

PRESCOTT CITY COUNCIL REGULAR VOTING MEETING A G E N D A

**PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, JANUARY 11, 2011
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:** Councilwoman Suttles
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

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

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

I. PRESENTATION

A. Citizen recognition of outstanding City employees.

II. CONSENT AGENDA

CONSENT ITEMS A - 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. 4061-1131 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, repealing Resolution Numbers 2342, 2492, 2552, 2695 and 3345, and authorizing the City of Prescott to enter into another Intergovernmental Agreement, JP 10-0311, with the State of Arizona, through its Department of Transportation (ADOT), for electric power to operate certain traffic signals and lighting on State Route 69 and State Route 89 at intersecting City streets.
- B. Approval of contract with Jellison Law Offices, LLC, for legal representation in the McBurnie v. City of Prescott litigation.
- C. Approval of Agreement with Laurie Hadley as Acting City Manager.
- D. Approval of the minutes of the Prescott City Council Workshop of December 7, 2010, the Regular Meeting of December 14, 2010, and the Special Meeting (Executive Session) of December 16, 2010.

III. REGULAR AGENDA

- A. Public Hearing and consideration of a liquor license application from Neeta Patel, applicant for Engineering Consultancy Group, Inc. for a Series 10, Beer & Wine Store, license for Prescott Food Store located at 146 South Montezuma Street.
- B. Approval of option for the Downer Trail Gate.
- C. Adoption of Resolution No. 4062-1132 – 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 Yavapai County for the construction and maintenance of West Dells Ranch Road and authorizing the mayor and staff to take any and all steps necessary to accomplish the above.
- D. Authorization to proceed with procurement of equipment for construction of two traffic signals on Willow Creek Road, one at Commerce Drive and the second 1700 feet north.
- E. Authorization to proceed with development of an Intergovernmental Agreement with Yavapai County for the installation of sanitary sewer service to Pioneer Park and commencement of construction.
- F. Adoption of Resolution No. 4063-1133 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, repealing Resolution Number 4001-1031 and adopting new Rules of Procedure for the Prescott City Council.

G. Appointment of Mayor Pro Tempore.

H. Recess into Executive Session.

IV. EXECUTIVE SESSION

A. 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 ARS 38-431.03(A)(4).

1. Lexington Insurance/Casa de Pinos v. City of Prescott.

V. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

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

Elizabeth A. Burke, MMC, City Clerk

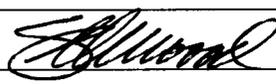
COUNCIL AGENDA MEMO – January 11, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Resolution No. 4061-1131 approving an Intergovernmental Agreement with the State of Arizona, through its Department of Transportation (ADOT) for electric power to operate certain traffic signals and lighting on State Route 69 and State route 89 at intersecting City streets.

Approved By:

Date:

Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	01/04/11 

Item Summary

Approval of this item will authorize an Intergovernmental Agreement with the State of Arizona through its Department of Transportation (ADOT) for a new Master Traffic Signal agreement to consolidate multiple existing agreements for traffic signal electrical power on State Route 69 and State Route 89 at certain intersecting city streets.

Background

Beginning in 1990 and continuing to the present day the City of Prescott and ADOT have, as needed, jointly participated in the construction and subsequent ongoing operation of six (6) traffic signals along State Route 69 and one (1) traffic signal on State Route 89, at intersecting City streets (see attached location list). These signals provide a public benefit for the citizens of Prescott by allowing controlled access onto the state highway system and as such the City of Prescott has agreed to provide electrical power for the signals and lighting at these seven (7) locations. Previously each signal location had its own agreement which provided for the responsibilities of both the City and State. With the addition of another traffic signal location on State route 69 at Robin Drive the State and City once again desire to enter into an agreement authorizing the City of Prescott to provide electrical power, with the State committing to construct, operate, and maintain the signals. In order to simplify this process staff desires to consolidate the existing agreements into one Master Agreement covering all eight (8) locations, seven (7) existing and one (1) new. This resolution rescinds the existing applicable resolutions and adopts a new Master Agreement.

The attached Master IGA identifies the seven (7) existing locations and the new signal at Robin Drive and SR 69.

Budget Impacts

The City is currently paying \$500 to \$600 annually for electric power to each of the seven (7) existing traffic signals. Revenue from One Cent Sales Tax is used to pay for traffic signals electric service. (Budget Account 2155410)

Agenda Item: Adoption of Resolution No. 4061-1131 approving an Intergovernmental Agreement with the State of Arizona, through its Department of Transportation (ADOT) for electric power to operate certain traffic signals and lighting on State Route 69 and State Route 89 at intersecting City streets.

Attachments

- Resolution No. 4061-1131
- Master Intergovernmental Agreement IGA/JPA 10-0311

Recommended Action: **MOVE** to adopt Resolution No. 4061-1131.

RESOLUTION NO. 4061-1131

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, REPEALING RESOLUTION NUMBERS 2342, 2492, 2552, 2695 AND 3345, AND AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO ANOTHER INTERGOVERNMENTAL AGREEMENT, JPA 10-031I, WITH THE STATE OF ARIZONA, THROUGH ITS DEPARTMENT OF TRANSPORTATION (ADOT) FOR ELECTRIC POWER TO OPERATE CERTAIN TRAFFIC SIGNALS AND LIGHTING ON STATE ROUTE 69 AND STATE ROUTE 89 AT INTERSECTING CITY STREETS

RECITALS:

WHEREAS, a portion of State Route 69, and State Route 89 are located within the corporate limits of the City of Prescott; and

WHEREAS, the parties have deemed it to be in the public interest of the citizens of Prescott to gain access from city streets to State Route 69 and State Route 89 using traffic signal control.

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, IGA 10-031I, with the State of Arizona, through its Department of Transportation (ADOT) for the City of Prescott to provide electric power to operate traffic signals and lighting on State Route 69 at the intersections of Gateway Boulevard, Holiday Drive, Lee Boulevard, Prescott Lakes Parkway, Robin Drive, Sunrise Boulevard and Walker Road; and on State Route 89 at the intersection of Willow Creek Road.

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 11th day of January, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

EXHIBIT 'A'

ADOT File No.: IGA/JPA 10-031I
AG Contract No.: P001 2009 00xxxx
Project: Master Maintenance Agreement
Traffic Signals
Section: Various Locations
TRACS No.: MAINTAGR
Budget Source Item No.: N/A

MASTER INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PRESCOTT

THIS AGREEMENT is entered into this date _____, 2010, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PRESCOTT, acting by and through its MAYOR and TOWN COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement on behalf of the City.

THIS AGREEMENT supersedes all existing individual signal maintenance agreements relative to the operation and/or maintenance at the locations listed in Exhibit A. In the event question(s) arise, this Agreement will take precedence.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Be responsible for the general routine operation and maintenance of the traffic signals, lighting hardware and ancillary equipment at the locations listed in Exhibit A.

b. Provide maintenance of EVP (Pre-Emptive equipment), if installed.

2. The City will:

a. Be responsible for obtaining the electrical power to operate the traffic signal and lighting, all at City expense.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect for the ongoing operations and maintenance provided by the State and the City as they relate to this Agreement. In the event of a conflict between this Agreement and any previous agreement between the parties relating to the same subject matter as this agreement, the terms of this Agreement shall control.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

3. The cost of the project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

4. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of Prescott
Attn: Mark Nietupski
P.O. Box 2059
Prescott, Arizona 86302
928-777-1130
928-771-5929

9. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

11. Non-Availability of Funds: Every payment obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

12. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

13. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

14. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF PRESCOTT

STATE OF ARIZONA

Department of Transportation

By _____
MARLIN KUYKENDALL
Mayor

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST:

By _____
LIZ BURKE
Clerk

JPA 10-031I

ATTORNEY APPROVAL FORM FOR THE CITY OF PRESCOTT

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF PRESCOTT, an Agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2010.

City Attorney

EXHIBIT A

Route	Intersection	MP
SR69	Robin Drive	291.61
SR69	Sunrise Blvd	292.10
SR69	Walker Road	293.10
SR69	Lee Blvd	293.30
SR69	Gateway Mall	293.49
SR69	Prescott Lakes Pkwy	293.72
SR69	Holiday Drive	294.54
SR89	Willow Creek Road	320.05

COUNCIL AGENDA MEMO – (January 11, 2011)
DEPARTMENT: Legal
AGENDA ITEM: Contract for outside counsel attorney's fees in Robert McBurnie v. City of Prescott

Approved By:	Date: 1/11/2011
Department Head: Gary Kidd	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood <i>SNorwood</i>	<i>es/104/11</i>

Item Summary

This is a request to approve a contract for attorney's fees for the City's representation in this litigation by outside counsel, James Jellison of the Jellison Law Offices, PLLC. The case is scheduled for trial February 8, 2011 and an employment litigation attorney is warranted.

Background

The litigation was brought by Robert McBurnie ("McBurnie) for wrongful termination, civil rights violations, etc., dealing in part with retaliation for filing his overtime claim and alleged safety concerns. The city has denied these allegations and the matter is set for trial on February 8, 2011.

Our office is also significantly involved in the litigation and has handled all matters for the past two years including discovery and law and motion matters and will continue to do so. Our insurance policy provides for reimbursement of any/all of the attorney's fees if we are successful. Because this trial is in Federal Court and involves highly technical issues and the litigation will involve a claim potentially in excess of \$750,000, along with attorney's fees should we not succeed, a litigation expert is warranted and recommended. Mr. Jellison has handled numerous employment law cases and has served as litigation counsel for many years on employment cases. Risk management and the Assistant City Manager agree with and fully support this request.

Fiscal Impact:

\$85,000 from budgeted project costs. This is an estimate depending upon the pretrial and trial issues.

Attachments- Proposed Contract for legal services with Jellison Law Offices, LLC.

Recommended Action: MOVE to approve the contract with Jellison Law Offices, LLC, for legal representation in the McBurnie v. City of Prescott litigation.
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RETAINER AGREEMENT
JAMES M. JELLISON, JELLISON LAW OFFICES, PLLC

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

WHEREAS, Section 16 of the City Procurement Code allows for the award of a contract for personal services without the necessity of pursuing the bidding or RFP requirements where there is justification to do so due to the particular expertise or knowledge of a particular professional consultant; and

WHEREAS, the firm of Jellison Law Offices, PLLC (hereinafter referred to as "Attorney") has unique expertise and knowledge of litigation and defense of tort and civil rights claims against governmental entities.

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

1. SCOPE OF REPRESENTATION

That Attorney shall appear as counsel of record in that litigation, including the trial, as one of the attorneys for and on behalf of the City of Prescott, Eric Smith, Rudy Baranko, Ted Hanneman, Mic Fenech, Jolaine Jackson and the spouses of the individually named defendants in the case entitled *Robert McBurnie v. City of Prescott, et al.*, United States District Court for the District of Arizona, Case No. CV 09-8139-PCT-FJM.

Attorney shall continue to provide consultation regarding all legal matters through trial, determination of trial costs, entry of a judgment, and the trial court's disposition of all post trial motions, as requested by the Prescott City Attorney or his designee, hereinafter referred to as the Project Director.

2. TERM, TERMINATION, AND ATTORNEY CONFLICT

(A) The initial term of this Agreement shall be for a one (1) year period commencing on December 10, 2010, until December 10, 2011, and thereafter may be automatically renewed for an additional period of two (2) years, upon written notice by either party provided to the other of intent to renew and without written objection being sent by the other party prior to the renewal date to such intent to renew. For purposes of the renewal, notices may be sent by written letter, by the parties authorized herein to receive notice on behalf of the parties to this Agreement.

(B) Notwithstanding the foregoing, either party reserves the right to terminate this Agreement with or without cause at any time. In the event the City elects to terminate this Agreement, the City hereby agrees to pay Attorney for all services rendered consistent with the

provisions of this Agreement.

(C) The Attorney may withdraw for good cause, including a conflict of interest existing with any clients to be represented in this matter or a conflict with the interests of Yavapai County, in his sole professional judgment consistent with the Arizona Rules of Professional Conduct or any superseding professional code of ethics, from professional representation of the clients herein on reasonable notice to the clients herein, and the clients agree to sign all necessary withdrawal or substitution of counsel documents. In the event of such withdrawal under this section, the City of Prescott shall pay and the Attorney shall be entitled to all fees earned prior to such withdrawal.

(D) In the event that the Attorney exercises his right to withdraw and/or terminate this Agreement, the City and clients hereby consent to the Attorney's withdrawal as their counsel in any pending litigation, and hereby authorizes Attorney to so represent to the tribunal in seeking permission to withdraw. In the course of withdrawing as counsel, Attorney shall take such steps as may be appropriate to prevent any adverse effect on the interests of the City or client officers.

3. CONFLICT AND CANCELLATION

a. 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 because of this Agreement.

4. NOTICE

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

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

Eric Smith
Rudy Baranko
Ted Hanneman
Mic Fenech
Jolaine Jackson
% City of Prescott

P.O. Box 2059
Prescott, AZ 86302

James M. Jellison
Jellison Law Offices, PLLC
3101 N. Central Ave., #1090
Phoenix, AZ 85012

5. INDEPENDENT CONTRACTOR STATUS

It is expressly agreed and understood by and between the parties that Attorney is an independent contractor, and as such Attorney shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled. As an independent contractor, Attorney further acknowledge that he 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, Attorney further agrees that he will conduct himself in a manner consistent with such status, and that they will neither hold themselves out nor claim to be an officer or employee of the City by reason thereof, and that they will not make any claims, demands or applications to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

6. NONASSIGNABILITY

This Agreement is personal to Jellison Law Offices, and is non-assignable by said firm without the written permission of the Project Director.

7. COMPENSATION AND BILLING

(A) During the initial term of this Agreement, the City shall pay to Attorney reasonable attorney's fees for each twelve-month period of the contract, commencing on the date all parties have executed this agreement, payable at the hourly rate for services provided as follows:

- (i) \$225.00 per hour for services provided by James M. Jellison.
- (ii) \$105.00 per hour for services provided by assigned paralegal.

(B) The foregoing notwithstanding, the City shall promptly and in good faith consider Attorney's request to exceed the foregoing fee for services rates in the event that the nature and complexity of the legal services provided by the Attorney is likely to cause the rates limitation to be exceeded or the attorney's normal hourly rates are exceeded..

(C) The City shall also pay the Attorney other actual disbursements or costs incurred by

the Attorney in the performance of this Agreement.

(D) The Attorney shall bill the City monthly for the Attorney's services that have been performed during the billing period. City shall pay such billings within thirty (30) days of the date of their receipt.

(E) All billing must be in accordance with ABA Opinion No 93- 379 and shall include the following information: (1) the full name of the claimant; (2) this Contract Number (to be added by the City Clerk); (3) the bill and or invoice date; (4) the date and time (to one decimal place of each activity billed); (5) the name or initials of the individual performing the activity; (6) a description of the activity and work performed; and (7) for each activity, the specific issues addressed by such work or activity (notice, employer-employee relationship, compromise and settlement, work-relatedness, timely filing, etc.). UTBMS (The Uniform Task Based Management System) Activity Codes may be used to supplement billing descriptions or in lieu of narrative descriptions. No block billing shall be allowed. Attorney shall prepare monthly billings in a hardcopy format.

(F) All expenses and costs shall be clearly identified in billings and City shall not be billed for "miscellaneous," "other," or any unidentified 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 Attorney without any additional charges. Travel expenditures of Attorney within Maricopa County and Yavapai County shall be billed at Attorney's customary rate. Approval for travel outside Maricopa or Yavapai County or the State of Arizona shall be obtained from the City Attorney prior to departure from such counties.

(G) The hourly rates set forth in Paragraph 7(A) above are based on Attorney's standard hourly rates in effect for calendar year 2008. City acknowledges and agrees that the hourly rates of Attorney and his legal assistants or paralegals may be adjusted for each 12-month period of this agreement, with adjusted rates becoming effective for all legal services provided in the first month of each succeeding 12-month period.

8. INTERPRETATION OF AMBIGUITIES

This Agreement is the result of negotiations by and between the parties. Although the Prescott City Attorney has drafted this Agreement, the Agreement is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to 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 the laws of the City.

10. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement between the City and the Attorney and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Attorney. 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 either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

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

13. DISCRIMINATION

The Attorney, with regard to the work performed by him after award and during its performance of this contract will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Attorney 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. COPIES OF DOCUMENTS

During the representation, Attorney shall immediately furnish the Project Director copies of all pleadings, motions and responses, investigative, expert witness, transactional documents, exhibits, discovery documents or materials, other discovery material, and any other reports and correspondence (other than routine transmittal letters), produced or received by Attorney, and not otherwise served or provided to the City Attorney. If requested by the City Attorney, Attorney shall provide a proposed draft of any pleadings, motions, memorandums, or discovery responses,

for approval by the City Attorney prior to serving or filing such documents. At the conclusion of the Attorney's representation, Attorney shall return the complete file to City, but may retain copies at Attorney's expense.

15. MEDIA RELATIONS

Attorney is not authorized to comment or communicate publicly on any City matters. All media inquires or inquiries by other parties should be directed to the City Attorney.

16. EXPERTS AND CONSULTANTS

Attorney shall consult with the City Attorney prior to hiring or retaining any litigation support vendors, experts and/or professional consultants, private investigators, arbitrators, mediators, or other professionals, and shall not retain same unless the City Attorney and Attorney agree that they are necessary for the Attorney's representation of the City in litigation or other proceedings.

DATED this ____ day of January, 2011.

MARLIN D. KUYKENDALL, MAYOR
City of Prescott

APPROVED AS TO FORM:

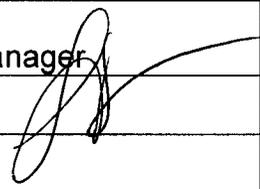
ELIZABETH A. BURKE
City Clerk

GARY D. KIDD
City Attorney

JELLISON LAW OFFICES, PLLC

By: _____
James M. Jellison

COUNCIL AGENDA MEMO – January 11, 2011	
DEPARTMENT:	City Manager
AGENDA ITEM:	Approval of Letter of Understanding with Laurie Hadley

Approved By:	Date:
Department Head: Laurie Hadley, Deputy City Manager 	01/11/2011
Finance Director: Mark Woodfill	
City Manager: Steve Norwood	

Background

On December 14, 2010, discussion occurred in an executive session between myself and the City Council regarding the appointment of an Acting City Manager. I agreed to the position and Council suggested the City Legal Department draft a Letter of Understanding outlining the conditions of the interim position. I have worked with the Legal Department in drafting such a letter. The letter will be in final form and given to City Council by Tuesday, January 11th. I am in agreement with the terms of the appointment.

<p>Recommended Action: MOVE to approve the Letter of Understanding with Laurie Hadley regarding the position of Acting City Manager.</p>

COUNCIL AGENDA MEMO -1/11/11
DEPARTMENT: City Clerk
AGENDA ITEM: Public Hearing and consideration of a liquor license application from Neeta Patel, applicant for Engineering Consultancy Group, Inc. for a Series 10, Beer & Wine Store license for Prescott Food Store located at 146 South Montezuma Street.

Approved By:	Date:
Department Head: Elizabeth A. Burke	1/11/11
Finance Director: Mark Woodfill	1/11/11
	1/11/11

A Liquor License Application, City No. 11-171, State No. 10133224, has been received from Neeta Patel, Applicant for Engineering consultancy Group, Inc. for a Series 10, Beer & Wine Store, License for **Prescott Food Store** located at 146 South Montezuma Street.

The public hearing will be held at the Regular Council Meeting of Tuesday, January 11, 2011. The applicant has been requested to attend the Regular Meeting to answer any questions Council may have.

A copy of the application is available for Council's review in the City Clerk's Office.

Recommended Action: (1) MOVE to close the Public Hearing, and (2) MOVE to approve/deny State Liquor License Application No. 10133224, for a new Series 10, Beer & Wine Store, license for Prescott Food Store located at 146 South Montezuma Street.

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

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

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

Historical Note

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

**ARIZONA STATE LIQUOR LICENSES
TYPES / PURPOSES
AS OF 09/10**

SERIES 01 -- In-State Producer's License

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

SERIES 02 -- Out-of-State Producer's License

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

SERIES 02L – Limited Out-of-State Winery Application License

Allows an out-of-state winery to sell 50 cases of wine or less per calendar year and ship the wine into the state to an Arizona licensed wholesaler.

SERIES 02L – Limited Out-of-State Domestic Farm Winery Application License

Allows an out-of-state domestic winery within or outside of the U.S. to produce less than 20,000 gallons of wine annually and ship the wine into the state to a licensed wholesaler.

SERIES 02L – Limited Out-of-State Domestic Microbrewery Application License

Allows an out-of-state domestic microbrewery within or outside of the U.S. to ship beer into the state to a licensed Arizona wholesaler.

SERIES 03 -- Domestic Microbrewery License

Allows the licensee of a microbrewery to manufacture or produce at least 5,000 gallons but less than 310,000 gallons of beer annually.

SERIES 04 -- Wholesaler's License

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

SERIES 05 -- Government License

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

SERIES 06 -- Bar License – TRANSFERABLE

Allows a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

SERIES 07 -- Beer and Wine Bar License - TRANSFERABLE

Allows a beer and wine bar retailer to sell and serve beer and wine, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

SERIES 08 -- Conveyance License (Airplanes, Trains, and Boats)

Allows the owner or lessee of an operating airline, railroad or boat to sell all spirituous liquors in individual portions or in original containers for consumption *only* on the plane, train or boat.

SERIES 09 -- Liquor Store License (All spirituous liquors) - TRANSFERABLE

Allows a spirituous liquor store retailer to sell all spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

SERIES 09S -- Liquor Store (Sampling) License

Allows either a new liquor store applicant or one holding an existing liquor store license to apply for sampling privileges, with conditions.

SERIES 10 -- Beer and Wine Store License (Beer and wine only)

Allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises.

SERIES 11 -- Hotel/Motel License (with Restaurant)

Allows the holder of a hotel/motel license to sell and serve spirituous liquor solely for consumption on the premises of a hotel or motel that has a restaurant where food is served on the premises.

SERIES 12 -- Restaurant License

Allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food.

SERIES 13 -- Domestic Farm Winery License

Allows a domestic farm winery licensee to manufacture or produce more than 200 gallons, but less than 40,000 gallons on wine annually.

SERIES 14 -- Club License

Allows the holder of a club license to sell and serve spirituous liquor for consumption only on the premises owned, leased or occupied by the club, and only to bona fide members of the club and their guests.

SERIES 15 -- Special Event License

Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.

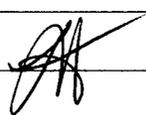
SERIES 16 -- Wine Festival/Wine Fair License (Temporary)

1. *Wine festival license:* Allows a licensed domestic farm winery to serve samples of its products on the wine festival premises and the sale of such products in original containers for consumption off the wine festival premises.
2. *Wine fair license:* Allows a licensed domestic farm winery to serve samples of its products at a sanctioned county or state fair, and the sale of such products in original containers for consumption off the fair premises.

SERIES 17 -- Direct Shipment License

Allows an out-of-state producer, exporter, importer, or rectifier, blender or other producer of spirituous liquor to take orders from retail customers by telephone, mail, catalog or the Internet. The orders must be shipped into the state to a licensed Arizona wholesaler. The wholesaler must sell the product to a licensed retailer. The retailer will deliver the spirituous liquor to the customer.

COUNCIL AGENDA MEMO – January 11, 2011
DEPARTMENT: Public Works
AGENDA ITEM: Downer Trail gate south of Sierry Peaks Drive

Approved By:	Date:
Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	

Item Summary

This item is to consider whether the gate on Downer Trail, south of Sierry Peaks Drive, should remain closed preventing north/south through traffic on Downer Trail between Oregon Avenue and points north and west of Sierry Peaks Drive.

Background

On December 14, 1981, City Council adopted Ordinance No. 1559 for rezoning and associated development of property in the general vicinity of Downer Trail and Sierry Peaks Drive. Section 5, of the ordinance required the developer *“to install a crash gate at the south entrance to the subdivision until such time as the City Council deems it necessary to open the road.”* The gate was installed as a traffic control measure during development of the property effectively limiting neighborhood circulation.

Between March 1993 and September 1995 the City entered into five (5) Development Agreements, with various parties, to provide for the construction of improvements associated with the East-West Connector and Downer Trail.

On May 11, 1999, City Council adopted the West Side Neighborhood and Specific Area Plan, which was a collaboration of West Side Neighborhood residents, City officials and staff. The objective was to develop a plan that articulates a shared vision of the neighborhood and provide a basis for the commitment of local government and the private sector to carry out proposals and programs. The Plan recommendation for neighborhood traffic circulation is provided in the following text. *“The planning group recommends that the emergency access gate remain in place until certain through roadways are constructed and opened to traffic. These roadways include Downer Trail from Oregon Avenue to Sierry Peaks Drive, Downer Trail from Sierry Peaks Drive to the east-west connector, and the east-west connector from Downer Trail to Gail Gardner Way.”*

Agenda Item: Downer Trail gate south of Sierry Peaks Drive

In February of 2000, City Council adopted the Gail Gardner Neighborhood Specific Area Plan, which included the following recommendation, *“Ensure that the emergency crash gate at Downer Trail and Sierry Peaks Drive does not come down until the east-west connector is completed and operational, and until the full circulation plan is implemented”*.

In April of 2006, Council adopted Resolution No. 3746 approving a six-party Development Agreement which rescinds / cancels previous Development Agreements and provides for construction of the East-West Connector, Downer Trail and relocation of the gate across Downer Trail south of Sierry Peaks Drive.

Construction of the East-West Connector from Downer Trail at Sierry Peaks Drive to Gail Gardner Way was completed with the roadway opened in April 2008.

Construction of improvements to Downer Trail between Oregon Avenue and Sierry Peaks Drive was completed May 22, 2008. The final street design configuration was generated with public involvement through an open-house meeting held with area residents in February 2007. The residents preferred a more rural character be maintained in the project area, in contrast to the new subdivisions nearby.

Reflecting that public input, the project was developed to avoid impacting existing trees along the roadway; the pavement was constructed 22 feet in width meeting ASSHTO Standards for rural streets and was reviewed and approved by the Fire Marshal; and curb and gutter was installed only at the intersection of Far View Lane and Downer Trail. No sidewalks were constructed and the gate formerly on Sierry Peaks Drive immediately west of Downer Trail was relocated on Downer Trail south of Sierry Peaks Drive. The street design on Downer Trail, with its accompanying width, serpentine alignment and elevation changes, provides default traffic calming promoting lower roadway speeds.

In 2008 local residents requested the City remove the gate to enhance neighborhood traffic circulation, which request was denied. The traffic study performed in June 2008 (attached) which evaluated existing volumes on Sierry Peaks, Downer Trail and Oregon Avenue to determine the anticipated immediate impact of the gate removal. The report estimated that an additional 38 vehicles will travel on Downer Trail and Oregon Avenue in the morning peak hour, and an additional 30 vehicles in the afternoon peak hour. This represents an increase of approximately 200 – 250 vehicles per day on the respective streets. These volumes are well within the normal ranges for the local residential and minor collector roadway classifications.

In recent years residential development has slowed dramatically and it appears many years will pass before buildout in the area occurs. At buildout it was estimated that an additional 1,500 vehicles per day will travel on Downer Trail and Oregon Avenue if the gate is removed. This indicates 24-hour volumes of 1,800 and 2,900 per day on Downer Trail and Oregon Avenue respectively. These numbers do not include any contribution for area cut-through traffic which may or may not use the route. Volumes in this range are within the normal limits for the minor collector roadway classification.

Agenda Item: Downer Trail gate south of Sierry Peaks Drive

Sierry Peaks Drive, Downer Trail, and Oregon Avenue are dedicated public streets. Both Police and Fire Departments have indicated emergency services response in the area would be enhanced if the gate was removed.

Options available for the Council's consideration regarding the issue include:

- A. Leave the gate in place.
- B. Remove the gate to allow full north/south access on Downer Trail.
- C. Open the gate for some period and evaluate actual changes in traffic volumes on Downer Trail and Oregon Avenue.

Note: (Construction of various physical modifications to the gate, pavement, and drainage at the intersection will be required for option B.)

Attachments - Location map
 - 2008 Traffic Study

Recommended Action: MOVE to approve Option ____ for the Downer Trail Gate as defined in the Council memorandum

Downer Trail Gate Traffic Engineering Report

July 22, 2008 Council

STUDY AREA

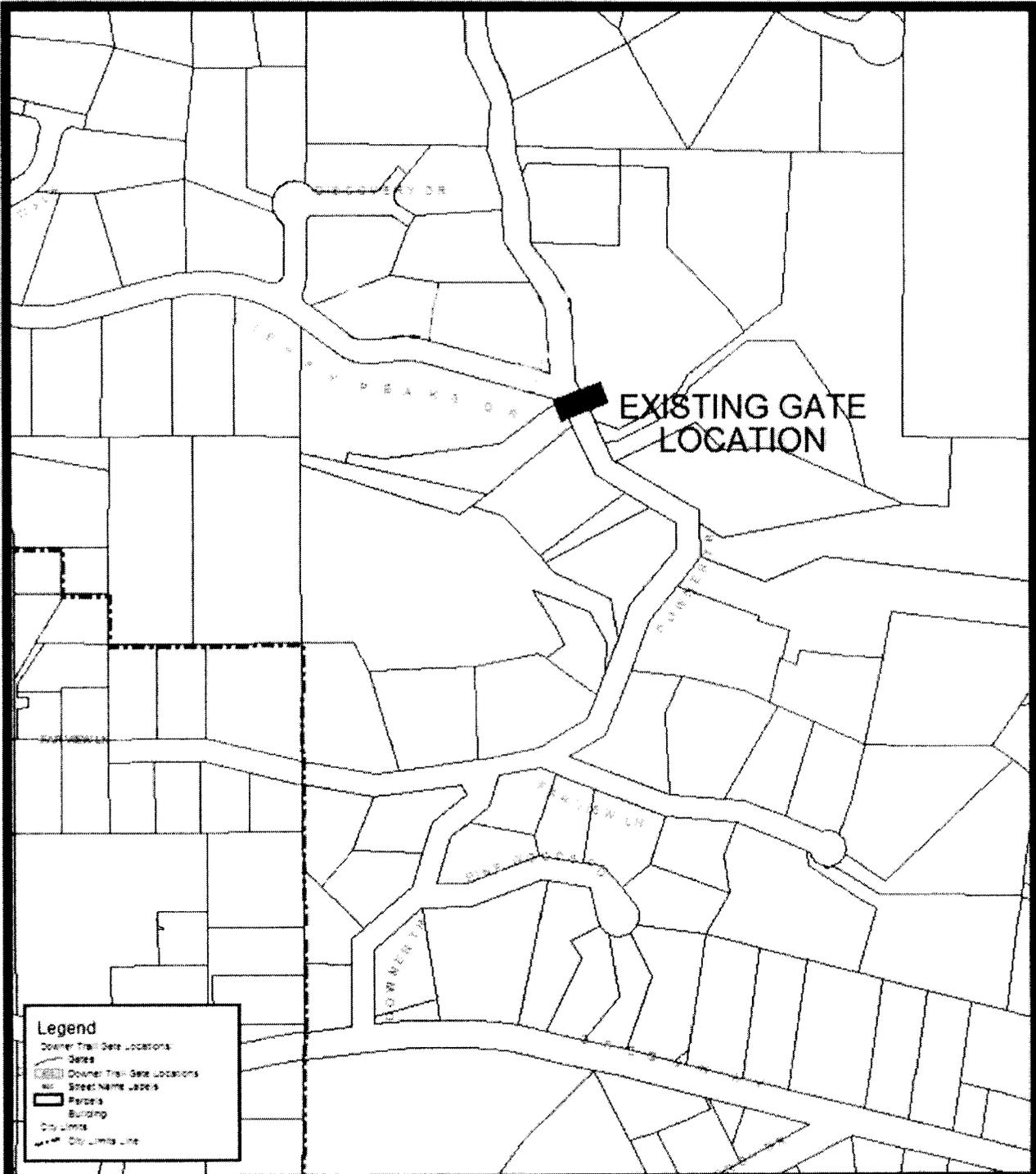
The study area consists of Downer Trail. The area is bounded in general by Sierry Peaks to the north, Oregon Avenue to the south, Gail Gardner to the east and the City limits to the west. east.

TRAFFIC SUMMARY

Downer Trail is a two lane newly paved roadway with a paved width of 22'. It has no curb and gutter and consists of numerous vertical and horizontal curves. The roadway is currently closed to thru traffic at its north end through the installation of an emergency access gate. The roadway is classified as a local residential street and has a current volume of 350 to 400 vehicles per day. In order to determine the impact that opening the gate at Sierry Peaks would have on Downer trail staff conducted 24HR traffic counts on Sierry Peaks, Westridge Drive and Oregon Avenue. In addition to this staff also recorded turn movements at the intersection of Westridge Drive and Gail Gardner Way. This information was then used to estimate that portion of traffic currently using Westridge to Gail Gardner that would be diverted onto the currently closed section of Downer Trail. According o the patterns observed it appears that 38% of the daily traffic turning from eastbound to southbound and northbound to westbound at the intersection would be diverted onto Downer Trail. This translates to approximately 200 vehicles per day.

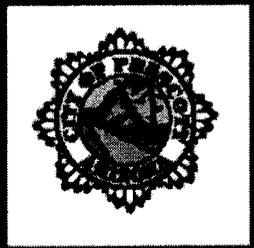
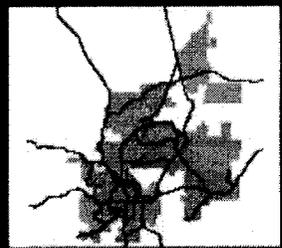
This would result in Downer Trail experiencing an increase from a 24HR traffic volume of 350 to 400 vehicles per day to 550 to 600 vehicles per day. This traffic would also impact Oregon Avenue with the same 200 vehicles per day raising its current 24 HR volume from 1200 vehicles to 1400 vehicles and increase of approximately 17%.

Sierry Peaks, Westridge and Oregon are all classified as minor collectors and the volumes currently seen on all roadways are within the normal limits.



Legend

- Downer Trail Gate Locations
- Downer Trail Gate Locations
- Downer Trail Gate Locations
- Street Name Labels
- Parcels
- Building
- City Limits
- City Limits Line



DOWNER TRAIL AT SIERRY PEAKS GATE LOCATION

This map is a product of the
The City of Prescott GIS

A north arrow pointing upwards and a graphic scale bar below it, with markings for 0 and 200 units.

COUNCIL AGENDA MEMO – January 11, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Resolution No. 4062-1132 - Approving an Intergovernmental Agreement between the City of Prescott and Yavapai County for the development and maintenance of a portion of West Dells Ranch Road.

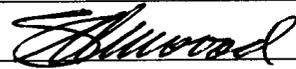
Approved By:

Date:

Department Head: Mark Nietupski

Finance Director: Mark Woodfill

City Manager: Steve Norwood



01/04/11

Item Summary

This item is to approve an Intergovernmental Agreement (IGA) between the City of Prescott and Yavapai County for the development and maintenance of a portion of West Dells Ranch Road adjacent to Granite Dells Estates.

Background

Granite Dells Estates (GDE) is an 1100 acre mixed used development located south of State Route 89A and east of Granite Creek. The Preliminary Plat and Master Plan for GDE were approved by Council on May 27, 2008. Site grading for the commercial and industrial section began in early 2010. The final plat for the first phase of the subdivision, Unit 1B was approved by Council on November 9, 2010. Unit 1B is located west of the Peavine Trail. West Dells Ranch Road provides access to Units 1B and 1C (see attached plan) and connectivity to Centerpointe East Drive and the larger portion of GDE located east of the Peavine Trail.

The portion of West Dells Ranch Road, located west of the Peavine Trail, is currently within the County and the underlying property is owned by Granite Dells Ranch Holdings LLC (Cavan). Cavan is providing a roadway easement to GDE for this portion of West Dells Ranch Road. The IGA was necessary to address the design, construction, inspection and maintenance of West Dells Ranch Road and will remain in effect until the roadway is annexed and dedicated to the City.

The IGA has been reviewed and approved by the County Public Works Director and is scheduled to be heard by the Yavapai County Board of Supervisors on January 3, 2011.

- Attachments**
- Intergovernmental Agreement
 - Resolution
 - Exhibits "A" & "B"
 - Area Plan

Recommended Action: MOVE to adopt Resolution No. 4062-1132.

RESOLUTION NO. 4062-1132

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 YAVAPAI COUNTY FOR THE CONSTRUCTION AND MAINTENANCE OF WEST DELLS RANCH ROAD AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, the City of Prescott and Yavapai County wish to enter into an Intergovernmental Agreement ("IGA") for the design, construction, inspection and perpetual maintenance of West Dells Ranch Road as shown on Exhibit "B" to the "IGA"; and

WHEREAS, Granite Dells Estates Properties Inc. (developer) is developing an approximately 1100 acre mixed use project know as Granite Dells Estates (GDE) as shown on Exhibit "A" to the "IGA" ; and

WHEREAS, West Dells Ranch Road provides access and connectivity for GDE and adjacent property; and

WHEREAS, West Dells Ranch Road as shown on Exhibit "B" to the "IGA" is currently outside City limits and under Yavapai County jurisdiction; and

WHEREAS, the developer will design and construct that portion of West Dells Ranch Road as shown on Exhibit "B" to the "IGA" to City Standards and upon completion and acceptance the City will provide funding for perpetual maintenance.

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 City of Prescott and Yavapai County.

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 11th day of January, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

EXHIBIT 'A'

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF PRESCOTT AND YAVAPAI COUNTY FOR
THE MAINTENANCE OF WEST DELLS RANCH ROAD**

THIS AGREEMENT, entered into this _____ day of _____, 2011, by and between the CITY OF PRESCOTT, a municipal corporation of Arizona (hereafter ``City''), and YAVAPAI COUNTY, a political subdivision of the State of Arizona (hereafter the ``County''); and

WHEREAS Granite Dells Estates Properties Inc. (hereafter developer) is developing an approximately 1100 acres mixed use project, Granite Dells Estates (GDE) south of State Route 89A within the Prescott City limits (see Exhibit ``A''); and

WHEREAS developer is currently Final Platting two commercial sites Phases 1-B and 1-C west of the Peavine Trail; and

WHEREAS West Dells Ranch Road (see Exhibit ``B'') located adjacent to the south property of GDE provides access to Phases 1-B and 1-C and is currently within County jurisdiction and owned by Granite Dells Ranch Holdings LLC; and

WHEREAS, the parties further acknowledge the necessity of effectuating certain road maintenance on West Dells Ranch Road (Exhibit ``B'') which would benefit residents of both the County and the City; and

WHEREAS, the parties have cooperated in the past in matters of mutual interest affecting both City and County residents; and

WHEREAS, ARS §§ 11-951 and 11-952 authorize public agencies' such as Prescott and the County to enter into such intergovernmental agreements; and

WHEREAS Granite Dells Ranch Holdings LLC will dedicate to the public that portion of West Dells Ranch Road right-of-way as shown on Exhibit ``B''; and

WHEREAS developer shall cause the preparation of infrastructure plans and construction of that portion of West Dells Ranch Road as shown on Exhibit ``B''.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

SECTION 1: That West Dells Ranch Road shall be designed and constructed to conform to City Standards and any other applicable standards. The City shall provide inspection for all West Dells Ranch Road infrastructure work.

SECTION 2: Upon completion of construction and acceptance by the City, the City will provide maintenance funding and maintain to City Standards that portion of West Dells Ranch Road right-of-way (Exhibit ~~B~~) under the jurisdiction of the County.

SECTION 3: NOTICES. Notices relating to this Intergovernmental Agreement shall be deemed to have been duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

Prescott:

City of Prescott
c/o City Manager
P.O. Box 2059
Prescott, Arizona 86302

Yavapai County:

Yavapai County
c/o County Administrator
1015 Fair Street
Prescott, Arizona 86301

SECTION 4: CONFLICT OF INTEREST. Pursuant to A.R.S. Section 38-511, either party 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 an extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

SECTION 5: INDEMNIFY AND HOLD HARMLESS. Yavapai County hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of Yavapai County's participation pursuant to this Agreement,

whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or its agents. Yavapai County further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which Yavapai County has or may have against the City, its agents or employees, arising out of or in any way connected with Yavapai County's activities as set forth in this Agreement.

The City of Prescott (hereinafter ``City'') hereby agrees to indemnify and hold harmless Yavapai County, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of City's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or its agents. City further releases and discharges Yavapai County, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of Yavapai County, from any and all claims which City has or may have against Yavapai County, its agents or employees, arising out of or in any way connected with City's activities as set forth in this Agreement.

SECTION 6: WAIVER. No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

SECTION 7: WAIVER OF JURY TRIAL AND ATTORNEYS' FEES. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney's fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute, or state or federal court rule, or state or federal common law.

SECTION 8: RESULT OF NEGOTIATIONS. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by Yavapai County Attorney and by the Prescott City Attorney, it is the result of negotiations between the parties. Therefore, any ambiguity in this agreement is not to be construed against either party.

SECTION 9: INSURANCE.

A. Yavapai County shall carry sufficient insurance to cover the activities outlined in this Agreement, and shall hold the City harmless and indemnify the City from any and all liability which may result from the acts or omissions of Yavapai County's employees or agents.

B. The City shall carry sufficient insurance to cover the activities outlined in this Agreement, and shall hold Yavapai County harmless and indemnify Yavapai County from any and all liability which may result from the acts or omissions of the City's employees or agents.

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

For the City:

Mark Nietupski
Public Works Director
Public Works Department
P.O. Box 2059, Prescott, AZ 86302
Phone: (928) 777-1130

For the County:

Phil Bourdon P.E.
County Engineer
1100 Commerce Drive
Prescott, AZ 86305
(928) 771-3183

SECTION 11: PROPERTY DAMAGE. Whenever one party to this Agreement damages property which is the subject of this Agreement, that party will be solely responsible for repairs and replacement.

SECTION 12: TERM OF AGREEMENT. This Agreement shall remain in full force and effect for a term of three (3) years and shall be automatically renewed for successive one (1) year periods thereafter unless written notice of termination pursuant to Council or Board action is delivered to the other party no later than May 1st of the year preceding the desired termination of this Agreement.

SECTION 13: ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to the subject matters hereof, and it may be amended, modified, or waived only by an instrument in writing signed by both parties.

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

CITY OF PRESCOTT

YAVAPAI COUNTY

Marlin D. Kuykendall
Mayor

Carol Springer Chairman, Yavapai
County Board of Supervisors

ATTEST:

ATTEST:

Elizabeth A. Burke
City Clerk

Clerk, Yavapai County Board
of Supervisors

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

Gary Kidd, City Attorney

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

David Hunt
Deputy County Attorney

EXHIBIT "A"

STATE ROUTE 89A

CENTERPOINTE EAST

GRANITE DELLS ESTATES

PEAVINE TRAIL

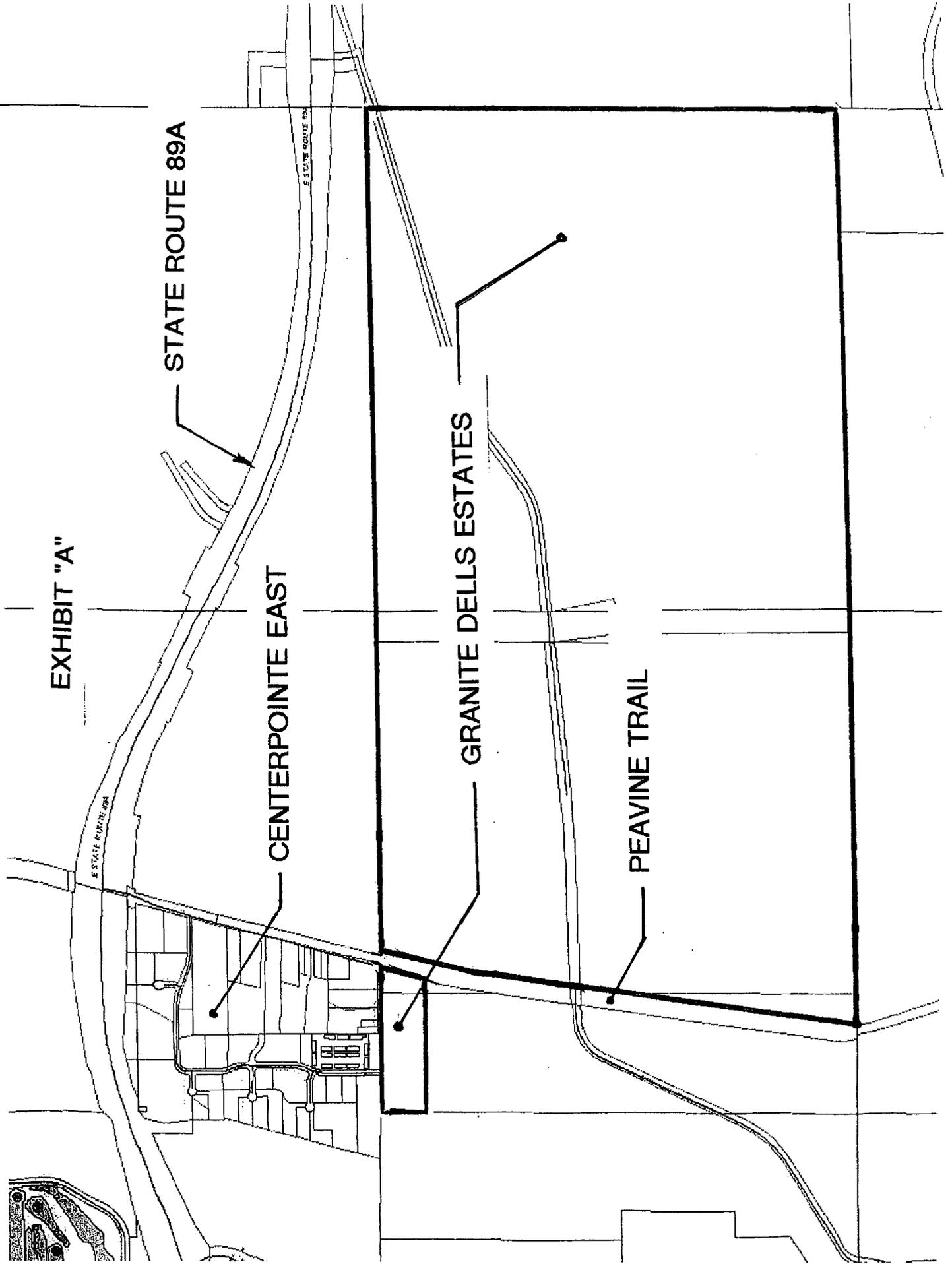
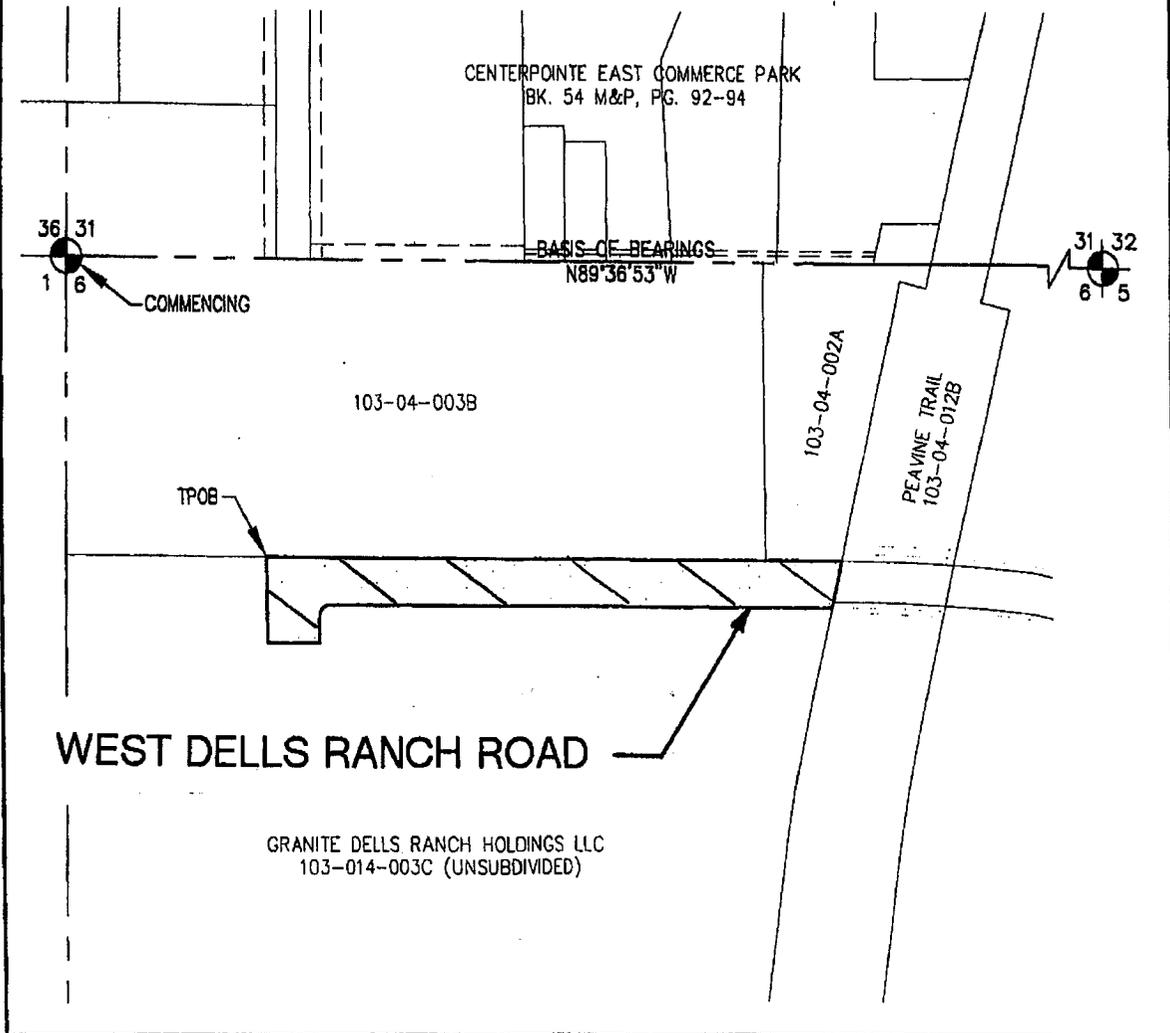


EXHIBIT "B"



SCALE: 1"=300'



AREA PLAN

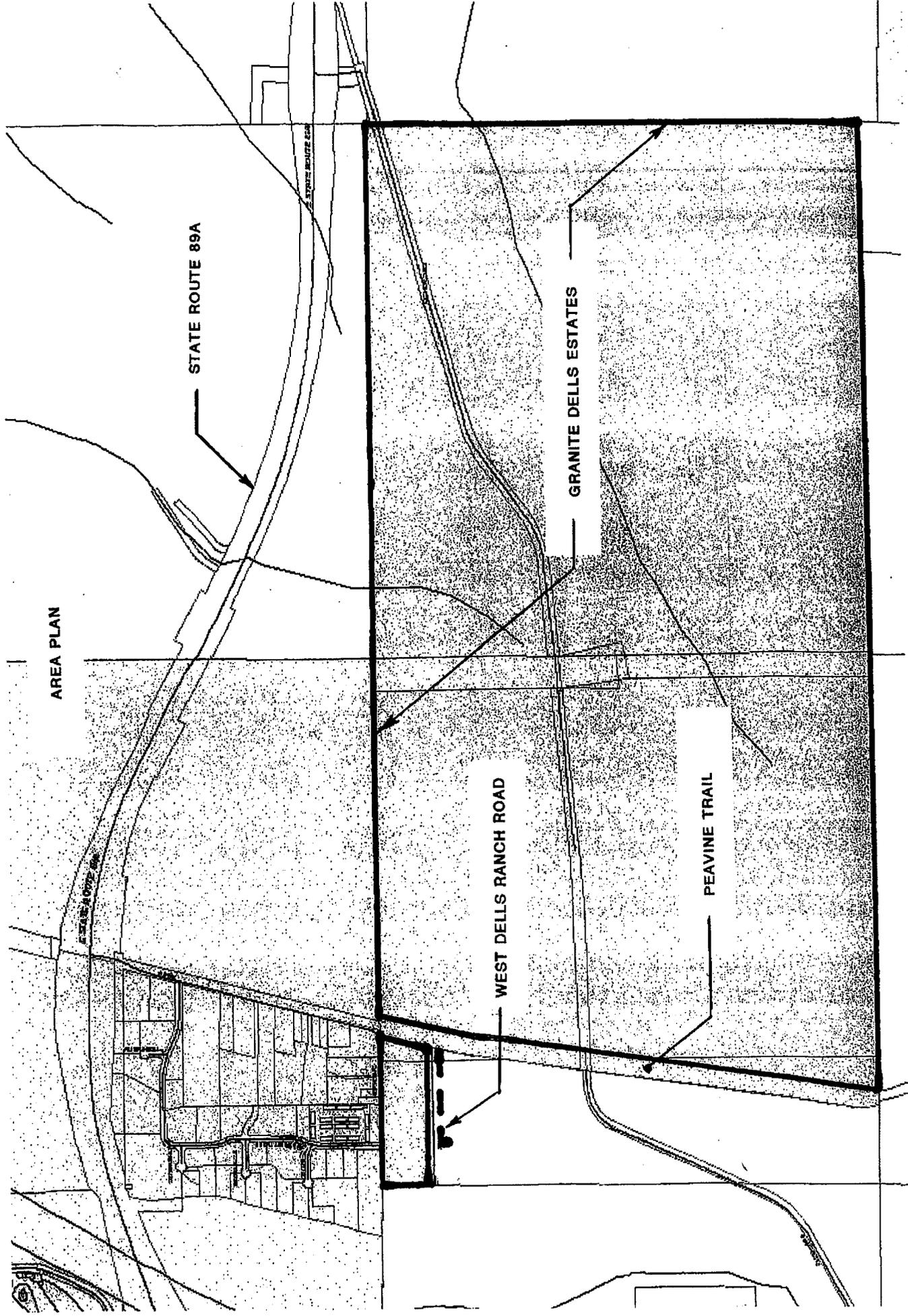
STATE ROUTE 89A

STATE ROUTE 89A

GRANITE DELLS ESTATES

WEST DELLS RANCH ROAD

PEAVINE TRAIL



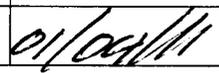
COUNCIL AGENDA MEMO – January 11, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Authorization to proceed with procurement of equipment for construction of two traffic signals on Willow Creek Road, one at Commerce Drive and the second 1700 feet north.

Approved By:

Date:

Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Steve Norwood 	01/04/11 

Item Summary

Approval of this item will authorize procurement of equipment and supplies for the construction of two new traffic signals to be installed on Willow Creek Road at Commerce Drive and 1700 feet north at the existing curb cut for Tim’s Subaru/Hyundai and the new location of Prescott Honda. The equipment will allow City crews to construct the signals after in-house design is complete.

Background

In 2004 Willow Creek Road was widened and improved between Commerce Drive and Haas Boulevard at Embry Riddle Aeronautical University. During engineering and construction of the improvements provisions were made for the installation of traffic signals at Commerce Drive and 1700’ north contemplating the future need at both locations. Conduits and pull boxes were installed in 2004 to facilitate traffic signal installation at these locations to avoid trenching across Willow Creek Road in the future.

The intersection of Willow Creek Road at Commerce Drive has been experiencing increased traffic volumes over the past 10 years, resulting in congestion and delays during the AM and PM peak hours. This has resulted in two (2) traffic signal warrants from the Manual on Uniform Traffic Control Devices (MUTCD) being met. The location 1700 feet to the north has very little existing traffic as the driveway on the west side accessing Tim’s Subaru/Hyundai currently is not normally open to traffic and the driveway on the east accesses two (2) undeveloped parcels. No traffic signal warrants are being met at this time, however, imminent development of the Prescott Honda site and the adjoining north parcel in the future (using a shared access at the new signal) will potentially meet one or more warrants based on the current zoning.

Constructing the signals as a pair, within a relatively close timeframe, will best serve long term traffic needs in the area. The new signals will be linked via inter-connection cable to those at Sandretto Drive, Willow Lake Road, Montana Drive, Crossings Drive, and Smoketree Lane and operated to maximize traffic progression through the commercial corridor.

Agenda Item: Authorization to proceed with procurement of equipment for construction of two traffic signals on Willow Creek Road, one at Commerce Drive and the second 1700 feet north.

Equipment to be purchased includes traffic signal poles, heads, controllers, cabinets, mast arms, and misc hardware required to construct the two complete signals. The design and construction of both signals will be completed in house by the Transportation Services Division. It is anticipated that the Willow Creek Road / Commerce Drive intersection will be designed and constructed first anticipating completion by June 30, 2011. The second signal 1700 feet north will be designed during FY11 but will not be constructed until FY12, beginning in July 1, 2011.

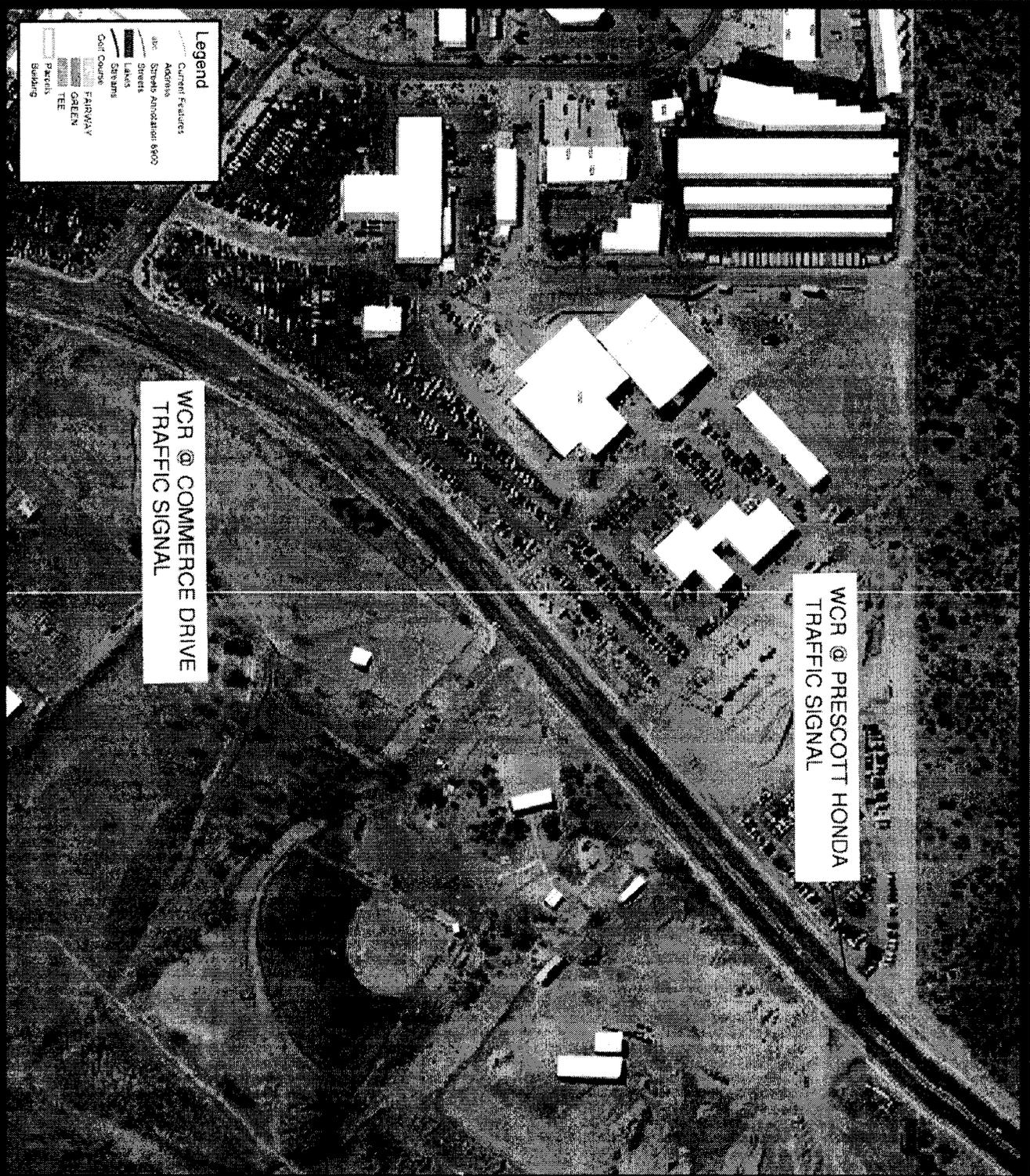
Budget Impacts

The total cost of the signal equipment and materials, for both traffic signal locations, will not exceed \$156,500.00. Funding for the traffic signals is available from the One Cent Sales Tax for Streets and Open Space. Procurement will be done pursuant to the City Procurement Code.

Attachments

- Location Map

Recommended Action: **MOVE** to approve procurement of equipment for construction of two traffic signals on Willow Creek Road, one at Commerce Drive and the second 1,700 feet north.



Legend

Current Features

Address

Streets Annotation 6900

Streets

LANES

Streams

Golf Course

FARMWAY

GREEN

TEE

Parklands

Buildings

WCR @ COMMERCE DRIVE
TRAFFIC SIGNAL

WCR @ PRESCOTT HONDA
TRAFFIC SIGNAL

This map is a product of the
The City of Prescott GIS




WILLOW CREEK ROAD TRAFFIC SIGNALS





COUNCIL AGENDA MEMO – January 11, 2011

DEPARTMENT: Parks, Recreation & Library

AGENDA ITEM: Authorization to proceed with development of an Intergovernmental Agreement with Yavapai County for the installation of sanitary sewer service to Pioneer Park and commencement of construction

Approved By:

Date:

Department Head: Debbie Horton

Finance Director: Mark Woodfill

City Manager: Steve Norwood



BACKGROUND:

When the Pioneer 4-plex was initially constructed it was not in proximity to city sewer services, therefore a septic system was deemed necessary. The system in place was not designed for the volume of use that it currently experiences, consequently, it must be pumped out more frequently than a properly functioning septic system should. There have been instances of sewage backup into the facility that creates a safety hazard for park users and has rendered the concession area inoperable. There are currently 10-11 months of solid league use at the park as well as special events such as the COP's 4th of July celebration and national tournaments. For this high level of usage, sewer services are greatly needed.

An opportunity presented itself when Yavapai County began the design phase for their new facility on Commerce, at which time they offered the City of Prescott an opportunity to tie in to their lift station so that the 4-plex could be served. The IGA will provide for the County's contractor to construct the sewer main extension to connect the 4-plex to the new lift station. The estimated cost of \$65,000 will come from Park Impact Fees, which were budgeted in the current fiscal year to address park growth issues.

Proceeding with construction at this time would be in the best interest of Park operations to minimize impact on scheduled uses in coming months. The IGA is being drafted and will be presented to Council as soon as possible.

Recommended Action: MOVE to approve development of an Intergovernmental Agreement with Yavapai County for installation of sanitary sewer service to Pioneer Park and commencement of construction.

COUNCIL AGENDA MEMO – (01/11/2011)

DEPARTMENT: City Clerk

AGENDA ITEM: Discussion/Direction on Council meeting schedule

Approved By:

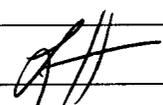
Date:

Department Head: Elizabeth A. Burke, City Clerk

01/05/2011

Finance Director: Mark Woodfill

City Manager: Steve Norwood



Summary

This item is to provide an opportunity for City Council to take action on when they wish to hold Council meetings.

Background

During yesterday's Workshop, members of the Council and audience discussed the meeting schedule for this year and directed staff to bring back the item at the January 11, 2011 Regular Voting Meeting for action.

Input from the Council members revolved around two basic options and a separate resolution for each has been prepared for further consideration.

Option A Workshops

Resolution No. 4063-1131, Version A, changes the wording of the Council's Rules of Procedure to reflect a schedule of one Workshop on the first Tuesday of each month, Regular Voting meetings on the second and fourth Tuesdays of each month, with others to be scheduled as needed. All meetings would be held at 3:00 p.m.

Option B Study Sessions

Resolution No. 4063-1131, Version B, reflects the request for consideration of returning to the prior practice of holding Study Sessions on the first and third Tuesday of each month and Regular Voting meetings on the second and fourth Tuesdays, with others scheduled as needed. All meetings would be held at 3:00 p.m.

Recommended Action: MOVE to adopt Resolution No. 4063-1133 (Version A or Version B).

RESOLUTION NO. 4063-1131 (VERSION A – Workshop)

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, REPEALING RESOLUTION NUMBER 4001-1031 AND ADOPTING NEW RULES OF PROCEDURE FOR THE PRESCOTT CITY COUNCIL

RECITALS:

WHEREAS, Resolution Number 1606, adopted March 10, 1980, first adopted Rules of Procedure for the Prescott City Council; and

WHEREAS, since that time several amendments have been adopted through Resolution Numbers 1851, 1877, 1890, 2033, 2074, 2294, 2296, 2439, 2456, 2850, 3032, 3047; 3401; 3927-0933; and 4001-1031; and

WHEREAS, on February 3, 2010, the Prescott City Council adopted Resolution Number 4001-1031 repealing the prior resolutions and adopting new Rules of Procedures; and

WHEREAS, the Prescott City Council wishes to make changes to the prior Rules of Procedure and adopt new Rules of Procedure for the Prescott City Council.

ENACTMENTS:

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

SECTION 1. THAT, Resolution Number 4001-1031 is hereby repealed.

SECTION 2. THAT, Exhibit A, attached hereto and made a part hereof, shall be the new Rules of Procedure for the Prescott City Council.

PASSED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, this 11th day of January, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A BURKE, City Clerk

GARY D KIDD, City Attorney

EXHIBIT 'A'

RULES OF PROCEDURE

for the

PRESCOTT CITY COUNCIL



JANUARY 2011

RULES OF PROCEDURE FOR THE PRESCOTT CITY COUNCIL

RULE 1 GENERAL RULES

- A. Rules of Journal (Article II, Section 15, City Charter): The Council shall determine its own rules and order of business subject to the provisions of this Charter. It shall keep a journal of its proceedings and the journal shall be open to public inspection during regular office hours.
- B. Written Rules of Procedure: The rules of procedure of the Council shall be in writing and be available to all interested citizens.
- C. Rules of Parliamentary Practice: The rules of parliamentary practice, comprised in Robert's Rules of Order, latest edition, shall govern the Council in all cases to which they are applicable, provided they are not in conflict with these rules or with the Charter of the City of Prescott.

RULE 2 COUNCIL CODE OF ETHICS

City Council members and officials occupy positions of public trust. Council members and all City officials shall strictly adhere to both the spirit and the letter of the laws of the State of Arizona pertaining to conflicts of interest.

In addition to matters of pecuniary interest, Council members shall refrain from making use of special knowledge or information before it is made available to the general public; shall refrain from violation of Council rules; shall refrain from appointing immediate family members, business associates, or employees to municipal boards and commissions; shall refrain from influencing the employment of municipal employees; and shall refrain from using their influence as members of the governing body in attempts to secure contracts, zoning, or other favorable municipal action for friends, immediate family members, or business associates.

RULE 3 CITY OFFICIALS

- A. City Manager, City Clerk, Finance Director and City Attorney: The City Manager, Clerk, Finance Director and Attorney shall perform their respective duties as set forth in the Charter of the City of Prescott. Whenever there may be any questions concerning the interpretation of the powers and duties of the aforementioned City officials as enumerated in the City Charter, the City Council shall be the final arbitrator of any such dispute and, by a majority vote of its members, shall settle any such issue as a matter of Council policy.
- B. Chief of Police: The Chief of Police or such members of the Police Department as he may designate, shall be Sergeant-at-Arms of the Council meetings.

- C. Officials and Employees to Attend: The head of any department, or officer or employee of the City, when requested by the Council or City Manager, shall attend any regular, adjourned or special meeting and confer with the Council on all matters relating to City business.

RULE 4 COUNCIL MEETINGS

- A. Regular and Special Meetings: The City Council shall hold regular and special meetings according to the provisions of the City Charter. Council meetings shall be conducted in accordance with the procedures set forth in these rules unless a motion to suspend the rules (as hereinafter provided) is first passed by the Council. Regular meetings of the Council shall begin at 3:00 P.M. on the second and fourth Tuesday of each month, unless a different day or time is determined by a majority of the Council. **WORKSHOPS SHALL BE HELD ON THE FIRST TUESDAY OF EACH MONTH AT 3:00 P.M., AND ON ADDITIONAL DAYS AS NEEDED.**

At **WORKSHOPS HELD ON THE FIRST TUESDAY OF EACH MONTH** ~~regular meetings of the Council~~, members of the public may be permitted to speak on an item not otherwise listed on the agenda, if they have requested to do so by giving notice to the City Clerk of their name, address, phone number, and topic. Said notice is to be given no later than 5:00 p.m. on the second Friday preceding the **WORKSHOP** ~~regular meeting~~ at which time has been confirmed to be available; and the member of the public and their topic shall appear on the **WORKSHOP** ~~regular meeting~~ agenda. In this event, members of the public shall be permitted to speak for a period not to exceed five (5) minutes, unless provided additional time by the Presiding Officer, provided however, a member of the public may not speak on the same topic more frequently than at a three-month interval. Copies of all documents and/or other materials proposed to be exhibited by a member of the public for an item not otherwise listed on the agenda shall be provided to the City Clerk by said deadline. Exhibition of any documents and/or other materials deemed to be offensive or otherwise inappropriate shall not be permitted.

In the event that twice in any six-month period a member of the public who has been placed on the agenda for Public Comment does not appear when scheduled or notify the City Clerk's Office in writing prior to the beginning of the session of their inability to appear, said individual shall not be entitled to request placement of an item on the agenda under Public Comment for a period of six months from the second occurrence of failure to appear or notify the City Clerk's Office.

- B. Executive Sessions: The Council may meet in executive session in accordance with the procedures and purposes set forth in State law and not otherwise.
- C. Scheduling Agenda Items. The Mayor may place any item on an agenda for consideration or discussion by the Council. Any two (2) councilmen may place an item on an agenda for consideration or discussion by the Council
- D. Withdrawing Agenda Items. When an item is initially placed on an agenda, it may only be withdrawn by the individual (Mayor or Councilmembers) who placed that item on the agenda.

RULE 5 PRESIDING OFFICER

The Mayor or, in his absence, the Mayor Pro Tempore, shall take the chair at the hour appointed for the Council to meet and shall immediately call the members to order. In the case of absence of both the Mayor and the Mayor Pro Tempore, the City Clerk shall call the Council to order. If a quorum is found to be present, the Council shall proceed to elect, by a majority vote of those present, a chairman of the meeting.

RULE 6 CONDUCT OF MEETINGS

The presiding officer shall serve as Council Parliamentarian. He shall preserve decorum and decide all questions of order, subject to appeal to the Council.

- A. During Council meetings, Council members shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the orders of the presiding officer or the rules of the Council. Every Council member desiring to speak shall address the chair and, upon recognition by the presiding officer, shall confine himself to the question under debate and shall avoid all offensive or indecorous language. A Council member once recognized shall not be interrupted while speaking unless called to order by the presiding officer or unless a point of order or other privileged motion is raised by another Council member. If a Council member is called to order while he is speaking, he shall cease speaking immediately until the question of order is determined. If ruled to be in order, he shall be permitted to proceed. If ruled not to be in order, he shall remain silent or shall alter his remarks so as to comply with the rules of the Council. A Council member, with permission of the presiding officer, may address questions to the City Manager or staff or members of the audience, but he shall confine his questions to the particular issue before the Council. If a point of order is raised and the presiding officer fails to act, any member of the Council may move to require him to enforce the rules and the affirmative vote of the majority of the Council shall be required to require the presiding officer to act.
- B. The presiding officer shall have the authority to preserve decorum in meetings as far as the audience, staff members, and City employees are concerned. The City Manager shall also be responsible for the orderly conduct and decorum of all City employees under his direction and control. Any remarks shall be addressed to the Chair and to any or all members of the Council. No member of the staff or audience shall enter into any discussion, either directly or indirectly, without first having obtained the floor by permission of the presiding officer,
- C. Citizens of the City and any other members of the public attending Council meetings shall also observe the same rules of propriety, decorum and good conduct applicable to members of the Council. Any person making personal, impertinent, and slanderous remarks or who becomes boisterous while addressing the Council, or while attending the Council meeting, shall be removed from the room if the Sergeant-at-Arms is so directed by the presiding officer, and such person shall be barred from further attendance at that particular Council meeting. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations shall not be

permitted by the presiding officer, who shall direct the Sergeant-at-Arms to remove such offenders from the room.

Should the presiding officer fail to act, any member of the Council may move to require him to enforce the rules, and the affirmative vote of the majority of the Council shall require the presiding officer the act.

Any member of the public desiring to address the Council must first be recognized by the Chair, shall state his name and city of residence in an audible tone for the record, and shall limit his remarks to the question under discussion. Any remarks shall be addressed to the Chair and to any members of the Council.

RULE 7 RIGHT OF APPEAL

Any Council member may appeal to the Council from a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state his reason for the same, and the presiding officer may briefly explain his ruling, but there shall be no debate on the appeal, and no other member shall participate in the discussion. The presiding officer shall then put the question, "Shall the decision of the Chair be sustained?" If the majority of the members present vote "Aye", the ruling of the Chair is sustained, otherwise it is overruled.

RULE 8 LIMITATION OF DEBATE

No member of the Council or public shall be allowed to speak more than once upon any one subject until all the Council members have had an opportunity to speak. No member of the Council or of the public shall be allowed to speak for a period longer than five minutes, without the leave of the presiding officer. Citizens groups shall identify themselves and shall be represented in presentation to the Council by one of the members of the group and cumulative or redundant speeches to the Council on the same issue shall be terminated at the discretion of the presiding officer.

RULE 9 VOTING

The vote on any question shall be taken by Ayes and Nays to be electronically tabulated, and the results thereof shall be disclosed simultaneously. In the event that the vote is unable to be electronically recorded, there shall be a roll call vote. It shall be out of order for members to explain their vote during the voting process. There shall be no additional debate or speaking after the vote is taken.

RULE 10 MOTIONS TO BE STATED BY CHAIR

When a motion is made and seconded, it shall be so stated by the Chair or, at his direction, by the City Clerk, before debate commences.

RULE 11
CITY COUNCIL AGENDA FORMAT

NORMAL BUSINESS

- I. CALL TO ORDER
- II. INTRODUCTIONS
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE
- V. ROLL CALL
- VI. SUMMARY OF CURRENT OR RECENT EVENTS BY PRESIDING OFFICER AND/OR CITY MANAGER
- VII. APPROVAL OF MINUTES
- VIII. CANVASS ELECTION RETURNS, SPECIAL AWARD PRESENTATIONS, SPECIAL GUESTS, RESOLUTIONS OR COMMENDATION, PROCLAMATIONS, ETC.

AGENDA ITEMS

- I. CONSENT AGENDA
- II. PUBLIC HEARINGS
- III. PUBLIC (5-minute time limit unless additional time allotted by Presiding Officer)
- IV. COMMUNICATIONS AND/OR PETITIONS
- V. MAYOR AND COUNCIL ITEMS
- VI. CITY MANAGER ITEMS
- VII. SCHEDULED AGENDA BUSINESS
- VIII. RESOLUTIONS
- IX. ORDINANCES
- X. ADJOURNMENT

Council Agenda formats are considered to be general guidelines for the published agenda. The Mayor is hereby authorized to deviate from the arrangement as set forth therein, or to delete a specific category from a particular agenda, at his or her discretion.

RULE 12
MOTION TO ADJOURN – WHEN NOT IN ORDER – NOT DEBATABLE

A motion to adjourn shall be in order at any time, except as follows: (A) When repeated without intervening business or discussion; (B) When made as an interruption of a member while speaking; (C) When the previous question has been ordered; and (D) While a vote is being taken. A motion to adjourn is debatable only as to the time to which the meeting is adjourned.

RULE 13
CONSIDERATION OF PETITIONS

Only those petitions submitted in writing at a regular Council meeting by a citizen of the City shall require Council action within thirty (30) days thereafter. (Article II, Section 18, City Charter).

All other petitions submitted to the Mayor and/or Council members or other agencies of the City in the regular course of business, shall be considered in accordance with the laws of the State of Arizona, the City Charter or the City Code of the City of Prescott. (Examples: Annexation, improvement district, protests, elections, etc.)

Unsigned communications or petitions, including newspaper articles or clippings, shall not be introduced in the minutes of Council meetings.

RULE 14

MOTION TO SUSPEND THE RULES

A motion to suspend the rules set forth herein shall be in order unless it pertains to rules mandated by the Charter of the City of Prescott or the laws of the State of Arizona. A motion to suspend the rules must be seconded, it is not debatable (except that the reason for the motion may be briefly explained by the mover) and requires at least a two-thirds vote of the members of the Council present at the meeting.

RESOLUTION NO. 4063-1133 (VERSION B – Study Sessions)

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, REPEALING RESOLUTION NUMBER 4001-1031 AND ADOPTING NEW RULES OF PROCEDURE FOR THE PRESCOTT CITY COUNCIL

RECITALS:

WHEREAS, Resolution Number 1606, adopted March 10, 1980, first adopted Rules of Procedure for the Prescott City Council; and

WHEREAS, since that time several amendments have been adopted through Resolution Numbers 1851, 1877, 1890, 2033, 2074, 2294, 2296, 2439, 2456, 2850, 3032, 3047; 3401; 3927-0933; and 4001-1031; and

WHEREAS, on February 3, 2010, the Prescott City Council adopted Resolution Number 4001-1031 repealing the prior resolutions and adopting new Rules of Procedures; and

WHEREAS, the Prescott City Council wishes to make changes to the prior Rules of Procedure and adopt new Rules of Procedure for the Prescott City Council.

ENACTMENTS:

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

SECTION 1. THAT, Resolution Number 4001-1031 is hereby repealed.

SECTION 2. THAT, Exhibit A, attached hereto and made a part hereof, shall be the new Rules of Procedure for the Prescott City Council.

PASSED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, this 11th day of January, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A BURKE, City Clerk

GARY D KIDD, City Attorney

EXHIBIT 'A'

RULES OF PROCEDURE

for the

PRESCOTT CITY COUNCIL



JANUARY 2011

RULES OF PROCEDURE FOR THE PRESCOTT CITY COUNCIL

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RULE 3 CITY OFFICIALS

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- B. Chief of Police: The Chief of Police or such members of the Police Department as he may designate, shall be Sergeant-at-Arms of the Council meetings.

- C. Officials and Employees to Attend: The head of any department, or officer or employee of the City, when requested by the Council or City Manager, shall attend any regular, adjourned or special meeting and confer with the Council on all matters relating to City business.

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At regular meetings of the Council, members of the public may be permitted to speak on an item not otherwise listed on the agenda, if they have requested to do so by giving notice to the City Clerk of their name, address, phone number, and topic. Said notice is to be given no later than 5:00 p.m. on the second Friday preceding the regular meeting at which time has been confirmed to be available; and the member of the public and their topic shall appear on the regular meeting agenda. In this event, members of the public shall be permitted to speak for a period not to exceed five (5) minutes, unless provided additional time by the Presiding Officer, provided however, a member of the public may not speak on the same topic more frequently than at a three-month interval. Copies of all documents and/or other materials proposed to be exhibited by a member of the public for an item not otherwise listed on the agenda shall be provided to the City Clerk by said deadline. Exhibition of any documents and/or other materials deemed to be offensive or otherwise inappropriate shall not be permitted.

In the event that twice in any six-month period a member of the public who has been placed on the agenda for Public Comment does not appear when scheduled or notify the City Clerk's Office in writing prior to the beginning of the session of their inability to appear, said individual shall not be entitled to request placement of an item on the agenda under Public Comment for a period of six months from the second occurrence of failure to appear or notify the City Clerk's Office.

- B. Executive Sessions: The Council may meet in executive session in accordance with the procedures and purposes set forth in State law and not otherwise.
- C. **STUDY SESSIONS: STUDY SESSIONS ARE PUBLIC MEETINGS OF THE COUNCIL FOR THE PURPOSES OF BRIEFING COUNCIL MEMBERS ON THE ITEMS INCLUDED ON THE REGULAR MEETING AGENDA. THE RULES OF PROCEDURE SHALL BE:**
1. **THE COUNCIL SHALL MEET IN STUDY SESSION AT 3:00 P.M. ON THE FIRST AND THIRD TUESDAY OF EACH MONTH, UNLESS A DIFFERENT DAY OR TIME IS DETERMINED BY A MAJORITY VOTE OF THE COUNCIL.**

2. **THE STUDY SESSION SHALL BE DEVOTED PRIMARILY TO ANY MATTERS REGARDING WHICH THE INTERCHANGE OF INFORMATION PRELIMINARY TO PUBLIC DISCUSSION IS DEEMED TO BE ESSENTIAL.**
 3. **NO FORMAL VOTE SHALL BE TAKEN ON ANY MATTER UNDER DISCUSSION NOR SHALL ANY COUNCIL MEMBER ENTER INTO A COMMITMENT WITH ANOTHER RESPECTING A VOTE TO BE TAKEN SUBSEQUENTLY IN A PUBLIC MEETING OF THE COUNCIL PROVIDED THAT NOTHING HEREIN SHALL PREVENT A POLLING OF THE COUNCIL OR THE TAKING OF AN INFORMAL CONSENSUS ON ANY MATTER UNDER DISCUSSION.**
 4. **AT STUDY SESSIONS, MEMBERS OF THE PUBLIC SHALL BE PERMITTED TO SPEAK WITH PERMISSION OF THE CHAIR, WHEN INVITED TO DO SO BY THE COUNCIL, OR WHEN THEY HAVE INFORMATION PERTINENT TO THE ISSUE UNDER DISCUSSION, FOR A PERIOD NOT TO EXCEED FIVE (5) MINUTES.**
- GD. Scheduling Agenda Items. The Mayor may place any item on an agenda for consideration or discussion by the Council. Any two (2) councilmen may place an item on an agenda for consideration or discussion by the Council
- DE. Withdrawing Agenda Items. When an item is initially placed on an agenda, it may only be withdrawn by the individual (Mayor or Councilmembers) who placed that item on the agenda.

RULE 5 PRESIDING OFFICER

The Mayor or, in his absence, the Mayor Pro Tempore, shall take the chair at the hour appointed for the Council to meet and shall immediately call the members to order. In the case of absence of both the Mayor and the Mayor Pro Tempore, the City Clerk shall call the Council to order. If a quorum is found to be present, the Council shall proceed to elect, by a majority vote of those present, a chairman of the meeting.

RULE 6 CONDUCT OF MEETINGS

The presiding officer shall serve as Council Parliamentarian. He shall preserve decorum and decide all questions of order, subject to appeal to the Council.

- A. During Council meetings, Council members shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the orders of the presiding officer or the rules of the Council. Every Council member desiring to speak shall address the chair and, upon recognition by the presiding officer, shall confine himself to the question under debate and shall avoid all offensive or indecorous language. A Council member once recognized shall not be interrupted while speaking unless called to order by the presiding officer or unless a point of order or other privileged motion is raised by another Council member. If a Council member is

called to order while he is speaking, he shall cease speaking immediately until the question of order is determined. If ruled to be in order, he shall be permitted to proceed. If ruled not to be in order, he shall remain silent or shall alter his remarks so as to comply with the rules of the Council. A Council member, with permission of the presiding officer, may address questions to the City Manager or staff or members of the audience, but he shall confine his questions to the particular issue before the Council. If a point of order is raised and the presiding officer fails to act, any member of the Council may move to require him to enforce the rules and the affirmative vote of the majority of the Council shall be require the presiding officer to act.

- B. The presiding officer shall have the authority to preserve decorum in meetings as far as the audience, staff members, and City employees are concerned. The City Manager shall also be responsible for the orderly conduct and decorum of all City employees under his direction and control. Any remarks shall be addressed to the Chair and to any or all members of the Council. No member of the staff or audience shall enter into any discussion, either directly or indirectly, without first having obtained the floor by permission of the presiding officer,
- C. Citizens of the City and any other members of the public attending Council meetings shall also observe the same rules of propriety, decorum and good conduct applicable to members of the Council. Any person making personal, impertinent, and slanderous remarks or who becomes boisterous while addressing the Council, or while attending the Council meeting, shall be removed from the room if the Sergeant-at-Arms is so directed by the presiding officer, and such person shall be barred from further attendance at that particular Council meeting. Unauthorized remarks from the audience, stamping of feet, whistles, yells, and similar demonstrations shall not be permitted by the presiding officer, who shall direct the Sergeant-at-Arms to remove such offenders from the room.

Should the presiding officer fail to act, any member of the Council may move to require him to enforce the rules, and the affirmative vote of the majority of the Council shall require the presiding officer the act.

Any member of the public desiring to address the Council must first be recognized by the Chair, shall state his name and city of residence in an audible tone for the record, and shall limit his remarks to the question under discussion. Any remarks shall be addressed to the Chair and to any members of the Council.

RULE 7 RIGHT OF APPEAL

Any Council member may appeal to the Council from a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state his reason for the same, and the presiding officer may briefly explain his ruling, but there shall be no debate on the appeal, and no other member shall participate in the discussion. The presiding officer shall then put the question, "Shall the decision of the Chair be sustained?" If the majority of the members present vote "Aye", the ruling of the Chair is sustained, otherwise it is overruled.

RULE 8 LIMITATION OF DEBATE

No member of the Council or public shall be allowed to speak more than once upon any one subject until all the Council members have had an opportunity to speak. No member of the Council or of the public shall be allowed to speak for a period longer than five minutes, without the leave of the presiding officer. Citizens groups shall identify themselves and shall be represented in presentation to the Council by one of the members of the group and cumulative or redundant speeches to the Council on the same issue shall be terminated at the discretion of the presiding officer.

RULE 9 VOTING

The vote on any question shall be taken by Ayes and Nays to be electronically tabulated, and the results thereof shall be disclosed simultaneously. In the event that the vote is unable to be electronically recorded, there shall be a roll call vote. It shall be out of order for members to explain their vote during the voting process. There shall be no additional debate or speaking after the vote is taken.

RULE 10 MOTIONS TO BE STATED BY CHAIR

When a motion is made and seconded, it shall be so stated by the Chair or, at his direction, by the City Clerk, before debate commences.

RULE 11 CITY COUNCIL AGENDA FORMAT

NORMAL BUSINESS

- I. CALL TO ORDER
- II. INTRODUCTIONS
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE
- V. ROLL CALL
- VI. SUMMARY OF CURRENT OR RECENT EVENTS BY PRESIDING OFFICER AND/OR CITY MANAGER
- VII. APPROVAL OF MINUTES
- VIII. CANVASS ELECTION RETURNS, SPECIAL AWARD PRESENTATIONS, SPECIAL GUESTS, RESOLUTIONS OR COMMENDATION, PROCLAMATIONS, ETC.

AGENDA ITEMS

- I. CONSENT AGENDA
- II. PUBLIC HEARINGS
- III. PUBLIC (5-minute time limit unless additional time allotted by Presiding Officer)
- IV. COMMUNICATIONS AND/OR PETITIONS

- V. MAYOR AND COUNCIL ITEMS
- VI. CITY MANAGER ITEMS
- VII. SCHEDULED AGENDA BUSINESS
- VIII. RESOLUTIONS
- IX. ORDINANCES
- X. ADJOURNMENT

Council Agenda formats are considered to be general guidelines for the published agenda. The Mayor is hereby authorized to deviate from the arrangement as set forth therein, or to delete a specific category from a particular agenda, at his or her discretion.

RULE 12

MOTION TO ADJOURN – WHEN NOT IN ORDER – NOT DEBATABLE

A motion to adjourn shall be in order at any time, except as follows: (A) When repeated without intervening business or discussion; (B) When made as an interruption of a member while speaking; (C) When the previous question has been ordered; and (D) While a vote is being taken. A motion to adjourn is debatable only as to the time to which the meeting is adjourned.

RULE 13

CONSIDERATION OF PETITIONS

Only those petitions submitted in writing at a regular Council meeting by a citizen of the City shall require Council action within thirty (30) days thereafter. (Article II, Section 18, City Charter).

All other petitions submitted to the Mayor and/or Council members or other agencies of the City in the regular course of business, shall be considered in accordance with the laws of the State of Arizona, the City Charter or the City Code of the City of Prescott. (Examples: Annexation, improvement district, protests, elections, etc.)

Unsigned communications or petitions, including newspaper articles or clippings, shall not be introduced in the minutes of Council meetings.

RULE 14

MOTION TO SUSPEND THE RULES

A motion to suspend the rules set forth herein shall be in order unless it pertains to rules mandated by the Charter of the City of Prescott or the laws of the State of Arizona. A motion to suspend the rules must be seconded, it is not debatable (except that the reason for the motion may be briefly explained by the mover) and requires at least a two-thirds vote of the members of the Council present at the meeting.