

# PRESCOTT CITY COUNCIL REGULAR VOTING MEETING A G E N D A \* AMENDED

**PRESCOTT CITY COUNCIL  
REGULAR VOTING MEETING  
TUESDAY, NOVEMBER 9, 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 **Regular Voting Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION:** Reverend Julia McKenna, Spiritual Architect
- ◆ **PLEDGE OF ALLEGIANCE:** Councilman Lamerson
- ◆ **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. [November 14 – 21, 2010, as Soroptimist International of the Americas Week](#)

**II. PRESENTATION**

- A. Update on current street improvements.

### III. CONSENT AGENDA

**CONSENT ITEMS A THROUGH D LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.**

- A. Adoption of Resolution No. 4055-1125 – 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 with the Governor’s Office of Economic Recovery, accepting funding in the amount of \$50,000 to support basic public safety activities and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
  
- B. Adoption of Resolution No. 4056-1126 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Police Department to enter into an Intergovernmental Agreement between the Maricopa County Board of Supervisors on behalf of the Maricopa County Sheriff’s Office (“MCSO”) to provide Arizona Department of Homeland Security (AZDOHS) grant funding to complete the data source connection to the MCSO Regional AzLINK Node and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
  
- C. WIFA (Water Infrastructure Financing Authority of Arizona) Funding:
  - 1. Adoption of Ordinance No. 4770-1121 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) for the Virginia Street & Penn Alley Sewer Replacement Project, through the Clean Water Program #910147-11, authorizing the Mayor and staff to sign any and all WIFA funding documents pertinent to said project, and declaring an emergency.
  
  - 2. Adoption of Ordinance No. 4771-1122 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) for the Small Water Mains Upgrades Project, through the Drinking Water Program #920206-11, authorizing the Mayor and staff to sign any and all WIFA funding documents pertinent to said project, and declaring an emergency.
  
  - 3. Adoption of Ordinance No. 4772-1123 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) for the Sundog Filter Replacement & Denitrification Project, through the Clean Water Program #901148-11, authorizing the Mayor and staff to sign any and all WIFA

funding documents pertinent to said project, and declaring an emergency.

- D. Approval of the minutes of the Prescott City Council Regular Voting Meeting of October 26, 2010.

#### IV. REGULAR AGENDA

- A. Approval of agreement with DeMenna & Associates for legislative representation services.
- B. Lease with Prescott Meals on Wheels:
  - 1. Adoption of Resolution No. 4053-1123 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled the *2010 Lease with the Prescott Meals on Wheels for Lease of a Portion of the Rowle P. Simmons Community Center*.
  - 2. Adoption of Ordinance No. 4767-1118 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona adopting by reference that certain document entitled the 2010 Lease with the Prescott Meals on Wheels for Lease of a Portion of the Rowle P. Simmons Community Center, made a public record by Resolution No. 4053-1123 and approving said lease.
- C. Adoption of Ordinance No. 4768-1119 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the sales and exchange of certain real properties belonging to Arizona Public Service Company (APS) and the City of Prescott, approving the conveyance of title to certain real property belonging to the City of Prescott and accepting title to that certain real property which is a 2.8 acre APS parcel north of the APS yard, and authorizing the Mayor and staff to execute all necessary sale and conveyance documents to complete the exchange.
- D. Authorization to enter into an Airport Ground Lease Agreement with Guidance Helicopters, Inc. for approximately .185 acres of airport property at Ernest A. Love Field and authorizing the Mayor and City staff to execute any and all related documents for the lease.
- E. Approval of the Final Plat of the Granite Dells Estates Commercial PAD Phase 1B.
- F. Adoption of Ordinance No. 4769-1120 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending the City Code by adding Chapter 5-14, *Fireworks*, and amending Section 15-1-20(A), to add regulations and penalties for the use of fireworks.

- G. Adoption of Resolution No. 4054-1124 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona repealing Resolution No. 4012-1042 dissolving the *Prescott: The Arizona Centennial City Committee* as an advisory committee.
- H. Approval of the Notice of Intention to Increase Water and Wastewater Rates, providing for a Public Hearing at 3:00 p.m. on December 14, 2010.
- I. Discussion/direction for December 28, 2010, regularly-scheduled meeting.
- J.\* **Recess into Executive Session.**

**V.\* EXECUTIVE SESSION**

- A. **Discussion or consultation for legal advice with the attorney or attorneys of the public body and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to A.R.S. §§38-431.03(A)(3) and (4).**
  - 1. **Spire Engineering LLC v. City of Prescott**

**VI.\* POST EXECUTIVE SESSION**

- A. **Discussion and consideration of proposed legal settlement on arbitration issues re Spire Engineering LLC v. City of Prescott.**

**VII. ADJOURNMENT**

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing AMENDED 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

# PROCLAMATION

## “Soroptimist International of the Americas Week”

November 14-21, 2010

**WHEREAS**, the Soroptimist International, a worldwide Women’s Service Organization, has been improving the lives of women and girls in local communities and around the world since its inception in 1921 in Alameda, California; has distinguished itself through its good works in more than 120 countries worldwide, has proven itself to be an effective organization in engaging business and professional women to put forth great effort both locally and around the world to improve the lives of women and girls; and

**WHEREAS**, Soroptimist is the leading international organization of business and professional women united through volunteer efforts to enable women and girls to live their dreams, take control of their lives, and live according to their own values; and

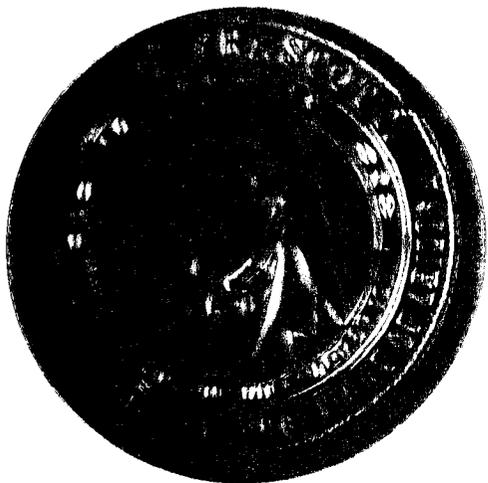
**WHEREAS**, Soroptimist International is committed to the belief that all women deserve to lead full and productive lives; women helping women and international diversity and fellowship; and

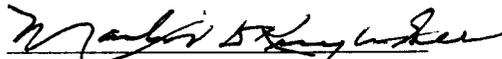
**WHEREAS**, Soroptimist International is celebrating its 89<sup>th</sup> anniversary with 120,000 members, in 124 countries, improving the lives of women and girls.

**IN WITNESS THEREOF**, I hereunto set my hand and cause the Great Seal of the City of Prescott to be affixed this 9th day of November 2010 to proclaim:

### SORPTIMIST INTERNATIONAL OF THE AMERICAS WEEK

And encourage all citizens to join in an effort to salute Soroptimist members raise awareness about the importance of community and international commitment to enable women and girls to live their dreams.

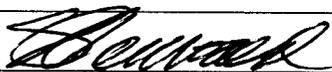
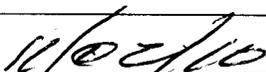


  
Marlin D. Kuykendall, Mayor

ATTEST:

  
Elizabeth A. Burke, City Clerk

<b>COUNCIL AGENDA MEMO – November 9, 2010</b>	
<b>DEPARTMENT: POLICE</b>	
<b>AGENDA ITEM: Recommendation for Council to adopt a resolution approving an Intergovernmental Agreement between the Governor’s Office of Economic Recovery (GOER) and the City of Prescott.</b>	

<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> 	

**Summary:**

The Prescott Police Department requests approval of an Intergovernmental Agreement (IGA) between the Governor’s Office of Economic Recovery (GOER) and the City of Prescott. The purpose of this Agreement will be to provide funding to support basic public safety activities that are consistent and suitable for Recovery Act Funding.

**Background:**

In September 2010, the Prescott Police Department received notification of a grant opportunity from the Public Safety Stabilization Program (PSSP), provided by the GOER. Due to the short 10-day submission period, a proposal was completed pending Council approval.

On October 15, 2010, we received notification that GOER had awarded \$50,000 to the City of Prescott per the PSSP. As detailed in the Intergovernmental Agreement, the funding will be split evenly between the Police and Fire Departments, and be used to offset overtime expenditures necessary to preserve minimum staffing levels required to uphold both Department’s basic commitment to the welfare of the community. The term of this Agreement shall be October 1, 2010 through September 30, 2011.

Either party may terminate this Agreement for convenience or cause upon thirty (30) days written notice to the other party.

**Financial Impact:**

This grant award does not require matching funds. Accordingly, there will be no financial impact to the City as result of this agreement.

**Recommended Action: MOVE to adopt Resolution No. 4055-1125.**

## RESOLUTION NO. 4055-1125

**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 WITH THE GOVERNOR'S OFFICE OF ECONOMIC RECOVERY AND ACCEPTING FUNDING IN THE AMOUNT OF \$50,000 TO SUPPORT BASIC PUBLIC SAFETY ACTIVITIES AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE**

### **RECITALS:**

WHEREAS, the City and the Governor's Office of Economic Recovery (GOER) wish to enter into a certain Intergovernmental Agreement ("IGA") attached hereto as Exhibit "A," and made a part hereof, for the City to accept funds from GOER to support basic public safety activities that are consistent and suitable for Recovery Act Funding; and

WHEREAS, after submitting a Council approved proposal for a grant opportunity from the Public Safety Stabilization Program (PSSP), on October 15, 2010, the Police Department received notification that GOER had awarded \$50,000 to it per the PSSP; and

WHEREAS, as detailed in the IGA, the funding will be split evenly between the Police and fire Departments, and be used to offset overtime expenditures necessary to preserve minimum staffing levels required to uphold both Department's basic commitment to the welfare of the community; and

WHEREAS, the term of this Agreement shall be October 1, 2010 through September 30, 2011; and

WHEREAS, the City of Prescott and the Governor's Office of Economic Recovery have the authority to enter into the foregoing agreement pursuant to ARS Sections 11-952, 48-3603(9) and 9-240(5).

### **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 with the Governor's Office of Economic Recovery for the City to accept funds in the amount of \$50,000 from GOER to support basic public safety activities that are consistent and suitable for Recovery Act Funding, as set forth in Exhibit "A" which is attached and made a part hereof.

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 November, 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 GOVERNOR'S OFFICE OF ECONOMIC RECOVERY  
AND  
City of Prescott  
CONTRACT #OER-11-IGA-GS-70**

This INTERGOVERNMENTAL AGREEMENT (the "AGREEMENT") is entered into by and between the Governor's Office of Economic Recovery ("GOER"), established by Governor Brewer to oversee and discharge funds granted under the American Recovery and Reinvestment Act of 2009 ("Recovery Act" or "ARRA"), and located at 1700 West Washington, Suite 300, Phoenix, Arizona 85007, and the City of Prescott, located at 201 S. Cortez St., Prescott, AZ 86303 in accordance with A.R.S. § 41-2701 et seq., authorizing the State of Arizona, GOER to execute and administer grants for Title XIV of the ARRA, known as the State Fiscal Stabilization Fund (as amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524). The Catalog of Federal Domestic Assistance (CFDA) Number is 84.397, Government Services Fund, administered by the U.S. Department of Education.

**I. PURPOSE OF THE AGREEMENT**

GOER is tasked with oversight and swift distribution of Economic Recovery Funding. In this capacity, GOER has agreed to provide funding to the City of Prescott for the purpose of supporting local public safety agencies to provide basic public safety activities, a project that GOER has determined meets the requirements of projects suitable for Recovery Act funding. The jurisdiction agrees to comply with all terms of the proposal as approved, submitted in response to the grant opportunity that emerged from Governor Brewer's Public Safety Stabilization Program. Attachment 1, detailing the jurisdiction's allowable expenditures, is made part of this agreement by reference herein. GOER will fund the jurisdiction up to \$50,000.00 for this purpose.

**II. WORK STATEMENT AND GENERAL PROVISIONS**

The parties mutually agree as follows:

**A. Scope of Work**

1. The jurisdiction shall provide GOER, within five business days of GOER's request, all information, data and supporting documentation requested by GOER or, if not requested by GOER, determined relevant by the jurisdiction to assist GOER in reconciling award amounts.
2. The jurisdiction shall comply with all ARRA requirements including the following 1512 reporting requirements:
  - a. Provide the following information, as required by GOER by the 15<sup>th</sup> day of the month following the end of a quarter or as requested by GOER:

- b. Grants and Projects
  - c. Financial Transactions
  - d. DUNS
  - e. Prime Vendor/Sub-recipients
  - f. 1512 Report Update
3. The jurisdiction shall make relevant personnel available for contact and meetings with Federal or State oversight agencies, when requested by GOER and shall make relevant jurisdiction personnel available to contact and meet with GOER when requested by GOER. The jurisdiction shall provide to GOER contact names, addresses, telephone numbers, e-mail addresses, and any other relevant contact information available to the jurisdiction regarding the jurisdiction's personnel considered by the jurisdiction relevant to the activities described in this section. GOER shall not reimburse the jurisdiction for any costs associated with the jurisdiction's personnel participation in these activities.
  4. GOER may monitor the jurisdiction's compliance with ARRA requirements regarding Recovery Act funds, in addition to any monitoring that other oversight agencies may decide to conduct. The jurisdiction shall cooperate with GOER regarding all monitoring activities related to ARRA funds. The jurisdiction may be required to provide information, data and supporting documentation of their ARRA transactions to GOER. GOER shall not reimburse the jurisdiction for any costs associated with these activities of the jurisdiction.
  5. The jurisdiction shall inform GOER when the jurisdiction is contacted by any Federal or State oversight agency regarding Recovery Act dollars within five business days of contact, including:
    - a. When an oversight agency requests any documents, data and information from the jurisdiction. The jurisdiction shall provide copies of the jurisdiction's responses to oversight agencies to GOER, if requested by GOER, within five business days of GOER's request.
    - b. When an oversight agency issues reports to the jurisdiction or about the jurisdiction. The jurisdiction shall provide copies to GOER, if available to the jurisdiction and if requested by GOER, within five business days of GOER's request.
    - c. When the jurisdiction responds to follow-up requests for documents, data and information from oversight agencies. The jurisdiction shall provide copies of the jurisdiction's responses to oversight agencies to GOER, if requested by GOER, within five business days of GOER's request.
  6. The jurisdiction shall allow GOER to review the jurisdiction's fraud, waste and abuse prevention programs and ARRA transactions, if requested by GOER in the manner requested by GOER.
  7. The jurisdiction shall comply with ARRA requirements as described in the following quotation: "Recipients who have failed to submit a Section 1512 report as required by the terms of their award are considered to be non-compliant. Non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal action, up to and including the termination of Federal funding or the ability to receive

Federal funds in the future.” EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, Peter R. Orszag.

B. Method and Terms of Reimbursement

Recovery Act funds will be transferred to the jurisdiction on a cost reimbursement basis upon receipt and approval of a Payment Request Form showing cumulative expenditures by line item. Items to be reported on are, dollar amount requested, name of project worked on, any Davis-Bacon reports and project status compared to timeline submitted. Travel expenses shall be at State rates (see website at [www.gao.az.gov/travel/default.asp](http://www.gao.az.gov/travel/default.asp)) and reimbursable at cost. State rates as established by the Arizona Department of Administration, General Accounting Office are made part of this agreement by reference herein. The jurisdiction will submit to GOER an estimated payment schedule and timeline for the project and the jurisdiction will be responsible for paying vendors associated with this project. GOER may provide to the jurisdiction a master template for the Payment Request Form. GOER will reimburse expenses to the jurisdiction using a warrant, transfer or by direct deposit of Recovery Act funds to the jurisdiction. Method of payment will be at the discretion of GOER and the jurisdiction will allow seven to ten working days for completion of payment of Recovery Act funds after receipt of a Payment Request Form. Any unspent funds associated with this agreement will be refunded to GOER at completion of stated agreement term. Final payment for this agreement will be released upon receipt of any final reporting requirements which are yet to be determined.

C. Reporting and Compliance Requirements

Payments by GOER to the jurisdiction shall be in strict compliance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (2 CFR 225 A-87) and shall adhere to the Federal Cash Management Improvement Act (CMIA) and comply with guidelines of the State Fiscal Stabilization Fund (SFSF), established under Recovery Act through Public Law 111-5 (H.R.1) and amended by Public Law 111-8 (H.R. 1105).

In addition, the Recovery Act specifically provides that funds may not be used by any state or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. The Recovery Act funds may be used in conjunction with other funding as necessary to complete projects, but tracking and reporting of Recovery Act funds must be separate, to meet the reporting and other requirements of the Recovery Act and other applicable law.

The accounting systems of all recipients and sub-recipients must ensure that funds from any award under this Recovery Act solicitation are not commingled with funds from any other source. Misuse of grant funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties.

Consistent with the special purposes and goals of the Recovery Act, and its strong emphasis on accountability and transparency, it is essential that all funds from a Recovery Act grant be tracked, accounted for, and reported on separately from all other funds. Recipients must also be prepared to track and report on the specific outcomes and benefits attributable to use of Recovery Act funds.

Funds associated with this AGREEMENT shall only be used to reimburse the jurisdiction for the purposes set forth on section I of this agreement. The jurisdiction must understand and comply with all applicable Federal and State policies, procedures, and requirements related to Recovery Act monies including, but not limited to, the following:

**1). "Buy American Act" Est. 1933**

The recipient understands that this award is subject to the provisions of section 1605 of the Recovery Act ("Buy American Act"). No award funds may be used for non-American sources of iron, steel, or manufactured goods for a project for the construction, alteration, maintenance, or repair of a public building or public work, unless the recipient provides advance written notification and upon approval of the federal grant agency, a waiver is issued allowing this activity.

**2.) Davis-Bacon and Related Acts: Wage Rate Requirements**

All applicants should be aware that the Recovery Act contains a provision on wage rate requirements that concerns projects funded or assisted by Recovery Act funds that employ laborers and mechanics. See section 1606 of the Recovery Act for the full text of this requirement.

**3.) ARRA Infrastructure Investment: Preference for Quick-Start Activities**

Pursuant to section 1602 of the Recovery Act, recipients of funds under this solicitation for infrastructure investment are to give preference to activities that can be started and completed expeditiously, and also are expected to use grant funds in a manner that maximizes job creation and economic benefit. For the details of this requirement, please refer to the text of section 1602 of the Recovery Act.

**4.) Recovery Act: Contracts**

Generally speaking, the Recovery Act places special emphasis on the use of fixed-price contracts awarded through competitive procedures.

**5.) National Environmental Policy Act Requirements**

Under section 1609 of the American Recovery and Reinvestments Act of 2009 all recipients must comply with any applicable environmental impact requirements of the National Environmental Policy Act of 1970 (NEPA), as amended, (42 U.S.C. 4371 *et seq.*), 40 CFR parts 1500 through 1508 and any State government requirements that implement NEPA.

**III. EFFECTIVE DATE, TERM, TERMINATION, RENEWAL, AMENDMENT**

**A. Effective Date**

This AGREEMENT shall become immediately effective only upon the following: (1) execution by GOER and the jurisdiction, and (2) execution by GOER's and the jurisdiction's attorneys, whose execution shall determine that this AGREEMENT is in proper form and within the powers and authority granted to GOER and the jurisdiction under the laws of the State of Arizona.

**B. Term, Termination, Renewal**

This AGREEMENT shall begin on October 1, 2010 and terminate on September 30, 2011, unless terminated as provided herein, or extended. Either party may terminate this AGREEMENT at any time by providing thirty (30) days written notice to the other party. If this AGREEMENT is extended by mutual written consent of the parties, all terms, conditions and provisions of the original AGREEMENT shall remain in full force and effect and apply during any extension period.

**C. Amendment**

This AGREEMENT may be modified, altered, extended or amended only in writing signed by, or on behalf of, both parties.

**IV. NOTICES**

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this AGREEMENT, unless otherwise noted, shall be delivered in person or sent by United States Mail, postage prepaid, to the parties at their respective addresses as set forth immediately below:

<p><b><u>GOER</u></b>                  James J. Apperson, Director                  Governor's Office of Economic Recovery                  1700 West Washington, Suite 300                  Phoenix, Arizona 85007                  Phone: (602) 542-6402</p>	<p><b><u>City of Prescott</u></b>                  Steve Norwood, City Manager                  City of Prescott                  201 S. Cortez St.                  Prescott, AZ 86303                  Phone: (928) 777-1952</p>
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**V. ARBITRATION**

This AGREEMENT is subject to arbitration to the extent required by A.R.S. § 12-1518.

**VI. NON-AVAILABILITY OF FUNDS**

Every payment obligation of GOER under this AGREEMENT is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this AGREEMENT, either party may terminate this AGREEMENT at the end of the period for which funds are available. No liability shall accrue to GOER or the State of Arizona in the event this provision is exercised, and GOER and the State of Arizona shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**VII. CANCELLATION FOR CONFLICT OF INTEREST**

This AGREEMENT is subject to cancellation pursuant to Arizona Revised Statutes § 38-511, the provisions of which herein incorporated by reference.

**VIII. AUDIT OF RECORDS**

Pursuant to Arizona Revised Statutes § 41-1351, GOER shall retain all data, books, and other records relating to this AGREEMENT. The jurisdiction is subject to all audit oversight policies and procedures established by GOER.

**IX. GOVERNING LAW**

This AGREEMENT is made under, and is to be construed in accordance with, the laws of the State of Arizona. In the event of litigation arising under, out of, or relating to, this AGREEMENT, GOER and The jurisdiction hereby stipulate to the exclusive jurisdiction and venue of the Maricopa County Superior Court in Phoenix, Arizona.

**X. ENTIRE AGREEMENT**

This AGREEMENT contains the entire agreement and understanding of the parties hereto. There are no representations or provisions other than those contained herein, and this AGREEMENT supersedes all prior agreements between the parties, whether written or oral, pertaining to the same subject matter of this AGREEMENT.

**XI. INVALIDITY OF PART OF THIS AGREEMENT**

The parties agree that, should any part of this AGREEMENT be held to be invalid or void, the remainder of the AGREEMENT shall remain in full force and effect and shall be binding upon the parties.

**XII. COUNTERPARTS**

This AGREEMENT may be executed in any number of duplicate originals, photocopies or facsimiles, all of which (once each party has executed at least one such duplicate original, photocopy, or facsimile) will constitute one and the same document.

**XIII. INTERPRETATION**

This AGREEMENT is not to be construed or interpreted for or against either of the parties on the grounds of sole or primary authorship or draftsmanship.

**XIV. PARAGRAPH HEADINGS**

The paragraph headings in this AGREEMENT are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

XXXXXXXXXXXXXXXXXXXX

THIS SECTION INTENTIONALLY LEFT BLANK

XXXXXXXXXXXXXXXXXXXX

**XV. IN WITNESS WHEREOF**, the parties agree to execute this AGREEMENT.

Governor's Office of Economic Recovery  
1700 W. Washington, Suite 300  
Phoenix, Arizona 85007

City of Prescott  
201 S. Cortez St.  
Prescott, AZ 86303

\_\_\_\_\_  
James J. Apperson, Director  
Governor's Office of Economic Recovery

\_\_\_\_\_  
Steve Norwood, City Manager  
City of Prescott

This AGREEMENT is in proper format and is within the powers and authority granted to the respective public agency.

\_\_\_\_\_  
Joseph Kanefield  
General Counsel  
Governor's Office

\_\_\_\_\_  
Name: \_\_\_\_\_  
Legal Counsel  
\_\_\_\_\_

**Allowable**  
**Expenditures:**

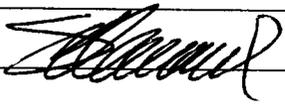
**Prescott**

<b>Description</b>	<b>Qty</b>	<b>Unit Cost</b>	<b>Total Allowable Cost</b>
FD - Overtime			\$25,000.00
PD - Overtime			\$25,000.00
<b><i>Total Award Amount</i></b>			<b><i>\$50,000.00</i></b>

**COUNCIL AGENDA MEMO – November 9, 2010**

**DEPARTMENT: POLICE**

**AGENDA ITEM: Recommendation for Council to adopt a resolution approving an Intergovernmental Agreement between the Maricopa County Board of Supervisors, on behalf of the Maricopa County Sheriff's Office, and the City of Prescott, on behalf of the Prescott Police Department.**

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Michael Kabbel</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> 	11/02/10

**Summary:**

The Prescott Police Department requests approval of an Intergovernmental Agreement (IGA) between the Maricopa County Board of Supervisors, on behalf of the Maricopa County Sheriff's Office (MCSO), and the City of Prescott, on behalf of the Prescott Police Department. The purpose of this Agreement will be to provide Arizona Department of Homeland Security (AZDOHS) grant funding to complete the data source connection to the MSCO Regional AzLink node.

**Background:**

Pursuant to an earlier IGA approved by Council, the Prescott Police Department became a Client Agency in the AZLink Northern Arizona Region. Participation in the AZLink program permits our Department to share law enforcement information administered by the MCSO, and to have access to information from other client agencies participating in the AZLink Program.

Approval of this additional IGA will provide AZDOHS grant funding, not to exceed \$22,500, necessary to complete the data source connection to the AzLink node, allowing our Department full access to the AzLink Program. Upon approval, the agreement shall become effective October 1, 2010, and will continue through December 31, 2010.

Either party may terminate this Agreement for convenience or cause upon thirty (30) days written notice to the other party.

**Financial Impact:**

This award does not require matching funds. Accordingly, there will be no financial impact to the City as result of this agreement.

**Recommended Action: MOVE to adopt Resolution No. 4056-1126.**

**RESOLUTION NO. 4056-1126**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT POLICE DEPARTMENT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE MARICOPA COUNTY BOARD OF SUPERVISORS ON BEHALF OF THE MARICOPA COUNTY SHERIFF'S OFFICE ("MCSO") TO PROVIDE ARIZONA DEPARTMENT OF HOMELAND SECURITY (AZDOHS) GRANT FUNDING TO COMPLETE THE DATA SOURCE CONNECTION TO THE MSCO REGIONAL AzLINK NODE AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE**

**RECITALS:**

WHEREAS, the Prescott Police Department and the Maricopa County Sheriff's Office (MCSO) wish to enter into a certain Intergovernmental Agreement ("IGA") attached hereto as Exhibit "A," and made a part hereof, to share law enforcement information administered by the Maricopa County Sheriff's Office and to have access to information from other client agencies participating in the AzLink Program; and

WHEREAS, Pursuant to an earlier IGA approved by council, the Prescott police Department became a Client Agency in the AzLink Northern Arizona Region; and

WHEREAS, approval of this additional IGA will provide AZDOHS grant funding, not to exceed \$22,500, necessary to complete the data source connection to the AzLink node, allowing the Prescott Police Department full access to the AzLink Program. Upon approval, the Agreement shall become effective October 1, 2010, and will continue through December 31, 2010; and

WHEREAS, ARS §§11-951 and 11-952 authorize "public agencies" such as Prescott Police Department and Maricopa County Sheriff's Office to enter into intergovernmental agreements to contract for services and facilities.

**ENACTMENTS:**

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

SECTION 1. THAT the City of Prescott hereby approves the attached Intergovernmental Agreement between the Prescott Police Department and the Maricopa County Sheriff's Office (MCSO) attached hereto as Exhibit "A," and made a part hereof.

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 foregoing.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 9<sup>th</sup> day of November, 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 Maricopa County  
and the City of Prescott****09-AZDOHS-HSGP  
Grant Number 555208-02  
CFDA Number 97.067  
(SHSGP)****C-50-11-\_\_\_\_\_**

This agreement is made by and between the Maricopa County Board of Supervisors, acting on behalf of the Maricopa County Sheriff's Office (MCSO), and the City of Prescott, an Arizona Municipal Corporation, on behalf of the Prescott Police Department (Agency).

Whereas, the parties are authorized to enter into this agreement pursuant to A.R.S. §11-952.

Whereas, the Maricopa County Sheriff's Office has been designated as the Subgrantee agency for the reimbursement of funds from the State Homeland Security Grant Program (SHSGP) of the Arizona Department of Homeland Security (AZDOHS).

Whereas, the parties agree:

1. This agreement shall become effective October 1, 2010 and will continue through December 31, 2010, or the date upon which this 2009 AZDOHS grant ends, including extensions, whichever is later.
2. Either party requesting termination of this agreement must provide thirty (30) days written notice to the other party of its intent to terminate.
3. In the event this agreement is terminated as provided herein, the parties shall have no further obligation to one another other than for payment for services rendered prior to such termination.
4. Pursuant to A.R.S. § 38-511, the state, its political subdivisions or any department or agency of either may cancel this contract within three (3) years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or created the contract on behalf of the state, its political subdivisions, or any of the departments or agencies of either is, at any time while the contract or any extension of 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.

5. If any provision of this Agreement is held by a court of competent jurisdiction or applicable state or federal law and their implementing regulations to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect.

**TERMS and CONDITIONS:**

The Maricopa County Sheriff's Office agrees to the following:

1. MCSO will authorize the Agency to procure the following services for benefit of the Agency:

Complete Data Source Connection to the MCSO Regional AzLink Node - \$22,500

2. Total funds available to the Agency for reimbursement from the SHSGP Grant Program are not to exceed \$22,500. At its discretion, MCSO may adjust the amount available to the Agency to meet requirements of the SHSGP Grant Program. If MCSO changes the not to exceed amount, prompt written notice will be provided to the Agency.
3. MCSO will monitor activities of the subrecipient Agency as necessary to ensure that awards are used for authorized purposes in compliance with laws, regulations, and the provision of contracts or grant agreements, and that performance goals are achieved as stated in OMB Circular A-133, Subpart D 400 section d (3). MCSO may conduct monitoring visits during the term of the Agreement.

The Prescott Police Department agrees to the following:

1. To submit reimbursement requests only for the services specified above unless otherwise authorized in writing by MCSO.
2. To mail reimbursement requests to the Maricopa County Sheriff's Office, Technology Bureau, 301 South 4<sup>th</sup> Ave, 3<sup>rd</sup> Floor, Phoenix, Arizona 85003, within thirty (30) days of payment to the vendor. The request will include, at minimum, a copy of the Agency purchase order, an invoice detailing the items purchased, proof of payment of the invoice, and use tax paid to the State (if applicable).
3. To pay any and all ongoing maintenance or support charges for hardware, software and/or services procured for benefit of the Agency through the SHSGP Grant Program.
4. To comply with the financial and administrative requirements as set forth in the effective edition of the Office of Justice programs Financial Guide. Further, Agency agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Once completed, a copy of the Agency's Single Audit Report for each applicable fiscal year during the term of the Agreement will be forwarded to Maricopa County Sheriff's Office, Business Services Division, 234 N Central Ave, Phoenix, AZ 85004.

Both parties agree to the following:

1. That program funds shall be used to support and enhance activities of the AzLink network. These funds will not be used to supplant State and/or local funds that would otherwise be made available for such purposes.
2. To complete all activities related this Agreement within the time period prescribed in the AZDOHS SHSGP grant. Written requests for an extension will include information and documentation to support the amendment request and a proposed schedule for completion.
3. The CFDA number associated with this funding is 97.067, Arizona Department of Homeland Security, State Homeland Security Grant Program. This information and the amount expended, if any, should be referenced and clearly designated as "Passed through Maricopa County Sheriff's Office" on the "Schedule of Expenditures of Federal Awards" included with the City's Annual Single Audit Reporting package.
4. To retain all financial records and other documents relevant to this agreement for a period of not less than five (5) years from the end of this Agreement, in compliance with A.R.S. § 35-214.
5. To comply with the applicable sections of all state and federal laws related to non-discrimination, equal access to employment opportunities, undue influence, and conflicts of interest under A.R.S. § 38-511.
6. Notices shall be sent in writing to designated personnel for each party as follows:  
  
If intended for the Maricopa County Sheriff's Office:  
  
Mr. Bob Rampy, Commander/TLO Intel Analyst  
Telecommunications Technology  
Maricopa County Sheriff's Office  
102 W Madison  
Phoenix, AZ 85003  
  
If intended for the Prescott Police Department:  
  
Lt. Andrew Reinhardt, Special Operations Bureau  
Prescott Police Department  
222 South Marina Street  
Prescott, AZ 86303
7. Other:
  - A. Indemnification: To the extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other parties, their officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or

nature which result from any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional or negligent.

- B. Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion: The undersigned by signing and submitting this Agreement has the authority to certify the City to the terms, representations and/or warrants of this Certification. The City defined as the primary participant in accordance with 28 CFR Part 66, certifies to the best of its knowledge and belief that it and its principals:
- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
  - (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) are not presently indicted or for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
  - (d) have not within a 3-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
- C. A.R.S. § 41-4401 – The parties mutually warrant that they are in compliance with and further acknowledge that:
- 1. They and their subcontractors, if any, warrant their compliance with A.R.S. § 41-4401 and all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer;
  - 2. A breach of a warranty under subsection 1 above, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract;
  - 3. The parties mutually retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty provided



<b>COUNCIL AGENDA MEMO – November 9, 2010</b>
<b>DEPARTMENT: FINANCE</b>
<b>AGENDA ITEM: Council Action for Debt Issuance through WIFA</b>

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> 	

**BACKGROUND**

The City has several water and wastewater projects which we have applied to the Arizona Water Infrastructure Financing Authority (WIFA) to finance. In reviewing the financing options available for these projects, we decided that WIFA was best because the subsidized issuance cost and interest rate made it less expensive than issuing debt on our own. Here is a list of the loans:

<u>Loan Program</u>	<u>Loan #</u>	<u>Project</u>	<u>Loan Amount</u>
Clean Water	910147-11	Virginia Street & Penn Alley WW Imp	2,070,000
Clean Water	910148-11	Sundog Filter Replacement & Denitrification	1,634,870
Drinking Water	920206-11	Small Water Mains	1,060,000
			<u>4,764,870</u>

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

**ITEM**

These three ordinances are to authorize the loans and identify the Mayor as the authorized representative of the City to execute these loans. We anticipate closing these loans on December 3, 2010.

<b>Recommended Action: (1) MOVE to adopt Ordinance No. 4770-1121; (2) MOVE to adopt Ordinance No. 4771-1122; and (3) MOVE to adopt Ordinance No. 4772-1123.</b>
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## **ORDINANCE NO. 4770-1121**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING LOAN FUNDS FROM THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (WIFA) FOR THE VIRGINIA STREET & PENN ALLEY SEWER REPLACEMENT PROJECT, THROUGH THE CLEAN WATER PROGRAM #910147-11, AUTHORIZING THE MAYOR AND STAFF TO SIGN ANY AND ALL WIFA FUNDING DOCUMENTS PERTINENT TO SAID PROJECT, AND DECLARING AN EMERGENCY**

### **RECITALS:**

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

WHEREAS, the Virginia Street & Penn Alley Sewer Replacement project has been approved by WIFA for loan funding; and

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

WHEREAS, the City of Prescott is requesting \$2,070,000 from WIFA for design and construction costs and commits to repayment of WIFA loan funds for project assistance.

### **ENACTMENTS:**

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

Section 1. THAT the Mayor and Council of the City of Prescott, Arizona hereby approve accepting \$2,070,000 in loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) to cover design and construction costs for the Virginia Street & Penn Alley Sewer Replacement project.

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

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

Section 4. THAT, an EMERGENCY is hereby declared to exist and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

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

\_\_\_\_\_  
MARLIN KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

**ORDINANCE NO. 4771-1122**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING LOAN FUNDS FROM THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (WIFA) FOR THE SMALL WATER MAINS UPGRADES PROJECT, THROUGH THE DRINKING WATER PROGRAM #920206-11, AUTHORIZING THE MAYOR AND STAFF TO SIGN ANY AND ALL WIFA FUNDING DOCUMENTS PERTINENT TO SAID PROJECT, AND DECLARING AN EMERGENCY**

**RECITALS:**

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

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

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

WHEREAS, the City of Prescott is requesting \$1,060,000 from WIFA for design and construction costs and commits to repayment of WIFA loan funds for project assistance.

**ENACTMENTS:**

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

Section 1. THAT the Mayor and Council of the City of Prescott, Arizona hereby approve accepting \$1,060,000 in loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) to cover design and construction costs for the Small Water Mains Upgrades project.

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

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

Section 4. THAT, an EMERGENCY is hereby declared to exist and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

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

\_\_\_\_\_  
MARLIN KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

## **ORDINANCE NO. 4772-1123**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING LOAN FUNDS FROM THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (WIFA) FOR THE SUNDOG FILTER REPLACEMENT & DENITRIFICATION PROJECT, THROUGH THE CLEAN WATER PROGRAM #901148-11, AUTHORIZING THE MAYOR AND STAFF TO SIGN ANY AND ALL WIFA FUNDING DOCUMENTS PERTINENT TO SAID PROJECT, AND DECLARING AN EMERGENCY**

### **RECITALS:**

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

WHEREAS, the Sundog Filter Replacement & Denitrification project has been approved by WIFA for loan funding; and

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

WHEREAS, the City of Prescott is requesting \$1,634,870 from WIFA for design and construction costs and commits to repayment of WIFA loan funds for project assistance.

### **ENACTMENTS:**

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

Section 1. THAT the Mayor and Council of the City of Prescott, Arizona hereby approve accepting \$1,634,870 in loan funds from the Water Infrastructure Finance Authority of Arizona (WIFA) to cover design and construction costs for the Sundog Filter Replacement & Denitrification project.

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

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

Section 4. THAT, an EMERGENCY is hereby declared to exist and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

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

\_\_\_\_\_  
MARLIN KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

<b>COUNCIL AGENDA MEMO – November 9, 2010</b>
<b>DEPARTMENTS:</b> City Manager
<b>AGENDA ITEM:</b> Approval of agreement with DeMenna & Associates for legislative representation services

<b>Approved By:</b>	<b>Date:</b>
<b>Regional Programs Director:</b> Craig McConnell <i>Craig McConnell</i>	11-1-10
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>Steve Norwood</i>	11/01/10

**Item Summary**

This item is to approve a one-year agreement with DeMenna & Associates for legislative representation services as described by the scope of Exhibit "A". The contract replaces a previous one with Policy Impact Communications issued by the Town of Prescott Valley pertaining to the Big Chino Water Ranch project.

**Background**

Prescott and Prescott Valley entered into an intergovernmental agreement (IGA) for the sale of water and cost participation for the Big Chino Water Ranch project in December 2004. Prescott is the project owner and Prescott Valley a project participant, sharing the costs and water on a basis of 54.1% / 45.9% respectively.

As the project evolved following approval of the original agreement, updating of that document with respect to the administrative roles and responsibilities of the parties was needed. A supplemental IGA was approved for this purpose in June 2010, confirming Prescott's primary role in the approval and issuance of contracts for services.

At that time, Council was advised that the aforementioned agreement with Policy Impact Communications would be closed out and, in the event of a replacement, contracted by Prescott at a reduced cost given the February 11, 2010, Agreement in Principle among Prescott, Prescott Valley, and SRP, and subsequent passage and signing into law of a legislative amendment clarifying Prescott's rights to Big Chino water under ARS 45-555. Recognizing the importance of water to Prescott and its future, and perpetual dynamics at the state level, it is crucial that the City continue to be well informed and represented at the Arizona Legislature.

DeMenna & Associates is a highly regarded firm providing effective government relations, political consulting, and lobbying services. With strong ties to Prescott, Kevin DeMenna and his group are very interested in representing the City.

**Agenda Item:** Approval of agreement with DeMenna & Associates for legislative representation services

**Term of Agreement and Compensation**

The initial term is for one year, renewable thereafter for additional one year periods. Compensation is at the flat fee of \$4,200.00 per month, a substantial reduction from the \$12,000.00 cost per month of the prior contract with Policy Impact Communications. The flat fee approach is standard for agreements of this type.

**Budget**

Funding is available for the contract in the FY 11 Big Chino Water Ranch project budget. Pursuant to the Prescott/Prescott Valley IGA, as amended, Prescott Valley will reimburse the City the amount of \$23,133.60, representing 45.9% of the annual total of \$50,400.00.

**Attachment** - Agreement with DeMenna & Associates

**Recommended Action:** MOVE to approve the agreement with DeMenna & Associates for legislative representation services.

AGREEMENT FOR LEGISLATIVE REPRESENTATION  
DeMENNA & ASSOCIATES

This Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Prescott, a municipal corporation of Arizona ("Prescott"), and DeMenna & Associates, an Arizona Subchapter S corporation ("Firm").

WITNESSETH:

WHEREAS, that due to the importance of issues of interest at the state level which may affect Prescott, professional legislative representation services are necessary, to include lobbying; and

WHEREAS, Section 16 of the Prescott Procurement Code allows for the direct award of a contract for personal services where justified due to the particular expertise of the professional; and

WHEREAS, Prescott has interviewed two qualified firms capable of providing the necessary services, both of which are free of potential conflicts of interest regarding other clients to whom they provide similar services; and

WHEREAS, DeMenna & Associates has unique expertise and knowledge of legislative activities necessary to effectively represent and lobby for Prescott at the Arizona Legislature; and

WHEREAS, Prescott desires to now enter into an agreement with the Firm for legislative representation and lobbying services;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES 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. SCOPE OF REPRESENTATION

The Firm shall provide to Prescott those services identified by Exhibit "A" attached hereto and made a part hereof.

2. TERM AND TERMINATION

The initial term of this Agreement shall be from the date first-above written for one (1) year. Thereafter, the Agreement shall automatically renew for additional one (1) year periods unless sooner terminated by Prescott or the Firm upon written notice as set forth in Section 4 below. Notwithstanding the foregoing, if either party wishes to terminate the

Agreement either with or without cause, the Agreement may be terminated by either Prescott or the Firm upon fifteen (15) days written notice.

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

#### 4. NOTICES

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

Prescott: Gary D. Kidd, Esq.  
City Attorney  
P.O. Box 2059  
Prescott, AZ 86302

With a copy to:

Steve Norwood  
City Manager  
P.O. Box 2059  
Prescott, AZ 86302

Firm: Kevin DeMenna  
President  
DeMenna & Associates  
1825 W. Adams Street  
Phoenix, AZ 85007

#### 5. INDEPENDENT CONTRACTOR STATUS

It is expressly agreed and understood by and between the parties that the Firm, including and its officers, employees and any subcontractors, is an independent contractor and, as such, they shall not be considered Prescott employees, and are not entitled to payment or compensation from Prescott or to any fringe benefits to which Prescott employees may be entitled. As an independent contractor, the Firm further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result

of this Agreement. As an independent contractor, the Firm further agrees that it will conduct the services hereunder in a manner consistent with such status, and that neither it nor its officers, employees, or any subcontractors will hold itself/themselves out nor claim to be officers or employees of Prescott by reason thereof. The Firm further agrees that it will not make any claims, demands or applications to or for any right or privilege applicable to any officer or employee of Prescott, including (but not limited to) worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

## 6. NONASSIGNABILITY

This Agreement is non-assignable by the Firm. Provided, however, that nothing herein shall be construed to limit the assignment of matters relative to this Agreement to other employees, staff, and/or subcontractors associated with the Firm.

## 7. COMPENSATION AND BILLING

A. Prescott shall pay to the Firm a flat fee of \$4200.00 per month for the services outlined in Exhibit "A" hereto, exclusive of direct expenses and costs for which the Firm will be reimbursed upon prior authorization by Prescott to incur.

B. The Firm shall bill Prescott monthly through the Office of the Prescott City Manager for the services provided under this Agreement during the billing period. Prescott shall pay such billings within thirty (30) days of the date of receipt.

C. All expenses and costs shall be clearly identified in billings and Prescott shall not be billed for "miscellaneous," "other," or any unidentified or unauthorized expenses or costs. UTBMS Expense Codes (E100) may be used to supplement or in lieu of narrative descriptions of expenses and costs. Expenses and costs shall be billed in the actual amount incurred or out-of-pocket by the Firm without any additional charges. Travel expenditures within Maricopa County and Yavapai County are included in the compensation. Approval for travel outside Maricopa or Yavapai County or the State of Arizona shall be obtained from the Prescott City Manager prior to departure from such counties or the State.

## 8. INTERPRETATION OF AMBIGUITIES

This Agreement is the result of negotiations between the parties, and any ambiguity in this Agreement shall not be construed against either party.

## 9. GOVERNING LAWS

This Agreement shall be construed under the laws of the State of Arizona and in conformity with and governed by local laws, rules and regulations of Prescott. It shall be considered entered into and within the jurisdiction of Yavapai County.

## 10. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Prescott and the Firm, and supersedes all prior negotiations, representations, or agreements (written or oral). This Agreement may be amended only by written instrument signed by both Prescott and the Firm. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein. Provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

## 11. SEVERABILITY AND WAIVER

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

## 12. MODIFICATION

No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by an agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

## 13. DISCRIMINATION

In performing its obligations under this Agreement, the Firm will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Firm will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Governor's Executive Order 99-4.

## 14. INDEMNIFICATION

The Firm shall indemnify, defend and hold harmless Prescott, its officers, agents and employees, for, from and against any and all claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to the Firm's own employees, or damage to property occasioned by a negligent act, omission or failure of the Firm.

15. INSURANCE

The Firm shall secure and maintain in force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$500,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$500,000 per occurrence/aggregate for property damage. Said general liability policy shall name Prescott as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon 30 days prior written notice to Prescott. Certificates of coverage as required by this section shall be delivered to the Office of the Prescott City Manager within fifteen (15) days of execution of this Agreement.

City of Prescott, a municipal corporation of  
Arizona ("Prescott")

By: \_\_\_\_\_  
Marlin D. Kuykendall, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary D. Kidd, City Attorney

DeMenna & Associates, an Arizona  
Subchapter S corporation ("Firm")

By: \_\_\_\_\_  
Kevin DeMenna, President



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## LEGISLATIVE REPRESENTATION SERVICES

In consultation with the City of Prescott (the Client), DeMenna & Associates will provide the following services:

1. Read every item of legislation introduced during each legislative session to determine its potential impact on the Client's rights or interests.
2. Serve as the Client's liaison to the Arizona State Legislature, the Office of the Governor, and various state and federal agencies.
3. Oversee the development of a legislative agenda to include water resource, supply, and related matters.
4. Assist in the drafting, development, promotion and passage of proposed legislation on behalf of the Client, including amendments thereto.
5. Serve as the lead advocate for the Client on all designated public policy issues of interest to the Client.
6. Monitor, track and address, as needed, legislation affecting the Client's rights or interests, and provide periodic updates to the Client regarding the status of the same.
7. Provide regular reports on legislation affecting the Client's rights or interests; meet with the Client in Prescott from time to time, to present reports and updates pertaining to the legislative agenda, and more general briefings concerning other active legislation of interest to the Client.
8. Review, track and report on all Executive Orders determined to be of interest to the Client.
9. Attend all legislative hearings and other meetings where legislation affecting the Client's rights or interests may be under consideration or discussion.
10. As needed, speak as an advocate for the interests of the Client during legislative hearings.
11. Develop and maintain relations with key members of the legislature, as well as legislative and executive branch staffs, who may control or directly influence legislation affecting the Client's rights or interests.

12. Continually gauge and report on the political/legislative climate as it relates to the rights or interests of the Client.
13. Monitor and report on all statewide ballot proposals that may affect the rights or interests of the Client.
14. Organize meetings between leadership and/or designated representatives of the Client with various key elected officials as deemed necessary or appropriate.
15. As needed, advise the leadership and staff of the Client on strategy and tactics relating to Arizona state government.
16. Manage the Client's compliance with Arizona laws relating to lobbyist registration and ensure completion of necessary filings with the Arizona Secretary of State.
17. Work directly with legislators, other municipal and county representatives, and various affected stakeholders in building coalitions to protect and secure the policy positions of the Client.

11-1-10

<b>COUNCIL AGENDA MEMO – November 9, 2010</b>
<b>DEPARTMENT: Parks, Recreation &amp; Library</b>
<b>AGENDA ITEM: Approval of Prescott Meals on Wheels Lease Agreement for the Rowle P. Simmons Community Center</b>

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Debbie Horton</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> 	11/09/11

**BACKGROUND:**

The City of Prescott and Prescott Meals on Wheels (PMOW, a.k.a. Golden Age Nutrition, Inc.) have an existing lease for the western portion of the Rowle P. Simmons Community Center located at 1280 E. Rosser Street dated March 1, 2004. Construction of the City-owned facility was completed in 2006, and PMOW contributed towards its construction costs.

The lease for the eastern portion of the Community Center with the Adult Center of Prescott, Inc. was revised and approved in early 2010 to better address needed details within the agreement. This agreement with PMOW was then modified to remain consistent with Adult Center of Prescott, Inc.'s lease agreement for the western portion of the same building. It has been reviewed by the Board of Directors of PMOW.

Following are key points agreed to between the parties:

- PMOW pays \$1 per year in rent
- PMOW pays telephone, gas, electric, cable and internet services for their respective area, and pays ½ of electricity costs for the common (lobby) area.
- City of Prescott pays for water unless usage by all tenants exceeds 360,000 gallons per year, at which time the cost of the overage will be apportioned equally between PMOW, Adult Center of Prescott, Inc., and the City of Prescott.
- Repair work required to the leased premises in amounts exceeding \$500 will be paid by the City of Prescott.
- The City of Prescott may use the leased premises free of charge for City programs, activities and related functions if City activities do not conflict with PMOW programs, activities and rentals previously scheduled.
- The term of the lease is 49 years, with an option to renew for an additional 49 years, subject to optional annual review by either party.

Because of the length of this document and the ARS requirement that ordinances be published, it is recommended that it first be adopted as a Public Record through Resolution No. 4053-1023 and then that public record is adopted by reference through Ordinance No. 4767-1118.

The full text of the lease is attached for your review.

Attachments: Ordinance; Resolution w/Lease Agreement

**Recommended Action: (1) MOVE to adopt Resolution No. 4053-1123; and (2) MOVE to adopt Ordinance No. 4767-1118.**

**RESOLUTION NO. 4053-1123**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED THE "2010 LEASE WITH THE PRESCOTT MEALS ON WHEELS FOR LEASE OF A PORTION OF THE ROWLE P. SIMMONS COMMUNITY CENTER"**

**RECITALS:**

WHEREAS, that certain document entitled the "*2010 Lease with the Prescott Meals on Wheels for lease of a portion of the Rowle P. Simmons Community Center,*" three copies of which are on file in the office of the City Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the city clerk.

**ENACTMENTS:**

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

Section 1. THAT certain document entitled the "*2010 Lease with the Prescott Meals on Wheels for lease of a portion of the Rowle P. Simmons Community Center,*" is hereby declared to be a public record.

Section 2. THAT the City Clerk is hereby directed to maintain three (3) copies of the above referenced public documents on file at all times for inspection by the public.

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

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

ATTEST:

APPROVED AS TO FORM:

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

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

**EXHIBIT 'A'****LEASE AGREEMENT**

**THIS LEASE AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY OF PRESCOTT, a municipal corporation, hereinafter referred to as "Lessor", and PRESCOTT MEALS ON WHEELS, an Arizona non-profit corporation, hereinafter referred to as "Lessee";

**WITNESSETH:**

**WHEREAS**, Lessor owns certain real property upon which the new Prescott Community Center has been built, which property is more particularly identified as Yavapai County Assessor's Parcel Number 105-04-026; and

**WHEREAS**, Lessee made a significant financial contribution to the construction of the Rowle P. Simmons Community Center, which contribution provided a significant benefit to the public and is gratefully acknowledged by the City of Prescott on behalf of its citizens; and

**WHEREAS**, Lessor acknowledges the public benefit to be derived from Lessee's operations at the Rowle P. Simmons Community Center and has complied with its charter obligations pertaining to the lease of real property.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL 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, the parties hereto agree as follows:

1. **LOCATION OF THE PRESCOTT COMMUNITY CENTER.** The real property upon which the Rowle P. Simmons Community Center ("RPSCC") has been constructed is herein described as Yavapai County Assessor's Parcel No. 105-04-026, which property is located at postal address 1280 E. Rosser Street, Prescott, Arizona (the "City Property").

2. **CONSTRUCTION OF THE PRESCOTT COMMUNITY CENTER.** Lessor was responsible for the construction of the RPSCC. The estimated cost of the design and construction of the RPSCC was in excess of \$3,650,000. In June, 2006, Lessee paid Lessor \$100,000 that was applied towards the cost of that construction.

3. **EFFECTIVE DATE OF LEASE AGREEMENT; PREMISES.** This term of this Lease Agreement shall begin upon the Effective Date, as defined in Paragraph 4 of this Lease Agreement. Upon the Effective Date, the terms of this Lease Agreement shall thereafter govern Lessee's right to possess and its actual possession of that part of the RPSCC as more fully described on Exhibit "B" (the "Leased Premises"). Subject to the terms and conditions of this Lease Agreement, Lessee shall accept the Leased Premises in their "as-is" condition as of the Effective Date.

4. **TERM & CANCELLATION.** The initial term of this Lease Agreement shall begin on \_\_\_\_\_ (the "Effective Date") and shall continue through December 31, 2059; provided, however, that the term of this Agreement is subject to the annual review, cancellation and renewal provisions herein, and both parties reserve the right to review the performance of the other and maintenance and operations of the leased premises every year during the month of May proceeding the next fiscal year of this agreement.

In the event that either City of Lessee or both of them determines based upon such annual review for any reason not to continue with the Lease, either may give the other party one year (12 months) written notice of intent to cancel, and the lease shall be cancelled with no further obligations by either party upon the expiration of the one year period after a notice of intent to terminate by either party. Accordingly, the term of years for this Lease is intended to be subject to the right of either or both parties to cancel the lease after one year following written notice to the other of cancellation. Unless earlier terminated or cancelled as herein provided, at the expiration of this initial Lease term, Lessee shall have the option to renew this Lease Agreement for an additional forty-nine (49) year term on the same terms and conditions as set forth herein, except as the parties may otherwise mutually agree at the time the option is exercised. Lessee may exercise this option by providing Lessor with no less than six (6) months written notice thereof prior to the expiration of the initial lease term.

5. **RENT.** In consideration of the public benefit to be realized from Lessee's operations at the RPSCC, as more particularly set forth in Paragraph 7 and 9 of this Lease Agreement, and also in consideration Lessee's financial contribution to Lessor which was used to finance, in part, the development of the City Property, Lessee shall pay rent to Lessor in the annual amount of One Dollar (\$1.00) payable each year commencing on the Effective Date and each year thereafter on the anniversary of the Effective Date for the remainder of the term of this Lease Agreement and any extensions thereof.

6. **ABANDONMENT.** If Lessee abandons the Leased Premises, Lessee shall automatically forfeit any and all rights under this Lease Agreement, and Lessor

may exercise any and all available remedies as set forth in Paragraph 13 of this Lease Agreement or as allowed by law. Abandonment as used in this paragraph shall be deemed to have taken place upon the Lessee closing the Leased Premises to the public for seven (7) consecutive days, excluding, however, closures (i) required due to national or natural disaster or local emergency, (ii) necessary to allow Lessee or Lessor to comply with their obligations under this Lease Agreement, (iii) occurring due to circumstances beyond Lessee's control or (iv) for which Lessee has given prior written notice to Lessor and Lessor has approved thereof in writing before the date set for closure.

7. **LESSEE'S RESPONSIBILITIES.** During the term of this Lease Agreement, Lessee's responsibilities shall be as follows:

A. Lessee shall pay prior to delinquency any and all taxes which may be assessed against and levied upon trade fixtures, furnishings, equipment, and all other personal property of Lessee.

B. Lessee shall place all utilities that provide service to the Leased Premises in its name to the extent the existing metering system at the Leased Premises or the RPSCC will allow. Except as otherwise provided in this Lease Agreement, Lessee is responsible for the payment of any and all of utility bills for services provided to the Leased Premises, including, without limitation, telephone, gas, electric, cable and internet services. Further, Lessee shall pay for one-half of the utility bills for such services provided to common areas within the RPSCC.

The common areas shall include all areas of the RPSCC that are not leased to any tenant. With respect to water service, which is provided by Lessor, Lessor shall

not charge Lessee for water usage unless the combined total of water usage by all tenants of the RPSCC and the Lessor exceeds 360,000 gallons in any given year. If water usage exceeds this amount, then the cost of the overage shall be apportioned amongst all tenants and the Lessor in equal amounts. Lessor shall ensure that all lease agreements with all other tenants of the RPSCC shall contain a lease provision identical in effect to the one provided for herein.

C. Lessee shall, at Lessee's expense, comply with all applicable statutes, ordinances, rules, regulations, orders, and requirements in effect during the term of this Lease Agreement.

D. Lessee shall ensure that no lien shall encumber, be placed upon or recorded against the Leased Premises, the RPSCC or upon any other estate or reversion of Lessor in the Leased Premises or in the RPSCC or upon any building or improvement thereon, and should any such lien arise, Lessee, at its own cost and expense, shall bond or otherwise discharge the same within ten days after receiving notice thereof.

E. Lessee shall make no alterations or additions to the Leased Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. Any alteration or addition of the Leased Premises, excepting movable furniture, machinery and trade fixtures, shall become part of the realty and shall belong to the Lessor upon termination of this Lease Agreement.

Notwithstanding the foregoing, however, it is mutually agreed that the Audio Visual System shall be Lessee's property and Lessee may remove the same at the expiration of this Lease Agreement provided all damages caused thereby shall be

repaired. It is further understood and agreed that under no circumstances is the Lessee to be deemed the agent of the Lessor for any alteration, repair or operation of the Leased Premises.

F. Subject to Lessor's prior written approval, which approval shall not unreasonably withheld, Lessee may install in the Leased Premises any new fixtures Lessee deems desirable and such shall remain Lessee's property. Lessee may remove these fixtures at any time, but shall repair any damage caused by the removal. No fixtures shall be installed which affect the structural integrity or external appearance of the Leased Premises or the RPSCC without Lessor's prior written consent, which consent Lessor may grant or withhold in its sole and absolute discretion. Any fixtures or other property of Lessee remaining on the premises after thirty (30) days after termination of this Lease Agreement shall become Lessor's property unless the parties have otherwise mutually agreed.

G. Lessee shall not assign, mortgage or encumber this Lease Agreement nor sublet the Leased Premises, without the prior written consent of the Lessor in each instance, which consent shall not be unreasonably withheld. The consent of the Lessor to an assignment or subletting shall not be construed to relieve the Lessee from obtaining the consent, in writing, of the Lessor to any further assignment or subletting.

H. Lessee shall not, at any time, without first obtaining the Lessor's express written consent, which consent Lessor may grant or withhold in its sole and absolute discretion:

- i. Change, whether by alteration, replacement, rebuilding or

otherwise, the exterior color or architectural treatment of the Leased Premises, the RPSCC, or the City Property, or any part thereof;

ii. Perform any act or carry on any practice which may damage, mar or deface the Leased Premises, the RPSCC or the City Property;

iii. Install, operate or maintain in the Leased Premises any electrical equipment which will overload the electrical system therein or any part thereof, beyond its reasonable capacity for proper and safe operation.

I. Lessee hereby agrees to indemnify, defend and hold harmless Lessor, its officers, employees, agents, successors or assigns herein (collectively the "Indemnified Party"), in both their public and private capacities, from and against any and all causes of action, claims, demands, expenses, liabilities, judgments, costs, losses or damages that any Indemnified Party may suffer or be subject to on account of, or in any way relating to or growing out of any and all known or unknown personal injuries, property damages, or claims of any type or any other matter in any way relating to the Leased Premises, to Lessee's operations at the Leased Premises, to such matters arising from acts or omissions by patrons or invitees of the Lessee, or to the Lessee's use of the RPSCC or the City Property; provided, however, that the Arizona laws, statutes, court cases and other laws pertaining to comparative fault apply to any and all of the matters subject to this paragraph and to Lessee's obligation to indemnify, defend and hold harmless any Indemnified Party.

J. Lessee undertakes to indemnify, defend and hold harmless any Indemnified Party from any and against any and all causes of action, claims, demands, expenses, liabilities, judgments, costs, losses or damages that any Indemnified Party

may suffer or be subject to on account of, or in any way relating to or growing out of or relating to Lessee's or Lessee's patrons or invitees use of the common areas (as defined in Paragraph 7B) in the RPSCC and on the City Property, and all areas adjoining, or used to access the Leased Premises in any way relating to use by Lessee's patrons or invitees, provided, however, that the Arizona laws, statutes, court cases and other laws pertaining to comparative fault apply to any and all of the matter subject to this paragraph and to Lessee's obligation to indemnify, defend and hold harmless any Indemnified Party.

K. Lessee expressly agrees that the provisions in Paragraphs 7I and 7J are intended to be as broad and inclusive as is permitted by City of Prescott Ordinances and the laws of the State of Arizona and that if any portion thereof is held invalid, it is agreed that the remaining provisions shall continue in full legal force and effect. Further, it is understood by Lessor that Lessee is not responsible for the acts or omissions of any other tenant or its patrons or invitees in the RPSCC or on the City Property and that the provisions of Paragraph 7I and 7J do not apply to thereto. Indemnification resulting from damage to portions of the RPSCC leased by any other tenant or from the actions of such tenant's officers, employees, agents, successors or assigns, patrons or invitees shall not be the responsibility of Lessee. In cases where damage shall be to the common areas of the RPSCC or the City Property shall be caused by jointly by the Lessee and any other tenant, the Arizona laws, statutes, court cases and other laws pertaining to comparative fault shall apply.

L. Lessee shall obtain and maintain in continuous effect during the term of this Lease Agreement, a policy or policies of Commercial General Liability and

Directors and Officers insurance with minimum limits of not less than \$1,000,000. The Lessee shall also endorse their general liability to increase limits of Fire Legal Liability (Damage to Rented Premises) to a minimum of \$300,000. All policies, with the exception of the Directors and Officers policy, shall name Lessor and its agents, officers, employees and assigns as additional insureds. Lessee shall provide copies of such policy or policies to Lessor upon request. Liability insurance shall provide the following coverage:

a) General Liability Policy shall include bodily injury, property damage and broad form contractual liability coverage which shall include coverage for all risks associated with this Lease Agreement;

b) Lessor may adjust liability insurance amounts and requirements as City deems reasonably necessary, or as may be required because of changes in the insurance requirements imposed by the City's insurer or by applicable law. Lessee shall comply with such adjustments or increases, within such reasonable time period as is requested by the City.

c) All insurance shall be in a form and from an insurance company with A.M. Best's rating of at least A-VII. The Lessee shall furnish certificates of insurance evidencing the required coverage. Such certificates shall provide for unequivocal thirty-day (30) notice of cancellation or material change of any policy limits or conditions.

d) All insurance required pursuant to this Lease Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-

217, a copy of which certificate is to be attached to each applicable bond or binder.

e) Lessee may, but shall not be required, to procure and maintain a policy of insurance covering its personal property. Except in the case of damages caused due to the acts of Lessor or its agent or employees, Lessor shall not be liable for any damages to the personal property of Lessee.

f) If Lessee fails to procure and maintain any insurance that Lessee is required to procure pursuant to the terms of this Lease, Lessor may, but shall not be required to, procure and maintain the same at Lessee's expense.

M. The terms and conditions of this Lease Agreement shall be binding upon Lessee, its successors, heirs and assigns.

N. Should it become necessary for any Indemnified Party to incur costs and expenses to retain the services of an attorney to enforce the indemnity and defense provisions of this Lease Agreement, or any portion thereof, Lessee agrees to pay such Indemnified Party's reasonable costs and attorneys' fees thereby expended, or for which liability is incurred as provided by law; provided, however, that Lessee and the Indemnified Party shall mutually select the attorney or attorneys providing the services. This paragraph shall not apply if Lessee provides written notice to Lessor of a necessary repair to be made which is the Lessor's responsibility under this Lease Agreement, and Lessor fails to perform said repairs within a reasonable time period after such written notice, and such failure of Lessor results in the bodily injury or property damage necessitating the services of an attorney.

O. Except as otherwise provide herein, Lessee shall be solely responsible for any and all costs associated with its programs and operations at the

RPSCC, including but not limited to costs relating to materials, employees and reception services.

P. Lessee shall permit an inspection of the Leased Premises by Lessor, or Lessor's agents or representatives, during reasonable hours, at any time during the term of this Lease Agreement. If access to the Leased Premises for such purposes cannot be obtained, or if at any time an entry shall be deemed necessary for the protection of the PCC, whether for the benefit of the Lessor or Lessee, the Lessor, its agents or representatives, may enter the Leased Premises to accomplish such purposes. The provisions contained in this paragraph are not to be construed as creating or increasing any obligation on the part of the Lessor under this Lease.

Q. Lessee hereby agrees to provide proof of payments of any and all personal property taxes and insurance coverage required under the terms of this Lease Agreement.

R. Lessee shall keep the inside of the Leased Premises in a clean and neat condition at all times. Lessee shall, at its sole expense, including personnel costs, change all air-conditioning filters on a monthly basis. Lessor shall make available, at no cost to Lessee, man-lift equipment to perform minor repairs in high ceiling areas. Lessor will offer training and certification to one or more Meals on Wheels employees in safe operation of man-lift. All Meals on Wheels employees must be certified prior to operation.

S. Lessee shall, at its expense and throughout the Lease term, maintain, service, replace, and keep in good repair the interior of that portion of the Leases Premises, including such items as floors, ceilings, walls, doors, glass, cleaning,

partitions, and electrical fixtures, light bulbs, provided said repairs do not constitute "Major Repairs" as contemplated by Paragraph 8E of this Lease Agreement. If Lessor determines that any such maintenance, service or repairs are required, Lessor shall give Lessee written notice of the need for such repair, in order to give Lessee the opportunity to effectuate said repair or replacement. If Lessee does not effectuate the same within a reasonable time, Lessor may, but shall not be required to, effectuate said maintenance, service or repair, the costs of which Lessee shall reimburse to Lessor (unless said repairs are deemed "Major Repairs"); provided, however, that any damage caused by any negligent or intentional acts or omissions of Lessee, Lessee's agents, employees, or invitees, shall remain the responsibility of the Lessee, irrespective of the cost of repair or replacement.

8. **LESSOR'S RESPONSIBILITIES.** During the term of this Agreement, Lessor's responsibilities shall be as follows:

A. Lessor shall enforce any and all warranties relating to the design and construction of the RPSCC or any improvements on the City Property for deficiencies or other matter that come within the terms of any and all applicable warranties; provided, however, that Lessor shall not be liable to Lessee or its patrons or invitees for any bodily injury or property damage should any warranty work fail to be timely completed through no fault of Lessor. Lessee shall be able to obtain warranty work for any defective construction, equipment or fixtures by advising Lessor in a timely fashion in writing so that Lessor can arrange for said repairs and/or replacement of defective equipment, etc. under the applicable warranty with the responsible party. No representations, statement or warranties, expressed or implied, have been made by or

on behalf of Lessor as to the condition thereof.

B. Lessor shall keep all buildings, landscaping and site improvements and other buildings or fixtures on the City Property and in the RPSCC, including all alterations, additions and improvements, insured against loss or damage by fire, or other casualty losses, with all standard extended coverage, in an amount not less than the full replacement value. Nothing in this paragraph shall be deemed to require Lessor to procure a general liability insurance or fire casualty policy covering claims or losses for Lessee's operation or use of the Leased Premises, the RPSCC or Lessee's operation or use of the City Property. Further, Lessor shall not be responsible for insuring against any risk associated with the use of the RPSCC by Lessee or its invitees, licenses, guests or patrons.

C. Lessor will pay the electric and gas utilities, if any, for the common areas in the RPSCC and on the City Property, and will send a copy of said billing to the Lessee on a monthly basis. Within twenty days of its receipt of the billing, Lessee will reimburse Lessor for one-half the cost of the same. Further, Lessor shall be responsible for all landscape watering. Lessor will pay for any and all costs related to the operation and repair of the alarm system, sewer and sanitation services relating to the Leased Premises. Other than as set forth herein, Lessor shall in no way be responsible for the expenses related to any utilities.

D. Lessor shall provide snow removal services to the parking lots (which will include cinder application and cinder removal if needed) of the City Property. It is expressly understood and agreed to by and between the parties that this service will only be available when all other public streets and municipal lots have been cleared

of snow, and is subject to other demands of the City of Prescott. Notwithstanding the foregoing, Lessor shall use all reasonable efforts to ensure that snow removal services are provided for the parking lots on the City Property.

E. Any repairs which are required to be done to the Leased Premises, which repairs are not necessitated by the acts or omissions of the Lessee, its officers, employees, agents, successors or assigns which exceed FIVE HUNDRED DOLLARS (\$500.00) in cost, shall be Lessor's responsibility for all repairs; provided however that the Lessor will not be obligated to pay for any repairs unless the Lessee first gives written notice to Lessor of the repairs needed, the reason for such repairs, and the estimated cost of said repairs, whereupon Lessor shall have the option to undertake said repairs by its own agents, contractors, or subcontractors. If Lessor undertakes to have repairs made by its own agents, contractors or subcontractors, and the repairs are not in excess of FIVE HUNDRED DOLLARS (\$500.00), the cost thereof shall be borne solely by the Lessee. In common areas, the repair expense shall be apportioned to and evenly born by all tenants of the RPSCC where the repair is necessitated. If the cost of such repairs exceeds FIVE HUNDRED DOLLARS (\$500.00), the costs thereof shall be borne by the Lessor to the extent that said repairs exceed FIVE HUNDRED DOLLARS (\$500.00).

If emergency repairs become necessary and providing written notice to Lessor is not practical (e.g., after hours, during holidays, etc.), Lessor will remain obligated to pay for such repairs provided the Lessee has made a good faith effort to contact the Lessor. Lessor and Lessee agree to attend necessary training regarding the operation of thermostats, exterior lighting clocks, fire alarm control panel, building water shut off and

water meter billing and meter locations. One copy of the building equipment maintenance specifications shall be kept and maintained on the Leased Premises. Lessee shall promptly notify Lessor of any needed warranty repairs or maintenance.

F. In accordance with ARS Section 42-17107(A)(2), it is expressly agreed by and between the parties that the Lessor is a body politic, and as such can neither incur debt in a succeeding fiscal year nor encumber future Prescott City Councils. As such, it is expressly agreed by and between the parties that in the event that in any subsequent fiscal year the Prescott City Council does not provide funding for the obligations provided for in this Paragraph 8, then and in that event this Lease Agreement shall be of no further force and effect; provided, however, that in the event of the termination of this Lease Agreement as a result of non-funding by the Prescott City Council during the first ten (10) years of this Lease Agreement, then and in that event the Lessee will be reimbursed for its capital contribution (as provided for in Paragraph 3) the sum of \$10,000 for each year prior to the tenth anniversary of this Agreement. This shall be the City's sole obligation for such termination of the agreement.

G. Lessor shall, at its expense and throughout the term of this Lease, at least annually inspect, maintain, service, replace needed parts, and keep in good repair the following items: electrical and mechanical equipment, plumbing, heating and cooling equipment, air conditioning, fire sprinkler system, fire extinguishers, security system, irrigation system, foundations, exterior walls, exterior roof, and adjacent parking lot which is owned by the Lessor.

H. Lessor's Human Resources Division may provide Lessee with City

of Prescott human resource policies and materials upon request by Lessee. It shall be Lessee's responsibility to deal with its employees and employment issues.

I. Lessor shall perform periodic maintenance to the outside of the demised premises, including sidewalks, parking area, and front, rear and side yards. Lessee shall keep and maintain general liability insurance covering these areas during the duration of this contract. Lessor shall be responsible for replacing any plants in the exterior of the Leased Premises.

9. **USE OF THE PROPERTY.** The prime consideration of this Lease Agreement is the public benefit to be realized from Lessee's operations at the Leased Premises. Therefore, compliance with this paragraph is of the utmost importance.

A. Lessor may use the Leased Premises, free of charge, for City of Prescott programs, activities, and other community functions, provided, however, that the scheduling of said activities does not conflict with Lessee's programs, activities, and rental uses regularly scheduled. In the event of conflict between the Lessee's use of the Leased Premises and a use requested by the City of Prescott, the parties shall meet and resolve competing use issues on an equitable basis, and both parties agree to reasonably resolve such conflicts in a manner that accommodates equitable use by both parties. In the event that Lessor schedules an event at the Leased Premises, it shall be responsible for its own event associated activities, including meals, employee labor and cleanup. As an additional consideration for free use of the Leased Premises, Lessor hereby agrees to exempt, indemnify, and hold harmless the Lessee from any and all claims, costs, or judgments resulting from any acts or omissions by the Lessor, its officers, employees, agents, successors or assigns during the Lessor's use of the

Leased Premises. For each such event subject to the provisions of this section, Lessor shall provide to lessee a Certificate of Insurance naming the Lessee as an additional insured for that particular event.

C. To insure compliance with the provisions of this paragraph, the Lessee, upon request by the City of Prescott Recreation Services Director, shall submit a list of programs and fees to the Recreation Services Director, or such other contract administrator as designated by the Prescott City Manager.

10. **TERMINATION OF EXISTING LEASE.** The parties acknowledge that the parties have an existing lease for Prescott Meals on Wheels dated March 1, 2004, City of Prescott Contract #04-022. The parties hereto agree that the existing lease agreement, together with any amendments thereto, shall be mutually rescinded as of the Effective Date, and that from and after that date neither party shall have any obligation or right under said prior lease and that this Lease Agreement shall be deemed the sole agreement between the parties.

11. **SURRENDER OF PREMISES.** It is agreed that at the expiration of the term of this Lease Agreement, any extension thereof pursuant to the Lessee's irrevocable option to renew for an additional 49-year term, or any sooner termination of this Lease Agreement, Lessee will quit and surrender the Leased Premises in good order and condition as reasonable use and wear thereof will permit, damage by the elements excepted. If Lessee should hold over the said term with the consent, express or implied, of Lessor, such holding over shall be construed as a tenancy only from month to month, and the Lessee shall continue to abide by the terms of this Lease Agreement during said holdover period.

**12. DEFAULTS.**

A. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

i. Lessee vacating or abandoning the Leased Premises.

ii. Lessee's failure to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by Lessee, where such failure shall continue for a period of thirty (30) days after written notice hereof from Lessor to Lessee.

iii. (i) The making by Lessee of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt entity or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the premises or of Lessee's interest in the Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

B. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessor:

i. Lessee's failure to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by Lessee, where such failure shall continue for a period of thirty (30) days after written

notice hereof from Lessor to Lessee.

**13. REMEDIES.**

A. The parties hereto expressly covenant and agree that they will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement through negotiation. If, however, a matter has not been resolved within a reasonable period of time, upon the written demand of either party, the matter shall be resolved by arbitration in accordance with the Uniform Arbitration Act, A.R.S. § 12-1501 *et seq.* A party desiring arbitration shall serve upon the other, a writing (the "Notice") describing, in general terms, the controversy and naming such party's Arbitrator. Within twenty (20) days after said Notice the other party shall serve upon the party demanding arbitration a writing (the "Response"), describing, in general terms, any additional issues to be arbitrated and naming its Arbitrator. Within seven (7) days thereafter the two Arbitrators shall meet, and at that time or within seven (7) days thereafter shall appoint a third Arbitrator. If the two Arbitrators cannot agree upon the third Arbitrator, either party may apply to the Arizona Superior Court in and for Yavapai County pursuant to the provisions of A.R.S. §12-1503 for appointment of the third Arbitrator. The three Arbitrators, immediately after appointment of the third Arbitrator, shall appoint a time and place and otherwise proceed under the provisions of A.R.S. §12-1505.

B. Subject to the arbitration provisions of Section 13A, if Lessor or Lessee determines that the other party has not fulfilled its duties or obligations under this Lease Agreement, this Lease Agreement may be terminated by that party upon twelve (12) months written notice to the other party, with or without cause. However, the party desiring to terminate this agreement must provide notice as to the specific

manner in which the other party has not fulfilled the aforementioned duties. The party deemed to be failing its duties or obligations would then have 30 days to implement a solution before final notice of termination is issued.

C. If Lessee is in material breach of this Lease Agreement, Lessor may re-take possession of the Leased Premises and remove therefrom all of Lessee's property and all persons then thereon. Any entry and/or re-entry by the Lessor, whether had or taken under what is generally known as summary proceedings, or otherwise, as provided by the terms of this Lease, shall not be deemed to absolve or discharge the Lessee from liability hereunder.

D. If Lessor is in material breach of this Agreement such that Lessee cannot reasonably comply with its obligation hereunder, Lessee may terminate this Lease Agreement by providing no less than thirty (30) days written notice thereof.

14. **NOTICES.** Any notice required or permitted to be given pursuant to this Lease Agreement shall be in writing and may be served personally or by regular mail, addressed to Lessor or Lessee respectively at the following addresses (until written notice of change of address is provided by either party to the other):

To Lessor:

City of Prescott  
Recreation Services Director  
P.O. Box 2059  
Prescott, Arizona 86302

With a copy to the City of Prescott Manager at the foregoing address;

To Lessee:

Prescott Meals on Wheels  
President, Board of Directors  
1280 E. Rosser St.  
Prescott, Arizona 86301

15. **WAIVER.** The waiver by any party hereto of any breach or breaches by the other party of any one or more of the covenants, agreements, conditions, or obligations herein contained or the acceptance of any delinquent payments shall not bar the party from seeking a forfeiture or any other rights or remedies in the event of any subsequent breach of any such or other covenants, agreements, conditions, or obligations.

16. **SEVERABILITY.** The invalidity of any provision of this Lease Agreement as determined by a Court of competent jurisdiction, shall in no way effect the validity of any other provision hereof, so long as the original intent of the parties is not defeated thereby.

17. **CHANGE IN LEASE.** The making, execution and delivery of this Lease Agreement have not been induced by any representation, statement, warranties or agreements other than those herein expressed. The parties mutually agree that this Lease Agreement supersedes all other previous and/or other agreements bearing upon the above premises, and it is further agreed that no changes to or in this Lease shall be made without being in writing, agreed to and signed by all parties hereto.

18. **CONSTRUCTION.** The terms and conditions of this Lease Agreement shall be construed and governed in accordance with the laws of the State of Arizona.

19. **PREPARATION OF AGREEMENT.** This Lease Agreement is the result of negotiations by and between the parties. Therefore, any ambiguity in this Lease Agreement is not to be construed against either party.

20. **WAIVER OF ATTORNEY FEES.** Subject to Section N, page 9, the parties hereto expressly covenant and agree that in the event of litigation arising from this Lease Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Lease Agreement, pursuant to A.R.S. Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

21. **CONFLICT OF INTEREST.** Pursuant to A.R.S. Section 38-511, Lessor may cancel this Lease Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Lease Agreement on behalf of the City of Prescott is, at any time while the Lease Agreement or an extension of the Lease Agreement is in effect, an employee or agent of any other party to the Lease Agreement in any capacity or a consultant to any other party of the Lease Agreement with respect to the subject matter of the Lease Agreement. In the event of the foregoing, Lessor further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease Agreement on behalf of the Lessor from any other party to the Lease Agreement arising as a result of this Lease Agreement.

22. **NON-DISCRIMINATION CLAUSE.** The Lessee, with regard to the provisions of services to the general public pursuant to this Lease, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status. The Lessee will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Orders 99-4 and 2000-

4.

23. **CONTRACT ADMINISTRATOR.** The Contract Administrator for the purposes of this Lease shall be the City of Prescott Recreation Services Director (or designee), until such time that a different contract administrator is designated by the City of Prescott Manager. Whenever the consent of the City of Prescott is required pursuant to the terms of this Lease Agreement, the Contract Administrator is hereby empowered to give such consent on behalf of the Lessor, with the exception of changes to the Lease Agreement pursuant to Paragraph 17, which are required to be approved by the Prescott City Council.

**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

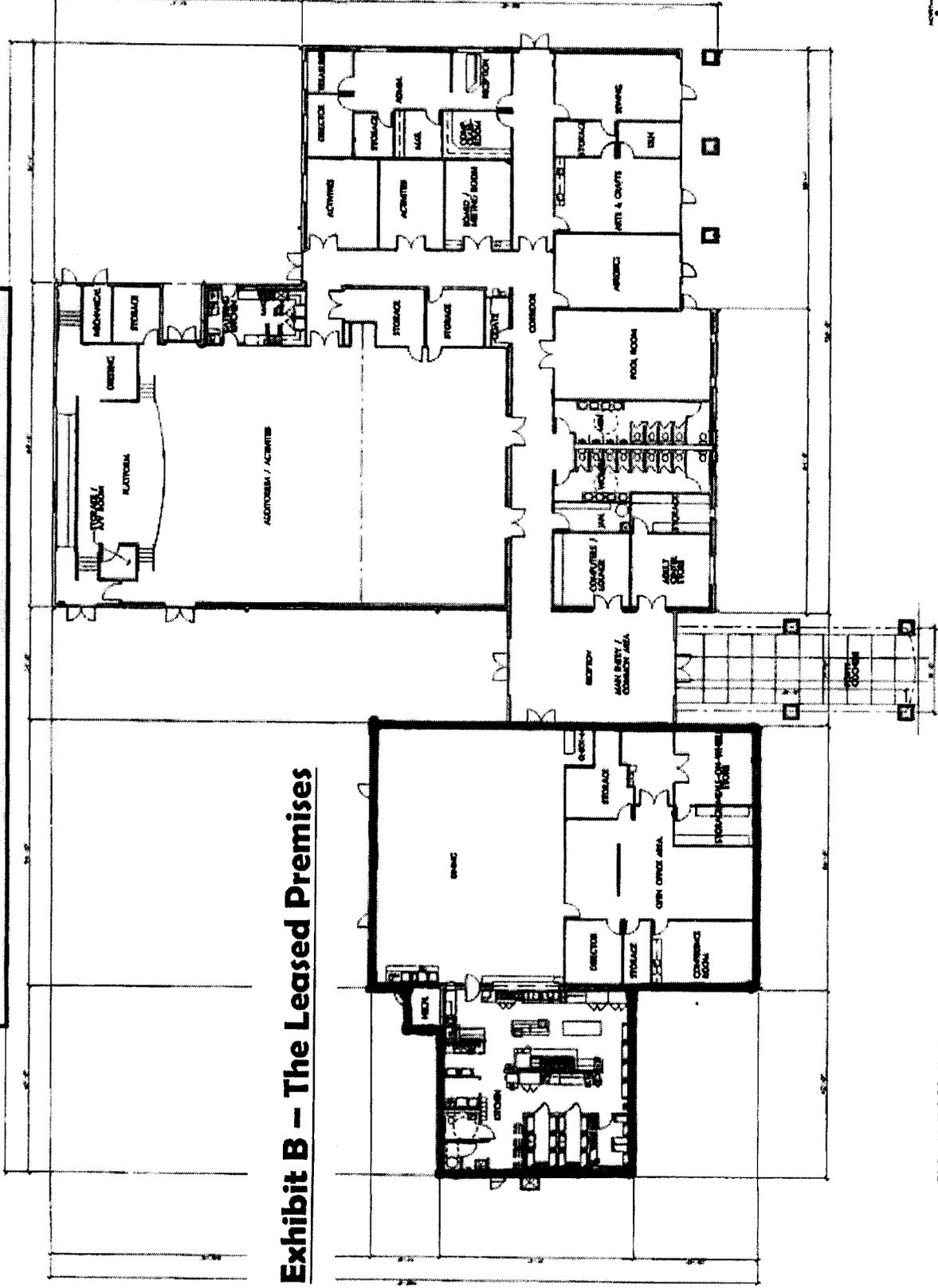
LESSEE:

**PASSED, APPROVED AND ADOPTED** by the Board of Directors of  
PRESCOTT MEALS ON WHEELS., this \_\_\_\_ day of \_\_\_\_\_,  
2010.

By: \_\_\_\_\_  
Robert Painter, President, Board of  
Directors

Floor Plan for Rowle P. Simmons Community Center

Exhibit B - The Leased Premises



OVERALL FLOOR PLAN

## ORDINANCE NO. 4767-1118

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT ENTITLED THE *2010 LEASE WITH THE PRESCOTT MEALS ON WHEELS FOR LEASE OF A PORTION OF THE ROWLE P. SIMMONS COMMUNITY CENTER*, MADE A PUBLIC RECORD BY RESOLUTION NO. 4053-1123 AND APPROVING SAID LEASE**

### **RECITALS:**

WHEREAS, the City has advertised its notice of intent to lease a portion of City owned property located at 1280 E. Rosser Street commonly known as the Rowle P. Simmons Community Center and as a result of such notice of intent has received a proposal to lease and has entered into negotiations to lease certain portions of such real property to Prescott Meals on Wheels ("PMOW"); and

WHEREAS, the lease for the eastern portion of the Community Center with the Adult Center of Prescott, Inc. was revised in early 2010 to address needed details within the agreement; and this agreement with PMOW was modified to remain consistent with Adult Center of Prescott, Inc.'s lease agreement; and

WHEREAS the City wishes to renew and update said lease to Prescott Meals on Wheels on the western portion of the City of Prescott's property located at 1280 E. Rosser Street; and

WHEREAS the City Council has determined that Prescott Meals on Wheels has submitted the best qualified proposal for the foregoing Lease.

### **ENACTMENTS:**

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

SECTION 1. THAT certain document known as the *2010 Lease with the Prescott Meals on Wheels for Lease of a Portion of the Rowle P. Simmons Community Center*, three copies of which are on file in the office of the City Clerk of the City of Prescott, Arizona, which document was made a public record by Resolution No. 4053-1123 of the City of Prescott, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance, the provisions thereof to become effective December 15, 2010.

SECTION 2. THAT the Mayor and staff are hereby authorized to execute said Lease Agreement on behalf of the City of Prescott, and to take any and all steps deemed necessary to accomplish the foregoing.

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

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

ATTEST:

APPROVED AS TO FORM:

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

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

<b>COUNCIL AGENDA MEMO – November 9, 2010</b>
<b>DEPARTMENT:</b> Parks, Recreation, & Library
<b>AGENDA ITEM:</b> Request adoption of ordinance to complete land exchange with Arizona Public Service Company.

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Debbie Horton	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>[Signature]</i>	12/01/11

**Background**

On August 31, staff presented to Prescott City Council a proposed land exchange with Arizona Public Service Company (APS). As required, staff published a Notice to Exchange Real Property in the Prescott Daily Courier the weeks of September 12<sup>th</sup>, 19<sup>th</sup>, & 26<sup>th</sup>, and there were no responses to the publication.

As discussed previously, APS is currently occupying 1/3-acre (6,430 sq. ft.) of City property at the east end of their maintenance yard, which they desire to own. APS also desires two ingress-egress easements from the City for long-term access to their facilities (i.e., north end of Granite Street, and access from Lincoln Ave). Meanwhile, the City is currently occupying and managing the 2.8-acre APS parcel north of the APS yard and substation with the placement of the Miller Creek Trail. As mentioned previously, for this proposed land exchange, APS has incurred all costs associated with recent appraisals and survey work, is desiring to pay all escrow costs, and do not desire to be compensated by the City for the disparity in values. With the exception of legal notice publishing mentioned above, there is no cost to the City of Prescott.

The 1/3-acre parcel owned by the City that APS occupies and desires is valued at \$22,500. The two ingress-egress easements desired by APS are valued at the following: COP #2 - \$8,500, & COP #2A - \$3,200. Meanwhile, the 2.8-acre parcel owned by APS that benefits the City is valued at \$70,000. As mentioned above, even though the parcels are not equal in value, APS does not wish to be compensated from this exchange.

At this time, staff is requesting adoption of the required ordinance for close of escrow.

**Financial Impact**

There is no financial impact from this project.

Recommended Action: **MOVE** to adopt Ordinance No. 4768-1119.



## ORDINANCE NO. 4768-1119

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE SALE AND EXCHANGE OF CERTAIN REAL PROPERTIES BELONGING TO ARIZONA PUBLIC SERVICE COMPANY (APS) AND THE CITY OF PRESCOTT, APPROVING THE CONVEYANCE OF TITLE TO CERTAIN REAL PROPERTY BELONGING TO THE CITY OF PRESCOTT AND ACCEPTING TITLE TO THAT CERTAIN REAL PROPERTY WHICH IS A 2.8 ACRE APS PARCEL NORTH OF THE APS YARD, AND AUTHORIZING THE MAYOR AND STAFF TO EXECUTE ALL NECESSARY SALE AND CONVEYANCE DOCUMENTS TO COMPLETE THE EXCHANGE**

### RECITALS:

WHEREAS, Arizona Public Service Company (APS) is the owner of certain property thereto consisting of a 2.8 acre parcel located north of the APS yard and substation with the placement of the Miller Creek Trail and more particularly described in Exhibit "A" attached; and

WHEREAS, the City is the owner of certain property consisting of a 1/3 acre parcel (6,430 sq. ft) at the east end of the APS maintenance yard, more particularly described in Exhibit "B" attached, and also two ingress-egress easements which APS desires to own for long-term access to their facilities at the north end of Granite Street, and access from Lincoln Avenue more particularly described in Exhibit "C" attached; and

WHEREAS, the 1/2 acre parcel owned by the City that APS occupies and desires is valued at \$22,500. The two ingress-egress easements desired by APS are valued at the following: COP #2-\$8,500, and COP #2A - \$3,200. The 2.8 acre parcel owned by APS that benefits the City is valued at \$70,000; and

Whereas, for the exchange of this property, APS has incurred all costs associated with recent appraisals and survey work, it desires to pay all escrow costs, and it does not desire to be compensated by the City for the disparity in values; and

WHEREAS, Article I, Section 3 of the Prescott City Charter empowers the City of Prescott to acquire property and sell property as its interests may require; and

WHEREAS, the requirements of Article VIII, Section 12 of the Prescott City Charter have been complied with; and

WHEREAS, there have been no further proposals received as a result of the land exchange public notice publication; and

WHEREAS, the City and APS have agreed to enter into a fee simple land exchange Agreement setting forth the terms of the real property exchange herein; and they have determined that their mutual interests and those of the public would be served by the conveyance of the above-referenced properties for purchase and a property trade of value(s); the three City parcels to benefit APS valued at \$22,500, \$8,500 and \$3,200 (total of \$34,200) and the APS property to benefit the City valued at \$70,000. Said exchange has been determined and agreed by the parties to be a fair exchange.

**ENACTMENTS:**

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

SECTION 1. THAT, the Council of the City of Prescott has determined that the mutual interests and those of the public would be best served by the sale and exchange of real properties with Arizona Public Service Company (APS) more particularly described in Exhibits "A" and "B" and "C" .

SECTION 2. THAT, the conveyances of the above-referenced properties for exchange between the City and APS pursuant to the terms and conditions as set forth herein are hereby approved

SECTION 3. THAT, the Council of the City of Prescott hereby accepts title to said real property from APS more particularly described in Exhibit "A". That the Mayor and staff are hereby authorized to execute a Quit-Claim Deed to APS and any other instruments in order to carry out the conveyances as set forth herein.

SECTION 4. THAT, the Mayor and Staff are hereby authorized to execute any and all documents necessary to transfer the respective property titles and complete the real property purchase and exchange with APS as set forth in Section 2.

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

\_\_\_\_\_  
MARLIN KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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

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

## Exhibit A

A parcel of land lying within Section 33, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai county, Arizona, more particularly described as follows:

**COMMENCING** at the West quarter corner of Section 33 (found a 1 1/2" drill steel), from which the East quarter corner of Section 33 (found a 2 1/2" GLO brass cap on a 1" pipe) bears North 89°26'16" East (Basis of bearing), 5265.56 feet;

Thence, along the East-West mid section line, North 89°26'16" East, 1,491.81 feet to a point from which the East quarter corner bears North 89°26'16" East, 3773.74 feet;

Thence South 41°20'02" East, 989.30 feet to a point on the Southerly line of that parcel described as "Parcel No. 2" in Book 265 of Deeds, page 596, Yavapai County Recorder;

Thence North 38°35'59" East, 48.14 feet to the POINT OF BEGINNING;

Thence North 38°35'59" East, 54.64 feet;

Thence South 62°29'31" East, 260.32 feet;

Thence South 71°56'01" East, 202.83 feet;

Thence South 89°42'01" East, 134.89 feet;

Thence South 01°44'22" West, 2.98 feet;

Thence South 88°39'07" East, 123.08 feet;

Thence North 00°53'06" East, 67.40 feet;

Thence Southeasterly an arc distance of 2.78 feet along a non tangent curve to the right from which the radius point bears South 31°31'33" West, a distance of 124.00 feet, and having a central angle of 01°17'00";

Thence Easterly an arc distance of 70.41 feet along a reverse curve to the left having a radius of 116.00 feet and a central angle of 34°46'44";

Thence North 88°01'49" East, 25.00 feet;

Thence North 79°53'54" East, 107.13 feet;

**Thence North 00°20'23" East, 17.00 feet;**

**Thence South 89°44'09" East, 376.51 feet;**

**Thence South 59°19'33" West, 59.45 feet;**

**Thence South 04°06'33" West, 25.70 feet;**

**Thence South 84°54'27" East, 16.00 feet;**

**Thence South 05°05'33" West, 32.00 feet;**

**Thence North 89°54'27" West, 13.00 feet;**

**Thence South 56°05'33" West, 48.20 feet;**

**Thence South 89°34'28" West, 160.00 feet;**

**Thence South 00°52'16" West, 13.90 feet;**

**Thence South 79°56'41" West, 456.33 feet;**

**Thence North 64°59'16" West, 651.64 feet to the POINT OF BEGINNING.**

**RESERVING unto the grantor, its successors and assigns, a blanket easement for Arizona Public Service Company's existing utilities**

## **Exhibit B**

**A parcel of land lying within Section 33, Township 14 North, Range 2 West of the Gila and Salt River Meridian, Yavapai County, Arizona, more particularly described as follows:**

**COMMENCING at the West quarter corner of Section 33 (found a 1 ½" drill steel), from which the East quarter corner of Section 33 (found a 2 ½" GLO brass cap on a 1" pipe) bears North 89°26'16" East (Basis of bearing), 5265.56 feet;**

**Thence, along the East-West mid section line, North 89°26'16" East, 3,200.31 feet to a point from which the East quarter corner bears North 89°26'16" East, 2,065.24 feet;**

**Thence South 0°33'44" East, 1150.96 feet to the POINT OF BEGINNING;**

**Thence North 00°52'16" East, 233.10 feet;**

**Thence South 89°25'51" East, 56.43 feet;**

**Thence South 48°09'01" East, 16.70 feet;**

**Thence South 03°30'05" West, 222.73 feet;**

**Thence North 89°04'52" West, 58.82 feet to the POINT OF BEGINNING.**

## Exhibit C

### Easement #2 (shown on map)

**TOGETHER WITH** an easement for ingress and egress, described as follows:

A parcel of land lying within Section 33, Township 14 North, Range 2 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

**COMMENCING** at the West quarter corner of Section 33 (found a 1 ½" drill steel), from which the East quarter corner of Section 33 (found a 2 ½" GLO brass cap on a 1" pipe) bears North 89°26'16" East (basis of bearing), 5265.56 feet;

Thence along the East-West mid section line, North 89°26'16" East, 3,200.31 feet to a point from which the East quarter corner bears North 89°26'16" East, 2,065.24 feet;

Thence South 0°33'44" East, 1150.96 feet to the POINT OF BEGINNING;

Thence South 89°04'52" East, 58.82 feet;

Thence South 00°14'59" West, 108.48 feet;

Thence North 88°34'14" West, 20.56 feet;

Thence North 88°39'07" West, 39.44 feet;

Thence North 00°52'16" East, 108.00 feet to the POINT OF BEGINNING.

### Easement #2A (shown on map)

**TOGETHER** with an access easement described as follows:

A parcel of land lying within Section 33, Township 14 North, Range 2 West of the Gila and Salt River Meridian, Yavapai County, Arizona, more particularly described as follows:

**COMMENCING** at the West quarter corner of Section 33 (found a 1 ½" drill steel), from which the East quarter corner of Section 33 (found a 2 ½" GLO brass cap on a 1" pipe) bears North 89°26'16" East (basis of bearing), 5265.56 feet;

Thence, along the East-West midsection line, North 89°26'16" East, 1,491.81 feet to a point from which the East quarter corner bears North 89°26'16" East, 3773.74 feet;

**Thence South 41°20'02" East, 989.30 feet to a point on the Southerly line of that parcel described as "Parcel No. 2" in Book 265 of Deeds, page 596, Yavapai County Recorder, said point also being the POINT OF BEGINNING;**

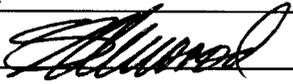
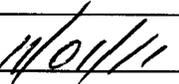
**Thence North 41°20'01" West, 51.88 feet;**

**Thence North 48°44'19" East, 47.40 feet;**

**Thence South 41°20'01" East, 43.40 feet;**

**Thence South 38°35'59" West, 48.14 feet to the POINT OF BEGINNING**

<b>COUNCIL AGENDA MEMO – November 9, 2010</b>
<b>DEPARTMENT: Airport</b>
<b>AGENDA ITEM: Request authorization to enter into an Airport Ground Lease agreement with Guidance Helicopters, Inc. for approximately .185 acres of airport property at Ernest A. Love Field and further authorizing the Mayor and City Staff to execute any and all related documents necessary for the lease.</b>

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Benjamin Vardiman</b>	<b>10-25-2010</b>
<b>Finance Director:</b>	
<b>City Manager:</b> 	

In June of 2010, the Airport published a Request for Proposals (RFP) for the purpose of developing aviation services at the Prescott Municipal Airport. The parcel identified in the RFP consisted of approximately .185 acres west of the current airport administration building at 6540 Crystal Ln. as shown on the attached Vicinity Map. This area is currently occupied by Guidance Helicopters under a month-to-month License Agreement and the City of Prescott has a Promissory Note approved by Council in April 2010 in the amount of \$171,741.40 with Guidance Helicopters.

One response was received to the published request for proposals from John Stonecipher, owner of Guidance Helicopters, Inc. The response provided for Mr. Stonecipher to deliver one original copy of the Promissory Note marked as "Satisfied in Full" within 15 days of the approval of this lease by Council. This response was found to be acceptable to the City and negotiations were completed. Mr. Stonecipher has signed the Standard City Airport Lease Agreement.

The attached lease is the result of the negotiations and is being recommended by staff for Council approval.

Basic Lease terms and conditions summary:

Lessee: Guidance Helicopters, Inc..  
 Use: Aviation related operations and any other of the uses listed below.  
 Location: .185 acres of land at 6540 Crystal Ln  
 Improvements: By Lessee as shown below  
 Term: Twenty year ground lease for .185 acres with three 5-year options which may be executed subject to approval of the City.  
 Valuation: Proposed rate for this lease is:  
                   \$0.350 Per sq ft. \$235.39 per month or \$2,824.68 per year  
                   Annual CPI adjustment not less than 3% and not more than 9%  
                   Additional Rental rate adjustment for extended term

Use: The Lessee operation may include any or all of the following uses:

The operation may include any or all of the following uses:

- (1) Automobile parking lots and structures.

**Agenda Item: Airport Ground Lease to Guidance Helicopters, Inc.**

- (2) Aviation ground school, including pilot and student equipment sales.
- (3) Aircraft sales, including radio and navigational equipment, parts, supplies and accessory equipment.
- (4) Aircraft leasing, rental and charter.
- (5) Aircraft cleaning services.
- (6) Aircraft and engine mechanic schools.
- (7) Air taxi and air ambulance services.
- (8) Aerial photography and surveying.
- (9) Office, retail and service uses related or ancillary to other uses permitted herein.
- (10) Identification, directional and safety signs.

**Recommended Action:** Authorize entering into an Airport Ground Lease agreement with Guidance Helicopters, Inc. for approximately .185 acres of airport property at Ernest A. Love Field and further authorizing the Mayor and City Staff to execute any and all related documents necessary for the lease.



**City Contract #** \_\_\_\_\_

**Airport Lease between the**

**CITY OF PRESCOTT**

**AND**

**GUIDANCE HELICOPTERS, INC.**

**LEASE AGREEMENT**

**EFFECTIVE DATE**

\_\_\_\_\_, 20\_\_\_\_

**TABLE OF CONTENTS**

	<b><u>Page Number</u></b>
ARTICLE I. DEFINITIONS AND EXHIBITS	4
ARTICLE II. LEASED PREMISES	5
ARTICLE III. TERM	5
ARTICLE IV. RENTALS AND PAYMENTS	5
ARTICLE V. USE OF PREMISES AND AIRPORT	6
ARTICLE VI. IMPROVEMENTS TO PREMISES	7
ARTICLE VII. MAINTENANCE	8
ARTICLE VIII. INSURANCE	8
ARTICLE IX. TAXES, ASSESSMENTS AND FEES	9
ARTICLE X. UTILITIES	9
ARTICLE XI. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS	10
ARTICLE XII. ASSIGNING, SUBLETTING AND ENCUMBERING	10
ARTICLE XIII. DEFAULT BY LESSEE	13
ARTICLE XIV. TERMINATION OF LEASE BY THE CITY	14
ARTICLE XV. TERMINATION BY LESSEE	14
ARTICLE XVI. DISPOSITION OF IMPROVEMENTS	14
ARTICLE XVII. EMINENT DOMAIN	14
ARTICLE XVIII. RESERVATIONS TO THE CITY	15
ARTICLE XIX. FEDERAL AVIATION ADMINISTRATION REQUIREMENTS	15
ARTICLE XX. HAZARDOUS MATERIALS	17
ARTICLE XXI. DISPUTE RESOLUTION; MEDIATION	18
ARTICLE XXII. DEFAULT BY LESSOR	18
ARTICLE XXIII. MISCELLANEOUS PROVISIONS	18

**AIRPORT GROUND LEASE BETWEEN THE  
CITY OF PRESCOTT AND GUIDANCE HELICOPTERS, INC.**

This agreement is made between the **CITY OF PRESCOTT**, a municipal corporation of the State of Arizona, hereinafter referred to as "CITY" or "LESSOR", and **GUIDANCE HELICOPTERS, INC.**, hereinafter referred to as "LESSEE". In consideration of the premises and the mutual covenants contained in this Lease, 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:

**RECITALS**

The City of Prescott has agreed to lease approximately 0.185 acres of land at Ernest A. Love Field to **GUIDANCE HELICOPTERS, INC.**, the Lessee, for the purpose of conducting flight training. Title to the Existing Improvements are hereby vested by the City of Prescott to the Lessee during the term of this Lease. Should improvements be made by the Lessee to the site, Lessee will retain ownership of the improvements during the term of this Lease.

**ARTICLE I. DEFINITIONS AND EXHIBITS**

A. Definitions. The following words as used in this Lease shall have the following meanings unless the context clearly indicates otherwise:

*Airport* means Ernest A. Love Field.

*Airport Manager* means the City's Airport Manager.

*Approved Lease Form* means a form of Space Lease (as described in Article XII), which has been reviewed and approved by Lessor in advance of its use by Lessee in establishing Space Leases.

*City* means the City of Prescott, Arizona.

*City Council* or *Council* means the City Council of the City.

*City Manager* means the City Manager for the City.

*Encumbrance* means:

- (1) any pledge, mortgage, contract lien, assignment, or transfer, of all or part of Lessee's interest in the Premises; or
- (2) any transfer of fifty percent (50%) or more of Lessee's total ownership interest in Lessee's business.

*Effective Date* means the 61<sup>st</sup> calendar day after the latter of i) the date upon which the City Council has formally approved this Lease or ii) the receipt by the City of the satisfied Promissory Note, which date shall be inserted on the cover page of this Lease concurrent with the City's execution following such approval.

*Existing Improvements* means those buildings, vehicular parking improvements, and associated improvements to serve the buildings (if any) existing on the Premises as of the Effective Date of this Lease.

*F.A.A.* means the United States Federal Aviation Administration or its successor agency.

*Improvement* means the construction, erection, placement, removal, expansion, alteration, or modification of any building, structure, or fixture on the Premises by

Lessee, including any parking lot, driveway, walkway, landscaping feature, water well, water supply system, septic system, utility line, or outdoor sign.

*Initial Improvements* mean the initial buildings, vehicular parking improvements, and associated improvements to serve the buildings (if any), which comprise the Phase 1 Improvements.

*Lease* means this agreement.

*Lessee* means GUIDANCE HELICOPTERS, INC.

*Mortgagee* means the beneficial holder of a mortgage on any Improvement and Lessee's interest under this Lease.

*Phase 1 Improvements* are those improvements (if any) to be constructed as the first phase of Improvements as more specifically described on Exhibit C.

*Premises* means the real property subject to this Lease as depicted on the map in Exhibit A and as described by metes and bounds in Exhibit A-1.

*Promissory Note* means that promissory note between the parties approved by the City Council on April 13, 2010.

*Qualified Tenant* mean a tenant under a Space Lease as described in Article XII of this Lease which meets the requirements set forth on Exhibit D attached hereto.

B. Exhibits. This Lease includes the following exhibits, attached to and incorporated into this Lease by reference. Any amendment of any Exhibit to this Lease approved by the City Council shall be attached to this Lease as a modification of this Lease. The amendment to any Exhibit shall be effective when the City and Lessee execute a written instrument accepting such amendment.

*Exhibit A* is a drawing of the Premises.

*Exhibit A-1* is the legal description of the Premises.

*Exhibit B* are the allowed uses for the Premises.

*Exhibit C* is a description of the Phase 1 Improvements (if any).

*Exhibit D* sets forth the requirements for a "*Qualified Tenant*" of space in the Premises.

*Exhibit E* is the form of Notice of Intent to Sublease for use pursuant to Article XII(A).

## **ARTICLE II. LEASE OF PREMISES; ADVANCE PAYMENTS**

The City hereby leases to Lessee and Lessee leases from the City the Premises described in Exhibits A and A-1, on the terms and conditions set forth in this Lease. Upon City Council approval of this Lease, Lessee shall deposit with the City the sum of \$720.30 exclusive of applicable taxes representing the first three month's Base Rent as defined in Article IV, paragraph B ("Advance Rent Deposit"); and the City shall credit such amount against Lessee's Base Rent obligation for the first three months that Base Rent becomes payable hereunder. The Advance Rent Deposits shall be deemed earned by Lessor and non-refundable. Additionally, within 15 days of City Council approval of this lease and at least 60 calendar days prior to the effective date of this lease, Lessee shall deliver to the Lessor, one original of the Promissory Note between the Lessor and Lessee in the amount of \$171,741.40 marked as "Satisfied in Full". Lessee acknowledges that its possession, development and use of the Premises shall be subject to the continued presence of an existing City water line serving adjacent property.

## **ARTICLE III. TERM; EXTENSION OPTIONS**

The term of this Lease shall be for 20 years, commencing on the Effective Date and continuing through the day immediately preceding the 20<sup>th</sup> anniversary of the Effective Date, unless earlier terminated under the Lease provisions. Notwithstanding any thing in this Lease to the contrary, if Lessee is unable to secure a financing commitment acceptable to Lessee for construction of the Improvements within ninety (90) days following City Council approval of this Lease, Lessee shall have the right to terminate this Lease by providing written notice to Lessor within fifteen (15) days following the end of such ninety (90) day period. The Lessee may request

to extend, but the Lessor shall not be obligated to approve to extend, the term of this Lease for three (3) additional five (5) year terms by giving the City written notice of each said extension no more than 300 days and at least 180 days prior to the date the Lease would otherwise terminate. The ground rent for any extended term shall be established at that time using the then prevailing rate for bare ground leases at Prescott Airport as may be agreed among the parties, or if the parties cannot agree, as set by an MAI appraiser retained by the parties, with the cost of such appraisal to be shared equally by the parties. However, the ground rent for any extended term shall not be less than the rate in effect 180 days prior to the date the Lease would otherwise terminate.

#### **ARTICLE IV. RENTALS AND PAYMENTS**

Lessee shall pay to Lessor rent, in equal monthly installments, on the 1<sup>st</sup> business day of each month during the term hereof, as follows:

A. **Construction Period Rent. -NOT APPLICABLE**

B. **Aggregate Base Rent.** On the first day of the Effective Date of this Lease, the aggregate base rent for Premises shall be ~~\$0.350~~ per square foot per year expressed in thousandths of cents per square foot per year multiplied by the combined square footage, as shown on the Exhibit A, divided by 12 ("Base Rent") equaling \$235.39 per month.

C. **CPI Adjustments.** On the first day of July following the first anniversary of the Effective Date of this lease and annually thereafter, the monthly rent payable by the Lessee shall be increased to an amount determined by multiplying the Base Rent described in paragraph B. above by a percentage equal to 100% plus the percentage increase between (1) the Consumer Price Index level most recently published prior to the Effective Date of this lease and (2) the Consumer Price Index level most recently published prior to the particular anniversary date; provided however that the rent shall not be less than the rent for the month immediately preceding such anniversary. As used herein, the term "Consumer Price Index" shall mean Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, not seasonally adjusted, or the successor of that Index, as published by the Bureau of Labor Statistics, U.S. Department of Labor. Should Lessor lack sufficient data to make the proper determination on the date of any adjustment, Lessee shall continue to pay the monthly rent payable immediately prior to the adjustment date. As soon as Lessor obtains the necessary data, Lessor shall determine the rent payable from and after such adjustment date and shall notify Lessee of the adjustment in writing; provided, however, that no annual adjustment shall be less than 3% or greater than 9%. Should the monthly rent for the period following the adjustment date exceed the amount previously paid by Lessee for that period, Lessee shall forthwith pay the difference to Lessor. Should the Consumer Price Index, as above described cease to be published, a reasonably comparable successor index shall be selected by Lessor.

D. **Due Date and Place of Payment.** Each monthly rental payment is due on the first City business day of each month without notice or billing from the City and shall be delivered to the City's Finance Department, P.O. Box 2059, Prescott, Arizona, or personally to the department at 201 S. Cortez Street, Prescott, Arizona, unless another address as specified by the City in writing.

E. **Penalties for Delinquency.** Any monthly rental payment not paid by the fifteenth (15) day of the month due is delinquent and shall include an additional monetary amount, as a penalty, equal to ten percent (10%) of the monthly rental due for that month. Additionally, all rental payments which are past due more than thirty (30) days shall accrue interest at the rate of one and one-half percent (1.5%) per month on the overdue amount.

## **ARTICLE V. USE OF PREMISES AND AIRPORT**

A. Permitted Uses. Lessee shall use the Premises solely for the purpose of conducting those aviation related operations as set forth in Exhibit B, attached hereto and made a part hereof. Lessee shall operate and manage the Premises according to Federal, State, and Local Codes, Laws, Ordinances, the Airport Rules and Regulations, and Minimum Development or Operating Standards as they may exist or be amended from time to time. If there is a conflict between this Lease and the Airport Rules, this Lease shall govern. Lessee shall also comply with any future amendments to the City Code and Airport Rules and Regulations that are not in conflict with this Lease. Lessee must comply with all applicable federal, state and local regulations, including but not limited to the Storm Water Pollution Prevention Plan.

B. Permitted Users. Only Lessee and its tenants operating under Approved Lease Forms, and their respective agents, employees, guests and subcontractors shall occupy or operate from the Premises.

C. Unpaved Areas. None of the authorized uses shall be permitted in any area of the Premises that have not been improved with paving, without the prior written consent of Airport Manager.

D. Unrestricted Access to Airport Facilities. Lessee and its tenants are granted the non-exclusive use of all portions of the Airport that are open for use by the public, including taxiway, runways, aprons, navigational aids and facilities relating thereto for the purpose of landings, takeoffs and taxiing of aircraft, on the same terms and conditions as are applicable to the public.

E. Security. Lessee shall be solely responsible for providing security to protect the Premises against criminal acts and Lessee shall make no claim or bring any action against the City for any loss, damage, or injury to persons or property arising from any criminal act committed on the Premises. Lessee shall design and construct at Lessee's expense, all gates, fences or barriers on the Premises that Lessee determines is required to prevent unauthorized access to the Premises. Lessee shall design, construct and maintain fences, barriers or gates on the Premises so as to preclude unauthorized, casual, or inadvertent entry by persons or vehicles onto the Air Operations Area, an aircraft parking apron, or taxiway, according to plans approved in advance by the Airport Manager. The City may at its cost construct and maintain any fences, gates, walls or barriers on the Premises as may be required for compliance with Federal security regulations in a manner designed, in the Airport Manager's judgment, to prevent unauthorized access to the Air Operations Area, taxiway and runways.

## **ARTICLE VI. IMPROVEMENTS TO PREMISES**

### **A. Approval of Improvements**

1. By approving this Lease, the City Council has approved the Initial Improvements (if any) on the Premises, as described in Exhibit C subject to compliance with this Lease and any and all applicable codes, ordinances, rules, regulations, and laws.
2. The plans for the Improvements shall be kept on file with the Airport Manager. Lessee shall not make any changes to the proposed and approved Improvements on the Premises unless and until the Airport Manager has approved said changes.
3. The City's ordinances and codes applicable to the construction of buildings and structures within the City shall apply to any Improvements made by Lessee on the Premises, including the requirements to apply for permits, pay fees, and receive permits prior to beginning construction of any Improvement. All Improvements shall be constructed in strict compliance with the plans for the Improvements as approved by

the Airport Manager and the provisions of this Lease. Lessee shall construct Improvements in a manner as not to interfere with the normal operation and use of the Airport by others. Lessee shall file with the Airport Manager, a complete set of as-built drawings and documents showing the actual construction costs of the Improvement, within thirty (30) days of completion of any Improvement. The drawings and documents must be submitted both in hard copy and in an electronic format as established by the Airport Manager.

**B. Initial Improvements by Lessee (if any).**

1. Within one hundred eight (180) days following the Effective Date, Lessee shall submit a proposed construction schedule for the Initial Improvements (if any) to the Airport Manager, which schedule is subject to the approval of the Airport Manager; provided that it shall be deemed approved so long as it reasonably contemplates completion of the Initial Improvements by the end of the 24<sup>th</sup> month following the Effective Date of this Lease. Lessee shall make proper application for construction permits for the Initial Improvements to the City's building official within thirty (30) days of the Airport Manager's approval of the construction schedule. Lessee or Lessee's contractor shall commence construction of the Initial Improvements no later than thirty days following the issuance of the construction permits and diligently pursue construction to completion.
2. If for any reason, Lessee fails to complete construction of the Initial Improvements within 36 months following the Effective Date, the City may terminate this Lease by giving the other party written notice of termination thirty (30) days in advance of the termination date.

**C. Connection to Taxiways. NOT APPLICABLE**

**ARTICLE VII. MAINTENANCE**

A. Lessee Maintenance Obligations. Lessee shall, to the satisfaction of the Airport Manager, keep and maintain the Premises and all Improvements on the Premises in good condition and repair and in a safe, clean and sanitary condition. Lessee shall provide containers on the Premises for trash, garbage and waste. The Airport Manager may issue and Lessee shall comply with any written directive regarding the type, location, and screening of trash containers maintained by Lessee outside any building.

B. Lessor Self Help. If Lessee fails to make repairs to any Improvement, correct any unsafe or unsanitary condition, or remove any litter or waste as required by this Article, the City may give Lessee written notice of the defect. If Lessee fails to correct the condition within thirty (30) days of the City's written notice, the City may enter upon the Premises and correct the condition and Lessee shall pay the cost thereof, (including, the cost of labor, material, and equipment) within ten (10) days of receipt of statement from the City.

C. City Protective Improvements. The City may, at its sole option, do any filling, grading, slope protection, retaining wall construction or replace or repair any City-owned or City-constructed facilities within or without the Premises in order to protect the Premises or any part of the Airport.

**ARTICLE VIII. INSURANCE**

A. Minimum Lessee Insurance Requirements. Lessee shall obtain and maintain during this Lease, at Lessee's expense, the following minimum insurance. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants

contained in this Contract. All insurance policies cited herein shall not contain any restrictions of coverage with regard to operations on or near airport premises. All insurance policies cited herein shall contain a waiver of subrogation rights endorsement with respect to the City. Insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

1. Commercial General Liability Insurance against claims for bodily injury, death, and property damage occurring on, in or about the Premises, related to or arising out of Lessee's activities, in an amount not less than \$2,000,000 aggregate. The policy must be written on an "occurrence basis" The policy shall be endorsed to include the following additional insured language: "The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities on Lessee's premises, using form CG2010 (10/01) or equivalent.
2. Fire and Extended Coverage to protect against loss or damage to any Improvements located on the Premises resulting from fire, lightning, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage". The insurance shall be maintained in an amount of not less than 100% of the full replacement value of all Improvements constructed on the Premises, subject to a deductible clause not to exceed ten thousand dollars (\$10,000.00). The proceeds paid to Lessee from any loss under this policy(s) shall be used to replace or repair any loss or damage to the premises. The City Of Prescott shall be named as a loss payee on property coverage.
3. Automobile – Commercial/business automobile liability insurance for all owned, non-owned, leased, and hired vehicles assigned to or used in performance of commercial aeronautical activities in the amount of at least \$1,000,000 per occurrence.
4. Worker's Compensation – Statutory as required by law and Employer's Liability in the amount of \$100,000 per accident, \$100,000 disease per person, \$500,000 disease policy limit.

B. Annual Delivery of Certificates. Lessee shall furnish to the Airport Manager prior to occupancy of the Premises and annually during the term of this Lease, certificates of insurance showing that the insurance requirements of this Lease have been met and that the City is named as an additional insured under the required Commercial General Liability policy. New Certificates of Insurance shall be resubmitted to the City whenever changes or revisions occur. Each policy of insurance shall contain the following clause:

It is agreed that this policy shall not be canceled nor the coverage reduced until thirty (30) days after the City's Airport Manager has received written notice of the cancellation or reduction.

C. Modification Of Coverage Requirements. The City shall have the right from time-to-time to require Lessee to obtain increases in insurance coverage if the City determines that increases are necessary to provide adequate protection to Lessee or the City, but only to the extent that the increased coverage are in amounts that are commonly required by other airports for operations similar to those performed by Lessee.

D. Self Help By City. Should Lessee fail to obtain or keep the required insurance in effect during this Lease, the City may purchase the required insurance and Lessee shall reimburse the City for the cost thereof within ten (10) days of the City sending an itemized statement showing the cost incurred.

#### **ARTICLE IX. TAXES, ASSESSMENTS AND FEES**

Lessee shall pay, before they become delinquent, all taxes, assessments and fees assessed or levied upon Lessee, Lessee's property or the Premises by any government entity or political subdivision, including, without limitation, the following:

A. Sales & Privilege Taxes. Lessee shall pay any taxes measured by the gross rental receipts (rental taxes) which Lessor is required to collect or pay by reason of the amounts paid by Lessee to Lessor under this lease, as determined by any taxes imposed by the City of Prescott, County of Yavapai, or the State of Arizona.

B. Real Property Taxes. Lessee, in addition to the rent provided for herein, shall pay or reimburse Lessor for all ad valorem real property taxes and assessments upon the Premises and the Improvements, which are assessed during the lease term.

C. Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment, and all other personal property of Lessee contained in the Premises or elsewhere, and when possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor.

Notwithstanding the above, Lessee shall not be responsible for, or have any personal liability to the Lessor for the payment (or a tenant's non-payment) of (1) taxes and assessments levied upon the personal property or fixtures of any tenant within the Premises, (2) the payment of any Airport related fees or charges assessed against any tenant in the Premises with respect to such tenant's use of the Airport facilities, and (3) commercial use fees assessed by the City, which the City hereby agrees shall be assessed directly against tenants on the Premises and not Lessor.

#### **ARTICLE X. UTILITIES**

A. Lessee Responsible. Lessee shall pay for and maintain all telephone, electric, cable television, gas and other utilities necessary to its use and enjoyment of the Premises. Lessee shall install and maintain water supply systems and sanitary sewer facilities to serve the Premises as approved by the City in accordance with this Lease.

B. City's Right To Connect. The City shall have the right, without charge by Lessee, to connect to water, sewer, power, gas and communication lines or equipment as are now or later installed upon the Premises and shall have the right of access to construct and maintain such connections. Lessee, however, will not be liable for any additional service fees or charges imposed by the utility provider as a result of such connection, nor will Lessee be required to contribute to the cost of upgrading any utility installations required in order to accommodate additional development within the vicinity of the Premises or the Airport generally.

#### **ARTICLE XI. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS**

A. General Obligation to Repair or Rebuild. The damage or destruction of Improvements on the Premises shall not terminate this Lease. Within ninety (90) days of the damage or destruction, Lessee shall commence and diligently pursue to complete the repair, replacement, or reconstruction of Improvements necessary to permit full use and occupancy of the Premises for the purposes permitted by this Lease. Notwithstanding the foregoing, upon any material damage to or destruction of the Improvements (effectively rendering the Improvements untenable) occurring within the last 48 months of the initial term of this Lease or any renewal term, Lessee may elect not to reconstruct the Improvements, but rather may (1) assign to Lessor the rights to all insurance proceeds available to reconstruct the Improvements and (2) thereupon vacate and surrender the Premises to Lessor whereupon this Lease will be deemed terminated.

B. Lessor Approval of New Plans. If Lessee wishes to repair or reconstruct the damaged or destroyed Improvements so that the repaired or rebuilt Improvements would not comply with the plans previously approved by the City for the Improvements, Lessee shall submit the revised plans to the City and comply with the requirements of this Lease that apply to the approval of plans for new Improvements

## **ARTICLE XII. ASSIGNING, SUBLETTING AND ENCUMBERING**

A. Space Leases. Lessee may enter into a sublease with a Qualified Tenant for a portion of the Premises (hangar and/or office space) for activities allowed under this Lease using the Approved Lease Form in effect at the time of execution of such sublease ("Space Lease"). Prior to entering into any Space Lease, Lessee shall submit to the Airport Manager a notice which sets forth the identity of the proposed tenant and the natural persons (if the proposed tenant is not a natural person) who own and control such proposed tenant, together with such reasonable background information with respect to such parties as Lessor may from time to time require ("Notice of Intent to Sublease"). Unless and until modified by Lessor, the Notice of Intent to Sublease shall be in the form, and contain the information required in Exhibit "E" attached hereto. The Airport Manager shall have ten (10) business days within which to provide Lessee written notice of any objection that Lessor has to the identity or background of the proposed tenant or any of its principals, together with an explanation of the basis for Lessor's concern with such proposed tenant, and either (i) an outright rejection of Lessee's right to complete a sublease with such proposed tenant, or (ii) a statement of requirements that must be met with respect to the proposed tenant before a Space Lease can be entered into ("Objection Notice"). If the Airport Manager fails to issue such an Objection Notice with respect to any proposed tenant within the afore-described ten (10) business day period, then Lessor shall be deemed to have approved the proposed tenant, and Lessee shall be entitled to consummate the proposed Space Lease using the then applicable Approved Lease Form. With respect to each Space Lease created by Lessee, Lessor and Lessee agree as follows:

1. Each Space Lease shall be subject and subordinate to this Lease and the rights of Lessor hereunder, and the rights of a Permitted Encumbrance as provided for in this Lease;
2. Any act or omission by a tenant which constitutes a violation of any term of this Lease shall be deemed a violation of such provision by Lessee, it being the intention and meaning of the parties that Lessee shall assume and be liable to Lessor for any and all acts and omissions of any and all tenants that constitute violations of this Lease.
3. Lessee will provide to Lessor a copy of each Space Lease following execution of the same.

B. Other Leases. With the exception of Space Leases completed in accordance with paragraph A. above, Lessee may not enter into any lease or sublease for all or any portion of the Premises without the Lessor's prior written approval. In the event Lessor consents to any such other lease or sublease, the provisions of paragraph A., parts 1 through 3 above shall apply to the same.

C. Encumbrances Approved by the City. Any proposed Encumbrance, or any Sublease (other than a Space Lease) of the Premises by Lessee must be first approved in writing by the Airport Manager. Any encumbrance or Sublease not approved by the City shall be void and any occupancy of the Premises by any person acting under such an Encumbrance or Sublease before City approval shall be a breach of this Lease. Any document used to encumber or Sublease the Premises shall incorporate the provisions of this Lease. The City may withhold consent to an Encumbrance or Sublease for any of the following reasons:

1. Lessee is in default of this Lease, whether or not notice of default has been given by the City.

2. The prospective Encumbrancer or Sublessee has not agreed in writing to be bound by this Lease.
3. The terms of the Encumbrance or Sublease have not been revealed in writing to the City.
4. Construction of any Improvements previously undertaken by Lessee have not been completed to the satisfaction of the City.
5. A processing fee of \$200 for approval of an Encumbrance or Sublease has not been paid to the Lessor by Lessee.

D. Permitted Encumbrance for Financing Improvements. An Encumbrance to finance construction of Improvements, including the Initial Improvements, shall be permitted subject to the following terms and conditions ("Permitted Encumbrance"):

1. Permitted Encumbrance—Conditions Of. Tenant from time to time during the term of this Lease may make one or more Permitted Encumbrances, provided that.
  - (a) Each Permitted Encumbrance shall cover no interests in any real property other than Tenant's interest in the Premises, the Improvements and the Space Leases;
  - (b) The holder of such Permitted Encumbrance ("Mortgagee") shall promptly deliver to Lessor in the manner herein provided for the giving of notice to Lessor, a true copy of the Permitted Encumbrance(s) and of any assignment thereof, and shall notify Lessor of the address of the Mortgagee(s) to which notices may be sent;
  - (c) Permitted Encumbrance shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Lease.
2. Effect of Permitted Encumbrance. For the purpose of this Section the making of a Permitted Encumbrance shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Mortgagee, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Lessee to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Encumbrance, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Encumbrance, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all of the terms, covenants, and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment.
3. Notice to Mortgagees. So long as any Mortgage shall remain a lien on Lessee's leasehold estate hereunder, Lessor agrees, simultaneously with the giving of any notice to Lessee (i) of default, or (ii) of a termination hereof, or (iii) of a matter on which a default may be predicated or claimed, or (iv) of a condition which if continued may lead to a termination hereof, to give duplicate copies thereof or of any process in any action or proceeding brought to terminate or otherwise in any way affect this Lease, to Mortgagee, and no such notice to Lessee or process shall be effective unless a copy of such notice is given Mortgagee in the manner herein provided for. Mortgagee will have the same period after receipt of the notice aforesaid to it for remedying the default or causing the same to be remedied as is given Lessee after notice to it plus twenty (20) days thereafter, and Lessor agrees to accept such performance, on the part of the Mortgagee as though the same had been done or performed by Tenant.

4. **Mortgagee Cures.** Lessor will take no action to effect a termination of this Lease by reason of any default without first giving to Mortgagee reasonable time within which either (i) to obtain possession of the Premises (including possession by a receiver) and thereafter to cure such default if the default be one which can be cured with the exercise of reasonable diligence by Mortgagee, or (ii) to institute foreclosure proceedings and to complete such foreclosure, or otherwise to acquire Lessee's interest under this Lease with diligence and without unreasonable delay in the case of a default which cannot be cured with the exercise of reasonable diligence by the Mortgagee. In either such case, the default of which notice shall have been given shall be deemed cured. The Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Lessee; provided, further, that nothing herein shall preclude Lessor from exercising any rights or remedies under this Lease with respect to any other default by Lessee during any period of such forbearance.
  
5. **Conditions of Cure.** The provisions of the preceding paragraph and this paragraph are conditioned on the following: The Mortgagee shall, within thirty (30) days after notice of such default:
  - (a) Notify Lessor of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Encumbrance or Premises or otherwise to extinguish Lessee's interest in this Lease; and
  
  - (b) Deliver to Lessor an instrument in writing duly executed and acknowledged wherein such Mortgagee agrees that:
    - (1) During the period that Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Lessee in this Lease shall terminate or such proceeding shall be discontinued, it will pay or cause to be paid to Lessor all sums from time to time becoming due hereunder for Base Rent; and
  
    - (2) If delivery of possession of the Premises shall be made to such Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements herein contained on Lessee's part to be performed (including but not limited to payment of net rent) to the extent that Lessee shall have failed to perform the same to the date of delivery of possession, as aforesaid, except such covenants and agreements which cannot with the exercise of due diligence be performed by such Mortgagee. Nothing in this (2) shall be construed to require such Mortgagee to perform any of the Lessee's obligations hereunder accruing after such Mortgagee ceases to be in possession.
  
6. **Mortgagee Consent.** This Lease shall not be modified or surrendered to Lessor or cancelled by Lessee, nor shall Lessor accept a surrender of this Lease without the prior written consent of Mortgagee, nor shall any merger result from the acquisition by, or devolution upon, any one entity of the fee and leasehold estates in the Premises.
  
7. **Lessor Option To Purchase Mortgagee's Interest.** Before exercising the power of sale or instituting foreclosure proceedings under the Permitted Encumbrance, Mortgagee shall first offer to the City and the City shall have the right to purchase all right, title, and interest in all property encumbered by the Permitted Encumbrance directly from trustee, and without public sale, for the then outstanding balance due on the note or notes secured by the Permitted Encumbrance, plus trustee's fees and costs of sale.

The offer to the City shall be made no later than ten (10) days following the filing of Notice of Default, and the City may exercise the option to purchase within three (3) months following the filing.

E. Assignees Bound. Every assignee, whether as assignee or as successor in interest of any assignee of Lessee herein named or as assignee of the holder of any Permitted Encumbrance, or as successor in interest of any assignee, including any purchaser of under a foreclosure of any Permitted Encumbrance, shall immediately be and become and remain liable for the payment of all rent coming due hereunder, and for the due performance of all the covenants, agreements, terms, and provisions hereof on Lessee's part to be performed to the end of the term hereof, and every provision of this Lease applicable to Lessee shall apply to and bind every such assignee and purchaser with the same force and effect as though such assignee or purchaser were the Lessee named in this Lease. No transfer to such assignee or to such purchaser shall be binding upon Lessor unless such assignee or purchaser shall deliver to the Lessor a recordable instrument which contains a covenant of assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth. Subsequent to the completion of the Initial Improvements and the discharge of all obligations in connection therewith, upon any assignment of this Lease, and the delivery of the instruments above referred to, the assignee shall be released from the performance of all of the obligations on the part of Tenant thereafter to be performed hereunder, except any obligation to hold and apply insurance or other monies held by assignor on the date of the assignment and any unperformed obligations which shall have matured prior to such assignment.

F. Limitation on Third Party Transfers for Value. If Lessee sells, assigns, conveys or otherwise transfers for value to a third party more than fifty percent (50%) of its interest in this Lease, or sells, assigns, conveys or otherwise transfers to a third party for value more than fifty percent (50%) of its business to another entity, then a conveyance fee equal to five percent (5%) of the sales price for the transferred interest shall be paid to the City, provided, however, that in no event shall this conveyance fee be less than \$10,000.00. The applicability of such conveyance fee is intended to be limited to third party transactions. It and shall not apply where Lessee (or the members of Lessee) are conveying interests in the Lease (or in Lessee) to family members or trusts or other vehicles in which family members hold beneficial interests, whether such conveyances occur as part of estate or family planning activities or as a result of the death of one or more of the members of Lessee.

### ARTICLE XIII. DEFAULT BY LESSEE

A. Lessee Default. Should Lessee default in the performance of this Lease, the City shall give written notice to Lessee and any Mortgagee holding an interest under a Permitted Encumbrance, of the default and what must be done to correct the default and the period of time in which Lessor has to cure such default. If the default is monetary in nature, the cure period shall be no less than 10 business days. If the default is non-monetary in nature, the cure period shall be no less than thirty days; provided that if at the end of any applicable cure period, Lessee is diligently pursuing a cure of the default, then such period shall be extended up to an additional 60 days provided that Lessee continues to diligently pursue such cure. If the default as noticed by the City is not corrected within the applicable cure period, the City may declare this Lease terminated. In the event of any such termination, Lessor and/or its designee shall have the right to re-enter the premises and remove there from all persons and personal property of the Lessee and may pursue any other remedy provided for herein or under applicable law, or Lessor may treat this Lease as continuing and take, have, and recover any damages it may have sustained or continue to sustain by reason of such continuing breach. All rights of Lessee and those who claim under or through Lessee shall expire and be of no further force and effect at time of any such termination; subject, however, to the continuing rights under Article XII, if any, of a Mortgagee holding a Permitted Encumbrance. If any Lessee default noticed by Lessor hereunder relates to any act or omission of a tenant under a Space Lease (including, without

limitation, any act or omission described in Article XIX), Lessee's termination of the rights of the defaulting tenant under its Space Lease shall be deemed to be an effective cure of such default under this Lease, so long as such termination results in or is accompanied by a cure of the condition giving rise to the default.

B. Quitclaim Upon Termination. Upon termination of this Lease for any reason, Lessee shall execute, acknowledge and deliver to the City within thirty (30) days after receipt of written demand therefor, a good and sufficient document whereby all title and interest of Lessee in the Premises is quitclaimed to City.

#### **ARTICLE XIV. TERMINATION OF LEASE BY THE CITY**

A. If the City should need the Premises during the term of this Lease for future expansion or operation of the Airport, the City may terminate this Lease by giving Lessee one-hundred-eighty (180) days prior written notice. Within thirty (30) days following the giving of such notice, Lessee and Lessor shall each identify an appraiser to conduct appraisals of the Lessee's interest in the Property. The cost of both appraisals shall be paid by the Lessor. Each appraiser shall be instructed to independently arrive at the fair market value of the Lessee's interest in the Property (the leasehold interest under this lease and the Improvements) taking into account the income producing capacity of the Property as a whole during the remaining term of the lease and any remaining extension periods. The mathematical average of the valuations arrived at by the two appraisers shall be the "Buy Out Price".

B. Upon the Effective Date of the termination, Lessor shall pay to or for the benefit of Lessee and any Mortgagee, in cash, the greater of (1) the Buy Out Price, or (2) the outstanding balance secured by the Permitted Encumbrance, whereupon all Improvements shall become the sole property of the City.

#### **ARTICLE XV. TERMINATION BY LESSEE**

If during the initial term of this Lease the City should, in the opinion of the F.A.A., fail to maintain the landing areas in a safe condition for aircraft operations, or any ordinance or law should become effective, the terms of which so restrict the uses to which the Premises may be put, such that Lessee is unable to continue the use and occupation of the Premises substantially in the manner as allowed by this Lease, Lessee may terminate this Lease by giving the City sixty (60) days prior notice of termination. Upon the effective date of termination Lessor shall pay to or for the benefit of Lessee and any Mortgagee the greater of (1) the construction cost of all Improvements divided by the number of years in the initial lease term and then multiplied by the number of whole years remaining under the lease, or (2) the then outstanding balance due under all Encumbrances approved by the City for the construction of Improvements. Upon making such payment all Improvements shall become the property of Lessee.

#### **ARTICLE XVI. DISPOSITION OF IMPROVEMENTS**

A. Ownership of Improvements. All Improvements installed by Lessee shall be and remain the property of Lessee during the term of this Lease. Upon the expiration or termination of this Lease, the Improvements shall become the property of the City.

B. Disposition of Improvements Upon Termination. Upon termination or expiration of this Lease, Lessee shall not be required to remove from the Premises any Improvements that had been approved by Lessor at the time of their construction or installation.

#### **ARTICLE XVII. EMINENT DOMAIN**

A. General. If all of the Premises is condemned by a public entity in the lawful exercise of the power of eminent domain, this Lease shall terminate upon the date possession is taken by the

public entity. If only a part is condemned and the taking of that part does not substantially impair the capacity of the remainder to be used for the purposes allowed by this Lease, Lessee shall continue to be bound by the terms, covenants and conditions of this Lease, except, the monthly rental shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity. If only a part is condemned and the taking of the part substantially impairs the capacity of the remainder to be used for the purposes allowed by this Lease, Lessee shall have the option to:

1. Terminate this Lease and be absolved of all obligations hereunder which have not accrued at the date possession is taken by the public entity; or
2. Continue to occupy the remainder of the Premises and remain bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue to occupy the remainder, the monthly rental shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity.

Lessee shall give notice in writing of its choice of remedies hereunder within thirty (30) days of the date possession of the part is taken by the public entity. If Lessor and Lessee can not agree as to whether a partial taking substantially impairs the capacity of the remainder to be used for the purposes allowed by this Lease, then they shall submit the issue to mediation in accordance with Article XXII.

B. Division of Award. If the order or decree in any condemnation or similar proceeding shall fail separately to state the amount to be awarded to the Lessor and the amount to be awarded to the Lessee under the provisions of this Article XVII, by way of compensation, damages, rent, the cost of demolition, removal or restoration or otherwise, and if the Lessor and the Lessee cannot agree thereon within thirty (30) days after the final award or awards shall have been fixed and determined, such dispute shall be determined in accordance with Article XXII hereof.

C. Rights of Participation. Each party shall have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials, and appeals therein. In addition, Lessor agrees to cooperate fully with Lessee to prevent any condemnation or eminent domain proceeding to be instituted or otherwise successfully prosecuted.

D. Notice of Proceeding. In the event Lessor or Lessee shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

#### **ARTICLE XVIII. RESERVATIONS TO THE CITY**

A. Reservation for Utility Installations. The Premises are accepted by Lessee subject to any and all existing easements and encumbrances on the Premises. The City may, at no cost to Lessee, install, lay, construct, maintain, repair and operate water, oil, gas, sanitary sewer, storm water, telephone, communication lines, conduits, and equipment and appurtenances in, over, across and along the Premises so long as it promptly repairs any damage or disturbance to the Premises or the Improvements caused in exercising such rights. No right reserved by the City in this Article shall be so exercised as to interfere unreasonably with Lessee's operations hereunder or impair the security of the Mortgagee. The City agrees that rights granted to third parties shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. The City further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by Lessee, the rental shall be reduced in proportion to the interference with Lessee's use of the Premises.

B. General Inspection Right. The City reserves the right for the Airport Manager or his/her designee, and upon presentation of identification confirming that person's employment with the City, to have access to, enter, and be upon the Premises with or without notice at all times to perform the duties of and related to airport operations and maintenance. The City further reserves the right for the Airport Manager or his/her designee to enter the premises during normal business hours and conduct inspections of the entire premises for compliance with the provisions of this Lease (Lease Compliance Inspection) with or without notice.

#### **ARTICLE XIX. FEDERAL AVIATION ADMINISTRATION REQUIREMENTS**

If there is any conflict between the provision in this Article and the other provisions in this Lease, the provisions in this Article shall take precedence.

A. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a United States Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Lessee's facilities; (2) that in the construction of any Improvements on, over, or under such Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; (3) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

C. In the event of Lessee's breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Lease and to re-enter and re-possess such land and the facilities thereon and hold the same as if this Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

D. Lessee shall furnish its accommodations and services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

E. Non-compliance with Provision "D" above shall constitute a material breach thereof and, in the event of such non-compliance, the City shall have the right to terminate this Lease and the estate hereby created without liability therefore, or at the election of the City or the United States either or both said Governments shall have the right to judicially enforce said Provisions.

F. Lessee agrees that it shall insert the above five (5) Provisions in any sublease, contract or agreement by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises herein leased.

G. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered suborganizations provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

H. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Lessee without interference or hindrance.

I. The City reserves the right but shall not be obligated to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.

J. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.

K. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.

L. Lessee agrees to be responsible for and comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises.

M. Lessee, by accepting this, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder which conflicts with any portion of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Lessee.

N. Lessee, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the leased Premises in any manner which might interfere with the taxiing, landing, and taking off of aircraft from said Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of Lessee.

O. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

P. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

Q. The Lessee will conform to airport, Federal Aviation Administration, and Transportation Security Administration safety and security rules and regulations regarding the use of the airport including but not limited to use of the airport operations areas, runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered and/or required by the airport: and will be subject to penalties as prescribed by the airport for violation of the airport safety and security requirements.

## **ARTICLE XX. HAZARDOUS MATERIALS**

### **A. Definitions.**

- (1) *Hazardous Materials Laws* means any Federal, State or local law, ordinance, rule, order, regulation or court decision relating to Hazardous Materials.
- (2) *Hazardous Materials* means any substance or other material that:
  - (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Materials Law or is a flammable or explosive material (including gasoline, diesel, aviation fuels, lubricating oils, and solvents), asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacterial, virus, or injurious or potentially injurious matter; or
  - (b) is controlled or governed by any Hazardous Materials Law.

B. Hazardous Material Handling, Spills, and Cleanup. Lessee shall comply with any Material Hazardous Law in the storage, distribution, processing, handling or disposal of any Hazardous Materials. If during the term of the Lease any Hazardous Material spills, leaks, or is discharged on or from the Premises, Lessee shall immediately make all repairs necessary to prevent further spills, leaks or discharges and shall immediately clean up the spill, remove any contaminated soil and promptly dispose of the spilled Hazardous Material and soil in the manner prescribed by Hazardous Materials Laws. If Lessee fails to immediately clean up the spill or properly dispose of any contaminated soil the City may, upon twenty-four (24) hours written notice to Lessee, take whatever action is necessary to clean up the spill and dispose of any contaminated soil. Lessee shall reimburse the City for the cost of all such work by the City within thirty (30) days from receipt of a bill from the City. Notwithstanding the foregoing, as between Lessee and Lessor, Lessee shall not be responsible for the cost of handling, removing and disposal of (a) any Hazardous Material which is determined to have been present on or below the Premises at the inception of this Lease, and (b) any material (whether or not a Hazardous Material) deposited on the Premises by any person exercising rights under the public right of flight reserved by the City under Article XIX, paragraph K. of this Lease.

C. Termination. Upon termination of this Lease, Lessee shall, at Lessee's cost, remove any equipment utilized in connection with any Hazardous Materials and shall clean up, detoxify, repair and otherwise restore the Premises to a condition free of Hazardous Materials, to the extent such condition is caused by Lessee or any assignee or sublessee of Lessee or their respective agents, contractors, employees, licensee or invitees.

D. Default. The release or discharge of any Hazardous Materials or violation of any Hazardous Materials Law by Lessee or any assignee or sublessee of Lessee shall be a material default by Lessee under the Lease, subject to the notice and cure provisions of Article XIII. In

addition to or in lieu of the remedies available under the Lease as a result of such default, the City shall have the right, without terminating the Lease, to require Lessee to suspend its operations and activities on the Premises until the City is satisfied that appropriate remedial work has been or is being adequately performed. The City's election to suspend Lessee's operations shall not constitute a waiver of the City's right thereafter to declare a default and pursue other remedies set forth in the Lease.

#### **ARTICLE XXI. DEFAULT BY LESSOR**

In the event of any breach by Lessor of any of the covenants, agreements, terms, or conditions hereof, Lessee, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

#### **ARTICLE XXII. DISPUTE RESOLUTION; MEDIATION**

All claims, disputes and other matters in controversy (herein called "dispute") arising out of or related to any provision in this Agreement shall be resolved exclusively according to the procedures set forth in this Article XXII. No party to this Agreement shall commence any litigation proceeding against the other unless such party shall first give a written notice (a "Dispute Notice") to the other party setting forth the nature of the dispute. Each party shall designate a senior executive officer to act on its behalf and to attempt in good faith to resolve the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association (AAA) in effect on the date of the Dispute Notice. If the parties cannot agree on the selection of a mediator within twenty (20) days after delivery of the Dispute Notice, the mediator will be selected by the AAA. If the dispute has not been resolved by mediation as provided above within ninety (90) days after delivery of the Dispute Notice, then either party may thereafter elect to seek resolution of the dispute through legal process (litigation).

#### **ARTICLE XXIII. MISCELLANEOUS PROVISIONS**

A. Holding Over. In the event Lessee shall hold over after the term herein granted, the holding over shall be deemed to be a tenancy from month-to-month and shall be governed by the provisions of this Lease.

B. Amendments. This Lease sets forth all of the agreements and understandings of the parties and any modification of this Lease must be written and executed by Lessor and Lessee.

C. Force Majeure. If by reason of force majeure, Lessee cannot perform any obligation of this Lease, it shall give notice of the force majeure to the City in writing within ten (10) days of the occurrence relied upon. The obligation of Lessee, to the extent and for the period of time affected by the force majeure, shall be suspended. Lessee and Lessor shall jointly endeavor to remove or overcome the inability with all reasonable effort. For purposes of this provision, "force majeure" shall mean acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars, or other civil or industrial disturbances; orders of any kind of the Federal or State government or of any civil or military authority; explosions, fires, breakage or accidents to machinery, lines, or equipment, or the failure of the system or water supply system; or any other cause not reasonably within the control of Lessee. Force Majeure shall not include financial inability and shall not excuse Lessee from paying any monthly rental or other charge as required by this Lease.

D. Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, the remainder of the Lease shall remain in effect.

E. Time. Time is of the essence of this Lease.

F. Americans With Disabilities Act. Lessee warrants that it is in compliance with the Americans with Disabilities Act (Public Law 101-336) and that it will, in carrying out the requirements of this Lease, comply in all respects with the provisions of the Act and its implementing regulations.

G. Unlawful Use. Lessee and its employees and agents shall not use or knowingly allow any other person to use of the Premises in violation of any federal, state, county, or local regulation, order, law, or ordinance applicable to the Premises.

H. Notices. Any notice given under this Lease shall be given in writing by mail, by delivery in person or by telecopier addressed as follows, or as the City or Lessee may hereafter designate by written notice:

To the City:

Airport Manager  
City of Prescott  
6546 Crystal Lane  
Prescott, AZ 86301

Telephone: 928-777-1114  
Facsimile: 928-771-5861

With a copy to:

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

Telephone: 928-777-1100  
Facsimile: 928-777-1255

To Lessee:

GUIDANCE HELICOPTERS, INC.  
C/O John Stonecipher, President  
6565 Crystal Ln  
Prescott, AZ 86301

Telephone: 928-443-9370

E-Mail: john@guidancehelicopters.com

I. Successors in Interest. Unless otherwise provided in this Lease, this Lease shall apply to and bind the successors and assigns of Lessee and the City.

J. Signage. Lessee shall place no signs, flags, or posters or other advertising or promotional materials on the premises, on the exterior of the premises, or in the windows of the demised premises without having obtained Lessor's prior written consent, which consent will not unreasonably be withheld.

K. Security. Lessee hereby agrees that the Lessor shall have a first and superior lien on all fixtures and personal property belonging to the Lessee in and about said building as additional security for the performance of this lease.

L. Lessee Indemnity. Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the premises or from the conduct of Lessee's business or from any activity, work, or things done, permitted, or suffered by Lessee in or about the premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of the lease or arising from any negligence of the Lessee, or any of the Lessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim.

N. Lessor Indemnity. Lessor shall indemnify and hold harmless Lessee from and against any and all claims arising from any breach or default in the performance of any obligation on Lessor's part to be performed under the terms of the lease or arising from any negligence of the Lessor, or any of the Lessor's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessee by reason of any such claim.

O. Waiver. The waiver by the Lessor of any breach or breaches by the lessee of any one or more of the covenants, agreements, conditions, or obligations herein contained or the acceptance of any delinquent payments shall not bar the Lessor's right to declare a forfeiture or to employ any other rights or remedies of the said Lessor in the event of any subsequent breach of any such or other covenants, agreements, conditions, or obligations. Any entry and/or re-entry by the Lessor, whether had or taken under what is generally known as summary proceedings, or otherwise, as provided by the terms of this lease, shall not be deemed to absolve or discharge the Lessee from liability hereunder.

P. Governing Law. The terms and conditions of this agreement shall be construed and governed in accordance with the laws of the State of Arizona.

Q. Time Is Of Essence. Time is of the essence in this agreement. The failure of either party to require the strict performance by the other 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.

S. Attorneys Fees. 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 Lease, pursuant to ARS Section 12-341.01 (A) and (B), or pursuant to any other State or Federal Statute.

T. Memorandum. Lessor and Lessee agree that at the request of either, each will execute a short form memorandum of this Lease in form satisfactory for recording in the office of the Yavapai County Recorder.

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

DATED this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_\_.

**LESSEE:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

APPROVED AS TO FORM:

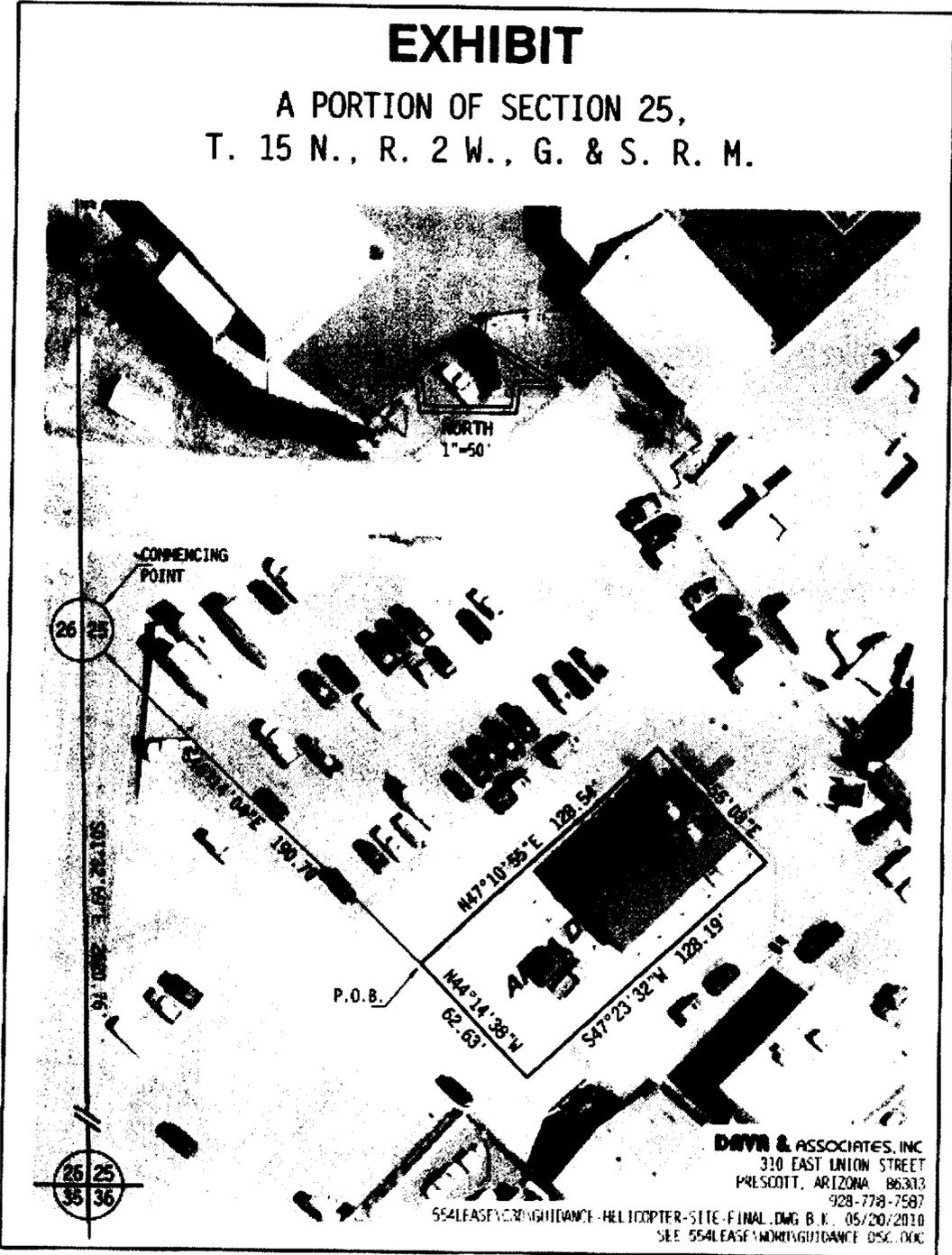
\_\_\_\_\_  
Elizabeth A. Burke  
City Clerk

\_\_\_\_\_  
Gary D. Kidd  
City Attorney

**EXHIBIT A**  
**PARCEL DRAWING**

**EXHIBIT**

A PORTION OF SECTION 25,  
T. 15 N., R. 2 W., G. & S. R. M.





## **EXHIBIT B**

### **PERMITTED USES OF THE PREMISES**

Lessee shall use the Premises only for the following aeronautical purposes on the condition that the facilities conform to all applicable codes, ordinances, laws, rules, and regulations. No other uses of whatever nature shall be permitted under the terms of this Lease.

- a. The operation may include any or all of the following uses:
  - (1) Automobile parking lots and structures.
  - (2) Aviation ground school, including pilot and student equipment sales.
  - (3) Aircraft sales, including radio and navigational equipment, parts, supplies and accessory equipment.
  - (4) Aircraft leasing, rental and charter.
  - (5) Aircraft cleaning services.
  - (6) Aircraft and engine mechanic schools.
  - (7) Air taxi and air ambulance services.
  - (8) Aerial photography and surveying.
  - (9) Office, retail and service uses related or ancillary to other uses permitted herein.
  - (10) Identification, directional and safety signs.
- b. **RESERVING TO LESSOR** in each and every enumerated use, the right to provide to Airport users one or more of the services allowed by this Clause without the necessity of renegotiation of the terms and conditions of this Lease.
- c. None of the uses enumerated in this Clause including, but not limited to aircraft tie-down or storage, shall be permitted in or upon any area of the Premises that have not been improved with paving without the prior written consent of the Airport Manager.

**EXHIBIT C**  
**INITIAL IMPROVEMENTS**  
**SITE PLAN & CONSTRUCTION SCHEDULE**

**RESERVED – NO INITIAL IMPROVEMENTS PROPOSED**

## **EXHIBIT D**

### **QUALIFIED TENANT DEFINITION**

#### **Qualified Tenant Definition**

*A "Qualified Tenant" shall mean any prospective tenant with respect to whom Lessor has not issued a Notice of Objection pursuant to the lease terms and conditions following Lessee's submission of a complete Notice of Intent To Sublease.*

**EXHIBIT E**  
**NOTICE OF INTENT TO SUBLEASE**

**Notice of Intent to Sublease**

Date: \_\_\_\_\_

To: City of Prescott, Airport Manager

Owner: Guidance Helicopters, Inc. by John Stonecipher President: \_\_\_\_\_

Proposed Qualified Subtenant: \_\_\_\_\_

Principals of Proposed Qualified Subtenant (If not a natural person): \_\_\_\_\_

Space to be subleased: \_\_\_\_\_

This shall serve as Notice to the City of Prescott of Guidance Helicopters, Inc. intent to lease to the above described Proposed Qualified Subtenant, the space identified above at the Prescott Airport. This notice is given pursuant to the Lease Agreement, Paragraph A Sublease or Assignment, between the City of Prescott & Guidance Helicopters, Inc.; also known as City contract number \_\_\_\_\_.

The Sublease agreement is attached for the City's records.

**CITY CONSENT**

The City of Prescott, by and through the Prescott Airport Manager, hereby consents to the sublease of the above referenced hangar space located within the premises defined in City of Prescott Contract Number \_\_\_\_\_ - \_\_\_\_\_ (hereinafter referred to as the "Lease"), to the above referenced "Proposed Qualified Subtenant" (hereinafter referred to as "Subtenant"), upon the following terms and conditions:

1. That this consent shall not be deemed a waiver or relinquishment in the future of the covenant against assignment, sale or subletting without first obtaining the consent of the City of Prescott.
2. That in the event of any conflict between the terms and conditions of the Lease and the hangar sublease agreement, the terms and conditions of the Lease shall prevail.
3. That the Subtenant shall agree to accept and abide by any and all provisions in the Lease, and to faithfully perform any and all covenants, stipulations, agreements and obligations under the Lease.

CITY OF PRESCOTT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Airport Manager

THIS FORM MAY BE AMENDED FROM TIME TO TIME BY THE CITY AND SHALL CONSTITUTE INFORMATION REQUIRED BY THE TRANSPORTATION SECURITY ADMINISTRATION OR OTHER GOVERNMENTAL AGENCIES FOR THE PURPOSES OF BACKGROUND SECURITY CHECKS THAT MAY, FROM TIME TO TIME, BE REQUIRED ON AIRPORT TENANTS.

<b>COUNCIL AGENDA MEMO – November 9, 2010</b>
<b>DEPARTMENT:</b> Community Development
<b>AGENDA ITEM:</b> Final Plat Granite Dells Estates Commercial PAD, Phase 1B, located South of the Centerpointe East Subdivision. Owner: Mike Fann; Agent: Lyon Engineering, Kevin Horton. File No. FP10-002.

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

**REQUEST**

This application seeks approval of a final plat for the first phase of development in the Granite Dells Estates Commercial Planned Area Development (PAD).

Phase 1B includes 10.08 acres and is to be divided into 3 lots, C-35, C-36 and C-37. This phase will include extending infrastructure associated with Centerpointe East Drive for a distance of 500 feet.

The City's Public Works and Engineering staff has reviewed the plans for the infrastructure associated with the overall development and those specific to Phase 1B. The plans have been modified in relation to comments provided.

**PRIOR REVIEW AND APPROVALS**

The overall Granite Dells Estates (GDE) Development has been the subject of numerous reviews and approvals, including but not limited to;

- ANX 07-002, the annexation of the GDE area including 1,142 acres, Ordinance No. 4632-0834, 11/30/07
- Development Agreement No. 2008-164, Resolution No. 3864-0832, Including a Master Plan, 11/30/08.
- RZ08-002, the zoning of GDE, including Residential, Commercial and Industrial Districts, Ordinance No. 4651-0853, 5/27/08.
- PP08-002 Granite Dells Estates Residential Preliminary Plat, 5/27/08.
- PP09-001 Preliminary Plat for Granite Dells Estates Commercial PAD, 2/23/10.

The final plat for Phase 1B is consistent with the prior approvals as noted above.

**GENERAL PLAN AND AIRPORT SPECIFIC AREA PLAN**

A review of the City's General Plan and the Airport Specific Area Plan occurred with the earlier approvals for GDE. The Plats reference the required Noise and Avigation Easement acknowledging proximity of the airport.

**PLANNING COMMISSION RECOMMENDATION**

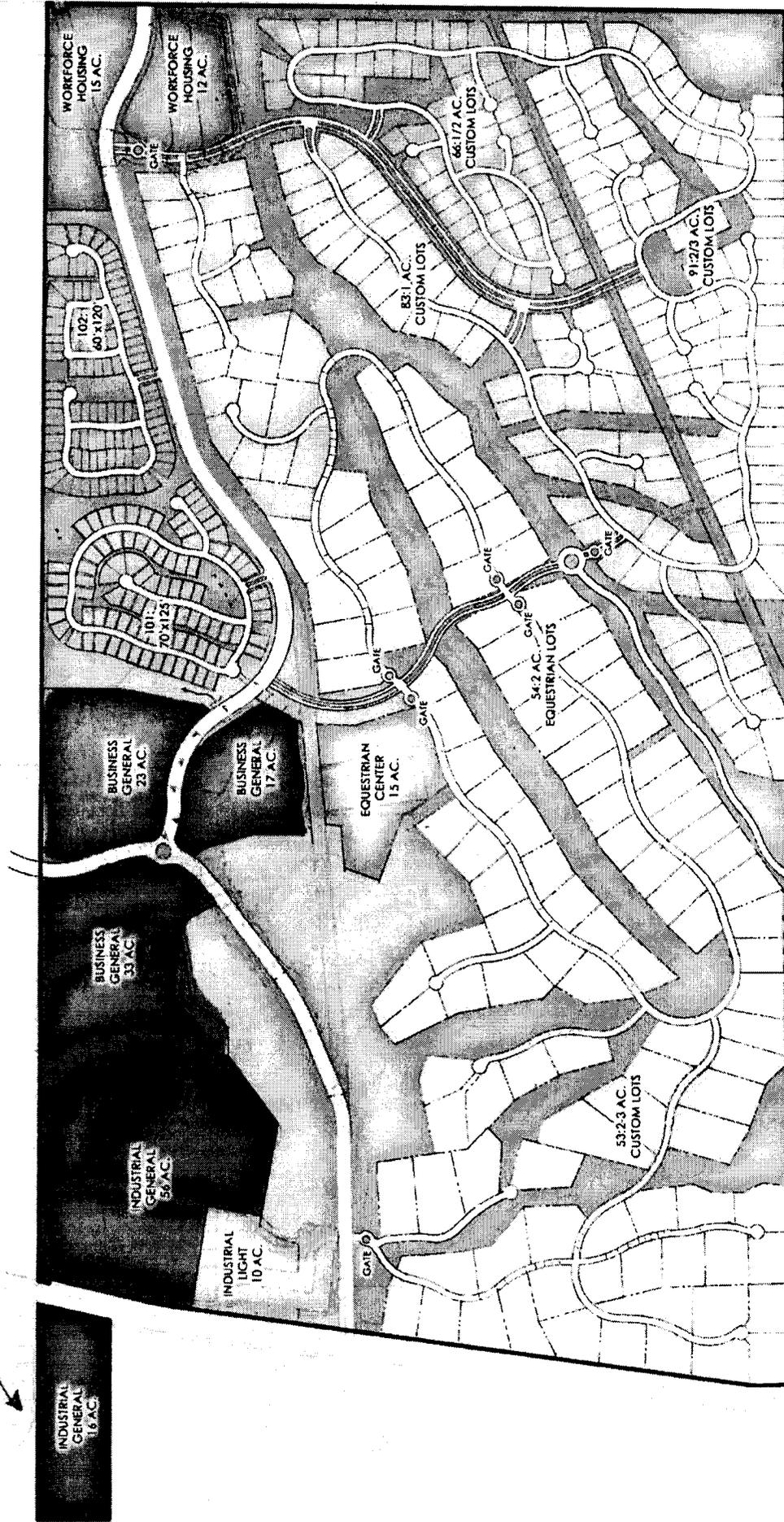
The Planning Commission reviewed this plat at their meeting on October 28, 2010 and recommends approval of the plat.

<b>Recommended Action:</b> MOVE to approve the Final Plat of the Granite Dells Estates Commercial PAD Phase 1B.
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Phases 10 + 1c

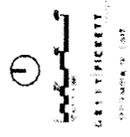


1/2 AC. CUSTOM	1.3	64	19.0
2/3 AC. CUSTOM	1.0	91	26.2
1 AC. CUSTOM	0.7	83	23.9
2 AC. EQUESTRIAN	0.4	54	15.6
2-3 AC. CUSTOM	0.3	53	15.3
CUSTOM SUBTOTAL		347	100.0
RESIDENTIAL TOTAL		550	

RESIDENTIAL SUMMARY			
PRODUCT	DENSITY	UNIT COUNT	PRODUCT %
1/2 AC. CUSTOM	3.6	182	50.0
2/3 AC. CUSTOM	3.0	181	50.9
PRODUCTION SUBTOTAL		263	100.0

# GRANITE DELLS ESTATES

## PRELIMINARY YIELD ANALYSIS



**COUNCIL AGENDA MEMO – (11-9-2010)**

**DEPARTMENT: Fire**

**AGENDA ITEM: Adoption of the ordinance amending the city code to add chapter 5-14, "fireworks" and amending the city code, chapter 15-1, section 15-1-20(a), all to add regulations for the use and penalties for the use of consumer fireworks in the City of Prescott.**

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Bruce Martinez</b>	
<b>Finance Director: Mark Woodfill</b>	
<b>City Manager: Steve Norwood</b> 	

**Background**

On December 1, 2010 the use of consumer fireworks will become legal in the State of Arizona. House Bill 2246 (HB2246) was passed in 2010 during the second Arizona Legislative Session. This bill allows for those 16 years or older to legally purchase consumer fireworks in the State of Arizona. This is unprecedented in the State of Arizona and has been criticized by fire officials from across the state, due to our unique climate and the danger to public safety regarding the use of fireworks. HB 2246 allows Cities and Towns to prohibit the use of consumer fireworks in their communities through local ordinance adoption. Consumer fireworks include: Ground sparkling devices, sparkling wheel devices (often mounted on trees), ground based sparklers, noise makers (Piccolo Pete's), and multi-box sparklers.

**Status**

The League of Cities and Towns has written a model ordinance for communities wishing to prohibit the use of consumer fireworks in cities and towns. This ordinance template was used to create a model ordinance for the City of Prescott that will prohibit the use of consumer fireworks within city limits. Research and communications through the Arizona Fire Marshals Association and other Northern Arizona Fire Marshals has created ordinance proposals to various communities throughout the State of Arizona. Communities who have already adopted or are considering council approval of an ordinance prohibiting the use of consumer fireworks in their cities or towns include: Prescott Valley, Payson, Sedona, Cave Creek, Fountain Hills, Kingman, Scottsdale, Chandler, El Mirage, Carefree, Paradise Valley, Tempe, and Goodyear.

The use of novelty fireworks (poppers, snakes, and sparklers) and display fireworks (4<sup>th</sup> of July, Homecoming at PHS, and New Year's etc) will not change with this proposed ordinance in the City of Prescott. A fire department permit must be issued for display fireworks in the City of Prescott and novelty fireworks will continue to be legal in the State of Arizona.

**Financial Impact**

There is no financial impact to the City of Prescott.

**Recommended Action: MOVE to adopt Ordinance No. 4769-1120.**

**ORDINANCE NO. 4769-1120**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE CITY CODE BY ADDING CHAPTER 5-14, FIREWORKS, AND AMENDING SECTION 15-1-20(A) TO ADD REGULATIONS AND PENALTIES FOR THE USE OF FIREWORKS**

**RECITALS:**

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the City of Prescott and its residents; and

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial and industrial dwellings; and

WHEREAS, due to the dry/desert-like, and timberland conditions surrounding the City of Prescott, risk of wildfires, and terrain of the community there is a danger of fire with the use of consumer fireworks in the community that can cause significant harm to the community and its residents; and

WHEREAS, A.R.S. § 36-1601 authorizes municipalities to regulate and prohibit some activities related to consumer fireworks; and

WHEREAS, the Mayor and Council of the City of Prescott wish to adopt certain amendments to the City Code to add Chapter 5-14 "Fireworks", and amend the City Code Chapter 15-1-20(A), all by adding regulations for the use and penalties for the use of fireworks.

**ENACTMENTS:**

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Prescott, Arizona, as follows:

SECTION 1. THAT Title V of the Prescott City Code entitled "Police Regulations" is hereby amended by adding Chapter 5-14, to read as follows:

**CHAPTER 5-14: FIREWORKS.**

**5-14-1: DEFINITIONS:**

(A) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Consumer fireworks* means those fireworks defined by Arizona Revised Statutes Section 36-1601.
- (2) *Display fireworks* means those fireworks defined by Arizona Revised Statutes Section 36-1601.
- (3) *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a consumer firework, display firework or permissible consumer firework as defined by Arizona Revised Statute Section 36-1601.
- (4) *Novelty items* means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statute 36-1601.
- (5) *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the City of Prescott even where the use of those items has been prohibited.
- (6) *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the Fire Chief or his designee.

**5-14-2: FIREWORKS PROHIBITED; EXCEPTIONS:**

- (A) The use, discharge or ignition of fireworks within the City of Prescott is prohibited.
- (B) Nothing in this section or article shall be construed to prohibit the use, discharge or ignition of novelty items or the occurrence of a supervised public display of fireworks.
- (C) The Fire Chief or his designee may grant permits for conducting a properly supervised public display of fireworks. Every such public display of fireworks shall be of such character and so located, discharged or fired, only after proper inspection by the Prescott Fire Department, and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked by the Fire Chief or his designee, during time periods of High Fire Danger warnings. The Fire Chief or designee has authority to impose reasonable conditions on any permits granted.

**5-14-3: SALE OF FIREWORKS:**

- (A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under sixteen years of age.
- (B) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law.

**5-14-4: POSTING OF SIGNS BY PERSONS ENGAGED IN THE SALE OF FIREWORKS; CIVIL PENALTY:**

- (A) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:
  - (1) The use of fireworks, except novelty items as defined by City Code, including permissible consumer fireworks within the City of Prescott is prohibited.
  - (2) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.
- (B) Signs required under this section shall be placed at each cash register and in each area where fireworks are displayed for sale.
- (C) The Fire Chief or his designee shall develop regulations concerning the size and color of the required signs and shall develop a model sign. The required sign regulations and model sign shall be posted on the City's website and filed with the Clerk's office.
- (D) Failure to comply with subsections A and B of this section is a civil violation punishable as provided in Section 1-3-2 of this Code.

**5-14-5: PENALTY:**

Except as otherwise provided herein, any person who violates any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in Section 1-3-1 of this Code.

**5-14-6: SEVERANCE CLAUSE:**

The provisions of this Chapter are hereby declared to be severable, and if any section, sentence, clause or phrase of this Chapter shall, for any reason, be held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Chapter, but they shall remain in effect, it being the legislative intent that this Chapter shall stand notwithstanding the validity of any part thereof.

SECTION 2. THAT Title 15, Chapter 15-1, "Parks and Recreation", Section 15-1-20(A) of the Prescott City Code is hereby amended as follows:

**15-1-20: FIREWORKS AND EXPLOSIVES:**

- (A) ~~Except for consumer fireworks as defined in A.R.S. § 36-1601,~~ No person shall possess fireworks or explosives or devices for such use of any kind within the park system except under special permit for fireworks display issued by the director or his agent.
- (B) ALL MUNICIPAL, COUNTY, STATE OR FEDERAL ORDINANCES, RULES, REGULATIONS AND ACTS SHALL BE COMPLIED WITH. (ORD. 3533, EFF. 10-10-1996)

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

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

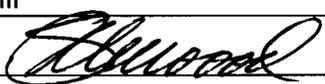
ATTEST:

APPROVED AS TO FORM:

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

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

<b>COUNCIL AGENDA MEMO – 11/09/2010</b>	
<b>DEPARTMENT:</b>	City Council
<b>AGENDA ITEM:</b>	Adoption of Resolution No. 4054-1124 Dissolving the formal Centennial Committee

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Don Prince, Director of Tourism	11/03/2010
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood 	11/09/10 

**Item Summary**

Resolution No. 4054-1126, attached, will dissolve the formal *Prescott: The Arizona Centennial City Committee*.

**Background**

Over the last year several members of the Centennial Committee have been appointed and resigned for various reasons. With the structure previously created with the Centennial Committee serving as a Standing Committee of the City, it has become difficult for the Committee members to move forward with necessary activities while complying with statutes required by its creation as a Standing Committee.

During several meetings I have held with Chairman Gilliss of the Committee, it was discussed and agreed that it would be more beneficial to have the formal Committee dissolved and allow the members to continue serving as an advisory committee to the City's Department of Tourism. This will allow changes to be dealt with in a timely manner and also provide an opportunity for members to work with other groups within the community to address the needs for the State's upcoming Centennial celebration.

**Recommended Action:** MOVE to adopt Resolution No. 4054-1124.

## RESOLUTION NO. 4054-1124

### A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA REPEALING RESOLUTION NO. 4012-1042 DISSOLVING THE *PRESCOTT: THE ARIZONA CENTENNIAL CITY COMMITTEE* AS AN ADVISORY COMMITTEE

#### RECITALS:

WHEREAS, the City Council is authorized under the general powers found in A.R.S. §11-251 to establish advisory committees; and

WHEREAS, a need exists to prepare for the celebration of Arizona's Centennial in the City of Prescott and for the development of one or more legacy projects to bring attention to the rich history of the City of Prescott during the Centennial celebration; and

WHEREAS, the City Council has a unique opportunity to encourage the development of legacy projects and other Centennial events by community organizations and individuals throughout the City; and

WHEREAS, on March 24, 2009, the Prescott City Council adopted Resolution No. 3947-0953 establishing the *Prescott: The Arizona Centennial City Committee*, which was subsequently amended multiple times, the most recent being through Resolution No. 4012-1042; and

WHEREAS, it is the desire of the Prescott City Council that the *Prescott: The Arizona Centennial City Committee* be dissolved as an advisory committee of the Council to allow for more flexibility, to work in conjunction with the Director of Tourism.

#### ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Prescott, Arizona that Resolution No. 4012-1042, establishing the *Prescott: The Arizona Centennial City Committee*, is hereby repealed.

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

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MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

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ELIZABETH A. BURKE, City Clerk

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GARY D. KIDD, City Attorney

<b>COUNCIL AGENDA MEMO – November 9, 2010</b>
<b>DEPARTMENT:</b> City Manager
<b>AGENDA ITEM:</b> Notice of Intention to Increase Water and Wastewater Rates

<b>Approved By:</b>		<b>Date:</b>
<b>Regional Programs Director:</b> Craig McConnell	<i>Craig McConnell</i>	11-3-10
<b>Finance Director:</b> Mark Woodfill		
<b>City Manager:</b> Steve Norwood	<i>Steve Norwood</i>	11/03/10

**ITEM SUMMARY**

On November 2, 2010, a Council workshop was conducted regarding adjustments to water and wastewater rates. Direction was given at that time to place the attached "Notice of Intention to Increase Water and Wastewater (Sewer) Rates" on the November 9, 2010, agenda for action, with the proposed rates to be those presented at the public meetings of October 14th and 21st. This rate schedule is also attached for reference.

Pursuant to procedures set forth by the Arizona Revised Statutes (ARS), upon approval of the notice of intention, the complete final report for the proposed rates will be filed with the City Clerk and made available for public review, including posting on the City website ([www.prescott-az.gov](http://www.prescott-az.gov)). This notice only sets a public hearing for 3:00 pm, Tuesday, December 14, 2010. Adoption of the notice and holding the public hearing does not obligate the Council to modify the current rates. Any changes must be implemented by approval of a separate ordinance, which could occur on December 14th following the public hearing, or at a subsequent meeting specified by the Council.

**BACKGROUND**

Economists.com was engaged by the City in October 2007 for a biannual analysis of rates and impact fees necessary to adequately support the City's potable water and wastewater enterprises. Rates were modified, and two years later, the firm was requested to prepare an update and make recommendations regarding any further adjustments necessary.

At the study session of January 19, 2010, Council discussed changes to City water and wastewater rates identified by the financial plan prepared by Dan Jackson, Economists.com, in his presentation a week earlier. Mr. Jackson cited various factors affecting the City's water and wastewater enterprises: slow growth in new customer accounts, much lower water use, reduced impact fee revenue, and most significantly, the City's extensive Capital Improvement Plan (CIP) which includes many projects to remedy existing system deficiencies.

**Agenda Item: Notice of Intention to Increase Water and Wastewater Rates**

Funding required to keep the Sewer Fund on a stable financial footing continues to be a primary concern, in particular the costs of extensive improvements to the Sundog and Airport Wastewater Treatment Plants required during the coming years which have been detailed for Council in several meetings over the last year.

On January 26, 2010, recognizing increases in the wastewater rates and alternative water sources fee which had become effective January 1, 2010, Council deferred the rate setting process to Summer 2010, to begin with review of the water and wastewater capital improvement programs (CIPs). That process is summarized in the table below.

**RATE SETTING PROCESS**

8/17/10 Completed	Council Workshop	Discussion of rate increases necessary to fund the FY 11-16 Water and Wastewater CIP.
9/7/10 Completed	Council Workshop	Discussion of priority projects and schedule for the rate setting public process.
10/4-11/10 Completed	Meetings with Customers	Meetings with large water users to discuss their water usage, and current and proposed rates.
10/14/10 Completed	Public Meeting #1	Public Meeting #1 to present information on the City utilities systems, enterprise funds, and proposed rates; and receive comments.
10/21/10 Completed	Public Meeting #2	Repeat of Public Meeting #1.
11/2/10 Completed	Council Workshop	Presentation of proposed rates and summary of public comments; Council direction to proceed with the rate setting process.
11/9/10	Council Agenda Item	Adoption of Notice of Intention declaring the intent to adjust/raise rates; set public hearing and formally release the public report.
12/14/10	Council Public Hearing	Public hearing on the proposed rates not less than 30 days following adoption of the Notice of Intention.
TBD	Council Agenda Item	Following the public hearing, Council can adopt an ordinance setting adjusted water and wastewater rates.
TBD	New Rates in Effect	The ordinance setting new rates becomes effective not less than 30 days after adoption.

If an ordinance is adopted December 14, 2010, the proposed effective date for the new rates would be February 1, 2011. If adopted on January 11, 2011, the proposed effective date would be March 1, 2011.

**PROPOSED RATES**

The rate schedule to be reflected in the public report is attached.

- Attachments:** - Notice of Intention to Increase Water and Wastewater Rates  
- Proposed rate schedule

**Recommended Action:** MOVE to approve the Notice of Intention to Increase Water and Wastewater Rates, providing for a public hearing at 3:00 pm, December 14, 2010.

NOTICE OF INTENTION TO INCREASE WATER AND WASTEWATER (SEWER) RATES

NOTICE IS HEREBY GIVEN, in accordance with ARS Section 9-511.01, that the Prescott City Council intends to increase City water and wastewater (sewer) rates. The City Council will hold a public hearing on December 14, 2010, at 3:00 P.M. in the City Council Chambers, 201 South Cortez Street, Prescott, Arizona, to consider said increases. Copies of the written findings justifying the need for said increases are available from the Prescott City Clerk at the above address.

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Elizabeth A. Burke, Prescott City Clerk

Publish: \_\_\_\_\_

### Proposed Water Rates

<b>Monthly Fixed Charge</b>								
<b>Meter Size</b>	<b>Meters</b>	<b>Current</b>	<b>3/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013</b>	<b>1/1/2014</b>	<b>1/1/2015</b>	<b>1/1/2016</b>
5/8" WATER	19,104	6.60	10.60	11.70	12.90	13.50	14.20	14.90
3/4" WATER	17	7.05	11.30	12.40	13.60	14.30	15.00	15.80
1" WATER	1,591	7.95	12.70	14.00	15.40	16.20	17.00	17.90
1 1/2" WATER	283	10.20	16.30	17.90	19.70	20.70	21.70	22.80
2" WATER	442	12.90	20.60	22.70	25.00	26.30	27.60	29.00
3" WATER	49	19.20	30.70	33.80	37.20	39.10	41.10	43.20
4" WATER	28	28.20	45.10	49.60	54.60	57.30	60.20	63.20
6" WATER	13	50.70	81.10	89.20	98.10	103.00	108.20	113.60
8" WATER	3	77.70	124.30	136.70	150.40	157.90	165.80	174.10
<b>TOTAL</b>	<b>21,530</b>							
<b>Water Consumption Charge (per 1,000 gallons)</b>								
<b>Residential Single Family</b>								
		<b>Current</b>	<b>3/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013</b>	<b>1/1/2014</b>	<b>1/1/2015</b>	<b>1/1/2016</b>
<b>INCREASE</b>			0%	7%	5%	5%	5%	5%
Tier1	\$	2.86	2.86	3.06	3.21	3.37	3.54	3.72
Tier2		4.30	4.30	4.60	4.83	5.07	5.32	5.59
Tier3		6.45	6.45	6.90	7.25	7.61	7.99	8.39
Tier4		12.90	12.90	13.80	14.49	15.21	15.97	16.77
<b>Residential Multi-Family</b>								
		<b>Current</b>	<b>3/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013</b>	<b>1/1/2014</b>	<b>1/1/2015</b>	<b>1/1/2016</b>
<b>INCREASE</b>			0%	7%	5%	5%	5%	5%
Tier1	\$	2.30	2.30	2.46	2.58	2.71	2.85	2.99
Tier2		3.46	3.46	3.70	3.89	4.08	4.28	4.49
Tier3		5.19	5.19	5.55	5.83	6.12	6.43	6.75
Tier4		10.39	10.39	11.12	11.68	12.26	12.87	13.51
<b>Non-Residential</b>								
		<b>Current</b>	<b>3/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013</b>	<b>1/1/2014</b>	<b>1/1/2015</b>	<b>1/1/2016</b>
<b>INCREASE</b>			0%	7%	5%	5%	5%	5%
Tier1	\$	2.61	2.61	2.79	2.93	3.08	3.23	3.39
Tier2		3.92	3.92	4.19	4.40	4.62	4.85	5.09
Tier3		5.88	5.88	6.29	6.60	6.93	7.28	7.64
Tier4		11.76	11.76	12.58	13.21	13.87	14.56	15.29
<b>Alt-Water Consumption Charge (per 1,000 gallons)</b>								
		<b>Current</b>	<b>3/1/2011</b>	<b>1/1/2012</b>	<b>1/1/2013</b>	<b>1/1/2014</b>	<b>1/1/2015</b>	<b>1/1/2016</b>
All Tiers		0.65	0.70	0.80	0.85	0.90	0.95	1.00

### Proposed Wastewater Rates

<b>Residential</b>							
	<u>Current</u>	<u>3/1/2011</u>	<u>1/1/2012</u>	<u>1/1/2013</u>	<u>1/1/2014</u>	<u>1/1/2015</u>	<u>1/1/2016</u>
INCREASE		15%	15%	15%	10%	5%	5%
Monthly Base	\$ 12.54	\$ 14.42	\$ 16.58	\$ 19.07	\$ 20.98	\$ 22.03	\$ 23.13
Volume Charge	2.71	3.12	3.59	4.13	4.54	4.77	5.01
<b>Non-Residential</b>							
	<u>Current</u>	<u>3/1/2011</u>	<u>1/1/2012</u>	<u>1/1/2013</u>	<u>1/1/2014</u>	<u>1/1/2015</u>	<u>1/1/2016</u>
INCREASE		10%	10%	10%	10%	5%	5%
Monthly Base	\$ 15.18	\$ 16.70	\$ 18.37	\$ 20.21	\$ 22.23	\$ 23.34	\$ 24.51
<b>Volume Charge</b>							
Uniform Non-Residential	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Bar w/o Dining Facilities	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Car Wash	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Dept/Retail Stores	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Hospital/Convalescent	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Hotel w/Dining Facilities	4.18	4.28	4.71	5.18	5.70	5.99	6.29
Hotel w/o Dining Facilities	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Laundromat	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Markets w/Garbage Disposal	5.84	5.84	5.84	5.84	5.84	5.99	6.29
Mortuaries	5.84	5.84	5.84	5.84	5.84	5.99	6.29
Professional Offices	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Repair shops/Service Stat	3.89	4.28	4.71	5.18	5.70	5.99	6.29
Restaurants	6.28	6.28	6.28	6.28	6.28	6.28	6.29
Schools and Colleges	3.89	4.28	4.71	5.18	5.70	5.99	6.29