



# PRESCOTT CITY COUNCIL JOINT STUDY SESSION/ SPECIAL MEETING AGENDA

**PRESCOTT CITY COUNCIL  
JOINT STUDY SESSION/SPECIAL MEETING  
TUESDAY, AUGUST 18, 2009  
3:00 P.M.**

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

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

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION:** Father Walter Crites, All Saints Anglican
- ◆ **PLEDGE OF ALLEGIANCE:** Councilman Bell
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

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

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

## STUDY SESSION

### I. DISCUSSION ITEMS

- A. [Approval of amendment to agreement with Yavapai Combined Trust.](#)
- B. [Notice of Public Hearing \(August 25, 2009\) and approval of a License Agreement between the City of Prescott and Cable One, Inc.](#)

- C. Adoption of Resolution No. 3987-1017 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Library Services Agreement for FY2009/2010 with the Yavapai County Library District to participate in cooperative funding to the benefit of the City of Prescott Public Library, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- D. Award of bid and contract for the Airport Zone North and South Loop Water Main Improvement Project to Sellers and Sons, Inc., in an amount not to exceed \$1,887,796.00.
- E. Approval of minutes of the Prescott City Council Public Regular Voting Meeting of August 11, 2009 and the Joint Study Session/Special Meeting of August 18, 2009.
- F. Selection of items to be placed on the Regular Voting Meeting Agenda of August 25, 2009.

## II. ADJOURNMENT

# SPECIAL MEETING

1. Call to Order.
2. Approval of Settlement in *Seastrand v. Prescott Unified School District and City of Prescott*.
3. Approval of a Settlement Agreement with Kimley-Horn and Associates, Inc., associated with engineering and increased construction costs for the Copper Basin Road Improvement Project.
4. Recess into Executive Session.
5. EXECUTIVE SESSION:  
  
Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to ARS §38-431.03(A)(3).
  - i. Grant of Easement for City's 18" Chino Valley to Prescott Water Transmission Line in the West Airport area.
6. 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

<b>COUNCIL AGENDA MEMO – 08/18/09 &amp; 08/25/09</b>
<b>DEPARTMENT:</b> City Manager
<b>AGENDA ITEM:</b> Yavapai Combined Trust Agreement Modification

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Jolaine Jackson/Mark Woodfill	08/12/09
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood 	

**Background:**

Yavapai Combined Trust (YCT) is comprised of four entities; Yavapai College, Yavapai County, City of Prescott, and Town of Chino Valley. The Trust is the mechanism for providing health insurance to employees. Each entity appoints representatives to serve on the Trust Board. The Board has fiduciary responsibility for the Trust. The Plan is self-insured with claims paid by an independent claims administrator. The Trustees meet once each quarter to review and vote any action items.

At a recent Board meeting, clarification language was suggested to the agreement, which will better match business practice and simplify processes in how the trust is administered and governed. The changes are simply updates, and do not affect benefits or how they are administered. Any changes to the agreement require approval of the “governing board” for each entity.

**Summary:**

*The following highlights revisions made to the Agreement, as approved by the Trustees of Yavapai Combined Trust on June 5, 2009. Please refer to the Agreement for full detail.*

**3.01 – Appointment of Trustees** – Last sentence removed for clarification.

**3.02 – Board of Trustees** – Removed language referencing members prior to 7/1/04. Adjusted scale to eliminate 0-70 grouping, and added scale for entity representation after the date of the amended Agreement. Moved Advisory Committee language to new section, 3.07.

**3.03 – Resignation or Removal of Trustee** – Removed reference to three-year Trustee terms.

**3.04 – Successor Trustees** – Language clarified.

**3.06 – Alternate Trustees** – Section added to comply with statute (instead of proxy vote option).

**3.07 – Advisory Committee** – Section added (from 3.02) to clarify the role and function of the Committee.

**COUNCIL AGENDA MEMO – 08/18/09 & 08/25/09**

**AGENDA ITEM: Yavapai Combined Trust Agreement Modification**

**4.01 – General Powers Of The Trustees** – Language added regarding Trust Administrator powers and duties pursuant to statute.

**4.03 – Stop Loss** – Added "if any" to last sentence regarding additional aggregate coverage.

**4.09 – Meetings** – Clarified and added Alternate Trustee language.

**6.01 – Funding Policy** – Fund balance language revised and clarified to reference "generally-accepted actuarial principles"

**9.02-9.06** – Added (expanded from former section 9.01) to provide additional clarification for prospective members.

**Financial Impact:**

There are no direct or indirect cost associated with these changes.

**Recommended Action:** **MOVE** to approve the language changes dated June 5, 2009, to the Agreement with the Yavapai Combined Trust.

**AMENDED AND RESTATED  
AGREEMENT AND DECLARATION OF TRUST**

**YAVAPAI COMBINED TRUST**

**EFFECTIVE January 1, 2007**

## **AMENDED AND RESTATED AGREEMENT AND DECLARATION OF TRUST**

This Amended and Restated Agreement and Declaration of Trust is made effective this 1<sup>st</sup> day of January, 2007, between the Yavapai County Community College District (the "College"), the City of Prescott (the "City"), Yavapai County (the "County") and the Town of Chino Valley (the "Town"), hereinafter referred to as "Participating Entities" and certain persons hereinafter referred to as the "Trustees" to administer the Trust in accordance with the terms and provisions of this instrument.

### **RECITALS**

A. A.R.S. §11-952.01 permits two or more public agencies to enter into contracts or agreements (1) for the joint purchase of life insurance or health benefits plan insurance, and (2) to pool retention of their risks for life insurance or health claims made against any public agency member of the pool, and to do so on a cooperative or contract basis, or by the execution of a trust agreement directly by the agencies or by contracting with a third party.

B. The College has the power and authority to contract (A.R.S. §15-1444(B)(3)); enter into intergovernmental agreements (A.R. S. §11-952); and provide for its employees' health, disability, life insurance and related fringe benefits (A.R.S. §15-1444(B)(5)); and

C. The Participating Entities and certain employees of the Participating Entities ("Employees") desire to enter into a program of providing and maintaining health and welfare benefits for Employees of the Participating Entities and certain members of their families; and,

D. To effect this purpose, it is mutually desirable to declare and create a Trust which establishes a Trust Fund in the manner more particularly set forth herein; and,

Now therefore, in consideration of the promises, covenants, agreements, terms, obligations and duties set forth herein, it is agreed as follows:

### **ARTICLE I -DEFINITIONS**

The following terms shall be defined as follows for the purposes of this Trust Agreement:

**1.01 - Beneficiary.** The term "Beneficiary" means employees, current and former Governing Board members, Council members and County Supervisors, retirees and their dependents who are eligible for benefits provided by and are enrolled in the Health and Welfare Program.

**1.02 - Employee.** "Employee" means all persons who have been employed by the Participating Entities on a regular basis, who work not less than the number of hours per week required by the Participating Entities for eligibility.

**1.03 - Employee Contribution.** The term "Employee Contribution" means the contributions made by the Employees of a Participating Entity to said Fund.

**1.04 - Fund.** The term "Fund" means the Trust Fund created by this instrument, and shall mean generally the monies, property, contracts, or things of value, tangible or intangible, received and held by the Trustees for the use and purposes set forth herein.

**1.05 - Health And Welfare Program.** The term "Health and Welfare Program" means the program of benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust.

**1.06 - Member Contributions.** The term "Member Contributions" means the contributions made by Participating Entities to the Fund for the Health and Welfare Program.

**1.07 - Participating Entities.** The term "Participating Entities" means each of the following: Yavapai College, the City of Prescott, Yavapai County, Town of Chino Valley and Prospective Members after they are approved for membership under Article IX.

**1.08 - Plan Document.** The term "Plan Document" means the document approved by the Trustees containing certain self-funded or insured health and welfare benefits, as it may be amended from time to time.

**1.09 - Trust Agreement.** The term "Trust Agreement" means this Agreement and Declaration of Trust and any modifications or amendments thereto.

**1.10 - Trustees.** The term "Trustees" as used herein means the Trustees and any successors provided for in this Trust Agreement.

**1.11 - Proportional Share.** The term "Proportional Share" means the contributions attributed to the Participating Entity (including contributions made by or on behalf of Beneficiaries in the Trust due to their affiliation with each respective Participating Entity as well as the Participating Entity's contributions on behalf of Employees) over the 12 months prior to termination under Article XI divided by total contributions to the Trust over the same 12 months.

**1.12 - Yavapai Combined Trust.** The name of this Trust shall be the Yavapai Combined Trust (the "Trust").

## **ARTICLE II - PURPOSE OF TRUST AND APPLICATION OF THE FUND**

**2.01 - Fund.** There is hereby created the Yavapai Combined Trust. The purpose of the Trust is to establish a Trust Fund to jointly purchase life insurance, disability insurance, accident insurance or health benefits plan insurance, to pool retention of their risks of loss for life, disability, health or accident claims, or to jointly provide the health and medical services authorized in Arizona Revised Statutes Section 36-2907. ~~provide Ebenefits for,~~ may include but are not limited or restricted to, Life, Accidental Death and Dismemberment, Disability Income, Basic or Major Medical coverage for accidents or sicknesses, dental, and any other benefits as

determined by the Trustees for Beneficiaries, provided such benefits are related to health, death or disability, whether through self-funded or insured programs or both. The Trustees shall have the power to enter into contracts, procure insurance policies, or provide such benefits through self-funding, and to place into effect and maintain the benefits as set forth in the Plan Document.

**2.02 - Principal Office.** The Trust shall have its principal office in Prescott, Arizona (hereinafter designated and referred to as "Principal Office").

### **ARTICLE III - TRUSTEES - APPOINTMENT, TERM AND REMOVAL**

**3.01 - Appointment Of Trustees.** The Trustees shall be appointed by the Participating Entities as provided herein and will serve at the pleasure of the Participating Entity which appointed them. A Trustee may be reappointed at the Participating Entity's sole discretion.

**3.02 - Board of Trustees, Advisory Committee Composition.** The Board of Trustees shall consist of at least five (5) people who are elected officials or employees of public entities in Arizona. Only those Participating Entities admitted to membership in the Trust on or before July 1, 2004, shall be entitled to appoint Trustee(s). Each Participating Entity's Governing Body shall appoint the number of Trustees which it is entitled to appoint based upon the number of participating or covered Employees of each entity as specified below:

No. Of Covered	<u>No. Of Trustees Appointed Per Entity</u> <b>Employees Per Entity</b>
0-70	0
71-249	1
250-699	2
700 +	3

In the event that a Participating Entity terminates its membership in the Trust, the remaining Participating Entities shall amend this Trust Agreement so as to have not less than the minimum number of Trustees required by law.

The number of covered employees shall be determined by calculating the total number of employees of each entity who participate in the Health and Welfare Program on the 1<sup>st</sup> day of the last month of each plan year (June 1). If an entity is entitled to appoint an additional Trustee, that Trustee shall be seated at the Board of Trustees meeting held in July immediately following the June 1 eligibility date. The Participating Entities hereby appoint and designate the individuals whose names appear on Exhibit "A" as it may be amended from time to time to serve as appointed Trustees.

Upon admission to membership of a new Participating Entity after July 1, 2004, an Advisory Committee will be established consisting of one (1) representative of each Participating Entity selected by the Governing Body of each Participating Entity from its human resources staff or other appropriate department, as determined by the Governing Body of each Participating Entity. The Advisory Committee shall meet at least monthly, at a convenient time and place, and may

meet before or in conjunction with regular meetings of the human resources personnel of each Participating Entity.

**3.03 - Term and Removal.** The term of office for a Trustee shall be three (3) years. Trustees appointed by a Participating Entity serve at the pleasure of the Governing Body of the Participating Entity and may be removed by the Governing Body at any time, with or without cause. The removal of a Trustee shall become immediately effective upon written notification by the appropriate Governing Body of a Participating Entity to the appointed Trustee to be removed. A Trustee who ceases to be an elected official or employee of a public entity in Arizona shall forfeit his office as a Trustee at the point of resignation or removal.

**3.04 - Successor Trustees.** Upon the resignation of a Trustee, expiration of the term of a Trustee, or removal of a Trustee or any of them, the Governing Board of the Participating Entity that appointed the Trustee, shall appoint a successor Trustee to fulfill the term of the Trustee being replaced. The appointed Trustee shall have the same powers and duties as those conferred upon the Trustees hereunder. In the case of the expiration of a term of office, a Trustee shall continue to serve until reappointed or until a successor is appointed.

**3.05 - Acceptance Of Trusteeship.** By signing this Trust Agreement, the Trustees hereby accept the Trust and Trusteeship and declare that they will receive and hold the Fund by virtue of this Trust Agreement for the uses and purposes and with the powers and duties herein set forth and none other and keep adequate and proper records as set forth herein.

#### **ARTICLE IV - POWERS AND DUTIES OF TRUSTEES**

**4.01 - General Powers Of The Trustees.** The Health and Welfare Program and Trust shall be administered by the Trustees. The Trustees shall hold, manage, care for and keep the Fund and collect the income and increments thereof, and shall keep and maintain adequate and proper records to render an annual audit, accounting and reports as hereinafter mentioned. The Trustees shall employ or hire such agents, attorneys, auditors, accountants, actuaries, private consultants, advisors, employees or other persons ~~and lease premises and equipment~~ as may be necessary or desirable in administering the Fund and carrying out its purposes, and the fees, salaries, wages, or compensation of any and all such persons shall be paid from the Fund. The Trustees may pay any and all taxes of whatsoever nature the Fund is and maybe obligated to pay, and incur any expenses for supplies, rental of space, or other items or anything else believed to be necessary or desirable in administering the Fund and carrying out the objectives and purposes of the Trust and Trust Agreement. Nothing herein is intended to and does not limit in any way the power of the Trustees, it being the intent of this Trust Agreement that the Trustees shall have all right, power and authority to do all those things, which in the opinion of the Trustees may be necessary or desirable for the administration and operation of and accomplishments of the objectives and purposes of the Fund and the Trust and this Trust Agreement and which are authorized by law. The Trustees shall have the power to adopt rules and regulations for the administration of the Fund and/or Trust, which regulations and rules shall be consistent with covenants, terms, conditions, obligations and duties as set forth in this Trust Agreement, and such rules and regulations shall be binding upon all persons dealing with the Fund and upon any and all persons claiming any benefits hereunder. The Trust may issue checks in its own name.

**4.02 - Benefits.** The Trustees, in carrying out the purposes of this Trust Agreement, shall have the power and the right to provide the intended benefits under this Trust as set forth in the Plan Document by means of direct or self-funding by the Trust and/or by the procurement of group insurance contracts (permissible under the laws of Arizona) including group insurance contracts issued to and in the name of the Trust, together with such other forms of contracts issued by qualified insurance companies authorized to do business in the State of Arizona as may be selected by the Trustees for the purpose of providing for all or part of the benefits provided for in the Plan Document. The Trustees shall establish the terms and conditions of coverage including exclusions of coverage. The Trustees are hereby expressly authorized to pay to any insurance company as may be selected by the Trustees the required premiums on the insurance contracts issued to the Trust. Subject to Paragraph 4.03 below, whether or not benefits are provided by means of direct or self-funding shall be at the sole and exclusive discretion of the Trustees. Should the Trustees select or provide for any policy or any program of self-funding, purchased insurance, or combination thereof, no claims for benefits or liabilities shall be brought against the Trustees or members of the Governing Bodies of Participating Entities.

**4.03 - Stop Loss.** If the Trustees choose to provide any self-funded benefits, the payment from the Fund of any and all benefits to or on behalf of each Beneficiary shall be limited to a total sum to be established by the Trustees each fiscal year. The aggregate total of payments for all self-funded benefits to or on behalf of all Beneficiaries shall be limited to an annual maximum calculated using an aggregate factor established through an aggregate stop-loss insurance policy selected by the Trustees.

**4.04 - Types of Employee Benefits To Be Funded By The Trust.** The Trustees may obtain for the Beneficiaries of the Trust the following forms of employee benefits plus other benefits, provided such benefits are related to Health, Death or Disability Income and shall establish terms and conditions of and exclusions from coverage:

1. Disability Income
2. Accidental Death and Dismemberment
3. Life Insurance
4. Hospital, surgical and medical, dental, and other group health products customarily made available to employee groups.

**4.05 - Unexpended Corpus.** The Trustees shall take necessary precautions to safeguard the assets of the Trust. The Trustees may enter into financial services agreements with banks and other financial institutions and may invest its monies in equity securities, mutual funds and investment funds registered with the United States Securities and Exchange Commission, debt obligations and any eligible investment permitted pursuant to A.R.S. § 35-323, or the Trustees may adopt a resolution to authorize and request the Arizona State Treasurer to invest the funds pursuant to A.R.S. § 35-326. All corpus or portions of the Fund not otherwise expended may be deposited by the Trustees in the name of the Trust in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits shall carry or bear interest. The Trustees are empowered to receive for the benefit of the Fund such interest as might accrue on the above deposits. If not so deposited, any accumulated funds not currently

required for the purposes of this Trust shall be invested by the Trustees in reasonably secure, reasonably liquid investments.

The Trustees may accumulate dividends or experience rating refunds or other monies, if any, accruing from any insurance policy or policies, deposits or investments. Such dividends, refunds or other monies, or all of them, shall be held in the Fund and applied to the payment of self-funded claims, the payment of insurance premiums, or held, used or applied as herein set forth. The Trust may issue checks in its own name.

**4.06 - Trustee Reimbursements / No Compensation.** The Trustees may receive reimbursement for actual reasonable expenses incurred, under such terms and conditions as may be approved by a majority of the Trustees. Trustees shall not receive compensation for their services rendered.

**4.07 - Recording Secretary.** The Trustees shall have a Recording Secretary who shall keep minutes of all meetings, proceedings, and acts of the Trustees, which records shall be available at the Principal Office of the Trust for inspection by all interested persons during usual business hours. Such records and minutes need not be verbatim. The Recording Secretary need not be a Trustee.

**4.08 - Acts Of Trustees.** No person who is dealing with the Trustees shall be obligated to see to the application of any monies or property of the Fund, or to see that the terms of this Trust Agreement have been complied with or to inquire as to the necessity or expediency of any act of the Trustees. Every instrument executed by the Trustees or at their direction shall be conclusive in favor of every person who in good faith relies upon it, that (a) at the time of the delivery of the instrument this Trust Agreement was in full force and effect; (b) the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and, (c) the Trustees were duly authorized to execute the instrument or direct its execution.

**4.09 - Meetings.** The Trustees shall hold their first meeting as soon as practical after being appointed. Thereafter, meetings shall be held on a regular basis sufficient to conduct the business of the Trust. The Trustees will hold all meetings in compliance with the Open Meeting Law of Arizona, A.R.S. §38-431, et seq. The Trustees shall determine the time and place of the regular meetings. Special meetings of the Trustees may be called by the Chairman or by a majority of the Trustees. At least twenty-four (24) hours written notice shall be provided to the Trustees of any meeting, including a copy of the meeting agenda. A majority of Trustees present at any meeting shall constitute a quorum. All actions of the Trustees shall be based upon a majority vote of the Trustees present.

**4.10 - Accounting.** The accounting year of the Fund shall be on a fiscal year basis, commencing on the first day of July and ending on the 30th day of June of the following year. Any report required by law, state or federal, or the respective subdivisions thereof, shall be prepared or caused to be prepared by the Trustees. The Trustees shall have an annual audit and accounting of the Trust Fund by a Certified Public Accountant ("CPA") in accordance with good accounting practices, at the end of each fiscal year. The CPA shall certify to the accuracy of its audit and accounting. A statement of the results of each audit shall be available for inspection by

at the Principal Office of the Trust. Copies of the audit and generalized statements of the accounting and reports shall be delivered to the Trustees after each audit and, copies of the report will be submitted to Governing Bodies or chief executive officers of the Participating Entities and to the Director of the Department of Insurance.

**4.11 - Actuarial Evaluation.** The Trustees at least annually shall obtain an appropriate actuarial evaluation of the claim reserves of the Trust including an estimate of the incurred but not reported (IBNR) claims.

**4.12 - Bonding Of Trustees.** The Trustees shall procure fidelity bonds for the benefit of the Trust and covering persons authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever, said bonds to be in such reasonable amount to reasonably aid in reimbursing bondable loss of money, and in any event shall meet the requirements as may be imposed, from time to time, by applicable law. Bonds are to be obtained from a reputable fidelity or surety company or companies as the Trustees shall determine. If convenient, and in conformity with law, such bonds may be position bonds. The cost of the premiums on such bonds shall be paid out of the corpus or income of the Fund. If any fidelity or surety company refuses to bond or write a bond for any Trustee, or other person as described in this section, that Trustee or person shall not serve and shall resign.

**4.13 - Benefits Claim Settlement and Appeals Board.** The Trustees shall assume ensure that all valid claims for which each Participating Entity incurs liability during each Participating Entity's period of membership are paid promptly. The Trustees may in their sole discretion compromise or settle any disputed benefits claim or benefits claim controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement of a disputed benefits claim or benefits claim controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding upon all parties interested in this Fund. The Trustees may establish an appeals board which may have the same powers and duties of the Trustees to settle benefits claims or benefits claims controversies. Should they decide to establish an appeals board, the Trustees shall establish by resolution the membership, procedures, and duties of the appeals board and include the same in the Plan Document.

**4.14 - Discharge Duties With Care.** The Trustees agree to discharge their responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, all in accordance with the provisions of this Trust Agreement. Notwithstanding this duty, Trustees shall only be liable for claims, damages or other harm to the extent provided for in Section 4.15 below.

**4.15 - Indemnification and Insurance.** A Trustee shall not be responsible or liable for any claim, damages or other harm, unless and only to the extent that the claim, damages or harm is caused by the Trustee's gross negligence, bad faith or willful misconduct, including gross negligence, bad faith or willful misconduct in the handling of monies received for the Trust's benefit and/or with respect to the execution and administration of the Fund or this Trust Agreement. A Trustee shall neither be responsible for actions or omissions of successor

Trustees, nor for the actions or omissions of other agents, nor for actions or omissions of any insurance company or its agents, including, but not limited to, nonpayment of claims by an insurance company or companies for any reason. To the extent permitted by law, a Trustee shall be entitled to indemnification from the Trust, including court costs and attorneys' fees, for costs attributable to any claim of liability, or actual liability, unless such costs of liability arises from the Trustee's willful misconduct, bad faith or gross negligence, in which case no indemnification shall be available to the Trustee. The Trustees are specifically authorized to purchase errors and omissions and other appropriate insurance coverage for the benefit of the Trustees, if such coverage is not provided by the Participating Entity which has appointed each Trustee.

**4.16 - Power To Interpret Agreement.** The Trustees shall have the power to construe, interpret and apply the provisions of this Trust Agreement or any amendments, rules or regulations adopted thereto, and the terms used herein and any construction, interpretation or application adopted in good faith shall be final and binding upon the Participating Entities and the Beneficiaries, and their respective successors, assigns, personal representatives, administrators, and/or legal representatives.

**4.17 - Required Notice and Filings.** The Trustees shall notify the Director of the Arizona Department of Insurance of the existence of the Trust, and shall file copies of the Trust with the Director and with the Attorney General of the State of Arizona.

**4.18 - Extending Credit and Borrowing.** Notwithstanding any provision of this Trust Agreement to the contrary, the Trustees shall not extend credit to Participating Entities to pay premiums except pursuant to the payment plans adopted by the Trustees, nor shall they borrow monies from the Participating Entities or in their name or the name of the Trust except in the ordinary course of business.

**4.19 - Availability of Records.** Any Participating Entity shall, upon request, be provided any records, reports or other information relating to the administration or operation of the Plan. Each Participating Entity shall be informed of the request for records, reports or information, and upon request shall be furnished the same information provided to the Participating Entity making the first request. In the event that preparation of a requested report entails significant additional cost, each requesting entity may be required to pay the additional cost for preparation unless the Board approves preparation of the report at no additional cost. Information will not be provided that would adversely affect the privacy of individual covered employees or dependents.

**4.20 - Authorization To Establish Office And Staff.** The Trustees may establish offices and employ necessary staff to carry out the provisions of this Trust Agreement.

**4.21- Authorization To Obtain Property.** The Trustees may purchase, lease or rent real and personal property deemed necessary or desirable to operate the Trust.

## **ARTICLE V - PLAN DOCUMENT AND ADMINISTRATION OF THE PLAN**

**5.01 - Benefits Set Forth In Plan Document.** The benefits to be provided hereunder, whether by self-funding or insurance contract, shall be set forth in a Plan Document which shall

also explain the eligibility rules for coverage for Beneficiaries. Beneficiaries have no rights to any claim to benefits under the Health and Welfare Program beyond those set forth in the Plan Document for which they are eligible. The Trustees and Participating Entities will have no liability for failure to fund or pay for benefits not provided for in the Plan Document.

**5.02 - Designation Of Third Party Administrator and Removal.** The Trustees shall have the full obligation and responsibility for the general administration of the Health and Welfare Program but may designate any person, firm or corporation as its agent to act for it in administering the Health and Welfare Program and define its authority. Such agent shall be known as the third party administrator. The third party administrator will provide day to day management of the Fund. The Trustees may remove the third party administrator at any time without cause. Areas of authority of the third party administrator will be delineated in the minutes of the meetings of the Board of Trustees, in the third party administrator's contract with the Trust and in any regulations or rules established by the Trustees.

**5.03 - Record Maintenance By Third Party Administrator.** Any agent designated as the third party administrator of the Health and Welfare Program shall keep accurate and detailed records of its administration of the Health and Welfare Program which shall be open for examination at reasonable times during business hours by any person authorized in writing by the Trustees. In addition, the third party administrator shall, within sixty (60) days after the end of each Trust year or such other date as determined by the Trustees, file with the Trustees a complete statement of the administration of the Health and Welfare Program covering the period since the last statement.

**5.04 - Disputes.** In the event there shall be any disagreement between the Trustees and the third party administrator over exercise of powers granted herein or with respect to the interpretation of any regulations or rules established by the Trustees, the Trustees shall prevail, and the third party administrator shall have no liability to any person with respect to such act or omission in the event it shall give notice in writing to the Trustees and to the Participating Entities of its dissent from such act.

## ARTICLE VI - CONTRIBUTIONS TO THE FUND

**6.01 - Funding Policy.** The Trustees shall establish a funding policy which identifies the criteria to be used in establishing an appropriate fund balance for the Trust. The Trust shall annually review its funding policy. During the sixth and twelfth month of each fiscal year, the Trustees shall establish a target fund balance in an amount sufficient to protect against foreseeable claims experience. Computation of the target fund balance shall be based upon generally-accepted actuarial principles. The Trust shall maintain claim reserves equal to known incurred losses and an estimate of incurred but not reported claims.

At the times that the target balances are determined, the Trustees shall compare the actual fund balance to the target balance. In the event that the actual fund balance exceeds the target fund balance, the Trustees shall reduce the actual balance through a reduction in required contributions or in accordance with other generally accepted accounting principles by an amount substantially equal to the amount that the actual fund balance exceeds the target fund

balance. In the event that the actual fund balance is less than the target fund balance, the Trustees shall take such actions as may be permitted by Section 6.03 or other legal means to increase the actual fund balance to an amount substantially equal to the target fund balance. Actions intended to reduce or increase the fund balance shall be based upon recognized actuarial calculations made prior to implementation.

**6.02 - Member Contributions.** In order to effectuate the purpose hereof, the Participating Entities shall contribute to the Fund an amount determined by the Trustees and approved by the Participating Entities to be necessary to pay for the benefits provided hereunder which shall include but is not limited to costs incurred for claim payments; insurance contracts; administrative expenses and establishing of and maintenance of incurred but not reported ("IBNR") claims reserves. During the first year of participation in this Trust, a Participating Entity may fund for incurred but not reported claims and known incurred losses through a lump sum payment at the beginning of the plan year or through prorated payments during the first 12 months of this Trust Agreement. The calculation of the IBNR and known incurred losses will be calculated using recognized actuarial calculation. The Participating Entity's contribution shall be due and payable as of the first day of the month or as otherwise determined by the Trustees.

**6.03 - Assessment Of Participating Entities If Fund Is Determined To Be Insolvent Or Unable To Discharge Its Legal Liabilities; Limits of Liability For Trustees And Participating Members.** If the Fund is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, the Participating Entities shall be assessed on a pro rata basis as calculated by the amount of each Participating Entity's annual contribution in order to satisfy the amount of deficiency. Notwithstanding the above, the assessment shall not exceed the amount of each Participating Entity's annual contribution to the Fund. For purposes of this Section 6.03, the annual contribution shall mean the monthly contribution required to be paid by a Participating Entity as of the date of the Trustees' determination to require an assessment, multiplied by twelve (12). In either event, benefit payments to such Beneficiaries shall be limited to the amount in the Trust Fund, together with any available stop-loss coverage. In the event the assessment does not yield sufficient funds to pay all outstanding claims, the Trust's obligation to pay claims shall be limited to the amount in the Fund after the assessment, and the Trustees and Participating Entities' shall have no further legal obligations of any type. In the event that submitted claims of Beneficiaries exceed the funds available, the claims shall be paid in the order received as determined by the Trustees or by the third party administrator if so delegated by the Trustees.

**6.04 - Participating Entities' Contributions Are Not Wages.** To the extent permitted by law, the Participating Entities' contributions to be paid into the Fund shall not constitute or be deemed wages due to Employees, nor shall the Participating Entities' contributions in any manner be liable for or subject to the debts, contracts, or liabilities of the Participating Entities. Neither the Participating Entities, any Employee, nor any Beneficiary under the Plan shall have any rights, title, or interest in the Fund, except as otherwise specifically provided herein.

**6.05 - Employee Contributions.** Covered Employees may be required to contribute to the Fund the amount determined by the Participating Entity, to be appropriate for the benefits to

be provided hereunder. All covered Employees' contributions shall be due and payable as of the first day of the month or as otherwise determined by the Trustees.

**6.06 - Payment In Lieu Of Benefits.** No Employee or other Beneficiary shall have any right to receive any part of his/her own or the Participating Entities' contributions paid to him/her in lieu of benefits.

**6.07 - Payroll Deductions.** All Employees' contributions shall be paid by payroll deduction, by salary reduction, or as otherwise required by the Trustees. The Participating Entity shall remit all monies obtained in a lump sum to the Fund, at least once per month, or as otherwise specified by the Trustees.

**6.08 - Payment.** All contributions shall be payable to the name of the Trust, and shall be paid in the manner and form determined by the Trustees.

**6.09 - Reports.** The Participating Entities shall make all reports required by the Trust in order that the Trustees can carry out their obligations under the Trust Agreement. The Trustees may at any time have an audit made by an independent Certified Public Accountant of the wage records of the Participating Entities in connection with their contribution and/or reports. In the event that an audit determines that contributions have been under paid, that Participating Entity shall pay for the audit.

**6.10 - Irrevocability Of Contribution.** Subject to the provisions providing for termination of this Trust Agreement, all contributions to the Fund shall be irrevocable, and under no circumstances shall any monies paid into the Fund, or any part of the Fund, in accordance with this Trust Agreement be recoverable by or payable to the Participating Entities or any Beneficiary except in accordance with the terms of this Trust Agreement, nor shall any of the same be used for or diverted to purposes other than for the exclusive program of benefits for Beneficiaries provided hereunder.

**6.11 - Trustees' Responsibility For Contributions.** Subject to the limitations stated in this section, and notwithstanding any other provisions of this Trust Agreement, each Trustee shall be responsible for monies only when and after such monies are received by the Trust pursuant to this Trust Agreement.

## **ARTICLE VII - PAYMENT OF BENEFITS**

**7.01 - Method Of Payment.** The Trustees may arrange for the disbursement of benefits under the Plan Document. Benefit payment determinations may be made by a third party administrator appointed by the Trustees. -

**7.02 - Protection Of Employees.** Prior to payment to any Beneficiary, all assets of the Trust shall be owned by the Trust and shall not be liable in any way for any debt or obligation of any Beneficiary. To the extent permitted by law, all Trust benefits shall be exempt from attachment, garnishment, levy of execution, bankruptcy proceedings, or other legal process; and,

in any event, such assets shall be subject to such process only to the extent of such Beneficiary's benefits hereunder as they fall due.

**7.03 - Claim To Benefits.** Beneficiaries will have no rights to any claim to benefits beyond those set forth in the Plan Document for which they are eligible. The Trustees and Participating Entities will have no liability for failure to fund or pay for benefits not otherwise provided for in the Plan Document.

## **ARTICLE VIII - NONVESTING OF RIGHTS**

**8.01 - Rights.** No Employee, Beneficiary, nor any other person or group or their respective successors, assigns or legal representatives shall have any right, title or interest, vested or otherwise, in or to the Fund, Trust, corpus income or increments thereto, insurance dividends, cash value, if any, or insurance or benefits or monies payable therefrom, payments from the Fund, or in or to the eligibility requirements for the benefits as changed or altered. Any participating Beneficiary who withdraws or ceases to participate in the Health and Welfare Program does hereby and shall expressly waive and forfeit any right, title or interest in and to the Fund, its corpus and assets. No Employee, Beneficiary, or any other person or group or their respective successors assigns or legal representatives shall have any rights in or to the Trust, Fund, corpus, insurance, dividends, cash value, if any, of insurance, income, benefits, or any benefits or money payable therefrom, or anything arising out of or in this Trust during the term of this Trust Agreement, and any benefit he or they may have is forever terminated and discharged upon the Employee's loss of employment with the Participating Entity (quitting or discharge), subject to COBRA rights pursuant to 42 U.S.C.A. §300bb-1, or when this Trust Agreement is terminated, wound up, and dissolved. No benefit, right or interest, if any of the foregoing, is transferable or assignable by the Employee to another Employee or person, corporate or otherwise, except to physicians, hospitals and any other person, or institutions furnishing medical services within the terms of this Trust Agreement. No monies, property, or equity, of whatsoever nature, in the Fund, nor insurance policies nor benefits nor monies payable therefrom, nor investments, nor deposits nor any part or portion of the Fund, shall be subject in any manner by an Employee, or other Beneficiary or person claiming through such Employee or Beneficiary, to ownership, anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, attachment, execution, mortgage, lien or charge of whatsoever nature or kind unless required by law, and any attempt to cause the same is and shall be null and void.

## **ARTICLE IX - PROSPECTIVE MEMBERS**

**9.01 - Petition For Membership.** A governmental unit with its operations wholly or principally within Yavapai County and with at least one hundred (100) participants who will become covered Employees if admitted as a Participating Entity in the Trust desiring membership in the Trust ("Prospective Member") may petition the Trustees to join by completing an application form available at the principal Office of the Trust. No governmental unit that will not enroll at least one hundred (100) covered Employees upon acceptance as a Participating Entity will be considered for participation. The deadline to submit an application for membership in the Trust shall not be less than three months prior to the proposed effective date for membership. A fee, as determined by the Trustees, will be charged for the application

process. The Trustees, in a meeting, may through a majority vote after approval by all Participating Entities extend an invitation for membership to the Prospective Member, subject to payment of the contribution required, in an amount according to the formula as determined by the Trustees. Upon acceptance of the invitation, the Prospective Member shall pay the Trust the formulated contribution for the purpose of establishing IBNR Trust reserves. This payment may be in the form of a lump sum payment prior to the effective date of coverage or the first payment of a prorated schedule of payments during the first 12 months of participation. Upon receipt of the lump sum or first of the 12 prorated payments, the Prospective Member shall be deemed a Participating Entity with the inherent rights and obligations of a Participating Entity. Representatives of the Prospective Member may attend meetings of the Advisory Committee but are not allowed to vote until the Prospective Member becomes a Participating Entity of the Trust. No Participating Entity admitted after July 1, 2004, may terminate its participation pursuant to Section 10.01 of this Trust earlier than three (3) years after its admission to the Trust.

## ARTICLE X - TERMINATION OF A PARTICIPATING ENTITY

**10.01 - Voluntary (Without Cause) Termination.** If an individual Participating Entity desires to terminate its membership in the Trust, the following provisions must be met:

1. ~~The Trustees must receive~~ The Participating Entity must provide written notification of intent to terminate membership to the Trustees at least twelve (12) months prior to the end of the plan year in which termination is desired (e.g. provide written notice prior to July 1, 2007, to be able to terminate on June 30, 2008); and,
2. Termination ~~would~~ shall become effective at the end of the plan year following the required twelve (12) month notice period (e.g. if written notice received prior to July 1, 2007, Participating Entity would terminate participation on June 30, 2008).
3. Once termination is effective, a former Participating Entity may not apply for readmission to the Trust for a minimum of three plan years.

**10.02 - Involuntary Termination (For Cause).** In the event a Participating Entity fails to make any required contribution of funds, or fails to comply with any of the other terms of this Trust Agreement, the Trustees may, if such default is not cured within thirty (30) days<sup>2</sup> after the Trustees send a written notice of noncompliance to the defaulting Participating Entity receipt of written notice, suspend the Participating Entity's Beneficiaries' coverage either in whole or in part for a period of up to ninety (90) days without further action. The written notice shall inform the Participating Entity that the suspension may be made permanent effective ninety (90) days after the date of the notice. During such suspension period, the Trustees shall either (i) determine that the suspension shall be made permanent, in which case this Agreement shall be deemed terminated effective ninety (90) days after the date of the written notice of suspension, or (ii) determine the circumstances, if any, under which the Participating Entity's participation in the Trust and coverage may be restored. Should the Participating Entity be permanently suspended and this Agreement terminated, the Participating Entity shall forfeit all rights to any

distribution of surplus, contributions or other distributions from or assets of the Trust. In the event of such termination, the Participating Entity shall not be relieved of its liability incurred during the Participating Entity's period of membership except through the payment of losses by the trust or by the Participating Entity. ~~the~~ The Participating Entity shall be relieved of any liability for ordinary contributions for fiscal years after the fiscal year of the Participating Entity's involuntary termination. Further, the Participating Entity's liability for additional assessments will continue if the Trust becomes insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations as determined in good faith by the Trustees, through the end of the fiscal year during which the Participating Entity was terminated.

**10.03 - Incurred But Not Reported Claims Liability On Termination.** A terminating Participating Entity, either upon voluntary termination or upon involuntary termination, shall be responsible for its Proportional Share of claims due to be paid after the termination date, but incurred prior to termination, ("claims run out") which exceeds Trust Fund Reserves established for the incurred but not reported claims liability. In the event Trust Fund reserves exceed claims run-out, an amount equal to 75% of a Proportional Share of such reserves will be returned to the former Participating Entity as set forth in Section 10.04.

**10.04 - Final Accounting.** ~~Twelve (12) months~~ After termination of any Participating Entity, whether it be voluntary or involuntary, and after all incurred claims are concluded, a final accounting and settlement of obligations of or refunds to a terminating Participating Entity will be made, including ~~of the~~ incurred but not reported claims reserve in a manner set forth by the Trustees in its rules and regulations. In the event of reserve excesses or deficit, as reflected in the Final Accounting, the balance shall be settled pursuant to Section 10.03 above -- (1) a terminating Participating Entity shall be responsible for its Proportional Share of claims which exceed Trust Fund Reserves established for the incurred but not reported claims liability, and (2) a terminating Participating Entity will receive an amount equal to 75 % of its proportional share of Trust Fund reserves in the event of an excess. Any deficit owed by the terminating Participating Entity, or any excess owed by the Trust to the terminating Participating Entity, shall be paid within 60 days of release and receipt of the final accounting.

## ARTICLE XI - TERMINATION OF TRUST

**11.01 - Termination by Participating Entities.** This Trust may be terminated by resolutions executed by a majority of the Participating Entities' governing bodies. An instrument in writing duly executed by a majority of the Participating Entities shall give the Trustees ninety (90) days written notice of the effective date of termination. If the Trust is in a deficit position upon termination, including the IBNR claims as determined by the Trustees, each Participating Entity will share in the liability of the Trust, subject to the limitations as set forth in Section 6.02 above, until the Trusts business has been wound up.

**11.02 - Continue Until Completion.** Upon termination of the Trust by the Participating Entities, each Participating Entity shall be responsible to notify all Beneficiaries affiliated with it, and any other interested parties, of the decision to terminate and its effective date. Any deficit shall be paid by the Participating Entities by paying a Proportional Share as set forth in Section 6.02. Notwithstanding any provisions herein concerning the duration and termination of

this Trust, the Trust shall continue in existence for so long a period as may be necessary to complete its affairs. Upon final termination of this Trust, after payment of unpaid claims and/or insurance premiums and other expenses and obligations of the Trust, each Participating Entity who was a member at the time of the decision to terminate, shall be paid its Proportional Share (as defined in Section 10.03) of any balance in the Fund.

**11.03 - Final Accounting.** At such time as the Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the Participating Entities, and thereafter there shall be no claim or action against the Trustees and they shall have no further responsibility or duties and shall be discharged. Notwithstanding the above, no Trustee shall be released or discharged for any malfeasance or wrongful conduct while in office.

## **ARTICLE XII - MISCELLANEOUS**

**12.01 - Power To Amend Rests With Participating Entities.** It is anticipated that conditions may arise that are not foreseen at the time of execution of this Trust Agreement. It is the intention of the Participating Entities and the Trustees that the power of amendment which is herein granted to the Participating Entities be exercised in order to carry out the spirit, objectives, and purposes of this Trust. Any Amendment shall be binding upon the parties to this Trust Agreement upon approval of the Governing Boards of all Participating Entities. Any such Amendment shall be signed by all Participating Entities and each Trustee.

**12.02 - Workers' Compensation.** The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is compensable under Workers' Compensation Laws.

**12.03 - Insurance Companies Not Parties To Trust Agreement.** No insurance company which may issue any policies or contracts for the purpose of fulfilling the terms of this Trust Agreement shall be deemed to be a party to this Trust Agreement, nor shall it be responsible for the validity of this Trust Agreement, nor is this Trust Agreement established in any manner for the benefit of the insurance company or companies. No insurance company shall be required to look into the terms of this Trust Agreement, or to question the authority of or action of the Trustees, or be responsible to verify that any action of the Trustees is authorized by the terms of this Trust Agreement.

**12.04 - Applicable Law.** Yavapai County, State of Arizona, shall be deemed the situs of the Fund created hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of the State of Arizona. This Trust Agreement is deemed, made, executed and delivered in Arizona.

**12.05 - Construction.** Wherever any words are used in this Trust Agreement in the masculine gender, they shall be construed as though they were also in the feminine or neuter gender in all situations where they would so apply, and wherever any words in this Trust Agreement are in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this

Trust Agreement in the plural form they shall be construed as though they were also used in the singular form in all situations where they would so apply.

**12.06 - Severability.** Should any provision or term in this Trust Agreement be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein contained unless such illegality shall make impossible or impractical the functioning of the Trust. In such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

**12.07 - Clarification of Captions.** It is understood and agreed that the captions headings are for convenience only and are not and shall not be a part of this Trust Agreement and in no manner whatsoever define, limit, or expand any of the terms, obligations or conditions hereof.

**12.08 - Cancellation.** This Trust Agreement is subject to cancellation pursuant to A.R.S. §38-511.

**SIGNATURES OF PARTICIPATING ENTITIES OR AUTHORIZED DESIGNEE**

**Yavapai County Community College District**

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

\_\_\_\_\_  
Print Name

Signed this \_\_\_\_ day of 20\_\_.

**City of Prescott**

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

\_\_\_\_\_  
Print Name

Signed this \_\_\_\_ day of 20\_\_.

**Yavapai County**

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

\_\_\_\_\_  
Print Name

Signed this \_\_\_\_ day of 20\_\_.

**Town of Chino Valley**

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

\_\_\_\_\_  
Print Name

Signed this \_\_\_\_\_ day of 20\_\_\_\_.

**SIGNATURES OF TRUSTEES**

\_\_\_\_\_  
Trustee for Yavapai College  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_

Trustee for Yavapai College  
Signed this 25 day of 2007. (January)

*Mark Woodfill*

\_\_\_\_\_  
Trustee for City of Prescott  
Signed this 25<sup>th</sup> day of 2007.

*Deanne Jackson*

\_\_\_\_\_  
Trustee for City of Prescott  
Signed this 25 day of 2007. (January)

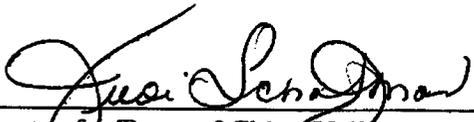
*[Signature]*

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this 25<sup>th</sup> day of 2007. (January)

*[Signature]*

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this 25<sup>th</sup> day of 2007. (January)

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.



Trustee for Town of Chino Valley  
Signed this 25<sup>th</sup> day of 2007.

**APPROVAL OF LEGAL COUNSEL PURSUANT TO A.R.S. §11-952.D**

Pursuant to A.R.S. §11-952(D), the foregoing agreement has been reviewed by the undersigned Legal Counsel for each public agency, and, as to the respective public agency represented by each Legal Counsel identified below, it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to that public agency.

\_\_\_\_\_  
Legal Counsel for Yavapai County Community College District  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
Legal Counsel for City of Prescott  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
Legal Counsel for Yavapai County  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
Legal Counsel for Town of Chino Valley  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.

\_\_\_\_\_  
Trustee for Town of Chino Valley  
Signed this \_\_\_\_ day of 20 \_\_\_\_.

**APPROVAL OF LEGAL COUNSEL PURSUANT TO A.R.S. §11-952.D**

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\_\_\_\_\_  
Legal Counsel for Yavapai County Community College District  
Signed this \_\_\_\_ day of 20 \_\_\_\_.

\_\_\_\_\_  
Legal Counsel for City of Prescott  
Signed this \_\_\_\_ day of 20 \_\_\_\_.

\_\_\_\_\_  
Legal Counsel for Yavapai County  
Signed this \_\_\_\_ day of 20 \_\_\_\_.  
*Musgrave Druten Kack, PC*  
*By Cathy L. Knapp*  
\_\_\_\_\_  
Legal Counsel for Town of Chino Valley  
Signed this 12~~th~~ day of 20 07.  
*April*

Trust Agreement in the plural form they shall be construed as though they were also used in the singular form in all situations where they would so apply.

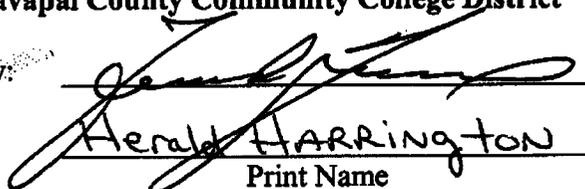
**12.06 - Severability.** Should any provision or term in this Trust Agreement be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein contained unless such illegality shall make impossible or impractical the functioning of the Trust. In such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

**12.07 - Clarification of Captions.** It is understood and agreed that the captions headings are for convenience only and are not and shall not be a part of this Trust Agreement and in no manner whatsoever define, limit, or expand any of the terms, obligations or conditions hereof.

**12.08 - Cancellation.** This Trust Agreement is subject to cancellation pursuant to A.R.S. §38-511.

**SIGNATURES OF PARTICIPATING ENTITIES OR AUTHORIZED DESIGNEE**

**Yavapai County Community College District**

By:   
Herald HARRINGTON  
Print Name

Signed this 2nd day of 2007. February

**City of Prescott**

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name

Signed this \_\_\_\_ day of 20\_\_.

**Yavapai County**

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name

Signed this \_\_\_\_ day of 20\_\_.

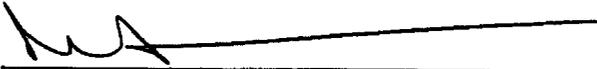
**Town of Chino Valley**

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

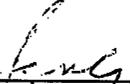
\_\_\_\_\_  
Print Name

Signed this \_\_\_\_\_ day of 20\_\_.

**SIGNATURES OF TRUSTEES**

  
\_\_\_\_\_  
Trustee for Yavapai College  
Signed this 1/31 day of 2007. *Rose Hurley*

  
\_\_\_\_\_  
Trustee for Yavapai College  
Signed this 2/6 day of 2007 *Herald Harrington*

  
\_\_\_\_\_  
Trustee for City of Prescott  
Signed this \_\_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for City of Prescott  
Signed this \_\_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Town of Chino Valley  
Signed this \_\_\_\_ day of 20 \_\_\_\_.

**APPROVAL OF LEGAL COUNSEL PURSUANT TO A.R.S. §11-952.D**

Pursuant to A.R.S. §11-952(D), the foregoing agreement has been reviewed by the undersigned Legal Counsel for each public agency, and, as to the respective public agency represented by each Legal Counsel identified below, it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to that public agency.

  
\_\_\_\_\_  
Legal Counsel for Yavapai County Community College District  
Signed this 12 day of 2007.

\_\_\_\_\_  
Legal Counsel for City of Prescott  
Signed this \_\_\_\_ day of 20 \_\_\_\_.

\_\_\_\_\_  
Legal Counsel for Yavapai County  
Signed this \_\_\_\_ day of 20 \_\_\_\_.

\_\_\_\_\_  
Legal Counsel for Town of Chino Valley  
Signed this \_\_\_\_ day of 20 \_\_\_\_.

Trust Agreement in the plural form they shall be construed as though they were also used in the singular form in all situations where they would so apply.

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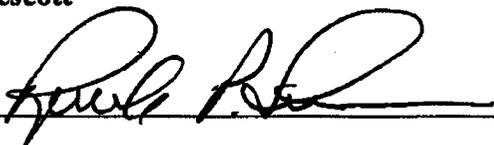
**SIGNATURES OF PARTICIPATING ENTITIES OR AUTHORIZED DESIGNEE**

**Yavapai County Community College District**

By: \_\_\_\_\_  
\_\_\_\_\_ **Print Name**

Signed this \_\_\_\_ day of 20\_\_.

**City of Prescott**

By:   
\_\_\_\_\_ **Rowle P. Simmons**  
\_\_\_\_\_ **Print Name**

Signed this 22 day of 2007.

**Yavapai County**

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

\_\_\_\_\_  
Trustee for City of Prescott  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_ day of 20\_\_.

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\_\_\_\_\_  
Legal Counsel for Yavapai County Community College District  
Signed this \_\_\_\_ day of 20\_\_.

  
\_\_\_\_\_  
Legal Counsel for City of Prescott  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Legal Counsel for Yavapai County: Gary D. Kidd  
Signed this \_\_\_\_ day of 20\_\_.

**Town of Chino Valley**

By: Mayor Karen Fanu

KAREN FANU  
Print Name

Signed this 12th day of <sup>APRIL</sup> 2007.

**SIGNATURES OF TRUSTEES**

\_\_\_\_\_  
Trustee for Yavapai College  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai College  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for City of Prescott  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for City of Prescott  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_ day of 20\_\_.

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**12.07 - Clarification of Captions.** It is understood and agreed that the captions headings are for convenience only and are not and shall not be a part of this Trust Agreement and in no manner whatsoever define, limit, or expand any of the terms, obligations or conditions hereof.

**12.08 - Cancellation.** This Trust Agreement is subject to cancellation pursuant to A.R.S. §38-511.

**SIGNATURES OF PARTICIPATING ENTITIES OR AUTHORIZED DESIGNEE**

**Yavapai County Community College District**

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name

Signed this \_\_\_\_ day of 20\_\_.

**City of Prescott**

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name

Signed this \_\_\_\_ day of 20\_\_.

**Yavapai County**

By: \_\_\_\_\_  
A.G. "Chip" DAVIS  
Print Name

Signed this 9<sup>th</sup> day of 2007. (July)

**Town of Chino Valley**

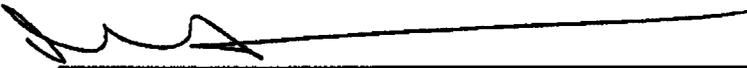
By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Signed this \_\_\_\_\_ day of 20\_\_\_\_.

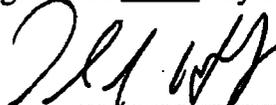
**SIGNATURES OF TRUSTEES**

\_\_\_\_\_  
Trustee for Yavapai College  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.

  
\_\_\_\_\_  
Trustee for Yavapai College  
Signed this 25 day of 2007. (January)

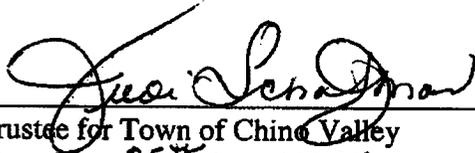
  
\_\_\_\_\_  
Trustee for City of Prescott  
Signed this 25<sup>th</sup> day of 2007.

  
\_\_\_\_\_  
Trustee for City of Prescott  
Signed this 25 day of 2007. (January)

  
\_\_\_\_\_  
Trustee for Yavapai County  
Signed this 20<sup>th</sup> day of 2007. (January)

  
\_\_\_\_\_  
Trustee for Yavapai County  
Signed this 25<sup>th</sup> day of 2007. (January)

\_\_\_\_\_  
Trustee for Yavapai County  
Signed this \_\_\_\_\_ day of 20\_\_\_\_.



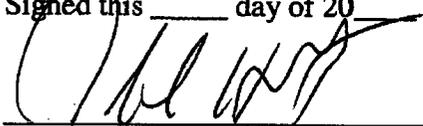
Trustee for Town of Chino Valley  
Signed this 25<sup>th</sup> day of 2007.

**APPROVAL OF LEGAL COUNSEL PURSUANT TO A.R.S. §11-952.D**

Pursuant to A.R.S. §11-952(D), the foregoing agreement has been reviewed by the undersigned Legal Counsel for each public agency, and, as to the respective public agency represented by each Legal Counsel identified below, it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to that public agency.

\_\_\_\_\_  
Legal Counsel for Yavapai County Community College District  
Signed this \_\_\_\_\_ day of 20\_\_\_\_\_.

\_\_\_\_\_  
Legal Counsel for City of Prescott  
Signed this \_\_\_\_\_ day of 20\_\_\_\_\_.



\_\_\_\_\_  
Legal Counsel for Yavapai County  
Signed this 17<sup>th</sup> day of 2007.

\_\_\_\_\_  
Legal Counsel for Town of Chino Valley  
Signed this \_\_\_\_\_ day of 20\_\_\_\_\_.

**EXHIBIT "A"**

**IDENTIFICATION OF TRUSTEES**

**Appointed by Yavapai County Community College District**

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**Appointed by City of Prescott**

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**Appointed by Yavapai County**

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**Appointed by Town of Chino Valley**

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<b>COUNCIL AGENDA MEMO – 08/18/09 &amp; 08/25/09</b>
<b>DEPARTMENT: ADMINISTRATIVE SERVICES - FACILITIES</b>
<b>AGENDA ITEM: COUNCIL APPROVAL OF A 10 YEAR LICENSE AGREEMENT BETWEEN THE CITY OF PRESCOTT AND CABLE ONE, INC.</b>

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: MIC FENECH</b>	
<b>Finance Director: MARK WOODFILL</b>	
<b>City Manager: STEVE NORWOOD</b> <i>SNorwood</i>	<i>08/13/09</i>

**BACKGROUND:**

On January 1, 1992 the City of Prescott entered into a license agreement with Paragon Communications (now Cable ONE, Inc.). This agreement will expire August 27, 2009, and calls for a license fee of 4% of the Licensee's gross monthly subscriber's receipts received, to be paid to the City of Prescott. Additionally, the Licensee is to provide one PEG (public, educational and governmental) access channel which can be increased in number by mutual consent. Free cable hook-up from the provider to City buildings within 150' of a feeder line, \$5,000 per year for technical assistance and hardware to the cable access provider, and up to 4 spots per month free of charge for the purposes of public service announcements or advertisements on behalf of the City are also included in the agreement.

Federal statutes allow up to 5% of the Licensee's gross monthly subscriber's receipts to be paid to the Licensor with the caveat that any additional compensation items, must not have an estimated combined value that would exceed 5% of the subscriber's gross monthly receipts. Currently in the Quad-City area, the following governmental agencies have license agreements with Cable ONE Inc., and their respective fees are listed:

<b>Yavapai County</b>	<b>5%</b>	<b>Dewey-Humboldt</b>	<b>5%</b>
<b>Prescott Valley</b>	<b>5%</b>	<b>Chino Valley</b>	<b>5%</b>

On July 14, 2009, Council approved Ordinance No. 4707-1002 amending the City Code to provide for the licensing of cable television systems.

**NEW AGREEMENT:**

Staff referenced current Federal & State Statutes, House Bill 2812 (amending sections 9-506, Arizona revised statutes; relating to cable television systems), as well as license agreements from the Cities of Tucson, Prescott Valley and Prescott before submitting a proposal to Cable ONE Inc. for their consideration. The recommended attached license agreement has the license fee increased from 4 to 5% and represents a document that has been reviewed by Counsel's of both the City of Prescott and Cable ONE Inc., and

**Agenda Item: AGENDA ITEM: COUNCIL APPROVAL OF A 10 YEAR LICENSE AGREEMENT BETWEEN THE CITY OF PRESCOTT AND CABLE ONE, INC.**

has the agreement of Cable One Inc. for execution. City of Prescott's Risk Management, Budget and Finance, Engineering Services, and Public Communications departments have all reviewed the agreement. The new agreement would commence on August 28, 2009 through August 27, 2019, a ten year term.

A comparison showing how the current agreement and new agreement differs and compares to the Prescott Valley agreement is presented by management Analyst Connie Tucker and is included in the Council packet for review. The new agreement would pass along the 1% increase in license fees to the subscriber.

**FINANCIAL:**

From June 2008 through May 2009 the City received 4% of the gross subscriber fees from Cable ONE Inc. as a license fee. For the purpose of comparison, 5% of the gross subscriber fees for the same time period are presented below, so Council may get an idea of how the two documents would differ financially had a 5% fee been in effect.

**JUNE 2008 – MAY 2009**

**4% = \$338,286.30**

**5% = \$422,857.87**

The difference between the two fee schedules is: **\$84,571.57.**

Subtracting \$5,000 the City is obligated to pay Access 13 for hardware and technical support would leave a net gain to the City of **\$79,571.57** for the time period of June 2008 through May, 2009.

The City of Prescott currently pays Access 13 \$82,000 per year plus \$5,000 per year for hardware and technical support.

**Recommended Action: (1) MOVE** to close the public hearing; and **(2) MOVE** to approve a 10 year License Agreement between the City of Prescott and Cable ONE Inc. with a license fee of 5% of the Licensee's gross monthly subscribers' receipts to be paid to the Licensor.

<b>Provisions</b>	<b>Old Prescott</b>	<b>Prescott Valley</b>	<b>New Prescott</b>
Definition of Gross Revenues	"Gross monthly subscriber receipts" means any and all compensation received directly or indirectly by Licensee from subscribers in city limits in payment of any service of cable television system	"Gross revenues" include all revenue from charges for cable service to subscribers; charges for installation, removal, connection of equipment for subscriber to receive service; all income cable operator receives from lease of its facilities located in public rights-of-way, unless subject to TPT.	"Gross revenues" definition same as PV
Term	From 1992-2009 (17 years)	From 2007-2017 (10 years)	2009-2019 (10 years)
PEG Channels	At least one	One government channel (PV15) run by the Town, one public access channel (PV13) run by PCAC, up to two additional channels in the digital tier upon request by Town that other channels exceeding program capacity	Same as PV
Cable TV service	Free to all buildings owned by City within 150 feet of existing line, limited to one free hook-up per building	Free hook-ups and service to: present or future buildings owned by Town within 200 feet of available line; and public education buildings within Town within 200 feet of available line, with request from educational entity. Limited to one free hook-up per building. Also provides for one additional free high-speed internet connection for PV Police Department.	Free hook-ups and basic service to all buildings owned by the City at the City's request.
Technical Assistance	Hardware and technical assistance to PCAC annually not less than \$5,000	Four hours per month of technical assistance for operation of Access Channels, plus surplus equipment for use in operating, at no cost to Town or subscribers	None
Advertisement	Ads or public service announcements for City free up to four spots per month	Four 30-second public service announcements per month on every core network (currently 20). Schedule for Town access channels will be displayed on the TV guide (channel 23) for a fee of \$95/month	No ads or PSAs. Schedule for City access channels will be displayed on the TV guide (channel 23) for a fee of \$95/month

Provisions	Old Prescott	Prescott Valley	New Prescott
Other Provisions		<p>1. Licensee will connect Town's cable system and PCAC's studio at no cost to Town to enable Town to manage Channel 13 for its subscribers.</p> <p>2. Licensee will also connect the Town's Civic Center cable system to the Town library at no charge to the Town to enable it to manage programming for Channel 15. The Town will provide trenching and conduit for the connection and the library shall receive free cable service.</p> <p>3. Town has the right to install and maintain any wire and pole fixtures that do not interfere with cable operations on any poles owned by licensee.</p>	<p>Same as PV for PCAC connection and use of poles</p> <p>Guarantee current fiber optic cable runs, plus ability to request additional runs at current lease agreement rates</p>
Fee	4% of gross monthly subscriber receipts, unless future laws allow increase in license fee above 5%, but always 1% lower than maximum.	5% of gross revenues, with option to increase fee upon changes in law allowing license fees above current 5% maximum.	Same as PV

## LICENSE AGREEMENT

THIS AGREEMENT, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, between the CITY OF PRESCOTT, a municipal corporation of the State of Arizona (hereinafter referred to as "City"), and CABLE ONE, INC., a Delaware corporation authorized to do business in the State of Arizona (hereinafter referred to as "Licensee").

WHEREAS, Licensee is a cable television operator which is currently conducting business within the City pursuant to a License Agreement dated August 29, 1991, and subsequent amendments thereto, and desires to continue to conduct its cable television operations within the City; and

WHEREAS, City and Licensee have agreed to be bound by the terms and provisions of this new License; and

WHEREAS, the parties wish to provide for a renewal of the Licensee's License and to have a new agreement which supersedes any and all agreements heretofore executed by the parties.

NOW, THEREFORE, the parties agree as follows:

### I. LICENSE

The City grants a license to Licensee to operate and maintain a cable television system subject to the provisions and conditions of this License, and Licensee's valid acceptance of the same, except that the City shall not have the right to hereinafter enact any ordinance or other provision which contravenes the terms of this Agreement, except with the written consent of the Licensee. Notwithstanding the foregoing, the parties specifically acknowledge that the City reserves the right to exercise any additional powers which may be granted to a municipality in the event that there are any future changes in federal legislation or regulations regarding cable television systems.

### II. DEFINITIONS

For purposes of this Agreement, the following words, phrases, terms and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning.

- A. "Access Channels" shall mean channel capacity designated for public, educational or governmental use.
- B. "Basic Cable Service" or "Basic Service Tier" shall mean any service tier which includes the retransmission of local television broadcast signals.
- C. "Books and Records" shall mean any recorded information relating to the Cable System or its management, including, but not limited to, information regarding its construction, operation or maintenance, in whatever form stored, including, but not limited to, computerized records and programs, paper records, and video or audio-taped records.

- D. "Cable Service" shall mean: (1) The one-way transmission to subscribers of (a) video programming or (b) other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 151, *et. seq.*, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) any facility of any electric utility used solely for operating its electric utility system. Except that as used herein, the term specifically refers to Licensee's Cable System within the Service Area. The term is used to refer to the Cable System as a whole, or to any part of the Cable System, including equipment or facilities appurtenant thereto, such as, by way of example and not limitation, equipment cabinets
- F. "Fiber optic cable" shall mean the fiber optic cable runs located in the rights-of-way and any future equivalent technology.
- G. "Gross Revenues" shall be given the broadest meaning available under applicable law, as amended from time to time and shall include (unless specifically excluded by applicable law): all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half per cent annually, that is received directly or indirectly by the cable operator, its affiliates, subsidiaries or parent or any person, firm or corporation in which the cable operator has a financial interest or that has a financial interest in the cable operator and that is derived from the cable operator's operation of its cable system to provide cable service in the area of jurisdiction. Gross revenues include all revenue from charges for cable service to subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a subscriber to receive cable service, and any other receipts from subscribers derived from operating the cable system to provide cable service, including receipts from forfeited deposits, sale or rental of equipment to provide cable service, late charges, interest and sale of program guides. Gross revenues also include all income the cable operator receives from the lease of its facilities located in the public streets, roads and alleys, unless services that the lessee provides over the leased facilities are subject to a transaction privilege tax of the licensing authority. Gross revenues do not include revenues from commercial advertising on the cable system, the use or lease of studio facilities of the cable system, the use or lease of leased access channels or bandwidth, the production of video programming by the cable operator, the sale, exchange, use or cablecast of any

programming by the cable operator in the area of jurisdiction, sales to the cable operator's subscribers by programmers of home shopping services, reimbursements paid by programmers for launch fees or marketing expense, license fees, taxes or other fees or charges that the cable operator collects and pays to any governmental authority, any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities.

- H. "License" shall mean the right and authority granted by this Agreement to Licensee to construct, maintain and operate a Cable Television System in the City. Any such authorization shall not mean nor include any license or permit required for the privilege of transacting and carrying on a business within the City in accordance with other applicable City Code provisions.
- I. "License Agreement" or "Agreement" shall mean this contract and any amendments, exhibits or appendices hereto.
- J. "Licensee" shall mean Cable One, Inc., a Delaware Corporation, and its lawful and permitted successors, transferees and assigns.
- K. "License Payments": The Licensee shall pay to the City, in the manner provided herein, an amount equal to a percentage of the gross monthly subscriber receipts, as set forth in Paragraph V. This payment shall be in addition to any other valid fees or payments made to the City by the Licensee. In addition to the "license payments" described herein, the Licensee shall be subject to any local tax now imposed or hereafter imposed by the City which is not unique to Cable system operations.
- L. "Public Rights-of-Way" shall mean City rights-of-way, alleys, roads, easements, and other City-owned property primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel or any easement the Licensee is authorized to use by federal law. It does not include City-owned real estate utilized primarily for any purpose other than vehicular or pedestrian travel. This exclusion includes without limitation, sidewalks, parking, and ingress/egress areas appurtenant to such other use.
- M. "Service Area" shall mean the corporate limits of the City and any areas hereinafter annexed.
- N. "Subscriber" shall mean any person or entity receiving for any purpose any service of the Cable Television System of Licensee.

### III. GRANT OF AUTHORITY AND RESERVATIONS

- A. Grant of Authority. City hereby grants to Licensee, subject to the terms and conditions of this Agreement and applicable law, the non-exclusive right, privilege, and authority to construct, operate, maintain, repair and remove a Cable System within the Service Area to provide Cable Service. However, the Licensee's license to use Rights-of-Way shall only become effective when all payments and documents

that are required prior to the Effective Date are provided (unless the City waives particular requirements).

- B. **Scope of License.** The license is intended to convey limited rights and interests only as to those Rights-of-Way in which City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Licensee any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant. The license does not deprive City of any powers, rights, or privileges it now has or may later acquire in the future to use, perform work on, or to regulate the use of, and to control the Right-of-Way, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant drainage facilities, including but not limited to, constructing, altering, removing, paving, widening, grading, or excavating.
- C. **Exercise of Authority under License.** This License Agreement only authorizes Licensee to provide Cable Service. Neither this Agreement nor the grant of the license shall be interpreted to prevent the City from imposing additional conditions consistent with applicable law, including additional compensation conditions for use of the Rights-of-Way should Licensee provide services other than Cable Service. However, this Agreement shall not be read as a concession by Licensee that it needs authorization to provide services other than Cable Service.
- D. **License Not Exclusive.** The right to use and occupy the Rights-of-Way is not exclusive and does not explicitly or implicitly preclude the issuance of other licenses to construct, operate, maintain or repair Cable Systems within City; or affect City's right to use or authorize the use of any of its Rights-of-Way or other property by other persons as City determines appropriate; or affect the City's right to authorize itself or to permit any other governmental entity to provide Cable Service. In the event a license is granted to a competitor or Licensee, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one licensee not be granted an unfair competitive advantage over another.
- E. **Conditions of Street Occupancy and Work.**
1. All construction, installation or other work performed in or on any City street, easement, right-of-way or other property shall be performed in conformance with applicable provisions of adopted City Codes, Specifications, and Standard Details concerning improvements in or upon City rights-of-way, including obtaining a right-of-way permit prior to construction. In the event that Licensee is required by the City to relocate any of its system located within City rights-of-way due to realignment of a City roadway or utility or any public project within the right-of-way, the costs of said relocation shall be borne by Licensee.
  2. Licensee shall timely restore and replace public property that is disturbed or damaged during the construction, maintenance or repair of the Cable System according to City Permit requirements, adopted City Codes and Standard Details. Licensee shall restore and replace private property that is disturbed or damaged by its activities within 30 days of completion of said construction maintenance or repair. Licensee agrees to compensate any entity whose person or property is

damaged by Licensee, or any contractor, subcontractor, or agents of Licensee in the course of construction, operation, maintenance or repair of the Cable System where the property is not restored by Licensee.

3. Licensee shall be responsible for the acts and omissions of any contractor or subcontractor as if Licensee performed that work itself. Licensee shall ensure that each of its contractors and subcontractors complies with the requirements of City Code, this Agreement and applicable laws in the course of constructing, operating, maintaining and repairing the Cable System.
4. Upon City request, Licensee shall provide timely review of design plans for public improvements (streets, water, sewer, and drainage) and written comments which identify potential conflicts of new public infrastructure with existing cable facilities.

#### IV. TERM

The license shall remain in effect from the Effective Date for a period of ten (10) years, to and through August 27, 2019, unless otherwise terminated pursuant to the terms of this License Agreement.

#### V. LICENSE PAYMENTS

The Licensee shall pay to the City, on or before the twenty-fifth (25<sup>th</sup>) day of each month, a license fee of five percent (5%) of the Licensee's gross monthly subscriber receipts received for operations in the City for the preceding calendar month. Notwithstanding the foregoing, the City shall have the option to increase this license fee upon ninety (90) days notice to the Licensee in the event that there are any future changes in state or federal legislation or regulations allowing an increase in license fees above the current five percent (5%).

#### VI. PUBLIC, EDUCATION AND GOVERNMENTAL ACCESS

A. Licensee shall provide Access Channel capacity in the Basic Service Tier as follows:

1. One government access channel to be run on cable channel 15 that will be managed by the City or such other entity as the City may designate;
2. One public access channel to be run on cable channel 13 that will be managed by the Prescott Community Access Channel, an Arizona not-for-profit corporation ("PCAC"), or such other entity as the City may designate;
3. Up to two (2) additional Access Channels digital channels in the digital tier for noncommercial governmental programming, each channel to be provided within six months of a request from the City and upon a showing that (i) the existing Access Channels are cablecasting locally-scheduled, locally-produced, non-character generated programming five days a week for an average of forty (40) hours per week during any consecutive ten (10) week period, (ii) an average of at least fifteen (15) hours per week of new original non-repeated programming is shown during

that ten-week period, and (iii) a public education or government entity operating within the City can provide one-third (1/3) or more of the hours of programming per week for the additional Access Channel.

- B. Licensee shall, at no cost to the City, connect the City's cable system and PCAC's studio so as to enable PCAC to manage public access Channel 13 for distribution to City subscribers. In the event that PCAC moves its studio location, Licensee shall, at no cost to the City, provide for The Connection for the first such move during the term of this Agreement [provided the new location is within 200' of an available fiber optic cable line].
- C. In the event that the City fails for a period of four consecutive weeks to provide programming for at least 1/3 of the channel capacity for its Access Channel(s), Licensee may use the excess channel capacity. Within six months of a showing by the City that it can again provide programming for at least 1/3 of the channel capacity for its Access Channel(s), Licensee's permitted use of the excess channel capacity shall cease and revert back to the City.

## VII. CITY FACILITIES, EQUIPMENT AND SERVICES

- A. Licensee shall provide free cable television hook-ups and basic cable television service to all buildings owned or leased by the City which the City requests to be serviced.
- B. Licensee shall display available program information for Access Channels on cable channel 23 or such other channel as Licensee may use from time to time to provide program guide information for its cable channels provided that: (i) the City (or its designee) pays Licensee the monthly fee required by TV Guide to display program information for Access Channels (currently ninety-five (\$95.00) dollars per month per channel); and (ii) the City (or its designee) provides Licensee with monthly program grids (showing time slot and program name) for Access Channels at least two weeks before the information is scheduled to air.
- C. The City shall have the right to install and maintain free of charge upon the poles owned by the Licensee any wire or pole fixtures that do not unreasonably interfere with the Cable System operations of the Licensee.
- D. Licensee guarantees that the current fiber optic cable runs (currently six runs) leased by the City will remain available to the City throughout the life of this Agreement. Licensee agrees to make additional fiber optic cable runs available to the City in the future as requested by the City under the current terms of the City's existing leases with Licensee. In the event Licensee abandons the use of fiber optic cable (or its equivalent) throughout the service area, the City requires a twelve (12) month notice in order to make alternative arrangements.

## VIII. RECORDS AND REPORTING REQUIREMENTS

- A. Licensee shall maintain on file with the City full and complete plans and records showing the exact location of all cable television lines, fiber optic lines, equipment or other structures installed or in use in public rights-of-way or other public property in the City. As extension, additions and modifications are made thereto, Licensee shall ensure that such plans and records are regularly updated.
- B. The City shall have the right to inspect the Licensee's records showing the Gross Revenues from which the License fee is computed, as well as the right to audit and re-compute any and all amounts to be paid to the City under this Agreement. No acceptance of any payment shall be construed as a release or as an accord in satisfaction of any claim the City may have for further or additional sums payable under this License or other performance of any other obligation hereunder.
- C. Reports. Upon sixty (60) days written notice by City, which period shall be subject to extension for good cause shown, Licensee shall submit the following reports. Anything to the contrary in this License Agreement notwithstanding, Licensee's obligation to prepare and provide the following reports shall arise only upon written request by City as described in this Section.
1. Annual Report. The Annual Report shall contain at least the following information regarding the previous calendar year operations of the Cable System:
    - (a) A summary of activities in the development of the Cable System, including cable television services begun or discontinued, total number of subscribers, homes passed, subscribers added or discontinued;
    - (b) A list of all complaints and system downtime received or experienced during the reporting period (all such submitted data shall include complaint disposition and response time);
    - (c) A summary by category of written complaints received concerning the Cable System, identifying the number and nature of complaints and their dispositions;
    - (d) A fully audited revenue report or a revenue report certified as correct by an officer of the Licensee;
    - (e) A list of officers and members of the board of directors of the Licensee and its parents;
    - (f) A full schedule of all subscriber and user rates, fees and charges for all Cable Service provided; and
    - (g) A copy of subscriber and user agreements used by the Licensee; *provided that*, when it provides the information required by subparagraphs (vi) and (vii), a licensee need not include proprietary MDU rates and agreements unless specifically requested by the City.
  2. Subscriber Survey. Licensee shall provide upon request a subscriber opinion survey report identifying subscriber satisfaction/dissatisfaction with Cable Service offered by Licensee. Licensee may submit to City the most recent subscriber opinion survey report it has prepared to satisfy this obligation if

such report has been prepared no more than twelve (12) months before City's request under this Section.

3. Other Reports. Licensee shall also provide the following reports upon request by the City:
  - (a) A report showing compliance with the requirements regarding telephone calls and installations specified in the customer service standards;
  - (b) The total number of complaints received for the most recent calendar quarter, including the number of complaints by type of complaint and complaints received as a percentage of basic subscribers; and
  - (c) A list of all services offered by the Licensee, including any non-Cable Service; *provided that*, if City requests more than one such report in any twelve (12) month period, subsequent filings need only identify new services and changes in services offered; and
  - (d) The percentage of time service interruptions were cured within thirty-six (36) hours; the average time from notice that a problem existed to final cure; and the percentage of time that other service calls were resolved within ninety-six (96) hours; and
  - (e) The percentage of time standard and non-standard installations were completed within the time required by the Cable Ordinance; and
  - (f) The total number of outages, divided into planned and unplanned outages, and showing the number of outages and the total duration of outages. An outage is defined as a loss of audio or video or impairment of audio or video affecting more than three (3) subscribers.
  - (g) Other reports as may be required to determine compliance with the License Agreement or applicable law.

#### IX. BOND, INSURANCE, INDEMNIFICATION AND DEFENSE OF LITIGATION:

- A. Licensee shall, concurrently with the filing of this License, furnish to the City and file with the City Clerk and at all times during the existence of this License, maintain in full force and effect, statutory workers' compensation insurance for all Cable System employees as required by the State of Arizona.
- B. Licensee shall, concurrently with the filing of this License, furnish to the City and file with the City Clerk and at all times during the existence of this License, maintain in full force and effect a performance bond in a company and a form approved by the City Attorney in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00).
- C. Licensee shall, concurrently with the filing of this License, furnish to the City and file with the City Clerk and at all times during the existence of this License, maintain in full force and effect a primary, noncontributory, comprehensive general liability insurance policy in a company and a form approved by the City Attorney, to protect the City, its officers, boards, commissions, agents, and employees against liability for loss or damage, from personal injury, death and property damage occasioned by the operation of Licensee under this Agreement in the minimum amounts of (i) ONE MILLION DOLLARS (\$1,000,000) for property damage resulting from any one (1)

occurrence; (ii) THREE MILLION DOLLARS (\$3,000,000) for personal bodily injury or death of one (1) or more persons resulting from any one (1) occurrence; and (iii) THREE MILLION DOLLARS (\$3,000,000) for all other types of liability. The coverage set forth herein may be in the form of a combined single limit or umbrella coverage.

- D. The policy described in subsection IX.(C) hereinabove shall name the City, its officers, boards, commissions, agents, and employees as additional insureds, and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City. Licensee shall not cancel any required insurance policy without submission of proof that the Licensee has obtained alternative insurance satisfactory to the City which complies with this Agreement.
- E. Failure to comply with the insurance requirements set forth in the Section shall constitute a material violation of the License.
- F. Licensee shall, at the sole risk and expense of Licensee (upon demand of the City made by and through the City Attorney), appear in and defend any and all suits, actions, or other legal proceedings (whether judicial, quasi-judicial, administrative, legislative or otherwise) brought or instituted or had by third persons or duly constituted authorities against or affecting the City or its officers, boards, commissions, agents or employees, and arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Licensee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the Cable System, other than City Access Channels; the conduct of the Licensee's business in the City; or the exercise or enjoyment of any right under this Agreement or the granting thereof by the City. Provided, however, that nothing herein shall be deemed a waiver by Licensee of any rights it may have against the City under this Agreement for indemnification based on the City being the full or partial cause of any such injury.
- G. Licensee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, settlement or demand rendered, made or issued against Licensee, the City, City officers, City boards, City commissions, City agents or City employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise. Provided, however, that Licensee shall not make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceeding without first obtaining the written consent of the City. Furthermore, such payments or satisfactions shall not be deemed a waiver of any rights of Licensee against the City under this Agreement for indemnification based on the City being the full or partial cause of any such injury.

X. LIMITATIONS OF LICENSE

- A. The Licensee shall be subject to all laws, rules and regulations of the State of Arizona and the United States Government, and any of its agencies, including but not limited to the Federal Communications Commission, whether said rule or regulation is in force or hereinafter enacted, relating to the business of cable television systems. Any of the provisions or terms of this License shall be amended and made consistent with any new or amended rule or regulation of the Federal Communications Commission that renders such provisions or terms prohibited or inconsistent.
- B. The License granted herein shall not relieve the Licensee of any obligation involved in obtaining the necessary pole or conduit space from any department of the City, utility company or from other maintaining poles, conduits or utilities in streets.
- C. The License granted herein shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable by Licensee, or any successor to any interest of Licensee of or pertaining to the construction, operation or maintenance of any Cable Television System in the City; and the acceptance of this License shall operate as between Licensee and the City as an abandonment of any and all such rights, privileges, powers, immunities, and authorities within the City, to the effect that, as between Licensee and the City, any and all construction, operation and maintenance by the Licensee shall be, and shall be deemed and construed in all instances and respects to be under and pursuant to this License, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.
- D. The License granted herein shall be a privilege to be held in personal trust by the original Licensee and shall not be sold, assigned or otherwise transferred without prior consent of the City Council, expressed by Resolution. The said consent of the Council may not be unreasonably refused; provided, however, the proposed assignee must show financial responsibility and must agree to comply with all provisions, terms and obligations of this License.

XI. NOTICES

Wherever in this Agreement it shall be required or permitted that notice be given by either party to the other, such notice must be in writing and must be given personally or mailed by U.S. mail, postage prepaid (certified mail, return-receipt requested), addressed as follows:

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

LICENSEE: General Manager  
Cable One, Inc.  
3201 Tower Road  
Prescott, AZ 86305

These names and addresses may be changed from time to time by the parties by following the above notice procedure.

## XII. TERMINATION OF LICENSE

The License herein granted may be terminated prior to its date of expiration by the City Council in the event that the Council, after full public hearing, shall have found that:

- A. The Licensee has, after actual notification and the passage of a reasonable time necessary to accomplish correction, failed to comply with any material provision of this License or has, by act or omission, violated any material term or condition of this License.
- B. The Licensee has failed to comply with any order of the Federal Communications Commission.

## XIII. CONFLICT OF INTEREST

Pursuant to A.R.S. §38-511, the City 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 or any extension of the Agreement is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the contract. In the foregoing event, the City further elects 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 the City from any other party to the Agreement, arising as a result of this Agreement.

## XIV. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this License is for any reason held illegal, invalid or void by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

## XV. ENTIRE AGREEMENT

This Agreement represents the entire agreement by and between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement by and through their authorized representatives the day and year first-above written.

CITY:

CITY OF PRESCOTT, a municipal corporation of Arizona, "City"

\_\_\_\_\_  
Jack D. Wilson, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
LIZ BURKE  
City Clerk

\_\_\_\_\_  
GARY KIDD  
City Attorney

**LICENSEE:**

CABLE ONE, INC., a Delaware corporation,  
"Licensee"

ATTEST:

\_\_\_\_\_  
General Manager, Cable One, Inc.

\_\_\_\_\_  
, Secretary

STATE OF ARIZONA     )  
                                  )  
COUNTY OF YAVAPAI    )     ss:

The foregoing instrument was acknowledged before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Jack D. Wilson, Mayor of the City of Prescott, a municipal corporation of Arizona, on behalf of said municipal corporation.

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

My Commission Expires:

\_\_\_\_\_

STATE OF )  
 )  
COUNTY OF ) ss:

The foregoing instrument was acknowledged before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by Dennis Edwards, General Manager of Cable One, Inc., a corporation of the State of Delaware, on behalf of said corporation.

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

My Commission Expires:

\_\_\_\_\_

<b>COUNCIL AGENDA MEMO – August 18 and 25, 2009</b>
<b>DEPARTMENT:</b> Parks, Recreation and Library
<b>AGENDA ITEM:</b> Approve Library Service Agreement between Yavapai County Library District and the City of Prescott

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Debbie Horton	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood 	08/12/09

**Background**

The Yavapai County Library District is a Special District established in 1987 by the Yavapai County Board of Supervisors within the auspices of Yavapai County government. It includes 20 affiliated public libraries in Yavapai County by means of intergovernmental agreements with incorporated areas and library service agreements with unincorporated areas. The countywide Library District provides supplemental funding for library operations and library materials for all affiliated public libraries.

The FY 2009/2010 Library Service Agreement provides for the contribution of **\$561,101** to be distributed as follows:

- \$197,720** for library services,
- \$ 44,198** for library materials, and
- \$319,183** for automation and special projects.

The agreement requires the Prescott Public Library to participate in resource sharing with the rest of Yavapai County, through opening our doors to all county residents and through interlibrary loan services. It also requires that District funds be used specifically and solely for library materials, services and operating expenses.

The first half of the total contribution in the amount of \$280,550.50 will be received in September 2009. The second half of the total contribution will be received in February 2010.

<b>Recommended Action:</b> MOVE to adopt Resolution No. 3987-1017.
--

**RESOLUTION NO. 3987-1017**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A LIBRARY SERVICE AGREEMENT FOR FY2009/2010 WITH THE YAVAPAI COUNTY LIBRARY DISTRICT TO PARTICIPATE IN COOPERATIVE FUNDING TO THE BENEFIT OF THE CITY OF PRESCOTT PUBLIC LIBRARY, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE**

**RECITALS:**

WHEREAS, the City desires to receive cooperative funding from the Yavapai County Library District for library services, materials, automation and operating expenses as well as to share library resources with Yavapai County through allowing use of the Prescott Library by county residents and participating in interlibrary loan services; and

WHEREAS, for FY2009/2010 the Library Service Agreement provides for a total contribution of \$561,101, the same amount as last year to be distributed as follows: \$197,720 for library services; \$44,198 for library materials, and \$319,183 for automation and special projects; and

WHEREAS, ARS §§11-951 and 11-952 authorize "public agencies" such as Prescott and the Yavapai County Library District to enter into agreements for cooperative resource sharing; and

WHEREAS the parties hereto wish to enter into an agreement to provide for cooperative funding for library services, materials, automation and operating expenses as well as library resource sharing.

**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 Library Service Agreement with Yavapai County Library District for cooperative funding from the Yavapai County Library District and sharing of library materials, operations as well as library resources attached hereto as Exhibit "A".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached Library Service 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 25<sup>th</sup> day of August, 2009.

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

ATTEST:

APPROVED AS TO FORM:

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

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

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<b>COUNCIL AGENDA MEMO – 8/18/09 &amp; 8/25/09</b>
<b>DEPARTMENT:</b> Public Works
<b>AGENDA ITEM:</b> Award of bid and contract for the Airport Zone North and South Loop Water Main Improvement Project to Sellers and Sons, Inc., in an amount not to exceed \$1,887,796.00

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>	<i>08/13/09</i>

**Item Summary**

This item is to approve a construction contract with Sellers and Sons, Inc. Avondale, Arizona for construction of new 12" water transmission mains to be located in the Airport Zone (see attached map). These new system links will upgrade service within the Airport Zone and further the Council's 2007 goal targeting the Airport area as a top priority for proactive annexation and economic development.

**Background**

The Airport Pressure Zone is presently fed from a single 8" line tapped off the 12" transmission main from Chino Valley which is located approximately 5,000 feet to the west. The new South Side Runway Loop project will consist of installing a 12" water main 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. There is currently only one 8" feed to this system.

The new North Side Runway Loop project will install a 12" water main from the existing Airport Pump Station northward beyond the proposed runway extension and connect to the existing 10" main on the northwest side of the runway. This will be a second feed to enhance the existing supply line to this system and service area. A utility easement is required to complete the project and staff is working with the owner, Cavan Real Estate Investment Inc., to that end. However, Cavan has provided the City written authorization and right-of-entry for the project to proceed while the appraisal and negotiations for the easement acquisition are completed.

The City Water Model has determined that these new main links are required system improvements necessary to augment capacity and flow to meet existing and future demands in the Airport Zone.

Under the contract 16,547 LF of 12" water main will be installed with smaller amounts of 8" and 6" mains and valves for tie-in to the existing system.

**Agenda Item: Award of bid and contract for the Airport Zone North and South Loop Water Main Improvement Project to Sellers and Sons, Inc., in an amount not to exceed \$1,887,796.00**

**Bid Results**

On July 9, 2009, 23 bids were received from companies in 11 different cities and 3 states with one bid from Minnesota as follows:

<u>Company</u>	<u>Location</u>	<u>Bid Amount</u>
Sellers & Sons, Inc.	Avondale, AZ	\$1,887,796.00
City Wide Contracting, LLC	Phoenix, AZ	\$1,967,889.00
Spire Engineering, LLC	Mesa, AZ	\$2,088,175.00*
Johansen Construction, Inc.	Prescott Valley, AZ	\$2,122,583.43
Fann Contracting, Inc.	Prescott, AZ	\$2,129,668.00
J. J. Sprague of AZ, Inc.	Phoenix, AZ	\$2,133,662.00
B & F Contracting, Inc.	Phoenix, AZ	\$2,165,706.80
Swengel-Robbins, Inc.	Phoenix, AZ	\$2,169,888.50
T & T Construction, Inc.	Fountain Hills, AZ	\$2,251,274.45
LLM Earthmovers, LLC	Prescott, AZ	\$2,381,157.01
Murrieta Development Co., Inc.	Temecula, CA	\$2,444,093.45
C S & W Contracting Co	Phoenix, AZ	\$2,461,321.63
Shiya-Strephans Contracting Co.	Phoenix, AZ	\$2,491,746.00
L P's Excavating, Inc.	Williams, AZ	\$2,510,579.09
Asphalt Paving & Supply, Inc.	Prescott Valley, AZ	\$2,589,573.25
LB3 Enterprises, Inc.	El Cajon, CA	\$2,738,021.00
Lee's Pipelines, Inc.	Gilbert, AZ	\$2,696,770.90
Wagner Place, Inc.	So. Int'l Falls, MN	\$2,718,050.30
Jeffrey C. Stone, Inc, (dba Summit Builders)	Phoenix, AZ	\$2,739,964.60
Arizona Pipeline Company	Phoenix, AZ	\$2,783,966.55
CNB Excavating	Sun City, CA	\$2,999,817.00
Pierson Construction, Inc.	Tempe, AZ	\$3,000,037.74
Kiewit Western Co.	Phoenix, AZ	\$3,296,311.00
<b>Engineer's Estimate</b>		<b>\$3,185,689.00</b>

Written confirmation of bid has been received from low bidder Sellers and Sons, Inc. Verification of the company's license, bonding, references, and performance of past municipal projects has been satisfactorily completed.

**Project Schedule**

Commence Construction	September, 2009
Completion	October, 2010

**Agenda Item:** Award of bid and contract for the Airport Zone North and South Loop Water Main Improvement Project to Sellers and Sons, Inc., in an amount not to exceed \$1,887,796.00

**Budget**

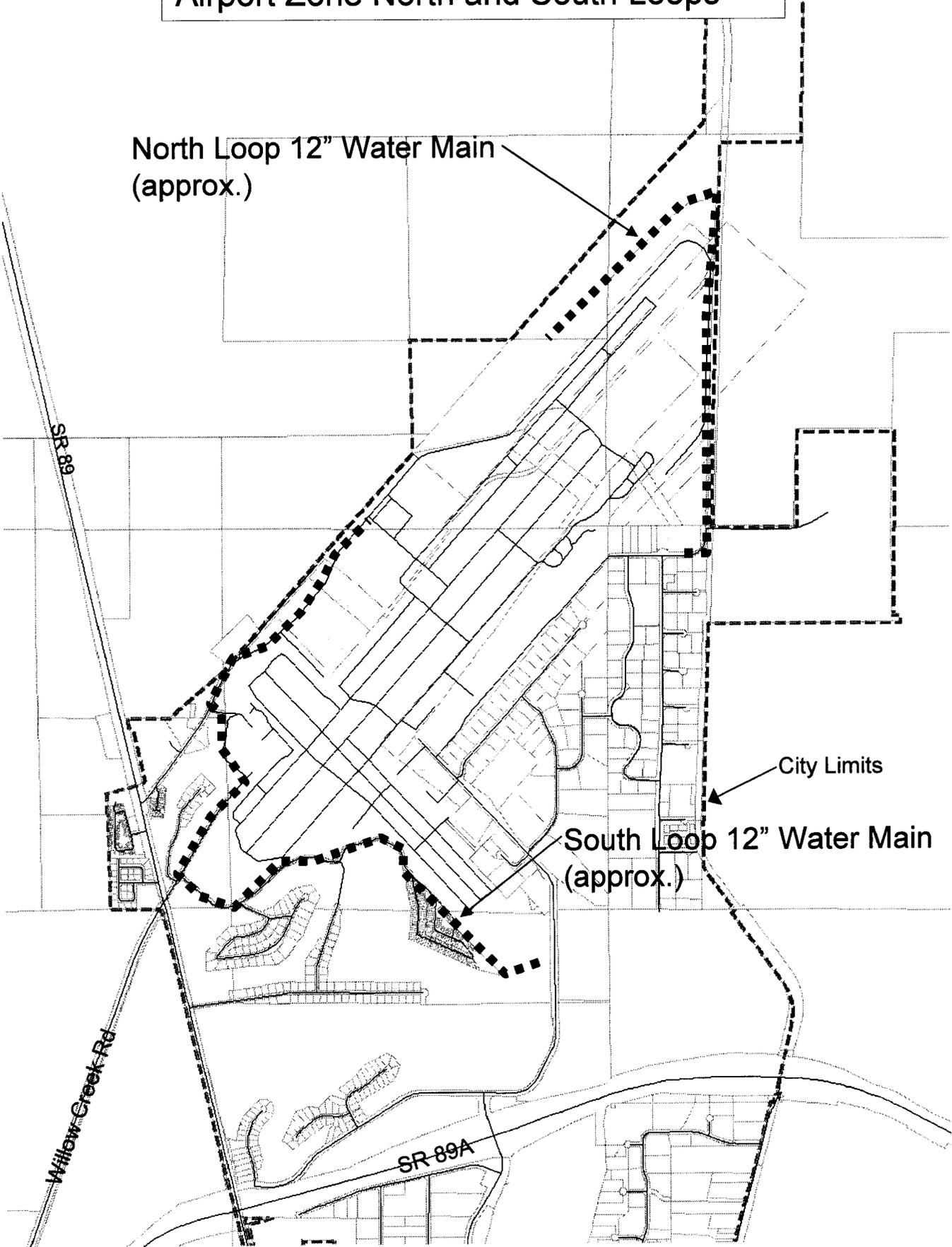
FY10 funding was budgeted and is available for the Airport Zone North and South Loops project in the Water Fund, in the amount of \$4,018,000.

This project was approved to receive ARRA (American Recovery and Reinvestment Act) Funding in the amount of \$2,155,128.00 (forgivable principal). This funding can be applied to both the City's design and construction costs to implement the project.

**Attachments** - Location Map

**Recommended Action:** MOVE to award a contract for construction of the Airport Zone North and South Loop Water Main Improvement Project to Sellers and Sons, Inc. in an amount not to exceed \$1,887,796.00

# Airport Zone North and South Loops



North Loop 12" Water Main  
(approx.)

City Limits

South Loop 12" Water Main  
(approx.)

SR 89

Willow Creek Rd

SR 89A

COUNCIL AGENDA MEMO – 8/18/09

DEPARTMENT: Legal

AGENDA ITEM: Approval of settlement in the case of Seastrand v. Prescott Unified School District and City of Prescott.

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Approved By: Gary D. Kidd, City Attorney

Date:

August 13, 2009

Department Head: *OK*

Finance Director:

City Manager: *A Hadley*

Background

The City Legal Department recently participated in a mediation to settle this personal injury lawsuit brought by Terri and Michael Seastrand and their son, Timothy Seastrand, against Prescott Unified School District and the City. Tim is alleged to have suffered head injuries on the school grounds of Prescott Mile High Middle School in May of 2007 during recreational activities organized by City recreation personnel. The mediator recommended a settlement of \$15,000 to be paid by the School District and \$75,000 to be paid by the City, subject to City Council approval. In the event the matter were tried, significant expert witness costs and expenses would be necessary. These costs could equal, or potentially exceed the settlement costs in the event a trial were to occur.

The Legal Department recommends approval of this settlement.

Fiscal Impact: \$75,000

**Recommended Action:** MOVE to approve a settlement of \$75,000 in the case of Seastrand v. Prescott Unified School District and City of Prescott.

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<b>COUNCIL AGENDA MEMO – 8/18/09</b>	
<b>DEPARTMENT:</b> Public Works	
<b>AGENDA ITEM:</b> Approval of a Settlement Agreement and Release with Kimley-Horn and Associates, Inc., associated with engineering and increased construction costs for the Copper Basin Road Improvement Project	

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>Stadley</i>	8-14-09

**Item Summary**

Approval of this item will settle the claim and demand for reimbursement made by the City against Kimley-Horn and Associates, Inc. associated with engineering and increased construction costs for the Copper Basin Improvement Project.

**Background**

On November 13, 2008, the City sent a notice of claim and demand for reimbursement in the amount of \$1,171,703.63 for design errors and omissions associated with the plans for the Copper Basin Road Project. Over the next several months Public Works staff and Kimley-Horn representatives had dialogue, met, and exchanged information in an effort to resolve the claim and avoid litigation.

As a result of those efforts Kimley-Horn recently submitted a written offer of settlement in the amount of \$191,000 in cash plus \$30,605 in services (for design modifications on Williamson Valley Road) for a total value of \$221,605.00. The attached Settlement Agreement and Release recites the provisions to which the parties would agree.

In arriving at the proposed settlement it was necessary for the parties to consider the project intent, standard of care in design, betterment (a change for the better; if an omission would have been required anyway), damages, and totality of the project.

During project construction, in an effort to reduce project costs, City engineering staff was able to modify aspects of the sanitary sewer system design with revisions that optimized constructability, capacity, and integrity without jeopardizing system needs and customer service.

The following contract summary illustrates the final construction costs pending approval of the Settlement Agreement and Release.

**Agenda Item:** Approval of a Settlement Agreement and Release with Kimley-Horn and Associates, Inc., associated with engineering and increased construction costs for the Copper Basin Road Improvement Project

**Contract Summary (rounded)**

<b>Original Amount</b>	<b>\$11,794,542.00</b>
<b>Contract Amendment No. 1</b>	<b>\$ 502,018.00</b>
<b>Contract Amendment No. 2</b>	<b>\$ 495,491.00</b>
<b>Total</b>	<b>\$12,792,051.00</b>

<b>Final Construction Cost</b>	<b>\$12,517,983.00</b>
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<b>Contract Balance Remaining</b>	<b>\$274,068.00</b>
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<b>Value of Kimley-Horn Offer</b>	<b>\$221,605.00</b>
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<b>Final Project Cost</b>	<b>\$12,296,378.00</b>
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**\$501,836.00 (over original amount - 4.25%)**

**Budget**

The cash reimbursement in the amount of \$191,000 will be deposited into the One Cent Fund to offset a portion of increased project costs for Copper Basin Road.

**Attachments** - Settlement Agreement and Release

**Recommended Action:** **MOVE** to approve a Settlement Agreement and Release with Kimley-Horn and Associates, Inc., associated with engineering of the Copper Basin Road Improvement Project.

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is made and entered into this \_\_\_\_\_ day of August 2009 by and between Kimley-Horn and Associates, Inc., a North Carolina corporation, ("Consultant") and the City of Prescott, Arizona, a governmental subdivision ("City"). Consultant and City are collectively referred to as the "Parties" for purposes of this Agreement.

### **RECITALS**

- A. On or about March 23, 2003, Consultant and City entered into their Consultant Agreement (City Contract Number 03-039 or "Contract") for professional engineering services in connection with the design and construction of road widening improvements to Copper Basin Road in the City of Prescott, Arizona ("Project"). The Contract is attached and incorporated by this reference as Exhibit A to this Agreement. Thereafter, the improvements designed by Consultant and its subconsultants were built by or at the direction of City.
- B. On or about November 13, 2008, City served Consultant with the Notice of Claim and Demand For Reimbursement attached and incorporated by this reference as Exhibit B to this Agreement ("Claim"). Among other things, the "Claim" alleges that City incurred damages as a result of deficiencies in the professional services and professional documents provided by Consultant and its subconsultants under the Contract. The "Claim" includes all matters relating to the design and construction of the Project for which the City has demanded reimbursement from Consultant.
- C. Consultant disputes the Claim, denies liability to City, and asserts that its professional services and professional documents (and those of its subconsultants) were not deficient and did not cause damages to City.
- D. The Parties desire to enter into this Settlement Agreement and Release to provide for certain payments and other services in full settlement and discharge of all claims and demands for compensation, including but not limited to claims for professional negligence, breach of contract, negligent misrepresentation, or other failure to perform according to the appropriate standard of care, and any other claim or claims relating to the Project that are, or might have been, the subject matter of the Claim, upon the terms and conditions set forth below.
- E. By entering into this Settlement Agreement and Release, neither of the Parties admits the allegations or contentions of the other Party, and each Party is entering into this Settlement Agreement and Release for the sole purpose of avoiding the expense of protracted litigation and resolving the disputed issues and contentions asserted by the Parties.
-

**AGREEMENT**

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, the Parties hereto agree as follows:

**1.0 RELEASE AND DISCHARGE**

1.1 For and in consideration of the payment set forth in Section 2 and Consultant's performance of the additional services described in the attached Exhibit B – Additional Services at no cost to City, in the total amount of \$221,605, City hereby releases and forever discharges and acquits Consultant and Consultant's subconsultants and their respective directors, officers, shareholders, agents, employees, servants, successors, assigns, departments, subdivisions, indemnitors, insurers, heirs, personal representatives, and all other persons and entities (collectively the "Released Parties") from any and all liability, obligations, rights, claims, demands, actions or causes of action of whatsoever kind or character, including but not limited to any construction defect, design defect, professional malpractice, negligence, or breach of contract or warranty claims, or any other potential claim or claims, including counterclaims and cross-claims, arising out of or related to the Claim including, without limitation, any and all known or unknown claim or claims which have resulted or may result from the alleged act or omission of Consultant or any of its subconsultants in connection with the Project.

1.2 The Parties acknowledge and agree that the release and discharge set forth above is a general release. The Parties expressly waive and assume the risk of any and all claim or claims for damages which exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect their decision to enter into this Settlement Agreement and Release. The Parties further agree that City has accepted the payment of the sum specified herein and performance of the additional services specified herein as a complete compromise of the matter involving a disputed issue of law and fact. The Parties assume the risk that the facts or law may be other than what they believe them to be. It is understood and agreed to by the Parties that the settlement is a compromise of a doubtful and disputed claim, and the payments and other consideration are not to be construed as an admission of liability on the part of Consultant or its subconsultants, by whom liability is expressly denied.

1.3 The Parties further agree that by signing this Settlement Agreement and Release, they are barred from initiating a lawsuit, arbitration, disciplinary complaint, administrative proceeding, or other legal action regarding any of the claim or claims made, or which could be made, from the events and claims set forth in the Claim.

**2.0 PAYMENTS AND SERVICES**

2.1 In consideration of the Settlement Agreement and Release set forth above:

*Settlement Agreement  
and Release*

2.1.1 Promptly after execution of this Settlement Agreement and Release by the Parties, Consultant will pay to City the total sum of ONE HUNDRED NINETY-ONE THOUSAND DOLLARS AND NO/100 CENTS (\$191,000).

2.2.2 As additional consideration for the releases given to the Released Parties, Consultant shall perform or cause to be performed the professional services described in the attached Exhibit C – Additional Services which is incorporated in this Settlement Agreement and Release by this reference, subject to the following terms and conditions:

2.2.2.1 The Parties agree that the value of the Additional Services required by Exhibit B shall be THIRTY THOUSAND SIX HUNDRED AND FIVE DOLLARS AND NO/100 CENTS (\$30,605.00).

2.2.2.2 City shall not be required to pay Consultant for the value of the Additional Services, but City shall not be entitled to demand or require payment of the agreed value of the Additional Services in lieu of the performance of those services.

2.2.2.3 Except for the Parties' agreement that no compensation shall be due or paid by City, the Additional Services shall be subject to all other terms and conditions of the separate contract between Consultant and County concerning the Williamson Valley Road corridor project. If needed, the Parties shall execute a written modification of this separate contract to incorporate the Additional Services into the scope of that contract.

2.2.2.4 Consultant shall not be obligated to perform any other professional services for City in connection with the Copper Basin Road Project, and it shall not be obligated to perform any other services at no cost to City.

**3.0 ATTORNEYS' FEES**

Each party hereto shall bear all attorneys' fees and costs arising from the actions of its own counsel in connection with the Claim, this Settlement Agreement and Release and the matters and documents referred to herein, and all related matters.

**4.0 REPRESENTATION OF COMPREHENSION OF DOCUMENT**

In entering into this Settlement Agreement and Release, the Parties represent that they have relied upon the advice of their respective attorneys, who are the attorneys of their own choice, concerning the legal consequences of this Settlement Agreement and Release; that they have completely read and understand the terms of this Settlement Agreement and Release; and that the terms of this Settlement Agreement and Release are voluntarily accepted by them.

Consultant and City also agree that, by entering into this Settlement Agreement and Release, the Parties are giving up potentially valuable legal rights and they intend to be bound by all the terms and conditions set forth in this Settlement Agreement and Release.

**5.0 WARRANTY OF CAPACITY TO EXECUTE AGREEMENT**

The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and Release, except as otherwise set forth herein; that each of the Parties has the sole right and exclusive authority to execute this Settlement Agreement and Release and receive the sums specified in it; and that the Parties have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement and Release.

**6.0 NON-ASSIGNMENT OF CLAIMS**

The Parties to this Settlement Agreement and Release represent and warrant that they have not assigned, or otherwise transferred or purported to assign or transfer, any interest in any claim, cause of action, or any other matter that is the subject hereof or herein released, and that they will not do so. Each Party agrees to indemnify and hold the other Party or Parties harmless against any claim, including attorney's fees actually paid or incurred, arising out of or in any way connected with such transfer or assignment or such purported or claimed transfer or assignment.

**7.0 GOVERNING LAW**

This Settlement Agreement and Release shall be construed and interpreted in accordance with the laws of the State of Arizona and in no event will this document be construed inconsistent with Arizona law.

**8.0 ADDITIONAL DOCUMENTS**

All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to this Settlement Agreement and Release.

**9.0 ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST**

This Settlement Agreement and Release contains the entire agreement by and between Consultant and City with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

**10.0 INTEGRATION CLAUSE**

This Settlement Agreement and Release sets forth the entire understanding of the Parties in connection with the subject matter hereof and supersedes and replaces all prior negotiations and agreements proposed or otherwise, whether written or oral, concerning the subject matter of this Settlement Agreement and Release. None of the parties hereto has made any statement, representation or warranty in connection herewith, except as expressly set forth herein, which has been relied upon by the other Parties or which served as an inducement for the other Parties to enter into this Settlement Agreement and Release. Nothing in this Settlement Agreement and Release may be altered or amended except by a writing executed by the Parties hereto.

**11.0 AMBIGUITIES**

This Settlement Agreement and Release shall be deemed to have been drafted jointly by the Parties hereto. The Parties hereto accordingly agree that any rule pertaining to the construction of contracts to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Settlement Agreement and Release or to the interpretation of any modifications or amendments to this Settlement Agreement and Release.

**12.0 EFFECTIVENESS**

This Settlement Agreement and Release shall become effective immediately following its execution.

13.0 COUNTERPARTS

This Settlement Agreement and Release can be executed in counterparts and becomes effective once all executed signatures are obtained.

**KIMLEY-HORN AND ASSOCIATES, INC., a  
North Carolina corporation**

By: Michael G. Schiller  
Its: Gen. Vice President

**CITY OF PRESCOTT, ARIZONA, a  
governmental subdivision**

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

**APPROVED AS TO FORM AND CONTENT:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Attorney

Dated: \_\_\_\_\_, 2009

**EXHIBIT A – CONSULTANT AGREEMENT DATED March 23, 2003**

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## CONSULTANT AGREEMENT

WHEREAS the City of Prescott (hereinafter referred to as "City") is in need of certain services; and

WHEREAS the City has solicited Requests for Qualifications in accordance with State Law; and

WHEREAS Kimley-Horn and Associates, Inc. (hereinafter referred to as "Consultant") has received the highest ranking of potential proposers for this project.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. That Consultant shall provide those services to the City on an as-needed basis, as more particularly identified in the attached Exhibits "A", "B" and "C", and as requested by the City's Public Works Director, hereinafter referred to as the Director of Public Works.

2. In addition to those services identified in the attached Exhibits "A" through "C" inclusive, the Consultant shall also perform all subordinate tasks not specifically referenced in Exhibits "A" through "C", but necessary to the full and effective performance of the tasks specifically referenced.

3 Consultant shall provide sufficient qualified personnel, upon reasonable notice to perform any and all services as required herein, including but not limited to inspections and preparation of reports, as reasonably requested by representatives of the City.

4. All services identified in Paragraphs 1 and 2 above shall be completed to the satisfaction of the City and shall be performed in compliance with the Consultant's project schedule identified in the attached Exhibit "B".

(A) Notwithstanding the foregoing, this Agreement may be terminated by the City upon ten (10) days written notice, with or without cause. It may also be terminated by the City in the event that funding for the City's payments hereunder is dependent on grants or other commitments of funds from another governmental agency and those funds are terminated or substantially reduced for any reason. If this Agreement is terminated, the Consultant shall be paid for services performed to the date of Consultant's receipt of such termination notice.

5. It is agreed by and between the parties that this Agreement incorporates the attached Exhibits "A" through "C" as a part of this Agreement, and that the terms thereof shall be binding between the parties.

6. Pursuant to A.R.S. 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 or any extension of 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 with respect to the subject matter 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 initiating, 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 this agreement.

7. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage and certified mail, at the following addresses:

City of Prescott  
Public Works Director  
P. O. Box 2059  
Prescott, AZ 86301

With copies to: City of Prescott City Clerk  
PO Box 2059  
Prescott, AZ 86302



(D) Payment of the total amount provided for under Section 10(A) shall not relieve Consultant of its obligation to complete the performance of all those services specified in Sections 1, 2 and 3. Should the City request in writing additional services beyond that specified in Sections 1, 2 and 3, then Consultant shall charge and City shall pay Consultant in accordance with Exhibit "B".

(E) Prior to the final payment to the Consultant, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid monies due the City from the Consultant, and shall apply to those monies to the appropriate account. Consultant shall provide to the City any information necessary to determine the total amount(s) due.

11. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party. In the event of a discrepancy between this Agreement and Exhibits "A" through "C", this Agreement shall control over said Exhibits.

12. This agreement shall be construed under the laws of the State of Arizona.

13. All original and/or sealed drawings, specifications, and other work product of the Consultant for this Project are instruments of service for this Project only and shall remain the property of the City whether the Project is completed or not. Consultant shall not be responsible for any damages resulting from unapproved modification of such work products by the City or its agents, or from their use for any purpose other than that for which they were intended and furnished. All plans, drawings, specifications, data maps, studies and other information, including all copies thereof furnished by the City shall remain the property of the City. They are not to be used on other work and, with the exception of this Agreement, are to be returned to the City on request or at the completion of the work.

14. This Agreement and Exhibits "A" through "C" inclusive represent the entire and integrated Agreement between the City and the Consultant and

supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Consultant. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

15. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

16. The Consultant shall, within ten (10) calendar days after the execution of the Agreement and before awarding any subcontract, furnish the City with a list of proposed subcontractors, and shall not employ any that the City may object to as incompetent or unfit.

17. The Consultant hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits, arising from the Consultant's wrongful or negligent acts, errors, or omissions pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or his/her agents. The Consultant further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Consultant has or may have against the City, its agents or employees, arising out of or in any way connected with the Consultant's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.

18. No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or

modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

19. (A) The Consultant shall obtain and maintain in effect during the term of, and until final acceptance of all work under, this Agreement a policy or policies of liability insurance with limits not less than \$1,000,000.00. Liability insurance shall provide the following coverages:

- a) Comprehensive General Liability ("explosion, collapse, and underground" and "products/ completed operations" coverage may be excluded);
- b) Errors and Omissions (professional malpractice);
- c) Automobile Liability.

(B) All insurance and bonds required pursuant to this Agreement 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 which certificate is to be attached to each applicable bond or binder.

(C) Prior to commencing work under this Agreement, the Consultant shall provide the City with evidence that he/she is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by A.R.S. 23-901 et seq., or that he/she employs no persons subject to the requirement for such coverage.

20. The Consultant, with regard to the work performed by it after award and during its performance of this contract, 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 Consultant 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 Orders 99-4 and 2000-4.

21. 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.

DATED this 25~~th~~ day of March, 2003.



ROWLE P. SIMMONS  
Mayor, City of Prescott

ATTEST:

APPROVED AS TO FORM:



MARIE L. WATSON  
City Clerk



JOHN R. MOFFITT  
City Attorney

KIMLEY-HORN AND ASSOCIATES, INC.

By: 

Name: John R. Conrad

Title: SENIOR VICE PRESIDENT

## EXHIBIT A

### CITY OF PRESCOTT DESIGN SERVICES FOR

## Design of Widening Improvements on Copper Basin Road Phase I – Design Concept

### SCOPE OF SERVICES

February 5, 2003

#### INTRODUCTION

This document describes the scope of services which Kimley-Horn and Associates, Inc. (hereinafter called the "ENGINEER") will provide to the City of Prescott (hereinafter called the "CITY"). In general, these services include the conceptual design of improvements to Copper Basin Road from White Spar Road westerly approximately two miles to Sheriff's Posse Road (CITY limits).

#### PROJECT OVERVIEW

The CITY is seeking to enhance vehicular, bicycle, and pedestrian safety and operational efficiency along Copper Basin Road. Copper Basin Road is a curving, two-lane, undivided collector street, primarily traveled by local residents. The proposed improvements will include pavement replacement, pedestrian/bike accommodation, drainage enhancements, and select intersection widening. The project services will be divided into two phases: Phase I will generate design concepts and alternatives with public involvement and input. Phase II will encompass all work necessary to produce final design documents for construction of the selected alternative.

A consistent public involvement program within Phase I will facilitate dissemination of accurate project information and input from residents and other stakeholders.

#### GENERAL

Length	Approximate gross length is 2.0 miles, with the limits being from White Spar Road to the CITY limits.
Roadway Section	A Typical section will be developed.
Design Speed	To be determined (Collector Street)
Cross Slope	2%
Drainage	Address potential cross and longitudinal drainage. Existing cross culverts may need to be replaced or extended.
Cut Ditch and Fill Slope	Best fit inside right-of-way
AASHTO Report	An AASHTO analysis of the existing roadway geometry will be performed.

## **Work Tasks:**

### **Task 1.0 ADMINISTRATION, COORDINATION AND QUALITY CONTROL**

The ENGINEER will provide project management services which include maintaining a project schedule, attending project related meetings specified in this scope of services and providing monthly progress reports. Project administration, as well as project status, will be closely coordinated with the CITY. The ENGINEER will provide meeting minutes and conversation records to the CITY for meetings initiated by the ENGINEER and significant project related conversations.

#### **1.1 Project Management and Quality Control**

The ENGINEER will establish a project management system for schedule and budget control and will be responsive to input from the CITY. The ENGINEER will maintain a master project documentation file and implement a proven quality control program for the project.

#### **1.2 Project Schedule**

Following the project kickoff meeting, the ENGINEER will submit a detailed project schedule clearly identifying all major tasks and primary submittal dates/milestones of the ENGINEER, the CITY, and other agencies as appropriate. The schedule will show the anticipated completion dates for each task of the project. The CITY shall review and approve this schedule prior to its commencement. The ENGINEER and the CITY will conduct their activities in accordance with the project schedule. Thereafter, the ENGINEER shall comply with this schedule and update the CITY on a weekly basis of any changes thereto with pertinent justification. The ENGINEER shall include a minimum of 2 weeks for each CITY review period. The Concept design will be completed within six months from the effective date of Notice to Proceed.

#### **1.3 Kickoff Meeting**

A kickoff meeting between the CITY and the ENGINEER will be scheduled. The ENGINEER shall submit for approval by the CITY a list of all sub-consultants to be employed and a project schedule as described in Section 1.2. Any subsequent changes in the list of sub-consultants or the project schedule will be communicated to the CITY as soon as this information becomes known to the ENGINEER.

The CITY will provide a sample set of plans and a disk with the CITY's standard cover sheet for use on this project. YAG, MAG, and ADOT standard details will be utilized on this project; the CITY will also provide a copy of its standard details to be used as applicable.

#### **1.4 Coordination Meetings**

The ENGINEER will plan to meet with the CITY on an as needed basis, for a total of up to five meetings to discuss the progress of the project (monthly progress meeting). The ENGINEER will invite affected utility companies and agencies as necessary based on project issues. The ENGINEER will provide minutes for the coordination meetings to the CITY. It is anticipated that all coordination meetings will be held at the CITY Public Works offices.

#### **1.5 Monthly Progress Reports**

The ENGINEER will prepare a letter-style progress report to accompany its monthly invoices, describing the services accomplished to date. Each progress report will outline the percentage

complete for each major task of this scope of services, and the overall completion percentage of the entire project. The ENGINEER's monthly invoices will be based upon the percentages complete within the monthly invoicing period and shall be submitted in the format prescribed by the CITY.

## Task 2.0 DATA COLLECTION AND FIELD WORK

The CITY will provide the ENGINEER with all available and relevant City information concerning the project. This information will include copies of design standards and guidelines, available plats, quarter section maps, as constructed drawings within the project area, previously prepared reports and studies, current ADT, Design Year ADT, traffic factors (D, K, and T), traffic counts, turning movement counts, and level of service analysis.

The ENGINEER will collect other pertinent data including applicable FEMA floodplain panels, FEMA flood insurance studies, USGS quadrangle maps, and SCS Soils Maps. The ENGINEER will review this available data and discuss specific design related issues with the CITY during Phase I development.

The ENGINEER will conduct site visits as necessary to observe site conditions within the project limits. The number and duration of the site visits will be determined by the ENGINEER based on project needs.

The ENGINEER will be responsible for the provision of all field data collection, including field investigations and testing, required for the design effort. The CITY will assist, where necessary, in the effort to secure access to sites.

### 2.1 Survey

The CITY will provide existing digital and hard copies of survey, right-of-way, base mapping and benchmarks information available for the project at the kickoff meeting. Survey services performed for this project by Kelley/Wise Engineering Inc. are anticipated to include aerial mapping within the roadway corridor. The aerial mapping will cover the limits of the project for a 200-foot wide corridor. Contours will be at 1-foot intervals. Text scale will be 1" = 20'.

Surveys and mapping for the project will utilize the existing roadway and tie directly to the existing as-built roadway centerline. The centerline shall be re-established in its original position by locating marking, staking and referencing the PC, PT, TS, SC, CS, ST, PI (if possible), and a minimum of 50-foot station intervals along the curves and 100-foot station intervals on tangents.

The surveys shall include locations, stakes and references of control points, (including the beginning and ending points of the project), PC's, PT's, TS's, SC's, CS's, ST's, and PI's (if possible) of curves, POT's with a maximum interval of one thousand feet, and bench marks on alternate sides of the roadway with a maximum interval of 500 feet. Any survey data provided must be certified by an Arizona Registered Land Surveyor. Any coordinates used shall comply with the City of Prescott Coordinate System (NAVD88).

The Surveys generally include:

1. Base line control
2. Control for aerial mapping
3. Topographic surveys
4. Roadway drainage surveys
5. Visible utility locating
6. Centerline and edge elevations of existing pavement at fifty (50) ft. intervals

7. Ties to Arizona State Plane Coordinates
8. Crossroads tie-ins (400 ft from mainline), turnouts and driveways
9. Above ground utilities
10. Survey scale will be 1" = 20'
11. An aerial photo for use at public information meetings.

## 2.2 Geotechnical Investigations

The ENGINEER will perform field visits and testing on the existing roadway subgrade and pavement sections in accordance with the sampling plan. Based on the fieldwork, the ENGINEER will prepare a preliminary geotechnical report for submittal to the City with the preliminary (30%) plans that will include a preliminary pavement design, selection of roadway materials and copies of testing results. Considerations for remediation of unsuitable subgrade condition (if appropriate) and rock excavation will also be addressed in the report.

The final geotechnical report will be provided in Phase II.

## 2.3 Utility coordination

Upon notice to proceed, the ENGINEER will contact all utility companies and request as-built drawings showing the location of utilities within the project limits. Recorded utilities, above or below ground, will be shown on the conceptual plans to be developed by the ENGINEER. The ENGINEER will be required to attend at least one Regional Utility Coordination Committee (RUCC) meeting.

Depths of utilities will not be determined in Phase I. The extent of probable utility conflict identification will be based on the locations of the concept-level edges of pavement, cut/fill lines and drainage ditches in relation to the locations of existing utility facilities as provided by the utility companies/agencies. A list of anticipated conflicts will be included in the conceptual plans.

## 2.4 Traffic Counts

The ENGINEER will evaluate available traffic count data and reports provided by the City. The ENGINEER will analyze this data and determine the peak hour. Manual traffic counts during the peak hour will be performed at four intersections within the project limits.

## **Task 3.0 PUBLIC INFORMATION/INVOLVEMENT/CONTACT**

Four (4) public meetings are planned during Phase I. Additional meetings may be authorized in writing by the City for either Phase I or II. Additional public meetings will be considered additional services to the contract. A separate meeting with bicycle advocates will also be held in the early stages of planning prior to the first two meetings described below. The parties will endeavor to schedule the meeting with bicycle advocates, and any other special interest groups meetings, during the normal work week, during or after lunch, on days when the public meetings are to be held in the evening.

### 3.1 Mailing to Property Owners with Return Postcards

The City will compile a list of property owners along Copper Basin Road, and divide the project length into two segments, upper and lower, each of which have distinctive contexts in terms of curves, trees, rock outcrops, driveway accesses, and proximity of residences. Separate mailings to the property owners along each segment will be done by the City, not less than three (3) weeks in advance, notifying them of the upcoming public meetings described in Task 3.2; and providing postage-paid, return-addressed postcards upon which the recipients can list their top three (3)

concerns about the project, and top (3) objectives they would like the project to accomplish, with the assistance of explanations to be provided in the initial informational letter. The City will compile the responses and provide it at the meetings of Task 3.2.

### 3.2 Meetings 1A and 1B

There will be two initial public meetings: 1A with property owners along the lower segment of Copper Basin Road; and 1B with those along the upper segment. The scope of both meetings will be identical, styled as information gathering sessions, prefaced by a brief presentation of project objectives and summary of responses provided via the postcards of Task 3.1. In addition, there is to be discussion of utilities within the project area, and reflecting dialogue with the utility companies and project budget, an indication to what extent/in what manner utilities will/will not be relocated, undergrounded, or otherwise changed. A strip map/aerial photography suitable for presentation and reference purposes is to be prepared by the ENGINEER for these meetings.

### 3.3 Meetings 2A and 2B

The second series of public meetings during Phase I will consist of a brief presentation of the proposed conceptual design, followed by an open-house format at which questions from property owners and other attendees will be addressed. Recognizing that the design will still be at the conceptual stage, stakeholders will be informed that there will be opportunity for refinement as it is finalized.

### 3.4 Roles of the ENGINEER and CITY in the Public Meetings

The ENGINEER will make presentations at the request of the CITY at these meetings, including visual aids and handouts to facilitate communication. The CITY will arrange for and schedule the meetings including location, advertisements, signage, and all other logistics. Strategy sessions will be held during the regularly scheduled monthly meetings to determine public meeting details, graphics, key issues to address, and roles of the participants.

The ENGINEER will provide content for and review CITY prepared press releases, fact sheets, and other written communication materials for the project.

The ENGINEER will be responsible for the collection, compilation, and preparation of summaries of written and/or verbal comments from the public at these meetings; and furnish these to the CITY in a timely manner.

### 3.5 Other Means of Communication

Consistent communication to property owners, residents, and other stakeholders will be important to the success of the project. The CITY plans to utilize various means for disseminating updates, calendar announcements, and other information regarding the project. The ENGINEER will write and coordinate placement of news items in the following CITY media:

- water bill inserts (Monthly up to four times)
- CITY website and link to a project page (Monthly up to four times)
- information hotline (2 times)
- newsletter (Monthly up to four times)

Other means of communicating project information will consist of:

- newspaper advertisements of public meetings (2 times)
- press releases (calendar items) announcing the public meetings (2 times)

- submittals to HOA newsletters (there are three organized groups in the area, plus nearby neighborhoods in the County), school newsletters, and church bulletins (Maximum of 4 releases)
- e-mail new releases and other updates (3/4 of the homes have on-line access) (Every 2 weeks for a maximum of 8 times)
- e-mail newsletter info to others. (Monthly for up to 4 months, HTML format or .pdf attachment)

Task 3.1 describes the mailing to be accomplished by the CITY prior to Meetings 1A and 1B. Once the overall project schedule is approved, an associated communications schedule will be developed by the parties.

### 3.6 Special Interest Groups

Bicycle advocates will be brought into planning of the project, and are to be kept informed. The CITY recognizes that right-of-way constraints may render a bicycle/pedestrian patch separated from the roadway unbuildable or unaffordable. Separate meetings will be held with bicycle advocates throughout the planning stage for their information, and to seek their support for implementation of the eventual project design. This meeting is to be held on the same day as one of the regularly scheduled monthly progress meetings.

Real estate agents, and others, will receive accurate information on a consistent basis, and will be invited to attend the public meetings when appropriate.

### 3.7 Meetings with Individual or Small Groups of Property Owners

The parties will endeavor to schedule any necessary meetings with individual or small groups of property owners on those days when the ENGINEER's personnel are on-site. Additional meetings requested by the CITY outside of those times when the ENGINEER is scheduled to be on-site shall be compensated according to the applicable section(s) of the fee schedule for this agreement.

### 3.8 Media Relations (Meet on days of monthly updates)

The CITY has a generally favorable relationship with local media, and desires to maintain such by keeping them informed regarding the project. The CITY's Communication Director will work closely with the ENGINEER in disseminating information, setting up interviews, and proactively maintaining the flow of information with the newspaper and radio stations.

### 3.9 City Council Communications and Meeting Presentations

The ENGINEER will strive to keep the City Council informed at every stage of the project through the CITY's project representative(s). This Scope of Services anticipates attendance of the ENGINEER at two City Council meetings, with the schedule to be determined within the overall project timeline.

## **TASK 4.0 AASHTO DESIGN CRITERIA REPORT**

The ENGINEER will prepare an AASHTO Design Criteria Report to analyze features of the existing roadway such as horizontal and vertical alignment, design speed and grades, lane and shoulder widths, cross slope and superelevation. The AASHTO Report will be completed using horizontal and vertical survey information generated by the ENGINEER.

**TASK 5.0: TRAFFIC OPERATIONAL ANALYSIS**

A Traffic Operational Analysis will not be performed for this project. A simple analysis will be performed for up to four intersections within the project limits to determine turn lane needs.

**TASK 6.0 DESIGN CONCEPT PLANS**

A design concept will be prepared which is responsive to the project Scope of Work. This concept will be discussed and agreed upon during the project kick-off meeting. Widening alternatives along the existing Copper Basin alignment will be evaluated.

A Typical section will be discussed and tentatively agreed upon for design. Conceptual roadway plans and cross sections will be prepared for the widening. The plans will be to a 15% design development level. Information shown on the plans will include horizontal and vertical alignment, cut and fill lines, and preliminary right-of-way requirements.

A cost estimate will be prepared for the project.

**TASK 7.0: EARTHWORK**

The quantity of excavation, embankment, and borrow will be determined. Earthwork quantities will be based on the digital terrain model provided from the project's electronic survey database. Cross sections and earthwork report will not be part of the project submittal.

**TASK 8.0: ENVIRONMENTAL STUDIES**

**8.1 Prepare Section 404 Jurisdictional Determination for project**

The existing roadway is adjacent to a surface water feature that will be considered a water of the United States by the US Army Corps of Engineers (COE). There are also several channels that extend from the jurisdictional water that may be considered jurisdictional by the COE. This task will prepare the necessary documentation for submittal to the COE to confirm the status of these areas.

It will include a field reconnaissance to identify the various channels and an analysis based on the COE recently published guidelines for determining the jurisdictional status of ephemeral and intermittent wash channels in the southwest. The field reconnaissance will include a preliminary evaluation of the site for potential endangered species inhabitation or suitable habitat and a general description of the wildlife habitat potential.

On behalf of the CITY, the ENGINEER will prepare and submit a request for a Jurisdictional Determination (JD) to the COE to confirm the jurisdictional status of the channels.

This task will be authorized as early in the project schedule as practicable. From past experience the COE will require approximately 60 days to review and approve the JD submittal.

Based on the results of the COE review and approval of the JD, a scope and fee for a Section 404 permit application can be prepared and submitted to the CITY for approval. The ENGINEER will not begin the permit application process until after the CITY has reviewed, approved and authorized the scope and fee projection.

## 8.2 Prepare Native Plant Survey per Arizona Native Plant Law Guidelines

This task will be conducted at the same time as the 404 Jurisdictional Status task and will identify and mark plant species subject to the Arizona Native Plant Law requirements.

## 8.3 Conduct Cultural Resources Survey

This task will include a Level III field survey and appropriate documentation for previously undisturbed areas that would be disturbed during project implementation. Commencement of this task may require delay until the areas of disturbance are identified.

## **TASK 9.0: RIGHT-OF-WAY (ROW) DETERMINATION**

Need for additional ROW and utility easements will be estimated by the ENGINEER. All efforts will be made to keep the new roadway and slopes within the existing ROW. The CITY shall supply the ENGINEER with the current ROW records showing the existing ROW lines in relation to the recorded Copper Basin centerline. Existing ROW lines will be generated on the plans based on the information obtained from the CITY.

## **TASK 10.0: DRAINAGE STUDY REPORT**

The ENGINEER will prepare a Conceptual Drainage Report, conceptual on-site drainage plans, and conceptual cost estimates. The Conceptual Drainage Report will include a maximum of two drainage design concepts associated with the selected widening alternative. One concept will include a closed drain system consisting of catch basins and storm drain pipes to handle onsite runoff. A second concept will include a partial closed drain system and the use of scuppers and existing open channels (cut ditches) to convey onsite runoff. This concept will be developed in an attempt to minimize drainage construction costs. The following is a summary of anticipated Drainage Report content.

### 10.1 Data Collection

The ENGINEER will evaluate historical storm data collected from the CITY, federal agencies and related entities. Field reconnaissance will be performed to inventory erosion conditions, existing channels, ditches, berms and cross drainage features.

### 10.2 Hydrologic Study

The ENGINEER will conduct a hydrologic study, in accordance with the CITY'S Drainage Criteria Manual, to include, historical storm data, off-site watershed area maps, watershed travel lengths, watershed roughness coefficients, times of concentration, related storm intensities and rational method calculations for off-site storm runoffs. Other analyses may involve existing cross culvert inventory and capacity analysis, off-site retention requirements, open channel improvements and area ditch modifications. Drainage exhibits will be prepared and included for this section in the final report submittal.

### 10.3 Hydraulic Analysis

The ENGINEER will perform a roadway widening analysis of proposed drainage elements supplementing existing and future drainage features. The conceptual roadway hydraulic analysis will involve identifying on-site drainage areas, proposed sag/inlet locations with curb & gutter, roughness coefficients, anticipated event intensities, times of concentrations, calculated peak flow runoffs, and inlet sizing based on inflow and estimated water spreads in the roadway. Preliminary network pipe sizing and analysis will be conducted to study locations, configurations and potential

points of conflict. Exhibits will include information on existing/future roadway widening drainage infrastructure, types, locations, capacities, size and estimated costs.

#### 10.4 Drainage Rights-of-Way

The ENGINEER will identify probable locations in which drainage easements or additional rights-of-way may be required for construction of drainage improvements or culvert extensions. Such easements and additional rights-of-way will be shown on roadway schematic plans.

#### 10.5 Coordination & Meetings

The ENGINEER anticipates the following meetings:

One meeting for drainage related issues, conducted in Prescott within the normally scheduled progress meetings.

#### 10.6 Cost Estimates

The ENGINEER will prepare a conceptual cost estimate for drainage improvements with the estimates being consistent with accuracy and level of effort customary in conceptual analysis.

#### 10.7 Conceptual Drainage Report

The ENGINEER will prepare a draft and revised Conceptual Drainage Report. The Report will include detailed results of hydrologic and hydraulic analyses including specific items described above, plus:

- Rainfall calculations.
- Description of sub-basin soil conditions and hydrologic soil groups.
- Estimation of vegetative cover, including representative photographs.
- Rational Method worksheets including flow path lengths and slopes, estimated resistance coefficients (Kb) and calculated peak flows.
- Hydraulic calculations.
- Summary of approximate locations, capacities and adequacy of existing culverts.
- Summary of visual scour/sedimentation conditions at existing culverts.
- Identification of culverts that may affect vertical roadway profile.

The ENGINEER will conduct discussions of on-site and off-site drainage for existing and proposed conditions. Drainage shall be addressed on all four alternatives to a level sufficient to assess its feasibility. Proposed condition discussion will include detailed evaluation of only one roadway widening configuration. Alternative widening configurations will not be considered.

The ENGINEER will submit a draft report for review and comment. Upon receiving the CITY's comments, the ENGINEER will revise the report accordingly and resubmit a revised, sealed report.

#### **TASK 11.0 ADDITIONAL SERVICES**

Upon request of the CITY, the ENGINEER will provide the following additional services:

1. Evaluations of additional alternatives as may be required by regulatory agencies
2. Environmental Assessment or Environmental Impact Statement
3. Environmental Testing Plans and Section 106 Consultation
4. Air or Noise modeling
5. Services to the Environmental Services Department not specifically described above
6. Additional Public Meetings

7. Traffic Signal warrant study(s)/design
8. Coordination with FEMA
9. Coordination with SHPO
10. Phase II -- a constructable final design and associated contracting documents with cost estimates
11. Construction administration and observation
12. Other additional services required for formulation and implementation of the project

#### **TASK 12.0 CITY RESPONSIBILITIES**

The following information, to the extent that it exists and is available, upon which the ENGINEER may rely, will be supplied to the ENGINEER by the CITY:

- Copies of available plats and quarter section maps.
- As constructed drawings of the project area.
- Benchmark locations and elevations
- Most recent ADT, Design Year ADT, traffic factors (D, K, and T), traffic counts, turning movement counts.
- Information and/or design plans relating to programmed improvements. If design plans are available, these will be provided.
- Standard CITY Contract Documents.

**EXHIBIT B**  
**SERVICES FOR**  
**DESIGN OF WIDENING IMPROVEMENTS TO COPPER BASIN ROAD**

**PHASE I – DESIGN CONCEPT**  
**SCHEDULE OF DESIGN SERVICE FEES**

November 20, 2002

**FEE SCHEDULE**

The ENGINEER will accomplish the services outlined in Tasks 1 through 12 of Exhibit A on the basis of its current hourly rates for an estimated not to exceed fee of \$253,702. A breakdown of the fee is provided on the following page.

The ENGINEER shall not exceed said fee without prior authorization from the CITY. Fees are payable based upon services actually accomplished to invoice date.

Additional Services will be performed at the hourly rates listed below.

**HOURLY RATES FOR ADDITIONAL SERVICES**

Project Principal	\$182.00
Project Manager	\$159.00
Project Engineer	\$125.00
Engineer/Designer	\$78.00
Technician/Drafter	\$81.00
Clerical/Admin	\$68.00



Kimley-Horn  
and Associates, Inc.

Copper Basin Road - Prescott, AZ  
Phase I - Design Concept

Contract No.  
Project No.

**DERIVATION OF COST PROPOSAL SUMMARY**

(Figures Rounded To The Nearest \$1)

**ESTIMATED DIRECT LABOR**

CLASSIFICATION	PERSON HOURS	BILLING RATE/HOUR	TOTAL
Project Principal	-	\$ 175.00	\$ -
Project Manager	295	\$ 153.00	\$ 45,135
Senior Project Engineer		\$ -	\$ -
Project Engineer	567	\$ 120.00	\$ 68,040
Engineer/Designer	337	\$ 75.00	\$ 25,275
Tech/Draftsman	223	\$ 78.00	\$ 17,394
Administrative	25	\$ 62.00	\$ 1,550
Clerical	80	\$ 55.00	\$ 4,400

Estimated Labor Cost 1,527 Hours \$ 161,794 EC10

**ESTIMATED DIRECT EXPENSES**

(Listed By Item At Estimated Actual Cost - NO MARKUP)

Travel	\$ 1,563	
Computer CAD Time & Plotting	\$ 6,360	
Miscellaneous Expenses	\$ 477	
<b>Total Estimated Expenses</b>	<b>\$ 8,400</b>	<b>EC30</b>

**ESTIMATED OUTSIDE SERVICES AND CONSULTANTS**

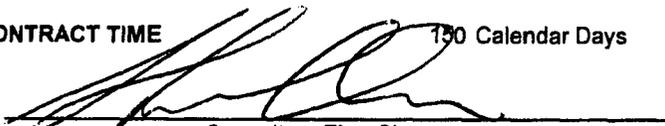
Firm	Cost	Compensation Method
Engineering & Testing Consultants	\$ 10,300	LS
Kelley/Wise Engineering, Inc.	\$ 38,560	LS
ACS, Ltd	\$ 2,500	LS
Olson Communications	\$ 25,000	LS
Ace Reprographics - Mount Aerials	\$ 1,000	LS
<b>Total Estimated Outside Services</b>	<b>\$ 77,360</b>	<b>EC40</b>

**TOTAL ESTIMATED COST TO CONSULTANT** \$ 85,760

Allocation @ 3.8% of Total Labor \$ 6,148

**TOTAL ESTIMATED FEE** \$ 253,702

**CONTRACT TIME** 150 Calendar Days

  
Consultant Firm Signature

2/10/03  
Date



Kimley-Horn  
and Associates, Inc.

Copper Basin Road - Prescott, AZ  
Phase I - Design Concept

Contract No.  
Project:

**ESTIMATED STAFF HOURS**

		\$ 175.00	\$ 153.00	\$ 120.00	\$ 75.00	\$ 78.00	\$ 62.00	\$ 55.00	
1.1	Project Management & Quality Control								
	Project Administration		24						24
	Quality Control / Quality Assurance		16						16
1.2	Develop Project Schedule		1	3					4
	Monthly Schedule Updates		3						6
1.3	Coordinate & Conduct Kick-off Meeting		8	8				3	19
	Meeting Minutes		1	2					3
1.4	Coordinate/Participate in Monthly Progress Mtg (5x max)								
	Travel Time		18	18					36
	Attend Meeting		10	10					20
	Meeting Minutes		3	10				7	20
1.5	Prepare Monthly Progress Reports								
	Prepare Monthly Invoicing Reports		10				15	5	30
	Accounting & Administration of Billing		5				10		15
<b>Subtotal 1.0 Admin, Coord &amp; QC</b>			99	51			25	18	193
2.1	Collect and Review available project data		2	8					10
	Survey & Mapping Coordination								
	Coord w/ Survey Consultant to verify Project Data		1	4					5
	Review Survey Information		1	3	3				7
	Coord w/ Survey Consultant for Aerial Mapping			2					2
	Review Benchmark & Project Control Data		1	2					3
	Verify Surveyor's DTM/Model		1	6	2				9
2.2	Geotechnical Investigations								
	Coord. w/ Geotech to Review Test Findings		1	2					3
	Obtain Soils Boring Tests			2					2
	Obtain Pavement Recommendations/Review Reports		1	4					5
	Coordination & Meeting Minutes		5	7				2	14
2.3	Utility Coordination								
	Coordinate with utilities/obtain as-builts		2		10			2	14
	Show Utilities on Plans		1		10	26			37
	Identify utility conflicts		2		8				10
	Attend One (1) RUCC Meeting		8	8					16
	Meeting Minutes			3				12	15
2.4	Traffic Counts								
	Analyze Traffic Data & Determine Peak Hour		1		2				3
	Perform Manual Traffic Counts at Four Intersections					24			24
	Prepare Graphic Summary				1	3			4
<b>Subtotal 2.0 Data Collection &amp; Field Work</b>			27	51	36	53		16	183
3.1	Mailing to Property Owners with Return Postcards								
	Assist in Property Owner Mailings Writeup			3					3
3.2	Meetings 1A & 1B								
	Create Project Strip Maps and Aerial Schematic			3	2	16			25
	Meeting Visual Aides, Handouts			1	8		2		12
	Preview Meeting			1	1				2
	Attend Meetings (2 KHA representatives)		12	12					24
	Meeting Minutes			2	12				16
3.3	Meetings 2A & 2B								
	Prepare Displays Showing Conceptual Designs			4	10	20	10		44
	Meeting Visual Aides, Handouts			1	8		2		12
	Preview Meeting			1	1				2
	Attend Meetings		20	20					40
	Meeting Minutes			2	12				16
3.4	Engineer's Role in Public Meetings								
	Meeting Coordination & Preparation with City Staff			4	2				6
	Review Content of Press Releases/Fact Sheets			4	2				6



Kimley-Horn  
and Associates, Inc.

Copper Basin Road - Prescott, AZ  
Phase I - Design Concept

Contract No.  
Project:

**ESTIMATED STAFF HOURS**

				\$ 175.00	\$ 153.00	\$ 120.00	\$ 75.00	\$ 78.00	\$ 62.00	\$ 55.00		
	Collection & Compilation of Public Meeting Comments			-	-	8	-	-	-	-	8	18
3.5	Other Means of Communication			-	-	-	-	-	-	-	-	-
	News Coordination for Water Bill Inserts, City Websites, Hotlines and Newsletter			-	2	-	-	-	-	-	-	2
	Other News Item Coordination: Ads, Press Releases, e-mails			-	2	-	-	-	-	-	-	2
	Development of Associated Communications Schedule			-	4	-	-	-	-	-	-	4
3.6	Special Interest Groups			-	-	-	-	-	-	-	-	-
	Coordination/Implementation of Bicycle Advocate Issues			-	12	12	-	-	-	-	-	24
	Communication with Real Estate Representatives			-	5	3	-	-	-	-	-	8
3.7	Meetings with Small Property Owner Groups			-	-	-	-	-	-	-	-	-
	Meet with Appropriate Small Groups in Conjunction with Local Trips			-	14	14	-	-	-	-	-	28
	Meeting Minutes			-	-	6	-	-	-	-	4	10
3.8	Media Relations			-	-	-	-	-	-	-	-	-
	Maintain Relationship with Media			-	10	-	-	-	-	-	-	10
3.9	City Council Communications & Meeting Presentations			-	-	-	-	-	-	-	-	-
	Prepare for City Council Meetings			-	6	4	-	-	-	-	2	12
	Attend Two City Council Meetings			-	20	20	-	-	-	-	-	40
<b>Subtotal 3.0 Public Information/Involvement</b>												
				-	133	157	36	14	-	-	24	364
4.0	Prepare Initial AASHTO Report			-	1	4	20	-	-	-	-	25
	Address City Comments/Prepare Final Reports			-	-	1	4	-	-	-	-	5
<b>Subtotal 4.0 AASHTO Design Report Criteria</b>												
				-	-	5	24	-	-	-	-	29
5.0	Simple Analysis for 4 Intersections/Determine Turning Lane Requirements			-	-	1	4	-	-	-	-	5
<b>Subtotal 5.0 Traffic Operations Analysis</b>												
				-	-	1	4	-	-	-	-	5
	Typical Sections			-	-	-	-	-	-	-	-	-
	Model Roadway			-	-	-	-	-	-	-	-	-
	Develop Concept - Create Inroads Models & Analyze			-	3	20	20	-	-	-	-	43
	Cross Sections & Earthwork			-	1	8	4	-	-	-	-	13
	Conceptual Cost Estimates			-	-	2	8	-	-	-	-	10
	Develop Concept Plan (Preferred Alternative)			-	-	-	-	-	-	-	-	-
	Review Alignment (best fit per survey)			-	-	4	2	-	-	-	-	6
	Develop Vertical Alignment			-	-	8	-	-	-	-	-	8
	Horizontal alignment			-	-	4	-	-	-	-	-	4
	Review Alignment (best fit per survey)			-	-	4	2	-	-	-	-	8
	Cover Sheet			-	-	1	-	4	-	-	-	5
	Create Typical Sections			-	3	8	17	9	-	-	-	37
	Plan & Profile Sheets	50	10	-	5	10	40	60	-	-	-	115
	Cross Road Plan & Profile Sheets	20	8	-	4	16	16	30	-	-	-	66
	Itemized Cost Estimate			-	2	2	8	-	-	-	-	12
<b>Subtotal 6.0 Design Concept Plans</b>												
		18		-	18	87	117	103	-	-	-	326
7.1	Earthwork Cross Section, Documentation & Report			-	-	-	-	-	-	-	-	-
	Prepare Cover Sheets			-	-	-	-	2	-	-	-	2
	Right-of-Way Alignment			-	-	-	8	-	-	-	-	6
	Superelevation Setup and Rollover Locks			-	2	6	-	-	-	-	-	8
	Model Roadway/Turnouts - Template Setup			-	2	4	10	-	-	-	-	16
	Generate Cross Sections			-	-	2	4	-	-	-	-	6
<b>Subtotal 7.0 Earthwork</b>												
		20	27	-	2	8	26	2	-	-	-	38
8.1	Prepare Section 404 Jurisdictional Determination			-	-	5	18	27	-	-	-	50
8.2	Prepare Native Plant Survey			-	-	3	5	7	-	-	-	15



Kimley-Horn  
and Associates, Inc.

Copper Basin Road - Prescott, AZ  
Phase I - Design Concept

Contract No.  
Project:

**ESTIMATED STAFF HOURS**

		\$ 175.00	\$ 153.00	\$ 120.00	\$ 75.00	\$ 78.00	\$ 82.00	\$ 55.00		
<b>Subtotal 8.0 Environmental Studies</b>		-	-	8	23	34	-	-	65	
9.1	Collect/Show Existing ROW and Utility Easements			2		1			3	
9.2	Identify New ROW and Utility Easement Requirements		2	4		6			12	
<b>Subtotal 9.0 Right-of-Way Determination</b>			2	6	-	7	-	-	15	
10.1	Data Collections								-	
	Evaluate Storm Histories/Field Reconnaissance		2	20	4				26	
10.2	Hydrologic Study								-	
	Perform Hydrologic Study			20					20	
	Cross Culvert Inventories			11	10				21	
	Drainage Exhibits			11	10			2	23	
10.3	Hydraulic Analysis								-	
	Analyze Existing & Future Drainage Features			12	10				22	
	Preliminary Network Pipe Sizing & Analysis			20	10				30	
	Drainage Infrastructure Exhibits		1	10	10	10		2	33	
	Ditch Analysis		1	6					7	
10.4	Drainage Right-of-Way								-	
	Identification of Possible Drainage Easements		2	5	2				9	
10.5	Coordination & Meetings								-	
	One Meeting for Drainage Related Issues			8				2	8	
	Comment Resolution			8				2	8	
10.6	Cost Estimates								-	
	Conceptual Cost Estimate for Drainage Improvements		1	8				2	11	
10.7	Conceptual Drainage Report								-	
	Draft Drainage Report		2	30	10			5	47	
	Revised Drainage Report		1	18	5			5	29	
	Drainage Discussions & Comments		4	10				2	16	
<b>Subtotal 10.0 Drainage Study Report</b>			14	193	71	10	-	22	310	
<b>Totals</b>		45	-	295	567	337	223	25	80	1,527



### Summary of Fee by Task

1	1.0 Admin, Coord & QC	\$ 23,607.00
2	2.0 Data Collection & Field Work	\$ 17,965.00
3	3.0 Public Information/Involvement	\$ 1,000.00
4	4.0 AASHTO Design Report Criteria	\$ 2,000.00
5	5.0 Traffic Operations Analysis	\$ 7,120.00
6	6.0 Design Concept Plans	\$ 30,000.00
7	7.0 Earthwork	\$ 3,372.00
8	8.0 Environmental Studies	\$ 3,367.00
9	9.0 Right-of-Way Determination	\$ 1,672.00
10	10.0 Drainage Study Report	\$ 32,617.00

\$ 161,794.00



**Copper Basin Road - Prescott, AZ**  
**Phase I - Design Concept**

**Contract No.**  
**Project No.**

February 10, 2003

**ESTIMATE OF DIRECT EXPENSES**

**Travel**

A. Hotel	\$ -
	\$ -
	\$ -
B. Subsistence (2 people x 12 days) (0 Breakfast, 24 Lunches, 24 Dinners)	\$ 528 day
C. Local Mileage	- miles
	\$ -
D. Out of town - To Prescott 3000 miles (12 Trips) x \$0.345 per mile	3,000 miles \$ 1,035
<b>Subtotal Travel</b>	<b>\$ 1,563</b>

**Computer CAD Time & Plotting**

A. CADD: 600 hrs. at billing rate \$10.00 per hour	600 hours \$ 6,000
Plotting B. Bond review Plots Total expense at billing rate of \$1.00 per plot	90 plots \$ 90
C. Vellum Plots Total expense at billing rate of \$5.00 per plot	54 plots \$ 270
<b>Subtotal Computer CAD Time &amp; Plotting</b>	<b>\$ 6,360</b>

**Miscellaneous Expenses**

A. 1 Video tape @ \$6.00	\$ 6
B. 6 Films @ \$20.00	\$ 120
C. Overnite Delivery (12 @ \$14)	\$ 168
D. In town delivery (0 @ \$15)	\$ -
E. Outside Copying	\$ 183
<b>Subtotal Miscellaneous Expenses</b>	<b>\$ 477</b>

**ESTIMATED OUTSIDE SERVICES & CONSULTANTS**

Engineering & Testing Consultants	\$ 10,300
Kelley/Wise Engineering, Inc.	\$ 38,560
ACS, Ltd	\$ 2,500
Olson Communications	\$ 25,000
Ace Reprographics - Mount Aerials	\$ 1,000
<b>TOTAL ESTIMATED OUTSIDE SERVICES</b>	<b>\$ 77,360</b>

**TOTAL ESTIMATED EXPENSES**

**\$ 85,760**

### **Statement of Qualifications Format**

The Statement shall be limited to no more than five (5) pages, to include the following:

- The firm's location.
- The names of the members of the project team proposed for this project.
- A brief description of similar projects in which the project team has been involved.
- A brief resume of each of the project team members describing their experience and background.
- A brief description of the current workload of the team members along with a listing of the projects in which they are currently involved and their status.
- A listing of all of the sub-consultants proposed to be utilized on the project and a description of their role.
- A proposed schedule for completion of Phase I and II of the project.
- A brief statement setting forth the firm's understanding of their role in this project.
- A brief statement of the firm's understanding of the project purpose and scope and a description of how the firm would approach, manage and complete the project. Candidate firms are encouraged to use this opportunity to describe any innovations they feel might expedite the project design and/or construction or make it more cost effective. Candidate firms may also use this opportunity to point out any omissions, concerns or issues that may not have been detailed above.

Not more than five (5) pages of supplementary information may be appended to the Statement, and may include graphs, charts, photos, and additional resumes. The letter of transmittal shall not exceed two (2) pages and is exclusive of the 5/5 page limitation for the statement submittal. The evaluation of all Statements of Qualifications received shall be based on the criteria indicated above.

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**EXHIBIT 'C'**



## **Copper Basin Road Design Request for Statements of Qualifications**

**DESCRIPTION:** Design services for improvements to Copper Basin Road from White Spar Road westerly to the city limits.

**CITY OF PRESCOTT, ARIZONA**

**PREPARED BY: Public Works Department**

**June 2002**

## Request for Statements of Qualifications

The City of Prescott, Arizona, requests statements of qualifications from qualified engineering firms to provide design services for improvements to Copper Basin Road from White Spar Road westerly to the City Limits. It is anticipated that this project will include drainage improvements, widening at certain intersections, the addition of pedestrian and bicycle facilities, and pavement replacement. More specifically the selected firm (hereinafter the "Engineer") will need to consider: 1) implications and impacts to existing driveways, properties and structures; 2) accommodation and/or relocation of existing utilities; 3) impacts to existing vegetation, trees, rock outcroppings, and terrain features; 4) existing and future drainage patterns and conveyances; 5) existing and projected traffic levels, patterns and speeds; and 6) existing and future right-of-way limits.

It is anticipated that the development of this project will consist of two (2) phases. Phase I will encompass generation of design concepts with considerable public input via a structured process, including at a minimum: 1) preparation of a detailed topographical survey and mapping of the existing road corridor; 2) generation of at least three (3) feasible concepts (including 3-dimensional computer superimposed renderings or videos each); 3) generation of an Engineer's estimate for each of the alternatives; 4) generation of a list of pros and cons for each of the alternatives; 5) presentations to the public at several open house meetings and two (2) or more City Council meetings; 6) consolidation of all public comments with responses to each; 7) involvement in the process to select a preferred alternative; and 8) generation of a conceptual design plan to implement the selected alternative.

Phase II will include necessary work to produce all required technical studies/reports and a complete set of bidding documents (at 60%, 95% and 100% levels), including, at a minimum: 1) a drainage study; 2) a traffic analysis study; 3) a master right-of-way map and individual legal descriptions/maps for each of the right-of-way parcels and easements required for the project; 4) a thorough evaluation and mapping of all existing utilities; 5) a geotechnical evaluation and report providing recommended pavement section alternatives, compaction requirements and slope stability requirements; 6) a landscaping/revegetation plan; 7) the Engineer's estimate; and 8) a complete set of bidding documents (plans, specifications and bid schedule).

Candidate firms shall submit four (4) sets of the Statement of Qualification which details: 1) their competence in the areas of expertise most applicable and critical to this project; 2) designation of specific individuals who would comprise their project team, their qualifications and experience with projects of a similar nature, demonstrating the capacity to accomplish this project; 3) the current workload of the proposed project team and status of ongoing projects they are involved in, 4) a listing of all sub-consultants proposed to be used on the project; and 5) a proposed schedule for completing the project. The Statements of Qualification will be evaluated on each of these criteria.

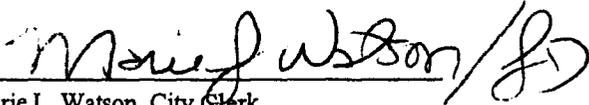
The City will appoint a Review Committee to evaluate the statements, generate a shortlist consisting of not less than three (3) firms and schedule/conduct presentation-interview meetings with each of these firms. During the presentation meetings candidate firms will be required to: 1) demonstrate their familiarity with and knowledge of the project scope and limits, including existing features and constraints; 2) offer any insights they may have regarding issues or problems that they believe will need to be considered; 3) suggest any innovative approaches to the planning and design process; 4) suggest possible technical solutions to problems inherent in this project; and 5) define why they believe their firm should be engaged by the City of Prescott. The presentations will be evaluated on these criteria. Following the presentation-interviews, the firms will be ranked by the Review Committee based on the cumulative ratings for each firm according to the aforementioned criteria. Following the ranking, a fee proposal for Phase I will be requested from the top ranked firm. The City will then enter into negotiations with the top ranked firm for the purpose of reaching agreement. If negotiation is successful, a contract will be executed with the top-ranked firm for the required services. If negotiations are unsuccessful, the City will terminate negotiation efforts and will repeat the fee submittal/negotiation process with the 2nd ranked firm. This procedure will continue until agreement is reached.

Phase II services will be negotiated upon the completion of Phase I.

It is highly recommended that candidate firms visit the project site.

Statements of qualification will be received until 2:00 p.m. on July 15, 2002, at the City Clerk's Office, City Hall, 201 S. Cortez St., PO Box 2059, Prescott, AZ 86302. Any statements received at or after 2:00 p.m. on the above-stated date will be returned unopened. Statements must conform to the scope of work available from the Public Works Department, City of Prescott, at (928) 777-1130 voice; (928) 778-5680 TDD. The City of Prescott reserves the right to reject any and all statements and the City assumes no liability for the cost of preparing a response to this request.

The outside of the statement envelope shall indicate the name and address of the respondent, shall be addressed to the City Clerk of Prescott at the above address and shall be marked: Statement of Qualification: Copper Basin Road Design Services.

  
Marie L. Watson, City Clerk  
Published: The Daily Courier, 2TC June 18 & 25, 2002

## Request for Statements of Qualifications

### Scope of Work for the Design of Widening Improvements on Copper Basin Road from White Spar Road to the City Limits

#### City of Prescott, Arizona

#### Description of Work

The City of Prescott will be reviewing the qualifications of interested engineering firms, for the purpose of entering into a contract for all services required to complete a set of bidding documents (plans and specifications) for the construction of improvements on Copper Basin Road from White Spar Road to the City limits.

The City is seeking that firm, hereinafter "Engineer", which is best qualified to provide the following services:

1. A project kick-off meeting. The Engineer will be required to attend a kick-off meeting with City staff. At that meeting the Engineer will be required to provide: a) a detailed Phase I schedule and tentative Phase II schedule; b) a list of the team members who will be involved in the project along with their phone numbers and e-mail addresses; c) an organization chart showing the relationships of all team members; and d) any submittals contractually required.
2. Public information presentations and coordination. The Engineer will be required to prepare for and conduct at least three (3) public meetings; and make presentations at two (2) City Council meetings.
3. Monthly progress meetings. For the duration of the project, the City and Engineer shall meet monthly to discuss the project status and all pertinent matters issues. This schedule will likely be augmented with additional meetings when issues arise requiring action.
4. Complete survey and/or aerial photography services to accurately and clearly identify all existing topographical, roadway, driveways, residences, trees, rock outcroppings and other notable features and conditions within a corridor extending 40' outboard of each road right-of-way line. The Engineer shall be required to prepare a current base map of the existing roadway corridor for use in preparation of the design plans.
5. Generation of at least three alternative treatments. The Engineer shall generate at least three (3) feasible alternative conceptual designs reflecting input received from the City and public meetings.
6. Preparation of right-of-way and/or easement legal descriptions and maps. The Engineer shall prepare all legal descriptions and maps for acquisition of additional right-of-way parcels and/or easements required to construct the proposed improvements. The Engineer WILL NOT be required to negotiate with property owners for acquisition of any of the required right-of-way parcels/easements. The City will provide all existing right-of-way limits for delineation on the plans as well as a listing of all benchmarks which are to be utilized on the project. A final right-of-way map (record of survey) will be required which indicates new right-of-way and any permanent easements required to be obtained.
7. Preparation of a complete geotechnical evaluation of the project site and pavement section design. The Engineer shall cause to be prepared a comprehensive geotechnical study providing all necessary information required for completion of the project. This will include, but not be limited to: a) generation of alternative pavement design section(s); b) evaluation of existing soil characteristics for cut/fill stability ~~and retaining wall design requirements~~ (if so required); and c) submittal of recommendations for embankment treatments for safety and to mitigate erosion.
8. Preparation of a SWPPP. The Engineer will be responsible for preparing a Storm Water Pollution Protection Plan.

9. Complete investigation of all existing utilities within the project limits. The Engineer shall be responsible for coordinating with all utility companies (e.g., water, sewer, cable TV, electric, gas, telephone) to assemble all current information regarding the precise locations and sizes of all existing utilities within the project corridor. This information shall be depicted on the plans with the objective of detailing the locations of all utilities as clearly and accurately as possible. This information will be used to mitigate impacts to the utilities and or to facilitate relocation. The Engineer shall also be required to coordinate with the utility companies to assist them with their endeavors to upgrade, or replace their facilities prior to or as a part of the construction project. The Engineer shall be responsible for providing each of the utility companies a set of plans at completion of the conceptual, 60%, 95% and 100% design stages, and shall secure written responses from each of the involved utilities at each of these progress levels. The Engineer shall conduct a meeting with the utilities at the completion of each design stage. The final design shall take into consideration all changes identified by said joint reviews. The Engineer shall be responsible for potholing utilities at locations where the possibility of conflict exists between existing utilities and the proposed road improvements. This information shall be used to either ensure that conflicts are not created, or to incorporate mitigation measures.
10. Accommodation of existing driveways and intersections. The Engineer shall evaluate all intersections with side streets and driveways to assure that transitions are smooth and that no abrupt breakovers are created by the roadway improvements. The Engineer shall also evaluate all intersections and driveways for adequate vertical and horizontal sight visibilities.
11. Plan requirements. Following is a list of the plan sheets that may be required. This list is provided to assist candidate firms in better understanding the project scope, and should not be regarded as conclusive. Some of the indicated sheets may not be required and there may be others not specified, that will be. A more precise clarification of the required plan sheets in each of Phases I and II will be established after the three (3) finalist firms are ranked and before they are requested to submit their fee proposals.

Cover Sheet (with title, index of sheets, City seal, list of utility contacts, Mayor/Council names, approval signature blocks and key map)  
 General Notes Sheet (with general notes, earthwork quantities table, symbols legend and design data)  
 Street Typical Sections and Pavement Section Details  
 Estimated Quantities Matrix (by sheet)  
 Pipe Summary Sheet(s)  
 Geometrics Layout and Data Sheet(s)  
 Survey Control Map (with coordinates – on City grid/State plane)  
 Plan & Profile Sheets (showing all existing and proposed improvements)  
 Intersection Detail Sheet(s) (plan & profile for all side streets and driveways)  
 Storm Drain Profile Sheets (if required)  
 Drainage Detail Sheet(s) (including structural sections for boxes, headwalls, and/or wingwalls) (if required)  
 Retaining Wall Detail Sheet(s) (if required)  
 Retaining Wall Profile Sheet(s) (if required)  
 Traffic Control Plan (during construction)  
 Pavement Marking and Signing Notes Sheet (with quantities)  
 Pavement Marking Detail Sheet(s)  
 Sign Summary Matrix (by station)  
 Signing and Marking Plan Sheets  
 Conduit Detail Sheet (with quantities)  
 Traffic Signal Plan Sheets (if warranted and directed by City)  
 Mainline Cross Sections  
 Water/Sewer Facilities (if required)

12. Evaluation of the hydrology of the existing adjacent area. The Engineer shall prepare a hydrology study for the limits of this project addressing both offsite and onsite flows; apply this study to evaluate existing drainage facilities for adequacy; and design any and all new drainage facilities that are required. It is not

envisioned that an USA COE Section 404 permit will be required. However, the Engineer set forth a fee for this work in the event that such a permit is deemed necessary.

13. Preparation of archaeological (cultural resources), biological (endangered species) surveys, vegetation analysis (for endangered plants), and environmental study. The Consultant will be required to prepare archeological and environmental studies to document that no impacts will be imposed as a result of the project or otherwise, if there will be, to identify and to recommend feasible mitigation measures.
14. Preparation of Phase I conceptual design plans. The Engineer shall prepare and submit a set of conceptual design plans following selection of the conceptual alternative. This submittal shall consist of a plan view depicting existing and proposed improvements, and existing and new right-of-way limits. These plans shall be distributed to the utility companies.
15. Preparation of 60% plans. Following negotiations the Engineer shall submit an amendment of the professional services contract setting forth the specific Phase II scope and schedule, submit to the City and to all utilities, a set of preliminary plans at the 60% level of completion. These plans will show, at a minimum, the plan and profile views of all existing features, all new improvements, existing utility locations and existing and new right-of-way limits.
16. Preparation of 95% plans. The Engineer shall incorporate all alternative selections, changes, corrections and/or additions from the 60% plan review. The 95% plans shall be submitted to the City and utilities for review, final adjustments, and/or corrections.
17. Preparation of final (100%) bidding documents. The final plans shall be prepared incorporating all adjustments or corrections made during review of the 90% set. Additionally, the Engineer shall prepare the Technical Specifications, Special Provisions, the final Engineer's Estimate, and the Bidding Schedule. A set of final reproducibles shall be provided on mylar.
18. Assistance during the bidding process. The Engineer shall be required to attend and actively participate in the pre-bid meeting, the pre-construction meeting, and the bid opening.
19. Provision of construction staking. The Engineer shall provide survey control for use by the Contractor during construction. The Engineer may be required to provide construction staking for this project. During the negotiation of Phase II, the Engineer will be required to provide a cost for construction staking as an optional service item which the City may or may not elect to authorize.
20. Provision of post-design consultation services. The Engineer shall be required to provide consultation assistance during construction, for the purpose of addressing unforeseen or new design issues not covered under the design scope of work or for the consideration of alternative solutions. Any questions/concerns from the Contractor or City that arise as a result of apparent design errors or omissions shall be addressed by the Engineer at no additional cost, and may not be considered as extra work under this item.
21. Preparation of Final As-Built Drawings. The Engineer shall be required to prepare mylars of the final as-built conditions based on the redline markups from the contractor.



## EXHIBIT B

### City of Prescott

Engineering Services Department

PO Box 2059 Prescott, Arizona 86302

Phone: (928) 777-1130 TDD: (928) 777-1100 FAX: (928) 771-5929

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November 13, 2008

Kimley-Horn and Associates, Inc.

Attn: Mr. Ahmad Omais, PE

7600 North 15<sup>th</sup> Street

Phoenix, AZ 85020

Re: Copper Basin Road Improvement Project,  
Notice of Claim and Demand for Reimbursement

Dear Mr. Omais,

The Copper Basin Road Reconstruction project has incurred significant cost overruns. Some of these have been the result of unforeseen field conditions which could not have been anticipated. However, it is the City's contention that many overruns were the result of errors or omissions in the design. Incorporation of design changes during the construction phase generally result in additional costs to the City (i.e. unanticipated removals, the cost of improvements, which were constructed and then required to be removed, higher unit costs for features for which there was no bid items, significant changes in quantities from what was bid.) These costs are related to engineering work detailed in Contract # 03-039 scope of services. Transmitted herewith are cost overruns to the project resulting from design errors and omissions.

The City is available to meet with Kimley-Horn at your earliest convenience to discuss resolution of this matter.

It is the City's intent to recover the increased costs incurred as a result of the errors and omissions of Kimley-Horn. The specific designs issues with associated costs are as follow:

#### Roadway Items:

##### Retaining Wall:

- 1) The existing soil below the retaining wall footings lack adequate bearing capacity to support the retaining walls at two (2) locations both east of Hassayampa Village Lane between stations 67+17 to 68+06 and from stations 70+40 to 73+61. Kimley-Horn and their geotechnical engineers (ETC) failed to investigate the bearing requirements. During the footing excavation, and per recommendation of ETC engineer Mr. Mike Wilson, the entire wall foundation area had to be over excavated to competent sub-grade (native ground). The un-compacted unsuitable native materials were removed and replaced with structural backfill to the base of the footings in order to obtain sufficient bearing capacity to construct the retaining walls. (See attached change order # 23)  
Increased Project Cost **\$84,661.44**
-

- 2) The existing rock slope on the southeast side of Copper Basin Road from approximate sta. 68+30 to 69+50 was comprised of highly fractured rock and ETC recommended a retaining wall as a preferred slope stabilization method. This recommendation was omitted from Kimley-Horn's design and during the sewer main construction the rock slope failed and the slope movement caused extensive damage to the existing water and sewer mains and the front porch of the resident located at # 1337 Copper Basin Road (Mrs. Arbuckle).

Revisions for a retaining wall to mitigate the slope failure were received by the City on October 14, 2008 and construction began on October 28, 2008.  
Increased Project Cost **\$260,638.00**

**Drainage Upgrades:**

- 3) A major change to the storm water runoff conveyance system was required to cover several upstream drainage sub-areas which were calculated incorrectly during Kimley-Horn's hydrologic analysis of the initial design. The additional storm water runoff volume and flows has facilitated the need to upsize the underground storm drain system from station 109+00 to 116+20 in order to account for historical storm water runoff patterns, flows and volumes.  
(See attached change order# 29)  
Increased Project Cost **\$160,209.93**
- 4) A second major change to the storm drain system was again required for the same reason as item # 3 from Cypress Drive to Linden Road in order to account for historical storm water runoff patterns, flows and volumes.  
(See attached change order # 37)  
Increased Project Cost **\$55,469.05**

**Box Culvert at Park Avenue:**

- 5) The box culvert at Park Avenue was initially designed to be extended on both the west and east sides. During construction, an investigation of the structure revealed that it was not actually a box culvert but a bridge; therefore, the box culvert details in the plans were not applicable. Further inspection of the structure found that the bridge concrete was deteriorated and spalling. It was determined in the best interest of the public to replace the bridge with a full length box culvert, in-lieu of adding new box culvert sections to a bridge structure that was over fifty (50) years old.  
(See attached)  
Increased Project Cost **\$78,500.00**
- 6) Removal and the replacement of the storm drain at approximate station 126+80.  
Plan omission.  
(See attached change order # 9)  
Increased Project Cost **\$5,247.50**
- 7) Quantity for catch basin ADOT C-15.80 (2x3) should have been 19 each as detailed on drainage descriptions on pages 15 to 27 of the contract drawings; Kimley-Horn's quantities detailed only 1 each on the pay item list.  
Increased Project Cost (18 x \$4000) **\$72,000.00**
- 8) Omission of rustication detail for the retaining walls.  
(See attached)  
Increased Project Cost **\$34,776.75**

- 9) Omission of Handrail from Approximate station 131+00 to 132+60.  
 (160' X \$45 = \$7,200.00)  
 Increased Project Cost **\$7,200.00**
- 10) During the construction of water main at the intersection of White Spar and Copper Basin Road, Traffic light loops were cut and damaged, the project plans omitted the replacement of the loops.  
 (Loops were installed by the traffic engineering department.)  
 Increased Project Cost **\$5,000.00**
- 11) The project plans omitted pavement marking or signage details for the intersections of White Spar Road, Copper Basin Road and Park Avenue.  
 Increased Project Cost **\$2,000.00**
- 12) Plans omitted the removal and replacement of the steps for driveway # 139  
 See attached change order # 39  
 Increased Project Cost **\$3,300.00**
- 13) The design of the following driveways was inadequate to facilitate access to the respective properties which resulted in removal and replacement of the same.
- |                |                      |
|----------------|----------------------|
| Driveway # 138 | (20' X 20' = 320 sf) |
| Driveway # 134 | (32' X 26' = 832 sf) |
| Driveway # 114 | (32' X 10' = 400 sf) |
| Driveway # 83  | (15' X 22' = 330 sf) |
| Driveway # 82  | (12' X 25' = 300 sf) |
- Total 2182sf @ \$7.60/sf  
 Increased Project Cost **\$16,583.20**
- 14) Curb, gutter and the sidewalk had to be removed and replaced, because sidewalk did not meet ADA standard width for the wheelchair at the Northwest corner of Copper Basin Road and Park Avenue (Northwest corner of box culvert).
- |                          |                |
|--------------------------|----------------|
| 60' X \$3.10 = \$186.00  | curb removal   |
| 60' X \$16.50 = \$990.00 | curb placement |
- Increased Project Cost **\$1,176.00**
- 15) Plans omitted relocating water meters on Carson Drive prior to roadway construction.  
 (See attached change order # 30)  
 Increased Project Cost **\$3,693.91**
- 16) Omission of plant replacement for parcel # 108-10-011  
 (See attached change order # 34)  
 Increased Project Cost **\$4,235.62**
- 17) Pine Knoll Intersection: Removal and replacement of the intersection from centerline to the end of curb re-turn on Pine Knoll, due to plan omission of valley gutter at the intersection.  
 (See attached)  
 Increased Project Cost **\$19,288.00**

- 18) Highland Avenue Curb & Gutter: Curb & gutter were required along the east side of the Highland Avenue to control street drainage affecting private property.  
(See attached)  
Increased Project Cost **\$13,411.03**
- 19) Vista Road & Butte Road drainage: Drainage revisions for SD # 46 and SD # 60 were required to direct storm water run off into the existing culvert on Vista Road.  
(See attached)  
Increased Project Cost **\$15,140.00**
- 20) Moyer road Drainage: Drainage on Moyer Road needed to be revised due to plan revision.  
(See attached)  
Increased Project Cost **\$8,166.06**
- Roadway Total      \$850,696.49**

**Utility Items:**

**Sewer**

- 1) Sewer services for the existing Church at Park Avenue and also two houses were not shown on the plans. The existing services were located within the limits of construction and additional work was required to install new services on the new main.

The new 8" sewer main on Park Avenue as designed exceeded 10 feet per second (fps) velocity for polyvinyl chloride (PVC) pipe maximum slope. This was identified during the ADEQ review and confirmed by Kimley Horn, who unfortunately did not run the flow vs. velocity calculations as part of the design and prior to submittal to ADEQ and the bid period. Options available were to change to ductile iron pipe (DIP) or deepen affected uphill manholes and excavations to flatten trenches to maximum slope allowed for PVC. Deepening trenches and manholes was more cost effective on this section.

(See attached change order No. 6.)

**Increased Project Cost \$12,776.28**

- 2) The new 8" sewer main on Cherokee Drive, connecting the existing sewer from the new manhole 38A into the new main on Copper Basin Road, exceeded 10 fps velocity for PVC maximum slope. This was identified during the ADEQ review and confirmed by Kimley Horn, who unfortunately did not run the flow vs. velocity calculations as part of the design and prior to submittal to ADEQ and the bid period. Options available were to change to DIP or deepen uphill manhole and excavation to flatten trench to maximum slope allowed for PVC. Deepening trench and manholes was more cost effective on this section.

(See attached change order No. 8.)

**Increased Project Cost \$1,498.72**

- 3) ADEQ identified various pipe velocities exceeded the maximum 10 fps allowed for PVC. The Kimley-Horn solution was to change 5,400 lineal feet of PVC to epoxy lined DIP. A preliminary City estimate (based on material changes for change Order No. 3) was approximately \$400,000. Kimley-Horn had no response when asked who would pay the additional cost, except to use the construction contract allowance immediately. The City suggested an alternative of deepening certain uphill manholes with drop inlets thereby flattening some runs, with the remainder where the excavation depth began to be excessive with DIP. The City provided a preliminary design and Kimley-Horn completed the plans with minimal changes to that preliminary design. The ADEQ Approval to Construct was obtained and a final construction change order was negotiated. The problem, as noted above, stems from a failure of Kimley-Horn to run even cursory flow calculations on the system to check velocities prior to submittal to ADEQ. By the time the problem was discovered the project was bid and awarded.  
(See attached change order No. 13.)  
**Increased Project Cost \$230,022.16**

- 4) Grade changes on the new Kimley-Horn designed reinforced concrete box (RCB) exposed two recently installed sewer mains downstream of the RCB outlet. The lowered RCB invert also reduced cover on the new upstream sewer and exposed the existing sewer to increased erosion potential, with immediate erosion from relatively small flows evident. Kimley-Horn proposed partially filling of the RCB (thereby reducing flow capacity) and installing a two inch (2") thick concrete cap with no turndowns. The City considered this solution inadequate based on previous experiences and other line damages. The City provided a revised design incorporating an inclined approach apron with steel reinforcement doweled into the wing walls and invert concrete. The downstream sewer mains received additional grouted rip-rap protection.  
(See attached change order No. 19.)  
**Increased Project Cost \$44,980.00**

**Sewer Total            \$289,277.16**

Water

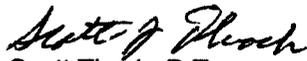
- 1) At approximately Station 134+00 a vertical realignment of the 12" water main was required to avoid a conflict with an existing 4" gas line, shown incorrectly on the original design.  
(See attached change order No. 4.)  
**Increased Project Cost \$1,663.20**
- 2) East of Park Avenue water services for four existing houses were not shown on the plans. Four new one inch (1") services were installed.  
(See attached change order No. 6)  
**Increased Project Cost \$8,927.64**
- 3) On Park Avenue the existing 2" service for the church was not shown on the plans. A new service was installed.  
(See attached change order No. 8)  
**Increased Project Cost \$4,411.64**

- 4) On Copper Basin Road, from Kopavi to Linden, it was required to temporarily relocate the existing services that were connected to a 1" galvanized main on the north side of the road to the existing 6" main on the south side while new construction proceeded. The 1" line was not shown on the plans even after it had been redlined during plan reviews by the City and the City's Project Manager reminded Kimley-Horn to include it and the affected services on the final plan submittal.  
(See attached change order No. 26)  
**Increased Project Cost \$5,834.73**
- 5) On Carson Drive two water services and meter boxes, not shown on the utility plans for relocation, would have been in the final pavement section. New services were installed and the meter boxes relocated to the right-of-way prior to paving.  
(See attached change order No. 30)  
**Increased Project Cost \$3,693.91**
- 6) On east Park Avenue the existing two inch (2") water service for the commercial trailer park was not shown on the project plans. A new service line and meter were installed.  
(See attached change order No. 54)  
**Increased Project Cost \$3,960.00**

<b>Water Total</b>	<b><u>\$ 28,491.12</u></b>
<b>GRAND TOTAL</b>	<b><u>\$1,168,464.77</u></b>

We look forward to hearing from you regarding reimbursement of these costs.

Regards,

  
Scott Tkach, P.E.  
City Engineer

cc: Ben Mokhtari, Project Manager  
Mark Nietupski, Public Works Director  
Gary Kidd, City Attorney  
Steve Norwood, City Manager

## EXHIBIT C – ADDITIONAL SERVICES

The additional design services described herein are requested by the City of Prescott to compliment the negotiations with property owners along the Williamson Valley Road corridor within the City Limits from Sidewinder Road through Shadow Valley Ranch Road.

Walls have been requested near Station 136+00 LT, parcel 115 01 102 and at Station 145+00 RT, parcel 115 01 001C to mitigate property impacts.

- The wall at Station 136+00 will be approximately 120 ft of the “combination wall” type as already shown in the (100%) plans. The screen wall will only be a visual screen (no design impact/vehicular load) is anticipated in this design. The heights required (8 ft + 4 ft screen) falls within the design envelope of the combination wall.
- The wall at Shadow Ridge Drive (Station 145+00 RT) will be approximately 130 ft long Pile Panel Walls. Exact height needs to be determined, but the maximum height ~ 16 ft is greater than the heights that we already have designs for within the 100% plan set. Therefore, this wall will have to be designed separately. This wall will not have a parapet or railing, but will have a guardrail set 2' behind it.
- Geotechnical coordination will be necessary to determine soil conditions in the area(s).
- This entire task will necessitate the updating of the roadway and right of way mainline sheets, the Shadow Ridge Drive detail sheet, the wall summary sheets, elevations, and detail sheets and the estimate.
- The rustication/painting/aesthetics will be in accordance with the already chosen rustication pattern contained in the 100% plans and color specifications.

Modifications to Standing Rock Drive have also been requested.

- The current design has Standing Rock Drive with a superelevation throughout the entire stretch before it “T’s” into the subdivision. KHA will transition the superelevation out of the roadway sooner and provide catch basins on both sides of the roadway. These will extend to the headwall just north of the street.
- This entire task will necessitate the updating of the roadway and right of way mainline sheets, the Standing Rock Drive detail sheet, the storm drain details, headwall details, and the estimate.

Modifications to two driveways were requested.

- Hefner Driveway – Add a hammerhead configuration for future access and development onto his property.
- Nel Driveway - This is a new design due to the recent addition of an access onto Williamson Valley Road.

The value of these services in terms of professional fees that would otherwise be charged by Kimley-Horn and Associates, Inc. is agreed to be \$30,605.00.

---

May 21, 2004

Item	Description	Quantity	Unit Price	Total
1	...	...	...	...
2	...	...	...	...
3	...	...	...	...
4	...	...	...	...
5	...	...	...	...

Prepared by: *[Signature]*

Approved by: *[Signature]*

Accepted by: *[Signature]*

Accounting: *[Signature]*

Scope of Work for the Design of  
**COPPER BASIN ROAD**

Sheriffs Posse Trail to White Spar Road  
City of Prescott, Arizona

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## PROJECT DESCRIPTION

The City of Prescott will be entering into a contract for consulting engineering services and other associated services required to produce a set of biddable documents (plans and specifications) for reconstructing Copper Basin Road – Sheriffs Posse Trail to White Spar Road.

### Project Information

#### Existing Condition

- Two-lane roadway with granular shoulders
- Residential area
- No closed storm sewer system –(Cross culverts and parallel culverts under drives)
- Utilities: Overhead Power, water, sewer, cable TV, gas, phone, communications

#### Proposed Improvements

- Reconstruct roadway (27 ft. face-to-face, and 29 ft. face-to-face)
- Improve Drainage – Add curb & gutter, and some closed storm sewer system
- Tie in existing driveways
- Add turn lanes at Park and Highland Avenues
- Upgrade utilities – water and sewer

#### Project Key Activities

- Development of construction plans, specifications, and estimates
- Drainage Improvement Design
- Driveway Accommodations Design
- Retaining Wall Design
- Sanitary Sewer design – 8”
- Water Main Design – 12”
- Meetings with CITY staff, CITY Council, Utilities, and the Public

**1.0 THIRD PUBLIC MEETING – PHASE 1**

This task is for the additional public meeting held during phase 1. The third public meeting was requested by the City.

**2.0 ADMINISTRATION, COORDINATION AND QUALITY CONTROL**

The ENGINEER will provide project management services which include maintaining a project schedule, attending project related meetings specified in this scope of services and providing monthly progress reports. Project administration, as well as project status, will be closely coordinated with the CITY. The ENGINEER will provide meeting minutes and conversation records to the CITY for meetings initiated by the ENGINEER and significant project related conversations. Project Management and Quality Control - The ENGINEER will establish a project management system for schedule and budget control and will be responsive to input from the CITY. The ENGINEER will maintain a master project documentation file and implement a proven quality control program for the project.

- 2.1 Monthly Progress Reports- The ENGINEER will prepare a letter-style progress report to accompany its monthly invoices, describing the services accomplished to date. Each progress report will outline the percentage complete for each major task of this scope of services, and the overall completion percentage of the entire project. The ENGINEER'S monthly invoices will be based upon the percentages complete within the monthly invoicing period and shall be submitted in the format prescribed by the CITY.

**3.0 OPEN HOUSE PRESENTATION AND COORDINATION**

- 3.1 Open House Prep – The ENGINEER will prepare for one (1) open house meeting. The meeting shall be held after the completion of the 60% complete plans. The format of the meeting shall be of an open house manner. Prior to the open house meetings, the CITY of Prescott will provide the meeting location, newspaper advertisements, and an electronic list of addresses within the distribution area for the project. The ENGINEER shall recommend the names of key participants, businesses and residential areas for the open house notice mailing. The CITY shall send the meeting notification letters to stakeholders. The ENGINEER shall prepare display boards, comment cards and similar meeting items.
- 3.2 Open House Participation – The ENGINEER will attend and provide assistance with exhibits for one (1) open house meeting. The meeting will deal with project issues including right-of-way, project design description, and construction impacts.
- 3.3 Individual business/property owner meetings – The ENGINEER will attend up to four (4) separate meetings with individual business/property owners. The parties will endeavor to schedule any necessary meetings with individual or small groups of property owners on those days when the ENGINEER'S personnel are on-site. Additional meetings requested by the CITY outside of those times when the ENGINEER is scheduled to be on-site shall be compensated according to the applicable section(s) of the fee schedule for this agreement

#### **4.0 MONTHLY PROGRESS MEETINGS**

- 4.1 Monthly coordination meetings – The CITY and ENGINEER will meet monthly to discuss the project status and any pertinent issues. The Coordination meetings will be scheduled to coincide with the coordination meetings for the Park Avenue project. Coordination meetings will continue for an assumed duration of 10 months following the Notice to Proceed.

#### **5.0 RIGHT-OF-WAY AND EASEMENTS**

- 5.1 Existing right-of-way mapping – The CITY will provide all existing right-of-way limits for delineation on the plans as well as a listing of all benchmarks, which are to be utilized on the project.
- 5.2 Legal Descriptions – The ENGINEER shall provide the CITY information needed to prepare legal descriptions for additional right-of-way acquisition and easements required to construct the proposed improvements. The CITY shall prepare legal descriptions and a map for the acquisition of additional right-of-way and or easements. The ENGINEER will NOT be required to negotiate with the property owners for the acquisition of any of the required right-of-way parcels/easements.

#### **6.0 INVESTIGATION OF EXISTING UTILITIES**

- 6.1 Existing Utility Mapping – The ENGINEER will be responsible for coordinating with all utility companies (i.e. water, sewer, cable TV, electric, gas, telephone, communications) in the area, to update current information regarding the locations and sizes of all existing utilities along the limits of the project corridor. This information will be updated on the plans with the objective of detailing the locations of all utilities based on provided information. This information will be used to mitigate impacts with the utilities or to facilitate their relocation.
- 6.2 Potholing – The ENGINEER will be responsible for potholing utilities at locations where the possibility of conflict exists between the existing utilities and proposed underground improvements. The ENGINEER shall include X,Y,Z coordinates of the potholes. Up to ten (10) potholes are included in this scope of services. Additional potholes will be considered additional services.
- 6.3 Utility Coordination – The ENGINEER shall be required to coordinate with the utility companies to assist them with their endeavors to upgrade, replace or enhance their facilities prior to or as part of the construction project. The ENGINEER will be responsible for providing each of the utility companies a set of plans at completion of the 60%, 95% and 100% levels and will be required to secure written responses from each of the involved utilities at the completion of each design level.
- 6.4 Regional Utility Coordination – The ENGINEER will be required to attend up to two (2) Regional Utility Coordination meetings. The meetings will be attended at the 60% design phase and at the 95% phase.

## 7.0 ACCOMMODATION OF EXISTING DRIVEWAYS AND INTERSECTIONS

- 7.1 Existing Driveways and Intersections – The ENGINEER shall evaluate all intersections with side streets and driveways to determine that transitions are smooth, no abrupt breakovers are induced as a result of the roadway improvements, and vertical and horizontal sight visibility is adequate. A sight distance report will be developed as part of this task.

## 8.0 PLAN REQUIREMENTS

- 8.1 General Sheets – This task involves work necessary for the creation of General Sheets. Tasks include necessary design calculations, summary of quantities calculations, annotations, and drafting. The following list of general plan sheets will be required for this project:

- Cover Sheet (with title, index of sheets, CITY seal, list of utility contacts, Mayor/Council names, approval signature blocks and key map.)
- General Notes Sheet (with general notes, earthwork quantities table, symbols legend and design data)
- Street Typical Sections and Pavement Section Details
- Estimated Quantities Matrix (by sheet)
- Pipe Summary Sheets
- Geometrics Layout and Data Sheet

- 8.2 Roadway Sheets – This task involves work necessary for the creation of Plan & Profile Sheets. Tasks include necessary design calculations, drawing annotations to proposed improvements, construction notes, and drafting.

The following list of roadway sheets will be required for this project.

- Plan & Profile Sheets (showing existing and proposed improvements)
- Intersection Detail Sheets (plan & profile for all side streets)
- Cross Section Sheets with sections at a minimum of 50 foot intervals through the project corridor and at driveways and street intersections.

- 8.3 Drainage Sheets – This task involves work necessary for the creation of Drainage Sheets. This task will include the preparation of drainage profile sheets and placement of drainage design data and construction notes on the roadway plan and profile sheets.

- 8.4 Traffic Sheets – This task involves work necessary for the creation of Traffic Sheets. The following list of traffic sheets will be required for this project.

- Project Phasing Plan
- Traffic Control Plan
- Pavement Marking and Signing Notes Sheet (with quantities)
- Pavement Marking and Signing Detail Sheets
- Sign Summary Matrix (by station)

- Signing and Marking Plan Sheets

- 8.5 Lighting Sheets - The ENGINEER will develop the lighting design for four (4) intersections within the project limits. The ENGINEER will coordinate with the Client and Power Company on the lighting locations, power locations, one type of new load center / meter pedestal / lighting control cabinet (if needed), and one type of lighting fixture. Plans for lighting design will be produced for the 60 %, 95 %, and 100% plan submittals. The ENGINEER will develop a quantities list for the lighting. ENGINEER will develop lighting special provisions.
- 8.6 Sewer Sheets – This task involves work necessary for design of the replacement of the existing sanitary sewer. It is assumed the existing sewer will be removed and the new sewer will be placed in the old trench. ADEQ Approval to Construct will be obtained. The ENGINEERs Certification of Completion to ADEQ for these improvements is covered under Task 15, Record Drawings, and Task 16, Construction Administration. All sewer design is to be in accordance with CITY of Prescott standards. The following list of utility sheets will be required for this project.
- Plan and Profile (Sanitary Sewer Design, and Water Main Design)
  - Details, Abandonment, Cross Over, and Reconnection
- 8.7 Water Main - This task involves work necessary for design of the upgrade from several various sized parallel water lines to a new 12-inch water main. It is assumed the existing water lines will be abandoned in place. Four sets of plans will be submitted to ADEQ and Approval to Construct will be obtained as part of this task. All water main design is to be in accordance with CITY of Prescott standards. The water main design will be shown on utility plan sheets along with the sanitary sewer design. Other water main sheets will include the following:
- Detail Sheet, Connections, Valves, Thrust Blocks

This task does not include any design for pump stations. It is assumed that pressures can be controlled with pressure regulated relief valves. This task does not include any design, inspection, or work involving the identification, removing, or handling of pipe containing asbestos.

- 8.8 Structural Sheets – This task includes the work necessary for the design of retaining walls at various locations throughout the corridor. The following will be done as part of this task:
- Perform necessary analysis and quantity calculations
  - Perform a QA/QC check of the retaining wall plans and calculations
  - Retaining wall sheets will include:
    - Retaining wall layout
    - Retaining wall typical section and details

<b>Sheets</b>	<b>30%</b>	<b>60%</b>	<b>95%</b>	<b>100%</b>
Cover Sheet (with title, index of sheets, CITY seal, list of utility contacts, Mayor/Council names, approval signature blocks and key map.)	X	X	X	X
General Notes Sheet (with general notes, earthwork quantities table, symbols legend and design data)		X	X	X
Street Typical Sections and Pavement Section Details	X	X	X	X
Estimated Quantities Matrix (by sheet)			X	X
Pipe Summary Sheet(s)			X	X
Geometrics Layout and Data Sheet(s)	X	X	X	X
Survey Control Map (with coordinates-on CITY grid/State plane)		X	X	X
Plan & Profile Sheets (showing all existing and proposed improvements)	X	X	X	X
Intersection Detail Sheet(s) (plan & profile for all side streets and driveways)		X	X	X
Storm Drain Profile Sheets (if required)		X	X	X
Retaining Wall Detail Sheet (s) (if required)			X	X
Retaining Wall Profile Sheet (s) (if required)			X	X
Traffic Control Plan		X	X	X
Pavement Marking and Signing Notes Sheet (with quantities)			X	X
Pavement Marking Detail Sheet(s)			X	X
Sign Summary Matrix (by station)			X	X
Signing and Marking Plan Sheets		X	X	X
Lighting Sheets (Including Quantities)		X	X	X
Lighting Details and Notes			X	X
Mainline Cross Sections	X	X	X	X
Water/Sewer Facilities (if required)		X	X	X
Geotechnical/Pavement Design Report		X		
Traffic Study	X			
Existing Sanitary Sewer Memorandum		X		

## 9.0 INCORPORATE PHASE ONE COMMENTS

The ENGINEER shall update the plans and incorporate comments received during phase one of this project.

9.1 Update Preliminary Plan Alignments – This task includes coordinating with the Surveyor to field check and update the topographic mapping information. The preliminary plans will be updated to include the recommendations of the CITY Council. The updating of the plans include:

- Updating the typical sections
- Updating the horizontal and vertical alignments
- Re-model the roadway
- Cleanup and annotate new design data
- Re-cut and cleanup preliminary cross sections

- 9.2 Stop sign warrants and traffic analysis – Stop sign warrants and related traffic counts and analysis will be investigated for three intersections (Hassyampa Lane, Highland Avenue, and Park Avenue.) Kimley-Horn and Associates will collect available traffic data from the CITY. If current data is not available, KHA will collect the required data in the field. The traffic analysis will include the elements necessary to evaluate the need for stop signs at the above mentioned locations, and will be based on the current MUTCD stop sign warrants.
- 9.3 Preliminary quantities and construction cost estimate - this task will also include calculating and updating preliminary project quantities and developing a preliminary construction cost estimate.
- 9.4 Sanitary sewer capacity analysis & Master Plan review – Kimley Horn and Associates will review existing data obtained from the CITY regarding capacity and routing of sanitary sewerage flows in this area. Existing flows will be estimated using City of Prescott Guidelines. Upstream flows from the existing master plan will be utilized. Vertical and horizontal alignments of the sewer lines will be analyzed to determine capacity. A letter report will be prepared that describes the feasibility of abandonment of the smaller diameter redundant lines. It will include the number of taps that must be relocated and estimated costs. No improvement plans will be provided under this task. Improvement Plans for sanitary sewer are covered under task 8.5.
- 9.5 Sanitary Sewer Video – Hoffman Southwest Pro Pipe will conduct a Closed Circuit Television (CCTV) investigation of the existing sanitary sewer lines. This investigation will include jet cleaning the sewer lines prior to introducing a camera. The CCTV record will be delivered to the CITY of Prescott on Compact Disc Media which includes the viewer to allow viewing of the televising on a personal computer. The inspection will horizontally locate existing service taps for use in developing abandonment plans for the existing smaller diameter pipelines. Existing taps on the smaller diameter lines will have to be moved to the larger diameter pipeline. The investigation will include information about the overall structural condition of the pipe, presence of obstructions, pipe defects such as sags, cracks, holes, offset joints, misalignments, root intrusion, and blockages.

## 10.0 COE 404 PERMIT–

- 10.1 Prepare Section 404 Jurisdictional Determination – This task has been completed for the Copper Basin Road Project. However, it is the CITY's intent to maximize the efficiency of the Park Avenue and the Copper Basin Road projects by combining them into one (1) COE National 404 Permit. This task will prepare the necessary documentation for submittal to the COE to confirm the status of the Park Avenue corridor and determine if other areas within the Park Avenue corridor are considered waters of the United States.

It will include a field reconnaissance conducted by environmental scientists to identify the ordinary high water mark and an analysis based on current COE guidelines for determining the jurisdictional status of ephemeral and intermittent wash channels in the southwest. The field reconnaissance will include a preliminary evaluation of the Park Avenue corridor for potential

endangered species inhabitation or suitable habitat and a general description of the wildlife habitat potential.

On behalf of the CITY, the ENGINEER will prepare and submit a request for a Jurisdictional Determination (JD) to the COE to confirm the jurisdictional status of the corridor.

- 10.2 Prepare Section 404 Pre-Construction Notification for Authorization under Nationwide Permit No. 14 - Due to the presence of waters of the United States within the project corridor, the Copper Basin Road and Park Avenue projects will require a Section 404 permit. This scope assumes that the impacts will be minimal, and the projects will qualify for authorization under the COE's Nationwide Permit No. 14. If it is determined that the project will not be eligible for authorization under the COE's Nationwide Permit Program, this scope will require revision. The impacts associate with these two projects will be combined and will be submitted to the COE as a single pre-construction notification.

This task will include the preparation of a pre-construction notification for authorization under Nationwide Permit No. 14. KHA will prepare a pre-construction notification (PCN) for Nationwide Permit No. 14. The PCN will include a description of the proposed project and its impacts to waters of the U.S. and a discussion of the proposed projects compliance with the nationwide permit general conditions. The PCN will also include a description of the mitigation that will be performed to compensate for impacts to waters of the U.S. resulting from the project.

- 10.3 Agency Coordination - This task includes coordination with agencies following submittal of the pre-construction notification. This may include providing additional information to the COE, the U.S. Fish and Wildlife Service, the State Historic Preservation Office, and other applicable agencies.
- 10.4 Prepare Native Plant Evaluation per Arizona Native Plant Law Guidelines – This task is for the preparation of the Jurisdictional Determination for the Park Avenue portion of the project. This will identify plant species subject to the Arizona Native Plant Law requirements. The ENGINEER will prepare a technical memorandum that presents the findings of the Native Plant Evaluation.
- 10.5 Conduct Cultural Resources Survey - This task is for the preparation of the Jurisdictional Determination for the Park Avenue portion of the project. Archaeological Consulting Services, Ltd. (ACS) will conduct a literature review to determine previously identified cultural resources within the Park Avenue corridor. ACS will review site and project files at the State

#### 11.7 PREPARATION OF PRELIMINARY (60%) PLANS

The ENGINEER shall submit to the CITY and to all utilities, a set of preliminary plans at the 60% level of completion. These plans will show, at a minimum, the final plan and profile views of all existing features, all new improvements, existing and proposed utility locations and existing and new right-of-way limits. This task shall also include the preparation of the preliminary technical specifications and special provisions.

**12.0 PREPARATION OF PRE-FINAL (95%) PLANS**

The ENGINEER shall incorporate any alternative selections, changes, corrections and/or additions as a result of the preliminary plan review. The resulting set of plans will be submitted to the CITY and utilities as a pre-final design, which will be reviewed by the CITY and utilities for any final adjustments or corrections.

**13.0 PREPARATION OF FINAL (100%) BIDDING DOCUMENTS**

The final plans shall be prepared incorporating any adjustments or corrections made during the review of the pre-final plans. Additionally, the ENGINEER shall prepare the technical specifications, special provisions, the Final ENGINEER'S Estimate and bidding schedule. A set of final reproducibles shall be provided on Mylar.

**14.0 ASSISTANCE DURING THE BIDDING PROCESS**

14.1 Bid Assistance – The ENGINEER shall be required to attend and actively participate in the pre-bid meeting, and the pre-construction meeting.



**Copper Basin Road- Final Design**

**Contract No.  
Project No.**

**Total Design Fees (Roadway + Water/Sewer Design)**

**DERIVATION OF COST PROPOSAL SUMMARY**

(Figures Rounded To The Nearest \$1)

**ESTIMATED DIRECT LABOR**

CLASSIFICATION	PERSON HOURS	BILLING RATE/HOUR	TOTAL
Project Principal	-	\$ 190.00	\$ -
Project Manager	407	\$ 167.00	\$ 67,969
Project Engineer	1,073	\$ 120.00	\$ 128,760
Engineer/Designer	1,152	\$ 84.00	\$ 96,768
Tech/Draftsman	1,713	\$ 81.00	\$ 138,785
Administrative	43	\$ 71.00	\$ 3,053
Clerical	75	\$ 58.00	\$ 4,321
	<b>4,463</b> Hours		

Estimated Labor Cost \$ 439,656 EC10

**ESTIMATED DIRECT EXPENSES**

(Listed By Item At Estimated Actual Cost - NO MARKUP)

Travel	\$ 1,239	
Miscellaneous Expenses	\$ -	
<b>Total Estimated Expenses</b>		<u>\$ 1,239</u> EC30

**ESTIMATED OUTSIDE SERVICES AND CONSULTANTS**

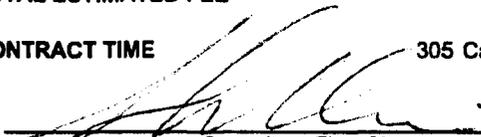
Firm	Cost	Compensation Method
Kelly Wise	\$ 6,000	LS
Olson Communications	\$ 4,000	LS
Thomas Reprographics - Mount Aerials	\$ 1,000	LS
Potholes	\$ 10,000	LS
Sewer Video (Electronic Development Co. Inc)	\$ 12,000	LS
ACS	\$ 1,500	LS
<b>Total Estimated Outside Services</b>		<u>\$ 34,500</u> EC40

**TOTAL ESTIMATED COST TO CONSULTANT** \$ 35,739

Allocation @ 3.8% of Total Labor \$ 16,707

**TOTAL ESTIMATED FEE** \$ 492,102

**CONTRACT TIME** 305 Calendar Days

  
\_\_\_\_\_  
Consultant Firm Signature

5/13/04  
Date







		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
					\$ 190.00	\$ 167.00	\$ 120.00	\$ 84.00	\$ 61.00	\$ 71.00	\$ 58.00			
<b>10.0 COE 404 Permit</b>														
USACOE 404 Permit														
10.1	Jurisdictional Determination (Park Ave)				4	9	18			8				37
10.2	404 Pre- Construction Notification (PCN)				5	18	27			3				53
10.3	Agency Coordination				2	9	4			2				17
10.4	Native Plant Survey & Memorandum (Park Ave)				6	8				2				18
10.5	Cultural Resource Coordination (Park Ave)				2	4	2			2				10
<b>Subtotal 10.0 COE 404 Permit</b>					21	48	51			15				135
<b>11.0 Preparation of 60% Plans</b>														
	Prepare Summary of Comments				-	-	-	4	-	-			4	8
	Prepare Preliminary Special Provisions				2	12	18						4	38
	Update Cost Estimate				2	3	5							10
	Submit 60% Plans				1	2			2				5	10
<b>Subtotal 11.0 Preparation of 60% Plans</b>					-	5	17	27	2	-			13	64
<b>12.0 Preparation of 95% Plans</b>														
	Prepare Summary of Comments				-	-	-	4	-	-			2	8
	Update Cost Estimate				1	2	3		2					8
	Submit 95% Plans				1	2			4				6	13
<b>Subtotal 12.0 Preparation of 95% Plans</b>					-	2	4	7	6	-			8	27
<b>13.0 Preparation of 100% Bid Docs</b>														
	Prepare Summary of Comments				-	-	-	4	-	-			2	8
	Prepare Final Estimate & Bidding Schedule				3	4	4		2					13
	Plot Final Plan Set on Mylar	130				4			10				1	15
<b>Subtotal 13.0 Preparation of 100% Bid Docs</b>					-	3	8	8	12	-			3	34
<b>14.0 Assistance During Bid Process</b>														
	Answer / Clarify Questions During Bidding Period				2	4	2						1	9
	Attend Pre-bid Meeting (1 Person)					6								6
	Attend Bid Opening (1 Person)					6								6
	Attend Pre- Construction Meeting (1 Person)					6								6
<b>Subtotal 14.0 Assistance During Bid Process</b>					-	2	22	2	-	-			1	27
<b>Totals</b>		301			-	407	1,073	1,152	1,713	-43			75	4,463



**Copper Basin Road- Final Design**

**Contract No.  
Project No.**

**May 3, 2004**

**ESTIMATE OF DIRECT EXPENSES**

**Travel**

A. Subsistence (2 people x 12 days) (0 Breakfast, 24 Lunches, 3 Dinner)	\$ 203 day
B. Out of town - To Prescott 2800 miles (14 Trips) x \$0.370 per mile	2,800 miles \$ 1,036
<b>Subtotal Travel</b>	<b>\$ 1,239</b>

**ESTIMATED OUTSIDE SERVICES & CONSULTANTS**

Kelly Wise	\$ 6,000
Olson Communications	\$ 4,000
Thomas Reprographics - Mount Aerials	\$ 1,000
Potholes	\$ 10,000
Sewer Video (Electronic Development Co. Inc.)	\$ 12,000
ACS	\$ 1,500
<b>TOTAL ESTIMATED OUTSIDE SERVICES</b>	<b>\$ 34,500</b>

**TOTAL ESTIMATED EXPENSES** **\$ 35,739**



City of Phoenix  
Department of Public Works  
Engineering Division

Project: [Illegible]  
Date: September 1, 2005

Approved by:

[Signature]

9/15/05

Approved by:

[Signature]

9/19/05

Approved by:

[Signature]

9/19/05

Accepted by:

[Signature]

9/22/05

Copy to: Steve Nishimoto, City Manager  
Megan Manning, City Clerk  
Derek Fisher, Permitting



**City of Prescott**  
**Supplemental Agreement No. Three**  
**Copper Basin Road Phase II Design**

Consultant: Kimley-Horn and Associates  
 Contract No.: 3-039  
 Account: Various  
 Date: August 13, 2007

**Purpose of Supplement:**

To amend the contract for additional design services for realignment of Moyer Road, including related drainage and wall structure design changes needed to avoid impacting Southwest Indian Bible Conference Center due to Copper Basin Road construction according to the attached letter dated July 19, 2007.

You are directed to make the following changes in the Contract Documents:

Increase Contract amount by \$7,239.00.

Roadway Account No. 66-8864-410

Item	Description	Adjustment to Quantity	Unit	Unit Price	Total
3-1	Moyer Road Revisions	1.00	LS	7,239.00	7,239.00
	Net Increase Acct. No. 66-8864-410				\$ 7,239.00

**Summary of Changes In Contract Price**

Original Contract Price	\$ 253,702.00
Supplement One - Phase II Final Design Services	\$ 492,102.00
Supplement Two - Add'l Design	\$ 75,013.00
Total Increase this Supplement	\$ 7,239.00
Amended Contract Price	\$ 828,056.00

Recommended by:

Dale S. Wachs / City Engineer

8/13/07  
 Date

Approved by:

Mark Nietupski, Engineering Services Director

8-13-07  
 Date

Accepted by:

Kimley-Horn & Associates

8/14/07  
 Date

Copy to: Steve Norwood, City Manager  
 Liz Burke, City Clerk  
 Dawn Foster, Purchasing



Kimley-Horn  
and Associates, Inc.

July 19th, 2007

Mr. Dale Wachs  
City of Prescott  
433 N. Virginia Street  
Prescott, AZ, 86302

■  
Suite 300  
7878 N. 18th Street  
Phoenix, Arizona  
85020

Re: Copper Basin Road - Additional Services  
KHA Project # 091345003

Dear Mr. Wachs:

We are prepared to begin the additional scope of services you requested on the Copper Basin Road Project. As discussed, KHA's design goal is to avoid any impacts to the Indian Bible Community Property due to reconstruction of Copper Basin Road. This will require the realignment of Moyer Road and related drainage and wall structure. These specific services include modifying the P, S, & E plans. This includes updating the following:

- Moyer Road Typical Section Sheet p. 9 of 137  
New Stationing will be applied to the typical sections. The section will be reviewed and modified accordingly as slopes may change.
- Mainline Roadway Sheet p. 49 of 137  
KHA will update the mainline roadway sheet that requires adjustment to callouts, hatching and other miscellaneous CAD to tie the road back into the mainline roadway. The radius returns will be modeled.
- Drainage Updates Sheet p. 100, 109 of 137  
Shifting the side road requires the redesign of two minor storm drain systems. New placement and elevations will be determined and the horizontal and vertical layouts will be modified. KHA will update all drainage summaries and quantities as necessary.
- Moyer Side Road Sheets p. 67, 68 of 137  
KHA will realign remodel Moyer Road, and CAD any necessary changes to avoid impact to the Southwest Indian Bible Community Property.
- Indian Bible Land Driveway Modifications p. 27, 81 of 137  
KHA will remove the driveway reconstruction, drainage improvements and new fencing near the Indian Bible Land. KHA's design goal is to avoid any impacts due to reconstruction of Copper Basin Road to this property. These items will be removed from the estimate.
- Kimley-Horn and Associates will provide project coordination with City staff. No meetings or site visits are anticipated.
- Additional Services – If wall sections are necessary in order to avoid impacts to the Indian Bible Community Property, additional services would be required.

■  
TEL 802 944 5500  
FAX 802 944 7423



Kimley-Horn  
and Associates, Inc.

Our anticipated fee for these services is \$7,239.00. Since these services are outside the scope of our original contract dated 5/21/04, it is important that we obtain written authorization. The terms and conditions of our original contract apply to these additional services.

Please sign below as indicated and fax to us at 602-906-1174.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Shamon Ahartz, P.E.  
Associate

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Date*

**Water & Sewer Design**  
**DERIVATION OF COST PROPOSAL SUMMARY**

(Figures Rounded To The Nearest \$1)

**ESTIMATED DIRECT LABOR**

<u>CLASSIFICATION</u>	<u>PERSON HOURS</u>	<u>BILLING RATE/HOUR</u>	<u>TOTAL</u>
Project Principal	-	\$ 218.00	\$ -
Project Manager	4	\$ 177.00	\$ 708
Project Engineer	18	\$ 130.00	\$ 2,340
Engineer/Designer	21	\$ 105.00	\$ 2,153
Tech/Draftsman	18	\$ 90.00	\$ 1,620
Administrative	1	\$ 91.00	\$ 91
Clerical	1	\$ 62.00	\$ 62

63 Hours

Estimated Labor Cost

\$ 6,974 EC10

**ESTIMATED DIRECT EXPENSES**

(Listed By Item At Estimated Actual Cost - NO MARKUP)

Allocation @ 3.8% of Total Labor

\$ 265

**TOTAL ESTIMATED FEE**

\$ 7,239

**CONTRACT TIME**

180 Calendar Days

  
\_\_\_\_\_  
Consultant Firm Signature

7/19/07  
Date

