

AGENDA

**PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, MAY 14, 2013
3:00 P.M.**

**Council Chambers
201 South Cortez Street
Prescott, Arizona 86303
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its **Regular Voting Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending this meeting through the use of a technological device.

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION** by Pastor Jane Cheek, First Congregational Church of Prescott
- ◆ **PLEDGE OF ALLEGIANCE:** Councilman Kuknyo
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow

Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

- ◆ **PROCLAMATION**
 - A. "American Craft Brewers Week"
- ◆ **SUMMARY OF CURRENT OR RECENT EVENTS**
- I. **CONSENT AGENDA**

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

- A. Approval of the minutes of the Prescott City Caucus of April 16, 2013; Special Executive Session Meeting of April 23, 2013; Special Meeting of April 23, 2013; and Regular Meeting of April 23, 2013.
- B. Adoption of Resolution No. 4169-1331 providing notice to the Industrial Commission of the change by the City from self insurance to insured by Arizona Municipal Risk Retention Pool (“AMRRP”) for workers’ compensation and employer’s liability coverages.
- C. Authorization to purchase one (1) ea. Kubota articulating loader at auction not to exceed \$15,000.
- D. Approval to purchase public safety microwave radio equipment from Microwave Networks in the total amount of \$13,937.72.
- E. Purchase of ammonium lignin sulfonate from Shilon Corporation in an amount not to exceed \$20,000.00.

RECOMMENDED ACTION: MOVE to approve Consent Agenda Items I.A - I.E.

II. REGULAR AGENDA

- A. Public Hearing and consideration of a liquor license application from Michael Joseph Magee, applicant for WEREFISHY LLC, for a Series 12, Restaurant license, for Prescott Lobster and Seafood Company located at 220 West Goodwin Street #2.

RECOMMENDED ACTION: (1) MOVE to close the public hearing; and, (2) MOVE to approve/deny Liquor License Applicant No.12133552, for a Series 12, Restaurant license, for Prescott Lobster and Seafood Company located at 220 West Goodwin Street #2.

- B. Appointment of members to the Board of Adjustment.

Appointments

MOVE to accept the Council Appointment Committee recommendation to re-appoint Mike Klein and Richard Rosa, and to appoint Phil King, as members of the Board of Adjustment with terms to expire March 2016.

Administration of the Oath of Loyalty

Following the approval of the appointments the City Clerk will administer the Oath.

- C. Amendment to Comprehensive Sign Plan for Centerpointe West Commerce Park (CC13-001; Applicant – HOAMCO; Agent – A&B Sign Co.)

RECOMMENDED ACTION: MOVE to approve Comprehensive Sign Plan Amendment CC13-001 for Centerpointe West Commerce Park.

- D. Adoption of Resolution No. 4168-1330 Approval of Intergovernmental Agreement with the Town of Prescott Valley's for the use of the Glassford Hill communications infrastructure.

RECOMMENDED ACTION: MOVE to adopt Resolution No. 4168-1330.

- E. Acceptance of a grant from the Governor's Office of Highway Safety, for funds in the amount of \$25,244.00 to purchase one (1) ea. equipped Police Motorcycle.

RECOMMENDED ACTION: MOVE to approve acceptance of grant funding from the Governor's Office of Highway safety in the amount of \$25,224.00 for the purchase of one (1) ea. equipped police motorcycle.

- F. Adoption of Resolution 4167-1329 declaring City Code Title II Chapter 2-1: Public Works Department, a public record; and Adoption of Ordinance No. 4856-1313 AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE PRESCOTT CITY CODE BY AMENDING CITY CODE TITLE II, CHAPTER 2-1, BY ADOPTING THE PUBLIC RECORD DOCUMENT GENERALLY ENTITLED "CITY CODE, TITLE II, CHAPTER 2-1, PUBLIC WORKS DEPARTMENT."

RECOMMENDED ACTION: By separate motions:

**MOVE to adopt Resolution No. 4167-1329;
and
Move to adopt Ordinance No. 4856-1313,**

- G. Award of bid and contract for the Annual Pavement Marking Project to Traffic Safety, Inc., in an amount not to exceed \$135,000.00 (City Contract No. 2013-183).

RECOMMENDED ACTION: MOVE to award the bid and contract for the Annual Pavement Marking Project to Traffic Safety, Inc., in an amount not to exceed \$135,000.00 (City Contract No. 2013-183).

- H. Award of bid and contract to OPTCO, Inc., to apply a protective coating to The Ranch 1B Lift Station Wet Well in the amount of \$20,500.00 (City Contract No. 2013-184).

RECOMMENDED ACTION: *MOVE to award the bid and contract to OPTCO, Inc., to apply a protective coating to The Ranch 1B Lift Station Wet Well in the amount of \$20,500.00 (City Contract No. 2013-184).*

- I. Approval of a license agreement with Burro Creek, LLC, for a City trail parking area (City Contract No. 2013-185).

RECOMMENDED ACTION: *MOVE to approve a license agreement with Burro Creek, LLC, for a City trail parking area (City Contract No. 2013-185).*

- J. Approval of Grant Application Submittal to Bikes Belong for Prescott's Greenways Trail Construction.

RECOMMENDED ACTION: *MOVE to approve a grant application to Bikes Belong Foundation for construction of Prescott's Greenways Trails.*

- K. Adoption of Resolution No. 4172-1334 approving the First Amendment to City Contract No. 2010-086, Procedural Pre-Annexation Agreement, James Deep Well Ranches #1 and #2.

RECOMMENDED ACTION: *MOVE to adopt Resolution No. 4172-1334.*

- L. Adoption of Resolution No. 4171-1333 approving a Procedural Pre-Development Agreement with Yavapai Community Hospital Association, an Arizona nonprofit corporation, d/b/a Yavapai Regional Medical Center (City Contract No. 2013-181).

RECOMMENDED ACTION: *MOVE to adopt Resolution No. 4171-1333.*

- M. Approval of settlement of litigation Case No. CV201200047, Linda and Warren Twelves v City of Prescott.

RECOMMENDED ACTION: *MOVE to approve settlement of Twelves v City of Prescott, case number CV201200047 in the amount of \$135,000.*

- N. Discussion/direction re downtown issues identified at Council Caucus of April 16, 2013.

RECOMMENDED ACTION: *Council discussion and direction; no formal action to be taken.*

- O. Legislation

RECOMMENDED ACTION: Council can discuss and provide direction. No formal action will be taken.

III. ADJOURNMENT

EXECUTIVE SESSION

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (ii) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (iii) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));
- (iv) Discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. §38-431.03(A)(4));
- (v) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));
- (vi) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6));
- (vii) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

Confidentiality

Arizona statute precludes any person receiving executive session information from disclosing that information except as allowed by law. A.R.S. §38-431.03(F). Each violation of this statute is subject to a civil penalty not to exceed \$500, plus court costs and attorneys' fees. This penalty is assessed against the person who violates this statute or who knowingly aids, agrees to aid or attempts to aid another person in violating this article. The city is precluded from expending any public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced for violation of the statute unless City Council takes a legal action at a properly noticed open meeting to approve of such expenditures prior to incurring any such obligation or indebtedness. A.R.S. §38-431.07(A)(B).

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.

Lynn Mulhall, MMC, City Clerk

CONSENT AGENDA

I.A. Approval of minutes:

- Caucus of April 16, 2013
- Special Executive Session Meeting of April 23, 2013
- Special Meeting of April 23, 2013
- Regular Meeting of April 23, 2013

PRESCOTT CITY COUNCIL
CAUCUS
TUESDAY, APRIL 16, 2013
PRESCOTT, ARIZONA

MINUTES OF THE CAUCUS OF THE PRESCOTT CITY COUNCIL HELD ON APRIL 16, 2013, 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 1:00 P.M.

◆ **ROLL CALL**

Present:

Absent:

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow
Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

None

Councilman Lamerson recognized Yavapai County Supervisors Rowle Simmons and Craig Brown and Kendall Jaspers, Director of the Prescott Downtown Partnership, and Dave Mauer, from the Chamber who were invited guest speakers.

I. DISCUSSION ITEMS

A. Downtown Issues

Councilman Kuknyo introduced the first item and said, having a healthy and safe downtown is for the residents as well as the tourists.

Mr. Jaspers asked "What is our identity?" and how do we go about defining what downtown is. It is a center of government, employment, wide streets, and is a good representation of our community. There is more pressure to have events downtown. Our downtown needs to stay healthy and stay diverse.

Councilman Kuknyo brought up the downtown Post Office which he has heard rumored as possibly closing. A suggestion was made to contact our representatives and encourage them to keep the Post Office open. Supervisor Brown said it is important to keep the Post Office.

1. Identification of downtown area

Councilman Arnold listed the different downtown areas and asked how do we define the downtown area? Zoning Code defines it as Marina to Summit and Carlton/Goodwin to Sheldon. Do we want to move events to areas other than the Courthouse Plaza?

Councilman Arnold said Council needs to determine what the downtown area is. This could impact special events and where events take place.

Councilman Scamardo said the downtown business district determines the zoning district and addresses parking and setbacks.

2. Update on what has already occurred

Councilman Arnold reported, as a result of recent Caucus meetings, the following has occurred:

- Opened new dialog with downtown groups and individuals
- Revamped the Aggressive Solicitation Ordinance
- Staff has established a cleaning program
- Parking garage entry has been modified
- Police have increased Community Policing activities

3. Signage

Councilman Kuknyo reported that the merchants complain that shoppers cannot find Whiskey Row and the parking garage. A suggestion was made to rename the parking garage "Whiskey Row Parking Garage".

Dennis Gallagher, Prescott citizen, was invited to come forward to present a plan related to signage, which he has already presented to the Chamber and PDP and has received endorsements for the concept. The proposed banners would help make the tourists aware of our assets. We need to promote the banners this summer and continue through 2014. The eligibility has to be based on bed tax revenue, regional and national recognition and a proven benefit to Prescott tourism. The banners would replace "Everybody's Hometown" banners. The plan is to phase this in, beginning with downtown. The organizations would pay for the banners. He suggested the City pay for banners related to City signature events.

Councilman Lamerson said we are looking at rewriting Code so this should be discussed.

Councilman Kuknyo pointed out the proposed banners include a Quick Read Code, allowing tourists to scan the code with a smart phone, which takes them to the specific website for additional information.

Councilman Arnold said he would like to see a small group put together to research and discuss this. He is concerned that someone driving into Prescott does not know where to go to find Lynx Lake, or the parking garage for example.

Councilman Blair said he is opposed to having too many signs. He would like to see an entry way sign or something, such as a kiosk, where people can stop and get information. Don't wait until they get downtown have the information as they drive into town. Travelers don't want to wait until they are in the core of the City.

Mr. Mauer said it would not be easy to get volunteers to man a kiosk at the four (4) entrances into the City.

Council agreed that increased signage at the entrances to the City is important. Councilman Arnold related two instances where people stopped him to ask where downtown is.

Councilman Arnold called attention to a suggestion that the white lights along the top of the buildings on Whiskey Row remain on all year.

Mr. Gallagher said the lights were funded by the Prescott Western Heritage Foundation and Chamber of Commerce. He would like to pursue having them up year round. He showed a Sesquicentennial Banner sample.

4. Circulation

Councilman Arnold said currently there is no pass through available to pedestrians from the parking garage to the sidewalk on Whiskey Row. We would like to know if there is an opportunity to put in a temporary passageway between the parking garage and the plaza. Supervisor Simmons said he thought there was going to be a breezeway. Yes, Councilman Kuknyo said, but not for a year. In the meantime can we open up a section for a passageway? Councilman Arnold said any pass through will cost money. This Council will have to decide if we want to be a part of that. Ultimately there will be a permanent breezeway.

Taxi Cab Parking:

Councilman Arnold called attention to the parking space at the Sam Stieger crosswalk, which is a taxi only parking space. Maybe on a Saturday night it is used, but the rest of the time it precludes anyone else from using it. He has heard many complaints from tourists (a) they don't know where to find a taxi (b) taxi's tend to pile up in front of two bars on Whiskey Row, taking up a majority of parking spaces. Councilman Arnold asked if this is something Council wants to have a conversation with the cab companies about? Parking for taxis should be made more efficient and safer. Councilman Lamerson said he has the same problem with delivery trucks. There are times when the delivery truck is parked in the cross walk. Lt. Rich Gill spoke up and said this is hard to enforce.

Councilman Kuknyo said we need to do something with the crosswalk. There should be a buffer zone. Councilman Arnold said he has heard multiple complaints. Councilman Scamardo said in his 25 years downtown he never heard a complaint.

Council discussed the timing of the left turn arrow, pedestrian crossings, deliveries, taxi cab parking and J-turns for visitor parking.

5. Promotion, events, attractions

Councilman Arnold said most people visit Prescott for the events held downtown and is what Prescott is known for. This is a topic worth discussing.

Councilman Kuknyo said some signature events are getting really big. For example, the Whiskey Off Road entrants has increased to 2,000. The Rodeo Street Dance is being moved from Albertsons parking lot to the end of Iron Springs Road. Is this something we want on the Courthouse square? Are road closures causing problems for the County?

Councilman Blair said some events should not be downtown. One is the Blue Grass Festival. Why not have that at Watson Lake Park, he asked. That is another place for the Street Dance. The Downtown association needs to decide what they want downtown. It was pointed out that the downtown merchants are split on the subject; half want events downtown and half don't want events downtown.

Mr. Jaspers said for 26 years we have been having this same conversation. You will never get consensus. The number of events on the square is very static and doesn't change much. What has changed, are the street closures. These are frustrating to the merchants and to local residents. Let's make sure people are not afraid to come downtown in May and June. There is potential to move some events and there are other venues we should think about. Gateway Mall would pay to get the crowds we get.

Councilman Blair said the Mile High Football field is close and suggested having conversations with the school district. Councilman Kuknyo reminded Council that no alcohol is allowed on school property.

Councilman Arnold asked about installing a traffic signal at the intersection of Granite and Goodwin where there are traffic problems. During events when there are street closures this would be helpful; either a temporary light or traffic control.

What are the signature events and do they need a space to grow? If they are held downtown we need to talk to the County Board of Supervisors. 4th of July, Whiskey Off-Road are two, but what are the other big events?

George Karsa was invited to speak. He has lived in the City 18 years and said it is getting out of control with the motorcycle noise. We have a noise ordinance and it is not being considered. Take the sign down or enforce. The noise does not contribute to the ambiance of the town.

Councilman Kuknyo suggested giving the Phoenix media an invitation for the opportunity to do live coverage for our events. All Councilmember's agreed.

Supervisor Simmons said there is a big impact on the grass at the Courthouse Square. 3-day events cause havoc on the lawn. Events starting after 5:00 PM create no problems per Judge Mackey and his constituents. Allowing the beer garden to take place on the lawn is a one year trial. Depending on how it goes will determine if it is allowed again.

Councilman Kuknyo asked how can we communicate better? Mr. Jaspers said (using the Whiskey Off Road as an example) they walked door to door about the proposed street closures. There was an opportunity for a marketing coop deal. The PDP has a newsletter but so many people refused delivery of the email. The City does not have a mechanism for a list of all business owners. Door to door is the only sure way. Councilman Kuknyo said he would like staff to put together a data base of contacts.

Dogs in the Court Plaza:

Supervisor Simmons said despite what some are saying, the Plaza is not turning into a dog park. He reported the County Health Department is coming up with some new parameters. His assistant has been working with a woman who has had some problems with dogs at the plaza. The Security people have been contacted to be aware of the problems. He said the County is trying to be pro active. The community is split on this issue. They are trying to enforce courtesy. The park is well taken care of and is very clean. In most cases people take care of their pets. Councilman Blair said he is more worried about the grandchild crawling in the grass and coming up with something left behind by a dog.

6. Smoking Issues

Councilman Arnold said you can't walk down Whiskey Row without walking through a plume of smoke. We need to look at the enforcement of the smoking laws. The PDP put ash containers in several places on the sidewalk for cigarette butts, but, the gutters are full of butts on the weekends. Education would be helpful, Councilman Arnold said.

7. Cleanliness

Councilman Arnold called attention to the alley behind Whiskey Row and the overall cleanliness downtown. We want people to come downtown and they park in our parking garage and then have to walk through a dirty alley to get to Whiskey Row. We need to be concerned with the overall cleanliness of the downtown area. How do we make sure we are prioritizing the downtown district enough that we are giving staff clear enough direction and support? How do we ensure this in the budget process? What priority do we have as a Council to ensure the downtown area stays as clean as possible. Supervisor Brown said the worst alley is behind Bashford Court. It is not in good shape and needs repair.

Discussion about trash cans:

- Size
- Recycling
- Number of containers

- Potential purchase of solar compacting trashcans

Supervisor Simmons said he is meeting with County Utilities in the morning and will address this issue.

Councilman Arnold said he would like to see something in the budget to help keep the crown jewel of the City (downtown) clean.

8. Special Events

Attractions:

Councilman Kuknyo asked if we want to encourage the private sector to come up with some kind of western show? Councilman Lamerson said the downtown businessmen should be contacted first. We close off downtown a lot. There may be other alternatives to what is trying to be accomplished. We need to pick and choose what events we might want to eliminate. We might want to let the private sector take over. Councilman Lamerson said he agreed that some events could be in other areas and not always downtown where streets would have to be closed. He said the Rodeo Grounds are underutilized.

Supervisor Simmons said the County does limit the number of events. The Whiskey Off Road is an exception this year. We are trying to be sensitive to the merchants, he said. He is in favor of maintaining that limit.

Councilman Kuknyo said he wished we had a conference center downtown. He is looking for ideas to make downtown live.

Supervisor Brown said Watson Lake and the Rodeo Grounds are underused. Why don't we have musical events at the Rodeo Grounds in the summer? Councilman Blair said we need to market better.

The Blue Grass festival was moved from Watson Lake back downtown because it wasn't as well attended at the park. Discussion ensued.

9. Parking

Councilman Kuknyo talked about the parking garage signage, fees, maintenance, and suggested giving two hour warnings for out of state license plates.

Councilman Arnold asked if we can give warnings. Lt. Rich Gill said the parking official solely issues citations and gives no warnings. Councilman Arnold asked if we should discuss this and change code. Lt. Gill said it would be very time consuming to check out each vehicle. We do not have the technology to do things differently.

Councilman Arnold asked the City Manager what it would take to get the capability to do this somewhat differently and more efficiently.

Councilman Kuknyo asked about creating a permanent sticker for a car window, to identify an employee or business owner working downtown, that allows them to enter at no charge on a payday? They would be limited to the parking garage and could not park downtown in other spaces. Is there something we can do to encourage parking in the parking garage? The top level of the parking garage is completely empty.

Mic Fenech, Facilities Manager, said there are thirteen spaces leased in the parking garage. There are no reserved spaces for the County use and there are 2-4 assigned spaces on the 3rd floor for City use.

Councilman Blair suggested to go out for an RFQ for shuttling people back and forth in a Club Car. Have we done it? If not, why not? What is the cost? For example: an employee of Murphy's parks in the garage and then hops in the Club Car to be brought to Murphy's. This would keep cars out of the parking spaces. If we don't want to do that, how can the City better move people from the parking garage? Councilman Scamardo asked why don't the business owners require their employers to park in the parking garage to free up space on the streets for customer parking.

A woman speaker, no name given, listed her concerns with downtown parking availability and complaints about motorcycle parking, the 2 hour parking limit, and the parking garage being too far to walk to shops in the rain.

10. Sanitation

No comments or discussion.

11. Activities disturbing the peace/disorderly conduct

No comments or discussion.

Mr. Mauer closed the discussion and reported that the comments he hears in the chamber from the visitors are all positive.

B. Council Meetings

No discussion.

II. REPORTS

A. Legislative Update

Alison Zelms gave a brief report.

III. IDENTIFICATION OF ITEMS FOR FUTURE CAUCUS MEETINGS

A. Council Identified Items

No items were identified.

IV. ADJOURNMENT

There being no further business to be discussed, the Prescott City Council Caucus of April 16, 2013, adjourned at 5:14 P.M.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

LYNN MULHALL, City Clerk

PRESCOTT CITY COUNCIL
SPECIAL MEETING
TUESDAY, APRIL 23, 2013
PRESCOTT, ARIZONA

MINUTES OF THE SPECIAL MEETING OF THE PRESCOTT CITY COUNCIL HELD ON APRIL 23, 2013, in the LOWER LEVEL CONFERENCE ROOM located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Kuykendall called the meeting to order at 2:01 P.M.

◆ **ROLL CALL**

Present:

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow
Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

Staff Present

Craig McConnell, City Manager
Jon Paladini, City Attorney
Lynn Mulhall, City Clerk
Mark Woodfill, Finance Director

CALL TO ENTER INTO EXECUTIVE SESSION

Upon a public majority vote of the members constituting a quorum, the Council may hold an executive session that is not open to the public for the purposes set forth below. When the executive session ends, Council may adjourn or return to open session.

COUNCILMAN LAMERSON MOVED TO RECESS INTO EXECUTIVE SESSION; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

The Prescott City Council recessed into Executive Session at 2:01 P.M.

EXECUTIVE SESSION

I. LEGAL MATTERS

A. The City Council will meet with the City Attorney for legal advice, discussion and consultation regarding its position in pending or

contemplated litigation, including settlement discussions conducted in order to avoid or resolve litigation. A.R.S. §38-431.03(A)(3)and(4)

- a. Twelves adv. City of Prescott
- b. Jennison adv. City of Prescott

B. The executive session adjourned at 2:55 P.M.

ADJOURNMENT

There being no further matters to come before the Executive Session, the meeting was adjourned at 2:55 P.M. with the City Council reconvening in the Special Meeting from which this Executive Session was convened.

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 Special Meeting of the City Council of the City of Prescott, Arizona held on the 23rd day of April, 2013. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2013.

AFFIX
CITY SEAL

LYNN MULHALL, City Clerk

PRESCOTT CITY COUNCIL
SPECIAL MEETING
TUESDAY, APRIL 23, 2013
PRESCOTT, ARIZONA

MINUTES OF THE SPECIAL MEETING OF THE PRESCOTT CITY COUNCIL HELD ON APRIL 23, 2013, 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 6:19 P.M.

◆ **ROLL CALL**

Present:

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow
Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

Absent:

None

II. REGULAR AGENDA

- A. Adoption of Resolution No 4167-1328 calling the Alternative Expenditure Limit – Home Rule Election at the August 27, 2013, City Primary Election.

Mark Woodfill, Finance Director, explained that the adoption of the Resolution, which was presented in the earlier Regular Meeting, is required to be done in a Special Meeting.

COUNCILMAN ARNOLD MOVED TO ADOPT RESOLUTION 4167-1328; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

III. ADJOURNMENT

There being no further business to be discussed, the Special Meeting of January 8, 2013, adjourned at 6:20 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 Special Meeting of the City Council of the City of Prescott, Arizona held on the 23rd day of April, 2013. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2013.

AFFIX
CITY SEAL

LYNN MULHALL, City Clerk

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, APRIL 23, 2013
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL HELD ON APRIL 23, 2013, 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 Rabbi Bill Berkowitz, Temple B'rith Shalom

◆ **PLEDGE OF ALLEGIANCE** by Councilman Arnold

◆ **ROLL CALL:**

Present:

Absent:

Mayor Kuykendall
Councilman Arnold
Councilman Blair
Councilman Carlow
Councilman Kuknyo
Councilman Lamerson
Councilman Scamardo

None

◆ **PROCLAMATION**

A. "Youth Week" May 1-7

Councilman Arnold read the proclamation honoring junior citizens in our community.

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

No summary given.

◆ **PRESENTATION**

A. Annual Rodeo Report by Prescott Frontier Days®, Inc. - Overview of 2012 Rodeo, upcoming 2013 Rodeo, and lease, development, and use of City facilities.

Bill Oden, President of Prescott Frontiers Days Rodeo, gave an overview and reported that the rodeo has been in existence for 126 years. He pointed out the challenges going forward:

- Rodeo Grounds Infrastructure
- Long Term Lease Agreement – planning and continued investment. The current lease ends in 2017.
- Volunteer Base/Community Support – community involvement is critical to the future.

He said there are 69 days until the Rodeo, to be held from July 1 – July 7, 2013, noting that this is the 100th year to be on these rodeo grounds.

Mayor Kuykendall said the City is interested in having conversations about the infrastructure and looking at long range plans.

I. CONSENT AGENDA

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

- A. Approval of the minutes of the Prescott City Council Workshop of April 2, 2013; Special Meeting of April 9, 2013; and Regular Meeting of April 9, 2013.
- B. Award of a contract for real property appraisal services to BERGTHOLD AG SERVICES (City Contract No. 2013-161) for rights-of-way and easements required for the Park Avenue Improvement Project in the amount of \$11,000.
- C. Approval of a contract in an amount not to exceed \$19,167.28, with Cummins Rocky Mountain (City Contract No. 2013-173), for the rebuild of the diesel engine in Fire Engine 75 (COP Eq#1156).
- D. Approval to purchase four (4) each tires for the Aircraft Rescue Fire Fighting (ARFF) vehicle from Phoenix Tire, Inc., in the amount of \$15,011.32.

Councilman Kuknyo asked questions concerning Item D. He asked if the City is keeping the best of the old tires for spares.

Roy Fisher, Fleet Maintenance Supervisor, said they will keep the spare they have and the best of the ones they take off the vehicle. Councilman Kuknyo noted that state pricing was about \$125.00/ per tire less than what the City of Prescott is paying and

Bridgestone tires were \$900.00 less per tire. Mr. Fisher said the price is the best bid the City received and said they are looking for the same tires the truck came with because they will hold the load and have the best wear.

COUNCILMAN ARNOLD MOVED TO APPROVE CONSENT AGENDA ITEM I.A. – I.C.; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

COUNCILMAN ARNOLD MOVED TO APPROVE CONSENT AGENDA ITEM I.D.; SECONDED BY COUNCILMAN BLAIR; PASSED 6-1 WITH COUNCILMAN KUKNYO VOTING NO.

II. REGULAR AGENDA

A. Public Hearing for CDBG 2013-2014 Annual Action Plan.

Tom Guice, Community Development Director, presented and opened the Public Hearing at 3:31 P.M. and reported this is the second public hearing as required. He showed the proposed projects and said the City is anticipating \$271,750.00 as part of the Fiscal Year 2013 program. He acknowledged the time spent by the Citizen Advisory Committee members: Chairwoman, Mary Ann Suttles, Mariam Haubrich, James Johnson, Jerry Jones, Eleanor Laumark, Tracy McConnell and Pamela Wickstrom.

Councilman Arnold asked if the Parking Garage is no longer an Enterprise Fund. Mr. Woodfill said it is not. Councilman Arnold asked that the reference to the Parking Garage be removed from page 20 of the Action Plan.

Councilman Lamerson said that things could change between now and when the grant monies are delivered to the City. Councilman Carlow reported the City still does not know how much money we will get this year. He asked that the recipients of grant money be notified that they cannot start work until the money is actually awarded. Mr. Guice said that each organization has been told that the City must receive the funding and a sub-recipient agreement must be in place, prior to them pursuing the project.

There being no further public comments, the Public Hearing was closed at 3:36 P.M.

COUNCILMAN LAMERSON MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

COUNCILMAN LAMERSON MOVED TO APPROVE THE CDBG 2013-2014 ANNUAL ACTION PLAN; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

B. Presentation of the Wastewater Pretreatment Program including discussion of comments received, cost-benefit analysis, and proposed sewer use ordinance.

Mr. Nietupski, Public Works Director, presented. He said this program will comply with newly mandated regulations. They kicked off a series of meetings in February and the public comment period ended in April. All comments and answers have been posted to the City website. Mr. Nietupski reviewed the proposed ordinance, which will change City Code Title 2, Chapter 2-1, Public Works. It defines the legal authority to process discharge permits and defines an enforcement process in reporting requirements for monitoring compliance. He said that examples of cost savings would include reduction in required supplies, a decline in electricity use and a decline in man hours.

Councilman Kuknyo said he appreciates staff reaching out to the community. He said that now is the time for business owners to become a part of this process. Mr. Nietupski said the initial program recommendation will pertain to industrial users. The City will implement a permitting process for significant users, which can take a year. The City is conducting a survey to see how industrial users use the sewer system, so the City knows which groups of users may need permitting. He said this is just the first step in order to comply with Arizona Department of Environmental Quality/Environmental Protection Agency regulations.

Councilman Lamerson said the City of Prescott does not have a choice but to address the issue. He said there may be some costs to the consumers. He also encouraged citizens to participate in the process.

Mr. Nietupski said staff will be back the first meeting in May to ask for Council to adopt the Ordinance.

NO ACTION TAKEN.

- C. Award of bid and contract for the FY 13/14 Pavement Rehabilitation Project to Asphalt Paving & Supply, Inc., in the amount of \$2,096,260.00 (City Contract No. 2013-170).

Mr. Nietupski, Public Works Director, presented. He pointed out that one of the segments to be repaired is Pleasant Street – (Gurley Street to Goodwin Street), not South Mt. Vernon Avenue, as stated in the staff memo. He reviewed the project and stated that most work will be done at night, as authorized by the City Council and no work will be done on the weekends. He said the work on Sheldon Street should be done by June 14, 2013.

Councilman Blair, calling attention to Ruth Street, asked if there has ever been thought of a double curb along the west side where the water comes off the parking lot, to create a trough. Mr. Nietupski said there are no drainage improvements associated with this project, but they will look at options to keep water off the pavement.

Councilman Lamerson asked Mr. Nietupski to address longevity versus construction of new roads. Mr. Nietupski said the City has shifted to more pavement maintenance and

preservation projects to maintain good quality streets. The cost of complete reconstruction is three times as much as maintenance. He said a street should have a twenty year life, but not without maintenance.

Councilman Kuknyo asked if the City recycles the millings. Mr. Nietupski said the millings go to the Streets Operations Division. Councilman Kuknyo said he noticed the millings being used on golf course paths.

Mr. Nietupski said the City also uses milled asphalt with a binder agent on alleys to abate dust.

COUNCILMAN BLAIR MOVED TO AWARD THE BID AND CONTRACT FOR THE FY 13/14 PAVEMENT REHABILITATION PROJECT TO ASPHALT PAVING & SUPPLY, INC., IN THE AMOUNT OF \$2,096,260.00 (CITY CONTRACT NO. 2013-170); SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

- D. Approval of a professional services agreement with J2 Engineering and Environmental Design, LLC, (City Contract No. 2013-172) for FEMA Studies Finalization, Updates, and Outreach Projects in an amount not to exceed \$135,257.00 (Yavapai County Flood Control District funded).

Mr. Nietupski, Public Works Director, said this contract will engage with an engineering firm to join with the City and Federal Emergency Management Agency (FEMA) representatives to go through a required process to update the flood insurance rate map panels. He said there will be a number of public meetings for citizens who may have property that borders the flood plain. As a result of the meetings, the property owners will have an appeal process for additional analysis.

Councilman Blair asked how long the FEMA study will be good for. Mr. Nietupski said it should have a life expectancy of twenty years. There could be segments of the flood plain that might need to be adjusted. He said affected properties will be notified by direct mailings, door hangers, and public notices by the media. Mr. Nietupski said some properties will come out of the flood plain and some that were not previously in a flood plain may now be listed in one.

COUNCILMAN KUKNYO MOVED TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH J2 ENGINEERING AND ENVIRONMENTAL DESIGN, LLC, FOR FEMA STUDIES FINALIZATION, UPDATES, AND OUTREACH PROJECTS IN AN AMOUNT NOT TO EXCEED \$135,257.00 (CITY CONTRACT NO. 2013-172).; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- E. Approval of a joint letter from the City of Prescott and Yavapai County to the State Transportation Board in support of widening State Route 89 from State Route 89A to Deep Well Ranch Road, and a separate letter from the City Council supporting the same.

Mr. Nietupski, Public Works Director, presented and reviewed the area impacted by the widening. He said the State Board is taking public comments right now. The Executive Board of Central Yavapai Metropolitan Planning Organization voted to contribute \$1.27 million to the Arizona Department of Transportation (ADOT) project. Mr. McConnell, City Manager, added that the blue ADOT project will require the Willow Creek Road approach to Highway 89, to be eliminated. He said that is the basis of the relocation of Willow Creek Road.

He said this is a dialogue that has gone on for several years and the City of Prescott will be able to preserve full access in and out of McCurdy Drive, the front door to the airport. He noted that a number of studies have been done to show that the intersections in that area work, even though they are not optimal.

Mayor Kuykendall asked if Perkins Drive was part of the north/south Highway 89 project. Mr. McConnell said yes. Mr. Nietupski said, pending funding, the design will include Perkins Drive, extended to intersect with Willow Creek Road and the construction of a roundabout at State Route 89 to facilitate turning movements at that intersection.

Councilman Arnold asked if the City would move forward on the Willow Creek alignment with or without programming by ADOT for the Highway 89 widening. Mr. Nietupski said it would be staff's recommendation. Councilman Arnold noted that Chino Valley has problems with a four lane to a roundabout to two lanes. He said they could not determine what the State would do as far as funding goes. Mr. Nietupski said the availability of funding is questionable.

Councilman Arnold said it is a safety issue and the widening and roundabout are needed. He supports sending the letter and encourages everyone in Prescott to push for southbound 89 to be finished; contact information is on the City website and this is a priority and needs to happen.

Councilman Kuknyo said the City is in danger of losing the project. He said this needs to be back in the Five Year Plan. He noted that money for roads in the future is in jeopardy.

Councilman Blair asked about the purchase of property for the realignment of Willow Creek Road. Mr. Nietupski said there are provisions for the right of way associated with the pre annexation development agreement with Deep Well Ranch.

COUNCILMAN ARNOLD MOVED TO APPROVE A JOINT LETTER FROM THE CITY OF PRESCOTT AND YAVAPAI COUNTY TO THE STATE TRANSPORTATION BOARD IN SUPPORT OF WIDENING STATE ROUTE 89 FROM STATE ROUTE 89A TO DEEP WELL RANCH ROAD, AND A SEPARATE LETTER FROM THE CITY

COUNCIL SUPPORTING THE SAME; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

- F. Award of three professional services agreements for on-call quality assurance and testing services for City capital construction projects to: (1) Ninyo & Moore (City Contract No. 2013-167), (2) Western Technologies, Inc. (City Contract No. 2013-168), and (3) Engineering & Testing Consultants Inc. (City Contract No. 2013-169), each in an amount not to exceed \$80,000.00.

Mark Nietupski, Public Works Director, presented. He noted that three contracts are represented to provide flexibility to the City and the firms.

Councilman Arnold asked how long the current contracts have been in place. Mr. Nietupski said since 2010.

COUNCILMAN ARNOLD MOVED TO AWARD SEPARATE CONTRACTS FOR QUALITY ASSURANCE AND TESTING SERVICES FOR CITY CAPITAL CONSTRUCTION PROJECTS TO: (1) NINYO & MOORE (CITY CONTRACT NO. 2013-167), (2) WESTERN TECHNOLOGIES, INC. (CITY CONTRACT NO. 2013-168), AND (3) ENGINEERING & TESTING CONSULTANTS INC. (CITY CONTRACT NO. 2013-169), EACH IN AN AMOUNT NOT TO EXCEED \$80,000.00; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- G. Approval of a professional services agreement with Lyon Engineering & Surveying, Inc., for the Sundog Wastewater Trunk Main Master Plan & Phase 1 Design, in an amount not to exceed \$541,385.00 (City Contract No. 2013-171).

Mr. Nietupski, Public Works Director, presented. He noted that this is a significant project to improve the wastewater collection system. The trunk main has been in service since 1920. He said the majority of the line is deficient. The overall length of the project is 20,000 feet, to be completed with three to five contracts. He said the project will start, pending award, in the May time frame with the completion of the design in August 2014. He noted that a large part of the facility crossed the reservation and the City will be working with the Tribe.

Councilman Scamardo asked what the estimate of the total project is. Mr. Nietupski answered saying the initial estimate, which did not extend to 12,000 feet, was \$3.2 million. He said the timeline will be driven by the availability of resources.

Mr. McConnell said everything the City is doing is consistent with a different long term scenario for centralizing treatment, if the money is there. He said the City does not have the financial capacity, without extreme rate shock, to do all these projects in a short period of time. He noted that there will be a discussion about water/wastewater rates that will be driven by the capital improvement projects.

COUNCILMAN LAMERSON MOVED TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH LYON ENGINEERING & SURVEYING INC., FOR THE SUNDG WASTEWATER TRUNK MAIN MASTER PLAN AND PHASE 1 DESIGN, IN AN AMOUNT NOT TO EXCEED \$541,385 (CITY CONTRACT NO. 2013-171); SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

- H. Approval of purchase and installation of public safety radio console dispatching equipment from Zetron for the Prescott Regional Communications Center in the amount of \$340,762.91 using State contract pricing.

Lieutenant Bonney, Regional Communications, presented. She said this equipment is necessary for the Communications Center to continue to operate. Zetron is a good option and will offer future expansion and off-site emergency operations. She noted that the Communications Center dispatches for 10 agencies.

Councilman Blair asked if this will address some of the state issues. Lieutenant Bonney said it will upgrade the capability for station alerting, like heart saver tones.

COUNCILMAN SCAMARDO MOVED TO APPROVE PURCHASE AND INSTALLATION OF PUBLIC SAFETY RADIO CONSOLE DISPATCHING EQUIPMENT FROM ZETRON FOR THE PRESCOTT REGIONAL COMMUNICATIONS CENTER IN THE AMOUNT OF \$340,762.91 USING STATE CONTRACT PRICING; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- I. Acceptance of a grant from the University of Illinois, Center for Public Safety and Justice, for funds in the amount of \$50,000.00 to implement a pilot program addressing persons with Alzheimer's disease.

Police Chief Monahan presented. He said this is a pass through grant. The University of Illinois identified Prescott as having a significant number of retirees, who may be in need of these services. He noted that the grant will:

- provide funding for staff
- develop partnerships with caregivers
- provide training for law enforcement
- work with Yavapai County Search and Rescue
- offer an education component for greater community awareness

He said three cities were selected nationwide.

Daniel Mattson, Prescott resident, asked if this includes radio-frequency identification (RFID) chips for monitoring. The Chief said any monitoring will be at the request of the caregiver. He said the Police Department has no intention of monitoring.

COUNCILMAN KUKNYO MOVED TO APPROVE ACCEPTANCE OF A GRANT FROM THE UNIVERSITY OF ILLINOIS, CENTER FOR PUBLIC SAFETY AND JUSTICE, FOR FUNDS IN THE AMOUNT OF \$50,000 TO IMPLEMENT A PILOT PROGRAM ADDRESSING PERSONS WITH ALZHEIMER'S DISEASE.; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- J. Acceptance of a grant from the Arizona Governor's Office of Highway Safety, for funding in the amount of \$30,000.00 to implement a DUI educational, training, awareness, and enforcement campaign.

Police Chief Monahan presented. The department was recently made aware of additional funds available from the Department of Highway Safety. He said the Police Department wanted to focus on the prevention side, working with the industry. He reviewed some of the highlights:

- Compensated staff time
- Work with the businesses who serve alcohol
- Improve relationship with the taxi companies
- Funds to create an educational awareness campaign about driving impaired

Councilman Arnold said he is glad that this will include the education program.

Council complimented the Chief for bringing this forward. Councilman Blair suggested working with the High Schools and the Resource Officers. Councilman Lamerson shared a concern about prescription drug use and noted that alcohol is not the only cause for driving while impaired.

Sandra Smith, Prescott resident, said the program should teach teens in the High School that getting behind the wheel of a car is a lethal weapon.

COUNCILMAN LAMERSON MOVED TO APPROVE ACCEPTANCE OF A GRANT FROM THE ARIZONA GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR FUNDING IN THE AMOUNT OF \$30,000.00 TO IMPLEMENT A DUI EDUCATIONAL, TRAINING, AWARENESS, AND ENFORCEMENT CAMPAIGN; SECONDED BY COUNCILMAN ARNOLD ; PASSED UNANIMOUSLY.

- K. Approval to transfer grant funds from the Gila River Indian Community to the Arizona Wildfire and Incident Management Academy for operation of the 2013 training event.

Todd Bentley, Fire Chief Groom Creek Fire District, and Secretary for the Arizona Wildfire Council, presented. He said that it took about \$250,000.00 per year to put the Academy on and tuition paid for \$150,000.00 of that. He noted that the grant passing through is important to make up the annual \$100,000.00 shortfall.

Mayor Kuykendall asked if they received any money from the Yavapai-Prescott Indian Tribe. Chief Bentley said they did not because the Tribe did not participate in the State Shared Revenue Program, where the grant money came from. Mayor Kuykendall asked if they housed many people in the Prescott Resort during the Academy. Chief Bentley said yes and that the Resort is the host hotel.

COUNCILMAN KUKNYO MOVED TO APPROVE THE TRANSFER OF \$50,000.00 OF GRANT FUNDING FROM THE GILA RIVER INDIAN COMMUNITY TO THE ARIZONA WILDFIRE AND INCIDENT MANAGEMENT ACADEMY, FOR REIMBURSEMENT OF 2013 EVENT EXPENSES; SECONDED BY COUNCILMAN CARLOW ; PASSED UNANIMOUSLY.

- L. Approval of Intergovernmental Agreement (City Contract No. 2013-149) with the Town of Chino Valley for prosecution services.

Jon Paladini, City Attorney, presented. He said that one of the citywide goals is to see if there are ways to develop additional funding sources. This agreement would allow the City Attorney's office to act as the prosecutor for the Town of Chino Valley. He noted the City of Prescott would provide part time prosecution services as well as training to the Police Department. In return Chino Valley would pay the City General Fund \$50,000.00. The Chino Town Council unanimously approved the IGA a few weeks ago.

COUNCILMAN ARNOLD MOVED TO APPROVE ENTERING INTO AN IGA (CITY CONTRACT NO. 2013-149) WITH THE TOWN OF CHINO VALLEY FOR PROSECUTION SERVICES; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.

- M. Participation in the Yavapai County Water Advisory Committee in Fiscal Year 2014.

Craig McConnell, City Manager, presented. He noted that in August of 2012 there was a discussion of the mission, roles and activities of water organizations, which included the Water Advisory Committee (WAC), Upper Verde Watershed Protection Coalition (UWWPC) and the Northern Arizona Municipal Water Users Association (NAMWUA). It was decided at that time to pay the dues for the organizations and Council requested further discussion of the effectiveness of the groups. The WAC held a retreat on March 1, 2013 which proved that 2014 will be a year of transition for the Committee. It is requested that the dues be reduced to spend down the balance on hand.

He noted that a letter had been drafted which, upon approval, will be sent to the WAC, requesting that dues be reduced to 50 percent for Fiscal Year 14; if not, the City of Prescott would request removal from the committee.

Councilman Blair said the City is looking into the accomplishments of the WAC for the past thirteen years. He noted that the tax payers in the City of Prescott have paid over

\$1.3 million in studies towards water in the Yavapai County. He asked if the City received that amount worth of benefit and said they have not. He said that NAMWUA is an important group. He noted the Verde River had different problems than what Prescott experiences.

Councilman Lamerson asked Ms. Graser, Water Resource Specialist, if this proposal is an advantage to the City of Prescott. Ms. Graser pointed out the WAC has had many successes. She said that through seed money from the state, they were able to bolster the science in the area. They did hydro-geologic monitoring on both sides of the mountain, which lead to modeling.

Councilman Arnold asked if the WAC does not reduce their fees, has the Council decided to walk away or would it come back for a vote. Mr. McConnell said the letter will serve as notice to withdraw funding if the WAC did not reduce their fees. Councilman Arnold said that he would like the final decision to come back to Council to allow for discussion.

Ms. Graser noted that the City, as a designated water provider, has the highest level of regulation within the Active Management Area (AMA).

There was a discussion about the reduction in dues.

Jon Paladini, City Attorney, said if notice is required to remove the City from the group by April 30th, then you either keep the wording in the letter or the City will be in the group for another year. He said the Council can provide alternatives in the motion. Councilman Blair said he would like to ask Yavapai County for a 30-day extension for the IGA.

Councilman Scamardo asked what Council wanted to do in the future with Prescott Valley, Chino Valley and Dewey-Humboldt. Councilman Blair said it would be important to stay in the WAC. Ms. Graser said they are doing long term water monitoring for the region.

Mayor Kuykendall asked if the County intended to have a member in the WAC on both sides of the mountain. Ms. Graser said that did not shake out at the planning session. Mayor Kuykendall noted that the County did not have an elected representative in the WAC. He asked who would be the voting members if the City of Prescott was not involved.

Ms. Graser noted that having a dues reduction, while maintaining core projects is still something that can continue to move forward. Mr. McConnell noted that the work of the WAC is not the same as the Big Chino Project. He noted that the City needed to make a point about the dues to the WAC.

Council discussed and asked Ms. Graser questions. Mr. McConnell explained the policy determination and that it is the role of Council to make that determination. The issue is to fully fund the WAC or not.

Councilman Arnold noted that the County facilitates the group's existence and the Board makes the decisions. Mr. Paladini said the dues are set by an exhibit to the IGA, based on population in the year 2,000. He noted that there are nine members and a majority of the members can amend the agreement and the fees. He said this could be a method of reducing fees without withdrawing. He noted that Prescott had one of nine votes.

Daniel Mattson, a Prescott resident, said that a change should be demanded.

Councilman Arnold said it is about the effectiveness of the WAC. Prescott Valley has already sent a letter of notice. He noted that the City has an opportunity to lead the group to fix this.

COUNCILMAN LAMERSON MOVED TO APPROVE SENDING THE ATTACHED LETTER PERTAINING TO FISCAL YEAR 2014 DUES AND ACTIVITIES TO THE YAVAPAI WATER ADVISORY COMMITTEE; SECONDED BY COUNCILMAN SCAMARDO ; PASSED 5-2 WITH COUNCILMEN ARNOLD AND KUKNYO VOTING NO.

N. Approval of Final Plat FP13-001 for The Meadows at Lynx Lake PAD, a 17 lot single-family home subdivision on 6.3 acres located on Walker Road south of State Route 69. APPLICANT/OWNER: Scot Lee, Lee Ltd., 300 N. Lee Blvd., Prescott, AZ 86301.

Tom Guise, Community Development Director, presented and noted that Council unanimously approved the final plat on March 12, 2013.

COUNCILMAN SCAMARDO MOVED TO APPROVE FINAL PLAT FP13-001 FOR THE MEADOWS AT LYNX LAKE PAD; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

O. Legislation Update.

Alison Zelms, Deputy City Manager, gave the legislative update and noted that there is a stalemate going on with various bills.

P. Public Hearing for Alternative Expenditure Limitation.

Mark Woodfill, Finance Director, presented. He noted that this is the second public hearing. He reviewed background for this election and said The Home Rule option has

to be renewed every four years. Action on this will take place in the Special Meeting, immediately following this meeting.

There being no further public comments, the Public Hearing was closed at 6:18 P.M.

COUNCILMAN ARNOLD MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN CARLOW; PASSED UNANIMOUSLY.

III. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of April 9, 2013, adjourned 6:19 P.M.

ATTEST:

MARLIN D. KUYKENDALL, Mayor

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 23rd day of April, 2013. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2013.

AFFIX
CITY SEAL

LYNN MULHALL, City Clerk

COUNCIL AGENDA MEMO – May 14, 2013
DEPARTMENT: Legal
AGENDA ITEM: Adoption of Resolution No. 4169-1331 providing notice to the Industrial Commission of the change by the City from self insurance to insured by Arizona Municipal Risk Retention Pool (“AMRRP”) for workers’ compensation and employer’s liability coverages

Approved By:		Date:
City Attorney: Jon M. Paladini		
Finance Director: Mark Woodfill		
City Manager: Craig McConnell		5-6-13

Summary

The Industrial Commission of Arizona requires notification of any change of insurance carrier for workers’ compensation insurance. Approval of Resolution No. 4169-1331 will provide notice to the Commission of a change in the City’s insurance carrier as of June 1, 2013.

Background

On April 9, 2013, Council approved joining AMRRP to provide workers’ compensation, employer’s liability, and liability insurance coverages, effective June 1, 2013.

Attachment

- Resolution No. 4169-1331

Recommended Action: MOVE to adopt Resolution No. 4169-1331.
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RESOLUTION NO. 4169-1331

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, PROVIDING NOTICE OF CHANGE FROM BEING SELF INSURED TO COVERAGE PROVIDED BY THE ARIZONA MUNICIPAL RISK RETENTION POOL FOR WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.

RECITALS:

WHEREAS, the City of Prescott is required by Arizona law to provide its employees with insurance coverage for job-related illnesses and injuries, and to provide employer's liability insurance coverage for which the City is currently self insured; and

WHEREAS, as of June 1, 2013, the City of Prescott as a member of the Arizona Municipal Risk Retention Pool ("AMRRP") will be covered by AMRRP to provide workers' compensation and employer's liability insurance coverage.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT THAT notice is hereby given that the City of Prescott has joined the Arizona Municipal Risk Retention Pool to provide workers' compensation and employer liability insurance, effective June 1, 2013.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this _____ day of _____, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL
City Clerk

JON M. PALADINI
City Attorney

COUNCIL AGENDA MEMO – May 28, 2013
PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

DEPARTMENT: Field and Facilities Services

AGENDA ITEM CAPTION: Authorization to purchase one (1) ea. Kubota articulating loader at auction not to exceed \$15,000

Approved By:	Date:
Department Director: Stephanie Miller	
City Manager: Craig McConnell <i>Craig McConnell</i>	5-6-13

Good(s) or Service(s) to be Purchased	
Description of Item(s) Check if Prof. Services <input type="checkbox"/>	Kubota articulating loader
Quantity	One (1) ea.
Necessity/Use	On March 26, 2013, Council approved an IGA with the City of Phoenix to test the use of a Kubota articulating loader during the Annual Spring Cleanup. The Division found that using the Kubota for this event, which netted 282 tons, allowed for faster service times, improved safety, and limited manual lifting. The Division is now seeking to purchase a Kubota articulating loader at auction to assist in loading bulky items into the rear loading collection vehicle during the annual city-wide cleanup. The Division will also use the Kubota to assist in various projects at the Transfer Station including loading and unloading containers, cleaning the above ground scales, and maintaining the landfill.

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. Public Surplus Online Auction	NTE \$15,000	TBD

x = recommended award

Budget Information Solid Waste Fund 7306600-8210

Additional Comments: Research on prior auction sales from Public Surplus Online Auction has shown 14 Kubota sales in the last year with an average purchase price of \$9,455.00. The Division does not anticipate needing to utilize the full \$15,000.00 for the purchase. Fleet Services previously inspected the Kubota the Division borrowed after the IGA was approved, and found it to be in good working condition. The Division plans on bidding on the Kubota that it is currently using.

Attachments 1. Photograph of Kubota articulating loader



COUNCIL AGENDA MEMO – May 14, 2013
 PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

DEPARTMENT: Police

AGENDA ITEM CAPTION: Approval to purchase public safety microwave radio equipment from Microwave Networks in the total amount of \$13,937.72

Approved By:	Date:
Department Director: Jerald Monahan	
City Manager: Craig McConnell <i>Craig McConnell</i>	5-8-13

Good(s) or Service(s) to be Purchased	
Description of Item(s) Check if Prof. Services ___	This item is to purchase a microwave dish and accompanying equipment. Installation will be completed over Fiscal Years 2013 and 2014 by the Prescott Regional Communications Center Radio Technician.
Quantity	One (1) each
Necessity/Use	The Prescott Fire Department has requested a license for a new frequency for primary fire dispatch use. This frequency will enable better coverage and to alleviate "dead spots" in areas such as YRMC, Prescott High School, and Gateway Mall. The new channel will be broadcast from the Town of Prescott Valley's Glassford Hill tower, using the subject equipment.

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. Microwave Networks, Stafford, TX	\$12,834.00	Equipment costs
	2.	\$ 1,103.72	AZ use tax = 8.60%
	3.	\$13,937.72	Total Cost

x = recommended award

Budget Information	Fund Name: General Fund
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Additional Comments: Microwave Networks is the manufacturer of the City's microwave equipment. The proposed equipment will interface seamlessly to the current command and management software that is in place to control and monitor the microwave network, and enable maintaining a single set of spares for support by trained personnel.

Attachments	1. Microwave Networks quote dated February 25, 2013
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Microwave Networks

4000 Greenbriar Stafford, TX 77477
 Ph.: 281-263-6500; Fx: 281-263-6406
 Sales Contact: Bob Stone
 System Engineer: Itai Farchi
 Quote: BS_IF30212-00
 Date: 25-Feb-13
 Currency: US Dollars

Customer: City of Prescott
 Contact: Tad Coyner
 Location: Prescott, Az
 FCA: Stafford, Texas
 Validity: 60 Days
 Delivery: 30-45 Days ARO
 Payment Terms: Net 30 Days Subject to Credit Approvals

PRICE AND MATERIAL LIST

Item	Model	Description	Unit Price	Northwest Tank	ADOTY DMV	Total Q-ty	Extended Price
Proteus MX							
1.00	Proteus MX Microwave Radio Terminals						
1.01	J18NC2-049C-NN0-EX32	Proteus MX, 18 GHz Gigabit Ethernet Radio, Non-Protected, High TX Pwr, Split Mount, 32 x DS1/E1, Licensed for 49 Mbps in 20 MHz Channel	\$5,724	1	1	2	\$11,448
2.00 Cables and Connectors for Proteus MX Microwave Radio Terminals							
2.01	8108760-10	CHAMP Connector 24 GA Cable, AMT-MX, 32 E1/DS1 (2 cables required), 10' (3m)	\$76	2	2	4	\$304
6.00 Antennas for Proteus Microwave Radio Terminals							
6.01	9900560-03	High Performance Integrated Antenna, Andrew, VHLP2-18-RC1, 0.6m, 18 GHz	\$541	1	1	2	\$1,082
7.00 Services							
7.01	FREQ COORD	Frequency Coordination & Licensing Assistance Fee Per Path	\$909			0	\$0
Grand Total, FCA: Stafford, Texas							\$12,834

- Notes:
- 1.) All other terms and conditions as per MNI's Standard Terms and Conditions of Trade.
 - 2.) A terminal as priced above consists of one radio terminal including one signal processor unit (IDU or SPU) and one RF unit (ODU or RFU).
 - 3.) MNI reserves the right to replace OEM-sourced products with alternative equipment of similar or superior function and quality.
 - 4.) MNI manufactured equipment is covered by 2 years warranty after shipment, per MNI's Standard Warranty Statement.
 - 5.) Warranty on non - MNI manufactured equipment is the original manufacturer's warranty.

COUNCIL AGENDA MEMO – May 14, 2013
 PROCUREMENT ITEM FOR CONSENT AGENDA (\$10,000 - \$20,000)

DEPARTMENT: Field and Facilities Services

AGENDA ITEM CAPTION: Purchase of ammonium lignin sulfonate from Shilon Corporation in an amount not to exceed \$20,000.00

Approved By:	Date:
Department Director: Stephanie Miller	4/25/2013
City Manager: Craig McConnell <i>Craig McConnell</i>	4-30-13

Good(s) or Service(s) to be Purchased	
Description of Item(s) Check if Prof. Services <input type="checkbox"/>	Ammonium Lignin Sulfonate
Quantity	Approximately 16,800 gallons
Necessity/Use	The Street Maintenance Division uses ammonium lignin sulfonate as a bonding agent when paving with millings for dust suppression on City streets and alleys. The application of millings mixed with this product improves the air quality and the quality of life in neighborhoods within the City of Prescott. The dust abatement treatment has been applied to over 19 miles of unpaved streets and alleys since 2007.

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, Las Vegas NV	\$1.11/Gal	Included/On demand
	2. Desert Mountain Corporation, Phoenix, AZ	\$1.36/Gal	Included/On demand
	3.		

x = recommended award

Budget Information	Fund Name: Streets and Open Space 1% - Street Maintenance Materials
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Additional Comments:
 Shilon Corporation provided the lowest, most responsive bid.

Attachments	1. Quote Comparison
	2. Shilon Corporation bid dated April 9, 2013
	3. Desert Mountain Corporation bid dated April 1, 2013

**City of Prescott
Street Maintenance Division
2013 Ammonium Lignin Sulfonate
Calculation of Quote Comparison**

Ammonium Lignin Sulfonate weighs 10 lbs. per gallon. At 4,500 gallons per truckload, that equals 22.5 tons per truckload. Based on the per ton price, Shilon Corporation's price per gallon is \$1.02. In spite of the lower quoted tax rate, Desert Mountain Corporation's price remains higher.

<u>Vendor</u>	<u>Price/Ton</u>	<u>Quantity (Ton)</u>	<u>Subtotal</u>	<u>Tax</u>	<u>Total</u>
Shilon Corp. (tax 9.35%)	\$203.00	22.5	\$4,567.50	\$427.06	\$4,994.56
Desert Mountain Corp.	N/A				
	<u>Price /Gal</u>	<u>Quantity (Gal)</u>	<u>Subtotal</u>	<u>Tax</u>	<u>Total</u>
Shilon Corp. (tax 9.35%)	\$1.02	4500	\$4,567.50	\$427.06	\$4,994.56
Desert Mountain Corp. (tax 6.6%)	\$1.27	4500	\$5,715.00	\$377.19	\$6,092.19

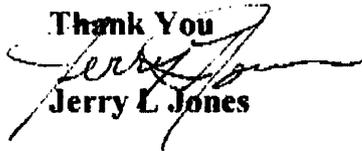
SHILON CORPORATION
10190 SOUTH HAVEN
LAS VEGAS, NEVADA 89183
(702) 361-5325
(702) 361-5425 Fax

City of Prescott
Prescott Az.
Att: Bobbie King

April 9, 2013

This is the Quote that you requested for Lignobond 50
[ammonium Lignin Sulfonate] for 2013 season.

The delivered price to your tanks would be \$1.015 per Gallon or \$203.00
Per ton plus any applicable Arizona sales Tax and Fuel surcharge.

Thank You

Jerry L. Jones

King,Bobbie

From: Louis Snow [lsnow@desertmtncorp.com]
Sent: Monday, April 01, 2013 2:53 PM
To: King,Bobbie
Cc: snowconsults@aol.com
Subject: LIGNIN PRICING DELIVERED, MINIMUM 4,500 CONCENTRATED GALLONS

Bobby,

Apologize for this delay, had to make sure the pricing was correct.

Your price for a full concentrated load (4,500 gallons) of Lignosulfonate is \$1.36 per gallon delivered or \$1.45 gallon delivered and computer applied. Tax in at 6.6% until 11-1-2013.

Note, price firm for 30 days only

Please let me know if you want a typed sales order with a delivery date ?

Thank You,
Lou Snow
Consultant
C.P.E.S.C. # 1244

COUNCIL AGENDA MEMO – May 14, 2013

DEPARTMENT: City Clerk

AGENDA ITEM: Public Hearing and consideration of a liquor license application from Michael Joseph Magee, applicant for WEREFISHY LLC, for a Series 12, Restaurant license, for Prescott Lobster and Seafood Company located at 220 West Goodwin Street #2

Approved By:

Date:

Department Head: Lynn Mulhall	
City Manager: Craig McConnell 	5-3-13

A Liquor License Application, City No. 13-220, State No.12133552, has been received from Michael Joseph Magee, applicant for WEREFISHY LLC., for a Series 12, Restaurant, license, for **Prescott Lobster and Seafood Company** located at 220 West Goodwin Street #2.

The application is for a new license and has cleared Planning and Zoning, as well as the Police Department.

The application and license fee have been paid; the property was posted and there have been no statements of opposition.

The public hearing will be held at the Regular Council Meeting of Tuesday, May 14, 2013. The applicant has been requested to attend the Regular Meeting to answer any questions Council may have.

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

Recommended Action: (1) **MOVE** to close the Public Hearing; and (2) **MOVE** to approve/deny Liquor License Application No.12133552, for a Series 12, Restaurant license, for Prescott Lobster and Seafood Company located at 220 West Goodwin Street #2.

COUNCIL AGENDA MEMO – May 14, 2013

DEPARTMENT: City Council

AGENDA ITEM: Appointment of members to the Board of Adjustment

Approved By:

Date:

Council Appointment Committee:
Councilmen Lamerson, Blair, and Carlow

4/24/2013

City Manager: Craig McConnell



4-30-13

Item Summary

There are three vacancies on the Board of Adjustment. The Council Appointment Committee met on April 9 and April 23, 2013 to review five applications. The Committee recommends the re-appointment of Mike Klein and Richard Rosa as members of the Board; and the appointment of Phil King to replace Duane Famas. All will have terms ending in 2016.

Background

The Board of Adjustment was originally established in December 1945 to become Title I, Chapter 7 of the Prescott City Code, as required under Arizona State Statutes Section 9-462.06.

The Board consists of seven (7) members appointed by the City Council for three (3) year terms, and elects from its membership a Chairman and Vice-Chairman. The Board hears and decides appeals and requests for relief from the zoning regulations of the City. Decisions of the Board of Adjustment are appealable only to the Superior Court of the State of Arizona.

Recommended Action:

Appointments

MOVE to accept the Council Appointment Committee recommendation to re-appoint Mike Klein and Richard Rosa, and to appoint Phil King, as members of the Board of Adjustment with terms to expire March 2016.

Administration of the Oath of Loyalty

Following approval of the appointments the City Clerk will administer the Oath.

COUNCIL AGENDA MEMO – May 14, 2013	
DEPARTMENT:	Community Development
AGENDA ITEM:	Amendment to Comprehensive Sign Plan for Centerpointe West Commerce Park (CC13-001; Applicant – HOAMCO; Agent – A&B Sign Co.)

Date:

Approved By:

Department Head: Tom Guice	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	5-3-13

Item Summary

The applicant is proposing an amendment to the existing Comprehensive Sign Plan for the Centerpointe West Commerce Park industrial subdivision. This request proposes to increase total wall signage from 40 sq. ft. up to 100 sq. ft. per individual business, based on building frontage, as allowed by the Land Development Code. The number of permitted wall signs is proposed to increase from one to two. The requested amendment will also increase wall signage letter size from 20 inches to 24 inches in height. Monument signage is proposed to increase from 15 sq. ft. to 24 sq. ft. with a maximum height of 5 feet.

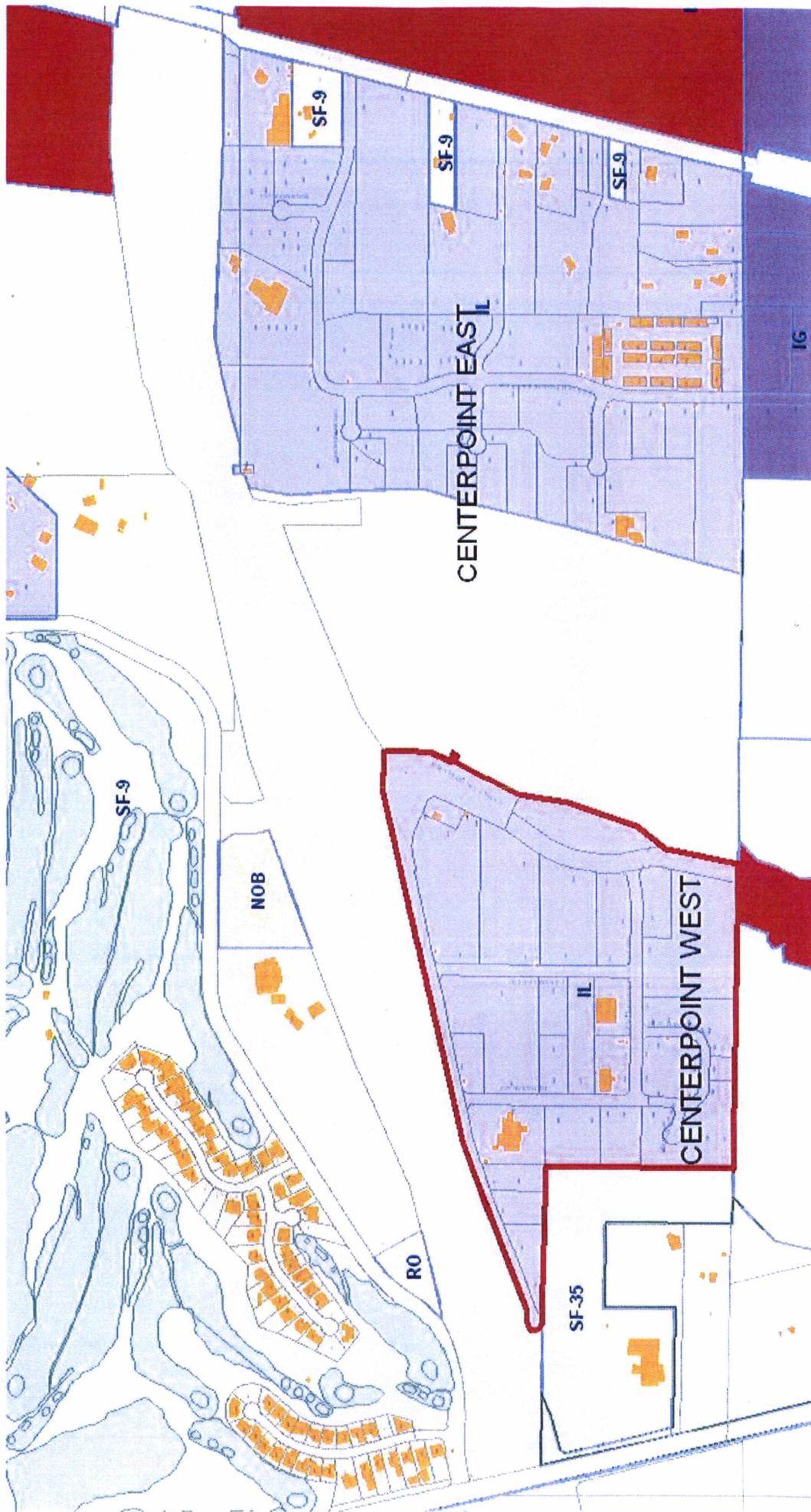
Background

The existing Comprehensive Sign Plan (CC05-004) for this subdivision was approved by Council on January 10, 2006. The Plan provided for increased subdivision monument signage; reduced individual tenant signage from that permitted by Code; and allowed individual tenants a maximum of 40 sq. ft. of wall signage with maximum 20" letters, and one 15 sq. ft. monument sign with a maximum 5' height.

The Planning and Zoning Commission discussed the amendment at their April 25, 2013, meeting. The discussion included the rationale for the request, current Land Development Code sign provisions, and the trade-off of increased subdivision monument signage for a reduction in individual tenant signage. The discussion concluded with a 5-0 vote recommending approval of CC13-001 (Marshall, Gardner absent).

- Attachments** - Location Map
 - Applicant Narrative

Recommended Actions: MOVE to approve Comprehensive Sign Plan Amendment CC13-001 for Centerpointe West Commerce Park.
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City of Prescott
Community Development Dept.
Planning and Zoning Division
201 S. Cortez Street
Prescott, AZ 86303



691 6th Street, Prescott, AZ 86301
928-445-6995 Office
928-776-4429 Fax
sales@absignco.com
www.absignco.com

To Whom It May Concern:

A & B Sign Company is representing Tri City Surgery Center concerning their signage needs and the signage needs of future business owners in the Centerpointe West commercial park located at Hwy 89A and Larry Caldwell Dr. in Prescott.

Because of the design of the Hwy 89 and Hwy 89A interchange, as well as the Larry Caldwell on and off ramps, it is very confusing for drivers not familiar with the area to locate businesses in the Centerpointe West commercial park area.

We respectfully submit the following changes to the existing sign plan so that business owners in this area can have more options when trying to attract the attention of their clients:

1. All Tenants (1 or 2 businesses), Monument : Increase the size of monument signs from 15 square feet to 24 square feet but keeping the overall height of 5 feet. The materials and method of construction will not change.
2. All tenants, wall mounted : Increase the number of wall mounted signs from 1 to 2 and change the square footage allowed from 40 to the standard City code formula. In addition to the sign types included in the current plan, we would include direct lit pan channel letters and increase the maximum letter height to 24 inches from 20 inches.
3. Restaurant, hotel, fast food, gas station and retail wall mounted : Increase the number of wall mounted signs from 1 to 2. In addition to the sign types included in the current plan, we would include direct lit pan channel letters.

We request the approval of these changes to the sign plan, as we believe it will keep the upscale appearance of the area as well as greatly help clients of the businesses in the area arrive to their destination with less frustration.

Sincerely,

Bryan Wieweck

Proposed changes are highlighted

Design Guidelines

Appendix D
Sign Guidelines

Sign Type	Function	Location	Quantity	Max. Height	Size	Illumination	Materials	Notes
Monument	Project Identification for Hwy. 89A	Frontage Road	One (1)	30-feet	Overall Size 30'x9'x3.5'	None	Fabricated steel and aluminum structure, stucco finish, powder coated individual letters and logo	Landscape Area: A minimum of 3 sq. ft. landscaping per 1 sq. ft. of freestanding sign area. Such landscape area may coincide with an otherwise required landscaped area when it surrounds the free standing sign.
Monument	Project Identification from Larry Caldwell Drive	Frontage Road and Larry Caldwell Drive	One (1)	6-feet	Overall Size 48'0"	None	Fabricated steel and aluminum structure, stucco finish, powder coated individual letters and logo	Landscape Area: See Above
Monument	Business Identification	Parking lot entrances	One (1) per tenant	5-feet	15 sq. ft. 24sq. ft.	Internal Illumination Fluorescent / neon LED	Steel framework, aluminum cut out faces & push through copy and graphics. Sign face to complement building architecture.	Landscape Area: A minimum of 3 sq. ft. landscaping per 1 sq. ft. of freestanding sign area. Such landscape area may coincide with an otherwise required landscaped area when it surrounds the free standing sign.
Monument	Business Identification	Parking lot entrances	One (1) per tenant. Maximum of two (2) if frontage exceeds 200 ft. Must be 100 ft. apart.	5-feet	32sq. ft.	Internal Illumination Fluorescent / neon LED	Steel framework, aluminum cut out faces & push through copy and graphics. Sign face to complement building architecture.	Landscape Area: See Above
Wall Mounted	Business Identification	Building facade of tenant space	One (1) per tenant Two (2) per tenant	Per City	40sq. ft. less monument sign Per City	Internal Illumination "hubs" effect Neon/LED Indirect Direct	Reverse push-channel HDU (sign foam, precision board) or approved equal Per channel	Letter height not to exceed 20-inches 24 inches
Wall Mounted	Business Identification	Building facade of tenant space	One (1) per tenant Two (2) per tenant	Per City	Per City	Internal Illumination "hubs" effect Neon/LED Indirect Direct	Reverse push-channel HDU (sign foam, precision board) or approved equal Per channel	Other sign types subject to special approval by ARC.

Exterior sign finish colors
MAP (Mathews Acrylic Polyurethane) or approved equal
25829, 25489, 25839
MAP Color Code
27168, 26077

COUNCIL AGENDA MEMO – May 14, 2013

DEPARTMENT: Police

AGENDA ITEM: Adoption of Resolution No. 4168-1330 approving an Intergovernmental Agreement with the Town of Prescott Valley for use of Glassford Hill communications infrastructure
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Approved By:**Date:**

Department Head: Jerald Monahan, Chief of Police	
---	--

Finance Director: Mark Woodfill	
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City Manager: Craig McConnell	
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5-6-13

Summary

Approval of this Intergovernmental Agreement (IGA) will allow City access to the Town of Prescott Valley's Glassford Hill site communications tower / shelter for public safety communications.

Background

The Prescott Fire Department (PFD) utilizes a primary dispatch channel operated by the Central Yavapai Fire District (CYFD). However, due to terrain the CYFD frequency coverage has dead spots in several critical areas, creating safety concerns.

Entering into this IGA with the Town of Prescott Valley will enable improvement of the situation. By licensing a new radio frequency and utilizing tower space on Glassford Hill, the dead spots will be eliminated.

The IGA is for a twenty (20) year term, to remain in full force and effect unless terminated by either party upon not less than one-year's notice.

Financial Impact

The yearly cost of being on the tower is \$75.00 for each 1% of tower space used. Prescott's anticipated need is 7.5% of total tower space, at a total yearly cost of \$562.50.

Attachments

- IGA with the Town of Prescott Valley
- Resolution 4168 - 1330
- Exhibit A – Lease
- Exhibit B – Right-of-Way

Recommended Action: MOVE to adopt Resolution No. 4168-1330.
--

RESOLUTION NO. 4168-1330

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PRESCOTT AND THE TOWN OF PRESCOTT VALLEY FOR SHARED TELECOMMUNICATIONS SERVICES FROM THE GLASSFORD HILL SITE

RECITALS:

WHEREAS, the City of Prescott has the authority pursuant to its Charter, A.R.S. §9-240 and §11-952 to enter into intergovernmental agreements for purposes of carrying out its responsibilities and to provide for the joint exercise of any powers common to public entities; and

WHEREAS, the Town of Prescott Valley has obtained an easement from the Arizona State Land Department for public safety use, been granted a Use Permit for a public safety communications facility on Glassford Hill, constructed a communications facility on portions of Glassford Hill and made those facilities available to other jurisdictions based upon shared expenses for operation and maintenance; and

WHEREAS, the City of Prescott, its Police Department and Communications Division, have recognized that there exist certain communication “blind” areas that the placement of City communications equipment on the Glassford Hill site would alleviate; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens of Prescott enter into an intergovernmental agreement with the Town of Prescott Valley to utilize a portion of the communication facilities for the purposes of public safety.

ENACTMENTS:

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

Section 1. That the City of Prescott hereby approves the attached Intergovernmental Agreement with the Town of Prescott Valley for shared use of the communication facilities on Glassford Hill, for which the City of Prescott will pay a pro rata share of expenses for the use as described in said Intergovernmental Agreement attached hereto as “Exhibit “A”.

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, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this ____ day of _____, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL
City Clerk

JON M. PALADINI
City Attorney

WHEN RECORDED, RETURN TO:

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

**INTERGOVERNMENTAL AGREEMENT
CITY OF PRESCOTT
TOWN OF PRESCOTT VALLEY
(GLASSFORD HILL PUBLIC SAFETY COMMUNICATION SITE)**

Preamble

This Intergovernmental Agreement (IGA), made and entered into this 9th day of May 2013, by and between the Town of Prescott Valley, a municipal corporation of the State of Arizona (“PRESCOTT VALLEY”), and the City of Prescott, a municipal corporation of the State of Arizona (“PRESCOTT”);

WITNESSETH:

Recitals

WHEREAS, PRESCOTT and PRESCOTT VALLEY have historically worked to preserve the 1,893 acres of State Trust Land located on Glassford Hill for conservation (open space) purposes; but

WHEREAS, the September 11, 2001 terrorist attacks in New York and Washington, D.C. demonstrated the need for greater interoperability between public safety agencies throughout the nation; and

WHEREAS, in 2004 the Arizona Legislature responded by adopting ARS §41-1830.42 which required the Arizona Public Safety Communications Advisory Commission to make recommendations to the Department of Public Safety (“DPS”) regarding a state-of-the-art public safety interoperable communications network for Arizona; and

WHEREAS, a new telecommunications facility on Glassford Hill was identified as the logical progression of DPS sites to enhance interoperability and redundancy; and

WHEREAS, PRESCOTT VALLEY submitted an application to Arizona State Land Department (ASLD) for a 125' x 125' facility and a 20' wide access easement along an existing road for underground electrical service, limited to public safety use, and presented Resolution No. 1539 to the Council approving a letter of support for the new facility, which the Council adopted on October 25, 2007; and

WHEREAS, on July 9, 2009, the Council adopted Resolution No. 1655 granted a Use Permit under Town Code 13-21-110 tied directly to a site plan for a public safety

telecommunications facility on Glassford Hill and giving the Council control over any further development of the site; and

WHEREAS, after considerable negotiation, ASLD offered Commercial Lease Grant No. 03-112920 and Right-of-Way Grant No. 18-112914 for Council approval, limiting use of the property to public safety related telecommunications facilities, which the Council approved on June 11, 2009 (see Exhibits "A" and "B" respectively); and

WHEREAS, PRESCOTT VALLEY has used Arizona Department of Homeland Security (AZDOHS) grant funds to construct the new telecommunications facility (including the tower, power, and equipment) on the portions of Glassford Hill shown in Exhibits "A" and "B" ("GLASSFORD SITE"), and to make the same available to other jurisdictions based on shared expenses for operation and maintenance; and

WHEREAS, PRESCOTT VALLEY and PRESCOTT have determined to enter into a bilateral IGA for shared telecommunications services from the GLASSFORD SITE; and

WHEREAS, PRESCOTT VALLEY and PRESCOTT are each empowered pursuant to ARS §§9-240, 11-952, and §48-805 to enter into IGAs for purposes of carrying out their mutual responsibilities and to jointly exercise any powers common to them;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

SECTION 1. PURPOSE.

The purpose of this IGA is to provide for operation and maintenance of the GLASSFORD SITE, including cost sharing of related expenses.

SECTION 2. IGA TERM.

This IGA shall be for a twenty (20) year term, beginning immediately upon signing and recording of the IGA, and shall remain in full force and effect during said term unless terminated by either party as set forth hereinafter.

SECTION 3. CONSIDERATION.

1. PRESCOTT VALLEY agrees to make available to PRESCOTT the GLASSFORD SITE for the purposes described herein.

2. The parties acknowledge that the State of Arizona holds the GLASSFORD SITE as State Trust Land, and has agreed to make the GLASSFORD SITE available to PRESCOTT VALLEY and other jurisdictions or legal entities (public and private) to place telecommunications equipment thereon in accordance with the provisions of this IGA.

3. PRESCOTT VALLEY may enter into separate agreements with other jurisdictions or legal entities (public and private) and to place their telecommunications equipment on the GLASSFORD SITE in return for that jurisdiction or legal entity agreeing to pay to PRESCOTT VALLEY a pro-rata capital contribution in relation to PRESCOTT VALLEY's costs in exceedance of AZDOHS funds, and a pro-rata share of on-going operations and maintenance costs based on SECTION 4 hereinafter.

4. The PRESCOTT Police Chief and the PRESCOTT VALLEY Chief of Police may cooperatively promulgate and revise from time to time operational procedures consistent with internal policy and law needed to implement this IGA, without further approval of their respective governing boards.

SECTION 4. CONDITIONS.

1. PRESCOTT shall be responsible for the following:
 - a) To secure documentation and pay for all costs associated with any required ASLD subleases attendant with Commercial Lease Grant No. 03-112920 and Right-of-Way Grant No. 18-112914.
 - b) To provide for installation, maintenance, operations, and insurance, at its own expense, of telecommunications equipment on the GLASSFORD SITE owned and used exclusively by PRESCOTT for its own purposes.
 - c) To provide a microwave communication link to the Prescott Regional Communication Center to PRESCOTT VALLEY, at no cost to PRESCOTT VALLEY.
 - d) To provide PRESCOTT VALLEY the opportunity to access to PRESCOTT'S Yavapai Hills communication system if requested under terms and conditions as set forth in a subsequent IGA.
 - e) To provide mutually-agreed-upon cost sharing as identified in Subsection 4 of this IGA including any security arrangements required within the shelter (e.g. fencing, locks, gates, etc.).
 - f) To provide a list of equipment to be installed (e.g. radios, antennae, repeaters, computers, etc.), along with power draw requirements, physical dimensions and specifications, radio frequencies and desired antennae locations. This list shall be updated anytime additional equipment is to be installed, and annually based on a mutual inspection of equipment.
 - g) To coordinate installation of equipment with PRESCOTT VALLEY's telecommunications provider (currently Niles Radio), and pay for all related costs. The Town's telecommunications provider shall review and approve all requests

for new equipment or changes to installed equipment to ensure that all radios and equipment operate within the ability of the solar power equipment and to minimize operating interference with existing telecommunication equipment.

2. PRESCOTT VALLEY shall be responsible for the following:

- a) To provide for maintenance, operations, and insurance, at its own expense, of telecommunications equipment on the GLASSFORD SITE owned and used exclusively by PRESCOTT VALLEY for its own purposes.
- b) To provide for maintenance, operations, and insurance required for tower, shelter, power, and other items associated with the GLASSFORD SITE except where otherwise noted.
- c) To pay costs associated with the physical connection to PRESCOTT'S microwave communication link to the Prescott Regional Communication Center.
- d) To provide mutually-agreed-upon cost sharing as identified in Subsection 4, including any security arrangements required within the shelter.
- e) To calculate PRESCOTT'S facility percentage share based on the equipment list and any updates.

3. Prorated Costs for Exceedance of AZDOHS grant funds if PRESCOTT'S capacity is 7.5 % or below.

- a) PRESCOTT VALLEY expended funds in exceedance of AZDOHS grant funds in order to develop the GLASSFORD SITE.
- b) PRESCOTT VALLEY expends funds annually for a service maintenance agreement associated with power, tower, shelter, and other miscellaneous features associated with the GLASSFORD SITE.
- c) It is expected that other jurisdictions entering into IGAs to use the GLASSFORD SITE shall share in prorated costs for maintenance, operations, taxes, fees, etc. in addition to monies expended by PRESCOTT VALLEY in exceedance of AZDOHS funds.
- d) PRESCOTT'S provision of a microwave communication link to the Prescott Regional Communication Center to PRESCOTT VALLEY provides an economic benefit that offsets PRESCOTT'S AZDOHS exceedance cost.
- e) Once available capacity is filled, other jurisdictions are responsible for all costs for additional tower, shelter, power and potential miscellaneous expenses.

- f) Prorated costs specifically associated with PRESCOTT VALLEY's exceedance funds related to AZDOHS grant are defined as follows:

AZDOHS exceedance costs per 1% of combined available capacity of tower, shelter and power are \$3,100.00.

- g) Initial general maintenance costs per 1% of combined available capacity of tower, shelter and power are \$75.00 per year. Future annual maintenance costs shall be based on percentage of actual maintenance cost.

4. Prorated Costs Associated with IGA between PRESCOTT and PRESCOTT VALLEY for 7.5% available capacity of tower, shelter and maintenance

PRESCOTT requires use of 7.5% of combined available capacity of tower, shelter, and power and agrees to pay an annual general maintenance contribution. General maintenance contribution shall be based upon 7.5% of the total charge for normal maintenance and basic minor repairs or minor upgrades to the tower or shelter and shall not include repairs required for structural integrity of the tower or shelter. If the cost to the City of Prescott exceeds \$1,000.00, the City of Prescott retains the right to prior authorization of that expense before agreeing to payment.

If and when PRESCOTT utilizes more than 8% of the available capacity, the AZDOHS exceedance costs will be applicable, based on utilized capacity above 8% as calculated in Section (3)(f).

SECTION 5. TERMINATION.

Either party may terminate its participation in this IGA by giving not less than one-year's notice to the other parties. In the event of such voluntary termination, the terminating party shall be entitled (and obliged) to remove any of its equipment used exclusively by and for the benefit of said terminating party, at its cost. Any entities with remaining equipment on the GLASSFORD SITE shall have continued rights to access and use said equipment for their telecommunications purposes.

SECTION 6. INDEMNIFICATION.

The parties to this IGA shall indemnify and hold harmless each other and the respective departments, boards, employees, and agents of said parties, for, from and against any and all claims, liabilities, expenses, or third-party actions resulting from the indemnifying party's negligence incurred in connection with the performance of its responsibilities under this IGA. Nothing herein shall be construed as a waiver by any party of the right to bring an action for

contribution against the other or as against any third person or entity.

SECTION 7. NO THIRD-PARTY BENEFICIARIES.

This IGA is intended solely for the benefit of PRESCOTT VALLEY and PRESCOTT, and shall not be construed as a third-party beneficiary contract.

SECTION 8. LEGAL ARIZONA WORKERS ACT COMPLIANCE.

To the extent any parties are government entities required to comply with ARS §41-4401, said parties hereby warrant that they will, at all times during the term of this IGA, comply with all federal immigration laws applicable to the employment of their respective employees, and with the E-Verify requirements of ARS §23-214 (A) (together the “State and Federal Immigration Laws”). Said parties shall further ensure that each subcontractor who performs any work under this IGA likewise complies with the State and Federal Immigration Laws. Said party agrees and warrants that any other party shall have the right at any time to inspect its books and records and the books and records of any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws. Said party agrees that any act by it or its subcontractors that results in the impediment or denial of access to its books and records or that of its subcontractors shall be a material breach of the IGA by that party. Nothing herein shall make any such party or its subcontractors an agent or employee of the other parties. Nothing herein shall act to establish privity of contract between any one party and the subcontractors of other parties. Any breach by such party or any of its subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this IGA subjecting that party to penalties up to and including suspension or termination of this IGA. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the party who breached this provision shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, subject to the non-breaching parties’ approval as soon as possible so as not to delay project completion and at no additional expense to the non-breaching parties. Any additional costs attributable directly or indirectly to remedial action under this section shall be the responsibility of the party who breached this provision. Such party shall advise its subcontractors of the other parties’ rights and the subcontractor’s obligations under this section by including a provision in its contract with each subcontractor in essentially the following form:

“SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR’s employees, and with the requirements of ARS §23-214 (A). SUBCONTRACTOR further agrees that [the parties to the IGA related to the GLASSFORD SITE] may inspect the SUBCONTRACTOR’S books and records to ensure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract.”

SECTION 9 - WORKERS' COMPENSATION COVERAGE

All other employees of any party to this IGA who work under the jurisdiction or control of, or who work within the jurisdictional boundaries of, any other party to this IGA, shall be deemed to be an employee of the party who is his or her primary employer, as provided in ARS §23-1022(D), and the primary employer/party of such an employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each party herein shall comply with provisions of ARS §23-1022 (E) by posting the public notice required.

SECTION 10 - NON-DISCRIMINATION

Any parties to this IGA agree not to discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The parties will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Orders 99-4 and 2000-4.

SECTION 11- A.R.S. §35-391.06 and 35-393.06

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

SECTION 12. TIME IS OF THE ESSENCE.

Time is of the essence in this IGA. It is expected that any parties thereto shall diligently and deliberately carry out their respective performances hereunder.

SECTION 13. AMENDMENTS.

This IGA may be amended at any time by mutual written agreement and approved by the governing entities. No other agreements or understandings shall modify the provisions of this IGA, except that PRESCOTT VALLEY may enter into separate agreements with other jurisdictions or legal entities (public and private) for use of the GLASSFORD SITE for areas outside the subject matter of this IGA.

SECTION 14. NOTICES.

Any notice by any party to the other shall be considered duly served if delivered in person to the office of the authorized representative listed below (or added by separate agreement), or if deposited in the U.S. mail, properly stamped with required postage, and addressed to the authorized representative listed below (or added by separate agreement). Any party may change its representative or the address thereof after giving the others written notice as provided herein. Unless changed, notices shall be sent to the following:

PRESCOTT: City Manager
 City of Prescott
 201 S. Cortez
 Prescott, AZ 86303

Copy to: City Attorney
 City of Prescott
 201 S. Cortez
 Prescott, AZ 86303

PRESCOTT VALLEY: Town Manager
 Town of Prescott Valley
 7501 E. Civic Circle
 Prescott Valley, AZ 86314

Copy to: Town Attorney
 Town of Prescott Valley
 7501 E. Civic Circle
 Prescott Valley, AZ 86314

SECTION 15. GOVERNING LAW.

This IGA shall be interpreted in accordance with the substantive and procedural laws of the State of Arizona and shall be deemed made and entered into in Yavapai County.

SECTION 16. CONFLICT OF INTEREST

Pursuant to ARS Section 38 511, either party may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of either party 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 event of the foregoing, either party further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this contract on behalf of either party from any other party to the contract, arising as a result of this contract

SECTION 17. DISPUTE RESOLUTION.

Any parties hereto expressly covenant and agree that in the event of a dispute arising under this IGA, the matter shall be put to arbitration under the terms and provisions of the Arizona Arbitration Act. In any event, the parties hereto waive any rights to a trial by jury. The parties hereto further expressly covenant and agree that each party shall be responsible for its own attorney's fees incurred in conjunction with any dispute, arbitration or judicial action.

SECTION 18. SAVINGS CLAUSE.

In the event any phrase, clause, sentence, section, article or other portion of this IGA shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this IGA shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

SECTION 19. ENTIRE AGREEMENT.

This IGA constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of City of Prescott this 14th day of May, 2013.

Mayor Date

ATTEST:

Town Clerk

PASSED, APPROVED AND ADOPTED by the Mayor and Council of Town of Prescott Valley this 9th day of May, 2013.

Mayor Date

ATTEST:

Town Clerk

APPROVED AS TO FORM:

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

Joe Paladini Date
City Attorney for Prescott

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

Ivan Legler Date
Town Attorney for Prescott Valley

EXHIBIT "A"

(ASLD Commercial Lease Grant No. 03-112920)

EXHIBIT "B"

(ASLD Right-of-Way Grant No. 18-112914)

**NOTICE:
IMPORTANT STATE CONTRACT OR
AMENDMENT TO CONTRACT ENCLOSED**

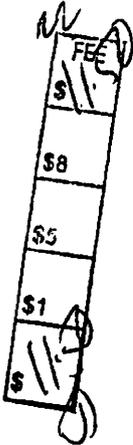
Contract No. 03-112920

- Enclosed is your executed contract with the State Land Department. This is a legal contract which should be kept in a secure place.
- Enclosed is your executed amendment to your contract with the State Land Department. You should attach this document to the original contract.

STATE LAND DEPARTMENT
Title and Contracts Section

#2-Final Insert.05-2003

Exhibit A



COMMERCIAL LEASE NO. 03-112920

ARIZONA STATE LAND DEPARTMENT

Site I.D.: Glassford Hill

THIS COMMERCIAL LEASE is entered into by and between the State of Arizona as "Lessor" by and through the Arizona State Land Department and

TOWN OF PRESCOTT VALLEY

as "Lessee". In consideration of the payment of rent and the performance by the parties of each of the provisions set forth herein, and intending to be legally bound, the parties agree as follows:

ARTICLE 1 PARCEL

1.1 Agreement. Lessor hereby leases to Lessee for the term, at the rent, and in accordance with the provisions set forth herein, the Parcel described in Appendix "A" attached hereto (the "Parcel") for the uses and purposes specified below, subject to the provisions of Article 4 (Use of Premises).

1.2 Use. The Parcel shall be used solely and exclusively for:
A public service radio antennae facility.

1.3 Parcel leased "as is". Lessee makes use of the Parcel "as is" and Lessor makes no express or implied warranties as to the physical condition of the Parcel.

1.4 Definition. "Premises" means the Parcel together with all rights appurtenant thereto expressly granted by this Lease, including Improvements, Removable Improvements, and personal property located on, below or above the Parcel.

1.5 Definition. "Rent" means Annual Rent, base rent, percentage rent or any combination thereof, including any and all payments required of Lessee to Lessor.



ARTICLE 2
TERM

2.1 **Commencement; Expiration.** The term of this Lease commences on April 10, 2009, and ends on April 9, 2019, unless terminated earlier as provided in this Lease.

ARTICLE 3
RENT

3.1 **Annual Rent.** Lessee shall pay rent to Lessor, without notice or demand, on or before the commencement date of this Lease, and each year thereafter, annually in advance, on or before the anniversary of the commencement date, for the use and occupancy of the Parcel during the term of this Lease, without offset or deduction except as provided hereafter. In the event that Lessee appeals the initial rental value set by the Land Commissioner for this Lease, and the Board of Appeals determines a rental value different from the initial rental value set by the Land Commissioner, either party may terminate this Lease within thirty days after the decision of the Board of Appeals is final. Lessee agrees to pay rent for this Lease due and payable as follows:

\$2,400.00 per year, subject to the following:

Lessee understands that this lease is offered for non-commercial public service purposes and should Lessee engage in revenue generating uses, Lessor reserves the right to adjust the rental rate to reflect current commercial communication site lease rates at the time of adjustment. Lessee further understands and agrees that the rent represents the current minimum rent for the allowed use. In the event Lessor adjusts the minimum rent, the adjustment shall be effective upon the subsequent anniversary date of this Lease; however, in no event shall rent be less than the previous Lease Year's rent.

3.2 **Penalty; Interest; Lien.** Lessee shall pay a penalty of five percent (5%) plus interest on any amount of delinquent rent. Interest shall accrue daily on the delinquent amount and on the penalty at the rate set by the Arizona State Treasurer under A.R.S. § 37-241(D) (3) until paid. The delinquent rent, penalty and interest shall be a lien on the Improvements and other property on the Parcel.

ARTICLE 4
USE OF PREMISES

4.1 **Use.** The Premises shall be used solely and exclusively for the purpose described in Article 1.2 (Use). All others are prohibited.



4.2 Co-location. Subject to Lessee (i) receiving technical and construction details of the additional user's proposed installation and Lessee verifying that such proposed installation will not interfere with Lessee's facilities or its operation and (ii) reaching reasonable and mutually acceptable terms and conditions of co-location with the additional user (including, without limitation, reimbursement of pro-rata capital costs, payment of modification costs, if any, payment of subrentals, additional user's agreement to reasonable continuing non-interference and operational rules and regulations), Lessee agrees that co-location of other compatible and similar communication users on the Premises is mandatory where space is available or where facilities can be modified to allow such use, and wherever non-interference to radio frequencies of Lessee and any approved sublessees can be assured. Lessee and any additional user shall comply with subleasing requirements of Article 14.

4.3 Artifacts.

(a) Pursuant to A.R.S. §§ 41-841 and 41-842, Lessee, Lessee's employees, and Lessee's guests shall not excavate or collect any prehistoric or historic archaeological specimens on the Parcel without a permit from the Director of the Arizona State Museum and written approval of Lessor pursuant to the terms of this Lease. Lessee shall immediately report any unpermitted excavation or collection of archaeological specimens on the Parcel to the Arizona State Museum and Lessor.

(b) Pursuant to A.R.S. § 41-844, Lessee shall report to the Director of the Arizona State Museum and Lessor any prehistoric or historic archaeological site, or paleontological site, that is discovered on the Parcel by Lessee, Lessee's employees, or Lessee's guests, and shall, in consultation with the Director of the Arizona State Museum and Lessor, immediately take all reasonable steps to secure the preservation of the discovery.

4.4 Waste. Lessee shall not conduct or permit to be conducted any public or private nuisance on the Premises, nor commit or permit to be committed any waste thereon. Lessee shall report to Lessor and appropriate law enforcement authorities any known or suspected trespass or waste committed on the Premises.

4.5 Native Plants. Lessee shall not move, use, destroy, cut or remove or permit to be moved, used, destroyed, cut or removed any timber, cactus, protected native plants, standing trees or products of the land except that which is necessary for the use of the Parcel, and then only with the prior written approval of Lessor. If the removal or destruction of plants protected under the Arizona Native Plant Law is necessary to the use of the Parcel, Lessee shall also obtain the prior written approval of the Arizona Department of Agriculture.

4.6 Conformity to Law. Lessee shall not use or permit the Premises to be used in any manner that is not in conformity with all applicable Federal, State, County and



municipal laws, rules and regulations, unless Lessor determines and advises Lessee in writing otherwise.

4.7 Governmental Approval. Except as provided in Article 4.5 (Conformity to Law), failure to obtain, or loss of any governmental approval that is prerequisite to the use for which this lease is issued or that is necessary to construct, maintain or operate any facilities on the site in connection with that use, shall constitute a breach of this lease, subject to the provisions of Article 17 (Lessee Defaults and Lessor's Remedies).

4.8 Reservations. Lessor excepts and reserves from the Parcel all oil, gases, geothermal resources, coal, ores, limestone, minerals, fossils, and fertilizers of every name and description that may be found in or upon the Parcel, and Lessor reserves the right to enter upon the Parcel for the purpose of prospecting therefor, or extracting any or all of the commodities therefrom. Lessor reserves the right to issue to other persons, rights to use the Parcel in a manner not inconsistent with the purposes for which this Lease was issued. Lessor further excepts and reserves the right to relinquish to the United States lands needed for irrigation works in connection with a government reclamation project, and to grant or dispose of rights-of-way and sites for canals, reservoirs, dams, power or irrigation plants or works, railroads, tramways, transmission lines or any other purpose or use on or over the Parcel.

4.9 No Water Rights Conferred. This Lease does not confer upon Lessee, its assignees or sublessees, any express or implied rights to the use or removal of surface or ground water from the Parcel. Any use or removal of water from the Parcel shall be pursuant to an independent written agreement with Lessor and no claim thereto shall be made by Lessee. Any water right established shall attach and be appurtenant to the Parcel.

4.10 Groundwater Conditions. Drilling of well(s) is PROHIBITED without prior written permission from Lessor per Article 6.2 (Prior Approval Required).

4.11 Quiet Enjoyment. Lessee shall peaceably and quietly enjoy the Parcel during the term of this Lease so long as Lessee is in compliance with all the provisions of this Lease.

4.12 Inspection. Lessor, its duly authorized agents, employees and representatives shall have the right to enter upon and inspect the Parcel and all Improvements thereon at reasonable time, and in a reasonable manner.

4.13 Surrender. In the event this Lease is not renewed, Lessee shall surrender peaceably the possession of the Parcel upon expiration of the term of this Lease.



ARTICLE 5 **RECORDS**

5.1 **Record Keeping; Inspection.** Lessee shall make and keep for the term of the Lease and either (i) five (5) years thereafter; or (ii) until the conclusion of any dispute concerning this Lease, whichever is later, appropriate books and records concerning the operation of this Lease, including but not limited to Federal and State tax statements, receipts and other records. Lessor, its duly authorized agents, employees and representatives shall have the right at all times during the term of this Lease and for either (i) five (5) years thereafter; or (ii) until the conclusion of any dispute, whichever is later, to make reasonable examination of those books, records or other material in order to obtain information which Lessor deems necessary to administer this Lease.

ARTICLE 6 **CONSTRUCTION AND IMPROVEMENTS**

6.1 **Definitions.** "Improvements" means anything permanent in character which is the result of labor or capital expended by Lessee or his predecessors in interest on State land in its reclamation or development, and which has enhanced the value of the Parcel. "Removable Improvements" means anything not permanent in character which is the result of labor or capital expended by Lessee or his predecessors in interest on State land.

6.2 **Prior Approval Required.** Lessee shall not place or construct or permit to be placed or constructed any Improvement or Removable Improvement on or to the Parcel, other than:

Telecommunication facilities, including: Telecommunications tower and ancillary equipment as allowed by zoning.

All other improvements are prohibited. Prior to applying for a building permit from the local government authority or prior to beginning of the construction if no permit is required, Lessee shall submit a current *Application to Place Improvement ("Application")*. No construction shall begin until Lessor approves in writing the *Application*. The *Application* shall include plans and specification (including but not limited to grading, construction and landscape plans) showing the nature, location, approximate cost, and quality of the proposed Improvements. Drainage, waste water, and sewage plans must be submitted with the *Application*. Plans submitted must be stamped by an Arizona registered engineer or architect. The work shall be completed by an Arizona registered contractor. The location of completed Improvements, as-built construction plans stamped by an Arizona registered engineer or architect, and any other information required by Lessor, shall be submitted to Lessor within thirty (30) days following the completion of construction on Lessor's form known as a *Report of Improvement Placed With Prior Approval*. Any Improvements placed on the Parcel shall conform to existing laws and ordinances applicable to the proposed construction in the jurisdiction where the Premises



are located, unless Lessor determines and advises Lessee in writing that such conformity is not in the best interest of the Trust.

6.3 Utilities; New Construction. Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines of every nature shall be placed and kept underground unless Lessor grants prior written approval otherwise. All buildings and structures shall be of new construction and no buildings or structures shall be moved from any other location onto the Parcel without Lessor's prior written approval.

6.4 Annual Statement. Upon request, but not more frequently than once a year, Lessee shall file with Lessor a sworn statement setting forth the description of any Improvement(s) placed on the Parcel during the prior lease year and the actual cash value of such Improvement(s).

6.5 Ownership; Removal. All Improvements placed upon the Parcel by Lessee shall be the property of the Lessee subject to the terms of this Lease, and shall, unless they become the property of the Lessor, be subject to assessment for taxes in the name of the Lessee, the same as other property of the Lessee. Not later than ninety (90) days following the expiration of this Lease, or, subject to A.R.S. § 37-289.B, sixty (60) days following the cancellation of this Lease, Lessee may remove those Improvements which belong to it, are free of any liens and can be removed without causing injury to the Parcel. At its option, Lessor may waive any of the above listed prerequisites to Lessee's removal of Improvements. Lessee may, with Lessor's prior written approval and within the time allowed for removal, sell its Improvements to the succeeding Lessee.

ARTICLE 7 **REPAIRS AND MAINTENANCE**

7.1 Lessee's Obligations. Lessor shall be under no obligation to maintain, repair, rebuild or replace any Improvement on the Parcel. Lessee shall, subject to the provisions of Article 12 (Damage) and Article 15 (Eminent Domain) and at its own expense, keep and maintain the Premises in good order, condition and repair in conformity with all governmental requirements and if applicable, those of the insurance underwriting board or insurance inspection bureau having jurisdiction over the Premises, unless Lessor determines and advises Lessee in writing that such conformity is not in the best interest of the Trust.

ARTICLE 8 **MECHANICS' LIENS**

8.1 Payment; Indemnity. Lessee shall be responsible for payment of all costs and charges for any work done by or for it on the Premises or in connection with Lessee's occupancy thereof, and Lessee shall keep the Premises free and clear of all mechanics' liens and other liens and encumbrances resulting from work done for Lessee or persons



claiming under it; provided, however, that Lessee may in good faith, and with reasonable diligence, contest or dispute any such lien claims in any appropriate forum so long as this Lease or the Leased Parcel are not actually in danger of levy or sale. Lessee expressly agrees to and shall indemnify and save Lessor harmless against liability, loss, damages, costs, attorney's fees and all other expenses on account of claims of lien or other encumbrances of laborers or material men or others for work performed or materials or supplies furnished to Lessee or persons claiming under it. Further, any contracts between Lessee or sublessees and any contractors and subcontractors shall expressly hold Lessor harmless against any liability arising from such contracts, as described above.

8.2 Notice. Should any such claims of lien or other encumbrances be filed against the Parcel or any action affecting the title to the Parcel be commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

ARTICLE 9
UTILITIES

9.1 Lessee's Obligations. Lessee shall be responsible for and shall hold Lessor harmless from any liability for all charges for water, gas, sewage, electricity, telephone and any other utility service.

ARTICLE 10
TAXES AND ASSESSMENTS

10.1 Lessee's Obligations. In addition to the rent set herein, Lessee shall timely pay and discharge, without deduction or abatement for any cause, all duties, taxes, charges, assessments, impositions and payments, extraordinary as well as ordinary, unforeseen as well as foreseen, of every kind and nature (under or by virtue of any current or subsequently enacted law, ordinance, regulation or order of any public or governmental authority), which during the term are due, imposed upon, charged against, measured by or become a lien on (i) the Premises; (ii) any Leasehold interest; (iii) the interest of any of the parties to this Lease or in proceeds received pursuant to this Lease; and (iv) the rent paid pursuant to this Lease.

ARTICLE 11
INSURANCE AND INDEMNITY

11.1 Indemnity. Except to the extent occurring or existing prior to the Commencement Date hereof, Lessee hereby expressly agrees to indemnify and hold Lessor harmless, or cause Lessor to be indemnified and held harmless, from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including attorney's fees and costs, which may be imposed upon or incurred by



or asserted against Lessor by reason of any: (i) accident, injury or damage to any person or property occurring on or about the Premises or any portion thereof; (ii) use, non-use or condition of the Premises or any portion thereof; or (iii) failure on the part of Lessee to perform or comply with any of the provisions of this Lease; except that none of the foregoing shall apply to Lessor's intentional conduct or active negligence nor to the intentional conduct or active negligence of Lessor's agents, servants, contractors or subcontractors. If any action or proceeding is brought against Lessor by reason of any such occurrence, Lessee, upon Lessor's written request and at Lessee's expense, will resist and defend such action or proceeding, or cause the same to be resisted either by counsel designated by Lessee or where such occurrence is covered by liability insurance, by counsel designated by the insurer.

11.2 Policies. Lessee, at its expense, shall at all times during the Term of this Lease, and any extension thereof, maintain in full force a policy or policies of commercial general liability insurance, including bodily injury, property damage, personal injury and broad form contractual liability coverage, written by one or more duly licensed (or approved non-admitted) insurers in the State of Arizona with an "A.M. Best" rating of not less than A-VII, and each policy shall be written on an occurrence basis, which insure Lessee and Lessor, as additional insured, against liability for injury to persons and property and death of any person or persons occurring in, on or about the Premises, or arising out of Lessee's maintenance, use and occupancy thereof. All commercial general liability and personal property damage policies shall contain a provision that Lessor, named as an additional insured, shall be entitled to recovery under the policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence or wrongdoing of Lessee, its servants, agents and employees or sublessee. Further, the policies shall provide that their coverage is primary over any other insurance coverage available to the Lessor, its servants, agents and employees as relates to the negligence of Lessee. All policies of insurance must contain a provision or endorsement that the company writing the policy shall give to Lessor thirty (30) days notice in writing in advance of any cancellation or lapse.

11.3 Amounts. The insurance as described in Paragraph 11.2 (Policies) herein shall afford protection not less than:

General Aggregate:	\$2,000,000.00
Personal Injury:	\$1,000,000.00
Each Occurrence:	\$1,000,000.00
Blanket Contractual Liability - Written and Oral:	\$1,000,000.00
Fire Damage (Any one fire):	\$500,000.00



in combined single limits and each liability policy or policies shall be written on an occurrence basis; provided, however, that the minimum amount of coverage for the above shall be adjusted upward on Lessor's reasonable request to be made no more frequently than once every two (2) years so that such respective minimum amounts of coverage shall not be less than the amounts then required by statute or generally carried on similarly improved real estate in the County herein described, whichever is greater. If at any time Lessee fails, neglects or refuses to cause such insurance to be provided and maintained, then Lessor may, at its election, procure or renew such insurance and any amounts paid therefore by Lessor shall be an additional amount due at the next date Rent is due and payable.

11.4 Blanket Policy. Notwithstanding anything to the contrary in this Article, Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance maintained by Lessee, provided, however, that the coverage afforded Lessor will not be reduced by reason of the use of such blanket policy of insurance.

11.5 Copies. Lessee shall furnish Lessor with certificates of insurance (ACORD form or equivalent approved by Lessor) and shall at all times during the term of this Lease maintain with Lessor a current certificate of insurance. The State of Arizona, Arizona State Land Department, the lease number, and location description of the subject parcel are to be noted on the certificate of insurance. Lessor reserves the right to view the original of all insurance policies and endorsements required by this Lease at any time at Lessee's headquarters. In addition, if any claim made by Lessor is rejected by Lessee's insurance company, Lessor shall have the right to view the complete, certified copy of the applicable policy at Lessee's area headquarters. Lastly, Lessor shall have the right, at any time, to request a representation letter from Lessee's insurance agent in relation to any particular coverage referenced in this Lease.

ARTICLE 12 DAMAGE

12.1 Lessee's Obligations. If the Parcel or any building or other Improvement located thereon are damaged or destroyed during the term of this Lease, Lessee may arrange at its expense for the repair, restoration and reconstruction of the same substantially to its former condition, but such damage or destruction shall not terminate this Lease or relieve Lessee from its duties and liabilities hereunder.

ARTICLE 13 TRADE FIXTURES AND PERSONAL PROPERTY

13.1 Lessee's Property. Any trade fixtures, signs, store equipment, and other personal property installed in or on the Parcel by Lessee or any sublessee shall remain its property subject to the provisions of this Lease. Lessee shall have the right, provided it is



not then in breach hereunder, at any time to remove any and all of the same, subject to the restrictions of Article 6.5 (Ownership; Removal).

ARTICLE 14

ASSIGNMENT, SUBLETTING AND ENCUMBRANCE

14.1 Prior Approval Required. Lessee shall not assign this Lease or any interest therein, nor shall Lessee sublease any portion or all of the Premises without obtaining Lessor's prior written approval. In no event may this Lease or any interest therein be assigned or sublet unless Lessee is in full compliance with this Lease. Lessor may require additional rent in consideration for approval of any sublease. Lessee shall not enter into a contract of sale, mortgage, lien or other encumbrance affecting this Lease unless a copy is filed with Lessor. Sublease approval shall be contingent upon the proposed sublessee obtaining and complying with the terms of a Special Land Use Permit ("SLUP") for the sublessee's use of the Parcel and Premises. Sublease approval shall terminate automatically upon the expiration, or cancellation for any reason including non-renewal, of the SLUP.

14.2 Consent Required. An assignment of this Lease shall not be made without the consent of all the parties. Lessee may assign all or a portion of the Premises as allowed by the terms of this Article provided Lessee shall assign Lessee's entire interest in that portion of the Premises.

14.3 Purpose. There shall be no assignment or sublease made except to an assignee or sublessee that will use the Premises for the purpose(s) described herein.

14.4 Lessee Primarily Responsible. Notwithstanding any sublease, Lessee shall remain responsible to Lessor for the performance of the provisions of this Lease.

14.5 Entire Interest. The assignment of Lessee's entire interest in a portion of the Premises shall not relieve Lessee of its responsibility to Lessor for the performance of the provisions of this Lease as it relates to that portion of the Premises not transferred by the assignment.

ARTICLE 15

EMINENT DOMAIN

15.1 Expiration. If at any time during the duration of this Lease the whole or any part of the Parcel is taken by direct sale, lease, institutional taking under A.R.S. § 37-441 or acquisition in any manner through condemnation proceedings or otherwise, for any quasi-public or public purpose by any person, private or public corporation, or any governmental agency having authority to exercise the power of eminent domain or condemnation pursuant to any law, general, special or otherwise, this Lease shall expire on the date when the Parcel is taken or acquired except as otherwise provided.



15.2 Partial Taking; Damages; Rent. In the event of a partial taking and if Lessor determines that it is in the best interest of the Trust, the Lease may continue in full force and effect for that portion of the Parcel not taken. As against Lessor, Lessee and any sublessee shall not have a compensable right or interest in the real property being taken and shall have no compensable right or interest in severance damages which may accrue to the remainder of the Parcel not taken, nor shall Lessee or any sublessee have any compensable right or interest in the remaining term of this Leasehold or any renewal. Rent shall be apportioned as of the day of such taking. Lessor shall be entitled to and shall receive any awards, including severance damage to remaining state lands that may be made for any taking concerning the Parcel.

15.3 Lessee's Rights to Award. In the event of any taking, Lessee shall have the right to receive any and all awards or payments made for any building or other Improvements on the lands fully placed on the Parcel by Lessee with Lessor's prior written approval.

ARTICLE 16
BANKRUPTCY AND INSOLVENCY

16.1 Lessor's Rights. If (i) all or substantially all of Lessee's assets are placed in the hands of a receiver, and such receivership continues for a period of thirty (30) days; or (ii) should Lessee make an assignment for the benefit of creditors; or (iii) should Lessee institute any proceedings under any present or future provisions of the Bankruptcy Code or under a similar law wherein Lessee seeks to be adjudicated as bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization; or (iv) should any involuntary proceedings be filed against Lessee under such bankruptcy laws and not be dismissed or otherwise removed within ninety (90) days after its filing, then this Lease shall not become an asset in any of such proceedings or assignment. In addition to all other rights and remedies of Lessor provided hereunder or by law, Lessor shall have the right to declare the term of this Lease at an end and to re-enter the Premises, take possession and remove all persons, and Lessee shall have no further claim on the Parcel under this Lease.

ARTICLE 17
LESSEE DEFAULTS AND LESSOR'S REMEDIES

17.1 Conditions. All of the provisions of this Lease are conditions. Breach of any one of these conditions by Lessee or any sublessee shall be sufficient grounds for cancellation of this Lease by Lessor, subject to the other provisions of this Article.

17.2 Cancellation. If Lessee fails to keep any provision of this Lease, Lessor may cancel this Lease and declare Lessee's interest forfeited, and if it appears that this Lease was procured through fraud, deceit or willful misrepresentation, the Improvements shall be forfeited to the State. Lessor shall be forever wholly absolved from liability for damages



which might result to Lessee or any sublessee on account of this Lease having been canceled or forfeited prior to the expiration of the full term, subject to the other provisions of this Article.

17.3 Breach. In the event of a breach of this Lease which is not curable or remains uncured after thirty (30) days notice by Lessor of failure to pay rent, taxes or other assessments, and forty-five (45) days from the receipt of the notice to cure any other curable default, to Lessee of the breach, Lessor may, in addition to all other remedies which may be available to Lessor in law or in equity, (i) enter and repossess the Premises or any part thereof, expelling and removing therefrom all persons and property (either holding such property pursuant to Lessor's landlord's lien, or storing it at Lessee's risk and expense, or otherwise disposing thereof), as to which Lessor shall not be liable to Lessee or any sublessee for any claim for damage or loss which may thereby occur, and (ii) either (a) terminate this Lease, holding Lessee liable for damages for its breach or (b) treat the Lease as having been breached anticipatorily and the Premises abandoned by Lessee without thereby altering Lessee's continuing obligations for the payment of rent and the performance of those Lease provisions to be performed by Lessee during the Lease term.

17.4 Liquidated Damages. If Lessor terminates this Lease for Lessee's breach, Lessee shall be liable to Lessor, as liquidated damages and not as a penalty, an amount, which at the time of such termination, represents the amount equal to the rent due for the two (2) subsequent lease years or the remaining term of the Lease, whichever is less. The liquidated damages will compensate Lessor for the loss of rent from the parcel due to the default and costs incurred to re-lease the Premises.

17.5 Expenses. Lessee shall pay to Lessor upon demand all costs, expenses and fees, including attorneys' fees (or market value of attorney's fees) which Lessor may incur in connection with the exercise of any remedies on account of or in connection with any breach by Lessee, plus interest on all amounts due from Lessee to Lessor at the rate set by the Arizona State Treasurer, according to law.

17.6 Remedies not Exclusive. The remedies herein granted to Lessor shall not be exclusive or mutually exclusive and Lessor shall have such other additional remedies against Lessee as may be permitted in law or in equity at any time; provided, however, Lessor shall not be relieved of any obligation imposed by law for mitigation of damages, nor shall Lessor recover any duplicative damages, and Lessee shall be reimbursed by any subsequent Lessee or purchaser of the Premises for any amount by which the value of Lessee's Improvements exceed Lessor's damages, notwithstanding any other provision in this Lease to the contrary. In particular, any exercise of a right of termination by Lessor shall not be construed to end or discharge any right of Lessor to damages on account of Lessee's breach.

17.7 No Waiver. No waiver of breach of any provision of this Lease shall be construed as a waiver of succeeding breach of the same or other provisions.



ARTICLE 18 **HOLDING OVER**

18.1 Prohibition. There shall not be any holding over by Lessee or any assignee or sublessee, upon the expiration or cancellation of this Lease without Lessor's prior written consent. If there be any holding over by Lessee or any assignee or sublessee, the holding over shall give rise to a tenancy at the sufferance of Lessor upon the same terms and conditions as are provided for herein with a rent for the holdover period commensurate with, but in no event less than, the previous year's rent.

18.2 Renewal Application. An application to renew this Lease, properly and timely filed, may give rise to a period of interim occupancy if the term of this Lease expires prior to execution of a new lease or the denial of the application to renew.

18.3 Interim Occupancy Conditions. Should interim occupancy occur, on or before the expiration of this Lease, and annually thereafter, Lessee shall pay rent established by Lessor (subject to A.R.S. § 37-215(b)). Unless advised in writing by Lessor to the contrary, all other terms and conditions of this Lease shall remain in full force and effect.

ARTICLE 19 **ENCUMBRANCES**

19.1 Rights. Lessee, and its successors and assigns, shall have the unrestricted right to mortgage and pledge this Lease, subject, however, to the limitations of this Section. Any such mortgage/deed of trust or pledge shall be subject and subordinate to the rights of Lessor, and nothing in this Lease shall be construed to impose upon Lessor any obligation or liability with respect to the payment of any indebtedness to any holder of a mortgage/deed of trust or pledge of this Lease.

19.2 Term. The term of any leasehold mortgage or deed of trust shall not be longer than the remaining lease term.

19.3 Registration. No holder of a mortgage/deed of trust on this Lease shall have the rights or benefits provided by this Article nor shall the provisions of this Article be binding upon Lessor, unless and until the name and address of the holder of the mortgage/deed of trust is registered with Lessor.

19.4 Of Record. If Lessee, or Lessee's successors or assigns, shall mortgage this Lease in compliance with provisions of this Article, then so long as any such mortgage/deed of trust of record remains unsatisfied, the following provisions shall apply:



(a) Lessor, upon giving Lessee any notice of default, or any other notice under the provisions of or with respect to this Lease, shall also give a copy of such notice to the registered holder of a mortgage/deed of trust on this Lease.

(b) Any holder of such mortgage/deed of trust, in case Lessee shall have a monetary default hereunder, shall, within thirty (30) days from the receipt of notice have the right to cure such default, or cause the same to be cured, and Lessor shall accept such performance by or at the instance of such holder as if the same had been made by Lessee, all as provided in A.R.S. § 37-289 (A)(2).

(c) Nothing herein contained shall preclude Lessor, subject to the provisions of this Article, from exercising any rights or remedies under this Lease with respect to any other default by Lessee during the pendency of any foreclosure or trustee's sale proceedings.

(d) Any holder of such mortgage/deed of trust, in case Lessee shall have a default other than a default involving failure to pay rent, taxes or other assessments, shall have forty-five (45) days from the receipt of notice to cure any curable default.

(e) No failure on the part of Lessor to give the required notice of default to the holder of a mortgage/deed of trust shall be deemed a waiver of Lessor's continuing right to give notice of the default.

(f) Upon foreclosure of the mortgage or deed of trust, Lessor shall assign this Lease to the holder of the mortgage or deed of trust if all taxes rent and assessment payments are current. Nothing herein contained shall be deemed to obligate Lessor to deliver physical possession of the demised Premises to the assignee under any assignment entered into pursuant to this paragraph.

(g) No agreement between Lessor and Lessee modifying, canceling or surrendering this Lease shall be effective without the prior written consent of the registered mortgagees and lienholders.

(h) No union of the interest of Lessor and Lessee shall result in a merger of this Lease in the fee interest.

(i) If a default is not cured within the applicable time period, Lessor may issue an order canceling the Lease. If a cancellation order is issued, the order shall not become final until any foreclosure action by a mortgagee or other lienholder, registered with Lessor pursuant to this Article, is finally resolved, if the mortgagee or lienholder does both of the following:

(1) Within thirty (30) days of the date of issuance of a Notice of Default, files written notice with Lessor of its intent to proceed with a foreclosure action, and;



(2) Within one hundred twenty (120) days of the date of issuance of a Notice of Default, has commenced either a foreclosure action in court or a nonjudicial foreclosure of a deed of trust, and has provided Lessor with a certified copy of the complaint or other document that officially commences the foreclosure process, and thereafter prosecutes the foreclosure with reasonable diligence.

19.5 Casualty Loss. A standard Mortgage Clause naming each leasehold mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder on condition that the insurance proceeds are to be applied in the manner that is not in derogation of Lessor's rights; except that the leasehold mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Lessee (but not such proceeds, if any, payable jointly to Lessor and Lessee) pursuant to the provisions of this Lease.

ARTICLE 20

ENVIRONMENTAL MATTERS

20.1 Definition of Regulated Substances and Environmental Laws. For purposes of this Lease, the term "Environmental Laws" shall include but not be limited to any relevant federal, state or local environmental laws, and the regulations, rules and ordinances, relating to environmental matters, and publications promulgated pursuant to the local, state, and federal laws and any rules or regulations relating to environmental matters. For the purpose of this Lease, the term "Regulated Substances" shall include but not be limited to substances defined as "regulated substance," "solid waste," "hazardous waste," "hazardous materials," "hazardous substances," "toxic materials," "toxic substances," "inert materials," "pollutants," "toxic pollutants," "herbicides," "fungicides," "rodenticides," "insecticides," "contaminants," "pesticides," "asbestos," "environmental nuisance," "criminal littering," or "petroleum products" as defined in Environmental Laws.

20.2 Compliance with Environmental Laws. Lessee shall strictly comply with all Environmental Laws, including, without limitation, water quality, air quality; and handling, transportation, storage, treatment, or disposal of any Regulated Substance on, under, or from the Premises. Without limiting the foregoing, compliance includes that Lessee shall: (1) comply with all reporting obligations imposed under Environmental Laws; (2) obtain and maintain all permits required by Environmental Laws, and provide a copy to Lessor within ten (10) business days of receipt of the lease; (3) provide copies of all documentation required by Environmental Laws to Lessor within ten (10) business days of Lessee's submittal and/or receipt of the documentation; (4) during the term of Lease, provide copies of all information it receives or obtains regarding any and all environmental matters relating to the Premises, including but not limited to environmental audits relating to the Premises regardless of the reason for which the information was obtained or whether or not the information was required by Environmental Laws; (5) prevent treatment, storage, disposal, handling or use of any Regulated Substances by Lessee and its agents,



employees and contractors within the Premises without prior written authorization from Lessor. Lessee shall use commercially reasonable efforts to preclude use of Lessee's portion of the Premises by unauthorized persons.

20.3 Designated Compliance Officer. Lessee at all times shall employ or designate an existing employee (the "Designated Compliance Officer") who is responsible for knowing all Environmental Laws affecting Lessee and Lessee's business and monitoring Lessee's continued compliance with applicable Environmental Laws. Upon request by Lessor, Lessee shall make the Designated Compliance Officer available to discuss Lessee's compliance, answer any questions, and provide such reports and confirming information as Lessor may reasonably request.

20.4 Audit. At any time, Lessor may request Lessee to provide an environmental audit of the Premises performed by an Arizona registered professional engineer or an Arizona registered geologist. Lessee shall pay the entire cost of the audit.

20.5 Environmental Assessment. At any time, during the term of the Lease, Lessor may require Lessee to obtain one Phase I environmental assessment of the Premises performed by an Arizona registered professional engineer or an Arizona registered geologist. If based upon the Phase I environmental assessment or its own independent investigation, Lessor identifies any possible violation of Environmental Laws or the terms of this Lease by Lessee or its agents, employees or contractors, Lessor may require Lessee to conduct additional environmental assessments as Lessor deems appropriate for the purpose of ensuring that the Premises are in compliance with Environmental Laws. The Phase I assessment, or any other assessment required by Lessor, shall be obtained for the benefit of both Lessee and Lessor. A copy of the Phase I report shall be provided both to Lessee and Lessor. Lessor, in its sole discretion, shall have the right to require Lessee to perform additional assessments of any damage to the Premises arising out of any violations of Environmental Laws by Lessee or its agents, employees or contractors. If Lessee fails to obtain any assessments required by Lessor, Lessee shall pay the entire costs of any and all assessments required by Lessor, notwithstanding the expiration or termination of the Lease.

20.6 Indemnity for Environmental Damage. Lessee shall defend, indemnify and hold Lessor harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs and fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, or reserved against Lessor in any way relating to or arising out of any non-compliance with any Environmental Laws by Lessee or its agents, employees or contractors, the existence or presence of any Regulated Substance, on, under, or from the Premises due to the acts or omissions of Lessee or its agents, employees or contractors, and any claims or damages in any way relating to or arising out of the removal, treatment,



storage, disposition, mitigation, cleanup or remedying of any Regulated Substance on, under, or from the Premises by Lessee, its agents, contractors, or subcontractors.

20.7 Scope of Indemnity. This indemnity shall survive the expiration or termination of this Lease and/or transfer of all or any portion of the Premises and shall be governed by the laws of the State of Arizona.

20.8 Lessee's Participation in the Defense. In the event any action or claim is brought or asserted against Lessor which is or may be covered by this indemnity, Lessee shall fully participate, at Lessee's expense, in the defense of the action or claim including but not limited to the following: (1) the conduct of any required cleanup, removal or remedial actions and/or negotiations, (2) the conduct of any proceedings, hearings, and/or litigation, and (3) the negotiation and finalization of any agreement or settlement. For indemnified matters all final decisions concerning the defense shall be reasonably approved by Lessor. Lessee's obligations to participate in the defense under this Section shall survive the expiration or termination of the Lease.

20.9 Restoration. Prior to the termination of the Lease, Lessee shall restore the Premises by removing any and all Regulated Substances deposited by Lessee or its agents, employees or contractors. In addition, the restoration shall include, but not be limited to, removal of all waste and debris deposited by Lessee. If the Premises or any portions thereof are damaged or destroyed from the existence or presence of any Regulated Substance due to the acts or omissions of Lessee or its agents, employees or contractors, or if the Premises or any portions thereof are damaged or destroyed in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance due to the acts or omissions of Lessee or its agents, employees or contractors, Lessee shall arrange, at its expense, for the repair, removal, remediation, restoration, and reconstruction to the Premises to the original condition existing on the date that Lessee first occupied the Parcel, to the satisfaction of Lessor. In any event, any damage, destruction, or restoration by Lessee shall not relieve Lessee from its obligations and liabilities under this Lease. Lessee's restoration obligations under this Section shall survive the expiration or the termination of the Lease.

ARTICLE 21
MISCELLANEOUS

21.1 Reservation. This Lease grants Lessee only those rights expressly granted herein and Lessor retains and reserves all other rights in the Premises.

21.2 Binding Effect. Each provision of this Lease shall extend to, be binding on and inure to the benefit of not only Lessee but each of its respective heirs, administrators, executors, successors and assigns. When reference is made in this Lease to either "Lessor" or "Lessee", the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of the parties. This Lease shall be



binding upon all subsequent owners of the Premises, and of any interest or estate therein or lien or encumbrance thereon.

21.3 No Partnership. The relationship of the parties is that of Lessor and Lessee, and it is expressly understood and agreed that Lessor does not in any way or for any purpose become a partner of Lessee or a joint venturer with Lessee in the conduct of Lessee's business or otherwise, and that the provisions of any agreement between Lessor and Lessee relating to rent are made solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

21.4 Quitclaim Upon Termination. After the expiration or termination of this Lease, Lessee shall execute, acknowledge and deliver to Lessor within thirty (30) days after written demand from Lessor to Lessee, any document requested by Lessor quitclaiming any right, title or interest in the Leasehold to Lessor or other document required by any reputable title company to remove the cloud of this Lease from the Premises.

21.5 Title. The titles to the Articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of the Lease.

21.6 Fraud or Misrepresentation. If during the term of this Lease it appears that there has been fraud or collusion on the part of Lessee to obtain or hold this Lease at a rent less than its value, or through Lessee's fraud or collusion a former Lessee of the Premises has been allowed to escape payment of the rent due for former Lessee's use of the Premises, Lessor may cancel this Lease and the Parcel shall immediately revert to Lessor. If during the term of this Lease it appears that Lessee has misrepresented, by implication, willful concealment or otherwise, (i) the value of the Improvements placed on the Parcel by a former Lessee or any other person; or (ii) Lessee not being the owner of the Improvements placed on the Parcel by a former Lessee or any other person at the commencement of the Lease term, Lessor may cancel this Lease and the Parcel shall immediately revert to Lessor.

21.7 Notices. Any notice to be given or other document to be delivered to Lessee or Lessor hereunder shall be in writing and delivered to Lessee or Lessor by depositing same in the United States Mail, with prepaid postage thereon fully prepaid and addressed as follows:

TO Lessor: Arizona State Land Department
1616 West Adams Street - First Floor
Phoenix, Arizona 85007

TO Lessee: Address of Record

Lessee must notify Lessor by written notice of any change in address within thirty (30) days. Lessor may, by written notice to Lessee, designate a different address.



21.8 Lessor's Title. If it is determined that Lessor has failed to receive title to any of the Parcel, the Lease is null and void insofar as it relates to that portion of the Parcel to which Lessor has failed to receive title. Lessor shall not be liable to Lessee or any assignee or sublessee for any damages that result from Lessor's failure to receive title.

21.9 Lessor's Lien. Lessee grants to Lessor a lien superior to all others in Lessee's interest in Improvements and valuable materials located on the Parcel. Lessor has the right to recover any rent arrearage and outstanding liabilities of Lessee from Lessee's interest in the Improvements or valuable materials.

21.10 No Promise to Sell. Lessee acknowledges that it has not been induced to enter into this Lease by any promise from Lessor or any of its agents, servants or employees that the Parcel will be offered for sale at any time.

21.11 Cancellation. Pursuant to A.R.S. § 38-511 this Lease may be canceled within three years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of 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.

21.12 Applicable Law. This Lease is subject to all current and subsequently enacted rules, regulations and laws applicable to State lands and to the rights and obligations of Lessors and Lessees. No provision of this Lease shall create any vested right in Lessee except as otherwise specifically provided in this Lease.

21.13 Amendment. This Lease may be amended only in writing and upon agreement by all parties.

21.14 Attorneys' Fees. In any action arising out of this Lease, the prevailing party is entitled to recover reasonable attorneys' fees and costs in addition to the amount of any judgment, costs and other expenses as determined by the court. In the case of Lessor, reasonable attorney's fees shall be calculated at the reasonable market value for such services when rendered by private counsel, notwithstanding that it is represented by the Arizona Attorney General's Office or other salaried counsel.

21.15 Execution. This document is submitted for examination and shall have no binding effect on the parties unless and until executed by Lessor (after execution by Lessee), and a fully executed copy is delivered to Lessee. Upon the execution hereof, at the request of Lessee, the parties also shall execute, so that Lessee may cause it to be recorded, a short form of this Lease.



21.16 Arbitration. In the event of a dispute between the parties to this Lease, it is agreed to use arbitration to resolve the dispute but only to the extent required by A.R.S. § 12-1518; and in no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department.

21.17 Survey. At the request of Lessor, Lessee shall submit a current survey prepared by an Arizona registered land surveyor of the Parcel. The survey shall be prepared to Lessors satisfaction and the cost of the survey shall be borne by Lessee.

21.18 Mutual Cancellation. This Lease may be terminated as to all or part of the parcel prior to the expiration date upon written agreement signed by both Lessor and Lessee. The agreement shall specify the terms and conditions of such a cancellation.

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

21.20 Non-discrimination. The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 99-4.



STATE OF ARIZONA LAND DEPARTMENT
1616 W. ADAMS
PHOENIX, AZ 85007

RUN DATE 14-APR-2009
RUN TIME: 11:35:13
APPENDIX A
PAGE: 001

KE-LEASE#: 003-112920-00-000 APPTYPE: NEW
AMENDMENT#: 0

LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
14.0-N-01.0-W-17-13-031-1014	M&B IN SE	0.00	0.430
TOTALS:		0.00	0.430



IN WITNESS HEREOF, the parties hereto have signed this Lease effective the day and year set forth below.

STATE OF ARIZONA, LESSOR
Arizona State Land Commissioner

By: Katalin Gordon 6-17-2009
Date



TOWN OF PRESCOTT VALLEY

Lessee

[Signature] 6-12-09
Authorized Signature Date

Mayor
Title

7501 E. Civic Circle
Address

Prescott Valley AZ 86314
City State Zip

TOWN OF PRESCOTT VALLEY
FOLDER

Ana Wayman-Trujillo, Recorder
OFFICIAL RECORDS OF YAVAPAI COUNTY
TOWN OF PRESCOTT VALLEY MISC

B-4681 P-470
07/14/2009 03:17P
8.50 4328169



B-4681 P-470
Page: 1 of 16
MISC 4328169

FEE
\$7.50
\$8
\$5
\$1
8.50

MB

STATE LAND DEPARTMENT STATE OF ARIZONA

Right of Way

R/W No. 18-112914

THIS RIGHT OF WAY ("Right of Way") is entered into by and between the State of Arizona (as "Grantor") by and through the Arizona State Land Department and

TOWN OF PRESCOTT VALLEY

("Grantee"). In consideration of payment and performance by the parties of each of the provisions set forth herein, the parties agree as follows:

EXTENT OF DOCUMENT

"Additional Conditions", "Exhibits", and "Appendixes" are an integral part of this document. In case of a conflict between the printed boiler document and the additional conditions, exhibits, or appendixes, the applicable additional condition, exhibit, or appendix shall be considered the governing document and supersede the printed boiler, but only to the extent necessary to implement the additional condition, exhibit, or appendix, and only if the additional condition, exhibit, or appendix does not conflict with governing state or federal law.

ARTICLE 1 SUBJECT LAND

1.1 Grantor grants to Grantee a Right of Way on, over, through, and across the State lands described in Appendix A attached hereto ("Subject Land").

1.2 Grantee makes use of the Subject Land "as is", and Grantor makes no express or implied warranties as to the physical condition of the Subject Land.

ARTICLE 2 TERM

2.1 The term of this Right of Way commences on April 9, 2009 ("Commencement Date"), and expires on April 8, 2019 ("Expiration Date"), unless sooner canceled or terminated as provided herein or as provided by law.



ARTICLE 3
RENT

3.1 Rental is due in advance for the term of this Right of Way document.

3.2 If the Grantee should fail to pay rental when due, or fail to keep the covenants and agreements herein set forth, the Commissioner, at his option, may cancel said Right of Way or declare the same forfeited in the manner provided by law.

ARTICLE 4
PURPOSE AND USE OF SUBJECT LAND

4.1 The purpose of this Right of Way is the location, construction, operation, and maintenance of:

A service road.

4.2 No material may be removed by Grantee or its contractors without the written approval of the Grantor.

4.3 Grantee shall not exclude from use the State of Arizona, its lessees, or grantees, or the general public the right of ingress and egress over this Right of Way.

4.4 Grantee shall acquire required permits prior to construction, and adhere to all applicable rules, regulations, ordinances, and building codes as promulgated by the local jurisdiction and any applicable State or Federal agencies.

4.5 All use of State land outside the Right of Way must be applied for and authorized in accordance with applicable law.

4.6 Grantee shall not sublet or assign this Right of Way or any portion thereof without the written consent of the Grantor.

4.7 The Grantor retains ownership of the Subject Land. The use of this Right of Way is to be non-exclusive. This Right of Way is sold subject to existing reservations, easements, or rights of way heretofore legally obtained and now in full force and effect.

4.8 When necessary for Grantee's reasonable use of this Right of Way for the purposes for which the grant is made, it shall be deemed to include the rights in, upon, over, and across the described Subject Land to erect, construct, reconstruct, replace, repair, and maintain the facilities authorized by this Right of Way.

4.9 Grantee shall have the right to erect, maintain, and use gates in all fences under the control of the Grantor which now cross or shall hereafter cross said Right of Way, and to 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 right herein provided.



4.10 Grantee shall not fence any portion of this Right of Way unless specifically authorized in the attached additional conditions without prior written consent of Grantor, nor shall Grantee exclude from the use of the surface thereof the State of Arizona or its lessees or grantees as reserved in Paragraph 10.1.

ARTICLE 5
CONFORMITY TO LAW

5.1 This Right of Way is subject to applicable laws and covenants relating to State lands.

ARTICLE 6
CANCELLATION, TERMINATION AND ABANDONMENT

6.1 This Right of Way is subject to cancellation pursuant to A.R.S. § 38-511.

6.2 If at any time the Right of Way ceases to be used for the purpose for which it was granted, it shall become void, and the right to use the Subject Land and all the rights of Grantee hereunder shall revert to the Grantor.

6.3 Upon revocation or termination of the Right of Way, the Grantee shall remove all equipment or facilities, and so far as is reasonably possible, restore and/or rehabilitate the Subject Land to its original condition, and to the satisfaction of the Grantor.

ARTICLE 7
ENVIRONMENTAL INDEMNITY

7.1 Grantee shall protect, defend, indemnify, and hold harmless the Grantor from and against all liabilities, costs, charges, and expenses, including attorneys' fees and court costs arising out of (or related to) the presence of (or existence of) any substance regulated under any applicable federal, state, or local environmental laws, regulations, ordinances, or amendments thereto because of: (a) any substance that came to be located on the Right of Way due to Grantee's use or occupancy of the lands by the Grantee before or after the issuance of the Right of Way; or (b) any release, threatened release, or escape of any substance in, on, under, or from the Right of Way that is caused, in whole or in part, by any conduct, actions, or negligence of the Grantee, regardless of when such substance came to be located on the Right of Way.

7.2 For the purposes of this Right of Way the term "regulated substances" shall include substances defined as "regulated substances", "hazardous waste", "hazardous substances", "hazardous materials", "toxic substances", or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation, and Liability Act; the Hazardous Materials Transportation Act; the Toxic Substance Control



Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the relevant local and state environmental laws, and the regulations, rules and ordinances adopted, and publications promulgated pursuant to the local, state, and federal laws. This indemnification shall include, without limitation, claims, or damages arising out of any violations of applicable environmental laws, regulations, ordinances, or subdivisions thereof, regardless of any real or alleged strict liability on the part of Grantor. This environmental indemnity shall survive the expiration or termination of this Right of Way and/or any transfer of all or any portion of the Subject Land and shall be governed by the laws of the State of Arizona.

7.3 In the event any such action or claim is brought or asserted against the Grantor, the Grantee shall have the right, subject to the right of the Grantor, to make all final decisions with respect to Grantor's liability for claims or damages, (i) to participate with Grantor in the conduct of any further required cleanup, removal, or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the Subject Land and (ii) to participate with the Grantor in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

ARTICLE 8
INSURANCE REQUIREMENTS

8.1 Grantee shall maintain in full force a commercial general liability insurance policy during the Right of Way term affording protection to the limit of not less than one million dollars. This policy shall contain a provision that Grantor, named as an additional insured, shall be entitled to recovery for any loss occasioned to it, its agents, and employees. Further, the policy shall provide that Grantee's coverage is primary over any other insurance coverage available to the Grantor, its agents, and employees. Insurance policies must contain a provision that the Grantor shall receive an advance 30 day written notice of any cancellation or reduction in coverage.

ARTICLE 9
ENVIRONMENTAL MATTERS

9.1 Grantee shall strictly comply with Environmental Laws relating but not limited to hazardous and toxic materials, wastes, and pollutants. Compliance means the Grantee shall act in accordance with the necessary reporting obligations, obtain and maintain all permits required, and provide copies of all documents as required by Environmental Laws. For purposes of this Right of Way the term "Environmental Law" shall include but not be limited to any relevant federal, state, or local laws, and applicable regulations, rules and ordinances, and publications promulgated pursuant thereto, including any future modifications or amendments relating to environmental matters.



ARTICLE 10
RESERVATIONS; RELINQUISHMENTS

10.1 Grantor reserves the right to grant other rights in, upon, over, and across the described Subject Land for any purpose whatsoever not inconsistent or incompatible with the use allowed by this indenture, and the Grantee agrees not to exclude the Grantor or its lessees or grantees from the use of the Subject Land herein described.

10.2 Grantor reserves all natural resources, timber, and minerals (including oil or gas) in or upon the described Subject Land, and the right to grant leases, permits, easements, and/or rights of way to extract such resources as provided by law and in a manner not inconsistent or incompatible with Grantee rights hereunder. Where inconsistent or incompatible uses exist, the Grantor will require the applicant therefor to indemnify Grantee for loss it might suffer by reason of such use.

10.3 Grantor reserves the right to relinquish to the United States pursuant to the U.S. Act of August 30, 1890, land needed for irrigation works in connection with a government reclamation project.

ARTICLE 11
LOCATION, CONSTRUCTION AND MAINTENANCE

11.1 Grantee shall ensure full compliance with the terms and conditions of this Right of Way by its agents, employees, and contractors (including sub-contractors of any tier), and the employees of each of them and shall include the terms and conditions in all contracts and sub-contracts which are entered into by any of them.

11.2 Failure or refusal of Grantee's agents, employees, contractors, sub-contractors, or their employees to comply with these terms and conditions shall be deemed to be the failure or refusal of Grantee.

ARTICLE 12
NATIVE PLANTS AND ARCHAEOLOGICAL RESOURCES

12.1 If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this Right of Way, the Grantee hereunder must obtain the written permission of the Grantor and the Arizona Department of Agriculture prior to removal of those plants.

12.2 Grantee shall promptly notify the Commissioner of the amount of flora, if any, which will be cut, removed, or destroyed in the construction and maintenance of said Right of Way and shall pay the Grantor such sum of money as the Commissioner may determine to be the full value of the flora to be so cut, removed, or destroyed. Grantee shall notify the Grantor and the Arizona Department of Agriculture 30 days prior to any destruction or removal of native plants to allow salvage of those plants where possible.



12.3 Prior to surface disturbance, the Grantee hereof shall provide evidence of archaeological clearance to the Department. Archaeological surveys and site mitigation must be conducted in accordance with rules and regulations promulgated by the Director, Arizona State Museum. In the event additional archaeological resources are detected by Grantee after receipt of archaeological clearance, all work shall cease and notification shall be given to the Director, Arizona State Museum, and Grantor.

ARTICLE 13
GRANTEE SHALL PROTECT AND RESTORE THE SUBJECT LAND

13.1 Grantee shall be required, upon completion of Right of Way construction, to make such rehabilitation measures on the State lands, including but not limited to restoration of the surface, revegetation, and fencing as determined necessary by the Grantor.

13.2 Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to all land values including but not limited to vegetation, drainage channels, and streambanks. Construction methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Grantee shall take such other soil and resource conservation and protection measures on the Subject Land under grant as determined necessary by the Grantor.

13.3 Costs incurred by the Grantee in complying with restoration and rehabilitation requirements, as determined by the Department, on State lands shall be borne by the Grantee.

13.4 Grantee shall conduct its operations on the Subject Land in such a manner as is consistent with good environmental practices. Grantee shall exert reasonable efforts to avoid damage of protected flora, and restore the surface to its condition prior to the occupancy thereof by Grantee.

ARTICLE 14
MISCELLANEOUS

14.1 The described Subject Land shall be used only for the purpose stated in Paragraph 4.1, and as may be further detailed elsewhere.

14.2 This Document is submitted for examination and shall have no binding effect on the parties unless and until executed by the Grantor (after execution by the Grantee), and until a fully executed copy is delivered to the Grantee.

14.3 In the event of a dispute between the parties to this Right of Way, it is agreed to use arbitration to resolve the dispute, but only to the extent required by A.R.S. § 12-1518. In no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department.



14.4 The Grantor does not represent or warrant that access exists over other State lands which intervene respectively between the above Right of Way and the nearest public roadway.

14.5 Grantee agrees to indemnify, hold, and save Grantor harmless against all loss, damage, liability, expense, costs, and charges incident to or resulting in any way from any injuries to person or damage to property caused by or resulting from the use, condition, or occupation of the Subject Land.

14.6 If for any reason the State of Arizona does not have title to any of the Subject Land described herein, this Right of Way shall be null and void insofar as it relates to the land to which the State has failed to receive title.

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

14.8 The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 99-4.

14.9 Within 30 days of project completion, Grantee shall submit a completed certificate of construction (copy attached).



ADDITIONAL CONDITIONS

18-112914

Page 1 of 2

1. The legal description of this right-of-entry is detailed in Exhibit A. Subject to Grantor's rules and policies then in place and as a result of construction related restrictions, Grantor and Grantee may agree to modify the legal description by Grantee submitting "as built" or "proposed realignment" legals, depending on the situation, to the Grantor for Grantor's review. If approved by Grantor and additional acreage is impacted Grantee agrees to pay an appraised or pro-rated charge as the Grantor determines is appropriate. No refund will be made for a reduction in acreage.
2. Grantor reserves the right to grant additional access rights, or any other rights not in conflict with the rights granted herein, to other parties at Grantor's sole discretion.
3. Grantee shall acquire any permits necessary prior to maintenance of service roads.
4. Grantee shall not alter or cause ponding, or any damage up or down stream of any water crossing.
5. A survey may be required to determine if protected plants are present and if they must be salvaged. The Arizona Department of Agriculture shall be notified at least 60 days before the salvage work begins.
6. Service roads shall be maintained in substantially the same condition as they exist at the time the Permit is issued except, if not drivable they may be made drivable, subject to paragraph 12.
7. Grantee shall keep all gates closed and insure its contractors do the same. Grantor reserves the right to require cattle guards if Grantor determines gates are being left open or fencing has been removed or damaged by Grantee, its employees or contractors.
8. Any grazing related improvements removed or damaged due to construction, operation, and maintenance of this right-of-way shall be replaced and/or reconstructed immediately. Cost of replacement and reconstruction shall be the responsibility of the Grantee.
9. Grantee shall use existing roads unless approved otherwise in writing by the Grantor.
10. The Right-of-way shall be void upon non-issuance or cancellation from the Grantor's records of Permit No. 03-112920 or its successor and shall only be used by Grantee in conjunction with such permit.
11. Unless Grantee elects to relinquish this Right-of-way, Grantee shall relocate roads to a route selected by Grantor, upon Grantor's request, at Grantee's expense.
12. No altering of existing drainages or drainage structures are authorized under this instrument.



ADDITIONAL CONDITIONS

18-112914

Page 2 of 2

13. Grantee shall notify the grazing lessee at least 15 days prior to the beginning of any construction.
14. If construction or maintenance occurs during periods of livestock grazing, the applicant will take necessary measures to achieve livestock protection and containment.
15. Material for construction (i.e. fill dirt, sand and gravel, etc.) may not be acquired from State lands without the proper permits and authorization.
16. All excess man-made materials or trash resulting from construction of this proposed project will be promptly removed from the site and disposed of properly.
17. Grantee will construct double "H-braces" with a metal Power River style where the road crosses all fences. These gates will be locked and clearly marked indicating no motorized vehicles and authorized personnel only.
18. Grantee will provide the Arizona State Land Department Prescott Range Resource Area Manager with a noxious weed management plan prior to construction of the communication site and maintenance of the dirt road. Grantee will be responsible for controlling weeds along the right of way and around the communication site for the duration of the right.
19. All vehicles/equipment entering State Land for the proposed project (construction or maintenance) will be power washed, including the undercarriage, to prevent the pread of noxious weeds.

EXHIBIT A

18-112914

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B-4681 P-470
Page: 10 of 16
MISC 4328169

DAVA AND ASSOCIATES
310 EAST UNION STREET PRESCOTT, ARIZONA 86303
928-778-7587

GLASSFORD HILL COMMUNICATIONS SITE ACCESS EASEMENT

Description of land located in Sections 20 and 17 of, Township 14 North, Range 1 West of the Gila and Salt River Meridian, Yavapai County, Arizona. Said parcel of land being a strip of land 20.00 feet in width the westerly line of which is described as follows.

COMMENCING at the southeast corner of said Section 20, marked with a G.L.O.S. brass cap stamped 20, 21, 29, 28 from which the south quarter corner of said Section 20 marked with a G.L.O.S. brass cap stamped 20 | 29, bears, South 88°07'00" West, 2,565.58 feet;

thence, along the south line of said Section 20, South 88°07'00" West, 2,565.58 feet, to the **POINT OF BEGINNING**.

Thence, along the westerly line of said strip, North 53°05'55" East, 139.53 feet;

thence, continuing along said westerly line, North 50°46'05" West, 135.18 feet;

thence, continuing along said westerly line, North 26°01'35" East, 119.54 feet;

thence, continuing along said westerly line, North 04°24'30" West, 243.89 feet;

thence, continuing along said westerly line, North 03°19'55" East, 255.40 feet;

thence, continuing along said westerly line, North 08°37'30" East, 124.68 feet;

thence, continuing along said westerly line, North 21°47'50" East, 147.73 feet;

thence, continuing along said westerly line, North 11°23'05" East, 89.93 feet;

thence, continuing along said westerly line, North 04°09'45" East, 101.32 feet;

thence, continuing along said westerly line, North 02°35'50" East, 126.44 feet;

thence, continuing along said westerly line, North 64°50'50" West, 27.19 feet;

thence, continuing along said westerly line, North 36°49'10" West, 308.63 feet;

thence, continuing along said westerly line, South 13°21'50" West, 157.04 feet;



EXHIBIT A

18-112914

Page 2 of 4

thence, continuing along said westerly line, North 52°17'55" West, 297.45 feet;
thence, continuing along said westerly line, North 16°58'05" West, 334.51 feet;
thence, continuing along said westerly line, North 02°30'55" East, 584.79 feet;
thence, continuing along said westerly line, North 01°56'05" East, 1,441.14 feet;
thence, continuing along said westerly line, North 01°26'45" East, 237.55 feet;
thence, continuing along said westerly line, North 51°57'25" East, 284.86 feet;
thence, continuing along said westerly line, North 04°31'30" East, 278.90 feet;
thence, continuing along said westerly line, North 31°45'25" West, 133.92 feet;
thence, continuing along said westerly line, North 60°38'40" East, 157.68 feet;
thence, continuing along said westerly line, North 11°37'50" West, 294.70 feet;
thence, continuing along said westerly line, North 45°49'05" West, 125.49 feet;
thence, continuing along said westerly line, North 73°52'10" West, 2.85 feet, to a point on
the south line of said Section 17, from which the southeast corner of said Section 17
marked with a G.L.O.S. brass cap stamped 17, 16, 20, 21, bears, North 87°41'03"
East, 656.96 feet;
thence, continuing along said westerly line, North 73°52'10" West, 377.91 feet;
thence, continuing along said westerly line, North 47°28'20" East, 309.06 feet;
thence, continuing along said westerly line, North 65°13'00" West, 385.13 feet;
thence, continuing along said westerly line, North 63°34'45" West, 220.58 feet;
thence, continuing along said westerly line, North 14°45'55" East, 206.25 feet;
thence, continuing along said westerly line, North 64°04'55" East, 206.15 feet;
thence, continuing along said westerly line, North 31°28'35" West, 83.72 feet;



EXHIBIT A

18-112914

Page 3 of 4

The easterly side lines of said strip are to lengthened or shortened to meet at the angel points, at the south line of said Section 20 and at the southwesterly boundary of the 125' X 150' site.

Containing 3.64 acres.

I certify that, I, Thomas G. Callahan, am a Registered Land Surveyor in the State of Arizona, that this description was prepared under my direction and contains adequate information to allow retracement thereof.

Thomas G. Callahan
Thomas G. Callahan, R.L.S. 22752

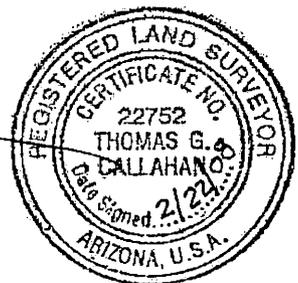
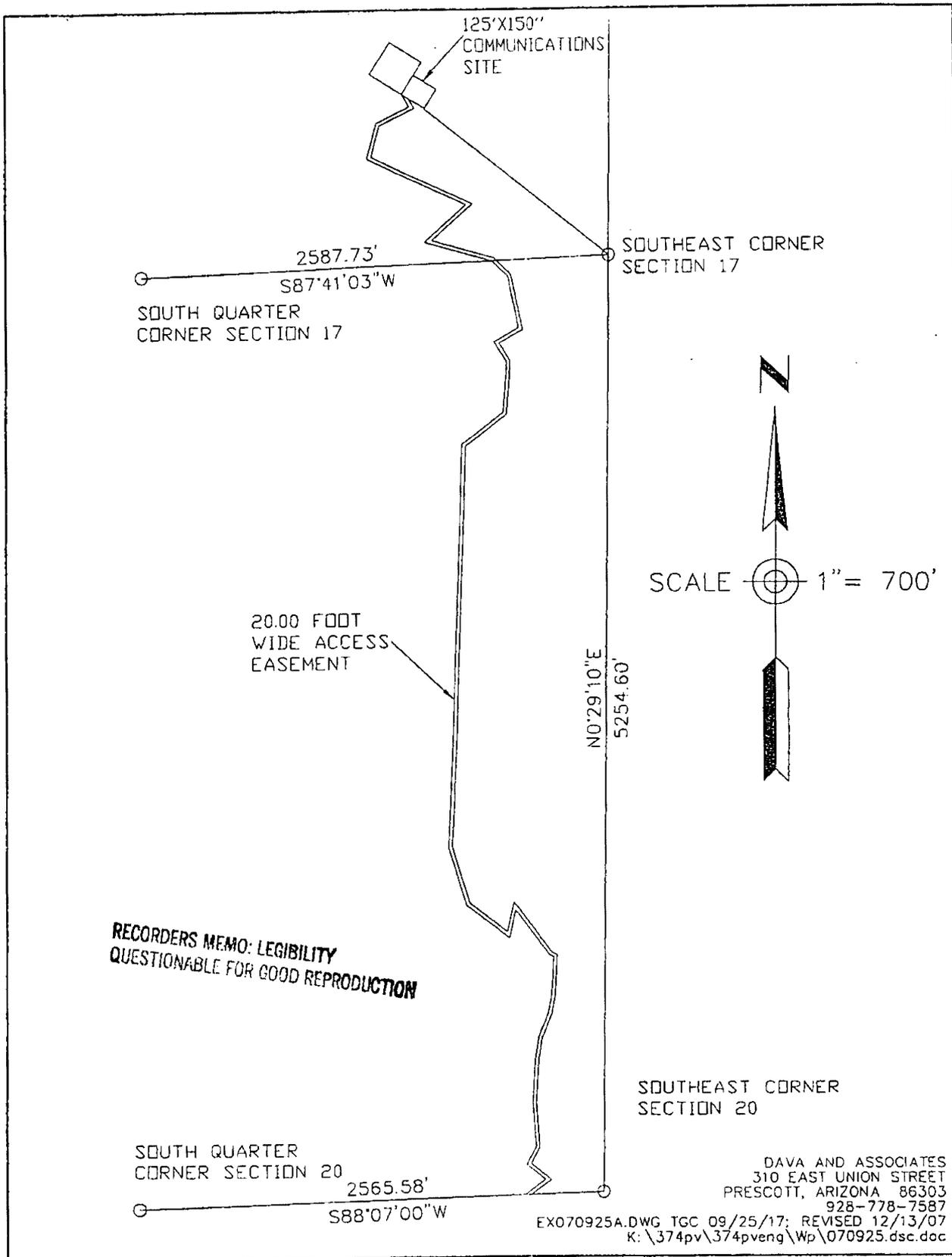




EXHIBIT A

18-112914

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STATE OF ARIZONA LAND DEPARTMENT
1616 W. ADAMS
PHOENIX, AZ 85007

RUN DATE 09-APR-2009
RUN TIME: 13:04:21
APPENDIX A
PAGE: 001

KE-LEASE#: 018-112914-00-000 APPTYPE: NEW
AMENDMENT#: 0

LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
14.0-N-01.0-W-17-13-031-9008	M&B THRU SE	0.00	0.820
14.0-N-01.0-W-20-13-031-9011	M&B THRU E2E2	0.00	2.820
TOTALS:		0.00	3.640

**RECORDERS MEMO: LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION**



IN WITNESS HEREOF, the parties hereto have signed this Right of Way effective the day and year set forth previously herein.

STATE OF ARIZONA, GRANTOR
Arizona State Land Commissioner

By: Katalin Gordon 6-17-2009
Date



TOWN OF PRESCOTT VALLEY
GRANTEE

[Signature] 6/17/09
Authorized Signature Date

Mayor
Title

7501 E. Live Circle
Address

Prescott Valley AZ 86314
City State Zip



GRANTEE'S CERTIFICATE OF CONSTRUCTION

RIGHT OF WAY NUMBER: _____

NAME OF GRANTEE: _____

DATE ISSUED: _____

PERMITTED USE: _____

LAND DEPARTMENT ADMINISTRATOR: _____

DATE CONSTRUCTION STARTED: _____

DATE CONSTRUCTION COMPLETED: _____

I hereby certify that the facilities authorized by the State Land Commissioner, were actually constructed and tested in accordance with the terms of the grant, in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

Harvey C. Hoag _____
Grantee's Signature Date 6-26-09

Mayor
Title

Return To: Arizona State Land Department
R/W Section
1616 W. Adams Street
Phoenix, AZ 85007

COUNCIL AGENDA MEMO – May 14, 2013	
DEPARTMENT:	Police
AGENDA ITEM:	Acceptance of a grant from the Governor's Office of Highway Safety, for funds in the amount of \$25,244.00 to purchase one (1) ea. equipped Police Motorcycle

Approved By:		Date:
Department Head:	Jerald Monahan, Chief of Police	
Finance Director:	Mark Woodfill	
City Manager:	Craig McConnell 	5-3-13

Item Summary

The Police Department requests acceptance of an award from the Governor's Office of Highway Safety (GOHS). The total amount of the award is \$25,224.00. The funds will be used to purchase a police motorcycle, and outfit it with police equipment, to further the Department's ongoing DUI enforcement efforts.

Background

The Police Department has received notification from the Governor's Office of Highway Safety for a FY2013 grant award of \$25,224.00 to purchase one equipped Honda ST 1300 police motorcycle which will be used for DUI enforcement as well as a primary response unit. The vehicle will allow the Police Department to continue conducting DUI traffic enforcement and details for several years, while funding normal replacement of an existing high mileage unit.

The Department's Traffic Safety Section has a total of nine Honda ST1300 motorcycles. Six are presently assigned to officers as their primary response vehicles. The remaining three consist of a 2005 model, which is designated as a spare for when the assigned motorcycles are in the shop for service or repair, and two are used as trainers. Of the six primary response vehicles two are 2006 model year units which will need to be replaced in the next several years. If acceptance of this grant funding is approved, the new motorcycle will replace the primary response unit which is the oldest and has the most miles. The one replaced will in turn become the operational spare. It is proposed that the number of trainer motorcycles be increased from two to three, drawn from the existing fleet, to reduce downtime and maintenance issues the Section is experiencing.

Financial

There are no requirements for local matching funds associated with this grant award.

Recommended Action: MOVE to approve acceptance of grant funding from the Governor's Office of Highway safety in the amount of \$25,224.00 for the purchase of one (1) ea. equipped police motorcycle

COUNCIL AGENDA MEMO – May 14, 2013

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Resolution 4167-1329 declaring City Code Title II Chapter 2-1: Public Works Department, a public record; and Adoption of Ordinance No. 4856-1313 to amend City Code Title II Chapter 2-1: Public Works Department, for Wastewater Pretreatment Program implementation

Approved By:

Date:

Department Head: Mark Nietupski	5/3/2013
Finance Director: Mark Woodfill	
City Manager: Craig McConnell 	5-6-13

Item Summary

This item consists of two parts to amend and update the existing City Code to implement a Wastewater Pretreatment Program as mandated by the United States Environmental Protection Agency (EPA) and Arizona Department of Environmental Quality (ADEQ) regulations associated with the Clean Water Act.

1. Adoption of Resolution No. 4167-1329 declaring City Code Title II Chapter 2-1: Public Works a public record
2. Adoption of Ordinance No. 4856-1313 amending Prescott City Code Title II Chapter 2-1: Public Works Department implementing a Wastewater Pretreatment Program

Background

On March 13, 2012, City Council awarded a contract to ARCADIS US, Inc., for completion of the Wastewater Pretreatment Program to comply with federal and state regulations. ARCADIS' work has been focused on developing regulatory and guidance program documents in conformance with ADEQ and EPA criteria.

On February 5, 2013, a presentation of the project status and direction moving forward was provided to City Council and the public.

The City hosted stakeholder meetings on February 21, 28, and March 7, 2013, to provide opportunities for commercial and industrial users of the City sanitary sewer system to receive information and comment on the recommended Wastewater Pretreatment Program. On March 12, 2013, a public hearing was held opening a 30-day public comment period from March 12 to April 12, 2013. On April 23, 2013, the Council and public received a presentation of the Wastewater Pretreatment Program and public comments received.

Agenda Item: Adoption of Resolution 4167-1329 declaring City Code Title II Chapter 2-1: Public Works Department, a public record; and Adoption of Ordinance No. 4856-1313 to amend City Code Title II Chapter 2-1: Public Works Department, for Wastewater Pretreatment Program implementation

The Pretreatment Program objectives are to: comply with pretreatment regulations, maintain compliance with wastewater treatment facility Aquifer Protection Permits, protect the treatment facilities from upset, facilitate control of pollutant discharges into the collection system, maintain high effluent and biosolids quality, and protect the environment, citizens, and employees from hazardous discharges.

Amended Chapter 2-1 Public Works Department will require permitting of Industrial Users. This amended chapter does not contain provisions to issue permits to Commercial Users at this time. Completion of the Industrial Waste Survey in conjunction with outreach and education on best management practices will be the initial focus with Commercial Users.

The Wastewater Pretreatment Program requires an amendment to City Code Title II Chapter 2-1: Public Works Department. Generally speaking the existing City Code, Chapters 2-1-1 through 2-1-60, has been updated for clarity (personnel, abbreviations) and to supplement existing pretreatment regulations. New sections of City Code, Chapters 2-1-61 through 2-1-75, have been added to provide the legal authority to process discharge permits (issue, transfer, revoke), define the enforcement process, identify reporting requirements and compliance monitoring, establish fees, and for administrative appeals and judicial reviews.

Fees

There are no fees associated with the Wastewater Pretreatment Program at this time. Any fees recommended in the future will be subject to City Council consideration and adoption of a resolution therefore prior to enactment.

Effective Date

Ordinance No. 4856-1313 implementing the Wastewater Pretreatment Program will become effective 30 days after Council adoption. ADEQ final review and approval of the adopted Ordinance must occur prior to the initiation of permitting under the program.

Attachments

- Amended City Code Chapter 2-1
- Resolution No. 4167-1329
- Ordinance No. 4856-1313

Recommended Action: By separate motions:

- (1) **MOVE** to adopt Resolution No.4167-1329;
and
- (2) **MOVE** to adopt Ordinance No. 4856-1313.

RESOLUTION NO. 4167-1329

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "CITY CODE, TITLE II, CHAPTER 2-1, PUBLIC WORKS DEPARTMENT".

RECITALS:

WHEREAS, a certain document entitled "*City Code, Title II, Chapter 2-1, Public Works Department*", three copies of which are filed in the office of the City Clerk, is to be declared a public record, with said copies to remain on file with the City Clerk.

ENACTMENTS:

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

Section 1. THAT certain document entitled "*City Code, Title II, Chapter 2-1, Public Works Department*", attached hereto as Exhibit A, is hereby declared to be a public record.

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

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott the 14th day of May, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN J. MULHALL
City Clerk

JON M. PALADINI
City Attorney

ORDINANCE NO. 4856-1313

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE PRESCOTT CITY CODE BY AMENDING CITY CODE TITLE II, CHAPTER 2-1, BY ADOPTING THE PUBLIC RECORD DOCUMENT GENERALLY ENTITLED “CITY CODE, TITLE II, CHAPTER 2-1, PUBLIC WORKS DEPARTMENT.”

RECITALS:

WHEREAS, the City of Prescott desires to amend its City Code in reference to the City of Prescott’s Public Works Department to implement a Wastewater Pretreatment Program in the interest of public health and safety and water quality in conformance with local, state, and federal laws; and

WHEREAS, it is in the best interests of the City of Prescott to amend its City Code in reference to the Public Works Department to implement a Wastewater Pretreatment Program to protect the environment and public in conformance with local, state, and federal laws; and

WHEREAS, a document entitled “City Code Title II, Chapter 2-1, Public Works Department” was made a public record by Resolution No.4167-1329.

ENACTMENTS:

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

Section 1. THAT City Code Title II, Chapter 2-1, Public Works Department, made a public record by Resolution No. 4166-1329, is hereby adopted, thereby replacing and repealing that previous document entitled City Code, Title II, Chapter 2-1, Public Works Department”.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 14th day of May, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL, City Clerk

JON M. PALADINI, City Attorney

Exhibit “A”

Prescott City Code, Title II, Chapter 2-1: Public Works Department

CHAPTER 2-1: PUBLIC WORKS DEPARTMENT

SECTIONS:

- 2-1-1: DEPARTMENT CREATED:
- 2-1-2: DIVISIONS CREATED:
- 2-1-3: STREET DIVISION; FUNCTION:
- 2-1-4: ENGINEERING SERVICES DIVISION; FUNCTION:
- 2-1-5: CONSTRUCTION SERVICES DIVISION; FUNCTION:
- 2-1-6: GENERAL SERVICES DIVISION; FUNCTION:
- 2-1-7: UTILITIES DIVISION; FUNCTION:
- 2-1-8: UTILITIES DIVISION; PROVISION OF WATER TO AREAS OUTSIDE OF THE CITY LIMITS; RULES AND REGULATIONS:
- 2-1-9: UTILITIES DIVISION; ABBREVIATIONS AND DEFINITIONS:
- 2-1-10: UTILITIES DIVISION; EXTENSION OF WATER MAINS:
- 2-1-11: UTILITIES DIVISION; EXTENSION OF SEWER MAINS:
- 2-1-12: UTILITIES DIVISION; WATER SERVICE CONNECTION AND METER INSTALLATION CHARGES:
- 2-1-13: UTILITIES DIVISION: WATER SERVICE LINES:
- 2-1-14: UTILITIES DIVISION; PRIVATE WATER LINES:
- 2-1-15: UTILITIES DIVISION; SEWER CONNECTIONS:
- 2-1-16: RESERVED:
- 2-1-17: UTILITIES DIVISION; WATER SERVICE DEPOSITS:
- 2-1-18: UTILITIES DIVISION; WATER RATES:
- 2-1-19: UTILITIES DIVISION; WATER METER READING AND BILLING:
- 2-1-20: UTILITIES DIVISION; WASTEWATER TREATMENT CHARGES:
- 2-1-21: UTILITIES DIVISION; SEWER RATES:
- 2-1-22: UTILITIES DIVISION; SEWER BUY IN FEES:
- 2-1-23: UTILITIES DIVISION; PAYMENT OF SEWER FEES:
- 2-1-24: UTILITIES DIVISION; WATER METERS:
- 2-1-25: UTILITIES DIVISION; WATER METER TESTS:
- 2-1-26: UTILITIES DIVISION: RELOCATION OF WATER METERS:
- 2-1-27: UTILITIES DIVISION: WATER CONSUMERS NOT TO SUPPLY WATER TO OTHERS:
- 2-1-28: UTILITIES DIVISION: DISCONTINUANCE OF WATER SERVICE FOR NONPAYMENT:
- 2-1-29: UTILITIES DIVISION: WATER TURN ON:
- 2-1-30: UTILITIES DIVISION: WATER CROSS CONNECTIONS:
- 2-1-31: UTILITIES DIVISION: SPECIAL SERVICE FOR WATER CUSTOMERS:
- 2-1-32: UTILITIES DIVISION; WATER CUT OFF FOR REPAIRS:
- 2-1-33: UTILITIES DIVISION: INTERRUPTIONS OF WATER SERVICE:
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2-1-1: DEPARTMENT CREATED:

- (A) There is hereby created a Public Works Department; said department to be under the supervision of the Director of Public Works. The director will report to and be responsible for the operation of the department to the City manager. The department shall have the divisions provided for in Section 2-1-2 of this Chapter, and such other divisions as shall be established from time to time by the City manager. (Ord. 687, 11-9-1964)

2-1-2: DIVISIONS CREATED:

The Public Works Department shall have those duties and consist of those divisions, over and above those provided for in this Code, as may be established from time to time by the City Manager. (Ord. 4451, 1-25-2005; Ord. 4480, 6-28-2005)

2-1-3: STREETS DIVISION; FUNCTION:

- (A) Function: It shall be the responsibility of the streets division to effectively maintain a clean street system that is reasonably safe for motor vehicles, and to maintain street lighting where deemed appropriate.
- (B) Streetlight Assessment: A monthly fee in the amount of seventy five cents (\$0.75) per unit shall be assessed against every City customer utilizing City water, sewer or garbage collection service. The revenues from these fees shall be utilized by the City for the purpose of defraying the costs of operation, maintenance, installation and replacement of streetlights within the City limits. For the purposes of this section, "unit" shall be calculated as follows:
1. A single-family residential customer shall constitute one unit.
 2. A commercial or industrial customer that services only one business or entity shall constitute one unit.
 3. Any customer which has multiservice connections through one master meter shall constitute one unit for each such connection.

The effective date of Ordinance 3271, and the charges to be levied herein, shall be November 1, 1994. (Ord. 3271, 9-27-1994; amd. Ord. 3317, eff. 2-14-1995; Ord. 3473, 2-12-1996, eff. retroactive to 2-1-1996)

2-1-4: ENGINEERING SERVICES DIVISION; FUNCTION:

(Ord. 1360, 8-27-1979; Rep. by Ord. 4504, 10-25-2005)

2-1-5: CONSTRUCTION SERVICES DIVISION; FUNCTION:

(Ord. 4317, 5-27-2003, eff. 7-1-2003; Rep. by Ord. 4504, 10-25-2005)

2-1-6: GENERAL SERVICES DIVISION; FUNCTION:

(Rep. by Ord. 4451, 1-25-2005)

2-1-7: UTILITIES DIVISION; FUNCTION:

The utilities division shall have charge of the water system and sanitary sewer system of the City, including the enforcement of all related provisions contained herein. (Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-8: UTILITIES DIVISION; PROVISION OF WATER TO AREAS OUTSIDE OF THE CITY LIMITS; RULES AND REGULATIONS:

- (A) Water Service To Areas Outside The City Limits: No property outside of the City limits shall be served water, nor shall any main extensions outside of the City limits be allowed. (Ord. 3527, eff. 9-12-1996; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

Notwithstanding the foregoing, the following are exempt from the provisions of this subsection:

1. Where the City has previously entered into a valid contractual agreement to provide water service to a specific property, in which event water service or a main extension shall only be allowed to the extent necessary to allow the City to comply with its contractual obligations. (Ord. 2133, 11-28-1989; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
2. Where there is a City water main fronting residential property desiring to be served on or before October 4, 2005, and there is sufficient capacity in the existing main to allow service to the property, and the service connection does not exceed one hundred feet (100'), and the Public Works Director determines that there will be no adverse impact upon the City's water system nor upon the City's ability to deliver sufficient water at sufficient pressure to existing water customers and expected future customers within the City limits; provided, however, that as a condition to obtaining water service pursuant to this subsection, any such property must also connect onto the City's sanitary sewer main at the property

owner's cost. (Ord. 4305, 4-8-2003; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003; Ord. 4503, 10-25-2005, eff. imm.)

3. If water service is provided for pursuant to an intergovernmental agreement.
- (B) Rules and Regulations: Water will be furnished subject to rules and regulations of the City, which rules and regulations are made a part of every application, contract, agreement or license entered into between the property owner or consumer and the City. (Ord. 2133, 11-28-1989; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (C) Unless otherwise required pursuant to Subsections 2-1-8(A)(1), (2) or (3), if potable water is provided to property outside of the City limits in accordance with this Section 2-1-8, then and in that event no more than one residential dwelling unit per parcel of property shall be provided potable water. The phrase "parcel of property", as used herein, shall mean all of that real property which was contiguous and under common ownership at any time on or after October 4, 2005. (Ord. 4503, 10-25-2005, eff. imm.)

2-1-9: UTILITIES DIVISION; ABBREVIATIONS AND DEFINITIONS:

Where used throughout this Chapter, the following abbreviations shall have the designated meanings:

°C	degrees Celsius
°F	degrees Fahrenheit
ADEQ	Arizona Department of Environmental Quality
ADHS	Arizona Department of Health Services
APP	Aquifer Protection Permit
A.R.S.	Arizona Revised Statutes
BMP	Best Management Practice
BMR	Baseline Monitoring Report
BOD	Biochemical Oxygen Demand
cm	centimeter
CFR	Code of Federal Regulations
CIU	Categorical Industrial User
COD	Chemical Oxygen Demand
EPA	United States Environmental Protection Agency

gpd	gallons per day
IU	Industrial User
LUST	Leaking Underground Storage Tanks
mg/l	milligrams per liter
O&M	Operation and Maintenance
POTW	Publicly Owned Treatment Works
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
SIU	Significant Industrial User
SNC	Significant Noncompliance
TRC	Technical Review Criteria
TSS	Total Suspended Solids
U.S.C.	United States Code

Where used throughout this Chapter, the following words and/or phrases shall be taken to have meanings as indicated below:

ACT OR THE ACT. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.

APPROVAL AUTHORITY. Arizona Department of Environmental Quality (ADEQ).

AUTHORIZED REPRESENTATIVE OF THE USER.

(1) If the User is a corporation:

- (a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- (b) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual Wastewater Discharge Permit requirements; and where authority to sign

documents has been assigned or delegated to the manager in accordance with corporate procedures.

- (2) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
- (3) If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (4) The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the Discharge originates or having overall responsibility for environmental matters for the company and the written authorization is submitted to the City.

AQUIFER PROTECTION PERMIT: an Aquifer Protection Permit issued by ADEQ to the City regarding any POTW owned and/or operated by the City pursuant to ADEQ's authority under Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes.

ADEQ: The Arizona Department of Environmental Quality.

AZPDES PERMIT: Any Arizona Pollution Discharge Elimination System permit issued by ADEQ to the City regarding any POTW owned and/or operated by the City pursuant to ADEQ's authority under Title 49, Chapter 2, Article 3.1 of the Arizona Revised Statutes.

BEST MANAGEMENT PRACTICES OR BMPs. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 2-1-38 and 2-1-39 [40 CFR 403.5(a) (1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. [Note: BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established Categorical Pretreatment Standards and effluent limits.]

BIOCHEMICAL OXYGEN DEMAND OR BOD: Denoting biochemical oxygen demand, means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) calendar days at twenty degrees centigrade (20°C), usually expressed in milligrams per liter (mg/L).

BUILDING OFFICIAL:

BYPRODUCTS: A treatment related byproduct such as land lease, crops, gas, effluent, etc.

CATEGORICAL INDUSTRIAL USER OR CIU. An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

CATEGORICAL PRETREATMENT STANDARD OR CATEGORICAL STANDARD. Any regulation containing Pollutant discharge limits promulgated by United States Environmental Protection Agency (EPA) in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of Users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471 and are incorporated in this Chapter by reference.

CHEMICAL OXYGEN DEMAND OR COD. The quantity of oxygen consumed from a chemical oxidation of inorganic and organic matter present in the water or wastewater, expressed in milligrams per liter.

CITY: The City of Prescott.

COMPOSITE SAMPLE: A combination of individual samples obtained at regular intervals over a specified time period. The volume of each individual sample shall be either proportional to the flow rate during the sample period (flow composite) or constant and collected at equal time intervals during the composite period (time composite) as defined in the permit.

CONCENTRATION-BASED LIMITS: Local limit expressed in terms of weight per volume (e.g., milligrams per liter, mg/L).

CONSUMER: A person, firm or corporation contracting with the City for the furnishing of water or sewer services to property subject to the following classifications:

Apartment Consumer: Any apartment, house or complex which has multi-service connection through one master meter. This classification shall be considered a Residential Multi-Family consumer.

Commercial Consumer: Any premises located within the service area on which a commercial business is operated, other than a home occupation business. This classification shall be considered a Non-Residential consumer.

Industrial Consumer: Any commercial or industrial consumer whose water usage exceeds two hundred thousand (200,000) gallons per month.

Multi-Family Consumer: Any permanent housing unit having one or more common walls within another housing unit located in a multi-family residential structure serviced by a common master meter, including a unit in a duplex, triplex, four-plex, condominium development, townhouse development or apartment complex. It also includes mobile homes located in a mobile home park, and other residential developments sharing a common master meter.

Residential Consumer: Any permanent housing unit located within the service area used as a residence, including but not limited to mobile home parks, apartment houses, single family and multi family residences.

Trailer And Mobile Home Park Consumer: A trailer park and mobile home consumer is any property, park or complex containing trailers or mobile homes which has multiservice connection through one master meter. This classification shall be considered a residential consumer.

CONTROL AUTHORITY: The City.

ENFORCEMENT RESPONSE PLAN OR ERP: Plan containing detailed procedures indicating how a POTW will investigate and respond to instances of Industrial User noncompliance, as defined in 40 CFR 403.8(f)(5).

ENVIRONMENTAL PROTECTION AGENCY OR EPA. The United States Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.

EXISTING SOURCE. Any source of Discharge that is not a New Source.

FOOD SERVICE FACILITY: Any facility that processes, prepares, and/or serves food, including but not limited to industrial and commercial establishments, such as delicatessens, bakeries, and restaurants, and private and public institutions, such as schools, hospitals, churches, day-care and residential facilities with common food preparation and dining areas, but excluding private dwellings.

GARBAGE: Solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

GRAB SAMPLE: A sample which is taken from a waste stream without regard to the flow or time of day in the waste stream and over a period of time not to exceed fifteen (15) minutes.

INDIRECT DISCHARGE OR DISCHARGE: The introduction of Pollutants into the Publicly Owned Treatment Works (POTW) from any nondomestic source.

INDUSTRIAL USER: A User that discharges treated or untreated process wastewater to the POTW (including, without limitation, sanitary, noncontact cooling and boiler blowdown wastewater). A source of Indirect Discharge, as defined in 40 CFR 403.3, not including discharges typical of residences.

INDUSTRIAL WASTES: Any liquid, free-flowing waste resulting from any industrial or manufacturing process or from the development, recovery, or processing of natural

resources with or without suspended solids, excluding sanitary sewage and uncontaminated water.

INFILTRATION/INFLOW: Water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between Storm Sewers and sanitary sewers, catch basins, cooling towers, Storm Waters, surface runoff, street wash waters or drainage.

INSTANTANEOUS LIMITS: The maximum concentration of a Pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

INTERFERENCE: A Discharge, which alone or in conjunction with a Discharge or Discharges from other sources, including an increase in magnitude or duration, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City's Aquifer Protection Permit (APP) or of the prevention of biosolids use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; and the Toxic Substances Control Act.

LOCAL LIMIT: Specific discharge limits developed and enforced by the City upon non-residential facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a) (1) and (b).

MAINS: The City owned water lines laid in or along the public streets or highways or on City acquired easements, but shall not include service connections.

MASS-BASED LIMITS: Local limits reported as weight per time (e.g., pounds per day, lb/day).

MEDICAL WASTE: Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

MONTHLY AVERAGE: The sum of all daily Discharges measured during a calendar month divided by the number of daily Discharges measured during that month.

MONTHLY AVERAGE LIMIT: The highest allowable average of daily Discharges over a calendar month, calculated as the sum of all daily Discharges measured during a calendar month divided by the number of daily Discharges measured during that month.

NATURAL OUTLET: Any outlet into a watercourse, ditch, or other body of surface or ground water.

NEW SOURCE:

- (1) Any building, structure, facility, or installation from which there is (or may be) a Discharge of Pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that Section, provided that:
 - (a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the Discharge of Pollutants at an Existing Source; or
 - (c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.
- (2) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the above criteria but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:
 - (a) Begun, or caused to begin, as part of a continuous onsite construction program
 - (i) any placement, assembly, or installation of facilities or equipment; or
 - (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of New Source facilities or equipment; or
 - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a

reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

O&M COST: All costs (including personnel, material, energy and administration) needed to assure the dependable and economical operation of treatment works. O&M includes replacement.

PASS THROUGH: A Discharge which exits the POTW into the receiving aquifer in quantities or concentrations which, alone or in conjunction with a Discharge or Discharges from other sources, is a cause of a violation of any requirement of the City's APP, including an increase in the magnitude or duration of a violation.

PERMIT: Any written authorization required pursuant to this or any other regulations of the City for the installation of any sewage works.

PERMITTEE: Any User that has been issued a Wastewater Discharge Permit under this Chapter.

PERSON: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, limited liability company, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

pH: A measure of the acidity or alkalinity of a solution, expressed in standard units; the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter or solution.

POLLUTANT: Dredged spoil, solid waste, incinerator residue, filter backwash, Sewage, garbage, biosolids, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and Industrial Wastes, and certain characteristics of wastewater (e.g., fats, oils, grease, pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

PRETREATMENT: The reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration of the nature of Pollutant properties in wastewater prior to, or in lieu of, introducing such Pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the Pollutants unless allowed by an applicable Pretreatment standard.

PRETREATMENT REQUIREMENTS: Any substantive or procedural duties, responsibilities, or requirements related to Pretreatment imposed on a User, other than a Pretreatment standard.

PRETREATMENT SECTIONS: The Sections of this Chapter pertaining to the City's Pretreatment program, which Sections are Sections 2-1-38, 2-1-39, 2-1-44, 2-1-45, 2-1-46, 2-1-48, 2-1-49, 2-1-50, 2-1-51, 2-1-58, 2-1-61, 2-1-62, 2-1-63, 2-1-64, 2-1-65, 2-1-66, 2-1-67, 2-1-68, 2-1-69, 2-1-70, 2-1-71, 2-1-72, 2-1-73, and 2-1-74.

PRETREATMENT STANDARDS OR STANDARDS: Pretreatment Standards shall mean Prohibited Discharge Standards, Categorical Pretreatment Standards, and Local Limits.

PRIVATE LINE:

- (A) A water line owned by a party other than the City and extending from the meter at the service connection onto private or other public property or properties;
- (B) Any service line which does not furnish water to any water outlet located within two hundred feet (200') from the property line on the abutting street, highway or City right of way on which such property is located; and for which application is made for a private line.

PRIVATE SEWER: A sewer line owned by a party other than the City of Prescott, which extends from the service connection at the public sewer main onto private or other public property or properties.

PROHIBITED DISCHARGE STANDARDS: Absolute prohibitions against the Discharge of certain substances; these prohibitions appear in Sections 2-1-38 and 2-1-39 of this Ordinance.

PROPERLY SHREDDED GARBAGE: Garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than one-half inch (1/2") in any dimension.

PUBLIC WORKS DIRECTOR: The Person designated by the City to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this Ordinance, or a duly authorized representative.

PUBLICLY OWNED TREATMENT WORKS OR POTW: A "treatment works," as defined by Section 212 of the Act (33 U.S.C. § 1292) which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of Sewage or Industrial Wastes of liquid nature, recharge/reuse systems and facilities, and any conveyances which convey wastewater to a Wastewater Treatment Plant.

PUBLIC SEWER: A sanitary sewer controlled and maintained by Control Authority.

REPLACEMENT: Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement. Replacement does not include the replacement of treatment works.

READY ACCESS: The ability of the Public Works Director to enter and approach sampling and monitoring locations such that equipment can be safely and easily delivered by truck, installed, operated, maintained, and inspected.

REPRESENTATIVE SAMPLE: A Composite Sample obtained by flow proportional sampling techniques except where another sampling method is specified by the User's Wastewater Discharge Permit or authorized by the Public Works Director.

SANITARY SEWER: A sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

SEPTIC TANK WASTE: Any Sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

SEWAGE OR SANITARY SEWAGE: Any and all waste substances, liquids or solids associated with human habitation, but excluding storm, surface and ground water, and industrial waste.

SEWAGE TREATMENT PLANT: Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS: All facilities for collecting, pumping, pretreating, treating and disposing of sewage.

SEWER CONNECTION: The connection to the public sewer and the extension therefrom of the sewer to the property line at the alley or the curb line of the street, whichever is applicable, depending on the location of the public sewer.

SEWER CONNECTION FEE: The initial sewer connection charge as set forth in Section 2-1-22 of this Chapter and shall apply to all sewer connections to the public sewer after the effective date of this Chapter.

SEWER DIVISION: Those officers and agents of the City supervising sewer operation for the City.

SIGNIFICANT INDUSTRIAL USER OR SIU: Except as provided in paragraphs (3) and (4) of this Section, a Significant Industrial User, as defined in 40 CFR 403.3, is:

- (1) An Industrial User subject to Categorical Pretreatment Standards; or

- (2) An Industrial User that:
- a) Discharges an average of twenty-five thousand (25,000) gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
 - b) Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment Plant; or
 - c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement.
- (3) The City may determine that an Industrial User subject to Categorical Pretreatment Standards is a non-significant Categorical Industrial User (CIU) rather than a SIU on a finding that the Industrial User never discharges more than one hundred (100) gpd of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:
- a) The Industrial User, prior to City's findings, has consistently complied with all applicable Categorical Pretreatment Standards and requirements; and
 - b) [Reserved]
 - c) The Industrial User never discharges any untreated concentrated wastewater.
- (4) Upon a finding that a User meeting the criteria in Subsection (2) of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a SIU.

SHALL: Mandatory.

SLUG LOAD OR SLUG DISCHARGE: Any Discharge at a flow rate or concentration, which could cause a violation of the Prohibited Discharge Standards in Sections 2-1-38 and 2-1-39 of this Ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or permit conditions.

STANDARD INDUSTRIAL CLASSIFICATION OR SIC: A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

STORM SEWER OR STORM DRAIN: A sewer which carries storm and surface waters and drainage but excludes sewage and polluted industrial wastes.

STORM WATER: Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

STREET: Any public highway, road, street, avenue, alleyway, place, easement or right of way.

TOTAL SUSPENDED SOLIDS OR SUSPENDED SOLIDS: The total suspended matter that floats on the surface of, or are in suspension in, water, wastewater, or other liquids and which are removed by laboratory filtering.

USER: Any person or entity that uses or obtains from the City any water, wastewater, sewage, sanitary, or other utility service governed by this Chapter.

USER CHARGE: A charge levied on Users of a treatment works, or that portion of the ad valorem taxes paid by a User, for the User's proportionate share of the cost of operation and maintenance (including replacement) of such works.

VEHICLE SERVICE FACILITY: Any facility, excluding residential homes, that conducts one or more of the following operations with respect to vehicles or components of vehicles: vehicle repair, fuel dispensing, vehicle fluid replacement, engine and parts cleaning, body repair, vehicle salvage and wrecking, or vehicle washing.

WASTE HAULER: Any Person carrying on or engaging in vehicular transport of wastewater or wastes as part of, or incidental to, any business for the purpose of discharging such waste into the POTW.

WASTEWATER DISCHARGE PERMIT: A permit issued by the Public Works Director pursuant to Section 2-1-65 of this Ordinance.

WASTEWATER TREATMENT PLANT OR TREATMENT PLANT: That portion of the POTW which is designed to provide treatment of municipal Sewage and Industrial Waste.

WATER SERVICE CONNECTION: The tap of the main and that portion of the line extending from the tap to where the meter is set at or near the property line on the street, highway or right of way on which the main is located. Where the meter is not set at or near the property line of the street, highway or right of way on which the main is located, only that portion of the line extending from the tap to such property line shall be included as a part of the "service connection".

WATER SERVICE LINE: The water lines extending from the service connection to and within the improvements on such property.

WATERCOURSE: A channel in which a flow of water occurs either continuously or intermittently. (Ord. 4317, 5-27-2003, eff. 7-1-2003)

(Ord. 4523, 2-7-2006, eff. 7-1-2006)

2-1-10: UTILITIES DIVISION; EXTENSION OF WATER MAINS:

The City may extend or cause to be extended or permit to be extended water mains. Extensions at the request of private parties will be made on application of one or more property owners to be benefited by said extension and only after the applicant or applicants have made a deposit equal to the estimated cost of the extension if it is not to be built through an improvement district. In those cases where an improvement district is to be formed, these procedures would be followed. The extensions shall be at the expense of the initial applicant or applicants in accordance with the following criteria: (Amended Ord. 3651, eff. 8-21-1997; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

- (A) **Cost Paid By Applicant:** The applicant or applicants shall pay the total cost of said extension. The applicant or applicants shall have the right to establish reimbursement districts for connection thereto to compensate them for portions of the cost of the extension.

No applicant shall be entitled to the formation of a reimbursement district unless the design engineer for that project first certifies, in writing, to the Public Works Director that the solicitation for bids for the construction for said project was publicly advertised, with proof of said advertisement, and that the contract was awarded to the lowest and most responsible bidder. Prior to awarding any bids on a project for which a reimbursement district is to be formed, the applicant shall provide the City with copies of all such bids for review by the Public Works Director or his designee, who shall approve the bid to be awarded prior to the start of construction. Additionally, the applicant shall require that payment and performance bonds be posted in accordance with Arizona Revised Statutes Section 34-222.

- (B) **Application For Reimbursement District:** In order for the applicant or applicants to establish a reimbursement district, written notice of intent to form a reimbursement district must be given to the Public Works Director prior to the applicant receiving approval of the submitted plans. A written notice to the Public Works Director shall be made within sixty (60) calendar days after the completion and acceptance of said main extension for which the reimbursement district is being requested, which notice shall include the costs associated therewith; the applicant shall enter into an agreement with the City setting forth the conditions

of reimbursement within one calendar year after the completion and acceptance of said main extension for which the reimbursement district is being established.

[Any reimbursement districts which have been formed and approved by the City council prior to May 13, 1993, and which comply with the time provisions of this section, are hereby ratified and approved.]

The plat map (reimbursement map) shall be drawn at a scale of not less than two hundred feet (200') to the inch, and the plat shall be eight and one-half inches by fourteen inches (8 1/2"x 14") in size, or seventeen inches by twenty eight inches (17" x 28"). The plat map shall specifically identify the terminus of the existing main, the exact location, route and distance of the main extension, the nonreimbursable area to be benefited by the extension, and the reimbursable area to be benefited by the extension and subject to the reimbursement district.

Contemporaneous with the application for a reimbursement district pursuant to the provisions of this section, the applicant for said district shall tender to the City Public Works Department an application fee equal to 0.5 percent of the estimate project cost, provided, however, that the application fee shall be not less than five hundred dollars (\$500.00). Upon the completion of the project, and prior to acceptance by the City of the project and approval by the City of the formation of the reimbursement district, if the final construction cost results in the fee deposited pursuant to this section being less than 0.5 percent of the final construction cost, the applicant for said district shall pay additional monies to the Public Works Department to equal 0.5 percent of the final construction cost of the project.

For a period of fifteen (15) years from the date upon which a new line has been put into service, each new applicant for service shall be required to pay a pro rata share in the initial cost of the line, which share shall be calculated by the Public Works Director, subject to the approval of the City council. In determining the pro rata share attributable to each property within the reimbursement area, the City shall determine the respective benefit to be received by each area, together with the distance of the property from the main to be extended, the proposed or contemplated uses and density of the property, and such other factors as may be relevant in arriving at said pro rata share. The determination of the pro rata share for each property within the reimbursement district shall be determined at the time of formation of the district by the City council, which determination shall be considered final thirty (30) calendar days after the recordation of the reimbursement district agreement. Notwithstanding the foregoing, the Public Works Director shall be empowered to equitably divide the obligation of a property within a reimbursement district upon the sale or partition of a portion of a property within a designated reimbursement district. In the foregoing event, the Public Works Director will record an amended, and updated, reimbursement map with the Yavapai County recorder. The total initial cost shall be adjusted by the rate of inflation in the construction industry since the date of final acceptance of

the extension by the City, to be calculated in accordance with the engineering news record construction cost index. The base index shall be the index reported in the engineering news record publication closest to the date of acceptance of the project. In no event shall the pro rata share be less than the pro rata share would have been at the time of construction. Each new applicant for a service connection will be required to pay to the City, for disbursement to the person, group, association, corporation or City that made the extension, for their pro rata share before they are permitted to connect to the extension. After fifteen (15) years from the date the new extension has been put into service, an applicant desiring to connect to the line may do so without having to pay for the service units as specified in this section. Subsequent extensions located outside of the established reimbursement district shall be treated as new extensions and shall not affect the calculating of service units of the original extension nor will such extensions be required to share in the cost of the original extension. [This section shall apply to any reimbursement district which has been formed and approved by the City council between May 13, 1983, and May 13, 1993.]

Notwithstanding any of the conditions hereinbefore specified pertaining to the fifteen (15) year limit to collect from new applicants a pro rata share of the cost of new lines, the City is hereby exempt from said fifteen (15) year limitation and the City will collect from all new applicants their pro rata share for such service connections until the City's total initial installation cost is reimbursed.

The size and specifications of the material used in the main to be installed shall be designated by the City. Sterilization of the main upon completion will be performed by the City.

At the discretion of the City, the necessary engineering and construction of said water mains may be performed or contracted by the City. In either case, the total actual cost of installation shall be borne by the initial applicant or applicants and funds estimated to cover the cost of the installation shall be deposited with the City prior to construction unless improvement district procedures are being followed.

In the event the applicant is directed to construct or contract for construction of said main or mains, with person or persons other than the City, complete plans and specifications shall be submitted for approval by the City. After approving the plans, the City will furnish necessary inspection of the installation of said main or mains. Upon satisfactory completion and final inspection, the City will give written notice of acceptance, at which time said main or mains will become the property of the City subject to the rules and regulations set forth herein.

Should the extension of mains require easements or rights of ingress and egress, said agreements or easements shall be provided by the applicant for use by the City.

Temporary connections to said extension will not be considered as consumers or applicants in connection with this regulation.

- (C) Design and Construction: Prior to an extension or construction of a water line, a civil engineer registered in Arizona must perform the necessary field engineering and prepare detailed plans and specifications for the line extension or construction. The final detailed plans and specifications for the line construction or extension must be approved by the Arizona Department of Environmental Quality (ADEQ) and by the City before construction begins. The design and engineering will be in accordance with the specifications of ADEQ and the City prior to construction. The construction shall meet the City's specifications, requirements and approval, and will be subject to inspection by the City's agent during construction.
- (D) Plans And Specifications: All construction under this Chapter shall conform to the specifications of the City entitled "Uniform Standard Specifications For Public Works Construction Sponsored And Distributed By The Maricopa Association Of Governments" (most recent edition), with all supplements thereto and all construction shall also conform to that certain document entitled "City Of Prescott Department Of Public Works Standard Specifications And Drawings" (the most recent edition), together with all applicable federal, state, county and City laws, rules and regulations.
- (E) Construction; Upgrades: The provisions of this section shall also apply to the construction and/or upgrades of any and all facilities associated with the provision of water service. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (F) Economic Hardship: Unless the City council finds that compliance with this section would result in an economic hardship to the applicant which would not be outweighed by the public benefit to be received, as a condition to extending any water mains, if an applicant is within the sewer service area of a City wastewater treatment facility, the applicant must also agree to and upsize or extend sewer mains and construct or install such related facilities, at the applicant's cost, and connect the applicant's property to the City sanitary sewer system. Any applicant failing to comply with this section shall entitle the City to install or upgrade such sewer mains and facilities as are necessary to provide adequate sewer services to the applicant's property, and to make labor and material charges therefore in an amount equal to the going or customary rate or price for such labor and materials; and the City shall have the further right to file a lien against the affected property for the amount of the foregoing charges, in addition to any other relief to which the City may be entitled. (Ord. 3824, 12-15-1998; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (G) Compliance: The City council may approve the formation of a reimbursement district pursuant to this section where there is substantial compliance with this

section, where the intent of this section has been met, and where the failure to strictly follow the requirements of this section did not result in any additional costs to the project. (Ord. 4239, 7-23-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-11: UTILITIES DIVISION; EXTENSION OF SEWER MAINS:

The City may extend or cause to be extended or permit to be extended sewer mains. Extensions at the request of private parties will be made on application of one or more property owners to be benefited by said extension and only after the applicant or applicants have made a deposit equal to the estimated cost of the extension if it is not to be built through an improvement district. In those cases where an improvement district is to be formed, those procedures would be followed. The extensions shall be at the expense of the initial applicant or applicants in accordance with the following criteria:

- (A) The applicant or applicants shall pay the total cost of said extension. The applicant or applicants shall have the right to establish reimbursement districts for connection thereto to compensate them for portions of the cost of the extension.

No applicant shall be entitled to the formation of a reimbursement district unless the design engineer for that project first certifies, in writing, to the Public Works Director that the solicitation for bids for the construction for said project was publicly advertised, with proof of said advertisement, and that the contract was awarded to the lowest and most responsible bidder. Prior to awarding any bids on a project for which a reimbursement district is to be formed, the applicant shall provide the City with copies of all such bids for review by the Public Works Director or his designee, who shall approve the bid to be awarded prior to the start of construction. Additionally, the applicant shall require that payment and performance bonds be posted in accordance with Arizona Revised Statutes Section 34-222.

- (B) In order for the applicant or applicants to establish a reimbursement district, written notice of intent to form a reimbursement district must be given to the Public Works Director prior to the applicant receiving approval of the submitted plans. A written notice to the Public Works Director shall be made within sixty (60) calendar days after the completion and acceptance of said main extension for which the reimbursement district is being requested, which notice shall include the costs associated therewith; the applicant shall enter into an agreement with the City setting forth the conditions of reimbursement within one calendar year after the completion and acceptance of said main extension for which the reimbursement district is being established. The agreement shall also contain a plat map indicating thereon the applicant's or applicants' area of development, the location of the proposed or constructed extension from the development, to the point of connection with the City sewer main providing sewer service to the development, and the map shall also indicate the area that will benefit from the extension, which area shall constitute the total area outside of

the applicant's or applicants' development, but shall be subject to reimbursement under the agreement.

The plat map shall be drawn at a scale of not less than two hundred feet (200') to the inch, and the plat shall be eight and one-half inches by fourteen inches (8 1/2" x 14") in size, or seventeen inches by twenty eight inches (17" x 28") in size. The plat map shall specifically identify the terminus of the existing main, the exact location, route and distance of the main extension, the non-reimbursable area to be benefited by the extension and the reimbursable area to be benefited by the extension and subject to the reimbursement district.

Contemporaneous with the application for a reimbursement district pursuant to the provisions of this section, the applicant for said district shall tender to the City Public Works Department an application fee equal to 0.5 percent of the estimate project cost, provided, however, that the application fee shall be not less than five hundred dollars (\$500.00). Upon the completion of the project, and prior to acceptance by the City of the project and approval by the City of the formation of the reimbursement district, if the final construction cost results in the fee deposited pursuant to this section being less than 0.5 percent of the final construction cost, the applicant for said district shall pay additional monies to the Public Works Department to equal 0.5 percent of the final construction cost of the project.

For a period of fifteen (15) years from the date upon which a new line has been put into service, each new applicant for service shall be required to pay a pro rata share in the initial cost of the line, which share shall be calculated by the Public Works Director, subject to the approval of the City council. In determining the pro rata share attributable to each property within the reimbursement area, the City shall determine the respective benefit to be received by each area, together with the distance of the property from the main to be extended, the proposed or contemplated uses and density of the property, and such other factors as may be relevant in arriving at said pro rata share. The determination of the pro rata share for each property within the reimbursement district shall be determined at the time of formation of the district by the City council, which determination shall be considered final thirty (30) calendar days after the recordation of the reimbursement district agreement. Notwithstanding the foregoing, the Public Works Director shall be empowered to equitably divide the obligation of a property within a reimbursement district upon the sale or partition of a portion of a property within a designated reimbursement district. In the foregoing event, the Public Works Director will record an amended (and updated) reimbursement map with the Yavapai County recorder. The total initial cost shall be adjusted by the rate of inflation in the construction industry since the date of final acceptance of the extension by the City, to be calculated in accordance with the engineering news record construction cost index. The base index shall be the index reported in the engineering news record publication closest to the date of acceptance of the project. In no event shall the pro rata share be less than the pro rata share

would have been at the time of construction. Each new applicant for a service connection will be required to pay to the City, for disbursement to the person, group, association, corporation or City that made the extension, for their pro rata share before they are permitted to connect to the extension. After fifteen (15) years from the date the new extension has been put into service, an applicant desiring to connect to the line may do so without having to pay for the service units as specified in this section. Subsequent extensions located outside of the established reimbursement district shall be treated as new extensions and shall not affect the calculating of service units of the original extension nor will such extensions be required to share in the cost of the original extension. [This section shall apply to any reimbursement district which has been formed and approved by the City council between May 13, 1983 and May 13, 1993.]

Notwithstanding any of the conditions herein before specified pertaining to the fifteen (15) year limit to collect from new applicants a pro rata share of the cost of new lines, the City is hereby exempt from said fifteen (15) year limitation and the City will collect from all new applicants their pro rata share for such service connections until the City's total initial installation cost is reimbursed.

The size and specifications of the material used in the main to be installed shall be designated by the City.

At the discretion of the City, the necessary engineering and construction of said sewer mains may be performed or contracted by the City. In either case, the total actual cost of installation shall be borne by the initial applicant or applicants and funds estimated to cover the cost of the installation shall be deposited with the City prior to construction unless improvement district procedures are being followed.

In the event the applicant is directed to construct or contract for construction of said main or mains, with person or persons other than the City, complete plans and specifications shall be submitted for approval by the City. After approving the plans, the City will furnish necessary inspection of the installation of said main or mains. Upon satisfactory completion and final inspection, the City will give written notice of acceptance, at which time said main or mains will become the property of the City subject to the rules and regulations set forth herein.

Should the extension of mains require easements or rights of ingress and egress, said agreements or easements shall be provided by the applicant for use by the City.

- (C) The provisions of this section shall also apply to the construction and/or upgrades of any and all facilities associated with the provision of sewer service. (Ord. 1329, 6-11-1979; amd. Ord. 1458, 7-14-1980; Ord. 1522, 4-27-1981; Ord. 4317, 5-27-2003, eff. 7-1-2003)

- (D) The City council may approve the formation of a reimbursement district pursuant to this section where there is substantial compliance with this section, where the intent of this section has been met, and where the failure to strictly follow the requirements of this section did not result in any additional costs to the project. (Ord. 4239, 7-23-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-12: UTILITIES DIVISION; WATER SERVICE CONNECTION AND METER INSTALLATION CHARGES:

- (A) All meter installations shall be made by the City upon written application. Meters shall be placed at suitable locations approved by the City. The consumer or property owner at the time of making application shall pay to the City the following installation charges:

Meter Size	Installation Charge
5/8" x 3/4"	Cost plus 10%, but not less than \$420.00
3/4"	Cost plus 10%, but not less than \$440.00
1"	Cost plus 10%, but not less than \$600.00
1 1/2"	Cost plus 10%, but not less than \$1,000.00
2"	Cost plus 10%, but not less than \$1,200.00
All others	Cost plus 10%, but not less than \$1,500.00

- (B) Property must be abutting a water main for a service connection to be made, unless otherwise allowed pursuant to this section. In cases where the main is not abutting, the main must be extended at the expense of the property owner before a connection is made. Private lines will not be allowed to be extended over areas that could be provided water by public mains; provided, however, that notwithstanding anything to the contrary herein, if it is determined by the Public Works Director that no benefit to the water system would be realized from a main extension, the City manager or his designee may grant permission for a private line extension to service not more than one customer.
- (C) A contractor shall have the right to install individual stub-in service connections provided that the stub-in service connections are constructed in conjunction with a development, and the costs for said service connections are included as a part of the financial assurances of an approved subdivision, planned area development or other development.
- (D) All service connections installed by contractors shall be according to City standards and specifications. In the event a contractor makes such installation, which installation includes the stub-in service line, meter yokes and boxes, there shall be a credit allowance in the amount of two hundred dollars (\$200.00) towards the purchase of the water meter for such stub-in service connection.
- (E) In the event a service connection must cross an Arizona Department of Transportation highway right-of-way, the consumer or property owner shall obtain

the necessary permits directly from the Arizona Department of Transportation to make said service connection and the consumer or property owner shall obtain their own contractor to make said service connection. Said service connection shall include the meter yoke and box and the service line from the meter box to the water main. The City will install the water main tap and the water meter after the contractor exposes the water main and the service connection in the right of way is in place and has been inspected and approved by the Arizona Department of Transportation. There shall be a credit allowance in the amount of two hundred dollars (\$200.00) toward the purchase of the water meter for such installation.

- (F) All service connections installed prior to the effective date of this section that do not include the meter box and yoke shall only receive a credit of fifty dollars (\$50.00) toward the purchase of the water meter for such service connection.
- (G) All applications for a meter installation shall be processed upon the receipt of a five dollar (\$5.00) permit fee for each meter.
- (H) Service Connections: Service connections for: 1) residential lots in a plat which had not received preliminary plat approval and a designation of assured water supply by August 21, 1998, based upon water being provided by the City; 2) new construction on vacant unplatted residential lots; 3) multi-family residential units; 4) mobile home parks and manufactured home parks; 5) timeshares; 6) apartment houses; 7) RV parks; and 8) similar high intensity uses, shall only be provided pursuant to an agreement with the property owner or applicant and the City council for the provision of water. No such agreement may be entered into unless the council finds that:
 - 1. The project or development is consistent with and conforms to, furthers the implementation of, and is not contrary to the adopted water management policy.
 - 2. The project or development is consistent with and conforms to, furthers the implementation of, and is not contrary to the adopted general plan.
 - 3. The project or development is consistent with and conforms to, furthers the implementation of, and is not contrary to any applicable adopted plans, including, but not limited to, specific area plans, circulation plans, capital improvement plans, open space and trail plans, neighborhood plans, local historic district plans, growth planning or growth management plans, and redevelopment plans.
 - 4. Is in accord with the duly adopted City water budget.
 - 5. In determining compliance with the foregoing, the council shall consider the overall intent and goals of the applicable plan or policy.

6. That notwithstanding the foregoing, a variance or exception may be granted by the City Council, in accordance with the council's duly adopted policy providing for same.

(I) Additional fees:

1. That in the event that an irrigation meter is installed, or a meter placed upon vacant property without the issuance of a building permit, or a meter upsized without the issuance of a building permit, then and in that event the applicant must pay to the City, in addition to all other fees required by this Section, a fee equivalent to those fees which would have been levied pursuant to Prescott City Code Section 3-14-13 and 3-14-14.
2. In the event of a charge pursuant to this subsection for an upsized meter, the applicant shall be assessed the difference between the fees which would have been levied pursuant to Prescott City Code Sections 3-14-13 and 3-14-14 for the upsized meter versus the fees which would have been assessed for the existing meter according to the fee schedule in effect at the time of the application for the upside meter.”

(Ord. 3824, 12-15-1998; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003; Ord. 4523, 2-7-2006, eff. 7-1-2006)

(J) Irrigation Meters:

1. A water service meter shall only be issued and installed by the City when accompanied by an approved City building permit for development of the property to be served by such meter.
2. A water service meter shall not be issued or installed by the City for any property for which the land use is single family residential when and where such meter would be used solely for irrigation and not for domestic supply purposes.
3. A water service meter may be approved, issued, and installed by the City for irrigation of lands within master planned developments, common areas managed by homeowner associations, improved areas of multiple family developments, and landscaped areas within other commercial, industrial, and institutional developments upon approval of a site development plan conforming to the requirements of the Land Development Code of the City and payment of all applicable development and water service fees.

(Ord. 4535, 4-11-2006)

2-1-13: UTILITIES DIVISION; WATER SERVICE LINES:

Service lines shall be installed by the consumers at their own expense. Temporary lines must be buried two feet (2') and backfilled ten feet (10') from the meter. All service lines shall be installed at least two feet (2') deep and not less than two feet (2') from an open area or vault. (Ord. 3733, 3-10-1998; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-14: UTILITIES DIVISION; PRIVATE WATER LINES:

- (A) Future Private Lines: From and after the effective date of these rules and regulations, the City will make only one service connection and meter installation for each private line. This connection and installation will be made after receiving a written application from a responsible person, firm or corporation which is eligible for "private line" service as defined in Section 2-1-9 of this Chapter.

Each applicant shall assume full liability for all water metered to his private line.

At the time of making such application, the applicant shall pay to the City the standard installation charge as set forth in Section 2-1-12 of this Chapter.

All charges for water metered to a private line and for damage to the meter settings and/or meter as provided for in this Chapter will be billed to the person, firm or corporation who applies for the line and who will be responsible for all amounts billed.

The private line shall be installed and maintained at the expense of the person, firm or corporation making the application and the line shall be and remain the property of this person, firm or corporation.

The City reserves the right to extend at any time, at its discretion, its mains. If by the construction and extension of any City main, such main is placed in or along a street, highway or City right of way contiguous to the property of any User of water furnished by a private line, or which private line application has been made after the effective date of these rules, and which main is within two hundred feet (200') of any water outlet of such User, the City may, after the completion of construction of extension, refuse to furnish water to the private line until the User is disconnected therefrom. Such User, if water is desired by him from any of the City's mains, shall obtain water through a service connection from the main. A service line shall be constructed from such service connection in accordance with Section 2-1-13 of this Chapter.

Service connection and meter installation for this service line shall be made and paid for in accordance with Section 2-1-12 of this Chapter. After connections have been made water will be supplied to the consumer in accordance with Section 2-1-17 of this Chapter.

In all applications made from and after the effective date of these regulations for service connection for a private line, the applicant shall expressly agree that the foregoing provisions of this section shall be binding upon him and upon any and

every other party served by or through such private line and the application for the private line shall expressly authorize the City to discontinue furnishing water to the private line until any service line connection required by this section has been made.

- (B) Existing Private Lines: Whenever, at any date subsequent to the initial effective date of these rules and regulations, a main is placed in or along a street, highway or City right of way contiguous to the property of any User, or water furnished by a private line which is in use on the initial effective date of these rules (including any hereafter constructed addition to or extension of such private line) and which main is within two hundred feet (200') of any water outlet of such User, the City may refuse to furnish water to the User through the private line and if the User desires to obtain water from the City or from its mains, it will only be furnished through a service connection and a service line constructed in accordance with Section 2-1-13 of this Chapter. The service line shall be made in accordance with Section 2-1-12 of this Chapter, and water will then be supplied to the consumer in accordance with Section 2-1-17 of this Chapter.

The City will not make or permit to be made, any additional connections to any private line which is in use on the initial effective date of these rules and regulations unless the City has in its possession a written contract executed by all individuals, firms and corporations to whom water is metered and billed from the line, and by written agreement there is an acceptance of full responsibility for maintenance of the private line, including any loss of water therefrom.

Where the City has in its possession a written contract, the private line may be extended or additions made thereto, provided all persons, firms and corporations responsible for the maintenance and water loss on such line agree in writing to such extension or addition, and provided written application for connection to such private line is filed with the City. One meter must be set for each additional consumer hereafter made to the private line and all water furnished through each addition will be metered through the individual meters, and all charges for water and damages, if any, to the meter as provided in Section 2-1-24 of this Chapter will be billed to the applicant, who is responsible for the payment thereof.

Any extension or addition to an existing private line (including the connection with the existing private line) shall be installed and maintained at the expense of the person making application, and the addition shall remain the property of each applicant. Any meter installation shall be provided and installed by the City in accordance with Section 2-1-12 of this Chapter, upon written application. Before any meter is installed and before water is furnished to an extension or addition, a deposit shall be made if necessary with the City in accordance with the provisions of Section 2-1-17 of this Chapter. (Ord. 4317, 5-27-2003, eff. 7-1-2003)

- (C) Private Fire Lines: Private fire lines may be installed at the expense of the consumer, in accordance with specifications of the City. These lines shall be owned and maintained by the consumer. (Ord. 3473, eff. 2-1-1996; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-15: UTILITIES DIVISION; SEWER CONNECTIONS:

All connections to the City's main sewer lines shall require the issuance of a permit by the Public Works Department. Said permit will be issued upon the payment of the sewer service fees and all other charges herein required by this Chapter. A separate sewer connection to the main sewer line shall be constructed for every separate building except as provided in the plumbing code adopted by the City and any exception requires the written permission of the building official and the Public Works Director. No person having a sewer service connection shall otherwise permit a connection to that sewer service connection by another person or User whether gratuitously or for charges.

All sewer connections shall be approved by the City and the actual tap into the main sewer shall be accomplished by City personnel, unless otherwise approved in writing by the superintendent of utilities, in which event the sewer tap connection fee shall be waived. (Ord. 1329, 6-11-1979; amd. Ord. 1458, 7-14-1980; Ord. 1522, 4-27-1981; Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-16: RESERVED

(Ord. 4650-0852, 5/27/2008, eff. 6/28/2008)

2-1-17: UTILITIES DIVISION; WATER SERVICE DEPOSITS:

Water deposits in the following amounts will be required of all persons making application for water service unless they have a good payment record or they are Users whose credit ratings in the community are representative of persons who promptly pay their creditors.

(Ord. 1552, 9-28-1981; amd. Ord. 2232, 11-27-1990; Ord. 4317, 5-27-2003, eff. 7-1-2003; Ord. 4523, 2-7-2006, eff. 7-1-2006)

Residential consumer	\$ 125.00
Multi-service (2 through 5 units)	\$ 150.00
Multi-service (over 5 units)	\$ 200.00
Commercial and industrial	Minimum of \$125.00 (calculated on an individual basis to cover at least two (2) months' estimated bills)

(Ord. 4174, 11-27-2001, eff. 3-1-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003; Ord. 4523, 2-7-2006, eff. 7-1-2006)

For the purpose of this Chapter, a present User with a good credit rating will be defined as a consumer who has not received more than one (1) delinquency letter in the last twelve (12) months and has not had his water service discontinued for nonpayment during the same period. Unless the City has had experience with the persons applying for water service or knows of their credit ratings, they will be required to leave the deposit for one year or until such time the City's good credit definition is satisfied. (Ord. 4523, 2-7-2006, eff. 7-1-2006)

The finance director is given the power of discretion for considering special cases involving the requirement of water deposits. His judgment in these cases may be appealed to the City manager whose decision shall be considered final. If the finance director requires a larger deposit than those specified above, it shall not exceed three (3) times the average monthly billing. (Ord. 1552, 9-28-1981; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

After the effective date hereof, deposits presently held will not be refunded for a period of twelve (12) months. This twelve (12) month period will be used to determine which present Users will be entitled to refunds according to the criteria established in paragraph one of this section. (Ord. 1166, 9-20-1976; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

After deposits have been held for the time specified in this section, a customer may, upon written request, have the deposit applied in payment of current monthly bills. The deposit shall in no way affect the City's right to discontinue service arising from nonpayment of bills as provided for in these rules and regulations. (Ord. 1329, 6-11-1979; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

The City will refund deposits upon written application to discontinue its service and upon receipt of payment in full for water metered to such consumer and for any meter damage or other damage to the City system, for which such consumer may be liable under these rules and regulations.

The consumer or property owner shall notify the City at the time each property becomes vacant. Otherwise, the consumer or property owner shall be responsible for any damage to the property until the City receives a vacancy notice.

The City will presume service is being rendered from the time water is turned on by application of the consumer until the consumer or property owner gives written notice to discontinue service. When the discontinue service notice has been given to the City, the City may at that time apply a consumer's deposit to his final bill and send the consumer a bill or check for the difference. (Ord. 1166, 9-20-1976; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

Residential or multiservice consumers in incorporated municipalities other than the City shall be required to make a deposit of one hundred thirty percent (130%) of the deposit listed in this section. Additionally, residential or multiservice consumers in all areas other than incorporated municipalities shall be required to make a deposit that is double the amount of the deposit listed in this section. (Ord. 2232, 11-27-1990; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-18: UTILITIES DIVISION; WATER RATES:

- (A) Residential (including but not limited to mobile home parks and apartment houses): A monthly water charge shall be assessed against all residential consumers having a service connection with the City water mains in accordance with the following table:

Single Family				
Block Thresholds (gallons)	Rate (\$/1000 gal)			
	Through 01/31/2011	02/01/2011 – 12/31/2011	01/01/2012 – 12/31/2012	Beginning 01/01/2013
First 3,000	\$ 2.86	\$ 2.86	\$ 3.06	\$ 3.21
Next 7,000	4.30	4.30	4.60	4.83
Next 10,000	6.45	6.45	6.90	7.25
Over 20,000	12.90	12.90	13.80	14.49

Multi-Family				
Block Thresholds (gallons)	Rate (\$/1000 gallons)			
	Through 01/31/2011	02/01/2011 – 12/31/2011	01/01/2012 – 12/31/2012	Beginning 01/01/2013
First 1,700	\$ 2.30	\$ 2.30	\$ 2.46	\$ 2.58
Next 3,300	3.46	3.46	3.70	3.89
Next 5,000	5.19	5.19	5.55	5.83
Over 10,000	10.39	10.39	11.12	11.68

(Ord. 4523, 02-07-06, Sec. 5 eff. 07-01-07; Ord. 4773-1124, eff. 1-13-11)

(B) Non-residential rates: A monthly water charge shall be assessed against all non-residential consumers having a service connection with the City water mains in accordance with the following tables.

1. Non-residential properties will be assessed according to meter size, based upon the following table:

Nonresidential Monthly Usage in Blocks (1,000 gallons)				
Meter Size	1	2	3	4
5/8" 3/4"	6	22	32	> 60
1"	15	55	80	> 150
1 1/2"	30	110	160	> 300
2"	48	176	256	> 480
3"	96	352	512	> 960
4"	150	550	800	> 1,500
6"	300	1,100	1,600	> 3,000
8"	480	1,760	2,560	> 4,800

2. Non-residential rates will be in accordance with the following table:

Block	Rate (\$/1000 gallons)			
	Through 01/31/2011	02/01/2011 – 12/31/2011	01/01/2012 – 12/31/2012	Beginning 01/01/2013
1	\$ 2.61	\$ 2.61	\$ 2.79	\$ 2.93
2	3.92	3.92	4.19	4.40
3	5.88	5.88	6.29	6.60
4	11.76	11.76	12.58	13.21

(Ord. 4523, 02-07-06, Sec. 5 eff. 07-01-07; Ord. 4773-1124, eff. 1-13-11)

(C) In addition to the charges provided for herein, there shall be assessed an alternative water sources fee per one thousand gallons of water consumed per month on each monthly bill for all City water customers. The revenues from this fee are restricted to defray expenses of the City associated with obtaining alternative water sources in order to comply with the groundwater laws of the State. The amount of the alternative water sources fee shall be as follows:

Effective Period	Volume Rate Per 1,000 Gallons
Through January 31, 2011	\$0.65
February 1, 2011 – December 31, 2011	\$0.70
January 1, 2012 – December 31, 2012	\$0.80
Beginning January 1, 2013	\$0.85

(Ord. 4650-0852, 5/27/2008, eff. 6/28/2008; Ord. 4773-1124, eff. 1-13-11)

- (D) In addition to the charges provided for herein, there shall be a monthly fixed charge based upon meter size, as set forth in the following table:

Meter Size	Through 01/31/2011	02/01/2011 – 12/31/2011	01/01/2012 – 12/31/2012	Beginning 01/01/2013
5/8"	\$ 6.60	\$ 10.60	\$ 11.70	\$ 12.90
3/4"	7.05	11.30	12.40	13.60
1"	7.95	12.70	14.00	15.40
1 1/2"	10.20	16.30	17.90	19.70
2"	12.90	20.60	22.70	25.00
3"	19.20	30.70	33.80	37.20
4"	28.20	45.10	49.60	54.60
6"	50.70	81.10	89.20	98.10
8"	77.70	124.30	136.70	150.40

(Ord. 4523, 02-07-06, Sec. 5 eff. 07-01-07; Ord. 4773-1124, eff. 1-13-11)

- (E) OTHER INCORPORATED MUNICIPALITIES

Water furnished to consumers in incorporated municipalities other than the City shall be charged at the same rate as water furnished similar consumers within the City (inside City limits rates) plus a surcharge equal to thirty percent (30%) of the inside City limits rates. The surcharge shall also apply to the monthly fixed charge and to the alternative water sources fee.

- (F) ALL OTHER AREAS

Water furnished to consumers in all areas other than incorporated municipalities shall be charged at the same rate as water furnished to similar consumers within the City (inside City limits rates) plus a surcharge equal to thirty nine percent (39%) of the inside City limits rates. The surcharge shall also apply to the monthly fixed charge and to the alternative water sources fee.

- (G) Rates For Private Fire Protection Connections: When fire service connections are required by applicable City code or state law provisions they shall include a

detector check of a type to be approved by the City. The indicating meter to be used with the check shall be furnished by the City. If unmetered water available under this subsection is used for other than fire protection purposes, the quantity so used shall be estimated and the same shall be charged according to applicable rates. If such use is continued for more than twenty (20) calendar days a recording meter will be installed at the consumer's expense and water furnished thereafter will be charged for in accordance with applicable rates.

(H) Private Fire and Drainage Service (Payable Yearly In Advance):

Each fire hydrant, yearly	\$60.00
Water for public sewer flush tanks, per 1,000 gallons	0.59

(I) Test Charge: A charge of fifty dollars (\$50.00) shall be assessed whenever City personnel are requested to perform pressure tests or flow tests upon fire hydrants. A separate assessment shall be levied for each test performed on each fire hydrant, and shall be payable at the time such request is made.

(J) Fees And Assessments Due: All fees and assessments are due and payable on the date billed. Water may be discontinued for the nonpayment of any of the fees, penalties or assessments set forth in this section. Late charges of one and one-half percent (1.5%) per month of the unpaid balance due will be imposed on bills not paid within thirty (30) calendar days after the billing date.

(K) Governmental Entities: That notwithstanding any provision to the contrary in this section, charges and rates to other governmental entities and customers within other governmental entities may be determined as set forth in an intergovernmental agreement between the City and that governmental entity.

(L) Industrial User: That notwithstanding the rates as set forth in subsection (B) of this section, in order to foster conservation of water resources, any water used by an Industrial User in excess of an average of four thousand (4,000) gallons per day per acre within a calendar year shall result in a surcharge of five thousand dollars (\$5,000.00) per acre foot for each acre foot of excess water used, unless a variance or exception is granted by the City council, in accordance with the council's duly adopted policy providing for same. Calculations shall be made by the City annually, for the period January 1 through December 31. In order to determine the maximum allowable amount of water prior to the foregoing surcharge becoming effective, the calculation per acre shall be based upon the total acreage owned, leased or otherwise controlled by the consumer within the City's water service area, which is not otherwise provided potable water.

(M) Turf Or Irrigation Purposes: That notwithstanding the rates as set forth in this Section, in order to foster conservation of water resources, any water used for turf or irrigation purposes in excess of an average of one acre foot per irrigated

acre per year within a calendar year shall result in a surcharge of five thousand dollars (\$5,000.00) per acre foot for each acre foot of excess water used, unless a variance or exception is granted by the City council, in accordance with the council's duly adopted policy providing for same. Calculations shall be made by the City annually, for the period January 1 through December 31. In order to determine the maximum allowable amount of water prior to the foregoing surcharge becoming effective, the calculation per acre shall be based upon the total acreage owned, leased or otherwise controlled by the consumer within the City's water service area which is not otherwise irrigated."

(Ord. 3824, 12-15-1998; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003; Ord. 4523, 2-7-2006, eff. 7-1-2006)

2-1-19: UTILITIES DIVISION; WATER METER READING AND BILLING:

Beginning June 1, 1990, water meters will be read and billed monthly. All bills shall be payable at the City's office or at places designated by the City for the convenience of the consumers. All bills to consumers shall be due and immediately payable upon receipt of notice. If a bill remains unpaid longer than thirty (30) calendar days after the original written notice, the City may discontinue water service. In the event a customer disputes the amount due, said customer may request a review of their account by the utility billing supervisor. Such review shall take place within seven (7) calendar days of the request. If the billing dispute is not resolved as a result of this review, the customer may then request a hearing before the finance director. Such hearing shall be informal and shall be held within seven (7) calendar days of receipt by the finance director of a written request for the hearing, unless otherwise agreed between both parties. Said hearings shall not prevent the discontinuance of water service for nonpayment. In order to maintain water service, the customer must pay the disputed amount within the time period stated in the original bill. If a meter is found stopped during a meter reading period, the bill will be estimated from similar periods, but consideration shall be given for any excessive use of water or water wasted during such period. (Ord. 2154, 2-27-1990; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-20: UTILITIES DIVISION; WASTEWATER TREATMENT CHARGES:

- (A) All Users: The basic wastewater treatment bill to be paid monthly by all users shall consist of the User charges for operation, maintenance and replacement, and the fixed charge as shown in Sections 2-1-17 and 2-1-18 of this Chapter. The sewer charge calculated in accordance with Subsection 2-1-21(B) of this Chapter shall be applied to each User's total metered water flow.
- (B) Additional Charges: Additional charges as described in Sections 2-1-17 and 2-1-18 of this Chapter shall, if required, be listed on the wastewater treatment bill. (Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-21: UTILITIES DIVISION; SEWER RATES:

- (A) There is hereby established a sewer user charge system designed to recover operation, maintenance and replacement costs of the sewer system. This charge system shall be applied to, and a monthly sewer charge shall be assessed against, all Users and all premises connected to and served by the City sanitary sewer collection system and all properties required to connect to the City sanitary sewer system pursuant to Section 2-1-37 of this Chapter, whether or not said property is connected to a sewer main. A monthly User charge shall be assessed to all Users by the City in accordance with the provisions of this Chapter.

- (B) The methodology used to determine User charges shall consider the sewage strength, suspended solids and flow volume. The basis for charges shall be a combination of a fixed monthly base charge allocated equally among all Users and a volume charge related to metered water usage. The formula for calculating the volume charge shall use the average monthly water consumption for each User for the winter months of October through March (billings of November through April). Those consumers with no water consumption during the months listed shall, for the purposes of calculating a volume charge, be assigned a water volume amount equal to the average for their classification. The fixed base charge and volume charge shall be as follows:

	Through 01/31/2011	02/01/2011 – 12/31/2011	01/01/2012 – 12/31/2012	Beginning 01/01/2013
Residential				
Monthly Base	\$ 12.54	\$ 14.42	\$ 16.58	\$ 19.07
Volume Charge	2.71	3.12	3.59	4.13
Non-Residential				
Monthly Base	\$ 15.18	\$ 16.70	\$ 18.37	\$ 20.21
Volume Charge by Category				
Uniform Non-Residential ¹	\$ 3.89	\$ 4.28	\$ 4.71	\$ 5.18
Bar w/o Dining Facilities	3.89	4.28	4.71	5.18
Car Wash	3.89	4.28	4.71	5.18
Department/Retail Stores	3.89	4.28	4.71	5.18
Hospital/Convalescent	3.89	4.28	4.71	5.18
Hotel w/Dining Facilities	4.18	4.28	4.71	5.18
Hotel w/o Dining Facilities	3.89	4.28	4.71	5.18
Laundromat	3.89	4.28	4.71	5.18
Markets w/Garbage Disposal	5.84	5.84	5.84	5.84
Mortuaries	5.84	5.84	5.84	5.84
Professional Offices	3.89	4.28	4.71	5.18
Repair Shops/Service Stations	3.89	4.28	4.71	5.18
Restaurants	6.28	6.28	6.28	6.28
Schools and Colleges	3.89	4.28	4.71	5.18

¹ The Uniform Non-Residential rate applies to all non-residential uses not otherwise specifically listed in the table.

(Ord. 4650-0852, 5/27/2008, eff. 6/28/2008; Ord. 4773-1124, eff. 1/13/2011)

- (C) Industrial Users: All Industrial Users will be required to comply with the federal industrial costs recovery requirements, which are hereby incorporated by reference as if fully set forth herein.

- (D) Recreational Vehicles: Recreational vehicles are exempt from the above fees; provided, however, their use of the City's septage receiving facility is restricted to the hours when the wastewater treatment plant personnel are on duty.
- (E) All septage must be unloaded at the septage receiving facility located at the main wastewater treatment plant on Sundog Ranch Road, and in conformance with all requirements and procedures established by the City, including pretreatment.
- (F) Financial Management System: The City will establish and maintain an adequate financial management system which will accurately account for operation and maintenance plus replacement (O&M+R) revenues and expenditures.

The accounting system will segregate O&M+R revenues and expenditures from other wastewater revenues and expenditures to assure adequate revenues to properly operate and maintain the treatment works. The sewer utility fund will have two (2) accounts, one for O&M and one for replacement costs. The User charge rates will be revised as needed to generate sufficient revenue to pay the total O&M+R.

- (G) Notification of Users: Each User shall be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the User charges which are attributable to wastewater treatment services.
- (H) Inconsistent Agreements: The User charge system shall take precedence over any terms or conditions of agreements or contracts between the grantee and Users (including Industrial Users, special districts, other municipalities, or federal agencies or installations) which are inconsistent with the requirements of Section 204(b)(1)(A) of the Federal Clean Water Act.
- (I) Wastewater Treatment Byproducts: Revenue from the sale of treatment related byproducts shall be used to offset the costs of operation and maintenance. User charges shall be proportionally reduced for all Users. Annual revenues from contracts for sale of byproducts will be credited to the treatment works operation and maintenance costs no later than the fiscal year immediately following their receipt.
- (J) Right of Review: All Users shall have the right to request that their rate and estimated contributions be reviewed. If a User can demonstrate to the finance director that a significant portion of the water as measured by the water meter does not and cannot enter the sewer system, their rate shall be adjusted accordingly. In considering the request, the finance director may make an equitable rate adjustment which may more accurately reflect the amount of metered water being returned to the sewer system. The decision of the finance director pursuant to the User's request under this section shall be final.

(K) Additional Charges: Additional charges shall be billed, as required, for the following:

1. Actual costs incurred for User requested samplings and analyses.
2. Actual costs incurred for water meter inspection requested by the User or as required because of damage.
3. Actual costs incurred for special handling not provided for elsewhere in this Chapter.
4. Actual costs incurred for handling a User's check returned because of insufficient funds.
5. Actual costs of capital outlay and debt service.

(L) Irrigation Meters: Water service meters for irrigation use shall only be permitted as set forth in Section 2-1-12(J) of this Ordinance. The City shall maintain approved irrigation meters and shall charge all maintenance costs, in addition to usage charges, to the User; provided, however, that sewer fees shall not be charged for the water supplied through such irrigation meters.

(Ord. 4650-0852, 5/27/2008, eff. 6/28/2008)

2-1-22: UTILITIES DIVISION; SEWER BUY IN FEES:

There shall be a mandatory charge for connections being served by any of the City's wastewater treatment plant systems that are owned, operated and maintained by the City. This charge shall be the equivalent of the customer's share of the costs to the City for the wastewater treatment plant systems, lift stations, and certain interceptor lines.

(A) Residential: The charge shall be fifty-six dollars (\$56.00) per fixture unit for a residential connection to the sewer system. Single-family residences, mobile homes, condominiums, apartments, and hotel/motels shall be classified as residential.

1. Number: The following shall be the number of fixture units per plumbing fixture:

Fixture	Number of Fixture Units—
<u>Residential Use</u>	
Bar Sink	1
Bathtub (with or without shower)	2
Floor drains	2
Laundry tub or clothes washer (each pair of faucets)	2
Lavatory	1

Shower (each head)	2
Sink or dishwasher	2
Water Closet	3

2. Permit Fee: A fee of five dollars (\$5.00) per residential permit shall be charged in addition to the fees charged in Subsection (A)1 of this Section.

(B) Commercial: The charge shall be fifty-six dollars (\$56.00) per fixture unit for a commercial connection to the sewer system. "Commercial connection" is hereby defined as any connection other than residential. (Ord. 3288, eff. 2-20-1995; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003).

1. Commercial Number: the following shall be the number of fixture units per plumbing fixture:

Fixture	Number of Fixture Units
<u>Commercial Use</u>	
Bar Sink	2
Bathtub (with or without shower)	4
Dental unit or cuspidor	1
Drinking fountain (each head)	1
Laundry tub or clothes washer (each pair of faucets)	4
Lavatory	2
Lavatory (dental)	1
Shower (each head)	4
Sink (flushing rim, clinic)	10
Sink (washup, circular spray)	4
Sink (washup, each set of faucets)	2
Sink or dishwasher	4
Urinal (flush tank)	3
Urinal (pedestal or similar type)	10
Urinal (stall)	5
Urinal (wall)	5
Water closet (flush tank)	5
Water closet (flushometer valve)	10
2 inch floor drains	4
3 inch floor drains	4
4 inch floor drains	4
All other traps of fixtures based upon trap size	

2. Permit fee: A fee of five dollars (\$5.00) per commercial permit shall be charged in addition to the fees charged in Subsection (B)1 of this Section.

(C) Addition or Remodeling: Fees for connection made to the sewer system under any of the above classifications contained in Subsection (A) or (B) of this Section

where connection is for the purpose of addition or remodeling, shall be in accordance with the sewer buy in fees stated in Subsection (A) or (B) of this Section, except that charges shall be made only for the number of fixture units in the addition or remodeling construction.

- (D) Charges Due and Payable: Charges and/or fees imposed under this Section shall be due and payable when construction permits for units are issued (Ord. 2164, 4-10-1990; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003).
- (E) Connection to City Main Line Sewer: For each sewer tap connection to a City main line sewer, there shall be a connection charge in the amount of two hundred dollars (\$200.00) to cover the labor and material costs incurred by the City for making the actual main line sewer tap connection. (Ord. 4174, 11-27-2001, eff. 3-1-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003).
- (F) Change of Use: In the event of a change of use of a structure from residential to commercial purposes, there shall be paid to the City additional connection fees required in Subsection (B) of this section, with a credit to be given for any connection fees which would have been assessed for that structure pursuant to Subsection (A) of this Section.
- (G) Fees Nontransferable: All fees paid pursuant to this section shall apply to the real property upon which the structure containing the fixture units is located. Connection fees are not transferable between properties. Structures moved from one location to another location must pay new connection fees for the new location, with a credit to be given for any connection fees previously paid for that location.
- (H) Connection Fees Waived: The City manager is hereby authorized to waive the provisions of Subsection (G) of this section regarding transfer of connection fees between properties in the event that the City manager determines that compliance with Subsection (G) of this section would result in gross inequity in a particular situation. (Ord. 3670, eff. 11-27-1997; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003).

(Ord. 3670, eff. 11-27-1997; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003; deleted Ord. 4665, 10-28-2008, eff. 7-11-2009; Ord. 4665 suspended by Ord. 4721-1018, eff. 03-23-2010)

2-1-23: UTILITIES DIVISION; PAYMENT OF SEWER FEES:

All fees and assessments are due and payable on the date billed. Late charges of one and one-half percent (1.5%) per month of the unpaid balance due will be imposed on bills not paid within thirty (30) calendar days after the billing date. (Ord. 2363, 4-14-1992; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-24: UTILITIES DIVISION; WATER METERS:

All water furnished or sold by the City shall be delivered or supplied through meter only, and every separate building supplied with the City water must have its own separate service connection and meter, except that two (2) or more buildings located on the same lot or on contiguous lots under the same ownership, or property known as a court, apartment house or block covering more than one lot, may, upon written permission granted by the City manager, be supplied through the same connection and meter as long as the single ownership continues. Upon change from such single ownership, a new and separate connection shall be immediately made for the building or premises for the indirect connection. No person having a water service connection shall otherwise furnish or deliver water to any other water User, whether gratuitously or for a charge.

All meter settings shall be furnished, owned and maintained by the City unless otherwise provided in these regulations or by agreement. (Ord. 1166, 9-20-1976; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

Meters and meter settings must be accessible at all times and not covered with rubbish or material of any kind. No one other than an authorized agent of the City shall be permitted to repair, adjust, remove or replace any meter or any part thereof. In the event a meter is determined not to be accessible, notice will be given to the customer of record. If the meter is not accessible within ten (10) calendar days of notice, a twenty five dollar (\$25.00) penalty will be assessed for each thirty (30) calendar day period the violation remains in effect. In general, all meters must be located in an accessible location and at a slope to prevent drainage from coming into their setting. (Ord. 1552, 9-28-1981; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

The consumer shall be responsible for damage to meters and/or meter settings where such damage is caused by a change in grade of the lot or by carelessness or negligence of the consumer or his agent, employee or any member of his family. Such consumer will be billed for the actual cost of repair or replacement and amount is payable within ten (10) calendar days of mailing thereof.

Temporary hydrant water meters for construction purposes and other temporary purposes may be issued by the Public Works Department pursuant to any rules or regulations which may be adopted by the Public Works Director, upon making proper application and tendering a deposit in an amount of one thousand dollars (\$1,000.00). (Ord. 3099, eff. 7-22-1993; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-25: UTILITIES DIVISION; WATER METER TESTS:

Should any consumer doubt the correctness of his/her water meter or water bill, the consumer may have his/her meter retested and/or reread by making written application to the City and paying a fee of thirty five dollars (\$35.00).

If during a meter test an error is found exceeding four percent (4%), allowance shall be made covering a period not to exceed the prior billing and the current consumption to date of removal of the meter. Should an error be found exceeding four percent (4%), all of the expenses incurred in the meter removal and replacement shall be borne by the City, and the thirty five dollar (\$35.00) deposit refunded to the consumer. If the error of the meter does not exceed four percent (4%) in either direction, the deposit shall be retained by the City, and the consumer shall bear all of the expenses incurred in the meter removal and replacement, provided however that in no event shall the charge for said removal and replacement be less than one hundred dollars (\$100.00). The amount of such bill shall be paid by the consumer within ten (10) calendar days from the date of billing or be subject to discontinuance of service. (Ord. 4174, 11-27-2001, eff. 3-1-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-26: UTILITIES DIVISION; RELOCATION OF WATER METERS:

All meters which, as of the effective date of these rules and regulations, are located inside of buildings or in meter settings which the City deems to be unsatisfactory may be moved to more suitable locations at the discretion of, and at the expense of the City.

The City may discontinue water service to any consumer who refuses permission to remove a meter in accordance with this regulation.

If any meter is relocated on application of, and to suit the convenience of the consumer, or where relocation of meter is required because of change in grade of a lot, such relocation and setting shall be made by the City at the expense of the consumer. A bill rendered to the consumer for the expense thereof shall be paid within ten (10) calendar days from the date of its mailing or service shall be discontinued. (Ord. 1166, 9-20-1976; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-27: UTILITIES DIVISION; WATER CONSUMERS NOT TO SUPPLY WATER TO OTHERS:

Consumers (other than a private line system) shall not supply water or allow water to be carried or run through a hose or pipe to any premises other than that described in the application, agreement or contract without first having received written permission from the City. (Ord. 1166, 9-20-1976; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-28: UTILITIES DIVISION; DISCONTINUANCE OF WATER SERVICE FOR NONPAYMENT:

- (A) If service has been discontinued for nonpayment of bills, or for violation of the rules of the City, service to such consumer will not be resumed by the City until the unpaid bill, including penalties, has been paid in full and/or the violation of any of the City's rules and regulations has ceased or been eliminated.

In the event the water service discontinued be that of a private line (either "existing" or "future" as such lines are designated in these rules), service to such private line will not be resumed until the full amount of such unpaid bill, including penalties, has been paid. (Ord. 1166, 9-20-1976; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

(B)

1. In leased or rental residential properties where multiple apartments, units or dwellings are serviced by a single water meter, for water provided by the City, including apartment consumers and trailer and mobile home park consumers, the service contract with the City water department shall be in the name of the owner or lessor thereof. The owner or lessor shall be the consumer or customer of the City water department and the party responsible for payment for water service.
2. Based upon then current City records, prior to discontinuing water service to properties defined in Subsection (B)1 of this Section, for nonpayment of the water bill, the City shall cause at least one notice of intent to discontinue service to be posted on each individual residential rental apartment, unit or dwelling at least thirty (30) calendar days prior to actual discontinuance of service. After diligent effort to gain entry, in the event that entry to the properties defined in Subsection (B)1 of this Section is denied, then notice by United States mail shall be sufficient. The notice period shall begin upon deposit in the United States mail addressed to the last known tenant address. An affidavit by a City employee with knowledge shall be prima facie and conclusive proof of compliance with the notice requirements set forth herein. The notice shall also inform the tenant or lessee of the amount of the outstanding bill and that they may pay the outstanding bill directly to the City and deduct the amount paid from their next rental or lease payment. A copy of said notice shall also be provided the owner or lessor thirty (30) calendar days before water service is discontinued. Mailing the notice to the last known address of the owner- lessor shall be sufficient.
3. No water service which is the subject of this section shall be discontinued until the notice provisions of Subsection (B)2 of this Section shall have been complied with. (Ord. 2126, 10-24-1989; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-29: UTILITIES DIVISION; WATER TURN ON:

Water shall not be turned into any water line and fire hydrants shall not be turned on for any purpose by anyone except an authorized employee of the City. Unauthorized turn ons and turn offs will be subject to punitive action by the City. In addition to such punitive action, a consumer whose water was turned on or off by unauthorized

personnel shall be subject to a fifty dollar (\$50.00) surcharge, which amount shall be added to their billing for water service.

Whenever water service has been discontinued for nonpayment of any bill rendered, or because of violation of any rules or regulations of the City, a fee of fifty dollars (\$50.00) shall be assessed to cover the cost of turning the water on again. Said fee shall be paid prior to turning on the water.

In the event the consumer requests that the water be turned on at any time other than during the City's scheduled working hours, the consumer shall be charged an additional fifty dollar (\$50.00) fee. Said fee shall be paid prior to turning on the water.

A fee of twenty five dollars (\$25.00) shall be charged for a turn on request for water which has been voluntarily discontinued by the consumer, and not for nonpayment of any bill rendered, or because of violation of any rules or regulations of the City. (Ord. 4174, 11-27-2001, eff. 3-1-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-30: UTILITIES DIVISION; WATER CROSS CONNECTIONS:

In no event will cross connections between the City's water and other source of water be allowed. Violations will result in loss of service until the cross connection is corrected. (Ord. 1166, 9-20-1976; amd. Ord. 2363, 4-14-1992; Ord. 3193, eff. 5-26-1994; Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-31: UTILITIES DIVISION; SPECIAL SERVICE FOR WATER CUSTOMERS:

Persons desiring small amounts of water for a short time or service which will require the special attention of an employee of the City will be required to make a deposit, the amount of which will be set by the finance director. For water used by such person a charge will be made at rates fixed by the finance director in keeping with the service rendered and the deposit made may be applied against this charge. Any difference between the deposit and charge shall be paid by the party owing the difference. (Ord. 1166, 9-20-1976; amd. Ord. 2363, 4-14-1992; Ord. 3193, eff. 5-26-1994; Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-32: UTILITIES DIVISION; WATER CUT OFF FOR REPAIRS:

The City reserves the right to shut off the water in the mains at any time for the purpose of making repairs or extensions or for other necessary purposes. It will endeavor to give notice of such shutoff except in cases of accident or emergency. All owners and consumers having boilers on their premises are hereby cautioned against dangers arising from interrupted service. (Ord. 1166, 9-20-1976; amd. Ord. 2363, 4-14-1992; Ord. 3193, eff. 5-26-1994; Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-33: UTILITIES DIVISION; INTERRUPTIONS OF WATER SERVICE:

All contracts for furnishing water shall be made subject to interruptions or inability to fulfill same from any and all causes whatsoever beyond the control of the City and the City will not be liable for damages for such failure to furnish water or to carry out its contacts to furnish water from any cause or causes beyond its control. (Ord. 1166, 9-20-1976; amd. Ord. 2363, 4-14-1992; Ord. 3193, eff. 5-26-1994; Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-34: UTILITIES DIVISION; TESTING FIRE HYDRANTS:

The City reserves the right to use or test fire hydrants without liability for any damage claims resulting from water discoloration or chemical or other change that might be caused by such practice. (Ord. 1166, 9-20-1976; amd. Ord. 2363, 4-14-1992; Ord. 3193, eff. 5-26-1994; Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-35: UTILITIES DIVISION; FAILURE OF CONSUMER TO COMPLY WITH REGULATIONS:

The City may refuse to furnish water or sewer services to the premises of any applicant who fails to meet all the applicable conditions and terms of the regulations or requirements set forth in this Code relating to water or sewer service. (Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-36: UTILITIES DIVISION; TAMPERING WITH THE WATER SYSTEM:

- (A) It shall be unlawful for any person to break, deface, tamper with or damage any hydrant, pipe or other water system appliance or fixture, or in any other manner interfere with the operation of any part of the water system of the City.
- (B) It shall be unlawful for any person to connect any pipe, tube or other instrument with any main or service pipe for conducting water belonging to the City, for the purpose of taking water from such main or service pipe without first obtaining a written permit from the Public Works Department.
- (C) No unauthorized person shall uncover, make any connections with or open into, use, alter or disturb any mains, appurtenances or service connections, without first obtaining a written permit from the Public Works Department. (Ord. 4201, 2-26-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-37: UTILITIES DIVISION; SEWER COLLECTION SYSTEMS CONSTRUCTED:

- (A) Construction Within The City:
 - 1. In the event the City/County Health Department shall determine that there exists on any property having access to a sanitary main belonging to the

City a condition which is a menace to health arising from improper sewer disposal, said property owner shall connect his property to such sanitary sewer main within sixty (60) calendar days after receiving written notification from the City/County Health Department to do so.

2. If the City shall determine that any property owner refuses after notice to connect, or does not have the financial ability necessary to make connection to a sanitary sewer main belonging to the City as herein required, the City shall have the right to install such sewer mains and facilities as are necessary to provide adequate sewer services to the affected property and to make labor and material charges therefore in an amount equal to the going or customary rate or price for such labor and materials within the City at the time of such work, and the City shall have the further right to file a lien against the affected property for the amount of the foregoing charges in the manner and form provided by the statutes of the State of Arizona.
3. The owner of any property, having access to a sanitary sewer main belonging to the City but not included within any sewer improvement district, who may request to connect to such sanitary sewer main or who may have been ordered to make such connection pursuant to Subsection (A)2 of this Section, shall pay as a connection charge an amount equal to that charge the owner of property of equal or equivalent size within the sewer improvement district closest to the location of the affected property and such connection shall be and become a lien against the affected property until fully paid. (Ord. 1166, 9-20-1976; amd. Ord. 1320, 3-26-1979; Ord. 4317, 5-27-2003, eff. 7-1-2003)
4. The term "access" as used in this Subsection shall be defined as meaning any possible method or means of obtaining a service line connection to a sanitary sewer main belonging to the City. For the purpose of this Subsection, the term "access" shall include any mechanical or artificial method of improving the subject property to the extent that a sanitary sewer main may be physically utilized by the owner. (Ord. 1320, 3-26-1979; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

(B) Construction Outside Of City:

1. Complete sanitary sewer collection systems which have been constructed and installed as part of subdivision or land development projects in accordance with plans and specifications previously approved by the Public Works Director and under his supervision and inspection, by private contract at the sole cost and expense of other than the City, on land situated outside the City limits, may be served by, and become a part of, the City sanitary sewer collection system, upon approval of the mayor and City council and satisfaction of all liens and encumbrances and payment

to the City of costs incurred by the City in connecting said system to the City sanitary system. (Ord. 4504, 10-25-2005)

2. Premises situated within a subdivision or land development project within which a complete sanitary sewer system has been constructed and installed, as provided in Subsection (B)1 of this Section and which are situated outside the City limits, may be served by the City sanitary sewer collection system, subject to the rates provided in this Chapter as they may be amended by the council, in its discretion. (Ord. 1166, 9-20-1976; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
 3. Before any permit for sewer service may be issued as provided in Subsection (B)2 of this Section, the owner of property to be served shall deliver, in duplicate, an executed sewer service agreement complying in all respects to all the provisions of this Chapter. It shall be the duty of the director of the Public Works Department to examine the agreement submitted and if the director determines that said agreement conforms in all respects with the provisions of this Chapter, he may approve the same and accept said service agreement for and on behalf of the City and issue permits as herein provided. Upon approval and acceptance of said agreement, the director of the Public Works Department shall cause the original thereof to be recorded in the office of the county recorder of Yavapai County, Arizona, the recording fee thereof to be paid by said owner of the property to be served. (Ord. 1166, 9-20-1976; amd. Ord. 1432, 4-10-1980; Ord. 3473, eff. retroactive to 2-1-1996; Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (C) Sewer Design And Construction: Prior to the construction or extension of sewer facilities, a civil engineer registered in Arizona must perform the necessary field engineering and prepare detailed plans and specifications for the sewer extension or construction. The final detailed plans and specifications for the sewer extension or construction must be approved by the ADEQ and by the City before construction begins. The design and engineering will be in accordance with the specifications of ADEQ and the City prior to construction. The construction shall meet the City's specifications, requirements and approval, and will be subject to inspection by the City's agent during construction. (Ord. 3651, eff. 8-21-1997; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (D) Plans And Specifications: All construction under this Chapter shall conform to the specifications of the City entitled "Uniform Standard Specifications For Public Works Construction Sponsored And Distributed By The Maricopa Association Of Governments" (most recent edition), with all supplements thereto, and all construction shall also conform to that certain document entitled "City Of Prescott Department Of Public Works Standard Specifications And Drawings" (the most recent edition), together with all supplements thereto, together with all applicable

federal, state, county and City laws, rules and regulations. (Ord. 2279, 6-25-1991; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

- (E) Deposits Into Sewer System: All wastes and inflow deposited into the City sanitary sewer system, as well as any effluent and byproducts produced as a result thereof, are the property of the City. (Ord. 3824, 12-15-1998; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-38: UTILITIES DIVISION; PROHIBITED SUBSTANCES IN THE SEWER SYSTEM; GENERALLY:

No User shall introduce or cause to be introduced into the POTW any Pollutant or wastewater which causes Pass Through or Interference, or any water or waste that could cause a violation of any Categorical Standard or Pretreatment or recharge requirement. These general prohibitions apply to all Users of the POTW whether or not they are subject to Categorical Pretreatment Standards or any other Federal, State, or local Pretreatment Standards or requirements.

No Person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process water to any sanitary sewer. Storm water and all other surface drainage shall be discharged to such sewers or drains as are specifically designated as such, or to a natural outlet approved by the City. (Ord. 1360, 8-27-1979; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-39: UTILITIES DIVISION; PROHIBITED SUBSTANCES IN THE SEWER SYSTEM; SPECIFICALLY:

Except as provided in this Section, no User shall discharge or cause to be discharged, or process or store in such a manner that they could be discharged, any of the following described water or wastes to any public sewer:

- (A) Wastewater having a temperature greater than 110 °F (43.3 °C), or which will inhibit biological activity in the POTW resulting in Interference, but in no case causes the temperature at the introduction into the POTW to exceed 104°F (40°C).
- (B) Fats, oils, or greases of animal or vegetable origin in amounts that will cause or contribute to obstruction of the flow or reduced treatment effectiveness in the POTW.
- (C) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquids, solids or gases which, by reason of their nature or quantity could be sufficient, either alone or by interaction with other substances, to cause injury to the POTW from fire or explosion.
- (D) Any Garbage that has not been properly shredded.

- (E) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch, manure, grit; such as brick, cement, onyx, carbide or any other solid or viscous substance capable of obstructing flow in the POTW or other interference with the proper operation of the Sewage Works.
- (F) Any water or waste having a pH lower than five and one-half (5 1/2) or higher than nine (9) or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel to the sewerage works.
- (G) Any water or waste containing a toxic, poisonous or radioactive or other substance in sufficient quantities to cause, or have the potential to cause, injury or interfere with wastewater treatment process, cause effluent of the Wastewater Treatment Plant to come out of ADEQ compliance, cause corrosive structural damage or equipment degradation, constitute a hazard to humans or animals or create any hazard to the POTW system or in the effluent of the Wastewater Treatment Plant, or Pollutants which result in the presence of toxic gasses, vapors, or fumes within the POTW System in a quantity that may cause acute worker health and/or safety problems.
- (H) Any waters or wastes containing Suspended Solids of such character or quantity that unusual attention or expense is required to handle such materials at the Wastewater Treatment Plant unless specifically authorized by the Public Works Director. Compensation will be determined by the City to be paid by the User who contributes any such authorized substance.
- (I) Any noxious or malodorous gas or substance capable of creating a public nuisance.
- (J) Any water containing a five (5) day biological oxygen demand (BOD) greater than three hundred (300) milligrams per liter (mg/L), unless specifically authorized by the Public Works Director.
- (K) Any water containing more than three hundred fifty (350) mg/L of Total Suspended Solids, unless specifically authorized by the Public Works Director.
- (L) Any water or wastewater having an average daily flow of greater than two and one-half percent (2.5%) of the treatment capacity of the Wastewater Treatment Plant to which it is discharged, unless specifically authorized by the Public Works Director.
- (M) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.

- (N) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than five percent (5%) or any single reading over ten percent (10%) of the Lower Explosive Limit of the meter.
- (O) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts which will cause or contribute to obstruction of the flow in the POTW, Interference, Pass Through, or damage to the POTW.
- (P) Solid or viscous substances in amounts which will cause or contribute to obstruction of the flow in the POTW, but in no case solids greater than one-half inch (1/2") or 1.27 centimeters (cm) in any dimension.
- (Q) Any Pollutant in concentrations that pose a risk of fume toxicity or other health and safety risks to POTW workers. The City reserves the right to establish, by Ordinance or in Wastewater Discharge Permits, specific instantaneous effluent limitations for these Pollutants.
- (R) Any new Discharge of water or waste, whether associated with a new User or with increased flows from an existing User, which would cause the average daily flow to any of the City's Wastewater Treatment Plant to exceed eighty percent of the treatment capacity of the Wastewater Treatment Plant, unless specifically allowed by the Public Works Director.
- (S) Trucked or hauled Pollutants, except at discharge points designated by the Public Works Director in accordance with Section 2-1-46-3 of this Ordinance, including any water or waste that is transported from the point of generation to the POTW by any septic tank pumper or chemical Waste Hauler, or similarly transported unless the transporter has first:
 - 1. Disclosed to the Public Works Director the origin, nature, concentration and volume of all Pollutants to be discharged; and
 - 2. Obtained written consent of the Public Works Director to discharge.
- (T) Storm Water, surface water, ground water, roof runoff, or subsurface drainage to any sanitary sewer. No rain spout, roof drain or other form of surface drainage and no foundation drainage or sump pump shall be connected to, or discharge into, any sanitary sewer. Storm Water and all other unpolluted drainage shall be discharged to such sewers or drains as are specifically designated as such, or to a Natural Outlet approved by the City.
- (U) Sludges, screenings, or other residues from the Pretreatment of Industrial Wastes.

- (V) Medical Wastes, except as specifically authorized by the Public Works Director in a Wastewater Discharge Permit.
- (W) Wastewater causing, alone or in conjunction with other sources, the Wastewater Treatment Plant's effluent to fail a toxicity test.
- (X) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW.
- (Y) Any Pollutant, including pesticides or polychlorinated biphenyls, that is not registered to be legally used in the United States. The City reserves the right to establish, by Ordinance or in Wastewater Discharge Permits, specific prohibitions for these Pollutants.

2-1-40: UTILITIES DIVISION; INTERCEPTORS REQUIRED:

Grease, oil and sand interceptors shall be provided for the proper handling of liquid waste containing grease in excessive amounts or any flammable waste, sand or other harmful ingredients except that such interceptors shall not be required for private living quarters or dwelling units. Grease traps shall be required at all public premises where food is served, such as restaurants, cafeterias, hospitals, schools, and day-care facilities. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-41: UTILITIES DIVISION; INTERCEPTORS; TYPE, CAPACITY AND LOCATION:

All interceptors shall be of a type and capacity approved by the Public Works Director, and shall be located as to be readily and easily accessible for cleaning and inspection. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-42: UTILITIES DIVISION; INTERCEPTORS, CONSTRUCTION OF GREASE AND OIL INTERCEPTORS:

Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of a substantial construction, watertight, and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-43: UTILITIES DIVISION; INTERCEPTORS; MAINTENANCE:

Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuous, efficient operation at all times in conjunction with requirements listed in this Chapter. (Ord. 1360, 8-27-1979; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-44: UTILITIES DIVISION; AUTHORITY OF PUBLIC WORKS DIRECTOR:

- (A) Consistent with applicable federal and state laws and regulations (including, without limitation, the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.), Federal Pretreatment Regulations (40 CFR Part 403), Arizona Revised Statutes, Section 49-391 and Section 9-276, the Arizona Administrative Code Sections R18-9-B204(B)(6)(b)(ii) and R18-9-B206, and the City Charter, Article I, Section 3), the City has jurisdiction and authority to regulate all Users of the POTW, including Significant Industrial Users, with respect to the volume and flow rate of discharge to the POTW and to establish permissible limits of concentration for various specific substances, materials, waters or wastes that are prohibited from entering the POTW. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003). The Public Works Director is authorized to establish, implement and enforce such limits and regulations.
- (B) In addition to the prohibitions specifically listed under Section 2-1-39 of this Chapter, The Public Works Director is authorized to establish Local Limits Pursuant to 40 CFR 403.5(c). Table A of this Section lists the Pollutant concentration limits that have been established to protect the POTW against Pass Through and Interference. Each User who discharges an Indirect Discharge to the POTW and is designated as a Significant Industrial User as defined in Section 2-1-9 shall not discharge or cause to be discharged at any entry point to the POTW any wastewater containing in excess of the following Local Limits:

TABLE A

Parameter	Local Limit	Sample Type
Arsenic	0.1 mg/l	Composite
Cadmium	1.2 mg/l	Composite
Copper	2.7 mg/l	Composite
Cyanide	1.0 mg/l	Grab
Fluoride	16.3 mg/l	Composite
Lead	0.4 mg/l	Composite
Mercury	0.001 mg/l	Composite
Nickel	1.04 mg/l	Composite
Silver	0.7 mg/l	Composite
Chromium	4.0 mg/l	Composite
Zinc	2.6 mg/l	Composite

Notes: mg/l = milligrams per liter

- (C) The City reserves the right to establish standards for substances not contained in Table A. The above limits apply at the point where wastewater is discharged to the POTW. The Local Limit shall be the maximum allowable concentration permitted in a discharge as measured, where feasible and appropriate for a given parameter, in a 24-hour composite sample obtained by flow-proportional sampling techniques. If the Public Works Director determines that flow-proportional sampling is not feasible, the Public Works Director may allow

composite sampling by time-proportional techniques or by compositing or averaging of one or more grab samples.

- (D) The Public Works Director may impose Mass-Based Limits in addition to the Concentration-Based Limits listed above. The Public Works Director may incorporate local limits on a User-specified basis into Wastewater Discharge Permits where necessary to meet Maximum Allowable Industrial Loading limitations. Any violation of User-specified pollutant limitations as may be set forth by the Public Works Director shall subject the User to the same administrative actions, penalties, and enforcement actions as would be available for any other violations described in this Ordinance.

2-1-45: UTILITIES DIVISION; PRETREATMENT FACILITIES;

Where necessary in the opinion of the Public Works Director, the owner shall provide, at his expense, such Pretreatment as may be necessary to: (Ord. 1615, 2-28-1983; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

- (A) Reduce objectionable characteristics or constituents to within maximum limits provided for in Sections 2-1-39 and 2-1-44 of this Chapter. (Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (B) Control the quantities and the rate of discharge of such waters, or wastes.
- (C) Comply with the Pretreatment Sections.

Users shall achieve compliance with all Categorical Pretreatment Standards; effluent limits based on applicable Pretreatment Standards, such as Local Limits; and/or requirements for Best Management Practices (BMPs) within the time limitations specified by EPA, the State, or the Public Works Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense.

Plans, specifications and any other pertinent information relating to proposed Pretreatment facilities shall be submitted for review by and the approval of the Public Works Director. No such construction of such facilities shall be commenced until such approvals are obtained in writing. The completed facilities shall not be placed in service until they have been inspected for conformance to the approved plans and the final construction approved by the Public Works Director. The approval of the plans and inspection of construction shall not relieve the User from complying with, and achieving, discharge limitations set forth in this Chapter. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a Discharge acceptable to the City under the provisions of this Chapter.

Federal and State pretreatment regulations shall be enforced as applicable. No discharge may exceed any federal categorical standard or cause the POTW to exceed any limitation set forth in any and all permits that govern discharge from the City's POTWs. (Ord. 1615, 2-28-1983; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-46: UTILITIES DIVISION; PRETREATMENT:

2-1-46-1 Additional Measures

- (A) Where preliminary treatment facilities are provided for any water or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his own expense. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (B) The Public Works Director may require Users to restrict their Discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate Sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this Chapter.
- (C) The Public Works Director may require any Person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A Wastewater Discharge Permit may be issued solely for flow equalization.
- (D) Dischargers of waste streams from leaking underground storage tank (LUST) groundwater remediation projects and any other type of groundwater remediation project that results in the Discharge of a waste stream to the POTW shall meet the following requirements:
 - 1. The User shall submit an application for a Wastewater Discharge Permit to the Public Works Director, as required by Section 2-1-65-2.B.
 - 2. No connection to the City's POTW will be made prior to receiving a permit.
 - 3. A flow meter as specified in the User's Wastewater Discharge Permit shall be installed prior to the discharge point and be easily accessible to the Public Works Director to record discharge flows.
 - 4. All maintenance and sampling activities for the groundwater remediation equipment shall be recorded and a copy of those records shall be kept on site and accessible to the Public Works Director.
 - 5. The waste stream piping shall be constructed in such a way that Discharge can be terminated by closing a valve.
 - 6. No connection will be made between the groundwater remediation system and any potable water supply.
 - 7. The Public Works Director may incorporate additional requirements into the User's Wastewater Discharge Permit in order to fulfill the purposes of this Ordinance.

- (E) As specified in the current adopted Plumbing Code (City Code 3-6-1), pretreatment devices for the removal of fats, oils, and grease and sand, grit, and/or other solids shall be installed by Food Service Facilities and Vehicle Service Facilities. They shall also be installed by other Users when, in the opinion of the Building Official, they are necessary for the proper handling of wastewater containing excessive amounts of these materials except that such interceptors shall not be required for residential Users. Requirements for the proper handling of these constituents in wastewater are as follows:
1. Grease interceptors shall be required, installed, and maintained as specified in the currently adopted Plumbing Code and per manufacturer's recommendations for the sizing and cleaning of interceptors for the food service industry.
 2. Sand/oil interceptors and oil/water separators shall be required, installed, and maintained as specified in the currently adopted Plumbing Code and per manufacturer's recommendations for the sizing and cleaning of interceptors for the vehicle service industry.
 3. All interceptors and separators shall be of a type and capacity specified in the currently adopted Plumbing Code; located as to be readily and easily accessible for cleaning and inspection; constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature; and provided with traffic-rated vaults and lids. They shall be of a substantial construction, watertight, and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.
 4. Where installed, all interceptors and separators shall be maintained by the owner, at his expense, in continuous, efficient operation at all times. Interceptors and separators shall be inspected, cleaned and repaired regularly by the User at the User's expense as specified in the Public Works Director's policies and procedures. The User shall have grease removed and disposed by grease haulers that are approved by the Public Works Director. The User shall keep records of all cleaning, repair and maintenance for at least three (3) years on the site where the interceptor, separator or trap is located. These records shall include copies of manifests indicating the point of discharge for each load. Such records shall be available for inspection by the Public Works Director upon request.
 5. The Public Works Director may require, in addition to the installation of Pretreatment devices, other actions by Industrial Users as necessary to implement the City's program to manage fats, oil, and grease, including but not limited to adoption and implementation of BMPs.
- (F) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

2-1-46-2 Accidental Discharge/Slug Discharge Control Plans

At least once every two (2) years, the Public Works Director shall evaluate whether each SIU needs an accidental Discharge/Slug Discharge control plan. The Public Works Director may require any User to develop, submit for approval, and implement such a plan. An accidental Discharge/Slug Discharge control plan shall address, at a minimum, the following:

- A. Description of discharge practices, including non-routine batch Discharges;
- B. Description of stored chemicals;
- C. Procedures for immediately notifying the Public Works Director of any accidental or Slug Discharge, as required by Section 2-1-67-6 of this Ordinance; and
- D. Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic Pollutants, including solvents, and/or measures and equipment for emergency response.

2-1-46-3 Hauled Wastewater

- A. The Public Works Director shall require haulers of Septic Tank Waste to obtain Wastewater Discharge Permits.
- B. Septic Tank Waste haulers may discharge loads only at locations designated by the Public Works Director and at such times as are established by the Public Works Director. The Public Works Director may collect samples of each hauled load to ensure compliance with applicable Standards. The Public Works Director may require the Septic Tank Waste hauler to provide a waste analysis of any load prior to discharge. The Discharge of hauled Septic Tank Waste is subject to all other requirements of this Ordinance.
- C. Septic Tank Waste haulers must provide a completed City waste-tracking form for every load. This form shall include, at a minimum, the name and address of the Septic Tank Waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. Septic Tank Waste haulers shall maintain records of all waste-tracking forms for at least three (3) years.
- D. The Public Works Director shall require grease haulers to obtain Wastewater Discharge Permits.

- E. Grease haulers shall not discharge mixed loads of grease and septic tank waste or any other type of waste. Grease haulers may discharge loads only at locations designated by the Public Works Director and at such times as are established by the Public Works Director. The Public Works Director may collect samples of each hauled load to ensure compliance with applicable Standards. The Public Works Director may require the grease hauler to provide a waste analysis of any load prior to discharge. The Discharge of hauled grease is subject to all other requirements of this Ordinance.
- F. Grease haulers must provide a completed City waste-tracking form for every load. This form shall include, at a minimum, the name and address of the grease hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. Grease haulers shall maintain records of all waste-tracking forms for at least three (3) years.
- G. The Public Works Director shall require haulers of Industrial Waste to obtain Wastewater Discharge Permits. The Public Works Director may require generators of hauled Industrial Waste to obtain Wastewater Discharge Permits. The Public Works Director also may prohibit the disposal of hauled Industrial Waste. The Discharge of hauled Industrial Waste is subject to all other requirements of this Ordinance.
- H. Industrial Waste haulers may discharge loads only at locations designated by the Public Works Director and at such times as established by the Public Works Director. No load may be discharged without prior consent of the Public Works Director. The Public Works Director may collect samples of each hauled load to ensure compliance with applicable Standards. The Public Works Director may require the Industrial Waste hauler to provide a waste analysis of any load prior to discharge.
- I. Industrial Waste haulers must provide a completed City waste-tracking form for every load. This form shall include, at a minimum, the name and address of the Industrial Waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes. Industrial Waste haulers shall maintain records of all waste-tracking forms for at least three (3) years.

2-1-47: UTILITIES DIVISION; MANHOLES:

When required by the City, the owner of any property served by a building sewer carrying industrial waste shall install a suitable control manhole in the building sewer to facilitate observation and sampling of the waste. Such manholes, when required, shall

be accessible and safely located and shall be constructed in accordance with the plans approved by the Public Works Director. The manholes shall be installed by the owner at his expense and shall be maintained by him, so as to be safe and accessible at all times. (Ord. 1360, 8-27-1979; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-48: UTILITIES DIVISION; SAMPLE COLLECTION AND ANALYTICAL REQUIREMENTS

- (A) All Significant Industrial Users shall provide, at their own expense, sampling and analyses at least twice each year, in June and December, according to 40 CFR 403.12. If any sample that is taken by the Significant Industrial User or the City is not within the limits of this Chapter or the Federal Categorical Standards, then the User will be required to perform the sampling and analyses as often as is determined by the City to be necessary.
- (B) The flow must be measured by the Industrial User at the time that the sample is taken according to 40 CFR 403.12(d). The methods of sampling and analyses must be in accordance with the latest edition of standard methods and/or the applicable EPA categorical standards. The laboratory must be certified by the Arizona Department of Health Services (ADHS). Analyses using onsite equipment, such as in-line pH meters, will be acceptable at the discretion of the Public Works Director. An authorized representative of the Industrial User must sign a statement verifying the validity of the methods and stating that the sample is representative of the discharge according to 40 CFR 403.12(k).
- (C) All records of sampling, analysis and flows must be kept by the Industrial User for at least three (3) years. Information and data obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agencies without restriction unless the Industrial User specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User, except that the City cannot restrict information on effluent data. Information accepted by the City as confidential shall not be transmitted to any governmental agency or to the general public by the City unless a ten (10) day notification is given to the Industrial User.
- (D) The City will maintain records of monitoring, inspections and correspondence relating to this Chapter for a minimum of three (3) years. These records will be available to the EPA and ADEQ.
- (E) The City will maintain records of monitoring that are necessary to enforce this Chapter. The City will sample randomly and analyze for any pollutants that would be anticipated for that particular user whose effluent was sampled. In accordance with 40 CFR 403.8(f), the City will maintain adequate funding and personnel to operate a Pretreatment Program as prescribed in this Chapter. The City may

designate an independent laboratory to do the sampling and testing, and this laboratory will be allowed to enter the premises of any Industrial User to sample any discharge which may enter the wastewater collection system.

- (F) The Industrial User will be financially responsible for any sampling and analysis done by the City that is not routine as provided for in this Chapter. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (G) Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.
 1. Except as indicated below, the Industrial User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Public Works Director. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the Discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple Grab Samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite Samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, Grab Samples may be required to show compliance with Instantaneous Limits.
 2. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
 3. For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 2-1-67 [40 CFR 403.12(b) and (d)], a minimum of four (4) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Public Works Director may authorize a lower minimum. For the reports required by Section 2-1-67 (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of Grab Samples necessary to assess and assure compliance by with applicable Pretreatment Standards and requirements.

4. The flow must be measured by the Industrial User at the time that the sample is taken according to 40 CFR 403.12(d).
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- (H) All Pollutant analyses, including sampling techniques, to be submitted as part of a Wastewater Discharge Permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the Pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.
 - (I) The analysis of all samples in order to be considered for compliance with the requirements of this article must be conducted by a laboratory licensed by the State of Arizona as an environmental laboratory (Arizona Revised Statutes (A.R.S.) 36-495, et seq. Analyses using onsite equipment, such as in-line pH meters, will be acceptable at the discretion of the Public Works Director.

2-1-49: UTILITIES DIVISION; SPECIAL AGREEMENT WITH INDUSTRIAL CONCERNS; SANITARY SEWER SYSTEM:

Nothing in this Chapter shall be construed to prevent any special arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment for the cost of such treatment by the industrial concern, except that any special agreement must be at least as stringent as applicable state and federal requirements. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-50: UTILITIES DIVISION; PROCEDURES FOR ENFORCEMENT:

Descriptions of enforcement procedures are described in the City's Enforcement Response Plan. A copy of the Enforcement Response Plan will be available through a public records request from the City Clerk.

- (A) A compliance schedule, as required by 40 CFR 403.12(b)(7)), will be established for Significant Industrial Users that do not meet applicable standards. The dates of the compliance schedule will be determined by the City.
- (B) Procedures for enforcement of hazardous discharge violations shall be administered as follows:
 1. The City shall give written notice to the Industrial User regarding the violation and explain the enforcement action to be taken in the event of continued noncompliance.

2. If the Industrial User does not immediately stop such discharge, the City may discontinue water and/or sewer service, and may undertake any legal proceedings as may be necessary or appropriate to halt such discharge.
 3. The Industrial User shall be responsible for any expenses to the City for handling or stopping such discharge, for reasonable cost and attorney fees, and for any damage resulting from the discharge.
- (C) Procedures for other violations which do not involve hazardous materials or present an imminent danger to the POTW or the environment shall be handled as follows:
1. Oral and written notification shall be given to the Industrial User regarding the nature and severity of the violation.
 2. A compliance schedule for eliminating the violation shall be established. The specific schedule shall be determined by the nature and severity of the violation.
 3. In the event of continued noncompliance, measures listed under Subsection (B) of this section may be implemented. (Ord. 1615, 2-28-1983; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-50-1: Administrative Enforcement Remedies

- (A) Notification of Violation:
- When the Public Works Director finds that a User has violated, or continues to violate, any provision of the Pretreatment Sections, a Wastewater Discharge Permit or order issued pursuant to the Pretreatment Sections, or any other Pretreatment Standard or requirement, the Public Works Director may serve upon that User a written Notice of Violation. Within fifteen (15) calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to the Public Works Director. Submission of this plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of the Public Works Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.
- (B) Consent Orders:
- The Public Works Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents will include specific action to be taken by the User to correct the noncompliance within a time period

specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 2-1-50 of this Ordinance and shall be judicially enforceable.

(C) Show Cause Hearing:

The Public Works Director may order an User which has violated, or continues to violate, any provision of the Pretreatment Sections, a Wastewater Discharge Permit or order issued under the Pretreatment Sections, or any other Pretreatment Standard or requirement, to appear before the Public Works Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any Authorized Representative of the User. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.

(D) Compliance Orders:

When the Public Works Director finds that an User has violated, or continues to violate, any provision of the Pretreatment Sections, a Wastewater Discharge Permit or order issued under the Pretreatment Sections, or any other Pretreatment Standard or requirement, the Public Works Director may issue an order to the User responsible for the Discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed, maintained and/or properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of Pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(E) Cease and Desist Orders:

When the Public Works Director finds that a User has violated, or continues to violate, any provision of the Pretreatment Sections, a Wastewater Discharge Permit or order issued under the Pretreatment Sections, or any other Pretreatment Standard or requirement, or that the User's past violations are likely to recur, the Public Works Director may issue an order to the User directing it to cease and desist all such violations and directing the User to:

1. Immediately comply with all requirements; and

2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the Discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(F) Administrative Fines:

1. When the Public Works Director finds that a User has violated, or continues to violate, any provision of the Pretreatment Sections, a Wastewater Discharge Permit or order issued under the Pretreatment Sections, or any other Pretreatment Standard or requirement, the Public Works Director may fine such User in an amount described in the Enforcement Response Plan, in accordance with A.R.S. 49-391. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation. In addition, the Public Works Director may add to the administrative fines an amount equal to any penalties, liquidated damages or expenses that the City is required to pay to ADEQ or EPA (pursuant to a consent order, consent decree or otherwise) as a result of User's violation of any provision of this Chapter.
2. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of the unpaid balance, and interest shall accrue thereafter at a rate per month as specified in the Enforcement Response Plan. A lien against the User's property will be sought for unpaid charges, fines, and penalties.
3. Each and every day any violation continues shall be deemed and considered a separate offense. Any User violating any provisions of this Chapter shall become liable to the City for any expense, loss or damage occasioned by the City by reason of such violation.
4. The penalties set forth above shall be cumulative and nonexclusive. In addition to those penalties set forth herein, the City may institute any other remedial actions available, including, but not limited to, a civil action to recover any and all monies due the City.
5. Users desiring to dispute such fines must file a written request for the Public Works Director to reconsider the fine along with full payment of the fine amount within fifteen (15) calendar days of being notified of the fine. Where a request has merit, the Public Works Director may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to

the User. The Public Works Director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

6. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

(G) Emergency Suspensions:

The Public Works Director may immediately suspend a User's Discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened Discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health, safety or welfare of Persons and/or POTW employees; damage or cause to damage the collection, treatment recharge/reuse system, or any part thereof, or cause a detrimental decrease in recharge water quality. The Public Works Director may also immediately suspend a User's Discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

1. Any User notified of a suspension of its Discharge shall immediately stop or eliminate its wastewater Discharge. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Public Works Director may take such steps as deemed necessary including, but not limited to, immediate severance of the Sewer Connection, to prevent or minimize damage to the POTW, the aquifer or other receiving waters, or endangerment to any individuals. The Public Works Director may allow the User to recommence its Discharge when the User has demonstrated to the satisfaction of the Public Works Director that the period of endangerment has passed, unless the termination proceedings in Section 2-1-50-1(H) of this Chapter are initiated against the User.
2. A User that is responsible, in whole or in part, for any Discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Public Works Director prior to the date of any show cause or termination hearing under Sections 2-1-50-1(C) or 2-1-50-1(H) of this Chapter.

Nothing in this Section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

(H) Termination of Discharge:

In addition to the provisions in Section 2-1-66-6 of this Chapter, any User who violates the following conditions is subject to discharge termination:

1. Violation of Wastewater Discharge Permit conditions;

2. Failure to accurately report the wastewater constituents and characteristics of its Discharge;
3. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to Discharge;
4. Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or
5. Violation of the Pretreatment Standards in Section 2-1-44 of this Chapter.

Such Industrial User will be notified of the proposed termination of its Discharge and be offered an opportunity to show cause under Section 2-1-50-1(C) of this Ordinance why the proposed action should not be taken. Exercise of this option by the Public Works Director shall not be a bar to, or a prerequisite for, taking any other action against the Industrial User.

(I) Alternative Administrative Enforcement:

As an alternative to the administrative enforcement procedures and remedies delineated in Section 2-1-50-1 of this Chapter, the Public Works Director may elect to administratively prosecute violations of this Chapter in accordance with the procedures delineated in the City's Enforcement Response Plan promulgated and adopted by the City pursuant to statutory requirements set forth in the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977.

2-1-50-2: Judicial Enforcement Remedies:

(A) Injunctive Relief:

When the Public Works Director finds that a Person has violated, or continues to violate, any provision of Pretreatment Sections, a Wastewater Discharge Permit, or order issued under the Pretreatment Sections, or any other Pretreatment Standard, the Public Works Director may, through the City Attorney, commence a civil action in the Superior Court of Arizona, Yavapai County, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the Wastewater Discharge Permit, order, or other requirement imposed by the Pretreatment Sections on activities of the Industrial User. Such civil action may also seek other appropriate legal or equitable relief, including a requirement for the User to conduct environmental remediation. An action for injunctive relief shall not be a bar against, or a prerequisite for, the City taking any other action against the Person.

(B) Civil Penalties:

1. A Person who has violated, or continues to violate, any provision of the Pretreatment Sections, a Wastewater Discharge Permit, or any

order issued under the Pretreatment Sections, or any other Pretreatment Standard shall be liable to the City for a civil penalty per violation, per day, as described in the Enforcement Response Plan, in accordance with A.R.S. § 49-391. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation. A.R.S. § 49-391 permits recovery of civil penalties provided therein by an action in superior court or negotiated settlement agreement. No consent decree in superior court, or in a negotiated settlement, may not become final until the City has provided a period of thirty (30) calendar days for public comment. In addition to any civil penalties, the City may also recover as damages an amount equal to all penalties, liquidated damages or expenses that the City incurs or is required to pay to ADEQ or EPA (pursuant to a consent order, consent decree or otherwise) as a result of User's violation of any provision of Pretreatment Sections or a Wastewater Discharge Permit.

2. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and any actual damages incurred by the City (including, but not limited to, penalties and costs under a consent order or consent decree or as a result of an ADEQ or EPA enforcement action, if those penalties or costs are caused by a violation of any provision of Pretreatment Sections or a Wastewater Discharge Permit).
3. In determining the amount of civil penalties, the City or Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the User's violation, corrective actions taken by the User to reduce, mitigate and/or eliminate the violation and any future potential violations of a similar nature, the compliance history of the User, and any other factor as justice requires.
4. Filing an action for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a User.

(C) Criminal Prosecution:

1. A User who willfully or negligently violates any provision of Pretreatment Sections, a Wastewater Discharge Permit, or order issued under the Pretreatment Sections, or any other Pretreatment Standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine per violation, per day as described in the Enforcement Response Plan, or imprisonment for not more than six (6) months, or both.
2. A User who willfully or negligently introduces any substance

into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty per violation, per day as described in the Enforcement Response Plan, or the cost of property repairs, whichever is greater, or be subject to imprisonment for not more than six (6) months, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

3. A User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Ordinance, Wastewater Discharge Permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be punished by a fine per violation, per day as described in the Enforcement Response Plan, or imprisonment for not more than six (6) months, or both.
4. In the event of a second conviction, a User shall be punished by a fine per violation, per day as described in the Enforcement Response Plan, or imprisonment for not more than two (2) years, or both.

(D) Remedies Nonexclusive:

The remedies provided for in this Ordinance are not exclusive. The Public Works Director may take any, all, or any combination of these actions against a noncompliant User. Enforcement of Pretreatment violations will generally be in accordance with the City's Enforcement Response Plan. However, the Public Works Director may take other action against any User when the circumstances warrant. Further, the Public Works Director is empowered to take more than one enforcement action against any noncompliant User.

2-1-50-3: Supplemental Enforcement Action

(A) Penalties for Late Reports:

A penalty shall be assessed to any Significant Industrial User for each day that a report required by this Ordinance, a permit, or order issued hereunder is late, beginning five (5) calendar days after the date the report is due, according to the schedule in the City's Enforcement Response Plan. Actions taken by the Public Works Director to collect late reporting penalties shall not limit the Public Works Director's authority to initiate other enforcement actions that may include penalties for late reporting violations.

(B) Performance Bonds:

The Public Works Director may decline to issue or reissue a Wastewater Discharge Permit to any User who has failed to comply with any provision of the Pretreatment Sections, a previous Wastewater Discharge Permit, or order issued those sections, or any other Pretreatment Standard or requirement, unless such Industrial User first files a satisfactory bond, letter of credit, cash, or other security device payable to the City, in a sum not to exceed a value reasonably determined by a third-party engineering analyses procured by the Public Works Director to be necessary to achieve consistent compliance.

(C) Liability Insurance:

The Public Works Director may decline to issue or reissue a Wastewater Discharge Permit to any Industrial User who has failed to comply with any provision of this Ordinance, a previous Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or requirement, unless the User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its Discharge.

(D) Payment of Outstanding Fees and Penalties:

The Public Works Director may decline to issue or reissue a Wastewater Discharge Permit to any Industrial User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this Ordinance, a previous Wastewater Discharge Permit, or order issued hereunder.

(E) Water Supply Severance:

Whenever a User has violated or continues to violate any provision of this Chapter, a Wastewater Discharge Permit, or order issued under the Pretreatment Sections, or any other Pretreatment Standard or requirement, water and/or sewer service to the User may be severed. Service will only recommence, at the User's expense, after it has demonstrated its ability to comply to the satisfaction of the Public Works Director.

(F) Public Nuisances:

A violation of any provision of Pretreatment Sections, a Wastewater Discharge Permit, or order issued under the Pretreatment Sections, or any other Pretreatment Standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Public Works Director. Any Person(s) creating a public nuisance shall be subject to the provisions of the City Code Section 3-4 governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance. The remedy provided herein shall be in addition to any other remedy authorized by this Chapter.

(G) Contractor Listing:

Industrial Users which have not achieved compliance with applicable Pretreatment Standards and requirements are not eligible to receive a

contractual award for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by a User found to be in Significant Noncompliance (as defined in Section 2-1-70 of this Chapter) with Pretreatment Standards or requirements may be terminated at the discretion of the Public Works Director.

2-1-51: UTILITIES DIVISION; PROHIBITED ACTS; SANITARY SEWER SYSTEM:

- (A) It is unlawful for any person to deposit, or permit to be deposited, in any unsanitary manner upon public or private property within the City or in any area under the jurisdiction of the City any human or animal excrement or other objectionable waste.
- (B) It shall be unlawful and designated a Class 1 misdemeanor for any person to dump or deposit sewage or septic tank effluent upon public or private property within the City at a location not then under valid permit by the county of Yavapai for such purpose. (Ord. 2279, 6-25-1991; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (C) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenances or equipment which is a part of the municipal sewage works. (Ord. 2037, 11-22-1988, eff. 1-1-1989; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-52: UTILITIES DIVISION; PERMIT REQUIRED FOR ACTIONS AFFECTING PUBLIC SEWER OR APPURTENANCES:

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Public Works Department. (Ord. 1360, 8-27-1979; amd. Ord. 1432, 3-10-1980; Ord. 1458, 7-14-1980; Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-53: UTILITIES DIVISION; INDUSTRIAL COST RECOVERY (ICR) SYSTEM:

At such time as industrial wastes, as defined under Section 35.905.8 of the construction grants regulations 40 CFR part 35, are discharged to the facilities constructed under EPA grant no. CO40143, the City shall develop and adopt an ICR system acceptable to the USEPA. The cost recovery system shall comply with the requirements of PL 92-500 and all regulations and guidelines pertaining thereto. (Ord. 1360, 8-27-1979; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-54: USE OF WATER FOR ARTIFICIAL LAKES:

The use of treated, metered, potable water for the purpose of filling or refilling artificial lakes shall be regulated as set forth in Title III, Chapter 10 of the City Code, incorporated herein by this reference as if set forth in full. (Ord. 1884, 5-12-1987; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-55: CROSS CONNECTION CONTROL PROGRAM:

- (A) Adoption Of Program: That certain Code entitled "Cross Connection Control Program", as adopted by the City Council pursuant to Resolution 2471, and as the same may be amended from time to time, is hereby adopted and made a part of this Chapter, the same as though said program were specifically set forth in full herein.
- (B) Civil Violation: A violation of any provision of the cross connection control program shall be a civil violation, and shall be subject to the provisions of Section 1-3-2 of the City Code for each day that the violation continues. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-56: EXTENSION OR CONSTRUCTION OF EFFLUENT LINES:

The City may extend or cause to be extended or permit to be extended or constructed effluent lines. Extensions or construction at the request of private parties will be made on application of one or more property owners to be benefited by said extension or construction and only after the applicant or applicants have made a deposit equal to the estimated cost of the extension or construction if it is not to be built through an improvement district. In those cases where an improvement district is to be formed, those procedures would be followed. The extensions and/or construction shall be at the expense of the initial applicant or applicants in accordance with the following criteria:

- (A) Payment: The applicant or applicants shall pay the total cost of said extension or construction. The applicant or applicants shall have the right to establish reimbursement districts for connection thereto to compensate them for portions of the cost of the extension or construction.

No applicant shall be entitled to the formation of a reimbursement district unless the design engineer for that project first certifies, in writing, to the Public Works Director that the solicitation for bids for the construction for said project was publicly advertised, with proof of said advertisement, and that the contract was awarded to the lowest and most responsible bidder. Prior to awarding any bids on a project for which a reimbursement district is to be formed, the applicant shall provide the City with copies of all such bids for review by the Public Works Directors or his designee, who shall approve the bid to be awarded prior to the start of construction. Additionally, the applicant shall require that payment and performance bonds be posted in accordance with Arizona Revised Statutes Section 34-222.

- (B) Establishment Of Reimbursement District: In order for the applicant or applicants to establish a reimbursement district, written notice of intent to form a reimbursement district must be given to the Public Works Director prior to the applicant receiving approval of the submitted plans. A written notice to the Public Works Director shall be made within sixty (60) calendar days after the completion and acceptance of said line extension or construction for which the reimbursement district is being requested, which notice shall include the costs associated therewith; the applicant shall enter into an agreement with the City setting forth the conditions of reimbursement within one calendar year after the completion and acceptance of said line extension or construction for which the reimbursement district is being established. The agreement shall also contain a plat map indicating thereon the applicant's or applicants' area of development, the location of the proposed or constructed extension from the development, to the point of connection with the existing City effluent line, and the map shall also indicate the area that will benefit from the extension or construction, which area shall constitute the total area outside of the applicant's or applicants' development, but shall be subject to reimbursement under the agreement.

The plat map shall be drawn at a scale of not less than two hundred feet (200') to the inch, and the plat shall be eight and one-half inches by fourteen inches (8 1/2" x 14") in size, or seventeen inches by twenty eight inches (17" x 28") in size. The plat map shall specifically identify the terminus of the existing effluent line, the exact location, route and distance of the line extension, the nonreimbursable area to be benefited by the extension and the reimbursable area to be benefited by the extension or construction and subject to the reimbursement district.

Contemporaneous with the application for a reimbursement district pursuant to the provisions of this section, the applicant for said district shall tender to the City Public Works Department an application fee equal to 0.5 percent of the estimate project cost, provided, however, that the application fee shall be not less than five hundred dollars (\$500.00). Upon the completion of the project, and prior to acceptance by the City of the project and approval by the City of the formation of the reimbursement district, if the final construction cost results in the fee deposited pursuant to this section being less than 0.5 percent of the final construction cost, the applicant for said district shall pay additional monies to the Public Works Department to equal 0.5 percent of the final construction cost of the project.

For a period of fifteen (15) years from the date upon which a new line has been put into service, each new applicant for service shall be required to pay a pro rata share in the initial cost of the line, which share shall be calculated by the Public Works Director, subject to the approval of the City council. In determining the pro rata share attributable to each property within the reimbursement area, the City shall determine the respective benefit to be received by each area, together with the distance of the property from the line to be extended, the proposed or contemplated uses and density of the property, and such other factors as may be

relevant in arriving at said pro rata share. The determination of the pro rata share for each property within the reimbursement district shall be determined at the time of formation of the district by the City council, which determination shall be considered final thirty (30) calendar days after the recordation of the reimbursement district agreement.

Notwithstanding the foregoing, the Public Works Director shall be empowered to equitably divide the obligation of a property within a reimbursement district upon the sale or partition of a portion of a property within a designated reimbursement district. In the foregoing event, the Public Works Director will record an amended (and updated) reimbursement map with the Yavapai County recorder. The total initial cost shall be adjusted by the rate of inflation in the construction industry since the date of final acceptance of the extension by the City, to be calculated in accordance with the engineering news record construction cost index. The base index shall be the index reported in the engineering news record publication closest to the date of acceptance of the project. In no event shall the pro rata share be less than the pro rata share would have been at the time of construction. Each new applicant for a connection to the effluent line will be required to pay to the City, for disbursement to the person, group, association, corporation or City that made the extension, for their pro rata share before they are permitted to connect to the extension. After fifteen (15) years from the date the new extension has been put into service, an applicant desiring to connect to the line may do so without having to pay for the service units as specified in this section. Subsequent extensions located outside of the established reimbursement district shall be treated as new extensions and shall not affect the calculating of service units of the original extension nor will such extensions be required to share in the cost of the original extension.

Notwithstanding any of the conditions herein before specified pertaining to the fifteen (15) year limit to collect from new applicants a pro rata share of the cost of new lines, the City is hereby exempt from said fifteen (15) year limitation and the City will collect from all new applicants their pro rata share for such service connections until the City's total initial installation cost is reimbursed.

The size and specifications of the material used in the main to be installed shall be designated by the City.

At the discretion of the City, the necessary engineering and construction of said effluent lines may be performed or contracted by the City. In either case, the total actual cost of installation shall be borne by the initial applicant or applicants and funds estimated to cover the cost of the installation shall be deposited with the City prior to construction unless improvement district procedures are being followed.

In the event the applicant is directed to construct or contract for construction of said line or lines, with person or persons other than the City, complete plans and

specifications shall be submitted for approval by the City. After approving the plans, the City will furnish necessary inspection of the installation of said line or lines. Upon satisfactory completion and final inspection, the City will give written notice of acceptance, at which time said line or lines will become the property of the City subject to the rules and regulations set forth herein.

Should the extension or construction of effluent lines require easements or rights of ingress and egress, said agreements or easements shall be provided by the applicant for use by the City.

- (C) Effluent Line Design And Construction: Prior to an extension or construction of an effluent line, a civil engineer registered in Arizona must perform the necessary field engineering and prepare detailed plans and specifications for the line extension or construction. The final detailed plans and specifications for the effluent construction or extension must be approved by the ADEQ and by the City before construction begins. The design and engineering will be in accordance with the specifications of ADEQ and the City prior to construction. The construction shall meet the City's specifications, requirements and approval, and will be subject to inspection by the City's agent during construction.
- (D) Plans And Specifications: All construction under this Chapter shall conform to the specifications of the City entitled "Uniform Standard Specifications For Public Works Construction Sponsored And Distributed By The Maricopa Association Of Governments" (most recent edition), with all supplements thereto and all construction shall also conform to that certain document entitled "City Of Prescott Department Of Public Works Standard Specifications And Drawings" (the most recent edition), together with all applicable federal, state, county and City laws, rules and regulations.
- (E) Reimbursement: Notwithstanding anything to the contrary contained herein, reimbursement to an applicant from an approved reimbursement may also include partial reimbursement for any and all associated effluent facilities and systems constructed by the applicant, under the same terms, conditions and provisions as set forth in this section.
- (F) Construction; Upgrades: The provisions of this Section shall also apply to the construction and/or upgrades of any and all facilities associated with the provision of effluent services. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)
- (G) Compliance: The City Council may approve the formation of a reimbursement district pursuant to this section where there is substantial compliance with this section, where the intent of this section has been met, and where the failure to strictly follow the requirements of this section did not result in any additional costs to the project. (Ord. 4239, 7-23-2002; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-57: EFFLUENT LINES; CONNECTIONS:

All connections to the City's effluent lines shall require the issuance of a permit by the Public Works Department. Said permit will only be issued upon the approval by the City council and all applicable regulatory agencies of an agreement between the consumer/User and the City relating to the use of effluent, together with the payment of any and all fees and charges agreed upon in said contract. The failure of the consumer/User to comply with any and all provisions of its agreement with the City for use of City effluent shall entitle the City, at its sole option, to immediately discontinue said service.

All effluent line connections shall be approved by the City and the actual tap into the effluent line shall be accomplished by City personnel, unless otherwise approved in writing by the Public Works Director. (Ord. 687, 11-9-1964; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

The approval of any agreement to connect to the City's effluent lines, and the permission to utilize City effluent, shall be at the sole discretion of the City, taking into consideration the then current effluent management policy. (Ord. 3824, 12-15-1998; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-58: INSPECTIONS; ADMINISTRATIVE WARRANTS:

- (A) The Public Works Director or his designee is hereby authorized to carry out periodic inspections or reinspections of facilities, equipment, property, records, and such other and further locations and/or items as may be deemed desirable, to determine compliance with this Chapter.
- (B) The Public Works Director or his designee is hereby authorized to investigate the cause, origin and circumstances of water, sewer or solid waste contamination. (Ord. 3689, eff. 12-12-1997; amd. Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-59: NONPAYMENT OF FEES; PENALTY:

- (A) All fees specified to be paid under this Chapter shall be paid prior to the final inspection and/or issuance of a certificate of occupancy by the building division. Failure to pay the specified fees under this Chapter shall result in discontinuance of water service.
- (B) The final inspection and/or issuance of a certificate of occupancy will not be made unless all fees specified by this Chapter have been fully paid.
- (C) Occupancy of any building prior to the payment of any fees specified to be paid in this Chapter shall be deemed a violation of this Code, and the violator shall be

subject to the penalty provisions of Title I, Chapter 3 of this Code. (Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-60: ENFORCEMENT PROVISIONS:

- (A) Any person, firm or corporation violating any provision of this Chapter, except those provisions covered in Section 2-1-59, "Nonpayment Of Fees; Penalty", of this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in Section 1-3-1 of this Code. Each and every day any such violation continues shall be deemed and considered a separate offense. Any person, firm or corporation violating any provisions of this Chapter shall become liable to the City for any expense, loss or damage occasioned by the City by reason of such violation.
- (B) The penalties set forth above shall be cumulative and nonexclusive. In addition to those penalties set forth herein, the City may institute any other remedies available, including, but not limited to, a civil action to recover any and all monies due the City. (Ord. 4317, 5-27-2003, eff. 7-1-2003)

2-1-61 CITY'S RIGHT OF REVISION:

The City reserves the right to establish, by Ordinance or in individual Wastewater Discharge Permits, more stringent Standards or requirements on Discharges to the POTW consistent with the purpose of this Chapter.

2-1-62: DILUTION:

No Industrial User shall ever increase the use of process water, or in any way attempt to dilute a Discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or requirement. The Public Works Director may impose Mass-Based Limits on Industrial Users who are using dilution to meet applicable Pretreatment Standards or requirements, or in other cases when the imposition of Mass-Based Limits is appropriate.

2-1-63: NATIONAL CATEGORICAL STANDARDS

The Categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated in this Chapter.

- (A) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a Pollutant in wastewater, the Public Works Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of Pollutant per unit of production, the Public Works Director may

convert the limits to equivalent limitations expressed either as mass of Pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

- (B) When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Public Works Director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).

2-1-64: STATE PRETREATMENT STANDARDS

State Pretreatment Standards currently set forth at Arizona Administrative Code R18-9-A905 (A) (8) (b) and any amendments and/or revisions hereto are hereby incorporated in this Chapter.

2-1-65: WASTEWATER DISCHARGE PERMIT APPLICATION

2-1-65-1 Wastewater Analysis

When requested by the Public Works Director, an Industrial User must submit information on the nature and characteristics of its wastewater within forty-five (45) calendar days of the request. The Public Works Director is authorized to prepare a form for this purpose and may periodically require Industrial Users to update this information.

2-1-65-2: Wastewater Discharge Permit Requirement:

- (A) No SIU shall discharge wastewater into the POTW without first obtaining a Wastewater Discharge Permit from the Public Works Director, except that a SIU that has filed a timely application pursuant to Section 2-1-65 of this Chapter may continue to discharge for the time period specified therein.
- (B) The Public Works Director may require Industrial Users in addition to those described in Subsection A above, to obtain individual Wastewater Discharge Permits as necessary to carry out the purposes of this Chapter. The Public Works Director may also elect to issue a general permit or set general requirements, including implementation of Pretreatment and BMPs, which apply to all individual Industrial Users in a particular category. For the purposes of this Subsection 2-1-65-2(B), Industrial Users in a category:
 1. Involve the same or substantially similar types of operations;
 2. Discharge the same types of wastes;
 3. Require the same effluent limitations;
 4. Require the same or similar monitoring; and

5. In the opinion of the Public Works Director, are more appropriately controlled under a general permit or general requirements than under individual Wastewater Discharge Permits.

(C) Any violation of the terms and conditions of a Wastewater Discharge Permit shall be deemed a violation of this Chapter and shall subject the Wastewater Discharge Permittee to the sanctions set out in Sections 2-1-50-1 through 2-1-50-2 of this Chapter. Obtaining a Wastewater Discharge Permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or requirements or with any other requirements of Federal, State, and local law.

2-1-65-3: Wastewater Discharge Permitting: Existing Connections:

Any Industrial User required to obtain a Wastewater Discharge Permit who was discharging wastewater into the POTW prior to June 13, 2013, and who wishes to continue such Discharges in the future, shall, within forty-five (45) calendar days after June 13, 2013, apply to the Public Works Director for a Wastewater Discharge Permit in accordance with Section 2-1-65 of this Chapter, and shall not cause or allow Discharges to the POTW to continue after thirty (30) calendar days August 27, 2013, except in accordance with either (1) a Wastewater Discharge Permit issued by the Public Works Director or (2) an extension granted for good cause by the Public Works Director.

2-1-65-4: Wastewater Discharge Permitting: New Connections:

Any Industrial User required to obtain a Wastewater Discharge Permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such Discharge. An application for this Wastewater Discharge Permit, in accordance with Section 2-1-65 of this Chapter, must be filed at least forty-five (45) calendar days prior to the date upon which any Discharge will begin or recommence.

2-1-65-5: Wastewater Discharge Permit Application Contents and other Information:

(A) All Industrial Users required to obtain a Wastewater Discharge Permit must submit a permit application. The Public Works Director may require all Industrial Users to submit either independently or as part of an application the following information:

1. Identifying Information;

- a. The name and address of the facility, including the name of the operator and owner; and
- b. Contact information, description of activities, facilities, and plant production processes on the premises.

2. Environmental Permits. A list of any environmental control permits held by or for the facility;
3. Description of Operations;
 - a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and SICs of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
 - b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
 - c. Number and type of employees, hours of operation, and proposed or actual hours of operation;
 - d. Type and amount of raw materials processed (average and maximum per day);
 - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge; and
 - f. Pretreatment processes and equipment.
4. Time and duration of Discharges;
5. The location for monitoring all wastes covered by the permit;
6. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in Section 2-1-63 (40 CFR 403.6(e));
7. Measurement of Pollutants;
 - a. The Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the Public Works Director, of regulated Pollutants in the Discharge from each regulated process.
 - c. Instantaneous, Local Limits, and long-term average concentrations, or mass, where required, shall be reported.
 - d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 2-1-48 of this

Ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the Industrial User shall submit documentation as required by the Public Works Director or the applicable Standards to determine compliance with the Standard.

e. Sampling must be performed in accordance with procedures set out in Section 2-1-48 of this Ordinance.

8. [Reserved]

9. Any other information as may be deemed necessary by the Public Works Director to evaluate the permit application; and

(B) Incomplete or inaccurate applications will not be processed by the Public Works Director and will be returned to the Industrial User for revision.

2-1-65-6: [Reserved – Wastewater Discharger Permitting: General Permits]:

2-1-65-7: Application Signatories and Certifications:

(A) All Wastewater Discharge Permit applications, Industrial User reports and certification statements must be signed by an Authorized Representative of the Industrial User and contain the certification statement specified in Section 2-1-67-12.

(B) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the Public Works Director prior to or together with any reports to be signed by an Authorized Representative.

2-1-65-8: Wastewater Discharge Permit Decisions:

The Public Works Director will evaluate the data furnished by the Industrial User and may require additional information. Within sixty (60) calendar days of receipt of a complete Wastewater Discharge Permit application, the Public Works Director will determine whether or not to issue a Wastewater Discharge Permit. The Public Works Director may deny any application for a Wastewater Discharge Permit or place upon it such conditions and restrictions as authorized by this Chapter.

2-1-66: WASTEWATER DISCHARGE PERMIT ISSUANCE:

2-1-66-1: Wastewater Discharge Permit Duration:

A Wastewater Discharge Permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A Wastewater Discharge Permit may be issued for a period of up to five (5) years, at the discretion of the Public Works Director. Each Wastewater Discharge Permit shall indicate a specific date upon which it will expire.

2-1-66-2: Wastewater Discharge Permit Contents:

A Wastewater Discharge Permit shall include such conditions as are deemed reasonably necessary by the Public Works Director to prevent Pass Through or Interference, protect the quality of the water body receiving the Wastewater Treatment Plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect against damage to the POTW, and prevent sanitary sewer overflows.

- (A) Wastewater Discharge Permits for Significant Industrial Users must contain:
1. A statement that indicates Wastewater Discharge Permit duration;
 2. A statement that the Wastewater Discharge Permit is nontransferable without prior notification to the City in accordance with Section 2-1-66-5 of this Chapter, and provisions for furnishing the new owner or operator with a copy of the existing Wastewater Discharge Permit;
 3. Effluent limits based on applicable Pretreatment Standards and/or requirements for BMPs;
 4. Self-monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of Pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;
 5. [Reserved]
 6. A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law; and
 7. Requirements to control Slug Discharge, if determined by the Public Works Director to be necessary.
 8. [Reserved]
- (B) Wastewater Discharge Permits may contain, but need not be limited to, the following conditions:
1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
 2. Requirements for the installation of Pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of Pollutants into the treatment works;

3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine Discharges;
4. Development and implementation of waste minimization plans, including but not limited to BMPs, to reduce the amount of Pollutants discharged to the POTW;
5. The unit charge or schedule of Industrial User charges and fees for the management of the wastewater discharged to the POTW;
6. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
7. A statement that compliance with the Wastewater Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the Wastewater Discharge Permit; and
8. Other conditions as deemed appropriate by the Public Works Director to ensure compliance with this Chapter, and State and Federal laws, rules, and regulations.

2-1-66-3: Wastewater Discharge Permit Issuance Process:

- (A) Reserved.
- (B) Notice of Decision. The Public Works Director shall provide written notice to an applicant for a Wastewater Discharge Permit of the decision to issue or deny the permit and the terms of the permit, if a permit is issued, and shall provide public notice of the issuance of the Wastewater Discharge Permit.
- (C) Petition to Reconsider. Any person, including the applicant for a Wastewater Discharge Permit, may petition the Public Works Director to reconsider the terms and conditions of a Wastewater Discharge Permit within twenty (20) calendar days after service and publication of the notice of its issuance as required by Subsection B of this Section.
 1. A petition for reconsideration shall indicate, if applicable, the Wastewater Discharge Permit provisions objected to, the reasons for this objection, the alternative provisions, if any, sought, and the grounds for the requested relief.
 2. The effectiveness of the Wastewater Discharge Permit shall not be stayed pending reconsideration.
 3. If the Public Works Director fails to act within thirty (30) calendar days, a request for reconsideration shall be deemed to be denied.

4. A request for reconsideration shall not be required as a condition for taking an administrative appeal or seeking judicial review.

2-1-66-4: Wastewater Discharge Permit Modification:

- (A) The Public Works Director may modify a Wastewater Discharge Permit for good cause, including, but not limited to, the following reasons:
1. To incorporate any new or revised Federal, State, or local Pretreatment Standards or requirements;
 2. To address significant alterations or additions to the Industrial User's operation, processes, or wastewater volume or character since the time of Wastewater Discharge Permit issuance;
 3. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized Discharge;
 4. Information indicating that the permitted Discharge poses a threat to the City's POTW, City Personnel, or the receiving waters;
 5. Violation of any terms or conditions of the Wastewater Discharge Permit;
 6. Misrepresentations or failure to fully disclose all relevant facts in the Wastewater Discharge Permit application or in any required reporting;
 7. Revision of or a grant of variance from Categorical Pretreatment Standards pursuant to 40 CFR 403.13;
 8. To correct typographical or other errors in the Wastewater Discharge Permit;
or
 9. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 2-1-66-5.

(B) [Reserved]

2-1-66-5: Wastewater Discharge Permit Transfer:

Wastewater Discharge Permits may be transferred to a new owner or operator only if the permittee gives at least sixty (60) calendar days advance notice to the Public Works Director and the Public Works Director approves the Wastewater Discharge Permit transfer. The notice to the Public Works Director must include a written certification by the new owner or operator which:

- (A) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- (B) Identifies the specific date on which the transfer is to occur; and

- (C) Acknowledges full responsibility for complying with the existing Wastewater Discharge Permit.

Failure to provide advance notice of a transfer renders the Wastewater Discharge Permit void as of the date of facility transfer.

2-1-66-6: Wastewater Discharge Permit Revocation:

The Public Works Director may revoke a Wastewater Discharge Permit for good cause, including, but not limited to, the following reasons:

- (A) Failure to notify the Public Works Director of significant changes to the wastewater prior to the changed Discharge;
- (B) Failure to provide prior notification to the Public Works Director of changed conditions pursuant to Section 2-1-67-5 of this Ordinance;
- (C) Misrepresentation or failure to fully disclose all relevant facts in the Wastewater Discharge Permit application;
- (D) Falsifying self-monitoring reports and certification statements;
- (E) Tampering with monitoring equipment;
- (F) Refusing to allow the Public Works Director timely access to the facility premises and records;
- (G) Failure to meet effluent limitations;
- (H) Failure to pay fines;
- (I) Failure to pay sewer charges;
- (J) Failure to meet compliance schedules;
- (K) Failure to complete a wastewater survey or the Wastewater Discharge Permit application;
- (L) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- (M) Violation of any Pretreatment Standard or requirement, or any terms of the Wastewater Discharge Permit or Pretreatment Sections.

Wastewater Discharge Permits shall be voidable upon cessation of operations or transfer of business ownership. All Wastewater Discharge Permits issued to a particular Industrial User are void upon the issuance of a new Wastewater Discharge Permit to that Industrial User.

2-1-66-7: Wastewater Discharge Permit Reissuance:

An Industrial User with an expiring Wastewater Discharge Permit shall apply for Wastewater Discharge Permit reissuance by submitting a complete permit application, in accordance with Section 2-1-65 of this Ordinance, a minimum of forty-five (45) calendar days prior to the expiration of the Industrial User's existing Wastewater Discharge Permit.

2-1-66-8: [Reserved – Regulation of Waste Received from Other Jurisdictions]:

2-1-67: REPORTING REQUIREMENTS:

2-1-67-1: Baseline Monitoring Reports:

- (A) Within either one hundred eighty (180) calendar days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6(a) (4), whichever is later, existing CIUs currently discharging to or scheduled to discharge to the POTW shall submit to the Public Works Director a report which contains the information listed in paragraph B, below. At least ninety (90) calendar days prior to commencement of their Discharge, New Sources, and sources that become CIUs subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Public Works Director a report which contains the information listed in paragraph B, below. A New Source shall report the method of Pretreatment it intends to use to meet applicable Categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of Pollutants to be discharged. The Public Works Director may designate in permits issued to other Industrial Users that they must file the reports required by this Section.
- (B) Industrial Users described above shall submit the information set forth below.
1. All information required in Section 2-1-65-5.
 2. Measurement of Pollutants.
 - a. The Industrial User shall provide the information required in Section 2-1-65-5.A (7) (a) through (d).
 - b. The Industrial User shall take a minimum of one Representative Sample to compile that data necessary to comply with the requirements of this paragraph.
 - c. Samples should be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to Pretreatment the Industrial User should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority.
 - d. Sampling and analysis shall be performed in accordance with Section 2-1-48.

- e. The Public Works Director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial Pretreatment measures.
 - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected Pollutant Discharges to the POTW.
- 3. Compliance Certification. A statement, reviewed by the Industrial User's authorized representative and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional Pretreatment is required to meet the Pretreatment Standards and requirements.
 - 4. Compliance Schedule. If additional Pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the Industrial User will provide such additional Pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 2-1-67-2 of this Chapter.
 - 5. Signature and Report Certification. All baseline monitoring reports (BMRs) must be signed and certified in accordance with Section 2-1-67-12 of this Chapter.

2-1-67-2: Compliance Schedule Progress Reports:

The following conditions shall apply to the compliance schedule required by Section 2-1-67-1.B.(4) of this Chapter:

- (A) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional Pretreatment required for the Industrial User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (B) No increment referred to above shall exceed nine (9) months;
- (C) The Industrial User shall submit a progress report to the Public Works Director no later than fourteen (14) calendar days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied

with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the Industrial User to return to the established schedule; and

- (D) In no event shall more than nine (9) months elapse between such progress reports to the Public Works Director.

2-1-67-3: Reports on Compliance with Categorical Pretreatment Standard Deadline:

Within ninety (90) calendar days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to such Pretreatment Standards and requirements shall submit to the Public Works Director a report containing the information described in Sections 2-1-65-5.A (6) and (7) and 2-1-67-1.B (2) of this Chapter. For Industrial Users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the Industrial User's long-term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable Pollutant Discharge per unit of production (or other measure of operation), this report shall include the Industrial User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 2-1-67-12 of this Chapter.

2-1-67-4: Periodic Compliance Reports:

- (A) SIUs and other Industrial Users as may be designated by the Public Works Director shall provide, at their own expense, sampling and analysis at least twice each year, in June and December, according to 40 CFR 403.12. If any sample that is taken by the SIU or the City is not within the limits of the Federal Categorical Standards or State Pretreatment Standards, then the Industrial User will be required to perform the sampling and analyses as often as is determined by the City to be necessary.
- (B) All SIUs and other Industrial Users as may be designated by the Public Works Director shall, at a frequency determined by the Public Works Director but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of Pollutants in the Discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with BMPs or pollution prevention alternatives, the Industrial User must submit documentation required by the Public Works Director or the Pretreatment Standard necessary to determine the compliance status of the Industrial User. All periodic compliance reports must be signed and certified in accordance with Section 2-1-65-7 of this Chapter.
- (C) All wastewater samples must be representative of the Industrial User's Discharge and analyzed in compliance with Section 2-1-48. Wastewater monitoring and

flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an Industrial User to keep its monitoring facility in good working order shall not be grounds for the Industrial User to claim that sample results are unrepresentative of its Discharge.

- (D) If an Industrial User subject to the reporting requirement in this Section monitors any Pollutant more frequently than required by the Public Works Director, using the procedures prescribed in Section 2-1-48 of this Ordinance, the results of this monitoring shall be included in the report.

2-1-67-5: Reports of Changed Conditions:

Each Industrial User must notify the Public Works Director of any planned significant changes to the Industrial User's operations or system which might alter the nature, quality, or volume of its wastewater at least forty-five (45) calendar days before the change.

- (A) The Public Works Director may require the Industrial User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a Wastewater Discharge Permit application under Section 2-1-65 of this Ordinance.
- (B) The Public Works Director may issue a Wastewater Discharge Permit under Section 2-1-65 of this Ordinance or modify an existing Wastewater Discharge Permit under Section 2-1-65-3 of this Chapter in response to changed conditions or anticipated changed conditions.
- (C) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the Discharge of any previously unreported Pollutants.

2-1-67-6: Reports of Potential Problems:

- (A) In the case of any Discharge, including, but not limited to, accidental Discharges, Discharges of a non-routine, episodic nature, a non-customary batch Discharge, Slug Discharge or a Slug Load, that may cause potential problems for the POTW, the Industrial User shall immediately telephone and notify the Public Works Director of the incident. This notification shall include the location of the Discharge, type of waste, concentration and volume, if known, and corrective actions taken by the Industrial User.
- (B) Within five (5) calendar days following such Discharge, the Industrial User shall submit a detailed written report describing the cause(s) of the Discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to Person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this Chapter.
- (C) A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees to notify the POTW in the event of a Discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause such a Discharge to occur, are advised of the emergency notification procedure.
- (D) SIUs are required to notify the Public Works Director immediately of any changes at its facility affecting the potential for a Slug Discharge.

2-1-67-7: Reports from Unpermitted Industrial Users:

All Industrial Users not required to obtain a Wastewater Discharge Permit shall provide appropriate reports to the Public Works Director as the Public Works Director may require.

2-1-67-8: Notice of Violation/Repeat Sampling and Reporting:

If sampling performed by an Industrial User indicates a violation, the Industrial User must notify the Public Works Director within twenty-four (24) hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Public Works Director within thirty (30) calendar days after becoming aware of the violation. Re-sampling by the Industrial User is not required if the Public Works Director performs sampling at the Industrial User's facility at least once a month, or if the Public Works Director performs sampling at the Industrial User between the time when the initial sampling was conducted and the time when the Industrial User or the Public Works Director receives the results of this sampling, or if the Public Works Director has performed the sampling and analysis in lieu of the Industrial User.

2-1-67-9: Notification of the Discharge of Hazardous Waste:

- (A) Any Industrial User who commences the Discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any Discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of Discharge (continuous, batch, or other). If the Industrial User discharges more than fifty (50) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) calendar days after the Discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 2-1-67-5 of this Chapter. The notification requirement in this Section does not apply to Pollutants already reported by Industrial Users subject to Categorical Pretreatment Standards under the self-monitoring requirements of Sections 2-1-67-1, 2-1-67-3, and 2-1-67-4 of this Chapter.
- (B) Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste require additional notification.
- (C) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the Public Works Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the Discharge of such substance within ninety (90) calendar days of the effective date of such regulations.
- (D) In the case of any notification made under this Section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

- (E) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, a permit issued thereunder, or any applicable Federal or State law.

2-1-67-10: Date of Receipt of Reports:

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

2-1-67-11: Recordkeeping:

Industrial Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the Industrial User independent of such requirements, and documentation associated with BMPs established under Section 2-1-45. Records shall include the date, exact place, method, and time of sampling, and the name of the Person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the Industrial User or the City, or where the Industrial User has been specifically notified of a longer retention period by the Public Works Director.

2-1-67-12: Certification Statements:

- (A) Certification of Permit Applications and Industrial User Reports - The following certification statement is required to be signed and submitted by Industrial Users submitting permit applications in accordance with Section 2-1-65-7; Industrial Users submitting BMRs under Section 2-1-67-1.B (5) [Note: See 40 CFR 403.12 (l)]; Industrial Users submitting reports on compliance with the Categorical Pretreatment Standard deadlines under Section 2-1-67-3 [Note: See 40 CFR 403.12(d)]; Industrial Users submitting periodic compliance reports required by Section 2-1-67-4 [Note: See 40 CFR 403.12(e) and (h)]. The following certification statement must be signed by an Authorized Representative as defined in Section 2-1-9:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified Personnel properly gather and evaluate the information submitted. Based on my inquiry of the Person or Persons who manage the system, or those Persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

2-1-68: COMPLIANCE MONITORING:

2-1-68-1: Right of Entry: Inspection and Sampling:

The Public Works Director shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of Pretreatment Sections and any Wastewater Discharge Permit or any order issued under Pretreatment Sections. Permittees shall allow the Public Works Director Ready Access to all parts of the premises, to the extent stated in the Wastewater Discharge Permit, for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties. With regard to Users (other than Permittees), the Public Works Director shall have the authority to request permission to enter upon and inspect any such User's premises and sample any such User's Discharge to determine whether the User is in compliance with all requirements of the Pretreatment Sections.

- (A) Where a User has security measures in force which require proper identification and clearance before entry into its premises, the User may be required by the Wastewater Discharge Permit to make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Public Works Director will be permitted to enter without delay for the purposes of performing responsibilities as specified in the Wastewater Discharge Permit.
- (B) The Public Works Director shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations, as specified in the Permittee's Wastewater Discharge Permit.
- (C) The Public Works Director may require the User to install monitoring equipment as necessary and as specified in the Permittee's Wastewater Discharge Permit. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy.
- (D) If specified in the Wastewater Discharge Permit, any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or oral request of the Public Works Director. The costs of clearing such access shall be borne by the Permittee to the extent required by the Wastewater Discharge Permit.
- (E) Unreasonable delays allowing the Public Works Director access to the User's premises shall be a violation of the Wastewater Discharge Permit. Unreasonable delays are defined in the City's Enforcement Response Plan.
- (F) The City shall maintain records of monitoring that are necessary to enforce the requirements of the Pretreatment Sections.
- (G) The City may sample randomly and analyze for any Pollutants that would be anticipated in the effluent of the User as may be designated in the Wastewater Discharge Permit. The City may designate an independent laboratory to conduct the sampling and analyses, and the staff of the designated laboratory shall be

allowed to enter the premises of any User to sample any Discharge which may enter the wastewater collection system.

- (H) The User shall be financially responsible for any sampling and analysis done by the City that is not routine as provided in the Wastewater Discharge Permit.

2-1-68-2: Search Warrants:

If the Public Works Director has been refused, or is unable to obtain consent for, access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of any provision of the Pretreatment Sections, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with the Pretreatment Sections or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Public Works Director may request that the City Attorney seek issuance of a search warrant authorizing the Public Works Director to conduct searches, inspections or testing as shall be specified in the search warrant.

2-1-69: CONFIDENTIAL INFORMATION:

Information and data obtained from any Person or contained in reports, surveys, Wastewater Discharge Permit applications, Wastewater Discharge Permits, and monitoring programs, or from the Public Works Director's inspection and sampling activities, shall be available to the public without restriction, unless a Person supplying the information or data (or a Person having a protectable interest in preserving the confidentiality of the information or data) specifies that the release of certain information or data would divulge private, propriety or competitively sensitive information, processes, or methods of production entitled to protection, as trade secrets or otherwise, under applicable law (collectively, the "Specified Information"). Any such specification must be asserted in writing at the time of submission (or collection) of the information or data. Upon such specification, the Specified Information shall not be made available for inspection by the public, to the extent permitted by law, but shall be made available immediately upon request to a governmental agency (if such governmental agency first agrees to preserve confidentiality consistently with this Section) and only for uses related to the APP program or Pretreatment program, and in enforcement proceedings involving the Person furnishing the information. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction. In the event the City determines that Specified Information is nevertheless subject to disclosure pursuant to a public records request, subpoena or otherwise, the City shall provide written notice of the City's determination to the Person(s) claiming trade secret status or requesting confidentiality, which notice shall state that such Person(s) have twenty (20) calendar days from the receipt of such notice from the City to petition a court of competent jurisdiction for injunctive, declaratory or other relief to preserve the confidentiality of the Specified Information. After expiration of the twenty (20) calendar day waiting period, the City shall not be required to preserve confidentiality of the information or data, except to the extent a court of competent jurisdiction so requires.

2-1-70: PUBLICATION OF SIGNIFICANT INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE:

The Public Works Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Significant Industrial Users which, during the previous twelve (12) months, were in Significant Noncompliance (SNC) with applicable Pretreatment Standards and requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

- (A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same Pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or requirement, including Instantaneous Limits as defined in Section 2-1-9;
- (B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each Pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or requirement including Instantaneous Limits, as defined by Section 2-1-9 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other Pollutants except pH);
- (C) Any other violation of a Pretreatment Standard or requirement as defined by Section 2-1-9 (Local Limits, long-term average, Instantaneous Limit, or narrative Standard) that the Public Works Director determines has caused, alone or in combination with other Discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;
- (D) Any Discharge of a Pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Public Works Director's exercise of its emergency authority to halt or prevent such a Discharge;
- (E) Failure to meet, within ninety (90) calendar days of the scheduled date, a compliance schedule milestone contained in a Wastewater Discharge Permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide within thirty (30) calendar days after the due date, any required reports, including BMRs, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance; or
- (H) Any other violation(s), which may include a violation of BMPs, which the Public Works Director determines will adversely affect the operation or implementation of the local Pretreatment program.

2-1-71: AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS:

2-1-71-1: Upset:

- (A) For the purposes of this Section, “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (B) An Upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (C), below, are met.
- (C) An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 1. An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
 - 2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable O&M procedures; and
 - 3. The Industrial User has submitted the following information to the Public Works Director within twenty-four (24) hours of becoming aware of the Upset [if this information is provided orally, a written submission must be provided within five (5) calendar days]:
 - a. A description of the Discharge to the POTW and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (D) In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.
- (E) Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.
- (F) Industrial Users shall control production of all Discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative

method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

2-1-71-2: Prohibited Discharge Standards:

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2-1-38 or the specific prohibitions in Sections 2-1-39 of this Chapter if it can prove that it did not know, or have reason to know, that its Discharge, alone or in conjunction with Discharges from other sources, would cause Pass Through or Interference and that either:

- (A) A Local Limit exists for each Pollutant discharged and the Industrial User was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or
- (B) No Local Limit exists, but the Discharge did not change substantially in nature or constituents from the User's prior Discharge when the City was regularly in compliance with its APP, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

2-1-71-3: Bypass:

- (A) For the purposes of this Section,
 - 1. "Bypass" means the intentional diversion of waste streams from any portion of an Industrial User's treatment facility.
 - 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in or reduction of production, or the additional cost of treatment/Pretreatment facilities.
- (B) An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this Section.
- (C) Bypass Notifications:
 - 1. If an Industrial User knows in advance of the need for a bypass, it shall submit written prior request and notice to the Public Works Director, at least ten (10) calendar days before the date of the bypass.
 - 2. An Industrial User shall submit oral notice to the Public Works Director of an unanticipated bypass that exceeds applicable Pretreatment Standards within

twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) calendar days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

(D) Bypass:

1. Bypass is prohibited, and the Public Works Director may take an enforcement action against an Industrial User for a bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, Personal injury, or severe property damage as defined in Section 2-1-71-3;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The Industrial User submitted notices as required under paragraph (C) of this Section.
2. The Public Works Director may approve an anticipated bypass, after considering its adverse effects, if the Public Works Director determines that it will meet the three conditions listed in paragraph (D)(1) of this Section.

2-1-72: MISCELLANEOUS PROVISIONS:

2-1-72-1: Pretreatment Charges and Fees:

The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include:

- (A) Fees for Wastewater Discharge Permit applications;
- (B) Fees to recover legal costs resulting from enforcement response to any Industrial User noncompliance including, but not limited to, administrative expenses, investigation, sampling, testing, legal proceedings and filings, and continued compliance monitoring; and
- (C) Other fees as the City may deem necessary to carry out the requirements contained in the Pretreatment Sections. These fees relate solely to the matters

covered by the Pretreatment Sections and are separate from all other fees, fines, and penalties chargeable by the City.

2-1-72-2: Severability:

If any provision of this Chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be effected and shall continue in full force and effect.

2-1-73: ADMINISTRATIVE APPEALS CONCERNING PRETREATMENT DECISIONS:

- (A) Any Person aggrieved by a final action or decision of the Public Works Director pursuant to Pretreatment Sections may appeal that action or decision to the Deputy City Manager by submitting to the Deputy City Manager, with copies to the Public Works Director, a written notice of appeal setting forth the relief sought and supported by a written memorandum setting forth the factual and legal grounds for the relief sought on appeal. The notice of appeal and supporting memorandum shall be submitted not more than thirty (30) calendar days after the decision from which the appeal is taken or, if a petition for reconsideration is permitted by Section 2-1-66-3 and timely filed, the notice of appeal shall be submitted not less than thirty (30) calendar days after the decision on the petition for reconsideration is issued or the petition for reconsideration is deemed denied.
- (B) The Deputy City Manager shall issue a written notice of decision within thirty (30) calendar days after a notice of appeal is submitted, after holding such hearings and conducting such investigation as the Deputy City Manager deems necessary or appropriate. The decision of the Deputy City Manager shall be the final decision of the City with respect to the subject matter thereof.
- (C) Completion of the administrative appeal process pursuant to this Section 2-1-73 shall be a condition precedent to judicial review pursuant to Section 2-1-74.

2-1-74: JUDICIAL REVIEW OF PRETREATMENT DECISIONS:

Any Person aggrieved by a final action or decision of the City pursuant to [the Pretreatment Sections], may commence a civil action in the Superior Court of Arizona in and for Yavapai County seeking judicial review of that decision or action by the City. In civil actions pursuant to this Section 2-1-74, the court shall determine whether the City's action or decision was (a) arbitrary, capricious or an abuse of discretion; (b) contrary to law; or (c) supported by substantial evidence in the entire record. The Court shall consider the entire record before the City, giving due deference to the factual findings of the Public Works Director (and the Deputy City Manager, if applicable) and to the City's construction and interpretation of City Code provisions. If the Court finds that the City's action or decision was arbitrary, capricious, contrary to law, or an abuse of discretion or not supported by substantial evidence in the record, the court may: (i) invalidate or overrule the City's final action or decision; (ii) remand the matter back to the City for further proceedings consistent with the court's order; or (iii) grant such other relief as the court deems appropriate.

This Section 2-1-74 is intended to, and shall provide, the sole and exclusive judicial remedy with respect to actions or decisions within its scope.

2-1-75: EFFECTIVE DATE:

This Amended Chapter 2-1, adopted under Ordinance No. 4856-1313, shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.

COUNCIL AGENDA MEMO – May 14, 2013
DEPARTMENT: Public Works
AGENDA ITEM: Award of bid and contract for the Annual Pavement Marking Project to Traffic Safety, Inc., in an amount not to exceed \$135,000.00

Approved By:	Date:
Department Head: Mark Nietupski	5/1/13
Finance Director: Mark Woodfill	
City Manager: Craig McConnell 	5-6-13

Item Summary

This item is to award a bid and contract for the annual City pavement marking project.

Background

This project provides for annual maintenance of striping and pavement markings on City streets. Re-striping of the Central Business District and all other striping, including several City owned parking lots and on-street parking stalls, will be completed by the end of Fiscal Year 2013 (June 30, 2013).

Bid Results

On April 25, 2013, the City received two bids for the project as follows:

<u>Company</u>	<u>Location</u>	<u>Bid Amount</u>
Traffic Safety, Inc.	Prescott Valley, AZ	\$104,643.89
Roadsafe Traffic Systems, Inc.	Phoenix, AZ	\$127,105.15
Engineer's Estimate		\$135,000.00

The project will be performed under a unit price contract with payment made for measured quantities of work. Due to the favorable unit pricing received, it is recommended that the contract be awarded in an amount not to exceed the Engineer's Estimate of \$135,000 to allow additional thermoplastic markings (arrows, stop bars, and crosswalks) to be re-marked at locations that would not have been completed based on the number of units included in the bid schedule.

The low bid by Traffic Safety, Inc., was evaluated and determined to be responsive and submitted by a qualified bidder. Verification of the company's license, bonding, references, and successful performance of similar projects was completed.

Agenda Item: Award of bid and contract for the Annual Pavement Marking Project to Traffic Safety, Inc., in an amount not to exceed \$135,000.00

Project Schedule

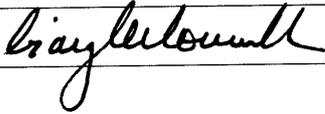
Pending bid award and execution of the contract, Notice to Proceed will be issued to Traffic Safety Inc., immediately thereafter. The contract will expire on June 30, 2013.

Budget

Fiscal Year 2013 funding is available for the Annual Pavement Marking Project from the Streets Fund (HURF).

Recommended Action: MOVE to award the bid and contract for the Annual Pavement Marking Project to Traffic Safety, Inc., in an amount not to exceed \$135,000.00.

COUNCIL AGENDA MEMO – May 14, 2013	
DEPARTMENT:	Public Works
AGENDA ITEM: Award of bid and contract to OPTCO, Inc., to apply a protective coating to The Ranch 1B Lift Station Wet Well in the amount of \$20,500.00	

Approved By:		Date:
Department Head:	Mark Nietupski	5/1/2013
Finance Director:	Mark Woodfill	
City Manager:	Craig McConnell 	5-6-13

Item Summary

This item is to award a bid to OPTCO, Inc., in the amount of \$20,500.00 to apply a protective coating (troweled epoxy) to the interior concrete surface of The Ranch 1B Lift Station Wet Well. The wet well is eight (8) feet in diameter and thirty (30) feet deep with a surface area of 840 square feet.

Background

Microorganisms naturally present in wastewater systems convert hydrogen sulfide in wastewater to sulfuric acid. Over time sulfuric acid attacks concrete structures within wastewater systems (pipes, manholes, wet wells, lift stations). Protective coatings have been successfully applied to these structures to prevent premature deterioration/failure.

The Ranch Lift Station was constructed in 1990. This is a regional lift station that conveys all wastewater from the Hwy 69 corridor east of the Lee Boulevard intersection including the Ranch and Yavapai Hills subdivisions. There are two wet wells at the site:

- The main wet well (No. 1A) had a protective coating applied in 2002.
- The redundant wet well (No. 1B), which will be coated under this procurement, has been in service since 1990.

Bids were received from the following companies:

Bidder	Bidder	Location	Bid Amount
1	OPTCO, Inc.	Apache Junction, Arizona	\$20,500.00
2	Murphy Industrial Coatings	Mesa, Arizona	\$20,777.00
3	AO Painting, Inc.	Tucson, Arizona	\$23,493.00
4	Joseph Painting Co, Inc.	Mesa, Arizona	\$25,465.35
5	SouthwestSpecialty Coatings, Inc.	N Las Vegas, Nevada	\$37,012.50

Agenda Item: Award of bid and contract to OPTCO, Inc., to apply a protective coating to The Ranch 1B Lift Station Wet Well in the amount of \$20,500.00

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

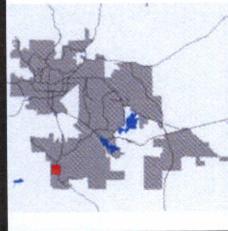
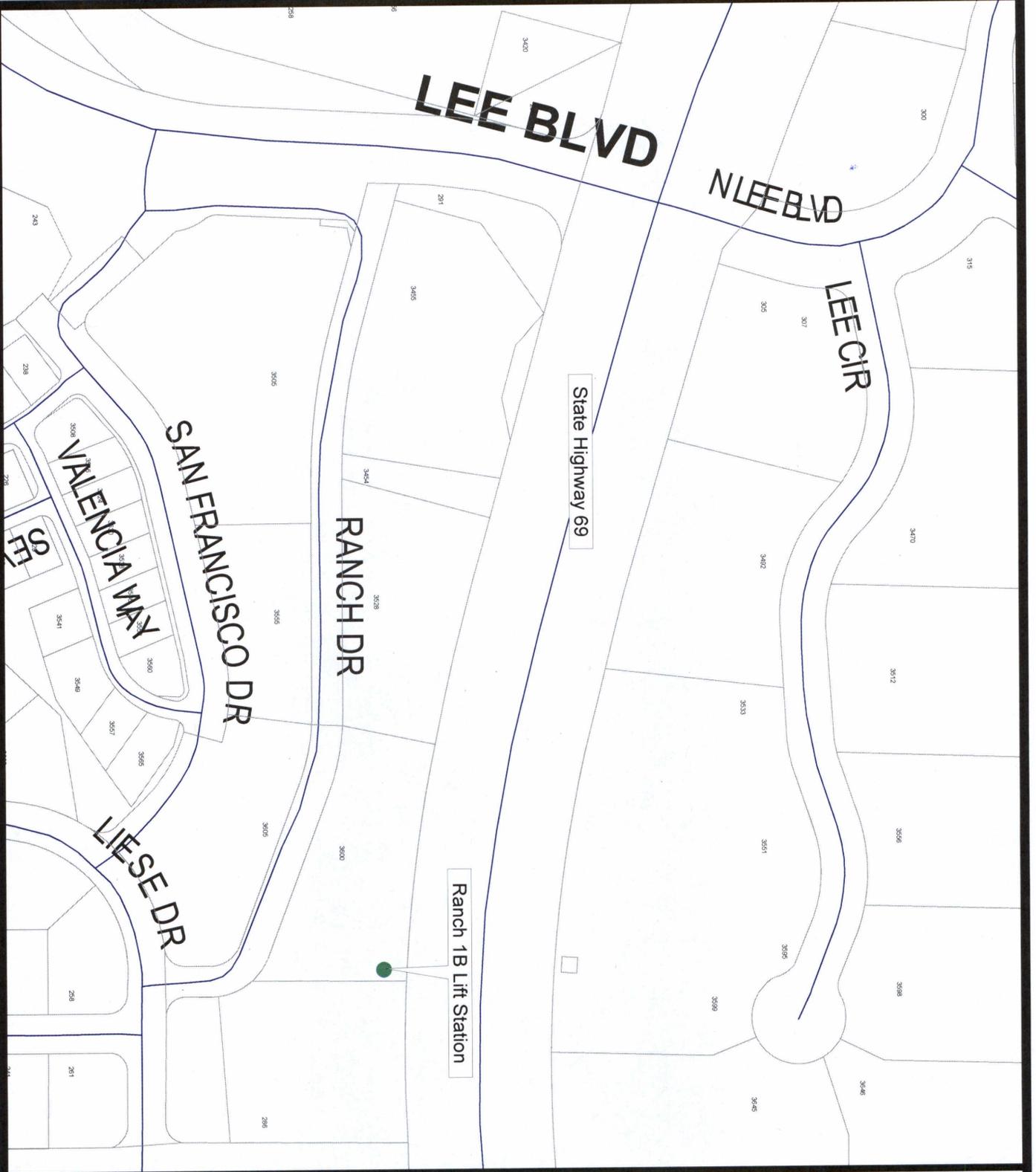
Financial

FY13 funding for the wet well coating project is available in the Wastewater Fund.

Attachments

Solicitation Response – OPTCO, Inc.
Location Map – The Ranch 1B Lift Station

Recommended Action: **MOVE** to award the bid and contract to OPTCO, Inc., to apply a protective coating to The Ranch 1B Lift Station Wet Well in the amount of \$20,500.00.



Ranch 1B Lift Station

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



This document is a graphic representation only of best available sources. The City of Prescott assumes no responsibility for any errors.

**City of Prescott
Solicitation Response**

Form B – Solicitation Response

Description: Ranch 1B Lift Station Wet Well Coating Project

Please note all that apply:

- Lump Sum Price (including tax) for Ranch 1B Lift Station Wet Well Coating Project \$ 20,500.00
- Addenda Number(s) Received (if any)
- Original Forms A through F plus two (2) photocopies

Business Name: OPTCO

Business Address: 5136 S. Desert View Dr.
Apache Junction AZ 85120

Business Phone: (480) 844-1920 Ext 111

Business Fax: (480) 844-2499

Business Contact: Allen Kauffman

Contractor Comments: _____

COUNCIL AGENDA MEMO – May 14, 2013	
DEPARTMENT:	Parks and Recreation
AGENDA ITEM:	Approval of a license agreement with Burro Creek, LLC, for a City trail parking area

Approved By:		Date:
Department Head:	Joe Baynes	
Finance Director:	Mark Woodfill	
City Manager:	Craig McConnell <i>Craig McConnell</i>	5-8-13

Summary

This item will provide an off-street, public parking area of 0.6 acres for the Centennial Trail on Westridge Drive.

Background

In 2012, the Centennial Trail was constructed and added to the City’s Mile-High Trail System. The trail was constructed on City open space lands in west Prescott that were established through existing subdivision plats, and a 2012 open space purchase. The trail can be accessed at three locations, and continues to increase in popularity. The western terminus along Westridge Drive has the most convenient access from Gail Gardner Way, however, on-street parking has created some safety issues.

Burro Creek, LLC, has offered public use of 0.6 acres along Westridge Drive for the City to establish an unpaved area to benefit trail users by providing off-street parking. The attached license agreement allows the City to use the private property for renewable five-year periods, to make basic improvements, and provide public parking. The cost to the City is \$1.00 per year.

Financial Impact

This agreement will have minimal financial impact as site improvements will be limited to grading of the natural surface and signage. Maintenance will be accomplished with in-house personnel and resources.

Attachments

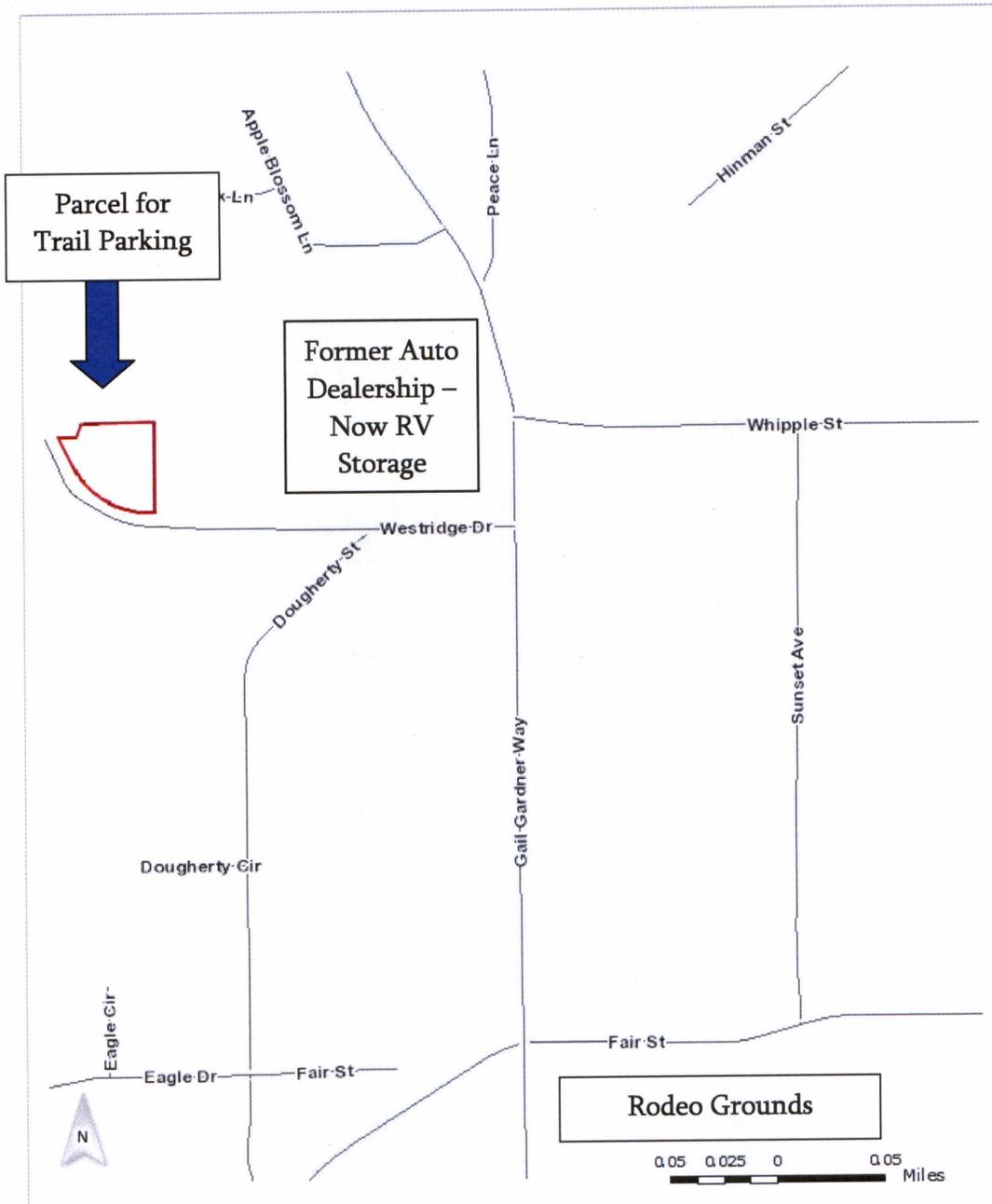
- Location Map
- Vicinity Map
- License Agreement

Recommended Action: MOVE to approve a license agreement with Burro Creek, LLC, for a City trail parking area.

Attachment A – Location Map - License Agreement –
Parking for Centennial Trail
Burro Creek, LLC - Parcel #115-07-155A – 1300 Westridge Drive



Attachment B – Vicinity Map - License Agreement - Parking for Centennial Trail
Burro Creek, LLC - Parcel #115-07-155A – 1300 Westridge Drive



4. Project Budget

- a) **Total Budget:** Please see enclosed budget below.
- b) **Additional Funding:** Although we have no additional funding, we do have a commitment from local organizations and businesses to provide the donations for remaining \$6,450 for materials.

5. Required Attachments

- a) **Letters** - Please see attached partner letters beginning on Page 8
- b) **List of Board Members** including their affiliations (Lead Organization only)
Marlin Kuykendall, Mayor, **Alan Carlow**, Council Member, **Jim Lamerson**, Council Member, **Steve Blair**, Council Member, **Charlie Arnold**, Council Member, **Chris Kuknyo**, Council Member, **Len Scamardo**, Council Member
- c) **Map/Plan** – Please see map on page 7.
- d) **Organizational Budget** for the current year (Lead Organization only)

FY13 Parks and Recreation Department Budget

Personnel	\$1,565,638
Supplies	\$278,800
Other Services & Charges	\$1,052,011
Capital Outlay/Projects	<u>\$160,000</u>
Total	\$3,056,449

- e) **Financial Statement** from the most recently completed fiscal year; audited financial statement or unaudited income and expense sheet with Form 990 of the same year is preferred. If you are a municipality, please provide a link to online financials. (Lead Organization only) - www.cityofprescott.net/services/finances/

Important Instructions:

Please submit all grant information and attachments as **one .pdf file**. If the file is too large to send, you may submit the map/plan as a separate .pdf attachment. Please direct any questions or concerns to Zoe Kircos, Grants Manager, 303-449-4893 x5.

**Prescott's Greenways Phase III
Construction Costs**

Location Description	Dist Ft	Sel A	Wall Description	W Sq Ft	Culverts	C Rock	Donated Labor @ \$18 per hour
1. Lincoln to MV Art Mart	400		33 50' up & down 1'high	100			66 plus 50 hours = 116 hours
2. Art Mart end Honda Fence	400		33 100' down side 1' high	100			66 plus 50 hours = 116
3. Honda Green Sewer Mark	300		25 150' up & down 1' high	300			50 plus 150 hours = 200
4. Green Sewer W. McDonalds	500		41 200' up & down 2' high	800			82 plus 400 hours = 482
5. W. McD to Cement @ Creek	450		37 150' up & down 2' high	600			74 plus 300 hours = 374
6. Creek MV Road Sewer W. Side	300		25 50' up & down 1'high	100	\$1,000	25 tons	50 plus 50 plus 42 = 142
7. Sewer Line to Yav County Rd	300		25 50' up & down 1'high	100		50 tons	50 plus 50 plus 100 = 200
	2650		219	2100			1630 hours@ \$18 = \$29,340
							City Trail Volunteers - a.k.a. The Over-the-Hill Gang
Purchased Materials Summary	Cost \$						
Select A - 219t@ \$10/t deliv	2190						
Handy-Wall 2100 @ \$5.60 sq ft	11,760						
Crush Rock 75 t @ \$20 deliv	1500						
CMP Culverts	1000						
Total Materials Costs \$	16450						

RIGHT OF ENTRY AND PARKING

LICENSE AGREEMENT

Burro Creek, LLC

This agreement made this _____ day of _____, 2013, by and between Burro Creek, LLC, hereinafter referred to as "Licensor" and City of Prescott, a municipal corporation of the State of Arizona, hereinafter referred to as "Licensee".

In consideration that the Centennial Trail and associated City-owned open space are an important asset to the City of Prescott, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, the parties agree as follows:

1. GRANT OF LICENSE. Licensor hereby grants to Licensee a license to occupy and use a portion of the property owned by Licensor for the purpose of providing public parking for the City of Prescott's Centennial Trail, including placing of associated improvements, facilities and signage.
2. LIMITATION TO DESCRIBED PREMISES. This license shall be specifically limited to that certain property as more particularly described and attached in Exhibit "A", also known as Parcel #115-07-155A, .6 acres, located at 1300 Westridge Drive, Prescott, AZ, owned by Burro Creek, LLC.
3. RESPONSIBILITY OF LICENSOR. The Licensor will provide public access and parking for, including the placing of associated improvements, facilities and signage, for the term of five-years, which is renewable for additional five-year periods, commencing on the date of this Agreement.
4. RESPONSIBILITY OF LICENSEE. The Licensee shall pay \$1.00 per year and make a reasonable attempt to manage the parking and public access on Licensor's property.
5. INSPECTION. Licensor reserves the right to enter and inspect the public access and parking as necessary during the term of this license agreement.
6. INDEMNIFICATION. Licensee hereby agrees to indemnify, save and hold harmless the Licensor, its departments, agencies, officers and employees from all cost, damages, liability and claims of any kind whatsoever which is caused by any activity, condition or event arising out of the Licensee's use of the licensed area.
7. LICENSE. This Agreement shall be construed as a mere license by Licensor to Licensee. It shall not be construed as an easement, lease, rental agreement, or as a grant of any interest in the real property other than a mere license.

8. TERM. This Agreement shall be for renewable five-year periods.
9. TERMINATION. This Agreement may be terminated with or without cause by either party by providing sixty (60) days written notice to the other party at the addresses provided herein. Licensee shall have no claim or cause of action whatsoever against the Licensor by reason of any termination of this license and hereby waives same.
10. REMOVAL OF IMPROVEMENTS UPON TERMINATION. Licensee agrees to remove any and all improvements, including but not limited to any structures which are allowed pursuant to this Agreement, at its sole cost, within ninety (90) days of the termination of this Agreement. If Licensee shall fail to remove said improvements within the time specified herein, then in that event Licensor may remove same, the costs of which shall become a charge against Licensee which Licensee hereby agrees to pay.
11. LICENSE NOT APPROVAL. It is the understanding of the parties that any use of the subject right of way, or structures located thereon, are subject to all applicable State, County and City laws, rules and ordinances, including but not limited to the City Land Development Code.
12. PEACEABLE ENJOYMENT. Licensor covenants to keep Licensee in peaceable possession and enjoyment of the premises during the term of this Agreement.
13. NONASSIGNABILITY OR SUBLICENSING. Licensee may not sub-license or assign the premises. Any attempt by Licensee to sub-license, assign or transfer of any kind shall terminate this Agreement without further notice.
14. MODIFICATION. This License Agreement contains the entire Agreement between the parties and shall not be modified in any manner except by an instrument in writing, signed by the parties.
15. NOTICES. Any notices required under this Agreement shall be deemed sufficient if made in writing and sent by certified mail to either party at the following addresses:

Licensee: City of Prescott
City Clerk
201 South Cortez Street
Prescott, Arizona 86303

With a copy to: Parks and Recreation Department
824 E. Gurley Street
Prescott, Arizona 86301

Licensor: Burro Creek, LLC
1153 Linwood Avenue
Prescott, Arizona 86305

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

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

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the day and year first above written.

LICENSOR:

Tom Devereaux
Burro Creek, LLC

LICENSEE:

CITY OF PRESCOTT,
a Municipal Corporation

Marlin D. Kuykendall, Mayor

ATTEST:

APPROVED AS TO FORM:

Lynn Mulhall, City Clerk

Jon M. Paladini, City Attorney

COUNCIL AGENDA MEMO – May 14, 2013
DEPARTMENT: Parks and Recreation
AGENDA ITEM: Approval of grant application to Bikes Belong Foundation for construction of Prescott’s Greenways Trails

Approved By:	Date:
Department Head: Joe Baynes	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell <i>Craig McConnell</i>	5-6-13

Summary

This item is a request to submit a grant application to Bikes Belong for \$10,000 to construct phase III of Prescott’s Greenways Trails.

Bikes Belong Foundation is a 400-member foundation of bicycle suppliers and retailers, whose primary mission is to increase bicycling opportunities. They are based in Boulder, Colorado, and have a \$7.5 million budget supported by their membership.

Background

Prescott’s Greenways Trails are the recreation and transportation trails within the Mile-High Trail System located interior to the City which utilize various creek corridors. These trails provide off-street bicycle-pedestrian opportunities connecting neighborhoods, schools, parks, businesses, and other points of interest. The Greenways Trails are a collaborative effort among the City and non-profit partner organizations.

Following a master plan process in 2000, and securing necessary rights-of-way, Phase I was constructed and opened in 2001, and Phase II in 2009. Today, these receive much use from residents and visitors alike. For many years, additional phases have been planned. The City and partner organizations are currently engaging property owners to secure final rights-of-way for Phase III, which parallels Miller Creek from Lincoln Avenue upstream to the Rodeo Grounds. If successful, a Council item will be forthcoming to approve acceptance of rights-of-way for public trail access.

The present request for grant application approval is to secure funding for construction of Phase III. An estimated \$29,340 in donated labor is the local match toward the grant. Additional construction materials will be provided by local organizations and businesses, and all labor will be provided by volunteers.

Project partners include:

- City of Prescott (Project and grant lead)
- CareScape
- Prescott Alternative Transportation

Agenda Item: Approval of grant application to Bikes Belong Foundation for construction of Prescott's Greenways Trails

- Open Space Alliance of Central Yavapai County
- Yavapai Trails Association
- Central Arizona Land Trust
- Yavapai County Community Health Services

Financial Impact

Existing City personnel will manage and assist with the Phase III project work. Routine maintenance thereafter will be provided by community volunteers. Acceptance of this grant, if received, will accordingly have minimal financial impact.

Attachments

- Attachment A – Grant Application to Bikes Belong Foundation
- Attachment B – Map of Prescott's Greenways Trails

Recommended Action: **MOVE** to approve a grant application to Bikes Belong Foundation for construction of Prescott's Greenways Trails.

Attachment A

Bikes Belong Community Partnership Grant Application

Administrative Information:

Date of Application: 5/24/2013

Name of Project: Prescott's Greenways Phase III – Lincoln Avenue to Prescott Rodeo Grounds

Legal Name of Lead Organization: City of Prescott – Parks and Recreation Department (an Arizona municipal government)

Address: 824 E. Gurley Street, Prescott, AZ 86301

Website: www.cityofprescott.net

Contact Person: Eric Smith

Title: Special Projects Administrator, Parks and Recreation Department

Direct Phone: (928) 777-1590

Email Address: eric.smith@prescott-az.gov

Type of Organization: Municipal Governmental Entity

State and Year of Incorporation: Arizona - 1883

Federal Employer Identification Number (EIN): 86-6000257

Number of Full-Time Staff: 19 (in Parks and Recreation)

Number of Part-Time Staff: 12 (in Parks and Recreation – not including sports temp staff)

Number of Volunteer Staff: 48 (in Parks and Recreation)

Number of Members (if applicable): N/A

Amount Requested from Bikes Belong: \$10,000

Funding Raised to Date: \$29,340 (in donated labor)

Total Project Budget: \$45,790

Total Organization Budget: Parks and Recreation Budget is \$3,056,449

Partner Organization Name: CareScape

Address (street, city, state, zip): 6752 Inter-Cal Way Suite 210 Prescott, AZ 86301

Website: www.carescape.com

Type of Organization: Business

Contact name and title: Frank Abbott General, Manager Northern Arizona

Direct Phone: 928-777-8519

Email Address: frank.abbott@carescape.com

Partner Organization Name: Prescott Alternative Transportation

Address (street, city, state, zip): PO Box 2122 Prescott, AZ 86302

Website: www.prescottbikeped.org

Type of Organization: nonprofit

Contact name and title: Greg Hull-Secretary

Direct Phone: 928-708-0911

Email Address: greg@prescottbikeped.org

Partner Organization Name: Open Space Alliance of Central Yavapai County

Address (street, city, state, zip): PO Box 211 Prescott, AZ 86302

Website: www.yavapaiosa.org

Type of Organization: nonprofit

Contact name and title: George Sheats- President

Direct Phone: 602-361-7857

Email Address: gsheats@aol.com

Partner Organization Name: Yavapai Trails Association
Address (street, city, state, zip): PO Box 403 Prescott, AZ 86302
Website: www.yavapai-trails.org
Type of Organization: nonprofit
Contact name and title: George Sheats-President
Direct Phone: 602-361-7857
Email Address: gsheats@aol.com

Partner Organization Name: Central Arizona Land Trust
Address (street, city, state, zip): PO Box 1050 Prescott, AZ 86302
Website: www.centralazlandtrust.org
Type of Organization: nonprofit
Contact name and title: Sue Lewis & Jean Wilcox
Direct Phone: 928-445-7790
Email Address: calt@centralarizonalandtrust.org

Narrative:

1. Organization Background

Established in 1957, the City of Prescott Parks and Recreation Department's mission is to preserve, protect, and enhance the parklands, trails, lakes, and public open spaces of the City of Prescott for the benefit of citizens and visitors, acting as a conscientious steward.

The Parks and Recreation Department provides a range of recreational opportunities and facilities to serve a growing community as one of Arizona's oldest cities. As statewide demand for trails and bicycling opportunities multiplied in the early 1990s, the City of Prescott responded by pursuing and succeeding with rails-to-trails opportunities. In fact, Prescott's Peavine Trail, which follows along the former Santa Fe Railroad, is one of the few rails-to-trails projects in Arizona.

While the city was increasing biking and pedestrian opportunities, the adjacent Prescott National Forest was promoting over 400 miles of non-motorized trails for bicycling of all skill levels. In 1996, The Parks and Recreation Department adopted its first trails plan, and, by late 1998, we were constructing trails and pathways for increased bicycling opportunities. The City trail efforts have greatly benefitted from much political support, donations, volunteer efforts, cooperation with property owners, much publicly-owned land, City bed tax revenues, a dedicated trails staff member, organized tourism effort and much citizen involvement.

Currently, the City of Prescott features over 48 miles of trails (i.e., known as the Mile-High Trail System), with many trails constructed to specifically meet the needs of bicyclists of all skill levels, for both recreational and transportation purposes. Prescott's mile-high elevation allows for almost year-round bicycling and active transportation.

Additionally, the City partners with, or gives permission to, for profit and non-profit organizations to host numerous biking events on the city-built trails and bike routes crisscrossing our area.

a) Past Successes:

Primarily with a collation of extensive volunteer labor, privately donated materials, and much City-owned land, the Parks and Recreation Department has been successful in expanding the trail and bicycling opportunities each year. In fact, over the last 16 years, the Prescott Parks and Recreation Department has added over 48 miles of trails. With many of these expanded opportunities occurring in a highly scenic area known as Granite Dells, this has complimented the City's comprehensive tourism efforts.

At the same time, the City's continued support and promotion of the annual Whiskey Off-Road Mountain Bike Race and the Skull Valley Loop Challenge, has further established Prescott as a premier (up-and-coming) bicycling destination within Arizona.

Another reason for the City's success is the continual collaboration with area non-profit organizations. We are working towards common goals in improving quality of life, such as increased bicycling and pedestrian opportunities. During Bike Month, Prescott's Parks and Recreation Department teams up with these local organizations to bring events like bike rodeos with helmet giveaways and bike lane stenciling events to the community.

Finally, both the Parks and Recreation Department and the Over The Hill Gang (Prescott's all volunteer trail-building crew) were awarded CYCLE (Central Yavapai Community Leadership Excellence) awards from Prescott Alternative Transportation for the continued effort in the Prescott Greenways Trail system.

b) Partner Organization Background and Contribution: For each partner, briefly describe the organization's background, role and investment in the community and in bicycling, and **how they will contribute to the successful completion of this project. Please see attached backgrounds with attached supporting letters.**

2. Purpose of Grant

a) Project Description: Describe your project request, including environment (current bicycling conditions and/or infrastructure), need (why this project and why now), goals and objectives, activities, and timeline for completing the project.

Bikes Belong funds will support Phase III, of a four phase plan, in the expansion of the Prescott's Greenways Trails System. It is important to note, that economic challenges facing the city has made this project difficult to fund.

Currently, Miller Creek Trail upstream (northwest) is in a low to moderate income neighborhood, impassable to bikes and is primarily on private property. Yet, an approximately .5 mile social (i.e., undesignated) trail to the Prescott Rodeo Grounds and the nearby and popular Centennial Trail exists.

We propose to "refine" this route thereby linking neighborhoods to downtown destinations, to schools, to commercial areas and to parks. This new trail will provide a safe traffic-free bicycling and walking path for all abilities under the shade canopy of Miller Creek; all while passing under busy Miller Valley Road. Additionally, this will help to prevent illegal dumping, camping and other activities along the creek while promoting active transportation and a healthier lifestyle.

The prior phase, Phase II, was completed and dedicated with connection to Prescott Mile High Middle School on National Trails Day – June 2009. Today, both Phases I & II receive much use on a daily basis, and provide important trail connections within downtown Prescott. Landowners report no problems, and decreased camping.

Since the success of Prescott's Greenways is largely due to the cooperation of private property owners predominately through trail easements, time is a key factor in this project. Our already secured easements will expire in 2014 if formal construction does not begin on the trail before then.

b) Population: The total population of the market area is approximately 100,000 residents. This includes Prescott, Prescott Valley, Chino Valley, Dewey-Humboldt, and all surrounding unincorporated areas. Approximately 20% of the area's population lives within two miles of the Greenways, and the remaining population is within a 25-mile radius.

c) Miles Built/Connected: Phase III portion of the Greenways would add an additional .5 miles to the Greenways system. This would allow for a connection of approximately four additional miles through the neighborhoods of Prescott. However, after this trail is built, a connection through sidewalks and bike routes could lead a rider from downtown Prescott all the way to Thumb Butte and the countless numbers of trails on forest service land.

d) Ridership: Through an informal trail count, we estimate 100-130 riders a day on the Prescott Greenway's system. We anticipate a growth in ridership of 25% with continued increase in popularity as time passes. During event times, trail use will increase dramatically due to it's proximity to places like downtown and the Rodeo Grounds.

3. Evaluation

a) Measurable Outcomes: As a result of the completion of Phase III of the Greenways Trails system, more people will be on bikes. People of all age ranges and all abilities will have the opportunity to travel via bike downtown, to the store, to school or to the park. Since the trail runs through a low to moderate income area, we hope it will provide an increase in equity in transportation and an increase in quality of life.

b) Measurement: The plan to determine the number of bikers is as follows:
First, trail counts will be conducted twice annually at predetermine entrance and exit points

Second, we will ask local organizations to record and report the number of riders who participate in group rides, skills clinics, and trail maintenance sessions once the section of the trail opens.

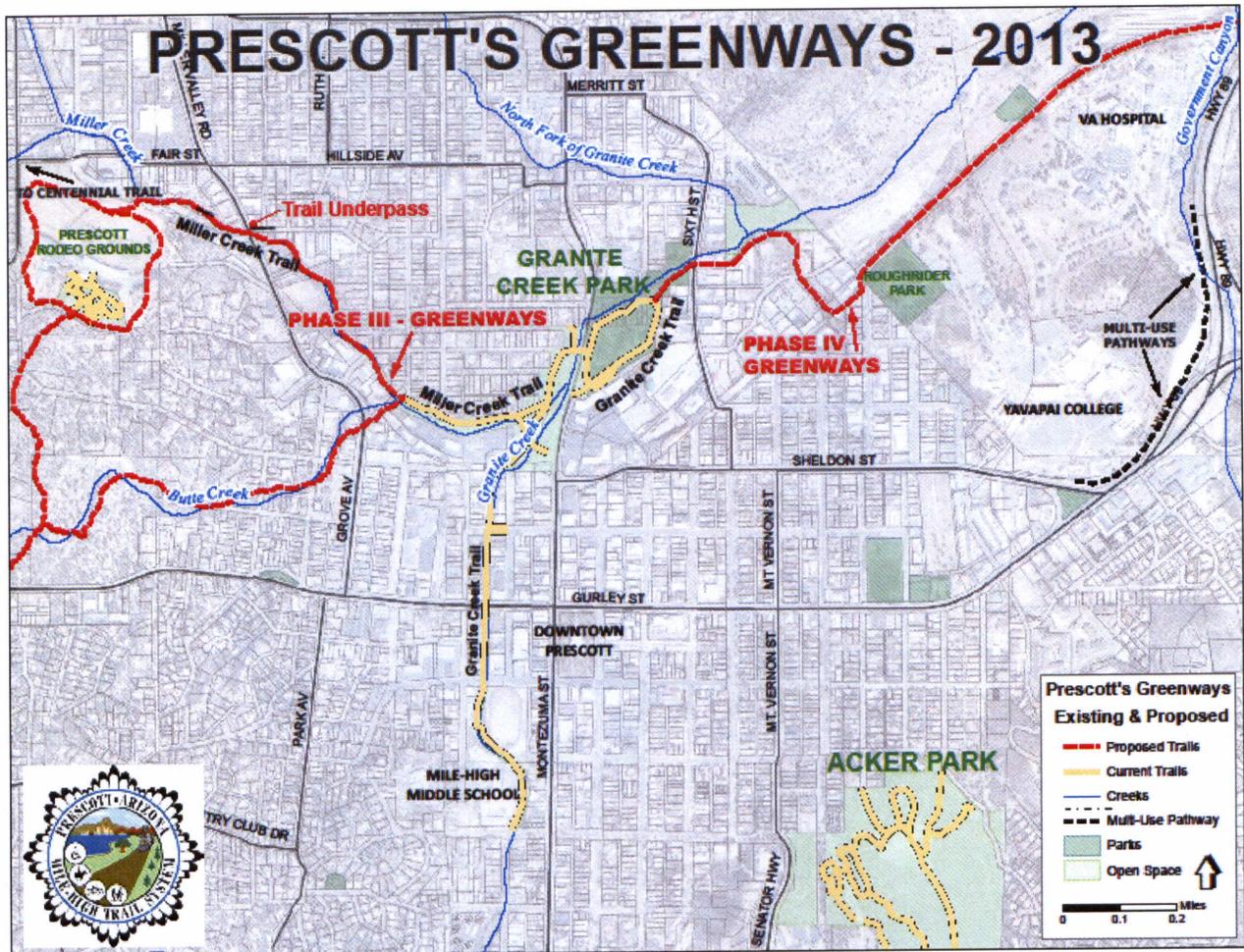
Third, we will ask residents along the trail to complete an informal survey about their experience with the trail.

Fourth, we will ask the local Safe Routes to School coordinator to report any increase in bike travel to school on the newly connected school sites.

c) Replicability:

This Greenway's project could serve as a model for other organizations and/or communities because it is built on a foundation of cooperation and partnerships. The collation between the city, nonprofits and private sector, demonstrates how to leverage resources to make goals come into fruition. This project shows the power of strength in numbers. In addition, our project is designed to encourage active transportation which may offer other communities ideas about how to use pre-existing informal trails as a basis for travel, recreation and exercise.

Attachment B – Map of Prescott's Greenways Trails



Northern Arizona Office
2222 Lowell Blvd.
Flagstaff, AZ 86001
Telephone: (908) 283-0111
Fax: (908) 776-6471
www.carescape.com

Leisurelink Design, Construction,
Maintenance & ArborCare

May 1, 2013

To Whom It May Concern,

Subject: Bikes Belong Grant



CARESCAPE
www.carescape.com

Carescape is in full support of applying for the Greenways Trail, Bikes Belong Grant. Carescape has worked for many years with organizations such as this to beautify the community and help maintain the trails system throughout the City. It is important to maintain this vital trails system to increase tourism, provide for current residents that live here for because of the trails systems and encourage use of these valuable assets.

Since the completion of the Greenways Trail System to Lincoln Avenue, additional trails have been constructed at the Rodeo Grounds plus the Centennial Trail toward the western neighborhoods. Bicycling has grown with the addition of the trails, and provides both a means of non-motorized travel as well as recreation and exercise. We are pleased that Prescott Alternative Transportation is taking the lead in the Greenways expansion efforts.

Carescape will also work with our member organizations to provide assistance during the trail construction process with manpower, equipment and will actively seek donations of materials from the many vendors we do business with.

Thank you,

A handwritten signature in black ink that reads "Frank Abbott". The signature is written in a cursive, flowing style.

Frank Abbott
General Manager
Northern Arizona



Open Space Alliance of Central Yavapai County

Open Space Alliance
P.O. Box 211
Prescott, AZ 86302
www.yavapaiosa.org

May 1, 2013

Subject: Bikes Belong Grant

Open Space Alliance is in full support of applying for the Greenways Trail, Bikes Belong Grant. OSA and Prescott Alternative Transportation led the previous community efforts in establishing the present Greenways Trail System. Open Space Alliance is a non-profit 501-C3 which works with other area organizations to preserve and protect our natural resources. By working with land owners to set aside scenic corridors, and provide access for non-motorized trail users, the community and its visitors are able to enjoy Prescott's outdoor assets.

Since the completion of the Greenways Trail System to Lincoln Avenue, additional trails have been constructed at the Rodeo Grounds plus the Centennial Trail toward the western neighborhoods. Bicycling has grown with the addition of the trails, and provides both a means of non-motorized travel as well as recreation and exercise. We are pleased that Prescott Alternative Transportation is taking the lead in the Greenways expansion efforts. OSA will cooperate and assist in this project, by working with landowners to ensure they also receive the many benefits and by-products of constructing a trail through the Miller Creek watershed.

Open Space Alliance will also work with our member organizations to provide assistance during the trail construction process. All of the OSA member organizations will be benefited by protecting the watershed, and extending this bicycle and pedestrian friendly urban trail system.

Sincerely,

A handwritten signature in cursive script that reads "George Sheats".

George Sheats – President OSA
Cell: 602-361-7857, email: gsheats@sol.com

CENTRAL ARIZONA LAND TRUST

Preserving Open Space in the Heart of Arizona

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PO Box 1050
Prescott, AZ 86302
928.445.7790

www.centralazlandtrust.org
calt@centralazlandtrust.org



April 29, 2013

To: Grants Committee, Bikes Belong Coalition

From: The Central Arizona Land Trust

Re: Letter of Support for Prescott Alternative Transportation Grant Application

The Board of Directors of the Central Arizona Land Trust strongly supports the grant application of Prescott Alternative Transportation for construction and improvement of a bikeway adjacent to Miller Creek, one of Prescott's greenway corridors.

The proposed project aligns well with the Trust's goal of preserving and protecting open space in Central Arizona so that everyone can enjoy the area's scenic vistas while biking or hiking along the paths in this region. While the majority of people who see these open spaces travel by car, the Trust encourages alternate forms of transportation in both urban and rural areas. This particular project adds an important dimension to CALT's mission: preservation of open space within urban areas that allow compatible uses of the land.

The Trust will contribute to this project by lending the expertise of its board members in educating landowners about the benefits of donating easements for bikeways and in negotiating transactions that result in legally protected pathways for the public. Our focus will be to acquire permanent easements by donation in order to minimize expense and maximize investment in the improvements to the pathway.



To: Prescott Alternative Transportation

April 29, 2013

Re. Letter of Support – Prescott Greenways Expansion

The Yavapai Trails Association is in full support of extending the Greenways Trail to both the Rodeo Grounds and to the Yavapai College/Veterans Administration areas. YTA is a local non-profit (501-C3) organized in the early 1990's. The organization's charter is to promote, implement, and support non-motorized trails in Central Yavapai County. Many of the region's bicycle, pedestrian, and equestrian trails were conceived and constructed under the leadership of Yavapai Trails Association. It is the general intent of YTA to create 'multi-use' trail systems that can be shared by all types of non-motorized trail users.

The Greenways Trails are particularly important to the area because of their central urban location and use as a transportation corridor. Providing trail access within the heavier populated areas of the City of Prescott provides numerous benefits to the community. In addition to the heavy transportation and recreational uses, trails provide a means for removal of trash, excess brush, creek cleanups, and reduce the unauthorized uses within the creeks and underpasses.

YTA is in support of this grant request, and if funded, will create a safe and aesthetically pleasing trail between the existing Greenways Trail at Lincoln and the Rodeo Grounds. This section of trail will function as a connector between Downtown and other trails at the Rodeo Grounds as well as the Centennial Trail to the west. YTA will cooperate with any implementation plan, and assist in obtaining additionally needed resources.

Sincerely,

A handwritten signature in cursive script that reads "George Sheats".

George Sheats – President YTA
P.O. Box 403
Prescott, AZ 86302
yavapai-trails.org, email:gsheats@aol.com, cell 602-361-7857



Yavapai County Community Health Services

Our Mission: Yavapai County Community Health Services will provide leadership, information, and services that contribute to improving the health and well-being of Yavapai County residents.*



April 23, 2013

Eric Smith
Special Projects Administrator
City of Prescott
201 S. Cortez
Prescott, AZ 86303

RE: Prescott's Greenways trails

Dear Mr. Smith:

I am writing as the Assistant Director of Yavapai County Community Health Services (YCCHS) to recognize the important role Prescott's Greenways trails play in promoting the health and wellness of area residents.

Projects like the Prescott Greenways literally connect members of the public with the resources they need to maintain and improve health. In general, the Prescott Greenways increases opportunities for the public to maintain healthy habits proven to prevent illness (and deaths) associated with chronic disease. Specifically, the Greenways offer:

- Increased access to recreational resources (i.e. parks, the trails themselves)
- An attractive option for active transportation (i.e. walking, biking)
- Increased access to purveyors of nutritious foods (i.e. grocery stores with fresh fruits and vegetables)
- Increased access to community resources (i.e. schools, community garden)

As such, the Greenways project provides an obvious environmental support for the public, as well as our department's work to prevent the devastating effects of chronic disease. To get an idea of its significance, please consider the following facts that help drive our work in chronic disease prevention:

- 7 out of 10 deaths among Americans each year are from chronic diseases.
- Obesity has become a major health concern. 1 in every 3 adults is obese, and almost 1 in 5 youth between the ages of 6 and 19 is obese.
- Four modifiable health risk behaviors—lack of physical activity, poor nutrition, tobacco use, and excessive alcohol consumption—are responsible for much of the illness and early death related to chronic diseases.

I am happy to hear of the planned expansion of the Prescott Greenways trails and appreciate its support of the public's health and wellness. Please let me know if I may be of further assistance of this terrific project.

Thank you for your consideration.

Nathan Peterson
Assistant Director, YCCHS

1080 Commerce Drive • Prescott, AZ 86306-3700 (928) 771-3122 (928) 771-3389 FAX
3212 N. Windsong Drive, Second Floor • Prescott Valley, AZ 86314 (928) 771-3377 (928) 771-3378 FAX
10 South 6th Street • Cottonwood, AZ 86326 (928) 639-8130 (928) 639-8179 FAX

To whom it may concern,

On behalf of the Dexter Connectors, our neighborhood community building group, I would like to heartily endorse Prescott Alternative Transportation's application for a Bikes Belong grant.

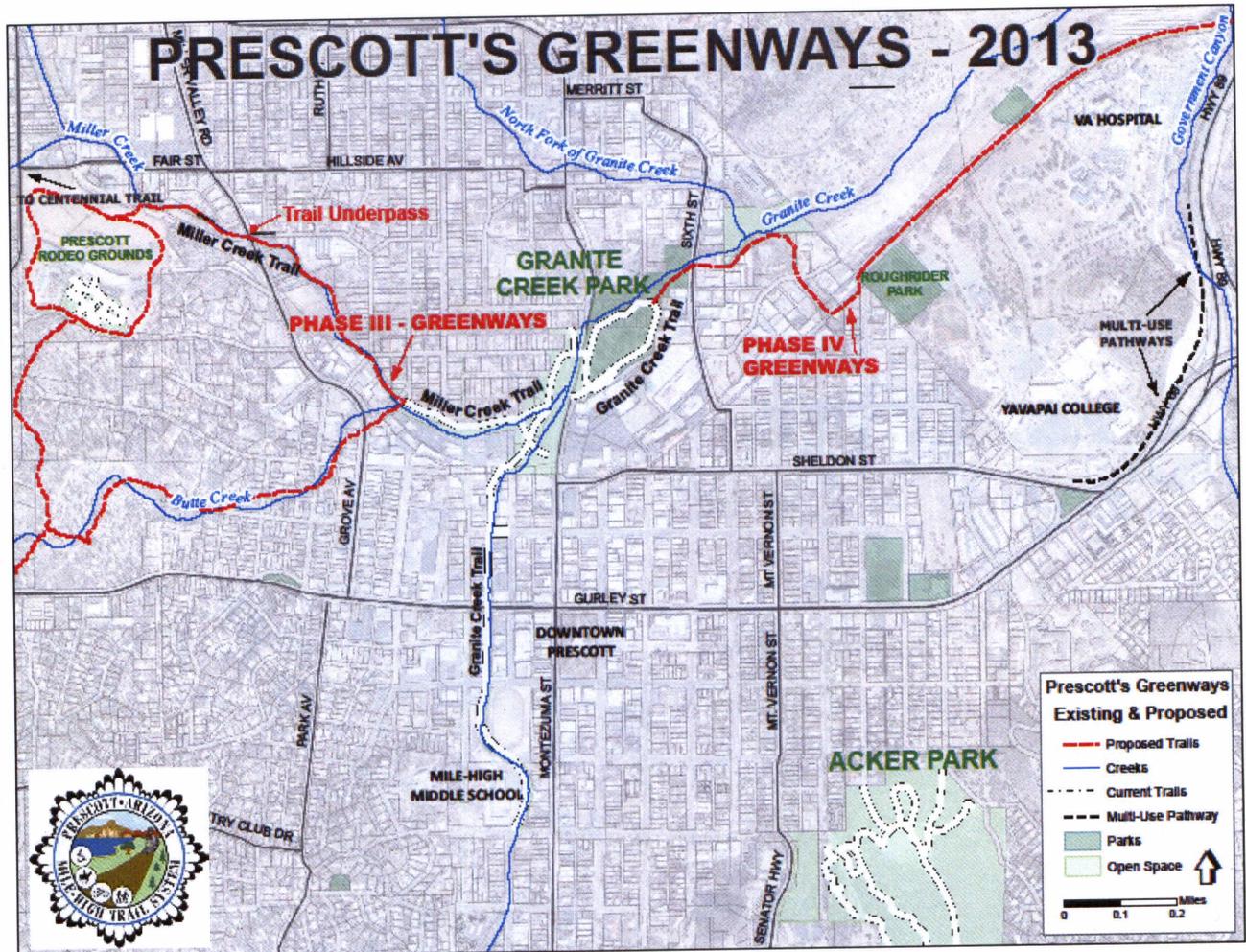
The proposed expansion of our current Greenways trail will border our neighborhood on the west, as it's current trail borders us to the south. This current bikeway is widely used by our neighborhood (proportionately the youngest, lowest income and highest percentage of transportation bikers in town) to get to school, shopping and work. Expansion along Miller Creek will increase these options, as well as better connect our shops with tourists staying downtown. Better and safer biking was a high priority goal in our 2000 neighborhood plan, and is further highlighted and emphasized in our 2013 revision, as we work toward becoming a neighborhood where cars are optional.

Our volunteer cadre is formidable in our brilliant yellow T shirts and determination and we look forward to assisting in the completion of this essential off road connector.

Thank you for your consideration,

Laurel Freeman

Attachment B – Map of Prescott's Greenways Trails



COUNCIL AGENDA MEMO – May 14, 2013
DEPARTMENT: City Manager
AGENDA ITEM: Adoption of Resolution No. 4172-1334 approving the First Amendment to City Contract No. 2010-086, Procedural Pre-Annexation Agreement, James Deep Well Ranches #1 and #2

Approved By:	Date:
Finance Director: Mark Woodfill	
City Manager: Craig McConnell 	5-7-13

Item Summary

This First Amendment adds the North Airport Annexation Area (Exhibit "B") northwest of Prescott Love Field to the West Airport Annexation Area (Exhibit "A") which was the subject of the Procedural Pre-Annexation Agreement, City Contract No. 2010-086, approved in November 2009. A complete copy of the Agreement is attached for reference.

By Resolution No. 4142-1302 (July 2012) the City's General Plan Map was amended to designate future land use (Exhibit "C") for the North Airport Annexation Area consisting of approximately 586 acres. Generally speaking, the mutual understandings and procedures set forth in the Procedural Pre-Annexation Agreement for the West Airport Annexation Area will remain in effect for annexations of property within the North Airport Annexation Area.

Adoption of the attached Resolution No. 4172-1334 will approve the First Amendment.

Background

The Procedural Pre-Annexation Agreement of November 2009 laid the groundwork for future annexation into the City of Prescott of up to 1,900 acres of Deep Well Ranch property located west of the airport and north of Pioneer Parkway (Exhibit "A") as a key step toward the cohesive vision set forth by the prior 2008 West Airport Area General Plan Major Amendment; and (2) settled the obligation of the City to provide water to Deep Well Ranch pursuant to a 1967 grant of easement for the City's 18" Chino Valley to Prescott water transmission pipeline. As such, the Agreement initiated a long term, "win-win" partnership between the City and Deep Well Ranch whereby lands are brought into the City in an orderly manner for quality development, generating beneficial economic activity; and water made available by the settlement is used on these annexed lands, with the additional value of return flow to the City's treatment plant, and recharge.

Agenda Item: Adoption of Resolution No. 4172-1334 approving the First Amendment to City Contract No. 2010-086, Procedural Pre-Annexation Agreement, James Deep Well Ranches #1 and #2

The West and North Airport Annexation Areas

The Agreement and this First Amendment represent significant steps toward fulfillment of the City's longstanding policy goal of proactive airport area annexation as expressed in the General Plan approved by voters in 2004 from which that goal arose:

"The airport and the manufacturing, industrial, and commercial uses associated with it have long been recognized as an important economic engine for the City. Based on this recognition the City developed and adopted several plans ... to assure the economic vitality of the airport, and to establish appropriate land use designations for the surrounding acreage.

... A new City annexation policy was adopted in 1994 with the objective to 'utilize annexation as a means to help ensure cost effective and orderly service delivery, provide for a balance of land uses and tax base, protect against undesirable development adjoining the City, and plan for the long term interests of Prescott.'

... Create quality job opportunities for Prescott area residents within employment sectors which complement Prescott's demographics, labor force, available sites, and quality of life. Establish suitable locations for employment centers and participate in development/expansion of infrastructure to support the designated sites."

City planning for the eventual resumption of significant quality growth in proximity to the airport has extended well beyond the updated land uses established by the West Airport Annexation Area and North Airport Annexation Area General Plan Map Amendments. Using the CYMPO 2030 Regional Transportation Plan, the City completed its Airport Area Transportation Plan (June 2009) to identify the locations and classes of streets, existing and future, to serve lands on all four sides of the Airport as well as regional traffic. Water and sewer master plans linked to the City-wide Water and Sewer Models have additionally been completed for both of these Annexation Areas. The streets and utilities plans provide an important framework enabling crafting of detailed development agreements, including infrastructure requirements and responsibilities.

The First Amendment to the Procedural Pre-Annexation Agreement

The Agreement and First Amendment contemplate incremental annexations and development of property triggered by market demand and supported by availability of infrastructure. Each such incremental annexation will involve a separate development agreement and annexation ordinance in compliance with all state and local requirements, including, when applicable, Proposition 400 (November 2005).

Agenda Item: Adoption of Resolution No. 4172-1334 approving the First Amendment to City Contract No. 2010-086, Procedural Pre-Annexation Agreement, James Deep Well Ranches #1 and #2

In addition to those of the Procedural Pre-Annexation Agreement which remain in force, the First Amendment adds the following provisions specifically pertaining to the North Airport Annexation Area:

- Lands in the North Airport Annexation Area are treated the same as those in the West Airport Annexation Area for the purposes of future annexations.
- A master plan has been created for an initial annexation area consisting of approximately 499 acres (Exhibit "D").
- The parties agree that water, wastewater, and transportation infrastructure required to serve the North Airport Annexation Area is neither presently funded nor shall the City be obligated to pay for this infrastructure provided, however, that the City may, but is not obligated to, facilitate financing through means which may be available to the City.
- Deep Well Ranch will make available at no cost to the City mutually agreeable rights-of-way and easements necessary to accommodate City utilities, public streets, and highways.
- The First Amendment anticipates conveyance of a portion of the North Airport Annexation Area from Deep Well Ranch to Yavapai Regional Medical Center (Exhibits "D" and "E"); a separate pre-development agreement between the City and YRMC is further contemplated.
- A water credit of 29 acre-feet/year will be provided by Deep Well Ranch for the proposed YRMC development.
- Deep Well Ranch will pay an annexation fee in the amount of \$25,000 to the City as required by Resolution No. 3761 (August 2006); since the first annexation of approximately 499 acres is being initiated by the City, pursuant to the Procedural Pre-Annexation Agreement the fee will be refunded to Deep Well Ranch as provided by Resolution No. 3761.
- Due to the first North Airport annexation exceeding 250 acres, Proposition 400 will apply. The City will have primary responsibility for meeting the requirements thereof, which include a cost-benefit analysis.

Procedural Steps Going Forward

The City has initiated the first annexation within the North Airport Annexation Area. The associated process, in accordance with Proposition 400, will extend into Fall 2013 and include: a development agreement, annexation ordinance and map, and rezoning ordinance, for the aforementioned 499 acres. A separate development agreement and water service agreement for the YRMC portion of the initial annexation will also be required. All of these items will come before the Council in public session.

Attachments

- Resolution No. 4172-1334
- First Amendment to the Procedural Pre-Annexation Agreement with Exhibits "A" through "E"
- Procedural Pre-Annexation Agreement, City Contract No. 2010-086

Recommended Action: MOVE to adopt Resolution No. 4172-1334.

RESOLUTION NO. 4172-1334

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO THE FIRST AMENDMENT TO CITY CONTRACT NO. 2010-086, PROCEDURAL PRE-ANNEXATION AGREEMENT WITH JAMES DEEP WELL RANCHES #1 AND #2; AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, on November 24, 2009, by Resolution No. 3996-1026, the City and James Deep Well Ranches #1, LLC, and James Deep Well Ranches #2, LLC, entered into that certain Procedural Pre-Annexation Agreement (the "Agreement"), City Contract No. 2010-086, pertaining to the West Airport Annexation Area as described therein; and

WHEREAS, the parties now wish to amend the Agreement to identify and provide for future annexation into the City of Prescott of additional lands identified as the North Airport Annexation Area.

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 First Amendment to the Procedural Pre-Annexation Development Agreement, which Amendment is attached hereto as Exhibit "1".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached First Amendment 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 14th day of May, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL, City Clerk

JON M. PALADINI, City Attorney

Exhibit "1"

PROCEDURAL PRE-ANNEXATION AGREEMENT James Deep Well Ranches #1 and #2 First Amendment to City Contract No. 2010-086

WHEREAS, on November 24, 2009, the parties hereto entered into that Procedural Pre-Annexation Agreement, City Contract No. 2010-086 (the "Agreement"), providing for mutual understandings regarding future annexation into the City of Prescott (the "City") of up to 1,900 acres of real property owned by James Deep Well Ranches #1 and #2 (the "Owner), and quantifying, fulfilling, and settling the obligation of the City to provide water to Deep Well Ranches pursuant to a 1967 grant of easement for the City's 18" Chino Valley to Prescott water transmission pipeline; and

WHEREAS, Paragraph 2.b. of the Agreement provides that upon mutual agreement among the parties the boundaries of the Property depicted by Exhibit "A" thereto may from time to time be amended; and

WHEREAS, on July 24, 2012, the City Council of the City adopted Resolution No. 4142-1302, amending its General Plan Land Use Map to establish future land uses in the North Airport Annexation Area generally situated and bounded as shown by Exhibit "B" hereto, which land uses are depicted on Exhibit "C", also attached hereto; and

WHEREAS, the Owner and/or its assigns has entered into an agreement with Yavapai Regional Medical Center ("YRMC") for the conveyance from the Owner to YRMC of a tract of real property consisting of approximately 180 acres (the "YRMC Property"), which property is identified as the "YRMC Planning Area" by the preliminary development master plan of Exhibit "D", also attached hereto; and

WHEREAS, YRMC has prepared a preliminary development master plan for the YRMC Planning Area, Exhibit "E", and wishes to receive utilities and other municipal services from the City to support implementation of their master plan which will require that the YRMC Property be annexed into the City limits; and

WHEREAS, pursuant to Arizona Revised Statutes annexation of the YRMC Property will require prior or concurrent annexation of additional lands of the Owner to join the YRMC Property to the City limits; and

WHEREAS, the Owner wishes to receive utilities and other municipal services from the City through annexation of said additional lands depicted by Exhibit "D" into the City limits; and

WHEREAS, the exact area of the property consisting of the YRMC Property and additional lands of the Owner depicted by Exhibit "D" to be annexed (in sum the "Annexation Area") will be determined by preparation of an annexation map with legal description; and

WHEREAS, primary access to the Annexation Area will be from State Route 89 at intersections subject to approval by the Arizona Department of Transportation ("ADOT"); and

WHEREAS the parties hereto now wish to amend the Agreement to identify and provide for future annexation into the City of Prescott of the Annexation Area totaling approximately 499 acres as depicted by Exhibit "D".

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the others, the parties hereto agree as follows:

SECTION 1. THAT in addition to those lands of the Owner within the boundaries of the West Airport Annexation Area depicted by Exhibit "A" to the Agreement, the parties hereby add certain other lands, the Annexation Area, and designate said lands for annexation, which lands shall be treated equally as those of the Owner within the West Airport Annexation Area depicted by Exhibit "A".

SECTION 2. THAT in anticipation of annexation of the Annexation Area, the City has caused to be prepared water and wastewater utilities master plans (the "Utilities Master Plans") and cost estimates for the North Airport Annexation Area. The parties hereto expressly acknowledge and agree that the water, wastewater, and transportation infrastructure required to serve the North Airport Annexation Area is neither presently funded nor shall the City be obligated to pay for said infrastructure provided, however, that the City may, but is not obligated to, facilitate financing through means which may be available to the City. Said infrastructure will be configured for buildout of the entire Annexation Area, to be implemented in phases to support the locations and sequencing of land development proposed by the Owner and its successors in coordination and cooperation with the City.

SECTION 3. THAT Owner will make available at no cost to the City mutually agreeable rights-of-way and easements necessary to accommodate City utilities, public streets, and highways, and to ADOT any mutually agreeable rights-of-way and/or easements specifically necessary for intersections on State Route 89 created to provide access to the property depicted by Exhibit "D".

SECTION 4. THAT successor documents to this First Amendment, all which are to be considered concurrently, are anticipated to include: two separate development agreements, the first between the City and Owner pertaining to the entire Annexation Area, and the second between the City and YRMC pertaining to the YRMC Property; a water service agreement for the YRMC Property; an annexation ordinance and map, and rezoning ordinance, all pertaining to the entire Annexation Area.

SECTION 5. THAT the Owner will provide a water credit of 29 acre-feet/year to offset the potable water demand of the YRMC Property, which credit quantity is to be deducted from the 950 acre-feet/year total of the "First Increment of 450 acre-feet" and

"Second Increment of 500 acre-feet" settlement quantities set forth by the Agreement, and arose from a total credit of 58 acre-feet/year associated with the sale of certain other real property by the Owner to CFCHINO INVESTMENT, LLC, RCCHINO INVESTMENTS, LLC, AND BCCCHINO INVESTMENTS, LLC, and City Contract No. 2009-091 approved December 9, 2008, and recorded in Book 4637 Page 508, Records of Yavapai County, Arizona. Said credit of 29 acre-feet/year will be incorporated into and applied within the water service agreement for the YRMC Property identified in Section 4 herein.

SECTION 6. THAT pursuant to City Council Resolution No. 3761, adopted August 29, 2006, prior to consideration of an ordinance to annex the property depicted by Exhibit "D" into the City limits, the Owner shall first pay an annexation fee to the City in the amount of \$25,000.00. As provided by Resolution No. 3761, the parties agree that in recognition of the special economic and public health and other benefits to the City and its residents to be derived from development of the Annexation Area, this amount shall be refunded to the Owner by the City upon approval of the development agreement providing for said annexation.

SECTION 7. The parties acknowledge that since the Annexation Area exceeds 250 acres, Proposition 400 will apply, the requirements of which are outlined in Article I Section 4 of the City of Prescott Charter. The City shall have primary responsibility for meeting said requirements, the fulfillment of which will affect the schedule for completing the items described in Section 4 herein.

SECTION 8. That except as provided herein, all terms and conditions of the Agreement shall continue in full force and effect, and be unmodified by this First Amendment.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of this _____ day of _____, 2013.

CITY OF PRESCOTT, an Arizona
municipal corporation

By:

MARLIN D. KUYKENDALL, Mayor

ATTESTED TO:

LYNN MULHALL, City Clerk

APPROVED BY:

JON M. PALADINI, City Attorney

JAMES DEEP WELL RANCHES #1, LLC,
an Arizona Limited Liability Company

By:

Its:

JAMES DEEP WELL RANCHES #2, LLC,
an Arizona Limited Liability Company

By:

Its:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, in his capacity as Mayor of the City of Prescott, Arizona.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, on behalf of James Deep Well Ranches #1, LLC, by _____, its _____.

SUBSCRIBED AND SWORN to me this _____ day of _____, 2013, by _____, the _____ of _____.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, on behalf of James Deep Well Ranches #2, LLC, by _____, its _____.

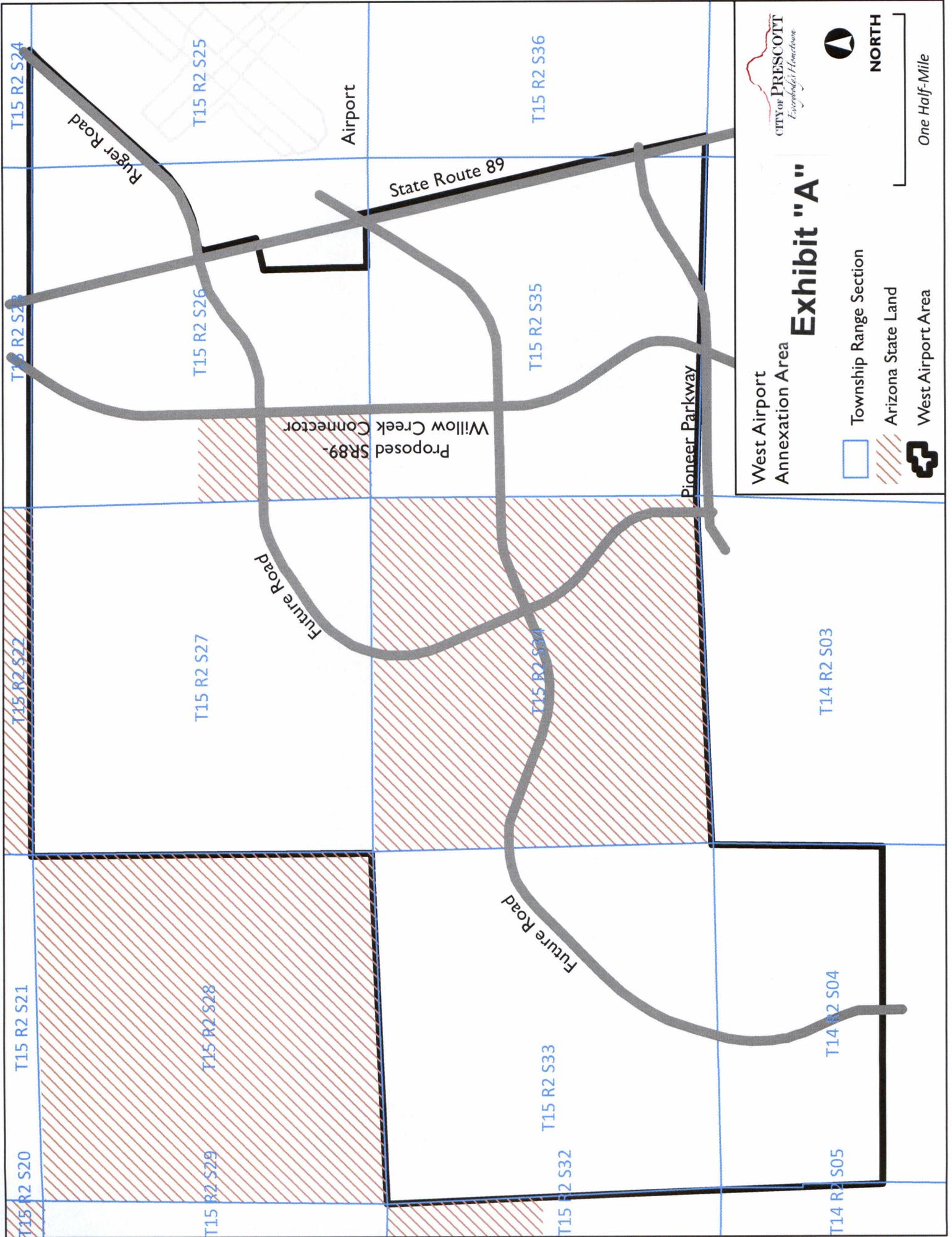
SUBSCRIBED AND SWORN to me this _____ day of _____, 2013, by _____, the _____ of _____.

Notary Public

My Commission Expires:

List of Exhibits

- Exhibit "A" Map of West Airport Annexation Area
- Exhibit "B" Location Map of North Airport Annexation Area
- Exhibit "C" Minor General Plan Land Use Map Amendment GP12-001
for North Airport Annexation Area
- Exhibit "D" Preliminary Development Master Plan for North Airport
Annexation Area - Lands of Deep Well Ranches #1 and #2
- Exhibit "E" Preliminary Development Master Plan for YRMC Property
(a portion of lands depicted by Exhibit "D")



West Airport Annexation Area

Exhibit "A"

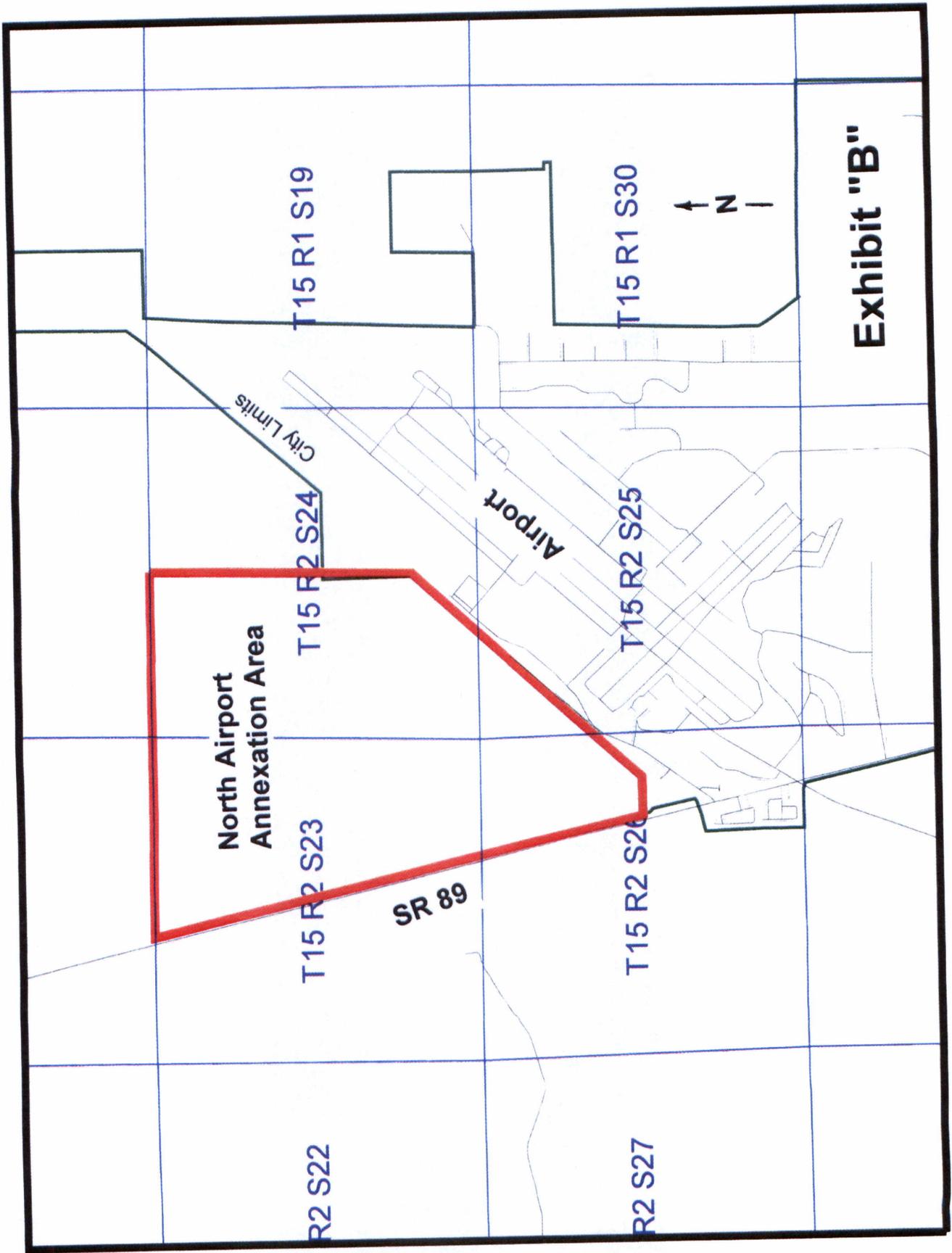
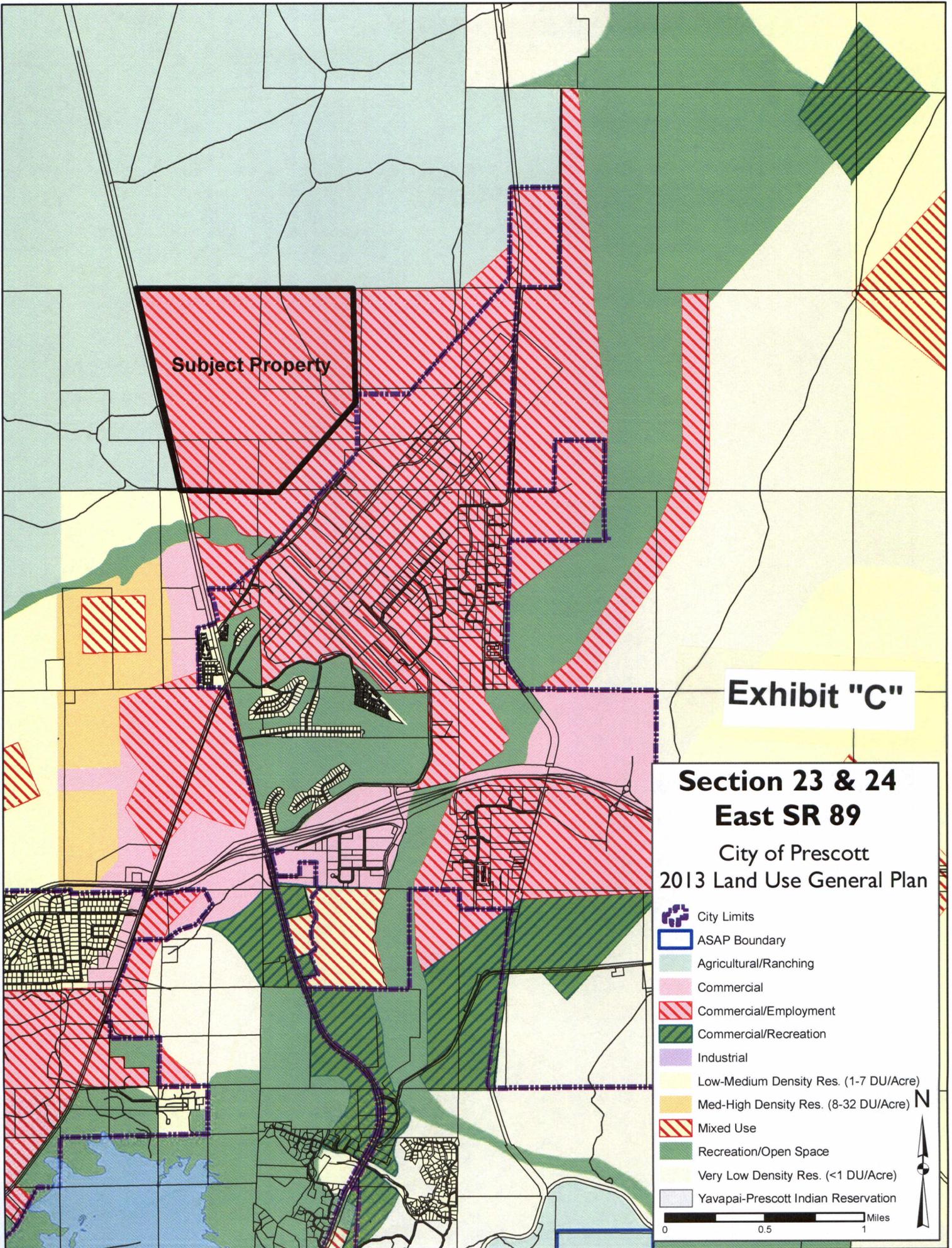


Exhibit "B"



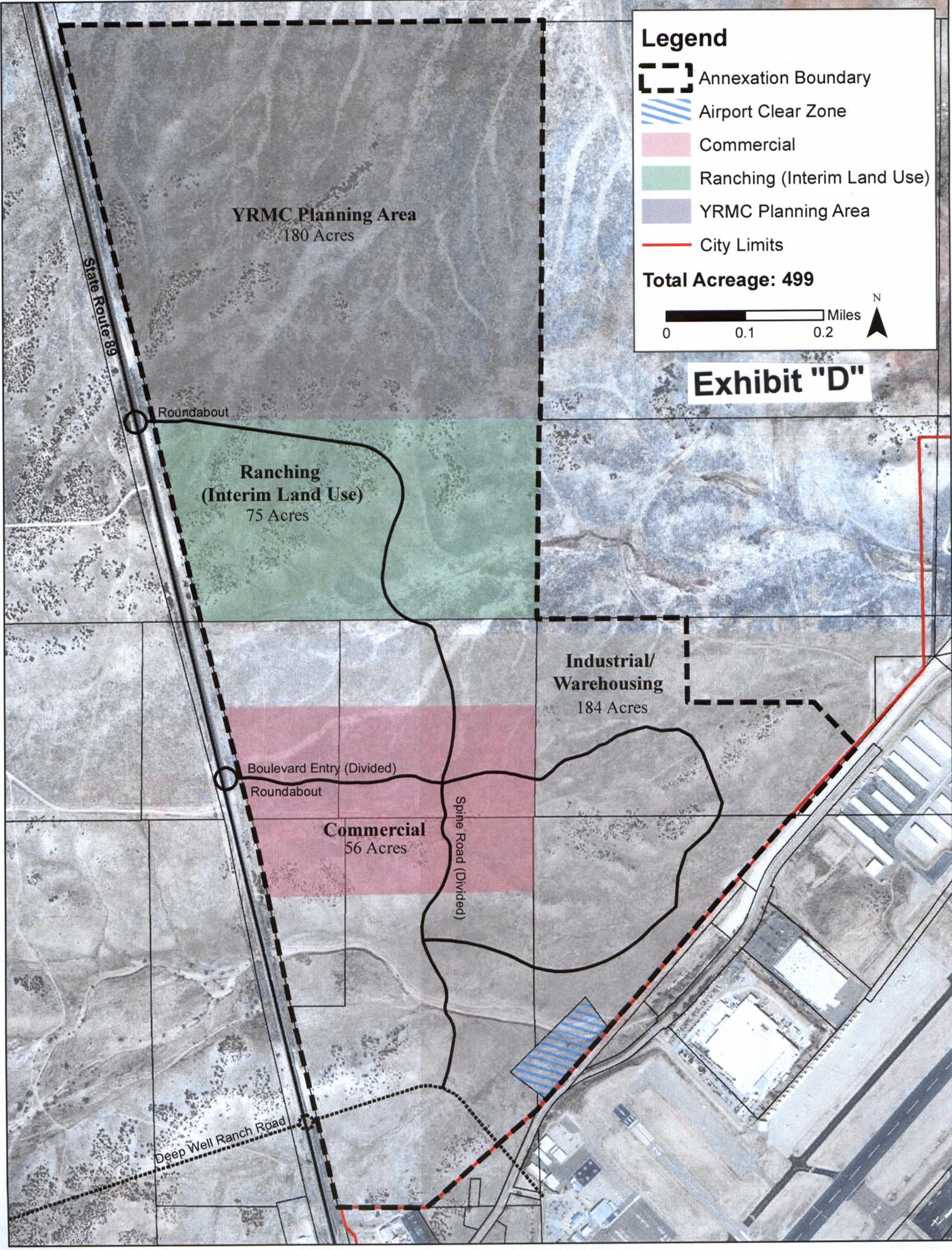
Legend

-  Annexation Boundary
-  Airport Clear Zone
-  Commercial
-  Ranching (Interim Land Use)
-  YRMC Planning Area
-  City Limits

Total Acreage: 499



Exhibit "D"



YRMC: North Campus Planning Scenarios

Parcel: 180.01 acres

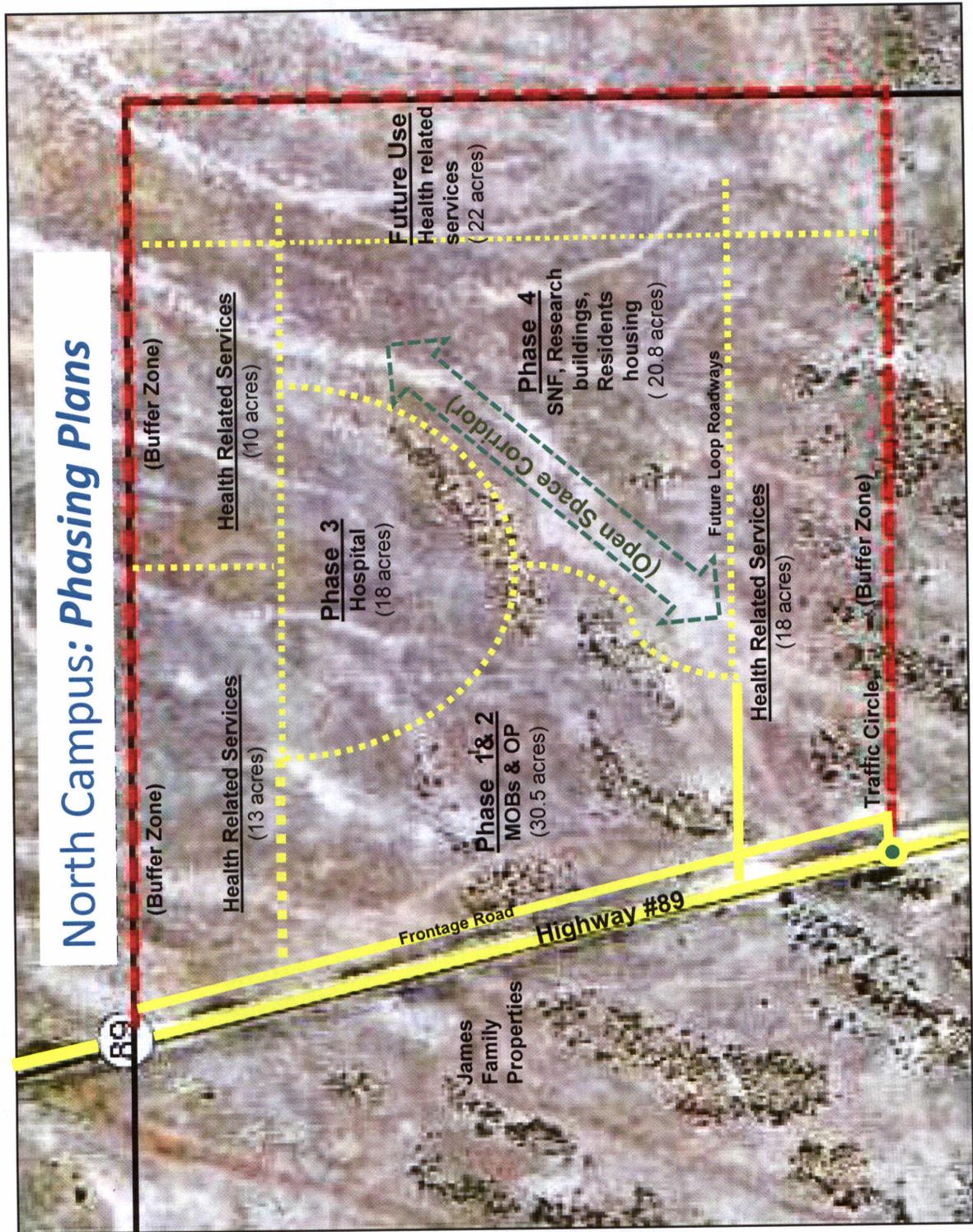


Exhibit "E"

Fee
\$
\$8
\$5
\$1

RECORDED AT THE REQUEST OF:

City of Prescott, Arizona

WHEN RECORDED, PLEASE RETURN TO:

Prescott City Clerk's Office
Interoffice Mail

Ana Wayman-Trujillo, Recorder
OFFICIAL RECORDS OF YAVAPAI COUNTY
CITY OF PRESCOTT AG

B-4714 P-699
12/24/2009 02:22P
9.00 4364720



B-4714 P-699
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AG 4364720

**Caption: City of Prescott Agreement No. 2010-086
Procedural Pre-Annexation Agreement
James Deep Well Ranches #1 and #2
Approved via Resolution No. 3996-1026
Adopted 11/24/2009 - Effective 12/24/2009**

**DO NOT REMOVE
THIS IS PART OF THE OFFICIAL DOCUMENT**



PROCEDURAL PRE-ANNEXATION AGREEMENT
James Deep Well Ranches #1 and #2

This Procedural Pre-Annexation Agreement (the "**Agreement**") is entered into this 24th day of November, 2009, by and between the CITY OF PRESCOTT, Arizona, an Arizona municipal corporation (the "**City**"), and James Deep Well Ranches #1, LLC, an Arizona Limited Liability Company, and James Deep Well Ranches #2, LLC, an Arizona Limited Liability Company, their successors in interest and assigns (collectively, the "**Owner**"), (collectively, the "**Parties**").

RECITALS

A. Owner holds fee simple title to approximately 1900 acres of land (the "**Property**"), located in Yavapai County, Arizona (the "**County**"), within the boundaries of that certain larger area (the "**West Airport Annexation Area**") depicted in attached **Exhibit "A"**. The Property is generally situated north of Pioneer Parkway and west of Ernest A. Love Field, the City airport, which Property is only a portion of Owner's property. Owner intends to develop the Property incrementally in phases yet to be determined.

B. Subject to the terms and conditions of this Agreement, and in express reliance upon the interest and action of the City in initiating annexation of the Property, Owner desires to use its reasonable best efforts to incrementally annex the Property into the City's municipal limits and jointly process with the City any applications for Minor and/or Major General Plan Amendment(s) (the "**GPAs**") and/or rezoning(s) ("**Rezonings**") as may be necessary or desired for each phase in coordination with the City and taking into consideration the economic factors and concerns of the City and the Owner at the time such annexations are proposed.

C. The Parties understand and mutually acknowledge that the City and Arizona State Land Department are discussing similar annexation of certain other contiguous lands identified by Exhibit "A". To assure effective coordination and consistency, and compliance with state statutes prohibiting the creation of County unincorporated "islands", such lands must of necessity be included by the City in the planning, development of transportation and utilities infrastructure, and other activities and actions mentioned herein, provided, however, that the City anticipates that in most cases annexation applications regarding lands under the jurisdiction of the Arizona State Land Department will be filed, if at all, separately and apart from those pertaining to the Property.

D. The City, having communicated to Owner its interest in annexing the Property in accordance with A.R.S. § 9-471, is willing to process annexations, GPAs, and Rezonings in accordance with applicable law and the terms and conditions of this Agreement.

E. The Parties have determined it may be in their best mutual interest to annex the Property into City's municipal limits and, subject to the final and effective adoption of the proposed annexation(s) and translational zoning ordinance(s), for Owner to seek GPAs and Rezonings, if any, as may be desired by the Owner in conjunction with annexation(s) of the Property, in its entirety or incrementally, in the City rather than the County. The parties contemplate as to such annexation(s) that there may be more specific development agreements addressing more detailed planning, development, and zoning components as to each incremental annexation of the Property.



F. The Parties are entering into this Agreement pursuant to the provisions in A.R.S. § 9-500.05 in order to facilitate annexation(s) of the Property for future development and to provide for a procedure to prevent the proposed annexation(s) from becoming effective if applications for such GPAs and Rezonings are not approved subject to conditions that are acceptable to the Owner.

G. The Parties neither desire nor intend that this Agreement shall in any way affect, hinder or interfere with the ability of City's governing body (the "**City Council**") (i) to approve or deny applications for the annexation(s) and/or GPAs and Rezonings and/or (ii) to impose reasonable conditions of approval similar to the conditions of approval for other General Plan amendments and rezonings which have been and continue to be applied to properties of other parties, in connection with the approval of applications for such GPAs and Rezonings.

H. In anticipation of the annexation(s), the City on November 8, 2008, amended its General Plan via a General Plan Major Amendment (the "**Major GPA**") to designate future land uses for the majority of the Property, completed the Airport Area Transportation Plan (the "**Transportation Plan**") to identify a future street network within the Property and proximate lands, and prepared water and wastewater utilities master plans (the "**Utilities Master Plans**") for the majority of the Property.

I. In consideration for the enhancement of the value of the Property which may be realized by the Owner due to the creation of said future street network and provision of City utilities and other municipal services, Owner will make available to the City, and where applicable other public agencies of jurisdiction, subject to Owner's approval, certain real property and easement interests as more particularly identified hereinafter.

J. The Parties further desire to settle as part of this Agreement any and all obligations of the City accruing to the Owner, as successor owner, by virtue of the granting in 1967 of an easement by Harold James and Jean Butz James to the City (the "**Easement**"), traversing Section 27, T15N, R2W for the 18-inch water transmission pipeline of the City, which Easement is recorded in Book 463, Pages 31-34, Records of Yavapai County, Arizona, and which Section 27 is contained within the Property. It is also the intent of the Parties to settle and set forth the rights accruing to the Owner pursuant to this Easement by setting forth the agreement of the Parties concerning the provision of water in that agreement herein. It is understood and agreed that Owner shall use its reasonable best efforts to facilitate and cooperate with the City to accomplish any and all annexations, incremental or otherwise, as may be undertaken by the City, provided that the timing of such annexation(s) are intended to be mutually agreed upon by the parties, and are to consider the economic impacts, costs and effects of each. The Parties agree to meet and confer and to utilize their reasonable best efforts to resolve and address any such timing issues to their mutual satisfaction, and that in the event the City for whatever reasons chooses not to pursue any annexation(s), then and in that event the City shall nevertheless be required to provide water as set forth herein. However, it is understood and acknowledged that it is the desire of the Parties that the water to be provided herein be provided to residents within the City at the time that the water is served to customers by the City and that the Parties agree that they shall use their reasonable best efforts to facilitate the serving of such water to residents of the City.

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm and agree as follows:



AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as though fully restated.

2. Annexation Processes.

a. Initiation of annexation. City agrees to initiate proceedings to annex the Property or portions thereof (the "**Annexation Property**") into City's municipal limits and to issue, for the Annexation Property, an annexation petition to Owner. In recognition of the benefits which will accrue to the public from annexation of lands identified by Exhibit "A", pursuant to City Council Resolution No. 3761, passed and adopted August 29, 2006, application and review fees for annexations of the Property, or portions thereof, are hereby waived.

b. Boundaries. By mutual agreement between the Parties the boundaries of the Property indicated by Exhibit "A" may from time to time be amended.

c. Annexation and zoning ordinances. Concurrent with an annexation ordinance for all or a portion of the Annexation Property (the "**Annexation Ordinance**") being introduced by the City for consideration by its City Council, the City will also introduce for consideration by the City Council an ordinance for City's proposed initial zoning classification for the Annexation Property (the "**Equivalency Zoning Ordinance**") (collectively, the "**Annexation and Equivalency Ordinances**"). The "Equivalency Ordinance" is also referred to as translational zoning and will be adopted pursuant to A.R.S. § 9-471(L).

3. GPA's and Rezoning; Applications and Effectiveness. The Parties agree to jointly submit applications for GPA's and Rezoning, if any, to City for approval. City agrees to process such applications in accordance with applicable law and the terms and conditions of this Agreement. In the event an application for rezoning is made prior to the Annexation and Equivalency Ordinances being introduced to the City Council for its consideration, then City shall schedule, advertise and conduct hearings before the City's Planning & Zoning Commission and the City Council so that any such application is considered by the City Council concurrent with or immediately following the Annexation and Equivalency Ordinances. If the City Council approves the applications and finally adopts the GPA and Rezoning Ordinances, then the effective date of the GPA and Rezoning Ordinances shall be established as being after the effective date of the Annexation and Equivalency Ordinances, as determined by reference to paragraph 4 below.

4. Annexation and Equivalency Ordinances; Adoption and Effectiveness. City agrees that at any time prior to the City Council's adoption of any Annexation Ordinance(s) covering the Property, Owner may withdraw the annexation petition(s) for the Annexation Property. In the event the City Council adopts the Annexation and Equivalency Ordinances and such Ordinances are not timely rescinded by the City Council or challenged by referendum, the Annexation and Equivalency Ordinances will become effective thirty (30) calendar days after being adopted by the City Council as outlined in A.R.S § 9-471. In the event (a) the Owner withdraws its annexation petition, and/or (b) the City Council denies Owner's Rezoning Application before the Annexation and Equivalency Ordinances have become final and effective, or (c) the Annexation Ordinance, the Equivalency Zoning Ordinance and/or the Rezoning Ordinance are challenged by reconsideration or referendum, the City Council shall (by Motion



for Reconsideration or other appropriate means) schedule, advertise and conduct a City Council hearing to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; provided that (I) in the case of (c) above (a challenge by reconsideration or referendum), nothing herein shall prohibit Owner and City from mutually agreeing to jointly oppose any such challenge, but absent such mutual agreement, the City Council shall move to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; and (II) in the case of (b) above, the City Council will not consider rescission of the Annexation and Equivalency Ordinances if Owner formally objects to such rescission. Other than as specifically set forth in the immediately preceding sentence, the City agrees that at such hearing (for reconsideration or otherwise), City shall use all best efforts to ensure its legislative repeal of the Annexation Ordinance and the Equivalency Zoning Ordinance.

5. GPA's and Rezonings; Applications. The Parties agree that nothing in this Agreement shall affect the ability of the City Council to approve or deny any GPA's and Rezonings Applications, and/or to impose reasonable conditions on the City's approval of such applications.

6. No Requirement to Proceed. The Parties agree that nothing in this Agreement shall require any of the Parties to proceed with a proposed annexation, proposed GPA and/or Rezoning, and/or development of the Property. However, the Parties agree that it is their intent to use their reasonable best efforts to mutually facilitate such annexations and to cooperatively work together to agree to mutually satisfactory timing and planning to help further such annexations.

7. Proposition 207 Waiver. On or before the Annexation and Equivalency Ordinances are placed on the City Council's agenda for introduction and tentative approval, Owner shall provide to City a completed "Proposition 207 Waiver" applicable to the Annexation and Equivalency Ordinances in form acceptable to the City Attorney. Owner shall also provide to City a separate completed Proposition 207 Waiver form acceptable to the City Attorney in connection with a GPA and Rezoning. In the event the Annexation and Equivalency Ordinances and/or the GPA and Rezoning Ordinances are not approved, or are rescinded, repealed or otherwise of no effect, the Parties shall take such steps as are required to release or rescind any applicable Proposition 207 Waiver. However, such release or rescission shall not apply to the annexation, development agreement and equivalency processes undertaken pursuant to this Agreement.

8. Proposition 400. Article 1, Section 4, Subsection b. of the City Charter, commonly referred to as Proposition 400, will apply to annexation of lands comprising the Property at such time as the cumulative area of such annexed lands equals or exceeds 250 acres. Proposition 400 requirements include permanent recharge of all effluent generated by new development upon such lands; the City shall be responsible for assuring satisfaction of this requirement.

9. Agreement to Provide Rights Of Way, Temporary Construction Easements, and other Property.

a. Temporary Construction Easements. As and when required by the City to accomplish construction of public streets and utilities, at its sole cost and expense, Owner and



the City shall execute and deliver temporary construction easements granting to City and its contractors and agents the right to enter upon designated areas of the Property subject to reasonable conditions and without monetary consideration to Owner.

b. Rights of Way for Public Streets and Highways. Subject to Owner's approval, which shall not be unreasonably withheld, Owner shall grant rights of way for the public streets and highways within the Property identified by the General Plan and Transportation Plan of the City, and as may be more specifically contained within and necessary for any subdivision and/or site development plans submitted to the City for approval. Rights of way for City streets, which streets shall be developed according to the uniform standards set forth by the Land Development Code of the City, shall be granted by Owner without monetary consideration, as set forth in a Right Of Way Agreement to be entered into between the Parties. Rights of way for highways under the jurisdiction of public agencies other than the City will be provided via separate agreement(s) between the Owner and said other public agencies, which agreements may include the City as an additional party.

c. Easements for City Utilities. Subject to Owner's approval, which shall not be unreasonably withheld, Owner shall grant easements to the City, without monetary consideration, for water and wastewater transmission, distribution, and collection infrastructure, and associated access, identified by the Utilities Master Plans.

d. Intermediate Pump Station, Reservoirs, and APS Substation Site. The Owner agrees to sell upon request by the City, and City agrees to use its best efforts to purchase, for appraised value, as determined by Robert C. Huck, MAI, 724 Gail Gardner Way, Prescott, Arizona, or such other mutually satisfactory MAI appraiser, property for the Intermediate Pump Station, Reservoirs, and APS Substation Site, and an access easement extending from Willow Creek Road to these facilities, all as more particularly described by the "City of Prescott Public Works Big Chino Water Ranch Water Delivery Project, Bid Package No. 2, Pump Stations & Reservoirs (90% submittal, June 2007) designed by Black and Veatch Corporation, Phoenix, Arizona", a copy of which has been provided to the Owner. The parties acknowledge and agree that the landscaping and aesthetic design features indicated on said design plans and to be implemented by a construction project, are material to the willingness of the Owner to sell to the City the aforementioned property, and further, that although governmental communications facilities for City water operations, public safety, and/or other public operational purposes may be placed on the above described property consistent with applicable City codes and procedures, no communications towers or other facilities for private sector commercial communications purposes shall be permitted on this property. The parties shall in good faith endeavor to negotiate a mutually acceptable sales agreement pertaining to the subject property.

10. Agreement to Provide Water to the Property. The City will set aside from its Assured Water Supply portfolio and make available separate from its water management budget(s) the quantities of potable water set forth hereinafter for the sole use of the Owner, its successors in interest and assigns, on the Property, subject to the terms of this Agreement, and in accordance with the adopted water management policies, codes, and regulations of the City including, where applicable, approval of water service agreements separate from this Agreement. The capability of the City to provide water to lands outside its present corporate limits is acknowledged and understood by the Parties to be limited, therefore, the total quantity of water which may be required for development of the entirety of the Property may exceed the total of the increments identified in this paragraph. The City makes no representation regarding the



future availability of water beyond the quantities specified herein and makes no representations regarding any sources for water or supply of water other than those identified herein.

a. First Increment. Four hundred and fifty (450) acre-feet per year upon execution of this Agreement (the "**First Increment**"). The Owner agrees to meet with City representatives and to utilize its reasonable best efforts to cooperate and assist with any City initiated annexation(s) pertaining to the Property consistent with the intent of the Parties that any such annexation(s), and the making available of water by the City to the Owner to support the annexation(s) as set forth herein, shall be timed and planned in a manner that is mutually undertaken, and that owner shall continue to meet and engage in joint planning of the Property with the City.

b. Second Increment. Upon issuance of a final decision and order by the Arizona Department of Water Resources ("**ADWR**") pertaining to the City's Application for Modification of Designation of Assured Water Supply filed with said agency on October 12, 2007, final resolution of all associated legal actions which may arise, if any, and subject to the approval by ADWR of a sufficient quantity of water, an additional 500 acre-feet (the "**Second Increment**"), which increment shall be the first allocation by the City from the quantity approved by ADWR. The Owner agrees to meet with City representatives and to utilize its reasonable best efforts to cooperate and assist with any City initiated annexation(s) pertaining to the Property consistent with the intent of the Parties that any such annexation(s), and the making available of water by the City to the Owner to support the annexation(s) as set forth herein, shall be timed and planned in a manner that is mutually undertaken, and that owner shall continue to meet and engage in joint planning of the Property with the City.

c. Third Increment. At such time as the City's Big Chino Water Ranch Project has been constructed and water is being delivered into the Prescott Active Management Area by said project, 900 acre-feet (the "**Third Increment**"), which quantity shall be in addition to and separate from the quantities specified in Paragraphs 10.a and 10.b hereinabove. The Owner agrees to meet with City representatives and to utilize its reasonable best efforts to cooperate and assist with any City initiated annexation(s) pertaining to the Property consistent with the intent of the Parties that any such annexation(s), and the making available of water by the City to the Owner to support the annexation(s) as set forth herein, shall be timed and planned in a manner that is mutually undertaken, and that owner shall continue to meet and engage in joint planning of the Property with the City.

d. Other Allocations. Nothing shall preclude the Owner from applying, now or in the future, for additional water from any sources of the City made available for development within the City.

e. Entitlement. The Owner, successors in interest and assigns, shall be entitled to the quantities of water identified herein pursuant to this agreement and to use such quantities on the Property, which entitlement shall remain in force notwithstanding any decision by the City to not proceed with or consummate annexation and/or rezoning of the Property or any portion thereof. However, in the event that the City proceeds with annexing any portion or all of the Property as it exists now or as it may exist in the future by mutual agreement of the Parties to redefine the boundaries delineated, the Owner agrees that it shall use its best efforts to cooperate



and agree to such annexation(s), subject to the Parties working together on mutual timing, planning of the areas and with due consideration to any adverse financial impacts such annexations might entail. Further, Owner agrees and represents that it shall ensure that such agreement(s) are made binding upon any and all of Owner's successors or assigns having an interest in such property(ies). The Parties further acknowledge that pending any annexation(s) of portions of the Property, some water provided pursuant to this agreement may be used, at the determination of the Owner, on lands of the Owner which have not yet been annexed into the limits of the City. All water service provided by the City shall be furnished in accordance with the Prescott City Code, and specific provisions of this Agreement.

f. Transmission Line Taps. That upon request of the Owner to the City and payment by the Owner of any and all meter and other applicable fees and/or charges set forth by the Prescott City Code necessary for the establishment of water service (but not including those fees described in Paragraph 10.f below), the City will install, at City expense, two (2) taps (connections) to its 18" transmission line, each with a pressure reducing station resulting in water service at not more than 75 psi on the discharge side of the pressure reducing station, and 6" diameter service line, all in specific fulfillment of the City's contractual obligation. Until the lands upon which this water is used are annexed into the Prescott city limits, the Owner shall be solely responsible for providing, operating, and maintaining any water system (the "**Owner's System**"), beyond the meter(s), including backflow prevention devices which shall be required and must be approved by the City. All water delivered to the Owner's System by the City will meet current and future water quality requirements for municipal uses. Nothing herein shall preclude the City from providing water service to the Property, or portions thereof, from other transmission and distribution facilities in addition to the aforementioned 18" transmission line and taps on it.

g. Payment for Services. Each customer (the "**Water Customer**") to whom water service is provided shall be billed for such service as provided by the Prescott City Code; as such, the Water Customer shall timely pay all such billings.

h. Water Development and Water System Impact Fees. As development of the lands upon which said water is used proceeds, the Owner, its successors in interest and assigns, shall remit, and/or otherwise assure remittance of, to the City all water development and water system impact fees which may be prescribed, and in the amounts specified by the Prescott City Code at such time of development, for each residential and nonresidential unit on the Property which receives water service, at the time construction permits are issued by the applicable governmental unit of jurisdiction.

i. Fire Flows. Design and construction of the City's public water system providing service to the Property shall be accomplished in compliance with all applicable codes, including those for fire protection. The City makes no representation and cannot provide any assurance as to the sufficiency of fire flows within any part of the Owner's System.

j. Wells. Upon annexation into the City of any lands for which water has been provided pursuant to this Agreement, no new wells shall be permitted to be developed on the Property by the Owner or any other party, with the sole exceptions of: (a) wells which may be permitted by the State of Arizona and developed by the City for municipal water utility purposes, including recovery of recharged effluent; and (b) wells necessary for the continuation of



agriculture and/or livestock ranching on undeveloped portions of the Property. Existing wells may be used to continue agriculture and/or livestock ranching on undeveloped portions of the Property.

11. Agreement to Provide Wastewater Services. The City will provide wastewater (sewer) services to the Property pursuant to the Land Development Code, City Code, and all other applicable governmental codes, regulations, policies, and procedures.

a. Payment for Services. Each customer (the “Wastewater Customer”) to whom wastewater service is provided shall be billed for such service as provided by the Prescott City Code; as such, the Wastewater Customer shall timely pay all such billings.

b. Wastewater System Impact Fees. As development of the Property proceeds, the Owner, its successors in interest and assigns, shall remit, and/or otherwise assure remittance of, to the City all wastewater system impact fees which may be prescribed, and in the amounts specified by the Prescott City Code at such time of development, for each residential and nonresidential unit on the Property which receives wastewater service, at the time construction permits are issued by the applicable governmental unit of jurisdiction.

12. Miscellaneous.

a. Good Standing; Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

b. Default and Remedies. In the event City is in default hereunder, Owner shall be entitled to withdraw its Proposition 207 Waiver, and shall then and in that event have those remedies available at law or in equity (including expedited equitable relief) as they pertain to Proposition 207, and notwithstanding any suggestion to the contrary in, or by virtue of Owner’s execution of, the Proposition 207 Waiver. As to all other legal issues, claims and lawsuits, Sections 12 through 18, inclusive, shall be applicable.

c. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Yavapai County, Arizona.

d. Development Agreement. This Agreement is intended to be a “Development Agreement” within the meaning of A.R.S. § 9-500.05.

e. Waiver. No waiver by any Party of a breach of any of the terms or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term or condition contained herein.

f. Severability. In the event that any phrase, clause, sentence, paragraph, or other portion of the Agreement shall be illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law and the Parties will negotiate



diligently in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

g. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States Mail, postage prepaid, by Certified Mail, return receipt requested, addressed as follows:

To City:
City Manager
City of Prescott
P.O. Box 2059
Prescott, AZ 86302

Copy to:
City Attorney
City of Prescott
221 S. Cortez St.
Prescott, AZ 86302

To Owner:
James Deep Well Ranches #1, LLC
8400 N. US 89
Prescott, AZ 86301

Copy to:
Selmer D. Lutey, Esq.
P.O. Box 591
Prescott, AZ 86302

148 N. Summit Ave.
Prescott, AZ 86301

Notice of address may be changed by any Party by giving notice to the other Parties in writing of a change of address. Such change shall be deemed to have been effectively noticed five days after mailed by the Party changing address.

h. Time of Essence. Time is of the essence of this Agreement.

i. Effective Date. This Agreement is entered into effective as of the date of full execution by the Parties.

j. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

k. Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties.



13. Waiver Of Jury Trial. 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.

14. Applicable Laws and Attorneys' Fees. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys' fees, either pursuant to the Agreement, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

15. Indemnification.

a. That Owner hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, appeals, expenses or lawsuits (including the costs of defense of any lawsuits or appeals) asserted by third parties which either (a) challenge the validity of this Agreement or any GPA or Rezoning approved hereunder, or (b) allege negligent acts or negligent omissions on the part of Owner to the extent that such claims and lawsuits pertain to and allege negligent acts or negligent omissions in relationship to any actions undertaken or allegedly undertaken by Owner pursuant to this agreement. Owner covenants to defend any and all claims, lawsuits, and appeals challenging this agreement at its sole cost and expense, including but not limited to attorneys fees, and costs, including any attorneys fees and costs incurred by the City should it elect or be required to defend itself, its employees agents, officers or assigns for any acts taken pursuant to this agreement.

b. That City hereby agrees to indemnify and hold harmless the Owner, its officers, employees, members, and agents and assigns, from any and all claims, liabilities, appeals, expenses or lawsuits (including the costs of defense of any lawsuits or appeals) asserted by third parties to the extent that such claims and lawsuits pertain to and allege negligent acts or negligent omissions pertaining to acts alleged to have occurred by City, or its officers, employees agents or assigns in relationship to any actions undertaken or allegedly undertaken by City, or its officers, employees agents or assigns pursuant to this agreement. City covenants to defend any and all claims, lawsuits, and appeals challenging this agreement at its sole cost and expense, including but not limited to attorneys fees, and costs, including any attorneys fees and costs incurred by the City should it elect or be required to defend itself, its agents, officers or assigns for any acts by City, its officers, agents, employees, or assigns, taken pursuant to this agreement.

16. Remedies. The parties further agree that there shall be no monetary damage remedy for breach of any provisions of this agreement and that the sole remedies for any breach shall be specific performance and/or declaratory judgment. The parties agree to meet and attempt to resolve any dispute in good faith prior to initiating any legal process, to participate in accelerated arbitration and to make good faith efforts to expeditiously resolve any dispute during such process, which process is set forth in exhibit in order to promptly and expeditiously to resolve any disputes. Further, in the event of an appeal from such arbitration process, the parties agree to utilize all good faith efforts to ensure expeditious resolution of any litigation, including participation in expeditious provisional remedies if available.



17. This Agreement shall be binding upon the Parties hereto, their administrators, heirs, successors or assigns and can be changed only by written agreement signed by all parties.

18. In the event that as a result of any legal proceeding all or any portion of this Agreement is determined to be invalid, contrary to existing laws, null and void, or without legal effect, the Parties agree to meet in good faith and to utilize all good faith reasonable efforts to redraft and/or renegotiate such portions of the agreement to comport with the intent of the Parties and to rectify such provisions to ensure the continued legal validity and effect of this agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

SEAL

CITY OF PRESCOTT, an Arizona municipal corporation

By: [Signature]
Mayor

Date: 12.3.09

ATTESTED TO:

[Signature]
City Clerk

APPROVED BY CITY COUNCIL

APPROVED BY:

[Signature]
City Attorney
MATTHEW PODRACZY
Acting City Attorney

RES # 3996-1026 ORD # -
DATE: 11/24/09 EFF: 12/24/09

JAMES DEEP WELL RANCHES #1, LLC,
an Arizona Limited Liability Company

By: [Signature]

Its: Managing Member

Date: 12/1/2009



JAMES DEEP WELL RANCHES #2, LLC,
an Arizona Limited Liability Company

By: Freddie L. Loman

Its: Managing Member

Date: 12/1/2009



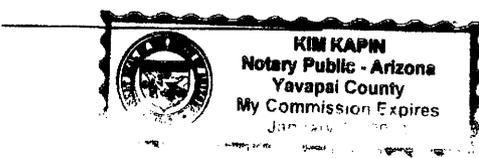
STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 3 day of December, 2009, by Jack Wilson, in his capacity as Mayor of the City of Prescott, Arizona.



Notary Public

My Commission Expires:



SEAL

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this 1ST day of DECEMBER, 2009, on behalf of James Deep Well Ranches #1, LLC, by RONALD E. JAMES, its MANAGING MEMBER.

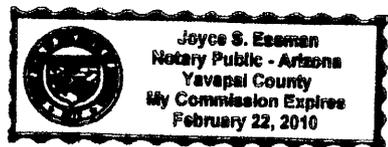
SUBSCRIBED AND SWORN to me this 1ST day of DECEMBER, 2009, by _____, the _____ of _____.



Notary Public

My Commission Expires:

FEBRUARY 22, 2010





STATE OF ARIZONA)
) ss.
County of Yavapai)

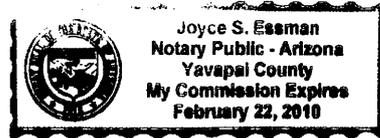
The foregoing instrument was acknowledged before me this 1ST day of DECEMBER, 2009, on behalf of James Deep Well Ranches #2, LLC, by RONALD E. JAMES, its MANAGING MEMBER.

SUBSCRIBED AND SWORN to me this 1ST day of DECEMBER, 2009, by RONALD E. JAMES, the MANAGING MEMBER of _____.

Joyce S. Esman
Notary Public

My Commission Expires:

FEBRUARY 22, 2010



SEAL

List of Exhibits



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Exhibit "A" Map of West Airport Annexation Area



Exhibit "A"

West Airport
Annexation Area



Township Range Section

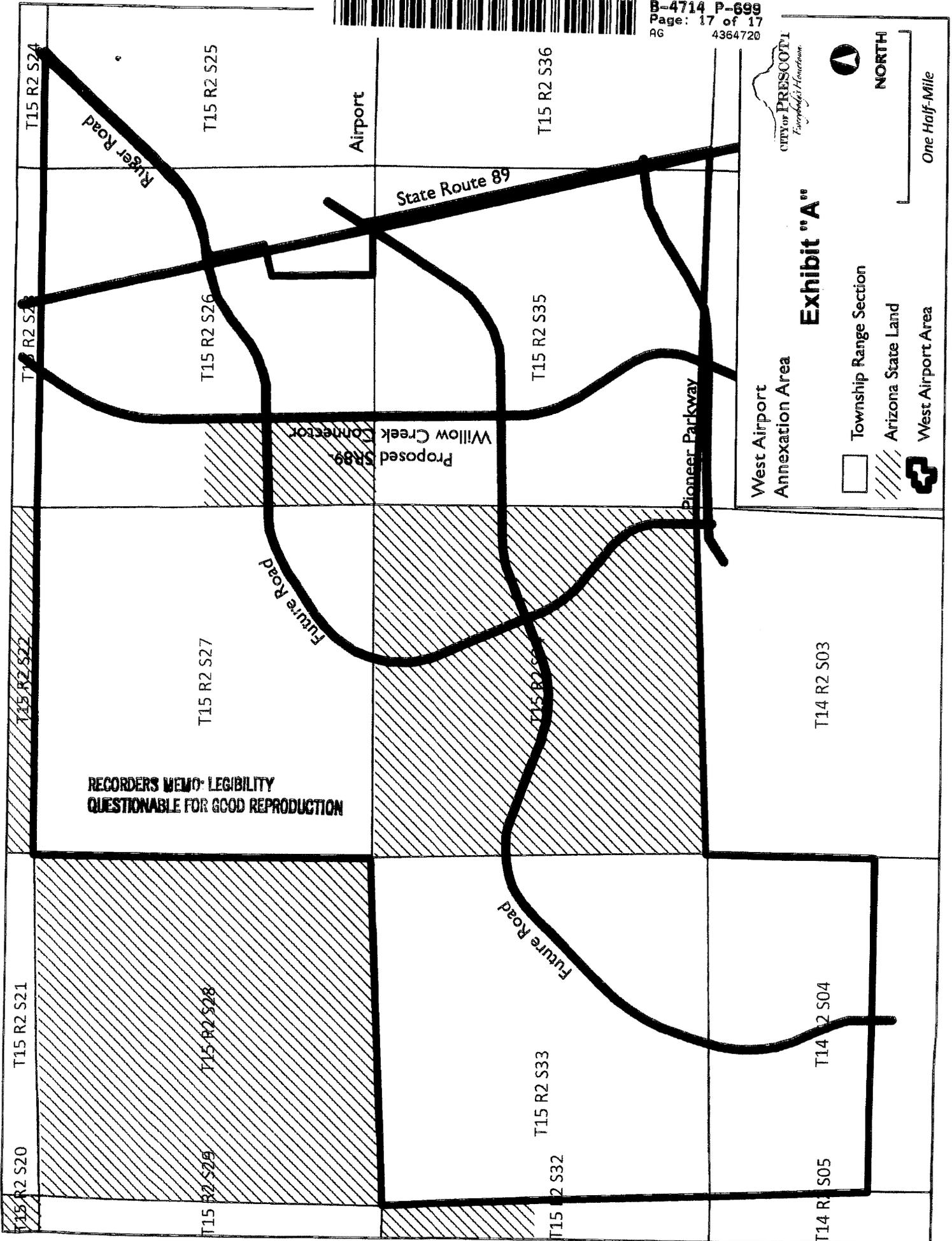
Arizona State Land

West Airport Area



NORTH

One Half-Mile



COUNCIL AGENDA MEMO – May 14, 2013
DEPARTMENT: City Manager
AGENDA ITEM: Adoption of Resolution No. 4171-1333 approving a Procedural Pre-Development Agreement with Yavapai Community Hospital Association, an Arizona nonprofit corporation, d/b/a Yavapai Regional Medical Center (City Contract No. 2013-181)

Approved By:	Date:
Finance Director: Mark Woodfill	
City Manager: Craig McConnell 	5-8-13

Item Summary

Deep Well Ranch has entered into a contract with Yavapai Regional Medical Center (YRMC) to convey a 180 acre parcel located within the North Airport Annexation Area to YRMC, which intends to develop a North Campus on the site. YRMC would like this property to be located within the City of Prescott.

In order to achieve the foregoing, Deep Well Ranch is amenable to the City initially annexing an area of approximately 499 acres, the majority of the North Airport Annexation Area which consists of approximately 586 acres. The annexation is addressed in a separate agenda item, *Adoption of Resolution No. 4172-1334 approving the First Amendment to City Contract No. 2010-086, Procedural Pre-Annexation Agreement, James Deep Well Ranches #1 and #2.*

The purpose of this item, adoption of Resolution No. 4171-1333 approving the attached Procedural Pre-Development Agreement with YRMC, is to set forth mutual understandings between YRMC and the City regarding rezoning and development of the prospective YRMC parcel following annexation of it, as part of the 499 acre Deep Well Ranch property, into the City.

The Procedural Pre-Development Agreement

The Agreement contemplates phased development of the 180 acre North Campus master plan (Exhibit "C") within the framework of the 499 acre annexation (Exhibit "B"). Highlights of the document are as follows:

- Concurrent with annexation of the 499 acre Deep Well Ranch property, the City will join YRMC in submitting an application for rezoning of the YRMC property for medical and related/compatible uses.
- Since the annexation exceeds 250 acres, it will be subject to Proposition 400, which is acknowledged in the Agreement. The City will be responsible for assuring satisfaction of Proposition 400 requirements.
- YRMC will grant at no cost rights-of-way for public streets and highways, and easements necessary for City utilities, identified by the respective master plans which have been prepared.

Agenda Item: Adoption of Resolution No. 4171-1333 approving a Procedural Pre-Development Agreement with YRMC (City Contract No. 2013-181)

- The Agreement acknowledges that the water, wastewater, and transportation infrastructure required to serve the North Airport Annexation Area is neither presently funded nor shall the City be obligated to pay for said infrastructure provided, however, that the City may, but is not obligated to, facilitate financing through means which may be available to the City.
- Development of the property will be subject to all applicable City fees in effect at the time of such development.
- While it is the intent of the parties to achieve the associated annexation and development of the property, nothing in the Agreement shall affect the ability of the City to proceed with, or deny, the annexation, rezoning, and/or development of the property in any specific timeframe.

Water Service Agreement

The water demand for buildout of the North Campus calculated from the water master plan for the North Airport Annexation Area is 127 acre-feet per year. Because of the health care and economic benefits which would be afforded to the community by this medical complex, YRMC is requesting a separate allocation of alternative water. The YRMC request is allowable pursuant to the provisions of the prior Water Settlement Agreement between the City and Deep Well Ranch, City Contract No. 2009-091.

In recognition of said benefits, Deep Well Ranch wishes to further support development of the YRMC North Campus by contributing a credit of 29 acre-feet per year from the "First Increment" (block of water) established by the Water Settlement Agreement. Accordingly, the net request for the YRMC property is 98 acre-feet per year (127 - 29 = 98 acre-feet per year). Said 29 acre-feet per year is one-half of a total credit of 58 acre-feet per year which arose from the sale of certain other real property by Deep Well Ranch in December 2008 for which the City issued a Water Service Agreement, City Contract No. 2009-091.

At their meeting of April 30, 2013, the Council Water Issues Committee discussed the YRMC request and related credit, and is recommending approval to the Council.

Procedural Steps Going Forward

The City has initiated the first annexation within the North Airport Annexation Area, of which the YRMC property is a part. The associated process, in accordance with Proposition 400, will extend into Fall 2013 and include a development agreement with Deep Well Ranch, annexation ordinance and map, and rezoning ordinance. A separate development agreement and rezoning for the YRMC property will be processed concurrently. All of these items will come before the Council in public session.

- Attachments**
- Resolution No. 4171-1333
 - Procedural Pre-Development Agreement with Exhibits "A" thru "C"

Recommended Action: MOVE to adopt Resolution No. 4171-1333.

RESOLUTION NO. 4171-1333

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A PROCEDURAL PRE-DEVELOPMENT AGREEMENT WITH YAVAPAI COMMUNITY HOSPITAL ASSOCIATION, AN ARIZONA NONPROFIT CORPORATION, D/B/A YAVAPAI REGIONAL MEDICAL CENTER (CITY CONTRACT NO. 2013-181); AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

RECITALS:

WHEREAS, Yavapai Community Hospital Association, an Arizona nonprofit corporation, d/b/a Yavapai Regional Medical Center ("YRMC"), wishes to acquire property from Deep Well Ranch located northwest of Prescott Love Field and develop said property as a North Campus; and

WHEREAS, YRMC and Deep Well Ranch have entered into an agreement providing for conveyance by Deep Well Ranch to YRMC of a 180 acre parcel located within the North Airport Annexation Area of the City; and

WHEREAS, YRMC wishes said 180 acre parcel to be located and developed within the corporate limits of the City of Prescott; and

WHEREAS, the City of Prescott and Deep Well Ranch have entered into that First Amendment to City Contract No. 2010-086, Procedural Pre-Annexation Agreement, James Deep Well Ranches #1 and #2, providing for annexation of a portion of the North Airport Annexation Area of the City, which portion includes said 180 acre YRMC parcel; and

WHEREAS, the City of Prescott and YRMC wish to enter into an Agreement setting forth the mutual understandings of the parties regarding annexation into, and future development of the YRMC 180 acre parcel within, the City of Prescott.

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 Procedural Pre-Development Agreement attached hereto as Exhibit "1".

Section 2. THAT the Mayor and staff are hereby authorized to execute the attached 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 14th day of May, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL, City Clerk

JON M. PALADINI , City Attorney

Exhibit "1"

PROCEDURAL PRE-DEVELOPMENT AGREEMENT Yavapai Regional Medical Center City Contract No. 2013-181

This Procedural Pre-Development Agreement (the "**Agreement**") is entered into this ____ day of _____, 2013, by and between the City of Prescott, Arizona, an Arizona municipal corporation (the "**City**"), and Yavapai Community Hospital Association, an Arizona nonprofit corporation, d/b/a Yavapai Regional Medical Center, its successors in interest and/or assigns ("**YRMC**"), (collectively, the "**Parties**").

RECITALS

WHEREAS, on November 24, 2009, the City and James Deep Well Ranches #1 and #2 ("**Deep Well Ranch**") entered into that Procedural Pre-Annexation Agreement, City Contract No. 2010-086 (the "**Deep Well Ranch Agreement**"), providing for mutual understandings regarding future annexation into the City of real property in the West Airport Annexation Area identified therein; and

WHEREAS, on July 24, 2012, the City Council of the City adopted Resolution No. 4142-1302, amending its General Plan Land Use Map to establish future land uses in the North Airport Annexation Area as depicted by Exhibit "A" hereto; and

WHEREAS, on April 23, 2013, the First Amendment to the Deep Well Ranch Agreement was approved by the City and Deep Well Ranch, identifying the North Airport Annexation Area as additional property to be considered for future annexation into the City; and

WHEREAS, Deep Well Ranch, its successor(s) in interest and/or assigns has entered into an agreement with YRMC for the conveyance to YRMC of a tract of real property consisting of approximately 180 acres (the "**YRMC Property**"), which property is identified as the "YRMC Planning Area" by the preliminary development master plan of Exhibit "B" hereto; and

WHEREAS, YRMC has prepared a preliminary development master plan for the YRMC Planning Area, Exhibit "C" hereto, and wishes to receive utilities and other municipal services from the City to support implementation of their master plan which will require that the YRMC Property be annexed into the City limits; and

WHEREAS, pursuant to Arizona Revised Statutes annexation of the YRMC Property is contingent upon annexation of other lands of Deep Well Ranch to join the YRMC Property to the City limits; and

WHEREAS, the exact area of the property consisting of the YRMC Property and other lands of Deep Well Ranch depicted by Exhibit "B" to be annexed (in sum the "**Annexation Area**") will be determined by preparation of an annexation map with legal description; and

WHEREAS, primary access to the Annexation Area will be from State Route 89 at the intersections depicted by Exhibit "B," which intersections, their exact locations, configurations, and construction thereof, are subject to approval by the Arizona Department of Transportation ("**ADOT**"); and

WHEREAS, YRMC and the City wish to set forth their mutual understandings to prepare for, work together toward, and accomplish, annexation of the YRMC Property into the City, for the purpose of development of the YRMC Property, including the furnishing of City services.

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm and agree as follows.

AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as though fully restated.

2. Annexation Process.

a. Initiation of annexation. City agrees to include the YRMC Property in the Annexation Area, to be brought into the City's municipal limits. Inasmuch as the YRMC Property is a portion of the Annexation Area, there shall be no separate application and review fees payable by YRMC for annexation of the YRMC property into the City.

b. Boundaries. The exact boundaries of the YRMC Property, comprising a portion of the Annexation Area, shall be as identified by the separate agreement between YRMC and Deep Well Ranch providing for transfer of ownership of the YRMC Property to YRMC, and further reflected on the map of annexation for the Annexation Area.

c. Annexation and zoning ordinances. Concurrent with an annexation ordinance for the Annexation Area (the "**Annexation Ordinance**") being introduced by the City for consideration by its City Council, the City will also introduce for consideration by the City Council an ordinance for City's proposed initial zoning classification for the YRMC Property (the "**Equivalency Zoning Ordinance**"), (collectively, the "**Annexation and Equivalency Ordinances**"). The "Equivalency Zoning Ordinance" is also referred to as translational zoning and will be adopted pursuant to A.R.S. § 9-471(L).

3. Rezoning; Applications and Effectiveness. Upon the request of YRMC, the City will join YRMC in submitting an application for initial rezoning of the YRMC Property (the "**Initial Rezoning**") which is consistent with, or otherwise, in the determination of the City, compatible with, the General Plan Land Use Map of the City. City agrees to process any such application in accordance with applicable law and the terms and conditions of this Agreement. Rezoning requests subsequent to the Initial Rezoning shall be the sole responsibility of YRMC, its successors in interest and/or assigns, to file, pay any required application fees for, advocate, and pursue within the standard rezoning process of the City.

4. Annexation and Equivalency Ordinances; Adoption and Effectiveness. City acknowledges that it has separately agreed with Deep Well Ranch that at any time prior to the City Council's adoption of any Annexation Ordinance(s) covering the YRMC Property, Deep Well Ranch may withdraw its annexation petition(s) for the Annexation Area. In the event the City Council adopts the Annexation and Equivalency Ordinances and such Ordinances are not timely rescinded by the City Council or challenged by referendum, the Annexation and Equivalency Ordinances will become effective thirty (30) calendar days after being adopted by

the City Council as outlined in A.R.S § 9-471. In the event (a) Deep Well Ranch withdraws its annexation petition, and/or (b) the City Council denies the Rezoning Application before the Annexation and Equivalency Ordinances have become final and effective, or (c) the Annexation Ordinance, the Equivalency Zoning Ordinance and/or the Rezoning Ordinance are challenged by reconsideration or referendum, the City Council shall (by Motion for Reconsideration or other appropriate means) schedule, advertise and conduct a City Council hearing to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; provided that (I) in the case of (c) above (a challenge by reconsideration or referendum), nothing herein shall prohibit Deep Well Ranch, YRMC, and City from mutually agreeing to jointly oppose any such challenge, but absent such mutual agreement, the City Council shall move to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances; and (II) in the case of (b) above, the City Council will not consider rescission of the Annexation and Equivalency Ordinances if Deep Well Ranch formally objects to such rescission. Other than as specifically set forth in the immediately preceding sentence, the City agrees that at such hearing (for reconsideration or otherwise), City shall use all best efforts to ensure its legislative repeal of the Annexation Ordinance and the Equivalency Zoning Ordinance.

5. GPA's and Rezoning's; Applications. The Parties agree that nothing in this Agreement shall affect the ability of the City Council to approve or deny any GPA's and Rezoning Applications, and/or to impose reasonable conditions on the City's approval of such applications.

6. No Requirement to Proceed. The Parties agree that nothing in this Agreement shall require the City, Deep Well Ranch, or YRMC, to proceed with a proposed annexation, proposed GPA and/or Rezoning, and/or development of the Property in any specific timeframe. However, the Parties agree that it is their intent to use their reasonable best efforts to mutually facilitate any such annexation(s) when initiated, and to cooperatively work together to agree to mutually satisfactory timing and planning to help further such annexation(s) and subsequent development.

7. Proposition 207 Waiver. On or before the Annexation and Equivalency Ordinances are placed on the City Council's agenda for introduction and tentative approval, YRMC shall provide to City a completed "Proposition 207 Waiver" applicable to the Annexation and Equivalency Ordinances in form acceptable to the City Attorney. YRMC shall also provide to City a separate completed Proposition 207 Waiver form acceptable to the City Attorney in connection with a GPA and Rezoning. In the event the Annexation and Equivalency Ordinances and/or the GPA and Rezoning Ordinances are not approved, or are rescinded, repealed or otherwise of no effect, the Parties shall take such steps as are required to release or rescind any applicable Proposition 207 Waiver. However, such release or rescission shall not apply to the annexation, development agreement and equivalency processes undertaken pursuant to this Agreement.

8. Proposition 400. Article 1, Section 4, Subsection b. of the City Charter, commonly referred to as Proposition 400, shall apply to annexation of lands comprising the Annexation Property at such time as the cumulative area of such annexed lands equals or exceeds 250 acres. Proposition 400 requirements include permanent recharge of all effluent generated by new development upon such lands; the City shall be responsible for assuring satisfaction of this requirement.

9. Agreement to Provide Rights Of Way, Temporary Construction Easements, and other Property.

a. Temporary Construction Easements. If and when required by the City, Yavapai County, and/or the Arizona Department of Transportation, to accomplish construction of intersections on SR 89 and/or other public streets and utilities, YRMC shall execute and deliver temporary construction easements granting to City and its contractors and agents the right to enter upon designated areas of the YRMC Property subject to reasonable conditions and without monetary consideration to YRMC.

b. Rights of Way for Public Streets and Highways. Subject to approval by YRMC, which shall not be unreasonably withheld, YRMC shall grant rights of way for the public streets and highways within the YRMC Property identified by the master plan, the General Plan, and/or Transportation Plan of the City, and as may be more specifically contained within and necessary for any subdivision and/or site development plans submitted to the City for approval. Rights of way for City streets, which streets shall be developed according to the uniform standards set forth by the Land Development Code of the City, shall be granted by YRMC without monetary consideration, as set forth in a Right Of Way Agreement to be entered into between the Parties. Rights of way for highways under the jurisdiction of public agencies other than the City will be provided via separate agreement(s) between YRMC and said other public agencies, which agreements may, upon the consent of the City, include the City as an additional party.

c. Easements for City Utilities. Subject to approval by YRMC, which shall not be unreasonably withheld, Owner shall grant easements to the City, without monetary consideration, for water and wastewater transmission, distribution, and collection infrastructure, and associated access, identified by the Utilities Master Plans.

10. Utilities and Transportation Infrastructure. In anticipation of annexation of the Annexation Area, the City has caused to be prepared water and wastewater utilities master plans (the “**Utilities Master Plans**”) and cost estimates for the North Airport Annexation Area. The Parties expressly acknowledge and agree that the water, wastewater, and transportation infrastructure required to serve the North Airport Annexation Area is neither presently funded nor shall the City be obligated to pay for said infrastructure provided, however, that the City may, but is not obligated to, facilitate financing through means which may be available to the City. Said infrastructure will be configured for buildout of the entire Annexation Area, to be implemented in phases to support the locations and sequencing of land development proposed by YRMC and its successors, in coordination and cooperation with Deep Well Ranch and the City.

11. Agreement to Provide Water to the YRMC Property. Subject to annexation of the Annexation Area, including the YRMC Property, and a Water Service Agreement incorporating the mutual understandings, quantity of potable water, and other provisions herein, the City will set aside from its Assured Water Supply portfolio and make available to the YRMC Property from its water management budget the quantity of one hundred and twenty-seven (127) acre-feet per year, which quantity the Parties have identified and hereby agree is the estimated water demand at buildout for the YRMC Property. This quantity of potable water shall be reserved by the City solely for use on the YRMC Property by YRMC, its successors in interest and assigns, subject to the terms of this Agreement, and in accordance with the adopted water management policies, codes, and regulations of the City including, where applicable, approval of water

service agreements separate from this Agreement. Nothing shall preclude YRMC, its successors in interest and assigns, from applying in the future for additional water from any sources of the City made available generally for development within the City provided, however, that the City makes no representation regarding the future availability of any such additional water for the YRMC Property.

a. Payment for Service. Each customer (the **“Water Customer”**) to whom water service is provided within the boundaries of the YRMC Property shall be billed for such service as provided by the Prescott City Code; as such, the Water Customer shall timely pay all such billings.

b. Water Development and Water System Impact Fees. As development of the lands upon which said water is used proceeds, YRMC, its successors in interest and assigns, shall remit, and/or otherwise assure remittance of, to the City all water development and water system impact fees which may be prescribed, and in the amounts specified by the Prescott City Code at such time of development, for each residential and nonresidential unit on the Property which receives water service, at the time construction permits are issued by the applicable governmental unit of jurisdiction.

c. Fire Flows. Design and construction of the City's public water system providing service to the YRMC Property shall be accomplished in compliance with all applicable codes, including those for fire protection.

d. Wells. Upon annexation into the City of any lands for which water is to be provided pursuant to this Agreement, the associated Water Service Agreement, and any subsequent agreement, if any, no new wells shall be permitted to be developed on the YRMC Property by YRMC or any other party, with the sole exceptions of: (a) wells which may be permitted by the State of Arizona and developed by the City for municipal water utility purposes, including recovery of recharged effluent; and (b) wells necessary for the continuation of agriculture and/or livestock ranching on undeveloped portions of the YRMC Property or adjacent property of Deep Well Ranch. Existing wells may be used to continue agriculture and/or livestock ranching on undeveloped portions of the Property.

12. Agreement to Provide Wastewater Services. The City will provide wastewater (sewer) services to the Property pursuant to the Land Development Code, City Code, and all other applicable governmental codes, regulations, policies, and procedures.

a. Payment for Services. Each customer (the **“Wastewater Customer”**) to whom wastewater service is provided within the boundaries of the YRMC Property shall be billed for such service as provided by the Prescott City Code; as such, the Wastewater Customer shall timely pay all such billings.

b. Wastewater System Impact Fees. As development of the YRMC Property proceeds, YRMC, its successors in interest and assigns, shall remit, and/or otherwise assure remittance of, to the City all wastewater system impact fees which may be prescribed, and in the amounts specified by the Prescott City Code at such time of development, for each residential and nonresidential unit on the YRMC Property which receives wastewater service, at the time construction permits are issued by the applicable governmental unit of jurisdiction.

13. Miscellaneous.

a. Good Standing; Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

b. Default and Remedies. In the event City is in default hereunder, YRMC, or other legal owner of the YRMC Property, shall be entitled to withdraw its Proposition 207 Waiver, and shall then and in that event have those remedies available at law or in equity (including expedited equitable relief) as they pertain to Proposition 207, and notwithstanding any suggestion to the contrary in, or by virtue of YRMC's execution of, the Proposition 207 Waiver. As to all other legal issues, claims and lawsuits, Sections 12 through 18, inclusive, shall be applicable.

c. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Yavapai County, Arizona.

d. Development Agreement. This Agreement is intended to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

e. Waiver. No waiver by any Party of a breach of any of the terms or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term or condition contained herein.

f. Severability. In the event that any phrase, clause, sentence, paragraph, or other portion of the Agreement shall be illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

g. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States Mail, postage prepaid, by Certified Mail, return receipt requested, addressed as follows:

To City:
City Manager
City of Prescott
201 S. Cortez St.
Prescott, AZ 86303

Copy to:
City Attorney
City of Prescott
221 S. Cortez St.
Prescott, AZ 86303

To YRMC:
c/o Chief Executive Officer
Yavapai Regional Medical Center
1003 Willow Creek Road
Prescott, AZ 86301

Copy to:
Robert S. Pecharich
Boyle, Pecharich, Cline, Whittington & Stallings, PLLC
125 N. Granite St.
Prescott, AZ 86301

Notice of address may be changed by either Party by giving notice to the other Party in writing. Such change shall be deemed to have been effectively noticed five days after mailed by the Party changing its address.

h. Time of Essence. Time is of the essence of this Agreement.

i. Effective Date. This Agreement is entered into effective as of the date of full execution by the Parties.

j. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

k. Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties.

14. Waiver Of Jury Trial. 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.

15. Applicable Laws and Attorneys' Fees. The Parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither Party shall be entitled to an award of attorneys' fees, either pursuant to the Agreement, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

16. Indemnification.

a. YRMC hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, appeals, expenses or lawsuits (including the costs of defense of any lawsuits or appeals) asserted by third parties

which either (a) challenge the validity of this Agreement or any GPA or Rezoning approved hereunder, or (b) allege negligent acts or negligent omissions on the part of YRMC to the extent that such claims and lawsuits pertain to and allege negligent acts or negligent omissions in relationship to any actions undertaken or allegedly undertaken by YRMC pursuant to this agreement. YRMC covenants to defend any and all claims, lawsuits, and appeals challenging this agreement at its sole cost and expense, including but not limited to attorneys fees, and costs, including any attorneys fees and costs incurred by the City should it elect or be required to defend itself, its employees agents, officers or assigns for any acts taken pursuant to this agreement.

b. That City hereby agrees to indemnify and hold harmless YRMC, its officers, employees, members, and agents and assigns, from any and all claims, liabilities, appeals, expenses or lawsuits (including the costs of defense of any lawsuits or appeals) asserted by third parties to the extent that such claims and lawsuits pertain to and allege negligent acts or negligent omissions pertaining to acts alleged to have occurred by City, or its officers, employees agents or assigns in relationship to any actions undertaken or allegedly undertaken by City, or its officers, employees agents or assigns pursuant to this agreement. City covenants to defend any and all claims, lawsuits, and appeals challenging this agreement at its sole cost and expense, including but not limited to attorneys fees, and costs, including any attorneys fees and costs incurred by the City should it elect or be required to defend itself, its agents, officers or assigns for any acts by City, its officers, agents, employees, or assigns, taken pursuant to this agreement.

17. Remedies. The Parties further agree that there shall be no monetary damage remedy for breach of any provisions of this agreement and that the sole remedies for any breach shall be specific performance and/or declaratory judgment. The Parties agree to meet and attempt to resolve any dispute in good faith prior to initiating any legal process, to participate in accelerated arbitration and to make good faith efforts to expeditiously resolve any dispute during such process, which process is set forth in exhibit in order to promptly and expeditiously to resolve any disputes. Further, in the event of an appeal from such arbitration process, the Parties agree to utilize all good faith efforts to ensure expeditious resolution of any litigation, including participation in expeditious provisional remedies if available.

18. This Agreement shall be binding upon the Parties hereto, their administrators, heirs, successors or assigns and can be changed only by written agreement signed by the Parties.

19. In the event that as a result of any legal proceeding all or any portion of this Agreement is determined to be invalid, contrary to existing laws, null and void, or without legal effect, the Parties agree to meet in good faith and to utilize all good faith reasonable efforts to redraft and/or renegotiate such portions of the Agreement to comport with the intent of the Parties and to rectify such provisions to ensure the continued legal validity and effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

CITY OF PRESCOTT, an Arizona municipal corporation

By: _____
Marlin D. Kuykendall, Mayor

Date: _____

ATTESTED TO:

Lynn Mulhall, City Clerk

APPROVED BY:

Jon Paladini, City Attorney

YAVAPAI COMMUNITY HOSPITAL ASSOCIATION, a nonprofit Arizona corporation,

By: _____
Timothy J. Barnett, CEO

Date: _____

APPROVED BY:

Robert S. Pecharich, Attorney for YRMC

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Marlin D. Kuykendall, in his capacity as Mayor of the City of Prescott, Arizona.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, on behalf of Yavapai Regional Center by _____, its _____.

SUBSCRIBED AND SWORN to me this _____ day of _____, 2013, by _____, the _____ of _____.

Notary Public

My Commission Expires:

LIST OF EXHIBITS

- Exhibit "A" Map of North Airport Annexation Area
- Exhibit "B" Preliminary Development Master Plan (portion of North Airport Annexation Area)
- Exhibit "C" Preliminary Development Master Plan for the YRMC Planning Area

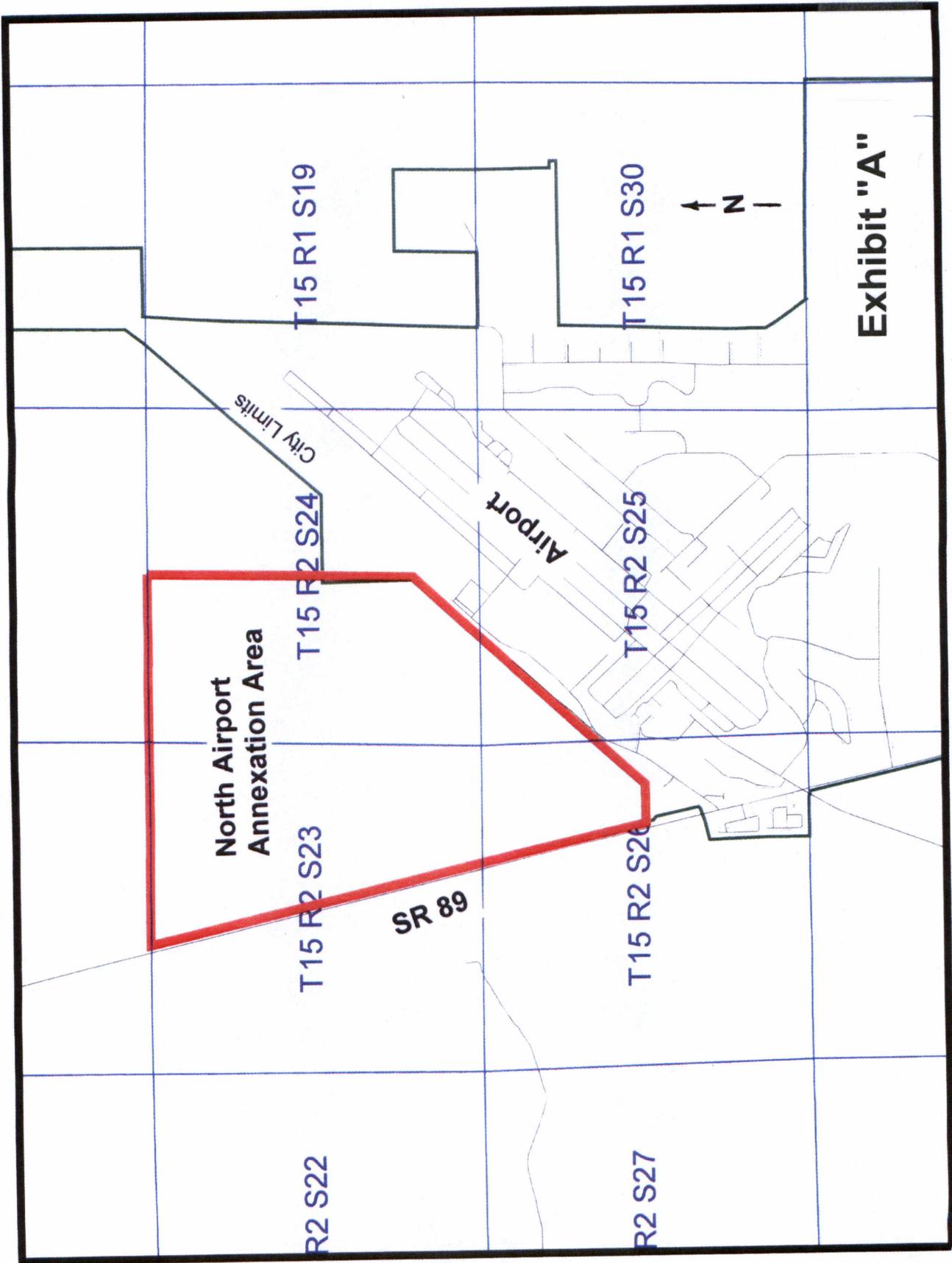
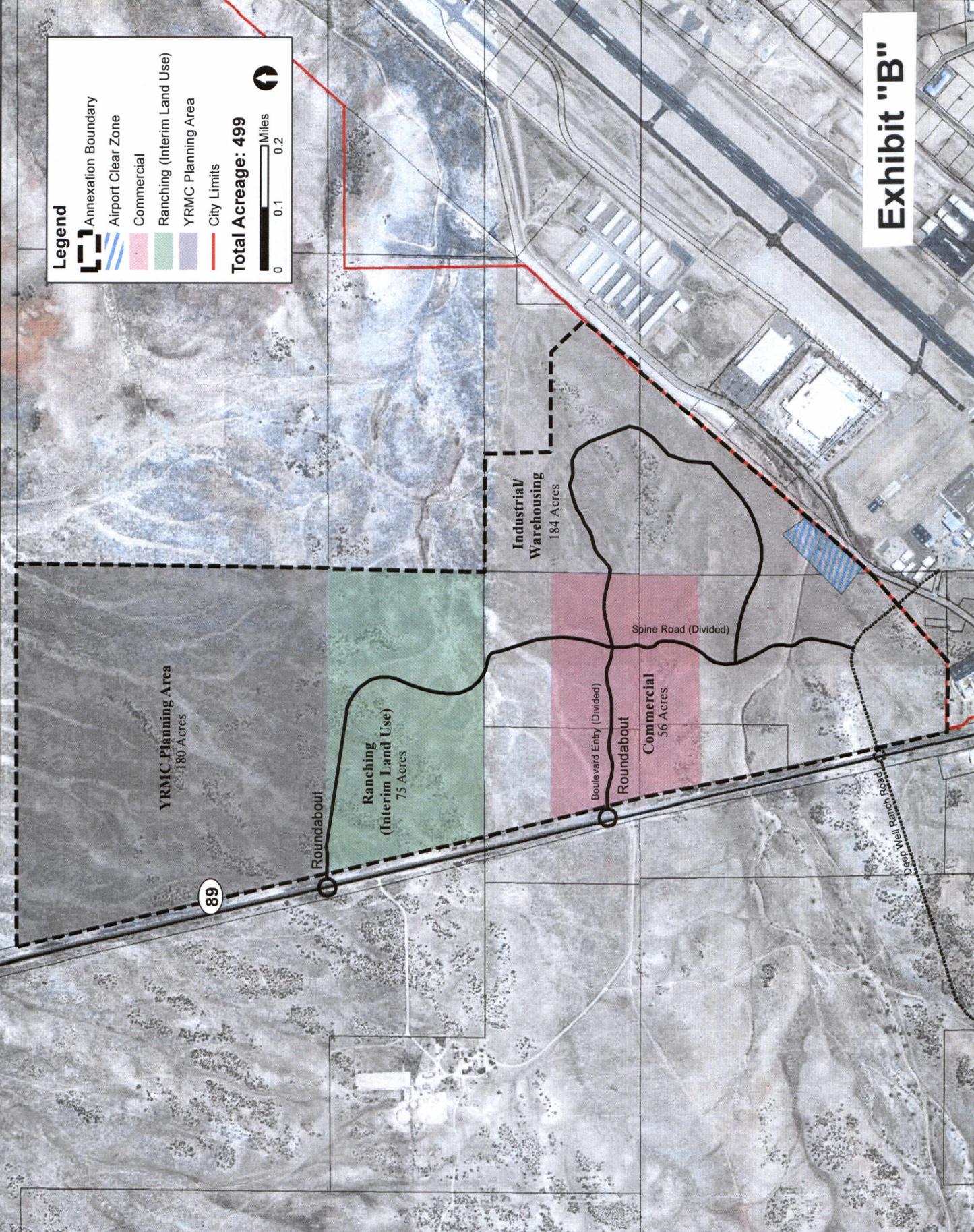


Exhibit "A"

Exhibit "B"



YRMC: North Campus Planning Scenarios

Parcel: 180.01 acres

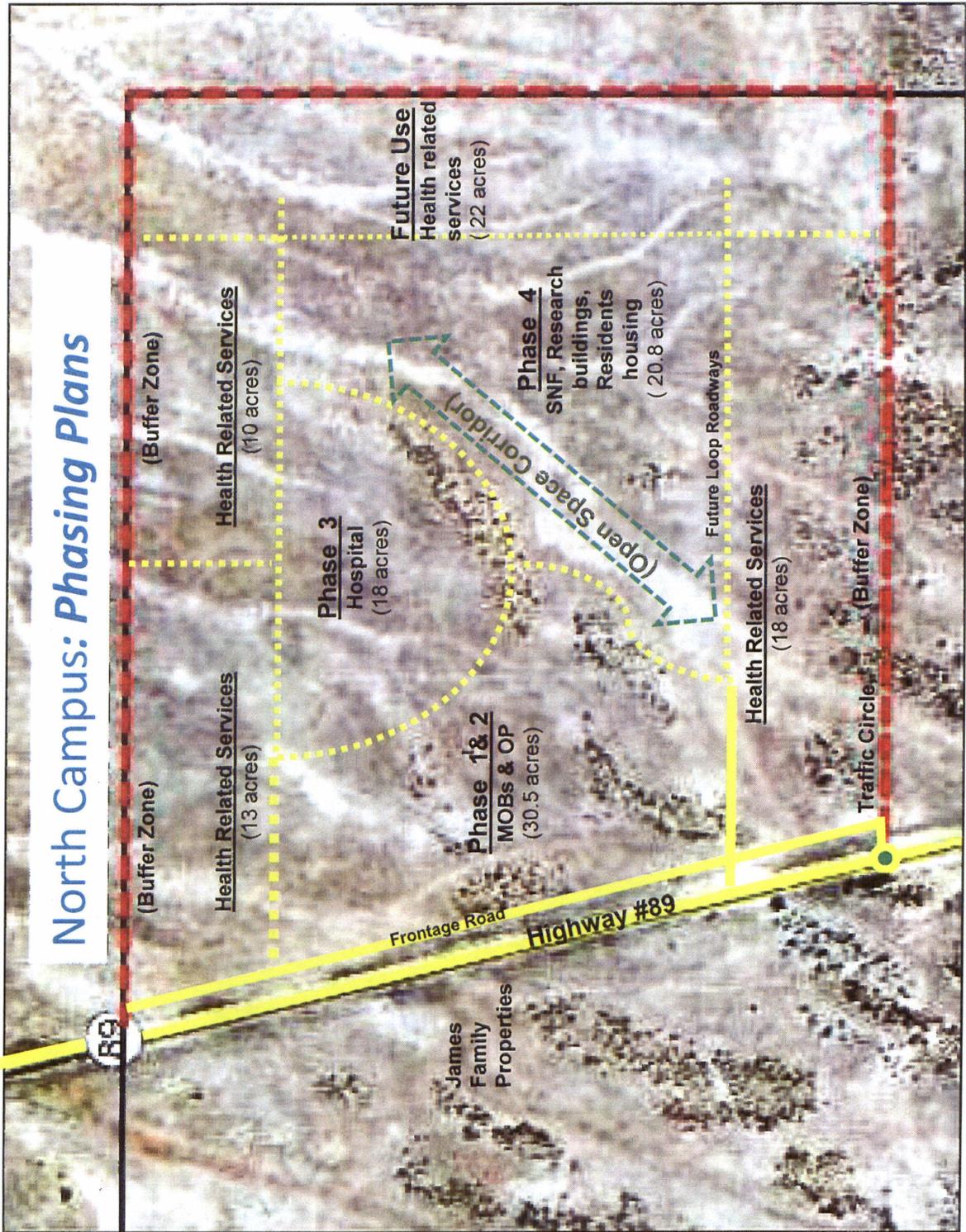


Exhibit "C"

COUNCIL AGENDA MEMO – May 14, 2013

DEPARTMENT: Legal

AGENDA ITEM: Approval of settlement of litigation Case No. CV201200047, Linda and Warren Twelves v City of Prescott

Approved By:

Date:

City Attorney: Jon M. Paladini	
Finance Director: Mark Woodfill	
City Manager: Craig McConnell 	5-6-13

Summary

Plaintiffs Linda and Warren Twelves agreed to accept \$135,000 as full and final settlement of all claims arising out of a slip and fall of Linda Twelves occurring on January 18, 2011.

Background

Ms. Twelves alleged that on January 18, 2011, she slipped and fell on the sidewalk adjacent to the City Library due to ice. She claimed severe injuries, resulting in approximately \$75,000 in medical bills. Plaintiff filed a Notice of Claim in the amount of \$400,000 and a subsequent lawsuit naming the City of Prescott. The parties entered into settlement negotiations and mediation beginning in February 2013. As a result, Plaintiffs have agreed to settle their claim in the amount of \$135,000. If the settlement is approved by Council, the Plaintiffs have agreed to sign a full and final release of all claims in exchange for settlement funds. This settlement does not constitute an admission of liability or fault by the City.

Financial Impact

The financial impact to the City is \$135,000. Funds to settle this matter will come out of the Risk Management budget.

Recommended Action: **MOVE** to approve settlement of Twelves v City of Prescott, Case No. CV201200047, in the amount of \$135,000.

COUNCIL AGENDA MEMO – May 14, 2013

DEPARTMENT: City Council

AGENDA ITEM: Discussion/direction regarding downtown issues identified at Council Caucus of April 16, 2013.
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Approved By:	Date:
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City Manager: Craig McConnell	<i>Craig McConnell</i>	5-9-13
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Summary

This item was requested by Council to provide an opportunity for additional discussion and possible direction to staff regarding downtown issues.

Background

The City Council discussed the following topics relative to the downtown at the April 16, 2013, Caucus meeting.

1. Identification of downtown area
2. Update on what has already occurred
3. Signage
4. Circulation
5. Promotion, events, attractions
6. Smoking Issues
7. Cleanliness
8. Special Events
9. Parking
10. Sanitation
11. Activities disturbing the peace/disorderly conduct

Councilman Kuknyo will present an outline of possible actions to improve or resolve various issues, for Council consideration.

Recommended Action: Council discussion and direction; no formal action to be taken.
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