

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, OCTOBER 9, 2012
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL HELD ON OCTOBER 9, 2012, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Kuykendall called the meeting to order at 3:00 P.M.

◆ **INTRODUCTIONS**

◆ **INVOCATION** by Reverend Julia McKenna Johnson, Each One Reach One.

◆ **PLEDGE OF ALLEGIANCE** by Councilman Kuknyo.

◆ **ROLL CALL:**

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow

Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

◆ **PROCLAMATIONS**

- Teen Read Week - October 14-20, 2012

Councilman Arnold read a proclamation designating the week of October 14th as Teen Read Week, and presented it to students representing members of the Teen Advisory Group (TAG).

- National Community Planning Month – Month of October, 2012

Councilman Scamardo read a proclamation designating the Month of October as National Community Planning Month, and presented it to Ryan Smith, Community Planner and Miriam Haubrich, Co-Chair of general plan committee. Mr. Smith spoke of the importance of the general plan. He said the general plan committee, appointed by Council, is working on updating the plan. The public is invited to view the materials on the web site and comments are always welcome, Mr. Smith said.

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

Mayor Kuykendall welcomed Councilman Kuknyo back from his two week trip to Germany. Councilman Kuknyo gave a brief report on his trip and said he will give a presentation in a few weeks.

I. CONSENT AGENDA

- A. Approval of the minutes of the Prescott City Council Special Meeting of July 31, 2012; Regular Meeting of September 11, 2012; Special Joint Meeting of September 19, 2012; Special Meeting of September 21, 2012; Regular Meeting of September 25, 2012; and a Special Meeting of October 2, 2012.
- B. Approval of purchase of wastewater flow monitoring equipment.
- C. Approval of ESRI GIS Software Support and Maintenance for November 2012 - November 2013.
- D. Approval of one-year contract with WEST for monthly computer legal research service.

COUNCILMAN LAMERSON MOVED TO APPROVE CONSENT AGENDA ITEMS I.A.-I.D.; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

II. REGULAR AGENDA

- A. Appointment of Member to the Prescott Preservation Commission.

Councilman Lamerson reported that Doug Stroh, a member of the Prescott Preservation Commission, resigned last month and Mr. Robert Burford submitted an application to fulfill the remainder of the term. The Council Subcommittee, (Councilmembers Blair, Lamerson and Carlow) met and reviewed the application and agreed that Mr. Burford met all requirements to serve on this commission.

Mr. Burford thanked the Council for allowing him the opportunity to participate on this Commission.

COUNCILMAN LAMERSON MOVED TO ACCEPT THE COUNCIL APPOINTMENT COMMITTEE'S RECOMMENDATION AND APPOINT ROBERT BURFORD TO THE PRESCOTT PRESERVATION COMMISSION TO FULFILL THE REMAINDER OF DOUG STROH'S 4-YEAR TERM ENDING IN MARCH OF 2013; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- B. Approval of a professional services agreement with Carollo Engineers Inc., for the 2012 City Wastewater Collection System Model Update in an amount not to exceed \$152,270.00.

Mark Nietupski, Public Works Director, presented and said the update will integrate new development wastewater collection infrastructure and capital improvement system upgrades. The new information will improve the accuracy of the information within the model. The current system was developed in 2008. Updating the Wastewater Collection System Model periodically is necessary to assure it accurately represents existing system conditions, Mr. Nietupski said.

Mr. Nietupski concluded his remarks saying the City received two (2) Statements of Qualifications. The submittals were ranked, followed by interviews.

Councilman Arnold said he feels confident that staff can provide a report and he would like to see the \$6200 excluded from the agreement.

Carollo representatives were present to answer any questions.

COUNCILMAN ARNOLD MOVED TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH CAROLLO ENGINEERS, INC., FOR THE 2012 CITY WASTEWATER COLLECTION SYSTEM MODEL UPDATE IN AN AMOUNT NOT TO EXCEED \$152,270.00, EXCLUDING THE COUNCIL PRESENTATION OF \$6,200.00; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.

- C. Purchase of one (1) ea. Crafc0 EZ1000 Series II melter/applicator (crack seal machine) using Houston-Galveston Area Council (HGAC) contract pricing in the amount of \$56,037.45.

Stephanie Miller, Field and Facilities Director, presented and provided information justifying the purchase of this machine. The current machine was purchased in 2005 and is expensive to maintain and is unreliable.

Council discussed cost and sales tax.

Mark Woodfill, Finance Director, confirmed that we are using the pricing from Houston but we are not buying from Houston. We are purchasing from a dealership in Chandler.

COUNCILMAN ARNOLD MOVED TO APPROVE THE PURCHASE OF AN EZ1000 SERIES II MELTER/APPLICATOR AT HGAC CONTRACT

PRICING IN THE AMOUNT OF \$56,037.45; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

- D. Approval of contract with Spray Systems Environmental for removal and disposal of asbestos-containing material at the Big Chino Water Ranch in an amount not to exceed \$67,035.00 (State contract #AD050026-4 pricing).

City Manager McConnell introduced this item. In 2004, the City acquired property in what is now known as the Big Chino Water Ranch. There are various structures on the property which are deteriorating. The City has been removing the unsafe structures. Since we have a permit to remove the structures, there are procedures to go through to identify and properly dispose of this material. The City is required by law to follow the procedures. The structures with asbestos-containing material will be removed, contained, and properly disposed of in accordance with Arizona Department of Environmental Quality statutes and regulations. Spray Systems Environmental is under state contract to provide this service. Once the asbestos is removed, all of the unsafe and unusable structures on the Ranch will be demolished by City staff, Mr. McConnell said.

Councilman Scamardo asked if anything can be done through our Fire Department as a training program. Mr. McConnell replied yes, there has been some burning of non-contaminating materials.

Councilman Lamerson said the Big Chino Water Ranch was an effort with Prescott Valley. He asked if Prescott Valley will be obligated for the same level of participation and expense. Mr. McConnell said the real property is solely owned by the City of Prescott. In 2004 the City of Prescott entered into an IGA with Prescott Valley for cost sharing and other responsibilities regarding the Big Chino Project. This type of expense is eligible for cost sharing on the basis of 54.1% City and 45.9% Town of Prescott Valley. The City of Prescott determines which expense to incur.

Michael Peters, resident of the City of Prescott, addressed his concerns with this item. He said Proposition 401 prohibits the City Council from expending on any project in excess of \$40 million or more on taxpayer dollars. In 2004 the property was acquired with buildings that had asbestos contained in some form or matter. In the staff memo provided on line, it said there are twelve residential and agricultural structures that have been identified as containing asbestos, which must be removed prior to demolition or other use. What does other use mean? The cost of demolition isn't mentioned. Demolition will follow the removal of asbestos. There is going to be a domino effect and go on and on and on. What is the cost of these other steps? This is under the original contract with Prescott Valley. Over an eight to nine year period of time, you are going

to spend \$4.32 million dollars, split with Prescott Valley. Mr. Peters said he thinks this is in violation of Proposition 401.

Mr. Peters said the agenda memo points out that Council will consider hiring Spray Systems Environmental for asbestos removal. He questioned why the City does not hire a local company so the money stays in Prescott. He asked the Council to put this item on hold and get the questions answered.

Mr. McConnell responded, saying this is not the forum to discuss the complexities of Proposition 401. For the record, to date, the City's total expenditures for the Big Chino Water Ranch Project, including land acquisition, is about \$20 million. The City Council does adopt an annual budget which includes a breakdown of expenses for each fiscal year. There is also a detailed budget breakdown of that budget document which indicates the demolition expenses. This is all public information. With respect to local contractors accomplishing this work, Mr. McConnell pointed out that asbestos abatement is a very specialized area and does require very specific certification. He is not aware of any local contractors who can do this type of specialty work. We need the professionals to get in and get out.

Councilman Blair pointed out that the date we signed the contract with Prescott Valley was late calendar year 2004 and Proposition 401 was passed in November 2010. There are quite a few issues with the applicability of 401 if it is applicable to the Big Chino Water Ranch.

Councilman Kuknyo said it would be hard not to do demolition and not remove the asbestos. It has to be demolished. Is there a chance of it getting into the water? City Manager McConnell said there is little risk of having it get into the water or air. But the law states if you are aware of the problem you must get rid of it.

Councilman Lamerson pointed out in order to use the property we would have to demolish any potential hindrance of the use of the property no matter what the use is. Mr. McConnell agreed and added, with respect to the master plan, we are in the process of a land use planning for the land. We are doing that in house, Mr. McConnell reported. The draft plan will come to Council. It does contemplate other uses, such as ranching. As a responsible property owner these hazards and nuisances must be removed.

Mr. McConnell concluded his remarks saying we have been demolishing some of the structures that do not have the asbestos problem and we have been burning some materials. There are all kinds of permit

requirements. We use the most economical but responsible way to remove the material.

Mayor Kuykendall said there are many opportunities for the public to visit the ranch. In 2009 the buildings were 40-50 years old and in an advanced stage of falling apart. In some areas, it is even difficult for our Fire Department to drive in. In this economy we are doing it the right way, the Mayor said. Before we can do anything the property needs to be all cleaned up.

COUNCILMAN SCAMARDO MOVED TO APPROVE A CONTRACT WITH SPRAY SYSTEMS ENVIRONMENTAL FOR REMOVAL AND DISPOSAL OF ASBESTOS-CONTAINING MATERIAL AT THE BIG CHINO WATER RANCH IN AN AMOUNT NOT TO EXCEED \$67,035.00; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

- E. Approval of Advertising Services Agreement for Fiscal Year 2013 with Moses Anshell in the amount of \$35,403.61 through the Arizona Office of Tourism cooperative marketing program.

Don Prince, Tourism Director presented and said this will allow the City to participate in the FY 2013 cooperative marketing program offered to rural destination marketing organizations by the Arizona Office of Tourism (AOT). This will allow us to take advantage of AOT's reduced advertising rates and leverage our resources in partnership with AOT, increasing the scope of Prescott's marketing and advertising activities.

Councilman Arnold pointed out the state is matching dollar for dollar and that our funds for the City portion come from the bed tax funds and not the general fund. Regarding billboards, Councilman Arnold asked about the effectiveness as relates to tourism. Mr. Prince said it builds awareness. This allows us to use five digital billboards in the Phoenix area in a three month period. Eight seconds out of every minute will be dedicated to promoting Prescott.

COUNCILMAN KUKNYO MOVED TO APPROVE THE ADVERTISING SERVICES AGREEMENT FOR FISCAL YEAR 2013 WITH MOSES ANSHELL IN THE AMOUNT OF \$35,403.61; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.

- F. Approval of contract for workers compensation third-party administration services (Tabled September 25, 2012).

Linda Ripley introduced this item, saying that the information Council asked for at the September 25th meeting has been provided, as well as a ratings spread sheet. The third party administrator ensures that the City

remains in compliance with Workers Compensation Laws, Rules, and Regulations of the State of Arizona. York submitted the best proposal and they have consistently provided service to the City of Prescott since 2002. The term is five (5) years at a flat fee. The source of the funding is from the Risk Management internal service fund, which covers workers compensation costs from fees charged to the departments based on employee pay and type of work they perform.

COUNCILMAN ARNOLD MOVED TO APPROVE A CONTRACT WITH YORK FOR WORKERS COMPENSATION THIRD PARTY ADMINISTRATION SERVICES IN THE TOTAL AMOUNT OF \$127,150.00, FOR FIVE (5) YEARS, EFFECTIVE JANUARY 1, 2013; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- G. Approval of a legal services agreement with Ryan Rapp & Underwood, PLC, re Chino Valley Tax Issue.

Interim City Attorney Neil introduced this item, and explained that the City of Prescott was served with a Notice of Claim by the Town of Chino Valley (Chino Valley) to collect taxes allegedly owed from transporting water through pipelines located within the town limits.

Recently, Chino Valley indicated they were ready to file an action in court that would require a response within a ten (10) day time frame. Because of that and the nature of the claim, most specifically the tax portion, he felt it was necessary to retain services of a tax lawyer, Mr. Neil said. We recently did receive a settlement agreement which will generate a response from the City or an action fairly quickly in court. In order to be up to speed, it is necessary to retain a tax lawyer.

Councilman Lamerson said this discussion comes up from time to time. We don't have this type of attorney on staff to provide this type of service.

Mr. Neil responded to Councilman Lamerson and said the expertise that is required to represent the City for this issue is very specialized and he cannot do it. He reiterated that he felt it was necessary to get a specialized person on board and get that person up to speed. This is an hourly contract and it is possible that this won't be spent.

Michael Peters, City of Prescott resident, questioned the items on the agenda that relate to the retention of outside legal services. He said he does not feel the City should hire outside attorney's when our own attorney's should be able to represent us.

Sandra Smith, City of Prescott resident, compared this to going to a hospital with a neurological problem. She would not invite an Internist to work on it; she would look for a neurologist. The City does not have a specific tax attorney available to handle this issue. She said a contracted attorney will ultimately cost less.

Councilman Arnold explained, for the benefit of the public, that this is not the first time Council has seen this item. This has been vetted and discussed in E-Sessions. Council has taken the time to understand the issues and he supports the recommendation by staff.

COUNCILMAN ARNOLD MOVED TO APPROVE A LEGAL SERVICES AGREEMENT WITH RYAN RAPP & UNDERWOOD, PLC, IN AN AMOUNT NOT TO EXCEED \$50,000.00; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- H. Approval of a legal services agreement with Mariscal, Weeks, McIntyre & Friedlander, P.A., re the Airport Water Reclamation Facility Aquifer Protection Permit.

Interim City Attorney Neil introduced the item and said this is a request to retain outside counsel to represent the City regarding a Notice of Violation that the City of Prescott received from the Arizona Department of Environmental Quality (ADEQ), pertaining to Aquifer Protection Permit Standards under which the Airport Water Reclamation Facility operates.

The effluent that is going into the ground has been determined to exceed the allowable limits. As a result, the state has given us a Notice of Violation that we have to respond to by November 17th.

Mr. Neil said this case requires a highly qualified attorney in environmental law to avoid any penalties that may be forthcoming as a result of this.

Councilman Scamardo pointed out, similar to the item before this, these things are not new to Council. Even new members have sat through E-sessions when this has been discussed. These are not spur of the moment recommendations, Councilman Scamardo said.

Councilman Arnold agreed and added that this is important because it not only affects our relationship with the state, but it is something long term that has to be addressed to ensure the health and safety of the citizens of Prescott.

Mr. Neil pointed out that all contracts are on an hourly basis, and there is no retainer being paid.

COUNCILMAN ARNOLD MOVED TO APPROVE A LEGAL SERVICES AGREEMENT WITH MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A., IN AN AMOUNT NOT TO EXCEED \$100,000.00; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- I. Approval of a legal services agreement with Jordan Bischoff & Hiser, PLC, re Crossings Residential Subdivision Plat.

Interim City Attorney Neil introduced this item and said this matter involves a Declaratory Judgment action with The Crossings residential subdivision. This is an ongoing matter. Attorney Doug Jordon has been involved with this for some period of time and knows about the case. Staff would like him to continue working on as it moves through the court system.

COUNCILMAN LAMERSON MOVED TO APPROVE A LEGAL SERVICES AGREEMENT WITH JORDEN BISCHOFF & HISER, PLC, IN AN AMOUNT NOT TO EXCEED \$50,000.00; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

III. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of October 9, 2012, adjourned at 4:40 p.m.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

LYNN MULHALL, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on the 9th day of October, 2012. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2012.

AFFIX
CITY SEAL

LYNN MULHALL, City Clerk