



PRESCOTT CITY COUNCIL STUDY SESSION AGENDA

**PRESCOTT CITY COUNCIL
STUDY SESSION
TUESDAY, JULY 21, 2009
3:00 P.M.**

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

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

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION:** Pastor Eunice Webb, Genesis
- ◆ **PLEDGE OF ALLEGIANCE:** Councilman Luzius
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

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

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

I. PRESENTATION

- A. [Presentation by Barbara Gilliss, Chairman of the Prescott: Arizona's Centennial City Committee, on Committee activities.](#)
- B. Presentation of Fourth of July Activities Wrap-Up video.

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

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

- 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.
- 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.
- 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.
- M. Water Infrastructure Finance Authority of Arizona (WIFA) Funding:
 - 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.
- 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.
- P. Approval of minutes of the Prescott City Council Joint Voting/Special Meeting of June 23, 2009, the Study Session of July 7, 2009, and the
- Q. Selection of items to be placed on the Regular Voting Meeting Agenda of July 28, 2009.

III. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

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

Elizabeth A. Burke, City Clerk

I-A

COUNCIL AGENDA MEMO – (07/21/09)

DEPARTMENT: City Clerk - Boards/Commissions

AGENDA ITEM: Report by Chairman Gilliss of the Prescott: The Arizona Centennial City's Committee

Approved By:

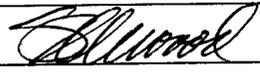
Date:

Department Head: Elizabeth A. Burke, City Clerk

07/16/2009

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/16/09

Summary

Report to be given by Chairman Gilliss of the Prescott: The Arizona Centennial City Committee.

Background

As you will recall, earlier this year the City Council appointed a Prescott: The Centennial City Committee to address the City's participation in the State's upcoming centennial activities of 2012. Chairman Barbara Gilliss of the Committee will be making a presentation on the Committee's activities. Additionally, she has requested that the attached documents be distributed to you prior to the meeting.

Recommended Action: No action required.

PRESCOTT: THE ARIZONA CENTENNIAL CITY COMMITTEE

Category: Advisors (Non-voting)

Name	Affiliation	Address	Phone/E-mail
Dennis Garvey, Dean, Division of Lifelong Learning	Yavapai College	1100 E. Sheldon Prescott, AZ 86301	(928) 445-7300 dennis.garvey@yc.edu
Vacant Center for Extended Studies and Lifelong Learning	Prescott College	220 Grove Avenue Prescott, AZ 86301	(928) 350-4110
William (Bill) G. Thompson Director of Alumni & External Relations	Embry-Riddle Aeronautical University	3700 Willow Creek Rd Prescott, AZ 86301	(928) 777-6961 or 777-4201 Cell (928) 830-0897 thompsb@erau.edu

Category: Agency Representatives

Nancy Burgess Preservation Specialist	City of Prescott	P.O. Box 2059 Prescott, AZ 86302	(928) 777-1318 nancy.burgess@cityofprescott.net
Councilman Bob Bell (Council liaison)	City of Prescott	P.O. Box 2059 Prescott, AZ 86302	(928) 777-1352 bob.bell@cityofprescott.net
Deborah Thurston, President (works @Phippen Museum)	Prescott Area Arts & Humanities Council (PAAHC)	4701 Hwy 89 North Prescott, AZ 86301	(928) 778-1385 echodesignz@gmail.com
David Maurer CEO	Prescott Chamber of Commerce	117 W. Goodwin Prescott, AZ 86303	(928) 445-2000 dmaurer@prescott.org
Lindsey Mills	PACT, Independent production	P.O. Box 2274 Chino Valley, AZ 86323	(928) 636-0695 Lindseym68@gmail.com
John Langellier, Ph.D., Director	Sharlot Hall Museum	415 W. Gurley St Prescott, AZ 86301	(928) 445-3122 ext 12 john@sharlot.org

Category: Professionals

Elisabeth Ruffner	Historian	1403 Barranca Drive Prescott, AZ 86303	(928) 445-5644 Elisabethf19@aol.com
Patti Ezell	Public Relations/ Marketing	PO Box 25907 Prescott Valley, AZ 86312	(928) 420-0525 Highlandsmarketing2000@yahoo.com
Dr. Barbara Gilliss	Management Consultant	1989 Haven's End Prescott, AZ 86305	(928) 717-0680 Gilliss@cableone.net

Category: Citizens at Large

Don Shaffer		4645 Aldrich Drive Prescott, AZ 86305	(928) 710-0061 dishaffer@cablone.net don.shaffer@azmoves.com
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Burke,Liz

From: John Langellier [john@sharlot.org]
Sent: Friday, July 03, 2009 2:47 PM
To: 'Barbara Gilliss'
Cc: 'Robert Kravetz'
Subject: Letter of Resignaiton

July 3, 2009

Barbara Gillis, Ph.D.
Chair
City of Prescott Centennial Committee
1989 Haves End
Prescott, AZ 86305

Dear Dr. Gillis:

It is with deep regret that because of family health issues I must reduce my outside activities for the foreseeable future. As such, I must respectfully resign from the City of Prescott's State Centennial Committee.

I will continue to serve with the Arizona Historical Advisory Commission and will continue to d my utmost forward information from this group to your committee. Thank you ever so much for conveying this news to City officials.

Sincerely,

John P. Langellier

John P. Langellier, Ph.D.

7/15/2009

Burke,Liz

From: Barbara Gilliss [gilliss@cableone.net]

Sent: Friday, July 10, 2009 8:53 AM

To: 'Barbara Gilliss'

Subject: Karen Churchill Bio

Karen L Churchill (short Bio)

Karen Churchill is a native Arizonan who has worked at the Sharlot Hall Museum in several capacities including Managing Editor of the Museum's press, Coordinator of Volunteer Services, and now Coordinator of Curriculum and Instruction. In addition, she teaches art history and humanities courses at Yavapai and Prescott colleges and Embry-Riddle Aeronautical University.

Believing in the importance of community engagement she has served on numerous boards, including the Greater Dallas Quincentennial Committee, and locally on the Prescott Area Arts and Humanities Council and the Friends of Yavapai College Art.

Prior to returning to her beloved Arizona, she worked as a curator at The Cleveland Museum of Art and was the director of museums/galleries at East Carolina and Southern Methodist universities. Churchill earned degrees at Colgate (A.B. English), Arizona State (M.A. Art History), Southern Methodist (M.A. Arts Administration/M.B.A. General Business) universities. She did her doctoral work at Case Western Reserve University in Art History and Museum Studies and was an Andrew Mellon Fellow at that institution.

D R A F T
July 2009

City of Prescott Arizona Centennial Committee

Mission Statement

Note: The following statement encompasses directives from the City of Prescott's Resolution #3947-0953, establishing Prescott's "Arizona Centennial City Committee" plus the Arizona Historical Advisory Commission's "Arizona Centennial Plan Summary," and the Arizona Centennial Commission's "Strategic Plan Outline" (in as succinct a form as possible!).

MISSION STATEMENT:

To highlight the Arizona Centennial through identifying and assisting with development and implementation of City Council approved enduring and educational "Legacy" as well as other projects and events which inspire an appreciation of Arizona's past, celebrate its present, and provide for its sustainable future, and which stimulate awareness, participation and education by showcasing all parts of the City's growth and development, from its rich, historic frontier beginnings to the 21st century.

These goals will be accomplished by: 1) initiating and maintaining communication with city-wide entities to provide information and support for their involvement in Arizona Centennial activities; 2) making available through a City web site, a master calendar of and information about city-wide events; 3) maintaining a continuous liaison with both the Yavapai County Centennial committee and the Arizona Centennial Commission; and 4) providing meeting space as available and funding support as approved by the City Council from the City of Prescott Transient Occupancy Tax, plus obtaining assistance and funding from the Arizona Historical Advisory Commission.

City of Prescott: AZ State Centennial Committee
Community Outreach Request

Yes, I/we want to receive information about participating in City of Prescott State Centennial projects/events.

Name: _____ e-mail address: _____

Name of Organization _____ Phone: _____

Please complete below if different from above:

Name and Title of Organization Director: _____

e-mail address: _____ Phone: _____

Return or e-mail to: Don Shaffer. djshaffer@cableone.net Thank you.

City of Prescott: AZ State Centennial Committee
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Name of Organization _____ Phone: _____

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Name: _____ e-mail address: _____

Name of Organization _____ Phone: _____

Please complete below if different from above:

Name and Title of Organization Director: _____

e-mail address: _____ Phone: _____

Return or e-mail to: Don Shaffer. djshaffer@cableone.net Thank you.

Meeting with Tim Wiederaenders, Managing Editor
Prescott Newspapers, Inc.
1958 Commerce Center Circle
July 9, 2009; 10:00 am

Proposed Arizona Centennial Legacy Project

A. Proposed Legacy Project (see Proposal, p. 1)

B. Project Considerations (see Proposal, p.2)

Additional Considerations:

Re publication:

- ownership Identification of publisher; copyright
- excerpts Length of stories vs. articles (possible
- (whose?) Possible use of Web Site for full story
- accuracy Identification of Editor(s) – language,
- (Aug or Sept.) vs. Centennial Day Timing of book release – pre-Christmas
- articles Competition with current SHM “Days Past”
- logo?) Location/identification in paper (use of
- Other?

Re content:

- Outline for 52 (?) Chronological stories
- Identification of stories
- Selection of authors
- Inclusion of photos
- Other?

C. State Guidelines for Legacy Projects (see AHAC Application)

- Question re “Education” requirement

Arizona State Centennial Celebration
Outline of Organizations and Events
June 2009

AZ Historical Advisory Commission (AHAC): www.azcentennial.gov

1976 – Established by ARS 41-1352

- Administered under: AZ State Library Archives and Public Records, Gladys Ann Wells, Director
- Membership: Experts in various fields of history and historic preservation; appointed by the Director, plus six statutory members
- Purpose: to preserve AZ history and culture of the state

Feb. 14, 2005 – Duties added by Senate Bill #1433, Signed by Gov. Napolitano

- Responsible for coordinating statewide Plan for the 2012 Centennial Celebration
- Plan to include:

Establishing and defining “Legacy Projects” – which require following elements:

- Reflect AZ history
- Be available to large numbers of users
- Demonstrate collaborative planning
- Include educational component
- Plan for implementation

[Note: Includes authority to require applications and to award designation (which authorizes use of AHAC Centennial logo)]

Providing Web-site and promoting/disseminating information re projects/events

Stimulating local government entities to:

- mobilize their communities
- identify projects

2007 – Amended membership

- Increased number from 20-25
- Added two statutory members: Arizona State Office of Tourism; Superintendent of Public Instruction

AZ Centennial Commission (ACC): www.arizona100.org

June 16, 2008 – Established by Executive Order #2008-24, signed by Gov. Napolitano, witnessed by Secretary of State Brewer

- Administered under: Arizona Office of Tourism (AOT), Karen Churchard, Asst. Deputy Director, AOT; Director, ACC
- Purpose: To enhance the Centennial Plan developed by AHAC

- Mission: To plan, promote, and implement a comprehensive, statewide plan to insure a meaningful and memorable Centennial celebration.
- Vision: Inspire Arizonans to:
 - Appreciate the state's rich past
 - Celebrate the present, and
 - Create a vibrant and sustainable future
- Duties: To plan, promote and implement state and local observances of Arizona's Centennial held between February 2011 and February 2012.

Yavapai County Arizona Centennial Committee: www.yavapai100az.org

January 26, 2009 – Established by County Resolution #1691

- Membership: Three members from each of the three County Districts
Chair: Retired Judge Janice Ann Sterling
- Mission:
 - Identify, approve, and assist with development of county-wide projects
 - Provide a web-site and master calendar for dissemination of information
 - Provide liaison with ACC and AHAC

Prescott: AZ Centennial Committee

December 16, 2008 – established by City Resolution #3923-0929

March 24, 2009 – above repealed, original confirmed with two additional members added

- Membership: 11 members to include:
 - Agency Representatives --. City of Prescott, Prescott Chamber of Commerce, museums, art community representative
 - Professionals – historian, media representative
 - Plus Advisory Members – Prescott College, ERAU, Yavapai College
- Mission:
 - Identify and assist with development of:
 - One or more Legacy projects -- to be approved by Council and State agency
 - Other projects and events by community organizations and individuals throughout the City to showcase the City's growth and development from historic beginnings to the 21st century.
 - Request state designation as "Prescott: The Arizona Centennial City"
 - Provide a web-site and master calendar for dissemination of information
 - Coordinate activities with the County and ACC

Burke,Liz

From: Barbara Gilliss [gilliss@cableone.net]

Sent: Monday, July 13, 2009 12:01 PM

To: 'Karen Churchard'

Subject: RE: State Centennial Stamp

Karen,

We'd be delighted to have you with us. The City Centennial Committee meets the 3rd Monday at 1:00 pm in the City Council Chambers. The August meeting will be the 17th, and City Hall is located at the corner of Cortez and Goodwin Streets, opposite the Post Office and diagonally across from the Court House Plaza.

Please let me know if you will be able to make it, as I would like to put you on the meeting agenda – to speak with us about any topic you think would be of benefit. None of our committee was able to attend your recent conference at the Kierland, so you may want to bring us up to date on what was shared there about Centennial planning. Susan Shepman from our Prescott Area Coalition for Tourism was to attend, but I haven't yet heard back from her about that session.

You might also be able to fill us in on the progress re the State Stamp. Although we're assuming the Post Office will plan to issue the stamp in Phoenix on the Centennial Date, we're wondering about the possibility of have the design revealed, which apparently takes place some weeks ahead of the actual issuance, here in Prescott. We're also contemplating First Day Cover and cancellation stamp involvement. Any information you can give us on coordinating with state plans would be helpful.

I also have a question about the state Centennial logo. I believe your agency already has one designed, however another is anticipated directly from AHAC? Or is it the reverse? In any case, the Yavapai County Centennial committee is currently identifying their logo, and we at the City are in the process. Some clarification on the intended uses of the logos at the state level could be helpful for us to determine how to best incorporate local applications.

You might also be able to clarify local applications for Legacy and other projects. Both the City and the County committees are exploring projects, including how to identify and designate them as well as market them – including how to make use of the state web site for recognition and publicity. Although it may be a bit early for this, some directions could be useful.

Those are topics of interest which come to my mind at the moment. I'll let the committee members know that you may be joining us, and they may have other topics they would like to discuss. You likely have other or additional information you would like to share with us. We will be interested in hearing from you on any and all topics.

Thank for suggesting the visit. We will look forward to having you here. If I can forward any information which would be helpful to you before your visit – perhaps our last two or three meeting minutes, for example, a copy of the City Resolution establishing the committee, our Mission Statement, or other documents to acquaint with our directions so far, I would be happy to do that.

Looking forward wit hearing from you and working with you, Barbara Gilliss

7/15/2009

P.S. I neglected to respond to your earlier request for information about the County Centennial Committee meetings. My apologies. The County meetings are held on the 4th Mondays at 10:00 am. They are most frequently held at the County Building on Fair Street here in Prescott, but they are also, from time-to-time, held in other areas of the county. As far as I know, the July 20 meeting will be held in Prescott, and the August 24 meeting is scheduled for Cottonwood.

You may want to directly contact the committee chairman, Retired Judge Ann Sterling, or Julie Ayers, County Administrator, who is working closely with the committee. Ann's e-mail is stirling@cableone.net and Julie's is julie.ayers@co.yavapai.az.us. Ann and Julie and I, along with another City Committee member, are meeting to begin discussing coordination of efforts between the two committees. Elisabeth Ruffner, member of our City Committee is also a member of the County Committee. In addition, Nancy Burgess, City staffer and Historic Preservation Specialist, and I, attend the County meetings regularly.

Let me know if there is anything I can do make your visit more profitable for you and for us. We appreciate your time and interest. Thank you, bg

From: Karen Churchard [mailto:kchurchard@azot.gov]
Sent: Monday, July 13, 2009 10:45 AM
To: Barbara Gilliss
Subject: RE: State Centennial Stamp

Barbara – Unfortunately, I'll be out next week. However, I'd like to attend the August meeting, current schedule permitting. When available, please forward the date, time and locations.

Many thanks!

Karen

Karen Churchard
 Assistant Deputy Director
 Arizona Office of Tourism
 1110 W. Washington St, Ste. 155
 Phoenix, AZ 85007
 p: 602.364.4158
 m: 602.510.9394
 f: 602.364.3701

From: Barbara Gilliss [mailto:gilliss@cableone.net]
Sent: Wednesday, June 17, 2009 12:22 PM
To: Karen Churchard
Subject: RE: State Centennial Stamp

We'd be pleased and honored to have you. Our July meeting will be the 20th, if that suits you. If not, we'll make it whenever it works. Thanks again for your interest and support. Barbara Gilliss

From: Karen Churchard [mailto:kchurchard@azot.gov]
Sent: Wednesday, June 17, 2009 11:41 AM
To: Barbara Gilliss
Subject: RE: State Centennial Stamp

7/15/2009

Glad to help. Also, I'm interested in attending a future meeting to provide updates, Q&A about the state commission, etc. If the committee is interested please contact me to schedule. I'd also like to attend the Yavapai meeting – however, won't be able to make the June 22nd meeting.

Are you on both committees?

Karen

Karen Churchard

Assistant Deputy Director
Arizona Office of Tourism
1110 W. Washington St, Ste. 155
Phoenix, AZ 85007
p: 602.364.4158
m: 602.510.9394
f: 602.364.3701

From: Barbara Gilliss [mailto:gilliss@cableone.net]
Sent: Wednesday, June 17, 2009 11:33 AM
To: Karen Churchard
Subject: RE: State Centennial Stamp

Thank you, Karen. We very much appreciate your assistance and consideration. Barbara Gilliss

From: Karen Churchard [mailto:kchurchard@azot.gov]
Sent: Wednesday, June 17, 2009 11:13 AM
To: john@sharlot.org
Cc: Barbara Gilliss
Subject: RE: State Centennial Stamp

John and Barbara – I'm in contact with USPS and according to David Failor we won't start working with the USPS until late 2010 or early 2011 for a centennial stamp release in February 2012. I will keep you posted...but don't expect to hear much from them until we are "officially" designated as one of the stamps for 2012. That said, I have no doubt we will receive this designation as the USPS has always included major milestone dates for all states.

Eventually, the USPS will ask that we develop a centennial stamp committee. When that time comes, I'll make sure that Prescott is included.

Karen

Karen Churchard

Assistant Deputy Director
Arizona Office of Tourism
1110 W. Washington St, Ste. 155
Phoenix, AZ 85007
p: 602.364.4158
m: 602.510.9394
f: 602.364.3701

From: John Langellier [mailto:john@sharlot.org]
Sent: Monday, June 15, 2009 3:48 PM
To: Karen Churchard
Cc: 'Barbara Gilliss'
Subject: State Centennial Stamp

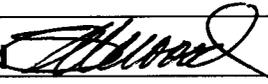
Karen:

Thank you so much for your reply relative to the state centennial stamp. The City of Prescott's The Arizona Centennial Committee would like to be included in any future updates about this project. Also, there is an interest in participating in this project if it would be possible to do so by the above mentioned committee. We appreciate your efforts on this important part of the 2012 commemoration.

John

7/15/2009

COUNCIL AGENDA MEMO – July 21/28 2009	
DEPARTMENT:	Field Operations
AGENDA ITEM:	Replacement of Trailer destroyed in fire on June 23, 2009

	Date:
Department Head: Chad McDowell	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	

Background:

As City Council is aware, the Solid Waste Division contracts with Fann Contracting for our waste hauling services. On June 23, 2009, approximately 1:30 a.m., one of Fann's hauling trailers caught fire and sustained severe damage. Given the time of the fire, we are fortunate the fire did not spread to surrounding trailers or the Transfer Station itself. Because of the fire's intense heat and the materials that were burned, the Fire Department believes this was possibly a chemical fire or a charcoal/chemical fire.

The waste was placed into the trailer at 3:00 p.m. on June 23rd; it was pulled out of the tunnel and placed on the ready line for removal the next morning. The trailer had been checked by the contractor per the contract. Paragraph 4.10 of our 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 the incident. After further review of the scene and the terms of the contract, the Risk Manager decided to process as a claim.

Unfortunately, this is not the only fire Solid Waste has experienced; with the nature of the material collected, we average three fires a year, however none has been of this magnitude.

New procedures have been implemented by both Fann Construction and the Solid Waste personnel and guidelines and policies have been implemented to reduce potential damage to vehicles and surrounding areas should another fire take place. The new procedures implemented are geared to minimize damage to equipment, require parking trailers at a greater distance between them and ensures keys to tractors will also be accessible at all times.

Financial:

The cost of a replacement trailer will be \$85,299.51. The manufacturer's review of the damage to the trailer indicated that to repair the trailer would cost as much as a replacement. Solid Waste will retain the trailer and salvage any reusable or recyclable materials.

Agenda Item: Replacement of Trailer destroyed in fire on June 23, 2009

The City has a self-insured retention of \$250,000. Based on actuarial reports, Risk Management budgets a set amount each year to cover all claims, including emergency claims such as this.

Recommended Action: MOVE to award \$85,299.51 to Fann Contracting Inc., for the purchase of one new Mac transfer trailer per Fann Contracting specifications.



EMPIRE TRUCK AND TRAILER
 840 N. 43rd Avenue
 Phoenix, AZ 85009
 602-627-6703 / Phone
 602-627-5718 / Fax
 www.empirecat.com

Quote-Sales Order

Customer:

Fann Contracting
 1403 Industrial Way
 Prescott, AZ 86302

Contact: Neil Hyatt/Scott Thomas
Phone: 928-713-9283
Fax: -
Cell: -
Email: -

Date: 07/01/09

Quote: TM07010901

Quote Expires: 07/31/09

Est. Delivery Date: 6 weeks upon order
This Sale is FOB: Prescott, AZ

Stock #

Qty	Description	Unit Price	Extension
1	2010 MAC Walking Floor V.I.N. to be determined 50ft. X102in. Hydraulic Floor Self Unloading Trailer Keith Floor #2301 with 3 inch cylinders 5 1/4 inch crossmembers on 14 inch centers 21 inch upright spacing 3/16 inch bulkhead Catwalk and ladder Brothers Tarp flip type mesh fabric Rear Gate, curbside swing with mechanical side latch Tandem Axle Aluminum Wheels, inside mill finished, outside polished finish 22.5 radial tires Cast steel hubs, 7 inch brakes Two speed landing legs Hydraulic hose with fitting on trailer Specifications to match previous trailer order 5MAMN5029AC018278	71,670.48	71,670.48

Subtotal : 71,670.48

F.E.T : 8,024.46

Trade-In Value : -

Sales Tax (8.3%) : 5,479.67

Doc Fee : 125.00

License Fee : -

Down Payment : -

Total : 85,299.61

 Neil Hyatt/Scott Thomas
 Fann Contracting

 Date

 Empire Truck and Trailer
 Salesperson Tom Meissner

 Date

 Empire Truck and Trailer
 Approved

 Date

AZ Form 6000 is required before release of equipment on all tax exempt sales.
 Dealer is not responsible for factory load time changes and/or delays. License to be determined at delivery time.

COUNCIL AGENDA MEMO – JULY 21 & 28, 2009

II-B

DEPARTMENT: POLICE

AGENDA ITEM: Recommendation for Council to approve the purchase of six (6) 2010 Ford Crown Victoria Police Interceptor (CVPI) vehicles from Five Star Ford, Scottsdale, AZ. Total purchase price for all vehicles will be \$155,875.3

Approved By:

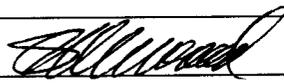
Date:

Department Head: Randy Oaks

07/15/2009

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/16/09

Summary:

In response to the City's request for bid, Five Star Ford, Scottsdale, AZ, submitted a proposal of \$155,875.32 regarding the purchase of six CVPI vehicles. This bid represents the lowest of the three received, and meets all specifications and requirements set forth by our Department.

Background:

Included in this year's City of Prescott budget are funds for the Police Department to purchase six new CVPI vehicles to replace aging cars currently being used for police patrol operations. Current vehicles are approaching 100,000 miles, and are becoming unreliable for emergency operations.

To facilitate purchase of these vehicles, a request for bid was established by the City during June 2009. As result of this solicitation, bids were received from Five Star Ford, Tom Jones Ford, and Galpin Ford. (Galpin's bid was \$32,914 per vehicle.) All bids received met required specifications; however, the bid received from Five Star Ford, as detailed below, was the lowest.

	<u>Price</u>	<u>Extended Price</u>
Six (6) 2010 Ford Crown Victoria Police Interceptor Vehicles	\$21,487.00	\$128,922.00
Silicone Hoses	\$ 279.00	\$ 1,674.00
Tire Tax	\$ 5.00	\$ 30.00
Sales Tax	\$ 1,708.22	\$ 10,249.32
Ford Extended Premium Care Service Plan	\$ 2,500.00	\$ 15,000.00
	TOTAL:	\$155,875.32

Financial Impact:

The total cost of the six CVPI vehicles, including an extended service plan, is \$155,875.32. The Prescott City Council has approved funding in the FY 2009-2010 budget to cover the purchase of these vehicles.

Recommended Action: Move to approve the purchase of six 2010 Ford Crown Victoria Police vehicles from Five Star Ford, Scottsdale, AZ, for the amount of \$155,875.32.

COUNCIL MEMO – 7/21/09 & 7/28/09

II-C

DEPARTMENT: City Manager

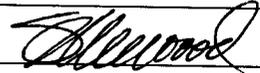
AGENDA ITEM: Adoption of Resolution No. 3981-1008 accepting a WIFA technical assistance grant award in the amount of \$34,500.00

Approved By:

Date:

Deputy City Manager: Craig McConnell

City Manager: Steve Norwood



07/16/09

Background

On May 26, 2009, Council approved the City's application for a Water Infrastructure Finance Authority of Arizona (WIFA) technical assistance grant to evaluate the feasibility of using vegetated detention ponds with drywells to collect, treat, and discharge stormwater 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. The grant application was a proposal developed by the Water Conservation/Safe Yield Committee.

The grant award is \$34,500.00; no City funding match is applicable. WIFA requires a City Council resolution (attached) accepting the grant.

Recommended Action: MOVE to adopt Resolution No. 3981-1008.

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

RECITALS:

WHEREAS, two watercourses within the City of Prescott, Granite Creek and Watson Lake, have been designated by the U.S. Environmental Protection Agency as being impaired due to certain stormwater runoff constituents; and

WHEREAS, the City of Prescott is currently working toward implementing a comprehensive stormwater management program to reduce the loading of such constituents that may be contributing to the impairment; and

WHEREAS, the comprehensive stormwater management program will include evaluation and application of various best management practices to address surface water quality issues; and

WHEREAS, the City of Prescott's Water Conservation/Safe Yield Committee formulated a conceptual proposal to investigate the feasibility of combining a bio-retention basin and drywell to maximize infiltration as a tool to reduce stormwater runoff and increase water storage; and

WHEREAS, the Water Infrastructure Finance Authority of Arizona provides technical assistance grants for such purposes.

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby accepts a Water Infrastructure Finance Authority of Arizona Project Technical Assistance Grant in the amount of \$34,500.00, which grant does not require a match, to evaluate the feasibility of constructing a bio-retention basin with a drywell to address surface water quality issues for the health and benefit of the residents of the City.

Section 2. THAT the Mayor and staff are hereby authorized to execute the grant documents, and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

COUNCIL AGENDA MEMO – July 21 and 28, 2009

II-D

DEPARTMENT: Parks, Recreation and Library

AGENDA ITEM: Approve Participating Library Agreement with Camp Verde Unified School District

Approved By:

Date:

Department Head: Debbie Horton

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/15/09

Background

The Prescott Public Library is the central site of a consortium of over 40 Yavapai County libraries called the Yavapai Library Network. The consortium is held together by Participating Library Agreements in effect between the City of Prescott and each of the participating libraries, and by these libraries willingness to share their resources. The Camp Verde Unified School District has requested formal membership in the Yavapai Library Network, and the Network Management Committee has formally voted to accept Camp Verde Unified School District (CVUSD) as a member of the Yavapai Library Network (YLN).

Council's approval of the Participating Library Agreement with CVUSD will formalize the partnership.

The cooperative arrangement that is the heart of the Yavapai Library Network allows area libraries to have a state of the art automation system that facilitates resource sharing. Every library within the network has a collection of over one million books and other library items easily available via the online catalog in their library, home or place of work. Because operational costs are shared, costs for each participating library are modest compared to the cost of operating dozens of separate systems.

Yavapai Library Network members' costs are driven by a formula based on several factors. In FY2010, the CVUSD will be obliged to pay 1.1% (~ \$3,000) of shared Network costs. The addition of Camp Verde Unified School District to the YLN will reduce the costs of other member libraries while increasing the resources available to all citizens of Yavapai County.

Recommended Action: MOVE to adopt Resolution No. 3982-1009.

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

RECITALS:

WHEREAS, the City of Prescott operates and maintains a library within the corporate limits of the City of Prescott; and

WHEREAS, the Prescott Public Library has been designated as the central site and administrative agency for the Yavapai Library Network (YLN), an integrated library automation system between over 40 Yavapai County libraries; and

WHEREAS, Camp Verde Unified School District has requested formal membership in the YLN and the Network Management Committee has formally voted to accept Camp Verde Unified School District as a member of the YLN; and

WHEREAS, the parties hereto wish to enter into the attached Participating Library Agreement with Camp Verde Unified School District (Exhibit "A" hereto), for its membership and participation with the consortium libraries of YLN in providing certain library services to residents of Yavapai County; and

WHEREAS, the addition of Camp Verde Unified School District to the YLN will reduce the costs of other member libraries while increasing the resources available to all citizens of Yavapai County.

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby approves the Participating Library Agreement with Camp Verde Unified School District for membership in the Yavapai Library Network, in the form attached hereto as Exhibit "A".

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

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

**YAVAPAI LIBRARY NETWORK
PARTICIPATING LIBRARY AUTOMATION AGREEMENT**

This Participating Library Automation Agreement (“Agreement”), made and entered into this _____ day of _____, 2009, by and between the City of Prescott (“City”), a municipal corporation in the of State of Arizona, on behalf of the Prescott Public Library acting as both a party to the agreement and as an agent for each participating library within the consortium of libraries, solely for the purpose of entering into this agreement on behalf of the Yavapai Library Network, hereafter referred to as “YLN” or “Network”, and pursuant to the authority of Article 1, Section 3 of the Prescott City Charter, and **Camp Verde Unified School District**, a participating member in the Yavapai Library Network, for the purpose of including **Camp Verde Unified School District** as part of the Network’s Integrated Library System.

WHEREAS, the purpose of the Yavapai Library Network is to develop, share in the purchase, operation, and benefits of an integrated library system including: the charging and discharging of library materials, the collection and reporting of circulation statistics, the sending of overdue and reserve notices to library patrons, the maintenance of patron files including delinquencies, the maintenance of library catalogues, the acquisition of materials, serials control, community bulletin boards, and gateways to other libraries. In addition, the integrated library system will facilitate intralibrary loans between these parties, as well as other participating libraries, and to other library systems in the State of Arizona. It is intended to include all library materials held by the participating libraries;

WHEREAS, it is in the best interest of the general public as well as the library patrons, and library staff of **Camp Verde Unified School District** that they be entitled to reciprocal use privileges with the participating libraries of the Yavapai Library Network;

WHEREAS, the Yavapai County Library District, a participating library in the Yavapai Library Network, has purchased an Integrated Library System to serve the Yavapai Library Network;

WHEREAS, the Prescott Public Library, referred to as the “Central Site” will house, operate, and maintain the system on behalf of the **Yavapai County Library District** and the Yavapai Library Network; and provide centralized administrative coordination for the participating libraries in the Yavapai Library Network, including entering into and administering a Maintenance Agreement with YLN’s Integrated Library System vendor;

WHEREAS, the City on behalf of the Prescott Public Library and **Camp Verde Unified School District** desire to share in the cost both of automated services made possible and provided by the Integrated Library System, and other services as determined and agreed to by the Yavapai Library Network.

NOW THEREFORE, the parties agree as follows:

1. GOVERNING COMMITTEE: All participating libraries shall agree to abide by the Bylaws and the policies of the governing committee, hereafter called the “Network Management Committee” composed of the Library Directors and the Library Network Manager.

This committee will meet regularly to discuss such matters as file maintenance, telecommunications, standards for database maintenance and operating protocols, equipment needs, service objectives, fees, and enhancements, including: software and hardware upgrades or additions. The cost of such upgrades or additions for the exclusive use of one participating library will be the responsibility of that library. The cost of such upgrades or additions for shared use will be borne by the parties based on the formula in effect at the time.

2. INTEGRATED LIBRARY SYSTEM: Each participating library agrees to acquire, license, and install, at its sole expense, staff and public access workstations and peripherals as needed by the participating library as well as the necessary cabling and hardware to make the connection to the integrated library system at the Central Site, and to procure and arrange for the necessary telecommunications to connect the participating library to the integrated library system at the Central Site as prescribed, planned and approved by the Yavapai Library Network Management Committee.

3. OPERATION OF THE SYSTEM:

(A) Prescott Public Library will operate the integrated library system continuously, as well as other Network-approved additions to the system. When maintenance and backup routines are required, Network members will be notified in advance of scheduled shutdowns.

(B) Prescott Public Library shall cause the integrated library system to produce reports and notices specified by participating libraries, according to accepted protocols and instructions and authorized by the Library Network Manager, in a timely fashion. Where appropriate, participating libraries will be authorized to produce reports and notices at their library.

(C) The Network Management Committee will continuously review telecommunications options for maximum benefit to users and cost efficiencies to the participating libraries. The Committee will implement such changes as deemed appropriate and consistent with Network Bylaws (Addendum #1) and distribute costs that are of a Network nature utilizing the formula in effect at the time.

(D) Interfaces between the bibliographic utilities in use locally and the integrated library system are included in the current system configuration; subsequent interfaces will be the responsibility of each participating library in consultation with the Library Network Manager.

4. MAINTENANCE:

(A) Participating libraries may execute and maintain in effect at their own expense a separate Maintenance Agreement relating to the maintenance of their own circulation stations and peripherals referred to in Section 2 (Integrated Library System) above, or may provide maintenance at their own expense on their own equipment.

(B) Prescott Public Library will enter into and maintain in effect the Integrated Library System vendor's Maintenance Agreement relating to the Central Site hardware, Central Site software, and peripheral (client) software.

(C) In the event of the future expansion of Central Site hardware, or an event not covered under the terms of the Maintenance Agreement for the Integrated Library System, all participating

libraries shall share in the capital and/or maintenance costs of such expansion or repair on the basis of their proportional share under the funding formula laid out in Section 8 of this Agreement.

5. ACCESS TO DATA:

A) The participating libraries agree that full and free access shall be allowed to the information stored in the integrated library system relating to the bibliographic descriptions of library materials at each of the libraries and relating to the holdings, availability, and circulation status of such library materials.

(B) The participating libraries each agree to maintain the confidentiality of the information stored in the integrated library system relating to patrons of each library.

(C) Prescott Public Library shall allow participating libraries access to the machine-readable information stored in the integrated library system relating to the patrons, titles, holdings, and circulation status of each respective participating library, and shall provide and maintain facilities to extract and/or copy said information in machine-readable or other form. Actual extraction of data shall be at the sole expense of each requesting library.

6. SUPPLIES, LICENSES AND TELECOMMUNICATIONS: All participating libraries shall purchase supplies, licenses and telecommunication connectivity to the Central Site at their sole expense. Supplies should be cleared with the Library Network Manager prior to purchase to confirm compatibility with the system. Licenses must be approved and ordered by the Library Network Manager and purchased through the Yavapai County Library District, as fiscal agent for the Network. Said licenses may be purchased either by each participating library or by the Network as a whole with the approval of the Network Management Committee. Installation costs and monthly charges for connectivity to the Central Site, as well as any maintenance costs for locally purchased and installed telecommunications equipment, are the sole responsibility of each participating library. Costs for Network-authorized telecommunications projects, such as frame relay, will be based on the formula for shared costs in effect at the time as described in Section 8.

Participating libraries shall pay telephone installation costs and monthly bills on their dedicated lines (if any) located at the Central Site, as well as any maintenance contracts for equipment installed locally and at their request (if any), and shall share in future Network-authorized telecommunication projects, such as frame relay, based on a cost distribution formula outlined below in Section 8.

7. MARC RECORDS: All participating libraries agree to comply with the Yavapai Library Network protocols with regard to machine-readable cataloging; to requirements for conversion and authority control; and to supplemental inclusion of foreign or locally constructed databases. The costs associated with authority control will be shared on the basis of the proportional number of titles each participating library has in the database at time of authority control processing.

8. FORMULA FOR SHARED COSTS: The Yavapai Library Network has agreed on a method for assessing participating libraries for costs associated with the purchase, maintenance, and operation of the shared integrated library system. This method is detailed in Exhibit A to this Agreement and is incorporated here by reference to Exhibit A.

The formula included in Exhibit A may be recalculated and its weights and weighting factors revised on an annual basis. The authority to recalculate the formula in Exhibit A rests with the Network Management Committee. The vote for any such revision must be a majority of those present, which shall require a quorum. As required by Article 3, Section 7 of the Bylaws of the Yavapai Library Network, a quorum is two-thirds of the voting members. The City of Prescott will provide any revision in writing to **Camp Verde Unified School District**, accompanied by a document prepared by the Network Management Committee outlining a rationale for and details of any changes. Annual review of the formula and notification of changes will take place on a schedule agreed to by the Network Management Committee.

Whenever a participating library joins or withdraws from the Network, the assessment amounts will change to the benefit or detriment of existing members.

The annual maintenance obligation of each participating library will be calculated each year based on current values in effect at the time for each participating library and the Network as a whole, using the formula in Exhibit A. The annual calculation will occur on a schedule that meets City of Prescott invoicing requirements. Notification of maintenance obligation amount will be provided by the Network Management Committee to participating libraries at the same time the information is provided to the City of Prescott.

Maintenance costs arising from the exclusive use of any upgrade or addition to the system that is not system-wide will be billed back to that library, or libraries, making such sole use of the addition and/or upgrade.

Prescott Public Library will underwrite the cost of the Central Site, including utilities, backup tapes, and Central Site supplies.

Other costs determined to be of a general Network nature; e.g. upgrades, authority control, added interfaces, added databases and other peripheral services will be reviewed by the Network Management Committee and assessed on a prorated basis to all, or such subgroup of members, consistent with the formula for the distribution of Network costs in effect at the time such cost commitments are made.

9. INVOICES: Prescott Public Library shall submit invoices for maintenance costs as reflected by the Maintenance Agreement entered into between the City of Prescott and the Integrated Library System vendor, and assigned to participating libraries as per the formula in effect on July 1 of each year, as well as other maintenance related to the integrated library system such as uninterrupted power supply, routers, hubs, switches, and other system-related elements not maintained by the vendor.

Invoices will be submitted during the first quarter of each calendar year. Yavapai County Library District as fiscal agent for the Network will bill each participating library annually for the proportional share of the membership assessment as determined by the Network Management Committee as per the Bylaws and distributed as per formula in Section 8 of this Agreement.

Payments are due and payable for all invoices and billings pursuant to this Agreement within thirty days of said billing or invoice.

10. INCLUSION OF ADDITIONAL LIBRARY AGENCIES: If any participating library elects in the future to sign on or include a library agency not heretofore encompassed by this Agreement but located within its jurisdiction or library system, additional fees will be charged under this Agreement for each library agency added. These extra charges shall include those costs set forth by Sections 8 and 9 above. For example, if the Prescott Unified School District #1 decided to add Prescott Mile High Middle School to the system, it would be charged these additional fees set by the Network and in effect at that point in time for this installation site.

In addition each new participating library will be obligated for one-time fees to the Network's Integrated Library System vendor for various costs associated with software modules, data loading and/or conversion, and custom programming that they select.

11. PARTICIPATING LIBRARY AGREEMENT AND BYLAWS: The parties contemplate that there may be other libraries within Yavapai County which may join in the use of the automation system in the future. Participation in the Network is in accordance with the Yavapai Library Network Bylaws and is conditional on entering into a Participating Library Agreement with the City of Prescott.

12. LICENSES: Licenses remain the property of the participating library and are transferable within the Network.

13. OWNERSHIP: Ownership of the Integrated Library System license will reside with the Yavapai County Library District in trust for the Network on the same basis as costs having been assessed. The residual value of the system is expected to be minimal. Ownership of system components shall be the property of the entity purchasing the component.

14. TERM: The initial term of this Agreement shall be for one (1) year to commence as of the date first above written and shall automatically continue for consecutive annual renewal terms unless terminated by either participant upon giving written notice to the other participant six (6) months prior to their effective date of withdrawal. However, any existing contracts shall remain binding upon all other participating libraries under this Agreement. Termination shall forfeit any rights and interests of the withdrawing party to any property held jointly by the members.

Pursuant to A.R.S., Section 38-511, any political subdivision may cancel this agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the political subdivision is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other part to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the foregoing event, such political subdivision may elect to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of said political subdivision from any other party to the agreement arising as a result of this agreement.

IN WITNESS WHEREOF, executed this _____ day of _____, 2009.

CITY OF PRESCOTT
individually and as agent for YLN

By _____
Jack Wilson
Mayor

ATTEST:

Elizabeth A. Burke, MMC
City Clerk

APPROVED AS TO FORM:

Gary Kidd
City Attorney

IN WITNESS WHEREOF, executed this _____ day of _____, 2009.

CAMP VERDE UNIFIED SCHOOL DISTRICT

By _____
Tim Roth
Governing Board President

ATTEST:

Tonya Bragdon
Superintendent Board Secretary

APPROVED AS TO FORM:

Attorney for Camp Verde Unified School District

Determinations of Counsel

In accordance with A.R.S. § 11-952, this Intergovernmental Agreement has been reviewed by the undersigned legal counsel who has determined that this contract is in appropriate form and within the powers and authority granted to the City of Prescott.

By _____ Date _____
Counsel for the City of Prescott

In accordance with A.R.S. § 11-952, this Intergovernmental Agreement has been reviewed by the undersigned legal counsel who has determined that this contract is in appropriate form and within the powers and authority granted to Prescott Unified School District.

By _____ Date _____
Counsel for Camp Verde Unified School District

COUNCIL AGENDA MEMO – 07/21/09 & 07/28/09

II-E

DEPARTMENT: Fire

AGENDA ITEM: Automatic Aid Agreement (IGA) between Prescott Fire Department, Central Yavapai Fire District, and Chino Valley Fire District.

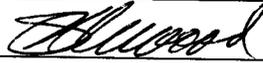
Approved By:

Date:

Department Head: Darrell Willis

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/16/09

BACKGROUND

Prescott Fire Department (PFD) currently has an Automatic-Aid, Intergovernmental Agreement (IGA) with Central Yavapai Fire District (CYFD) and a Mutual-Aid agreement with Chino Valley Fire District (CVFD). Automatic-Aid is a planned response built into the dispatch response sequence. (A dispatch response sequence is the order in which units are dispatched based on proximity to the call.) Mutual Aid is provided to a neighboring department or district by special request. Automatic-Aid essentially sends the closest unit, regardless of jurisdiction, to mitigate an emergency. In the past a PFD or CYFD Battalion Chief had to respond well out of their jurisdiction when a mutual-aid request was made by CVFD. This was prior to CVFD having their own battalion chiefs, participating in our training, and working off the same standard operating guidelines.

STATUS

Since CVFD now has equal response capabilities, all agencies agree that utilizing each others resources in an automatic-aid capacity makes sense and serves the Tri-city area much more effectively. In addition, the efficiency of dispatching is enhanced and firefighter safety increases by a decrease in response time, especially on working fires. Dispatch response sequences have already been formulated and can be implemented upon council approval. This agreement specifically supersedes prior mutual or automatic-aid agreements between the three parties. This Auto-Aid Agreement shall renew itself automatically from year to year, until terminated. Any Party may terminate its participation in this Auto-Aid Agreement, for any reason, effective one hundred eighty (180) days from the giving of written notice to the other Parties.

FINANCIAL

Except as provided for below, each Party shall be responsible for all costs incurred by that Party in responding to an emergency incident under this Auto-Aid Agreement, regardless of whether the emergency incident occurs inside or outside of that Party's jurisdictional boundaries, and no Party shall be required to reimburse any other Parties

AGENDA ITEM: Automatic Aid Agreement (IGA) between Prescott Fire Department, Central Yavapai Fire District, and Chino Valley Fire District.

for any such costs incurred pursuant to this Auto-Aid Agreement. Notwithstanding the above:

If provided for in a separate MOU between the Parties, off-duty, reserve, or additional response personnel for emergency incidents, if requested, shall be paid for by the Party in whose jurisdictional boundaries the emergency incident has occurred.

Foam and other consumable EMS equipment or supplies used on an emergency incident in excess of five hundred dollars (\$500.00), will be replenished by the Party in whose jurisdictional boundaries the emergency incident has occurred.

In the event of declared State or Federal disaster, all Parties may apply for reimbursement from County, State or Federal agencies based on their own costs in responding to an emergency incident.

Recommended Action: MOVE to adopt Resolution No. 3979-1006.

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 AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, the City of Prescott Fire Department, Central Yavapai Fire District (CYFD) and Chino Valley Fire District (CVFD) wish to enter into the attached IGA, Exhibit "A", hereto. This Agreement specifically supersedes any prior mutual or automatic-aid agreements between the three parties. The IGA sets the groundwork for the utilization of each party's emergency dispatch resource procedures and policies in an automatic-aid capacity for the tri-city area; and

WHEREAS, this Auto-Aid Agreement shall renew itself automatically from year to year, until terminated; and

WHEREAS, with the exception of certain provisions in a separate MOU between the parties, each party shall be responsible for all costs incurred by that Party in responding to an emergency incident under this Auto-aid Agreement, regardless of whether the emergency incident occurs inside or outside of that party's jurisdictional boundaries, and no Party shall be required to reimburse any other Party for any such costs incurred pursuant to this Auto-aid Agreement.

WHEREAS, ARS §§11-951 AND 11-952 authorize "public agencies" such as Prescott and Yavapai County to enter into intergovernmental agreements to contract for services and facilities.

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby approves the attached Intergovernmental Agreement (Exhibit "A") between the City of Prescott Fire Department, CYFD and CVFD to utilize each other's resources in an automatic-aid capacity for the tri-city area.

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

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

**INTERGOVERNMENTAL AGREEMENT FOR AUTOMATIC AID
BETWEEN CHINO VALLEY FIRE DISTRICT,
THE CITY OF PRESCOTT AND CENTRAL YAPAPAI FIRE DISTRICT**

PREAMBLE

This Intergovernmental Agreement for Automatic Aid ("Auto-Aid Agreement") is made and entered into this ____ day of _____ 2009, by and between the CHINO VALLEY FIRE DISTRICT, a political subdivision of the State of Arizona ("CHINO VALLEY"), the CITY OF PRESCOTT, a municipal corporation of the State of Arizona ("PRESCOTT") and CENTRAL YAPAPAI FIRE DISTRICT, a political subdivision of the State of Arizona ("CYFD"). CHINO VALLEY, PRESCOTT and CYFD also may be referred to herein as a "Party" or "Agency" and jointly referred to herein as the "Parties" or "Agencies", as the context requires.

RECITALS

WHEREAS, CHINO VALLEY, PRESCOTT and CYFD are empowered pursuant to A.R.S. §11-952, etc., A.R.S. §48-805, etc. and A.R.S. §9-240 etc., to enter into this Auto-Aid Agreement for purposes of carrying out their mutual responsibilities; and

WHEREAS, CHINO VALLEY, PRESCOTT and CYFD wish to cooperate with each other in order to more effectively and economically provide emergency medical response, fire protection services, hazardous materials incidents, EMS services and rescue responses (collectively, "Emergency Services") within each of their respective jurisdictions.

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties agree as follows:

COVENANTS

SECTION 1. - AUTOMATIC AID

The Parties hereby agree to provide Emergency Services on an automatic aid basis under the following terms and conditions:

- A. Response units, as determined by each of the Parties and as otherwise established by agreed upon protocol, will respond to calls for Emergency Services, as dispatched, without regard to the location of the emergency incident.
- B. All Parties agree to utilize standard command procedures and policies for efficient management of the emergency incident and for the safety of responding personnel.
- C. The Fire Chiefs from each Party may jointly promulgate operational procedures and a standard set of protocols for the implementation of this Auto-Aid Agreement, which shall

be detailed in a jointly formulated Memorandum of Understanding (MOU), and shall implement a uniform Incident Command System.

- D. The Parties agree that the Party whose battalion chief arrives at the emergency incident first will maintain incident command throughout the duration of the incident.
- E. The Parties to this Auto-Aid Agreement shall encourage the continued development of cooperative procedures and protocols, including but not limited to training, safety and communications.
- F. All Parties agree to utilize, where practical, the NFPA standards as a guideline in maintaining an inventory of equipment on each apparatus. Notwithstanding the foregoing, the parties agree that a party's inability or failure to comply with an NFPA standard shall not prevent them from participating under this Agreement, and shall not be considered an event of default hereunder.
- G. All Parties agree that automatic aid is intended to be reciprocal. While automatic aid does not ensure that a participating jurisdiction will receive the exact same amount of assistance as it gives, it is intended that all Parties will provide some assistance outside its jurisdictional boundaries and that the level of service delivered will be comparable.
- H. All Parties agree to track automatic aid responses and shall at all times maintain a combined incident reporting system, as well as make available to the other Parties any records, data and reports required by any other Party, as permitted by law.
- I. All Parties agree that during working first alarm assignments, each agency will be responsible for backfilling their respective reserve units.
- J. All Parties agree that each Party will advise the other in the event of a change in a particular station's response area.

SECTION 2. – LEGAL ARIZONA WORKERS ACT COMPLIANCE

Each Party is a governmental entity that is required to comply with A.R.S. §41-4401. Each Party hereby warrants that it will, at all times during the term of this Auto-Aid Agreement, comply with all federal immigration laws applicable to the employment of its respective employees, and with the E-Verify requirements of A.R.S. § 23-214 (A) (together, the "State and Federal Immigration Laws"). Each Party shall further ensure that each employee who performs any work under this Auto-Aid Agreement likewise complies with the State and Federal Immigration Laws.

Each Party agrees and warrants that each other Party shall have the right at any time to inspect its books and records and the books and records of any of its subcontractors in order to verify such Party's compliance with the State and Federal Immigration Laws. Each Party agrees that any act by it or its subcontractors that results in the impediment or denial of access to its

books and records or that of its subcontractors shall be a material breach of this Auto-Aid Agreement by that Party.

Nothing herein shall make any Party or its subcontractors an agent or employee of the other. Nothing herein shall act to establish privity of contract between one Party and the subcontractors of any other Party.

Any breach by any Party or any of its subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this Section, shall be deemed to be a material breach of this Auto-Aid Agreement subjecting that Party to penalties up to and including suspension or termination of this Auto-Aid Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the Party who breached this provision shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, subject to the non-breaching Party's approval, as soon as possible so as not to delay project completion and at no additional expense to the non-breaching party. Any additional costs attributable directly or indirectly to remedial action under this section shall be the responsibility of the Party who breached this provision.

Each Party shall advise its subcontractors of the rights and obligations of the other Parties' and the subcontractor's obligations under this Section by including a provision in its contract with each subcontractor in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that Chino Valley Fire District, the City of Prescott or Central Yavapai Fire District, as the case may be, may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

SECTION 3. – COST PROVISIONS

- A. Except as provided for below, each Party shall be responsible for all costs incurred by that Party in responding to an emergency incident under this Auto-Aid Agreement, regardless of whether the emergency incident occurs inside or outside of that Party's jurisdictional boundaries, and no Party shall be required to reimburse any other Parties for any such costs incurred pursuant to this Auto-Aid Agreement. Notwithstanding the above:
 - a. If provided for in a separate MOU between the Parties, off-duty, reserve, or additional response personnel for emergency incidents, if requested, shall be paid

for by the Party in whose jurisdictional boundaries the emergency incident has occurred.

- b. Foam and other consumable EMS equipment or supplies used on an emergency incident in excess of five hundred dollars (\$500.00), will be replenished by the Party in whose jurisdictional boundaries the emergency incident has occurred.

- B. In the event of declared State or Federal disaster, all Parties may apply for reimbursement from County, State or Federal agencies based on their own costs in responding to an emergency incident.

SECTION 4. - SEVERABILITY

If any provision of this Auto-Aid Agreement shall be held to be unconstitutional, invalid, or unenforceable, it shall be deemed severable; however, the remainder of the Auto-Aid Agreement shall not be affected and shall remain in full force and effect.

SECTION 5. – EFFECTIVE DATE AND DURATION OF AGREEMENT

This Auto-Aid Agreement shall become effective upon the execution of this Auto-Aid Agreement by all Parties and the filing of this Auto-Aid Agreement with the Yavapai County Recorder, and shall renew itself automatically from year to year, until terminated.

SECTION 6. - LIABILITY INSURANCE

Each Party shall maintain, during the life of this Auto-Aid Agreement, a policy of liability insurance naming the other Parties as an additional named insured in the amount of not less than \$1,000,000.00 per occurrence with an aggregate liability coverage of \$2,000,000.00. In the alternative, a Party may self-insure in accordance with the above referenced liability amounts.

SECTION 7. - TERMINATION

This Auto-Aid Agreement will terminate should the governing body of any Party fail to allocate funds for its continued implementation. Should termination occur due to said non-allocation, the non-allocating Party shall give not less than ninety (90) days written notice to the other Parties prior to termination.

In addition, any Party may terminate its participation in this Auto-Aid Agreement, for any reason, effective one hundred eighty (180) days from the giving of written notice to the other Parties at the following addresses:

Central Yavapai Fire District
Attn: Fire Chief
8555 E. Yavapai Road
Prescott Valley, Arizona 86314

City of Prescott
Attn: City Manager or Fire Chief
P.O. Box 2059
Prescott, Arizona 86302

Chino Valley Fire District
Attn: Fire Chief
P.O. Box 264
Chino Valley, Arizona 86323

SECTION 8. - INDEMNIFICATION

The Parties to this Auto-Aid Agreement shall indemnify and hold harmless each other and their respective departments, agencies, officers or employees from any and all claims, liabilities, expenses, or third-party actions resulting from the indemnifying Party's negligence incurred in connection with the performance of its responsibilities under this Auto-Aid Agreement. Nothing herein shall be construed as a waiver by any Party of the right to bring an action for contribution against the other or as against any third person or entity.

SECTION 9. - NO THIRD PARTY BENEFICIARY

This Agreement is intended solely for the benefit of CHINO VALLEY, PRESCOTT and CYFD, and shall not be construed as a third-party beneficiary contract.

SECTION 10. - CANCELLATION

Any Party may cancel this Auto-Aid Agreement pursuant to the terms of A.R.S. §38-511.

SECTION 11. - WORKERS' COMPENSATION COVERAGE

All employees of a Party to this Auto-Aid Agreement who work under the jurisdiction or control of, or who work within the jurisdictional boundaries of another Party pursuant to this Auto-Aid Agreement, shall be deemed to be an employee of the Party who is his or her primary employer, as provided in A.R.S. § 23-1022(D), and the primary employer/Party of such an employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required.

SECTION 12. - NON-DISCRIMINATION

The Parties, with regard to this Auto-Aid Agreement, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Parties will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 11246 as amended.

SECTION 13. – PRIOR AGREEMENTS

This Auto-Aid Agreement supersedes that certain Intergovernmental Agreement between Chino Valley and CYFD entered into on or about July 1, 2002, that certain Intergovernmental Agreement between CYFD and Prescott entered into on or about June 13, 2001, and that Mutual Aid Agreement entered into between Chino Valley Fire District and the City of Prescott dated 1987.

SECTION 14. - BINDING EFFECT

This Auto-Aid Agreement shall be binding upon the Parties and any successor in interest. No provision herein is intended to create a third beneficiary interest in any person or entity, including but not limited to the respective employees or agents by either Party.

SECTION 15. - DISPUTE RESOLUTION AND WAIVER OF JURY TRIAL

The Parties to this Auto-Aid Agreement agree to resolve all disputes arising out of or relating to this Auto-Aid Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518, except as may be required by other applicable statutes. In any event, the Parties hereto waive any rights to a trial by jury. The Parties hereto further expressly covenant and agree that each Party shall be responsible for their own attorneys fees incurred in conjunction with any dispute, arbitration or judicial action arising from this Auto-Aid Agreement. In the event of litigation arising from this Auto-Aid Agreement, no Party shall be entitled to an award of attorneys’ fees, either pursuant to this Auto-Aid Agreement, pursuant to A.R.S. §12-341.01, or pursuant to any other state or federal statute.

IN WITNESS WHEREOF, the Parties enter into this Auto-Aid Agreement on the date set forth below.

APPROVALS

CENTRAL YAVAPAI FIRE DISTRICT

CITY OF PRESCOTT

Chairman/Fire Board Date

Mayor Date

Clerk/Fire Board Date

City Clerk Date

Fire Chief Date

Fire Chief Date

CHINO VALLEY FIRE DISTRICT

Chairman/Fire Board Date

Clerk/Fire Board Date

Fire Chief Date

The foregoing Auto-Aid Agreement has been reviewed by the undersigned counsels, who have determined that the Auto-Aid Agreement is in proper form and within the powers and authority granted under the laws of this state.

By: _____
(Chino Valley Fire Date
District Attorney)

By: _____
(Prescott Attorney) Date

By: _____
(Central Yavapai Fire Date
District Attorney)

COUNCIL AGENDA MEMO – 07/21/09 & 07/28/09

II-F

DEPARTMENT: Fire

AGENDA ITEM: Base Hospital Agreement

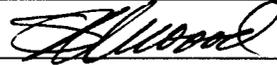
Approved By:

Date:

Department Head: Darrell Willis

07/14/2009

City Manager: Steve Norwood



07/16/09

Background

State Statutes require that the Arizona Department of Health Services (ADHS) regulate Emergency Medical Services (EMS) in the State of Arizona. One of the ADHS's regulations is to ensure that providers of Paramedic level care (Advanced Life Support), have an agreement with a Base Hospital for medical control, direction, and administrative oversight of all providers. For more than 30 years, the City of Prescott has had an agreement with Yavapai Regional Medical Center (YRMC) for this purpose and to meet the statutory requirements. The agreement is normally renewed annually. The attached agreement sets out the expectations for the Provider Agency (City of Prescott Fire Department) and the Base Hospital (YRMC).

Status

YRMC has provided the Prescott Fire Department with a revised agreement that meets all the current rules under the ADHS regulations and statutes. This agreement has been reviewed and approved by Legal as it has some minor changes since the last agreement. The Base Hospital changes were made in order to mirror current state guidelines and the City changes were at the request of our Legal Department.

Financial

There are no financial implications of this agreement.

Recommendation: MOVE to adopt Resolution No. 3980-1007.

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

RECITALS:

WHEREAS, for more than 30 years the City of Prescott Fire Department and the Yavapai Regional Medical Center (YRMC) have had an annual agreement for medical control, direction, and administrative oversight of all providers relating to Paramedic level care (Advanced Life Support); and

WHEREAS, the City of Prescott Fire Department and the Yavapai Regional Medical Center wish to enter into the attached Base Hospital Agreement , Exhibit "A", hereto, that mirrors current state guidelines and meets all the current rules under the Arizona Department of Health Services (ADHS) regulations and statutes; and

WHEREAS, there are no financial implications of this Agreement.

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby approves the attached Base Hospital Agreement (Exhibit "A") between Yavapai Regional Medical Center and the City of Prescott Fire Department for medical control, direction, and administrative oversight of all providers relating to Paramedic level care (Advanced Life Support).

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

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

BASE HOSPITAL AGREEMENT

This AGREEMENT is made between **YAVAPAI COMMUNITY HOSPITAL ASSOCIATION dba YAVAPAI REGIONAL MEDICAL CENTER**, a health care facility licensed under the laws of the State of Arizona, hereinafter referred to as "Base Hospital", and **PRESCOTT FIRE DEPARTMENT**, hereinafter referred to as "Provider Agency", licensed to provide pre-hospital care services under the laws of the State of Arizona.

Base Hospital shall:

1. Be designated and referred to as "Base Hospital" for the purpose of being identified as the regional facility with primary responsibility for medical control with respect to the services provided under its auspice.
2. Execute a written contract with an agency that employs emergency medical technicians in a prehospital setting, to be reviewed and updated yearly. The base hospital shall maintain written verification that the yearly review and update was performed.
3. Provide both administrative and on-line medical direction to the prehospital emergency medical technicians that are employed by the agency.
4. Establish a procedure to replace disposable, medical (fire only), and pharmaceutical supplies for the contracted provider agency after the patient care has been terminated by the agency.
5. Establish a provision to dispose of contaminated waste that meets federal and state regulation.
6. Base hospital agrees to investigate and resolve agency complaints about the base hospital, its procedures, the medical director, emergency physician, nurse, or other base hospital employees by referring the complaint to the Administrative Medical Director or his/her designee. Complaints about the Administrative Medical Director will be directed to the Emergency Department Medical Director.
7. Contain a provision that establishes;
 - a. Written procedures to withdraw or suspend medical direction
 - b. Written medical direction requirements for the emergency medical technicians; and
 - c. Written procedure for notifying the employing agency and the emergency medical technician of the withdrawal or suspension of medical direction.
8. Appoint an administrative medical director that meets the qualifications and responsibilities of AZDHS rules and regulations R9-25-204.
 - A. An individual shall not act as an administrative medical director unless the individual:

1. Is a physician; and
 2. Meets one of the following:
 - a. Has emergency medicine certification from a specialty board recognized by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners in Medicine and Surgery;
 - b. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association; or
 - c. Is practicing emergency medicine and has:
 - i. Proficiency in advanced emergency cardiac life support,
 - ii. Proficiency in advanced trauma life support, and
 - iii. Proficiency in pediatric emergency care.
- B. An administrative medical director shall act only on behalf of:
1. An emergency medical services provider;
 2. An ambulance service;
 3. An ALS base hospital certified under this Article;
 4. A centralized medical direction communications center; or
 5. The Department, as provided in A.R.S. 36-2202(J).
- C. An administrative medical director:
1. Shall coordinate the provision of administrative medical direction to EMT's; and
 2. May delegate responsibilities to an individual as necessary to fulfill the requirements in this Section, if the individual is:
 - a. A physician,
 - b. A physician assistant,
 - c. A registered nurse practitioner,
 - d. A registered nurse,
 - e. A practical nurse, or
 - f. An EMT-1 or EMT-P
- D. An administrative medical director shall:
1. Ensure that an EMT receives administrative medical direction as required under A.R.S. Title 36, Chapter 21.1 and this Chapter;
 2. Approve, ensure implementation of, and annually review treatment protocols, triage protocols, and communications protocols for an EMT to follow that are consistent with:
 - a. A.R.S. Title 36, Chapter 21.1 and this Chapter; and
 - b. The EMT's scope of practice as identified under Article 4 & 5 of this Chapter;
 3. Approve, ensure implementation of, and annually review policies and procedures that an EMT shall follow for medical recordkeeping, medical reporting, and completion and processing of prehospital incident history reports that are consistent with:
 - a. A.R.S. Title 36, Chapter 21.1 and this Chapter; and
 - b. The EMT's scope of practice as identified under Article 4 & 5 of this Chapter;

4. Approve, ensure implementation of, and annually review policies and procedures governing the administrative medical direction of an EMT, including policies and procedures for:
 - a. Monitoring and evaluating an EMT's compliance with treatment protocols, triage protocols, and communications protocols;
 - b. Monitoring and evaluation an EMT's compliance with medical recordkeeping, medical reporting, and prehospital incident history report requirements;
 - c. Monitoring and evaluating an EMT's performance as authorized by the EMT's scope of practice as identified under Article 4 & 5 of this Chapter;
 - d. Ensuring that an EMT receives ongoing education, training, or remediation necessary to promote ongoing professional competency and compliance with EMT standard or practice established in R9-25-410;
 - e. Withdrawing an EMT's administrative medical direction; and
 - f. Reinstating an EMT's administrative medical direction; and
 5. Approve, ensure implementation of, and annually review policies and procedures for a quality assurance process to evaluate and effectiveness of the administrative medical direction provided to EMT's.
- E. An administrative medical director shall
1. Annually document that the administrative medical director has reviewed A.R.S. Title 36, Chapter 21.1 and this Chapter; and
 2. Ensure that an individual to whom the administrative medical director delegates authority to fulfill the requirements in this Section annually documents that the individual has reviewed A.R.S. Title 36, Chapter 21.1 and this Chapter.
9. Assure that all emergency physicians who provide on-line medical direction to prehospital personnel meet requirements of AZDHS regulation (R9-25-203):
 10. Have necessary communications equipment that is operational, compatible with EMSCOM system (if available in their area), located in the emergency room, has a dedicated line, with the capability of recording communication between base hospital and emergency medical personnel. Base hospital shall also have policy and procedures in place for communication notification and alternative communications. Flagstaff Medical Center will act as an alternate.
 11. Communicate as soon as it is practically possible all pertinent patient management information when a patient is to be transported to a receiving facility other than base hospital. In that event, care of the patient and direct communications, which the emergency medical technician rendering that care may be transferred to the medical control of authority of said receiving facility, if it is a hospital medical control authority. Exception to this will be a mass casualty incident.

12. Respond to all requests for radio or telephone medical direction by emergency medical technicians of provider agency as promptly as possible in a cooperative and responsible manner.
13. Medical direction shall be consistent with NAEMS Field Treatment Protocols and with the rules and regulation of AZDHS.
14. Provide adequate structural and facility resources to allow for the training of emergency medical technicians, to include:
 - a. Process integration of information, access contact supervisor at station.
 - b. Hospital will continue to meet requirements as a training center for the re-certification of EMTs. This training center would be available for Y.R.M.C. personnel and agency personnel.
 - c. Hospital to provide space for run review. Hospital and agencies to jointly determine issues to be reviewed. The Base Hospital will provide a separate area for completion of documentation and of re-supplies for agency personnel.
15. Provide for on-line medical direction, (if applicable) to field units in remote assignments outside the jurisdiction of the fire department boundaries. (fire only)
16. Upon arrival to the emergency center, the hospital staff will assist with the effective transfer of the patient in an orderly and timely manner.
17. Provide Base Hospital orientation to new ALS providers within a 5-day period from time of request.
18. Provide a mechanism for timely notification of potential infectious disease exposure to agencies personnel.
19. Will indemnify the Administrative Medical Director and/or any physician acting as the Administrative Medical Director, and Medical Services of Prescott Emergency Physician Group harmless for liability not directly caused by the EMS Director or the EMS Director's duly designated agents.

Provider Agency Shall:

1. Provide an emergency vehicle staffed by basic emergency technicians twenty-four (24) hours per day, and by ALS personnel, whenever possible. Volunteer agencies that do not incorporate emergency medical technicians must have first responders available for purpose of delivering emergency care.
2. Agencies will notify the Base Hospital immediately regarding separation of ALS personnel.
3. Agency personnel will have identification with name and agency.
4. Have working communication equipment that allows base hospital medical direction communication with emergency medical technicians in the field.
5. Utilize NAEMS Field Treatment Protocols to determine patient treatment in the event of the unavailability of on-line medical direction or contact alternate base hospital.
6. Provide the administrative medical director with adequate and appropriate access to prehospital personnel and records for purposes of performance evaluation, and training.

7. When ALS skills have been instituted, the emergency medical technician with the highest skill level shall be in charge of patient care. This ALS provider will contact the Base Hospital and communicate specific components of the patient's assessment, treatment, and other pertinent information. Upon the consent of the Physician, patients may be designated BLS and transported accordingly.
8. Upon arrival to the emergency center, ALS personnel shall, in an orderly and timely manner, transfer the patient (s) to the hospital's emergency medical staff. Provider Agency personnel shall assist and cooperate in the transferring of the patient (s) into the treatment area of the emergency center, and assist with continued treatment if needed or requested by the hospital staff. The Provider Agency shall have no further duty to the patient upon completion of the transfer. Transfer shall be defined as completion of verbal and required documentation report with signature of accepting physician or nursing personnel.
9. Whenever Provider Agency personnel are performing service on the premises of Base Hospital, such personnel shall be considered independent contractors and not as agency or physician or hospital staff. Provider Agency personnel shall not be under the supervision, management, direction, or control of Base Hospital in the performance of their duties, except as provided for in this agreement.
10. That the ALS personnel assigned to the Base Hospital shall not be assigned concurrently to any other facility for administrative medical direction.
11. Provider Agency agrees to cooperate with the Base Hospital to investigate and resolve patient, physician, and nurse complaints about the agency, its procedures, and agency personnel.
12. Nothing in this Agreement shall prohibit Base hospital from entering into similar agreements with other parties.
13. Will indemnify the Administrative Medical Director and/or any physician acting as the Administrative Medical Director, and Medical Services of Prescott Emergency Physician Group harmless for liability not directly caused by the EMS Director or the EMS Director's duly designated agents.

Base Hospital and Provider Agency shall:

1. Conduct themselves pursuant to this Agreement based on integrity, respect, and professionalism. Utilizing the five values list of YRMC; Respect, Integrity, Accountability, Commitment, and Quality.
2. Implement a process to develop and review policies and procedures that all emergency medical personnel must follow.
3. Develop a written quality improvement process in consultation with Y.R.M.C. Q.I. department.
4. Have a written process for evaluation of each EMT, to assess the EMT's clinical competency and compliance with protocols, by the Administrative Medical Director. The basis for clinical competency will be established utilizing current data relating to specific procedures within the EMT's

scope of practice. Prior to June 30, 2004 clinical competency will be validated by the current method utilized.

5. Participate in Pre-Hospital Committee.
6. To each maintain adequate public and professional liability insurance with a company licensed to do business in Arizona to cover personal injury and property damage caused by the acts or omissions of their respective personnel in an amount not less than \$1,000,000.00 per occurrence. Each party shall forward to the other a certificate of such insurance, or be self-insured. Thirty days advance written notice of cancellation, non-renewal, or substantial change shall be given.
7. To comply, where applicable, with the requirement of Arizona Revised Statutes of the Rules and Regulations of the Arizona Department of Health Services in the performance of their respective functions under the agreement. Said ADHS regulation are incorporated herein by the reference.
8. To comply with Federal regulation and HIPAA requirements: Whereas the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §§ 160, 164 (“HIPAA”), adopted by the United States Congress, requires confidentiality of protected health Information received by a Covered Entity, for the purpose of this agreement both parties are considered 'Covered Entities'.
9. That this writing constitutes the entire Agreement entered into by and between the parties and supersedes any prior Agreement or understanding of the parties in this matter whether oral or written. Any modification of this Agreement shall be invalid unless stated in writing and signed by both parties.
10. That this agreement shall commence on January 1, 2009 and shall be reviewed sixty (60) days prior to end date of December 31, 2009 and signed by hospital and Provider Agency for renewal, and shall not be terminated unless terminated in writing by either of the parties at least thirty (30) days prior to the end of any one year period.
11. That this Agreement is executed in original and one more counterparts, any of which may be considered an original agreement if signed in original.
12. Pursuant to ARS Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on behalf of the City is, at any time while the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in writing, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of the Agreement.

13. Base Hospital and Provider Agency shall indemnify and hold harmless each other and their respective departments, agencies, officers or employees from any and all claims, liabilities, expenses, or third-party actions resulting from the indemnifying Party's negligence incurred in connection with the performance of its responsibilities under this Base Hospital Agreement. Nothing herein shall be construed as a waiver by any Party of the right to bring an action for contribution against any third person or entity.

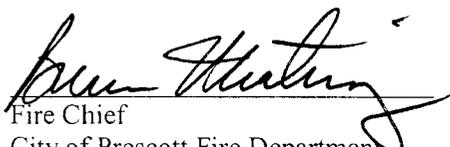
IN WITNESS WHEREOF, the parties have set their signature,

Timothy J. Barnett
Chief Executive Officer
Yavapai Regional Medical Center
Base Hospital

Date

Christopher Lampe, M.D.
EMS Administrative Medical Director
Yavapai Regional Medical Center
Base Hospital

Date


Fire Chief
City of Prescott Fire Department
Provider Agency

7-17-2009
Date

City Manager
City of Prescott
Provider Agency

Date

APPROVED AS TO FORM:



City Attorney
City of Prescott
Provider Agency

7/15/01

Date

Attest:

City Clerk
City of Prescott

Date

II-G

COUNCIL AGENDA MEMO – (07/21/09 & 07/28/09)

DEPARTMENT: City Clerk

AGENDA ITEM: Renewal of Off-track Pari-mutuel Wagering permit for Matt's Saloon, located at 112 S. Montezuma Street, submitted by Turf Paradise.

Approved By:

Date:

Department Head: Elizabeth A. Burke, City Clerk	07/13/2009
Finance Director: Mark Woodfill	
City Manager: Steve Norwood <i>[Signature]</i>	07/16/09

Summary

This is a request submitted by Turf Paradise for renewal of the Off-track Pari-mutuel Wagering permit for Matt's Saloon, located at 112 S. Montezuma Street.

Background

The current Off-track Pari-mutuel Wagering permit for Turf Paradise expired at the end of May 2009. As indicated in their letter, they are requesting renewal of that permit for a new term from September 9, 2009 through May 31, 2012, when their season starts back up.

I have checked with the Police Department and they report that there have been no incidents for the past five years dealing with off-track wagering at this location.

Attachments

- Letter from Turf Paradise dated July 8, 2009
- Letter from Arizona Department of Racing to Turf Paradise dated May 29, 2009

Recommended Action: MOVE to approve renewal of the Turf Paradise Off-track Pari-mutuel Wagering permit for Matt's Saloon, located at 112 S. Montezuma Street, Prescott, for a time period of September 9, 2009 through May 31, 2012.



July 8, 2009

**Elizabeth Burke
City Clerk
City of Prescott
P.O. Box 2059
Prescott, AZ. 86302**

Dear Elizabeth,

Turf Paradise respectfully requests to renew its Off-track Pari-mutuel Wagering permit for Matt's Saloon, located at 112 S. Montezuma St. Prescott, Arizona Turf Paradise is currently in the process of renewing its Permit to Operate Additional Wagering Facilities with the Arizona Department of Racing. The term of the permit applied for is from September 9, 2009 through May 31, 2012. Therefore, we ask that the term of the license for Matt's Saloon be valid until that date. A copy of the Permit to Operate Additional Wagering Facilities will be forwarded to you upon receipt.

**Applicant: David Johnson, Agent
Matt's Saloon
112 S. Montezuma St.
Prescott, AZ. 86301**

Also, enclosed is a copy of a letter from the Arizona Department of Racing stating that our permit has been submitted and timely filed and that our current permit is in effect during the review period. Thank you for your attention to this matter. If you have any questions or concerns please contact me at (602) 375-6431.

David Johnson
Vice President

Turf Paradise

ARIZONA DEPARTMENT OF RACINGJANICE K. BREWER
GOVERNORLUIS A. MARQUEZ
DIRECTOR

May 29, 2009

Eugene T. Joyce, General Manager
Turf Paradise Race Course
1501 West Bell Road
Phoenix, Arizona 85023

Re: Notice of Administrative Completeness as required by A.A.C. R19-2-103(F)(1)(b)
TP Racing, L.L.L.P. Application for Renewal of Permit to Conduct Commercial Horse
Racing and Teletracking

Dear Mr. Joyce:

This is to inform you that the applications for renewal of commercial and teletracking permits have been determined to be administratively complete per Arizona Administrative Code R19-2-103(F)(1)(b).

As of June 1, 2009, the Department of Racing will begin the substantive review portion of the renewal permit application process as required by A.A.C. R19-2-103(F)(2). During the substantive review timeframe, the Department may make one comprehensive written request for additional information, per A.R.S. §§ 41-1075(A) and 5-107(B)(6). The Department and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information, per A.R.S. § 41-1075(A). The substantive review timeframe is 30 days. Under the provisions of A.R.S. § 41-1092.11, your existing permits do not expire until the Commission has made a final determination, or if the applications are denied, until a later date fixed by the reviewing court.

Thank you for your cooperation during the application process. If you have any questions, please contact me at 602-364-1726 or by email at jcozby@azracing.gov.

Sincerely,

A handwritten signature in cursive script that reads "Joyce Cozby".

Joyce Cozby
Assistant Director/Management Review

By Certified Mail and E-Mail

cc: Luis A. Marquez, Director

1110 West Washington, Suite 260
Phoenix, AZ 85007
Ph (602) 364-1700
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ador@azracing.gov

COUNCIL AGENDA MEMO – 07/21/09 & 07/28/09

II-H

DEPARTMENT: Administrative Services – Elks Opera House

AGENDA ITEM: 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.

Approved By:	Date:
Department Head: Mic Fenech, Administrative Services	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	07/16/09

ITEM SUMMARY

This contract is the second of two contracts with Haley Construction. The first, pre-construction phase contract, has been successfully completed and as required arrived at a Guaranteed Maximum Price (GMP) for this construction phase contract.

Haley Construction has been working under the pre-construction phase contract to develop subcontractor pricing, assist the architect with discovery of unknown items within the Theatre and develop all final pricing for this Construction Manager at Risk contract.

City of Prescott Staff, the Elks Opera House Foundation Board of Directors and Otwell Associates Architects have worked diligently over the previous months to identify and agree on the work to be included into this restoration project. We are now satisfied the current scope of work can be accomplished within the Guaranteed Maximum Price and recommend the approval of this construction contract. The City's Risk, Procurement and Legal departments have reviewed the contract.

Items included in this contract have been summarized in the contract Exhibit "A" (plan sheets), "B" (GMP spread sheet), and "C" (project funding schedule).

The plan set include the demolition of previous era specific interior remodel items and the restoration of the stage front box seats, removal of the fluted panels and repairs to the original proscenium (front of the stage). New carpet, plaster repair, wall paper, decorative stenciling and historically accurate paint colors will be added. Upgrades to the electrical system and theater lighting will improve the theater experience. A new fire sprinkler system will be installed and exiting and handicap access improved for added safety.

The Elks Opera House Foundation will continue fundraising activities during this construction phase and anticipates additional funding will be found for specific set aside items. We would then add these items to the contractor's scope of work as additional funding accumulates.

Agenda Item: AGENDA ITEM: 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

The items that depend upon future funding are the restoration of the original Gurley Street marquee, and the elaborate raised plaster elements surrounding the box seats and the stage. To include these items would have exceeded our available funding and can be done later as independent stand alone items.

Many items that will contribute to the success of this project are being done outside this contract. Various City Departments will contribute: Public Works will design and install the water line for the new fire sprinklers, Solid Waste will provide the construction dumpster, Elks staff with assistance from Parks and Recreation has been moving all theater props and loose furniture to storage, Facilities Department will provide lead and asbestos abatement and various maintenance and repair items throughout the project. The Elks Opera House Foundation is supplying new larger, more comfortable theater seats.

PROJECT FINANCES

The Elks Opera House Foundation and The City of Prescott will jointly finance this project as follows:

The City's current budget includes the following funds for this project:

Fire Sprinkler: \$241,000. These funds will 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.

Marquee: \$67,377. These funds although set aside in the budget for the marquee, is being recommended to complete the funding for the fire sprinkler, fire alarm, necessary thermal insulation and structural supports for the sprinkler piping.

Project Funding:

The City of Prescott	\$ 308,377
The Elks Opera House Foundation:	<u>\$ 842,946</u>
Guaranteed Maximum Price:	\$1,151,323

Additional funding from the Elk's Opera House Foundation (not in GMP):

Otwell Associates Architectural Services:	\$ 92,749
Haley pre-construction services:	\$ 62,564
Theater seating	<u>\$ 186,111</u>
	\$ 341,424

Recommended Action: MOVE to award a three party construction contract between the City of Prescott, Haley Construction Company, and the Elks Opera House Foundation for Restorations and Renovations to the Elks Opera House in the amount of \$1,151,323.



**HISTORIC RESTORATIONS AND RENOVATIONS
TO THE ELKS OPERA HOUSE**

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES CONTRACT**

CONTRACT NO. _____

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CITY OF PRESCOTT

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

THIS AGREEMENT, made and entered this ____ day of _____ 2009, by and between the City of Prescott, an Arizona municipal corporation, hereinafter designated "CITY", the Elks Opera House Foundation, hereinafter designated "Foundation" and Haley Construction Company, an Arizona corporation, hereinafter designated "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 contracts for construction services.
- B.** The City of Prescott and the Elks Opera House Foundation intend to construct improvements to the Elks Opera House as described in the Architects Plans and Specifications dated _____ attached as Exhibit A and in the Guaranteed Maximum Price prepared by Haley Construction Company and attached as Exhibit B, both together 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 the Elks Opera House Foundation has entered into an Agreement with Otwell Associates Architects, hereinafter referred to as "DESIGN PROFESSIONAL."
- D.** The CM@Risk has represented to the City and the Foundation the ability to provide construction management services and to construct the Project. Based on this representation the City and the Foundation engage Haley Construction Company to provide these services and construct the Project.
- E.** Payment to the CM@Risk will be made from funds available from both the City and the Foundation according to the Project Funding Schedule attached as Exhibit C.
- F.** Contract # _____ has been executed previously between City and CM@Risk to perform Design Phase services. Those services may continue during the duration of this contract.

AGREEMENT

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

ARTICLE 1 - DEFINITIONS

1.0 "Agreement" means this fully executed agreement between City and CM@Risk.

"Allowance" means an agreed amount by the City and the CM@Risk for items which may be required to complete the scope of work.

"Change Order" – means 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 consistent with S.R.C. Sec. 2-200.

"City" ("Owner" or "OWNER") – means the City of Prescott, Arizona.

"Contract Administrator" means the person designated in Section 8.3.1.

"City's Senior Representative" means the person designated in Section 8.3.1.1.

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

"Contingency, Owner's" means 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" means the plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

"Construction Fee" means 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.

"Construction Manager at Risk" or "CM@Risk" means the firm selected by the City to provide construction services as detailed in this Agreement.

"CM@Risk's Representative" means the person designated in Section 8.3.2.2.

"CM@Risk's Senior Representative" means the person designated in Section 8.3.2.1.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) all written modifications, addenda and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) written Supplementary Conditions; (iv) Construction Documents; (v) GMP Plans and Specifications.

"Contract Time(s)" means the Day(s) set forth in Article 4 subject to adjustment in accordance with this Agreement.

"Cost of the Work" means 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(s)" mean calendar days unless otherwise specifically noted in the Contract Documents.

"Design Phase Agreement" means the agreement between the City and CM@Risk for the services provided by the CM@Risk during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate, GMP preparation, and subcontractor bid phase services.

"Design Professional" means a qualified, licensed design professional, with whom the City has entered into a design contract and who furnishes design and/or construction administration services for the said project.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Field Order" means a written field directive prepared and signed by the City, directing a change in work that may or may not include an adjustment in contract price and or contract time.

"Final Acceptance" means the completion of the Work as prescribed in Section 4.3.

"General Conditions Costs" – means costs incurred by the CM@Risk during the construction phase and 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" means the documents used to establish the GMP and made part of this Agreement by reference.

"Guaranteed Maximum Price" or "GMP" means the sum of the maximum cost of the Work; the CM@Risk's Construction Fee; General Conditions, Costs; Taxes, Bonds, Insurance Costs; and CM@Risk Contingency.

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.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means an amount the CM@Risk shall pay as specified in Section 108.9 of the M.A.G. Standard Specifications.

"Payment Request" means a monthly progress payment request which is based on a monthly estimate of the dollar value of the work completed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the Work.

"Project" means the works to be completed in the execution of this Agreement as described in the Recitals above and in Exhibit A and B attached.

"Project Record Documents" means the documents created pursuant to Section 2.10.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Shop Drawings” mean drawings, diagrams, schedules and other data specially prepared for the Work by the CM@Risk or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” means the land or premises on which the Project is located generally described as The Elks Opera House located at 117 E. Gurley St., Prescott, Arizona..

“Specifications” means those sections 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” means any person or entity retained by CM@Risk as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

“Substantial Completion” means 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” means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase work by CM@Risk or any Subcontractor.

“Total Float” means the number of Days by which the design phase 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” means 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 - CM@RISK'S SERVICES AND RESPONSIBILITIES

2.0 The CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the restorations and renovations of the Elks Opera House, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike manner and within the care and skill of a qualified CM@Risk in Prescott, Arizona. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with all legal requirements and Project Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.

2.1 General Services

2.1.2 CM@Risk's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with City but not less than once a week and shall be vested with the

authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of City.

2.3 Government Approvals and Permits

- 2.3.1** Unless otherwise provided, CM@Risk shall obtain or assist the City to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project.
- 2.3.2** Copies of all necessary permits and notices must be provided to the Contract Administrator prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.
- 2.3.3** The CM@R shall be responsible for City permit(s) fees for building and demolition permits. City will pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.
- 2.3.4** CM@Risk shall be responsible for all other review and permit fees not specifically listed in Section 2.3.3 above.
- 2.3.5** The City is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@Risk 's responsibility.

2.3.6

The M.A.G. Standard Specification 107.12 shall hereby be modified to read as follows: The CM@Risk, at his own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage and maintenance purposes, which are required in addition to existing easements and/or rights of way secured by the City as indicated upon the plans.

2.4 Pre-construction Conference

- 2.4.1** Prior to the commencement of any Work, the Contract Administrator will schedule a Pre-construction conference.
 - 2.4.2** The purpose of this conference is to establish a working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, CM@Risk Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.
- 2.4.3** The construction Notice to Proceed date will be established at the Pre-Construction conference.
- 2.4.4** The CM@Risk shall provide a schedule of values based on the bids accepted from selected Subcontractors.
- 2.4.5** At a minimum, attendees shall include CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the CM@Risk's safety officer.

2.5 Control of the Work

- 2.5.1** The CM@Risk shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until the entire contract is completed and accepted by the City. Any payment for completed portions of the work shall not release the CM@Risk from such responsibility, however, he shall turn over the entire work in full accordance with these specifications before final settlement shall be made. In case of suspension of the work for any cause whatever, the CM@Risk shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project and shall erect any necessary

temporary structures, signs, or other facilities at no cost to the City.

- 2.5.2** After all work under the Agreement is completed, the CM@Risk shall remove all loose concrete, lumber, wire, reinforcing, debris and other materials not incorporated in the work from the site of the work and perform a final cleanup for immediate owner occupancy.
- 2.5.3** Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, CM@Risk shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.
- 2.5.4** CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.5.5** Survey stakes and marks required for the completion of the construction shown on the plans and described in the specifications will be furnished by the CM@Risk.
- 2.5.6** CM@Risk or the CM@Risk's Superintendent shall be present at the Work at all times that construction activities are taking place.
- 2.5.6.1** All elements of the Work, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.
- 2.5.6.2** In the event of noncompliance with Section 6.1, the City may require the CM@Risk to stop or suspend the Work in whole or in part.
- 2.5.7** Where the Contract Documents require that a particular product be installed and/or applied by an approved applicator by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such work is approved.
- 2.5.8** The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be immediately reported to the City.
- 2.5.9** Before ordering materials or doing work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness and accuracy of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, shall be submitted to the City for resolution before proceeding with the work.
- 2.5.10** The CM@Risk shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This work shall be performed or supervised by an Arizona licensed civil engineer or surveyor.
- 2.5.11** Any person employed by the CM@Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. The CM@Risk or Subcontractor shall keep the City harmless from damages or claims which may occur in the enforcement of this Section.
- 2.5.12** CM@Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the

Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.5.13 CM@Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.5.14 On a daily basis, the CM@Risk shall prepare a Contractor's Daily Report. The report shall detail the activities that took place during the course of the day, all equipment utilized and the number of hours operated and all personnel on the site inclusive of subcontractors. The Daily Reports shall be submitted on a daily basis, unless otherwise arranged, to the City's Designated Representative. The Daily Reports shall also be made available to the Contract Administrator upon request. Failure to provide Daily Reports as arranged or requested above will result in the retention of monthly progress payments until the Reports are brought up to date. On a weekly basis the CM@Risk shall update a three week look ahead schedule and submit to the City.

2.6 Control of the Work Site

2.6.1 Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the City use of adjacent land areas, building or site access. The CM@Risk shall assist with overall site and adjacent area security. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

2.6.1.1 The Elks Opera House shares the building with another owner, the Prescott Elks Building LLC and their tenants. These businesses will remain in operation during the project. Although separate entities, many utilities and common spaces are shared. The CM@Risk shall make himself aware of these situations and make provisions to not unduly interfere with the use of these items by the Prescott Elks Building LLC and its tenants. Utilities shall not be interrupted without prior notification. Sidewalks, entrances, exits, and access to spaces shall not be blocked. Noise shall be kept to a minimum and not be disruptive during their hours of operation. All noisy or dusty operations must be done in off hours or so as to not disrupt the operation of these businesses. All access to and use of their spaces will be by permission and be supervised.

2.6.2 CM@Risk shall maintain ADA accessibility requirements during construction activities in an occupied building or facility. ADA accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

2.6.3 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@Risk.

2.6.4 The CM@Risk shall provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and shall make necessary arrangements for such disposal. Any disposal/dumping of waste products or unused materials shall conform to applicable Federal, State and Local Regulations. Any hazardous material disposal shall be the responsibility of the CM@Risk. The City will supply a construction dumpster and dumping of non hazardous

construction debris as needed at no cost to the CM@R.

- 2.6.5** The CM@Risk will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CM@Risk will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CM@Risk as the CM@Risk's representative at the site. The representative shall have full authority to act on behalf of the CM@Risk and all communications given to the representative shall be as binding as if given to the CM@Risk. The representative shall be present on the site at all times as required to perform adequate supervision and coordination of the work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.

2.7 Shop Drawings, Product Data and Samples

- 2.7.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.7.2** The CM@Risk shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as shown in Exhibit B as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the CM@Risk, which are not required by the Contract Documents, may be returned without action.
- 2.7.3** The CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals.
- 2.7.4** By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CM@Risk represents that the CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 2.7.5** The CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@Risk has specifically informed the City in writing separate of the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation. The CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval thereof.
- 2.7.5** The CM@Risk shall direct specific attention to the City, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, of revisions other than those requested by the City on previous submittals.
- 2.7.7** Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- 2.7.8** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.8 Quality Control, Testing and Inspection

2.8.1 Inspection

Inspectors may be stationed on the work site to report to the Contract Administrator or his Designee as to the progress of the work, the manner in which it is being performed, and also to report whenever it appears that material furnished or work performed by the CM@Risk fails to

fulfill the requirements of the specifications and Agreement. The Inspector may direct the attention of the CM@Risk to such failure or infringement but such inspection shall not relieve the CM@Risk from any obligation to furnish acceptable materials or to provide completed construction that is satisfactory in every particular.

2.8.2 In case of any dispute arising between the Inspector and the CM@Risk as to material furnished or the manner of performing the work, the Inspector shall have the authority to reject materials or suspend the work until the question and issue can be referred to and decided by the City. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Inspectors shall in no case act as foremen or perform other duties for the CM@Risk or interfere with the management of the work by the CM@Risk.

2.8.3 Inspection or supervision by the Contract Administrator or Designee shall not be considered as direct control of the individual workman and his work. The direct control shall be solely the responsibility of the CM@Risk.

2.9 Materials Testing

2.9.1 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.9.2 All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection of the City.

2.9.3 The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests shall be made in accordance with the standard methods of AASHTO or ASTM, DSPM and MAG supplements.

2.9.4 The City will select a pre-qualified Independent Testing Laboratory. The CMAR shall determine the scope of testing required and provide an allowance in the GMP for the payment of the materials testing. The CM@Risk shall schedule and coordinate and make payment to the Testing Laboratory as needed.

2.9.4.1 When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM@Risk. Construction contingency cannot be utilized for the cost of re-testing.

2.9.4.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.9.5 The CM@Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

2.9.6 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.9.7 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@Risk, unless otherwise provided in the Contract Documents.

2.9.8 CM@Risk's quality control testing and inspections shall be the sole responsibility of the CM@Risk and paid by the CM@Risk.

2.10 Approved Alternates

2.10.1 Plans and specifications may contain references to equipment and/or materials (patented or unpatented) or "approved alternate(s)." Such references shall be regarded as establishing a standard of quality, finish, appearance, performance or as indicating a selection or design based upon compatibility with existing equipment, materials or details of construction inherent to the project design. Such references shall not be construed as limiting the selection to a specified

item, source or design detail. The use of an alternate or substitute, item or source as an approved alternate will be permitted, subject to the following procedure pursuant to ARS 34-104.

- 2.10.2** The Bidder shall submit a written Proposal for substitution to the CM@Risk and Contract Administrator at least eight (8) days prior to the original deadline for receiving Bids. Requests for substitution submitted to the City's contracted Consultant or other City Staff shall not be reviewed. The submittal envelope must be clearly marked with Bid Number and "**REQUEST FOR APPROVED ALTERNATE**". Requests must be time stamped by the CM@Risk and Contract Administrator by 4:00 P.M. (approved alternate date). The proposal shall include all information necessary for proof of quality and suitability for substitution including benefits, engineering design and data (calculations) and/or detailed plan modifications which may be required by the substitution. The Bidder shall submit additional information and/or samples when required.
- 2.10.3** The Contract Administrator, will evaluate the information submitted, perform tests when necessary and make comparisons in order to approve or reject the proposal. If rejected, the Contract Administrator shall give notice of rejection to the Bidder submitting the proposal.
- 2.10.4** The City, if the proposal is accepted, shall issue a written addendum to the Invitation For Bid specifying the approved alternates and publish the modification in the same manner as the original bidding documents.
- 2.10.5** The Specifications may reference equipment or materials "or alternate". The reference to "or alternate" shall be construed to mean "or approved alternate" in every instance. Use of an alternate or substitute item shall be allowed only if approval was received as outlined in this Section.

2.11 Project Record Documents/As-Builts

- 2.11.1** During the construction period, the CM@Risk shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes. These jobsite drawings shall be kept up to date with all changes, posted in an orderly manner for review by the City or any inspectors..

The CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. CM@Risk shall give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on Drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

The CM@Risk shall mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

The CM@Risk shall mark Project Record Drawings sets with red erasable colored pencil.

The CM@Risk shall note Requests for Information (RFI) Numbers, American Standards Institute (ASI) Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

The CM@Risk shall at the time of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.

2.11.2 Immediately upon receipt of the reviewed Project Record Drawings from the City, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City:

2.11.2.1A complete set of electronic Project Record Drawings prepared in electronic format compatible with City of Prescott Capital Project Management electronic format. The Design Professional will provide files of the original Construction Documents to the CM@Risk for the use of preparing these final Project Record Drawings or the CM@Risk may Agreement with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

2.11.2.2A complete set of reproducible mylars from the final City electronic file drawings and five (5) edge-bound blue-line or blackline sets reproduced from these mylars. The CM@Risk shall engage the Civil Engineer of record to approve all underground utility, grading and drainage and stamp the final civil mylars prior to final submittal.

2.11.2.3 The original copy of the Project Record Drawings (redline mark-ups).

2.12 Project Safety

2.12.1 CM@Risk Safety Program

The industrial environment in which the CM@Risk for the City of Prescott operates may on occasion present a potential safety and health hazard to any who may be on the job site, if applicable governmental regulations and sound work rules for maintaining a safe place and environment are not followed. The Occupational Safety and Health Act (OSHA) is the minimum standard for safety and environmental protection and must be fully complied with at all times. All work shall be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including ADOSH policies and procedures.

2.12.2 Contractor Safety Tailgate Meetings

CM@Risk shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.

2.12.3 Accident/Injury Procedure

CM@Risk shall contact the Contract Administrator and the Risk Management Division within 24 hours of the occurrence of an accident or injury arising out of the CM@Risk's work under this Agreement.

2.12.4 Unsafe Acts

CM@Risk employees are encouraged to abate or remedy any unsafe act or condition which may arise in the course of CM@Risk's work under this Agreement.

2.12.5 Safety Audits

The City reserves the right to conduct safety audits at the job site and stop unsafe acts at any time. In addition, the City shall be notified should any OSHA inspection occur at a City job site.

2.12.6 CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

2.12.7 CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

2.12.8 CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.

2.12.9 The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.

2.12.10 CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

2.12.11 CM@Risk will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Contract Administrator and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.12.13 CM@Risk's responsibility for safety under this Section 2.12 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.12.14 CM@Risk and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the City of Prescott, that come under the Occupational Safety and Health Administration Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

All CM@Risk and all Subcontractors using chemicals on City of Prescott property, shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Prescott representative prior to bringing them on property.

CM@Risk and all Subcontractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation shall be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, CM@Risk and Subcontractors are hereby informed of the presence of (or possible presence of) chemicals in the area where the work requested will be performed. It is the responsibility of all selected Contractors to contact the City of Prescott for specific information relative to the type of chemicals present and location of appropriate Material Safety Data Sheets.

Unless included in the Work, if the CM@Risk encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or

materials regulated by Public Health Laws, he shall immediately stop work and report the condition to the City.

If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas onsite. An extension of Contract Time may be granted in accordance with Article 6.

Upon discovery of hazardous materials the CM@Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

2.12 Warranty

The provisions of M.A.G., Section 108.8 shall apply with the following additional requirements:

Should the CM@Risk fail to begin repairs or corrective work within fourteen (14) calendar days after receipt of written notice from the City, the City may perform the necessary work and the CM@Risk hereby agrees to reimburse the City for the actual cost.

The warranty period on any part of the work so repaired or replaced shall be extended for a period of 1 year from the date of such repair or replacement.

This guarantee will not apply to damage caused by normal wear and tear or by acts beyond the CM@Risk's control.

2.13.2 CM@Risk's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@Risk or anyone for whose acts CM@Risk may be liable.

2.13.3 CM@Risk's warranty obligation shall be for one year.

2.13.4 Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section 2.12 or the Contract Documents. CM@Risk will provide City with all manufacturers' warranties upon Substantial Completion.

2.14 Correction of Defective Work

2.14.1 CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.13 above, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A Progress Payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Contract Documents.

2.14.2 During the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City will commence correction of such nonconforming Work with its own forces.

2.14.3 CM@Risk shall, take meaningful steps to commence correction of nonconforming Work subject to Section 2.13 above. These measures include but are not limited to timely correction of the Work. If the CM@Risk fails to initiate necessary measures with such work within seven days of receipt of written notice from City, the City, in addition to any other

remedies provided under the Contract Documents, may provide CM@Risk with written notice that City will commence correction of such nonconforming Work with its own forces.

2.14.4 If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.

2.14.5 The CM@Risk shall immediately respond to any nonconforming Work that creates an emergency.

2.14.6 The one year period referenced in Division 2.13.3 above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents.

ARTICLE 3 - CITY'S SERVICES AND RESPONSIBILITIES

3.1 Duty to Cooperate. City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

3.2 City shall furnish the CM@Risk, at no cost to the CM@Risk, a CADD file or electronic format acceptable to the City of the Construction Documents in AutoCAD format compatible with City of Prescott's project representative.

3.3 Contract Administrator

3.3.1 Contract Administrator shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents.

3.3.2 Contract Administrator shall also provide CM@Risk with prompt notice if the Contract Administrator observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.

3.4 Design Professional Services

3.4.1 The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM@Risk. The CM@Risk shall not have any right however, to limit or restrict any contract modifications to such contract.

3.4.2 The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work:

3.4.2.1 The Design Professional will provide administration of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.

3.4.2.2 The Design Professional will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work, and will endeavor to guard the City against defects and deficiencies in the Work.

3.4.2.3 The Design Professional will review and certify the CM@Risk's Payment Requests.

- 3.4.2.4 The Design Professional will have authority to reject Work which does not conform to the Contract Documents.
- 3.4.2.5 The Design Professional will have authority to require additional inspection or testing of the Work in accordance with Section 2.9.
- 3.4.2.6 The Design Professional will review and approve or take other appropriate action upon the CM@Risk's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.8.
- 3.4.2.7 The Design Professional will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.
- 3.4.2.8 The Design Professional will prepare Change Orders, and may authorize minor changes in the Work as provided in Section 6.6.
- 3.4.2.9 The Design Professional will conduct inspections to determine Substantial Completion and Final Acceptance.
- 3.4.2.10 The Design Professional will receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@Risk.
- 3.5 **City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents.
- 3.6 **Permit Review and Inspections.** For clarification, permitting activities are handled by the City of Prescott Planning and Permit Services and are not subject to the responsibilities of the City under this Agreement. The CM@Risk is responsible for securing all and the payment for all permits.

ARTICLE 4 - CONTRACT TIME

4.1 Contract Time.

- 4.1.1 Contract Time shall be approximately 260 calendar days, from August 3, 2009 to April 20, 2010, as indicated in the Notice to Proceed.
- 4.1.2 CM@Risk agrees that it will commence and complete performance of the Work as set forth in the Notice to Proceed.
- 4.1.3 All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6.

4.2 Substantial Completion

- 4.2.1 Substantial Completion shall be in accordance with its definition in Article 1 except for the following: *(insert can add or subtract criteria)*
- 4.2.2 Prior to notifying the City in accordance to Section 4.2.3 below, the CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CM@Risk shall proceed promptly to complete and correct items on the list.

Failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.

CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

- 4.2.4** Within five (5) days of City's receipt of CM@Risk's notice, City, Design Professional and CM@Risk will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 4.2.5** If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 4.2.6** City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 4.2.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.
- 4.3 Final Acceptance.** Upon receipt of written notice that the Work or identified portions of the Work are ready for final inspection and acceptance, City and CM@Risk will jointly inspect to verify that the remaining items of Work have been completed as set forth in Article 4.2.5. Upon verification that the items have been satisfactorily completed, the City will issue a Final Acceptance Letter.
- 4.4 Liquidated Damages.**
 - 4.4.1** There are no liquidated damages specified.
 - 4.4.2 Incentive Bonuses.** None
- 4.5 Project Schedule**
 - 4.5.1** The Project Schedule shall be initially submitted at the start of this Agreement pursuant to Article 2 and updated and maintained throughout the Contract Services. An updated Project Schedule shall be part of the GMP amendment.
 - 4.5.2** The Project Schedule shall be revised as required by conditions and progress of the Contract Services, but such revisions shall not relieve CM@Risk of its obligations to complete the Contract Services within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents.
 - 4.5.3** Updated Project Schedule shall be maintained by the CM@Risk on a weekly basis to show at least a three week look ahead and submitted to the City as part of the CM@Risk's monthly payment request.
 - 4.5.3.1** CM@Risk shall provide the City with a monthly status report with each Project Schedule detailing the progress of Constructions, including whether (i) the construction is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, and (iii) other items require resolution so as not to jeopardize the ability to complete the construction as presented in the GMP and within the Contract Time(s).

- 4.5.4 The City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences and techniques for executing the Contract Services.
- 4.5.5 The Project schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the path of critical activities.
- 4.5.5.1 The CPM diagram schedule shall be in days and indicate duration, earlier and latest start and finish dates, and float times for all activities except critical activities and shall be presented in a time scaled graphical format for the Project as a whole.

ARTICLE 5- CONTRACT PRICE

- 5.0 The CM@Risk agrees at his own cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the Guaranteed Maximum Price proposal.
- 5.1 **Contract Price.**
 - 5.1.1 The Contract Price will be \$1,151,323.00, the Guaranteed Maximum Price as shown in Haley Construction letter dated 7/10/2009 and itemized in the spreadsheet labeled Exhibit B.
 - 5.1.2 The Contract Price is subject to adjustments made in accordance with Article 6.
 - 5.1.3 The CM@Risk shall be responsible for payment of all State of Arizona and City of Prescott transaction privilege (sales) taxes due on construction income, whether or not such taxes are specifically separated in the bid amount.
 - 5.1.4 Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes throughout the term of this Agreement, whether or not yet effective or merely scheduled to go into effect.
- 5.2 Any Contingencies and Allowances as agreed upon between the City and the CM@Risk shall be set forth in the Guaranteed Maximum Price. Allowances designated CM@Risk Contingency allowances may be used for the project at the discretion of the CM@ Risk for unforeseen items related to the project. Any unused CM@Risk Contingency allowance amounts will revert to the Owners allowance. When a GMP line item allowance is reduced due to competitive bidding or for other reasons, 50% of the savings will revert to the Owners allowance and 50% to the CM@ Risk Contingency allowance. All allowance use amounts shall be kept in a log available at regular meetings.
- 5.3 **Markups for Changes.** If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

ARTICLE 6 - CHANGES TO THE CONTRACT PRICE AND TIME

- 6.1 **Delays to the Work**

- 6.1.1** If CM@Risk is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times for performance may be reasonably extended by Change Order.
- 6.1.2** The CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary.
- 6.1.3** By way of example and subject to Section 12.7, events that may entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, unusual delay in transportation, and adverse weather conditions not reasonably anticipated.
- 6.1.4** If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- 6.1.5** In the event that the CM@Risk sustains damages as a result of expenses incurred by a delay for which the City is responsible, the CM@Risk and the City shall negotiate to determine the amount of such damages. This provision is made pursuant to Arizona Revised Statutes Section 34-221 and is effective only if the delay caused by the City is unreasonable under the circumstances and was not within the contemplation of the parties. This provision shall not be construed to void any provision of this contract pertaining to notice of delays, arbitration or other settlement provisions applicable to disputes, or provisions relating to liquidated damages.
- 6.1.6** In addition to CM@Risk's right to a time extension for those events set forth in this Section 6.1, CM@Risk may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 12.7.
- 6.2 Differing Site Conditions**
- 6.2.1** If CM@Risk encounters a Differing Site Condition(s), CM@Risk may be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent CM@Risk's cost and/or time of performance are the direct result of a Differing Site Condition(s).
- 6.2.2** Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.
- 6.3 Errors, Discrepancies and Omissions.**
- 6.3.1** If the CM@Risk observes errors, discrepancies or omissions in the Contract Documents, it shall promptly notify the Design Professional and request clarification. CM@Risk shall provide a copy of such notice to the City Contract Administrator.
- 6.3.2** If the CM@Risk proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, it does so at his own risk. Adjustments involving such circumstances made by the CM@Risk prior to clarification by the Design Professional shall be at the CM@Risk's risk.
- 6.4 City Requested Change in Work.** The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or desirable.

6.4.1 Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents.

The City will request a proposal for a change in Work from CM@Risk, and an adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

6.5 Legal Requirements. The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP, affecting the performance of the Work

6.6 Change Orders.

6.6.1 The City and the CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Order. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment. The change in Work may or may not include an adjustment in the Contract Price or Contract Time.

6.6.2 All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

6.7 Field Orders

6.7.1 The City has authority to initiate Field Orders that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Field Orders shall be effected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly.

6.7.2 Field Orders will not involve an adjustment in the Contract Price and/or Contract Times unless or until such an adjustment becomes a Change Order.

6.7.3 CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.

6.8 Contract Price Adjustments

6.8.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

6.8.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

6.8.1.2 A mutually agreed upon accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; and

6.8.1.3 Costs, fees and any other markups.

6.8.2 The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit B.

6.8.3 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

- 6.8.4** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 6.8.5** If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof.
- 6.8.5.1** As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.
- 6.8.5.2** If the parties are unable to agree and City expects CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.
- 6.8.6 Emergencies.** In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) resulting from emergency work under this Section 6.8.6 shall be determined as provided in this Article 6.

ARTICLE 7- PROCEDURE FOR PAYMENT

- 7.0** For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City and the Elks Opera House Foundation agrees to pay the CM@Risk the actual cost of the work and any applicable costs for general conditions, insurance, bonding, and taxes plus the CM@Risk's construction fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.
- 7.1 GMP Payment Request**
- 7.1.1** At the pre-construction conference described in Section 2.4, CM@Risk shall submit for City's review and approval a Schedule of Values. The Schedule of Values will (i) be based on the bids accepted from the successful Subcontractors (ii) include values for all items comprising the GMP including any CM@Risk Construction Contingency and/or city allowances and (iii) serve as the basis for monthly progress payments made to CM@Risk throughout the Work.
- 7.1.2** At least five (5) working days prior to the date established for a progress payment, the CM@Risk shall meet with the Contract Administrator to review the progress of the Work as it will be reflected on the CM@Risk Payment Request.
- The CM@Risk Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the CM@Risk Payment Request, and that title to all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.
- 7.1.3**
- 7.1.4.1** For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances.

7.1.4.2 For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Yavapai County and be accessible for Owner's inspection. Title to such materials and equipment protects the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

7.1.4.3 All bonds and insurance required for stored materials shall be in the City's name.

7.1.5 CM@Risk shall submit a Payment Request in a format acceptable to the City on a date established by the City and the CM@Risk.

7.1.6 The City representative will review the Payment Request and recommend and assign payment to be made by either the City or the Foundation, or both.

7.2 Payment of GMP

7.2.1 City shall make payment in accordance with A.R.S. 34-607. Payment will be made no later than fourteen (14) days after the CM@Risk Payment Request is certified and approved by the City's Contract Administrator, less amounts properly retained under Section 7.3 below.

7.2.2 City shall pay CM@Risk all amounts properly due. If City determines that CM@Risk is not entitled to all or part of a CM@Risk Payment Request, it will notify CM@Risk in writing within (7) days after the date CM@Risk Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns. CM@Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

7.3 Retention of GMP

7.3.1 The City and / or Foundation will retain ten percent (10%) of each CM@Risk Payment Request amount provided; however, that when fifty percent (50%) of the Work has been completed by CM@Risk, upon request of the CM@Risk, City may reduce the amount retained to five percent (5%) from CM@Risk's subsequent CM@Risk Payment Requests if the CM@Risk's performance of work has been satisfactory.

7.3.2 In lieu of retention, the CM@Risk may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by the state of Arizona, securities guaranteed by the United States, securities of the United States, the state of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.

Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the City of Prescott.

CDs and Securities shall be assigned exclusively for the benefit of the City of Prescott pursuant to the City's form of Retainage Escrow Agreement.

7.4 Substantial Completion. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City may release to CM@Risk all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, not to exceed two and one half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.5 Final Payment

7.5.1 After receipt of a final CM@Risk Payment Request, City shall make final payment 30 days after the receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.

7.5.2 At the time of submission of its final CM@Risk Payment Request, CM@Risk shall provide the following information:

7.5.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;

7.5.2.2 A affidavit regarding settlement of claims executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

7.5.2.3 Consent of CM@Risk's surety, if any, to final payment.

7.6 Payments To Subcontractors or Supplier

7.6.1 CM@Risk shall pay its Subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. The CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within fourteen (14) calendar days of the payment of the reduction of the retention to the CM@Risk. No Contract between CM@Risk and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

7.6.2 If the CM@Risk fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions and CM@Risk agrees that the City may take such actions:

7.6.2.1 to hold CM@Risk in default under this Agreement;

7.6.2.2 withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;

7.6.2.3 reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this project; or

7.6.2.4 terminate this Agreement.

7.6.3 If CM@Risk's payment to a Subcontractor or supplier is in dispute, CM@Risk and Subcontractor or supplier agree to submit the dispute to any of one of the following dispute resolution processes within fourteen (14) calendar days from the date any party gives notice to the other: (a) binding arbitration; (b) a form of alternative dispute resolution (ADR) agreement to all parties, or (c) a City of Prescott facilitated mediation. When disputed claim is resolved through ADR or otherwise, the CM@Risk and Subcontractor or supplier agree to implement the resolution within seven (7) calendar days from the resolution date.

7.6.4 Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release or modification of the requirement of this Section or of any of the terms or provisions thereof.

7.6.5 CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

7.7 Record Keeping and Finance Controls

7.7.1 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 shall be kept on a generally recognized accounting basis.

From the effective date of this Agreement and until three (3) years after the date of final payment, by the City of Prescott to the CM@Risk pursuant to this Agreement, the City, its authorized representative, and/or the appropriate federal or state agencies, 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 Contract Documents and any change orders. The City of Prescott or its authorized representative shall have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. The City of Prescott shall give Contractor or Subcontractor reasonable advance notice of intended audits.

The City reserves the right to decrease Contract Price and/or payments made on this Agreement 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.

- 7.7.2** The CM@Risk shall include similar provisions in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal and/or state agencies, have access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 7.7.3** The City reserves the right to decrease Contract Price and/or payments made on this Agreement if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.
- 7.7.4** 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.

ARTICLE 8- CLAIMS AND DISPUTES

8.1 Requests for Contract Adjustments and Relief.

- 8.1.1** If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to Work, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.1.2** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.
- 8.1.3** In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.1.4** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

8.2 Dispute Avoidance and Resolution

- 8.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.2.2** CM@Risk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and Contract Administrator.
- 8.2.3** If a dispute or disagreement cannot be resolved through CM@Risk's Representative and Contract Administrator, CM@Risk's Senior Representative and City's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

8.3. Representatives of the Parties

8.3.1 Contract Administrators

- 8.3.1.1** City designates the individual listed below as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.2.3:

Mic Fenech, Administrative Services Director
City of Prescott
201 S. Cortez St
Prescott, AZ 86302

City designates the individual listed below as its Contract Administrator, which individual has the authority and responsibility set forth in Division 8.2.2:

Ron Miller, Project Manager
City of Prescott
201 S. Cortez St.
Prescott, AZ 86302

8.3.2 CM@Risk's Representatives

- 8.3.2.1** CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Division 8.2.3: Bill Haley, Vice President, Haley Construction.
- 8.3.2.2** CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Division 8.2.2: Mic Fenech, Director of Administrative Services.

ARTICLE 9 – SUSPENSION AND TERMINATION

9.1 City's Right to Stop Work

- 9.1.1** City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days. If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.

9.1.2 CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

9.2 Termination for Convenience

9.2.1 The City has the right to terminate this Contract or abandon any portion of the project for which services have not been performed by the CM@Risk.

9.2.2 City reserves the right to terminate this Agreement or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, 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. The City shall make this final payment within sixty (60) days after the CM@Risk has provided and the City has accepted the last of the partially completed items. CM@Risk shall not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by CM@Risk's suppliers or Subcontractors, which CM@Risk could reasonably have avoided.

9.3 Termination for Cause

9.3.1 City may also terminate this contract 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 Contract Administrator, 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.

9.4 City's Right to Perform and Terminate for Cause

9.4.1 If CM@Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 9.4.2 9.4.3 and 9.4.4 below.

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.

9.4.2 Upon the occurrence of an event set forth in Section 9.3 above, the City may provide written notice to the CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of the CM@Risk's receipt of such notice.

If the CM@Risk fails to cure, or undertake reasonable efforts to cure, such problem, then City may give a second written notice to CM@Risk of its intent to terminate within an additional seven (7) day period.

- 9.4.4** If CM@Risk, within such second seven (7) day period, fails to cure, or undertake reasonable efforts to cure, such problem, then City may declare the Agreement terminated for cause by providing written notice to CM@Risk of such declaration.

Upon declaring the Agreement terminated pursuant to Subsection 9.4.4 above, City may enter upon the premises and take possession of all materials and equipment, for the purposes of completing the Work.

- 9.4.5** 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 apprise the Work it has completed and submit its appraisal to the City for evaluation.

- 9.4.6** 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.

- 9.4.7** In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default.

- 9.4.8** If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM@Risk's default.

- 9.4.11** If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 9.2.

ARTICLE 10 - INSURANCE AND BONDS

10.1 Insurance Requirements

- 10.1.1** Concurrently with the execution of this Agreement, the CM@Risk shall furnish the City of Prescott a certificate of insurance on a standard insurance industry ACORD form. The ACORD form shall be issued by an insurance company authorized to transact business in the state of Arizona, or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.
- 10.1.2** CM@Risk, Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the CM@Risk, his agents, representatives, employees, or Subcontractors.
- 10.1.3** The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- 10.1.4** The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the Agreement Services under this Agreement by the CM@Risk, his agents, representatives, employees,

Subcontractors or Subconsultants and CM@Risk is free to purchase such additional insurance as may be determined necessary.

10.2 Minimum Scope And Limits Of Insurance. CM@Risk shall provide coverage at least as broad and with limits of liability not less than those stated below.

10.2.1 Commercial General Liability-Occurrence Form

(Form CG 00 01, ed. 07/98 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expense (Any one person)	Optional

Commercial Umbrella Liability – Occurrence Form \$6,000,000

10.2.2 Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles

(Form CA 00 01, ed. 07/97 or any replacement thereof)

Combined Single Limit Per Accident	\$1,000,000
For Bodily Injury and Property Damage	

10.2.3 Workers Compensation and Employers Liability

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

10.2.4 Builders' Risk Insurance (Course of Construction)

CM@Risk bears all responsibility for loss to all work being performed unless waived in writing by City of Prescott, CM@Risk shall purchase and maintain in force Builders Risk-Installation insurance on the entire work until completed and accepted by City of Prescott. Such insurance shall be Special Causes of Loss policy form, (minimally including perils of fire, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, collapse and flood coverage), completed value, replacement cost policy form equal to the GMP and all subsequent modifications thereto. CM@Risk's Builders Risk-Installation insurance shall be primary and not contributory.

Such Builders Risk-Installation insurance shall name City of Prescott, CM@Risk and all tiers of Subcontractors as Named Insureds and shall contain a provision that subject insurance shall not be canceled or materially altered without at least 30 days advance notice to City of Prescott. City of Prescott shall also be named as a Loss Payee under Builders Risk-Installation coverage.

Such Builders Risk-Installation insurance shall cover the entire work including reasonable compensation for architects and engineers' services and expenses and other "soft costs" made necessary by an insured loss. Builders Risk-Installation insurance shall provide coverage from the time any covered property comes under CM@Risk's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property shall include, but not be limited to, scaffolding, falsework, and temporary buildings at the site. Said insurance shall also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code. Builders Risk-Installation insurance shall provide coverage while covered premises, or any portion thereof, are occupied.

CM@Risk shall also purchase and maintain Boiler and Machinery insurance with same requirements as Builders Risk-Installation insurance cited above if the work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law and or testing requirements in the performance of this contract.

CM@Risk shall be responsible for any and all deductibles under above policies and CM@Risk waives all rights of recovery and subrogation against City of Prescott under CM@Risk-provided Builders Risk-Installation insurance and Boiler and Machinery insurance described herein.

10.3 Self-Insured Retentions. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

10.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

10.4.1 Commercial General Liability and Automobile Liability Coverages

10.4.1.1The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: *The City of Prescott, and the Prescott Elks Building L.L.C., its officers, officials, agents, and employees are additional insureds 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.*

10.4.1.2The CM@Risk 's insurance shall contain broad form contractual liability coverage and shall not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.

10.4.1.3The City, and the Prescott Elks Building, L.L.C. its officers, officials, agents, and employees shall be additional insureds 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.

10.4.1.4The CM@Risk 's insurance coverage shall be primary insurance with respect to the City, and the Prescott Elks Building L.L.C., its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CM@Risk and shall not contribute to it.

10.4.1.5The CM@Risk 's insurance shall 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.

10.4.1.6Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

10.4.1.7The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from work performed by the CM@Risk for the City.

10.4.2 Workers' Compensation and Employers Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from work performed by the CM@Risk for the City.

10.4.3 Builders Risk Insurance (Course of Construction)

10.4.3.1Builders Risk Insurance shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Prescott, has an insurable interest in the property required to be covered.

10.4.3.2The Builders' Risk insurance shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

10.4.3.3This insurance shall include as named insureds, the City of Prescott, the CM@Risk, Subcontractors, Subconsultants and/or others with an insurable interest in the work.

10.4.3.4This insurance shall be written using the Special Causes of Loss policy form, replacement cost

basis and shall include, if specifically requested by the City, coverage for flood and earthquake.

10.4.3.5 All rights of subrogation are hereby waived against the City of Prescott, its officers, officials, agents and employees.

10.4.3.6 Builders' Risk Insurance must provide coverage from the time any covered property becomes the CM@Risk's responsibility, and continuing without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation Site, or awaiting installation, whether on or off site.

10.4.3.7 CM@Risk is responsible for payment of all deductibles under the Builder's Risk policy.

10.5 Subconsultant's and Subcontractor's Insurance. CM@Risk's certificates shall include all Subcontractors and Subconsultants as insureds under its policies or CM@Risk shall maintain separate certificates and endorsements for each Subcontractor and Subconsultant. All coverages for Subcontractors and Subconsultants shall be in the amounts shown in Section 10.2.

10.6 Notice Of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall 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:

City of Prescott Risk Management Office
PO Box 2059
Prescott, Arizona 86302

10.7 Acceptability Of Insurers. Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an A. M. Best's rating of no less than B++6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

10.8 Verification of Coverage

10.8.1 CM@Risk shall furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and 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 endorsements that restrict or limit coverages shall be clearly noted on the certificate of insurance.*

10.8.2 All certificates and endorsements are to be received and approved by the City before Work commences except for Builder's Risk Insurance which will be received and approved as provided in Section 10.2.4. Each insurance policy required by this Agreement must be in effect at or prior to the earlier of commencement of Work under the Contract Documents or the signing of this Agreement except for Builder's Risk Insurance which must be in effect prior to commencement of Work 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 contract.

10.8.3 All certificates of insurance required by this Agreement shall be sent directly to the City of Prescott, City Clerk's Office. The project number and project description shall 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.

10.9 Approval. Any modification or variation from the insurance requirements in this Agreement shall be approved by the Law Department, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

10.10 Bonds and Other Performance Security.

- 10.10.1** Prior to execution of this Agreement, the CM@Risk must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP set forth in this Agreement.
- 10.10.2** Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of this Agreement.
- 10.10.3** The bonds shall be made payable and acceptable to the City of Prescott.
- 10.10.4** The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.
- 10.10.4.1** If one Power of Attorney is submitted, it shall be for twice the total GMP amount.
- 10.10.4.2** If two Powers of Attorney are submitted, each shall be for the total GMP amount. Personal or individual bonds are not acceptable.
- 10.10.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 10.10.6** All bonds submitted for this project shall be provided by a company which has been rated "A- or better" by the A.M. Best Company.

ARTICLE 11 - INDEMNIFICATION

- 11.1 CM@Risk's General Indemnification.** 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.

- 11.2** The CM@Risk agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Prescott and its agents or vendors for alleged patent and/or copyright infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this Agreement and the CM@Risk further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may

be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires.

ARTICLE 12 – GENERAL PROVISIONS

12.1 Contract Documents

12.1.1 Contract Documents are as defined in Article 1.

12.1.2 The Contract Documents form the entire agreement between City and CM@Risk. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

12.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1. As to drawings and plans, given dimensions shall take precedence over scaled measurements, and large scale plans over small-scale plans. Contract specifications shall take precedence over contract plans.

The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

12.2 Amendments. The Contract Documents may not be changed, altered, modified, or amended in any way except in writing signed by a duly authorized representative of each party.

12.3 Time is of the Essence. City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

12.4 Mutual Obligations. City and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

12.5 Cooperation And Further Documentation. The CM@Risk agrees to provide such documents as the City shall reasonably request to implement the intent of the Contract Documents.

12.6 Assignment. Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

12.7 Force Majeure. 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, acts of terrorism, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

12.8 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 CM@Risk 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.

12.9 Construction Methods. If the City provides the CM@Risk with a written order to provide adequate maintenance of traffic, clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@Risk fails to comply in the time frame

specified, the City may have work accomplished by other sources at the CM@Risk's expense.

- 12.10 Utility Relocations for Construction Methods.** If any utility is relocated or rebuilt to accommodate the CM@Risk's construction methods and available equipment, the expense shall be borne by the CM@Risk.
- 12.11 Damaged Utilities during Construction.** Any utilities damaged during construction shall be replaced at the CM@Risk's expense as per the requirements of the M.A.G. Standard Specifications.
- 12.12 Third Party Beneficiary.** The Contract Documents shall not be construed to give any rights or benefits to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other party.
- 12.13 Governing Law.** The Agreement and all Contract Documents shall be deemed to be made under, and shall 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. Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall 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. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project which is the subject of this Agreement. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.
- 12.14 Severability.** If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 12.15 Legal Requirements.** CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 12.16 Independent Contractor.** The CM@Risk is and shall be an independent contractor and not an employee or agent of the City.
- 12.17 City's Right Of Cancellation.** All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Prescott pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
- 12.18 Survival.** All warranties, representations and indemnifications by the CM@Risk shall survive the completion or termination of this Agreement.
- 12.19 Covenant Against Contingent Fees.** The CM@Risk warrants that no person other than a bona fide employee working solely for CM@Risk has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this covenant, the City of Prescott shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, together with costs and attorneys fees.
- 12.20 Successorship.** CM@Risk and City agree that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs and assigns. This Agreement shall

extend to and be binding upon CM@Risk, its successors and assigns, including any individual, company, partnership or other entity with or into which CM@Risk shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which CM@Risk shall sell its assets.

- 12.21 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 or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
- 12.22 Headings.** The headings used in this Agreement, or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.23 No Waiver.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.
- 12.24 Notice.** All notices or demands required to be given, pursuant to the terms of this Agreement, shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

To City:	Legal Department Attn: Gary Kidd, City Attorney 201 S. Cortez St. Prescott, AZ 86302
To CM@Risk:	Haley Construction Company Attn; Bill Haley, Vice President PO Box 831 Prescott, AZ 86302
To Design Professional:	Otwell Associates Architects Attn; Bill Otwell 121 E. Goodwin St. Prescott, AZ 86303
Copy to:	Ron Miller, Project Manager City of Prescott 201 S. Cortez St. Prescott, Arizona 86302

- 12.25 Equal Employment Opportunity**
During the performance of this contract the CM@Risk will follow the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex or national origin.
- 12.26 Additional CITY Rights Regarding Security Inquiries.** In addition to the foregoing, CITY reserves the right to: (1) have an employee/prospective employee of CM@RISK be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of CM@RISK 's

employees and/or prospective employees; and, (4) object, at any time and for any reason, to an employee of CM@RISK performing work (including supervision and oversight) under this Agreement.

12.27 Terms of This Provision Applicable to all of CM@RISK 's Contracts and Subcontracts. CM@RISK shall include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Agreement, including supervision and oversight.

12.28 Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Agreement, as set forth above, are material to the City's entry into this Agreement and any breach thereof by CM@RISK may, at the City's option, sole and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Agreement. Such termination shall subject CM@RISK to liability for its breach of contract.

12.29 Hazardous Materials. Upon discovery of hazardous materials the CM@Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

12.30 Traffic Control

- a. Complete street closures will not be permitted unless specified in the Special Provisions. The timing and sequence of street closures shall be approved by the Engineering Services Director or designee at least 30 days prior to the closure. This approval is necessary to provide coordination with other roadway projects and special events.
- b. Adequate barricades and lighted warning signs shall be installed and maintained by the CM@Risk throughout the duration of the project.
- c. The CM@Risk shall submit a construction schedule and a barricade plan to the Engineering Services Director (or designee) for approval and/or modification at least 72 hours before construction is initiated.
- d. CM@Risk will comply with all provisions as may be provided in the technical specifications or in the approved barricade plan.

12.31 Material Source. No material source has been designated by the City for use on this project. MAG Specification, Section 106 shall apply as will ADOT Standard Specifications 1982, Section 106.1, 106.2, 106.7 & 106.8, which outline controls and Section 1001-1, -2, & -4 concerning approval of Contractor-Furnished Source and supplemental agreements in regards to environmental analysis and the liability for materials testing costs.

CM@Risk and Subcontractor furnished material sources situated in the 100-year flood plain of any stream or watercourse, and located within 1.0 mile upstream and 2.0 miles downstream of any highway structure or surfaced roadway crossing, shall not be allowed.

A CM@Risk and Subcontractor-furnished source shall be defined as a material source which is neither an A.D.O.T.-furnished source nor a commercial source, as herein defined.

A commercial source shall be defined as a material source in which the owner or producer has been for at least one year regularly engaged during regular business hours on a regular basis in the processing and selling of sand, rock, ready mixed portland cement concrete, asphaltic concrete and other similar products normally produced and sold to all parties. The company shall have an Arizona retail sales tax license.

The location of any new material source or existing non-commercial material source proposed for use on this project shall be reviewed by the appropriate agency having flood plain management jurisdiction over the area of proposed source location. CM@Risk and Subcontractor shall obtain a letter from the agency addressed to the Contract Administrator certifying that the proposed source location conforms to the conditions herein and such applicable Standard Specifications as referenced.

12.32 The CM@Risk shall familiarize himself with the nature and extent of the Contract documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

12-33 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 verifications 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.

The CM@Risk shall comply with the Immigration Reform and Control Act of 1996.

- 12-34 **Employment Provisions.** Subject to existing law and regulations, illegal or undocumented aliens will not be employed by the CM@Risk for any work or services to be performed pursuant to this contract. The CM@Risk will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. CM@Risk agrees to comply with the provisions of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A), 1324a(a)(2) (the "INA employment provisions"), and any amendments thereto prohibiting the unlawful employment of illegal or undocumented aliens. Under the terms of this agreement, the CM@Risk shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work under the provisions of the Immigration and Nationality Act or any other applicable federal or state laws. Violation of the provisions of this section shall be deemed a material breach of this contract.

SIGNATURE PAGE

CITY OF PRESCOTT

HISTORIC RESTORATIONS AND RENOVATIONS TO THE ELKS OPERA HOUSE

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

The CM@Risk agrees that this Agreement, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), per the terms and conditions of the Agreement.

Guaranteed Maximum Price

\$1,151,323

One Million one-hundred fifty-one thousand three hundred twenty three dollars and zero cents

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

JACK D. WILSON
Mayor, City of Prescott

ATTEST:

APPROVED AS TO FORM:

Elizabeth A. Burke
City Clerk

GARY D. KIDD
City Attorney

HALEY CONSTRUCTION COMPANY

ELKS OPERA HOUSE FOUNDATION

By: _____

Name: _____

JOHN OLSEN

Title: _____

President

EXHIBIT A - PROJECT DESCRIPTION

Exhibit A consists of the Construction Documents including the plans and specifications prepared by the Architect and Engineers for this project.

SEE SEPARATE PLANSHEETS
& SPECIFICATIONS

EXHIBIT B – GMP PROPOSAL



7/13/2009

Mic Fenech
Director of Administrative Services
City of Prescott
201 S Cortez Street
Prescott, AZ 86303

John Olsen, President
Elks Opera House Foundation
Prescott, AZ

RE: GMP for Historic Restorations and Renovations to the Elks Opera House

Haley Construction Company is proud to submit the Guaranteed Maximum Price for the Historic Restoration and Renovations to the Elks Opera House located at 117 East Gurley Street in Prescott according to plans prepared by Otwell Associates Architects and the itemized costs, exclusions and allowances included in Exhibit B attached. Allowances are shown in the description column and will be monitored by the project manager for the City of Prescott.

Haley Construction will provide those items delineated in the "GMP" column in appendix A for the Guaranteed Maximum Price of **One Million One Hundred Fifty One Thousand Three Hundred Twenty Three Dollars. (\$1,151,323)**. Exclusions are items which are shown in the drawings but are not included in the current GMP price. These items and the soft costs associated with them will be added to the contract as additional funding is received.

We want to thank the Elks Opera House Foundation and the City of Prescott for selecting Haley Construction Company to be a part of this exciting project. We look forward to working with the entire team to complete this restoration of the Elks Opera House.

Sincerely

Bill Haley
Vice President



GENERAL BUILDING CONTRACTOR

POST OFFICE BOX 831 • PRESCOTT, ARIZONA 86302

HISTORIC RESTORATIONS AND RENOVATIONS TO THE ELKS OPERA HOUSE

GUARANTEED MAXIMUM PRICE

CATEGORY	DESCRIPTION	GMP TOTAL	EXCLUSIONS: ITEMS NOT IN GMP
	Permits and Fees (\$6,000 Allowance)	6,000	
	General Conditions	179,282	
1	Remove fluted covering at front of theater Completed in Pre-Construction Phase		1,680 (1,680)
2	Restore decorative detailing at proscenium wall, box seats with (Estimated) cost of Trompe L'Oeil on the Proscenium wall and the balcony wall decorative plaster. a. Opera Box pilasters and decoration (Allowance) b. Interior Scaffolding for the stage area and box seats and flat plaster repair and paint	35,000 3,750	200,900
3	Replace Box Seats	15,675	
4	Replace chandelier, and new period lighting Use Grand Lighting (Estimate)		28,000
4a.	VE Alternate - Use steel in lieu of brass Cost through Connie Humphrey (Design 360 at 50% discount)		(14,000)
5	Provide new carpeting (Cambridge Commercial Carpet, Grand Junction)	10,973	
6	Provide new isle lighting	2,800	

CATEGORY	DESCRIPTION	GMP TOTAL	EXCLUSIONS: ITEMS NOT IN GMP
7	Repair all damaged wall and ceiling plaster Use Evergreene budget (Estimate) for plaster repair	52,600	
7a.	VE Alternate - Use drywall in lieu of cementous plaster Costs with local drywall subcontractors	(43,052)	
8	Repaint all walls to historically correct colors Use Evergreen budget (Estimate) for base paint Evergreen budget for decorative painting (Estimate)	20,000	53,800
8a.	VE Alternate - Use local subs for base painting	(3,529)	
9	Repair and repaint metal ceiling in auditorium	88,869	
10	Doors per plan	22,303	
11	Remove and replace hardware and curtains at openings to boxes		16,865
12	Replace curtains at top of stairs to balcony		11,833
13	Provide new stair lift		10,750
14	Remove enclosure at stage left pin line balcony, expose original pinloft	5,600	
15	Provide new sound rated loading door (In Item #10)	In Item # 10	
16	Provide new insulation in attic space above theater and stage (moved to #36 \$15,100.00)	In Item # 36	
17	Provide new theater lighting system (<u>Includes 30k Allowance for electrical work</u>) a. Theatre lighting b. Theatre lighting racking	67,520	72,150 13,100
18	Provide 2 hr. rated separation in attics between theater and lawyers offices (moved to #34 \$4200.00)	In Item #34	
19	Cabinets (<u>Allowance</u>)		7,000
20	Carpet Protection in Lobby Areas	1,000	
21	Trim Carpentry	1,120	
22	Misc Framing	5,000	

CATEGORY	DESCRIPTION	GMP TOTAL	EXCLUSIONS: ITEMS NOT IN GMP
23	Demo window header in projection room, move up for new window (16 m.h.)		1,487
24	Refurbish wood windows (32 m.h.)	1,932	
25	Wall paper below Wainscot a. Provide and install wallpaper below chair rail b. Remove existing vinyl wallcovering, patch walls if necessary to accept new wallpaper. c. Install wallpaper to the balcony fascia to cover wood and paint below chair rail.	840 2,400	1,500
26	Remove Stone Veneer, repair and restore walls finish		8,763
27	Remove ceiling at the foyer and below the marquee.		25,598
28	Lobby Window		3,800
29	Remove Existing Marquee and Foyer ceiling. Replace with original Marquee design		15,150
30	Provide 2 new electronic signs with wireless controls. <u>(Includes \$4,500 Allowance for Marquee Electrical)</u> c. Provide conduit from the sub panel to access the Marquee area for future electrical supply.	200	28,667
31	Remove concrete ramp, steps and handrails at East and West exits. Replace w/ new stairs and handrail.	4,700	
32	Fire sprinkler system installation and attic access <u>(190k fire sprinkler Allowance)</u>	286,940	
32a.	VE Alternate to eliminate fire sprinklers in the balcony floor, ramped floor in auditorium, and the crawl space. (Estimated fire sprinkler credits)	(35,273)	
33	Fire Alarm B&W <u>(Allowance)</u>	5,000	
34	Provide 2 hour rated wall in pinlofts, and attic a. Framing b. Drywall	13,030	
35	3" pipe columns inside of 2 hour rated wall	7,408	

CATEGORY	DESCRIPTION		GMP TOTAL	EXCLUSIONS: ITEMS NOT IN GMP
36	Provide roof insulation c. High density foam insulation (option)		17,820	16,314
37	Provide 90 min rated door assembly between theater attic and Pinloft (Includes \$5,000 Allowance for stairs, metal or wood)		16,872	
38	Remove file room, and stairway, and subfloor catwalks in attic		8,400	
39	Provide new partial stairway and subfloor in the theater attic w/ expanded metal aprox 5'x14' w/ 14lf. Of guardrail (Allowance)		8,000	
40	Projector room, Office (Includes \$2,000 Electric Allowance)			7,767
41	Balcony Support (Allowance)		53,119	
42	Abatement a. Lead Abatement contingency (Allowance) do to the vague report done by Western Technologies and the increased scope of work on the balcony floor.		2,816 5,000	
43	Seating (By Elks Opera House Foundation)			186,111
44	Owners Contingency		20,000	
	Direct Costs		890,115	696,830
19400	CM Contingency	7.57%	67,382	52,750
19100	Builders Risk Insurance	0.25%	2,225	1,742
19200	Performance Bond	1.50%	13,352	10,452
19300	Liability Insurance Umbrella Ins 6 Mil/Occurance, 7 mil. Agg.	1.00%	8,901 10,800	6,968
		Subtotal	992,775	768,743
20000	CM Fee	10.00%	99,277	76,874
		Subtotal	1,092,052	845,617
20000	Sales Tax (5.34) of total GMP		59,271	47,037
	GMP Category Total	Total	1,151,323	892,654

EXHIBIT C – PROJECT FUNDING SCHEDULE

EXHIBIT C RESTORATIONS AND RENOVATIONS TO THE ELKS OPERA HOUSE

This funding schedule shows where funds originate and how much each party will pay towards the Construction Phase Contract as of July 14, 2009

AVAILABLE FUNDING COMPARED TO GMP

**ELKS OPERA HOUSE
FOUNDATION**

Available Funding	1,100,000
Seating including sales tax	(185,111)
PreConstruction fees to Haley	(62,824)
Otwell Architects balance to pay	(8,078)
TOTAL EOHF AVAILABLE FOR GMP	842,987

CITY OF PRESCOTT

Available funding	
Sprinkler Fund	241,000
Marquee Fund	67,377

TOTAL CITY AVAILABLE FOR GMP	308,377
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TOTAL FUNDING AVAILABLE FOR GMP	1,151,364
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HALEY GMP CONSTRUCTION PHASE TOTAL	1,151,323
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DIFFERENCE	41
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COUNCIL AGENDA MEMO – July 21 & 28 2009

II-I

DEPARTMENT: Airport

AGENDA ITEM: Authorization of a Thru-The-Fence Access Permit for Yavapai College at Ernest A. Love Field.

Approved By:

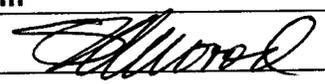
Date:

Department Head: Benjamin Vardiman, ACE, Airport Manager

July 14, 2009

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/16/09

Summary

This item is 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 as shown in the attached vicinity map.

Background

This access will allow for Yavapai College to develop an aviation related training program. Specific discussions have centered on the potential development of a helicopter mechanic training program. This permit will be for a period of twenty years and may be extended for one additional ten-year period beyond that date. Yavapai College will be subject to and comply with all applicable policies, procedures, and rules and regulations at the airport regarding or relating to their access.

The access permit is the result of discussions and negotiations between Yavapai College, the City, and the FAA. The attached access permit has been reviewed by the FAA who has stated no objection to the permit and the permit was approved by the Yavapai College District Governing Board on their July 14, 2009 special meeting.

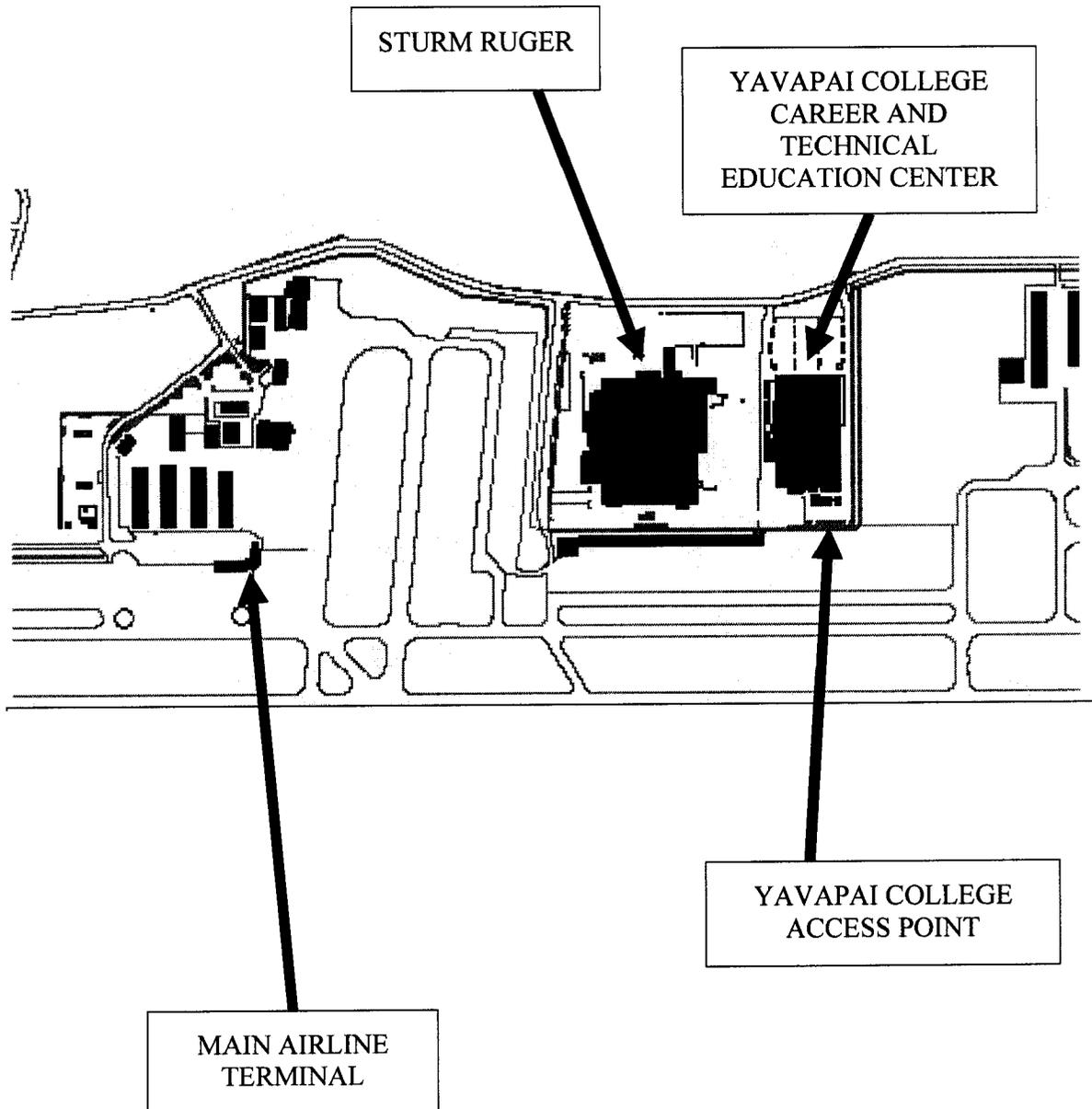
Financial Impact

Yavapai College will pay to the Airport \$900 per year for the access permit subject to annual increases. Yavapai College will pay for the entire cost of providing the gate access into the airport property.

Recommended Action: MOVE to approve a Thru-The-Fence Access Permit for Yavapai College at Ernest A. Love Field and further authorize the Mayor and Staff to take any and all actions necessary to accomplish the above.

Agenda Item: Thru-The-Fence Access Permit for Yavapai College at Ernest A. Love Field.

VICINITY MAP



AIRPORT ACCESS PERMIT

THIS AGREEMENT is entered into by and between the City of Prescott, a municipal corporation of the State of Arizona ("LICENSOR") and the Yavapai County Community College District, a political subdivision of the State of Arizona ("PERMITTEE").

RECITALS

WHEREAS, PERMITTEE is a political subdivision of the state of Arizona, and a non-profit educational institution, established pursuant to A.R.S. §15-1403; and

WHEREAS, PERMITTEE currently owns property that adjoins the Prescott Municipal Airport, Ernest A. Love Field (hereinafter referred to as "Airport") in Prescott, Arizona; and

WHEREAS, the Airport tarmac encroaches upon PERMITTEE's property; and

WHEREAS, the LICENSOR is the owner and operator of the Airport; and

WHEREAS, PERMITTEE desires to obtain permission from LICENSOR allowing the PERMITTEE to access Airport property via a "through-the-fence" operation, and

WHEREAS, the parties wish to resolve the issue of LICENSOR's encroachment upon PERMITTEE's property and PERMITTEE's desire to obtain access to the Airport property via a "through-the-fence" operation pursuant to the terms and conditions identified below; and

WHEREAS this Agreement relates to PERMITTEE's use of Airport property in support of the operations of the PERMITTEE on PERMITTEE's Premises as more particularly described in Exhibit "A" attached hereto ("Premises").

COVENANTS

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL RIGHTS AND RESPONSIBILITIES HEREIN, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, it is hereby agreed as follows:

1. LICENSOR hereby agrees to cease its encroachment onto PERMITTEE's Premises, and in furtherance thereof, agrees to move PERMITTEE's fence, at LICENSOR's expense, to the property line shared by LICENSOR and PERMITTEE. In

conjunction therewith, LICENSOR will obtain alternate bids for the installation of a gate and alternate bids for a relocated fence and a gate to permit access through the fence to LICENSOR's airport tarmac, as referenced in Section 29 hereof, and LICENSOR shall provide said bids to PERMITTEE for approval prior to construction and subsequent payment. The PERMITTEE shall be solely responsible for providing any bidder with plans and/or specifications for the gate to be installed in such relocated fence, all in compliance with the other provisions herein. Upon completion of construction of the relocated fence and gate, the PERMITTEE shall reimburse the LICENSOR the full cost of the gate only as shown by such bids and alternate bids obtained by LICENSOR. The LICENSOR shall not be entitled to reimbursement for the cost of any fence or relocated fence as shown by such bids and alternate bids.

2. In consideration of this permit, PERMITTEE shall pay LICENSOR the sum of nine hundred dollars (\$900.00) per year, payable each year in advance, in one annual installment; provided, however, that the compensation due the LICENSOR shall be increased every twelve (12) months, said increase to be computed by a three percent (3%) increase over the sum paid during the preceding twelve (12) month period, or by the percentage of increase in the Consumer Price Index (hereinafter referred to as "Index") for all items of the Bureau of Standards of the United States Department of Labor, Table CUUR000SAO - All Urban Consumers, All items, Not Seasonally Adjusted, during said period, whichever is more. This provision shall be capped at 4% each year. This calculation shall be stated for the period of January through December of the year preceding the adjustment. At the end of each yearly rental period, the LICENSOR, as soon as possible, shall furnish PERMITTEE with the amount to be paid by PERMITTEE for the following year. Should Licensor lack sufficient data to make the proper determination on the date of any adjustment, Permittee shall continue to pay the annual rent payable immediately prior to the adjustment date. As soon as Licensor obtains the necessary data, Licensor shall determine the rent payable from and after such adjustment date and shall notify Lessee of the adjustment in writing. The annual payment shall be due and payable with or without notice or billing from the City.

3. PERMITTEE agrees to conform to all requirements set forth in Title 3 of the Prescott City Code, all rules and regulations of Ernest A. Love Field issued pursuant to Title 2, Chapter 12, or any amendment thereto, with respect to its use of the Premises, as well as the federal regulations as more particularly described in Exhibit "B," attached hereto and made a part hereof, as they currently exist and as they may be amended from time to time.

4. PERMITTEE agrees that no aviation fuel or propellant will be purchased, stored, sold or handled on said Premises except by an aviation fuel vendor authorized to provide such service at the Airport, and that all aircraft users of the Premises shall be notified by PERMITTEE of such restrictions.

5. PERMITTEE's use of the adjoining property shall be restricted to activities specifically and normally associated with educational courses and activities. No commercial aeronautical business activities may be performed from this property.

6. PERMITTEE must provide evidence acceptable to the LICENSOR's Risk Manager that the PERMITTEE has obtained and will maintain in force and effect insurance in no event less than:

Public Liability-One Person \$1,000,000.00
-One Occurrence . . \$1,000,000.00
Property Damage \$ 500,000.00

All insurance must be written by an insurance company authorized to do business in the State of Arizona to be evidenced by a Certificate of Authority as defined in ARS Section 20-217. A copy of the certificate must be attached to the applicable policy.

7. PERMITTEE agrees to allow a representative of the LICENSOR to enter upon the Premises of the PERMITTEE to make periodic inspections to insure that all the terms of the permit are being fulfilled.

8. PERMITTEE agrees to pay or cause to be paid, prior to delinquency, any and all taxes, including possessory interest taxes, and any assessments levied or assessed:

- A. On the PERMITTEE's operations adjacent to the Airport; and
- B. On any improvements now or hereafter maintained by the PERMITTEE on the Premises and on any of the PERMITTEE's personal property situated in, on or about the Premises, or in, on or about any buildings or improvements thereon.

It is understood, however, that PERMITTEE may pay any such taxes and assessments under protest, and without liability, cost or expense to the LICENSOR in a good faith contest of the validity of the amount thereof.

9. PERMITTEE shall arrange for the prompt and regular collection and disposal from the PERMITTEE's Premises of trash, clippings, refuse, debris, and waste material at PERMITTEE's own expense in accordance with applicable rules and regulations of the Airport and with applicable laws and ordinances. If the PERMITTEE fails to maintain PERMITTEE's activities in a neat and clean manner as set forth herein, LICENSOR may at its option and in addition to any other remedies it may have, order the clearing and removal of trash, clippings, refuse, debris, and waste material by others and charge the PERMITTEE the costs therefore with interest at the legal rate of interest until paid in full.

10. PERMITTEE agrees that, except for the City of Prescott's own negligence acts or omissions, the LICENSOR shall not be liable to PERMITTEE or any other person whomsoever for death or personal injury or for loss, damage or destruction of property in, on or about the Premises or any improvement thereon, and upon the date of the permit and for the full term of the permit and any extensions thereof, PERMITTEE shall

indemnify and save harmless LICENSOR and its officers, agents and employees from and defend the same against any and all claims, liens, liability, expense (including attorney's fees), losses and judgments arising from death or personal injuries or from the loss, damage, or destruction of property of any person whomsoever resulting from acts, omissions, the presence upon the Airport, or negligence of PERMITTEE, PERMITTEE's officers, agents or employees.

11. PERMITTEE's use of the Premises shall conform to all applicable laws, rules and regulations.

12. This permit may not be assigned, transferred, or in any other manner set over to another person or corporation.

13. This permit may be issued for a twenty year period commencing September 1, 2008, and may be renewed for one additional ten-year period so long as all of the terms, conditions and covenants of the permit are being kept and observed, subject to the earlier termination of this Agreement as provided for herein.

14. Any permit granted hereunder may be temporarily or permanently revoked or suspended at any time by the Airport Manager for: (i) PERMITTEE's breach of any terms of this Agreement, (ii) violation of federal, state, or local rules, regulations, policies or procedures as may be adopted or amended in the future, or (iii) if the revocation, suspension or termination of such access is required by the city code or any state or federal authority as may be adopted or amended in the future. Any temporary revocation or suspension of any permit granted hereunder may be appealed to the City Manager within thirty (30) days of the effective date of the revocation or suspension but such appeal shall not preclude the revocation or suspension from taking effect on the date of issuance. Unless such local, state or federal authority requires otherwise, any permit granted hereunder may be permanently revoked or suspended upon thirty (30) days notice by the Airport Manager. The PERMITTEE shall be entitled to appeal the decision of the Airport Manager to the City Manager within thirty (30) days of the notice.

During the term of the permit, the PERMITTEE may terminate this Agreement at any time by giving the Airport Manager written notice specifying the date of termination, such notice to be given not less than sixty (60) days prior to the date therein specified. Should the Premises, or any essential part thereof, be totally destroyed or rendered useless for the described purpose of this permit, this Agreement shall immediately terminate and in case of partial destruction, this Agreement may be termination by either party by giving written notice to the other, specifying the date of termination, such notice to be given within ten (10) days following such partial destruction and not less than thirty (30) days prior to the termination date therein specified.

15. The waiver by the LICENSOR of any breach by PERMITTEE of any term, covenant or condition of any permit shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or conditions of the permit. No term, covenant or condition hereof can be waived except by the written consent of the

LICENSOR, and forbearance or indulgence by the LICENSOR in any regard whatsoever, shall not constitute a waiver of the terms, covenants or conditions to be performed by PERMITTEE.

16. All permits are granted in and shall be considered in accordance with the laws of the State of Arizona.

17. All rights of the PERMITTEE are expressly set forth in the permit and this Agreement, both of which can be amended only in writing.

18. The parties are neither joint ventured with nor partners, associates, or agents of the other with respect to any manner provided for in the permit. Nothing herein contained shall be construed to create any such relationship between the parties or subject the parties to any other obligation of the other whatsoever. The permit is a license only and not a lease.

19. PERMITTEE agrees that the use of the Premises shall conform to all applicable laws, rules and regulations and that the use of said Premises shall be strictly limited to those activities of the PERMITTEE as set forth in Paragraph 5 above, unless the PERMITTEE receives written permission from the Airport Manager to expand its activities.

20. Although a PERMITTEE must at all times have a valid and current business license issued by the LICENSOR, such business license shall not be in lieu of any permit and fees required hereunder.

21. Either party may cancel this Agreement pursuant to the provision of ARS Section 38-511.

22. This Agreement shall be subject to the final approval of PERMITTEE's Governing Board and the Mayor and Council for the LICENSOR.

23. The PERMITTEE, with regard to its use of the Premises, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the provision of services, nor in the selection and retention of subcontractors, including procurement of materials and permits of equipment. The PERMITTEE will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Orders 99-4 and 2004.

24. PERMITTEE hereby agrees that all maintenance and upkeep of the Premises and improvements placed thereon shall be the responsibility of the PERMITTEE and shall be subject to the approval of the Airport Manager.

25. PERMITTEE shall use the access provided pursuant to this Agreement only as direct ingress and egress of aircraft to and from PERMITTEE's off-Airport Premises, and solely for such aircraft regularly used for PERMITTEE's regular, allowed educational purposes. Such access shall not be used for any type of pedestrian, vehicle, equipment, other aircraft, or other type of access whatsoever unless specifically approved in writing by the Airport Manager.

26. PERMITTEE shall not allow its employees, guests, students or others to use its adjoining premises for parking any aircraft, except for parking or storing aircraft regularly used for PERMITTEE's regular, allowed educational purposes.

27. PERMITTEE shall remain responsible for all required installation, maintenance, repair and replacement of all fencing and a lock intended to prevent inadvertent entry into the air-operations area by motor vehicles, people or animals. Said fencing shall be constructed by PERMITTEE at its own costs and shall be constructed in the manner and location as approved by LICENSOR. Additionally, PERMITTEE shall at all times insure that the Airport Manager and/or his designees have a key for the lock on the access gate. Gates and fencing shall be constructed in such a way that they provide access to fire department and other emergency personnel and vehicles and in compliance with all applicable Airport, Federal Aviation Administration, and Department of Homeland Security rules and regulations.

28. PERMITTEE will not make use of the licensed Premises in any manner which might interfere with the taxiing, landing or taking off of aircraft from the Airport or to otherwise present a hazard to normal aircraft operations.

29. PERMITTEE shall be entitled to install a gate sufficient to permit access, ingress and egress to PERMITTEE's property from the LICENSOR's tarmac, for a distance of approximately sixty (60) feet, and as more fully depicted in Exhibit "C" attached hereto. PERMITTEE shall be responsible for keeping the ingress and egress granted herein free and clear of any and all debris at all times, to include (but not limited to) removal of any snow and weeds.

30. The parties hereto specifically agree and acknowledge that this permit is not effective until approved by the Federal Aviation Administration ("FAA"). It shall be PERMITTEE's sole responsibility to provide any and all such documentation necessary for the LICENSOR to obtain such approval, and shall be PERMITTEE's sole responsibility to comply at its sole expense with any additional requirements which may be required by the FAA. In the event that the FAA does not approve this Agreement, or if the PERMITTEE cannot reasonably comply with FAA or Airport requirements, this Agreement shall be null and void.

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

litigation arising from this Agreement, neither party shall be entitled to an award of attorneys' fees, either pursuant to the contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

DATED this _____ day of _____, 20__.

FOR PERMITTEE:

PASSED, APPROVED AND ADOPTED by the Governing Board of the Yavapai County Community College District this _____ day of _____, 20__.

Dr. Patricia McCarver, Board Chair

Attest:

Mr. Herald Harrington, Board Secretary

FOR LESSOR:

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this _____ day of _____, 20__.

Jack Wilson, Mayor

Attest:

Elizabeth A. Burke
City Clerk

Approved as to form:

William B. Whittington, Esq.
Counsel for PERMITTEE

City Attorney
Counsel for LESSOR

EXHIBIT "A"

All that portion of Section 25, Township 15 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the North Quarter corner of said Section 25;

Thence South 89 degrees, 52 minutes West, 841.32 feet along the North line of said Section 25;

Thence South 41 degrees, 15 minutes, West, 604.96 feet to the TRUE POINT OF BEGINNING;

Thence South 48 degrees, 45 minutes East, 1122.00 feet;

Thence South 41 degrees, 15 minutes West, 388.24 feet;

Thence North 48 degrees, 45 minutes West, 1122.00 feet;

Thence North 41 degrees, 15 minutes, East, 388.24 feet to the TRUE POINT OF BEGINNING.

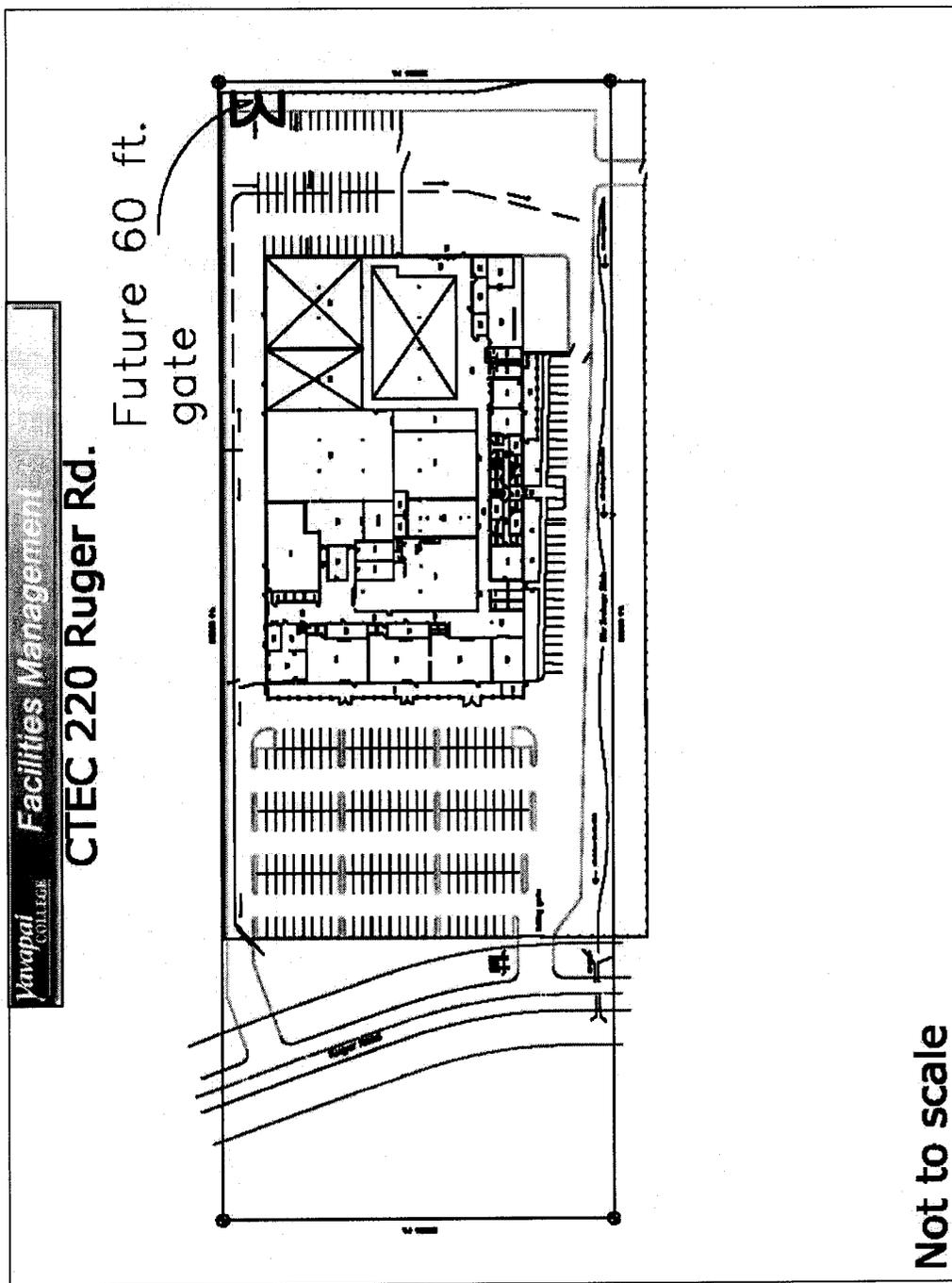
Exhibit "B"
FEDERAL PROVISIONS

1. The Lessee/Licensee/Permittee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained, or otherwise operated on the said property described in the Lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefit, the Lessee/Licensee/Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
2. The Lessee/Licensee/Permittee, for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby convey and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the Lessee/Licensee/Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
3. That in the event of breach of any of the above nondiscrimination covenants, the Lessor/Licensor shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR, Part 21 are followed and completed including expiration of appeal rights.
4. Lessee/Licensee/Permittee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Lessee/Licensee/Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Noncompliance with Provision 4 above shall constitute a material breach thereof and in the event of such noncompliance, the Lessor/Licensor shall have the right to terminate this Lease Agreement and the estate hereby created without liability therefore or at the election of the Lessor/Licensor or the United States either or both said Governments shall have the right to judicially enforce provisions.
6. Lessee/Licensee/Permittee agrees that it shall insert the above five provisions in any Lease Agreement by which said Lessee/Licensee/Permittee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.
7. The Lessee/Licensee/Permittee assures that it will undertake an affirmative action program as required by 14 CRF Part 152, Subpart E to ensure that no person shall on the grounds of race, creed, Federal Provisions Page 2 of 2 color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee/Licensee/Permittee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the Subpart. The Lessee/Licensee/Permittee assures that it will require that its covered sub-organizations provide assurances to the Lessee/Licensee/Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effort.
8. The Lessor/Licensor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee/Licensee/Permittee and without interference or hindrance.
9. The Lessor/Licensor reserves the right, but shall not be obligated to the Lessee/Licensee/Permittee to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee/Licensee/Permittee in this regard.
10. This Lease shall be subordinate to the provisions and requirements of any existing or future agreements between Lessor/Licensor and the United States, relative to the development, operation or maintenance of the airport.
11. There is hereby reserved to the Lessor/Licensor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on Ernest A. Love Field, Prescott Municipal Airport.

12. Lessee/Licensee/Permittee Agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
13. The Lessee/Licensee/Permittee by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above a height as determined by the application of the most restrictive requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee/Licensee/Permittee.
14. The Lessee/Licensee/Permittee by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft from Ernest A. Love Field, Prescott Municipal Airport, or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Lessee/Licensee/Permittee.
15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).
16. This Agreement and all the provisions hereof shall be subject to whatever right the United States government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.
17. The Lessee/Licensee/Permittee will conform to airport, Federal Aviation Administration, and Transportation Security Administration safety and security rules and regulations regarding the use of the airport including but not limited to use of the airport operations areas, runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport: and will be subject to penalties as prescribed by the airport for violation of the airport safety and security requirements.

EXHIBIT "C"



Vardiman, Ben

From: Anthony.Garcia@faa.gov
Sent: Friday, June 19, 2009 3:32 PM
To: Vardiman, Ben
Cc: Ruben.Cabalbag@faa.gov; George.Aiken@faa.gov; Eric.Vermeeren@faa.gov
Subject: Feedback Regarding Through-the-Fence Access Permit for Yavapai College

Ben Vardiman

We have completed our review of the Prescott Through-the-Fence Agreement with Yavapai College.

Although the FAA does not support the establishment of TTF agreements at federally obligated airport, we are not objecting the Access Permit to Yavapai College.

Note that our opinion is not an endorsement of the TTF Access Permit nor is it a harbinger of its merits.

Although the access permit did not contain an apparent conflict with the Grant Assurances, we remind the City of Prescott that it should not take any action in administering the TTF agreement that would deprive the City of its rights and powers to operate and manage the airport in compliance with federal airport requirements.

Tony Garcia
Compliance Program Manager
FAA Airports

COUNCIL AGENDA MEMO – 7/21/09 & 7/28/09

II-J

DEPARTMENT: Public Works

AGENDA ITEM: 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.

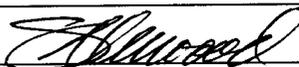
Approved By:

Date:

Department Head: Mark Nietupski

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/16/09

Item Summary

This item is to authorize the purchase of radio read water meters from Mountain States Pipe and Supply Company. The majority of meters purchased will be for Phase 3 of the meter replacement program on Routes One and Five. A small portion of the meter purchased will go to inventory. At Council direction, Staff prepared specifications and solicited bids for various size meters in lieu of utilizing "piggyback" provisions on an existing City of Flagstaff contract. Due to current economic conditions, market place competition, and the size of the proposed purchase implementing the competitive bid process resulted in a savings to the City of approximately \$53,000.00 versus the previously recommended contract.

Background

Increasing water demand and costs for new water supplies, production, and delivery to 22,290 City customers in seven (7) designated routes provide strong justification to assure water meters are accurate, and the quantity of unaccounted (non-revenue) water is minimized. In April 2003 City Council approved Phase 1 for conversion of existing water meters on Route No. 7, and in September of 2006 Phase 2, Route No. 4 was approved. The Utilities Operations capital program provides for replacing all water meters on the remaining five (5) routes by FY 2013.

The replacement meter program utilizes a radio-read system which improves accuracy and efficiency, with the purpose of reducing water and revenue loss by changing out old meters that become inaccurate with cumulative water flow over time.

The American Water Works Association (AWWA) recommends replacing meters after ten years of service due to wear. Various studies have established that the total quantity of water flowing through a meter affects the meters accuracy over its service life. The majority of the meters on the City's five (5) remaining routes were last changed out 17 years ago, in 1992. Additional research into customer accounts indicates there are numerous meters that were not changed out as part of the 1992 program. Meters of this age can significantly increase water loss.

The Arizona Department of Water Resources (ADWR) requires that no more than 10% of water be "lost" in a distribution system. The calculation compares water produced with what is metered or accounted for otherwise. The City's 2008 water loss of 8.47% was just under the 10% ADWR criterion.

Hilly terrain and difficulty of physical access presently reduce the number of reads which can be accomplished per hour. Using radio technology, a productivity increase of ten times

AGENDA ITEM: Award of Contract to Mountain States Pipe and Supply Company for the purchase of water meters.

or more is anticipated over that of the present manual read method. The conversion will also facilitate a reduction of meter reading staffing requirements. \$1,239,611.88

Bid Results

Three bids were received from the following companies:

Mountain States Pipe & Supply	Phoenix, Arizona	\$1,186,112.43
National Meter & Automation, Inc.	Scottsdale, Arizona	\$1,206,909.02
Ferguson Water Works	Phoenix, Arizona	\$1,279,510.35

Purchase of Radio-Read Meters

The required meters for Phase 3 of the meter replacement program and inventory follow:

<u>Meter Sizes</u>	<u>Replacement Meters</u>	<u>Inventory Stock</u>	<u>Total Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
5/8" x 3/4"	7000 ea.	500 ea.	7500 ea.	\$127.56	\$ 956,700.00
1"	450 ea.	50 ea.	500 ea.	\$166.50	\$ 83,250.00
1½"	25 ea	25 ea.	50 ea.	\$316.80	\$ 15,840.00
2"	75 ea	25 ea.	100 ea.	\$394.20	\$ 39,420.00
				Subtotal	\$1,095,210.00
				Tax	90,902.43
				Total	\$1,186,112.43

The initial one-year meter purchase contract is renewable for two (2) additional one-year periods utilizing the base bid pricing plus an annual PPI (Producer Price Index) for the Phoenix area. New replacement meters will be purchased incrementally with delivery scheduled just prior to installation. Installation of replacement meters will be performed under a separate contract, which is currently being prepared for advertisement. The installation contract is planned for Council consideration in the August/September 2009 timeframe.

Budget

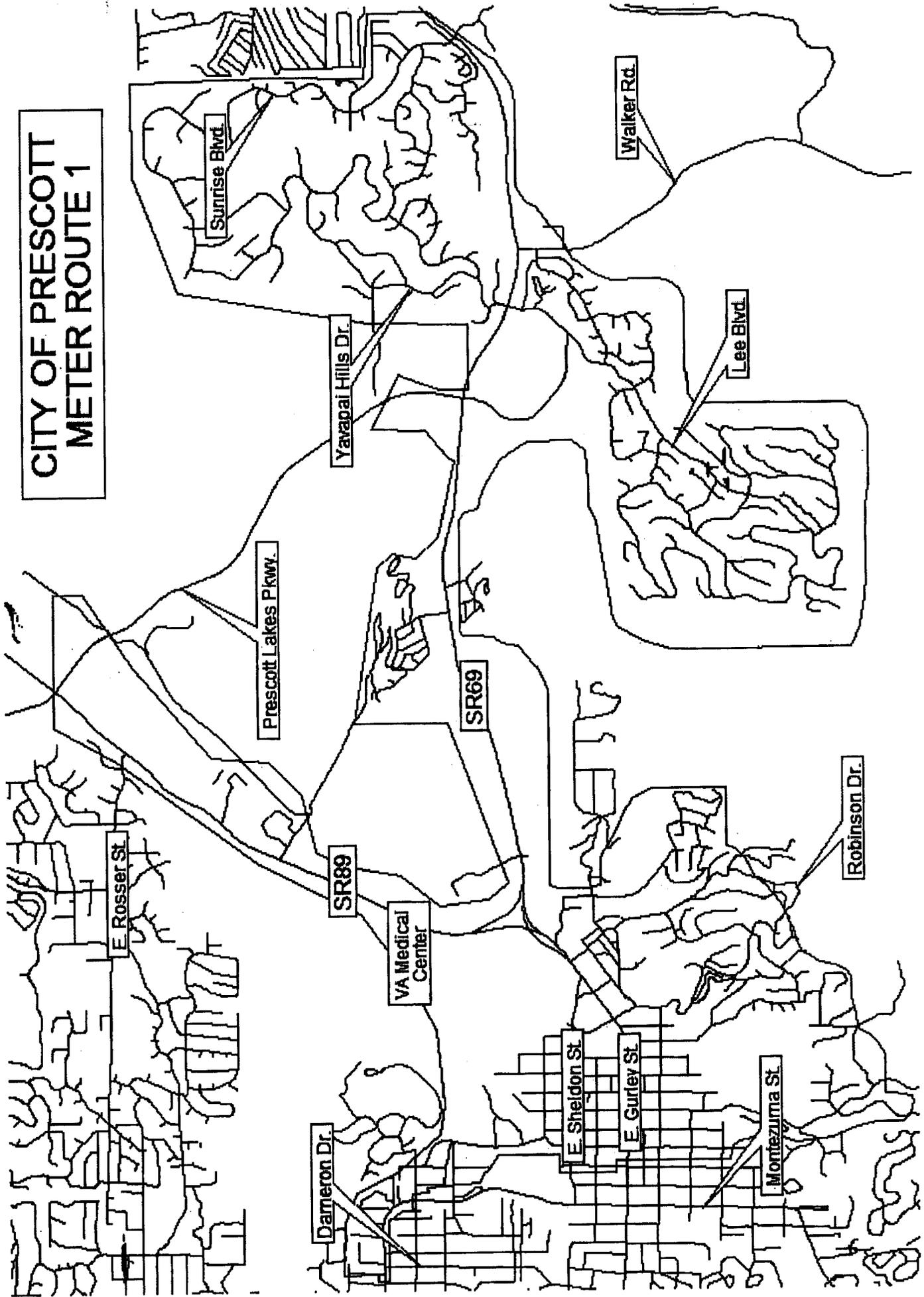
FY 09 funding for water meter change-out program is available from the Water Fund. (Budget Account # 2-81700-714; amount \$1,600,000) Financing for this project is through the Water Infrastructure Finance Authority (WIFA). The original debt issue was \$2.5 Million. Expenditures to date for prior construction are approximately \$965,000.00. The remaining balance is \$1,535,000.00.

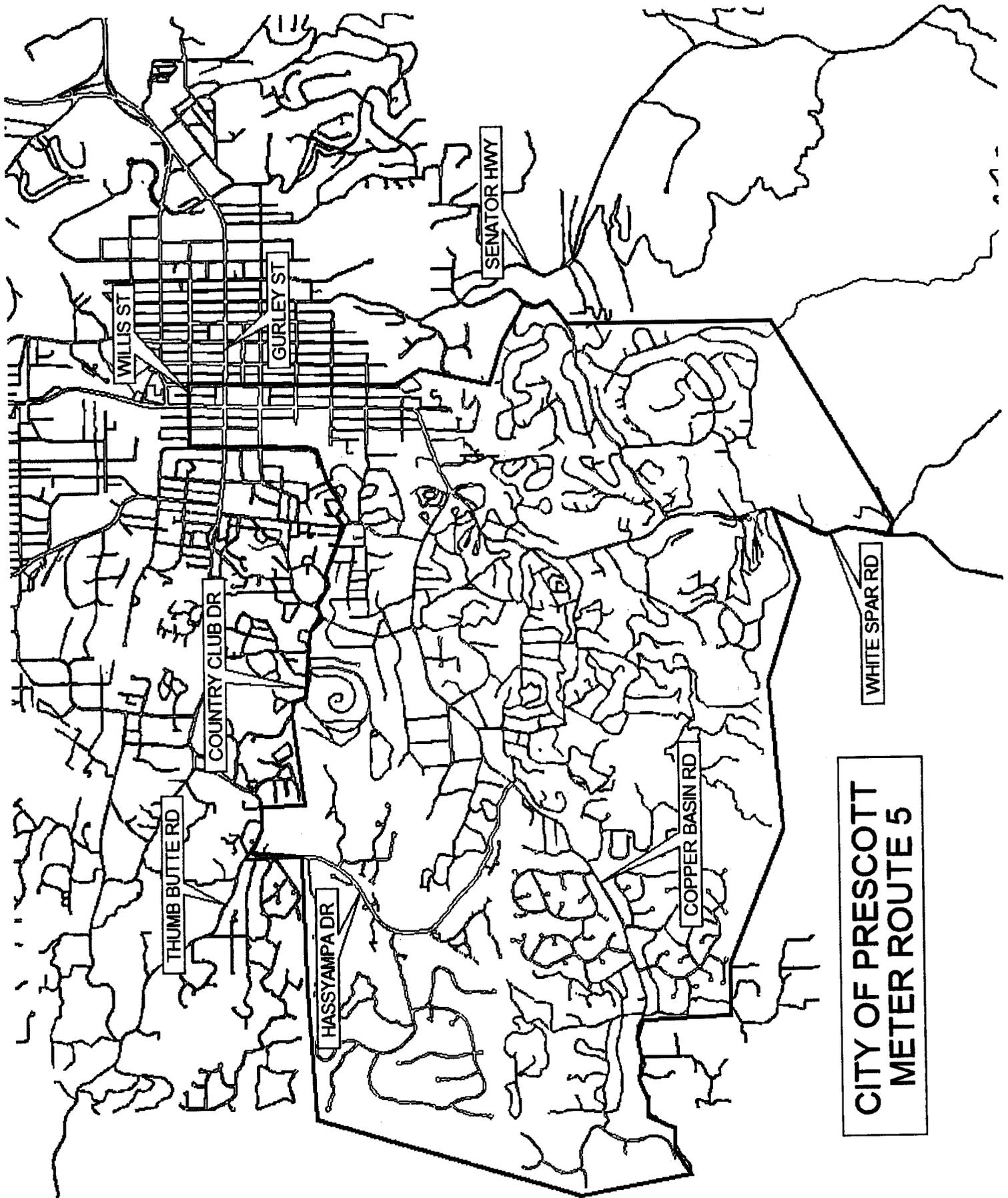
Attachments

Meter Routes No. 1 and 5 location maps

Recommended Action: **MOVE** to approve the purchase of new radio-read water meters from Mountain States Pipe and Supply Company in an amount not to exceed \$1,186,112.43.

CITY OF PRESCOTT METER ROUTE 1





WILLIS ST

GURLEY ST

SENATOR HWY

COUNTRY CLUB DR

THUMB BUTTE RD

HASSYAMPADR

COPPER BASIN RD

WHITE SPAR RD

CITY OF PRESCOTT
METER ROUTE 5

COUNCIL AGENDA MEMO – 7/21/09 & 7/28/09

II-K

DEPARTMENT: Public Works

AGENDA ITEM: 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.

Approved By:

Date:

Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood <i>[Signature]</i>	07/16/09

Item Summary

This item is to award a bid and contract for construction services for improvements within water system Pressure Zone 39 in the south part of Prescott. The contract consolidates the following separately budgeted projects which will be constructed concurrently (see attached map for locations):

Country Club Drive Street and Utility Improvements:

- Installation of 3,300 linear feet of 16" Ductile Iron Pipe, including all appurtenances
- Installation of 12 sewer manholes and 1,300 linear feet of 8" SDR 35 PVC sewer pipe, including all appurtenances
- Testing and disinfection of all new pipe and appurtenances
- Installation of underground electrical conduit, J-boxes, and sonotubes for street light replacement as shown on the approved plans
- Roadway pavement reconstruction on Country Club Drive from intersection of Vista Avenue and Country Club Drive to the intersection of Park Avenue and Country Club Drive

Indian Hill Reservoir Replacement:

- Protection of existing archeological site
- Removal of existing tanks, pipelines and appurtenances
- Removal of top 4 ft of hill
- Construction of a 1.33 MG welded steel water storage tank, including all appurtenances
- Installation of 770 linear feet of 16" Ductile Iron Pipe, including all appurtenances
- Installation of 610 linear feet of 12" and 18" HDPE storm drain including all appurtenances

Agenda Item: 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

Background

These system upgrades, consisting of replacement of aged and undersized facilities, are necessary to meet current and future water demand and to increase Indian Hills Reservoir storage from 400,000 to 1.33 million gallons and to replace the water and sewer mains and the pavement in Country Club Drive. The new water mains and Indian Hill tank identified above will enhance public safety by augmenting fire flow capability throughout Pressure Zone 39.

There are currently two 200,000 gallon reservoirs situated on Indian Hill. The existing reservoirs are undersized and were constructed in the mid-1950's. The 2005 Carollo Water Model determined that a new reservoir was needed to provide increased storage and improved fire flow capacity in Zone 39, which includes portions of the Country Club, Copper Basin, and Forest Highlands neighborhoods. The 1.33 million gallon reservoir is engineered and designed to work with the new pump station currently under construction as part of the Zone 39 Phase I project.

All issues and concerns with the State Historic Preservation Office (SHPO) and the City Of Prescott Historic Preservation Committee have been incorporated into the plans and specifications. The City has contracted with ESMP to provide construction phase archaeological monitoring and reporting as required by SHPO.

The Zone 39 Phase II and III Project are another important step toward fulfillment of the **"First Class Utility System"** Council Goal.

The contract requires Davis-Bacon wages be paid to all contractor employees working on the project.

Bid Results

1- Fann Contracting, Inc	Prescott Arizona	\$ 2,959,209.00
2- CLM Earthmovers LLC	Prescott Arizona	\$ 3,123,101.16
3- Asphalt Paving & Supply	Prescott Valley Arizona	\$ 3,724,856.50
4- Technology Construction	Prescott Arizona	\$ 3,736,438.00
5- Pierson Construction Corp	Tempe Arizona	\$ 3,823,120.25
6- Spire Engineering	Mesa Arizona	\$ 3,864,412.00
7- Tonto Supply, Inc	Colorado City Arizona	\$ 3,996,836.30
Engineer's Estimate		\$ 5,586,589.80

Fann Contracting has submitted written Confirmation of Bid.

Budget

The City will receive \$4,000,000.00 in ARRA (American Recovery And Reinvestment Act) financing (forgivable principal) as part of the federal stimulus package for all three phases of the Zone 39 projects. The Zone 39 Phase I contract was awarded to A Miner Contracting in the amount of \$3,167,367.00 on March 17, 2009.

Agenda Item: 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

The ARRA funding will be applied first to the Phase I project with the balance of ARRA funds (\$832,633.00) to be applied to Phase II and Phase III. The remaining \$2,126,576.00 will be paid from the Water Fund and a portion from the One Cent Sales Tax for Streets and Open Space.

FY 10 budgeted funds are available for the Zone 39 Phase II and III Project (Source: Water Fund - \$5,974,999.00; One Cent Sales Tax - \$250,000)

Schedule

Construction work is scheduled to commence in August 2009 and be completed in January 2011.

Attachments

- Location Map
- WIFA Grant / Loan Authorization
- Zone 39 Project Chronology

Recommended Action: **MOVE** to award the 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.

Zone 39 Phase II and III Project

Replacement of Water Mains, Sewer Mains, Roadway and Water Tank

1.33MG Indian Reservoir
(Phase III)

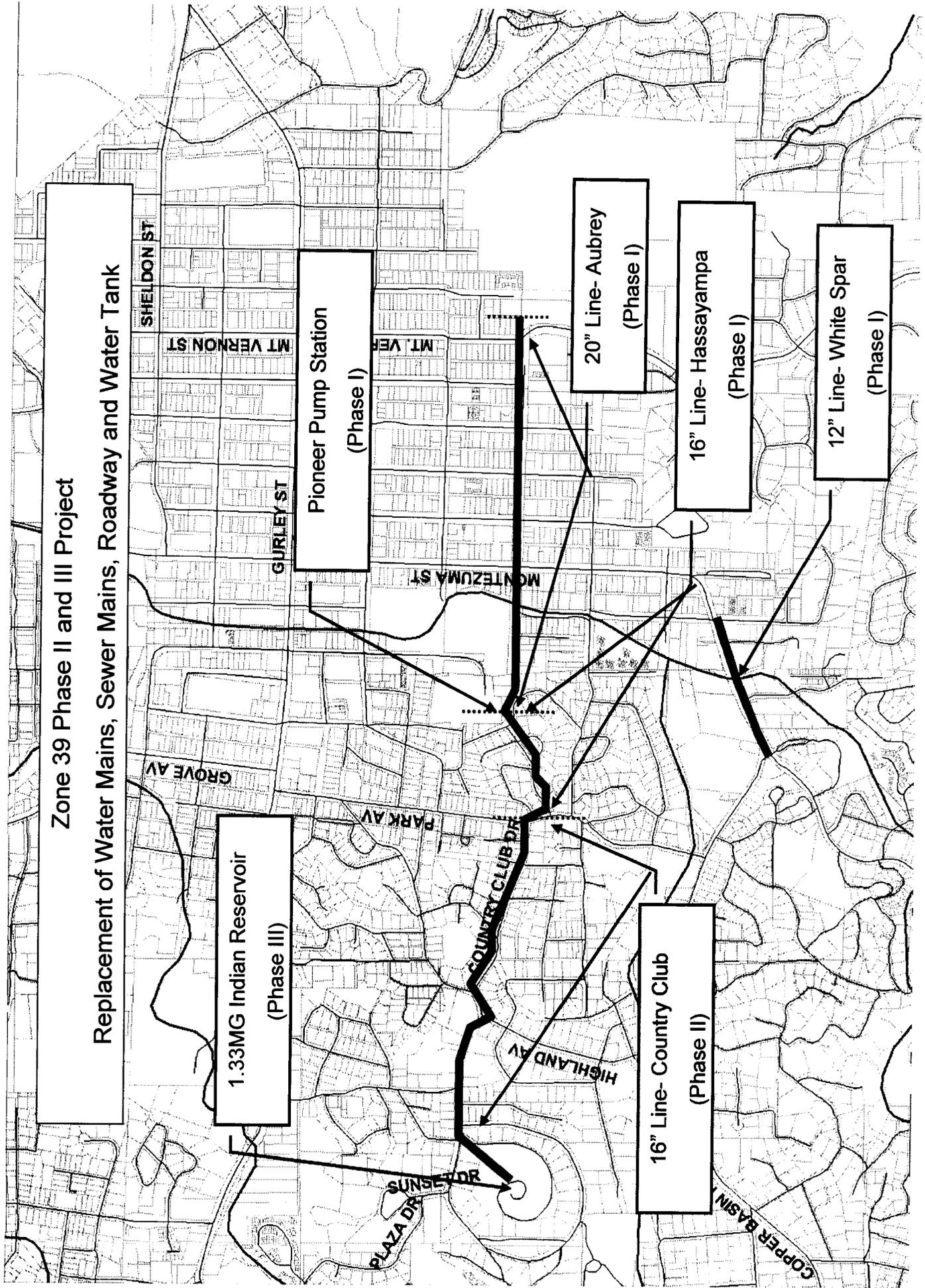
Pioneer Pump Station
(Phase I)

20" Line- Aubrey
(Phase I)

16" Line- Hassayampa
(Phase I)

12" Line- White Spar
(Phase I)

16" Line- Country Club
(Phase II)



Zone 39 Project Chronology

- January 2003** City Council Annual Strategic Planning Meeting
Identified Goal – First Class Utility System
- March 2004** Water System Model Project begins
- April 2005** Water Model Completed
Provides basis for the Water System CIP with required projects identified
- July 2005** FY 06 Budget identifies Zone 39/Indian Hill Project
- Sept. 2007** City Contracts with PBS&J for Zone 39 Water Mains and Pump Station Upgrades Project
- Nov. 2007** Contract with PBS&J amended for design of Indian Hill Reservoir
- April 2008** Notice of public meeting mailed to residents
- May 2008** Public meeting held at Lincoln School
- July 2008** Public meeting held in Council Chambers
- July 2008** Prescott Preservation Commission Reviews Project
- August 2008** Prescott Preservation Commission recommends aesthetic treatments
- Sept. 2008** Contract Amendment Two with PBS&J for Country Club Drive sewer and street reconstruction recommended.



Water Infrastructure Finance Authority of Arizona

NEWS RELEASE

1110 West Washington, Suite 290 • Phoenix, Arizona
85007 • www.azwifa.gov

Date: May 27, 2009

Contact: Veronica Rivera, Communications Director: (602) 364-1236

WIFA Announces Stimulus Funds Part of \$12.6 Million in Loans to City of Prescott for Water Improvements

PHOENIX (May 27, 2009) – The Water Infrastructure Finance Authority (WIFA) of Arizona announced today its second round of loans, in part from federal stimulus money, including two water infrastructure improvement loans for the City of Prescott.

A \$9 million loan will allow the City to construct new main lines, add a new pump station and purchase a new water storage tank. A second \$3.6 million loan will allow for a second line to enhance the existing supply line to the system and service area.

“These two loans will help ensure a better water delivery system for Prescott residents,” said Patrick J. Cunningham, WIFA’s acting board chairman. “We are pleased to make these loans to help make the most of Arizona’s precious water resources.”

WIFA is receiving "stimulus" funding from the American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA funding is providing significant savings on clean and drinking water infrastructure projects for many municipalities and private drinking water companies in Arizona that are able to start construction by June 17, 2009 or have signed contracts for construction by Feb. 17, 2010.

WIFA maintains and improves water quality in Arizona by providing communities and private water systems with access to low-interest financial assistance and technical assistance needed for basic water infrastructure. For more information, please visit WIFA’s Web site at www.azwifa.gov.

ARRA Loan Resolution 2009-031 - Prescott, City of
Water Infrastructure Finance Authority of Arizona

Section 2: Project Summary

2.1 Project Number(s)

DW 184-2009

2.2 Project Priority Data

<u>ARRA PL Rank</u>	<u>Master PL Rank</u>	<u>Funding Cycle</u>	<u>Population Served</u>	<u>Type of ARRA Assistance</u>	<u>Subsidy Rate</u>
18	116	DW 2009	43,217	Forgivable Principal \$2,155,128	75%

2.3 Project Description(s)

Airport Zone North and South Loops Water Mains

Install 12" water line from the existing 12" main in Melville Road around the south end of the Airport runway and connect to the existing 10" main on the northwest side of the runway. Provide a second 12" main loop around the north end of the runway from proposed development to the existing tank and booster station. This will be a second feed to enhance the existing supply line to this system and service area.

2.4 Previous Board or Committee Actions

October 3, 2007 - Board adopted Loan Resolution 2007-013 to award \$4,703,000 (#910097-08) to the City of Prescott for several CIP wastewater system improvements.

August 24, 2007 - Board adopted Loan Resolution 2007-041 to award \$9,854,000 (Loan #920125-08) to the City of Prescott for several CIP drinking water improvement projects.

February 28, 2003 - Board adopted Loan Resolution 2003-046 to award \$95,839.95 (Loan #920080-03) to the City of Prescott for a drinking water system connection.

2.5 Project Finance Committee Recommendations

No Project Finance Committee for May 2009.

ARRA Loan Resolution 2009-030 - Prescott, City of
Water Infrastructure Finance Authority of Arizona

Section 2: Project Summary

2.1 Project Number(s)

DW 178-2009

2.2 Project Priority Data

<u>ARRA PL Rank</u>	<u>Master PL Rank</u>	<u>Funding Cycle</u>	<u>Population Served</u>	<u>Type of ARRA Assistance</u>	<u>Subsidy Rate</u>
113	17	2009	43,217	Forgivable Principal \$4,000,000	75%

2.3 Project Description(s)

Zone 39 Water Mains, Pump Station & Water Tank

Construct new 20" and 12" mains, a new 1,400 gpm pump station with upgraded controls and a new 1.33 MG water storage tank.

This project generally consists of approx. 3,471LF of 20" DIP water main in Aubrey St. from S. Pleasant to the new pump station at Pioneer Dr.; a new Pump Station at Pioneer Dr. and S. Hassayampa; installation of 930LF of 16" DIP water main in S. Hassayampa Dr. from the new pump station to Park Ave.; and installation of 1,411LF of 12" DIP water main in White Spar Rd. from Granite St. to Copper Basin Rd.

2.4 Previous Board of Committee Actions

October 3, 2007 - Board adopted Loan Resolution 2007-013 to award \$4,703,000 (#910097-08) to the City of Prescott for several CIP wastewater system improvements.

August 24, 2007 - Board adopted Loan Resolution 2007-041 to award \$9,854,000 (Loan #920125-08) to the City of Prescott for several CIP drinking water improvement projects.

February 28, 2003 - Board adopted Loan Resolution 2003-046 to award \$95,839.95 (Loan #920080-03) to the City of Prescott for a drinking water system connection.

2.5 Project Finance Committee Recommendations

No Project Finance Committee for May 2009.

COUNCIL AGENDA MEMO – 7/21/09 & 7/28/09

II-L

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Resolution No. 3983-1010 authorizing submittal of a Transportation Enhancement Program application requested by Prescott Alternative Transportation for east Gurley Street improvements.

Approved By:

Date:

Department Head: Mark Nietupski

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/10/09

Item Summary

Approval of this item will 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. If this Resolution is approved it will ensure Prescott's commitment to act as the sponsoring agency as outlined below.

Prescott Alternative Transportation's application is for the modification of Gurley Street from the SR89/69 Interchange project west towards downtown. The primary improvements will consist of enhancing pedestrian and bicycle facilities by adding multiple median refuge crossings and bicycle lanes along the east Gurley Street alignment while maintaining appropriate lane widths for motorists. Other project elements include improving or constructing new 5 foot wide sidewalks with ADA curb ramps to provide continuous connection, enhancing the area with "street furniture" to include trash receptacles and benches and landscaping various areas.

The information listed below identifies details, impacts, and processes necessary for the City to participate as a sponsoring agency for a Federal Transportation Enhancement Program (TEP). Additionally a summary of the current process to date is included. Each segment of the TEP process is highlighted below with its corresponding requirements.

TEP Basics:

- The TE Program is not a grant program, it is a reimbursement program.
- Local TE Programs are identified as projects outside of ADOT right-of-way that are sponsored by a MPO or COG member agency and incorporate a local funding source.

Agenda Item: Request for authorization of application for a Transportation Enhancement Program request by Prescott Alternative Transportation for Gurley Street improvements.

- Any local government, group or individual may apply for enhancement funding. However, a governmental body must sponsor the project. This restriction is necessitated by project development and financial administration requirements.
- The TE Program provides funding for projects in any one of 11 eligible activities. These activities are intended to enhance surface transportation sites with specific focus on pedestrian and bicycle facilities, scenic highways, historic preservation, landscaping, and transportation museums. Proposed projects must fit these categories in order to be chosen by the selection committee. Any non-eligible element of the project can be included however it needs to be identified as separate in the cost estimate and paid for from a funding source other than the TE Program.
- The cap for individual local projects is \$500,000.
- The project must follow the National Environmental Policy Act (NEPA) process for federally funded projects. The process normally takes 36 months.

TEP Budget Impacts:

- Program sponsors must be prepared to pay for ALL costs incurred and then request reimbursement.
- All projects require a minimum of 5.7% hard cash match.
- Local projects require the sponsoring agency to incur all stage 1 scoping costs which include a site topographic survey (2% -5% of constr. cost), preparation of a project assessment or DCR, an ADOT scoping review fee of \$5,000, and an environmental determination fee of up to \$40,000.
- The project sponsor is responsible for the payment of costs above the approved amount in the event that a project's actual cost exceeds its approved cost.
- Long term maintenance is a City responsibility.

Current Process Summary

- The project has been reviewed by both the Transportation Coordinating Committee (TCC) and staff. Initially it appears the proposed improvements may be achievable and will adequately accommodate existing and future transportation needs.
- The improvements should have minimal impact to the fronting property owners and business tenants and will result in an improved facility that would be desired by the public.

Agenda Item: Request for authorization of application for a Transportation Enhancement Program request by Prescott Alternative Transportation for Gurley Street improvements.

- The proposed project and its corresponding elements conform to those on the approved list and the entire project should be eligible for federal funds.
- No special study to determine the impacts of the improvements are needed as the roadway will retain all existing travel lanes and turn lanes.
- The applicant (PAT) has coordinated with the MPO and its representatives and a summary of the project scope has been delivered to the review board as required.
- The applicant (PAT) has coordinated with staff through the recent budget process to ensure that funds are available in the current fiscal year for the applicable portions of the project.
- The project application is currently being completed and will be submitted to ADOT and FHWA pending Prescott (sponsoring agency) City Council adopting the Resolution. The application is due August 10, 2009.
- The cost estimates are being completed with the aid of City staff to ensure all issues are addressed and the City will not incur any project overrun costs because of incomplete information.

Conclusion:

Based on the information provided above, it is recommended that the City of Prescott participate with PAT on this Transportation Enhancement Grant request as the sponsoring agency. Council approval of the Resolution does not commit the City to constructing a project.

Budget

The City has included the contributions required for this application in the fiscal year 2010 budget.

Attachments

- (PAT) Gurley Street Bike/Ped. improvements summary
- Resolution Approving TE Application

Recommended Action: MOVE to adopt Resolution No.3983-1010.

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

RECITALS:

WHEREAS, the City of Prescott wishes to apply for a Transportation Enhancement program request and to act as a sponsoring agency for Prescott Alternative Transportation ("PAT") to the Federal Highway Administration, through submittal to the Arizona Department of Transportation (ADOT), for a proposed Gurley Street roadway project. By approval of this Resolution, it will ensure the City's commitment to act as the sponsoring agency; and,

WHEREAS, Prescott Alternative Transportation's application is for the modification of Gurley Street from the SR89/69 Interchange project west towards downtown. The primary improvements will consist of enhancing bicycle and pedestrian movements by adding bicycle lanes through the narrowing of the existing travel lanes and center turn lane and adding multiple median refuge crossings. Other project elements include improving or constructing new 5 foot wide sidewalks with ADA curb ramps to provide continuous connection, enhancing the area with "street furniture" to include trash receptacles and benches and landscaping various areas; and,

WHEREAS, associated with this grant award, are the following requirements:

1. Commitment to 5.7% match and any overmatch – if not included, would eliminate the City's application from TERC review;
2. Commitment to funding project scoping document, environmental, right-of-way and utility clearances and design, if applicable;
3. Commitment that the project will be ready for advertisement in Three Years;
4. Commitment to pay for all cost overruns;
5. Commitment to reimburse ADOT/FHWA for all federal funds used, if the project is cancelled by the sponsor;
6. Commitment to ADOT review fee; and,

WHEREAS, the City in its capacity as a sponsor, must be prepared to pay for all costs incurred and then request reimbursement; all projects require a minimum of 5.7% hard cash match; local projects require the sponsoring agency to incur all stage 1 scoping costs which include a site topographic survey (2%-5% of construction cost); preparation

of a project assessment or DCR, an ADOT scoping review fee of \$5,000 and an environmental determination fee of up to \$40,000; the project sponsor is responsible for the payment of costs above the approved amount in the event that a project's actual cost exceeds its approved cost; and long term maintenance is a City responsibility.

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby authorizes the submittal of an Application to apply for a Transportation Enhancement (TE) program request 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 project subject to the within commitments set forth in the "Recital" section of this Resolution; and

Section 2. THAT the Mayor and staff are hereby authorized to execute and submit the application for the TE program.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

COUNCIL AGENDA MEMO – July 21 & 28, 2009

II-M

DEPARTMENT: FINANCE

AGENDA ITEM: Council Action for Debt Issuance through WIFA

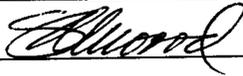
Approved By:

Date:

Department Head:

Finance Director: Mark Woodfill

City Manager: Steve Norwood



07/16/09

BACKGROUND

The City has several water and wastewater projects which we have applied to the Arizona Water Infrastructure Financing Authority (WIFA) to finance. In reviewing the financing options available for these projects, we decided that WIFA was best because the subsidized issuance cost and interest rate made it less expensive than issuing debt on our own. Additionally, WIFA was tasked by the Federal government with distributing a portion of the federal stimulus from the American Recovery and Reinvestment Act of 2009 (ARRA).

Two of the projects we submitted qualified for the stimulus and were awarded forgivable principal through ARRA by the WIFA board. Here is a list of the loans:

<u>Loan Program</u>	<u>Loan #</u>	<u>Project</u>	<u>Project Cost</u>	<u>ARRA (Forgiven Prin.)</u>	<u>Net Loan Amt</u>
Drinking Water	92A154-10	Airport Water Mains	3,591,880	2,155,128	1,436,752
Drinking Water	92A166-09	Zone 39 Water Imp.	8,998,096	4,000,000	4,998,096
Wastewater	910122-10	Wastewater Imp.	6,573,506	-	6,573,506
			<u>19,163,482</u>	<u>6,155,128</u>	<u>13,008,354</u>

The loan documents are available for review from the Finance Department.

ITEM

These three resolutions are to authorize the loans and identify the Mayor as the authorized representative of the City to execute these loans. We anticipate closing these loans on July 31, 2009.

Recommended Action: (1) MOVE to adopt Resolution No. 3984-1011; (2) MOVE to adopt Resolution No. 3985-1012; and (3) MOVE to adopt Resolution No. 3986-1013.

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

RECITALS:

WHEREAS, the Clean Water and Drinking Water Programs are sponsored by the Water Infrastructure Finance Authority of Arizona (WIFA) to provide financial assistance to enhance and improve water and wastewater infrastructure throughout Arizona communities; and

WHEREAS, WIFA has received America Recovery and Reinvestment Act of 2009 (ARRA) funds from the federal government and has made these funds available to Arizona communities for eligible projects; and

WHEREAS, the City of Prescott submitted the Airport Water Mains project to WIFA for possible ARRA funding, of which said project is deemed "shovel-ready" and is included in the City of Prescott's Capital Improvements Program; and

WHEREAS, the Airport Water Mains project has been approved by WIFA for loan funding; and

WHEREAS, said adopted procedures established by the WIFA Board require the applicant to certify by resolution signature authorization of such funding documents, the availability of local funds for loan repayment and a population of less than 50,000; and

WHEREAS, the City of Prescott is requesting \$3,591,880 from WIFA for construction costs and commits to repayment of WIFA loan funds for project assistance, with \$2,155,128 in forgivable principal.

ENACTMENTS:

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

Section 1. THAT the Mayor and Council of the City of Prescott, Arizona hereby approve accepting \$3,591,880 in loan funds from the Water Infrastructure

Finance Authority of Arizona (WIFA) to cover construction costs for the Airport Water Mains project, with \$2,155,128 in forgivable principal.

Section 2. THAT the Mayor and Council of the City of Prescott hereby certify that the population of the City of Prescott is less than 50,000.

Section 3. THAT the Mayor and staff are hereby authorized to execute the loan documents, and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

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

RECITALS:

WHEREAS, the Clean Water and Drinking Water Programs are sponsored by the Water Infrastructure Finance Authority of Arizona (WIFA) to provide financial assistance to enhance and improve water and wastewater infrastructure throughout Arizona communities; and

WHEREAS, WIFA has received America Recovery and Reinvestment Act of 2009 (ARRA) funds from the federal government and has made these funds available to Arizona communities for eligible projects; and

WHEREAS, the City of Prescott submitted the Zone 39 Water Improvements project to WIFA for possible ARRA funding, of which said project is deemed "shovel-ready" and is included in the City of Prescott's Capital Improvements Program; and

WHEREAS, the Zone 39 Water Improvements project has been approved by WIFA for loan funding; and

WHEREAS, said adopted procedures established by the WIFA Board require the applicant to certify by resolution signature authorization of such funding documents, the availability of local funds for loan repayment and a population of less than 50,000; and

WHEREAS, the City of Prescott is requesting \$8,998,096 from WIFA for construction costs and commits to repayment of WIFA loan funds for project assistance, with \$4,000,000 in forgivable principal.

ENACTMENTS:

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

Section 1. THAT the Mayor and Council of the City of Prescott, Arizona hereby approve accepting \$8,998,096 in loan funds from the Water Infrastructure

Finance Authority of Arizona (WIFA) to cover construction costs for the Zone 39 Water Improvements project, with \$4,000,000 in forgivable principal.

Section 2. THAT the Mayor and Council of the City of Prescott hereby certify that the population of the City of Prescott is less than 50,000.

Section 3. THAT the Mayor and staff are hereby authorized to execute the loan documents, and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

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

RECITALS:

WHEREAS, the Clean Water and Drinking Water Programs are sponsored by the Water Infrastructure Finance Authority of Arizona (WIFA) to provide financial assistance to enhance and improve water and wastewater infrastructure throughout Arizona communities; and

WHEREAS, WIFA has received America Recovery and Reinvestment Act of 2009 (ARRA) funds from the federal government and has made these funds available to Arizona communities for eligible projects; and

WHEREAS, the City of Prescott submitted the Wastewater Improvements project to WIFA for possible ARRA funding, of which said project is deemed "shovel-ready" and is included in the City of Prescott's Capital Improvements Program; and

WHEREAS, the Wastewater Improvements project has been approved by WIFA for loan funding; and

WHEREAS, said adopted procedures established by the WIFA Board require the applicant to certify by resolution signature authorization of such funding documents, the availability of local funds for loan repayment and a population of less than 50,000; and

WHEREAS, the City of Prescott is requesting \$6,573,506 from WIFA for construction costs and commits to repayment of WIFA loan funds for project assistance.

ENACTMENTS:

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

Section 1. THAT the Mayor and Council of the City of Prescott, Arizona hereby approve accepting \$6,573,506 in loan funds from the Water Infrastructure

Finance Authority of Arizona (WIFA) to cover construction costs for the Wastewater Improvements project.

Section 2. THAT the Mayor and Council of the City of Prescott hereby certify that the population of the City of Prescott is less than 50,000.

Section 3. THAT the Mayor and staff are hereby authorized to execute the loan documents, and to take any and all steps deemed necessary to accomplish the above.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 28th day of July, 2009.

JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

II-N

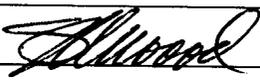
COUNCIL AGENDA MEMO – (July 21/July 28, 2009)

DEPARTMENT: City Clerk

AGENDA ITEM: Public Hearing and consideration of a liquor license application from Gurnam Singh, Applicant for Taj Mahal, for a Series 12, Restaurant, license for Taj Mahal located at 124 North Montezuma Street.

Approved By:

Date:

Department Head: Elizabeth A. Burke	7/28/2009
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	07/15/09

A Liquor License Application, City No. 09-145, State No. 12133450, has been received from Gurnam Singh, Applicant for Taj Mahal, for a Series 12, Restaurant, License for **Taj Mahal** located at 124 North Montezuma Street.

The public hearing will be held at the Regular Council Meeting of Tuesday, July 28, 2009. The applicant has been requested to attend the Regular Meeting to answer any questions Council may have.

This license application is due to a new location and new license for a Series 12 Restaurant license. A copy of the application is available for Council's review in the City Clerk's Office.

Recommended Action: (1) **MOVE** to close the Public Hearing; and (2) **MOVE** to approve/deny State Liquor License Application No. 12133450, for a Series 12, Restaurant, license for **Taj Mahal** located at 124 North Montezuma Street.

R19-1-102. Granting a License for a Certain Location

Local governing authorities and the Department may consider the following criteria in determining whether public convenience requires and that the best interest of the community will be substantially served by the issuance or transfer of a liquor license at a particular unlicensed location:

1. Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in, own or lease property in close proximity.
2. The number and series of licenses in close proximity.
3. Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.
4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.
5. Residential and commercial population density in close proximity.
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers.
7. Effect on vehicular traffic in close proximity.
8. The compatibility of the proposed business with other activity in close proximity.
9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing by the Board.
11. Comparison of the hours of operation of the proposed premises to the existing businesses in close proximity.
12. Proximity to licensed childcare facilities as defined by A.R.S. § 36-881.

Historical Note

Former Rule 2; Former Section R4-15-02 renumbered as Section R4-15-102 without change effective October 8, 1982 (Supp. 82-5). Repealed effective July 11, 1983 (Supp. 83-4). New Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-102 recodified from R4-15-102 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5119, effective January 9, 2006 (Supp. 05-4).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp

**ARIZONA STATE LIQUOR LICENSES
TYPES / PURPOSES
AS OF 04/07**

License Types: Series 01 In-State Producer's License

Allows an in-state producer to produce or manufacture spirituous liquor and sell the product to a licensed wholesaler.

License Types: Series 02 Out-of-State Producer's License

Allows an out-of-state producer, exporter, importer or rectifier to ship spirituous liquor into the state to a licensed Arizona wholesaler.

License Types: Series 03 Domestic Microbrewery License

Allows the licensee of a microbrewery to manufacture or produce not less than 5,000 gallons of beer in each calendar year following the first year of operation and not more than 620,000 gallons of beer in a calendar year.

License Types: Series 04 Wholesaler's License

Allows a wholesaler to warehouse and distribute for sale, spirituous liquor to a licensed retailer.

License Types: Series 05 Government License

Allows the holder of a government license to sell and serve spirituous liquor solely for consumption on the premises for which the license is issued. The license is issued in the name of a county, city, town or state university whose governing body has authorized its use.

License Types: Series 06 Bar License – Transferable

Allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

License Types: Series 07 Beer and Wine Bar License - Transferable

Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

License Types: Series 08 Conveyance License (Airplanes, Trains, and Boats)

Allows the owner or lessee of an operating airline, railroad or boat to sell all spirituous liquors in individual portions or in original containers for consumption *only* on the plane, train or boat.

License Types: Series 09 Liquor Store License (All spirituous liquors) - Transferable

Allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

License Types: Series 10 Beer and Wine Store License (Beer and wine only)

Allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

License Types: Series 11 Hotel/Motel License (with Restaurant)

Allows the holder of a hotel/motel license to sell and serve spirituous liquor solely for consumption on the premises of a hotel or motel that has a restaurant where food is served on the premises.

License Types: Series 12 Restaurant License

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

License Types: Series 13 Domestic Farm Winery License

Allows a domestic farm winery licensee to manufacture or produce more than two hundred (200) gallons, but less than seventy-five thousand (75,000) gallons of wine annually, from grapes or other agricultural products, of which at least seventy-five percent (75%) are grown in this state.

License Types: Series 14 Club License

Allows the holder of a club license to sell and serve spirituous liquor for consumption only on the premises owned, leased or occupied by the club, and only to bona fide members of the club and their guests.

License Types: Series 15 Special Event License

Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

Non-transferable License Types: Series 16 Wine Festival/Wine Fair License (Temporary)

1. Wine festival license: Allows a licensed domestic farm winery to serve samples of its products on the wine festival premises and the sale of such products in original containers for consumption off the wine festival premises.
2. Wine fair license: Allows a licensed domestic farm winery to serve samples of its products at a sanctioned county or state fair, and the sale of such products in original containers for consumption off the fair premises.

License Types: Series 17 Direct Shipment License

Allows an out-of-state producer, exporter, importer, or rectifier to take orders from retail customers by telephone, mail, catalog or the Internet. The orders must be shipped into the state to a licensed Arizona wholesaler. The wholesaler must sell the product to a licensed retailer. The retailer will deliver the spirituous liquor to the customer.

COUNCIL AGENDA MEMO – (July 21, 2009)

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DEPARTMENT: Legal

AGENDA ITEM: Extended Contract for outside counsel attorney's fees in Asphalt Paving and Supply v. Granite Dells Estates Properties, Inc.

Approved By:

Date: 7/15/09

Department Head: Gary Kidd

GD/K

7/15/09

Finance Director: Mark Woodfill

7/15/09

City Manager: Steve Norwood

[Signature]

Item Summary

This is a request to approve an extended contract for an additional amount of \$50,000 on a contract for attorney's fees in this litigation being handled for the City by outside counsel, Jones, Skelton and Hochuli. Because the City Attorney has been listed as a witness in the case and cannot engage in complete representation, outside counsel is necessary in this case.

Background

The litigation was brought by Asphalt Paving and Supply (AP&S) because of Granite Dells Estate's failure to award the contract for the Granite Dells Parkway Traffic Interchange to AP&S, the low bidder. The City Council previously approved a contract amount of \$75,000 for outside counsel's attorneys' fees to defend the City in this litigation. As of June 12, 2009, billings for attorney's fees amount to approximately \$61,000. Although the show cause hearing in this matter was originally scheduled for June 11, the significant motions and discovery requested by AP&S, plus the claims asserted by Granite Dells Estates have greatly expanded the case. Additional responses and briefings have been required, and the court has rescheduled AP&S's show cause hearing for July 1. Because of the additional discovery requests, motions, and claims, we estimate that another \$50,000 is required at this time to continue to defend the City through the July 1 order to show cause hearing, hearing preparation, and up to the point of a possible arbitration under the Development Agreement or the defense of Granite Dells Estate's special action. If the court enters an order in this litigation that is adverse to the City, additional amounts may be required to further pursue a special action petition or an appeal in the court of appeals. However, our office is also significantly involved in litigation assistance.

Fiscal Impact:

\$50,000 from budgeted project costs.

Recommended Action: MOVE to approve a change order in the amount of \$50,000 for the contract with Jones, Skelton and Hochuli for outside counsel.