

# PRESCOTT CITY COUNCIL SPECIAL MEETING AGENDA

**PRESCOTT CITY COUNCIL  
SPECIAL MEETING  
TUESDAY, APRIL 17, 2012  
3:00 PM**

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

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

◆ **CALL TO ORDER**

◆ **PLEDGE OF ALLEGIANCE** Mayor Kuykendall

◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

Mayor Kuykendall  
Councilman Arnold  
Councilman Blair

Councilman Carlow  
Councilman Kuknyo  
Councilman Lamerson

**I. SPECIAL RECOGNITION**

A. Administer Oath of Office and Seating of Len Scamardo as Councilmember, term to expire November 2013.

**II. CONSENT AGENDA**

A. Purchase of used 1998 Volvo/Leech rear loading refuse truck (119,000 original miles) from City of Mesa Solid Waste in the amount of \$20,000.00.

**III. REGULAR AGENDA**

A. Adoption of Resolution No. 4125-1235 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Settlement Agreement pertaining to property commonly referred to as Centerpointe East Commerce Park, amending all prior resolutions and development agreements pertaining to properties located within the Centerpointe East Development as provided in the Settlement Agreement; and authorizing the mayor and staff to take any and all steps necessary to accomplish the above.

- B. Approval of agreement re relocation of FAA airport navigational systems associated with the Runway 21L-3R Safety Area Improvement Project at the Prescott Municipal Airport.
- C. Discussion / direction re employee benefits.

**IV. ADJOURNMENT**

CERTIFICATION OF POSTING OF NOTICE

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

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

**COUNCIL AGENDA MEMO – April 17, 2012**  
 PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

**DEPARTMENT:** Field & Facilities Services

**AGENDA ITEM CAPTION:** Purchase of used rear loading refuse truck

<b>Approved By:</b>	<b>Date:</b>
<b>Department Director:</b> Stephanie Miller	04/10/2012
<b>City Manager:</b> Craig McConnell <i>Craig McConnell</i>	4-11-12

Good(s) or Service(s) to be Purchased	
<b>Description of Item(s)</b>	1998 Volvo/Leech rear loading refuse truck (119,000 original miles) from City of Mesa Solid Waste
<b>Quantity</b>	One (1) ea.
<b>Necessity/Use</b>	This will be the Solid Waste Division's first rear loading truck, to be used extensively for the annual Spring Cleanup, a month-long collection of bulk trash from residential customers. The unit will be safer than the front loader and container configuration used in previous years. Other uses throughout the year include special events requiring frequent manual pickup of trash bags (e.g., Fourth of July and Christmas parades).

Summary of Written Quotes (exclusive of tax) <u>or</u> Professional Services Proposals			
		** See Note (1) below for professional services **	
<b>x</b>	<b>Vendor (Name and Location)</b>	<b>Price</b>	<b>Delivery/Schedule</b>
<b>X</b>	City of Mesa	\$20,000	Ready for pick up

x = recommended award

**Budget Information** Solid Waste Fund - Motor Vehicles (7306600-8915)

**Additional Comments:** City of Prescott Procurement Code, Section 1-27-1.9 (G): "Procurements in an amount of more than \$3,000 may be solicited from suppliers without bidding or competition, with the prior approval of City Council, for used vehicles." The price for the Tool Carrier purchased earlier in this fiscal year was \$42,700 less than budgeted, enabling the Division to remain within budget for this additional vehicle purchase. The vehicle was identified as surplus by City of Mesa, and was scheduled to be auctioned. Comparable rear-loading trucks are listed for \$34,900 - \$75,000 on several municipal auction websites.

<b>Attachments</b>	1. Price quote, City of Mesa Fleet Services Department Director
	2.
	3.

**From:** Pete Scarafiotti [mailto:Pete.Scarafiotti@mesaaz.gov]  
**Sent:** Monday, April 09, 2012 10:22 AM  
**To:** Frisk,Brad  
**Cc:** Tony Cronin; Denise Ruther; John Milhon; Scott Bouchie  
**Subject:** RE: Rear Loading Refuse Truck

Brad,

We have unit #1195 Volvo/Leech rear loader (VIN# 4VMDCKHD5WN747654) for sale for \$20,000; it is ready for immediate delivery. I have checked to see if we had any spare parts to go along with it but we do not. Since we are both governmental agencies, I can sell the truck directly to the City of Prescott for fair market value, fair market has been determined by an average of past auctions. Payment will be to:

City of Mesa  
Fleet Services Department  
PO Box 1466  
Mesa, AZ 85211-1466

You are welcome to inspect the truck anytime Monday through Friday (please call first). I will pull the vehicle from auction pending the outcome of this sale.

Thanks

Pete

Peter G. Scarafiotti  
MEng. CAFM. CEM. CFPF.  
Director & Automotive Engineer  
Fleet Services Department  
City of Mesa, AZ  
480-644-5909





**COUNCIL AGENDA MEMO – April 17, 2012**

**DEPARTMENT:** Legal Department

**AGENDA ITEM:** Adoption of Resolution No. 4125-1235 approving a Settlement Agreement with Centerpointe East Commerce Park owners

<b>Approved By:</b>		<b>Date:</b>
<b>Department Head:</b> Gary D. Kidd		
<b>Finance Director:</b> Mark Woodfill		
<b>City Manager:</b> Craig McConnell		4-10-12

**Summary**

A claim was filed on behalf of property owners in the Centerpointe East commercial development contending that the City violated a 2003 settlement agreement in the Country Dells litigation, and a subsequent 2005 amendment to that settlement by failing to commence construction of a traffic interchange (TI) on SR 89A at Side Road by June 14, 2009. Those agreements also required the owners of property in the development to reimburse the City for a portion of the cost of the interchange up to a maximum of \$480,000. The claim filed by these owners, collectively, was for \$2 million and \$4 million for alleged diminution of the value of their properties due to a change in the interchange location.

The interchange was approved and eventually built at Granite Dells Parkway after a series of meetings regarding alternative designs and locations and engineering recommendations of Parsons Engineering, the engineering design consultant hired by the City. The interchange as envisaged in 2003 would not meet ADOT design standards for spacing on a divided, limited access state highway which require a one-mile separation between interchanges. Per ADOT, this is considered a requirement and safety standard. These standards changed subsequent to the Country Dells settlement and (the amendment thereto in 2005).

To meet ADOT's spacing standards for interchanges and accomplish the needed separation from the Larry Caldwell interchange to the west, the City built the interchange 1800' farther to the east of the original Side Road location. In order to obtain ADOT approval the interchange had to be located a minimum of 1200' feet east of existing Side Road. Without the required separation, it is highly unlikely the City would have been able to obtain an ADOT permit to construct the interchange on SR89A.

With respect to the aforementioned claim, representatives of the parties have met and formulated a proposed agreement which will result in a complete settlement of all claims the property owners have against the City and all claims that the City may have against the property owners. No fees or damages will be paid by either party; each party will bear their own costs and attorneys fees.

**Agenda Item:** Adoption of Resolution No. 4125-1235 approving a Settlement Agreement with Centerpointe East Commerce Park owners.

Notwithstanding the filing of the claim, certain property owners did remit to the City their pro rata shares of the \$480,000 reimbursement. These amounts total \$3,282.28. Given the prospective settlement terms, the recommended action below would return the contributions of these property owners.

**Attachments-** 1) Settlement Agreement

**Recommended Action:** **MOVE** to adopt Resolution No. 4125-1235, authorizing the Mayor and staff to execute all settlement documents and to issue a refund to certain Centerpointe East Commerce Park property owners in the amount of \$3,282.28.

## RESOLUTION NO. 4125-1235

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A SETTLEMENT AGREEMENT PERTAINING TO PROPERTY COMMONLY REFERRED TO AS CENTERPOINTE EAST COMMERCE PARK, AMENDING ALL PRIOR RESOLUTIONS AND DEVELOPMENT AGREEMENTS PERTAINING TO PROPERTIES LOCATED WITHIN THE CENTERPOINTE EAST DEVELOPMENT AS PROVIDED IN THE SETTLEMENT AGREEMENT; AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

### RECITALS:

WHEREAS, a settlement has been reached resolving certain claims between the property owners and the property owners association within the Centerpointe East Commerce Park, (which property was duly platted on October 19, 2005), and the City of Prescott, pertaining to portions of settlement agreements, referred to collectively herein as the "Country Dells Settlement Agreement and Amendments thereto" concerning those properties located within the Centerpointe East Commerce Park; and

WHEREAS, the Parties have negotiated and wish to enter into a Settlement Agreement and a Release of Encumbrances in order to resolve certain delineated claims set forth in said agreement, between the City of Prescott and the parties; and

WHEREAS, this Settlement Agreement and the Release of Encumbrances shall amend, supersede and replace all prior agreements between the parties with respect to those delineated terms and conditions set forth in the settlement agreement, and whereas, all other terms of the prior agreements currently applicable will remain in effect, except to the extent modified by the Settlement Agreement and Release of Encumbrances.

### ENACTMENTS:

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

Section 1. THAT the attached Settlement Agreement and Release of Monetary Encumbrances, attached and incorporated herein as Exhibit "A" is hereby approved. Further, Resolutions 3503 and 3680 pertaining to the prior Country Dells Settlement Agreement and amendments thereto are hereby amended to include the terms and conditions of the Settlement Agreement and Release of Monetary Encumbrances (Exhibit "A.").

Section 2. THAT the Mayor and staff of the City of Prescott are hereby authorized to execute the attached Settlement 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 17<sup>th</sup> day of April, 2012.

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

ATTEST:

APPROVED AS TO FORM:

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

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

## SETTLEMENT AGREEMENT

April \_\_, 2012

### PARTIES

City of Prescott and the Property Owners listed on Exhibits "A" and "B" attached and incorporated as if set forth herein.

### RECITALS

A. City of Prescott (hereinafter "City" or "COP") and the predecessors in interest of the Property Owners, presently referred to as Centerpointe East Commerce Park (hereinafter "Property Owners"), entered into that certain Agreement in Settlement of Litigation (City Contract #03-016), recorded in the Official Records of Yavapai County, Book 3994, page 258, the Agreement in Settlement of Litigation, Amendment Number One (City Contract #03-016A1), recorded in the Official Records of Yavapai County, Book 4279, Page 2, which documents and any amendments thereto set forth certain obligations of the City and Property Owners, whereby City was to construct certain interchange improvements and Property Owners were to tender payment to City for such improvements;

B. WHEREAS, certain Property Owners are the legal successors in interest of the original developers and signatories on the above referenced agreements and as such are entitled to the benefits and obligations set forth in said Agreements,

C. WHEREAS Property Owners have filed a notice of claim, pursuant to A.R.S. 12-821.01 setting forth claims for damages in the specific amount of \$2,039,914.50 up to \$4,079,829 and whereas City has responded to such claim, denying that such claim is valid, setting forth its legal positions, and seeking funds pursuant to the agreements referenced herein;

D. WHEREAS, the parties wish to settle and resolve all issues raised in their claims in good faith and release the encumbrance and payment requirement of the Property Owners recorded against the subject property, all as set forth in this Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF THE FOLLOWING MUTUAL COVENANTS AND AGREEMENTS, THE PARTIES AGREE AS FOLLOWS:**

#### **1. DEFINITIONS**

The following terms, when used in this Settlement Agreement, shall have the definitions as described below:

1.1. "Property Owners" shall mean Centerpointe East Commerce Park Property Owners represented by legal counsel Alex B. Vakula, collectively and individually, as listed on Exhibit "A" attached, and those additional Property Owners, collectively and individually, as listed on Exhibit "B" who are not represented by Mr. Vakula, and the successors in interest to the Property Owners' affected properties.

1.2. "COP" shall mean the City of Prescott, Arizona.

1.3. "Dispute" shall mean the disputed issues related to the Agreement in Settlement of Litigation (City Contract #03-016), recorded in the Official Records of

Yavapai County, Book 3994, page 258, the Agreement in Settlement of Litigation, Amendment Number One (City Contract # 03-016A1), recorded In the Official Records of Yavapai County, Book 4279, Page 2, which documents and any amendments thereto set forth certain obligations of the City and Property Owners, all claims set forth or referred to in the claim letter dated December 10, 2010, filed by Property Owners, and the demands for payment(s) sent to Property Owners by City pursuant to the above referenced agreements for contributions which the Property Owners were to make as referenced in the Agreement in Settlement of Litigation and as amended in the subsequent Amendment Number One thereto.

1.4. "Effective Date" shall mean the date upon which the City of Prescott City Council approves the terms and conditions of this Settlement Agreement.

1.5. "Project" shall mean the Granite Dells Parkway Interchange Project 89A YV 318 H722401C 89A-A-NFA.

## **2. TERMS.**

- A. Pursuant to this settlement agreement, the Property Owners and their successors in interest agree that they shall, as more fully set forth in Section 3, settle, waive, and release any and all claims, including any and all monetary claims, they may have against the City of Prescott pertaining to the Dispute.
- B. Pursuant to this settlement agreement, the City of Prescott agrees that it shall, as more fully set forth in Section 3, settle, waive, and release any and all claims it may have against the Property Owners and their successors in interest, including any and all monetary claims it may have against the Property Owners, individually or separately, pertaining to the Dispute.

## **3. EXECUTION AND COUNTERPARTS.**

The parties agree that this Settlement Agreement may be executed in counterparts, with each counterpart being deemed to be an original.

## **4. WAIVER OF CLAIMS.**

Except as expressly reserved herein, this Settlement Agreement constitutes a compromise of all of the claims arising out of the Dispute or occurring as a result of the Dispute, as well as all claims pertaining to the Project which any party may have or assert against the other party arising prior to the date of this Settlement Agreement. Other than the obligations of each party set forth herein, the parties waive any right not specifically herein preserved arising out of the Dispute. It is understood and agreed that this Agreement shall result in full settlement of any and all claims Property Owners, jointly and individually, their employees, agents, officers or assigns may have against the City, its employees, agents, officers or assigns, arising out of or relating in any way to the Dispute arising out of or relating in any way to the Dispute or any other matters involving the Project prior to the date of this Agreement, and shall result in full settlement of any and all claims the City, its employees, agents, officers or assigns may have against the Property Owners, their employees, agents, officers or assigns, arising out of or relating in any way to the Dispute or any other matters involving the Project prior to the date of this Agreement. This settlement, release and waiver of claims includes all of those claims related to the Dispute including all claims, counter and crossclaims and affirmative assertions, defenses and avoidances for equitable relief,

damages, costs, fees, attorneys' fees and other money claims. Upon execution of this Settlement Agreement by all parties, each of the parties and signatories to this Settlement Agreement agree to fully, forever, irrevocably and unconditionally remise and discharge one another from any and all claims, charges, complaints, demands, actions, causes of action, suits, debts, sums of money, costs, accounts, reckonings, covenants, any and all negligent acts or omissions, damages, executions, obligations, liabilities and expenses of every kind and nature and description, known or unknown, which any party may have, purport to have, ever claimed to have had against one another occurring or accruing prior to the date of this Settlement Agreement pertaining to the Disputes or the Project.

**5. ASSUMPTION OF RISK OF ERROR.**

The parties expressly waive and assume the risk of any and all claims for damages or equitable relief which exist as of this date or in the future which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decisions to enter into this Agreement. The parties further agree that they have accepted the consideration provided herein as a complete compromise of matters involving disputed issues of law and fact. The parties assume the risk that the facts or law may be other than they believe.

**6. RELEASE OF ENCUMBRANCES.**

The City hereby releases and relinquishes in full any and all obligations arising out of that the Agreement in Settlement of Litigation (City Contract #03-016), recorded in the Official Records of Yavapai County, Book 3994, page 258, and the Agreement in Settlement of Litigation, Amendment Number One (City Contract # 03-016A1), recorded in the Official Records of Yavapai County, Book 4279, Page 2, which documents and any amendments thereto affect title to certain properties owned by the Property Owners. In connection with the foregoing release, the parties shall record in the Official Records of Yavapai County, a Release of Encumbrances, in the form attached hereto as Exhibit 1 within ten (10) days of the Effective Date of this Agreement. Further, the City and Property Owners represent and warrant that the two recorded documents referenced in this paragraph are the only recorded documents which create any lien or encumbrance relating to the Project or the claims released by the City herein, to the best of the actual knowledge of the City and the Property Owners, upon reasonable inquiry. The City further covenants and agrees that, in the event the Release of Encumbrances, attached hereto as Exhibit 1, is for any reason ineffective or insufficient to reflect the release contemplated by this Agreement, the City will execute forthwith such other and further documents or agreements as may be required by a title insurance company or the Property Owners to reflect the full release contemplated in this Agreement. By signing below, the Property Owners listed on Exhibit "A" irrevocably authorize and direct Alex B. Vakula as their attorney and authorized representative to sign the Release of Monetary Encumbrances and record the same on their behalf. The remaining Property Owners listed on Exhibit "B" irrevocably authorize and direct Alex B. Vakula to sign the Release of Monetary Encumbrances for recordation and release of any potential claims against COP, but acknowledge that Mr. Vakula is not their legal counsel and they have had an opportunity to review and discuss all of the documentation herein with legal counsel of their choice before signing.

**7. RELIANCE ON COUNSEL.**

In entering into this Agreement, the parties represent and warrant that they have each relied upon the advice of their counsel, who is an attorney of their own choice, concerning the legal consequences of this Agreement; that the terms of this Agreement have been completely read and explained to them by their counsel; and that the terms of this Agreement are fully understood and voluntarily accepted by them. Further, the parties acknowledge and affirm that they have not received any legal advice concerning this settlement or its tax consequences from the City or its counsel.

**8. WARRANTY AND REPRESENTATION REGARDING COMPREHENSION OF AGREEMENT.**

The Property Owners expressly warrant and represent that they are each of sound mind and are legally, physically, and mentally capable of understanding and executing this Agreement and they in fact understand the terms of this Agreement. The Property Owners understand that this warranty and representation was material to the City's decision to settle with them.

**9. OWNERSHIP OF CLAIMS.**

The Property Owners represent and warrant that no other person or entity has any interest in the claims, demands, obligations, or causes of action that they have or had against the City; that the Property Owners have the sole right and exclusive authority to execute this Agreement; that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement; and that no other person or entity has an unresolved claim or cause of action arising out of or related to the relationship between Property Owners and the City.

**10. NO ADMISSION OF LIABILITY.**

It is mutually understood and agreed upon by the parties hereto that the resolution set forth herein in no way shall constitute any admission on the part of the City of Prescott or any fact or matters of law asserted by Property Owners, and is undertaken solely for the purposes of resolving a disputed civil matter. It is mutually understood and agreed upon by the parties hereto that the resolution set forth herein in no way shall constitute any admission on the part of the Property Owners or any fact or matters of law asserted by the City of Prescott, and is undertaken solely for the purposes of resolving a disputed civil matter. Accordingly, this Agreement shall not be deemed to be an admission of any wrongdoing, notice, or any other admission of liability or factual issue of any kind on the part of the City or the Property Owners in any proceeding. The Property Owners acknowledge that the City denies any and all liability stemming from its relationship with Property Owners and warrants no promises or inducements have been made other than stated in this Agreement **and the parties further acknowledge that nothing in this agreement shall be used to establish any assertions or claims of negligence or violations, policy or any other legal standards or claims.**

**11. GOVERNING LAW AND DISPUTES.**

This Agreement shall be construed and interpreted in accordance with the laws of Arizona, regardless of choice of law provisions.

**12. MUTUAL UNDERSTANDING:**

It is mutually understood and agreed upon by the parties hereto that the resolution set forth herein in no way shall constitute any admission on the part of the City or the Property Owners of any facts or matters of law asserted by the Property Owners against the City or the City against the Property Owners, and is undertaken solely for the purposes of resolving a disputed civil matter; and this Agreement shall **not** be deemed to be an admission of any wrongdoing, notice, or any other admission of liability or factual issue of any kind on the part of the City or the Property Owners in any proceeding.

**13. ENTIRE AGREEMENT AND SUCCESSORS-IN-INTEREST.**

This Agreement constitutes the complete understanding between Property Owners and the City and supersedes any and all prior agreements, promises, representations, or inducements, no matter what their form. Property Owners acknowledge and agree that the City has not made any commitments to them in connection with their settlement which are not set forth in this Agreement. No promises or agreements made subsequent to the execution of this Agreement by the parties shall be binding unless reduced to writing and signed by authorized representatives of these parties. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of Property Owners and the City.

**14. PARAGRAPH HEADINGS.**

The paragraph headings used in this Agreement are included for the convenience of the parties, only and do not limit or otherwise affect the language used in this Agreement.

**15. EFFECTIVENESS.**

This Agreement shall become effective following execution by Property Owners and their counsel and immediately upon the Effective Date, *i.e.*, the date which the City of Prescott City Council approves the terms and conditions of this Settlement Agreement.

**16. ENFORCEMENT OF THIS AGREEMENT.**

The parties agree that this Settlement Agreement may be specifically enforced in a court of competent jurisdiction and that in the event of breach by any party, an order directing that party to perform necessary, proper and appropriate actions to effectuate the agreement.

**17. ATTORNEYS' FEES.**

In the event that any party brings an action to enforce the provisions of this Agreement, the parties agree that the prevailing party in any such action shall be entitled to specific performance of the agreement and if awarded recovery of their reasonable attorney's fees incurred, along with statutory costs.

This Agreement is entered into as of the \_\_\_\_ day of April, 2012.

**CITY OF PRESCOTT, ARIZONA**

**CENTERPOINTE EAST COMMERCE  
PARK**

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

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

**HK INVESTMENTS, LLC  
MEMBER**

**THE PHAM LIVING TRUST**

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

By: \_\_\_\_\_  
Hal Pham  
Its: Trustee

**SCANLAN PROPERTIES, LLC**

**EMPIRE SOUTHWEST, LLC**

By: \_\_\_\_\_  
Stephen R. Scanlan  
Its: Manager

By: \_\_\_\_\_  
Jon Helms  
Its: Vice President and CFO

**RNB PROPERTY ACQUISITIONS, LLC**

**SUMMIT AVENUE INDUSTRIAL  
PROPERTIES, LLC**

By: \_\_\_\_\_  
Mark Norris  
Its: Manager

By: \_\_\_\_\_  
Dewey A. Spitler  
Its: Manager

\_\_\_\_\_  
**Douglas Rupp**

\_\_\_\_\_  
**Dewey A. Spitler**

**SMITH LIVING TRUST**

**KOSKI FAMILY REVOCABLE TRUST**

By: \_\_\_\_\_  
Bruce Smith  
Its: Trustee

By: \_\_\_\_\_  
Troy Koski  
By: \_\_\_\_\_  
Rhonda Koski  
Its: Trustees

Pursuant to Section 3 of the foregoing Agreement, this signature page has been executed by the above property owners in counterparts.

\_\_\_\_\_  
Richard Kelley

**JANICE WAHL REVOCABLE TRUST**

By: \_\_\_\_\_  
Its: Janice Wahl  
Trustee

\_\_\_\_\_  
Lori Kelley

**NIEMANN'S FLASH, LP  
TILTIN T'S LLC**

By: \_\_\_\_\_  
Its: Helen Testa  
General Partner

\_\_\_\_\_  
Constance "Connie" Joy Busse

\_\_\_\_\_  
Kim Scola

\_\_\_\_\_  
Penny Hardy

\_\_\_\_\_  
James Holt

**MARION LEFKOWITZ DEFINED  
BENEFIT PLAN**

**LIISA M. RAIKKONEN PC 401  
(K) PLAN**

By: \_\_\_\_\_  
Its: Marion Lefkowitz  
Beneficiary

By: \_\_\_\_\_  
Its: Liisa M. Raikkonen  
Beneficiary

\_\_\_\_\_  
Kendall Jaspers

\_\_\_\_\_  
Amy Jaspers

\_\_\_\_\_  
Byron Jaspers

\_\_\_\_\_  
Susan Jaspers

\_\_\_\_\_  
Paul Carlson

**CENTERPOINTE EAST COMMERCIAL  
CENTER OWNERS ASSOCIATION**

**CENTERPOINTE DEVELOPMENT,  
LLC**

By: \_\_\_\_\_  
Its: Justin Scott  
President

By: \_\_\_\_\_  
Its: Justin Scott  
Manager

Pursuant to Section 3 of the foregoing Agreement, this signature page has been executed by the above property owners in counterparts.

**LU'S INVESTMENT GROUP  
LU FAMILY, LLP**

By: \_\_\_\_\_  
Yun Xiu Lu, General Partner

By: \_\_\_\_\_  
Chin Yin Liu, General Partner

By: \_\_\_\_\_  
Yun Qing Lu, General Partner

**CORUM TRUST**

By: \_\_\_\_\_  
Donald Corum

By: \_\_\_\_\_  
Kathleen Corum  
Its: Trustees

\_\_\_\_\_  
**A. Brian Holliday**

**VAIL FAMILY TRUST**

By: \_\_\_\_\_  
Curtis Owen Vail

By: \_\_\_\_\_  
Alice Loretta Vail  
Its: Trustees

**MASTER DEVELOPMENT, LLC**

By: \_\_\_\_\_  
James R. Myers, Member

**EICHMAN FAMILY TRUST**

By: \_\_\_\_\_  
George Eichman

By: \_\_\_\_\_  
Collen Eichman  
Its: Trustees

**KDG INVESTMENTS, LLC  
KENNETH AND DEBORAH GWIN  
TRUST**

By: \_\_\_\_\_  
Kenneth E. Gwin Jr.

By: \_\_\_\_\_  
Deborah H. Gwin  
Its: Trustees

Pursuant to Section 3 of the foregoing Agreement, this signature page has been executed by the above property owners in counterparts.

**CHAMBERLAIN & MYERS  
DEVELOPMENT, LLC**

By: \_\_\_\_\_  
James M. Chamberlain  
Its: Manager

STATE OF ARIZONA     )  
  ) ss.  
County of Yavapai     )

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by James M. Chamberlain, who is personally known to me.

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

**THE VIRGINIA A. PHIPPS  
REVOCABLE TRUST**

By: \_\_\_\_\_  
Nancy O'Brien  
Its: Trustee

STATE OF ARIZONA     )  
  ) ss.  
County of Yavapai     )

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Nancy O'Brien, who is personally known to me.

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

**THE HOPMAN FAMILY TRUST**

By: \_\_\_\_\_  
Maria G. Hopman  
Its: Trustee

STATE OF ARIZONA     )  
  ) ss.  
County of Yavapai     )

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Maria G. Hopman, who is personally known to me.

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

Pursuant to Section 3 of the foregoing Agreement, this signature page has been executed by the above property owners in counterparts.

**THE VINCENT N. CAMPOLONGO TRUST**

By: \_\_\_\_\_  
Vincent N. Campolongo  
Its: Trustee

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Vincent N. Campolongo, who is personally known to me.

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

\_\_\_\_\_  
**Jonathan D. Rose**

\_\_\_\_\_  
**Martha A. Rose**

STATE OF ARIZONA )  
County of Yavapai ) ss.

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Jonathan D. Rose and Martha A. Rose, who are personally known to me.

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

\_\_\_\_\_  
**Darren J. De Young**

\_\_\_\_\_  
**Amy C. De Young**

STATE OF ARIZONA )  
County of Yavapai ) ss.

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Darren J. De Young and Amy C. De Young, who are personally known to me.

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

Pursuant to Section 3 of the foregoing Agreement, this signature page has been executed by the above property owners in counterparts.

\_\_\_\_\_  
**Michael R. Fraker**

\_\_\_\_\_  
**Cynthia H. Fraker**

STATE OF ARIZONA     )  
  ) ss.  
County of Yavapai     )

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Michael R. Fraker and Cynthia H. Fraker, who are personally known to me.

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

\_\_\_\_\_  
**Scotty Evans**

STATE OF ARIZONA     )  
  ) ss.  
County of Yavapai     )

On this \_\_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Scotty Evans, who is personally known to me.

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

Pursuant to Section 3 of the foregoing Agreement, this signature page has been executed by the above property owners in counterparts.

---

---

I, undersigned counsel for certain Property Owners, (a) approves this Agreement as to form, and (b) expressly warrants that I have no reason to suspect that the certain Property Owners listed on Exhibit "A" are not of sound mind, or are not legally, physically, and mentally capable of understanding and executing this Agreement, or do not understand this Agreement.

---

ALEX B. VAKULA, counsel for Property Owners

---

Date

APPROVED AS TO FORM:

---

GARY KIDD, City Attorney

---

Date

## Exhibit "A"

1. Centerpointe East Commerce Park
2. HK Investments, LLC
3. The Pham Living Trust
4. Scanlan Properties, LLC
5. Empire Southwest, LLC
6. RNB Property Acquisitions, LLC
7. Summit Avenue Industrial Properties, LLC
8. Douglas Rupp
9. Dewey A. Spitler
10. Smith Living Trust
11. Koski Family Revocable Trust
12. Richard Kelley and Lori Kelley
13. Janice Wahl Revocable Trust
14. Constance "Connie" Joy Busse
15. Kim Scola
16. Penny Hardy
17. James Holt
18. Niemann's Flash, LP
19. Tiltin T'S LLC
20. Marion Lefkowitz Defined Benefit Plan
21. Liisa M. Raikkonen PC 401(K) Plan
22. Kendall Jaspers and Amy Jaspers
23. Byron Jaspers and Susan Jaspers
24. Paul Carlson
25. Centerpointe East Commercial Center Owners Association
26. Centerpointe Development, LLC
27. Lu's Investment Group
28. Lu Family, LLP
29. Master Development, LLC
30. Corum Trust
31. Eichman Family Trust
32. A. Brian Holliday
33. Vail Family Trust
34. KDG Investments, LLC
35. Kenneth and Deborah Gwin Trust

## **Exhibit "B"**

1. Chamberlain & Myers Development, LLC
2. Darren J. De Young and Amy C. De Young
3. Scotty Evans
4. Jonathan D. Rose and Martha A. Rose
5. Michael R. Fraker and Cynthia H. Fraker
6. The Hopman Family Trust
7. The Vincent N. Campolongo Trust
8. The Virginia A. Phipps Revocable Trust

When Recorded return to:

Alex B. Vakula  
THE VAKULA LAW FIRM, PLC  
Post Office Box 3500  
Prescott, Arizona 86302

---

**Release of Monetary Encumbrances**

The City of Prescott hereby releases the Property Owners, and the Property Owners hereby release the City of Prescott, from all monetary claims and financial obligations created pursuant to or arising out of the following agreements:

1. Agreement in Settlement of Litigation (City Contract #03-016), recorded in the Official Records of Yavapai County, Book 3994, page 258; and
2. Agreement in Settlement of Litigation, Amendment Number One (City Contract #03-016A1), recorded in the Official Records of Yavapai County, Book 4279, Page 2, including those monetary obligations set forth at paragraph 6 (A) though (D) thereof.

All obligations and payments contemplated therein have been released and fully resolved by a separate written Settlement Agreement dated April \_\_, 2012.

DATED this \_\_\_ day of April, 2012.

**CITY OF PRESCOTT, ARIZONA**

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

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

On this \_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Marlin D. Kuykendall, who is personally known to me.

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

**PROPERTY OWNERS**

By: \_\_\_\_\_  
Alex B. Vakula, Authorized Representative of Property Owners

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

On this \_\_\_ day of April, 2012, the foregoing instrument was acknowledged before me, by Alex B. Vakula, who is personally known to me.

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

**COUNCIL AGENDA MEMO – April 17, 2012**

**DEPARTMENT:** Airport

**AGENDA ITEM:** Relocation of FAA airport navigational systems associated with the Runway 21L-3R Safety Area Improvement Project at the Prescott Municipal Airport

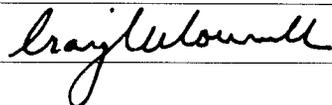
**Approved By:**

**Date:**

**Department Head:** Benjamin Vardiman, Airport Manager

**Finance Director:** Mark Woodfill

**City Manager:** Craig McConnell



4-11-12

**ITEM SUMMARY**

This is a request to enter into a Reimbursable Agreement with the FAA in the amount of \$1,559,178.94 for relocation of the MALSR and Glideslope navigational equipment, owned and operated by the Air Traffic Organization (ATO) of the FAA, as part of the Runway 21L-3R Safety Area Improvement Project. This request will necessitate that the grant funding for the project be increased accordingly.

**BACKGROUND**

The Glideslope antenna and the Medium Intensity Approach Lighting System (MALSR) are integral parts of the instrument approach system providing pilots with a safe navigation to the runway end, owned and operated by the Air Traffic Organization of the FAA. As part of the runway project these components need to be relocated to ensure the accuracy, viability, and safety of instrument approach operations.

While initially proposed to simply be relocated, detailed evaluation by the ATO determined that the existing equipment has exceeded its design life and is not able to be relocated in a manner which would ensure said operations. Accordingly, new equipment has been designed and the ATO is fully funding and providing it as well as updating the Glideslope equipment components. The cost of the new MALSR equipment which is being provided by the ATO at no cost to the City is in excess of \$400,000. The ATO has been working with the City to design and prepare for this portion of the construction project and this agreement is the formal document which will initiate replacement of this vital safety system.

**FINANCIAL**

Federal policy requires that if an FAA owned and operated navigational facility is impacted by an airport improvement project, the airport is responsible for funding the relocation of that facility. The federal policy also provides for grant reimbursement of a majority of the costs associated with the relocation.

Aside from the \$400,000 system equipment being separately provided by the ATO, the Agreement cost of the other work will be 95% grant funded by the FAA Airports District Office (\$1,270,399.99) and 2.5% grant funded by ADOT Aeronautics Division

**AGENDA ITEM: Relocation of FAA airport navigational systems associated with the Runway 21L-3R Safety Area Improvement Project at the Prescott Municipal Airport**

(\$38,979.47). The City's share for the agreement (\$38,979.47) will be paid from the General Fund Capital Reserve. Due to the timing of the project initiation and funding, budgeted funds are available to be re-appropriated from the construction portion of this project to this agreement in FY12. The balance of the construction funding showing the cumulative increase will be appropriated in FY13. Upon approval, staff will process the appropriate grant increases to both the FAA and ADOT in accordance with their respective processes.

**Recommended Action: MOVE to:**

1. Accept and enter into a Reimbursable Agreement with the FAA for relocation of the airport navigational aids; and
2. Authorize an increase in the FAA and ADOT grant funding amounts, further authorizing the Mayor and City staff to execute any and all related documents and take any actions necessary to accomplish the foregoing.

**NON-FEDERAL REIMBURSABLE AGREEMENT**

**BETWEEN**

**DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

**AND**

**CITY OF PRESCOTT  
ERNEST A. LOVE FIELD AIRPORT (PRC)  
PRESCOTT, ARIZONA**

**WHEREAS**, the Federal Aviation Administration (FAA) can furnish directly or by contract, material, supplies, equipment, and services which the City of Prescott (Sponsor) requires, has funds available for, and has determined should be obtained from the FAA;

**WHEREAS**, it has been determined that competition with the private sector for provision of such material, supplies, equipment, and services is minimal; the proposed activity will advance the FAA's mission; and the FAA has a unique capability that will be of benefit to the Sponsor while helping to advance the FAA's mission;

**WHEREAS**, the authority for the FAA to furnish material, supplies, equipment, and services to the Sponsor upon a reimbursable payment basis is found in 49 U.S.C. § 106(l)(6) on such terms and conditions as the Administrator may consider necessary;

**NOW THEREFORE**, the FAA and the Sponsor mutually agree as follows:

**ARTICLE 1. Parties**

The Parties to this Agreement are the FAA and City of Prescott.

**ARTICLE 2. Type of Agreement**

This Agreement is an "other transaction" authorized under 49 U.S.C. § 106(l)(6). It is not intended to be, nor will it be construed as, a partnership, corporation, joint venture or other business organization.

**ARTICLE 3. Scope**

A. The purpose of this Agreement between the FAA and the Sponsor is to provide for the relocation of existing FAA owned facilities in association with the Sponsor's project to relocate the 21L threshold 411' to the northeast. Effected facilities are known to be the runway 21L Glide Slope (GS) and Medium Intensity Approach Lighting System with Runway Alignment Indicator Lights (MALSR). This Agreement provides funding for the FAA to establish these services. Therefore, this Agreement is titled:

**Relocation of RWY 21L GS and MALSR at Ernest A. Love Field Airport**

B. The FAA will perform the following activities:

1. Review the airports design plans for work impacting the effected FAA facilities and report the results of the review to the airport.
2. Perform the Engineering design work, including new siting and layout, necessary for the relocation of the FAA GS and MALSR. Any design drawing and specification information will be transmitted to the Airport in PDF format.
3. The FAA will de-energize FAA facilities prior to any work being done on the equipment.
4. Completely provide and construct the new GS and MALSR facilities, as required. The existing electronic GS equipment will be reused.
5. Provide construction oversight, inspection, and approval for the relocation of the FAA facilities.
6. Perform the Electronic Installation work, and the necessary system checks and tests to confirm the newly relocated equipment is ready to be returned to service.
7. Ensure the systems are operational and in compliance with FAA standards, conduct the required flight inspections, complete all documentation for facility publication, and turn the systems over for maintenance and operation to the appropriate local FAA offices (includes JAI and commissioning).
8. Revise instrument procedures, as required, to sustain instrument services and arrange for their publication.
9. Provide as built location drawings for the new equipment shelters, GS antenna and MALSR light stations. This information will be transmitted via Adobe Acrobat Reader© (.pdf) files.
10. Coordinate with the sponsor FAA work to be completed.

C. The Sponsor will perform the following activities:

1. Provide a full set of plans, including scaled electronic drawings, showing the proposed airport work where FAA facilities are impacted.
2. Provide coordinates and elevations of the existing and ultimate runway/taxiway configuration; including end of runway, threshold, and displaced threshold information. This includes the topography along the runway centerline throughout the touchdown zone (first 3000' from the landing threshold), and along the extended runway centerline out to 2600 feet into the final approach area.

3. Provide the existing and ultimate dimensions of the runway and taxiway safety areas.
4. Provide survey information (horizontal and vertical relative to the runway) for existing FAA and/or airport owned facilities and infrastructure.
5. Allow independent airfield access to FAA Engineering Services personnel who are associated with the project. This includes airport gate access, any required stickers or placards needed for government owned and leased vehicles (vehicles may be continuously changing), and provisions for any required training necessary for badging.
6. Provide grading and compaction, as required to shape the area where the FAA facilities will be located.
7. Insure that the new Glide Slope Critical Area is clear and protected. This includes providing the necessary signage to delineate the areas.
8. Provide vehicular site access to the new GS and MALSR equipment buildings.
9. Provide a dedicated commercial power service to the relocated FAA GS and MALSR equipment buildings.
10. Maintain any existing communication connectivity to the FAA facilities.
11. Provide a full schedule showing periods where the existing FAA equipment will be impacted.
12. Incorporate the requirements and recommendations made by the FAA into the airport's design drawings and specifications which impact FAA-owned systems.
13. Completely remove any portions of the FAA facilities (including above ground structures, equipment, foundations, cables, and debris) that are no longer needed for the new facility.
14. Provide photographic records of the construction work performed by the sponsor or sponsor's representative relative to the FAA facilities.
15. Provide a legal description and plot definition for the newly installed/relocated FAA facilities and amend the existing lease with the FAA to reflect the newly installed/relocated FAA facilities.
16. Ensure any relocated FAA facilities are included in the sponsor's environmental assessments and mitigations strategy.
17. The Sponsor shall coordinate directly with the local FAA air traffic and maintenance activities [Prescott Airport Traffic Control Tower and Prescott Systems Support Center (SSC)] work that may affect any FAA operational facilities or services. This includes any

work in the vicinity of existing FAA operational facilities and/or within its critical or grading area. Any resulting facility shutdowns and the need for mediation and/or flight checks for facility restoration shall be at the discretion of the local FAA SSC.

18. Sponsor provided drawings shall be delivered directly via Adobe© (.pdf) format (as opposed to access via a server or web site) and include only those that are relevant to the FAA work.
19. Upon completion of the project the sponsor will include relocated FAA facilities, including critical areas, in its revised airport layout plan submissions.

#### **ARTICLE 4. Points of Contact**

##### **A. FAA:**

1. The NAVAIDS Engineering Center Denver will perform the scope of work included in this Agreement. Bob Brown is the Lead Engineer and liaison with the Sponsor and can be reached at 303-809-6525. This liaison is not authorized to make any commitment, or otherwise obligate the FAA, or authorize any changes which affect the estimated cost, period of performance, or other terms and conditions of this Agreement.
2. FAA Contracting Officer: The execution, modification, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, David Klinger who can be reached at 310-725-7552.

##### **B. Sponsor:**

City of Prescott  
Attn: Benjamin D. Vardiman  
6546 Crystal Lane  
Prescott, Arizona 86301  
Phone: 928-777-1114  
Email: ben.vardiman@prescott-az.gov

#### **ARTICLE 5. Non-Interference with Operations**

The Sponsor understands and hereby agrees that any relocation, replacement, or modification of any existing or future FAA facility, system, and/or equipment covered by this Agreement during its term or any renewal thereof made necessary by Sponsor improvements, changes, or other actions which in the FAA's opinion interfere with the technical and/or operations characteristics of an FAA facility, system, and/or piece of equipment will be at the expense of the Sponsor, except when such improvements or changes are made at the written request of the FAA. In the event such relocations, replacements, or modifications are necessitated due to causes not attributable to either the Sponsor or the FAA, the parties will determine funding responsibility.

**ARTICLE 6. Transfer Agreement**

- A. To the extent that the Sponsor provides any material associated with the project, and to the extent that performance of the requirements of this project results in the creation of assets constructed, emplaced, or installed by the Sponsor all such material (buildings, equipment, systems, components, cable enclosures, etc.) and assets will become the property of the FAA upon project completion. The transfer of ownership of such real and personal property to the FAA shall not require the creation of a transfer or other agreement by the Sponsor. It is being acknowledged by the parties to this Agreement that the FAA has assumed the fundamental responsibilities of ownership by assuming all operations and maintenance requirements for the GS and MALSR facilities, and that the subject transfer to FAA is in the best interest of both the Sponsor and FAA. The sponsor will provide a line item property listing in tabular format, as set forth in Attachment A to this agreement (Transfer of Real and Personal Property Form), consisting of all real and personal property that will be included in the Project. Real property will be identified by each line item and cost (e.g., foundation size, building type and dimensions, systems, composition of access road and parking, linear feet of fencing and cabling, etc.). Personal property listing will include the bar code number (where applicable), manufacturer, full item description, part number and/or serial number, quantity, model number, cost, funding appropriation, etc. The cost data for each item will be supported by a copy of the original invoice or billing statement and a copy of the construction contract along with verification of the contract acceptance date.
- B. In order to ensure that the assets and materials transferred pursuant to the Article remain fully accounted-for and operational, the Sponsor will provide the FAA any additional documents and/or publications that will enhance the FAA's ability to manage, maintain and track the assets being transferred. Examples include, but are not limited to, operator manuals, maintenance publications, bills of lading, invoices, purchase records, vendor contracts, construction contracts, inspection reports, etc. These documents will be considered required hand-off items upon project completion.

**ARTICLE 7. Estimated Costs**

The estimated FAA costs associated with this Agreement are as follows:

Description of Reimbursable Item	MALSR	GS	Total
<b>*WB4020,4050,4060,4070 Engineering Labor</b>	<b>\$ 113,400.00</b>	<b>\$ 71,064.00</b>	<b>\$ 184,464.00</b>
<b>*WB4020,4070 Drafting Labor</b>	<b>\$ 18,702.72</b>	<b>\$ 13,247.76</b>	<b>\$ 31,950.48</b>
<b>*WB4060 Technician Labor</b>	<b>\$ 1,857.00</b>	<b>\$ 18,568.80</b>	<b>\$ 20,425.80</b>
<b>Labor Total</b>	<b>\$133,959.72</b>	<b>\$102,880.56</b>	<b>\$236,840.28</b>
<b>WB4050,4060 Materials/Goods</b>	<b>\$ 710,501.00</b>	<b>\$ 256,720.00</b>	<b>\$ 967,221.00</b>
<b>WB4020,4050,4060,4070 Travel</b>	<b>\$ 45,248.00</b>	<b>\$ 32,858.00</b>	<b>\$ 78,106.00</b>
<b>Indirect on Non Labor (26.5%)</b>	<b>\$ 200,273.49</b>	<b>\$76,738.17</b>	<b>\$277,011.66</b>
<b>Non-Labor Total</b>	<b>\$ 956,022.49</b>	<b>\$ 366,316.17</b>	<b>\$1,322,338.66</b>
<b>Total Estimated Cost</b>	<b>\$ 1,089,982.21</b>	<b>\$ 469,196.73</b>	<b>\$1,559,178.94</b>

\* Labor rates used in the cost estimate are fully loaded and includes indirect cost. Indirect charges indicated on the customer statement may reflect these charges in a separate line.

#### **ARTICLE 8. Period of Agreement and Effective Date**

This Agreement supersedes and nullifies any previous agreements between the parties on the subject matter. The effective date of this Agreement is the date of the last signature. This Agreement is considered complete when the final invoice is provided to the Sponsor and a refund is sent or payment is received as provided for in Article 9, Section E of this Agreement. Under no circumstances will this Agreement extend five years beyond its effective date.

#### **ARTICLE 9. Reimbursement and Accounting Arrangements**

- A. The Sponsor agrees to prepay the entire estimated cost of the Agreement. The Sponsor will send a copy of the executed Agreement and full advance payment in the amount stated in Article 7 to the Accounting Division listed in Section C of this Article. The advance payment will be held as a non-interest bearing deposit. Such advance payment by the Sponsor must be received before the FAA incurs any obligation to implement this Agreement.
- B. The Sponsor certifies that arrangements for sufficient funding have been made to cover the estimated costs of the Agreement.
- C. The Accounting Division is identified by the FAA as the billing office for this Agreement. The Sponsor will send a copy of the executed Agreement and the full advance payment to the Accounting Division shown below. All payments must include the Agreement number, Agreement name, Sponsor name, and project location.

The mailing address is:

FAA Mike Monroney Aeronautical Center  
Attn: AMZ-330, Reimbursable Project Team  
P.O. Box 25082  
Oklahoma City, OK 73125

The overnight mailing address is:

FAA Mike Monroney Aeronautical Center  
Attn: AMZ-330, Reimbursable Project Team  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: 405-954-3002

The Sponsor hereby identifies the office to which the FAA will render bills for the project costs incurred as:

City of Prescott  
Attn: Benjamin D. Vardiman,  
6546 Crystal Lane  
Prescott, AZ 86301  
928-777-1114

- D. The FAA will provide a Statement of Account of costs incurred against the advance payment every quarter.
- E. The cost estimates contained in Article 7 are expected to be the maximum costs associated with this Agreement, but may be modified to recover the FAA's actual costs. If during the course of this Agreement actual costs are expected to exceed the estimated costs, the FAA will notify the Sponsor immediately. The FAA will also provide the Sponsor a modification to the Agreement which includes the FAA's additional costs. The Sponsor agrees to prepay the entire estimated cost of the modification. The Sponsor will send a copy of the executed modification to the Agreement to the FAA-Mike Monroney Aeronautical Center with the additional advance payment. Work identified in the modification cannot start until receipt of the additional advance payment. In addition, in the event that a contractor performing work pursuant to the scope of this Agreement brings a claim against the FAA and the FAA incurs additional costs as a result of the claim, the Sponsor agrees to reimburse the FAA for the additional costs incurred whether or not a final bill or a refund has been sent.

#### **ARTICLE 10. Changes and Modifications**

Changes and/or modifications to this Agreement will be formalized by a written modification that will outline in detail the exact nature of the change. Any modification to this Agreement will be executed in writing and signed by the authorized representative of each party. The parties signing this Agreement and any subsequent modification(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person will be interpreted as modifying or otherwise affecting the terms of the Agreement. Any party to this Agreement may request that it be modified, whereupon the parties will consult to consider such modifications.

#### **ARTICLE 11. Termination**

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date, by giving the other party at least thirty (30) days prior written notice of termination. Payment of amounts due and owing may include all costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination; the total cost of terminating and settling contracts entered into by the FAA for the purpose of this

Agreement; and any other costs necessary to terminate this Agreement. Upon receipt of a notice of termination, the receiving party will take immediate steps to stop the accrual of any additional obligations which might require payment. All funds due after termination will be netted against the advance payment and, as appropriate, a refund or bill will be issued.

#### **ARTICLE 12. Order of Precedence**

If attachments are included in this Agreement and in the event of any inconsistency between the attachments and the terms of this Agreement, the inconsistency will be resolved by giving preference in the following order:

- A. This Agreement
- B. The attachments

#### **ARTICLE 13. Legal Authority**

This Agreement is entered into under the authority of 49 U.S.C. § 106(1)(6), which authorizes the Administrator of the FAA to enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary to carry out the functions of the Administrator and the Administration on such terms and conditions as the Administrator may consider appropriate. Nothing in this Agreement will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

#### **ARTICLE 14. Disputes**

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any dispute through good faith negotiations, the dispute will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The outcome of the alternative dispute resolution will be final unless it is timely appealed to the Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see 49 U.S.C. § 46110).

#### **ARTICLE 15. Warranties**

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

#### **ARTICLE 16. Insurance**

The Sponsor will arrange by insurance or otherwise for the full protection of itself from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf.

**ARTICLE 17. Limitation of Liability**

To the extent permitted by law, the Sponsor agrees to indemnify and hold harmless the FAA, its officers, agents and employees from all causes of action, suits or claims arising out of the work performed under this Agreement. However, to the extent that such claim is determined to have arisen from the act or omission by an officer, agent, or employee of the FAA acting within the scope of his or her employment, this hold harmless obligation will not apply and the provisions of the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., will control. The FAA assumes no liability for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf. In no event will the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

**ARTICLE 18. Civil Rights Act**

The Sponsor will comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs.

**ARTICLE 19. Protection of Information**

The parties agree that they will take appropriate measures to identify and protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

**ARTICLE 20. Security**

In the event that the security office determines that the security requirements under FAA Order 1600.72A applies to work under this Agreement, the FAA is responsible for ensuring that security requirements, including compliance with AMS clause 3.14-2, Contractor Personnel Suitability Requirements (January 2011) are met.

**ARTICLE 21. Entire Agreement**

This document is the entire Agreement of the parties, who accept the terms of this Agreement as shown by their signatures below. In the event the parties duly execute any modification to this Agreement, the terms of such modification will supersede the terms of this Agreement to the extent of any inconsistency. Each party acknowledges participation in the negotiations and drafting of this Agreement and any modifications thereto, and, accordingly that this Agreement will not be construed more stringently against one party than against the other. If this Agreement is not executed by the Sponsor within 120 calendar days after the FAA transmits it to the Sponsor, the terms contained and set forth in this Agreement shall be null and void.

AGREED:

**FEDERAL AVIATION  
ADMINISTRATION**

**CITY OF PRESCOTT**

SIGNATURE \_\_\_\_\_  
NAME \_\_\_\_\_  
TITLE Contracting Officer  
DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_  
NAME \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

Attachment A

**Transfer of Real and Personal Property Resulting from a RA**

Agreement #	AJW-FN-WSA-12-4044	JCN	JAI Number	
LOC ID	PRC	Runway	21L	JAI Date
FAC TYPE	GS	Airport	Ernest Love Fld.	City, State Prescott, AZ

Item #	Name of Item	Dimensions	Type of Property		Total Cost
			Personal	Real	
1					
2					
3					
4					
5					
6					
7					
<b>Total</b>					

Notes

- 1: Unless otherwise indicated, cost of items labeled "Personal" will be applied to the supported system cost.
- 2: Building/Shelter cost will include foundation and attached stoops, porches, patios and walkways.
- 3: Fuel storage system cost will include slabs, containment structures, piping, monitoring and metering devices.
- 4: Underground cable system cost (all types) includes ductbanks, conduit, manholes, handholes, fasteners and fixtures external to the Bldg/Shltr. Cost of UG cable systems supporting a single NAS system will be applied to the supported system's cost.
- 5: Road cost includes cost of any culverts, bridging, curbing or ditching.
- 6: Fence cost includes cost of gates, tie-downs, foundations, mounting fixtures, etc.

Party	Signature	Title	Date
Project Sponsor			
FAA Project Implementation Manager (PIM)			
FAA Contracting Officer (CO)			

Attachment A

**Transfer of Real and Personal Property Resulting from a RA**

Agreement #	AJW-FN-WSA-12-4044	JCN		JAI Number	
LOC ID	PRC	Runway	21L	JAI Date	
FAC TYPE	MALSR	Airport	Ernest Love Fld.	City, State	Prescott, AZ

Item #	Name of Item	Dimensions	Type of Property		Total Cost
			Personal	Real	
1					
2					
3					
4					
5					
6					
7					
<b>Total</b>					

**Notes**

- 1: Unless otherwise indicated, cost of items labeled "Personal" will be applied to the supported system cost.
- 2: Building/Shelter cost will include foundation and attached stoops, porches, patios and walkways.
- 3: Fuel storage system cost will include slabs, containment structures, piping, monitoring and metering devices.
- 4: Underground cable system cost (all types) includes ductbanks, conduit, manholes, handholes, fasteners and fixtures external to the Bldg/Shltr. Cost of UG cable systems supporting a single NAS system will be applied to the supported system's cost.
- 5: Road cost includes cost of any culverts, bridging, curbing or ditching.
- 6: Fence cost includes cost of gates, tie-downs, foundations, mounting fixtures, etc.

Party	Signature	Title	Date
Project Sponsor			
FAA Project Implementation Manager (PIM)			
FAA Contracting Officer (CO)			

<b>COUNCIL AGENDA MEMO – April 17, 2012</b>	
<b>DEPARTMENT:</b>	City Manager
<b>AGENDA ITEM:</b>	Employee benefits

<b>Approved By:</b>		<b>Date:</b>
<b>Department Head:</b>		
<b>Finance Director:</b>	Mark Woodfill	
<b>City Manager:</b>	Craig McConnell <i>Craig McConnell</i>	4-11-12

**Item Summary**

Alison Zelms, Deputy City Manager, will present to the Council a summary of certain changes to employee benefits proposed to become effective in Fiscal Year 2013, focusing primarily on replacement of both vacation and sick leave with a unified "personal time off (PTO)" program. Reference materials will be distributed at the meeting.

Upon receipt of Council direction to proceed, an ordinance implementing the changes would be brought back in May 2012 for consideration of approval.

<p><b>Recommended Action:</b> No formal action - Council discussion and direction to draft an ordinance amending the City Code to create the personal time off program, and make certain other changes regarding employee benefits.</p>
---