

# PRESCOTT CITY COUNCIL STUDY SESSION AGENDA

**PRESCOTT CITY COUNCIL  
STUDY SESSION  
TUESDAY, MARCH 2, 2010  
3:00 P.M.**

**Council Chambers  
201 South Cortez Street  
Prescott, Arizona 86303  
(928) 777-1100**

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

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION**      Pastor Lloyd Teeter, Church of Nazarene
- ◆ **PLEDGE OF ALLEGIANCE**      Councilwoman Suttles
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

Mayor Kuykendall	
Councilman Blair	Councilwoman Linn
Councilman Hanna	Councilwoman Lopas
Councilman Lamerson	Councilwoman Suttles

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

**I. PROCLAMATION**

A. *March 2010 as Red Cross Month in Prescott.*

**II. DISCUSSION ITEMS**

A. *Authorization to apply for funding from the Governor's Office of Highway Safety for overtime payments and related expense to DUI enforcement and aggressive driving details in the amount of \$64,100.00.*

B. *Authorization to apply for funding from the Governor's Office of Highway Safety to purchase an unmarked enforcement vehicle for DUI and aggressive driver enforcement in the amount of \$43,075.00.*

- C. Adoption of Resolution No. 4007-1037 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement ("IGA") with Prescott Unified School District (P.U.S.D.) for the exchange of facilities and various maintenance requirements and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- D. Notice of Public Hearing (March 9) and approval of Draft Consolidated Plan FY2010-2014, Annual Action Plan FY2010, and Citizens Participation Plan 2010-2014.
- E. The Bradshaws – A Planned Area Development:
  - 1. Approval of Site Plan Amendment for Phase IV of The Bradshaws – A Planned Area Development comprising 32 Senior Apartments located on approximately 1.5 acres at the Southeast corner of Bradshaw Drive and Stetson Drive; Zoning is Business General; Owner, Wescap Investments; Agent, Fergis and Hardings, Inc. (SI10-001).
  - 2. Waiver of LDC Section 9.10.2 regarding the subdivision process.
  - 3. Approval of Water Service Agreements for Phases III, IV and V, Nos. 10-001, 10-002, and 10-003.
- F. Adoption of Ordinance No. 4732-1029 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending the zoning of certain property within the City of Prescott generally located at the northwest corner of East Sheldon Street and North Alarcon Street from Multi-Family High Density (MF-H) to Industrial Light (IL) zoning district. (Rezone of approximately .09 acres Owner, Miss Kitty's Cat House; Agent, Marcia L. Kerans; APN 113-13-006A.) (RZ09-009)
- G. Adoption of Ordinance No. 4733-1030 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the purchase of real property belonging to A. Roy and Donna L. Bennett Family Trust for the construction of a new Zone 27 Water Utility Pump Station, and authorizing the Mayor and City staff to take all necessary steps to effectuate said purchases.
- H. Council direction on negotiations re acquisition of real property identified as Thumb Butte Estates Lot 18 for the Zone 24 & 27 Water Reservoir Upgrade and Replacement Project.
- I. Approval of a Settlement Agreement and Release with TranSystems Corporation for acceptance of \$100,000.00 for modification of the retaining wall adjacent to Iron Springs Road and Vyne Street.

- J. Adoption of Ordinance No. 4734-1031 - An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the purchase of real properties, easement and improvements from Flower Fields, LLC, Ken Lain, for the Iron Springs Road Retaining Wall Improvement Project, and authorizing the Mayor and City staff to take all necessary steps to effectuate said purchases, and declaring an emergency.
- K. Approval of the Minutes of the Prescott City Council Workshop of February 23, 2010; the Regular Voting Meeting of February 23, 2010 and the Study Session of March 2, 2010.
- L. Selection of items for placement on the agenda of the Regular Voting Meeting of March 9, 2010.

**III. ADJOURNMENT**

CERTIFICATION OF POSTING OF NOTICE

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

\_\_\_\_\_  
Elizabeth A. Burke, MMC, City Clerk

**MARCH IS RED CROSS MONTH**

**MARCH 2010**

**WHEREAS**, today, the mission of the American Red Cross is more relevant than ever as we confront a changing America full of unique challenges; and

**WHEREAS**, through its preparedness initiative to Be Red Cross Ready, the Red Cross is empowering individuals and families to protect themselves in three simple steps – Make a Plan, Build a Kit and Be Informed; and

**WHEREAS**, the American Red Cross, for more than 125 years, has honored its mission to provide relief to disaster victims while helping people prevent, prepare for and respond to emergencies; and

**WHEREAS**, last year local volunteers helped their neighbors in need by responding to 20 disasters in Yavapai County; and

**WHEREAS**, last year 1,715 people were trained in life-saving skills and another 1,349 were trained in water safety in Yavapai County; and

**WHEREAS**, more than 1,600 critical messages were relayed for Arizona service members and their families around the world; and

**WHEREAS**, compassionate and caring people who want to make a difference in Arizona and across the nation, at home and abroad, channel their support through the American Red Cross.

**NOW THEREFORE**, I, Marlin D. Kuykendall, Mayor of the City of Prescott, Arizona, do hereby proclaim March 2010 as Red Cross Month in Prescott.

Given under my hand in these free United States in the City of Prescott, on the second day of March two thousand nine, and to which I have caused the Seal of the City of Prescott to be affixed and have made this proclamation public.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Prescott to be affixed this 2nd day of March, 2010.



*Marlin D. Kuykendall*  
**MARLIN D. KUYKENDALL, MAYOR**  
City of Prescott

**ATTEST:**

*Elizabeth A. Burke*  
**ELIZABETH A. BURKE, CITY CLERK**  
City of Prescott

**COUNCIL AGENDA MEMO – March 2 & 9, 2010**

**DEPARTMENT: POLICE**

**AGENDA ITEM: Recommendation for Council to approve completion of a grant application to the Governor’s Office of Highway Safety seeking funds in the amount of \$64,100. If approved, funding will be used for DUI and aggressive driver enforcement, as well as purchase of speed measurement and portable breath testing devices.**

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Michael Kappel</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> 	<i>02/25/10</i>

**Summary:**

The Prescott Police Department requests approval to submit an application for grant funding provided by the Governor’s Office of Highway Safety in the amount of \$64,100. The majority of awarded funds will be use to continue our Department’s participation with the Tri-City DUI Task Force; however, grant funding will also be sought for aggressive driver enforcement, and purchase of traffic enforcement related equipment.

**Background:**

In October of 1994, the Prescott Police Department was successful in applying for grant funds through the Arizona Governor’s Office of Highway Safety (GOHS) to form the Northern Arizona (now the Tri-City) DUI Task Force. The Task Force was created in May of 1995, with the Prescott Police as administrator. This multi-agency Task Force has continued to conduct special enforcement operations each year since its inception with grant funding provided by GOHS. However, in a marked change from previous years each participating agency will apply for individual funding, and our Department, although remaining administrator of the Taskforce, will not coordinate pass-through funds.

The DUI Task Force operates primarily in the Tri-City area, but also includes the surrounding county and forestland, as well as agencies in the Verde Valley. Participating agencies in the Task Force have included the Prescott Police Department, Prescott Valley Police Department, Yavapai County Sheriff’s Office, Arizona Department of Public Safety, Chino Valley Police Department, Cottonwood Police Department, Clarkdale Police Department, Camp Verde Marshal’s Office and the Sedona Police Department.

The Prescott Police Department has received notification from the Governor’s Office of Highway Safety of the opportunity to apply for FY2011 grant funding. Consequently, our Department requests permission to apply for funds allowing continued participation with the Tri-City DUI Task Force. If awarded, funds will pay for officer overtime and employee related operating expenses throughout the grant period.

In addition to the above, funds will be requested for overtime and employee related operating expenses that allow us to continue speed and aggressive driving deterrence

**AGENDA ITEM:** Recommendation for Council to approve completion of a grant application to the Governor's Office of Highway Safety seeking funds in the amount of \$64,100 for DUI and aggressive driver enforcement, as well as purchase of speed measurement and portable breath testing devices.

details in areas with high accident rates, as well as purchase of two laser speed measurement devices and four portable breath testing equipment to support enforcement efforts by our Department's Patrol Bureau.

Because of the February 26, 2010 deadline for this grant application, and the cycle of Prescott City Council Meetings, we are submitting the initial application in order to meet the submittal deadline pending City Council approval on March 9, 2010.

**Financial Impact:**

There are no requirements for local matching funds associated with this grant award. Consequently, there would be no fiscal impact to the City.

**Recommended Action:**

**MOVE** to approve completion of a grant application to the Governor's Office of Highway Safety for grant funds in the amount of \$64,100.00.

**COUNCIL AGENDA MEMO – March 2 & 9, 2010**

**DEPARTMENT: POLICE**

**AGENDA ITEM: Recommendation for Council to approve completion of a grant application to the Governor's Office of Highway Safety seeking funds in the amount of \$43,075 to be used for the purchase of an unmarked enforcement vehicle.**

**Approved By:**

**Date:**

<b>Department Head: Michael Kabbel</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> <i>SNorwood</i>	<i>02/25/10</i>

**Summary:**

The Prescott Police Department requests approval to submit an application for grant funding provided by the Governor's Office of Highway Safety in the amount of \$43,075. Awarded funds will be used to purchase an unmarked enforcement vehicle equipped with emergency lighting and equipment, speed detection system, and a mobile data computer.

**Background:**

The Prescott Police Department has received notification from the Governor's Office of Highway Safety (GOHS) regarding the availability of grant funds for FY2011. Consequently, our Department requests permission to apply for funds in the amount of \$43,075, to be used to purchase an unmarked enforcement vehicle equipped with a speed detection system, emergency lighting and equipment, and a mobile data computer. This vehicle will be used to detect impaired and aggressive drivers throughout the year, as well as supporting enforcement efforts associated with the Tri-City DUI Taskforce and Holiday DUI enforcement campaign.

Because of the February 26, 2010 deadline for this grant application, and the cycle of Prescott City Council Meetings, we are submitting the initial application in order to meet the submittal deadline pending City Council approval on March 9, 2010.

**Financial Impact:**

There are no requirements for local matching funds associated with this grant award. Consequently, there would be no fiscal impact to the City.

**Recommended Action:**

**MOVE** to approve completion of a grant application to the Governor's Office of Highway Safety for grant funds in the amount of \$43,075.

<b>COUNCIL AGENDA MEMO – (03/02/10 &amp; 03/09/10)</b>	
<b>DEPARTMENT:</b>	<b>Parks, Recreation &amp; Library</b>
<b>AGENDA ITEM:</b>	<b>Resolution No. 4007-1037 - Intergovernmental Agreement with Prescott Unified School District</b>

	<b>Date:</b>
<b>Department Head:</b> Debbie Horton	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>[Signature]</i>	<i>02/25/10</i>

**Background:**

The City of Prescott (C.O.P.) and Prescott Unified School District (P.U.S.D.) have an existing IGA that outlines the exchange of facilities and various maintenance requirements. This new IGA received input from city and district representatives and will replace the previous document. Major points of the new agreement include:

- PUSD may use Pioneer & Kuebler fields (February – May), various Ramadas (August – May), Antelope Hills Golf Course (subject to availability) and the Community Nature Center at no cost to the district
- The City of Prescott may use the Prescott High School & Mile High Middle School gymnasiums (subject to availability) & track facilities (3 weeks per year) at no cost to the city
- Both entities are responsible for any event preparation requirements of borrowed facility or will bear the cost of labor & supplies
- Both entities are responsible for general maintenance & upkeep of their respective properties & equipment
- Agreement’s term will be for three years and will be automatically renewed for one year periods thereafter

The Parks and Recreation Department and officials from Prescott Unified School District are in complete agreement with this new IGA.

<b>Recommended Action: MOVE to adopt Resolution No. 4007-1037.</b>
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**RESOLUTION NO. 4007-1037**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (“IGA”) WITH PRESCOTT UNIFIED SCHOOL DISTRICT (P.U.S.D.) FOR THE EXCHANGE OF FACILITIES AND VARIOUS MAINTENANCE REQUIREMENTS AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE**

**RECITALS:**

WHEREAS, the City of Prescott (City) and Prescott Unified School District (P.U.S.D.) wish to enter into the attached IGA, Exhibit “A”, hereto. This Agreement specifically supersedes any prior agreements between the parties and repeals that certain prior IGA #03-087; and

WHEREAS, ARS §§11-951 AND 11-952 authorize “public agencies” such as City of Prescott and Prescott Unified School District to enter into intergovernmental agreements to contract for services and facilities; and

WHEREAS, major points of the new agreement include (1) PUSD may use Pioneer & Kuebler fields (February – May), various Ramadas (August-May), Antelope Hills Golf Course (subject to availability) & track facilities (3 weeks per year) at no cost to the City; (2) City may use the Prescott High School & Mile High Middle School gymnasiums (subject to availability) & track facilities (3 weeks per year) at no cost to the City; (3) both entities are responsible for any event preparation requirements of borrowed facility or shall bear the cost of labor & supplies; (4) both entities are responsible for general maintenance & upkeep of their respective properties & equipment.

WHEREAS, the term of this Intergovernmental Agreement shall be three years and will automatically renew itself for one year periods thereafter; and

WHEREAS, there are no financial implications of this Agreement.

**ENACTMENTS:**

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

Section 1. THAT the City of Prescott hereby approves the attached Intergovernmental Agreement (Exhibit “A”) between the City of Prescott and Prescott Unified School District (P.U.S.D.) for the exchange of facilities and various maintenance requirements.

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

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 9<sup>th</sup> day of March, 2010.

\_\_\_\_\_  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

## EXHIBIT 'A'

**INTERGOVERNMENTAL AGREEMENT**  
**Between**  
**The City of Prescott**  
**And**  
**Prescott Unified School District**

THIS AGREEMENT, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Prescott, an Arizona municipal corporation (hereinafter referred to as "City"), and the Prescott Unified School District, an Arizona School District (hereinafter referred to as "PUSD")

WHEREAS, PUSD is the owner of certain lands within the City limits of the City of Prescott which are currently available for use as and suitable for use as a recreational facility; and

WHEREAS, the parties acknowledge the need to enter into an agreement for the use and maintenance of certain PUSD property, and further acknowledge that the residents of both PUSD and City will benefit thereby; and

WHEREAS, the parties hereto are empowered to enter into this Agreement pursuant to ARS Section 11-952.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES HEREIN CONTAINED, in consideration of that certain prior IGA #03-087, which agreements is hereby repealed and superseded by this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, the parties agree as follows:

**1. CITY FACILITIES:**

A. PIONEER PARK/ KUEBLER FIELD: PUSD may use these two athletic complexes for their spring girls' softball and boys' baseball program, February through May. The fields used will be determined by mutual agreement between Prescott High School and the Recreation Services Department.

B. PUSD may reserve Ramadas at city parks for school events, subject to availability, from August through May of each year. PUSD will be responsible for general clean-up of the area reserved for PUSD after said use.

C. GOLF COURSE: PUSD may use Antelope Hills Municipal Golf Course subject to availability, for their interscholastic golf team practice (including range balls) and matches.

D. COMMUNITY NATURE CENTER – PUSD shall ensure that the City has continued road access to the Nature Center, and PUSD shall continue to have access to the center for student activities.

**2. PUSD FACILITIES**

A. GYMNASIUMS: The City may use gymnasiums at Prescott High School and Mile-High Middle School throughout the year, subject to their availability. The gymnasiums used will be determined by mutual agreement between Prescott High School and the Recreation Services Department.

B. TRACK FACILITIES: The City may use track and field facilities at Mile High Middle School and Prescott High School for a maximum of three weeks per year for events such as the Hershey Track Meet and Senior Olympics.

**3. YOUTH LEAGUES**

The City will prepare PUSD fields for City sponsored youth leagues during their normal seasons of play. City sponsored youth leagues are Prescott Little League, American Youth Soccer Organization, Prescott Girls Softball Association, and Prescott Youth Football. Preparation will consist of dragging, lining fields and watering down infields as needed. Designated sites include fields at Taylor Hicks Elementary, Miller Valley Elementary, Prescott Mile High Middle School and the Prescott High School upper and lower fields.

4. All recreation facility and field usage will be at no cost to either entity. If there is a maintenance requirement (e.g. field preparation), the requesting entity will bear the labor and supply costs for the work required. Fees for labor and supplies will be

negotiated between parties. Both COP and PUSD will be responsible for the maintenance and upkeep of their respective properties and equipment (e.g. lights, fields, scoreboards, etc).

5. Restrooms – The user will be responsible for unlocking facility/complex restrooms and checking for damage before their event. The user will complete a final restroom inspection after their event and note any damages that may have occurred. In the event that damages have occurred, the user will be responsible for all necessary repairs. General cleanup will be performed by property owner. The user will lock restrooms before they depart the premises.

6. Pursuant to A.R.S. §38-511, either PUSD or 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 contract on behalf of the either PUSD or the CITY OF PRESCOTT is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The CITY OF PRESCOTT and/or PUSD further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of the CITY OF PRESCOTT and/or PUSD from any other party to the contract, arising as a result of this contract. PUSD has insurance coverage that satisfies the requirements of this section.

7. PUSD shall carry sufficient self insurance to cover the activities outlined in this Agreement, and shall hold the City harmless and indemnify the City from any and all

liability which may result from the acts or omissions of PUSD's employees or agents.

8. The City shall carry sufficient insurance to cover the activities outlined in this Agreement, and shall hold PUSD harmless and indemnify PUSD from any and all liability which may result from the acts or omissions of the City's employees or agents. The City's self insurance program satisfies the requirements of this section.

9. Whenever one party to this agreement damages property which is the subject of this agreement, that party will be solely responsible for repairs and replacement.

10. Both parties hereto agree that they will designate at all times at least one staff member to be a liaison of that agency in carrying out the provisions of this agreement, for purposes of notice, scheduling, etc. Initially, the designated staff persons are:

For the City:           Debbie Horton, Recreation Services Director  
                              P.O. Box 2059, Prescott, AZ 86302  
                              Phone: (928) 777-1561

For PUSD:               Jay Collier, Prescott Unified School District Liaison  
                              926 Hinman Street, Prescott, AZ 86301  
                              Phone: (928) 445-5400

11. PUSD further agrees and covenants for the consideration provided above, not to file any claim, lawsuit or other proceeding, whether judicial or administrative against the City, its officers, agents and employees arising or relating in any way to this Agreement or to activities of PUSD undertaken or in any way relating to this Agreement or the funding by City.

12. The terms and conditions of this Agreement shall be binding upon the PUSD, its successors, heirs and assigns. PUSD further expressly agrees that the foregoing waiver and release of liability and assumption of risk agreement by PUSD contained herein is intended to be as broad and inclusive as is permitted by City Ordinances and the laws of

the State of Arizona and that if any portion thereof is held invalid, it is agreed PUSD hereby agrees to indemnify and hold harmless the City, its department and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of participation pursuant to this Agreement, where said claims, liabilities, expenses or lawsuits arise by the acts of omissions of the undersigned or his/her agents. 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 activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.

13. The terms and conditions of this Agreement shall be binding upon the City, its successors, heirs and assigns. City further expressly agrees that the foregoing waiver and release of liability and assumption of risk agreement by City contained herein is intended to be as broad and inclusive as is permitted by City Ordinances and the laws of the State of Arizona and that if any portion thereof is held invalid, it is agreed City hereby agrees to indemnify and hold harmless PUSD, its department and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of participation pursuant to this Agreement, where said claims, liabilities, expenses or lawsuits arise by the acts of omissions of the undersigned or his/her agents. Further releases and discharges PUSD, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of PUSD, from any and all claims which activities as set forth below, other than those acts which occur due to the negligence of PUSD, its employees or agents.

14. Pursuant to A.R.S. §38-511, either PUSD or the City may cancel this contract,

without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of PUSD is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. PUSD further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of PUSD from any other party to the contract, arising as a result of this contract.

15. This Agreement shall remain in full force and effect for a term of three (3) years and shall be automatically renewed for successive one (1) year periods thereafter unless written notice of termination pursuant to Council or Board action is delivered to the other party no later than \_\_\_\_\_ 1<sup>st</sup> of the year preceding the desired termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials on the aforementioned date.

CITY OF PRESCOTT

PRESCOTT UNIFIED SCHOOL DISTRICT

\_\_\_\_\_  
Marlin D. Kuykendall  
Mayor

\_\_\_\_\_  
Kevin J. Kapp, Superintendent

ATTEST:

ATTEST:

\_\_\_\_\_  
Elizabeth A. Burke  
City Clerk

\_\_\_\_\_  
Andi Mayer, Administrative Assistant to  
the Governing Board and Superintendent

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Prescott, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Prescott.

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Gary Kidd, City Attorney

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned Deputy County attorney for Yavapai County, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the Prescott Unified School District.

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Thomas Stoxen, Deputy County Attorney

<b>COUNCIL AGENDA MEMO – March 2 and 09, 2010</b>	
<b>DEPARTMENT:</b>	City Manager, Grants
<b>AGENDA ITEM:</b>	Public Hearing (March 9), Draft Consolidated Plan FY 2010 – 2014 and Annual Action Plan FY 2010 as associated with the City's Community Development Block Grant (CDBG) Program and approval of the Citizens Participation Plan 2010-2014

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Linda Hartmann	February 24, 2010
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood 	02/25/10

**Background:**

The City was originally notified of Entitlement eligibility in August 2004. The Mayor appointed a Citizens Advisory Committee and the planning process was initiated. Since then we have processed four action plans and we are now working on our second consolidated plan.

To receive CDBG funding from HUD, the City must develop a Consolidated Plan and it is to cover a five year period and serve three functions:

1. Development planning that builds on a participatory process.
2. Application for HUD formula grant programs (CDBG).
3. Strategy to follow in carrying out HUD programs.

This Consolidated Plan has been developed to meet U.S. Department of Housing and Urban Development (HUD) requirements for Prescott to continue as CDBG "Entitlement Community".

The Plan includes three elements:

1. A Five-Year Consolidated Plan, Federal Fiscal Years 2010-2014
2. An Annual Action Plan, FFY 2010, City FY2011
3. A Citizens Participation Plan 2010-2014

A Public Hearing occurred on January 27, 2010. More than 700 post cards were sent to low/to moderate income neighborhoods; 33 letters were sent to providers regarding this meeting, additionally we used a large display ad in the Courier to touch as many people as possible for this meeting. The purpose of this meeting was to provide background information to, and to gain insight from the community and requests for dollars from service providers. The statistical data was collected from census records, HUD, State and local sources. Analysis of the data lead to the identification of priorities and strategies that are presented in the Draft Plan.

The Five-Year Plan includes information on needs and strategies for eight elements:

**AGENDA ITEM:** Public Hearing (March 9), Draft Consolidated Plan FY 2010 – 2014 and Annual Action Plan FY 2010 as associated with the City's Community Development Block Grant (CDBG) Program and approval of the Citizens Participation Plan 2010-2014

- Homelessness and Special Populations
- Affordable Housing
- Minority & Low Income Neighborhoods
- Fair Housing
- Public Infrastructure
- Barriers to Affordable Housing
- Housing Stock Rehabilitation
- Lead-based Paint

A Public comment period will occur between March 02 and April 02, 2010. A Final Consolidated Plan and 2010 Annual Action Plan with Public comments be addressed and the Plan will be presented to Council for approval on April 28, 2010. The Final Plans will be submitted to HUD on or before May 15, 2010 HUD's review and comment period will occur between May 15 and June 30, 2010.

**Project:**

The 2010 Citizens Participation Plan is an updated version of the original plan approved in 2005. The Annual Action Plan proposes uses for an anticipated \$294,000 in CDBG funds including:

- West Yavapai Guidance Clinic \$80,000 for projects at Hillside and Cortez locations
- Project Aware \$100,000 for matching funds to renovate their existing commercial space to accommodate 6 more apartments,.
- Prescott Meals on Wheels \$30,000 to support their MOW Homebound Low Income Elderly program.
- Fair Housing \$3000 to cover educational programs for the public.
- Prescott Area Women's Shelter, \$23,000 to re-floor kitchen area, add cabinets/shelving and the addition of a bathroom.
- Administration \$59,000 Salary, Analysis of Impediments to Fair Housing Study expenses, legal noticing, advertising, mailings.

It should be noted that the housing rehabilitation dollars from the 09 period will be a continuing project.

The Mayor's advisory committee supports both the 2010 Citizens Plan update and were in full agreement as to the selection of projects to go forward.

**Financial:**

It is expected that the CDBG allocation of anticipated amount of \$294,000 will be approved on July 01, 2010.

**Recommended Action:** (1) **MOVE** to close the public hearing; (2) **MOVE** to approve the Citizens Participation Plan 2010, the Action Plan Draft and the Consolidated Plan Draft.

City of Prescott  
CITIZEN PARTICIPATION PLAN  
2010

**Purpose of the Citizen Participation Plan**

The purpose of the Citizen Participation Plan is to provide a written policy and procedure that describes the actions to be taken to provide for, and to encourage, citizen participation in the development of the Consolidated Plan, any substantial amendments to an adopted Consolidated Plan, and the Annual Performance Report.

The City of Prescott encourages participation by low- and moderate-income persons, specifically those living in deteriorated areas as well as in areas where federal funds are proposed to be used and by residents of predominately low- and moderate-income neighborhoods.

The City of Prescott further encourages the participation of residents of public and assisted housing development in the process of developing and implementing the Consolidated Plan, along with recipients of tenant-based assistance and other low-income residents of targeted revitalization areas in which housing developments are located.

The City of Prescott provides citizens with a reasonable opportunity to comment on the Citizen Participation Plan (including any substantial amendments). The Citizen Participation Plan is a public document. It will be made accessible to those persons with disabilities and/or non-English speaking persons upon request.

**Availability to the Public**

The Citizen Participation Plan, the Consolidated Plan in adopted form, amendments to the Consolidated Plan and the CAPER will be available at the following locations:

Public Works Building  
ATTN: Grants Administrator  
433 N. Virginia Street  
Prescott, AZ 86301

Prescott Public Library  
215 E. Goodwin Street  
Prescott, AZ 86301

City of Prescott  
City Hall  
201 S. Cortez Street  
Prescott, AZ 86301

### **Access to Meetings, Information and Records**

To ensure that citizens, public agencies, and other interested parties have the opportunity to review and comment, the public will be provided with reasonable and timely access to meetings, information and records relating to the City's Consolidated Plan and the City's use of all federal, state and local funds in the conduct of strategies outlined in the Consolidated Plan. Access to these records may be obtained by contacting one of the entities listed above.

### **Public Hearings and Notices**

The City of Prescott shall hold at least two public hearings annually to obtain citizens' views and shall be conducted at a minimum of two different stages of the program year.

**The first public hearing will address:** purpose and content of Consolidated/Annual Action Plan; receive public comment regarding community needs and priorities; discussion of the type and amount of federal funds available and activities that are eligible; discussion of the City's CDBG open proposal process; and, dissemination of proposal packets to anyone who had not received a packet prior to the meeting.

**The second public hearing will address:** activities proposed to be undertaken and funded; open discussion of proposed activities; discussion of estimate of the low income benefit related to proposed activities; and, presentation by staff of draft Consolidated Plan or Annual Action Plan.

Notices of (1) public hearings and other public meetings related to the consolidated planning process, (2) funding availability and applicant workshops, (3) availability of the draft Consolidated Plan, (4) proposed substantial amendments to an adopted Consolidated Plan, and (5) availability of the draft Annual Performance Report will be published in Prescott's *Daily Courier*. Each public hearing will be noticed at least fourteen days prior to the public hearing date. Notices will include the time, date and location of the hearing as well as summary information about the matter to be discussed. A contact name and telephone number will be included in the notice for interested parties who have questions or requests for special accommodations prior to the hearing. Meetings will be held in an effort to accommodate various schedules.

Notices of hearings and public notices will also be displayed at City Hall, within and at the Prescott Public Library. Notices of (1) funding availability and

applicant workshops, and (2) the schedule of public hearings and other public meetings related to the consolidated planning process, will be mailed directly to interested parties who request to be included on a mailing list maintained for this purpose.

Public hearings will be handicap accessible. In addition, if a significant number of persons unable to understand the English language can reasonably be expected to attend the hearing, the City shall make sufficient translation services available so that such persons may understand the proceedings.

### **Publication of Draft Documents**

The Consolidated Plan Summary will be published in the *Daily Courier*. This summary will describe the contents and purpose of the plan and will include a description of the proposed activities in sufficient detail.

This plan is published in an effort to receive further public participation from interested stakeholders so they have the opportunity to examine the plan's contents and also submit additional comments.

Copies of the entire Consolidated Plan will be available at the City of Prescott in City Hall, Prescott Public Library and the Public Works Building Free copies will be provided to those who make a request in writing with their name and return address.

### **Comments and Complaints**

Citizens will have 30 days after publication to make comments in writing or orally at the public hearing. The City of Prescott shall consider any comments or views of citizens and/or local governments received either in writing or verbally at the hearings for preparation of the final Consolidated Plan, amendments, Annual Plans, or CAPER. A summary of these comments or views and a summary of the comments or views not accepted and the reason therefore shall be attached to the final plan or report.

The City will provide a timely, substantive, and written response to every written citizen complaint within 15 working days of its receipt.

### **Substantial Amendments to the Consolidated Plan**

Substantial amendments of the Consolidated Plan are defined as:

- 1) A change in the funding priorities to the Consolidated Plan when not undertaken through the Annual Action Planning process;
- 2) Project cancellations or project creations of any funding amount;
- 3) Any single increase or decrease in funding for a project that constitutes 10% or more of the current year's entitlement allocation.

Prior to making any substantial amendments to the Consolidated Plan, the City of Prescott must do the following:

- 1) Publish the amendments in the *Prescott Daily Courier* allowing 30 days to receive comments from the public concerning the amendments;
- 2) Upon termination of the 30 day public comment period, submit the amendments to the City Council for approval as part of a regular City Council meeting;
- 3) Notify HUD of the amendments, as well as the public response to the amendments.

### **Displacement**

The City of Prescott's Anti-displacement and Relocation Assistance Plan details the City's plans for minimizing displacement of persons as a result of CDBG assisted activities. It provides a guideline for assistance to persons who are displaced as a result of such activities.

### **Technical Assistance**

The Grants Administrator for the City of Prescott will provide technical assistance to any group which represents persons of low- and moderate-income in developing proposals for funding assistance under any of the programs covered by the Consolidated Plan. Assistance does not guarantee funding approval.

In addition, the Grants Administrator for the City of Prescott is available to answer questions concerning procedures for the development and implementation of the plan and all of its components. Citizens or organizations requesting technical assistance should contact the Grants Administrator at (928) 777-1143.

### **Consolidated Annual Performance and Evaluation Report (CAPER)**

The City of Prescott is required to make public annually the CAPER, a written summary and evaluation of accomplishments and performance based on the goals and activities described in the Consolidated Plan.

The availability of the CAPER, at the three referenced locations, Public Works Building, Prescott Public Library and City of Prescott offices, will be published in The Prescott *Daily Courier* allowing 15 days to receive comments about the CAPER from the public. The City of Prescott will consider any comments or views of citizens received in writing or orally at public hearings when preparing the performance report. The CAPER will be submitted to HUD, along with a summary of comments received.

## City of Prescott FY 2010 – 2014 HUD 5-Year Consolidated Plan Goals and Strategies

Goals	Strategies	Priority
<b>Homeless and Special Needs Populations</b>		
1. Increase the supply of transitional housing for families.  <i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Availability/Accessibility	a. Support organizations that develop and provide transitional housing for families.	√
	b. Rezone and allocate water to higher-density projects that provide transitional housing for families.	
2. Increase the supply of permanent housing for homeless and other special populations.  <i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Availability/Accessibility	a. Support organizations that develop and provide permanent supportive housing and other special populations, including those moving from transitional housing.	√
3. Increase supportive services to homeless and special populations.  <i>OBJECTIVE:</i> Suitable Living Environment <i>OUTCOME:</i> Availability/Accessibility	a. Support organizations that provide supportive services to homeless and special populations.	
4. Improve transportation services	a. Work cooperatively within the region to improve transportation by acquiring accessible vehicles.	
5. Increase accessibility in new and existing housing stock for persons with disabilities.	a. In all CDBG-funded activities, ensure a portion of units meet accessibility standards	
	b. Evaluate the effectiveness of and, if appropriate, revise the building code to require a portion of all units in new development meet accessibility standards.	
6. Increase the supply of efficiency and one-bedroom rental units in close proximity to employment and services and that are affordable to low-income households.  <i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Availability/Accessibility	a. Support the development of efficiency and rental units.	√
	b. Support applications for Low-Income Housing Tax Credit and other financial resources when such applications include efficiency and one-bedroom units.	

Goals	Strategies	Priority
<b>Affordable Housing</b>		
<p>7. Rehabilitate the existing housing stock.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Affordability</p>	a. Support owner-occupied housing rehabilitation programs for low- and moderate-income homeowners.	√
	b. Support owner-occupied emergency repair programs for low- and moderate-income homeowners.	
	c. Explore the creation of a rental rehabilitation program to improve the rental housing stock while maintaining affordability.	
	d. Support programs that acquire and rehabilitate substandard housing and resell rehabilitated units to low- and moderate-income first-time home buyers.	
<p>8. Increase the supply of homeownership units affordable to low- and moderate-income households, specifically those units located in close proximity to employment and priced for less than \$125,000 as adjusted annually based on changes in median income.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Affordability</p>	a. Rezone and allocate water to higher-density projects that provide homeownership housing.	√
	b. Support organizations that develop homeownership units.	√
	c. Support applications for Low-Income Housing Tax Credit homeownership projects.	
	d. Evaluate the effectiveness of, and if appropriate, match employer-sponsored homeownership programs.	
	e. Evaluate programs and organizations that provide down payment and closing cost assistance and identify methods of partnering to augment homeownership assistance within the City limits.	√
<p>9. Increase the supply of rental units in close proximity to employment and services and that are available to extremely-low income households.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Availability/Accessibility</p>	a. Support the development of rental units affordable to extremely-low income households.	√
	b. Support applications for Low-Income Housing Tax Credit and other financial resources when such applications include units affordable to extremely-low income households.	
	c. Rezone and allocate water to higher-density projects that provide rental units affordable to extremely-low income households.	

Goals	Strategies	Priority
<b>Affordable Housing (cont'd.)</b>		
<p>10. Increase the supply of homeownership units affordable to low- and moderate-income households, specifically those units located in close proximity to employment and priced for less than \$125,000 as adjusted annually based on changes in median income.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Affordability</p>	a. Rezone and allocate water to higher-density projects that provide homeownership housing.	√
	b. Support organizations that develop homeownership units.	√
	c. Support applications for Low-Income Housing Tax Credit homeownership projects.	
	d. Evaluate the effectiveness of, and if appropriate, match employer-sponsored homeownership programs.	
	e. Evaluate programs and organizations that provide down payment and closing cost assistance and identify methods of partnering to augment homeownership assistance within the City limits.	
	f. Evaluate the effectiveness of, and if effective, waive or pay permit fees and pay impact fees as an incentive to the private sector to develop homeownership units affordable to low- and moderate-income households.	
<p>11. Increase the supply of rental units in close proximity to employment that are affordable to extremely-low income households.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Availability/Accessibility</p>	a. Support the development of rental units affordable to extremely-low income households.	√
	b. Support applications for Low-Income Housing Tax Credit and other financial resources when such applications include units that are affordable to extremely-low income households.	√
	c. Rezone and allocate water to higher-density projects that provide rental units that are affordable to extremely-low income households.	

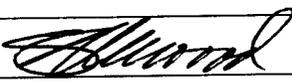
Goals	Strategies	Priority
<b>Affordable Housing (cont'd.)</b>		
<p>12. Increase the supply of efficiency and one-bedroom rental units in close proximity to employment and services that are affordable to low-income households.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Availability/Accessibility</p>	a. Support the development of efficiency and rental units.	√
	b. Support applications for Low-Income Housing Tax Credit and other financial resources when such applications include efficiency and one-bedroom units.	
	c. Rezone and allocate water to higher-density projects that include efficiency and one-bedroom units.	
<p>13. Rehabilitate the existing housing stock.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Sustainability</p>	a. Support owner-occupied housing rehabilitation programs for low- and moderate-income homeowners.	√
	b. Support owner-occupied emergency repair programs for low and moderate-income homeowners.	
	c. Explore the creation of a rental rehabilitation program to improve the rental housing stock while maintaining affordability.	
	d. Support programs that acquire and rehabilitate substandard housing and resell rehabilitated units to low- and moderate-income first-time homebuyers.	
<b>Minority and Low-Income Neighborhoods</b>		
<p>14. Revitalize qualifying neighborhoods.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Availability/Accessibility</p>	a. Support programs that concentrate the rehabilitation of the housing stock on the older housing units in the neighborhood.	√
	b. Support programs that upgrade the existing housing stock.	√
	c. Ensure that programs focusing on the rehabilitation of the older and existing housing stock preserve the character of the neighborhood by retaining the existing footprint of assisted housing units.	
	d. Replace or upgrade aging and deteriorated infrastructure.	√

Goals	Strategies	Priority
<b>Public Facilities</b>		
15. Ensure a variety of public facilities are available to meet the human development, social service and recreational needs of low- and moderate-income residents.	a. Support the construction and rehabilitation of public facilities.	
	b. Through planning efforts, identify the types of public facilities needed to serve the needs of neighborhoods and the community based on demographic and economic factors.	
<b>Public Infrastructure</b>		
16. Provide reliable water and sewer services to low- and moderate-income residents.  <i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Affordability	a. Support connections to City water and sewer services for low- and moderate-income households.	√
17. Provide assistance to populations with the most critical needs.	a. Support public transportation services for low- and moderate-income persons.	
	b. Support programs to assist victims of crimes.	
	c. Support programs to prevent and mitigate domestic violence.	
<b>Economic Development</b>		
18. Increase employment among low income, special needs and homeless populations	a. Support the development of a workforce housing plan.	
	b. Support programs that prepare low-income persons for employment and higher education.	
<b>Planning</b>		
19. Ensure that all community planning efforts include the participation of neighborhood stakeholders, including low- and moderate-income residents.	a. Include low- and moderate-income residents, representatives of organizations that assist low-income residents, local businesses, schools and government in comprehensive planning efforts.	

Goals	Strategies	Priority
<b>Barriers to Affordable Housing</b>		
<p>20. Increase awareness among citizens, elected officials, and all levels of government of the impact of governmental policies and community attitudes on housing affordability.</p>	<p>a. Support efforts to educate the public about the value of affordable housing in terms of community and economic diversity.</p>	
<p>21. Provide for a balanced community with a diversity of neighborhoods and residential housing types and prices.</p> <p><i>OBJECTIVE:</i> Decent Housing <i>OUTCOME:</i> Affordability</p>	<p>a. Revise the zoning code to allow accessory rental units.</p>	
	<p>b. Rezone and allocate water to housing development that provides a diversity of residential housing types and prices, including units affordable to low- and moderate-income households in accordance with the affordable housing strategy.</p>	√
	<p>c. Evaluate the effectiveness of waiving or paying permit fees and paying impact fees for housing affordable to low- and moderate-income households.</p>	√
<b>Lead-based Paint</b>		
<p>22. Reduce lead-based paint hazards in the City of Prescott.</p>	<p>a. Strengthen efforts to educate the public and private sector about lead paint poisoning hazards.</p>	
	<p>b. Incorporate lead paint information and notification procedures into all City-operated and sponsored housing and public service programs.</p>	
	<p>c. Ensure sufficient equipment and environmental services resources are available to provide testing necessary for the conduct of public facilities and housing rehabilitation programs or projects.</p>	√

Goals	Strategies	Priority
<b>Anti-poverty Strategy</b>		
23. Reduce the number of poverty-level households in the City of Prescott.	a. Identify the populations with the greatest poverty level and incorporate housing and services for these populations into program development.	
	b. Support Low-Income Housing Tax Credit and similar projects that incorporate housing and/or services for poverty-level households.	
	c. Expand job availability for low-income persons through the enforcement of the Section 3 initiative, which mandates that contractors on federally-funded construction projects attempt to recruit low-income subcontractors and employees.	
<b>Fair Housing</b>		
24. Ensure equal housing access for all persons regardless of race, color, religion, sex, handicap, familial status or national origin.  <i>OBJECTIVE:</i> Compliance with Fair Housing Laws	a. Adopt a fair housing ordinance that is substantially equivalent to the Arizona Fair Housing Act and the Fair Housing Amendment Act of 1998.	
	b. Establish a mediation process to resolve complaints of housing discrimination in City-sponsored programs and projects.	
	c. Develop guidelines for reasonable alterations to make housing accessible for handicapped and disabled persons receiving assistance through City-sponsored programs and projects.	
	d. Develop a partnership with the local real estate sales industry to promote fair housing and justice in determining housing values and insurance ratings, especially in older neighborhoods and those undergoing transition.	√

<b>COUNCIL AGENDA MEMO – (03/02/10 &amp; 03/09/10)</b>
<b>DEPARTMENT:</b> Community Development
<b>AGENDA ITEM:</b> Site Plan Amendment for Phase IV of The Bradshaws – A Planned Area Development comprising 32 Senior Apartments on Approx. 1.5 acres located South of Gurley and East of Bradshaw Drive; and Water Service Agreements for Phases III, IV and V. SI10-001, WSA Nos. 10-001, 10-002, and 10-003, and Waiver of Subdivision Regulations, LDC Section 9.10.2. Zoning: Business General, Owner: Wescap Investments, Agent: Fergis and Harding, Inc.

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Tom Guice	
<b>City Manager:</b> Steve Norwood 	02/25/10

**REQUEST**

Proposed amendment to "The Bradshaws" site plan for Phase IV (SI09-001) changing the occupancy from family housing to senior housing (called Bradshaw Senior III), increasing the number of units from 20 to 32, changing the building footprint, reorienting the building, and modifying the setbacks as follows: Front setback (on Stetson) from 35 feet to 20 feet, side set back from 40 feet to 22 feet at the closest point to 60 feet at the farthest point (22 feet)

The overall height will increase slightly from 42.5' to a proposed 44' (50' maximum allowed per Land Development Code). The total number of parking stalls for the overall site will be reduced by 8 spaces because of the less restrictive parking requirement for senior housing.

City Council has the authority to waiver unnecessary plat criteria and procedures under LDC Section. 9.10.13. The site plan and building permit process will result in a subdivision, per the LDC. State Law provides exceptions to the subdivision process in certain circumstances. This project is covered by one of the exception provisions and is not required by the Arizona Revised Statutes to subdivide. Subsequently, staff is recommending a waiver to the subdivision process and has provided a suggested motion to that effect.

**Water Service Agreement.** Water Service Agreements were previously prepared for the first two phases of the project. Additional agreements are needed for each of the last three phases, Phases III, IV and V, consisting of 16.1 ac ft, 11.2 ac. ft., and 2.8 ac ft., respectively.

**AREA MEETING.** An hour long area meeting was held on January 20<sup>th</sup> at the Bradshaws Senior Apartments with 6 adjoining property owners in attendance. Discussion topics included:

- The reason for change. Financing for senior projects is easier to acquire in today's market based upon the demand for senior housing, rather than be on the finance waiting list for affordable family housing. There is a waiting list of over 200 for the

**Agenda Item: SI10-001–The Bradshaws Phase IV Revised- A 'PAD' and WSA #10-001, 10-002 and 10-003.**

Bradshaw's Phase I, and over 100 for the applicant's similar project in Prescott Valley.)

- In order for the project to be economically feasible for the quality amenities being provided, 32 senior affordable family units are proposed.
- Basketball court noise impacts. (The architect agreed to move the court to the south property line).
- Concern about the building ridgeline height, now proposed to be 44', an 18 inch increase from the previously approved 20 unit-building to the new 32-unit building is only about 18-inches higher than the original approved 20-unit, 3-story building.
- Construction of Phase II (affordable family/workforce housing) is slated to begin in February.
- Construction of Phase III (senior housing) is slated to begin in March.
- The property owner of 1125 Overstreet Drive was given assurances by the architect that the building, although larger, will not extend to her property line.

### **Prior Council Approvals**

2009, June. SI09-001–Approval of a 5-phased site plan Planned Area Development (PAD) totaling 172 apartment units with a revision of Phase II from 60 units to 52 units and adding Phase V.

Phase I: A 46-unit, 3-story senior apartment building.

Phase II: A 52-unit family apartment complex of 3 buildings with 2 and 3 bedroom units.

Phase III: A 46-unit, 3-story senior apartment building similar to Phase 1.

Phase IV: A 20-unit, a 2.5 and 3-story apartment building similar in design to Phase 2.

Phase V: An 8-unit, 2-story apartment building of 1 bedroom units.

2009, June. DA1996-150A1–Approval of Amended Development Agreement for deferring the impact fees until issuance of a Certificate of Occupancy.

2008, Feb. SI07-003–Bradshaw Senior Community Site Plan for a 126 units of senior and family apartment living located east of Bradshaw Drive & south of Stetson on ±10.47 acres and WSA08-003–Water Service Agreement for 60 units of family apartments in Phase 2.

2007, Feb.- SI07-001 Bradshaw Senior Community Site Plan for a 52 unit senior apartment building (later reduced to 46 units) on ±2.86 acres and WSA07-011–Water Service Agreement for 46 units..

1996, DA1996-150. Approval of original Development Agreement which addresses the following:

- Neighborhood meeting required.
- Site plan review/approval by both Planning and Zoning Commission and City Council.
- Limits on use with residential uses permitted.
- Right of way dedication.
- Limit LOS "C" on traffic generation from the project site.
- Payments for off-site improvements.
- Payments of proportional costs of a traffic study.

**Agenda Item:** SI10-001–The Bradshaws Phase IV Revised- A ‘PAD’ and WSA #10-001, 10-002 and 10-003.

## **STAFF ANALYSIS**

***The project, as proposed, meets or exceeds Land Development Code requirements, and complies with all subdivision requirements.***

**Access.** Primary access is via Bradshaw Drive with secondary (emergency) access from Stetson Drive. The proposed parking lot driveway network will provide the needed access to the site. Legal access to the individual parcels will be provided through easements delineated in a land split to be administratively approved. The developer has recorded cross-access & utility easements.

**Grading.** The finish floor elevation of the proposed senior apartment building is  $\pm 5440.0'$ . The estimated finish floor elevations of the adjoining properties on Overstreet Drive range from 5444.0 to 5457.0

### **LDC Setback, Buffering and Screening Requirements**

As a result of the neighborhood buffering requirement, LDC Sect 6.13, the residential buffer requirements are greater based on height of the building and extent of landscaping. The site plan meets this requirement.

**Traffic.** The Traffic Study (TIA) associated with the 2008 Site Plan approval satisfied all the traffic issues and no additional improvements are required on Bradshaw or Stetson.

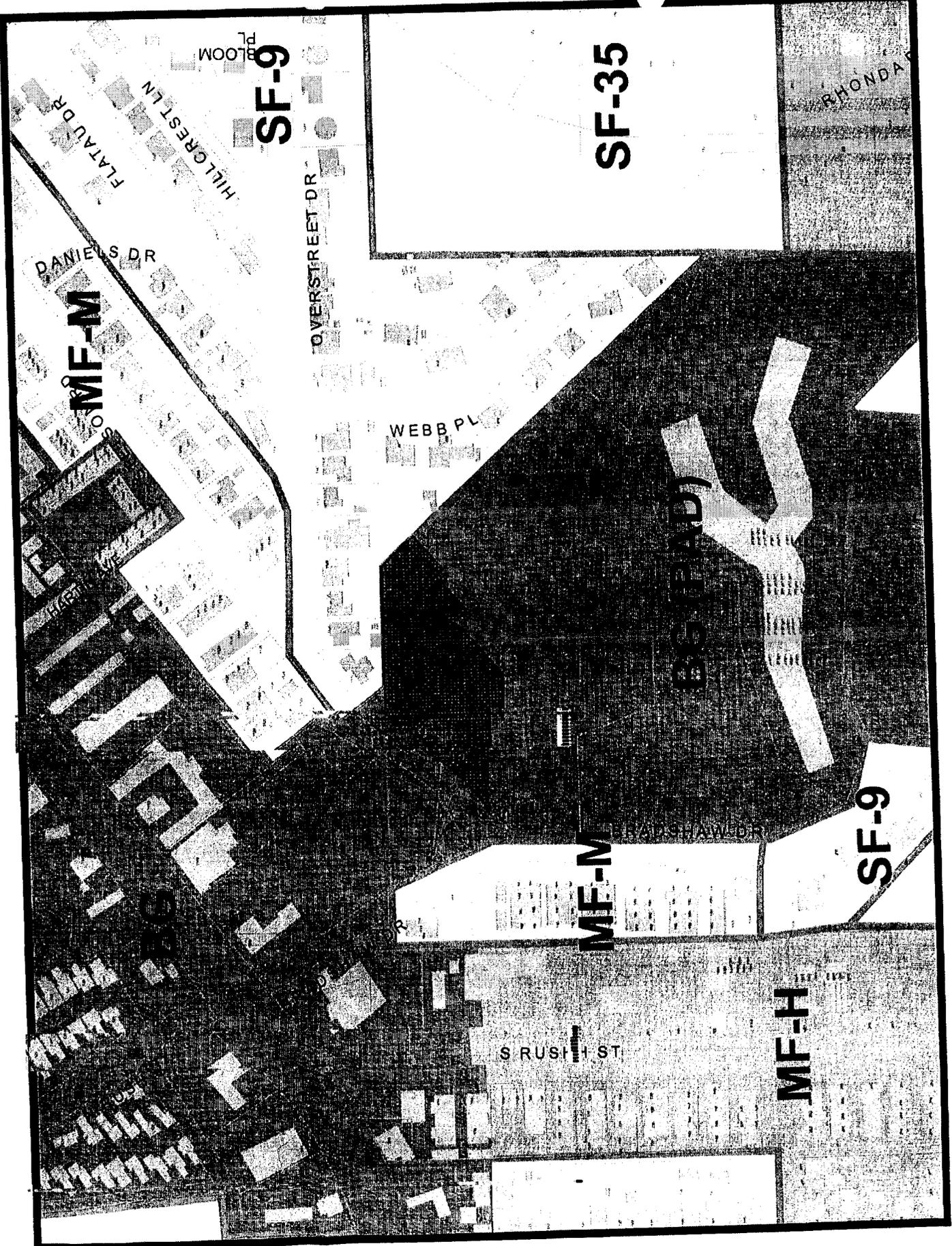
**Development Agreement (DA).** The amended site plan before Council meets the Development Agreement (DA 96-150) requirements.

**Water Service Agreement.** Water Service Agreements for Phase I and II were previously approved. The suggested motion includes the approval of three additional water service agreements: WSA numbers 10-001, 10-002, and 10-003, in the amounts of 16.1 ac.ft., 11.2 ac.ft., and 2.8 ac.ft., respectively for Phases III (46 units), IV (32 units) and V (8 units).

### **Planning Commission Recommendation**

At their January 28<sup>th</sup> meeting, Commissioner Menser expressed concern regarding the building's proximity (22' setback) to the adjoining residential properties. The owner and architect responded positively by redesigning and reorienting the building to the present configuration, increasing the set back distances and lowering the finish floor elevation 1.5 feet. At their February 11, 21010 meeting the Commission voted unanimously (5:0) to recommendation approval of the revised site plan.

**Recommended Action (1) MOVE** to Approve the Amended “The Bradshaws” Site Plan, SI10-001; **(2) MOVE** to approve Waiver of LDC Section 9.10.2; and **(3) MOVE** to approve WSA 10-001, WSA 10-002 and WSA 10-003.



WOOD PL

SF-9

SF-35

RHONDA

FLATAU DR

HILL CREST LN

DANIELS DR

MF-M

OVER STREET DR

WEBB PL

BOLEAD (WASHAW DR)

SF-9

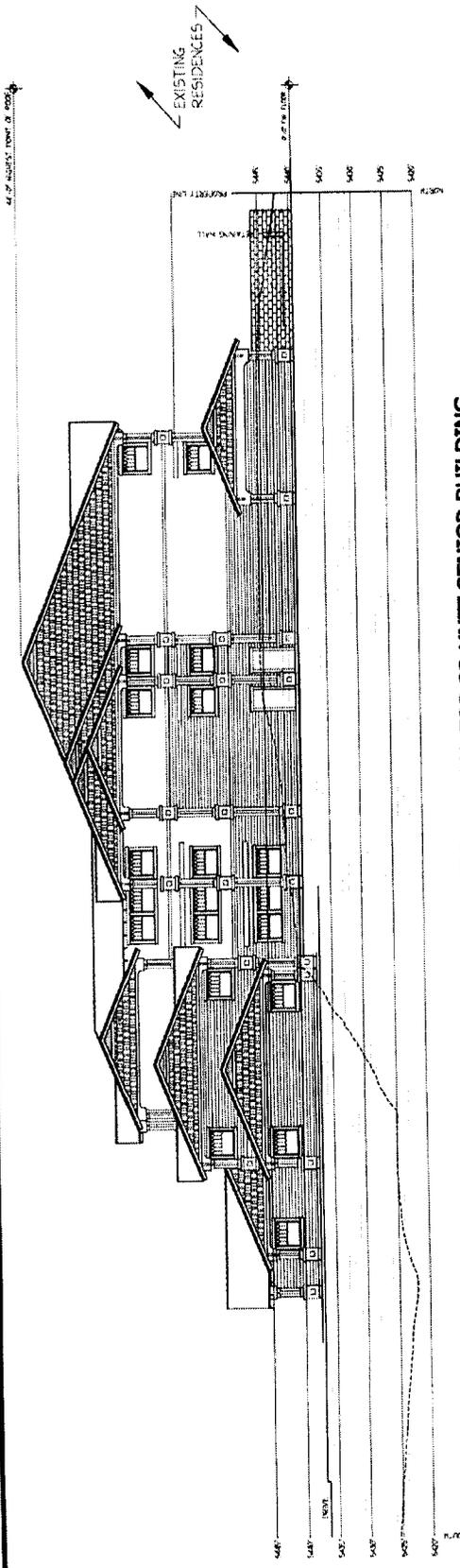
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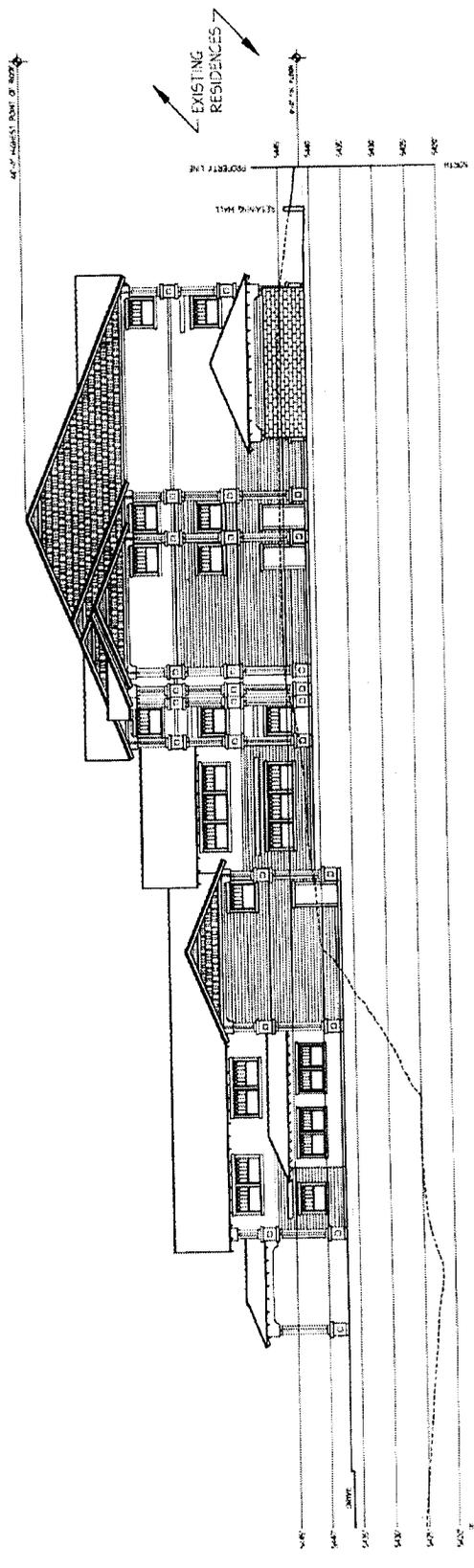
MF-H







**SITE SECTION - CURRENT PROPOSAL FOR 32-UNIT SENIOR BUILDING**  
 see civil plans for grades



**SITE SECTION - OLD PROPOSAL FOR 32-UNIT SENIOR BUILDING**

Building Elevations Exhibit A Page 3 of 3

**AGREEMENT FOR POTABLE WATER  
BRADSHAW II SENIOR COMMUNITY**

WHEREAS, Bradshaw Senior II/Prescott LP (hereinafter referred to as "Applicant") is the owner of certain real property within the City of Prescott; and

WHEREAS, Applicant wishes to secure approval for the provision of potable water for the foregoing property from the City of Prescott (hereinafter referred to as "City"); and

WHEREAS, the Applicant contemplates constructing forty-six (46) dwelling units on the property for a total of forty-six (46) dwelling units; and

WHEREAS, PCC Section 2-1-12(H) requires that an agreement be reached between the City and the Applicant in order to provide potable water; and

WHEREAS the City Council finds that compliance with this Agreement by the Applicant shall result in:

1. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to, the adopted Water Management Policy; and
2. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to the adopted General Plan; and
3. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to any applicable adopted plans, including but not limited to Specific Area Plans, Circulation Plans, Capital Improvement Plans, Open Space and Trail Plans, Neighborhood Plans, Local Historic District Plans, growth planning or growth management plans, and redevelopment plans; and
4. The project being in accord with the duly adopted Prescott Water Budget.

NOW, THEREFORE, in consideration of the covenants contained herein, 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 this Agreement shall relate to the property described as Yavapai County Parcel Number 110-04-193E, more specifically described in the attached Exhibit "A" (hereinafter collectively referred to as the "Property").
2. That the City will set aside and allocate 16.1 acre feet annually of potable water to serve the Property, subject to the following:
  - A. That the Applicant shall be solely responsible for the costs of any water and sewer main extensions or upgrades required to serve the Property.

B. The Applicant shall tie the Property onto the City's Sanitary Sewer System, and shall be responsible for any and all costs associated therewith, before water service to the property is initiated.

C. That any change in use of the Property exceeding a total of forty-six (46) dwelling units shall result in the termination of this Agreement.

D. In the event that the additional forty-six (46) dwelling units are not constructed by March 9, 2013, then and in that event, the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced by .35 acre feet for each such dwelling unit not constructed.

E. That the installation of any well on the Property, or the use of water on the Property from any other exempt well (less than 35 gpm), shall result in the termination of this Agreement.

F. That the Applicant agrees to pay the applicable water resource development and system impact fees in effect at the time of building permit approval.

G. That there shall be no further lot splits on the Property.

3. This Agreement shall run with the land, and shall be binding upon the Property owner's successors in interest and assigns.

4. 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 this 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 event of the foregoing, 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.

5. That the Property Owner 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 as a result of this agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the Applicant or its agents or employees.

6. 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.

7. Time is of the essence in this agreement. The failure of either party to require strict performance of any provision of this agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this agreement in accordance with the terms hereof, and without notice.

8. 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.

9. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

APPLICANT:  
BRADSHAW SENIOR II/PRESCOTT LP

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

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

STATE OF ARIZONA        )  
  )ss.  
COUNTY OF YAVAPAI     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of Bradshaw Senior II/Prescott LP, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that they executed it.

\_\_\_\_\_  
[Seal]

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

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF YAVAPAI     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Marlin D. Kuykendall, Mayor of City of Prescott, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

\_\_\_\_\_  
[Seal]

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

EXHIBIT A

**BRADSHAW III SENIOR COMMUNITY**

ALL THAT CERTAIN PARCEL DESCRIBED IN BOOK 4458 OF DEEDS, PAGE 24, YAVAPAI COUNTY OFFICIAL RECORDS, SITUATE IN SECTION 34, TOWNSHIP 14 NORTH, RANGE 2 WEST; AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 3 TOWNSHIP 13 NORTH, RANGE 2 WEST, OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF THE SOUTHERLY RIGHT OF WAY OF STETSON DRIVE, A CITY OF PRESCOTT STREET DETAILED IN CITY ASBUILT FILE D-11-1003, MARKED BY A ½" REBAR WITH CAP 13941, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY, NORTH 32 DEGREES 11 MINUTES 25 SECONDS EAST, A DISTANCE OF 41.08 FEET TO A POINT OF CURVE TO THE RIGHT HAVE A RADIUS OF 75.00 FEET AND A CENTRAL ANGLE OF 20 DEGREES 32 MINUTES AND 55 SECONDS;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID RIGHT OF WAY, A DISTANCE OF 26.90 FEET;

THENCE DEPARTING FROM SAID SOUTHERLY RIGHT OF WAY OF STETSON DRIVE AND ALONG THE WESTERLY LINE OF LOT 8 OF BLOCK 1 OF GREEN MANOR HEIGHTS AS RECORDED IN BOOK 4 OF MAPS AND PLATS, PAGE 81, YAVAPAI COUNTY OFFICIAL RECORDS, SOUTH 36 DEGREES 35 MINUTES 25 SECONDS EAST, A DISTANCE OF 67.11 FEET;

THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 8, NORTH 89 DEGREES 33 MINUTES 23 SECONDS EAST, A DISTANCE OF 71.79 FEET TO A POINT COMMON TO LOT 7 AND LOT 8 OF BLOCK I OF GREEN MANOR HEIGHTS;

THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 7, NORTH 89 DEGREES 36 MINUTES 50 SECONDS EAST, A DISTANCE OF 59.96 FEET TO A POINT COMMON TO LOT 6 AND LOT 7 OF BLOCK I GREEN MANOR HEIGHTS;

THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 6, NORTH 89 DEGREES 40 MINUTES 10 SECONDS EAST, A DISTANCE OF 27.08 FEET;

THENCE DEPARTING FROM SAID SOUTHERLY LINE OF LOT 6, SOUTH 00 DEGREES 19 MINUTES 50 SECONDS EAST, A DISTANCE OF 47.16 FEET;

THENCE SOUTH 41 DEGREES 52 MINUTES 51 SECONDS EAST, A DISTANCE OF 39.12 FEET;

THENCE SOUTH 47 DEGREES 54 MINUTES 22 SECONDS WEST, A DISTANCE OF 194.46 FEET;

THENCE NORTH 89 DEGREES 45 MINUTES 22 SECONDS WEST, A DISTANCE OF 83.99 FEET;

THENCE NORTH 45 DEGREES 01 MINUTES 12 SECONDS WEST, A DISTANCE OF 37.14 FEET TO A POINT OF CURVE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES NORTH 89 DEGREES 32 MINUTES 13 SECONDS WEST, A RADIAL DISTANCE OF 118.50 FEET;

THENCE NORTHWESTERLY ALONG THE ARC, A DISTANCE OF 14.67 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF STETSON DRIVE;

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY, NORTH 32 DEGREES 11 MINUTES 25 SECTIONS EAST, A DISTANCE OF 84.36 FEET TO THE TRUE POINT OF BEGINNING.

THIS AREA CONTAINS 47,614.95 SQUARE FEET OR 1.09 ACRES, MORE OR LESS

AND ALSO INCLUDING;

A PORTION OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 13 NORTH, RANGE 2 WEST, OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHERN MOST CORNER OF PARCEL NO.1 AS DESCRIBED IN BOOK 4679, PAGE 144, YAVAPAI COUNTY OFFICIAL RECORDS WHERE IT INTERSECTS STETSON DRIVE, A CITY OF PRESCOTT STREET DETAILED IN THE CITY ASBUILT FILE D-11-1003, SAID POINT BEING MARKED BY A ½" REBAR WITH CAP STAMPED 33861; THENCE S.35°10'06"E., A DISTANCE OF 20.17 FEET TO THE TRUE POINT OF BEGINNING;

BEGINNING AT A POINT OF A CURVATURE OF THE RIGHT, OF WHICH THE RADIUS POINT LIES S.33°08'09"E., A RADIAL DISTANCE OF 75.00 FEET;

THENCE EASTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 30°01'25", A DISTANCE OF 39.30 FEET;

THENCE S.89°46'15"E., A DISTANCE OF 66.69 FEET;

THENCE S.00°27'47"W., A DISTANCE OF 30.00 FEET;

THENCE N.89°46'42"W., A DISTANCE OF 90.81 FEET;

THENCE N.35°10'06"W., A DISTANCE OF 21.81 FEET TO THE TRUE POINT OF BEGINNING.

THIS AREA CONTAINS 2,834.49 SQUARE FEET MORE OR LESS.

THE PREVIOUSLY DESCRIBED PARCELS CONTAIN A COMBINED AREA OF 50, 449.44 SQUARE FEET OR 1.16 ACRES, MORE OR LESS

**AGREEMENT FOR POTABLE WATER  
BRADSHAW III SENIOR COMMUNITY**

WHEREAS, William E. Spreitzer (hereinafter referred to as "Applicant") is the owner of certain real property within the City of Prescott; and

WHEREAS, Applicant wishes to secure approval for the provision of potable water for the foregoing property from the City of Prescott (hereinafter referred to as "City"); and

WHEREAS, the Applicant contemplates constructing thirty-two (32) dwelling units on the property for a total of thirty-two (32) dwelling units; and

WHEREAS, PCC Section 2-1-12(H) requires that an agreement be reached between the City and the Applicant in order to provide potable water; and

WHEREAS the City Council finds that compliance with this Agreement by the Applicant shall result in:

1. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to, the adopted Water Management Policy; and
2. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to the adopted General Plan; and
3. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to any applicable adopted plans, including but not limited to Specific Area Plans, Circulation Plans, Capital Improvement Plans, Open Space and Trail Plans, Neighborhood Plans, Local Historic District Plans, growth planning or growth management plans, and redevelopment plans; and
4. The project being in accord with the duly adopted Prescott Water Budget.

NOW, THEREFORE, in consideration of the covenants contained herein, 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 this Agreement shall relate to the property described as Yavapai County Parcel Number 110-04-193D, more specifically described in the attached Exhibit "A" (hereinafter collectively referred to as the "Property").
2. That the City will set aside and allocate 11.2 acre feet annually of potable water to serve the Property, subject to the following:
  - A. That the Applicant shall be solely responsible for the costs of any water and sewer main extensions or upgrades required to serve the Property.

B. The Applicant shall tie the Property onto the City's Sanitary Sewer System, and shall be responsible for any and all costs associated therewith, before water service to the property is initiated.

C. That any change in use of the Property exceeding a total of thirty-two (32) dwelling units shall result in the termination of this Agreement.

D. In the event that the additional thirty-two (32) dwelling units are not constructed by March 9, 2013, then and in that event, the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced by .35 acre feet for each such dwelling unit not constructed.

E. That the installation of any well on the Property, or the use of water on the Property from any other exempt well (less than 35 gpm), shall result in the termination of this Agreement.

F. That the Applicant agrees to pay the applicable water resource development and system impact fees in effect at the time of building permit approval.

G. That there shall be no further lot splits on the Property.

3. This Agreement shall run with the land, and shall be binding upon the Property owner's successors in interest and assigns.

4. 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 this 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 event of the foregoing, 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.

5. That the Property Owner 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 as a result of this agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the Applicant or its agents or employees.

6. 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.

7. Time is of the essence in this agreement. The failure of either party to require strict performance of any provision of this agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this agreement in accordance with the terms hereof, and without notice.

8. 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.

9. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

APPLICANT:  
WILLIAM E. SPREITZER

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

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

STATE OF ARIZONA        )  
                                  )ss.  
COUNTY OF YAVAPAI    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by William E. Spreitzer, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that they executed it.

\_\_\_\_\_  
[Seal]

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

STATE OF ARIZONA        )  
                                  )ss.  
COUNTY OF YAVAPAI    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Marlin D. Kuykendall, Mayor of City of Prescott, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

\_\_\_\_\_  
[Seal]

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

EXHIBIT A

**BRADSHAW II SENIOR COMMUNITY**

A PORTION OF THAT CERTAIN PARCEL DESCRIBED IN BOOK 4679 OF DEEDS, PAGE 144, YAVAPAI COUNTY OFFICIAL RECORDS AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 13 NORTH, RANGE 2 WEST, OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY ANGLE POINT OF PARCEL NO. 1 AT THE INTERSECTION OF BRADSHAW DRIVE AND STETSON DRIVE AS DESCRIBED IN BOOK 4679, PAGE 144, YAVAPAI COUNTY OFFICIAL RECORDS, SAID POINT OF BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG THE SOUTHERLY RIGHT OF WAY OF STETSON DRIVE A CITY OF PRESCOTT STREET DETAILED IN CITY ASBUILT FILE D-11-1003, NORTH 67 DEGREES 15 MINUTES 10 SECONDS EAST, A DISTANCE OF 9.33 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, NORTH 22 DEGREES 44 MINUTES 50 SECONDS WEST, A DISTANCE OF 15.00 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, NORTH 67 DEGREES 15 MINUTES 10 SECONDS EAST, A DISTANCE OF 31.19 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 275.00 FEET AND A CENTRAL ANGLE OF 04 DEGREES 19 MINUTES 50 SECONDS;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID RIGHT OF WAY, A DISTANCE OF 20.79 FEET;

THENCE DEPARTING FROM SAID SOUTHERLY RIGHT OF WAY OF STETSON DRIVE, SOUTH 35 DEGREES 10 MINUTES 06 SECONDS EAST, A DISTANCE OF 41.97 FEET;

THENCE SOUTH 89 DEGREES 46 MINUTES 42 SECONDS EAST, A DISTANCE OF 90.81 FEET;

THENCE SOUTH 00 DEGREES 27 MINUTES 47 SECONDS WEST, A DISTANCE OF 14.97 FEET;

THENCE SOUTH 89 DEGREES 32 MINUTES 13 SECONDS EAST, A DISTANCE OF 27.92 FEET;

THENCE SOUTH 89 DEGREES 45 MINUTES 35 SECONDS EAST, A DISTANCE OF 164.42 FEET

THENCE ALONG SAID EAST LINE, SOUTH 42 DEGREES 05 MINUTES 36 SECONDS EAST, A DISTANCE OF 28.67 FEET;

THENCE CONTINUE ALONG SAID EAST LINE, SOUTH 00 DEGREES 14 MINUTES 29 SECONDS WEST, A DISTANCE OF 252.21 FEET TO THE SOUTHEAST CORNER THEREOF;

THENCE ALONG THE SOUTH LIN OF SAID PARCEL, NORTH 89 DEGREES 45 MINUTES 26 SECONDS WEST, A DISTANCE OF 136.39 FEET TO THE SOUTH WESTERN MOST CORNER THEREOF;

THENCE ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL, NORTH 19 DEGREES 34 MINUTES 40 SECONDS WEST, A DISTANCE OF 156.78 FEET;

THENCE ALONG SAID SOUTHWESTERLY LIN, NORTH 89 DEGREES 45 MINUTES 26 SECONDS WEST, A DISTANCE OF 188.95 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF BRADSHAW DERIVE AS DETAILED IN BOOK 12 OF LAND SURVEYS, PAGE 72, YAVAPAI COUNTY OFFICIAL RECORDS;

THENCE ALONG SAID EASTERLY RIGHT OF WAY, NORTH 02 DEGREES 54 MINUTES 06 SECONDS EAST, A DISTANCE OF 126.04 FEET;

THENCE CONTINUE ALONG SAID RIGHT OF WAY, NORTH 21 DEGREES 38 MINUTES 15 SECONDS WEST, A DISTANCE OF 11.63 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 75,055.15 SQUARE FEET OR 1.72 ACRES, MORE OR LESS.

**AGREEMENT FOR POTABLE WATER  
BRADSHAW CROSSING II APARTMENTS**

WHEREAS, William E. Spreitzer (hereinafter referred to as "Applicant") is the owner of certain real property within the City of Prescott; and

WHEREAS, Applicant wishes to secure approval for the provision of potable water for the foregoing property from the City of Prescott (hereinafter referred to as "City"); and

WHEREAS, the Applicant contemplates constructing eight (8) dwelling units on the property for a total of eight (8) dwelling units; and

WHEREAS, PCC Section 2-1-12(H) requires that an agreement be reached between the City and the Applicant in order to provide potable water; and

WHEREAS the City Council finds that compliance with this Agreement by the Applicant shall result in:

1. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to, the adopted Water Management Policy; and
2. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to the adopted General Plan; and
3. The project or development being consistent with and conforming to, furthering the implementation of, and is not contrary to any applicable adopted plans, including but not limited to Specific Area Plans, Circulation Plans, Capital Improvement Plans, Open Space and Trail Plans, Neighborhood Plans, Local Historic District Plans, growth planning or growth management plans, and redevelopment plans; and
4. The project being in accord with the duly adopted Prescott Water Budget.

NOW, THEREFORE, in consideration of the covenants contained herein, 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 this Agreement shall relate to the property described as Yavapai County Parcel Number 110-04-141Z, more specifically described in the attached Exhibit "A" (hereinafter collectively referred to as the "Property").
2. That the City will set aside and allocate 2.8 acre feet annually of potable water to serve the Property, subject to the following:
  - A. That the Applicant shall be solely responsible for the costs of any water and sewer main extensions or upgrades required to serve the Property.

B. The Applicant shall tie the Property onto the City's Sanitary Sewer System, and shall be responsible for any and all costs associated therewith, before water service to the property is initiated.

C. That any change in use of the Property exceeding a total of eight (8) dwelling units shall result in the termination of this Agreement.

D. In the event that the additional eight (8) dwelling units are not constructed by March 9, 2013, then and in that event, the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced by .35 acre feet for each such dwelling unit not constructed.

E. That the installation of any well on the Property, or the use of water on the Property from any other exempt well (less than 35 gpm), shall result in the termination of this Agreement.

F. That the Applicant agrees to pay the applicable water resource development and system impact fees in effect at the time of building permit approval.

G. That there shall be no further lot splits on the Property.

3. This Agreement shall run with the land, and shall be binding upon the Property owner's successors in interest and assigns.

4. 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 this 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 event of the foregoing, 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.

5. That the Property Owner 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 as a result of this agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the Applicant or its agents or employees.

6. 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.

7. Time is of the essence in this agreement. The failure of either party to require strict performance of any provision of this agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this agreement in accordance with the terms hereof, and without notice.

8. 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.

9. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

APPLICANT:  
WILLIAM E. SPREITZER

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

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

STATE OF ARIZONA        )  
  )ss.  
COUNTY OF YAVAPAI     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by William E. Spreitzer, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that they executed it.

\_\_\_\_\_  
[Seal]

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

STATE OF ARIZONA        )  
  )ss.  
COUNTY OF YAVAPAI     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Marlin D. Kuykendall, Mayor of City of Prescott, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

\_\_\_\_\_  
[Seal]

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

EXHIBIT A

**BRADSHAW CROSSING II APARTMENTS (BRADSHAW V)**

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 13 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ½" REBAR & CAP, RLS 23383 MARKING THE CORNER COMMON TO LOT 8 AND 9 OF SAID PARK EAST SUBDIVISION; THENCE S.42°00'17"E., A DISTANCE OF 10.75 FEET TO THE TRUE POINT OF BEGINNING;

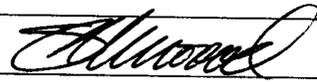
THENCE CONTINUE SOUTHEASTERLY ALONG SAID LINE S.42°00'17"E., A DISTANCE OF 344.94 FEET TO A ½" REBAR AND CAP, RLS 23383 MARKING THE SOUTHERN MOST CORNER OF SAID PARK EAST SUBDIVISION AND THE NORTHEASTERLY CORNER OF THE PERIDOT AS DESCRIBED IN BOOK 3942, PAGE 978 OF OFFICIAL RECORDS;

THENCE LEAVING SAID LINE AND ALONG THE NORTHERLY BOUNDARY LINE OF THE PERIDOT AS DESCRIBED IN BOOK 3942, PAGE 978 OF OFFICIAL RECORDS N.64°33'37"W., A DISTANCE OF 373.51 FEET;

THENCE LEAVING SAID NORTH LINE, N.47°59'43"E., A DISTANCE OF 143.27 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 24,709.85 SQUARE FEET OR 0.57 ACRES, MORE OR LESS.

<b>COUNCIL AGENDA MEMO – (03/02/10 &amp; 03/09/10)</b>	
<b>DEPARTMENT:</b> Community Development	
<b>AGENDA ITEM:</b> Rezoning from Multi-Family High Density (MF-H) to Industrial Light (IL). Located at the northwest corner of E. Sheldon St. and N. Alarcon St., the applicant is proposing to operate a cat kennel and public adoption facility on one parcel totaling 0.09 acres. <b>Owner:</b> Miss Kitty's Cat House, 609 S. Granite St. Prescott, AZ 86303 <b>Agent:</b> Marcia L. Kerans. <b>APN:</b> 113-13-006A, RZ09-009.	

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Tom Guice	
<b>Finance Director:</b>	
<b>City Manager:</b> Steve Norwood 	02/25/10

**REQUEST:**

Located at the northwest corner of E. Sheldon St. and N. Alarcon St., the applicant is proposing to operate a cat kennel and public adoption facility on one property totaling 0.09 acres. The current zoning district does not allow for a kennel, therefore, the applicant is requesting that the zoning be returned to the previous designation of Industrial Light.

**PREVIOUS COMMISSION/COUNCIL ACTIVITY:**

The area is part of the Prescott Original Townsite established in 1864 and later incorporated in 1958. Council rezoned the property from Industrial Light (IL) to Multi-family High (MF-H) in 2003 (RZ-0309) to allow for multi-family uses. A Conditional Use Permit, CC05-005 was granted by the BOA in 2005 to allow for a contractors office.

**COMPATIBILITY WITH NEIGHBORHOOD CHARACTERISTICS, ZONING & LAND USE:**

The proposed use is compatible with the surrounding area. The properties to the north and west of the project are zoned Industrial Light (IL). The properties to the south and east to the project proposal are zoned BR.

The property was originally zoned as Industrial Light along with the surrounding properties to the north and west. A previous property owner requested a rezoning to permit a multifamily residential use, which is prohibited in the IL district. That use never materialized, however the MF-H zoning remains.

**TRAFFIC AND ROADS:**

The primary parking area in the rear contains 4 spaces and is accessed from the alley connecting to Sheldon Street. Additional parking is located in the right-of-way along Alarcon Street.

**Agenda Item:** Miss Kitty's Cathouse Rezoning, RZ09-002.

**CONSISTENCY WITH THE GENERAL PLAN:**

The proposed project is consistent with and conforms to the City's adopted General Plan. This area is designated as Industrial, which is defined as a mix of offices, wholesaling manufacturing, fabrication and processing of durable goods.

**PUBLIC COMMENTS:**

Notices were mailed to the surrounding property owners of record. The mailing included project details, a hearing schedule, contact information and a vicinity map. Also, this rezoning has been advertised and posted according to State Law requirements. An area meeting was held on January 20, 2010. No members of the public participated.

A total of 3 telephone calls have been received regarding this application. 1) The owner of the Caldwell Banker office building across the street indicated concern over the property value of his building and his ability to rent office space with IL zoning across the street. He was not aware that the area across the street is zoned IL with the exception of the one lot. 2) The owner of several commercial properties behind Caldwell Banker along Marina Street made a general inquiry and did not object to the rezoning. 3) A homeowner on N. Alarcon Street indicated support of the project and felt this was an excellent use for this location. No written opposition has been received as of this writing.

**P&Z COMMISSION RECOMMENDATION:**

The Planning & Zoning Commission met at their regularly scheduled meeting on February 11, 2010 and voted unanimously to support this application. Menser and Wiant were not present.

**Attachments:**

Applicant Narrative  
Vicinity and Zoning Map  
Site Plan

**RECOMMENDATION:** MOVE to adopt Ord. No. 4732-1029.

December 10, 2009

City of Prescott  
Community Development Department  
Planning and Zoning Division  
201 S. Cortez St.  
Prescott, AZ 86302

### Rezoning Application Narrative

Miss Kitty's Cat House (MKCH) is an all volunteer cat rescue and no kill shelter that has been in the Prescott area for over eight years. To date we have placed well over 2,000 abandoned or feral cats in the community. All animals are spayed or neutered prior to adoption. In addition we administer a free spay and neuter program for low- income families through a grant from PetsMart. To date we have operated from a rented facility where we house approximately twenty adult cats. All kittens are fostered in private homes of our volunteers. Adoptions are conducted primarily at the local PetsMart on weekends and on a limited basis from the house.

Recently MKCH inherited a sum of money from the estate of Bess Brumley, one of our valued volunteers, for the sole purpose of purchasing a new facility to house MKCH. After numerous attempts we located and purchased the current property now before you for your consideration. The property address is 302 N. Alarcon on the NW corner of E. Sheldon. It is located within the boundaries of the East Prescott National Register Historic District and is listed in the National Register. The proposed improvements will have no impact on the historic integrity of the building.

The current zoning is listed as MF-H. This zoning was changed from the former IL designation around 2003. The remainder of properties on the west side of N. Alarcon are all zoned IL. Our understanding is that the MF-H was granted to facilitate a previous owners request to obtain a residential vice commercial loan.

We are simply requesting a change in zoning to the previous IL designation which is consistent with the adjoining properties and our proposed usage.

We are planning the following improvements to the Alarcon property:

#### Exterior

- New roof and new siding
- Full exterior paint in historic colors
- New stairs to rear entrance
- Misc repairs to parking and retaining wall along E. Sheldon

New ADA compliant railing on handicapped ramp in front of house

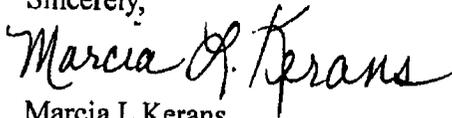
Interior

Complete new paint in historic colors  
Necessary door and passageway improvements for ADA compliance  
ADA compliant restroom improvements  
New flooring throughout  
Plumbing and electrical improvements to code

We feel that the above proposal will result in a very positive improvement of a historical building at a highly visible corner. It will allow MKCH to continue their good work for the community in a better equipped facility with no negative impact to the neighboring businesses and residences.

We request your favorable and timely consideration of our rezoning request. For any additional information please contact me at the below numbers.

Sincerely,



Marcia L Kerans

President

MKCH

928 541-1652 HM

928 925-5455 CELL

2740 Whispering Way Cir

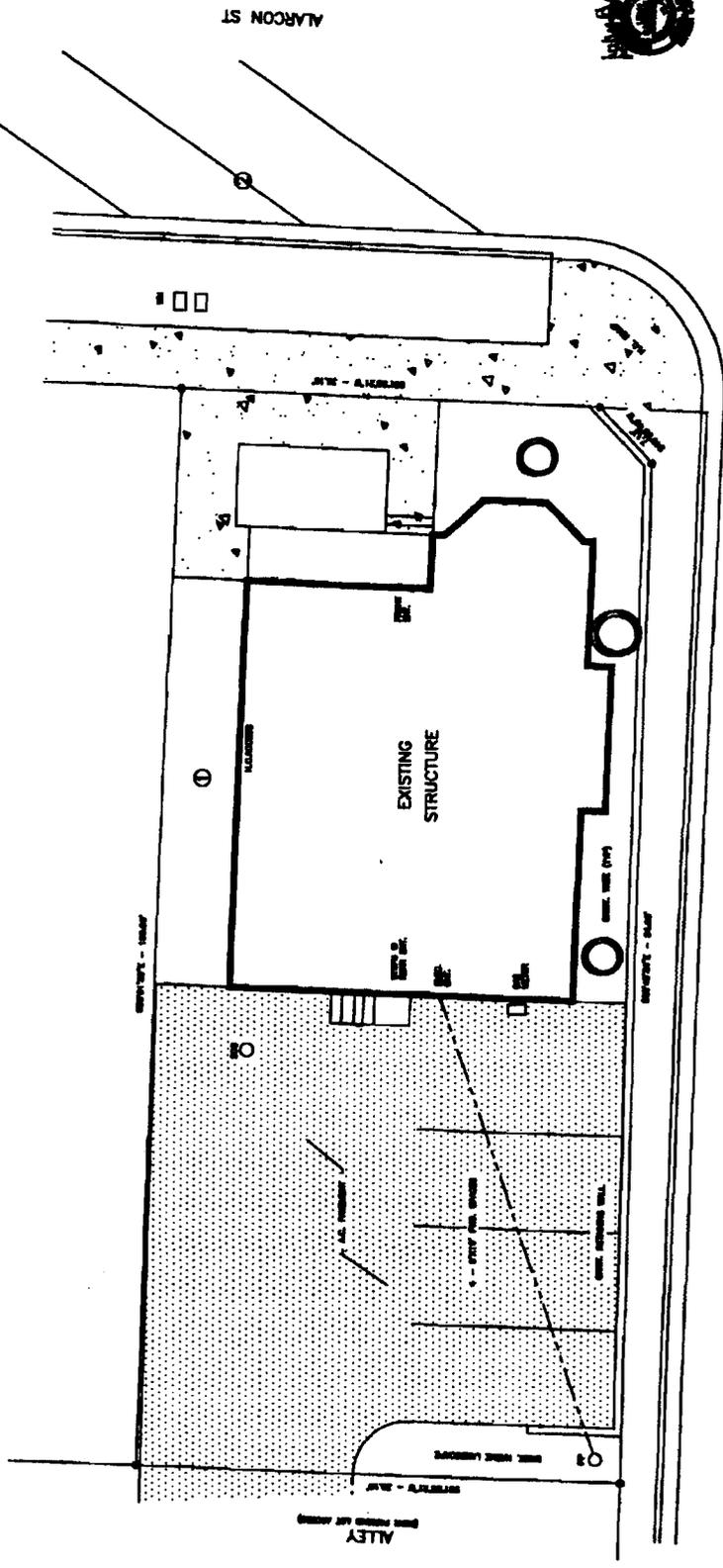
Prescott, AZ 8630399777

# MISS KITTY'S CAT HOUSE

SEE PLAN SHEET  
 APPLIC. 113-14-0004  
 OWNER: MISS KITTY'S CAT HOUSE  
 ADDRESS: 101 N. ALARCON ST.  
 PROJECT: 101-14-0004  
 PREPARED BY: J. L. BROWN, JR.  
 DATE: 11/1/78  
 CITY: JACKSONVILLE, FLORIDA  
 COUNTY: DUVAL COUNTY

PROPERTY INFORMATION  
 THE SITE IS THE PROPERTY OF MISS KITTY'S CAT HOUSE, INC., A CORPORATION OF THE STATE OF FLORIDA, AND IS LOCATED IN THE CITY OF JACKSONVILLE, FLORIDA, IN THE COUNTY OF DUVAL COUNTY, FLORIDA. THE SITE IS ZONED R-1 (RESIDENTIAL SINGLE-FAMILY) AND IS SUBJECT TO THE CITY OF JACKSONVILLE ZONING ORDINANCES.

- ① THE EXISTING STRUCTURE IS TO BE DEMOLISHED AND A NEW STRUCTURE IS TO BE CONSTRUCTED ON THE SAME SITE.
  - ② THE NEW STRUCTURE IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF JACKSONVILLE ZONING ORDINANCES AND THE FLORIDA BUILDING CODE.
- THESE NOTES SHALL APPLY TO ALL SHEETS OF THIS PROJECT.



E SHELTON ST - U.S. HWY 89

J. L. BROWN, JR.	
REGISTERED PROFESSIONAL ENGINEER	
NO. 113-14-0004	
DATE: 11/1/78	
SCALE:	AS SHOWN
DATE:	11/1/78
PROJECT:	MISS KITTY'S CAT HOUSE
ADDRESS:	101 N. ALARCON ST.
CITY:	JACKSONVILLE, FLORIDA
COUNTY:	DUVAL COUNTY

**ORDINANCE NO. 4732-1029**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE ZONING OF CERTAIN PROPERTY WITHIN THE CITY OF PRESCOTT GENERALLY LOCATED AT THE NORTHWEST CORNER OF EAST SHELDON STREET AND NORTH ALARCON STREET FROM MULTI-FAMILY HIGH DENSITY (MF-H) TO INDUSTRIAL LIGHT (IL) ZONING DISTRICT**

**RECITALS:**

WHEREAS, the owners of certain properties within the corporate limits of the City of Prescott have requested a rezoning of their property; and

WHEREAS, the Planning and Zoning Commission of the City of Prescott has held public hearings regarding said rezoning; and

WHEREAS, the City Council of the City of Prescott has determined that it would be in the best interest of public necessity, interest, convenience or general welfare to rezone certain property; and consistent with the General Plan; and

WHEREAS, the requirements of Section 9.15 of the City of Prescott *Land Development Code* have been complied with.

**ENACTMENTS:**

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

SECTION 1. THAT, the following described parcel of land, approximately further described in Exhibit A attached hereto and made a part hereof, is hereby reclassified as follows: Multi-Family High Density (MF-H) Zoning District to Industrial Light (IL) Zoning District.

SECTION 2. THAT the Mayor and staff are hereby authorized to take all necessary steps to effectuate such rezoning.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott on this 9th day of February, 2010.

\_\_\_\_\_  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

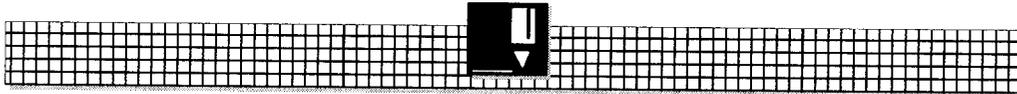
APPROVED AS TO FORM:

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

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

# Exhibit "A"

G. MICHAEL HAYWOOD  
REGISTERED LAND SURVEYOR



212 S. Marina St. ♦ P. O. Box 1001 ♦ Prescott, Arizona 86302  
Phone 928-778-5101 ♦ Fax 928-778-9321 ♦ email [mike@mhainc.net](mailto:mike@mhainc.net)

## PROPERTY DESCRIPTION

The East 100 feet of Lot 36, Block 1, Moeller Addition to the City of Prescott, according to the plat recorded in Book 2 of Maps and Plats, Page 15, on file in the office of the Yavapai County Recorder, Yavapai County, Arizona;

Excepting there from that portion of said Lot 36 conveyed to the State of Arizona for additional right-of-way of "Sheldon Street", as described in Warranty Deed recorded March 6, 2001, in book 3815 of official records, page 633, on file in the office of the Yavapai County Recorder.

12-4-09  
MH1713

<b>COUNCIL AGENDA MEMO – 3/2/2010 &amp; 3/9/2010</b>
<b>DEPARTMENT:</b> Public Works
<b>AGENDA ITEM:</b> Adoption of Ordinance No. 4733-1030 authorizing purchase and acceptance of real property from A. Roy and Donna L. Bennett Family Trust for construction of a new Water Utility Pump Station for Pressure Zones 24 and 27

<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 	02/25/10

**Item Summary**

Approval of this ordinance will acquire real property necessary for the Zone 24 and 27 Water Utility Improvement Project. This location will serve for construction of a new booster station for the pressure zone upgrade and replace the existing undersized pump station located near the Josephine and Gurley Street intersection.

**Background**

It has been determined through the City of Prescott Water System Model and field observations that additional storage and water pressure is needed within Pressure Zones 24 and 27 located in the southwest portion of the City, south of Thumb Butte Road, and east of the Prescott National Forest. Insufficient capacity is evident within the zones during periods of peak demand demonstrating an inadequacy in the existing facilities. Post, Buckley, Schuh, and Jernigan, Inc., is currently working on engineering and design of the Zone 24 Water Storage Tank, Booster Station, Water Main; and analysis and siting of the Zone 27 Storage Tank improvements needed to increase storage volume, enhance pressure, fire flows, and overall system performance within the two zones.

Exhibit "A" identifies property owner, addressee, assessor's parcel number, area of acquisition (6,591 SF), compensation and other terms and conditions for the acquisition. The agreement amounts are based on appraisal of competitive market data provided by Briggs Appraisal and Consulting, State Certified Appraiser, and negotiations with the property owner. The agreement for sale is in the amount of \$61,094.82.

**Budget**

FY 10 funding for this real property acquisition is available from the Water Fund; (\$400,000 budgeted). The total required for the acquisition is in the amount of \$61,094.82 plus closing costs estimated between \$200 and \$1000. The actual closing costs will determine the final transaction amount.

- Attachments**
- Exhibit "A" Agreement for Sale
  - Ordinance No. 4733-1030
  - Location Map

<b>Recommended Action:</b> MOVE to adopt Ordinance No. 4733-1030.
---

**ORDINANCE NO. 4733-1030**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE OF REAL PROPERTY BELONGING TO A. ROY AND DONNA L. BENNETT FAMILY TRUST FOR THE CONSTRUCTION OF A NEW ZONE 27 WATER UTILITY PUMP STATION, AND AUTHORIZING THE MAYOR AND CITY STAFF TO TAKE ALL NECESSARY STEPS TO EFFECTUATE SAID PURCHASES**

**RECITALS:**

WHEREAS, the City Council has determined that certain real property is needed by the City for a new water utility pump station; and

WHEREAS, the proposed purchase price of the following described property is deemed to be fair and equitable and will benefit the City of Prescott; and

WHEREAS, A. Roy and Donna Bennett, as co-trustees of the A. Roy and Donna L. Bennett Family Trust, the owners of certain real property agree to transfer title of real property to the City; and

WHEREAS, the purchase of this certain real property and improvement is for the public's health, safety and welfare.

**ENACTMENTS:**

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

SECTION 1. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated December 29, 2009, from the A. Roy and Donna L. Bennett Family Trust, which consists of real property as described in Exhibit A, located in APN 111-08-030B and the City agrees to purchase and accept said property from the A. Roy and Donna L. Bennett Family Trust, pursuant to the terms and conditions as set forth therein, for the purchase price of \$61,094.82 plus closing costs.

SECTION 2. THAT the Mayor and staff are hereby authorized and directed to execute any and all documents in order to effectuate the foregoing purchase.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 9<sup>th</sup> day of March, 2010.

\_\_\_\_\_  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

**When recorded, mail to:**  
**City of Prescott**  
**City Clerk**  
**P.O. Box 2059**  
**Prescott, AZ 86302**

**CITY OF PRESCOTT**  
**AGREEMENT FOR SALE OF REAL PROPERTY**

**KNOW ALL MEN BY THESE PRESENTS:**

THIS AGREEMENT, dated this day of 29th, December 2009, by and between A. ROY BENNETT & DONNA L. BENNETT FAMILY TRUST, (hereinafter referred to as the "Seller"), residing at 1885 Paradise Lane, Prescott, AZ 86301, and the CITY OF PRESCOTT, an Arizona municipality (hereinafter referred to as "Buyer").

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) Seller agrees to sell and convey to the Buyer, and Buyer agrees to purchase from Seller, the real property described in Exhibit "A" for permanent real property improvements.
- 2) The total purchase price for the public property acquisition is \$61,094.82, Sixty-one Thousand, ninety-four and 82/100 dollars, payable upon the close of escrow, based on the contingencies/conditions listed under item 3 immediately below, all at the Buyer's expense.
- 3) The Seller warrants that Seller is the owner of a good and fee simple title to the property herein sold, free and clear of all liens and encumbrances, subject only to the following:
  - (A) Applicable zoning regulations.
  - (B) Utility, drainage and other easements of record in the records of the Yavapai County Recorder.
  - (C) Mineral rights reserved in the patents to the land.
- 4) In order to effectuate the terms of this Agreement, Seller and Buyer shall promptly execute and deliver any and all documents required by the Buyer.
- 5) The closing of escrow shall be at a Title Company designated by the Buyer as soon as possible after approval of this Agreement by the Prescott City Council [(the "Closing Date")].

1

Buyer MM

Seller QRB

Seller DLB

On the Closing Date, Buyer shall make payment as provided in Section 2 of this Agreement to the Seller. The Buyer shall pay all recording and transfer taxes and fees, including the cost of recording the right-of-way and any and all closing costs not hereinbefore specified.

- 6) Buyer shall be entitled to use of the property for public purposes.
- 7) Buyer understands that the foregoing sets forth the entire agreement between the parties and that no agent or representative of Seller has any authority to change or modify this agreement in any manner, or to make any agreement or representation on behalf of the Seller not set forth herein.
- 8) Pursuant to A.R.S. §38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the foregoing event, the City 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 contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.
- 9) This Agreement is subject to the approval by the Prescott City Council of an Ordinance authorizing the purchase of the right of way contemplated herein.
- 10) All notices to Buyer shall be sent to: City of Prescott, c/o City Clerk, Post Office Box 2059, Prescott, Arizona 86302, with a copy to the Director of Public Works, Post Office Box 2059, Prescott, Arizona 86302.
- 11) All notices to the Seller shall be sent to: Roy and Donna Bennett, 1885 Paradise Lane, Prescott, AZ 86301.

DATED THIS 29<sup>th</sup> Day of December, 2009.

A Roy Bennett  
A. Roy Bennett, co-trustee

Donna L. Bennett  
Donna L. Bennett, co-trustee

Buyer

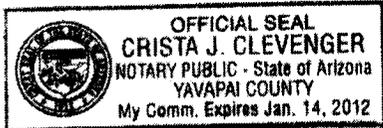
MM

Seller  
Seller

ARB  
DLB

State of Arizona )  
 ) ss.  
County of Yavapai )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of December, 2009, by A. Roy Bennett and Donna L. Bennett, co-trustees of the A. Roy and Donna L. Bennett Family Trust, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that she executed it.



[Seal]

*Crista J. Clevenger*

Notary Public

My commission expires: 1-14-2012

*Mark J. Nietowski*  
MARK J. NIETOWSKI, Director of Public Works

ATTEST:

APPROVED AS TO FORM:

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

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

Buyer *MM*

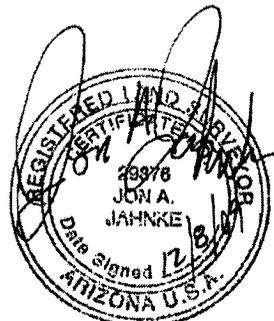
Seller *ARB*  
Seller \_\_\_\_\_

## EXHIBIT 'A'

All that portion of Section 32 Township 14 North, Range 02 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

All that portion of Parcel 'B' as shown and recorded in the Replat of a portion of Lots 409,410,417 and 418 of the Idylwild Tract as recorded in Book 63 of Maps and Plats Page 14, on file at the Office of Yavapai County Recorder, Yavapai County, Arizona.

Containing 6,591.3 square feet more or less.



EXPRES  
3/31/2011





**COUNCIL AGENDA MEMO – 3/2/2010 & 3/9/2010**

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Acquisition of real property identified as Thumb Butte Estates Lot 18 for the Zone 27 Water Reservoir Upgrade and Replacement Project

**Approved By:**

**Date:**

<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>	<i>02/26/10</i>

**Item Summary**

Direction for staff on acquisition of real property necessary for the Zone 24 and 27 Water Utility Improvement Project. This real estate is the preferred location for construction of a new water storage tank, which will provide additional storage capacity for the area.

**Background**

It has been determined through the City of Prescott Water System Model and field observations that additional storage and water pressure is needed within Pressure Zones 24 and 27 located in the southwest portion of the City, south of Thumb Butte Road and east of the Prescott National Forest. Insufficient capacity is evident within the zones during periods of peak demand demonstrating an inadequacy in the existing facilities. Post, Buckley, Schuh, and Jernigan, Inc. (PBS&J), is currently designing the Zone 24 Water Storage Tank, Booster Station, Water Main; and performing an analysis for siting of the Zone 27 Storage Tank improvements needed to increase storage volume, enhance pressure, fire flows, and overall system performance within the two zones.

Staff and PBS&J have evaluated several properties with Zone 27 area to determine if the properties meet the storage elevation requirements for the pressure zone. Attachment is the executive summary of the reservoir siting analysis (Exhibit A).

City staff has been in negotiations for purchase of Lot 18 of Thumb Butte Estates (see attached legal description), the preferred reservoir site based off the reservoir siting analysis. The City did obtain an appraisal provided by Bergthold Ag Services, State Certified Appraiser, which determined an appraisal price for Lot 18 at \$185,000 (Letter attached). A copy of the appraisal and offer letter was provided to the property owners on September 14, 2009. A counteroffer letter from the property owner at \$220,000 was written on September 17, 2009. The City made a counter offer at appraised price plus 10% at \$203,500 on November 3, 2009. The property owner responded on January 4, 2010, rejecting the counter-offer and reaffirming his asking price of \$220,000.00.

**AGENDA ITEM:** Acquisition of real property identified as Thumb Butte Estates Lot 18 for the Zone 27 Water Reservoir Upgrade and Replacement Project

Based on the reservoir siting analysis it was determined that placement of the reservoir at this site is beneficial for the following reasons:

- The property is the only property within the required elevation ranges available for sale.
- The tank site is located closer to the Zone 27 service area.
- This location requires the shortest pipeline length reducing construction, maintenance, and pump energy costs.
- The site allows the decommissioning of the existing aged above ground storage tank currently serving Zone 27.
- Less concern with operation, hydraulics, tank cycling, and water quality with a single tank on the Zone 27 system
- The partially buried prestressed concrete tank will have less visual impacts to the neighboring community.
- Pre-stressed concrete tanks require less lifetime maintenance than welded steel.

On February 11, 2010 staff held a public meeting to disclose the reservoir siting analysis and to review the proposed reservoir site with the neighborhood. Attached are drawings detailing the proposed layout and profile (Exhibit B). The major concern from the neighborhood was regarding the size of the tank and effort needed to construct the reservoir partially underground. There was also support for efforts to reduce the height of the reservoir and increase water storage capacity for the area.

The new reservoir and pump station will provide increased storage and pumping capacities for fire protection and build out of the area.

Council direction is requested with respect to the stalemate in negotiations. Options to consider include:

- 1) Meeting the seller's asking price
- 2) Choosing a less desirable location and dealing with unwilling sellers
- 3) Condemnation

**Budget**

FY 10 funding for land acquisition is available from the Water Fund. An Amount of \$400,000 of the funding has been budgeted for acquisitions needs for the project.

- Attachments**
- Exhibit "A" summary Reservoir Siting Analysis
  - Lot 18 Thumb Butte Estates Legal Description
  - Appraisal Letter
  - Exhibit "B" Layout and Profile for proposed Reservoir
  - Alternative Sites

**Recommended Action:** Provide direction to staff regarding acquisition of the property.



An employee-owned company

## **ZONE 27 RESERVOIR TANK B SITING EVALUATION**

**July, 2009**

### **EXECUTIVE SUMMARY**

The City of Prescott *Water Distribution System Model Report dated 2005 (2005 Water System Report)* identifies a new Zone 27 Reservoir (Lower Thumb Butte) Tank B with a capacity of 1.25 million gallons. The new reservoir is needed to improve both operational and fire flow storage capacity within the City's Zone 27 service area.

The existing Zone 27 Reservoir (Lower Thumb Butte) Tank A is located along Skyline Drive north of the intersection with Forest Hills Road. Reference the attached Project Location Map. The existing tank was constructed in 1961 and is welded steel construction (AWWA D-100) with a design capacity of 200,000 gallons. The tank has the following dimensions:

Diameter:	40-feet
Height:	16-feet
Pad Elevation:	5,840-feet
High Water Level:	5,854-feet +/-

Five possible site alternatives were identified for evaluation. There were additional properties for sale in the area that did not meet our elevation requirements for the project.

Potential sites for the new Zone 27 Reservoir – Tank B were evaluated based on the following criteria:

- **System Hydraulics**
- **Available Lot and Space**
- **Environmental Considerations**
- **Tank types**
- **Site access**
- **Property Acquisition Costs**
- **Pipeline Length**
- **Total Estimated Project Construction Cost**

Five possible site alternatives were identified for evaluation.

- Alternatives 1 – Replacement of Existing Reservoir – Welded Steel on same site.
- Alternative 2 – Parcel to west - Replacement of Existing Reservoir – Welded Steel or Buried Pre-stressed Concrete Tank
- Alternative 3 – Loma Rica Circle – Buried Conventional Concrete Tank
- Alternative 4 – Parker Drive – Buried Pre-stressed Concrete Tank
- Alternative 5 – National Forest – Welded Steel Tank  
(City Staff met with Laura Jo West of the Bradshaw Ranger District USDA Forest Service. Construction of a tank in Prescott National Forest will not be allowed unless it is shown that no other reasonable alternatives are available. Economic benefits are not part of their evaluation criteria)

An evaluation matrix summarizes the evaluation criteria for each alternative. Each of site alternatives has been ranked based on the evaluation criteria stated above.

#### *Recommended Site*

Although the cost to construct Site Alternative 2-C is moderately higher than some of the other alternatives investigated, the numerous advantages associated with this option make it the recommended alternative.

These advantages include:

- The property is available for sale.
- The tank site is located closer to the Zone 27 service area.
- Requires the shortest pipeline length reducing construction, maintenance, and pump energy costs.
- Site allows the decommissioning of the existing aged above ground storage tank currently serving Zone 27.
- Less concern with operation, hydraulics, tank cycling, and water quality with a single tank on the Zone 27 system
- The partially buried prestressed concrete tank will have less visual impacts to the neighboring community
- Pre-stressed concrete tanks require less lifetime maintenance than welded steel.



Bergthold Ag Services  
P.O. Box 12635  
Prescott, AZ 86304  
Email: [basglb@cableone.net](mailto:basglb@cableone.net)

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August 14, 2009

Mr. Jeff M. Low  
Capital Projects Manager  
City of Prescott Public Works  
433 North Virginia St.  
Prescott, AZ 86302

Re: Summary Appraisal Report on approximately 0.513 acres of open land, located at 2215 Skyline Drive, just west of downtown Prescott, Arizona. Report Number 09-004.

Dear Mr. Low:

In accordance with your request and authorization, I have completed my investigation and appraisal analysis of the property owned by the Stone Living Trust located at 2215 Skyline Drive, Prescott, Yavapai County, Arizona.

The appraisal assignment is to determine the "as is" Market Value of the Stone property as of August 8, 2009, also the date of inspection. This Summary Appraisal Report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and The Appraisal Institute. The appraiser hereby acknowledges that he has the appropriate education and experience to complete this assignment in a competent manner.

The following value conclusion is subject to certain assumptions and limiting conditions set forth in the body of this report. My conclusion of value is as follows:

**SUBJECT 0.513 ACRE PROPERTY. \$185,000**

This letter itself is not the appraisal, but merely serves to transmit the results of the investigation and analysis. It would be possible to determine a range of value should you request the results of the appraisal be expressed in that manner. I will await your response before completing the full written report.

Respectfully submitted,

Gordon L. Bergthold  
Certified General Real Estate Appraiser  
Arizona Certificate Number 31210

Alt. 4

Property on National Forest Service (NFS), requires a lease with NFS and documentation that no other sites are feasible

Alt. 3

Unwilling seller

Alternative 1,  
Existing Tank Site

(Existing site too small,  
properties needed, not all  
willing sellers)

Alt. 2 (C/S)

Property for Sale

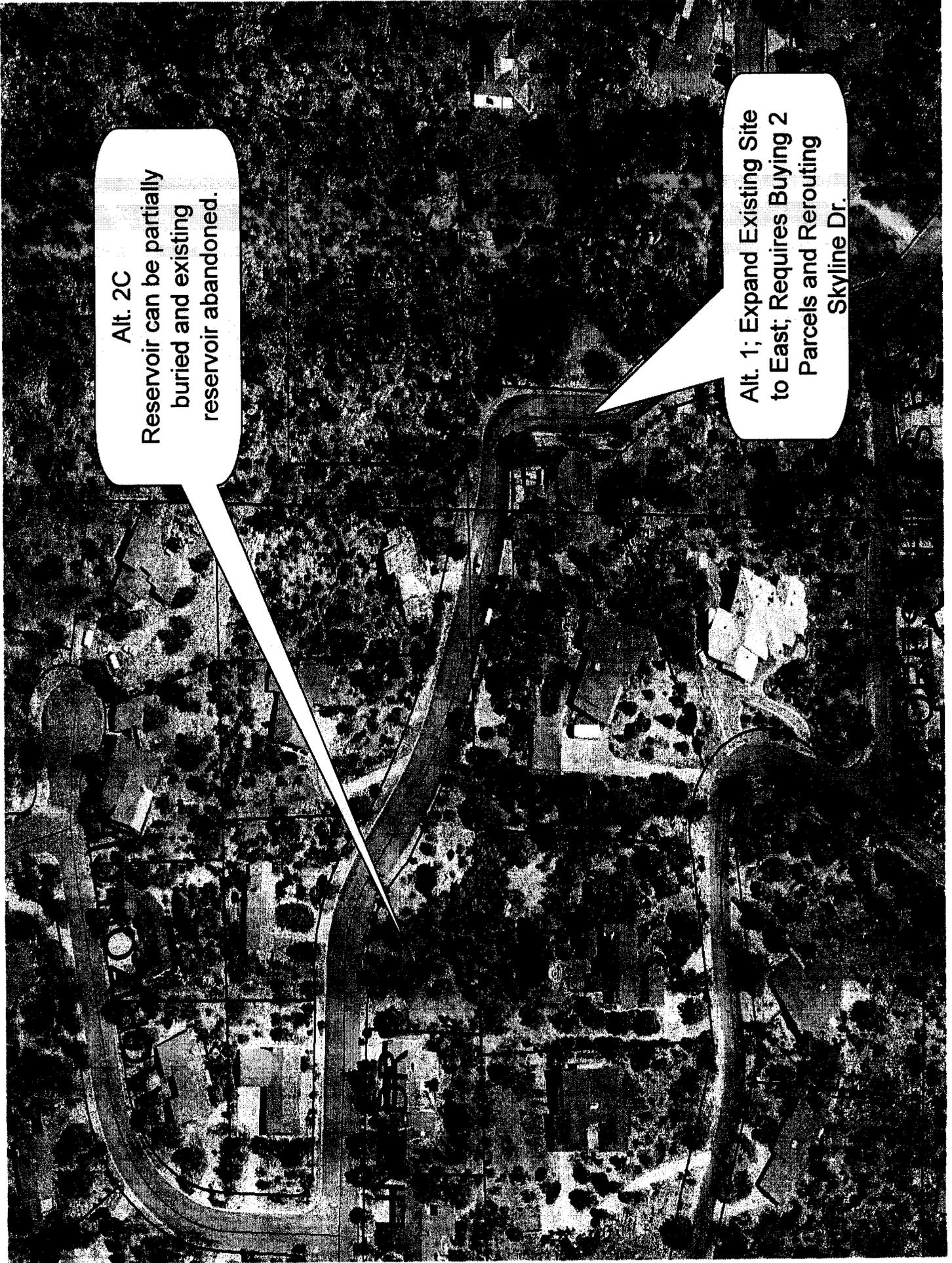
Alt. 5

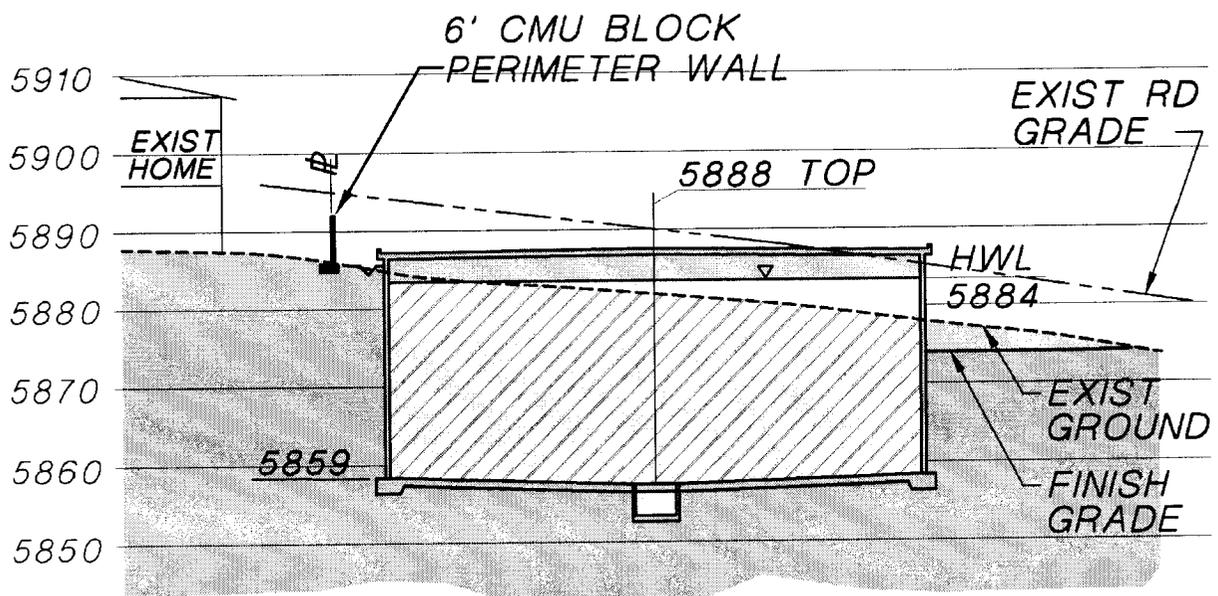
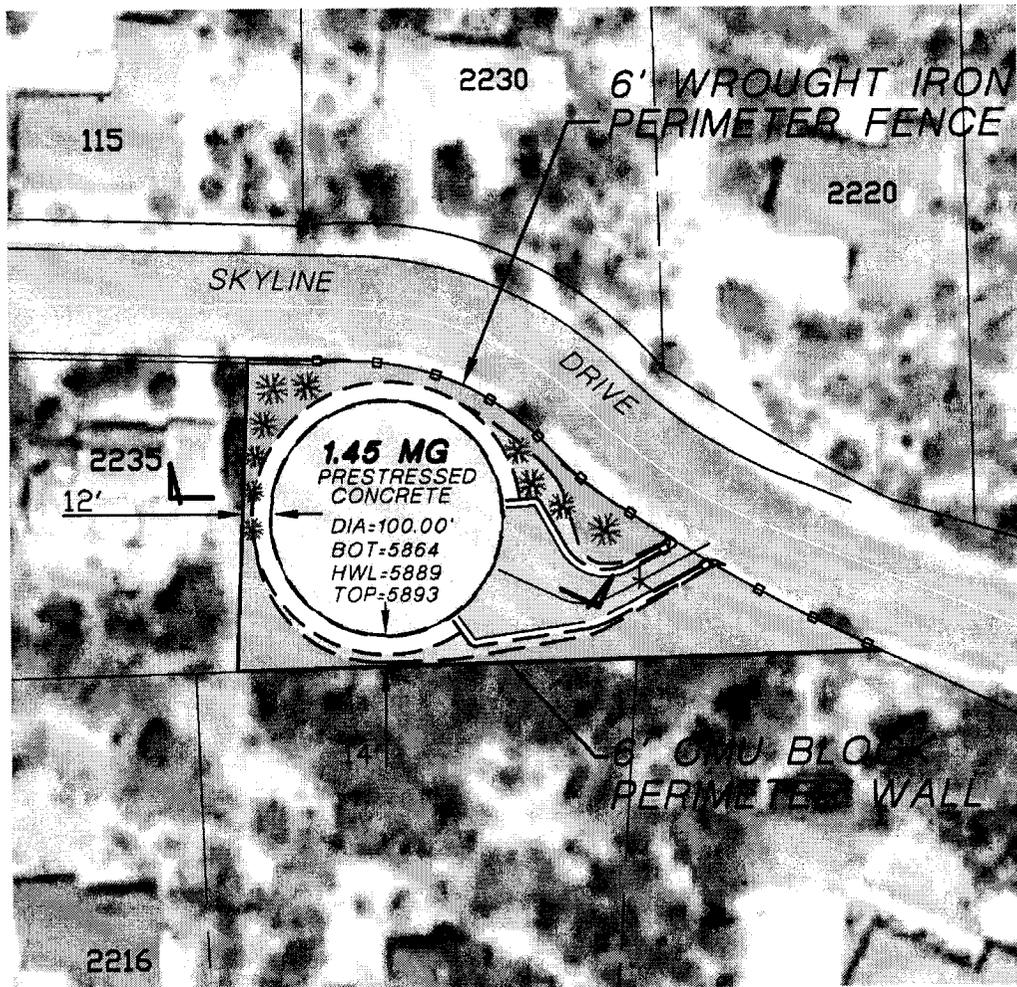
Unwilling Seller

**Alt. 2C**

Reservoir can be partially buried and existing reservoir abandoned.

**Alt. 1; Expand Existing Site to East; Requires Buying 2 Parcels and Rerouting Skyline Dr.**





**PRESTRESSED CONCRETE RESERVOIR  
LOWER ELEVATION OPTION**

**COUNCIL AGENDA MEMO – 3/2/2010 & 3/9/2010**

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Approval of a Settlement Agreement and Release with TranSystems Corporation for acceptance of \$100,000 for modification of the retaining wall adjacent to Iron Springs Road and Vyne Street

<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>[Signature]</i>		02/25/10

**Item Summary**

Approval of this item will settle the claim made by the City against TranSystems Corporation (TSC), for costs to reconstruct a thirty four (34) foot section of barrier rail and cantilevered sidewalk along Iron Springs Road adjacent to Vyne Street. As originally designed and constructed the wall blocked the view of motorists turning left from Vyne Street onto Iron Springs Road. The Settlement Agreement will result in payment of \$100,000.00 for modification of the retaining wall.

**Background**

Staff completed a site distance traffic assessment in April 2008 verifying corrective action was required to meet sight distance criteria per American Association of State Highway Transportation Officials (AASHTO) requirements. TSC agreed and provided the City with biddable plans and specifications, at no cost, for the modification of the wall. TSC payment in the amount of \$100,000.00 will be deposited into the One Cent Fund to offset future retaining wall construction costs.

**Attachments** - Settlement Agreement and Release

**Recommended Action:** MOVE to approve a Settlement Agreement and Release with TranSystems Corporation, for acceptance of \$100,000 for modification of the retaining wall adjacent to Iron Springs Road and Vyne Street.

## **SETTLEMENT AGREEMENT AND LIMITED RELEASE**

NOW ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010, the undersigned, City of Prescott, Arizona ("City") and TranSystems Corporation, ("TranSystems") f/k/a Cannon & Associates, Incorporated, through their authorized representatives, who by executing this Agreement represent that they have obtained the requisite authority to so bind the respective parties, do herewith agree as follows to wit:

1. Certain claims and disputes have arisen between City and TranSystems concerning professional services by TranSystems delivered under that certain Consultant Agreement for Iron Springs Road Design Services Contract No. 03-086 dated May 21, 2003. In order to avoid the risk and expenses of litigation concerning these claims and defenses thereto the City and TranSystems do herewith enter into this Agreement for the purpose of fully and finally settling these claims and disputes.

2. Neither City nor TranSystems admit the validity of any specific claim or defense; no liability is admitted by either party.

3. The consideration for this Agreement is acknowledged as the mutual desire to avoid the risks and expenses of litigation, to preserve the good business relations between the parties, and for the promises contained herein.

4. City and TranSystems therefore stipulate and agree that all claims and disputes arising out of and/or related to the relocation of retaining wall no. 1 including but not limited to any retaining wall report, retaining wall plans, profile and details, construction staking therefore and/or related to the determined need to relocate the wall in accordance with AASHTO requirements for site distance including any demolition plan and details therefore in accordance with the plan attached hereto as Exhibit "A" or

otherwise including all fees, costs and expenses related thereto are by this Agreement fully settled and compromised. This settlement and compromise is expressly intended to include any potential future claims which may arise out of the same claims and dispute and/or defenses, including but not limited to any additional repair and/or maintenance expenses associated with said retaining wall no. 1.

5. City and TranSystems therefore agree that:

a. Concurrently with the parties' approval of this Settlement Agreement and Limited Release, TranSystems' sole obligation shall be to pay to City the total sum of \$100,000.00.

b. It is expressly understood and agreed that the total amount payable by TranSystems to City in consideration of this settlement shall not exceed \$100,000.00.

c. Upon said payment by TranSystems to City, all of City's claims, demands, damages, injuries, losses, costs, expenses, compensation, attorney fees, actions, causes of action, debt and responsibilities in dispute, whether known or unknown, existing or which may hereafter arise as herein described shall be deemed fully settled and compromised and TranSystems shall be released by City from any current and future liability arising out of or related to the matters settled herein.

d. It is expressly understood and agreed that this Settlement Agreement and Limited Release is intended to bind and benefit the parties hereto as well as all those claiming by, through and under them, their respective successor and assigns, if any, including the parties' respective insurance carriers, agents, servants, employees, representatives, subsidiaries, and affiliated companies.

e. It is acknowledged and stipulated that this Settlement Agreement and Limited Release relates only to those claims and disputes specifically settled herein and shall not be extended by implication to include any unrelated claims or disputes between the parties currently known or unknown or which may arise in the future.

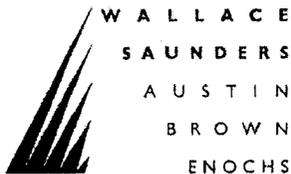
IT IS SO AGREED.

CITY OF PRESCOTT

By \_\_\_\_\_  
Name:  
Title:

TRANSYSTEMS CORPORATION

By \_\_\_\_\_  
Name:  
Title:



10111 West 87th Street  
P.O. Box 12290  
Overland Park, KS 66282  
T: 913-888-1000  
F: 913-888-1065

WWW.WALLACESAUNDERS.COM

CHARTERED  
ATTORNEYS AT LAW

January 29, 2010

Mr. Matt Podracky  
Senior Assistant City Attorney  
Legal Department  
City of Prescott  
P.O. Box 2059  
Prescott, AZ 86302

Re: Revised Settlement Agreement and Limited Release  
City of Prescott v. TranSystems/Iron Springs Retaining Wall  
Relocation  
Our File No: 89676

Dear Matt:

TranSystems has confirmed its agreement with the City to fully and finally settle this dispute in exchange for the payment by TranSystems to the City of \$100,000. Based on this confirmation and your e-mail to me of January 26, 2010, I have revised the December 7, 2009 Settlement Agreement into a new form (attached) which reflects a straightforward settlement of all claims arising out of or related to the Iron Springs Road design services contract in exchange for the payment by TranSystems to City of \$100,000.

If you will confirm your agreement with the revisions I will present the original to TranSystems for signature and will forward it to you along with TranSystems' check payable to the City with the instruction that you are authorized to deliver the check to the City only upon confirmation to TranSystems that the City has fully approved the revised Settlement Agreement and Release and has executed the same.

Please look this over and let me know if you and the City are in accord with these revisions and I will proceed accordingly.

RICHMOND M. ENOCHS  
JAMES G. BUTLER, JR.  
RICHARD T. MERKER  
ROD L. RICHARDSON  
BARRY E. WARREN  
MARK W. MCKINZIE  
JAMES L. SANDERS  
MICHAEL J. DUTTON  
THOMAS D. BILLAM  
GARY R. TERRILL\*  
TIMOTHY G. LUTZ  
DOUGLAS C. HOBBS\*  
PATRICK E. MCGRATH  
ROBERT A. MINTZ  
D'AMBRA M. HOWARD  
D. STEVEN MARSH\*  
STEPHEN H. SNEAD\*\*  
KARL KUCKELMAN  
JOHN M. ROSS  
MICHAEL D. STREIT\*Δ  
TIMOTHY J. FINNERTY\*  
ERIC A. VAN BEBER  
KURT W. RATZLAFF\*  
DERRICK A. PEARCE  
CHRISTOPHER J. MCCURDY  
NICK NAGRICH\*\*  
JOEL I. KRIEGER  
DONALD J. FRITSCHIE  
PATRICK J. MURPHY\*  
GARY A. SCHAFERSMAN  
MARTY T. JACKSON\*  
JEFFREY S. NICHOLS  
KEVIN D. WEAKEYΔ  
MICHAEL R. KAUPHUSMAN  
KEVIN M. JOHNSON  
MARK E. MCFARLAND  
MICHAEL L. BROWN  
PAUL M. CROKER  
ALLISON G. CONFER  
JENNIFER ARNETT  
JONATHAN W. DAVIS  
ALEX B. JUDD  
SCHALIE A. JOHNSON  
RYAN D. WELTZ  
CARA R. ROSE\*\*  
NATHANIEL A. DULLEQ  
CHERYL A. KESSLER  
AMBER JEFFERS  
ROGER HUDLIN\*  
TYLER HIBLER  
AARON SCHWARTZ\*\*Q  
CAROL A. KRSTULIC\*  
MATTHEW W. SIMS\*\*

(OF COUNSEL)  
JAMES O. SCHWINN  
JAMES L. MOWBRAY  
BRIAN G. BOOS

K.B. WALLACE (1912-1982)  
FRANK SAUNDERS, JR. (RETIRED)  
LARRY J. AUSTIN (RETIRED)  
BARTON BROWN (RETIRED)

ALL ATTORNEYS ADMITTED  
IN KANSAS AND MISSOURI  
UNLESS OTHERWISE NOTED

\*\* ADMITTED IN MISSOURI  
\* ADMITTED IN KANSAS  
Δ ADMITTED ALSO IN OKLAHOMA  
Q ADMITTED ALSO IN ILLINOIS

Springfield, MO  
T: 417-866-2300  
F: 417-866-2444

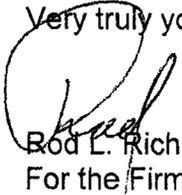
Kansas City, MO  
By Appointment Only  
T: 816-942-8080  
F: 913-888-1065

Wichita, KS  
T: 316-269-2100  
F: 316-269-2479

Mr. Matt Podracky  
January 29, 2010  
Page 2

I'll wait to hear from you.

Very truly yours,



Rod L. Richardson  
For the Firm

(913) 752-5501  
rlr@wsabe.com

RLR/sgb

Attachment

<b>COUNCIL AGENDA MEMO – 3/2/2010 &amp; 3/9/2010</b>
<b>DEPARTMENT:</b> Public Works
<b>AGENDA ITEM:</b> Adoption of Ordinance No. 4734-1031 authorizing purchase and acceptance of public right-of-way and temporary construction easement from Flower Fields LLC, Ken Lain for the Iron Springs Road Retaining Wall 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 	02/25/10

**Item Summary**

Approval of this ordinance will acquire right-of-way and a temporary construction easement necessary for the Iron Springs Road Retaining Wall Improvement Project. Exhibit "A" (attached) provides a summary of the acquisition, involving one (1) parcel of real property and a total value of \$4,350.00.

**Background**

A concrete retaining wall was constructed along Iron Springs Road adjacent and west of Vyne Street in 2007 as part of the Iron Springs Road Reconstruction Project. The City retained TranSystems Corporation (TSC) in 2006 to provide professional engineering services to complete the design of the Iron Springs Road Improvement project. As part of TSC's scope of work retaining walls were required for the road widening along Iron Springs Road. The concrete retaining wall southwest of the intersection of Iron Springs Road and Vyne Street, as designed, did not meet the requirements of the MUTCD sight distance triangle for vehicular traffic making a left-hand-turn movement from Vyne Street onto Iron Springs Road. Additional right-of-way is required for modification of 34' of the barrier rail and cantilevered sidewalk to correct the design error. The new right-of-way required is approximately 198 SF and the temporary construction easement is 9,868 SF. The agreed compensation also provides for the loss of rod-iron fencing, landscaping, and concrete parking bumpers.

**Budget**

Funding for the Iron Springs Road Retaining Wall Project right-of-way acquisition is available from the One Cent Sales Tax for Streets and Open Space. The total amount required for the acquisition is \$4,350.00 plus closing costs estimated between \$200 and \$1000. The actual closing costs will determine the final amount for each transaction.

- Attachments**
- Agreement for Sale
  - Legal Descriptions and Plot Plan
  - Ordinance No. 4734-1031

<b>Recommended Action:</b> Move to adopt Ordinance No. 4734-1031.
---

**CITY OF PRESCOTT**  
**AGREEMENT FOR SALE OF REAL PROPERTY**

THIS AGREEMENT, dated November 24, 2009, by and between Flower Fields, LLC, Ken Lain (hereinafter referred to as the "Seller"), residing at (or its principal place of business located at) 1815 Iron Springs Road, Prescott, AZ 86305, and the CITY OF PRESCOTT, an Arizona municipality (hereinafter referred to as "Buyer").

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) Seller agrees to sell and convey to the Buyer, and Buyer agrees to purchase from Seller, the real property described in Exhibit "A" for public right-of-way, the temporary construction easement described in Exhibit "C", both illustrated on Exhibit "B" and "D".
- 2) The total purchase price for the public right-of-way, the temporary construction easement and the permanent real property improvements is Four Thousand Three Hundred Fifty and no/100 dollars (\$4,350.00), payable upon the close of escrow.
- 3) The Seller warrants that Seller is the owner of a good and fee simple title to the property herein sold, free and clear of all liens and encumbrances, subject only to the following:
  - (A) Applicable zoning regulations.
  - (B) Utility, drainage and other easements of record in the records of the Yavapai County Recorder.
  - (C) Mineral rights reserved in the patents to the land.
- 4) In order to effectuate the terms of this Agreement, Seller and Buyer shall promptly execute and deliver any and all documents required by the City.
- 5) The closing of escrow shall be at a Title Company designated by the Buyer as soon as possible after approval of this Agreement by the Prescott City Council (the "Closing Date"). On the Closing Date, Buyer shall make payment as provided in Section 2 of this Agreement to the Seller. The Buyer shall pay all recording and transfer taxes and fees, including the cost of recording the right-of-way and any and all closing costs not hereinbefore specified.

Buyer 

Seller \_\_\_\_\_

- 6) Buyer shall be entitled to use of the right-of-way and easements as depicted in Exhibits "A" and "B", "C" and "D" for construction and maintenance of roadway improvements, upon the approval of this agreement by the Prescott City Council.
- 7) Buyer understands that the foregoing sets forth the entire agreement between the parties and that no agent or representative of Seller has any authority to change or modify this agreement in any manner, or to make any agreement or representation on behalf of the Seller not set forth herein.
- 8) Pursuant to A.R.S. §38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the foregoing event, the City 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 contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.
- 9) This Agreement is subject to the approval by the Prescott City Council of an Ordinance authorizing the purchase of the right of way contemplated herein.
- 10) All notices to Buyer shall be sent to: City of Prescott, c/o City Clerk, Post Office Box 2059, Prescott, Arizona 86302, with a copy to the Director of Public Works, Post Office Box 2059, Prescott, Arizona 86302.
- 11) All notices to the Seller shall be sent to: 1815 Iron Springs Road, Prescott, AZ 86305

DATED THIS 24 Day of November, 2009.

  
 \_\_\_\_\_  
 KEN LAIN (Flower Fields LLC.)

\_\_\_\_\_  
 MARK J. NIETUPSKI, Public Works Director

ATTEST:

APPROVED AS TO FORM:

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

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

Buyer 

Seller \_\_\_\_\_

**EXHIBIT 'A'**

**RIGHT OF WAY ACQUISITION**

115-06-099F

All that portion of Section 29, Township 14 North, Range 02 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the Northeast corner of that certain parcel described in Book 4206, Page 46, of Official Records of Yavapai County, Arizona;

Thence S 24°52'59" W, 46.40 feet, along the Westerly right of way of Vyne Street, to the Southeast corner of said parcel. Said point also being part of the South right-of-way of Iron Springs Road;

Thence N 14°49'28" W, 19.47 feet, along the said parcel to the Point of Beginning;

Thence continuing N 14°49'28" W, 9.59 feet, along said parcel;

Thence N 71°40'19" W, 49.26 feet, along said parcel;

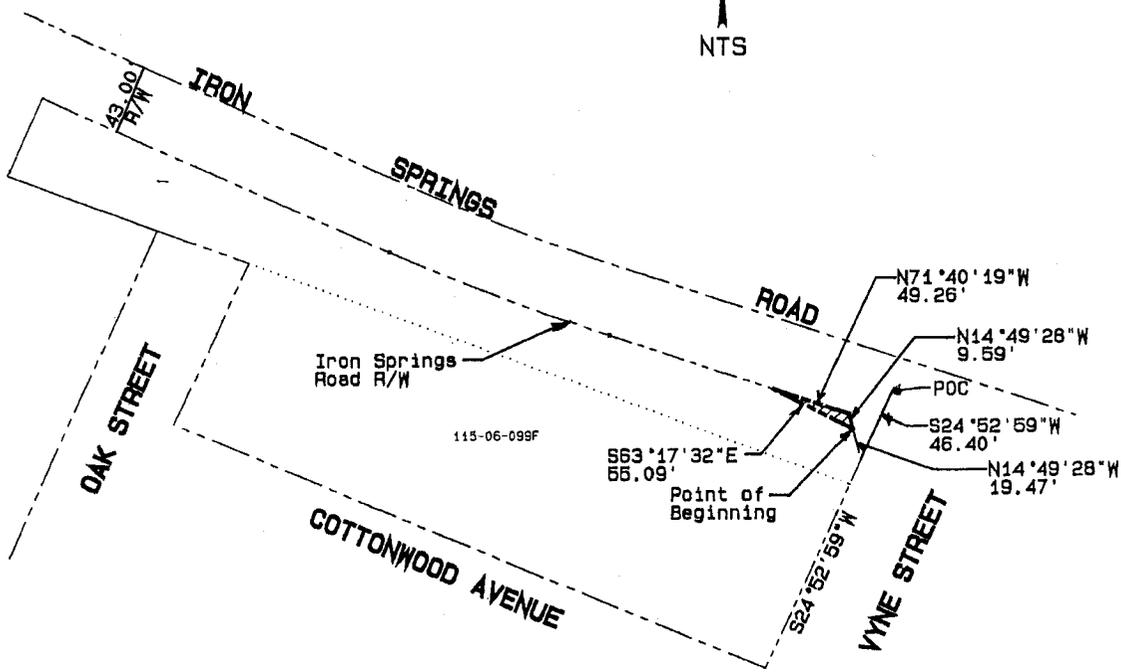
Thence S 63°17'32" E, 55.09 feet to the Point of Beginning.

Containing 197.8 square feet more or less.



*EXPIRES 5/31/2011*

EXHIBIT "B"  
 RIGHT OF WAY ACQUISITION  
 PARCEL 115-06-099F



New R/W = 197.8 sq. ft.



## EXHIBIT 'C'

**TCE**

115-06-099F

All that portion of Section 29, Township 14 North, Range 02 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the Northeast corner of that certain parcel described in Book 4206, Page 46, of Official Records of Yavapai County, Arizona;

Thence S 24°52'59" W, 46.40 feet, along the Westerly right of way of Vyne Street, to the Southeast corner of said parcel being the Point of Beginning. Said point also being part of the Southerly right-of-way of Iron Springs Road;

Thence continuing S 24°52'59" W, 48.11 feet, along the West line of Vyne Street;

Thence N 71°36'53" W, 138.73 feet;

Thence N 18°23'07" E, 71.99 feet, to the intersection of the South right-of way of Iron Springs Road;

Thence S 71°40'19" E, 79.00 feet, along the South right-of-way of Iron Springs Road;

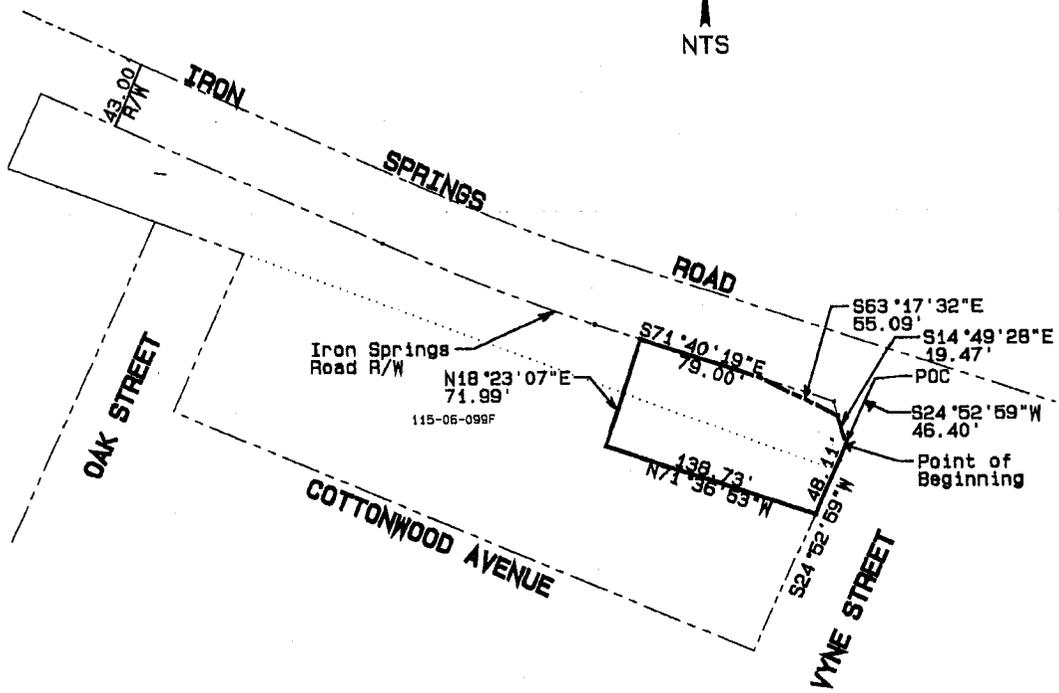
Thence S 63°17'32" E, 55.09 feet to the intersection of the Southerly right-of-way of Iron Springs Road;

Thence S 14°49'28" E, 19.47 feet, along the Southerly right-of-way of Iron Springs Road to the Point of Beginning.

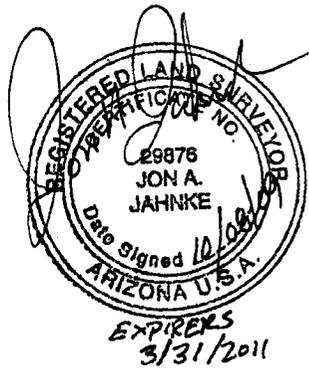
Containing 9,868.0 square feet more or less.



EXHIBIT "D"  
TCE  
PARCEL 115-06-099F



TCE = 9,868.0 sq. ft.





**ORDINANCE NO. 4734-1031**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE OF REAL PROPRTIE, EASEMENT AND IMPROVEMENTS FROM FLOWER FIELDS, LLC. KEN LAIN FOR THE IRON SPRINGS ROAD RETAINING WALL IMPROVEMENT PROJECT, AND AUTHORIZING THE MAYOR AND CITY STAFF TO TAKE ALL NECESSARY STEPS TO EFFECTUATE SAID PURCHASES AND DECLARING AN EMERGENCY**

**RECITALS:**

WHEREAS, the City Council has determined that certain real property, easement and improvements are needed by the City for the Iron Springs Road Retaining Wall Improvement Project; and

WHEREAS, the proposed purchase prices of the following described property, easement and improvements are deemed to be fair and equitable and will benefit the City of Prescott.

WHEREAS, the purchase of this certain real property, easement and improvements in for the public's health, safety and welfare.

**ENACTMENTS:**

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

SECTION 1. THAT the City Council hereby accepts the offer to purchase certain real property and easement more particularly described in a certain Agreement for Sale of Real Property dated November 24, 2009, from Flower Fields, LLC, Ken Lain, which property and easement consist of: (1) real property as described in Exhibits A and B thereto; (2) a Right of Entry and Temporary Construction Easement as described in Exhibits C and D, thereto, all located in APN 115-06-099F (2009), and the City agrees to purchase and accept said property and easements from Flower Fields, LLC, Ken Lain, pursuant to the terms and conditions as set forth therein, for the purchase price of \$4,350.00 plus closing costs.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott, Arizona this 9<sup>th</sup> day of March, 2010.

---

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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ELIZABETH A. BURKE, City Clerk

---

GARY D. KIDD, City Attorney