



PRESCOTT CITY COUNCIL REGULAR VOTING MEETING AGENDA *A M E N D E D

**PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, SEPTEMBER 27, 2011
3:00 PM**

**Prescott City Hall Council Chambers
201 South Cortez
Prescott, Arizona
(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:** Chaplain Walter Crites, Veterans of Foreign Wars
- ◆ **PLEDGE OF ALLEGIANCE:** Councilman Scamardo
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

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

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

I. CONSENT AGENDA

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

- A. [Approval to purchase Ammonium Lignon Sulfonate \(aka Lignobond\) from Shilon Corporation for \\$.9768/gallon, not to exceed \\$20,000.00.](#)
- B. [Authorization to pay invoice from Application Data Systems, Inc., \(ADSi\) in the amount of \\$13,869.00 for annual support and maintenance for record storage and retrieval system public safety software system utilized by the Police Department, period of September 1, 2011, through August 31, 2012.](#)

- C. Authorization to pay invoice from Application Data Systems, Inc., (ADSi) in the amount of \$16,990.00 for annual support and maintenance for Computer Aided Dispatch (CAD) software system utilized by the Prescott Regional Communications Center, period of September 1, 2011, through August 31, 2012.
- D. Authorization to pay invoice from Micro Force in the amount of \$15,400.99 for annual support and maintenance for the Micro Focus Compiler utilized by the Prescott Regional Communications Center.
- E. Adoption of Resolution No. 4098-1208 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement with the Fort McDowell Yavapai Nation (FMYN), on behalf of the Arizona Wildfire and Incident Management Academy and Williamson Valley Fire District, for acceptance of \$3,000.00 from FMYN for general operating expenses for the Arizona Wildfire Academy (\$1,000.00) and Williamson Valley Fire District (\$2,000.00), and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- F. Adoption of Ordinance No. 4814-1214 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, granting a natural gas utility easement to UNS Gas, Inc., to provide natural gas service to The Shops at Prescott Gateway, and declaring an emergency.
- G. Approval of minutes of the Prescott City Council Workshop of September 6, 2011, and the Regular Voting Meeting of September 13, 2011.

II. REGULAR AGENDA

- A. Appointment of Don Michelman as Temporary Vice Chairman of the Planning and Zoning Commission.
- B. Public Hearing and consideration of a Bingo application for Clearwater Café located within the Prescott Racquet Club at 1 Kingswood, Prescott, Arizona.
- C. Presentation by Public Works and Police Departments re performance of stop signs and related public comments (total public comment period limited to 30 minutes).
- D. Adoption of Resolution No. 4097-1207 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Library Service Agreement for FY2011/2012 with the Yavapai County Library District to participate in cooperative funding to the benefit of the City of Prescott Public Library,

- and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- E. Adoption of Resolution No. 4096-1206 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting a grant from the Governor's Office of Highway Safety in the amount of \$55,983 through the 2012 Highway Safety Plan and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
 - F. Approval to purchase pavement deicing agents from Envirotech Services, Inc., in an amount not to exceed \$75,000.00.
 - G. Approval of an agreement with Mountain Bike America, LLC, dba Epic Rides, LLC, for the 2012-2014 Whiskey Off-Road Mountain Bike Events.
 - H. Approval of the Master Plan Revision for the Preserve at Prescott (Downer Trail). (Owner/Applicant: Westridge Preserve, LLC/Tom Devereaux, No. MP11-001)
 - I. Approval of a Real Estate Purchase Agreement with Westridge Preserve, LLC, for acquisition of a minimum of 30 acres of open space at the purchase price of \$56,000.00.
 - J. Adoption of Ordinance No. 4813-1213 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona granting a utility easement to SunE AZ1, LLC (SunEdison) in the vicinity of Ernest A. Love Field.
 - K. Approval of a one-year extension to Contract No. 2008-325 with Duke's Root Control for sewer line treatment, in the amount of \$80,000.00.
 - L. Approval of a Construction Manager at Risk (CMAR) agreement for preconstruction services with PCL/Fann a Joint Venture for the Airport Water Reclamation Facility, Phase I Expansion, in an amount not to exceed \$319,938.00.
 - M. Award of bid and contract for the Old North Reservoir Replacement Project to Fann Contracting, Inc., in the amount of \$3,107,740.00.
 - N. Adoption of Ordinance No. 4807-1207 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the purchase of real property belonging to John G. Balentine and Vicki E. Balentine, husband and wife and as co-trustees of the John G. Balentine and Vicki E. Balentine Revocable Trust and Howard W. Balentine and Deborah A. Balentine, husband and wife and as co-trustees of the Howard W. Balentine and Deborah A. Balentine Family Trust for the construction of the Zone 19 Water Storage Reservoir, and authorizing the Mayor and City staff to take all necessary steps to effectuate said purchases.

- O.* Adoption of Resolution No. 4099-1209 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving Amendment No. 1 to Intergovernmental Agreement No. 2011-097 (State No. OER-11-IGA-GS-70) with the Governor’s Office of Economic Recovery increasing and accepting funding in the new total amount of \$434,000.00 to support and expand the allowable public safety purposes for which said funding may be applied, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

- P.* Approval of a purchase agreement with The Pulmonary Foundation for real and other appurtenant property located at 215 N. McCormick Street; and adoption of Resolution No. 4100-1210 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving the transfer of unencumbered appropriations from the Grants Fund to the Miscellaneous Gifts & Donations Fund.

III. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

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

Elizabeth A. Burke, MMC, City Clerk



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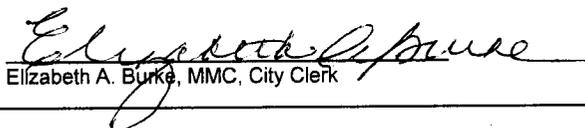
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III. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on 9-22-11
at 11:00 a.m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

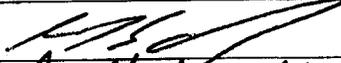

Elizabeth A. Burke, MMC, City Clerk

I-A

COUNCIL AGENDA MEMO – 09/27/2011
 PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

DEPARTMENT: Field Operations – Streets Division

AGENDA ITEM CAPTION: Lignobond Purchase FY 12

Approved By:		Date:
Department Director: Chad McDowell		9-15-11
City Manager: Craig McConnell		9-15-11

Good(s) or Service(s) to be Purchased	
Description of Item(s) Check if Prof. Services <input type="checkbox"/>	Ammonium Lignon Sulfonate, a.k.a. Lignobond
Quantity	20,000 gallons per year
Necessity/Use	A polymeric liquid used as a bonding agent for application of millings as a dust suppression membrane.

Summary of Written Quotes (exclusive of tax) or Professional Services Proposals			
		** See Note (1) below for professional services **	
x	Vendor (Name and Location)	Price	Delivery/Schedule
X	1. Shilon Corporation	\$0.9768/gallon	Included
	2. Desert Mountain Corp.	\$1.29/gallon	Included
	3.		

x = recommended award
 Notes: (1) Professional services may not be selected by price; indicate the price, & delivery only for the vendor selected on the basis of qualifications, after which the final price and schedule were negotiated.
 (2) Provide justification for sole source purchases in "Additional Comments" below.

Budget Information	Fund Name: Streets & Open Space 1% - Street Maintenance Materials
---------------------------	--

Additional Comments:
 Shilon Corporation provided the only bid that meets our specifications.

Attachments	1. Shilon Corporation
	2. Desert Mountain Corp.
	3.

SHILON CORPORATION

10190 SOUTH HAVEN

LAS VEGAS, NEVADA 89123

(702) 361-5325

(702) 361-5425 Fax

**City of Prescott
Att: Bobbie King
Streets Division.**

August 28, 2011

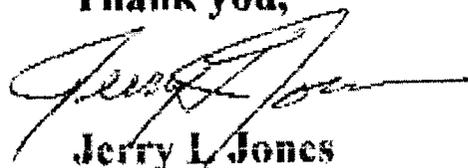
Subject Lignobond 50, 2011-2012 Bid proposal

**Lignobond 50 Concentrate (47% Lignin & 20 to 22% wood sugars)
Delivered to Prescott City Yard In
minimum 24 ton tanker loads. Approx. 5000 Gallons per delivery.**

**Your Delivered Price would be \$203.50 Per Ton. Plus Applicable
Arizona Sales Tax.**

I have included a spec sheet for Lignobond 50.

Thank you,



Jerry L. Jones

.9768/gal



DESERT MOUNTAIN CORPORATION



QUOTE <i>from Lou Snow</i>			DATE 8-27--2011																																																								
Bill To:	CITY OF PRESCOTT 2800 SUNDG RANCH ROAD PRESCOTT AZ. 86301 ATT: BOBBIE KING (928) 777-1126		NOTE: CUSTOMER TO PROVIDE HIGH VOLUME WATER SOURCE AT SITE FOR DILLUTION AND WASH OUT.																																																								
Shp To:	SAME																																																										
			Terms: AS AGREED	Tax ID: EX TAX																																																							
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Quantity</th> <th style="width: 20%;">Item</th> <th style="width: 10%;">Units</th> <th style="width: 40%;">Description</th> <th style="width: 10%;">Unit Price</th> <th style="width: 10%;">Total</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">4500</td> <td>MAGNESIUM CHLORIDE</td> <td style="text-align: center;">GALLONS</td> <td>ROAD SAVER DUST CONTROL</td> <td style="text-align: center;">\$.83 GALLON</td> <td style="text-align: right;">\$ 3,735.00</td> </tr> <tr> <td style="text-align: center;">4500</td> <td>AMMONIUM LIGNIN</td> <td style="text-align: center;">GALLONS</td> <td>ROAD LOC STABILIZER</td> <td style="text-align: center;">\$ 1.29 GALLON</td> <td style="text-align: right;">\$5,805.00</td> </tr> <tr> <td style="text-align: center;">24</td> <td>GRANULAR</td> <td style="text-align: center;">TONS</td> <td>ICE SLICER ICE MELT</td> <td style="text-align: center;">\$ 125.00 TON</td> <td style="text-align: right;">\$ 3,000.00</td> </tr> <tr> <td style="text-align: center;">4500 GAL MIN.</td> <td>APPLICATION</td> <td style="text-align: center;">HOURS</td> <td>COMPUTER CONTROLLED APPLICATION @ \$95.00/hr.x 4 hr minimum</td> <td style="text-align: center;">\$ 95.00/hr.</td> <td style="text-align: right;">\$ 380.00</td> </tr> <tr> <td colspan="4"></td> <td style="text-align: center;">Tax</td> <td></td> </tr> <tr> <td colspan="4"></td> <td style="text-align: center;">Shipping</td> <td style="text-align: center;">N/A</td> </tr> <tr> <td colspan="4"></td> <td style="text-align: center;">Miscellaneous</td> <td></td> </tr> <tr> <td colspan="4"></td> <td style="text-align: center;">Balance Due</td> <td></td> </tr> </tbody> </table>						Quantity	Item	Units	Description	Unit Price	Total	4500	MAGNESIUM CHLORIDE	GALLONS	ROAD SAVER DUST CONTROL	\$.83 GALLON	\$ 3,735.00	4500	AMMONIUM LIGNIN	GALLONS	ROAD LOC STABILIZER	\$ 1.29 GALLON	\$5,805.00	24	GRANULAR	TONS	ICE SLICER ICE MELT	\$ 125.00 TON	\$ 3,000.00	4500 GAL MIN.	APPLICATION	HOURS	COMPUTER CONTROLLED APPLICATION @ \$95.00/hr.x 4 hr minimum	\$ 95.00/hr.	\$ 380.00					Tax						Shipping	N/A					Miscellaneous						Balance Due	
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<p>NOTE: FUEL SURE CHARGE APPLICABLE AT TIME OF DELIVERY To accept this sales order please sign and fax to (602)-943-0685 AND (505)-598-0436</p>																																																											



LOU SNOW CONSULTANT
 602- 799 7010
 1-800 3759264
 Lou Snow Cell#: 602-799-7010
 Office 1 -800-375-9264
Fax: 602-943-0685
E-Mail: lsnow@desertmtncorp.com
Web Site: www.desertmtncorp.com

I-B

COUNCIL AGENDA MEMO – (SEPTEMBER 27, 2011)
PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

DEPARTMENT: POLICE

AGENDA ITEM CAPTION: REQUEST COUNCIL APPROVAL ON APPLICATION DATA SYSTEMS, INC. (ADSi) INVOICE IN THE AMOUNT OF \$13,869.

Approved By:

Date:

Department Director: MICHAEL KABEL

9-8-11

City Manager: CRAIG MCCONNELL

9-9-11

Good(s) or Service(s) to be Purchased

Description of Item(s)
Check if Prof. Services

Annual support and maintenance for ADSi public safety software system utilized by the Police Department. Valid September 1, 2011 through August 31, 2012. This maintenance agreement has been renewed annually since 1999. ADSi is the sole source, as well as a proprietary, vendor.

Quantity

N/A

Necessity/Use

The ADSi public safety software system provides the Police Department with a secure and dependable record storage and retrieval system. Payment would allow the Department continued use of the software system for another year, including support and maintenance.

Summary of Written Quotes (exclusive of tax) or Professional Services Proposals

** See Note (1) below for professional services **			
x	Vendor (Name and Location)	Price	Delivery/Schedule
1.			
2.			
3.			

x = recommended award

Notes: (1) Professional services may not be selected by price; indicate the price & delivery only for the vendor selected on the basis of qualifications, after which the final price and schedule were negotiated.

(2) Provide justification for sole source purchases in "Additional Comments" below.

Budget Information

Fund Name: Records – Computer Maintenance: 1004605-8520

Additional Comments:

Attachments

1. ADSi Invoice (ON FILE AT POLICE DEPT.)
- 2.
- 3.

I-C

COUNCIL AGENDA MEMO – (SEPTEMBER 27, 2011)
PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

DEPARTMENT: REGIONAL COMMUNICATIONS CENTER

AGENDA ITEM CAPTION: REQUEST COUNCIL APPROVAL ON APPLICATION DATA SYSTEMS, INC. (ADSi) INVOICE IN THE AMOUNT OF \$16,990.

Approved By:

Date:

Department Director: MICHAEL KABEL *[Signature]*

9-8-11

City Manager: CRAIG MCCONNELL *[Signature]*

9-9-11

Good(s) or Service(s) to be Purchased

Description of Item(s) Check if Prof. Services <input checked="" type="checkbox"/>	Annual support and maintenance for ADSi Computer Aided Dispatch (CAD) software system utilized by the Prescott Regional Communications Center. Valid September 1, 2011 through August 31, 2012. This maintenance agreement has been renewed annually since 1999. ADSi is the sole source, as well as a proprietary, vendor.
Quantity	N/A
Necessity/Use	The ADSi Computer Aided Dispatch software system provides the Communications Center with a secure and dependable means of inputting calls for service and dispatching public safety agencies. Payment would allow the Communications Center continued use of the software system for another year, including support and maintenance.

Summary of Written Quotes (exclusive of tax) or Professional Services Proposals

** See Note (1) below for professional services **			
x	Vendor (Name and Location)	Price	Delivery/Schedule
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Notes: (1) Professional services may not be selected by price; indicate the price & delivery only for the vendor selected on the basis of qualifications, after which the final price and schedule were negotiated.

(2) Provide justification for sole source purchases in "Additional Comments" below.

Budget Information

Fund Name: Communications Center
Computer Maintenance: 1005200-8520

Additional Comments: Request Council to approve multi-year authorization for annual support and maintenance for a period of five (5) years. In providing this authorization, either City of Prescott and/or ADSi can terminate the extension of the annual support and maintenance agreement with thirty (30) days written notice.

Attachments

1. ADSi Invoice (ON FILE AT POLICE DEPT.)
- 2.
- 3.

I-D

COUNCIL AGENDA MEMO – (SEPTEMBER 27, 2011)
PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

DEPARTMENT: REGIONAL COMMUNICATIONS CENTER

AGENDA ITEM CAPTION: REQUEST COUNCIL APPROVAL ON MICRO FORCE INVOICE IN THE AMOUNT OF \$15,400.99.

Approved By:

Date:

Department Director: MICHAEL KABEL

9-8-11

City Manager: CRAIG MCCONNELL

9-9-11

Good(s) or Service(s) to be Purchased

Description of Item(s) Check if Prof. Services <input checked="" type="checkbox"/>	Annual support and maintenance for Micro Focus Compiler (C++) service express support and application server for server express support utilized by the Prescott Regional Communications Center. Valid October 2011 through October 2012. This maintenance agreement has been renewed annually since 1999. Micro Force is the sole source, as well as a proprietary, vendor.
Quantity	N/A
Necessity/Use	The Micro Focus Compiler (C++) tracks the processes on the Computer Aided Dispatch (CAD) server and run software for the CAD dispatch system. Payment would allow the Communications Center continued use of the Micro Focus Compiler (C++) system for another year, including support and maintenance.

Summary of Written Quotes (exclusive of tax) or Professional Services Proposals

x	Vendor (Name and Location)	** See Note (1) below for professional services **	
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Budget Information

Fund Name: Communications Center
Computer Maintenance: 1005200-8520

Additional Comments: Request Council to approve multi-year authorization for annual support and maintenance for a period of five (5) years. In providing this authorization, either City of Prescott and/or Micro Force can terminate the extension of the annual support and maintenance agreement with thirty (30) days written notice.

Attachments	1. Micro Force Invoice (ON FILE AT POLICE DEPT.)
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I-E

COUNCIL AGENDA MEMO - September 27, 2011

DEPARTMENT: Fire

AGENDA ITEM: Resolution No. 4098-1208 approving an Intergovernmental Agreement between the City of Prescott and Fort McDowell Yavapai Nation for transfer of funds

Approved By:

Date:

Department Head: Bruce Martinez

Finance Director: Mark Woodfill

City Manager: Craig McConnell



9-21-11

Background

The City of Prescott-sponsored Arizona Wildfire Academy (AWA), Prescott Fire Department, and Williamson Valley Fire District (WVFD) submitted separate grant applications to Fort McDowell Yavapai Nation for potential 2011 tribal revenue-sharing. The Nation has made available a total of \$3,000 for distribution, \$1,000 to AWA and \$2,000 to WVFD.

Intergovernmental Agreement

This is an intergovernmental agreement between the City of Prescott and the Fort McDowell Yavapai Nation to fund public programs in the City of Prescott and surrounding communities, pursuant to a tribal revenue sharing agreement authorized by Section 12 payment of regulatory costs, tribal contributions Fort McDowell Yavapai Nation and the State of Arizona gaming compact 2002, and A.R.S. 5-601.02 Fort McDowell Arizona.

As in previous years, the IGA identifies the City of Prescott as the "Designated Entity" for distribution of 12% annual contributions from the Fort McDowell Yavapai Nation. The IGA is necessary to enable the City of Prescott to be the pass-thru agent for both the AWA and WVFD.

Financial

The \$1,000 award to the AWA will be utilized for wildland firefighter training and education. The \$2,000 awarded to the WVFD project is being passed through the City of Prescott and will have no cost or impact to the City's budget. No City match or funding is required for either of these awards. An amount sufficient to cover grant awards the Fire Department may receive from a multitude of sources, including this one, was included in the FY 2012 budget.

Recommended Action: MOVE to adopt Resolution No. 4098-1208.

RESOLUTION NO. 4098-1208

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE FORT MCDOWELL YAVAPAI NATION (FMYN), ON BEHALF OF THE ARIZONA WILDFIRE AND INCIDENT MANAGEMENT ACADEMY AND WILLIAMSON VALLEY FIRE DISTRICT, FOR ACCEPTANCE OF \$3,000.00 FROM FMYN FOR GENERAL OPERATING EXPENSES FOR THE ARIZONA WILDFIRE ACADEMY (\$1,000.00) AND WILLIAMSON VALLEY FIRE DISTRICT (\$2,000.00), AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, the Fort McDowell Yavapai Nation may enter into agreements with cities, towns or counties to distribute 12% of its annual contribution under Section 12(b)(1) of the Compact to benefit the general public or promote commerce and economic development; and

WHEREAS, ARS §§5-601.02 and 11-952 authorize "public agencies" to enter into intergovernmental agreements for cooperative resource sharing and distribution of proceeds from gaming; and

WHEREAS, the parties hereto wish to enter into an agreement to provide for such funding.

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 an Intergovernmental Agreement between the City of Prescott and the Fort McDowell Yavapai Nation and agrees to accept such funds, on behalf of and in the amounts as follows:

- | | | |
|----|--|------------|
| A. | Arizona Wildfire Incident Management Academy | \$1,000.00 |
| B. | Williamson Valley Fire District | \$2,000.00 |

Section 2. THAT the Mayor and staff are hereby authorized to execute the Intergovernmental Agreement, Exhibit A attached hereto and made a part hereof, 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 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

Intergovernmental Agreement

Between

The City of Prescott and The Fort McDowell Yavapai Nation

For Funds for Public Programs

In the City of Prescott

And

Surrounding Communities

Pursuant To A Tribal Revenue Sharing Agreement

Authorized By

Section 12 Payment of Regulatory Costs; Tribal Contributions

Fort McDowell Yavapai Nation and State of Arizona

Gaming Compact 2002,

And

A.R.S. § 5-601.02

Fort McDowell, Arizona

**Intergovernmental Agreement
Between
The City of Prescott and The Fort McDowell Yavapai Nation
for Funds for Public Programs
in the City of Prescott and Surrounding Communities**

This Intergovernmental Agreement (this "Agreement") is entered into by and between the City of Prescott, an Arizona municipal corporation (the "City") and the Fort McDowell Yavapai Nation (the "Nation"), a Federally-Recognized Indian Tribe, pursuant to Section 12 Payment of Regulatory Costs; Tribal Contributions ("Section 12") of the Fort McDowell Yavapai Nation and State of Arizona Gaming Compact 2002 (the "Compact") and A.R.S. § 5-601.02.

Recitals

- A. The City and Nation may enter into an agreement with one another for the distribution of 12% of the Nation's annual contribution under Section 12(b)(1) of the Compact to cities, towns, or counties that benefit the general public or promote commerce and economic development and pursuant to A.R.S. § 5-601.02.
- B. The Nation is authorized by Section 13(A)(15) of Article V, Legislative Branch, of the Constitution of the Fort McDowell Yavapai Nation to consult, negotiate, contract and conclude and perform agreements with Federal, state, local governments and Indian tribes, as well as any person, association, partnership, corporation, government or other private entity.
- C. The City is authorized by A.R.S. §§ 5-601.02 and 11-952 to enter into agreements with Indian Tribes for the purpose of accepting distributions to cities, towns or counties for governmental services that benefit the general public, including public safety, mitigation of impacts of gaming, or promotion of commerce and economic development.
- D. The City and Nation desire to enter into this Agreement to provide funds for the purpose of promoting tourism and other public programs in the State of Arizona and specifically the City of Prescott and surrounding communities, as designated by the Nation, hereinafter referred to as the "Designated Entity," as more particularly described in Exhibit A attached hereto and incorporated herein by reference.
- E. The City and Nation desire to enter into this Agreement to define the terms and conditions of the Nations' funding of the Designated Entity.
- F. The total cost of the Designated Project(s) is \$3,000.00
- G. The \$3000.00 is hereby made available for the Designated Entity from revenue generated by the Nation's Gaming Enterprise also known as the Fort McDowell Casino.
- H. The Nation intends to provide \$3000.00 (the "Funds"), which represents a portion of its contribution pursuant to a Tribal Revenue Sharing Agreement authorized by Section 12 of the Compact and A.R.S. § 5-601.02.

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, the Nation and the City, hereby mutually agree as follows:

1. **Designated Entity.** The Designated Entity(s) is the City or a non-profit entity within the City of Prescott which operates for the public benefit in the City of Prescott and surrounding areas, as identified in the attached Exhibit A.
2. **Disbursement of Funds.** After receipt of the Funds from the Nation, the City shall send a payment to such Designated Entity(s) in the amount of the payment received from the Nation as expeditiously as possible.
3. **Consideration and Reliance.** The Nation expressly acknowledges that the City's promise to accept and disburse to the Designated Entity all Funds received by the City pursuant to this Agreement is full and adequate consideration and shall render this promise to provide funding irrevocable, and this Agreement shall constitute a binding obligation of the Nation under applicable law.
4. **Limited Duties of City.** The Nation further expressly agrees that, except as specifically set forth in this Agreement, the City has no duties under or related to this Agreement other than to receive the Funds and deliver same to the Designated Entity; selection of Designated Entity and determination as to the amount of funding are solely at the discretion of the Nation. The Parties agree that there are no third-party beneficiaries to this Agreement.
5. **Financing; Verification of Payment.**
 - A. *Nation Deposit.* The Nation shall deposit with the City the amount of \$3000.00 within thirty (30) days of the Effective Date of this Agreement to be disbursed by the City according to the Designated Project amounts in Exhibit A.
 - B. *Verification of Payment.* At the request of the Nation, the City shall provide a verification of payment to the Designated Entity. The City's responsibility is limited to disbursement to each Designated Entity and the City has no further duty with regard to third party, provided that the disbursement is complete.
6. **Inspection and Audit.** To ensure compliance with the City's limited duties herein, the Nation may inspect any and all records maintained by the City with respect to the Project upon seven (7) days prior written notice to the City. This Section 6 shall survive termination, cancellation, or revocation, whether whole or in part, of this Agreement for a period of one (1) year following the date of such termination, cancellation, or revocation.
7. **Report.** The City of Prescott agrees to advise the recipients that the Nation request a written report , and describing the purposes or Designated Project(s), to which the funds were put by the Designated Entity(s) who received funding under this agreement. This report should be prepared and sent to the Nation by March 1, 2012.
8. **Term and Termination of Agreement.**
 - A. *Effective Date.* This Agreement shall be effective on the date it is signed by the Nation's authorized representative.

- B. *Term.* This Agreement shall commence upon the Effective Date and shall terminate when the funds have been received by the City and disbursed to the Designated Entity(s).
- C. *Termination.* The Nation may terminate this Agreement with or without cause at any time prior to providing payment to the City, provided that such notice shall be in writing and delivered to the parties' designated representatives, as set forth in the Notice section.

9. Indemnification.

- A. *Indemnification.* Each party shall indemnify, defend, and hold harmless the other party, its governing body, officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's, and account's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of the negligence or willful misconduct of the indemnifying party, its employees or agents in performing the duties set forth in this Agreement.
- B. *No Liability for Other Party's Debts and Obligations.* Neither party shall be liable for any debts, accounts, obligations, nor other liabilities whatsoever of the other, including and without limitation the other party's obligation to withhold employment and income taxes for itself or any of its employees.
- C. *Severability.* This Section 9 shall survive termination, cancellation, or revocation, whether whole or in part, of this Agreement for a period of one (1) year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. § 12-821.01, in which case this Section 9 shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this Section 9 survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.

10. Interpretation of Agreement.

- A. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
- B. *Amendment.* This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by both parties.
- C. *Construction and Interpretation.* All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals contained herein.
- D. *Relationship of the Parties.* Neither party shall be deemed to be an employee or agent of the other party to this Agreement.
- E. *Days.* Days shall mean calendar days.
- F. *Severability.* In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that

any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

11. **Waiver.** Waiver or delay in enforcement by either party of any breach of a term, covenant, or condition contained herein shall not be deemed a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition contained herein.
12. **Notification.** Any notice, communication, or modification shall be given in writing and shall be given by registered or certified mail or in person to the following individuals. The date of receipt of such notices shall be the date the notice shall be deemed to have been given.

For the Fort McDowell Yavapai Nation:

Dr. Clinton M. Pattea, President
Fort McDowell Yavapai Nation
P.O. Box 17779
Fountain Hills, AZ 85269

Thomas Moriarty, General Counsel
Fort McDowell Yavapai Nation
P.O. Box 17779
Fountain Hills, AZ 85269

For the City of Prescott:

Craig McConnell,
City Manager
221 S. Cortez Street
Prescott, AZ 86303

Gary Kidd,
City Attorney
221 S. Cortez Street
Prescott, AZ 86303

13. **Assignment and Delegation.** Neither party shall assign nor delegate any of its rights, interest, obligations, covenants, or performance under this Agreement. Any termination shall not relieve either party from liabilities or costs already incurred under this Agreement.
14. **Non-Waiver of Sovereign Immunity.** Nothing in this Agreement, Exhibit A or the Funding Agreements shall be construed to waive the Sovereign Immunity of the Nation.

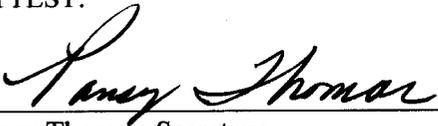
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, The City of Prescott has caused this Intergovernmental Agreement to be executed by the Mayor, upon resolution of the City Council and attested by the Clerk of the City, and the Fort McDowell Yavapai Nation has caused this Intergovernmental Agreement to be executed by the Nation's Tribal Council and attested to by its Clerk.

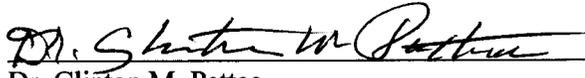
This Agreement is effective upon signature of a duly appointed representative of the Fort McDowell Yavapai Nation.

ATTEST:

FORT MCDOWELL YAVAPAI NATION



Pansy Thomas, Secretary
Fort McDowell Yavapai Nation



Dr. Clinton M. Pattea
President, Tribal Council
Fort McDowell Yavapai Nation

9/1/11

Date

ATTEST:

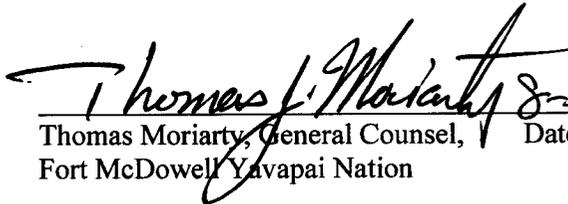
CITY OF PRESCOTT

Liz Burke, City Clerk
City of Prescott

Marlin Kuykendall, Mayor
City of Prescott

Date

The undersigned attorney acknowledges that he has reviewed the above Agreement on behalf of the FORT MCDOWELL YAVAPAI NATION, and has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the Constitution of the Fort McDowell Yavapai Nation, Section 13(A)(15), Article V Legislative Branch, as adopted October 19, 1999 and approved by the U.S. Deputy Commissioner of Indian Affairs November 12, 1999. This acknowledgement shall not constitute nor be construed as a waiver of the Sovereign Immunity of the Fort McDowell Yavapai Nation.


Thomas Moriarty, General Counsel, Date 8-30-11
Fort McDowell Yavapai Nation

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges that (i) he has reviewed the above Agreement on behalf of the CITY OF PRESCOTT and (ii) as to the City of Prescott only, has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the laws of the State of Arizona.

Gary Kidd, City Attorney, Date
City of Prescott

**EXHIBIT A
DESIGNATED PROJECTS 2011-2012**

Project(s)	Purpose	Award	Contact
City of Prescott	AZ Wildfire/Incident Mgmt Academy	\$1,000.00	Tony Sciacca 928-442-3563 tony@azwildfireacademy.org
	Williamson Valley FD Equipment	\$2,000.00	George Price 928-717-2304
TOTAL		\$3,000.00	

I-F

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Ordinance No. 4814-1214 granting a Natural Gas Utility Easement to UNS Gas, Inc., to provide natural gas service to The Shops at Prescott Gateway and declaring an emergency

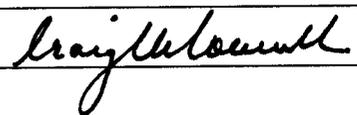
Approved By:

Date:

Department Head: Mark Nietupski

Finance Director: Mark Woodfill

City Manager: Craig McConnell



9-22-11

Item Summary

This item is to grant a Natural Gas Utility Easement to UNS Gas, Inc. (Unisource), to provide natural gas service to The Shops at Prescott Gateway.

Background

Grading and infrastructure work for The Shops at Prescott Gateway began in June of this year. Construction of the building "Major A" which includes Trader Joe's began in late July. The requested easement is for natural gas mains and lines necessary to provide service to all of the buildings in the initial phase of the development.

Attached are Exhibits "A" & "B" presenting the Map and Legal Description of the easement which connects to the Lee Boulevard public right-of-way and extends through the site.

An emergency clause has been included with this Ordinance to allow this line to move forward immediately.

There are no costs for the easement except for recording fees.

Attachments

- Exhibit "A" Legal Description
- Exhibit "B" Map of Gas Easement
- Natural Gas Utility Easement
- Ordinance

Recommended Action: MOVE to adopt Ordinance No. 4814-1214.

ORDINANCE NO. 4814-1214

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, GRANTING A NATURAL GAS UTILITY EASEMENT TO UNS GAS, INC., TO PROVIDE NATURAL GAS SERVICE TO THE SHOPS AT PRESCOTT GATEWAY AND DECLARING AN EMERGENCY

RECITALS:

WHEREAS, the City Council of the City of Prescott has determined that granting of a natural gas utility easement, more particularly described in the attached Exhibits "A" & "B" would benefit the City of Prescott, and such granting of easements is provided for by the UNS Gas, Inc., Franchise Agreement.

ENACTMENTS:

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

SECTION 1. THAT a natural gas utility easement to UNS Gas, Inc., as more particularly described and set forth in Exhibits "A" & "B", attached hereto and made a part hereof, is hereby granted.

SECTION 2. THAT the attached easement is hereby ordered to be recorded in the Office of the Yavapai County Recorder, Arizona.

SECTION 3. THAT, an EMERGENCY is hereby declared to exist and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

When recorded, mail to:

CITY OF PRESCOTT
CITY CLERK
Interoffice Mail
Prescott, AZ 86302

NATURAL GAS UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The City of Prescott hereinafter called "Grantor", hereby grants unto UNS Gas Inc., an Arizona corporation duly franchised by the City of Prescott and doing business in the State of Arizona, hereinafter referred to as the "Grantee", its successors or assigns, the right of ingress and egress over and through the following described property, for natural gas utility purposes, to use and construct same, together with the right to construct, maintain and place any and all natural gas facilities therein, the Natural Gas Utility Easement being more particularly described on the attached Exhibits "A" & "B".

No structures will be permitted over the easement without the written permission of the Grantee.

This easement shall run with the land, and shall be perpetual unless earlier abandoned or vacated by the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand this ____ day of _____, 2011.

GRANTOR CITY OF PRESCOTT :

Marlin D. Kuykendall, Mayor

ATTEST:

APPROVED AS TO FORM:

Elizabeth A. Burke, City Clerk

Gary D. Kidd, City Attorney



EXHIBIT A

LEGAL DESCRIPTION

S.R. 69 & LEE BOULEVARD, PRESCOTT, AZ
16' GAS EASEMENT

A 16-FOOT GAS EASEMENT LYING WITHIN THAT PORTION OF THE WEST HALF OF SECTION 31, TOWNSHIP 14 NORTH, RANGE 1 WEST, GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT AN ALUMINUM CAP STAMPED 'WOOD/PATEL RLS 27239 2007' FOUND AT THE WEST QUARTER CORNER OF SAID SECTION 31, FROM WHICH A G.L.O. BRASS CAP STAMPED 1926 FOUND AT THE NORTHWEST CORNER OF SAID SECTION 31 BEARS N. 01°07'54" E. (BASIS OF BEARING), A DISTANCE OF 2622.71 FEET;

THENCE N. 01°07'54" E. ALONG THE WEST LINE OF SAID SECTION 31, A DISTANCE OF 362.56 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF ARIZONA STATE ROUTE 69;

THENCE DEPARTING SAID WEST LINE, S. 89°24'21" E. ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 322.49 FEET;

THENCE S. 83°16'22" E., A DISTANCE OF 308.54 FEET;

THENCE S. 63°53'20" E., A DISTANCE OF 328.02 FEET;

THENCE S. 73°42'20" E., A DISTANCE OF 228.90 FEET;

THENCE S. 51°06'13" E., A DISTANCE OF 123.23 FEET;

THENCE S. 54°33'14" E., A DISTANCE OF 401.52 FEET;

THENCE S. 64°54'12" E., A DISTANCE OF 308.71 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS POINT THAT BEARS N. 33°18'53" E., A DISTANCE OF 2989.79 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°37'06", AN ARC LENGTH OF 188.81 FEET TO A FOUND REBAR WITH CAP STAMPED 'LS 17187' AT THE NORTHWESTERLY CORNER OF ADJACENT PARCEL 5

Page 1 of 3

(p) 602.286.9300 | (f) 602.286.9400 | www.optimus-usa.com
4650 E. Cotton Center Boulevard | Suite #140 | Phoenix, AZ 85040

AS DESCRIBED IN PART 5 OF EXHIBIT A OF THAT CERTAIN CONSTRUCTION,
OPERATION AND RECIPROCAL EASEMENT AGREEMENT RECORDED IN BOOK 3832,
PAGE 968, YAVAPAI COUNTY RECORDS (Y.C.R.), ARIZONA;

THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE, S. 30°08'35" W. ALONG THE
WESTERLY LINE OF SAID ADJACENT PARCEL 5, A DISTANCE OF 182.41 FEET TO A
FOUND REBAR WITH CAP STAMPED 'LS 13941';

THENCE S. 65°54'45" E., A DISTANCE OF 81.39 FEET TO A FOUND REBAR WITH CAP
STAMPED 'LS 17187', 0.17 FEET NORTH AND 0.32 FEET EAST PER BOOK 168 OF
LAND SURVEYS, PAGE 82, Y.C.R., SAID REBAR BEING ON A NON-TANGENT CURVE,
CONCAVE SOUTHWESTERLY, HAVING A RADIUS POINT THAT BEARS S. 55°04'50"
W., A DISTANCE OF 1055.07 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
05°13'29", AN ARC LENGTH OF 96.21 FEET;

THENCE DEPARTING RADially TO SAID WESTERLY LINE, N. 60°18'19" E., A
DISTANCE OF 63.36 FEET TO THE POINT OF BEGINNING;

THENCE N. 64°32'35" E., A DISTANCE OF 28.00 FEET;

THENCE S. 25°27'25" E., A DISTANCE OF 16.00 FEET;

THENCE S. 64°32'35" W., A DISTANCE OF 12.00 FEET;

THENCE S. 25°27'25" E., A DISTANCE OF 17.91 FEET;

THENCE S. 66°31'29" E., A DISTANCE OF 31.02 FEET;

THENCE S. 23°28'31" W., A DISTANCE OF 16.00 FEET;

THENCE N. 66°31'29" W., A DISTANCE OF 12.66 FEET;

THENCE S. 25°27'25" E., A DISTANCE OF 150.64 FEET;

THENCE N. 64°12'42" E., A DISTANCE OF 26.47 FEET;

THENCE N. 19°12'42" E., A DISTANCE OF 24.75 FEET;

THENCE N. 64°12'42" E., A DISTANCE OF 13.31 FEET;

THENCE S. 25°47'18" E., A DISTANCE OF 16.00 FEET;

THENCE S. 64°12'42" W., A DISTANCE OF 6.69 FEET;

THENCE S. 19°12'42" W., A DISTANCE OF 24.75 FEET;

THENCE S. 64°12'42" W., A DISTANCE OF 35.68 FEET;

Page 2 of 3

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4650 E. Cotton Center Boulevard | Suite #140 | Phoenix, AZ 85040

THENCE S. 15°30'33" E., A DISTANCE OF 117.04 FEET;

THENCE S. 09°16'25" E., A DISTANCE OF 142.64 FEET;

THENCE S. 77°58'08" E., A DISTANCE OF 123.81 FEET;

THENCE N. 12°01'52" E., A DISTANCE OF 12.00 FEET;

THENCE S. 77°58'08" E., A DISTANCE OF 16.00 FEET;

THENCE S. 12°01'52" W., A DISTANCE OF 12.00 FEET;

THENCE S. 77°58'08" E., A DISTANCE OF 72.76 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF LEE BOULEVARD AS SHOWN IN BOOK 40, PAGE 24, Y.C.R., SAID POINT BEING ON A NON-TANGENT CURVE, CONCAVE WESTERLY HAVING A RADIUS POINT THAT BEARS N. 80°15'29" W., A DISTANCE OF 522.96 FEET;

THENCE SOUTHERLY ALONG SAID CURVED WESTERLY RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 01°45'13", AN ARC LENGTH OF 16.01 FEET;

THENCE DEPARTING SAID CURVED WESTERLY RIGHT-OF-WAY LINE, N. 77°58'08" W., A DISTANCE OF 200.43 FEET;

THENCE S. 12°01'52" W., A DISTANCE OF 22.00 FEET;

THENCE N. 77°58'08" W., A DISTANCE OF 16.00 FEET;

THENCE N. 12°01'52" E., A DISTANCE OF 22.00 FEET;

THENCE N. 77°58'08" W., A DISTANCE OF 7.47 FEET;

THENCE N. 09°16'25" W., A DISTANCE OF 152.70 FEET;

THENCE N. 15°30'33" W., A DISTANCE OF 129.17 FEET;

THENCE N. 25°27'25" W., A DISTANCE OF 209.36 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED GAS EASEMENT CONTAINS AN AREA OF 13,437 SQUARE FEET OR 0.31 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION IS BASED ON AN ALTA/ACSM LAND TITLE SURVEY PREPARED BY OPTIMUS SURVEY SERVICES, INC., JOB NO. 3-10028, DATED MARCH 23, 2011.



Expires: 8/30/14

**S.R. 69 & LEE BOULEVARD, PRESCOTT, AZ
EXHIBIT B - GAS EASEMENT**

Job No: **3-10028**

(BASIS OF BEARING)

N01°07'54"E
2622.71'

362.56'

NW COR SEC 31,
T14N, R1W,
FD. G.L.O. BRASS CAP
STAMPED 1926

P.O.C.
W 1/4 COR SEC 31,
T14N, R1W,
FD. ALUMINUM CAP
STAMPED WOOD/PATEL
RLS 27239 2007



ARIZONA STATE ROUTE 69

N33°18'53"E
RAD

FD. CAPPED
REBAR
'LS 13941'

S55°04'50"W
RAD

FD. CAPPED REBAR
'LS 17187'
0.17' N. X 0.32' E.
PER BK. 168 OF LAND
SURVEYS, PG. 82, YAVAPAI
COUNTY RECORDS

SEE SHEET 2
P.O.B.

SEE SHEET 3

LEE BOULEVARD

SEE SHEET 4 FOR COURSE TABLES

S:\3-10028 (Prescott - SR69 & Lee Blvd)\Dwgs\Exhibit\EXHIBIT-GAS ESMT.dwg, 9/19/2011 9:15:02 AM, brossi



OPTIMUS
SURVEY SERVICES
4650 E. COTTON CENTER BOULEVARD
SUITE 140

PHOENIX, AZ 85040
PH: (602) 286-9300 FAX: (602) 286-9400

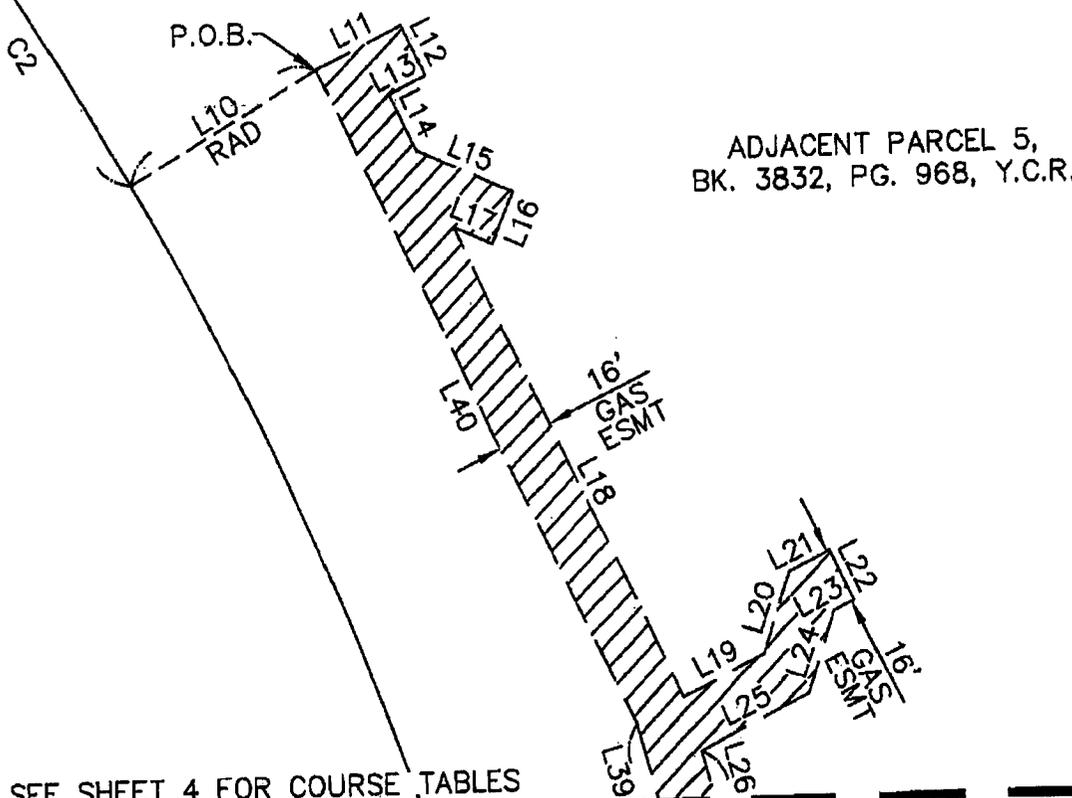
S.R. 69 & LEE BOULEVARD, PRESCOTT, AZ
EXHIBIT B - GAS EASEMENT

Job No: 3-10028

ARIZONA STATE
ROUTE 69



S:\3-10028 (Prescott - SR69 & Lee Blvd)\Dwgs\Exhibit\EXHIBIT-GAS ESMT.dwg, 9/19/2011 9:07:22 AM, brossi



SEE SHEET 4 FOR COURSE TABLES
MATCH LINE SEE SHEET 3



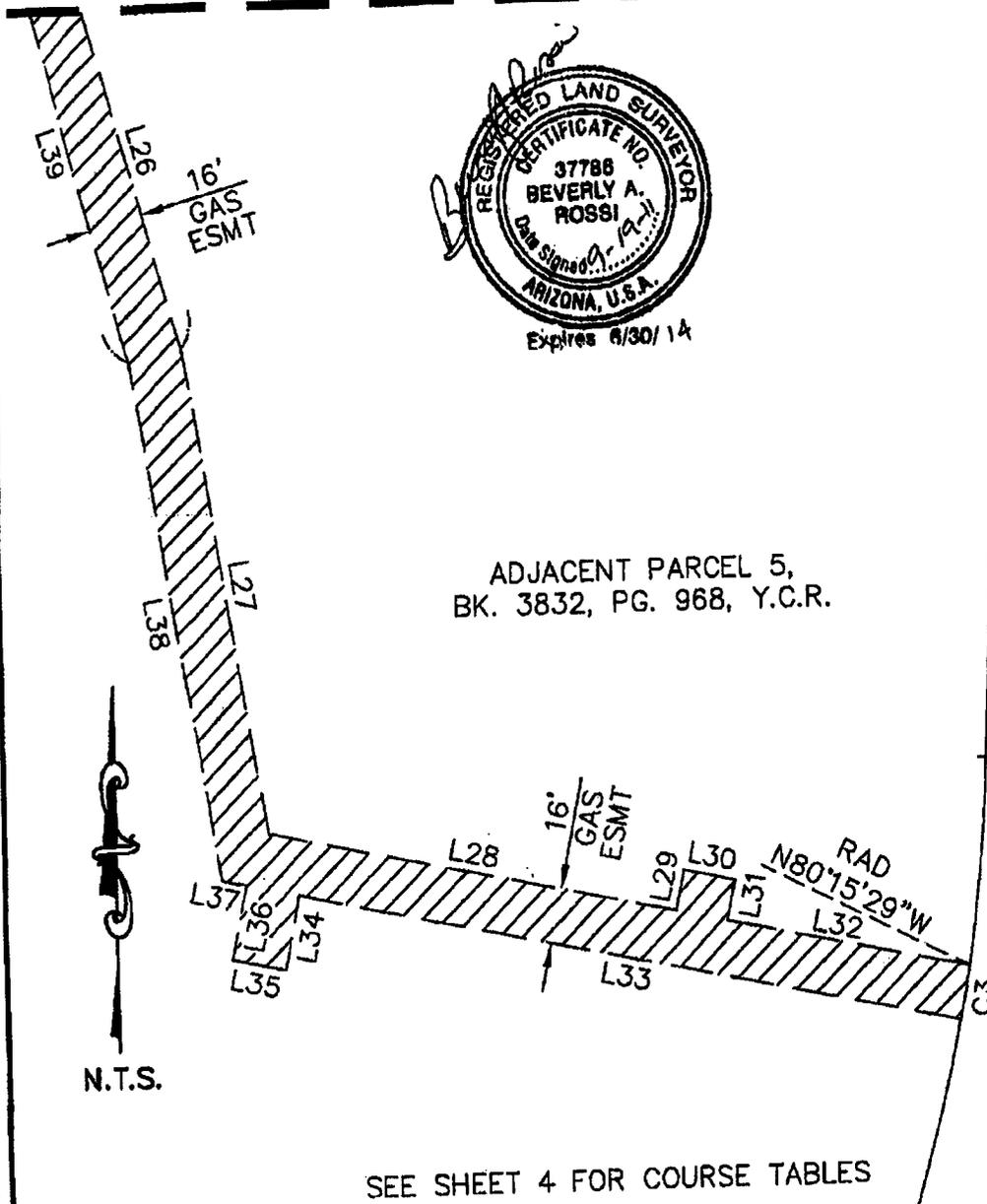
OPTIMUS
SURVEY SERVICES
4650 E. COTTON CENTER BOULEVARD
SUITE 140
PHOENIX, AZ 85040
PH: (602) 286-9300 FAX: (602) 286-9400

Prepared By: BAR Date: 9/19/2011 Checked By: SAW Sheet No: 2 Of 4

S.R. 69 & LEE BOULEVARD, PRESCOTT, AZ
EXHIBIT B - GAS EASEMENT

Job No: 3-10028

MATCH LINE SEE SHEET 2



50' R/W
PER
BK 40,
PG 24,
Y.C.R.

LEE BOULEVARD

OPTIMUS
SURVEY SERVICES

4650 E. COTTON CENTER BOULEVARD
SUITE 140
PHOENIX, AZ 85040

PH: (602) 286-9300 FAX: (602) 286-9400

Prepared By: BAR

Date: 9/19/2011

Checked By: SAW

Sheet No: 3 Of 4

S:\3-10028 (Prescott - SR69 & Lee Blvd)\Dwgs\Exhibit\EXHIBIT-GAS ESMT.dwg, 9/19/2011 9:07:36 AM, brossi

**S.R. 69 & LEE BOULEVARD, PRESCOTT, AZ
EXHIBIT B - GAS EASEMENT**

Job No: 3-10028

LINE TABLE			LINE TABLE		
LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S89°24'21"E	322.49'	L21	N64°12'42"E	13.31'
L2	S83°16'22"E	308.54'	L22	S25°47'18"E	16.00'
L3	S63°53'20"E	328.02'	L23	S64°12'42"W	6.69'
L4	S73°42'20"E	228.90'	L24	S19°12'42"W	24.75'
L5	S51°06'13"E	123.23'	L25	S64°12'42"W	35.68'
L6	S54°33'14"E	401.52'	L26	S15°30'33"E	117.04'
L7	S64°54'12"E	308.71'	L27	S09°16'25"E	142.64'
L8	S30°08'35"W	182.41'	L28	S77°58'08"E	123.81'
L9	S65°54'45"E	81.39'	L29	N12°01'52"E	12.00'
L10	N60°18'19"E	63.36'	L30	S77°58'08"E	16.00'
L11	N64°32'35"E	28.00'	L31	S12°01'52"W	12.00'
L12	S25°27'25"E	16.00'	L32	S77°58'08"E	72.76'
L13	S64°32'35"W	12.00'	L33	N77°58'08"W	200.43'
L14	S25°27'25"E	17.91'	L34	S12°01'52"W	22.00'
L15	S66°31'29"E	31.02'	L35	N77°58'08"W	16.00'
L16	S23°28'31"W	16.00'	L36	N12°01'52"E	22.00'
L17	N66°31'29"W	12.66'	L37	N77°58'08"W	7.47'
L18	S25°27'25"E	150.64'	L38	N09°16'25"W	152.70'
L19	N64°12'42"E	26.47'	L39	N15°30'33"W	129.17'
L20	N19°12'42"E	24.75'	L40	N25°27'25"W	209.36'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	3°37'06"	2989.79'	188.81'
C2	5°13'29"	1055.07'	96.21'
C3	1°45'13"	522.96'	16.01'



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Prepared By: BAR **Date:** 9/19/2011 **Checked By:** SAW **Sheet No:** 4 Of 4

S:\3-10028 (Prescott - SR69 & Lee Blvd)\Dwgs\Exhibit\EXHIBIT-GAS ESMT.dwg, 9/19/2011 9:18:56 AM, brossi

COUNCIL AGENDA MEMO – September 27, 2011
DEPARTMENT: City Council
AGENDA ITEM: Appointment of Don Michelman as Temporary Vice Chairman of the Planning and Zoning Commission

Approved By:	Date:
Council Appointment Committee: Councilwoman Suttles, Councilmen Blair and Hanna	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	9-21-11

BACKGROUND

On July 19, 2011, Len Scamardo was appointed to fill the unexpired term of Tammy Linn, through the next election, and was sworn into office on July 26, 2011. Councilman Scamardo will serve in this capacity through November 22, 2011. Prior to his appointment, Councilman Scamardo took a temporary leave of absence from his service on the Planning and Zoning Commission, for which he served as Vice Chairman.

At the request of the Chairman of the Planning and Zoning Commission, a temporary appointment for a Vice Chairman was considered by the Council Appointment Committee and they are recommending that Don Michelman serve in this capacity, until Councilman Scamardo returns.

Recommended Action: MOVE to accept the Council Appointment Committee's recommendation to appoint Don Michelman as the Temporary Vice Chairman of the Planning and Zoning Commission, until November 22, 2011.

COUNCIL AGENDA MEMO – September 23, 2011

DEPARTMENT: City Clerk

AGENDA ITEM: Public Hearing and consideration of Bingo License Application Submitted by Clearwater Café LLC located within the Prescott Racquet Club at 1 Kingswood Drive

Approved By:

Date:

Department Head: Elizabeth A. Burke, City Clerk

Finance Director: Mark Woodfill

City Manager: Craig McConnell



9-21-11

Item Summary

Clearwater Café LLC, located within the Prescott Racquet Club at 1 Kingswood Drive in Prescott, has submitted an application for a Bingo License.

Background

The first step in this application process is for the Local Governing Body (Prescott City Council) to hold a public hearing and recommend approval or disapproval of the application. Once that is received, the entire application packet, including the City's endorsement form (if approved), will be submitted to the Arizona State Department of Revenue, Bingo Section. A public hearing has been scheduled for September 27, 2011, and notice of said hearing has been published in the newspaper.

A complete copy of the application is available in the City Clerk's Office.

Recommended Action: (1) **MOVE** to close public hearing; and (2) **MOVE** to approve/disapprove the bingo license application submitted by Clearwater Café LLC, located within the Prescott Racquet Club at 1 Kingswood Drive.

II-C

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENTS: Police and Public Works

AGENDA ITEM: Review of performance, additional discussion, and possible direction regarding stop signs at the Copper Basin Road/Highland Avenue intersection

Approved By:

Date:

Chief of Police:	Mike Kappel	
Public Works Director:	Mark Nietupski	
City Manager:	Craig McConnell <i>Craig McConnell</i>	9-21-11

Summary of Item

This item has been placed on the agenda at the request of several Councilmembers for the purposes of reviewing the performance of the stop signs presently in place (traffic speeds and delay; enforcement and accident statistics), and to provide an opportunity for additional discussion.

As indicated on the agenda, following the staff presentation and initial Council discussion, a total of 30 minutes is recommended for public comments, a reasonable amount of time to hear both sides of the issue. At the conclusion of public comments, the Council may choose to direct the subject be placed on a future agenda.

Background

At their regular voting meeting of May 24, 2011, the Council adopted Resolution No. 4076-1146 finding that the public safety would be benefited by the installation of stop signs on Copper Basin Road at Highland Drive, and directing the installation. Although there was some discussion of a one-year period for evaluation, at that time the Council did not take action or provide specific direction to create such a period. Minutes of the May 24th discussion are available on the City website for reference.

The City Attorney has advised that the present revisiting of these stop signs does not constitute a "reconsideration" of the May 24th Council vote, which procedurally would require that the item be placed on the agenda at the request of a Councilmember who voted in favor of the action taken. To comprise such a formal reconsideration, the request would be made at the next Council meeting following the one at which the action occurred, or prior to the effective date of that action (30 day period following adoption of the ordinance or resolution). These timeframes have long passed.

Upon the request of two Councilmembers, a new item could be placed on a future agenda regarding the stop signs. As such, it would not be a reconsideration, rather for any new action proposed to be taken.

Recommended Action: No action - for presentation, discussion, and possible direction only.

COUNCIL AGENDA MEMO – September 27, 2011	
DEPARTMENT: Parks, Recreation and Library	
AGENDA ITEM: Resolution No. 4097-1207 approving a Library Service Agreement with Yavapai County Library District	

Approved By:		Date:
Department Head: Debbie Horton		
Finance Director: Mark Woodfill		
City Manager: Craig McConnell <i>Craig McConnell</i>		9-16-11

Background

The Yavapai County Library District is a special district established in 1987 by the Board of Supervisors. It includes 20 affiliated public libraries in Yavapai County by means of library service agreements. The countywide Library District provides supplemental funding for library operations and library materials for all affiliated public libraries.

The FY 2011/2012 Library Service Agreement with Prescott provides funding of \$618,614, from which \$26,690 will be deducted for the City's share of Yavapai Library Network operations and maintenance. The balance of \$591,924 is to be distributed as follows:

- \$250,000 for library services
- \$200,000 for library materials
- \$141,924 for automation and special projects

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

Financial

The FY 2011/2012 contribution represents a 5% increase over FY2010/2011. The first half of the funding (\$295,962) will be received in November 2011 with the second half to follow in May 2012.

Recommended Action: MOVE to adopt Resolution No. 4097-1207.
--

RESOLUTION NO. 4097-1207

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A LIBRARY SERVICE AGREEMENT FOR FY2011/2012 WITH THE YAVAPAI COUNTY LIBRARY DISTRICT TO PARTICIPATE IN COOPERATIVE FUNDING TO THE BENEFIT OF THE CITY OF PRESCOTT PUBLIC LIBRARY, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

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

WHEREAS, for FY2011-2012 the Library Service Agreement provides for a total contribution of \$618,614 to be distributed as follows: \$250,000 for library services; \$200,000 for library materials, and \$141,924 for automation and special projects; and

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

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

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby approves the attached Library Service Agreement with Yavapai County Library District for cooperative funding from the Yavapai County Library District and sharing of library materials, operations as well as library resources attached hereto as Exhibit "A".

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

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

YAVAPAI COUNTY FREE LIBRARY DISTRICT
LIBRARY SERVICE AGREEMENT

This agreement is entered into between the **YAVAPAI COUNTY FREE LIBRARY DISTRICT**, hereinafter referred to as the "District," and the **City of Prescott**, hereinafter referred to as the "City," and shall be for a period commencing July 1, 2011 to June 30, 2012.

WHEREAS, the Yavapai County Board of Supervisors has established a County Library District, pursuant to A.R.S. 48-3901, on June 1, 1987; and

WHEREAS, the District has an agreement with the Department of Library, Archives and Public Records of the State of Arizona, hereinafter referred to as the "State Library," to provide library services within Yavapai County and the State of Arizona; and

WHEREAS, the District and the City recognize the need to cooperate in the provision of library services to the citizens of the District; and

WHEREAS, the City has taken action and officially notified the District that it desires to be a part of the District, and therefore is entitled to the benefits of the District; and

WHEREAS, the City operates and maintains a library and the District desires to contract with the City for library services for the benefit of the citizens of the District; and

NOW THEREFORE, IT IS AGREED by and between the District and the City as follows:

1. Equal access and use of the library facilities and services shall be made available to all citizens of the County.
2. The City and the District shall cooperate in planning and implementing resource sharing activities acceptable to the District and the City.
3. All library materials purchased with District funds are the property of the City.
4. It is understood by both parties that officials, employees and agents of the District remain the sole responsibility of the District. It is further understood that the officials, employees and agents of the City remain the sole responsibility of the City.
5. Except as expressly specified in this agreement, the District shall save, hold harmless and indemnify the City and the City's officials, employees and agents against all expenses, liabilities and claims of every kind arising from any intentional or negligent act or omission by the District or the District's officials, employees and agents.

6. Except as expressly specified in this agreement, the City shall save, hold harmless and indemnify the District and the District officials, employees and agents against all expenses, liabilities and claims of every kind arising from any intentional or negligent act or omission by the City or the City's officials, employees and agents.
7. The City agrees to the following conditions:
 - A. Required monthly statistics are maintained and submitted to the District within five **(5)** calendar days of the month's end.
 - B. The annual Arizona State Library Data Report is submitted to the District as required by the State Library.
 - C. Resource sharing is supported by participating in interlibrary loan services as a borrower and lender of library materials.
 - D. District funds are used specifically and solely for library materials, services and operating expenses. District funds may not be accumulated from year to year. An annual written accounting shall be made to the District describing the manner and use of District funds as required by the District.
 - E. The City is responsible for all terms and conditions of this agreement. District funds may not be transferred to any other agency without prior written agreement with the District.
8. The District will provide the following benefits and support services to the library:
 - A. Professional assistance and consultation services.
 - B. Continuing education opportunities for staff and volunteers.
 - C. Coordination of county-wide library services.

9. The City and the District acknowledge that the services to be performed by the City have a value to the District and to the City. In consideration of that value, the District agrees to provide financial resources for the operation of the Prescott Public Library as follows:
 - To pay the City the amount of **\$618,614.00**, of which **\$26,690.00** will be withheld from the total amount for the operations and maintenance of the Yavapai Library Network. The remaining **\$591,924.00** will be distributed in two equal installments of **\$295,962.00** (November and May): **\$250,000.00** for library services, **\$141,924.00** for automation and special projects and **\$200,000.00** for library materials.
10. This agreement may be renewed from year to year by mutual agreement of the parties and stipulation as to the consideration to be paid as between the parties.
11. This agreement contains the entire agreement of the parties with respect to the subject matter hereof and, it may be amended, modified or waived only by an instrument in writing signed by both parties.
12. Pursuant to A.R.S. Section 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 further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City from any other party to the agreement arising as a result of this agreement.
13. The parties shall comply with Executive Order #99-4 (dated January 29, 1998) concerning non-discrimination in employment.
14. The parties agree that it is their intention that this Agreement be effective on and from July 1, 2011, even if the date varies from the dates of actual signature.

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

CITY OF PRESCOTT

YAVAPAI COUNTY FREE LIBRARY DISTRICT

Mayor

Chairman, Board of Directors

ATTEST:

ATTEST:

City Clerk

Clerk of the Board

Date

Date

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

City Attorney

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

Deputy County Attorney

COUNCIL AGENDA MEMO – September 27, 2011
DEPARTMENT: POLICE
AGENDA ITEM: Resolution No. 4096-1206 allowing acceptance of \$55,983 from 2012 Highway Safety Plan Grant Funds provided by the Governor’s Office of Highway Safety

Approved By:	Date:
Department Head: Michael Kabbel	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	9-12-11

Summary

The Prescott Police Department requests approval of a resolution to accept \$55,983 in total grant funding provided by the Governor’s Office of Highway Safety. Awarded funds will be used to further our Department’s ongoing DUI enforcement efforts, conduct selective speed and aggressive driving enforcement details, and purchase an enforcement motorcycle equipped with required emergency equipment.

Background

In March 2011, Council approved submission of three applications to the Governor’s Office of Highway Safety seeking grant funds through the 2012 Highway Safety Plan. Approved applications sought funding in the categories of DUI Enforcement, Speed and Aggressive Driver Enforcement, and purchase of an enforcement motorcycle.

On September 1, 2011, we received notification that three grant awards totaling \$55,983 had been awarded to our Department, pending formal acceptance. Specific grant awards are detailed below:

- \$25,000 - DUI Enforcement: Will be used to offset overtime expenditures and other employee related expenses necessary to enhance citywide DUI enforcement through specialized enforcement efforts and public education.
- \$20,983 - Speed/Selective Traffic Enforcement Equipment: Will be used to acquire one fully-equipped police motorcycle to enhance our Department’s ability to enforce traffic laws, gain voluntary compliance of traffic laws, and reduce serious and fatal collisions.
- \$10,000 - Speed/Selective Traffic Enforcement: Will be used to offset overtime expenditures and other employee related expenses necessary to conduct increased traffic enforcement details and public education regarding speed and aggressive driving.

Agenda Item: Resolution No. 4096-1206 allowing acceptance of \$55,983 from 2012 Highway Safety Plan Grant Funds provided by the Governor's Office of Highway Safety

Financial Impact

There are no requirements for local matching funds associated with these grant awards. Consequently, there will be no fiscal impact to the City.

Recommended Action: MOVE to adopt Resolution No.4096-1206.

RESOLUTION NO. 4096-1206

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, ACCEPTING A GRANT FROM THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY IN THE AMOUNT OF \$55,983 THROUGH THE 2012 HIGHWAY SAFETY PLAN AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, the City of Prescott submitted a Council-approved proposal for a grant opportunity from the Governor's Office of Highway Safety (GOHS) through the "2012 Highway Safety Plan"; and

WHEREAS, on September 1, 2011, the Prescott Police Department received notification that GOHS awarded three grants totaling \$55,983 to be used to support categories of DUI enforcement, speed and aggressive driver enforcement and purchase of an enforcement motorcycle; and

WHEREAS, there are no requirements for local matching funds associated with these grant awards and therefore, there will be no fiscal impact to the City; and

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

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby authorizes the acceptance of grant funding from the Governor's Office of Highway Safety in the total amount of \$55,983 to be used to support categories of DUI enforcement, speed and aggressive driver enforcement and for the purchase of an enforcement motorcycle; and

Section 2. THAT the Mayor and staff are hereby authorized to execute any and all documents to effectuate the foregoing and all previous documents executed by them as necessary to accept the grant funding.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

II-F

COUNCIL AGENDA MEMO - September 27, 2011

DEPARTMENT: Field Operations – Streets Division

AGENDA ITEM: Purchase of pavement deicing agents from Envirotech Services, Inc., in an amount not to exceed \$75,000.00

Approved:

Date:

Department Head: Chad McDowell

Finance Director: Mark Woodfill

City Manager: Craig McConnell



9-16-11

Background

When winter storms threaten the community the City of Prescott demonstrates its commitment to maintaining safe traffic circulation. In addition to checking equipment, it is necessary for the Streets Division to stockpile supplies, including deicing agents.

Magnesium chloride is a liquid product used as a spray on roadways, either as a pre-treatment or during a storm. Magnesium chloride depresses the freezing point of water to lower temperatures than sodium chloride, plain or rock salt, the conventional treatment used for decades. As a result refreezing of water on the roadways is inhibited. Magnesium chloride neither damages concrete or vegetation nor corrodes metal or paint, reducing damage to vehicles and equipment.

Ice Slicer is another effective deicing product. Its unique reddish appearance comes from over 60 naturally occurring trace minerals. The color facilitates application in proper quantities by visual monitoring by crews, as opposed to white salt products. Tire traction on surfaces treated with Ice Slicer has been measured to be as good as or better than tire traction on surfaces treated with salt, cinders and sand. Ice Slicer will inhibit ice formation at temperatures as low as zero degrees Fahrenheit, as opposed to about 17 degrees for white salt. Both these deicing products are currently products of choice used by the Arizona Department of Transportation.

Financial

ADOT has a contract with Envirotech Services, Inc., of Greely, Colorado for the two products. ADOT has granted permission to piggyback off their contract at the unit prices of \$1.179 per gallon for magnesium chloride, and \$108.61 per ton for Ice Slicer. The Streets Division has included in the FY 12 budget an amount not to exceed \$75,000 for this year's purchase of deicing agents, as needed and depending on the number and severity of winter storms.

Recommended Action: MOVE to approve purchase of pavement deicing agents from Envirotech Services, Inc., in an amount not to exceed \$75,000.00.

II-6

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Tourism

AGENDA ITEM: Approval of agreement with Mountain Bike America, LLC, dba Epic Rides, LLC, for the 2012-2014 Whiskey Off-Road Mountain Bike Events

Approved By:

Date:

Department Head: Don Prince

Finance Director: Mark Woodfill

City Manager: Craig McConnell



9.22.11

BACKGROUND

During the eight years of the Whiskey Off-Road, dramatic growth has been seen in the overall economic benefit of the annual spring competition, and the event has had a major influence in development of a thriving off-road bicycling culture within our community. As a result, Prescott is becoming well-positioned on the national level as a mountain bike town, creating a new, year-round industry.

A recap of the very successful 2011 event was presented to Council on June 14, 2011, by Todd Sadow, President, Mountain Bike America, LLC. In his presentation, Mr. Sadow indicated that nearly 1500 competitors and other participants were involved in the weekend activities, generating an estimated overall economic impact of \$1.9 million.

2012 BIKE EVENT

Scheduled annually for the last weekend of April, the Whiskey Off-Road extends Prescott's traditional tourism season by one week and introduces visible mountain bike-related tourism during the months prior to event weekend by encouraging pre-event visits for preparation (58% of the participants made an additional visit to Prescott prior to event weekend to pre-ride the course). With the introduction of a significant cash purse, expanded expo, and three day event schedule, the duration and quantity of pre-event visits will continue to increase as participants strive to improve their skills for the sizable purse as well as to heighten the quality of their overall event experience. Additionally, Epic Rides makes concerted efforts to reach out to local retailers and restaurants to ensure that race participants, their families, and friends are made aware of retail and dining options in Prescott by partnering with the Prescott Downtown Partnership (PDP), Prescott Area Independents (PAI), and Chamber of Commerce.

The economic impact from race participants, their families, and other spectators who come to experience Prescott as a result of publicity and word of mouth generated by the Whiskey Off-Road over the past eight years is significant, and expected to grow with the additional investments outlined below and in the attached agreement. Three independent event-focused economic impact studies (by Rock'n Roll Marathon, Ironman and El Tour de Tucson) determined the average event participant contributes an estimated \$1,400 to the community annually. At an estimated 1,750 registered participants in 2012 the expected economic impact is \$2.4 million.

AGENDA ITEM: Approval of agreement with Mountain Bike America, LLC, dba Epic Rides, LLC, for the 2012-2014 Whiskey Off-Road Mountain Bike Events

AGREEMENT

Listed below are some of the key provisions of the attached agreement.

- The base amount of City support ("Base Fee") remains at \$20,000.
- To increase the size of the purse and participation, each year the City and Epic Rides will contribute identical amounts above the Base Fee: the FY12 match amount for each party ("Matching Funds") is \$5,000, increasing to \$10,000 in 2014.
- The City will continue to provide necessary police security, trash collection, traffic control and other barricading, to be jointly reviewed prior to the Bike Event weekend. Beginning in 2013, Epic Rides will reimburse the City for actual event-specific overtime and other costs for these agreed services should the total exceed \$10,000.00.
- A 3-year term "rolling" agreement with automatic renewal each year after the event.
- 24 month cancellation notice by the City to Epic Rides with no financial termination penalty.
- Continuation of Montezuma Street along Whiskey Row as the event focal point, with the bandshell to be installed at a separate location to be determined (in 2011 it was on Goodwin Street).
- Together, Epic Rides and the City of Prescott will begin exploring opportunities to retain ASU's business school to conduct an economic impact analysis of the event specific to Prescott.

COMMUNITY COORDINATION

On June 13, 2011, a town hall was held with downtown businesses and other interested parties to recap the 2011 event, identify impacts such as traffic closures, and improvements which could be made for future years. This productive dialogue will continue through the detailed planning and recaps of the 2012 and subsequent events.

BUDGET

Event support has been budgeted and is available in the Transit Occupancy Tax (Bed Tax) Fund.

Attachment: Agreement for 2012-2014 Whiskey Off-Road Mountain Bike Events

RECOMMENDED ACTION: MOVE to approve an agreement with Mountain Bike America, LLC, dba Epic Rides, LLC, for the 2012 through 2014 Whiskey Off-Road Bike Events.

Draft for 9/27/11 City Council Meeting
(minor revisions may be necessary following final reviews by respective legal counsels)
AGREEMENT

2012-2014 WHISKEY OFF-ROAD MOUNTAIN BIKE EVENTS

WHEREAS the City of Prescott (hereinafter referred to as “City”) is empowered to budget and expend public monies for and in connection with economic development activities; and

WHEREAS Mountain Bike America, LLC, dba Epic Rides, an Arizona Limited Liability Corporation (“Epic Rides”), will conduct the Whiskey Off-Road Mountain Bike Event to start and finish in downtown Prescott on Whiskey Row (hereafter referred to as the “Bike Event”); and

WHEREAS the parties hereto acknowledge the importance of the Bike Event to help bring visitors and tourists to the Prescott area in general and specifically to the Prescott Downtown area, for the purpose of helping in the retention of jobs and improve or enhance the economic welfare of the inhabitants of the City; and

WHEREAS the parties wish to enter into a recurring three (3) year Agreement to allow for the partial funding of the Bike Event by the City, in order to help expand Epic Rides’ ability to increase the number of visitors and tourists, and to heighten awareness of the Bike Event.

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

1. This Agreement shall be for an initial term of three (3) years, for the Bike Events to be held in 2012, 2013, and 2014, unless otherwise terminated earlier as provided herein. At the conclusion of each Bike Event, this Agreement shall be automatically extended for an additional year to provide for a total term forward from such time of three (3) years.
2. The Bike Event shall be held each year beginning on the last Friday of the month of April. During the initial term of this Agreement, the Bike Event shall be held April 27-29, 2012; April 26-28, 2013; and April 25-27, 2014.
3. Payments by the City to Epic Rides.
 - a. The City agrees to pay to Epic Rides during the term of this Agreement an annual base fee of \$20,000 to offset expenses associated with the production of each Bike Event (the “Base Fee”).
 - b. In addition to the Base Fee, during the term of this Agreement the City agrees to pay to Epic Rides each year an amount equal to the amount of funds contributed by Epic Rides to the Bike Event purse (the “Matching Funds”). The Matching Funds are expected to be \$5,000 for the 2012 Bike Event, \$7,500 for the 2013 Bike Event, and \$10,000 for the 2014 Bike Event.

- c. The City shall pay to Epic Rides one-half (½) of the Base Fee plus one-half (½) of the Matching Funds by September 30 of 2011, 2012, 2013 for the respective 2012, 2013 and 2014 Bike Events, and so on as this Agreement is automatically extended. The remaining one-half (½) of the Base Fee and one-half (1/2) of the Matching Funds shall be paid by the City to Epic Rides on or before April 1st of each year during the term of this Agreement.
- d. The total annual payment by the City to Epic Rides, consisting of the entire amount of each of the Base Fee and Matching Funds, shall be capped at \$30,000.00 this Agreement is mutually amended specifying a different amount..

4. The City shall provide certain equipment and services annually to Epic Rides for this event as follows:

- a. The City-owned bandshell for use during the Bike Event, including delivery, set-up and removal. The City will deliver and install the bandshell at an agreed upon location by 8:00 a.m. (local time) on the Friday of the Bike Event week.
- b. Police services for security and traffic control, closures of the roads for the time periods set forth by Exhibit A; trash collection; and other barricading required for the Bike Event. The City of Prescott Police Department will solely determine the services necessary to reasonably provide for the safety and welfare of the public attending and cyclists competing in the events.
- c. Within sixty (60) days of receipt of an invoice and reconciliation detailing the amount due, if any, Epic Rides will reimburse the City for actual costs exceeding the amount of \$10,000.00 incurred by the City in furnishing the services specified in Paragraph 4.b. in Years 2013 and 2014; provided, however, that the scope and estimated costs for such services shall be reviewed and approved by the parties annually prior to the Bike Event weekend.

5. Epic Rides shall present a report to the City Manager within 60 days after the Bike Event detailing the estimated economic impact of the Bike Event to the City. The parties will mutually explore opportunities to retain Arizona State University's business school to conduct an economic impact analysis of the event.

6. In consideration of the monies and services to be received by Epic Rides pursuant to this Agreement, Epic Rides hereby agrees to the following:

- a. The Bike Event will be held annually that weekend which includes the final Saturday of April to be started within the downtown Prescott area, and include a community concert provided by Epic Rides.
- b. For planning purposes, Epic Rides estimates 1,750 participants in the 2012 Bike Event. Epic Rides will use its best efforts to increase the number of participants to 2000 through the term of this Agreement.

- c. Epic Rides guarantees the cash purse payout as specified in Exhibit B attached.
- d. Epic Rides will acknowledge the City as a major sponsor of the annual Whiskey Off-Road Bike Event in all printed and computer-generated matter created after this Agreement is executed.
- e. Epic Rides warrants and agrees that the City is not required to sponsor future Bike Events beyond the term of this agreement as it may be extended as provided herein.
- f. In the event the City elects to cancel this Agreement, twenty-four (24) months prior written notice shall be provided to Epic Rides. Following issuance by the City and receipt by Epic Rides of such notice, the City shall continue to provide the financial and other support set forth herein and/or otherwise identified by subsequent amendment(s) to this Agreement, for the remaining term. No financial penalty shall apply to either party for such termination.
- g. If Epic Rides is successful in obtaining national television coverage or selling the event as programming content to television or online networks Epic Rides and the City agree to renegotiate the Base Fee for the applicable event year(s) to reflect the value of the increased exposure and any associated media remuneration paid to Epic Rides.

7. Pursuant to A.R.S. Section 38-511, except as described above, the City may cancel this Agreement without penalty or further, if any person significantly involved in initiating, negotiation, 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 further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating the Agreement on behalf of the City from any other party to the Agreement, arising as a result of the Agreement.

8. It is expressly agreed and understood by and between the parties that Epic Rides is an independent contractor, and as such Epic Rides 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 other than that compensation as set forth in this Agreement. As an independent contractor, Epic Rides further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement, or as a result of its employment of a business manager. As an independent contractor, Epic Rides further agrees that it will not make any claim, demand or application 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. The parties expressly acknowledge that provisions of this Paragraph shall also be binding upon Epic Rides employees.

9. Epic Rides, with regard to the work performed by it after award and during its performance of the Agreement, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of contractors, subcontractors, including procurement of materials and leases of equipment. Epic Rides will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 99-4.

10. Each party shall indemnify, defend, save and hold harmless the other party, its agents, representatives, contractors, subcontractors, officials, and employees (hereinafter referred to as 'Indemnitee') from and against any and all claims, actions liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and the cost of appellate proceedings) (hereinafter referred to as 'Claims') for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property causes, or alleged to be caused, in whole or in part, by the gross negligence or willful misconduct of the other party, its agents, representatives, contractors, subcontractors, officials, and employees, in connection with the carrying out their respective obligations under this Agreement. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the gross negligence or willful misconduct of the other party, be indemnified by the Indemnitee from and against any and all claims.

EVENT INSURANCE REQUIREMENTS:

Commercial General Liability – Occurrence Form –
Policy shall include bodily injury, property damage, and broad form contractual liability.

General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$2,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000
• Automobile Liability (including non-owned)	\$1,000,000

The policies shall include, or be endorsed to include, the following provisions:

1. The City of Prescott to be named as additional insured to the full limits of liability purchased by Epic Rides, even if those limits of liability are in excess of those required by this Agreement.
2. Epic Ride's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

VERIFICATION OF COVERAGE: Epic Rides shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

11. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

12. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Agreement, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

13. If the performance of either party of any of its obligations under this Agreement is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable control of the party obligated to perform (a "Force Majeure"), then the party so affected shall, upon giving written notice to the other party, be excused from such performance to the extent such prevention, restriction, interference or delay, provided that the affected party shall use its best efforts to avoid or remove such causes of nonperformance and shall continue performance with its best efforts whenever such causes are removed. The parties understand that, if a Force Majeure results in the cancellation of the Bike Event, Epic Rides shall have no obligation under this Agreement to the City by reason of such cancellation. Force Majeure shall include, but shall not be limited to, inclement weather which might reasonably impact the safety of Bike Event participants, whether through direct contact, or through such weather's affect on the Bike Event, or the roads and trails utilized for the Bike Event, in Epic Rides' reasonable determination; unsafely high or low temperatures, in Epic Rides reasonable determination; or the cancellation or postponement of the event by the City, Forest Service or County of Yavapai.

DATED this 27th day of September, 2011.

MOUNTAIN BIKE AMERICA, LLC.

By: _____
TODD SADOW
President

DATED this 27th day of September, 2011.

By: _____
MARLIN D. KUYKENDALL
Mayor

APPROVED AS TO FORM:

ATTEST:

GARY D. KIDD, City Attorney

ELIZABETH A. BURKE, City Clerk

Exhibit A

Road Closures & Traffic Control (Subject to Annual Review and Approval)

Goodwin St. between Cortez St. and Montezuma St.	Friday 6:00 a.m. – Sunday 5:00 p.m.
Montezuma St. between Gurley St. and Goodwin St.	Friday 6:00 a.m. – Sunday 5:00 p.m.
Goodwin St. West of Montezuma to Granite St.	Friday 3:00 p.m. – Friday 7:30 p.m. Saturday 7:00 a.m. – Saturday 5:00 p.m. Sunday 9:00 a.m. – Sunday 10:30 a.m.
Coned lane beginning at Gail Gardner Way to Park Ave. Right on Park Ave. to Glenwood Ave. Left on Glenwood Ave. to Goodwin St. Right on Goodwin St. Coned lane terminates at Montezuma St.	Friday 4:00 p.m. – Friday 7:30 p.m. Saturday 10:00 a.m. – Saturday 4:00 p.m. Sunday 7:00 a.m. – Sunday 2:00 p.m.
Traffic control at the following intersections: Montezuma and Goodwin St., Glenwood and Park, Park and Highland, Highland and Copper Basin	Friday 3:00 p.m. – 4:00 p.m. Saturday 7:00 a.m. – 10:00 a.m. Sunday 9:00 a.m. – 10:30 a.m.
Traffic control at the following intersections: Park Ave. and Gurley St., Glenwood St. and Park Ave., Montezuma and Goodwin St.	Friday 4:00 p.m. – 7:30 p.m. Saturday 9:30 a.m. – 4:00 p.m. Sunday 7:00 a.m. – Sunday 2:00 p.m.
Friday Evening Downtown Christmas Race	Several Options Available, below is one option that appears to minimize disruption to area traffic
Right-side lane closure and traffic control: From Cortez St. and Union St. intersection. East on Union St. to Pleasant St., South on Pleasant St. to Carleton St. West on Carleton St. To Cortez St. North on Cortez St. to Cortez St. and Union St. intersection.	Friday 4:00 p.m. – 8:00 p.m.

Exhibit B

Estimated 2012 Cash Purse

Purse Place	Male	Female
1st	\$5,000	\$5,000
2nd	\$3,000	\$3,000
3rd	\$2,000	\$2,000
4th	\$1,500	\$1,500
5th	\$1,000	\$1,000
6th	\$800	\$800
7th	\$600	\$600
8th	\$450	\$450
9th	\$350	\$350
10th	\$300	\$300
Total	\$15,000	\$15,000

II-H

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Community Development

AGENDA ITEM: Master Plan Revision for the Preserve at Prescott (Downer Trail).
Owner/Applicant: Westridge Preserve, LLC/Tom Devereaux, File No. MP11-001.

Approved By:

Date:

Department Head: Tom Guice	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	9-15-11

Location

The Preserve at Prescott is located south of Forbing Park, west of Gail Gardner Way and has Westridge Drive and Downer Trail as the main access points (see the attached vicinity map). The zoning is Single-Family Residential SF-18 (PAD). The requested Master Plan Revision would modify the type of housing and the density in Phase 4, increase the size of the common area (open space), and allow for the open space to become public.

Background

This request seeks to amend the Master Plan for the Preserve at Prescott (formerly known as Downer Trail). The Preserve at Prescott is a multi-phased subdivision controlled by a Master Plan and containing separate plats for each phase. The applicant desires to amend and update the Master Plan for the Downer Trail/Preserve at Prescott subdivision to modify the boundaries of Phase 4, to change the type of housing for Phase 4, to increase the area of the open space tracts and to allow the open space tracts to be publicly owned. Phase 4 is proposed to be redesigned to accommodate a higher density residential type, such as patio homes.

As a result of previous redesigns of Phases 1 through 3, and partly due to meeting new street design guidelines, 21 lots were "lost" from those phases. The applicant desires to transfer those lots into Phase 4, where the proposed higher density will accommodate the additional dwelling units within the already established phase boundary. The original master plan and previous plats established a total of 144 lots at build-out for the combined four phases of the subdivision. The current proposal retains the previous build-out maximum of 144 lots and thus will result in no increase in the number of lots originally platted and approved.

An important part of this Master Plan amendment affects the common areas, which are now privately held by the property owners association for residents use only. The applicant desires to sell/donate the common area to the City subject to Lot 144 being incorporated into the open space for the purpose of developing public parking and access to the open space and trails. The sale/donation of the common area for open space will provide an opportunity for important open space and trail linkages through the area, connecting the existing trails to the west (Enchanted Canyon) with a hard trail (sidewalk) all the way to the

Agenda Item: Master Plan Revision for the Preserve at Prescott (Downer Trail).
Owner/Applicant: Westridge Preserve, LLC/Tom Devereaux, File No. MP11-001.

Rodeo Grounds. In addition to the trails and open space areas, a stormwater weir structure adjacent to Phase 1 (southeast of Lot 2R) will be taken over by the City.

The Parks and Recreation Department endorses the open space and trails aspects of this proposal and has committed to maintain the stormwater structure and to construct and maintain the new public trails. With the removal of the common areas from private ownership, the existing property owners association may be dissolved at the developer's option.

Approval of the proposed Master Plan amendment does not obligate the city to purchase the approx. 30 acres of "common area". The proposed purchase agreement will also be on the agenda for Council's consideration. See separate memo from the Parks and Rec. Dept. outlining the proposed purchase agreement.

General Plan Consistency

The proposed amendment to the Master Plan will remain in conformance with the General Plan Land Use designation, which indicates Low-Medium Density Residential throughout the Master Plan area. The proposed change in the housing type for Phase 4 will not exceed the existing General Plan permitted density. The SF-18 (PAD) zoning classification will allow for the change in residence type based upon the amended Master Plan.

Summary

To summarize, this proposal will result in:

1. twenty-one additional lots in Phase 4.
2. no net increase in the 144 lots originally approved for the development.
3. a higher density housing type for Phase 4.
4. the potential for public ownership and use of the current private common area tracts for improved trails and open space connectivity within the area.

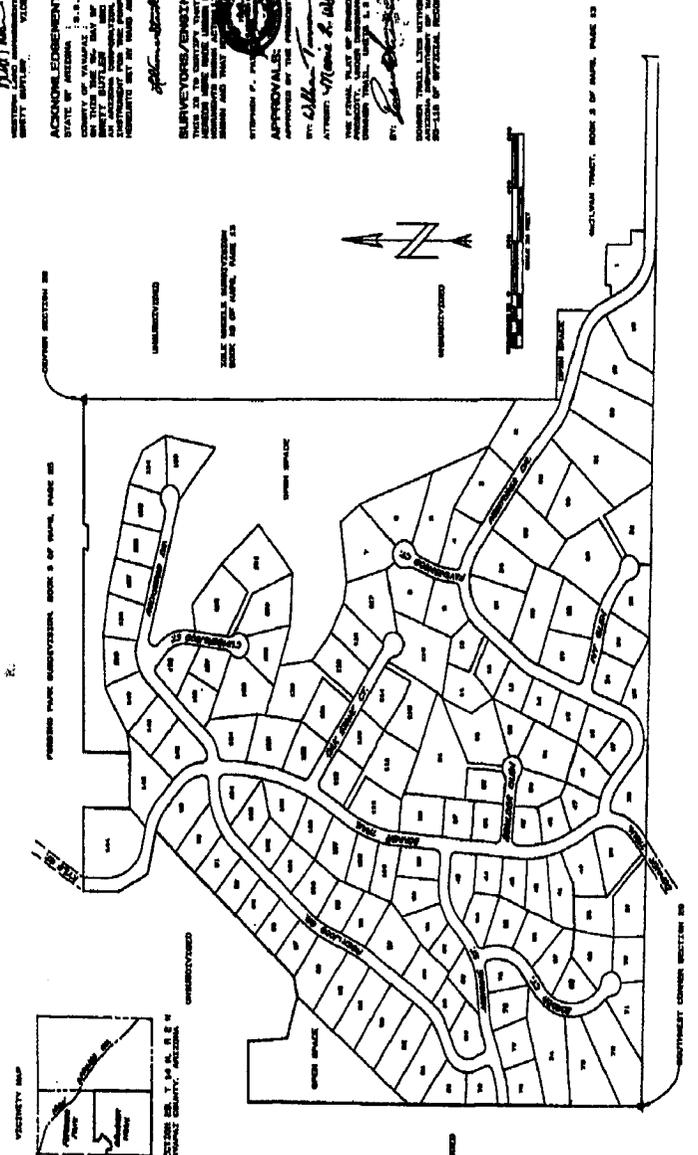
Planning & Zoning Commission Recommendation

At their July 14, 2011 meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the amended Master Plan for The Preserve at Prescott.

Attachments - Downer Trail Subdivision Final Plat (Recorded in 1987)
- Proposed Master Plan exhibit

Recommended Action: MOVE to approve the amended Master Plan of the Preserve at Prescott dated April 13, 2011.

FINAL PLAT
DOWNER TRAIL SUBDIVISION
 OF A PART OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH,
 RANGE 2 WEST,
 OF THE GILA AND SALT RIVER BASIN AND MERIDIAN, YAVAPAI
 COUNTY, ARIZONA.



DEDICATION:
 STATE OF ARIZONA
 COUNTY OF YAVAPAI
 TOWNSHIP 14 NORTH
 RANGE 2 WEST
 SECTION 28
 DOWNER TRAIL SUBDIVISION
 OF A PART OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH,
 RANGE 2 WEST,
 OF THE GILA AND SALT RIVER BASIN AND MERIDIAN, YAVAPAI
 COUNTY, ARIZONA.

ACKNOWLEDGEMENT:
 STATE OF ARIZONA
 COUNTY OF YAVAPAI
 TOWNSHIP 14 NORTH
 RANGE 2 WEST
 SECTION 28
 DOWNER TRAIL SUBDIVISION
 OF A PART OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 14 NORTH,
 RANGE 2 WEST,
 OF THE GILA AND SALT RIVER BASIN AND MERIDIAN, YAVAPAI
 COUNTY, ARIZONA.

SURVEYORS/CERTIFICATE:
 I, the undersigned, being duly qualified as a Surveyor in and for the State of Arizona, do hereby certify that the above described plat is a true and correct copy of the original plat as filed in my office, and that the same conforms to the provisions of the laws of the State of Arizona relating to the recording of plats.

APPROVAL:
 APPROVED BY THE YAVAPAI COUNTY COUNCIL THIS 27 DAY OF Sept. 1988.
 BY: *Thomas S. Dwyer* COUNTY CLERK

NOTICE:
 THE PLAT, MAP OF DOWNER TRAIL, IS CONFORMANT WITH THE REGULATIONS RELATING TO THE CITY OF PHOENIX, ARIZONA, AND WITH THE CONSTITUTIONALLY APPROVED PRELIMINARY PLATS OF PHOENIX, ARIZONA, AND WITH THE CONSTITUTIONALLY APPROVED PRELIMINARY PLATS OF PHOENIX, ARIZONA, AND WITH THE CONSTITUTIONALLY APPROVED PRELIMINARY PLATS OF PHOENIX, ARIZONA.

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Parks & Recreation

AGENDA ITEM: Approval of Real Estate Purchase Agreement with Westridge Preserve, LLC, for Open Space Acquisition

Approved By:

Date:

Department Head:	Debbie Horton	
Finance Director:	Mark Woodfill	
City Manager:	Craig McConnell <i>Craig McConnell</i>	9-16-11

Background

On July 14, 2011, the Planning and Zoning Commission voted unanimously to recommend approval of a master plan amendment for The Preserve at Prescott, a Westridge Preserve, LLC, planned area development. The amendment pertains to Phase 4 section of the development, revising the number of lots and the housing type. It also proposes public ownership of the open space tracts with trail connectivity to existing City trails. The Preserve at Prescott was originally platted as Downer Trail subdivision.

The attached standard city agreement provides for purchase of a minimum of 30 acres for the total price of \$56,000. A July 2011 appraisal by Robert Huck valued the 30 acres at \$238,000. The subject tract of open space is contiguous with and complementary to previously designated open space within the Enchanted Canyon Subdivision; a significant east-west trail corridor has been identified with a western terminus at the Dalke petroglyph site. Once constructed, total trail length to be added to Prescott's Mile-High Trail System will be 1.8 miles. The acquisition will also afford future eastbound connections via sidewalks to the Prescott Rodeo Grounds. The 30 acres is inclusive of Lot #144 on which a future trailhead parking lot will be constructed at an estimated cost to the city of \$8,000. The annual maintenance cost of the proposed trail system through the property is estimated to be \$300.

The purchase agreement sets forth more details of the proposed purchase, including opening escrow and initiation of the required ALTA survey. The survey process and associated legal description could result in an increase to the 30 acres, but will not alter the purchase price. Once all steps identified in the purchase agreement are completed, the final purchase will be presented to City Council for the required ordinance. Close of escrow is specified to be on or before December 15, 2011.

Budget

Funding for this purchase, and development of the parking lot, is available and budgeted from the 1% sales tax for Streets and Open Space.

Attachment – Real Estate Purchase Agreement

Recommended Action: **MOVE** to approve a Real Estate Purchase Agreement with Westridge Preserve, LLC, for acquisition of a minimum of 30 acres of open space at the purchase price of \$56,000.00.

**REAL ESTATE PURCHASE AGREEMENT
(Open Space Acquisition)**

THIS REAL ESTATE PURCHASE AGREEMENT (“Agreement”) is made and entered into by and between Westridge Preserve, LLC (“Seller”), and the City of Prescott, an Arizona municipal corporation, (“Buyer” or “City”). Seller and Buyer may be jointly termed “Parties” or individually “Party.”

WITNESSETH:

WHEREAS, Seller owns certain real property consisting of that property more particularly described in Exhibit “A” attached hereto (the “Property”) including any and all improvements on the real property and all easements and rights-of-way. That portion of the Property described as Open Space in Parcels 3 and 4 of Exhibit “A” is depicted as Open Space on the Master Plan and Open Space Exhibit attached hereto as Exhibit “B”.

WHEREAS, Seller desires to sell and Buyer desires to purchase the Property in accordance with the terms and conditions specified herein.

WHEREAS. The parties agree that the City’s use of the Property for its’ open space acquisition program is a public use for a public purpose. The Property will be purchased with monies designated by the City in accordance with applicable City ordinances.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties hereby agree as follows:

1. DESCRIPTION OF PROPERTY.

The Property which is the subject of this Agreement consists of approximately 30 acres located in The Preserve at Prescott and Downer Trail Subdivision, both subdivisions on the west side of Prescott, Yavapai County, Arizona, as more fully described in Exhibit “A” attached hereto.

2. AGREEMENT TO SELL AND PURCHASE.

Subject to the terms of this Agreement, Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, on the terms and conditions herein set forth, the Property, together with all privileges, rights-of-way, easements, licenses, water rights, and other rights and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such real property. The Parties acknowledge and agree that the Property is being purchased with public funds, is intended to and shall be for the benefit of the citizens of Prescott.

3. OPENING AND CLOSING DATES.

“Opening of Escrow” shall occur when Escrow Agent accepts this Agreement as provided at the end of this Agreement. Subject to the satisfaction of all contingencies as set forth herein, the closing of this transaction (the “Closing” or the “Close of Escrow”) shall take place at the office of the Escrow Agent on or before December 15, 2011 (the” Scheduled Closing Date”).

4. PURCHASE PRICE.

A. The purchase price for the property is agreed to be \$56,000.00.

B. The Seller warrants that Seller is the owner of a good title to the Property herein sold and shall convey to the City fee simple title to the property by special warranty deed, free and clear of all monetary liens and all other liens and encumbrances to which Buyer does not object as set forth in the title commitment and the use restrictions as hereinafter set forth, subject only to the following:

(1) The tendered purchase price for the Property to be paid by the City is agreed to be the total sum of \$56,000.00 and has been determined by the City to be fair value in the public interest based upon the suitability, need and public benefit of said Property and has been also agreed to be the acceptable paid value by the Seller.

C. Buyer shall provide payment for the purchase price to the Seller as follows:

(1) The sum of Three Thousand Dollars (\$3,000.00) (the “Earnest Money Deposit”) shall be deposited with the Escrow Agent, in cash or certified funds, within three (3) days from the Opening of Escrow, and shall be disbursed to the Seller upon the Close of Escrow. The Earnest Money Deposit shall be refundable until expiration of the Sixty (60) day Examination Period, at which time, if Buyer has failed to terminate this Agreement, it shall become non-refundable and shall be forfeited to Seller upon Buyer’s failure to perform, subject only to (a) the conditions of Section 4 hereof and (b) to performance by Seller of its obligations hereunder. Immediately upon receipt of the Earnest Money Deposit, the Escrow Agent shall deposit the funds in a short-term interest-bearing account at a financial institution mutually acceptable to Buyer and Seller. The interest earned on such deposit shall accrue to the benefit of the Buyer, except in the event Seller becomes entitled to retain the Earnest Money Deposit by reason of Buyer’s failure to perform, in which event said interest shall accrue to the benefit of the Seller.

(2) The balance of the remaining purchase price in the sum of Fifty Three Thousand dollars (\$53,000.00) shall be paid as follows:

(a) Buyer shall pay the balance of Fifty Three Thousand dollars (\$53,000.00) to the Escrow Agent for the benefit of Seller plus or minus pro-rations as hereinafter provided, in cash or certified funds or by wire, on or before the Scheduled Closing Date, unless the Scheduled Closing Date is extended by

mutual agreement of the parties in which case the balance shall be paid to Escrow Agent on or before the agreed upon extended closing date. The balance shall not bear interest and shall be paid and disbursed to Seller on or before Close of Escrow during the City's fiscal year 2011-2012.

5. EXAMINATION PERIOD.

A. Buyer shall have a period commencing on the date of Opening of Escrow and ending at 5:00 p.m. on the sixtieth (60th) day after the Opening of Escrow (the "Examination Period") during which to make its examination and investigation of the Property, and this Agreement is subject to and conditioned upon Buyer's approval of same in Buyer's sole and absolute discretion. Buyer's activities during the Examination Period shall include, without limitation, investigation of all aspects of the Property that Buyer deems advisable to confirm that the Property is suitable for Buyer's intended use

B. Within fifteen (15) days after the Opening of Escrow, the Seller shall supply to City any surveys or environmental reports in Seller's possession concerning the Property. Seller makes no representations or warranties in regard to the information provided pursuant to this paragraph or Buyer's right to rely thereon.

C. Within the Sixty (60) day examination period after the Opening of Escrow, or such shorter time period as will allow the Close of Escrow prior to December 15, 2011, Seller shall assist in and cooperate with Buyer obtaining information and documents and any Property information possessed by Seller to assist Buyer in obtaining and procuring, at Buyers' sole cost, a survey of the Property (the "Survey") prepared by an Arizona licensed civil engineer. The Survey shall be certified to Buyer, Seller and Escrow Agent and shall meet the minimum ALTA/ASCM standards for issuance by Escrow Agent of an extended ALTA coverage owner's policy of title insurance. The Survey shall contain a complete and accurate legal description of the Property. In addition, Seller agrees to reasonably cooperate with Buyer during the Examination Period and to furnish Buyer such other documents, instruments and information in Seller's possession concerning the Property or its operation as Buyer may, from time to time, reasonably request.

D. Following the Opening of Escrow, Buyer, its agents and employees may enter upon the Property at any time for the purpose of conducting any and all tests, investigations, inspections, studies, and surveys which Buyer in its discretion may deem advisable. If Buyer desires an environmental report or any other reports of any kind with respect to the Property, Buyer shall obtain such reports at its expense during the Examination Period. Buyer hereby agrees to indemnify Seller and the Property and holds Seller and the Property free and harmless from any and all loss or liability resulting from the activities of Buyer, its agents and employees upon the Property, and from any and all mechanics', material man's and other liens resulting from such conduct of Buyer, its agents and employees upon the Property. The foregoing indemnification shall survive the termination of this Agreement. Buyer agrees to deliver to Seller, within five (5) days copies of any reports pertaining to any examination or inspection report received by Seller.

E. At any time prior to the expiration of the Examination Period, if Buyer determines, for any reason whatsoever, that it does not desire to complete the transaction contemplated herein, Buyer may terminate this Agreement by so notifying Seller and Escrow Agent in writing. Upon termination of this Agreement pursuant to this paragraph, the escrow provided for herein shall be immediately canceled, the Earnest Money Deposit and all earnings thereon shall be returned to Buyer, and Buyer shall pay all escrow fees accrued in connection with the escrow or the cancellation thereof. Notwithstanding anything to the contrary contained in this agreement, it is agreed that in the event that either Buyer or Seller wishes to cancel this agreement as may be provided herein during the examination period, they shall be required to provide written notice of their intent to cancel this agreement which notice shall be provided to the other party and to Escrow Agent, not later than Ten (10) days prior to the closing date specified herein.

6. TITLE REVIEW PERIOD.

A. Escrow Agent is hereby instructed to deliver to Buyer and Seller, as soon as practicable after the Opening of Escrow, a title commitment for an ALTA extended coverage Owner's title insurance policy (the "Title Report"), together with full, complete and legible copies of all instruments of record referred to therein. Buyer shall pay the premium for the standard portion of the title insurance policy, and Buyer shall pay all costs for any extended coverage and/or endorsements in excess of the cost of a standard coverage policy, if so desired by Buyer.

B. Buyer shall have ten (10) days after receipt of the Title Report and the Survey (the "Title Review Period") to give written notice of objection to any matter shown on the Title Report or the Survey. In the event an amended Title Report is issued or an amended Survey is prepared, Buyer shall have ten (10) days from Buyers' receipt of the amended Title Report or Survey within which to give written notice of objection to any matter shown on the amended Title Report or amended Survey. Seller will, within ten (10) days after timely notification of any objection, advise Buyer in writing whether or not Seller will attempt to eliminate or cure any matter to which Buyer has objected. In the event that Seller advises Buyer that Seller will not attempt to eliminate or cure the matter to which Buyer has objected, Buyer, may exercise its options in writing within five (5) days after receipt of Sellers's notice, may elect to (i) waive the objection; or (ii) terminate this Agreement and the escrow. If Buyer fails to give written notice of its election within the time period provided, Buyer will be deemed to have waived the objection. If Seller advises Buyer that Seller will attempt to eliminate any matter to which Buyer has objected, Seller shall use its best efforts to cure such matters on or before the Scheduled Closing Date, provided, however, Seller shall have no liability to Buyer for failure to cure such matters, and in the event such matters are not cured on or before the Scheduled Closing Date, Buyer shall at its option have the right to either (i) terminate this Agreement, or (ii) waive its objections to such matters. Upon termination of this Agreement pursuant to the terms of this paragraph, the escrow provided for herein shall be immediately canceled, the Earnest Money Deposit, together with all earnings thereon, shall be returned to the Buyer, and Seller and Buyer shall each pay one-half (1/2) of the fees in connection with the escrow or the cancellation

thereof.

C. If Buyer fails to give written notice of any objection to the Title Report or the Survey within the time provided above, Buyer will be deemed to have approved all matters shown on the Title Report and the Survey, and the Property shall be conveyed to the Buyer subject to all such matters. All matters shown on the Title Report and the Survey, except those to which Buyer timely objects are hereinafter referred to as "Permitted Title Exceptions".

D. Notwithstanding anything to the contrary in the preceding subparagraphs, Close of Escrow shall be conditioned on Seller removing any financial liens and monetary obligations without the necessity of Buyers' objecting to said matters. Seller and Buyer acknowledge that the Property is subject to a Deed of Trust in favor of National Bank of Arizona recorded at Book 4564, Page 637, and modified at Book 4620, Page 124, Official Records of Yavapai County, Arizona, release of which shall be a condition of Close of Escrow. If any monetary liens or encumbrances have not been removed on or before the Scheduled Closing Date, this Agreement shall automatically terminate and Buyer shall obtain refund of the escrow deposit.

7. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller represents, warrants and covenants to Buyer those matters set forth below, with the understanding that Buyer shall rely upon said representations, warranties and covenants. All representations and warranties shall survive the Closing for a period of One (1) year after the entire Property is paid.

A. Seller and all persons acting for and on behalf of Seller have the full power, capacity and authority to enter into and deliver this Agreement, to perform all obligations of Seller hereunder, to complete and close this transaction in accordance with this Agreement and to sign, deliver and perform any documents and instruments in connection herewith on behalf of Seller.

B. Seller is not aware of any liens, encumbrances, claims of liens or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report, and Seller shall protect Buyer against or remove as a lien or encumbrance any such matter arising prior to the Closing except those caused by Buyer.

C. The Property is not subject to any written or oral agreement which grants to any person or entity other than the Buyer an option, right of first refusal or other right to acquire any interest in the Property.

D. Seller has no knowledge of any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking of all or any portion of the Property.

E. Seller has not authorized any work on the Property which could result in any

mechanics' liens, claims of lien or other claims against the Property, and all bills for work done or material supplied to the Property have been paid. Seller shall indemnify, defend, protect and hold Buyer harmless from any unrecorded mechanics', surveyors' or engineers' liens, claims of lien or other claims against the Property occurring or arising for work or services performed at Seller's request to or for the Property prior to the Closing, except for work performed by or on behalf of Buyer.

F. To Seller's knowledge, there are not any adverse claims of adjoining property owners against the Property; there are no adverse parties in possession of the Property or any part thereof; and there are no encroachments by Seller on the Property or by others in the Property, except as disclosed in the Title Report.

G. To Seller's knowledge, but without any investigation or inquiry of any kind, the Property has not been used by Seller or any of Seller's predecessors in title, nor by anyone else, to generate, manufacture, refine, transport, treat, store, handle, discharge or dispose of hazardous or toxic wastes or substances, except for insecticides, pesticides, chemicals, and other substances used in connection with the growing and harvesting of agricultural products or the preparation or use of the land for agricultural purposes. Seller is not aware of any proceeding or inquiry by any governmental authority with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from or to other property.

8. DISCLAIMER.

A. Except as herein specifically set forth, Seller makes no representations or warranties, express or implied, with respect to, and shall have no liability for: (1) the condition of the Property or the suitability of the Property for Buyer's intended use or for any use whatsoever; (2) any applicable building or zoning laws or regulations or with respect to compliance therewith or with respect to the existence of or compliance with any required permits, if any, of any governmental agency; (3) the availability of water, sewer or other utilities; (4) water, sewer or other utility districts; (5) access to any public or private sanitary sewer system; or (6) the presence of any hazardous substances on or under the Property. Without limiting the generality of the foregoing, but subject to the representations set forth in Section 8, Seller shall have no liability to Buyer with respect to the condition of the Property under common law, or any federal, state, or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C.A. §9601 et seq., or any similar state statutes in Arizona, including but not limited to the Arizona State Superfund Act, as codified in A.R.S. §49-281 through 287, and Buyer hereby waives any and all claims which the Buyer has or may have against the Seller with respect to the condition of the Property (except claims for a breach of Seller's representations and warranties set forth in Section 8), including any private causes of action arising under the foregoing statutes concerning the Property and any conditions in the Property.

B. Buyer's failure to terminate this Agreement during the Examination Period shall act as an acknowledgment by Buyer that: (i) during the Examination Period, Buyer has had the opportunity to review the Property to determine if the Property is in violation of any federal,

state or local environmental law, rule or regulation or otherwise contains levels or concentrations of "hazardous substances", "hazardous materials", "toxic substances" or "hazardous waste", as such terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. §9601 et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., or the Toxic Substances Control Act, as amended, 15 U.S.C. §2601 et seq., or analogous provisions of state law; (ii) Buyer is purchasing the Property "as is" in its present condition, subject only to the representations and warranties contained in this Agreement; and (iii) Buyer has fully inspected the Property and assumes the responsibility and risks of all defects and conditions, including such defects and conditions, if any, that cannot be observed by casual inspection.

C. By closing the transaction hereunder, Buyer agrees that (i) Buyer shall be deemed to have accepted all risks associated with adverse physical characteristics and existing environmental conditions that may or may not have been revealed by the Buyer's investigation of the Property, (ii) as between the Buyer and the Seller, Buyer shall be deemed to have accepted all costs and liability associated in any way with the physical and environmental condition of the Property, and (iii) the Buyer hereby waives any and all objections, setoffs, claims, or causes of action (whether under a statute or common law) concerning the physical characteristics and existing conditions of the Property, including, without limitation, any environmental hazards.

D. Notwithstanding the foregoing disclaimers, waivers and releases, nothing in this Section 9 shall be deemed to relieve Seller of any liability to Buyer for release of hazardous materials or other environmental contamination on the Property caused by Seller or Seller's officers, directors, shareholders, employees, agents, contractors, or invitees; nor shall this Section be deemed to release Seller from liability for breach of any express representations or warranties contained in this Agreement.

9. POSSESSION.

Possession of the Property and risk of loss will be delivered to the Buyer at Close of Escrow.

10. CLOSING MATTERS.

A. On or before the Scheduled Closing Date, Seller shall deposit with Escrow Agent, for delivery to Buyer at the Closing, the following items, which shall be in form satisfactory to Buyer and be duly executed and acknowledged (where applicable): (i) a Special Warranty Deed conveying fee simple title to the Property to Buyer, subject only to the Permitted Title Exceptions and deed restrictions regarding use as hereinafter set forth (the "Special Warranty Deed"); (ii) an Affidavit of Real Property Value; (iii) an affidavit of Seller's non-foreign status, as required pursuant to Section 20; and (iv) such other documents as may be required by Escrow Agent.

B. On or before the Scheduled Closing Date, Buyer shall deposit with Escrow

Agent, for delivery to Seller at the Closing, (i) Fifty Three Thousand dollars (\$53,000.00) the balance of the purchase price in cash or certified funds.

C. All real property taxes and assessments shall be prorated as of the Closing Date on the latest information available to the Escrow Agent. All Escrow fees and all other closing costs shall be charged to and pro rated per standard escrow practice and allocated between the Buyer and Seller. If any tax or assessments affects the property and any additional land not a part of the Property, only that portion of the tax or assessment attributable to the Property shall be prorated between Buyer and Seller, and the remainder of said tax or assessment shall remain the sole obligation of the Seller. The determination of the portion of the tax or assessment attributable to the Property shall take into account the value of improvements (if any) made to the property and/or any other property covered by the tax bill to properly account for differences in the valuation of, and resulting tax or assessment levied against the Property covered by the bill.

11. GRANT OF EASEMENT.

At Close if Escrow Seller shall grant to City a non-dedicated easement ("Easement") of no less than fifteen feet (15') in width for pedestrian ingress and egress adjacent to and parallel with the westerly boundary of the Preserve at Prescott Phase 3 (Proposed) as depicted on Exhibit "B" hereto. The grant of Easement shall be subject to the following:

A. City agrees to use its best efforts to manage the Easement and control its use, control excessive noise and protect existing vegetation and other physical attributes of the Easement consistent with City practices on other open space properties owned by the City.

B. City shall keep the Easement free of liens and encumbrances.

C. No building or other structures shall be permitted within the Easement.

D. No hazardous waste or other hazardous materials or substances shall be transported in or on the Easement by City.

E. City shall indemnify and hold harmless the Seller, its members, agents and assignees from any claims, liabilities, causes of action or damages arising from or relating to the Easement arising from or related to acts of the City, its agents, officers or employees, or the City's use of the Easement.

12. USES.

Buyer shall only use the Property for the uses set forth in the Permitted Use Table of the City Land Development Code as Amended March 22, 2011 for Natural Open Space (NOS) excepting therefrom; amphitheaters, arenas and campgrounds. Such use restriction shall be specifically set forth in the Special Warranty Deed. As an exception to the above, Buyer is

authorized to construct a parking lot on Lot 144 (described as PARCEL 2 in Exhibit "A") for the purpose of public parking for use of the Property.

13. REPLAT.

A. Seller anticipates submitting a request for replat of the Preserve at Prescott Phase 3 (Proposed) which is depicted as currently proposed on Exhibit "B" hereto. At the time of approval of such request for replat, Seller shall transfer and City shall accept fee title to the Easement described in paragraph 11 hereof. Such transfer shall be at no additional consideration and shall be subject to the same representations and warranties of Seller as set forth herein. Such transfer of the Easement shall include the use provisions set forth in paragraph 12 hereof.

B. Seller anticipates submitting a request for replat of the Preserve at Prescott Phase 4 (Proposed) which is depicted as currently proposed on Exhibit "B" hereto. The City agrees that as a part of such a requested replat process, it will reasonably allow for the exchange of certain of the Property being purchased hereunder in return for certain of the property owned by Seller as depicted as the Preserve at Prescott Phase 4 (Proposed) on Exhibit "B" hereto so long as such property is contiguous and the exchange does not result in City ownership of less gross square footage of property than the total gross square footage purchased by the City hereunder. Should such replat of the Preserve at Prescott Phase 4 result in additional property for open space use, the City agrees to accept a transfer of such additional open space property, without payment of additional consideration, subject to the same representations and warranties of Seller as are set forth herein. In order to facilitate the possible exchange of property described herein, the City agrees that for a period of five (5) years from the date of the Special Warranty Deed it will not seek to rezone any of the Property located within one hundred fifty feet (150') of the mutual boundary between the Property and the Preserve at Prescott Phase 4 (Proposed) on Exhibit "B" hereto. Any property transferred to Seller by way of the exchange of property described herein shall not be subject to the use provisions set forth in paragraph 12 hereof or in the Special Warranty Deed.

14. MAINTENANCE.

Following transfer, the City shall use its best efforts, consistent with the practices and procedures that City utilizes on other open space properties owned by the City, as follows:

A. to keep the Property free from trash, waste and other debris , and

B. to proactively manage and patrol the Property to control its use, excessive noise and protect existing vegetation and other physical attributes of the Property.

15. BROKERS' COMMISSIONS.

Buyer and Seller warrant, each to the other, that, there are no fees or commissions owing to any broker or other party for bringing about the sale contemplated hereunder by Buyer. If any other person shall assert a claim to a fee, commission or other compensation on account of

alleged employment as a broker or finder or for performance of services as a broker or finder in connection with this transaction, the party hereto under whom the broker or finder is claiming shall indemnify and hold harmless the other party against and from any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought thereon (including, but without limitation, counsel and witness fees and court costs in defending against such claim).

16. NOTICES.

All notices, requests and other communications hereunder shall be given in writing and either (i) personally served on the party to whom it is given, or (ii) mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as Federal Express or Airborne, or (iv) sent by facsimile to the number set forth below, as long as such facsimile transmission is confirmed as received by the transmission equipment, and is followed the next business day by another permissible means of notice hereunder, addressed as follows:

If to Seller:

Tom Devereaux
Westridge Preserve, LLC
1153 Linwood Avenue
Prescott, AZ 86305

With a copy to:

Paul L. Roberts
Roberts & Carver, PLLC
239 South Cortez Street
Prescott, AZ 86303
Phone (928) 445-8824

If to Buyer:

Craig McConnell
Prescott City Manager
201 S. Cortez
Prescott, AZ 86303

With a copy to:

City Attorney
City of Prescott
221 S. Cortez Street
Prescott, AZ 86303

Phone (928) 777-1274

If to Escrow Agent:

Connie Allman
Yavapai Title
123 N. Montezuma
Prescott, Arizona 86301
928-445-2528

All notices shall be deemed given when delivered or, if mailed as provided above, on the second day after the day of mailing, and if sent by overnight courier, on the next day after the date of deposit with the courier, and if sent by facsimile, upon machine confirmation of receipt. Any party may change his address for the receipt of notices at any time by giving written notice thereof to the other parties in accordance with the terms of this section. The inability to deliver notice because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

17. SELLER'S REMEDIES.

Provided Seller is not in default hereunder, in the event the escrow hereunder fails to close because of a breach by the Buyer or Buyer's inability to satisfy any of the conditions precedent set forth herein, Seller shall not be entitled to specifically enforce this Agreement. In that event, the Earnest Money Deposit that has been deposited into escrow, together with all earnings thereon, shall be released to Seller, free of all claims of Buyer. Seller's sole remedy shall be to retain the Earnest Money Deposit and earnings thereon as liquidated damages.

18. BUYER'S REMEDIES.

Provided Buyer is not in default hereunder, in the event the escrow hereunder fails to close because of a breach by the Seller or Seller's inability to satisfy any of the conditions precedent set forth herein, Buyer shall not be entitled to specifically enforce this Agreement. In that event, the Earnest Money Deposit that has been deposited into escrow, together with all earnings thereon, shall be released to Buyer, free of all claims of Seller. Buyer's sole remedy shall be to retain the Earnest Money Deposit and earnings thereon as liquidated damages.

19. RIGHT TO CURE.

The breach by either Party of any representation or warranty under this Agreement or such Party's failure to perform any covenant, condition or obligation hereunder shall constitute a default hereunder, and the non-breaching party may exercise its remedies, including termination of this Agreement, only if such breach or nonperformance continues more than five (5) business days following the date of notice by the other Party specifying such breach or nonperformance.

20. AFFIDAVIT OF NON-FOREIGN STATUS; IRS FORM 1099B.

Seller shall deliver or cause to be delivered to Escrow Agent at the Close of Escrow an affidavit executed by Seller under penalty of perjury setting forth Seller's taxpayer identification number and stating that Seller is not a foreign person, in accordance with Internal Revenue Code Section 1445(b)(2). Seller shall also execute and deliver to Escrow Agent at the Close of Escrow a copy of IRS Form 1099B for filing by Escrow Agent with the Internal Revenue Service (the "IRS"). Escrow Agent, as the party responsible for closing the transaction contemplated hereby within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "code"), is instructed to file all necessary information reports, returns and statements (collectively the "reports") regarding the transaction required by the Code, including, but not limited to, the reports required pursuant to Section 6045 of the Code.

21. CLOSING PROTECTION LETTER.

If Escrow Agent acts as an agent for an underwriter and does not issue policies of title insurance, Escrow Agent agrees that, as a condition to acting as the escrow agent for this transaction, it shall cause its underwriter (the "title insurer") to issue to Seller and Buyer, within twenty (20) days after the Opening of Escrow, an escrow and closing protection letter, insured escrow and closing service, or statement of service responsibility in written form satisfactory to both Seller and Buyer.

22. MISCELLANEOUS.

A. This Agreement and the exhibits attached hereto or to be attached hereto, embody the entire agreement between the Parties in connection with this transaction, and there are no oral agreements existing between the Parties relating to this transaction that are not expressly set forth herein and covered hereby; this Agreement may not be modified except in a writing signed by all parties.

B. Time is of the essence of this Agreement.

C. In the event either Party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the sole remedies shall be as specified in paragraphs 15 and 16 respectively, herein.

D. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.

E. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute

one and the same agreement.

F. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest and assigns; provided, however, that no assignment of this Agreement shall in any way relieve the assignor of its obligations hereunder. Buyer may assign its rights pursuant to this Agreement by giving written notice of such assignment to Seller and the Escrow Agent.

G. This Agreement shall be construed and interpreted under, governed and enforced according to the laws of the State of Arizona.

H. Cancellation in the Event of Conflict. The parties hereby note that either party hereto may cancel this agreement in the event of a conflict of interest as defined by A.R.S. § 38-511, the provisions of which are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date set forth below their respective signatures.

SELLER:

WESTRIDGE PRESERVE, LLC

By _____

By: _____

BUYER:

CITY OF PRESCOTT

By _____

Marlin D. Kuykendall

Its: Mayor

Attest: _____

Elizabeth A. Burke

City Clerk

Approved as to form:

By _____

Gary D. Kidd

City Attorney

AGREEMENT AND CONSENT BY ESCROW AGENT

The undersigned, Yavapai Title Company, hereby agrees to (i) accept the foregoing Real Estate Purchase Agreement as instructions to the undersigned, (ii) act as Escrow Agent under said Agreement in consideration of its fees normally charged in such transactions, and (iii) be bound by said Agreement in the performance of its obligations as the Escrow Agent.

Dated this _____ day of _____, 2011.

YAVAPAI TITLE AGENCY

By: _____
Its: _____

II-J

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Airport

AGENDA ITEM: Adoption of Ordinance No. 4813-1213 authorizing the granting of a Public Utility Easement to SunE AZ1, LLC (SunEdison), located on City property at the Airport

Approved By:

Date:

Department Head: Benjamin Vardiman, Airport Manager

Finance Director: Mark Woodfill

City Manager: Craig McConnell



9-21-11

ITEM SUMMARY

This is a request to grant an easement to SunE AZ1, LLC (SunEdison), for electrical service and access rights across City property, extending between the SunEdison Solar field and the Ruger Substation at the Prescott Municipal Airport.

BACKGROUND

This easement has been requested by SunEdison to accommodate underground power supply from the SunEdison Solar field located north of the airport, across City and Airport property to the electrical substation at the Ruger plant. There are two portions of this easement. The first grants rights for the operation of the electrical service lines (10 feet wide) and the other grants access across certain airport property (30 feet wide) to their facility to the north of the Airport as shown on the attached area map (Exhibit 1).

This easement will not impede future Airport development or alteration and is subject to relocation at the request of the City in the future. SunEdison is responsible for costs of such relocation and accomplishment within 180 days of the notification by the City.

BUDGET

As compensation for the first 35 year term of this easement, SunEdison has paid for the removal of three existing above ground poles which are closest to the airport runway and placed the electrical lines underground. SunEdison will have the option of renewing this easement for four additional 10 year terms, subject to City approval, at a rate to be determined in accordance with the fair market value of the property at the time of the extension, which shall not be less than \$10,000 per year.

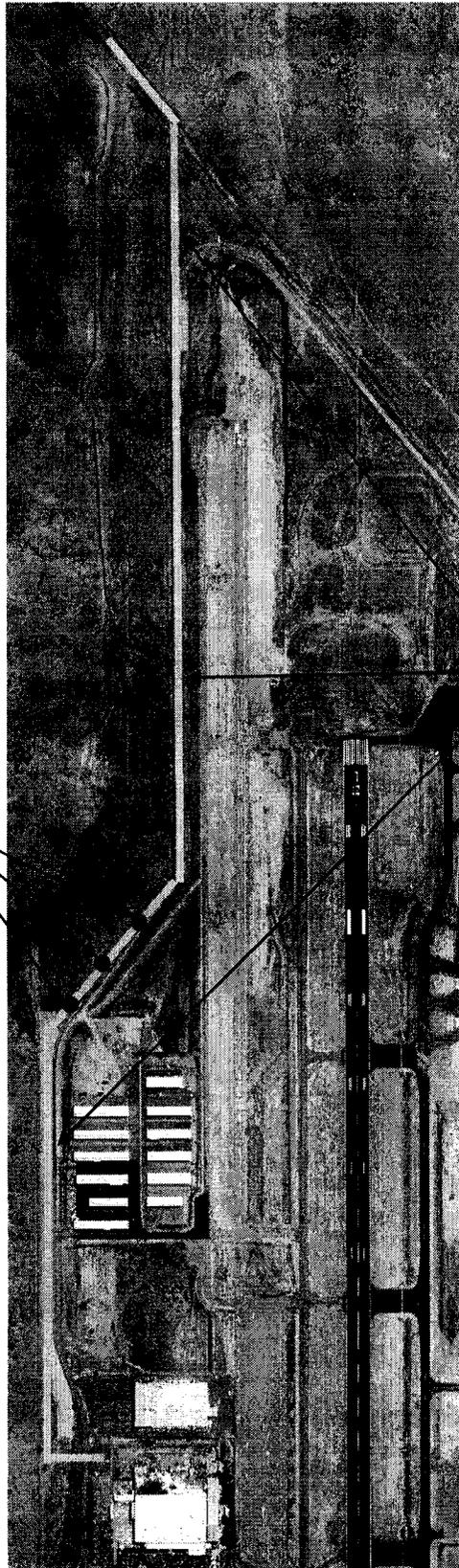
Recommended Action: MOVE to adopt Ordinance No. 4813-1213.

AGENDA ITEM: Adoption of Ordinance No. 4813-1213 authorizing the granting of a Public Utility Easement to SunE AZ1, LLC (SunEdison), located on City property at the Airport

EXHIBIT 1

3 POWER POLES
REMOVED BY
APS paid by SunE
AZ1, LLC
(SunEdison)

APPROXIMATE EASEMENT
SHOWN IN YELLOW



ORDINANCE NO. 4813-1213

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT,
YAVAPAI COUNTY, ARIZONA GRANTING A UTILITY EASEMENT TO SUNE AZ1,
LLC (SUNEDISON) IN THE VICINITY OF ERNEST A. LOVE FIELD**

RECITALS:

WHEREAS, the City Council of the City of Prescott has determined that the granting of an easement, more particularly described in the attached exhibit, would benefit the City of Prescott; and

WHEREAS, SunE AZ1, LLC (SunEdison) has requested to proceed with construction activities.

ENACTMENTS:

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

SECTION 1. THAT a utility easement to SunE AZ1, LLC (SunEdison), as more particularly set forth in the easement attached hereto and made a part hereof, is hereby granted.

SECTION 2. THAT the attached easement is hereby ordered to be recorded in the Office of the Yavapai County Recorder, Arizona, in accordance with the provisions of the easement.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

PUBLIC UTILITY EASEMENT
Across certain property owned and operated by the CITY OF PRESCOTT
At the PRESCOTT MUNICIPAL AIRPORT

The **CITY OF PRESCOTT**, a municipal corporation (herein called the Grantor), for and in good and valuable consideration as described herein, does hereby grant and convey unto **SunE AZ1, LLC**, a Delaware limited liability company, and its successors, assigns, members, shareholders, employees, agents and independent contractors (herein called the Grantee), an Ingress and Egress Easement in conjunction with a Public Utility Easement as described below subject to the terms and conditions contained herein.

INGRESS and EGRESS

An easement for ingress and egress, 30 feet in width, upon, over, and across the lands herein described, to use for ingress and egress purposes and for all other purposes connected therewith.

The premises through and across which this Ingress and Egress Easement is granted are situated in the County of Yavapai, State of Arizona, and are described as follows:

An portion of the Northwest quarter of Section 19, Township 15 North, Range 1 west and a portion of the Southwest quarter for Section 24, Township 15 North, Range 2 West of the Gila and Salt River Meridian, Yavapai County, Arizona.

Said Ingress and Egress Easement being more particularly described on EXHIBIT A and shown on EXHIBIT A-1 attached hereto and by this reference incorporated herein.

The Grantee shall have the right to use said easement for all lawful purposes. And, at the Grantees expense, the Grantee shall also have the right to construct, level, cut, fill, drain, gravel/seal, pave, install culverts, and to maintain, repair and rebuild a roadway within the boundaries of said easement subject to the Grantor's approval of plans and specifications for said roadway. The Grantee shall comply with access controls to limit the use of this easement by the public, as are deemed acceptable to the City of Prescott Airport Manager. Grantee hereby acknowledges and agrees to abide by the Federal Provisions as stated in Exhibit D attached hereto and by this reference incorporated herein.

PUBLIC UTILITY EASEMENT

An easement ten (10) feet in width, to construct, operate and maintain electric lines and appurtenant facilities upon, across, under and over the surface of the premises hereinafter described together with the right to operate, repair, replace, maintain, and remove said lines and appurtenant facilities and the right to for ingress and egress purposes and for all other purposes connected therewith. The Grantee shall comply with access controls to limit the use of this easement by the public, as are deemed acceptable to the City of Prescott Airport Manager. Grantee hereby acknowledges and agrees to abide by the Federal Provisions as stated in Exhibit D attached hereto and by this reference incorporated herein.

The Grantor shall have the right and privilege to use the easement to the extent such use is not inconsistent with the Grantee's use thereof. The Grantee shall have the right trim, cut and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights hereby granted.

The premises through and across which this easement is granted are situated in Yavapai County, Arizona, and are described as follows:

An portion of the Northwest quarter of Section 19, Township 15 North, Range 1 west and a portion of the Southwest quarter for Section 24, Township 15 North, Range 2 West of the Gila and Salt River Meridian, Yavapai County, Arizona.

Said easement being 10 feet in width lying 5 feet on each side of the centerline being more particularly described on EXHIBIT B and EXHIBIT C and shown on EXHIBIT B-1 AND EXHIBIT C-1 attached hereto and by this reference incorporated herein.

CONSIDERATION AND TERMS OF THE EASEMENT:

In consideration of the removal of three (3) existing power poles which were installed by Arizona Public Service Company and have been identified by the City Airport Manager as conflicting with the 2009 Airport Master Plan and placing the associated length of power lines supported by these poles underground at the sole cost of the Grantee, which is anticipated to be completed no later than June 30, 2011, Grantor hereby grants this easement for a term of thirty-five (35) years starting on the date of execution by the Grantor subject to the extension of such easement as is provided for herein.

The Grantee may request to extend, but the Grantor shall not be obligated to approve to extend, the term of this Easement, for four (4) additional ten (10) year terms by giving the City written notice of each said extension no more than 300 days and at least 180 days prior to the date the Easement would otherwise terminate. The compensation for any extended term shall be due and payable annually starting on the 36th anniversary of the date that this Easement was first executed by the Grantor and shall be established at that time using the then prevailing rate for bare ground leases at Prescott Airport as may be agreed among the parties, or if the parties cannot agree, as set by an MAI appraiser retained by the parties, with the cost of such appraisal to be shared equally by the parties. However, the compensation for any extended term shall not be less than \$10,000 per year.

The Grantee may terminate this easement at any time by providing 180 day prior written notice to the Grantor. In the event the Grantee permanently abandons said Easement, all the Grantee's rights hereunder shall cease and the Grantee shall record with the County Recorder an instrument abandoning the rights herein granted and all Grantee's rights hereunder shall cease, except for the right to remove any and all property placed upon said Easement within 180 calendar days subsequent to such abandonment.

By accepting this easement, the Grantee agrees to exercise reasonable care to avoid damage to said premises and all property that may at any time be thereon and further agrees to the Federal

Provisions as set forth in Exhibit D. The provisions hereof shall be binding upon the parties hereto and their respective heirs, executors, administrator's successors and assigns.

This easement shall in no way inhibit or interfere with the Grantor's right or ability to improve, alter or further develop the airport as it sees fit, regardless of the desires or views of the Grantee. If in the sole discretion of the Grantor, should relocation of the easement become necessary or desirable due to improvements, alterations, or future development of the airport, the parties agree to the following:

1. That Grantee and Grantor shall work together in a positive manner to successfully ensure the relocation of the easement and related facilities in a timely manner at a reasonable cost.
2. The Grantor shall provide 120 day prior written notice of intent to relocate the easement prior to adoption and recordation of the relocated easement. Said notice shall include at a minimum such proposed language as is deemed necessary to amend the easement location in this document, a written and graphical depiction of the existing easement and a written and graphical depiction of the proposed relocated easement. Grantee shall return three (3) signed originals of the relocated easement documents to the Grantor within 100 days of receipt of the notice.
3. The Grantor shall be responsible for planning, coordinating, surveying, and documenting the legal description for the relocated easement.
4. The Grantee shall be responsible for completing relocation of all of the Grantee's facilities within 180 days of the adoption of the relocated easement by the Grantor.
5. The Grantee shall be responsible for 100% of the Grantee's costs associated with the relocation of the Grantee's facilities which may exist within the easement.
6. Notwithstanding anything to the contrary contained herein, the width of any replacement easement shall be equal to or greater than the width granted herein.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand this _____ day of _____, 2011.

GRANTOR CITY OF PRESCOTT:

Marlin D. Kuykendall
Mayor

ATTEST:

APPROVED AS TO FORM:

Elizabeth A. Burke
City Clerk

Gary D. Kidd
Prescott City Attorney

GRANTEE: SUNE AZ1, LLC, a Delaware limited liability company,

BY: James Scarron

ITS: Authorized Representative

James Scarron
Signature

LEGAL DEPT.
Approved as to Form
Initials: JSC
Date: 9-2-11

ATTEST:

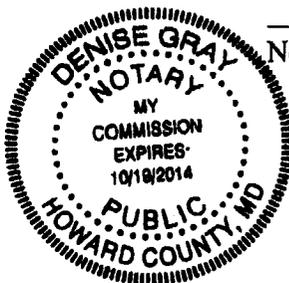
STATE OF MARYLAND)

County of Howard) ss.
~~Prince George's~~)

The foregoing instrument was acknowledged before me this 8 day of ~~August~~ ^{September}, 2011, by James Scarron, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

Denise Gray
Notary Public

My commission expires:
October 19, 2014



**EXHIBIT A
INGRESS AND EGRESS EASEMENT
METES AND BOUNDS LEGAL DESCRIPTION**

**PROPERTY DESCRIPTION
Access through the City of Prescott
Sec. 19, T15N-R1W & Sec. 24 & 25, T15N-R2W**

An easement 30.0 feet in width, lying 15.0 feet on each side of a centerline located within a portion of Sections 19, Township 15 North, Range 1 West, and Sections 24 and 25, Township 15 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

(The basis of bearings for this description is North 00°27'37" East, as measured from the Southwest corner of Section 7, Township 15 North, Range 1 West, to the West One-quarter corner thereof.)

Commencing at the North One-quarter corner of said Section 19;

Thence, North 89°43'30" West, 1045.09 feet to a point on the North line of said Section 19 and the East line of that certain parcel described in Book 2994 of Official Records, Page 552, on file in the office of the Yavapai County Recorder, being a portion of the historic Atchison, Topeka and Santa Fe Railroad right-of-way;

Thence, South 02°08'41" West (record South 02°03'13" West), 20.01 feet to a point on said East line of that said certain parcel described in Book 2994 of Official Records, Page 552, and the POINT OF BEGINNING of this centerline description;

Thence, North 89°43'30" West, 14.51 feet to a point hereinafter referred to as Point "A";

Thence, South 00°13'58" West, 92.80 feet;

Thence, South 04°51'16" West, 177.79 feet;

Thence, South 03°49'13" West, 161.80 feet;

Thence, South 01°27'48" East, 210.20 feet;

**City Access
Page 2 of 3**

Thence, South 01°08'08" West, 83.46 feet;

Thence, South 04°08'51" West, 86.00 feet;

Thence, South 02°14'46" West, 105.87 feet to the beginning of a tangent curve, concave Northwesterly, with a radius of 90.00 feet;

Thence, Southwesterly along said curve through a central angle of 54°59'18", a length of 86.38 feet;

Thence, South 57°14'04" West, 57.02 feet;

Thence, South 49°19'50" West, 644.48 feet;

Thence, South 46°00'53" West, 268.08 feet;

Thence, South 41°18'50" West, 232.03 feet;

Thence, South 44°08'21" West, 322.54 feet;

Thence, South 41°22'06" West, 450.90 feet;

Thence, South 41°48'12" West, 332.33 feet

Thence, South 40°28'17" West, 306.45 feet;

Thence, South 41°14'13" West, 1436.37 feet;

Thence, South 45°56'30" West, 104.42 feet to the beginning of a tangent curve, concave Northwesterly, with a radius of 396.00 feet;

Thence, Southwesterly along said curve through a central angle of 31°03'19", a length of 214.64 feet;

Thence, South 76°59'49" West, 519.18 feet;

Thence, South 78°28'41" West, 427.84 feet to the beginning of a tangent curve, concave Southeasterly, with a radius of 200.00 feet;

Thence, Southwesterly along said curve through a central angle of 13°00'14", a length of 45.39 feet;

Thence, South 65°28'27" West, 42.84 feet the beginning of a tangent curve, concave Southeasterly, with a radius of 200.00 feet;

City Access
Page 3 of 3

Thence, Southwesterly along said curve through a central angle of $12^{\circ}52'10''$, a length of 44.92 feet;

Thence, South $52^{\circ}36'17''$ West, 130.28 feet;

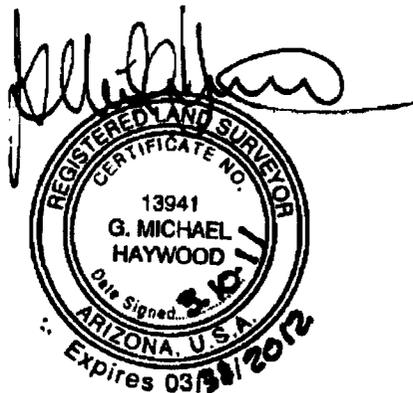
Thence, South $41^{\circ}24'50''$ West, 552.63 feet to a point on the Northerly terminus of the proposed right of way of Ruger Road, to be dedicated by the City of Prescott, from whence the Southwest corner of said Section 24 bears South $79^{\circ}14'50''$ West, 2379.97 feet;

AND BEGINNING at the point herein referred to as Point "A";

Thence, North $00^{\circ}13'58''$ East, 20.00 feet to a point on the North line of that certain parcel described in said Book 2994 of Official Records, Page 552, being the South line of that certain parcel described in Book 3444 of Official Records, Page 964, all on file in the office of the Yavapai County Recorder and the **END** of this portion of the centerline description;

EXCEPTING THERE FROM any portion of said easement lying East of the East line of said parcel described in Book 2994 of Official Records, Page 552;

The sidelines of this easement to be extended or shortened to fall on the said proposed right-of-way of Ruger Road, the South line of the said parcel described in Book 3444 of Official Records, Page 964, and the East line of the said parcel described in Book 2994 of Official Records, Page 552.



March 10, 2011
10-036

EXHIBIT A-1
INGRESS AND EGRESS EASEMENT
MAP OF METES AND BOUNDS LEGAL DESCRIPTION

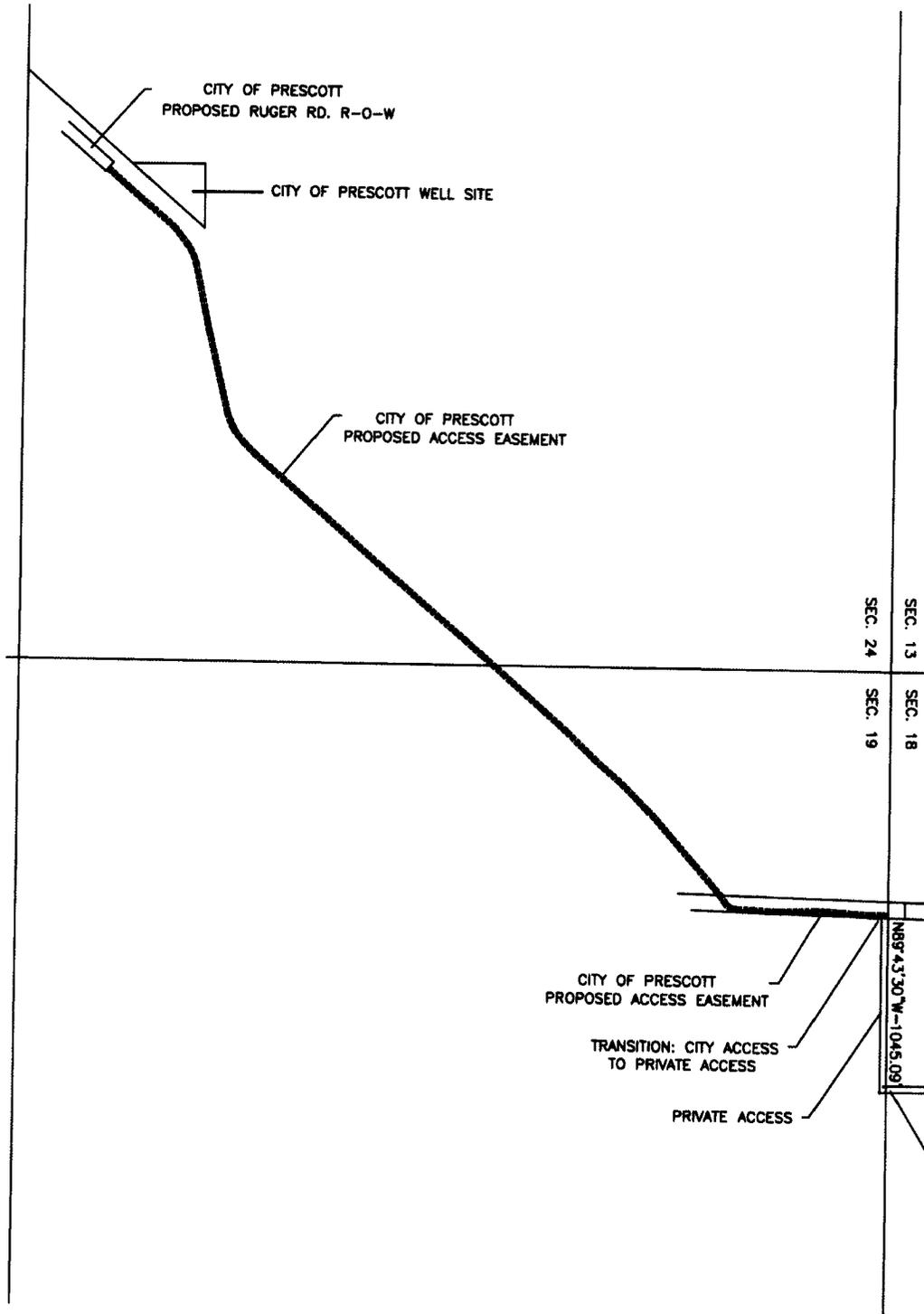


EXHIBIT B
PUBLIC UTILITY EASEMENT
METES AND BOUNDS LEGAL DESCRIPTION

An easement for public utilities being situated in a portion of the Northwest quarter of Section 25, 15 North, Range 2 West of the Gila and Salt River Meridian, Yavapai County, Arizona being 10 feet in width, 5 feet each side of the following described centerline:

Commencing at the Northwest corner of said Section 25, from whence the Northeast corner of said Section 25 bears South 89° 58' 41" East, 5381.93 feet distant;

THENCE: South 55° 27' 42" East a distance of 1661.59 feet to the Northwesterly corner of the Arizona Public Service Company "Sturm Ruger Electrical Substation" easement boundary as described in Book 4010, Page 617, records of Yavapai County, Arizona;

THENCE: South 41° 13' 07" West along the Northwesterly line of said Substation easement a distance of 174.77 feet to the TRUE POINT OF BEGINNING of the public utility easement herein described, from whence the Southwesterly corner of said Substation bears South 41° 13' 07" West 5.23 feet distant;

THENCE: North 48° 18' 07" West a distance of 322.84 feet to the POINT OF TERMINATION on the Westerly property line of the Prescott Municipal Airport "Ernest A. Love Field".

And

An easement for public utilities being situated in a portion of the Northwest quarter of Section 19, Township 15 North, Range 1 West and a portion of the Northeast and Southeast quarter of Section 24, Township 15 North, Range 2 West of the Gila and Salt River Meridian, Yavapai County, Arizona being 10 feet in width, 5 feet each side of the following described centerline: Commencing at the North quarter corner of said Section 19, from whence the Northwest corner of Section 19 bears North 89° 23' 52" West, 2577.10 feet distant;

THENCE: North 89° 23' 52" West along the North line of said Section 19, a distance of 1045.14 feet to the Easterly line of an abandoned 100 foot wide railroad right of way;

THENCE South 02° 21' 01" West along said right of way line a distance of 5.00 feet to the

TRUE POINT OF BEGINNING of the public utility easement herein described;

THENCE; North 89° 23' 52" West on a line parallel to and 5 feet South of the North line of said Section 19 a distance of 83.27 feet;

THENCE: South 02° 24' 42" West a distance of 793.45 feet;

THENCE: South 41° 34' 43" West a distance of 2491.31 feet;

EXHIBIT "B"
Sheet 2

THENCE: South 41° 32' 51" West a distance of 1816.82 feet;

THENCE: South 58° 30' 24" West a distance of 79.54 feet;

THENCE: South 72° 19' 17" West a distance of 50.29 feet;

THENCE: South 78° 23' 21" West a distance of 22.99 feet;

THENCE: continuing on a bearing of South 78° 23' 21" West a distance of 352.38 feet;

THENCE: South 78° 14' 12" West a distance of 66.72 feet;

THENCE: North 45° 46' 34" West a distance of 14.35 feet;

THENCE: North 63° 14' 08" West a distance of 51.03 feet;

THENCE: South 78° 36' 20" West a distance of 260.96 feet;

THENCE: South 76° 22' 44" West a distance of 259.84 feet to the Point of Curvature of a curve, concave to the North and having a radius of 475.15 feet;

THENCE: Westerly along the arc of said curve through a central angle of 16° 08' 59", an arc length of 133.93 feet to a Point of Tangency;

THENCE: North 88° 16' 44" West a distance of 64.76 feet;

THENCE: South 41° 35' 31" West a distance of 221.19 feet;

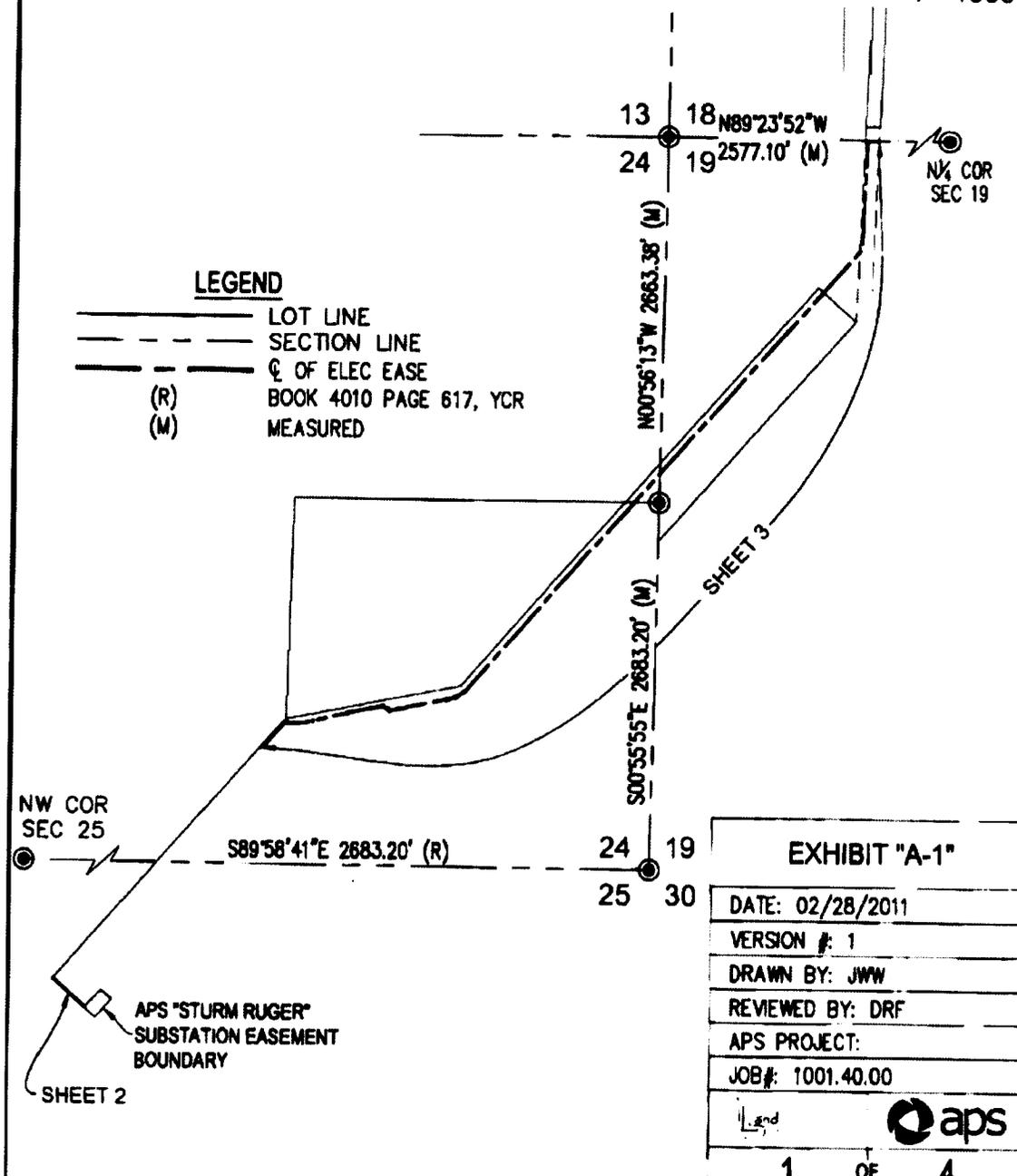
THENCE: South 57° 14' 44" West a distance of 33.30 feet to the POINT OF TERMINATION.

**EXHIBIT B-1
PUBLIC UTILITY EASEMENT
MAP OF METES AND BOUNDS LEGAL DESCRIPTION**

**ARIZONA PUBLIC SERVICE COMPANY
ELECTRIC EASEMENT
SEC. 19, T15N, R1W, & SEC. 24, T15N, R2W
OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA**



**SCALE
1"=1000'**



ARIZONA PUBLIC SERVICE COMPANY
ELECTRIC EASEMENT

SEC. 25, T15N, R2W, OF THE GILA AND SALT RIVER MERIDIAN
YAVAPAI COUNTY, ARIZONA



SCALE
1"=50'

102-03-008
JAMES DEEP WELL
RANCHES #1 LLC

NW COR SEC 25 $S89^{\circ}58'41''E (R)$ 5381.93' (BOB) NE COR SEC 25

WESTERLY LINE OF
PRESCOTT MUNICIPAL AIRPORT
"ERNEST A. LOVE FIELD"

POINT OF
TERMINATION

$N48^{\circ}18'07''W$ 322.84'

$S55^{\circ}27'42''E (R)$ 1661.59 (R)

102-03-006

$S41^{\circ}13'07''W (R)$ 180.00' (R)
 $S17^{\circ}47'$

WESTERLY LINE OF
APS "STURM RUGER"
SUBSTATION EASEMENT
BOUNDARY

SEE
DETAIL "A"

POINT OF
BEGINNING

LEGEND

- CONCRETE APRON
- LOT LINE
- SECTION LINE
- ϕ OF ELEC EASE
- CHAIN LINK FENCE
- BLDG FOOTPRINT

BOOK 4010 PG 617

EXHIBIT "A-1"

DATE: 02/28/2011

VERSION #: 1

DRAWN BY: JWW

REVIEWED BY: DRF

APS PROJECT:

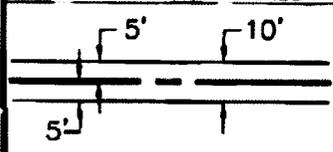
JOB#: 1001.40.00

Land

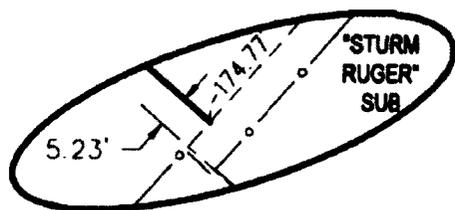


ROW AREA

3228 SF ± OR 0.007 ACRES ±



ELECTRIC
EASEMENT DETAIL



DETAIL "A"

ARIZONA PUBLIC SERVICE COMPANY
ELECTRIC EASEMENT

SEC. 19, T15N, R1W, & SEC. 24, T15N, R2W
OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA

100' ABANDONED
RR ROW



SCALE
1"=800'

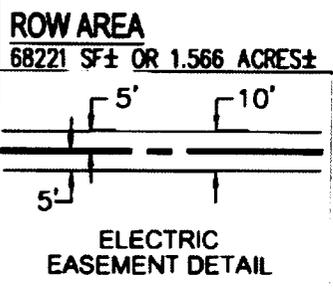
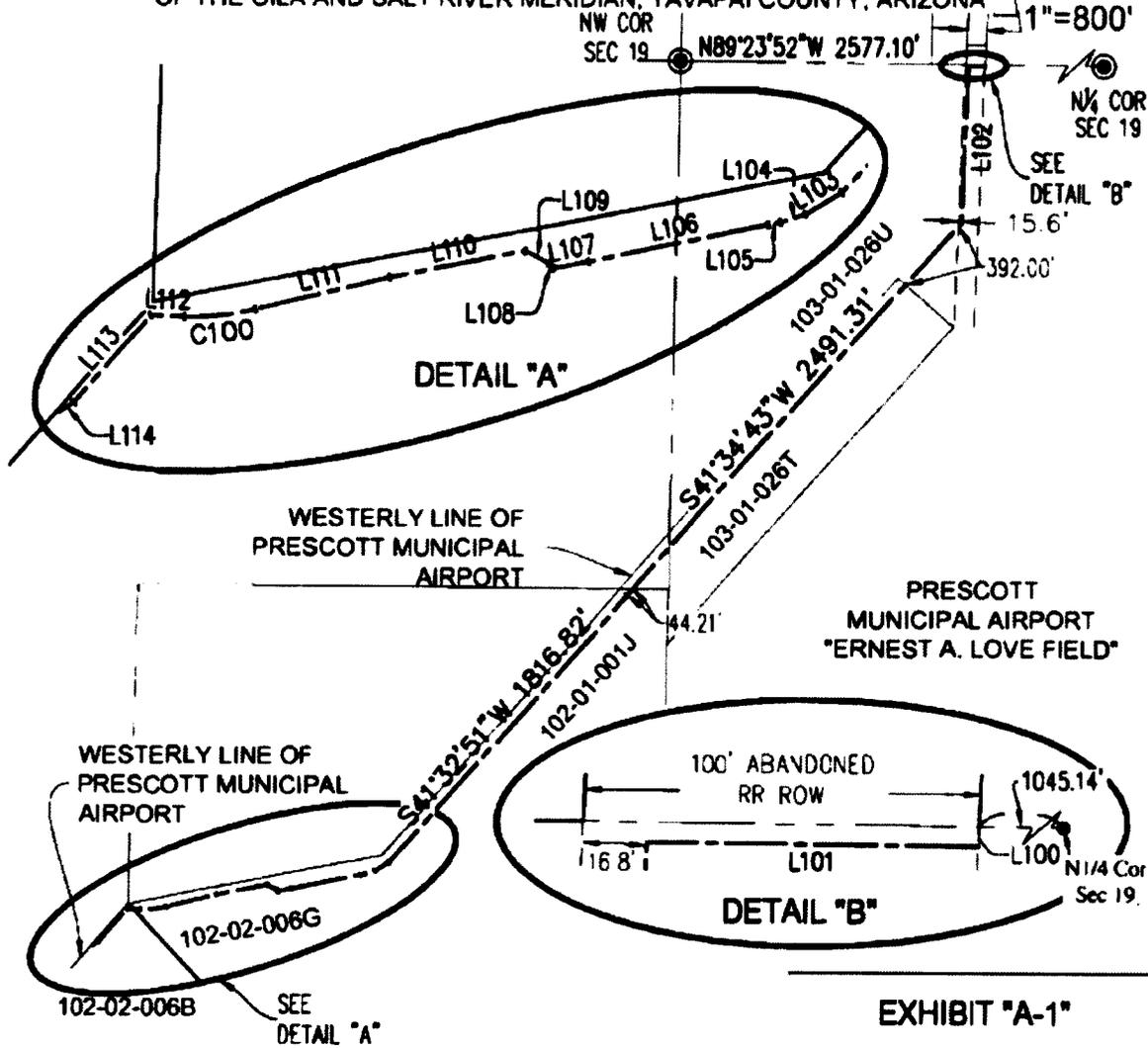


EXHIBIT "A-1"

DATE: 02/28/2011
VERSION #: 1
DRAWN BY: JWW
REVIEWED BY: DRF
APS PROJECT:
JOB#: 1001.40.00
3 OF 4

**ARIZONA PUBLIC SERVICE COMPANY
ELECTRIC EASEMENT
SEC. 19, T15N, R1W, & SEC. 24, T15N, R2W
OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA**

Line Table		
Line #	Length	Direction
L100	5.00'	S2°21'01"W
L101	83.27'	N89°23'52"W
L102	793.45'	S2°24'42"W
L103	79.54'	S58°30'24"W
L104	50.29'	S72°19'17"W
L105	22.99'	S78°23'21"W
L106	352.38'	S78°23'21"W
L107	66.72'	S78°14'12"W
L108	14.35'	N45°46'34"W
L109	51.03'	N63°14'08"W
L110	260.96'	S78°36'20"W
L111	259.84'	S76°22'44"W
L112	64.76'	N88°16'44"W
L113	221.19'	S41°35'31"W
L114	33.30'	S57°14'44"W

Curve Table			
Curve #	Length	Radius	Delta
C100	133.93'	475.15'	16°08'59"

EXHIBIT "A-1"	
DATE: 02/28/2011	
VERSION #: 1	
DRAWN BY: JWW	
REVIEWED BY: DRF	
APS PROJECT:	
JOB #: 1001.40.00	
	
4	OF 4

EXHIBIT C
PUBLIC UTILITY EASEMENT
METES AND BOUNDS LEGAL DESCRIPTION

G. MICHAEL HAYWOOD
REGISTERED LAND SURVEYOR



212 S. Marina St. • P. O. Box 1001 • Prescott, Arizona 86302
Phone 928-778-5101 • Fax 928-778-9321 • email mike@mhainc.net

EXHIBIT " C "
PUBLIC UTILITY EASEMENT

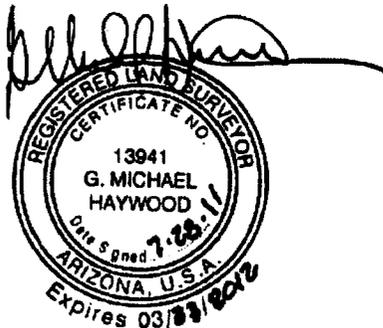
An easement for public utilities, being situated in a portion of the Northwest Quarter of Section 25 and the Southwest Quarter of Section 24, all in Township 15 North, Range 2 West. Gila and Salt River Base and Meridian, Yavapai County, Arizona, being 10 feet in width, lying 5 feet on each side of the following described centerline:

Commencing at the Northwest corner of said Section 25, being the Southwest corner of said Section 24;

Thence, South 49°41'50" East, 1327.65 feet to a point on the Westerly property line of the Prescott Municipal Airport "Ernest A. Love Field", from whence the Northwesterly corner of the Arizona Public Service "Sturm Ruger Electrical Substation" boundary, as described in Book 4010 of Official Records, Page 617, on file in the office of the Yavapai County Recorder, bears South 76°50'21" East, 365.82 feet, being the POINT OF BEGINNING of this centerline description;

Thence, North 40°33'26" East, 1129.42 feet to a point on the North line of said Section 25 and the South line of said Section 24;

Thence, continuing North 40°33'26" East, 1186.75 feet to the END of this centerline description..



10-036
APS-gap.doc

**EXHIBIT C-1
PUBLIC UTILITY EASEMENT
MAP OF METES AND BOUNDS LEGAL DESCRIPTION**

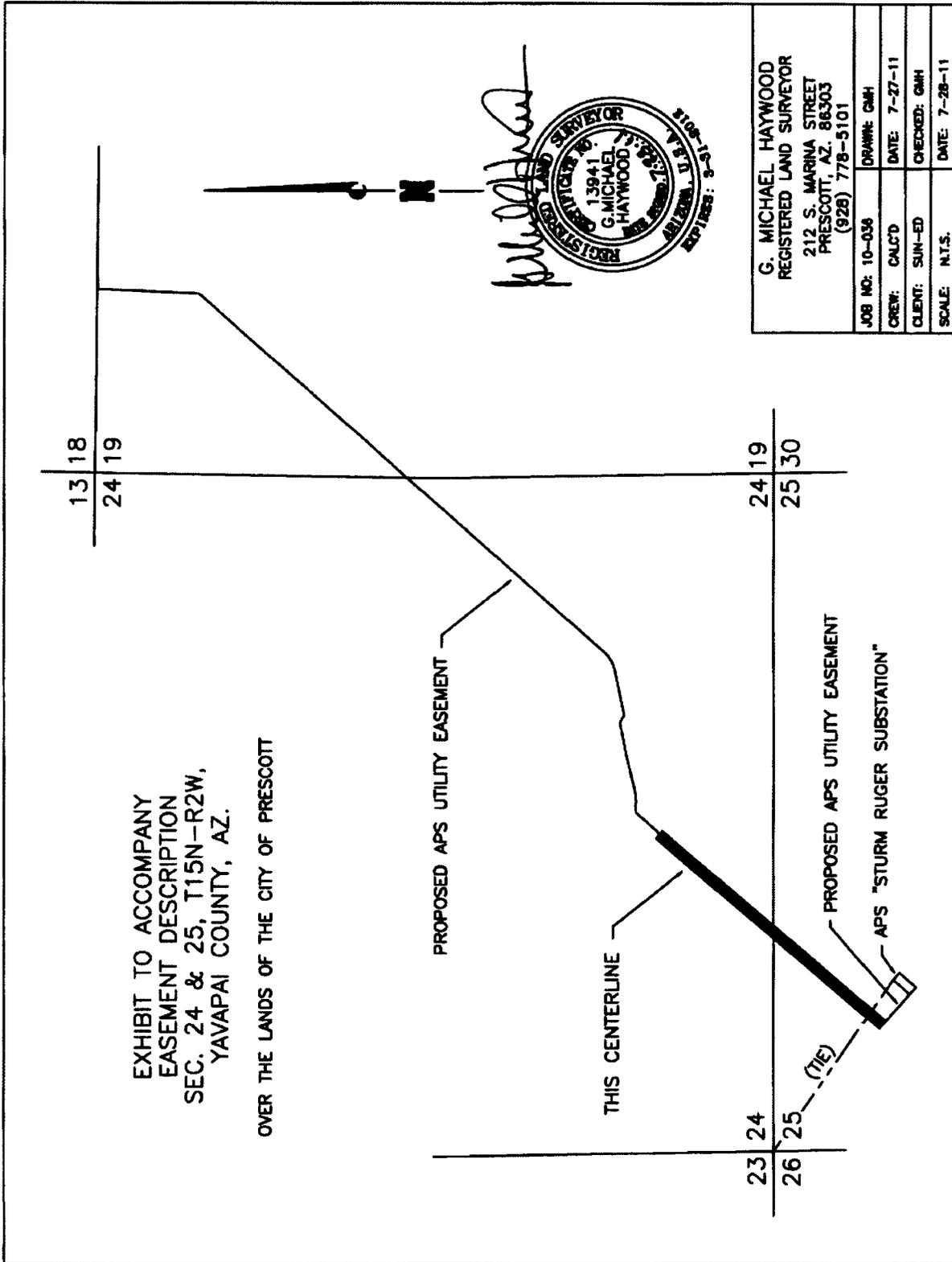


EXHIBIT D

FEDERAL PROVISIONS

1. The Grantee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained, or otherwise operated on the said property described in the Easement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefit, the Grantee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
2. The Grantee, for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby convey and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the Grantee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
3. That in the event of breach of any of the above nondiscrimination covenants, the Grantor shall have the right to terminate the Agreement and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR, Part 21 are followed and completed including expiration of appeal rights.
4. Grantee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Grantee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
5. Noncompliance with Provision 4 above shall constitute a material breach thereof and in the event of such noncompliance, the Grantor shall have the right to terminate this Easement Agreement and the estate hereby created without

liability therefore or at the election of the Grantor or the United States either or both said Governments shall have the right to judicially enforce said provisions.

6. Grantee agrees that it shall insert the above five provisions in any Easement Agreement by which said Grantee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein described.
7. The Grantee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Grantee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the Subpart. The Grantee assures that it will require that its covered sub-organizations provide assurances to the Grantee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effort.
8. The Grantor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Grantee and without interference or hindrance.
9. The Grantor reserves the right, but shall not be obligated to the maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Grantee in this regard.
10. This Easement shall be subordinate to the provisions and requirements of any existing or future agreements between Grantor and the United States, relative to the development, operation or maintenance of the airport.
11. There is hereby reserved to the Grantor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein described. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on Ernest A. Love Field, Prescott Municipal Airport.
12. Grantee Agrees to be responsible for and comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the described premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the described premises.
13. The Grantee by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land described hereunder above a height as determined by the application of the most restrictive requirements of Title 14 CFR

Part 77. In the event the aforesaid covenants are breached, the Grantor reserves the right to enter upon the land described hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Grantee.

14. The Grantee by accepting this Easement agrees for itself, its successors and assigns that it will not make use of the described premises in any manner which might interfere with the taxiing, landing and taking off of aircraft from Ernest A. Love Field, Prescott Municipal Airport, or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Grantor reserves the right to enter upon the premises hereby described and cause the abatement of such interference at the expense of the Grantee.
15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).
16. This Agreement and all the provisions hereof shall be subject to whatever right the United States government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.
17. The Grantee will conform to airport, Federal Aviation Administration, and Transportation Security Administration safety and security rules and regulations regarding the use of the airport including but not limited to use of the airport operations areas, runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport: and will be subject to penalties as prescribed by the airport for violation of the airport safety and security requirements.

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Approval of a one-year extension to Contract No. 2008-325 with Duke's Root Control, in the amount of \$80,000.00

Approved By:

Date:

Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	9-21-11

Item Summary

This item is to approve a one year contract extension with Duke's Root Control for the application of a specialized herbicide to kill root growth in the sanitary sewer system.

Background

Root growth in the City's Wastewater Collection System is a common occurrence. Roots cause blockages, pipe fractures and system failures that result in sanitary sewer overflows, property damage and increased maintenance expenses.

The purpose of this ongoing treatment is to apply a specialized herbicide to predetermined areas within the City's sanitary sewer system where root intrusion has been identified through Closed Circuit TV inspection. The herbicide kills the existing root up to 18 inches outside of the sewer line and inhibits re-growth for up to two years without harming the vegetation producing the roots. The specific focus for this year's work is on the remaining untreated sewer in Haisley Homestead. Hot spots where heavy root growth has contributed to sanitary sewer overflows will also be addressed.

Duke's Root Control carries a two year guarantee against any sewer stoppages caused by live tree roots and provides an additional three year guarantee if the line requires retreatment within 30 months. If the product fails to prevent regrowth within the guarantee period, a retreatment is performed at no charge.

Duke's Root Control was originally awarded a one year contract which ran from July 1, 2008, through June 30, 2009. The agreement provides for up to three additional extensions of the contract under the same terms and conditions making this the last renewal.

Schedule

Pending extension of the contract, the project is anticipated to commence in October 2011 and be completed within approximately one month.

Agenda Item: Approval of a one-year extension to Contract No. 2008-325 with Duke's Root Control, in the amount of \$80,000.00

Budget

FY 2012 funding is available from the Sewer Fund for award of this contract. (Account No. 7204578-7810-8930).

Attachment: Letter of contract extension acceptance by Duke's Root Control

Recommended Action: **MOVE** to approve a one-year extension to Contract No. 2008-325 to Duke's Root Control, in the amount of \$80,000.00.



1020 Hiawatha Blvd., West
Syracuse, NY 13204-1131
1-800-44-ROOTS
(315) 472-4781
FAX (315) 475-4203

August 31, 2011

Scott J. Gregorio
Wastewater Superintendent
City of Prescott
1505 Sundog Ranch Road
Prescott, AZ 86301

RE: Sewer Line Chemical Root Control
Contract Extension

Dear Mr. Gregorio:

Duke's Root Control Inc. hereby agrees to provide our services to the City of Prescott, AZ according to the same terms, conditions and prices as outlined in the original contract for one additional year.

Thank you for considering Duke's for your root control needs. We look forward to being of service to the City of Prescott.

Sincerely,

William J. Anderson
Vice President

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Approval of a Construction Manager at Risk (CMAR) agreement for preconstruction services with PCL/Fann a Joint Venture for the Airport Water Reclamation Facility, Phase I Expansion, in an amount not to exceed \$319,938.00

Approved By:

Date:

Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	9-21-11

Item Summary

This item is for approval of a preconstruction services agreement with PCL/Fann Environmental to provide CMAR/contractor preconstruction involvement during the engineering design of improvements for the Airport Water Reclamation Facility (WRF) Expansion, Phase 1. This preconstruction contract will provide for design document review, evaluation of materials and construction methods, a construction management plan, project schedule, multiple estimates and schedules of values, and development of a Guaranteed Maximum Price Proposal for construction and commissioning of the new Airport WRF improvements with a treatment capacity of 3.75 Million Gallons per Day (MGD).

In February of 2011, staff provided a presentation to City Council on Alternative Project Delivery Methods with a recommendation that the Airport WRF Phase I Project be delivered via the Construction Manager at Risk method. Due to the magnitude and complexity of the project the CMAR process, which is a qualifications-based approach to construction, provides many important benefits. Teamwork is emphasized from the start of design with involvement of the Owner, Engineer (Waterworks Engineers) and CMAR.

Common goals and objectives are developed with emphasis on value, quality of construction, and schedule. Continuous budget control is available to the Owner throughout the design process with team involvement in the evaluation of costs in relation to methods and materials to be incorporated into the work. CMAR projects in general have been shown to provide higher quality construction for the best value resulting in fewer warranty issues. The team approach exemplified by the CMAR process also reduces the potential for disputes, claims, and litigation.

Background

The Airport WRF was constructed in 1965 and designed to treat 0.4 MGD of wastewater. In 1978, the Airport WRF was upgraded to a treatment capacity of 0.75 MGD. The most recent Airport WRF expansion was completed in 1998 with a design capacity of 2.2 MGD.

Agenda Item: Approval of a Construction Manager at Risk (CMAR) agreement for preconstruction services with PCL/Fann a Joint Venture for the Airport Water Reclamation Facility, Phase I Expansion, in an amount not to exceed \$319,938.00

On April 14, 2009, the City contracted with Black and Veatch to complete the Sundog Wastewater Treatment Plant (WWTP) and Airport Water Reclamation Facility (WRF) Capacity and Technology Master Plans (Master Plan). On September 28, 2010, the recommendations of the Master Plan were presented to Council in a work session. Part of that study revealed that wastewater parameters of Biochemical Oxygen Demand and Total Suspended Solids at both treatment plants have nearly tripled since the most recent upgrade at Airport (1998) and Sundog (1990). The increase in strength of aforementioned in relation to the existing physical plant has effectively reduced the treatment capacity at the Airport WRF from 2.2 MGD to 1.2 MGD.

The average daily hydraulic flow to the Airport plant is 1.1 MGD; therefore a plant expansion is urgently needed and necessary to handle existing committed capacities and provide additional wastewater treatment capacity for future growth in this service area.

The Master Plan Project also determined treatment capacity at Sundog has been reduced from 1989 design capacity of 6.0 MGD to 3 MGD. The current average daily hydraulic flow at Sundog is 2.58 MGD.

Subsequently, on April 26, 2011, Waterworks Engineers was awarded a design contract for engineering services for the Airport WRF Phase I Improvements, now in progress.

Three phases are recommended for the Airport WRF expansion from the Master Plan. However, flexibility remains in sizing future phases. 9.6-MGD is the calculated capacity required at build-out (Airport service area) based on the City's adopted General Plan.

The scope of the aforementioned design contract with Waterworks Engineers includes analysis of a single plant alternative whereby all final wastewater treatment would be accomplished at the Airport Plant. A presentation to Council of the results of this analysis is anticipated in the January 2012 timeframe.

Scope of Services and Fee

A detailed scope of services with fees is attached; a brief summary follows.

Task Series 1105	Program Evaluation
Task Series 1200	Meetings
Task Series 1230	Design Document Review
Task Series 1400	Construction Management Plan
Task Series 1500	Project Schedule
Task Series 3000	Cost Model/Estimates and Schedule of Values
Task Series 3100	Guaranteed Maximum Price Proposal
Task Series 3200	Disadvantaged Business Enterprise Program Goals
Task Series 3300	Major Subcontractor and Supplier Selection Plan
Task Series 3400	Additional Services

Agenda Item: Approval of a Construction Manager at Risk (CMAR) agreement for preconstruction services with PCL/Fann a Joint Venture for the Airport Water Reclamation Facility, Phase I Expansion, in an amount not to exceed \$319,938.00

This contract will provide CMAR involvement in the design phase of the Airport Water Reclamation Facility Expansion Phase I Project with input into design, costs for construction, subcontractor selection, materials, and methods to develop a final cost proposal (Guaranteed Maximum Price) for the construction project that the CMAR will agree to meet. This contract does not obligate the City to use this CMAR for the construction project. A separate scope and fee proposal will be required for the actual construction of the project, which would be subject to separate action by City Council in the future.

Procurement

On June 23, 2011, the City received nine (9) proposals for this publicly advertised Construction Manager at Risk Design Phase Services solicitation. Pursuant to State Statutes for qualifications-based selection, a committee composed of staff members, a licensed contractor, and architect ranked the individual firms based on their Statements of Qualifications, and then interviewed the top ranked five firms to determine the final ranking. PCL/Fann was the firm selected by the committee for the Airport WRF Expansion project. The scope of services was developed and fee negotiated thereafter.

Schedule

Anticipated milestones for design of the Airport WRF: Phase 1 Expansion

NTP for Design Services	October 2011
Complete Design Services	July 2012
Anticipated Construction Completion	July 2014

The project schedule will coincide with the design engineer's schedule attached (see Exhibit D). Engineering for the project is approaching the 30% level of completion which is the standard stage for active involvement of the CMAR.

Budget

FY 11 thru FY 14 funding to cover this agreement and future project costs in the estimated amount of \$41,600,000 is available from the Wastewater Fund Account 727810-09578. The Water Infrastructure Financing Authority of Arizona (WIFA) will provide financing for the project.

Attachment	Scope of Work	Exhibit A
	Fee Proposal	Exhibit B
	Vicinity Map	Exhibit C
	Schedule	Exhibit D

Recommended Action: **MOVE** to approve a Construction Manager at Risk (CMAR) agreement for preconstruction services with PCL/Fann a Joint Venture for the Airport Water Reclamation Facility, Phase I Expansion, in an amount not to exceed \$319,938.00.



September 6, 2011

Mr. Jeff Low
City of Prescott
433 N. Virginia St.
P.O. Box 2059
Prescott, AZ 86302

RE: City of Prescott – Airport Water Reclamation Facility Expansion, Phase 1

SUBJECT: Preconstruction Proposal Scope

Dear Mr. Low,

Per your request, attached is the scope of work for the tasks associated with our preconstruction proposal. Following our philosophy as a company this proposal is based on a NOT TO EXCEED price, if we do not perform any of the proposed tasks we will not bill for such items. The attached excel spreadsheet further defines each task proposed for this phase of the project. Our total proposed amount for pre-construction services is **\$319,938**.

SCOPE OF WORK

PCL/Fann will begin in an agency support role for design phase services and may enter into contract with the City for the construction phase, if agreed to by the team. Prior to construction, PCL/Fann will assume the risk of delivering the project through a guaranteed maximum price (GMP) contract. We will be responsible for the construction means and methods and will solicit bids from pre-qualified subcontractors to perform specified aspects of the work using an approved subcontractor selection plan as detailed within the City's Request for Statement of Qualifications (RSOQ) and as further defined herein. Design phase services shall include, unless otherwise directed by the City, the following:

- COST ESTIMATING AND KNOWLEDGE OF MARKETPLACE CONDITIONS
- PROJECT PLANNING AND SCHEDULING
- CONSTRUCTION PHASING AND SCHEDULING THAT MINIMIZES INTERRUPTION TO CITY OPERATIONS
- ALTERNATE SYSTEMS EVALUATION AND CONSTRUCTABILITY STUDIES
- LONG-LEAD PROCUREMENT STUDIES AND INITIATION
- PERMITTING PROCESS ASSISTANCE
- PARTICIPATE WITH THE CITY IN A PROCESS TO EMPLOY GOOD FAITH EFFORTS FOR LOCAL AND DBE CONTRACTOR PARTICIPATION AND IMPLEMENT THE PROCESS
- SELECTION OF PREQUALIFIED SUBCONTRACTORS AND SUPPLIERS

In addition to the above-mentioned items of work, PCL/Fann will specifically perform the following during the design phase services for this project:

TASK 1105 - PROGRAM EVALUATION (\$480) – Upon the City's request, PCL/Fann will provide a written evaluation of the City's Project Program and Project Budget with recommendations as to whether either is realistic and/or sufficient. Pending on the findings of this evaluation PCL/Fann will provide its

recommendations regarding ways to maximize the City's needs while minimizing the impact to the project's budget.

TASK 1200 - PROJECT MEETINGS (\$44,512) - This task will involve bi-weekly project team meetings between August 2011 and January 2013. We are assuming approximately 30 meetings, which include several with Waterworks/Carollo regarding the contractor work plan and permitting issues, workshops, public agency or community meetings, construction document review meetings, and team site visits (including finalization of the staging and access plan).

TASK 1230 - DESIGN DOCUMENT REVIEWS (\$54,066) – PCL/Fann will routinely conduct constructability and biddability reviews of the documents to satisfy the requirements of the project team. We will also provide assistance to the design professional to ascertain whether or not the documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. Any findings will be reported and the team will promptly notify the design professional and City in writing, describing the variance or deficiency. Moreover, our team will routinely identify and evaluate any and all value engineering ideas/alternates that have the potential to reduce project costs without reducing scope or quality of the project. This task will be conducted in strict accordance with the City's RSOQ/Sample Contract.

TASK 1400 - CONSTRUCTION MANAGEMENT PLAN (\$26,556) – PCL/Fann will prepare a construction management plan (CMP) that will address items such as project milestone dates, investigations of subsurface and surface physical conditions, construction phasing and/or fast-tracking strategies, subcontractor and supplier selection plan, permitting strategy, safety, training and quality control programs, commissioning plan/process, cost models and its basis, project's team members' responsibilities and roles matrix as detailed in the City's RSOQ/Contract.

TASK 1500 - PROJECT SCHEDULE (\$23,672) – Develop and provide a schedule that identifies, coordinates and records the tasks and activities to be performed by all project team members for each phase of the project. This schedule will be utilized for monitoring of progress throughout each phase of the project as detailed in the City's RSOQ/Sample Contract. The project schedule will become more defined as the design progresses from conceptual to detailed final plans. The schedule will be developed at the 30% design stage, then further detailed and presented at the subsequent 60%, 90% and 100% stages. PCL/Fann will also provide updates to the project schedule whenever requested but at a minimum for each monthly progress meeting.

TASK 3000 - COST MODELS/ESTIMATES AND SCHEDULE OF VALUES (\$125,404) – At each specified design milestone (30%, 60%, 90% and 100%) for the project plans PCL/Fann will provide a detailed cost model depicting the cost of the project based on the level of plans provided. As the design is moving forward this cost model will reflect costs from approved suppliers and subcontractors along with projected costs based upon our experience constructing similar projects. Additionally we will provide a detailed report regarding the impact of any design changes that affected the cost model based on our review of the design documents provided at each milestone. Near the 60% detailed design review completion, we will submit a preliminary schedule of values that is directly related to the project schedule and cost model. We will also submit a final schedule of values at the 100% design stage as well as project cash flow projections as required throughout the design phase as further detailed within the City's RSOQ/Sample Contract.

TASK 3100 - GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS (\$8,414) – At any point during the design phase and cost model development, PCL/Fann will provide the City upon request a GMP for the entire work or any portions thereof in a format acceptable to the City. We will then meet with the City and design engineer to discuss the details of the GMP. The GMP will detail any contractor contingency and specify the amount of owner's contingency. It is PCL/Fann's philosophy that at the 100% design stage there is 0% contractor contingency. However, if the team is insistent upon including a contractor's contingency we will consider doing so.

TASK 3200 - DBE PROGRAM GOALS (\$2,556) – PCL/Fann perform all activities and will abide by all requirements of the DBE program goals as described in exhibit E of the City's RSOQ/Sample Contract. We will comply with all the provisions of Executive Order No. 11246 of Sept. 24, 1965, and of all rules, regulations, and relevant orders of the Secretary of Labor. We will furnish all required information and reports by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to our books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. PCL/Fann will also follow, document and maintain documentation of our good faith efforts as detailed in Exhibit E of the City's RSOQ/Sample Contract to ensure that Certified DBE's have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach. This may

include publicized and internal meetings to solicit involvement from any and all interested Disadvantaged Business Enterprises (DBE) companies. PCL/Fann will also ensure that DBE's are made aware of contracting opportunities to the fullest extent practical through outreach and recruitment activities; make information on upcoming opportunities available to DBE's; encourage and facilitate participation by DBE's in the competitive process; consider in the contracting process whether firms competing for large contracts could be subcontracted with DBE's; encourage contracting with a consortium of DBE's when a contract is too large for one of these firms to handle individually; and utilize the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.

TASK 3300 - MAJOR SUBCONTRACTOR & SUPPLIER SELECTION PLAN (\$24,778) – PCL/Fann will submit and conform to our subcontractor/supplier selection plan as detailed in the City's RSOQ/Sample Contract and as summarized herein. PCL/Fann will establish a formalized subcontractor/supplier pre-qualification and selection plan that meets all of the State of Arizona requirements, pursuant to ARS Title 34 requirements. Once the plan has been developed we will submit the plan to the City for review and subsequent approval. We also review our subcontract selection process to keep the plan current with all new legislation including House Bill 2579 (Chapter 162) which requires the pre-qualification of subcontractors on projects where Alternative Delivery Methods are utilized. PCL/Fann's subcontractor/supplier pre-qualification program is fully encompassing and is based on the subcontractor/supplier's past experience, bonding and insurance capabilities, corporate structure, financial information, safety history and supplier references. Our comprehensive subcontractor/supplier pre-qualification program ensures that only the best, most qualified subcontractor/supplier perform work on PCL/Fann's projects. One aspect of PCL/Fann's subcontractor/supplier selection procedure is to pre-qualify a minimum of three (3) subcontractor/suppliers for each of the subcontract bid packages. Once the subcontractor/supplier have been selected based upon qualification, formal project bid packages will be sent to them to obtain competitive pricing. Another aspect is that the subcontractor/supplier selection procedure is that it can be modified to not only include qualifications but also competitive bid pricing in evaluating the subcontractor/supplier. These bid packages will be organized so that each definable feature of the work will have a separate package with a specific scope of work. PCL/Fann's Guaranteed Maximum Price (GMP) for this project will be formulated using the results of this competitive subcontractor/supplier pricing.

Furthermore, PCL/Fann proudly participates in the US E-Verify documented worker program. E-Verify (formerly known as the Basic Pilot/Employment Eligibility Verification Program) is an Internet-based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired employees. E-Verify is the best means available for determining employment eligibility of new hires and the validity of their Social Security Numbers. In fact, the state of Arizona requires certain employers to participate in E-Verify: the Legal Arizona Workers Act has survived a number of constitutional challenges and is currently in effect. In addition to this, we strongly encourage all subcontractors and suppliers alike to participate in the program regardless of whether they are required to or not; to the extent, of which we have informed, educated, and assisted with implementing this system for others.

The procedure that PCL/Fann proposes to follow to select this project's subcontractors is as follows:

- 1) As the Construction Manager at Risk Contractor for the City of Prescott's Airport WRF Project, we will determine which subcontractors will need to be selected early (based solely on qualifications for pre-construction assistance) and which subcontractor/suppliers will be selected based on the combination of qualifications and price. Our preliminary review of the project has indicated that it may be advantages to select the project's subcontractors early in the process to provide design assistance throughout the design phase of the project.
- 2) As the design for the project progresses, PCL/Fann will define the Subcontractor Bid Packages which will be utilized to select the subcontractors on the basis of both qualifications and price. PCL/Fann will also draft a preliminary listing of the Subcontractor Bid Packages for the project as determined to be needed early within the design process. This preliminary list will be revised to include early GMP's (once identified) and any potential changes to the project's scope of work. At any time during the selection process the City has the option to object to any nominated subcontractors/suppliers that may be used for this project.
- 3) During the design phase of the project, PCL/Fann will also target local subcontractors and suppliers alike to the fullest extent. We realize the importance of local participation and will ensure due diligence is served to achieve this participation. Additionally, we will look to target Small/Minority/Woman Owned Business Enterprises for involvement; although there are not specific goals relative to SBE/MBE/WBE participation, we continually strive to attract these businesses on all projects. PCL/Fann will explore all potential options relative to attracting potential subcontractors to this project; and PCL/Fann will assist all businesses throughout this

process by providing mentoring, training, customized scope of work descriptions, specialized payment provisions, scheduling assistance and any other services deemed necessary by the subcontractor. PCL/Fann will plan to hold a project information meeting with the local contracting community to discuss the project and to provide information about registering as SBE/MBE/WBE as further described in Task 3200 above.

4) In order to facilitate the subcontractor selection process, PCL/Fann will develop detailed Subcontractor Bid Packages with a defined scope of work and project plans. Each bid package will contain a Subcontractor Qualification Evaluation Form and a Subcontractor Pricing Proposal Form. These forms will be developed and subsequently submitted to the City for review and approval.

5) Once the various bid packages have been received by PCL/Fann from the prospective subcontractors, each proposal will be evaluated and scored. The subcontractor's qualifications and price will be evaluated separately with the qualifications part of the proposal being scored before the price. A total score will be established for each subcontractor based on a weighted point system.

6) PCL/Fann will prepare a report for the City's review identifying the recommended subcontractor/supplier for each category of work. Once the report is reviewed and approved, PCL/Fann will award a contract to the subcontractor/supplier based upon the highest total score for each bid package. PCL/Fann will follow up the selection process with a final report summarizing the findings from all categories of work. At anytime during the process of evaluating subcontractor/suppliers the City has the right to review and be provided copies of all documents submitted to PCL/Fann by the subcontractor/suppliers.

7) The final scoring evaluation for each bid package will be available for inspection by each subcontractor that submitted a proposal but did not receive a contract award.

8) It shall be noted, that as part of the competitive and qualifications based selection process, PCL/Fann intends to self-perform portions of the scope anticipated for the Airport WRF Project. Scope of work typically completed by PCL/Fann forces shall include, but not be limited to, demolition, earthwork and excavation, subgrade preparation, cast-in-place concrete, equipment installation, mechanical and buried pipe installation, start-up and commissioning.

TASK 3400 - ADDITIONAL SERVICES (\$TBD) – If authorized by the City, PCL/Fann will perform additional surface/subsurface investigations to validate questions or concerns of physical features or underground utilities at the project site. The PCL/Fann team will not charge travel or long distance telephone call costs as we are a local company and conduct business out of our J/V office located at 6708 Corsair Avenue, Suite A, Prescott, AZ 86301. Any non-overhead printing, courier services or other project-related services that may be requested by the City shall be covered at a not to exceed price without further approval from the City.

APPENIX F – ENGINEER/PCL/FANN PROVISIONS (\$Included Above) – In addition to the above items, PCL/Fann will include all aspects of the design phase requirements not described above, but as detailed in section 2 (items 2.1 through 2.9) of the “Design Professional – Construction Manager at Risk Provisions” defined in the City's RSOQ/Sample Contract, appendix F.

In conclusion, the PCL/Fann team will perform any/all activities as detailed in the City's RSOQ/Sample Contract for the attached, Not to Exceed price. We are determined to work with the City/Engineer in every way possible to ensure this CM@R project is a success.

Should you have any questions please do not hesitate to contact me.

Best Regards,

PCL CONSTRUCTION, INC.

DOUGLAS A. SCHMITS

Doug Schmits
Construction Manager

PCL/Fann, A Joint Venture
6708 Corsair Avenue, Suite A
Prescott, AZ 86301
P 928-778-5335 F 928-778-5870

Airport Wastewater Treatment

Exhibit C -- Vicinity Map



Exhibit C – Vicinity Map

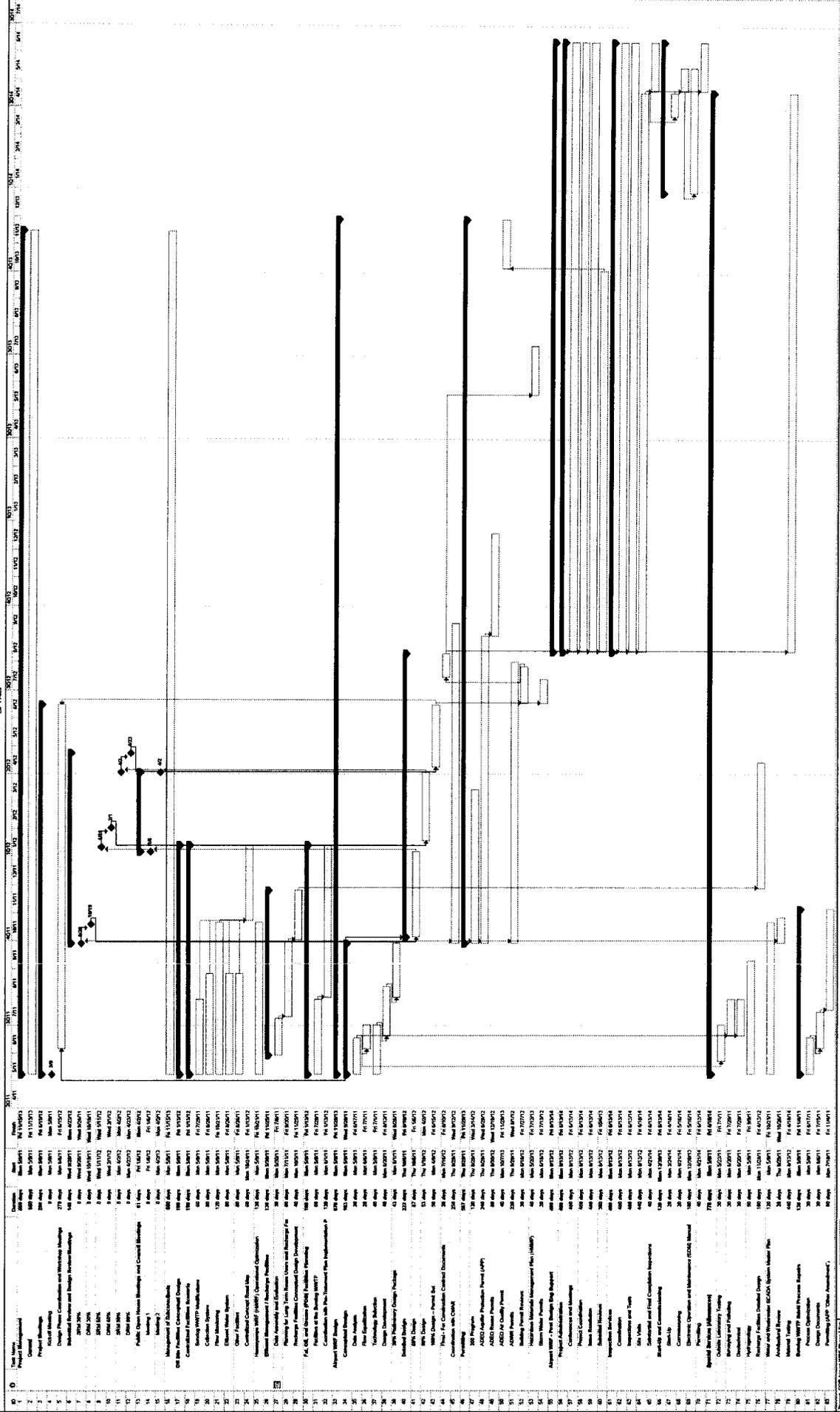
Sundog Wastewater Treatment Plant





PCL/Parsons, a Joint Venture
AIRPORT WRF EXPANSION - PHASE 1
 City of Prescott
 Preconstruction Services Cost Proposal

Description	Project Director		Precon Manager		Proj Manager		Lead Estimator		Project Engineer		Proj Superintendent		Clerical		Total	
	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual
TASK 1105 - PROGRAM EVALUATION Project Program & Schedule Evaluation & Report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	0.00	2.00	0.00	6.00	0.00
Subtotal Program Evaluation (Hours):	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	0.00	2.00	0.00	6.00	0.00
Subtotal Program Evaluation (Cost):	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$400	\$0	\$0	\$0	\$80	\$0	\$480	\$0
TASK 1200 - MEETINGS																
Subtask 1210 - Kickoff Meeting	4.00	0.00	4.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.00	0.00
Subtask 1220 - Coordination & Workshop Meetings	8.00	0.00	80.00	0.00	32.00	0.00	80.00	0.00	72.00	0.00	32.00	0.00	0.00	0.00	304.00	0.00
Subtask 1240 - Public/Open House & Council Meetings	0.00	0.00	4.00	0.00	4.00	0.00	0.00	0.00	2.00	0.00	6.00	0.00	0.00	0.00	16.00	0.00
Subtask 1250 Site Visits - Field Investigations	0.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	4.00	0.00	12.00	0.00	0.00	0.00	40.00	0.00
Subtotal Meetings (Hours):	12.00	0.00	96.00	0.00	44.00	0.00	88.00	0.00	78.00	0.00	50.00	0.00	0.00	0.00	368.00	0.00
Subtotal Meetings (Cost):	\$1,800	\$0	\$12,480	\$0	\$5,192	\$0	\$11,440	\$0	\$7,800	\$0	\$5,800	\$0	\$0	\$0	\$44,512	\$0
TASK 1230 - DESIGN DOCUMENT REVIEW																
Subtask 1231 - 30% Design - Plan Review Meeting	1.00	0.00	4.00	0.00	0.00	0.00	4.00	0.00	4.00	0.00	4.00	0.00	0.00	0.00	17.00	0.00
Subtask 1232 - 30% Design - Constructability Rvw Mtgs	1.00	0.00	4.00	0.00	0.00	0.00	4.00	0.00	4.00	0.00	6.00	0.00	0.00	0.00	19.00	0.00
Subtask 1233 - 30% Design - Value Engineering Mtgs	1.00	0.00	2.00	0.00	0.00	0.00	2.00	0.00	2.00	0.00	3.00	0.00	2.00	0.00	12.00	0.00
Subtask 1234 - 60% Design - Plan Review Meeting	2.00	0.00	16.00	0.00	16.00	0.00	32.00	0.00	16.00	0.00	22.00	0.00	0.00	0.00	104.00	0.00
Subtask 1235 - 60% Design - Value Engineering Mtgs	2.00	0.00	16.00	0.00	8.00	0.00	16.00	0.00	16.00	0.00	22.00	0.00	2.00	0.00	82.00	0.00
Subtask 1236 - 60% Design - 3D Modeling/Conflict Rvws	1.00	0.00	16.00	0.00	8.00	0.00	0.00	0.00	24.00	0.00	11.00	0.00	2.00	0.00	62.00	0.00
Subtask 1237 - 90% Design - Plan Review Meeting	1.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	11.00	0.00	0.00	0.00	44.00	0.00
Subtask 1238 - 90% Design - Value Engineering Mtgs	2.00	0.00	16.00	0.00	8.00	0.00	16.00	0.00	16.00	0.00	22.00	0.00	2.00	0.00	82.00	0.00
Subtask 1239 - 90% Design - 3D Modeling/Conflict Rvws	1.00	0.00	8.00	0.00	4.00	0.00	0.00	0.00	12.00	0.00	0.00	0.00	2.00	0.00	27.00	0.00
Subtask 1240 - 100% Design - Plan Review Meeting	1.00	0.00	2.00	0.00	2.00	0.00	2.00	0.00	2.00	0.00	3.00	0.00	0.00	0.00	12.00	0.00
Subtotal Design Document Review (Hours):	13.00	0.00	92.00	0.00	54.00	0.00	84.00	0.00	104.00	0.00	104.00	0.00	10.00	0.00	461.00	0.00
Subtotal Design Document Review (Cost):	\$1,950	\$0	\$11,960	\$0	\$6,372	\$0	\$10,920	\$0	\$10,400	\$0	\$12,064	\$0	\$400	\$0	\$54,066	\$0
TASK 1400 - CONSTRUCTION MANAGEMENT PLAN																
Subtask 1401 - 30% Design - Preliminary Work & CMP	2.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	11.00	0.00	4.00	0.00	49.00	0.00
Subtask 1402 - 60% Design - Preliminary Work & CMP	2.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	11.00	0.00	8.00	0.00	53.00	0.00
Subtask 1403 - 90% Design - Preliminary Work & CMP	2.00	0.00	6.00	0.00	6.00	0.00	6.00	0.00	6.00	0.00	8.00	0.00	6.00	0.00	40.00	0.00
Subtask 1404 - 100% Design - Final Work & CMP	2.00	0.00	2.00	0.00	2.00	0.00	2.00	0.00	2.00	0.00	3.00	0.00	2.00	0.00	13.00	0.00
Subtask 1405 - Develop Quality Control Program	1.00	0.00	4.00	0.00	4.00	0.00	4.00	0.00	16.00	0.00	16.00	0.00	4.00	0.00	45.00	0.00
Subtask 1406 - Develop Safety & Training Programs	1.00	0.00	4.00	0.00	4.00	0.00	4.00	0.00	16.00	0.00	16.00	0.00	4.00	0.00	45.00	0.00
Subtotal Work & CMP (Hours):	10.00	0.00	32.00	0.00	32.00	0.00	22.00	0.00	56.00	0.00	65.00	0.00	28.00	0.00	245.00	0.00
Subtotal Work & CMP (Cost):	\$1,500	\$0	\$4,160	\$0	\$3,776	\$0	\$2,860	\$0	\$5,600	\$0	\$7,540	\$0	\$1,120	\$0	\$26,556	\$0
TASK 1500 - PROJECT SCHEDULE																
Subtask 1501 - 30% Design - Construction Schedule	2.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	11.00	0.00	0.00	0.00	37.00	0.00
Subtask 1502 - 60% Design - Construction Schedule	2.00	0.00	16.00	0.00	16.00	0.00	16.00	0.00	16.00	0.00	22.00	0.00	0.00	0.00	72.00	0.00
Subtask 1503 - 90% Design - Construction Schedule	2.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	11.00	0.00	0.00	0.00	37.00	0.00
Subtask 1504 - 100% Design - Construction Schedule	1.00	0.00	2.00	0.00	2.00	0.00	2.00	0.00	4.00	0.00	11.00	0.00	0.00	0.00	20.00	0.00
Subtask 1505 - Prepare Final Construction Schedule	1.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	8.00	0.00	11.00	0.00	0.00	0.00	36.00	0.00
Subtotal Project Schedule (Hours):	8.00	0.00	42.00	0.00	42.00	0.00	42.00	0.00	44.00	0.00	66.00	0.00	0.00	0.00	202.00	0.00
Subtotal Project Schedule (Cost):	\$1,200	\$0	\$5,460	\$0	\$4,956	\$0	\$0	\$0	\$4,400	\$0	\$7,656	\$0	\$0	\$0	\$23,672	\$0



ID	Task Name	Start	End	Duration	Predecessors	Task
1	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
2	Procurement	2011-03-31	2011-06-30	90 Days	1	Procurement
3	Construction	2011-06-30	2011-12-31	180 Days	1, 2	Construction
4	Commissioning	2011-12-31	2012-03-31	90 Days	3	Commissioning
5	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
6	Procurement	2011-03-31	2011-06-30	90 Days	5	Procurement
7	Construction	2011-06-30	2011-12-31	180 Days	5, 6	Construction
8	Commissioning	2011-12-31	2012-03-31	90 Days	7	Commissioning
9	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
10	Procurement	2011-03-31	2011-06-30	90 Days	9	Procurement
11	Construction	2011-06-30	2011-12-31	180 Days	9, 10	Construction
12	Commissioning	2011-12-31	2012-03-31	90 Days	11	Commissioning
13	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
14	Procurement	2011-03-31	2011-06-30	90 Days	13	Procurement
15	Construction	2011-06-30	2011-12-31	180 Days	13, 14	Construction
16	Commissioning	2011-12-31	2012-03-31	90 Days	15	Commissioning
17	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
18	Procurement	2011-03-31	2011-06-30	90 Days	17	Procurement
19	Construction	2011-06-30	2011-12-31	180 Days	17, 18	Construction
20	Commissioning	2011-12-31	2012-03-31	90 Days	19	Commissioning
21	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
22	Procurement	2011-03-31	2011-06-30	90 Days	21	Procurement
23	Construction	2011-06-30	2011-12-31	180 Days	21, 22	Construction
24	Commissioning	2011-12-31	2012-03-31	90 Days	23	Commissioning
25	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
26	Procurement	2011-03-31	2011-06-30	90 Days	25	Procurement
27	Construction	2011-06-30	2011-12-31	180 Days	25, 26	Construction
28	Commissioning	2011-12-31	2012-03-31	90 Days	27	Commissioning
29	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
30	Procurement	2011-03-31	2011-06-30	90 Days	29	Procurement
31	Construction	2011-06-30	2011-12-31	180 Days	29, 30	Construction
32	Commissioning	2011-12-31	2012-03-31	90 Days	31	Commissioning
33	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
34	Procurement	2011-03-31	2011-06-30	90 Days	33	Procurement
35	Construction	2011-06-30	2011-12-31	180 Days	33, 34	Construction
36	Commissioning	2011-12-31	2012-03-31	90 Days	35	Commissioning
37	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
38	Procurement	2011-03-31	2011-06-30	90 Days	37	Procurement
39	Construction	2011-06-30	2011-12-31	180 Days	37, 38	Construction
40	Commissioning	2011-12-31	2012-03-31	90 Days	39	Commissioning
41	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
42	Procurement	2011-03-31	2011-06-30	90 Days	41	Procurement
43	Construction	2011-06-30	2011-12-31	180 Days	41, 42	Construction
44	Commissioning	2011-12-31	2012-03-31	90 Days	43	Commissioning
45	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
46	Procurement	2011-03-31	2011-06-30	90 Days	45	Procurement
47	Construction	2011-06-30	2011-12-31	180 Days	45, 46	Construction
48	Commissioning	2011-12-31	2012-03-31	90 Days	47	Commissioning
49	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
50	Procurement	2011-03-31	2011-06-30	90 Days	49	Procurement
51	Construction	2011-06-30	2011-12-31	180 Days	49, 50	Construction
52	Commissioning	2011-12-31	2012-03-31	90 Days	51	Commissioning
53	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
54	Procurement	2011-03-31	2011-06-30	90 Days	53	Procurement
55	Construction	2011-06-30	2011-12-31	180 Days	53, 54	Construction
56	Commissioning	2011-12-31	2012-03-31	90 Days	55	Commissioning
57	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
58	Procurement	2011-03-31	2011-06-30	90 Days	57	Procurement
59	Construction	2011-06-30	2011-12-31	180 Days	57, 58	Construction
60	Commissioning	2011-12-31	2012-03-31	90 Days	59	Commissioning
61	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
62	Procurement	2011-03-31	2011-06-30	90 Days	61	Procurement
63	Construction	2011-06-30	2011-12-31	180 Days	61, 62	Construction
64	Commissioning	2011-12-31	2012-03-31	90 Days	63	Commissioning
65	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
66	Procurement	2011-03-31	2011-06-30	90 Days	65	Procurement
67	Construction	2011-06-30	2011-12-31	180 Days	65, 66	Construction
68	Commissioning	2011-12-31	2012-03-31	90 Days	67	Commissioning
69	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
70	Procurement	2011-03-31	2011-06-30	90 Days	69	Procurement
71	Construction	2011-06-30	2011-12-31	180 Days	69, 70	Construction
72	Commissioning	2011-12-31	2012-03-31	90 Days	71	Commissioning
73	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
74	Procurement	2011-03-31	2011-06-30	90 Days	73	Procurement
75	Construction	2011-06-30	2011-12-31	180 Days	73, 74	Construction
76	Commissioning	2011-12-31	2012-03-31	90 Days	75	Commissioning
77	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
78	Procurement	2011-03-31	2011-06-30	90 Days	77	Procurement
79	Construction	2011-06-30	2011-12-31	180 Days	77, 78	Construction
80	Commissioning	2011-12-31	2012-03-31	90 Days	79	Commissioning
81	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
82	Procurement	2011-03-31	2011-06-30	90 Days	81	Procurement
83	Construction	2011-06-30	2011-12-31	180 Days	81, 82	Construction
84	Commissioning	2011-12-31	2012-03-31	90 Days	83	Commissioning
85	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
86	Procurement	2011-03-31	2011-06-30	90 Days	85	Procurement
87	Construction	2011-06-30	2011-12-31	180 Days	85, 86	Construction
88	Commissioning	2011-12-31	2012-03-31	90 Days	87	Commissioning
89	Final Design	2011-01-01	2011-03-31	90 Days		Final Design
90	Procurement	2011-03-31	2011-06-30	90 Days	89	Procurement
91	Construction	2011-06-30	2011-12-31	180 Days	89, 90	Construction
92	Commissioning	2011-12-31	2012-03-31	90 Days	91	Commissioning

II-M

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Award of bid and contract for the Old North Reservoir Replacement Project to Fann Contracting, Inc., in the amount of \$3,107,740.00

Approved By:

Date:

Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	9-21-11

Item Summary

This item is to award the bid and contract with Fann Contracting, Inc., of Prescott for construction services within Water System Pressure Zone 0 in the central part of the City. The construction will include:

- Selectively deconstructing, salvaging materials, and demolishing an existing 1.4 MG water reservoir initially built in 1947
- Demolish deteriorated, out of service, Quonset huts
- Removal of existing pipelines and appurtenances
- Site grading and excavation
- Construction of a 3.0 MG conventionally reinforced concrete water storage tank, including all electrical instrumentation
- Construction of a concrete block electrical controls building to house monitoring equipment
- Installation of 605 lineal feet of 8", 14" 18", 24", and 30" Ductile Iron Pipe, including all appurtenances
- Construction of 450 lineal feet of 20' wide asphalt concrete access road with curb and gutter
- Protection of existing vegetation and incorporation of new vegetation on the site to preserve views
- Installation of site security fencing.

Background

There are currently two reservoirs situated at the site. Reservoir 'A' (to remain) is a 3.0 MG circular concrete structure constructed in the 1980s. Reservoir 'B' (to be removed and replaced via this contract) is a vintage 1.4 MG rectangular concrete, timber, and aluminum structure built in the 1940s. Existing Reservoir 'B' has provided the City with a reliable storage facility but its service life has been exhausted. Additionally, it has been the subject of previous Arizona Department of Environmental Quality (ADEQ) inspections which identified deficiencies with condition and code compliance.

Agenda Item: Award of bid and contract for the Old North Reservoir Replacement Project to Fann Contracting, Inc., in the amount of \$3,107,740.00

The two North Reservoirs are critical to the operation of the entire Prescott water distribution system as water from the Chino Valley transmission mains is delivered initially to these facilities for subsequent distribution to other zones in the system. Most of Prescott depends on the storage capacity of these reservoirs, of particular public safety and welfare importance in the event that the water supply from Chino Valley is interrupted.

The system upgrades, consisting of replacement of aged and undersized facilities, are necessary to meet current and future water demand. This will be accomplished by increasing Old North Reservoir 'B' storage from 1.4 to 3.0 million gallons and upgrading the water main in Douglas Avenue. The new Reservoir 'B' and water mains identified above will enhance public safety by augmenting system capacity throughout Pressure Zone 0.

The new Reservoir 'B' includes aesthetic design considerations to lessen impacts to nearby residents. The partially buried reservoir coupled with the existing and proposed vegetation will preserve the existing viewshed. Additionally, an exterior stain is being applied to the exposed surfaces of the reservoir to blend into the existing terrain.

The Old North Reservoir Replacement Project is another important step toward fulfillment of the "**First Class Utility System**" Council Goal.

Bid Results

A mandatory pre-bid meeting was held on August 9, 2011. Eight (8) bids were received on September 1, 2011, as follows:

<u>Bidder</u>	<u>Location</u>	<u>Base Bid</u>
1-Fann Contracting, Inc	Prescott, AZ	\$3,107,740.00
2-MGC Contractors, Inc.	Phoenix, AZ	\$3,271,967.00
3- Capital Improvements, LLC	Prescott, AZ	\$3,277,527.00
4-Hunter Contracting Co.	Gilbert, AZ	\$3,383,616.50
5-Archer Western Contractors	Phoenix, AZ	\$3,406,718.00
6-Currier Construction, Inc	Phoenix, AZ	\$3,422,000.00
7-CNB Excavating, Inc.	Dewey, AZ	\$3,939,000.00
8-Sletten Construction Co.	Phoenix, AZ	\$4,167,385.50
Engineer's Estimate	N/A	\$3,502,366.80

Written confirmation of bid has been received from the low responsive bidder, Fann Contracting, Inc. Verification of the company's license, bonding, references, and past performance of similar projects has been completed.

Agenda Item: Award of bid and contract for the Old North Reservoir Replacement Project to Fann Contracting, Inc., in the amount of \$3,107,740.00

Schedule

The contract allows three-hundred (300) calendar days for completion of the work with anticipated project milestones listed below:

Award of Contract	September 27, 2011
Pre-Construction Meeting	October 3, 2011
Notice to Proceed (NTP)	October 10, 2011
Substantial Project Completion	August 5, 2012

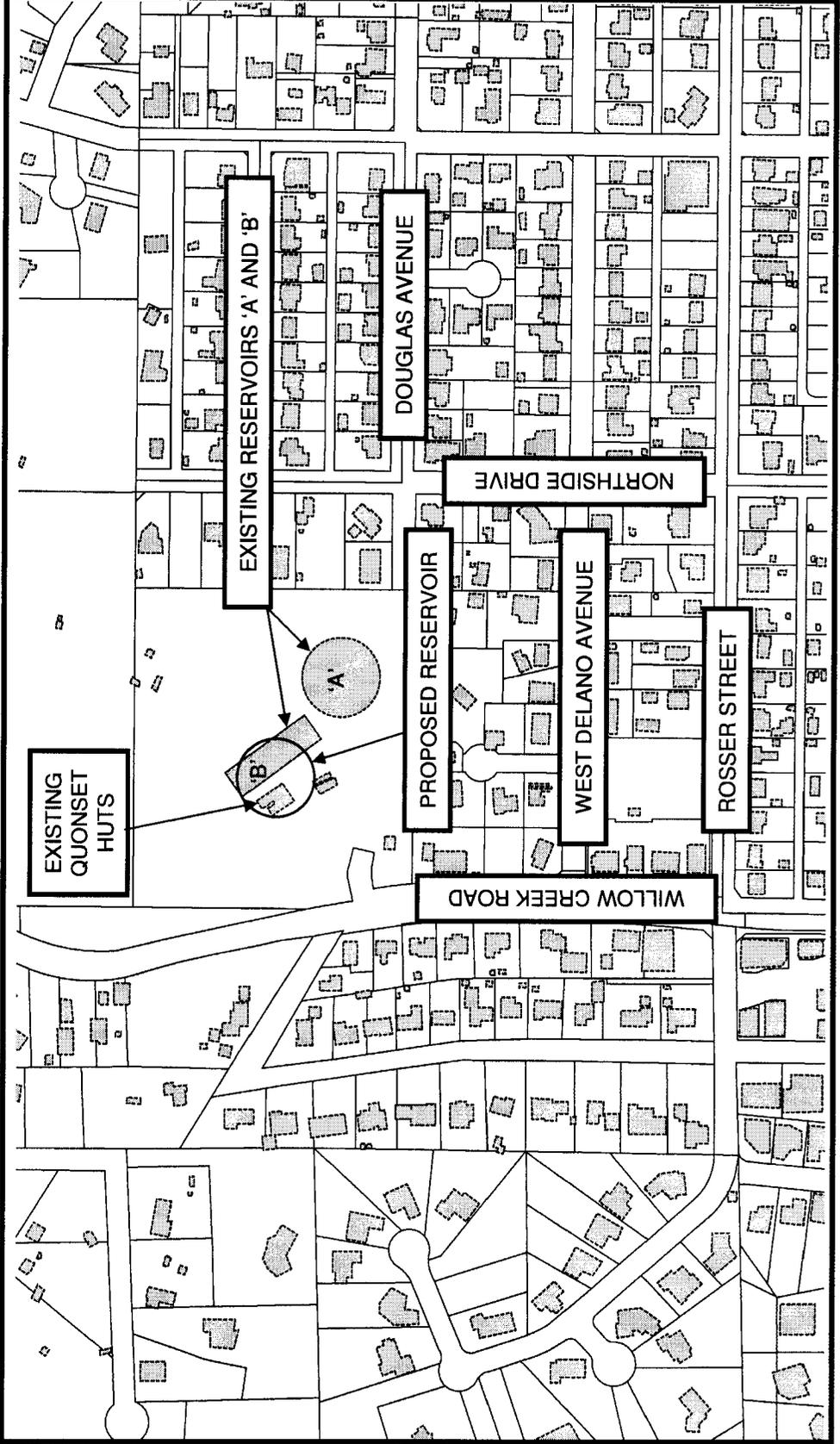
Budget

FY 2012 funding for this project will be from the Water Fund; Account No. 7007810-09546 and 7007810-10003.

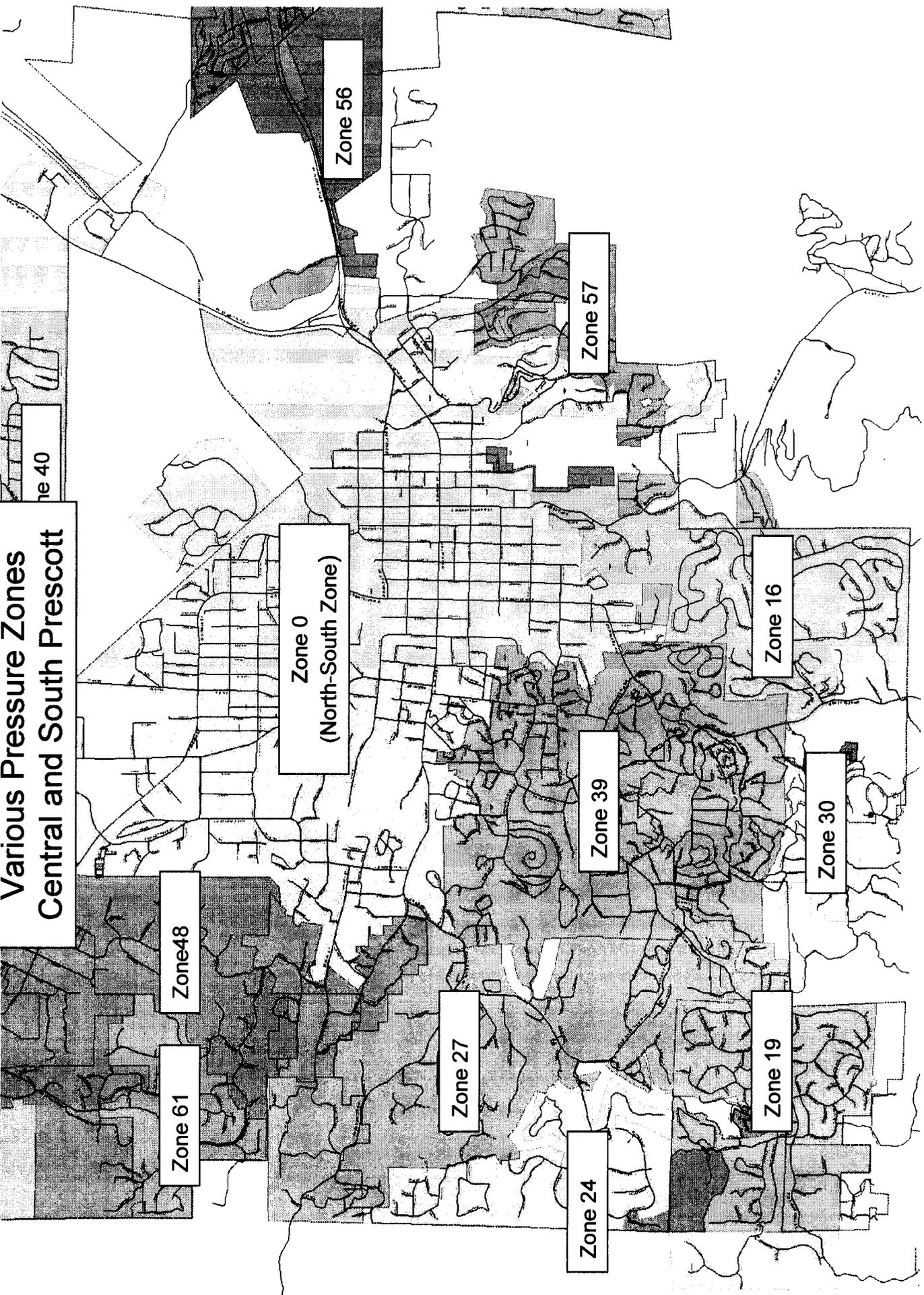
Attachment - Vicinity Map
- Zone Map

Recommended Action: **MOVE** to award the bid and contract for the Old North Reservoir Replacement Project to Fann Contracting, Inc., in the amount of \$3,107,740.00.

Old North Reservoir Replacement Project



Various Pressure Zones Central and South Prescott



II-N

COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Ordinance No. 4807-1207 authorizing the purchase of real property for siting of a new one million gallon water storage tank associated with the Zone 19 Water Utility Improvement Project

Approved By:

Date:

Department Head: Mark Nietupski	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	9-21-11

Item Summary

This item is to acquire 2.13 acres of real property necessary for the Zone 19 Water Utility Improvement Project. The land will be the site of a new one million gallon water storage tank, increasing storage capacity in the Copper Basin area. The purchase amount is \$153,957.55. When constructed, the new tank will enable decommissioning of three (3) undersized and outdated existing storage tanks with a combined capacity of 220,000 gallons. The completed project will provide the new storage facility, extend the water distribution system to the storage facility, and upgrade the pump station servicing the area.

Background

As identified by the City's Water Model, Zone 19 in the Copper Basin area is in need of additional water storage to enhance system operation pressure, capacity, and fire flow. The project will result in improved system performance within Zone 19. Over the past 18 months, staff has worked with the neighborhood to acquire property for the new reservoir and easements to the proposed facility.

On March 15, 2010, an offer was tendered to the owners (Balentine) based on the real property appraisal prepared by Gordon L. Bergthold, Certified General Real Estate Appraiser, dated October 26, 2009, and an easement appraisal on March 12, 2010. The total appraised value is \$193,810.00.

On October 12, 2010, Council approved Ordinance 4762-1113 which provided public right-of-way and utility easements along Wickwood Lane and across two parcels to the proposed tank site, involving six (6) owners at a cost of \$35,813.34.

Under terms of the Agreement for Sale, the Balentines are to receive the appraised cost minus the cost of easement acquisition and utility extension costs to service the remaining lot they own. The cost of utility extension has been determined to be \$4,039.11. The calculation is as follows:

$$\$193,810.00 - \$35,813.34 - \$4,039.11 = \$153,957.55 \text{ payment to the Balentines}$$

AGENDA ITEM: Adoption of Ordinance No. 4807-1207 authorizing the purchase of real property for siting of a new one million gallon water storage tank associated with the Zone 19 Water Utility Improvement Project

After the acquired easements were recorded a lot line adjustment was necessary to segment out the tank site, which was accomplished by a Record of Survey for Parcel Lot Line Adjustment recorded under Instrument No. 2011-0018963 on April 7, 2011, in Book 190 of Land Surveys on Page 68 in the Records Office of Yavapai County, Prescott, Arizona.

The Sales Agreement which has been entered into by the Balentines and the City includes two water services. A water service agreement will be necessary, to be administratively approved according to the City's Water Management Policy. The following is provided regarding the water services for general information. The City will allocate 0.7 AF/year to serve Parcel A. This volume is calculated as 2 SFRs (Single Family Residential) x 0.35 AF/yr. The meter size for each SFR will correlate to the demand. The agreement will include standard language that addresses consistency with adopted Water Management Policy, General Plan, and other applicable plans. It will also address lot splits and water use from a well. Sewer is not available in the area.

Shepard-Wesnitzer, Inc., is currently working to complete the engineering and design of the Zone 19 Water Utility Improvements. An additional public meeting on the project is anticipated at the completion of the 90% design plans in Fall 2011.

Budget

Funding for the Zone 19 Water Infrastructure Improvement Project property acquisition is available from the Water Fund: (Account #700 7810 8930 09550).

- Attachments**
- Agreement for Sale
 - Location Map
 - Pressure Zone Map
 - Ordinance No. 4807-1207

Recommended Action: MOVE to adopt Ordinance No. 4807-1207.

ORDINANCE NO. 4807-1207

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE OF REAL PROPERTY BELONGING TO JOHN G. BALENTINE AND VICKI E. BALENTINE, HUSBAND AND WIFE AND AS CO-TRUSTEES OF THE JOHN G. BALENTINE AND VICKI E. BALENTINE REVOCABLE TRUST AND HOWARD W. BALENTINE AND DEBORAH A. BALENTINE, HUSBAND AND WIFE AND AS CO-TRUSTEES OF THE HOWARD W. BALENTINE AND DEBORAH A. BALENTINE FAMILY TRUST FOR THE CONSTRUCTION OF THE ZONE 19 WATER STORAGE RESERVOIR, AND AUTHORIZING THE MAYOR AND CITY STAFF TO TAKE ALL NECESSARY STEPS TO EFFECTUATE SAID PURCHASES

RECITALS:

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

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

WHEREAS, John G. and Vicki E. Balentine, husband and wife and as co-trustees of the John G. Balentine and Vicki E. Balentine Revocable Trust; and Howard W. and Deborah A. Balentine, husband and wife and as co-trustees of the Howard W. Balentine and Deborah A. Balentine Family Trust, are the owners of real property agree to transfer title of real property to the City; and

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

ENACTMENTS:

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

SECTION 1. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement of Sale of Real Property dated July 6, 2011, from John G. and Vicki E. Balentine, husband and wife and as co-trustees of the John G. Balentine and Vicki E. Balentine Revocable Trust; and Howard W. Balentine and Deborah A. Balentine, husband and wife and as co-trustees of the Howard W. Balentine and Deborah A. Balentine Family Trust, which consists of real property as described as Parcel 'B' and Assessor Parcel Number 108-21-231 as referenced in Book 190 of Land Surveys, Page 68 on file at the Office of the Yavapai County Recorder, Yavapai County Arizona (Exhibit A), and the City agrees to purchase

and accept said property from John G. Balentine and Vicki E. Balentine husband and wife and as co-trustees of the John G. Balentine and Vicki E. Balentine Revocable Trust; and Howard W. Balentine and Deborah A. Balentine, husband and wife and as co-trustees of the Howard W. Balentine and Deborah A. Balentine Family Trust, pursuant to the terms and conditions as set forth therein, for the purchase price of \$153,957.55 plus closing costs.

SECTION 2. THAT the Mayor and Staff are hereby authorized to execute any and all documents necessary to transfer the respective property title and complete the real property purchase.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

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



CITY OF PRESCOTT
AGREEMENT FOR SALE OF REAL PROPERTY

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT, dated this day of 7th, September, 2011, by and between John G. Balentine, and Vicki E. Balentine, husband and wife, and John G. Balentine and Vicki E. Balentine, as Trustees of the John G. Balentine and Vicki E. Balentine Revocable Trust u/a/d August 19, 1998; and Howard W. Balentine and Deborah A. Balentine, husband and wife, and Howard W. Balentine and Deborah A. Balentine, as Trustees of the Howard W. Balentine and Deborah A. Balentine Family Trust (hereinafter referred to as the "Seller") residing respectively at 1231 East Sobre Lomas, Tucson, AZ 85718; and 6068 Tahoe Place, Camarillo, CA 93012; and the CITY OF PRESCOTT, an Arizona municipality (hereinafter referred to as "Buyer").

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

- 1) Seller agrees to sell and convey to the Buyer, and Buyer agrees to purchase from Seller, the real properties described as Parcel 'B', as recorded in Book 190 of Land Surveys Page 68, and Parcel 1 described in Book 2605, Page 961, both on file in the Office of the Yavapai County Recorder, Prescott, Arizona (as shown on Exhibit A).
- 2) The total purchase price for the permanent real property is \$ 153,596.66 payable upon the close of escrow.
- 3) The Buyer agrees to provide to Sellers, their heirs, successors and assigns the following:
 - a) A minimum 30-foot wide permanent public ingress/egress and utility easement beginning at the northeast corner of Parcel B and ending at the approximate midpoint of the west boundary line of Parcel B shall be recorded at close of escrow and shall be appurtenant to Parcel A, Assessor Parcel Number 108-21-230A, that is retained by the Seller. The roadway shall be constructed by the Buyer with the City Water Utility Project and a permanent public ingress/egress easement, appurtenant to Parcel A - as built - shall be subsequently recorded by separate instrument prior to conclusion of the

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Buyer [Signature] Seller JGB Seller [Signature] Seller HWB Seller [Signature]

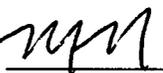
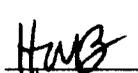
the project. The roadway shall be a gravel roadway appurtenant to Parcel A, Assessor Parcel Number 108-21-230A retained by the Seller and shall be constructed to the City of Prescott minimum fire code standards. The roadway shall be a Public easement that provides unimpeded and perpetual appurtenant ingress, egress and utility service to Seller's retained Parcel A.

- b) Utility Service of water and electricity for the benefit of and appurtenant to Parcel A shall be constructed by Buyer at its sole cost on or before January 1, 2015 located at a point within a 100 feet east of the western boundary of Parcel B within the Public Easement. The water utility service extension will include two meter box and yoke connections able to accept up to a 2-inch meter with adequate room for future installation of booster pumps to service the future residential structures to be located on Parcel A. The electrical service shall be sufficient to provide 200 amp or other required electrical service. Utilities to be installed shall be underground according to the City of Prescott present utility construction standards. The Seller understands and agrees that the cost of extending the utilities from the midpoint of the planned Public Road easement to 100 feet east of the western boundary of Parcel B shall be a cost borne by the Seller. Accordingly, the original sales price has been reduced by Four Thousand Four Hundred (\$4,400.00) dollars to cover the total cost of installing and extending said utilities as set forth in the attached diagram (Exhibit B) and is reflected in the final sale price above (Item 2). Seller further understands and agrees that Seller, their successors or assigns shall remain responsible for City of Prescott impact fees at the then prevailing rate at such time as they decide to develop homesites on Parcel A. Buyer agrees that Seller shall have no personal responsibility for the impact fees unless they are subsequently responsible for the development of the homesites on Parcel A. Buyer and Seller understand that telephone service will not be installed at this time.
- 4) The Seller warrants that Seller is the owner of a good and fee simple title to the property herein sold, free and clear of all liens and encumbrances, subject only to the following:
- (A) Applicable zoning regulations
 - (B) Utility, drainage and other easements of record in the records of the Yavapai County Recorder.
 - (C) Mineral rights reserved in the patents to the land.
- 5) In order to effectuate the terms of this Agreement, Seller and Buyer shall promptly execute and deliver any and all documents required by the City or the Title Company as hereinafter described.

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Buyer MM Seller JGB Seller JGB Seller HUB Seller EM

- 6) The closing of escrow shall be at a Title Company designated by the Buyer as soon as possible after approval of this Agreement by the Prescott City Council. On the Closing Date, Buyer shall make payment as provided in Section 2 of this Agreement to the Seller. The Buyer shall pay all recording and transfer taxes and fees, including the cost of recording the right-of-way and any and all closing costs not hereinbefore specified. Seller reserves the right to acquire Title Insurance at their cost in a form acceptable to Seller and the Title Company insuring Seller with legal access appurtenant to Parcel A for ingress, egress and utilities over and across Parcel B and over and across Wickwood Lane and/or any extensions thereof so that the Sellers have legal ingress, egress and utility easement from their retained Parcel A to Copper Basin Road, all as set forth in the Record of Survey approved by the City of Prescott and recorded at 2011-00118963 on April 7, 2011 in Book 190 of Land Surveys, Page 68 on file at the Office of the Yavapai County Recorder, Prescott, Arizona or as otherwise provided for by this Agreement. If insurable title to the easement /right of way for ingress, egress and utilities appurtenant to Parcel A is not available, the Seller shall have the option of voiding this Agreement.
- 7) Buyer shall be entitled to use of the right-of-way and easements as set forth in the Record of Survey approved by the City of Prescott and recorded at 2011-00118963 on April 7, 2011 in Book 190 of Land Surveys, Page 68 on file at the Office of the Yavapai County Recorder, Prescott, Arizona for construction and maintenance of roadway improvements, upon the approval of this agreement by the Prescott City Council. Buyer understands and agrees that Seller shall have no responsibility for the cost of construction of the right of way road improvements and easements over Wickwood Lane and/or any extensions thereto nor have any responsibility for the cost of construction of the right of way or easement across Parcel B. These costs shall be solely the responsibility of the Buyer.
- 8) Buyer warrants, upon closing, that the Seller shall have the ability to divide the retained Parcel A into two lots without further compliance with the subdivision laws, rules and regulations of the City of Prescott in conformance with applicable State and Federal laws.
- 9) Buyer and Seller agree that the Buyer intends to construct a water tank upon Parcel B for City utility purposes. Buyer therefore agrees and warrants that the tank when constructed will be painted with a hue that is at all times "forest green". Buyer further agrees to mitigate the visual impact of the tank on the retained parcels of Seller by preserving old tree growth, movement of the tank and such similar items as is reasonably possible.
- 10) Buyer and Seller agree that any and all warranties, including the duty to construct roadways, install utilities, provide legal access to the retained parcel of Seller and the retained right to divide Seller's retained Parcel into two lots shall survive closing.

Buyer  Seller JGB Seller  Seller  Seller 

- 11) Buyer understands that the foregoing sets forth the entire agreement between the parties and that no agent or representative of Seller has any authority to change or modify this agreement in any manner, or to make any agreement or representation on behalf of the Seller not set forth herein.
- 12) Pursuant to A.R.S. §38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.
- 13) This Agreement is subject to the approval by the Prescott City Council of an Ordinance authorizing the purchase of the right of way contemplated herein.
- 14) All notices to Buyer shall be sent to: City of Prescott, c/o City Clerk, Post Office Box 2059, Prescott, Arizona 86302, with a copy to the Director of Public Works, Post Office Box 2059, Prescott, Arizona 86302.
- 15) All notices to the Seller shall be sent to: John and Vicki Balentine at 1231 E. Sobre Lomas, Tucson, Arizona 85718 with copies to Howard W. Balentine and Deborah A. Balentine at 6068 Tahoe Place, Camarillo, CA 93012 and to James P. F. Egbert, Esq. 485 S. Main Avenue, Building 2, Tucson, Arizona 85701.

DATED THIS 7th Day of September, 2011.

John G. Balentine
John G. Balentine

Vicki E. Balentine
Vicki E. Balentine

Husband and wife, and John G. Balentine and Vicki E. Balentine, as Trustees of the John G. Balentine and Vicki E. Balentine Revocable Trust u/a/d August 19, 1998

State of Arizona)
) ss.
County of Pima)

Buyer WJN Seller JOB Seller ⁴ VEB Seller HWB Seller RAE


MARK J. NIETUPSKI, Director of Public Works

ATTEST:
APPROVED AS TO FORM:

ELIZABETH A. BURKE City Clerk

GARY D. KIDD City Attorney

Buyer  Seller  Seller ⁶  Seller  Seller 

EXHIBIT 'A'

LEGAL DESCRIPTION

All that portion of that of Parcel 1 as described in Book 2605, Page 961, and all of Parcel 'B' as recorded in Book 190 of Land Surveys, Page 68, both on file at the Yavapai County Recorder, Yavapai County, Arizona, more particularly described as follows:

Beginning at the Northeast corner of said Parcel 'B', Thence S 00°09'26" W, 357.83 feet, to the Southeast corner of said Parcel 'B';

Thence S 87°59'21" W, 210.27 feet, to the Southwest corner of said Parcel 'B';

Thence N 00°12'11" W, 372.62 feet, to the Northwest corner of said Parcel 'B', said point also being the Southwest corner of the said Parcel 1;

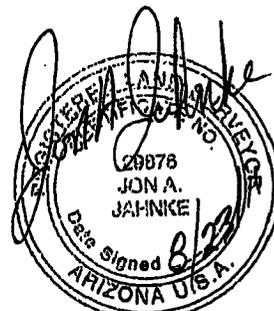
Thence N 01°52'24" W, 287.63 feet, to the Northwest corner of said Parcel 1;

Thence N 62°16'56" E, 55.70 feet, to the Northeast corner of said Parcel 1;

Thence S 01°48'45" E, 315.28 feet, to the Southeast corner of said Parcel 1 and the North line of said Parcel 'B';

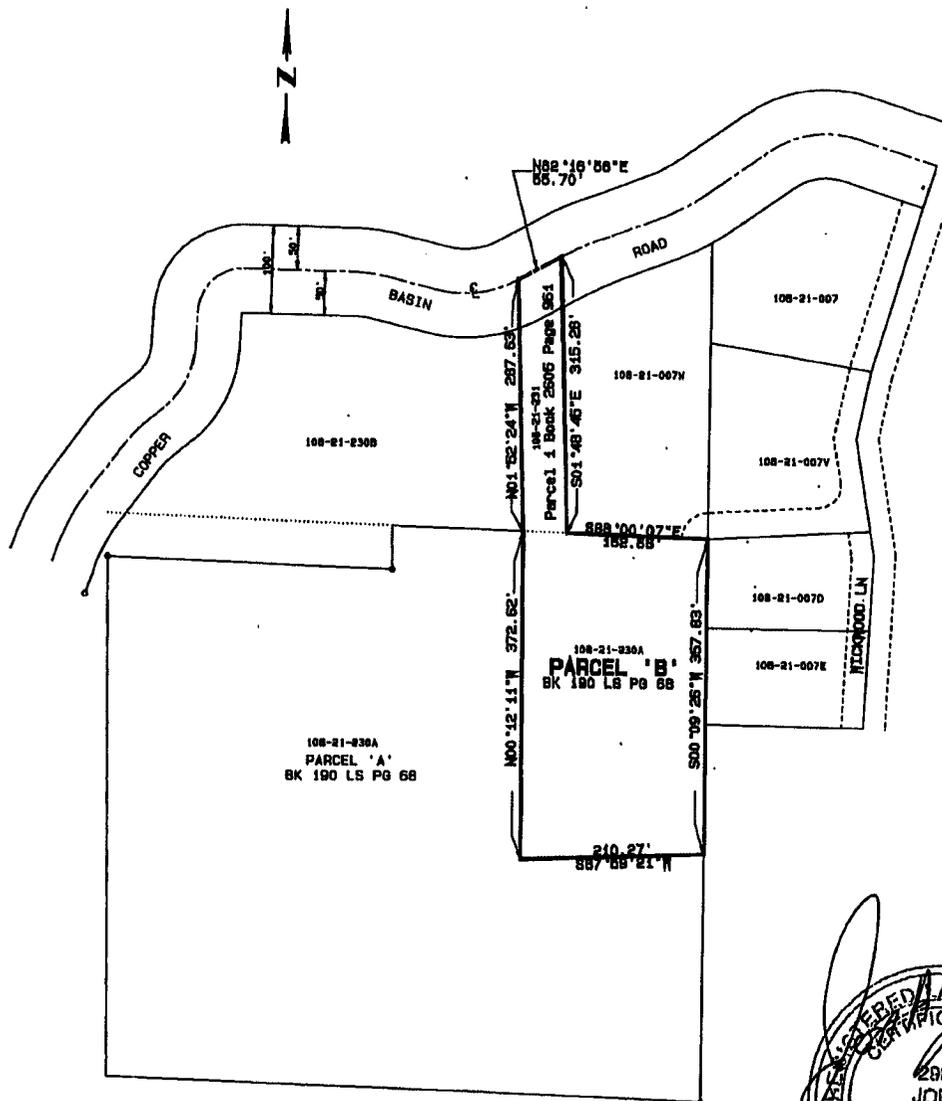
Thence S 88°00'07" E, 162.66 feet, along the said North line to the Point of Beginning.

Containing 92,228.1 square feet more or less.



EXPIRES
3/31/14

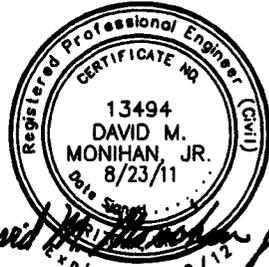
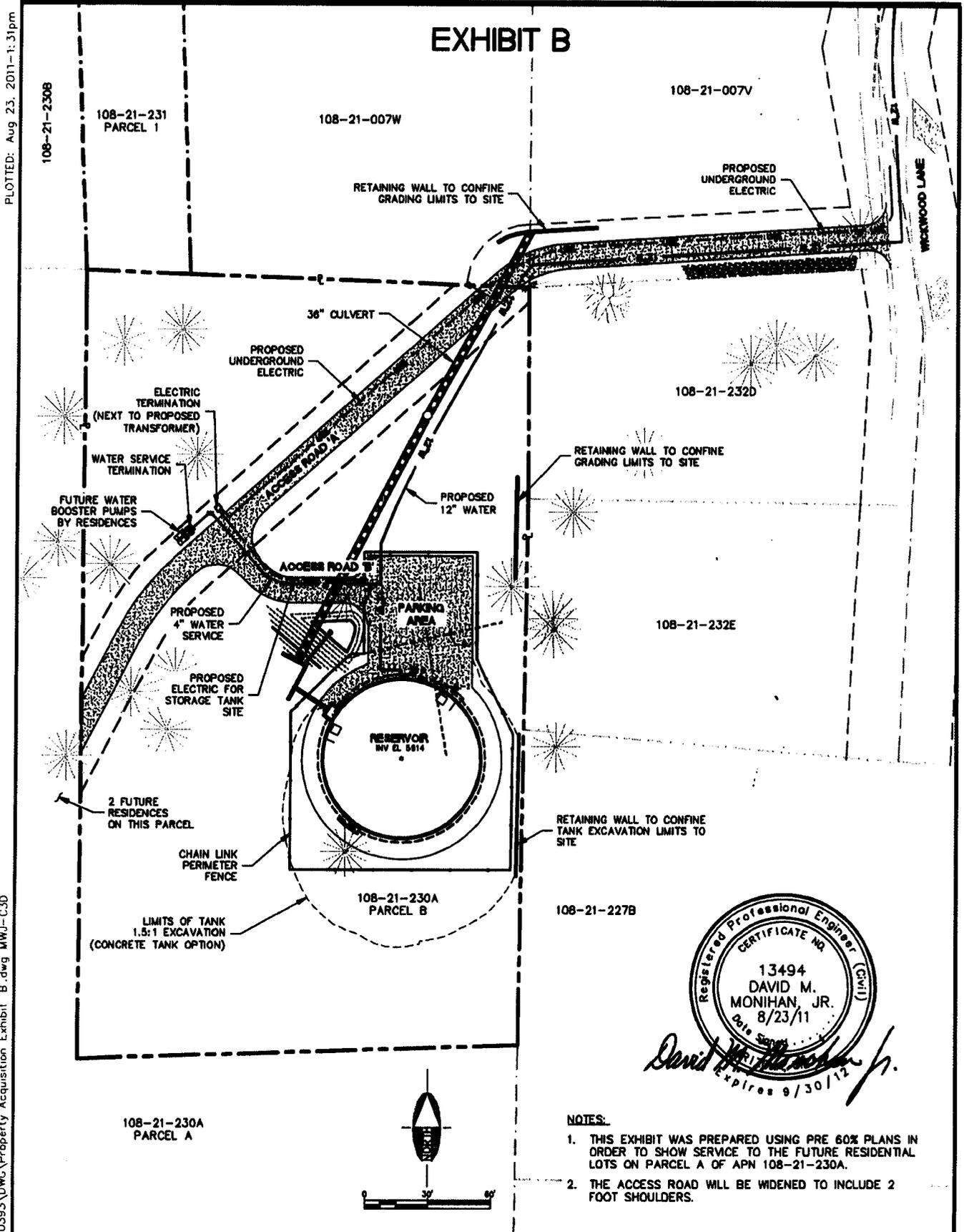
EXHIBIT 'A' LEGAL DESCRIPTION



AREA = 92,228.1 sq. ft.



EXHIBIT B



NOTES:

1. THIS EXHIBIT WAS PREPARED USING PRE 60% PLANS IN ORDER TO SHOW SERVICE TO THE FUTURE RESIDENTIAL LOTS ON PARCEL A OF APN 108-21-230A.
2. THE ACCESS ROAD WILL BE WIDENED TO INCLUDE 2 FOOT SHOULDERS.

PLOTTED: Aug 23, 2011-1:31pm
 FILE: P:\2010\10393\DWG\Property Acquisition Exhibit 'B'.dwg MWJ-C3D

SWI
Shephard Wenzler, Inc.

75 Kollof Place
 Sedona, AZ 86336
 928.282.1041
 928.282.2058 fax
 www.swiaz.com

JOB NO.	10393
DATE	JUN 11
SCALE	1"=60'
DRAWN	MWJ
DESIGN	DMN
CHECKED	DMN

CITY OF PRESCOTT ZONE 19 RESERVOIR,
 PIPING & PUMP STATION REPLACEMENT
 PRESCOTT ARIZONA

PROPOSED SERVICES FOR FUTURE LOTS
 ON PARCEL A OF APN 08-21-230A

Zone 19 Improvement Project Construction & Abandonment Sites

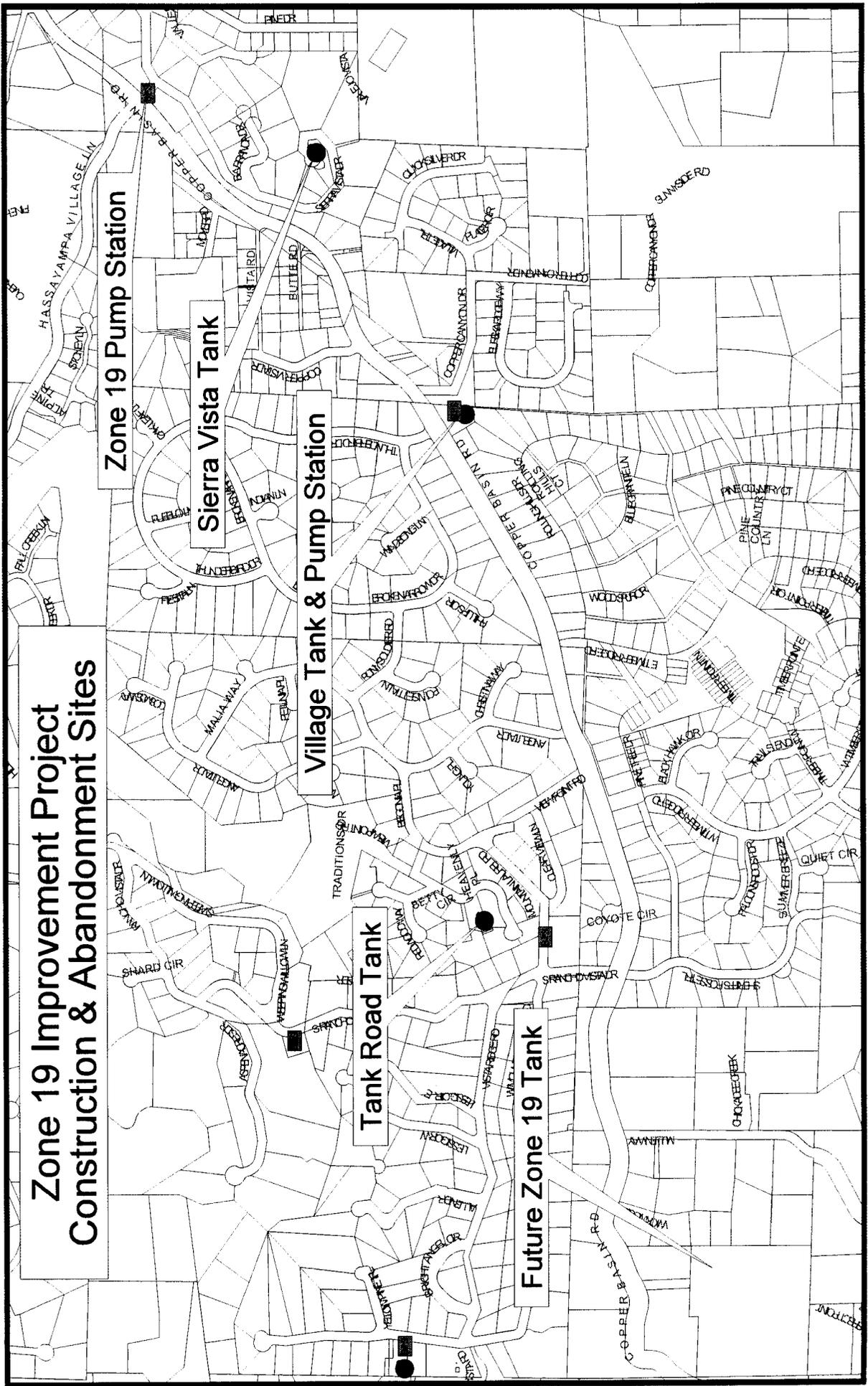
Zone 19 Pump Station

Sierra Vista Tank

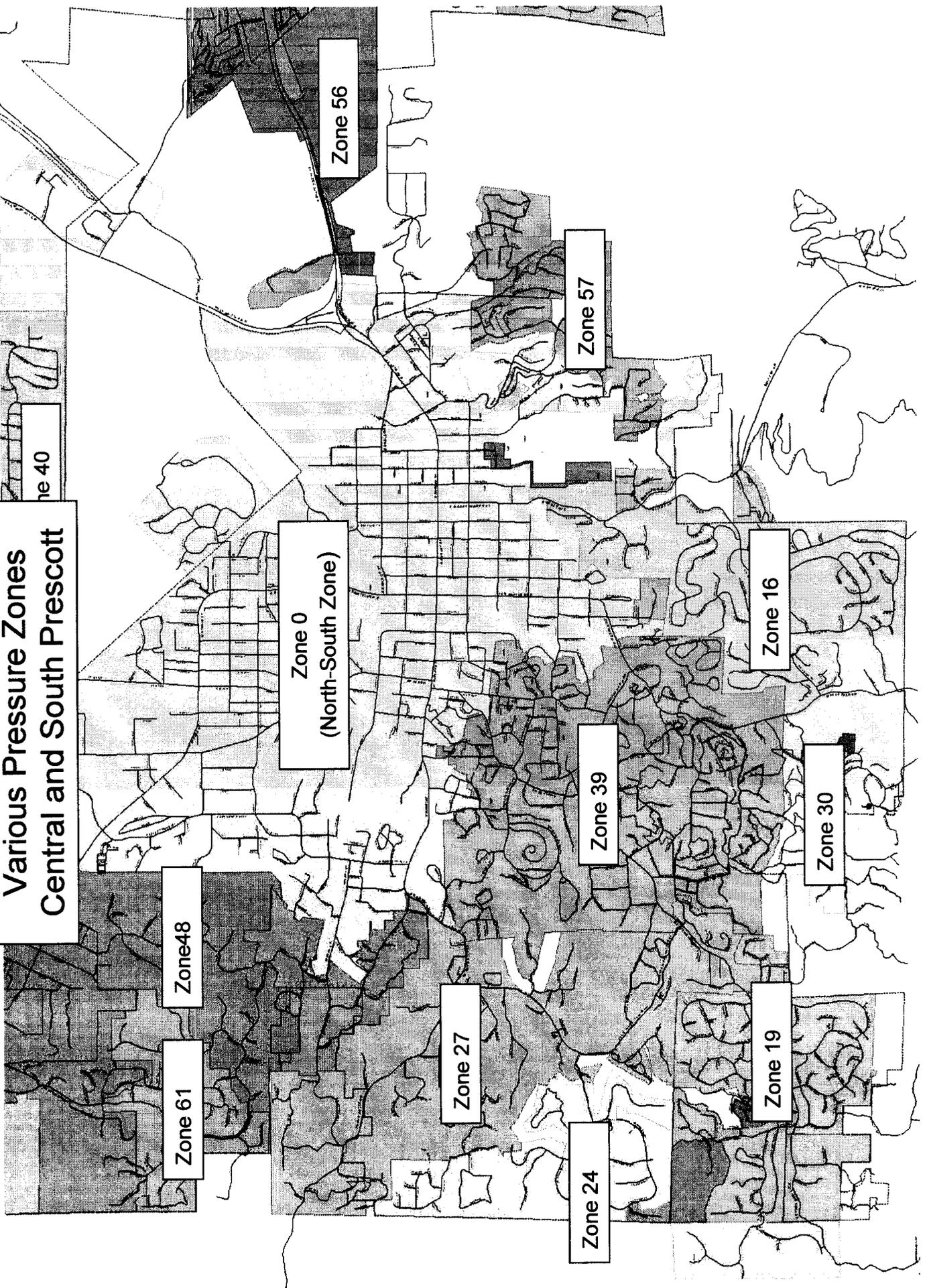
Village Tank & Pump Station

Tank Road Tank

Future Zone 19 Tank



Various Pressure Zones Central and South Prescott



COUNCIL AGENDA MEMO – September 27, 2011

DEPARTMENT: Police

AGENDA ITEM: Adoption of Resolution No. 4099-1209 approving Amendment No. 1 to Intergovernmental Agreement No. 2011-097 (State No. OER-11-IGA-GS-70) between the Governor’s Office of Economic Recovery (GOER) and the City of Prescott

Approved By:		Date:
Department Head: Michael Kappel		
Finance Director: Mark Woodfill		
City Manager: Craig McConnell <i>Craig McConnell</i>		9-26-11

Summary

The Prescott Police Department recommends approval, through adoption of Resolution No. 4099-1209, of Amendment No. 1 to prior Intergovernmental Agreement (IGA) No. 2011-097 between the Governor’s Office of Economic Recovery (GOER) and the City of Prescott. The purpose of this amendment is to increase the grant amount from the original \$50,000.00 to a new total of \$434,000.00 to support public safety activities consistent with and suitable for Recovery Act Funding.

Background

In September 2010 the Prescott Police Department received notification of a grant opportunity from the Public Safety Stabilization Program (PSSP) through GOER. On October 15, 2010, the City was notified that GOER had awarded \$50,000.00 to Prescott. As detailed in the subsequent Intergovernmental Agreement, the funding was provided to offset overtime expenditures necessary to preserve minimum public safety staffing levels.

Amendment No. 1 with GOER is to receive additional (end of federal fiscal year) funding of \$384,000.00 through that state office; and to expand the allowable purposes to include public safety salary and overtime costs, public safety related travel and training costs, and public safety vehicle maintenance and fuel costs incurred during the term of the Agreement, October 1, 2010, through September 30, 2011. The City has already incurred these costs, and will be required to submit one additional report by October 15, 2011, identifying the qualifying expenditures.

Financial Impact

This grant, increased to a new total of \$434,000.00, does not require matching funds. Accordingly, there will be no associated financial impact to the City.

- Attachments** - Resolution No. 4099-1209
- Amendment No. 1 to IGA No. 2011-097 (State No. OER-11-IGA-GS-70)

Recommended Action: MOVE to adopt Resolution No. 4099-1209

RESOLUTION NO. 4099-1209

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING AMENDMENT NO. 1 TO INTERGOVERNMENTAL AGREEMENT NO. 2011-097 (STATE NO. OER-11-IGA-GS-70) WITH THE GOVERNOR'S OFFICE OF ECONOMIC RECOVERY INCREASING AND ACCEPTING FUNDING IN THE NEW TOTAL AMOUNT OF \$434,000.00 TO SUPPORT AND EXPAND THE ALLOWABLE PUBLIC SAFETY PURPOSES FOR WHICH SAID FUNDING MAY BE APPLIED, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, the City and the Governor's Office of Economic Recovery (GOER) previously entered into that certain Intergovernmental Agreement ("IGA") identified as No. 2011-097 (State No. OER-11-IGA-GS-70) for the City to accept the amount of \$50,000.00 in funding from GOER to support basic public safety activities that are consistent and suitable for Recovery Act Funding; and

WHEREAS, having been notified by GOER of the availability of supplemental Recovery Act Funding in the amount of \$384,000.00, the City wishes to accept said additional funding, and the parties wish to amend the IGA to provide for a new total of \$434,000.00 and to expand the allowable purposes to include public safety salary and overtime costs, public safety related travel and training costs, and public safety vehicle maintenance and fuel costs incurred during the term of the Agreement; and

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

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

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby approves the attached Amendment No. 1 to Intergovernmental Agreement No. 2011-097 (State No. OER-11-IGA-GS-70) with the Governor's Office of Economic Recovery for the City to accept additional funds in the amount of \$384,000.00 from GOER to support public safety activities that are consistent and suitable for Recovery Act Funding, as set forth in Exhibit "A" which is attached and made a part hereof.

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

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

EXHIBIT 'A'**AMENDMENT No. 1**

for

**INTERGOVERNMENTAL SERVICES AGREEMENT #OER-11-IGA-GS-70
between the
GOVERNOR'S OFFICE OF ECONOMIC RECOVERY
and the
CITY OF PRESCOTT**

Pursuant to **Section III.C, Amendment**, and by mutual agreement of the parties, the following section of the above referenced AGREEMENT is hereby amended to read as follows:

Section I, PURPOSE OF THE AGREEMENT

GOER is tasked with oversight and swift distribution of Economic Recovery Funding. In this capacity, GOER has agreed to provide funding to the City of Prescott for the purpose of supporting local public safety agencies to provide basic public safety activities, a project that GOER has determined meets the requirements of projects suitable for Recovery Act funding. The City of Prescott agrees to comply with all terms of the proposal as approved, submitted in response to the grant opportunity that emerged from Governor Brewer's Public Safety Stabilization Program and/or as established by GOER. GOER will fund the City of Prescott's projects up to **\$434,000** (four hundred thirty-four thousand dollars). The allowable purposes of this agreement are also expanded beyond the original application submitted by the City of Prescott to now include: public safety salary and overtime cost; public safety related travel and training cost; and public safety vehicle maintenance and fuel cost.

Section II(A)(2), WORK STATEMENT AND GENERAL PROVISIONS

The reporting requirements applicable to the supplemental funds only, will take effect as of the execution date of this amendment. The City of Prescott will be required to submit one progress report by October 15th that captures all programmatic activity that occurred with the supplemental funds since the earliest date of expenditure through September 30, 2011.

Except as specifically stated herein, all other terms and conditions of this AGREEMENT remain unchanged.

IN WITNESS, WHEREOF, the parties hereto agree to execute this AMENDMENT.

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

Governor's Office of Economic Recovery
1700 W. Washington St., Ste. 300
Phoenix, AZ 85007

Marlin D. Kuykendall
Mayor

Matt Hanson, GPC
Director

Elizabeth A. Burke
City Clerk

John McCleve, Comptroller
Governor's Office

Gary D. Kidd
City Attorney

COUNCIL AGENDA MEMO - September 27, 2011
DEPARTMENT: Fire
AGENDA ITEM: Approval of a purchase agreement with The Pulmonary Foundation for real and other appurtenant property located at 215 N. McCormick Street; and adoption of Resolution No. 4100-1210 transferring appropriation authority for the transaction

Approved By:	Date:
Department Head: Bruce Martinez	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	<i>9-26-11</i>

Background

Following contact initiated by The Pulmonary Foundation, an Arizona non-profit corporation, the parties have negotiated purchase of the property at 215 North McCormick Street to be used by the Prescott Fire Department for administrative offices, and training and educational programs. This location is near other City-owned property at the intersection of Montezuma and Sheldon Streets (the former "Roadhouse 69") which was acquired for siting a future fire station and administrative offices. Purchase of the subject property for the administrative offices will enable significant reductions in the size and cost of the structure planned at Montezuma/Sheldon; and enable relocation of the offices from current temporary housing in the basement of the fire station at the Iron Springs Road/Williamson Valley Road intersection.

The purchase price is \$200,000.00; the City will be responsible for the Buyer's portion of closing costs. By a separate gift, the Williams Family Trust will donate \$204,033.65 to the City at closing to offset the purchase costs. Through the generosity of both The Pulmonary Foundation and the Williams Family Trust, the citizens of Prescott will be acquiring a property with an estimated value of \$800,000 essentially at no net cost.

Purchase Agreement

Approval of the agreement will be followed by the opening of escrow and due diligence activities prior to the closing date of October 21, 2011 (or sooner). By the terms of the agreement, the building being purchased will be restricted as to use for fire department purposes for a period of ten years, during which time it cannot be sold by the City.

The Property and Uses

The parcels comprising the property total approximately 0.5 acre, upon which are the main two-story building (6,364 SF), an accessory structure (2,050 SF) and a paved parking lot with 50 spaces. The lower floor of the main building offers much needed meeting and classroom spaces for CPR/First Aid training, as well as paramedic refresher and emergency management courses; and a fully equipped fitness area. The upper floor will house the administrative offices.

AGENDA ITEM: Approval of a purchase agreement with The Pulmonary Foundation for real and other appurtenant property located at 215 N. McCormick Street; and adoption of Resolution No. 4100-1210 transferring appropriation authority for the transaction

Budget

As mentioned above, the purchase price is \$200,000.00, which will be offset by a donation of \$204,033.65 from the Williams Family Trust for the purchase and closing costs.

Since this project was not included in the original FY 12 budget, a transfer of budget appropriation is needed. It is anticipated that there will be available appropriation in the Grants Special Revenue Fund that can be moved to the Miscellaneous Gifts & Donations Fund in order to accept and record this generous donation. Attached is a resolution authorizing the transfer of \$205,000 of unencumbered appropriation for the project.

Expenses for alterations related to occupancy have not yet been estimated in detail, but will not be significant based upon prior inspection of the premises. Move-in will occur when planning and design are completed, and funding is made available, either later in the present fiscal year (FY 12) or as a budgeted item in FY 13.

Attachments - Purchase Agreement with The Pulmonary Foundation
(redline draft; final document to be available for the Council meeting)
- Resolution No. 4100-1210

Recommended Action: **MOVE** to approve the Purchase Agreement with The Pulmonary Foundation for real and other appurtenant property located at 215 N. McCormick Street; adoption of Resolution No.4100-1210; and authorization of the Mayor and City staff to take all steps necessary to complete the purchase Agreement.

RESOLUTION NO. 4100-1210

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING THE TRANSFER OF UNENCUMBERED APPROPRIATIONS FROM THE GRANTS FUND TO THE MISCELLANEOUS GIFTS & DONATIONS FUND

RECITALS:

WHEREAS, Article VI, Section 10 of the Prescott City Charter allows the City Council to transfer appropriations among various City departments; and

WHEREAS, there are unencumbered appropriations allocated to the Grants Fund which will not otherwise be expended during fiscal year 2011-12; and

WHEREAS, the budgeted amount for the Miscellaneous Gift & Donations Fund will be insufficient to meet the fiscal needs for fiscal year 2011-12.

ENACTMENTS:

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

SECTION 1. THAT, the Mayor and staff are authorized to transfer from unencumbered funds allocated in the Grants Fund for fiscal year 2011-12 to the Miscellaneous Gift & Donations Fund the amount of \$205,00.00.

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

PASSED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, this 27th day of September, 2011.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

ELIZABETH A. BURKE, City Clerk

GARY D. KIDD, City Attorney

Redline Draft - Final Document to be Available for 9/27/11 Council Meeting

PURCHASE AGREEMENT

THIS AGREEMENT is made this day of September, 2011, by and between The Pulmonary Foundation, an Arizona non-profit corporation (the "Seller"), and the City of Prescott, an Arizona municipal corporation (the "Buyer").

In consideration of the covenants in this Agreement, Seller and Buyer agree as follows:

ARTICLE I

Purchase and Sale

1.1 **The Property.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, in accordance with this Agreement, the following described real property located in Yavapai County, Arizona (the "Property"):

Lots 1, 3, 5, 10, 12 and 14, Block A, CITY OF PRESCOTT, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, in Book 4 of Maps, page 22.

EXCEPTING therefrom the South 30 feet of the East 72.24 feet of said Lot 3 and the East half of said Lot 5.

TOGETHER with all improvements situate thereon and all easements and rights appurtenant thereto.

Street address is 215 North McCormick Street, Prescott, Arizona.

TOGETHER with all equipment presently located in the building on the Property, as listed on Exhibit "A" attached hereto.

1.2 **Survey of the Property.** At Seller's option, Seller may cause the exterior boundaries of the Property to be surveyed by a registered land surveyor. Seller shall pay for the cost of the survey. The information and survey plat prepared by the surveyor shall be provided to both Seller and Buyer promptly upon completion thereof.

1.3 **Commitment for Title Insurance.** Promptly following the execution of this Agreement, Seller shall cause Yavapai Title Agency, on behalf of First American Title Insurance Company (the "Title Company") to prepare a commitment for title insurance (standard owner's form) (the "Commitment"), with respect to the Property. Seller shall deliver the Commitment to Buyer promptly upon its completion.

1.4 Inspection of Property. Buyer shall have the right, at its option, to conduct additional inspections with respect to the Property, including termite inspection, environmental survey, and structural engineering study, together with any other inspections Buyer may select. The reports, if any, prepared with respect thereto shall be made available to both Buyer and Seller. The cost thereof shall be paid by Buyer.

ARTICLE II

Purchase Price

2.1 Amount and Payment. The purchase price ("Purchase Price") for the Property shall be \$200,000.00. The Purchase Price shall be paid by Buyer to Seller at the Closing (as hereinafter defined) on the Closing Date (as hereinafter defined).

2.2 Gift by Seller. The parties acknowledge that the fair market value of the Property is estimated to be at least \$800,000.00. The difference between the fair market value and the Purchase Price shall be considered as a gift by Seller to Buyer. The Seller is making this gift in view of the fact that the Seller is a non-profit corporation, recognized by the Internal Revenue Service as a Section 501(c)(3) entity pursuant to the Internal Revenue Code of 1986, as amended, and regulations thereunder. The incentive for making this gift is based upon Seller's interest in the fire department of the Buyer.

ARTICLE III

Completion of Sale

3.1 Place and Date. The purchase and sale of the Property shall be completed in accordance with Article VIII (the "Closing"). The Closing shall occur through an escrow with the Escrow Agent at 1235 East Gurley Street, Prescott, Arizona, on October 21, 2011 (the "Closing Date"), subject to the right of Buyer to extend the Closing Date as reasonably necessary for Buyer to complete its due diligence, as Seller and Buyer shall reasonably agree. ~~to such later date as Seller and Buyer agree in writing.~~ Prior to the Closing Date, Seller and Buyer shall give appropriate written escrow instructions, consistent with this Agreement, to the Escrow Agent for the Closing in accordance with this Agreement.

ARTICLE IV

Title to and Condition of the Property

4.1 Conveyance of the Property. Seller shall convey the Property to Buyer, in accordance with this section.

4.1.1 Seller shall convey the Property by a duly executed and acknowledged warranty deed in the form of Exhibit "B" attached hereto and made a part hereof by reference (the "Warranty Deed").

4.1.2 Seller shall transfer title to the equipment by a duly executed and acknowledged bill of sale (the "Bill of Sale").

4.2 Fixtures and Improvements. The parties agree that the sale and purchase includes all fixtures and improvements which are presently attached to the Property, including but not limited to the heating and cooling systems, the electrical distribution system, lighting fixtures, floor coverings, window coverings, and any and all security and fire detection systems. Seller will not remove any such fixtures or improvements and Seller warrants that all such fixtures and improvements are unencumbered and that Seller has good title thereto and the right to transfer title thereto.

ARTICLE V

Representations and Warranties

5.1 Seller. The representations and warranties of Seller in this Section 5.1 are a material inducement for Buyer to enter into this Agreement. Buyer would not purchase the Property from Seller without such representations and warranties of Seller. Such representations and warranties shall survive the Closing. Seller represents and warrants to Buyer as of the date of this Agreement as follows:

5.1.1 Seller is a non-profit corporation organized and validly existing and in good standing under the laws of the State of Arizona. Seller has full power and authority to enter into this Agreement and to perform this Agreement. This Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject as to enforceability to the effect of applicable bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

5.1.2 There are no leases or other agreements (whether oral or written) with Seller giving any person the right to possession of the Property or any portion thereof.

5.1.3 Seller has not employed or engaged any broker or finder or incurred any liability for any commission or fee to any broker or finder in connection with the sale of the Property to Buyer.

5.2 Buyer. The representations and warranties of Buyer in this Section 5.2 are a material inducement for Seller to enter into this Agreement. Seller would not sell the Property to Buyer without such representations and warranties of Buyer. Such representations and warranties shall survive the Closing. Buyer represents and warrants to Seller as of the date of this Agreement as follows:

5.2.1 Buyer is a duly organized and validly existing municipal corporation of the State of Arizona. Buyer has full power and authority to enter into this Agreement and to perform this Agreement. This Agreement is a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject as to enforceability to the effect of applicable bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

5.2.2 Buyer has not employed or engaged any broker or finder or incurred any liability for any commission or fee to any broker or finder in connection with the purchase of the Property from Seller.

ARTICLE VI

Covenants

6.1 **Seller.** Seller covenants and agrees with Buyer as follows:

6.1.1 All representations and warranties made by Seller in Section 5.1 shall survive the Closing. Seller shall use its best efforts, in good faith and with diligence, to cause all of the representations and warranties made by Seller in Section 5.1 to be true and correct on and as of the Closing Date.

6.1.2 Seller shall indemnify and defend Buyer against and hold Buyer harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by Buyer if any representation or warranty made by Seller in Section 5.1 was untrue or incorrect in any respect when made or at the Closing Date or that may be caused by any breach by Seller of any such representation or warranty.

6.2 **Buyer.** Buyer covenants and agrees with Seller as follows:

6.2.1 Buyer shall not assign its interest in this Agreement to any other person or entity, and Buyer agrees that it will comply with the restrictions contained in the Warranty Deed.

6.2.2 All representations and warranties made by Buyer in Section 5.2 shall survive the Closing. Buyer shall use its best efforts, in good faith and with diligence, to cause all of the representations and warranties made by Buyer in Section 5.2 to be true and correct on and as of the Closing Date.

6.2.3 Buyer shall indemnify and defend Seller against and hold Seller harmless from all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by Seller if any representation or warranty made by Buyer in Section 5.2 was untrue or incorrect in any

respect when made or at the Closing Date or that may be caused by any breach by Buyer of any such representation or warranty.

ARTICLE VII

Conditions Precedent

7.1 **Seller.** The obligations of Seller under this Agreement are subject to satisfaction of all of the conditions set forth in this Section 7.1. Seller may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by Seller of any of its rights or remedies if Buyer defaults in the performance of any covenant or agreement to be performed by Buyer under this Agreement or if Buyer breaches any representation or warranty made by Buyer in Section 5.2. If any condition set forth in this Section 7.1 is not fully satisfied or waived in writing by Seller, this Agreement shall terminate, but without releasing Buyer from liability if Buyer defaults in the performance of any covenant or agreement to be performed by Buyer under this Agreement, or if Buyer breaches any such representation or warranty made by Buyer before such termination.

7.1.1 On the Closing Date, Buyer shall not be in default in the performance of any covenant or agreement to be performed by Buyer under this Agreement.

7.1.2 On the Closing Date, all representations and warranties made by Buyer in Section 5.2 shall be true and correct as if made on and as of the Closing Date.

7.2 **Buyer.** The obligations of Buyer under this Agreement are subject to satisfaction of all of the conditions set forth in this Section 7.2. Buyer may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by Buyer of any of its rights or remedies if Seller defaults in the performance of any covenant or agreement to be performed by Seller under this Agreement or if Seller breaches any representation or warranty made by Seller in Section 5.1. If any condition set forth in this Section 7.2 is not fully satisfied or waived in writing by Buyer, this Agreement shall terminate, but without releasing Seller from liability if Buyer defaults in the performance of any covenant or agreement to be performed by Seller under this Agreement, or if Seller breaches any such representation or warranty made by Seller before such termination.

7.2.1 On or prior to the Closing Date, Buyer shall have approved the Commitment issued pursuant to Section 1.3.

7.2.2 On or prior to the Closing Date, Buyer shall have approved any survey of the Property and any reports related to inspections of the Property.

7.2.3 On the Closing Date, Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement.

7.2.4 On the Closing Date, all representations and warranties made by Seller in Section 5.1 shall be true and correct as if made on and as of the Closing Date.

7.2.5 On the Closing Date, the Title Company shall be irrevocably committed to issue an American Land Title Association, Standard Owner's Policy of Title Insurance (the "Title Policy"), with liability equal to the Purchase Price for the Property, insuring Buyer that fee title to the Property is vested in the Buyer, subject only to exceptions contained in the Title Policy.

ARTICLE VIII

Closing

8.1 Procedure. Seller and Buyer shall cause the following to occur at the Closing on the Closing Date:

8.1.1 The Warranty Deed for the Property, duly executed and acknowledged by Seller, shall be recorded in the office of the County Recorder of Yavapai County, Arizona.

8.1.2 The Bill of Sale for the equipment, duly executed and acknowledged by Seller, shall be delivered to Buyer.

8.1.3 Buyer shall pay the Purchase Price, in accordance with Section 2.1.

8.1.4 The Title Company shall issue the title insurance policy described in Subsection 7.2.5.

8.2 Possession. Seller shall transfer possession of the Property and equipment to Buyer on the Closing Date.

8.3 Closing Costs. Buyer shall pay the premium for the Title Policy described in Subsection 7.2.5, the escrow fee charged by the Escrow Agent, recording charges and any other closing costs. Buyer and Seller shall each pay their own legal expenses incurred in connection with the transaction contemplated hereby.

8.4 Prorations. All current property taxes shall be prorated between Seller and Buyer as of the Closing Date. Such proration shall be based upon the most recent tax figures available. Seller shall pay all taxes relating to the Property that are allocable to the period before the Closing Date, and Buyer shall pay all taxes relating to the Property that are allocable to the period on and after the Closing Date.

ARTICLE IX

General

9.1 **Notices.** All notices and other communications required or permitted by this Agreement shall be in writing, and shall be delivered by personal delivery or deposited with the United States Postal Service, certified with return receipt requested, or delivered by a nationally recognized private courier service, with proper postage or other charges prepaid, or by electronic mail, addressed as follows:

If to Seller, to: The Pulmonary Foundation
(address)

With a copy to: Barry B. Cline, Esq.
Boyle, Pecharich, Cline,
Whittington & Stallings, P.L.L.C.
125 North Granite Street
Prescott, Arizona 86301

If to Buyer, to: City of Prescott
c/o Mayor
201 South Cortez Street
Prescott, Arizona 86303

With a copy to: City of Prescott
c/o City Attorney
201 South Cortez Street
Prescott, Arizona 86303

If to Escrow Agent, to: Jan Gallagher
Yavapai Title Agency
1235 East Gurley Street
Prescott, Arizona 86301

or to such other address or electronic mail address as a party may hereafter specify for such purpose by notice to each other party hereto. Each such notice or other communication shall be effective (i) if delivered in person, on the date of delivery, (ii) if delivered by private courier, on the date of delivery, (iii) if delivered by electronic mail, on the date of delivery, or

(iv) if deposited with the United States Postal Service, on the third business day following the date of postmark.

9.2 Breach. Seller and Buyer shall each have all such rights and remedies afforded at law or in equity on account of the breach of this Agreement by the other party, including the right to specific performance hereof.

9.3 Attorneys' Fees. If there is any legal action or proceeding between Seller and Buyer arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred by such prevailing party.

9.4 Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of Arizona.

9.5 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transaction contemplated hereby is not affected in any manner materially adverse to either party.

9.6 Amendments; Entire Agreement. This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement executed by the parties hereto. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, with respect thereto.

9.7 Terminology. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender shall, where appropriate, include all other genders and the singular shall include the plural and *vice versa*.

9.8 Further Assurances. From and after the date of this Agreement, Seller and Buyer agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transaction contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

9.9 Waivers. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provisions of this Agreement or any other or subsequent breach of this Agreement.

9.10 Time of the Essence. The parties agree that time shall be of the essence in the performance of obligations hereunder.

9.11 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

9.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, Seller and Buyer have executed this Purchase Agreement as of the date first hereinabove written.

SELLER:

THE PULMONARY FOUNDATION,
an Arizona non-profit corporation

By _____

BUYER:

CITY OF PRESCOTT, an Arizona municipal
corporation

By _____
Marlin Kuykendall, Mayor

ATTEST:

Liz Burke, City Clerk

APPROVED AS TO FORM:

Gary D. Kidd, City Attorney

List of Equipment

The Pulmonary Foundation, Seller – City of Prescott, Buyer

<u>Quantity</u>	<u>Item Number</u>	<u>Description</u>
1	880-546	Seated leg curl w/Start RLD
1	880-504	GS-CPS Chest Press
1	880-512	GS-UP Seated Row
1	880-522	GS-HLP Hi\Lo Column
1	880-654	Adjustable Flat Bench
1	880-532	GS-BE Back Extension
1	880-540	GS-LES Leg Extension
1	880-430	Flat Bench
Note the "Item Numbers" were provided by the seller of the equipment, namely Fun'n Fitness, Tempe, Arizona, at the time the equipment was purchased in June of 1998		

Exhibit "A"

Recorded at the request of:

Yavapai Title Agency

and when recorded, return to:

City of Prescott
c/o City Attorney
201 South Cortez Street
Prescott, Arizona 86303

WARRANTY DEED

For the consideration of TEN DOLLARS (\$10.00), and other valuable considerations, The Pulmonary Foundation, an Arizona non-profit corporation (the "Grantor"), hereby grants and conveys to the City of Prescott, an Arizona municipal corporation (the "Grantee"), the following described real property situated in Yavapai County, Arizona (the "Property"), to-wit:

Lots 1, 3, 5, 10, 12 and 14, Block A, CITY OF PRESCOTT, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, in Book 4 of Maps, page 22.

EXCEPTING therefrom the South 30 feet of the East 72.24 feet of said Lot 3 and the East half of said Lot 5.

TOGETHER with all improvements situate thereon and all easements and rights appurtenant thereto.

SUBJECT TO current taxes and assessments, reservations or exceptions in governmental patents to the Property or in Acts authorizing the issuance thereof, easements, obligations, covenants, conditions and restrictions as may appear of record or as may be disclosed upon an inspection of the Property.

NO TRANSFER FEE NECESSARY
EXEMPT UNDER A.R.S. §11-1134(A)(3)

Exhibit "B"

Grantor warrants the title against all persons whomsoever, subject to the matters above set forth.

This conveyance is made on the following conditions subsequent:

1. The Grantee shall not transfer or convey any interest in the Property to any other party whatsoever within ten (10) years after this Deed is recorded in the office of the Yavapai County Recorder.

2. For a period of ten (10) years after this Deed is recorded in the office of the Yavapai County Recorder, the Property shall be used forby the fire department related purposes only which will allow fire qualification and related education and training to members of the Prescott Fire Department, members of outside agencies and/or other individuals as allowed by the Grantee acting through its fire department. of the Grantee and by other fire departments and fire fighters based in Yavapai County, and for no other purpose whatsoever.

In the event of any violation or nonobservance of Grantee violates the foregoing conditions subsequent 1 or 2, Grantor, its successors and assigns, shall have the right to terminate the estate herein granted and to reenter and retake possession of the Property. Prior to such reentry and retaking of the Property, Grantor shall provide Grantee with a 30 (thirty) day written notice of default, and Grantee shall have the right to cure such default within such 30 (thirty) day period. Grantor will take no action to effect a termination of Grantee's interest in the Property by reason of any default without first giving written notice to Grantee of such default and allowing a reasonable time for Grantee within which to cure such default if the default is one which can be cured with the exercise of reasonable diligence by Grantee. In the event that the Grantee shall timely remedy the default, it shall be deemed cured. The Grantor shall not, in the event of a cure, be entitled to reenter and retake possession of the Property and terminate the estate of the Grantee. —may, at any time thereafter (but not subsequent to ten (10) years after the date this Deed is recorded in the

~~office of the Yavapai County Recorder), elect that fee simple title to the whole of the Property revert to Grantor, such election to be made by Grantor recording written notice thereof in the office of the Yavapai County Recorder and by delivering a copy thereof to Grantee, and thereupon without any further action on the part of Grantor fee simple title to the whole of the Property and to all improvements and fixtures then existing thereon shall revert to and revest in Grantor, and Grantor shall have the right of reentry to the whole of the Property and to the improvements and fixtures then existing thereon, without further consideration to Grantee.~~

The foregoing conditions subsequent and other terms and covenants relating thereto shall run with the land and shall be binding upon Grantee, its successors and assigns. The power of termination shall not be transferrable or assignable by Grantor.

DATED this _____ day of _____, 2011.

THE PULMONARY FOUNDATION,
an Arizona non-profit corporation

EXHIBIT - DO NOT SIGN

By _____

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, on behalf of The Pulmonary Foundation, an Arizona non-profit corporation.

Notary Public

My commission expires:
_____.

ACCEPTANCE AND APPROVAL

The Grantee, the City of Prescott, an Arizona municipal corporation, accepts the foregoing Warranty Deed and approves the terms and conditions set forth therein.

DATED this _____ day of _____, 2011.

CITY OF PRESCOTT, an Arizona municipal corporation

~~EXHIBIT - DO NOT SIGN~~

By _____
Marlin Kuykendall, Mayor

ATTEST:

Liz Burke, City Clerk

APPROVED AS TO FORM:

Gary D. Kidd, City Attorney