr. Nietupski said that they will have sufficient insurance. The contract requires performance bonds and they will have those in place.

Ms. Kaukol asked if they would be making a 30' wide swath when they start on replacing the water line like they did on Aubrey, or if they could use a smaller bulldozer to not impact the area to such degree. Mr. Nietupski said that the project would minimize the impact to the extent they can. They do not direct the contractor in that, other than define the project limits.

Mayor Wilson asked Mr. Fann if he had ever built a water tank. Mr. Fann, 454 Whetstine, said that they had been in business in Prescott since his father started it in 1960. They have overseen the construction of many

water tanks. They will be subcontracting with Paso Robles Construction out of California, who is a tank builder. He said that there are very few tank builders and no prime contractors that build tanks. He said that he would guess that everyone that bid the project would be subcontracting the tank portion of the project. Councilman Lamerson said that he would like to have a conference with his attorney after the meeting with regard to bridge contractors.

Bill Richards, 425 Fairway View Drive, said that on July 15 he routed a memo to the Mayor and Council members with a proposal. He said that he did not have time to read all of it, but did read a few excerpts. He said that they need to leave Indian Hill as is. They need to save and protect the existing storage and not tear down the existing tanks. He said that the most urgent needs are along the southwest ridgeway line, west of Hassayampa Village Lane.

Councilman Roecker said that he was confused on where Mr. Richards stood; he asked if he was in favor of the new tanks or not. Mr. Richards said that he mostly was not in favor of doing the project; however, conditions change and when this was conceived they had a good economic situation.

Councilman Roecker said that in looking at the numbers, he saw an Engineer's Estimate of \$5.5 million and they are able to build it for under \$3 million. He said that it sounds like they were getting a good deal because of the economy at this point in time.

Mr. Richards said that if the place where they need storage is along Copper Basin Road, then that was where they should be spending available funding.

Ms. Kaukol told Councilwoman Lopas that she was disappointed in her for laughing at the citizens. She said that they voted her in and they could vote her out. Councilwoman Lopas said that she was not laughing at her, but her comments were inappropriate and not on the agenda.

Councilwoman Suttles asked if the project started with the Fire Department making sure they were covered for fires. Mayor Wilson said that what started the project was when the City completed the water model. Mr. Nietupski said that the water model depicted the deficiencies within the City's water system, and Zone 39 is the heart of the system. He said that it is quite intricate in its operation and design. He said that they went through a number of evaluations of looking at alternate sites to find the most feasible location. To say that they did not do it prudently and without due diligence would be inaccurate.

Councilman Lamerson said that he was not comfortable doing business with someone that the City is currently in litigation with. Mr. Kidd said that there is stuff in the Procurement Code that addresses past experience. In this particular case, the determination was made to go with the low bidder. He said that he understood his concern, but they need to comply with their bidding procurement statutes.

- L. Adoption of Resolution No. 3983-1010 - A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to submit an application to apply for a Transportation Enhancement Program Sponsorship to the Federal Highway Administration through submittal to the Arizona Department of Transportation (ADOT) on behalf of Prescott Alternative Transportation for a proposed Gurley Street Roadway Project and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

City Traffic Engineer Ian Mattingly said that this item would authorize an application by Prescott Alternative Transportation (PAT) to the Federal Highway Administration through submittal to the Arizona Department of Transportation (ADOT) for a proposed Gurley Street roadway enhancement project to improve pedestrian and bicycle safety. He said that the resolution would ensure Prescott's commitment to act as the sponsoring agency.

Councilman Luzius said that he was hearing that the improvement is intended to go to Marina, but no where in the memo did it state the length of the project and they were not given a schematic of what it was going to look like. He said that he thought they should have all that information. He asked that it be pulled so they could get further information, as well as a schematic.

Mr. Mattingly apologized for not including the schematic, although the resolution was just to submit the application. While they do have the limits, they do not have specific details beyond the concept which was provided in the packet. He said that in general, the limits would be from Marina east to the 69/89 traffic interchange. He said that there would be a few improvements at the signal; however, no bike lanes would extend beyond the signal. There would be some route signing to aid in bikes and pedestrians.

Councilman Luzius said that his concern was with traffic calming and bike lanes; he did not want another Rosser Street. He said that he did not know how they could approve something if they did not know what it was going to look like.

Mr. Mattingly reviewed the process stating that they submit an application, and while it has some detail with cost estimates and a general outline of improvements to do, it does not require any hard design. They know that they want to modify the striping to maintain all existing thru-lanes, while adding bike lanes, and improve the pedestrian facilities. He said that part of the award would be to pay for the design which would specify what they would be doing. Through that process they would have time to review it.

Councilman Luzius asked what happened if they got the grant and completed the concept, and found the people do not like it. He asked if they would be forced to take it. Mr. Mattingly said that if the project concept was awarded, they would enter into an agreement with ADOT to pay for design and construction to go forward. Until they spend funds on the design or construction, they would not be obligated. If they go forward with design and then the Council was not in support, they would be responsible for what had been expended.

Councilman Luzius said that he was not against the bike lanes, but the fact that they have things in the roads, and along them, they need to know.

Councilman Roecker said that he had been out of town and did not have a chance to ask, but they had received a letter from a citizen, Adam Rowling, with a string of questions. He thought that would be a good place to start.

Mr. Mattingly then read the questions and responded to them:

1. *Even with bike lanes, how safe is it to have bike traffic going through the 69/89 interchange?*

Mr. Mattingly said that bike lanes are not anticipated or would not be installed under interchange.

2. *He asked who would be policing benches for transient activity?*

Mr. Mattingly said that while that was not his area, he would assume that the Police patrol Gurley Street and would continue to patrol that, but he could not speak to any additional enforcement.

3. *How much staff time has been used and how much will be used in future?*

Mr. Mattingly said that it has been minimal to this point. They met with PAT, the Transportation Coordinating Committee and had a field visit to provide enough measurements to determine what

improvements could be done. If Council does not want to go forward, they will not continue. He said that if they do go forward and were awarded the grant, the design would be paid for as well as administration and inspection.

4. *Why is this any different than the Grove Bike Lane Project where staff determined to not support it?*

Mr. Mattingly said that the Grove project was proposing to reduce a lane of traffic in each direction, and that was why did not support it. This project does not reduce the traffic lanes, it only narrows them, and they would still be standard widths.

5. *How will this affect parking along Gurley?*

Mr. Mattingly said that the only area with parking on street is between Marina and Pleasant. The roadway there is wider; however, in looking at it, and if bike lanes continued through that area, parking would need to be eliminated on one side. That leaves them two options in the design phase. They could stop the bike lanes at Pleasant, and if the property owners have an issue with that, that is what they would do.

6. *Have you discussed this with any property owners along Gurley?*

Mr. Mattingly said that as there has been no proposed right of way takes, and they are at the concept phase to go forward with the application, they have not had specific meetings with any property owners in that area. They fully intend to do that through the process assuming that they go forward with the application. That would entail quite a bit of staff time and they did not want to do that if there was no interest.

7. *Will any improvements be done in front of PAT's offices?*

Mr. Mattingly said that there are no special improvements planned in front of PAT, other than restriping and any incidental sidewalks repairs that may or may not be there. He said that one of the things they are going to do is fix panels as they go.

8. *How much work is PAT receiving for its work on this project?*

Mr. Mattingly said that he could not speak for them, but they were in the audience and could address it. As far as he was aware, there was no money in this for them and he knew that through the TEP

process, they do not administer the contract; the City would be the sponsoring agency.

9. *How much have you spent on labor and research?*

Mr. Mattingly said that beyond staff time, which has been minimal, there have been no out-of-pocket expenses.

10. *The packet says that “no study is necessary because turn lanes and travel lanes will remain unchanged.” Without a study how can the City of Prescott know that traffic and parking will remain unaffected after these proposed changes?*

Mr. Mattingly said that through field visits and measurements staff has determined that the existing roadway widths can accommodate the addition of bike lanes while still maintaining acceptable lane widths. Therefore, no additional studies would be needed.

11. *Will the City have to supply water to landscaping?*

Mr. Mattingly said that in the concept they pitched a cost for landscaping. He felt that as an entryway to the City, it might be of interest to the Council or management to improve those, so he did include some costs. Maintenance of those, trimming, water, would fall on the City. If they do benches or landscaping they will have to maintain them, but that is a choice to be made during design process.

Mr. Mattingly said that this process is very preliminary, and they will let them adjust the cost estimate up and down, so long as the concept remains the same.

Councilman Lamerson said that he was glad to hear there were no plans for bike lanes in the interchange. He said that he has nothing against bikes, pedestrians, horses, etc. but he does think there are appropriate areas for them. He said that the City has evolved; it was not planned at one time. He said that this area is a truck route, bus route, has industrial uses, and he sees such things as an attractive nuisance. He said that the minute they make it more attractive it will encourage them, and he does not support it.

Councilman Bell asked Mr. Mattingly if he had reviewed the application form. Mr. Mattingly said that the application has been completed by PAT; he approved the cost estimates, and at this point it has been turned over to CYMPO who will have to support it and pitch it to ADOT. He said that PAT has contacted CYMPO and the City is turning in the preliminary cost

estimate. He said that he has not read the entire application, but will do so after CYMPO reviews it.

Councilman Bell asked if the application form committed the City as a sponsor. Mr. Mattingly said that if they approve the resolution, it states that the City is willing to become the sponsoring agency. They are not committed until Federal funds are received.

Councilman Bell asked, if they were to become a sponsor, what the estimated total financial impact to the Council would be. Mr. Mattingly said that based on preliminary cost estimated, the hard cash would be \$21,500, based on a project amount of \$380,000. He said there is a \$5,000 ADOT review fee and environmental can run between \$20,000 to \$40,000; he threw in \$20,000 as he does not anticipate any cost there.

Councilwoman Lopas said that this is the gateway to the City and anything that enhances it is a good idea. She said that bike lanes have been very successful and she hopes they can at least take it down the road a little further.

Mayor Wilson asked Mr. Knaup, co-chairman of the Mayor's Bicycle Advisory Committee, to address the Council and public and comment. Mr. Knaup said that he was not a traffic engineer but bikes are used on Gurley Street now. He said that people are working there now; pedestrians are walking up and down Gurley Street even though there are not sidewalks all the way. He said that Gurley Street is in the application because they met with TCC and members of PBAC, and it ranked highest on the collision report. They have problems with the streets and anything they can do to make them safer is a win/win.

He said that if they remember back to the Grove project, PAT wanted to submit an application for an enhancements grant and they were told that there needed to be a process followed, and that is what they have done, working with the City and TCC. He said that they chose Gurley Street as a potentially multi-phased project and this would be the first phase. If they examine the length to the City limit up by Thumb Butte, there is an area where there are no sidewalks and there is a lot of pedestrian use, then they move into West Gurley where there are sidewalks on one side with giant lightpoles. He said that there is an area by Prescott College and Lincoln School where there is funny intersections.

He said that they chose this part of Gurley because of all the activity at 69/89, to continue the visual appearance of things coming into town.

Councilman Luzius said that this was not described in the memo; he has said they need pedestrian access through that intersection. He said that

this enhances that project. He said that Prescott Valley has taken great advantage of these same grant applications. He said that in that way this is a good thing and they need to know more.

Councilman Lamerson asked if there were any documented incidents where bicycles and pedestrians have had problems with bicycles on sidewalks. He said that he noticed going home every day on Copper Basin that there are bike people riding their bikes on the sidewalks, off the road. He said that it is not a safe road for bicyclists. He said that it is his opinion that bikes and vehicles do not mix as well as perhaps bikes and pedestrians, and they should direct their efforts toward multipurpose lanes.

Mr. Knaup said that safety was their greatest concern, too. They have a great deal of resources to them to explain that bicyclists would be safest when on the road, participating as a vehicle. Of course, they would be safest on an off-road path where they had no chance for conflict, but the ability to put a path like that along Gurley or Sheldon is not feasible. He said that there is room for sidewalks; there are a lot of pedestrians that have to get to low-paying jobs at the motels in that area.

Mr. Knaup said that every time he sees a bicyclist riding down a sidewalk in Prescott, it sends two thoughts through his head. First, they are not doing a good enough job on education because a sidewalk is not a safe place for a bike to ride; motorists do not expect to see bicyclists on sidewalks so all too often the typical sidewalk accident is someone pulling out of their driveway not looking for cross-traffic.

The other thing is that it is a good indicator that the area does not have safe enough streets that they do not feel safe on the streets. That is why there are bike routes on Moeller and Willis to keep bikers in less areas of conflict. He said that it was important that all citizens have the ability to travel safely.

Mr. Knaup said that Councilman Luzius mentioned Prescott Valley and he would suppose that they had a City staff person responsible for applying for those grants. In Prescott, they do not have staffers applying for grants. In the meantime, PAT is doing it as a volunteer service to the community and he appreciated their legwork.

Al Williams, Chairman of the Transportation Coordinator Committee, said that he could reassure the Council members that with three professional traffic engineers (retired) on their committee, they have looked at this project very closely.

As was mentioned, when Grove came up they were opposed to it but they support this project. He said that early in his career, in Eugene, Oregon, he was responsible for implementation of one of the best bike programs in the country. When it started, there was a lot of doubt, but the program got off the dime by the mayor breaking a tie vote. Since that time, it has progressed to be one of the better programs in the country.

He said that one thing he has learned is that they cannot dictate people to be riding on a sidewalk. The serious biker would not do that. They will do it at locations where a multiuse path has been provided such as near the interchange. He said that this will continue that pedestrian/bike multipath way in a manner that provides a route on the street toward the downtown, and eventually out to Thumb Butte. He said that this is the first phase of their proposals.

He said that TCC, PAT and PBAC has had a lot of discussion, and they did not enter into their decision lightly to make this the top project. He could assure them that while there is not anything to guarantee a safety element, he would rather see bikes on the street in a marked lane than have them on the sidewalk.

Councilman Roecker asked Mr. Williams to address Councilman Lamerson's thought that if they attract them to this area it creates more of a problem. Mr. Williams said that it would be nice if that held water, but it does not. Individuals not comfortable riding on streets do not do it. Those that want to use that route are using it now and will continue to do so, regardless of this project. He has found that they are better off providing the capability of riding in the bike lanes. They have a responsibility to do what they need to in the bike lane.

Mayor Wilson said that he was encouraged that when they were first turned down on the Grove project for not having a process, that they have now created a process. They now have collaboration between private organization and two City committees, and it will enhance safety. He said that he thought it was something beneficial and overdue.

Mr. Williams said that this was only the preliminary process, and it was a backwards thing. He said that the Council, in the end, will have the final say, but it will be after a very good review process by professionals on advisory committees and many public meetings. He said that he thought this was a way to improve the gateway into the City and make a statement that Prescott does support bike facilities.

Councilman Luzius thanked Mr. Williams and said he was glad to hear that the TCC supports the project. He said that the issue is accommodation, and they need to accommodate all of the citizens.

Councilman Lamerson thanked Mr. Williams for his expertise and said he appreciated him and his comments. He said that he would concede that he was probably right that bikes do not belong to the sidewalk, but he also believes that there are areas within the City that are not appropriate for bikes.

Mr. Knaup said that he wanted to reinforce the idea that as a taxpayer in Prescott, the funds go to Washington, DC to be divided up. They do have a chance of getting it if they do not apply. What PAT is doing is casting a lure into the pond. He said that they made similar attempts three or four times before they were successful in obtaining funding for the Peavine Trail, and now it is an incredible asset to the City. He said that this was another chance to bring tax dollars to Prescott and keep people working.

Lisa Barnes, 1513 Linwood Avenue, said that she wanted to state strongly why Gurley was chosen; it was not just by PAT, but by TCC and PBAC recognizing there is a high number of bikes and pedestrians using Gurley. She said that they saw Gurley as a long-term project. She said that the multi-use path is great, but as it comes into town it stops and they will be dumped into the dangerous roadway unless there is a way to move them into town. They are looking at this project as a way to move them through town. She said that this was a primary east/west route and people are going to take the shortest route.

She said that she also wanted to comment that the collaborative nature of the process was very satisfying. They have all gotten to know each other better, and find that they are not enemies but want to work together to meet the needs.

Adam Rowling, 325 East Gurley, said, with regard to collaboration, they never asked any of the business owners. He said that they have been property owners in that area for five years and do not see the traffic they talk about. He said that bikes do go by but to allocate that much infrastructure to such a small percentage does not make sense. He said that they have had benches in front of his business and they get campers using them. He said that the Police have better things to do than chase away people on benches.

He said that there was one thing he liked, the ramps for the sidewalks to the streets as they need to help people in wheelchairs. He said that they are one of the businesses that would lose parking, and they would not want that taken away. He said that he does not want skinnier lanes and this is a luxury they do not need.

Sandy Griffis, Yavapai County Contractors Association, said that if the resolution is passed and the money is obtained, by the time they get public buy-in there is no design criteria established. She asked if there was a time frame to spend the money.

Mr. Mattingly noted that this was a reimbursement project, but they allow 36 months.

Councilwoman Suttles said that in listening to the discussion, this is simply asking the Council to apply for the grant. Mr. Mattingly said that by approving the resolution they would become the sponsoring agency, which is required because PAT cannot act in that capacity. The City would have to spend the money up front and then be reimbursed.

Councilwoman Suttles said that in looking at the resolution to apply for reimbursement for the design, everything she has heard sounds good. The biggest question she has is whether the money will be there in the three years to finish the project. Mr. Mattingly said that it would as long as the Federal government was intact.

Mayor Wilson said that they would be getting into it up until they accept the Federal funds, but there is no free lunch. If they do the design and decide not to go forward, they would not get reimbursed.

Councilwoman Suttles asked what the estimate of design was. Mr. Mattingly said that based on the formula used with the application, and based on the project outlined, it would be around \$45,000, however, they have asked for design in-house. If they could get reimbursed for staff time, their risk goes down.

Councilwoman Suttles asked if they still plan to work with the property owners. Mr. Mattingly said that if the application is awarded they will have time to have meetings with the public to get their feedback. Councilwoman Suttles said that it was important that they do not chase away the property owners; they need to have their buy-in.

Mayor Wilson noted that Ms. Hadley had to leave and Mr. McConnell was filling in her seat.

Councilman Lamerson asked how wide Gurley was currently. Mr. Mattingly said that within this area there are four different widths, but it has been determined that aside from the area east of Pleasant, it is sufficient width for four travel lanes, one center turn lane and bike lanes.

Ms. Ruffner said that she did not think that PAT was boasting enough. She said that it was because of them that the 10 foot wide lane has been

established. PAT applied for that and got it and it is an improvement in their City that cannot be overlooked. She said that they need to enhance east Gurley because it is the entrance into the City.

M. Water Infrastructure Finance Authority of Arizona (WIFA) Funding:

Mr. Woodfill said that in April or May the Council authorized debt on seven public works projects. He said that they applied to WIFA for financing of those projects and what they have before them today is acceptance of the loan on five of them.

He said that the resolutions authorize the loans and appoint the Mayor as the person responsible for executing them.

Councilman Roecker asked what rate they would be at. Mr. Woodfill said that he did not know for sure as they would not know that until they close, but it should be around 3 ¾ percent

Councilwoman Suttles asked if Resolution No. 3985-1012 should be pulled since it was for Zone 39. After brief discussion, it was agreed that it should be pulled from the Consent Agenda.

1. Adoption of Resolution No. 3984-1011 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) for the Airport Water Mains Project, through the Drinking Water Program with ARRA Funding #92A154-10, and authorizing the Mayor and staff to sign any and all WIFA funding documents pertinent to said project. (\$3,591,880 with \$2,155,128 forgivable principal)
2. Adoption of Resolution No. 3985-1012 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) for the Zone 39 Water Improvements Project, through the Drinking Water Program with ARRA Funding #92A166-09, and authorizing the Mayor and staff to sign any and all WIFA funding documents pertinent to said project. (\$8,998,096 with \$4,000,000 forgivable principal)
3. Adoption of Resolution No. 3986-1013 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) for the Wastewater Improvements Project, through the Clean Water (Wastewater) Program #910122-

10, and authorizing the Mayor and staff to sign any and all WIFA funding documents pertinent to said project. (\$6,573,506)

- N. Notice of Public Hearing (July 28) and consideration of a liquor license application for a Series 12, Restaurant, license for Taj Mahal located at 124 North Montezuma.

Ms. Burke said that this was notice of a Public Hearing scheduled for next week for a new Series 12 liquor license for Taj Mahal at 124 North Montezuma. She said that the property has been posted, there have been no public comments received and the applicant had been requested to attend next week's meeting.

- O. Approval of Change Order No. 1 in the amount of \$50,000.00 with Jones, Skelton and Hochuli for outside counsel in Asphalt Paving and Supply v. Granite Dells Estates Properties, Inc..

Mr. Kidd said that this is a request to extend the contract with outside counsel for the AP&S v. Granite Dells Estates/City of Prescott bid dispute. He said that both of the other parties are represented by specialty counsel and the City has never handled a dispute like this, so their experience is very limited. He said that his office has been involved to the extent they can be. He said that the other issue is a potential conflict of interest because the city attorney and members of staff could be called as a witness. Mr. Kidd then reviewed some ethics opinions regarding the potential conflict of interest.

Mayor Wilson said that they were asking for attorneys fees from AP&S because they were dragged into the case. Mr. Kidd said that was correct; they requested attorney's fees because they did not feel they were a proper party.

Councilwoman Suttles said that it was a hard decision the first time at \$75,000 since they never were the problem. They were trying to issue a contract to get it started. She said that they have two developers who cannot agree on what is to be done. They have spent \$75,000 and the city attorney is now asking for another \$50,000 on a \$17 million project that they cannot get started. She said that she would be voting no. She said that the city attorney has done what he has been told. Perhaps they got into this too soon and dug themselves a hole but it feels like they were putting more money into a black hole. She said that she would not be at the meeting next week, but she would be participating telephonically.

Michael Allan Peters said that he met with Mr. Kidd today and reviewed some limited documents. He said that it was a complex litigation. Just today Mr. Kidd assembled the lawyer's invoices for the funds expended

already and he has not had a chance to read them, but he would suggest that all of the Council members review them.

He said that through June 12, 2009 they had expended \$61,000, leaving them \$14,000 which may be pending. He said that the judge does have under advisement a decision to be made, and the City does have an opportunity to recover attorney's fees and costs if the cross claim pending and being decided by the judge is collected.

He said that the other item of whether Mr. Kidd is a necessary witness or not, under Arizona Ethic Rule 3.7, only becomes an issue when he would be a necessary witness as defined in the statutes. He found it curious of Mr. Kidd, not being derogatory of Mr. Kidd or employment of technical counsel, that he has participated up to this point and has yet to be called or challenged by anyone. He said that there is a possibility that there could be a waiver of him being precluded from continued representation and still being a witness.

Then there becomes the issue of whether there is a conflict of interest. He said that lawyer still can be a witness, except in situations involving a conflict of interest. Whether there is a conflict would arise only when the Council had been put on notice as to what the conflict might be adverse to the City's benefit. He mentioned to Mr. Kidd that it might be a good idea to put in writing for the Council's consideration what those issues are, for their evaluation or consideration.

Mr. Peters said that his suggestion would be to pay the lawyer's fees owed through the judge's decision. He would withhold further advancement of the \$50,000 because those would be related to appeal and possibly a counterclaim filed by Mr. Fann's business. Then they could reevaluate the request by the outside technical counsel.

- P. Approval of minutes of the Prescott City Council Joint Voting/Special Meeting of June 23, 2009, the Study Session of July 7, 2009.

No discussion.

- Q. Selection of items to be placed on the Regular Voting Meeting Agenda of July 28, 2009.

Councilman Bell stated that the items on the Consent Agenda would be: B, C, D, F, G, I, M1, M3 and P. The remainder would be on the Regular Agenda.

**III. ADJOURNMENT**

There being no further business to be discussed, the Study Session of the Prescott City Council held on July 21, 2009, adjourned at 6:32 p.m.

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JACK D. WILSON, Mayor

ATTEST:

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ELIZABETH A. BURKE, City Clerk