



AGENDA

**PRESCOTT CITY COUNCIL
STUDY SESSION
Tuesday, January 21, 2014
3:00 PM**

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

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

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION** Pastor James Taylor, Church on the Street
- ◆ **PLEDGE OF ALLEGIANCE** Councilman Lazzell
- ◆ **ROLL CALL**

MAYOR AND CITY COUNCIL

Mayor Kuykendall	
Mayor Pro Tem Lamerson	Councilman Kuknyo
Councilman Arnold	Councilman Lazzell
Councilman Blair	Councilwoman Wilcox

◆ **ANNOUNCEMENTS**

I. DISCUSSION ITEMS

- A. Adoption of Ordinance No. 4876-1414 approving an Airport Food Service Concession Agreement and Lease, City Contract No. 2014-101, with George Sullivan and Susan Sullivan, dba "Susie's Skyway Restaurant"
- B. Approval of desktop computer hardware and software purchases from Dell, Inc., for Fiscal Year 2014 in an amount not to exceed \$120,000.00 (City Contract No. 2014-122)
- C. Approval of a professional services agreement with Kelley/Wise Engineering, Inc., for the FY 2015 Pavement Reconstruction Project in

an amount not to exceed \$353,547.00. (City Contract No. 2014-115)

- D. Adoption of Resolution No. 4213-1422 authorizing an Intergovernmental Agreement with Yavapai County for Pioneer Park Recreational Facilities (City Contract No. 2014-121)
- E. Adoption of Resolution No. 4214-1423 authorizing a Memorandum of Understanding among the Arizona Diamondbacks Foundation, Inc., Pimmex General Contracting, Nelson Architects, Yavapai County, and the City of Prescott (City Contract No. 2014-124)
- F. Legislative Update

II. 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.

Dana R. DeLong, City Clerk

MEETING DATE/TYPES: STUDY SESSION 01-21-14
VOTING SESSION 01-28-14

DEPARTMENT: Airport

AGENDA ITEM: Adoption of Ordinance No. 4876-1414 approving an Airport Food Service Concession Agreement and Lease, City Contract No. 2014-101, with George Sullivan and Susan Sullivan, dba "Susie's Skyway Restaurant"

Approved By:		Date:
Economic Initiatives Director:	Burt, Jeff	12/20/2013
City Manager:	McConnell, Craig	01/13/2014

Item Summary

This item is for approval of a new, 10-year agreement for the operation of the restaurant at the Prescott Airport Terminal.

Background

Original parties to the current restaurant lease were the City and Nancy Greene, dba "Nancy's Skyway Restaurant" (City Contract No. 1994-060; Ordinance No. 3202). The First Amendment, which assigned the Lease from Nancy Greene to George and Susan Sullivan, dba "Susie's Skyway Restaurant", was approved by the City Manager January 20, 1997, as Contract No. 1994-060A. The Lease allowed for the assignment with the prior written consent of the City Manager and Airport Manager. Council approval was not required. The current lease expires May 31, 2014.

In June 2013 a gas leak occurred in the kitchen which required the City, as the responsible party under to the Lease, to rebuild the service between the meter and kitchen equipment. During the repairs, it was determined by City Building and Fire officials that the existing kitchen equipment hood and grill needed to be replaced with code-compliant equipment containing an integral fire suppression system. The hood, grill, and deep fryer, appearing to be original (1957), were "red-tagged", not available for use, until the life-safety code issues were corrected. It is important to note that the restaurant has remained open, able to serve food items not requiring the use of the grill or deep-fryer.

According to the Lease, it is the tenant's responsibility to maintain and, if necessary,

replace kitchen equipment. Since the current lease is about to expire, however, it is not reasonable to expect the tenant to expend the monies necessary to bring the kitchen into compliance at this time. Therefore, in order for the facility to continue to operate, it is necessary for the City to complete repairs and upgrades to have a leasable restaurant. The cost is anticipated to be approximately \$25,000.

The attached Agreement incorporates lease terms and conditions consistent with current standards and a fair market value lease rate. The new lease term will coincide with the expiration of the current lease on May 31, 2014.

Lease Agreement Details

The monthly lease payment is currently \$331.02 per month (\$3,972.24 per year or \$0.2622 per sf/yr) excluding applicable taxes. The lease contains an annual CPI increase of not less than 2%; the most recent CPI increase occurred on June 1, 2013. The lease payments will continue under the terms and conditions of the existing lease through May 31, 2014.

In order to set fair market rent for the restaurant facility, the City engaged Southwest Appraisal Associates of Tucson. The appraiser's opinion of fair market rent is \$986.00 per month (\$11,832.00 per year).

Under the terms of the new lease, effective June 1, 2014, the tenant will pay the City an annual rent of \$10,200.00 in equal monthly installments of \$850.00 for the first 24 months, to include the annual CPI adjustment. The rate for the first 24 months was negotiated recognizing impacts to the Sullivans' business which may have occurred due to limited operability of the kitchen facilities since June 20, 2013.

At the start of the 25th month, the annual rent will increase to \$14,232.00 in equal monthly installments of \$1,186.00 plus an annual cumulative CPI adjustment of not less than 3% nor greater than 9%, for the remaining term (through May 31, 2024).

The new rental rate includes a pro-rated percentage (40%) of utility costs for water, wastewater, and trash for the Airport Terminal Building of \$200.00 per month (plus annual CPI adjustments). The costs of these items are not being recovered under the existing lease.

At the current lease rental rate, revenue over the next 10 years would be approximately \$43,000.00. The new lease rental rate will generate approximately \$147,000.00 over the same 10-year period of which \$103,000.00 is additional revenue. Assuming the kitchen repairs cost the full \$25,000.00, the Airport will realize at least \$79,000.00 in additional revenue during the term of the new lease.

The Lease recognizes that the City may build a new airport terminal building. In such

Agenda Item: Adoption of Ordinance No. 4876-1414 approving an Airport Food Service Concession Agreement and Lease, City Contract No. 2014-101, with George Sullivan and Susan Sullivan, dba "Susie's Skyway Restaurant"

event, the Lease may be terminated upon 180 days notice by the City with no financial obligation or penalty; and the Lessee will have the right of first refusal to enter into a new lease at terms and conditions to be set by the City.

Attachments

1. City Contract No. 2014-101
2. Ordinance No. 4876-1414
3. Financial Worksheet

Recommended Action: MOVE to adopt Ordinance No. 4876-1414.

**AIRPORT FOOD SERVICE CONCESSION AGREEMENT AND LEASE
ERNEST A. LOVE FIELD/PRESCOTT MUNICIPAL AIRPORT**

City Contract No. 2014-101

THIS AIRPORT FOOD SERVICE CONCESSION AGREEMENT AND LEASE ("Lease Agreement") is made on _____, 2014, between THE CITY OF PRESCOTT, an Arizona municipal corporation ("City") and GEORGE SULLIVAN AND SUSAN SULLIVAN, husband and wife, dba "Susie's Skyway Restaurant" ("Lessee").

RECITALS:

- A. The City is the owner of the Prescott Municipal Airport and Airport Terminal Building located at 6500 MacCurdy Drive, Ernest A. Love Field in Prescott, Arizona ("Airport").
- B. The City has a need for an operator to provide non-exclusive concession service by maintaining food and beverage service at the Airport Terminal Building.
- C. By way of that certain Lease Agreement dated May 24, 1994, Lessee has been the tenant and operator of Susie's Skyway Restaurant at the Airport Terminal Building since on or about January 24, 1997.
- D. Lessee represents that its personnel/employees are trained, certified, and competent to perform such services.
- E. Lessee acknowledges that the City might build a new Airport Terminal at the Airport, at which time this Lease Agreement may be terminated by the City with adequate notice but with no financial obligation or penalty to the City. Notwithstanding the foregoing, Lessee has expressed an interest and desire to continue a lease agreement with the City to provide food concession services at the Airport.
- F. In the event that the Airport Terminal is moved from its present location, the parties hereby acknowledge that this Lease Agreement shall terminate and be of no further force or effect upon the effective date of the closure of the current terminal containing the premises. However, in the foregoing event, and in the event that the City elects to construct a new restaurant at its new Airport terminal location, the parties hereto agree that the Lessee will be given the first option to negotiate a new lease with the City for a restaurant at said new location with new terms and conditions to be established by the City.
- G. The City acknowledges the difficulty in obtaining a restaurant and food service concessionaire for the Airport given the conditions set forth in Recital E, and therefore desires to continue a lease agreement with Lessee to provide such services.

NOW THEREFORE, this is an integrated contract and lease, relying on the statements in the above Recitals and with each and every covenant, term and condition stated below, each as a promise and consideration for the other, the parties do hereby covenant and agree as follows:

1. Premises

- A. Leased Premises. City leases to Lessee and Lessee leases from the City a portion of the Airport Terminal Building described in Exhibit "A" which is attached hereto and made a part hereof (herein the "Premises" or "Leased Premises").
- B. Airport. The Leased Premises are a part of the Prescott Municipal Airport owned and operated by City and known as Ernest A. Love Field.

- C. Common Areas. In conjunction with Lessee's use of the Premises and for the purposes herein set forth in this Lease Agreement, Lessee is hereby granted the nonexclusive right during the term of this Lease Agreement to enter upon or make customary and reasonable use of such areas of the Airport as City may from time to time designate as "common areas." Lessee's rights hereunder shall be in common with City and with other persons authorized by City from time to time to use such areas.
- D. Right of Ingress and Egress. The City hereby consents to the right to ingress and egress to and from the Premises over and across public roadways, right-of-way, parking lot, and sidewalks serving the Airport for Lessee, their employees, patrons and invitees, suppliers of services and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application to the Airport.
- E. Acceptance of the Premises. Except for the installation of City improvements as provided in Section 4 below Lessee hereby accepts the Premises in the condition existing as of the date hereof. Lessee hereby agrees that the Premises are in a good and rentable condition and acknowledges that it has inspected the Premises to its satisfaction and acknowledges that City is not obligated to make any repairs or alterations to the Premises or common areas.

2. Term

- A. Term. The term of this Lease Agreement shall commence on June 1, 2014 ("Commencement Date"), and shall terminate, unless earlier terminated in accordance with the provisions of this Lease, on a date ten (10) years from the Commencement Date ("Termination Date").
- B. Possession. City shall use good faith efforts to give Lessee possession of the Leased Premises on the Commencement Date. If City does not do so, City shall have no liability to Lessee for any damages to Lessee, actual or consequential, but rent shall be abated and the Termination Date extended for the period of time until Lessee is granted possession.
- C. Early Termination. Upon One Hundred and Eighty (180) days written notice to Lessee, the City may terminate this Lease Agreement before the Termination Date or Renewal Termination Date without penalty or financial liability to the City in the event the City issues a "Notice to Proceed" to construct a new Airport Terminal at the Airport. Upon termination of this Lease Agreement, based on the City constructing a new terminal, Lessee shall have the right of first refusal to enter into a new lease agreement with the City to provide food and beverage concessions at the new terminal, at new terms and conditions set by Lessor Upon One Hundred and Eighty (180) days written notice to City, Lessee may terminate this Lease without accruing any penalties.
- D. If Lessee shall hold over the Premises after the expiration of the term hereof with the consent of City, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations hereof, and Lessee hereby agrees to pay to City 110% as provided, however, that nothing herein contained shall be construed to give Lessee any rights to so hold over and to continue in possession of the Premises after the expiration of the term hereof.
- E. Upon the end of the term of this Lease Agreement, as provided herein, or any extension thereof, or sooner termination of this Lease Agreement, Lessee shall surrender to City the Premises, together with all improvements, except as hereinabove provided, and all fixtures and equipment in good condition, reasonable wear and tear excepted.

3. Use of the Premises and Conduct of Lessee's Business

- A. Lessee hereby acknowledges that the principal use of the Airport consists of the operation of a public airport and that all other operations and businesses which are now or hereafter permitted by City, including the use hereunder, must be at all times compatible with such principal use, as City shall, in its sole discretion, determine.
- B. Lessee shall, continuously and uninterruptedly during the Term of this Lease, provide restaurant food and beverage sales on the Premises, for a profit, to the general public on the Premises. Lessee shall remain open for business a minimum of seven (7) hours per day between the hours of 7:00 a.m. and 2:00 p.m., seven (7) days per week, regular City holidays excepted. Said hours shall be subject to modification as the need arises and may be modified by mutual written agreement between Lessee and City. At any time current circumstances or conditions beyond the control of Lessee cause an unhealthy or unsafe environment for said operation, Lessee may, subject to the provisions of Section 17, also close and remain closed until such conditions are remedied.
- C. In the operation of its business on the Premises, Lessee shall maintain the highest degree of cleanliness and standards of service and courteous, polite and inoffensive conduct and demeanor on the part of its representatives, agents, and employees.
- D. Lessee shall have the right and duty to manage, operate and control the restaurant concession facilities and all of the above-mentioned activities and to do all things reasonably necessary in the exercise of such management, operation and control subject to the laws, rules, regulations, policies and procedures of the City, County, State and Federal government and in accordance with the terms and conditions set forth in this Agreement.
- E. Lessee is limited to the privileges, uses, and rights set forth in this Lease and shall exercise no other without the prior written consent of City.
- F. Lessee expressly agrees at all times during the term of this Lease Agreement, at their own cost and expense, to maintain and operate such Premises and areas adjacent in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future laws, rules, or regulations of any governmental authority, now or at any time during the term of this Lease Agreement in force, relating to sanitation or public health, safety or welfare, and Lessee shall at all times faithfully obey and comply with all laws, rules and regulations of Federal, State, City, County or other governmental bodies or department or officers thereof. Lessee shall remedy without delay any defective, dangerous or unsanitary conditions.
- G. Except as provided in Section 4 below, Lessee, at its sole cost, shall provide all supplies, equipment, furnishings and personnel necessary for the administration, staffing, operation and maintenance of the Premises as a restaurant as provided herein.
- H. In addition to any other provisions of this Lease Agreement, Lessee shall not do or permit anything which may interfere with (A) the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems, or portions thereof, on the Premises or within the Airport Terminal, (B) free access and passage upon the Premises, the Airport, the Airport Terminal or public areas adjacent thereto, or (C) airport, police, fire fighting or other emergency personnel in the discharge of their duties.

- I. Lessee shall, at Lessee's own cost and expense, obtain and maintain all licenses, permits, certificates or other authorizations of any governmental authority having jurisdiction over the Premises and Lessee's use of the Premises. Without limiting the generality of the foregoing, Lessee shall comply with all applicable laws, resolutions, codes, rules, orders, directions, ordinances and regulations of any department, bureau or agency or any governmental authority having jurisdiction over the operations, occupancy, maintenance and use of the Premises for the purpose demised hereunder, except for those requiring major Alterations to the Premises as distinguished from those relating to furniture, fixtures or equipment of Lessee therein. Lessee shall indemnify and hold City harmless from and against any claims, penalties, losses, damages or expenses imposed by reason of Lessee's violation of any applicable law or the rules and regulations of governmental authorities having jurisdiction thereof.
- J. Lessee shall not use or permit the use of the Premises in any manner that will (A) tend to create or permit any waste or nuisance, (B) tend to disturb other users of the Airport and the Airport Terminal (C) invalidate or cause cancellation or be in conflict with fire or other hazard insurance policies covering the Airport, or (D) increase the rate of fire insurance for the Airport or of property located therein, over that rate in effect on the Commencement Date hereof. Lessee, at its expense, shall comply with all rules, orders, regulations or requirements of the National Board of Fire Underwriters, or any other similar body.

4. Furniture, Fixtures and Equipment

The Premises also includes the furniture, fixtures and equipment ("FF&E") owned by the City listed on Exhibit "B" attached to this Lease Agreement. The FF&E will be maintained in good working condition by Lessee from time to time at Lessee's expense. If and when, during the term of this Lease Agreement, any of the FF&E wears out, the City may dispose of it at Lessee's expense. Lessee at Lessee's expense will replace all worn out FF&E as listed on Exhibit "B", which the City owns at all times. Lessee is solely responsible for the condition of the FF&E. Lessee has inventoried the FF&E before executing this Agreement and has determined that it is all within the Premises and in serviceable condition. The FF&E is provided "as is" and Lessee accepts the responsibility for its condition.

5. Airport Use

Lessee acknowledges that Lessee's use of the Premises is subject to and subordinate to the City's operation of the Airport, which will necessarily and directly affect Lessee, the Premises and Lessee's use of the Premises. Lessee's use of the Premises must not in any way adversely affect the City's use or operation of the Airport, without limitation:

- A. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Lessee, and without interference or hindrance.
- B. The City reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.
- C. This Lease Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States relative to the development, operation or maintenance of the Airport.

- D. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349).
- E. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause within the said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operating on the Airport.
- F. Lessee shall not erect or permit the erection of any structure or object on the Airport in violation of federal height restrictions and obstruction criteria. In the event the aforesaid covenants are breached, the City reserves the right to remove the offending structure or object, all of which shall be at the expense of Lessee.
- G. Lessee shall not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport, or which might otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises and cause the abatement of such interference, at the expense of Lessee.
- H. This Lease Agreement and all the provisions hereof shall be subject to whatever right the United States government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport, or the exclusive or nonexclusive use of the Airport, by the United States during the time of war or national emergency or otherwise.
- I. Lessee shall use reasonable precautions to prevent unauthorized persons from gaining access to restricted flight and aircraft operational areas, including the precautions established by Section 6 below.

6. Airport Security

- A. Lessee is responsible for maintaining security in and around the Premises or any other area adjacent to or upon the Airport which Lessee has right to use or which Lessee otherwise controls.
- B. Upon request of the City, Lessee shall adopt and implement a written security program setting forth the manner and methods by which Lessee shall carry out its responsibility for maintaining security. Lessee shall include in its program all provisions necessary to comply with applicable guidelines, policies and procedures adopted from time to time by the TSA or by the City.
- C. Lessee will participate in any public safety program promulgated from time to time by the City of Prescott Police Department. Lessee will reasonably cooperate with the City and the Prescott Police Department regarding concerns and counter-measures affecting security and related risks of business and other operations and activities at and near the Premises.

7. Rent

- A. Monthly Rent. Lessee shall pay City as annual rent hereunder **Ten Thousand Two Hundred Dollars (\$10,200.00)** in equal monthly installments of **Eight Hundred Fifty Dollars (\$850.00)** for the first 24 months of this lease. At the start of the 25th month of this lease, annual rent hereunder shall increase to the fair market appraised value of **Fourteen Thousand Two Hundred**

Thirty-Two Dollars (\$14,232.00) in equal monthly installments of **One Thousand One Hundred Eighty-Six Dollars (\$1,186.00)** for the remaining term of this lease. This rental rate includes a pro-rated percentage of utilities costs as detailed in Section 15 - Utilities. Lessee shall pay rent to City on or before the first day of each calendar month during the term of this Lease, in advance.

- B. Rent Commencement. Rent payments shall commence on the Commencement Date, unless adjusted elsewhere herein, and shall be paid prior to the fifth (5th) day of each month.
- C. Rent Escalation. On the first anniversary of the commencement date of this lease, and annually thereafter, the base rental payable by the Lessee shall be increased to an amount determined by multiplying the basic monthly rental by a fraction, the denominator of which shall be the most recent Consumer Price Index figure, as hereinafter defined, published prior to the Commencement Date, and the numerator of which shall be the most recent Consumer Price Index figure published prior to the particular anniversary date; provided, however, that in no event shall the rent for any month after such anniversary be less than the rent for the month immediately preceding such anniversary.
- D. As used herein, the term "Consumer Price Index" shall mean Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, not seasonally adjusted, or the successor of that Index, as published by the Bureau of Labor Statistics, U.S. Department of Labor. Should Lessor lack sufficient data to make the proper determination on the date of any adjustment, Lessee shall continue to pay the monthly rent payable immediately prior to the adjustment date. As soon as Lessor obtains the necessary data, Lessor shall determine the rent payable from and after such adjustment date and shall notify Lessee of the adjustment in writing. Should the monthly rent for the period following the adjustment date exceed the amount previously paid by Lessee for that period, Lessee shall forthwith pay the difference to Lessor. Should the Consumer Price Index, as above described cease to be published, a reasonably comparable successor index shall be selected by Lessor. Notwithstanding the foregoing, the increase in rent in any one year during the term of this Lease shall be not less than 3% nor greater than 9%.

8. Late Charge

Both City and Lessee acknowledge and agree that City is dependent on the revenue from Lessee for the operation and maintenance of the airport and that it would be extremely difficult to estimate the damages to City from late payment by Lessee. If any installment of Rent or other payment due from Lessee is not received by City within ten (10) days of the date upon which it is due, Lessee shall pay to City an additional charge of five percent (5%) of the overdue payment as a late charge.

9. Taxes and Licenses

- A. Lessee must pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of the occupancy of the Premises or conduct of business at the Airport under authority of this Lease Agreement, including any tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, the tax must also be paid by Lessee for the period this Lease Agreement is in effect.
- B. Lessee acknowledges that it is a "prime lessee" as defined in A.R.S. §42-6201, and that it may, or in the future, may be subject to government property lease excise tax liability under this

Agreement. Lessee further acknowledges that any failure to pay taxes due hereunder after notice and an opportunity to cure constitutes a default that could result in divesting Lessee of any interest in or right to occupancy of the Premises.

- C. Lessee must, at its own cost, obtain and maintain in full force and effect during the Term of this Lease Agreement, all licenses and permits required for its business purposes.

10. Construction on Premises/Capital Improvements

- A. Any construction, capital improvements or physical modification to the leased Premises to be undertaken under the terms of this Lease Agreement specified herein, shall be done so only with the expressed prior written consent of the City. Said consent will not be unreasonably withheld, conditioned or delayed.
- B. Said construction shall be done at the sole cost and expense of the Lessee.
- C. Lessee agrees to first submit to the City, for review and approval, all plans including specifications, working drawings, and other information required by City for such projects as may be proposed to be accomplished by Lessee. No improvement or alteration shall be made to the Premises or any portion thereof without the submission to and prior written approval of the plans by the City. Any unauthorized work will be deemed an immediate default of this Lease Agreement, NOT subject to cure and the Lease will terminate immediately.
- D. Nothing contained herein shall be construed by Lessee to be a waiver by the City of Lessee's need to acquire building and construction permits to include, but not be limited to, required permits from the City Planning and County Health departments and other applicable licenses through normal governmental procedures.
- E. Unless otherwise expressly stated in Exhibit "B" attached hereto, Lessee is required to purchase and install any equipment necessary for daily operation of the restaurant. Installation of any such equipment that requires any alteration (plumbing, electrical, etc.) of the Premises will require authorization and approval by the City prior to the initiation of such installation on the Premises. Lessee is liable for any and all costs incurred by the City to perform corrective action to repair any unauthorized or faulty installation.
- F. Lessee agrees to use licensed contractors to perform the work described in this Section and other parts of this Lease Agreement.

11. Ownership of Improvements

- A. Title to improvements on the Premises at the commencement of this Lease Agreement is retained by the City. The ownership of all approved improvements made by Lessee hereunder shall remain forever after with the City, unless otherwise agreed to in writing by the City, as will any and all kitchen equipment furnished and installed by the City, as specified in Exhibit "B", attached hereto. Temporary and non-affixed improvements, trade fixtures, equipment and furniture that are furnished by the Lessee shall remain the property of the Lessee and must be removed at the conclusion of the tenancy.
- B. In the event that City consents to the assignment or sublease of this Agreement, ownership of all approved improvements, excluding temporary and non-affixed improvements, trade fixtures,

equipment and furniture constructed and/or supplied by the Lessee, if any, shall remain on the Premises under the original terms of this Lease Agreement.

- C. In the event of any termination of this Lease Agreement, Lessee shall commence and diligently proceed to remove from said Premises at Lessee's sole cost and expense any and all temporary and non-affixed improvements, trade fixtures, equipment, and furniture constructed and/or supplied by Lessee under this Lease Agreement; provided that if Lessee for any reason fails to do so, then such construction and/or improvements to said Premises not so removed shall automatically upon the termination date of this Lease Agreement be and become the property of City and the title of Lessee therein shall automatically terminate.
- D. Any and all improvements on the Premises, as specified above, at the expiration of the term (or sooner termination of this Lease Agreement) shall, without compensation to Lessee, become City property free and clear of all claims to or against the improvements by Lessee or any third person, and Lessee shall defend and indemnify the City against all liability and loss arising from such claims or from the City's exercise of the rights conferred by this paragraph.

12. Personal Property

Title to all personal property, not described in Section 9 above, provided by the Lessee shall remain in the Lessee.

13. Protection of Premises

Lessee agrees to take all reasonable precautions to protect the Premises from damage, theft, vandalism and other such hazards.

14. Providing of Services

In addition to other provisions of this Lease Agreement, Lessee shall provide and maintain the following minimum standards throughout the term of this Agreement.

- A. Lessee shall operate and conduct their business in a good, efficient and economical manner so as to be conducive to rendering service to the public on a fair, equal and not unjustly discriminatory basis, and in a manner which will compare favorably to the service or services offered to the public in operations of like kind, and so far as is possible in a manner conducive to the obtaining and retaining of the general good will of the public.
- B. It is distinctly and particularly understood and agreed between the parties hereto that the City is in no way associated or otherwise connected with the actual performance of this Lease Agreement on the part of Lessee nor as to the employment of labor or the incurring of other expenses; that the Lessee is an independent contractor in the performance of each and every part of this Lease Agreement and is solely and personally liable for any and all damages which may be occasioned on account of the operation of this Lease Agreement, whether the same be for personal injury or damages of any other kind.
- C. Lessee does, because of their status as independent contractors, hereby agree to forebear from making any claims against the City, pursuant to any Federal or State laws providing for employees' liability compensation for personal injury or unemployment compensation.

15. Utilities

Lessee agrees to pay before delinquency all charges for natural gas, electricity, telephone, and meter charges, including connection charges, provided during the term hereof whether charged or assessed at flat rates, measured by separate meters, or prorated by the utility company or City. City shall pay for water, wastewater and trash for the entire terminal building; Lessee shall pay an initial flat rate of two hundred (\$200.00) dollars per month utility fee to cover their pro-rated portion of the utility expenses. This fee will be increased annually consistent with the annual CPI adjustment to the base rent in Section 7 - Rent. City shall in no event be liable to Lessee for any interruption in the service of any utility furnished to the Premises howsoever caused, provided that such interruption is not caused by the intentional act or omission of City or its authorized representatives. This lease shall continue in full force and effect despite any such interruptions.

16. Maintenance and Repairs

- A. The City will maintain the structural integrity of the portions of the Terminal Building comprising the Premises (including the roof, plumbing, HVAC, exterior walls, and electrical conduits and wiring), except that if it is determined by the City that the failure of any of the systems described in this Section is due to the negligence or intentional act of the Lessee, the Lessee will be responsible for the costs of any such repairs. Additionally, the City is not responsible for maintenance of a routine or minor nature of these systems.
- B. Lessee covenants and agrees, at Lessee's sole cost and expense, to keep the Premises, and each and every part thereof, including without limitation, all fixtures, all floors and flooring, interior walls, lighting, storefronts, restaurant windows, ceilings and all other parts thereof in good condition and repair at all times during the term hereof and to make promptly any and all repairs, renewals and replacements which may at any time be necessary or proper to put and keep the Premises in good, clean, safe and wholesome condition at all times during said term. City reserves the right, upon ten (10) days written notice of needed repairs to Lessee, to make said repairs and bill Lessee for the cost thereof and Lessee shall promptly pay for said repairs on demand. Failure to pay on demand shall be deemed an event of default under the contract.
- C. Lessee may employ, pay and supervise maintenance personnel to maintain the Premises. Maintenance personnel shall be responsible to Lessee and cooperate with City personnel.
- D. Lessee shall not grant, with respect to said Premises, easements, rights-of-way, licenses and permits.

17. Janitorial

- A. Lessee shall be solely responsible for complete janitorial services and the furnishing of janitorial supplies and equipment necessary for the proper maintenance of the leased premises. Janitorial services for the public-use areas of the terminal and other common use areas adjacent thereto shall remain the responsibility of the City. Lessee shall notify the City immediately of any item(s) needing correction or repair in the public areas of the Terminal.
- B. Lessee shall provide proper maintenance and inspection, as required by Municipal Code and Public Health Regulations, for all applicable facilities and equipment, including, but not limited to, exhaust hoods and systems, dry chemical fire extinguishing and alarm systems, grease separators and traps. Copies of all such inspections shall be provided to the City within ten (10) business days.

18. Quality of Service and Control of Rates and Charges

- A. Lessee agrees that they will operate and manage the services and facilities offered in a manner equal to or exceeding the standard met by comparable concessions providing similar facilities and services throughout the City during the entire term of this Lease Agreement. The standards required shall be subject to the review and approval of the City.
- B. The City reserves the right to prohibit the sale of any item that is deemed objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. A competent employee of Lessee shall be on the Premises at all times while the Food Service Concession is in operation. Lessee agrees that they shall and will furnish and maintain a high standard of service.

19. Closure

- A. At any time, should an occurrence necessitate the closing of the restaurant to the general public, Lessee shall have no recourse by law to the City for losses incurred.
- B. In the event the restaurant is closed for at least forty-eight (48) hours, at the request of the City, the minimum monthly rental payment shall be reduced pro-rata for the period the restaurant is closed.

20. Hold Harmless Agreement

- A. Lessee shall indemnify and hold harmless the City of Prescott, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, liability or judgment arising out of this Agreement or attempted performance of the provisions hereof, including, but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, Premises liability, liability arising from trespass or inverse condemnation, violation of civil rights and also including any adverse determination made by the Internal Revenue Service or the State Department of Revenue with respect to Lessee's "independent contractor" or "Lessee" status that would establish a liability for failure to make social security and income tax withholding payments, or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Lessee or their agents, employees or other independent contractors in the chain of contractual privity with Lessee; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or omissions to act, committed jointly or concurrently by Lessee or Lessee's agents, employees or other independent contractors and the City, County or State, their agents, employees or independent contractors. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of the City.
- B. Lessee hereby agrees that City shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise, or other property of Lessee. Lessee has expressed an interest and desire to continue a lease agreement with the City to provide such services.

- C. The City shall not be liable for injury to the person of Lessee, Lessee's employees, agents, contractors, invitees, customers, or any other person in or about the Premises whether such damage or injury is caused by or resulting from fire, steam, electricity, gas, water, or rain, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee. City shall not be liable for any damages to the Lessee arising from any act or neglect by any other tenant, occupant, or user of the Airport Terminal Building, nor from the failure of City to enforce the provisions of any other lease of the Airport Terminal Building.

21. Insurance

- A. **INSURANCE:** Lessee shall procure and maintain the following insurance until this lease terminates.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Agreement.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Lessee from liabilities that might arise out of the performance of this Lease by the Lessee, his agents, representatives, employees, or subcontractors. Lessee is free to purchase such additional insurance as may be determined necessary.

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

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

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division.

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

All certificates and any required endorsements are to be received and approved by the City before the Lease begins. Each insurance policy required by this Agreement must be in effect at or prior to commencement of the Lease Agreement and remain in effect for the duration of the

leasehold. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to the Risk Manager at the City Legal Department, 201 S. Cortez Street, Prescott, AZ 86301 with a copy to the Airport Administration office. The City contract number and lease description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

Insurance Requirements - Lessee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form:

Policy shall include bodily injury, property damage, personal injury, broad form contractual liability coverage.

- | | |
|--|--------------|
| • General Aggregate | \$ 2,000,000 |
| • Products – Completed Operations Aggregate | \$ 1,000,000 |
| • Personal and Advertising Injury | \$ 1,000,000 |
| • Each Occurrence | \$ 1,000,000 |
| • Fire Legal Liability (Damage to Rented Premises) | \$ 100,000 |

The policy shall be endorsed to include the following additional insured language:

"The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Lessee under the Lease Agreement".

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language:

"The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Lessee under the Lease Agreement".

Worker's Compensation and Employer's Liability:

Workers' Compensation	Statutory
Employer's Liability	
Each Accident -	\$1,000,000
Disease – each employee -	\$1,000,000
Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Lessee under the Lease Agreement.

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

Prior to commencing work under this Agreement, the Lessee shall provide City with evidence that it is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by A.R.S. 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

- A. Leasehold Improvements and Lessee's Personal Property. During the Term, Lessee shall maintain in full force and effect on all leasehold improvements, including the City improvements referenced in Section 4 above, interior and exterior signage, trade fixtures, merchandise, and other personal property from time to time in, on or upon the Premises, fire and extended coverage insurance in the amount of the full replacement value thereof containing sprinkler leakage, replacement cost, and inflation endorsements, and providing for no deductible in excess of five hundred dollars (\$500) per loss. All proceeds from the insurance required pursuant to this subsection shall be used for the repair or replacement of the property damaged or destroyed. Both City and Lessee shall be named as co-insureds as to coverage of leasehold improvements and alterations, though not as to Lessee's personal property.
- B. Workers' Compensation Insurance. In accordance with the provisions of Title 23, Chapter 6 of Arizona Revised Statutes, if Lessee has any employees, Lessee is required to be insured against liability for workers' compensation or to undertake self-insurance. Lessee agrees to comply with such provisions before commencing the performance of this Agreement.
- C. Additional Insureds to be Covered. The commercial liability policy shall name the "City Prescott, its officers, employees, and agents" as additional insureds. The policy shall provide that the Lessee's insurance will operate as primary insurance and that no other insurance maintained by the City, or additional insureds will be called upon to contribute to a loss hereunder.
- D. Certification of Coverage. Prior to commencing work under this Agreement, Lessee shall furnish City with the following for each insurance policy required to be maintained by this Agreement:
 - 1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.
 - 2) A copy of the Lessee's Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.
 - 3) Upon further written request, the Lessee shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.
 - 4) Approval of Insurance by City shall not relieve or decrease the extent to which Lessee may be held responsible for payment of damages resulting from Lessee's services or operations pursuant to this Agreement. Further, the City's act of acceptance of an insurance policy does

not waive or relieve Lessee's obligations to provide the insurance coverage required by the specific written provisions of this Agreement.

- E. Effect of Failure or Refusal. If Lessee fails or refuses to procure or maintain the insurance required by this Agreement, or fails or refuses to furnish City with the certifications required by subsection (d) above, the City shall have the right, at its option, to terminate the Agreement for cause.

22. Quiet Possession by Lessee

City shall place Lessee in the peaceful and undisturbed possession of the Premises on the commencement of the term hereof, and Lessee performing and observing all of the conditions and covenants on their part to be performed, City shall secure to Lessee the quiet and peaceful possession of the Premises during the term hereof against all persons claiming the same.

23. Termination for Unsatisfactory Service

Lessee shall comply with all laws, rules, regulations, policies, and procedures of the Yavapai County Health Department or any health inspection by the City. Lessee will keep all current inspections by the Yavapai County Health Department or the City on file with the Airport Manager, updating inspection reports within five (5) days after Lessee's receipt of the report. Should Lessee receive an inspection report indicating defects and/or deficiencies, Lessee must remedy the defects or deficiencies within fourteen (14) days of Lessee's receipt of the report, unless the defect or deficiency poses an immediate threat to the health and safety of airport patrons, in which case the defect or deficiency will be remedied immediately. If defects or deficiencies are not remedied within the time provided in this Section, the City may issue a Notice of Termination for Unsatisfactory Service. Within five (5) days of receipt of said notice Lessee shall remedy the conditions and provide written notice to the City of remedies completed by Lessee. In the event that the City determines in good faith that Lessee has not remedied the conditions, the City may terminate this Lease Agreement.

24. Signs

Lessee shall have the right, with prior written permission of City, as provided herein, to place such signs as deemed acceptable, and in compliance with any City codes or regulations relative to sign ordinances, on airport property sufficient to advertise the location and presence of restaurant.

25. Parking

Lessee shall have the nonexclusive right to utilize existing City parking facilities subject to all applicable fees. City may, from time to time, modify the approved parking plan for the terminal area.

26. Notices

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail as follows:

To the Lessee at:

Susie's Skyway Restaurant
6500 MacCurdy Drive
Prescott, AZ 86301

To the City at:

City of Prescott
Airport Manager
Prescott Municipal Airport
6546 Crystal Lane
Prescott, AZ 86301

With a copy to:

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

The address to which the notices may be mailed as aforesaid by either party may be changed by written notice given by such party to the other as herein before provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

27. Default

The occurrence of any one or more of the following events shall constitute a default under this Lease Agreement by Lessee:

- A. Failure to pay an installment of rent or other sum when due;
- B. Failure to pay any insurance premium, lien, claim, demand, judgment or other charge provided for in this Lease to be paid or caused to be paid by Lessee at the time and in the manner as provided for in this Lease;
- C. Failure to maintain the Premises as provided for in this Lease;
- D. Abandonment of the Premises;
- E. Default by Lessee under the terms of any mortgage on the estate of Lessee; or
- F. Failure to perform or breach of any other covenant, condition or restriction provided for in this Lease.

28. Remedies in Event of Default

Upon any default of Lessee, and in the event the said default is due to the failure of Lessee to make the payment of any installment of rent or other sum when due, and in the event Lessee shall fail to remedy such default within ten (10) days after written notice to do so, or upon any other default by Lessee, and in the event that Lessee shall fail to remedy such other default within thirty (30) days after written notice from City so to do specifying the nature of such default, or if such default cannot be cured within thirty (30) days, Lessee has not commenced corrective action and prosecuted the same to completion with due diligence, or in the event that the default is of such a nature that it cannot be cured by any action of Lessee, the City may:

- A. Terminate this Lease Agreement without further notice to Lessee, re-enter the Premises and recover damages, including but not limited to all costs of repossession and re-letting and brokerage commissions for services performed by or for the City.
- B. Alternatively, the City (1) may institute an action in equity or law to enforce the Lease Agreement (i.e. specific performance); (2) take possession of the Premises, without terminating this Lease Agreement, and on behalf of Lessee, re-let the same or any part thereof for a term

and Lessee must pay any deficiency in the rental amounts due; provided, however, the City may at any time after taking possession terminate this Lease Agreement by giving notice to Lessee and sue for damages; (3) exercise the "Remedies of Landlord" as set forth on Arizona Revised Statutes, Title 33; or (4) exercise any other remedy by law or equity.

- C. Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder does not constitute a waiver of default nor of any of any subsequent default by Lessee.
- D. Acceptance of rent and other fees by the City under this Lease Agreement for any period after a default by Lessee is not a waiver by the City of its right to terminate this Lease Agreement or to seek any other remedy provided herein, nor does acceptance constitute an estoppel of the City. Acceptance of any partial payment does not constitute any form of accord and satisfaction.

29. Sublease or Assignment of Agreement

- A. Lessee may not assign or sublease any of its interest under this Lease Agreement, nor permit any other person to occupy the Premises, without the prior written consent of the City.
- B. The City will not unreasonably withhold consent so long as Lessee's proposed assignee/subleasee has in the City's sole determination the experience and financial capacity to continue Lessee's operations at the level of service required herein.
- C. As a condition of approval, Lessee will submit biographical and financial information of the proposed assignee or sub-lessee as well as the potential terms of the sale or sub-lease at least sixty (60) days prior to any anticipated transfer of Lessee's interests. The terms of this Lease Agreement will be considered incorporated into any sub-lease.
- D. Lessee may not mortgage, encumber or assign any portion of its right, title and interest in this Lease Agreement to lenders for any purpose.
- E. In the event the City consents to such assignment or sublease of this Lease Agreement, City shall reserve the right to renegotiate the rental amount not to exceed an increase in the rental amount equal to fifteen (15) % of the then-current rental rate. The City shall negotiate any subsequent changes, modifications or further amendments to the Lease Agreement prior to approval of the assignment or sublease.
- F. In the event the City consents to a sublease, if the proportional rent paid by Sub-lessee to Sub-lessor is greater than the rent paid by Lessee to the City, then the Lessee shall pay the City fifty percent (50%) of the monthly rent received from Sub-lessee in excess of Lessee's rental obligation to the City, for the same portion of the Premises.

30. Waiver of Claim

Lessee hereby waives any claim against the City, its officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Lease Agreement, or any part thereof or by any judgment or award in any suit or proceeding declaring this Lease Agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

31. Duration of Public Facilities

By entering into this Lease Agreement, the City makes no stipulation as to the type, size, location and duration of public facilities to be maintained at the airport.

32. Laws

- A. It is understood and agreed that general control over said Premises and all flying activities in connection therewith are vested by law in the City acting by and through its City Council and City Manager. In the general operation of any activities conducted under the terms of this Lease Agreement, Lessee agrees to comply with all reasonable rules and regulations adopted by City for the use and operation of the said Premises as now currently existing, or as amended in the future.
- B. Lessee shall, at their sole cost and expense, comply with all the requirements of all local, municipal, county, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said Premises, and shall faithfully observe in the use of the Premises all local, municipal and county ordinances and State and Federal statutes, rules and regulations now in force or which may be hereafter in force. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee whether City be a party thereto or not, that Lessee has violated any such ordinance, statute, rules or regulations in the use of the Premises shall be conclusive of the fact as between City and Lessee and may be grounds for termination of this Lease Agreement by the City as provided herein.
- C. Lessee warrants to the extent applicable under A.R.S. §41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. §23-214(A) which requires registration and participation with the E-Verify Program. "E-Verify Program" means the employment verification program administered by U.S. Department of Homeland Security, the Social Security Administration, or any successor program.
- D. Any breach of this Section is considered a material breach of this Lease Agreement and is subject to penalties up to and including termination of this Lease Agreement.

33. Americans with Disabilities Act

Lessee acknowledges the passage and applicability of the Americans with Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., ("ADA") and will comply with ADA.

34. Drug Free Workplace

Lessee and Lessee's employees shall comply with City's policy of a drug free workplace. Neither Lessee nor Lessee's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Lessee's facilities or City facilities or work sites. If any employee of Lessee is found to be under the influence of or in possession of any illegal substance at or on the City's Premises, that employee may not return to any of the City's Premises. Further return shall be a breach of Lease Agreement. If Lessee becomes aware that any of Lessee's current or future employees has been convicted or pleads *nolo contendere* to a criminal substance abuse statute, Lessee shall notify the City within five (5) days and Lessee shall be responsible for making sure that employee does not return to City's Premises. Violation of this notification provision shall constitute a breach of this Lease Agreement.

35. Inspection of Premises

The City, its agents and employees, shall have access to and the right to enter upon the Premises at any time to examine the condition thereof, and to direct Lessee to make such repairs as may be necessary and, in the event of an emergency, to take such action therein as may be required for the protection of persons or property, at the expense of Lessee. The City shall, except in an emergency, make reasonable attempt to give twenty-four (24) hour notice to Lessee, prior to such inspection.

36. Hazardous Materials

- A. Lessee, its agents, employees and contractors, at all times, shall keep the Premises free of Hazardous Materials (as hereinafter defined). Lessee shall not use, generate, manufacture, store, release, or dispose of Hazardous Materials in, on, or about the Premises. "Hazardous Materials" shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 USCS Sec. 9601, et seq.; the hazardous Materials Transportation Act, 49 USCS 1801, et seq.; and the Resource Conservation and Recovery Act, 42 USCS Sec. 6901, et seq.
- B. Lessee, shall, except in the event of City's sole negligence, indemnify, defend, protect, and hold City, each of City's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by Lessee's failure to comply with section A above.
- C. Lessee's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Lessee and shall survive the expiration or earlier termination of the terms of the Lease Agreement.

37. Severability

If any provision of this Lease Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective if elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

38. Remedies Not Exclusive

All remedies provided in this Lease Agreement are cumulative and additional, not in lieu off or exclusive of, each other, or of any other remedy available to the City or Lessee at law or in equity, and the exercise of any remedy, or the existence or other remedies, does not prevent the exercise of any other remedy.

39. Litigation

- A. This Lease Agreement is governed by the laws of the State of Arizona and any action taken hereunder will be filed in the courts of Yavapai County.

- B. In the event any litigation or arbitration between the City and Lessee arises under this Lease Agreement, each party shall be responsible for their own attorneys' fees, regardless of any State or Federal statutes, Court Rules, or common law that would otherwise allow for application of such attorneys' fees.
- C. This Lease Agreement will be interpreted, applied and enforced according to the fair meaning of its terms and not construed strictly in favor or against either party, regardless of which party may have drafted any of its provisions.

40. Waiver

No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease Agreement shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of City to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Lessee under this Lease Agreement. The various rights and remedies reserved to City herein including those not specifically described in this Lease Agreement shall be cumulative and, except as otherwise provided by Arizona law in effect at the time of execution of this Lease Agreement, City may pursue any or all of such rights and remedies whether at the same time or otherwise.

41. Lease Binding Upon Successors and Assigns

The terms of this Lease Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

42. Relationship of Parties

The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way, nor for any purpose, become a partner of Tenant or a joint-venturer with Tenant in the conduct of Tenant's business or otherwise.

43. Time of the Essence

Time is expressly declared to be of the essence of this Lease Agreement.

44. Headings and Titles

The marginal headings or titles to the Sections of this Lease Agreement are not a part of this Lease Agreement and shall have no effect upon the construction or interpretation of any part of this Lease Agreement.

45. Force Majeure

Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the control of such parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Lease Agreement.

46. Disclaimer of Representation

Except as otherwise specifically provided herein, City has made no representations or warranties to the Lessee concerning the Premises, the present use thereof or the suitability for Lessee's intended use of the property. Lessee represents and warrants to City that they have made or will make their own independent inspection and investigation of the Premises and Lessee, in entering into this Lease Agreement, is relying solely on such inspection and investigation. No patent or latent physical condition of Premises, whether or not known or discovered, shall affect the rights of either party hereto. Any agreement, warranties or representations not expressly contained herein shall in no way bind either Lessee or City. City and Lessee waive any right of rescission and all claims for damages by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease Agreement.

47. Entire Lease Agreement and Modifications

This Lease Agreement constitutes the entire agreement between the parties, except as to documents incorporated herein by reference, and supersedes all prior negotiations, understandings and agreements between the parties. No provision of this Lease Agreement may be waived or modified except by a writing signed by the party against whom such waiver or modification is sought to be enforced.

48. Corporate Authority

Any individual executing this Lease Agreement on behalf of Lessee represents and warrants that he/she is duly authorized to execute and deliver this Lease Agreement on behalf of said Lessee, and that this Lease Agreement is binding upon said Lessee in accordance with its terms.

In witness whereof, the parties hereto have caused this lease agreement to be duly executed on the date first stated above.

CITY OF PRESCOTT

SUSIE'S SKYWAY RESTAURANT

Marlin D. Kuykendall, Mayor

GEORGE SULLIVAN

SUSAN SULLIVAN

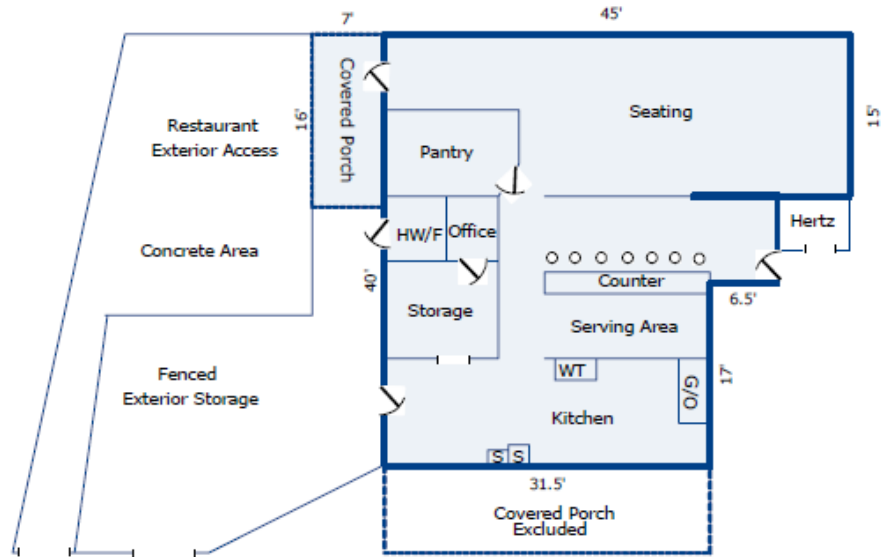
ATTEST:

Dana R. DeLong, City Clerk

APPROVED AS TO FORM:

Jon M. Paladini, City Attorney

EXHIBIT "A"
LEASED PREMISES



Sketch by Apex Media™

Scale: 1 = 15

AREA CALCULATIONS SUMMARY				BUILDING AREA BREAKDOWN		
Code	Description	Net Size	Net Totals	Breakdown		Subtotals
GBA1	First Floor	1514.50	1514.50	First Floor		
P/P	Porch	112.00	112.00	17.00	x 31.50	535.50
				15.00	x 45.00	675.00
				8.00	x 38.00	304.00
Net BUILDING Area		(rounded)	1515	3 Items	(rounded)	1515

EXHIBIT "B"
FURNITURE, FIXTURES & EQUIPMENT (FF&E)
OWNED BY THE CITY

CITY EQUIPMENT

- 1 – U.S. Range & Grill
- 1 – Stove & Oven
- 1 – Exhaust Hood
- 1 – Fire Suppression System

EXHIBIT "C"
FEDERALLY-MANDATED CONTRACT CLAUSES

- A. Lessee for themselves, heirs, personal representatives, successors in interests and assigns, as a part of the consideration for this Agreement hereby covenants and agrees as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which the U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate the facilities and services in compliance with all other requirements imposed under C.F.R. Part 21, Nondiscrimination in the Federally Assisted Programs of the DOT, as may be amended.
- B. Lessee for themselves, heirs, personal representatives, successors in interests and assigns, as a part of the consideration for this Agreement hereby covenants and agrees as a covenant running with the land that:
 - (1) no person on the grounds of race, color or national origin will be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises;
 - (2) that in the construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin will be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination; and
 - (3) that the Lessee will use the Premises in compliance with all other requirements imposed under 49 C.F.R. Part 21, Nondiscrimination in the Federally Assisted Programs of the DOT, as may be amended.
- C. In the event of breach of any of the above non-discrimination covenants, upon 30 days' notice and Lessee's failure to cure, but only to the extent such a notice period will not cause the City to be or become in violation of any applicable law, rule, or regulation, the City may terminate this Agreement and re-enter and re-possess the Premises and hold the Premises as if this Agreement had never been entered into. This provision does not become effective until the procedures under 49 C.F.R. Part 21 are completed, including expiration of appeal rights.

ORDINANCE NO. 4876 - 1414

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING LEASE AGREEMENT BETWEEN THE CITY AND GEORGE SULLIVAN AND SUSAN SULLIVAN, DBA "SUSIE'S SKYWAY RESTAURANT", AT THE PRESCOTT MUNICIPAL AIRPORT.

RECITALS:

WHEREAS, the City is the owner of the Prescott Municipal Airport and Airport Terminal Building located at 6500 MacCurdy Drive, Ernest A. Love Field in Prescott, Arizona ("Airport"); and

WHEREAS, the City has a need for an operator to provide non-exclusive concession service by maintaining food and beverage service at the Airport Terminal Building; and

WHEREAS, by way of that certain Lease Agreement dated May 24, 1994, Lessee has been the tenant and operator of Susie's Skyway Restaurant at the Airport Terminal Building since on or about January 24, 1997; and

WHEREAS, Lessee represents that its personnel/employees are trained, certified, and competent to perform such services; and

WHEREAS, Lessee acknowledges that the City may build a new Airport Terminal at the Airport, at which time this Lease Agreement may be terminated by the City with adequate notice, but with no financial obligation or penalty to the City. Notwithstanding the foregoing, Lessee has expressed an interest and desire to continue a Lease Agreement with the City to provide food concession services at the Airport; and

WHEREAS, in the event that the Airport Terminal is moved from its present location, the parties hereby acknowledge that the Lease Agreement shall terminate and be of no further force or effect upon the effective date of the closure of the current terminal containing the premises. However, in the foregoing event, and in the event that the City elects to construct a new restaurant at its new Airport terminal location, the parties agree that the Lessee will be given the first option to negotiate a new lease with the City for a restaurant at said new location with new terms and conditions to be established by the City; and

WHEREAS, the City acknowledges the difficulty in obtaining a restaurant and food service concessionaire for the Airport given the conditions set forth above, and therefore desires to continue a lease relationship with Lessee to provide such services.

ENACTMENTS:

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

Section 1. THAT, the City Council hereby approves a Lease Agreement between the City of Prescott and George Sullivan and Susan Sullivan, dba "Susie's Skyway Restaurant", as City Contract No. 2014-101 with an effective commencement date of June 1, 2014.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this ____ day of _____, 2014.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

DANA R. DELONG
City Clerk

JON M. PALADINI
City Attorney

Airport Restaurant Lease

Current Monthly Rental Rate: **\$331.02 plus tax** *(does not include cost to provide utilities - water/wastewater, trash currently paid by City)*
Appraised Fair Market Value: **\$986.00 per month (\$7.81 SF)**
Total Square Footage: 1,515

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Totals
CURRENT RENT - Annual 2% CPI increase (minimum); City pays for water/wastewater and trash											
\$ 2.62 SF \$ 331 x 12 months =	\$ 3,972	\$ 4,051.68	\$ 4,132.72	\$ 4,215.37	\$ 4,299.68	\$ 4,385.67	\$ 4,473.39	\$ 4,562.86	\$ 4,654.11	\$ 4,747.19	\$ 43,495

NEW RENT - Years 1 & 2 with 3% annual CPI increase and 3% utilities increase											
at modified rent \$ 5.15 SF \$ 650 x 12 months =	\$ 7,800	\$ 8,034									\$ 15,834
Pro-rated Utilities \$ 200 x 12 months =	\$ 2,400	\$ 2,472									\$ 4,872
\$ 850	\$ 10,200	\$ 10,506	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,706

Percent Increase from current rent: **96%**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Totals
NEW RENT Years 3 - 10 with 3% annual CPI increase and 3% utilities increase											
at 100% FMV \$ 7.81 SF \$ 986 x 12 months =			\$ 11,832	\$ 12,187	\$ 12,553	\$ 12,929	\$ 13,317	\$ 13,717	\$ 14,128	\$ 14,552	\$ 105,214
Pro-rated Utilities \$ 200 x 12 months =			\$ 2,400	\$ 2,472	\$ 2,546	\$ 2,623	\$ 2,701	\$ 2,782	\$ 2,866	\$ 2,952	\$ 21,342
\$ 1,186	\$ -	\$ -	\$ 14,232	\$ 14,659	\$ 15,099	\$ 15,552	\$ 16,018	\$ 16,499	\$ 16,994	\$ 17,504	\$ 126,556

Percent Increase from current rent: **198%**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Totals
Rent:	\$ 7,800	\$ 8,034	\$ 11,832	\$ 12,187	\$ 12,553	\$ 12,929	\$ 13,317	\$ 13,717	\$ 14,128	\$ 14,552	\$ 121,048
Utilities:	\$ 2,400	\$ 2,472	\$ 2,400	\$ 2,472	\$ 2,546	\$ 2,623	\$ 2,701	\$ 2,782	\$ 2,866	\$ 2,952	\$ 26,214
	\$ 10,200	\$ 10,506	\$ 14,232	\$ 14,659	\$ 15,099	\$ 15,552	\$ 16,018	\$ 16,499	\$ 16,994	\$ 17,504	\$ 147,262

Revenue for next 10-Year Lease at Current Rental Rate:

\$ 43,495

Revenue for next 10-Year Lease at New Rental Rate:

\$ 121,048

\$ 77,553 Additional increase in revenue

\$ 26,214 PLUS cost recovery for Terminal utility expenses

\$ 103,767

City cost to upgrade facility

\$ (25,000) MINUS City cost to upgrade facility (Estimated high)

\$ 78,767 Est. difference in rent paid to the City over the next 10 years

MEETING DATE/TYPES: STUDY SESSION 1-21-14
VOTING SESSION 1-28-14

DEPARTMENT: Finance / IT

AGENDA ITEM: Approval of desktop computer hardware and software purchases from Dell, Inc., for Fiscal Year 2014 in an amount not to exceed \$120,000.00 (City Contract No. 2014-122)

Approved By:

Date:

Director:	Woodfill, Mark	01/02/2014
City Manager:	McConnell, Craig	01/13/2014

Item Summary

This item is to authorize purchase of desktop computer hardware and software on an as-needed basis from Dell in an amount not to exceed \$120,000.00 using pricing from State of Arizona Contract No. ADSPO10-00000010 and Western States Contract Alliance (WSCA-NASPO) Contract No. B27160.

Background

The Information Technology (IT) Division currently supports 626 desktop computers and notebooks. In addition to these 626 systems, IT provides support and installation services for 33 non-Dell mobile data computers installed in our Police and Fire units.

Previous IT industry desktop hardware replacement cycles were at various years of service, with most organizations using a three, four, or five-year replacement interval. IT is able to maximize the City's investment in production desktop hardware beyond the standard hardware replacement interval via multiple strategies: by deploying and redeploying assets to maximize resource utilization and service life; by replacing under-powered and/or non-maintainable hardware; and by maintaining accurate and detailed inventory information for each unit.

The effective use of this approach has also benefited from advances in hardware reliability and management options for desktop hardware platforms developed in the IT industry over the past several years. Matching hardware asset capabilities with the workload enables spreading out the costs of replacement desktop hardware while providing fully functional equipment for City personnel. The net result is that the City has

Agenda Item: Approval of desktop computer hardware and software purchases from Dell Inc., for Fiscal Year 2014 in an amount not to exceed \$120,000.00 (City Contract No. 2014-122)

desktops in service which range from new to nearly 10 years of age, with most desktops/notebooks in the 3-5 year-old range.

IT purchases desktop hardware and desktop management software directly from Dell, one of the largest PC manufacturers in the world. Advances in manufacturing and hardware have reduced the cost for a standard City PC to around \$800.00 currently, down from \$1,200.00 five years ago.

The standard City PC configuration is specified with hardware capable of running applications such as Microsoft Office, Munis (financial system), CRW (building permits and workflow), etc., for the next five to seven years.

Financial Impact

This purchase is part of the IT Division's annual budget which is cost recovered for the using departments.

Recommended Action: MOVE to approve purchases of desktop computer hardware and software from Dell, Inc., in an amount not to exceed \$120,000.00 (City Contract No. 2014-122).

COUNCIL AGENDA MEMO

Agenda Item: Approval of a professional services agreement with Kelley/Wise Engineering, Inc., for the FY 2015 Pavement Reconstruction Project in an amount not to exceed \$353,547.00 (City Contract No. 2014-115)

Background

Pavement reconstruction is one element of the City's comprehensive program to preserve, rehabilitate, and upgrade the public street system. The annual Pavement Maintenance Program consists of three primary strategies to maintain and preserve the street network. These are: 1) pavement preservation - the application of asphalt pavement rejuvenating agents, seal coats, chip seals, and pavement overlays such as Asphalt Rubber-Asphalt Concrete Friction Course; 2) pavement rehabilitation - milling and removal of the top 2"-3" of existing pavement surface and repaving with new hot mix asphalt; and 3) pavement reconstruction - rebuilding the full pavement structural section including subgrade, aggregate base course, and new asphalt required when existing pavements cannot be cost-effectively remedied by preservation or rehabilitation methods.

City water and sewer facilities were evaluated and checked against the City Water and Sewer Models to establish needs for replacement or upgrade of the systems. It was determined that the existing water main in Smoke Tree Lane is in need of upgrade. The contract includes design of an 18" replacement water main on Smoke Tree Lane from Willow Creek Road to Birchwood Cove, to include necessary ADEQ approvals. The design will include connection to the 30" water main in Willow Creek Road, replacement of all service lines, stub-out and connections to all side distribution mains, and separation of current pressure zones. The existing water distribution main will remain in place from Willow Creek Road to Meadow Circle. The water main from Meadow Circle to Birchwood Cove will be abandoned.

Design plans are complete to construct drainage improvements within the Blackhawk Subdivision using funding provided by a prior intergovernmental agreement with the Yavapai County Flood Control District. The affected streets in Blackhawk have been identified in need of pavement replacement due to advanced deterioration. The pavement reconstruction plans for the Blackhawk Subdivision will be combined with the drainage improvement plans to result in a complete package of drainage and pavement improvements.

Procurement of Engineering Services

On November 7, 2013, the City received Statements of Qualifications from three (3) firms for engineering design services. Pursuant to the City Procurement Code for selection of professional services, a committee ranked the individual firms based on their Statements of Qualifications, and determined Kelley/Wise Engineering, Inc., to be the top ranked firm for this project. Subsequently, the scope of services was determined and fees negotiated.

Agenda Item: Approval of a professional services agreement with Kelley/Wise Engineering, Inc., for the FY 2015 Pavement Reconstruction Project in an amount not to exceed \$353,547.00 (City Contract No. 2014-115)

Project Schedule

Engineering is scheduled to be completed within six (6) months of the notice to proceed. Three (3) construction contracts for the various improvements are planned to be awarded in Fiscal Year 2015.

Financial Impact

Over 4.5 lane-miles of streets will be reconstructed; and 5,110 lineal feet of new 18" water main will be installed to upgrade the City's potable water delivery system. The total estimated construction cost is \$4.1 million, consisting of street construction at \$2.4 million and utility construction of \$1.7 million. The cost of engineering services is less than 9% of the estimated construction cost.

Budgeted Fiscal Year 2014 funding for this contract in the amount of \$353,547.00 is available from the One Cent Sales Tax for Streets and Open Space, Water Fund, and Sewer Fund.

Attachments

1. Scope and Fee Proposal (Exhibit "A")
2. Project Vicinity Map No. 1
3. Project Vicinity Map No. 2

Recommended Action: **MOVE** to approve a professional services agreement with Kelley/Wise Engineering, Inc., for the FY 2015 Pavement Reconstruction Project in an amount not to exceed \$353,547.00 (City Contract No. 2014-115).

EXHIBIT A

Scope of Services for FY 2015 Pavement Reconstruction Project City of Prescott, Arizona

Prepared by Kelley/Wise Engineering, Inc.
December 18, 2013

Project Description

The City of Prescott will be entering into a contract for consulting engineering services and other related services required to produce a set of construction drawings (plans and specifications) for the FY 2015 Pavement Reconstruction Project.

Preliminary Project Information and Proposed Improvements

- I. This FY 2015 pavement reconstruction consists of improvements to three distinct areas as follows:
 - a) Smoke Tree Lane
 - b) Blackhawk Subdivision
 - c) Montezuma Street
- II. Each area has the following proposed improvements:
 - a) Smoke Tree Lane
 - i) New 18-inch water main from Willow Creek Road to 150 feet east of Birchwood Cove (± 5300 feet).
 - ii) Mill and overlay from Willow Creek Road to Tabosa Drive (± 2300 feet)
 - iii) Pavement rehabilitation/reconstruction from Tabosa Drive to about 150 feet east of Birchwood Cove (± 3000 feet).
 - b) Blackhawk Subdivision
 - i) Pavement rehabilitation to approximately 2200 lineal feet of South Lakeview Drive (from Peace Pipe east to Trail Walk).
 - ii) Pavement rehabilitation to approximately 2100 lineal feet of Golden Hawk Drive (from Peace Pipe to the cul-de-sac on the east end).
 - iii) Pavement rehabilitation to approximately 350 lineal feet of Peace Pipe (between South Lake View and Golden Hawk).
 - iv) Pavement rehabilitation to approximately 650 lineal feet of Golden Bear Drive (between Golden Hawk Drive and Smoke Tree Lane).
 - v) Storm drainage catch basins and piping system for the "Blackhawk Subdivision Drainage Improvement Project, CIP 13-008" was previously completed by Kelley/Wise Engineering (KWE). These improvements included portions of South Lakeview Drive, Golden Hawk Drive, Golden Bear Drive, Darby Creek Way and across Smoke Tree Lane into an existing open channel.
 - c) Montezuma Street
 - i) Pavement rehabilitation from the north side of the north cross-walk on Gurley Street to approximately 150 feet north of Willis Street (± 800 feet).

- ii) New 8-inch water main from Gurley Street to Willis Street (± 800 feet).
- iii) New 8-inch sewer main from the manhole at the intersection of Willis upstream to Gurley Street (or the Courthouse manhole).

III. Existing Drainage Conditions

- a) Smoke Tree Lane – This project includes milling and overlay for the northwest portion of improvements and pavement reconstruction for the eastern portion. The existing curb and gutter will remain in-place. Select areas of destroyed curb will be replaced in-kind. As such, no new catch basins, curb opening spillways or other drainage system improvements are anticipated. If, during the design phase, it is determined that a drainage improvement is needed in a limited, specific area, then KWE will size and design the storm drain improvement.
- b) Blackhawk Subdivision – This project already includes storm drain improvements to portions of the road improvement limits. If, during the design phase, it is determined that a drainage improvement is needed in a limited, specific area, then KWE will size and design the storm drain improvement. KWE will also design a centerline crown of 2-percent above the high side curb.
- c) Montezuma Street – No change or impact to the existing street drainage capacity is anticipated. The street cross-section is to remain unchanged. The existing curb and gutter will remain or be replaced in-kind if needed. If, during the design phase, it is determined that a drainage improvement is needed in a limited, specific area, then KWE will size and design the storm drain improvement.

Key Project Tasks

- Utility pothole services will be provided by Earth Resources Corporation (ERC) with survey and map of results provided by KWE.
- Geotechnical borings (± 12) will be provided by ETC to verify excavation conditions and provide recommendations for trench backfill construction and recommended pavement sections for each area.
- Develop 30%, 60%, 90%, 100% and Final plan set submittals of construction documents including bid schedule and technical specifications (90%, 100% and Final), and cost estimate (30%, 60%, 90%, 100% and Final).
- Table top meetings for design, 30%, 60%, 90%, 100% and Final submittals with City staff.

Term of Contract

- The term of this contract is anticipated to start in January, 2014, and extend through calendar year 2014 (completed construction) with design services complete at the end of June, 2014.

Excluded Services¹ – The following services are not anticipated to be needed or required for this project and therefore work scope and fees are not included in this contract proposal.

- Archeological or cultural resource studies

- Environmental site assessment
- 404 permit or evaluation
- Traffic analysis
- Landscape plans

¹Services can be provided for an additional negotiated fee if required

Smoke Tree Lane

Task A-100-Data Collection

1. **Reconnaissance-** The necessary team members will conduct a site visit and conduct design team meetings to review project scope, project limits, existing available or furnished information
2. **Kick-off Meeting/coordination meetings-** The relevant design team members will attend a project kick-off meeting with City personnel. KWE will provide the City with a project schedule, directory of team members, organization chart and any contractual submittals. Elements of the project design will be discussed with City personnel to identify any critical issues and verify design timeline. Additional coordination meetings will augment the target submittal for 30%, 60%, 90%, 100% and Final design levels.
3. **Topographic Survey and Mapping-** KWE will survey each road within the right-of-way (R.O.W.) to depict curb, gutter, sidewalk, pavement limits and above ground apparent utility appurtenances. KWE will verify the R.O.W. and provide project benchmark(s) and include this information on the project design base electronic file and subsequent maps.
4. **Review Available As-Built Mapping-** The City will furnish KWE all available maps within the projects limits. KWE will review these maps in an effort to clarify existing conditions, i.e. pipe materials, diameter, depth and or location.

Task A-200- 30% Construction Plans

The general requirements for the project design and the plan set will meet City requirements for COP Design Submittal Requirements, except where drainage studies, walls and structural reports do not apply to this project.

The anticipated plan sheets are as follows:

1. **Cover sheet-** This sheet will include the title, sheet index, and City seal/logo, list of utility companies with contacts, Mayor/Council name list, signature block, location and vicinity map.
2. **Index-** Index or Key Map will identify which sheet paving or utility improvements are located.
3. **Standard Details-** KWE will utilize City, ADOT, YAG and/or MAG Standard Details for this project. Each detail that is referenced on the project design plans will be included on the detail sheets. Also, any unique or project specific details will be included.
4. **Pipe Connection Details-** KWE will develop details at point-of-connections and laterals. These details will be typical at each lateral or further detailed as necessary based on existing conditions of the water system, including valve locations and anticipated pipe depths at the tie –in locations.

5. **Notes-** KWE will utilize the standard construction notes furnished by the City. This sheet will also include symbol legend and overall quantity matrix.
6. **Horizontal Control-** A horizontal control plan will be prepared with adequate information to stake the proposed improvements.
7. **Striping-** KWE will create a striping plan that reestablishes the striping per existing conditions including turn arrows, double yellow, stop bars, cross-walks etc.
8. **Results of Potholing/Utility Review-** KWE will incorporate the results of each pothole on the appropriate plan/profile sheet tabulating the coordinate northing/easting and elevation. KWE will be responsible for potholing utilities for location and depth where the possibility of conflicts exist between the existing utilities and proposed construction. 30 utility explorations are budgeted for Smoke Tree Lane and will be billed per the fee schedule.

KWE will be responsible for coordinating with all utility companies (i.e. water, sewer, cable TV, electric, gas, telephone) in the area. Available information shall be depicted on the plans as clearly and accurately as possible in order to minimize unforeseen utility conflicts. No "Bluestake" fees are included in the KWE fees. Visible utilities and above ground utilities will be identified and located during the topographic survey, including water valves, hydrants, electrical poles, street lighting, equipment pads, telephone and television risers, and above ground gas facilities. Any available "Bluestake" markings of underground utilities (water, sewer, electrical, telephone, cable and gas) will also be surveyed.

KWE will also coordinate with the utility companies to assist them with their endeavors to upgrade, replace or enhance their facilities prior to or as part of the construction project. KWE will provide each of the utility companies a set of plans at the completion of the 30%, 60%, 90% and 100% levels and will provide any written responses from each of the involved utilities at the completion of each design level to the City. KWE will also attend the monthly Regional Utility Coordination (RUC) meetings as appropriate with our submittals. We anticipate attendance at two (2) RUC meetings.

9. **SWPPP-** KWE will prepare a Storm Water Pollution Prevention Plan showing BMP's at each inlet to protect the existing storm drain system. The contractor will be responsible for notifying ADEQ and implementing the plan.
10. **Water Main Plan and Profile-** KWE in coordination with the City and based on existing field conditions will establish an alignment for the new 18-inch water main. Preliminary alignment, laterals, valves, fire hydrants and services will be shown.
11. **Paving Plan and Profile-** KWE will incorporate paving improvement design call-outs on the same plan-profile sheet as the water design call-outs. The paving plan call-outs will be limited in number basically consisting of typical road section (mill or remove and replace), and adjusting valves or manholes to new finish grade with new concrete collars. KWE will also create cross section sheets for each project at 50-foot stations.

Task A-300-Potholing

Potholing will be coordinated with our sub-consultant, Earth Resources Corporation (ERC). This scope of work includes up to 30 potholes to under 8' in depth (average). The survey layout will be provided by KWE's survey crew. ERC will backfill potholes with pea gravel and install concrete patch per City requirements.

1. **Identify potential utility conflicts-** In collaboration with City personnel, KWE will review the 30% plans and determine the horizontal location of potential utility conflicts.
2. **Survey Pothole Locations-** Each pothole location will be laid out by field survey for the hydro excavation provided by ERC.
3. **Coordinate Pothole Activities-** KWE will coordinate with ERC prior to potholing to establish location, anticipated utility (electric, telco, gas, etc.) and furnish ERC a map of the pothole locations.
4. **Tabulate Pothole Results-** KWE will collect the findings from ERC and plot the results in table form and in each profile view for subsequent design call-outs. ERC will furnish KWE the depth, pipe diameter, number of pipes and pipe material (if evident)

Task A-400-Water Main Alignment

1. **Refine Horizontal Alignment-** Based on pothole results, KWE will modify the horizontal alignment as necessary to avoid utility conflicts.
2. **Refine Vertical Alignment-** Based on pothole results, KWE will add the necessary vertical bends to create proper vertical separation to known conflicting utilities.
3. **Pipe Tie-ins-** Based on the City Blue-Stake and existing field conditions, KWE will design connections at each lateral. These will likely include a standard tee/cross and valves and tapping sleeve and valve into the existing pipe (or coordinated tie-over).
4. **Service Connections-** KWE will design new service connections with new meter at each existing service and where required to undeveloped parcels.

Task A-500-Water Main Abandonment

1. **"Blue-stake" Alignment-** The City will furnish the Blue-stake location and markings of the existing water and sewer from Willow Creek Road to the east project limits on Smoke Tree, including laterals and services.
2. **Abandonment Call-outs-** KWE will coordinate with the City to establish the abandonment limits for the existing water main on Smoke Tree Lane. We understand the existing main is to be abandoned from Meadow Circle to Birchwood Cove. Appropriate design call-outs will be included on the plans for construction.
3. **Coordinated Tie over-** KWE will review with the City and establish appropriate notes and/or call-outs and technical specifications for the coordinated tie-over to the points-of-connection after the new system is tested and approved for operation.

Task A-600-Technical Specifications/Special Provisions

KWE will utilize the City's boilerplate technical specifications for this project which utilize COP, YAG, and MAG format. Each bid item will be presented in the specifications. The technical specifications will be provided at the 90% and 100%

reviews. Final technical specifications (hard copy and Word document) will be furnished to the City after approval.

Task A-700-Engineer's Opinion of Probable Construction Costs

KWE will prepare 30%, 60%, 90%, and 100% Engineer's Opinion of Probable Construction Cost Estimate. The City will furnish KWE recent bid tabs to aid in this effort.

Task A-800-Bid Schedule

KWE will prepare a bid schedule for the 90%, and 100% reviews. The bid schedule will be coordinated and reference the project technical specifications section.

Task A-900-Preparation of 60% Plans

KWE will incorporate changes, correction, and or additions from the 30% table top plan review including those items required by the Design Submittal Requirements for a 60% submittal. The resulting set of plans will be submitted to the City and utilities, which will be reviewed by the City and utilities for any adjustments or additions.

Task A-1000-Preparation of 90% Plans

KWE will incorporate changes, correction, and or additions from the 60% plan review including those items required by the Design Submittal Requirements for a 90% submittal. The resulting set of plans will be submitted to the City and utilities, which will be reviewed by the City and utilities for any adjustments or additions.

Task A-1100-Preparation of 100% Plans

KWE will incorporate changes and/or additions as a result from comments of the 90% plan review. A set of bond plans will be provided. A hard copy of the technical specifications, bid schedule, and construction estimate will be submitted.

Task A-1200-Final Bid Documents (P, S & E)

KWE will incorporate changes and/or additions as a result from comments of the 100% plan review. A set of final reproducible plans will be provided on 3 mil Mylar and on a disk (AutoCad dwg and pdf format). A hard copy and disk of the technical specifications, bid schedule, and construction estimate will be submitted in Microsoft Word format. The City will prepare the formal contract documents.

Task A-1300-Assistance during the bidding process

KWE will be present for the pre-bid meeting and review bid tabulations. During the bidding process, KWE will be available to coordinate bid addenda with the City.

Task A-1400- Construction Administration

1. **Shop Drawings, RFI's and COR's-** KWE will review shop drawings for general conformance with the project plans and specifications. KWE will review and respond to contractor RFI's and change orders.
2. **Periodic Site Observation-** KWE will review the general progress of the construction. Periodic site observation will include finish subgrade observation prior

- to placing aggregate base course and finish aggregate base course prior to paving. Pre-Final and final walk through and punch list will be prepared.
3. **Utility Testing-** KWE will observe the contractor performance of quality assurance testing (disinfection, hydrostatic and bacteriological) for the newly installed water main and submit the test results and accompanying paper work required for ADEQ approval of construction.
 4. **As-Built Plans-** The contractor's as-built plans will be reviewed during the periodic site visits. KWE will provide site visits for field survey for locating the actual construction installation of underground utilities. The contractor's as-built plans, KWE's survey and site observation will be utilized to prepare the final project as-built plans. Final as-built Mylar plan set and digital files will be provided by KWE to the City and Yavapai County (for ADEQ Approval of Construction).
 5. **Pre-Final Punchlist-** KWE in conjunction with City personnel and inspectors will field walk/review the project to develop a punch list for the contractor. KWE will review this punch list created by the City prior to submission to the contractor.
 6. **Final Project Acceptance-** After all punchlist items have been satisfactorily completed by the contractor, KWE will complete and submit the as-built plans to the City on Mylar and electronic disk.

Blackhawk Subdivision

Task B-100-Data Collection

1. **Reconnaissance-** The necessary team members will conduct a site visit and conduct design team meetings to review project scope, project limits, existing available or furnished information.
2. **Kick-off Meeting/coordination meetings-** The relevant design team members will attend a project kick-off meeting with City personnel. KWE will provide the City with a project schedule, directory of team members, organization chart and any contractual submittals. Elements of the project design will be discussed with City personnel to identify any critical issues and verify design timeline. Additional coordination meetings will augment the target submittal for 30%, 60%, 90%, 100% and Final design levels.
3. **Topographic Survey and Mapping-** KWE will survey each road within the right-of-way (R.O.W.) to depict curb, gutter, sidewalk, pavement limits and above ground apparent utility appurtenances. KWE will verify the R.O.W. and provide project benchmark(s) and include this information on the project design base electronic file and subsequent maps.

Task B-200- 30% Construction Plans

The general requirements for the project design and the plan set will meet City requirements for COP Design Submittal Requirements, except where drainage studies walls and structural reports do not apply to this project.

The anticipated plan sheets are as follows for each project location:

1. **Cover sheet-** This sheet will include the title, sheet index, and City seal/logo, list of utility companies with contacts, Mayor/Council name list, signature block, location and vicinity map.

2. **Index-** Index or Key Map will identify which sheet paving or utility improvements are located.
3. **Standard Details-** KWE will utilize City, ADOT, YAG and/or MAG Standard Details for this project. Each detail that is referenced on the project design plans will be included on the detail sheets. Also, any unique or project specific details will be included.
4. **Integrate with Storm Drain Plans-** KWE will coordinate with the City the integration of the existing storm drain improvement plans with the pavement improvement plans.
5. **Notes-** KWE will utilize the standard construction notes furnished by the City. This sheet will also include symbol legend and overall quantity matrix.
6. **Horizontal Control-** A horizontal control plan will be prepared with adequate information to stake the proposed improvements.
7. **Results of Potholing/Utility Review-** KWE will incorporate the results of each pothole on the appropriate plan/profile sheet tabulating the coordinate northing/easting and elevation. For the Blackhawk Subdivision area this work was completed by KWE/Badger Daylighting under separate contract with the City.
KWE will be responsible for coordinating with all utility companies (i.e. water, sewer, cable TV, electric, gas, telephone) in the area. Available information shall be depicted on the plans as clearly and accurately as possible in order to minimize unforeseen utility conflicts. No "Bluestake" fees are included in the KWE fees. Visible utilities and above ground utilities will be identified and located during the topographic survey, including water valves, hydrants, electrical poles, street lighting, equipment pads, telephone and television risers, and above ground gas facilities. Any available "Bluestake" markings of underground utilities (water, sewer, electrical, telephone, cable and gas) will also be surveyed.
KWE will also coordinate with the utility companies to assist them with their endeavors to upgrade, replace or enhance their facilities prior to or as part of the construction project. KWE will provide each of the utility companies a set of plans at the completion of the 30%, 60%, 90% and 100% levels and will provide any written responses from each of the involved utilities at the completion of each design level to the City. KWE will also attend the monthly Regional Utility Coordination (RUC) meetings as appropriate with our submittals. We anticipate attendance at two (2) RUC meetings.
8. **SWPPP-** KWE will prepare a Storm Water Pollution Prevention Plan showing BMP's at each inlet to protect the existing storm drain system. The contractor will be responsible for notifying ADEQ and implementing the plan.
9. **Paving Plan-** As determined in conjunction with the City, KWE will incorporate paving improvement design call-outs on the same plan-profile sheets as the existing storm drain improvement plans, with additional sheets as required to show the project limits, or produce a separate paving plan set with paving plan call-outs. The paving plan callouts will be limited in number basically consisting of typical road section (remove and replace), and adjusting valves or manholes to new finish grade with new concrete collars. KWE will also create cross section sheets at 50-foot stations.

Task B-300-Technical Specifications/Special Provisions

KWE will utilize the City's boilerplate technical specifications for this project which utilize COP, YAG, and MAG format. Each bid item will be presented in the specifications. The technical specifications will be provided at the 90% and 100% reviews. Final technical specifications (hard copy and Word document) will be furnished to the City after approval.

Task B-400-Engineer's Opinion of Probable Construction Costs

KWE will prepare 30%, 60%, 90%, and 100% Engineer's Opinion of Probable Construction Cost Estimate. The City will furnish KWE recent bid tabs to aid in this effort.

Task B-500-Bid Schedule

KWE will prepare a bid schedule for the 90%, and 100% reviews. The bid schedule will be coordinated and reference the project technical specifications section.

Task B-600-Preparation of 60% Plans

KWE will incorporate changes, correction, and or additions from the 30% table top plan review including those items required by the Design Submittal Requirements for a 60% submittal. The resulting set of plans will be submitted to the City and utilities, which will be reviewed by the City and utilities for any adjustments or additions.

Task B-700-Preparation of 90% Plans

KWE will incorporate changes, correction, and or additions from the 60% plan review including those items required by the Design Submittal Requirements for a 90% submittal. The resulting set of plans will be submitted to the City and utilities, which will be reviewed by the City and utilities for any adjustments or additions.

Task B-800-Preparation of 100% Plans

KWE will incorporate changes and/or additions as a result from comments of the 90% plan review. A set of bond plans will be provided. A hard copy of the technical specifications, bid schedule, and construction estimate will be submitted.

Task B-900-Final Bid Documents (P, S & E)

KWE will incorporate changes and/or additions as a result from comments of the 100% plan review. A set of final reproducible plans will be provided on 3 mil Mylar and on a disk (AutoCad dwg and pdf format). A hard copy and disk of the technical specifications, bid schedule, and construction estimate will be submitted in Microsoft Word format. The City will prepare the formal contract documents.

Task B-1000-Assistance during the bidding process

KWE will be present for the pre-bid meeting and review bid tabulations. During the bidding process, KWE will be available to coordinate bid addenda with the City.

Task B-1100- Construction Administration

1. **Shop Drawings, RFI's and COR's-** KWE will review shop drawings for general conformance with the project plans and specifications. KWE will review and respond to contractor RFI's and change orders.
2. **Periodic Site Observation-** KWE will review the general progress of the construction. Periodic site observation will include finish subgrade observation prior to placing aggregate base course and finish aggregate base course prior to paving. Pre-Final and final walk through and punch list will be prepared.
3. **Utility Testing-** KWE will observe the contractor performance of quality assurance testing (disinfection, hydrostatic and bacteriological) for the newly installed water main and submit the test results and accompanying paper work required for ADEQ approval of construction.
4. **As-Built Plans-** The contractor's as-built plans will be reviewed during the periodic site visits. KWE will provide site visits for field survey for locating the actual construction installation of underground utilities. The contractor's as-built plans, KWE's survey and site observation will be utilized to prepare the final project as-built plans. Final as-built Mylar plan set and digital files will be provided by KWE to the City and Yavapai County (for ADEQ Approval of Construction).
5. **Pre-Final Punchlist-** KWE in conjunction with City personnel and inspectors will field walk/review the project to develop a punch list for the contractor. KWE will review this punch list created by the City prior to submission to the contractor.
6. **Final Project Acceptance-** After all punchlist items have been satisfactorily completed by the contractor, KWE will complete and submit the as-built plans to the City on Mylar and electronic disk.

Montezuma Street

Task C-100-Data Collection

1. **Reconnaissance-** The necessary team members will conduct a site visit and conduct design team meetings to review project scope, project limits, existing available or furnished information
2. **Kick-off Meeting/coordination meetings-** The relevant design team members will attend a project kick-off meeting with City personnel. KWE will provide the City with a project schedule, directory of team members, organization chart and any contractual submittals. Elements of the project design will be discussed with City personnel to identify any critical issues and verify design timeline. Additional coordination meetings will augment the target submittal for 30%, 60%, 90%, 100% and Final design levels.
3. **Topographic Survey and Mapping-** KWE will survey each road within the right-of-way (R.O.W.) to depict curb, gutter, sidewalk, pavement limits and above ground apparent utility appurtenances. KWE will verify the R.O.W. and provide project benchmark(s) and include this information on the project design base electronic file and subsequent maps.
4. **Review Available As-Built Mapping-** The City will furnish KWE all available maps within the projects limits. KWE will review these maps in an effort to clarify existing conditions, i.e. pipe materials, diameter, depth and or location.

Task C-200- 30% Construction Plans

The general requirements for the project design and the plan set will meet City requirements for COP Design Submittal Requirements, except where drainage studies walls and structural reports do not apply to this project.

The anticipated plan sheets are as follows:

1. **Cover sheet-** This sheet will include the title, sheet index, and City seal/logo, list of utility companies with contacts, Mayor/Council name list, signature block, location and vicinity map.
2. **Index-** Index or Key Map will identify which sheet paving or utility improvements are located.
3. **Standard Details-** KWE will utilize City, ADOT, YAG and/or MAG Standard Details for this project. Each detail that is referenced on the project design plans will be included on the detail sheets. Also, any unique or project specific details will be included.
4. **Pipe Connection Details-** KWE will develop details at point-of-connections and laterals. These details will be typical at each lateral or further detailed as necessary based on existing conditions of the water system, including valve locations and anticipated pipe depths at the tie -in locations.
5. **Notes-** KWE will utilize the standard construction notes furnished by the City. This sheet will also include symbol legend and overall quantity matrix.
6. **Horizontal Control-** A horizontal control plan will be prepared with adequate information to stake the proposed improvements.
7. **Striping-** KWE will create a striping plan that reestablishes the striping per existing conditions including turn arrows, double yellow, stop bars, cross-walks etc.
8. **Results of Potholing/Utility Review-** KWE will incorporate the results of each pothole on the appropriate plan/profile sheet tabulating the coordinate northing/easting and elevation. KWE will be responsible for potholing utilities for location and depth where the possibility of conflicts exist between the existing utilities and proposed construction. 10 utility explorations are budgeted for Montezuma Street and will be billed per the fee schedule.

KWE will be responsible for coordinating with all utility companies (i.e. water, sewer, cable TV, electric, gas, telephone) in the area. Available information shall be depicted on the plans as clearly and accurately as possible in order to minimize unforeseen utility conflicts. No "Bluestake" fees are included in the KWE fees. Visible utilities and above ground utilities will be identified and located during the topographic survey, including water valves, hydrants, electrical poles, street lighting, equipment pads, telephone and television risers, and above ground gas facilities. Any available "Bluestake" markings of underground utilities (water, sewer, electrical, telephone, cable and gas) will also be surveyed.

KWE will also coordinate with the utility companies to assist them with their endeavors to upgrade, replace or enhance their facilities prior to or as part of the construction project. KWE will provide each of the utility companies a set of plans at the completion of the 30%, 60%, 90% and 100% levels and will provide any written responses from each of the involved utilities at the completion of each design level to the City. KWE will also attend the monthly Regional Utility Coordination (RUC)

meetings as appropriate with our submittals. We anticipate attendance at two (2) RUC meetings.

9. **SWPPP-** KWE will prepare a Storm Water Pollution Prevention Plan showing BMP's at each inlet to protect the existing storm drain system. The contractor will be responsible for notifying ADEQ and implementing the plan.
10. **Water Main Plan and Profile-** KWE in coordination with the City and based on existing field conditions will establish an alignment for the new 8-inch water main. Preliminary alignment, laterals, valves, fire hydrants and services will be shown.
11. **Paving Plan-** KWE will incorporate paving improvement design call-outs on the same plan-profile sheet as the water/sewer design call-outs. The paving plan call-outs will be limited in number basically consisting of typical road section (mill or remove and replace), and adjusting valves or manholes to new finish grade with new concrete collars. KWE will also create cross section sheets for each project at 50-foot stations.
12. **Sewer Main Plan and Profile-** KWE in coordination with the City and based on existing field conditions will establish an alignment for the new 8-inch sewer main. Preliminary alignment and services will be shown.
13. **ADA Stall and Access Aisle-** KWE in coordination with the City and based on existing field conditions will establish a suitable location for an ADA parking stall and access aisle. An evaluation of the existing marked ADA stall and access aisle, may indicate that the existing location could meet ADA standards (with some minor modifications).

Task C-300-Potholing

Potholing will be coordinated with our sub-consultant, Earth Resources Corporation (ERC). This scope of work includes up to 10 potholes to under 8' in depth. The survey layout will be provided by KWE's survey crew. ERC will backfill potholes with pea gravel and install concrete patch per City requirements.

1. **Identify potential utility conflicts-** In collaboration with City personnel, KWE will review the 30% plans and determine the horizontal location of potential utility conflicts.
2. **Survey Pothole Locations-** Each pothole location will be laid out by field survey for the hydro excavation provided by ERC.
3. **Coordinate Pothole Activities-** KWE will coordinate with ERC prior to potholing to establish location, anticipated utility (electric, telco, gas, etc.) and furnish ERC a map of the pothole locations.
4. **Tabulate Pothole Results-** KWE will collect the findings from ERC and plot the results in table form and in each profile view for subsequent design call-outs. ERC will furnish KWE the depth, pipe diameter, number of pipes and pipe material (if evident)

Task C-400-Water and Sewer Main Re-Alignment

1. **Refine Horizontal Alignment-** Based on pothole results, KWE will modify the horizontal alignments as necessary to avoid utility conflicts.
2. **Refine Vertical Alignment-** Based on pothole results, KWE will add the necessary vertical bends to create proper vertical separation to known conflicting utilities.

3. **Pipe Tie-ins-** Based on the City Blue-Stake and existing field conditions, KWE will design connections at each water and sewer tie-in location. For water connections, these will likely include a standard tee/cross and valves and tapping sleeve and valve into the existing pipe (or coordinated tie-over). For sewer connections, these will likely include by-pass pumping or coordination to accommodate new sewer connections to existing sewer system components.
4. **Service Connections-** KWE will design new water service connections with new meters at each existing service and where required to undeveloped parcels. New RPZA assemblies will not be provided; existing RPZA assemblies will be reconnected in their existing location and condition. KWE will design new sewer service connections with new backwater valves and building sewer service double cleanout assemblies per plumbing code.

Task C-500-Water and Sewer Main Abandonment

1. **"Blue-stake" Alignment-** The City will furnish the Blue-stake location and markings of the existing water and sewer from the intersection of Gurley/Montezuma to the north project limits on Montezuma north of the Montezuma/Willis intersection, including laterals and services.
2. **Abandonment Call-outs-** KWE will coordinate with the City to establish the abandonment limits. Appropriate design call-outs will be included on the plans for construction.
3. **Coordinated Tie over-** KWE will review with the City and establish appropriate notes and/or call-outs and technical specifications for the coordinated tie-over to the points-of-connection after the new water and sewer systems are tested and approved for operation.

Task C-600-Technical Specifications/Special Provisions

KWE will utilize the City's boilerplate technical specifications for this project which utilize COP, YAG, and MAG format. Each bid item will be presented in the specifications. The technical specifications will be provided at the 90% and 100% reviews. Final technical specifications (hard copy and Word document) will be furnished to the City after approval.

Task C-700-Engineer's Opinion of Probable Construction Costs

KWE will prepare 30%, 60%, 90%, and 100% Engineer's Opinion of Probable Construction Cost Estimate. The City will furnish KWE recent bid tabs to aid in this effort.

Task C-800-Bid Schedule

KWE will prepare a bid schedule for the 90%, and 100% reviews. The bid schedule will be coordinated and reference the project technical specifications section.

Task C-900-Preparation of 60% Plans

KWE will incorporate changes, correction, and or additions from the 30% table top plan review including those items required by the Design Submittal Requirements for

a 60% submittal. The resulting set of plans will be submitted to the City and utilities, which will be reviewed by the City and utilities for any adjustments or additions.

Task C-1000-Preparation of 90% Plans

KWE will incorporate changes, correction, and or additions from the 60% plan review including those items required by the Design Submittal Requirements for a 90% submittal. The resulting set of plans will be submitted to the City and utilities, which will be reviewed by the City and utilities for any adjustments or additions.

Task C-1100-Preparation of 100% Plans

KWE will incorporate changes and/or additions as a result from comments of the 90% plan review. A set of bond plans will be provided. A hard copy of the technical specifications, bid schedule, and construction estimate will be submitted.

Task C-1200-Final Bid Documents (P, S & E)

KWE will incorporate changes and/or additions as a result from comments of the 100% plan review. A set of final reproducible plans will be provided on 3 mil Mylar and on a disk (AutoCad dwg and pdf format). A hard copy and disk of the technical specifications, bid schedule, and construction estimate will be submitted in Microsoft Word format. The City will prepare the formal contract documents.

Task C-1300-Assistance during the bidding process

KWE will be present for the pre-bid meeting and review bid tabulations. During the bidding process, KWE will be available to coordinate bid addenda with the City.

Task C-1400- Construction Administration

1. **Shop Drawings, RFI's and COR's-** KWE will review shop drawings for general conformance with the project plans and specifications. KWE will review and respond to contractor RFI's and change orders.
2. **Periodic Site Observation-** KWE will review the general progress of the construction. Periodic site observation will include finish subgrade observation prior to placing aggregate base course and finish aggregate base course prior to paving. Pre-Final and final walk through and punch list will be prepared.
3. **Utility Testing-Water-** KWE will observe the contractor performance of quality assurance water system testing (disinfection, hydrostatic and bacteriological) for the newly installed water main and submit the test results and accompanying paper work required for ADEQ approval of construction.
4. **Utility Testing-Sewer-** KWE will observe the contractor performance of quality assurance sewer system testing (low-pressure air, deflection and manhole exfiltration) for the newly installed sewer main and submit the test results and accompanying paper work required for ADEQ approval of construction.
5. **As-Built Plans-** The contractor's as-built plans will be reviewed during the periodic site visits. KWE will provide site visits for field survey for locating the actual construction installation of underground utilities. The contractor's as-built plans, KWE's survey and site observation will be utilized to prepare the final project as-

built plans. Final as-built Mylar plan set and digital files will be provided by KWE to the City and Yavapai County (for ADEQ Approval of Construction).

6. **Pre-Final Punchlist-** KWE in conjunction with City personnel and inspectors will field walk/review the project to develop a punch list for the contractor. KWE will review this punch list created by the City prior to submission to the contractor.
7. **Final Project Acceptance-** After all punchlist items have been satisfactorily completed by the contractor, KWE will complete and submit the as-built plans to the City on Mylar and electronic disk.

STANDARD OF CARE:

KWE shall be responsible to the level of competency and standard of care presently maintained by other practicing Professional Engineers performing the same or similar type of work at the time notice to proceed is issued. KWE and the City of Prescott mutually agree that standard of care, as applied to design professionals, shall be defined as the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the same or similar circumstances.

OPINIONS OF COST:

KWE has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractor's methods of determining prices, or other competitive bidding or market conditions, practices, or bidding strategies. Cost estimates are based on KWE's opinion based on experience and judgment. KWE cannot and does not guarantee that proposals, bids, or actual project construction costs will not vary from cost estimates prepared by KWE.

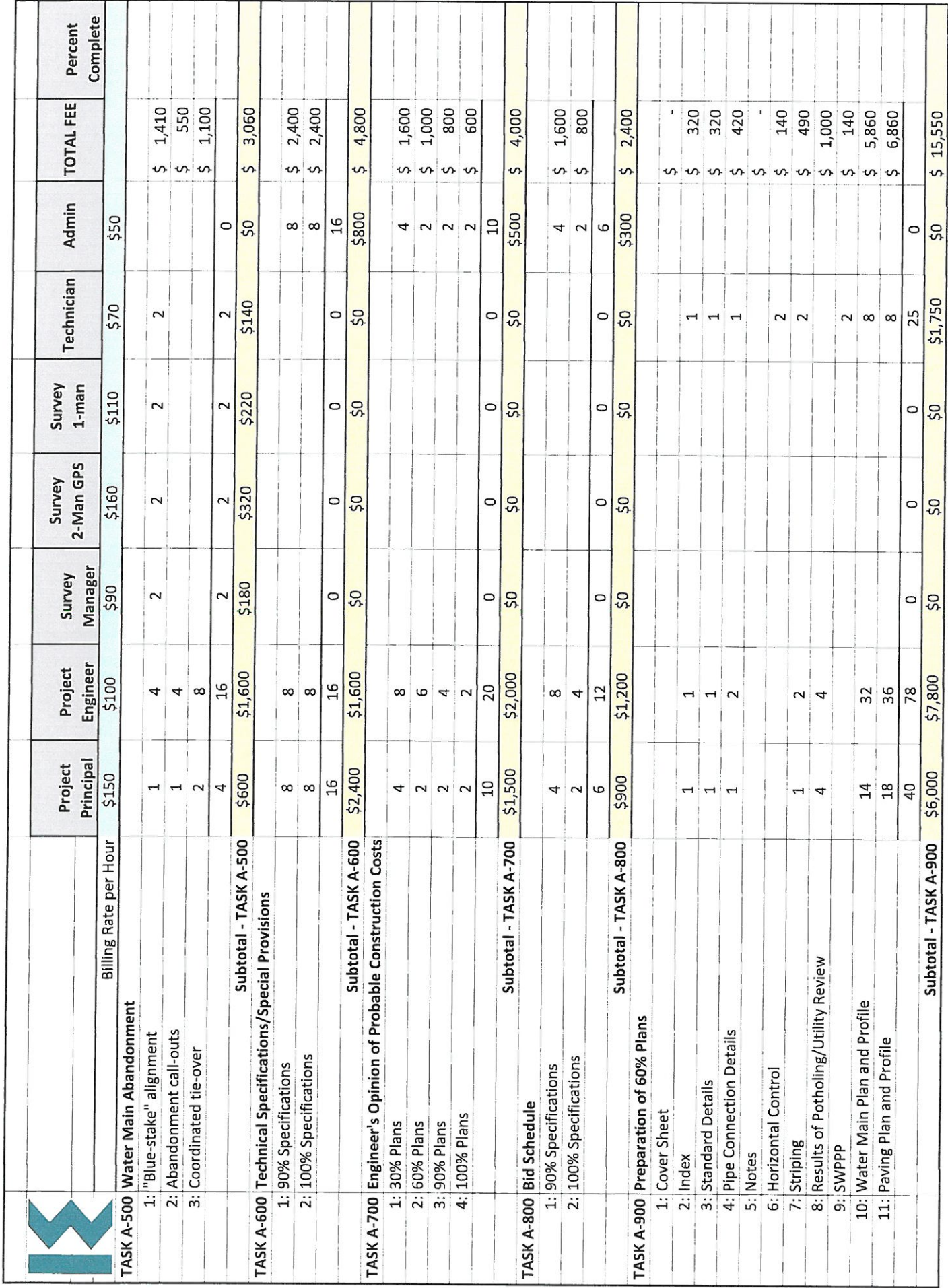
END OF EXHIBIT A

Attachments: Scope/Fee Spreadsheet
Subconsultant Proposals (ETC, ERC)

FY 2015 Pavement Reconstruction Project

Scope and Fees

		Billing Rate per Hour															Project Principal		Project Engineer		Survey Manager		Survey 2-Man GPS		Survey 1-man		Technician		Admin		TOTAL FEE		Percent Complete					
																	\$150		\$100		\$90		\$160		\$110		\$70		\$50									
		TASK A-100 Data Collection																	Smoke Tree Lane																			
		1: Reconnaissance																	2		2														\$ 680			
		2: Kick-off Meeting / Coordination Meetings																	12		12								8				\$ 3,400					
		3: Topographic Survey and Mapping																					24		48		48		24				\$ 16,800					
		4: Review Available As-Built Mapping																	1		2		2										\$ 530					
																			15		16		28		48		48		24		8							
		Subtotal - TASK A-100																	\$2,250		\$1,600		\$2,520		\$7,680		\$5,280		\$1,680		\$400		\$ 21,410					
		TASK A-200 30% Construction Plans																																				
		1: Cover Sheet																	1		2		1						1				\$ 510					
		2: Index																	1		2								2				\$ 490					
		3: Standard Details																	1		2								2				\$ 490					
		4: Pipe Connection Details																	4		8						8				\$ 1,960							
		5: Notes																			1												\$ 100					
		6: Horizontal Control																	1		4		8				8				\$ 1,830							
		7: Striping																	2		8		2				8				\$ 1,840							
		8: Results of Potholing/Utility Review																	4		8										\$ 1,400							
		9: SWPPP																	2		8						4				\$ 1,380							
		10: Water Main Plan and Profile																	10		36						12				\$ 5,940							
		11: Paving Plan and Profile																	12		24		4				4				\$ 4,840							
																			38		103		15		0		0		49		0							
		Subtotal - TASK A-200																	\$5,700		\$10,300		\$1,350		\$0		\$0		\$3,430		\$0		\$ 20,780					
		TASK A-300 Potholing																																				
		1: Identify Potential Utility Conflicts																	2		4		2										\$ 880					
		2: Survey Pothole Locations																			2		2		4		4		4				\$ 1,740					
		3: Coordinate Pothole Activities																	1		2		2				2		2				\$ 670					
		4: Tabulate Pothole Results																			8						4		4				\$ 1,080					
																			3		16		6		4		4		10		0							
		Subtotal - TASK 300																	\$450		\$1,600		\$540		\$640		\$440		\$700		\$0		\$ 4,370					
		TASK A-400 Water Main Alignment																																				
		1: Refine Horizontal Alignment																	2		4												\$ 700					
		2: Refine Vertical Alignment																	2		8										\$ 1,100							
		3: Pipe Tie-ins																	2		8										\$ 1,100							
		4: Service Connections																	2		8										\$ 1,100							
																			8		28		0		0		0		0									
		Subtotal - TASK A-400																	\$1,200		\$2,800		\$0		\$0		\$0		\$0		\$0		\$ 4,000					

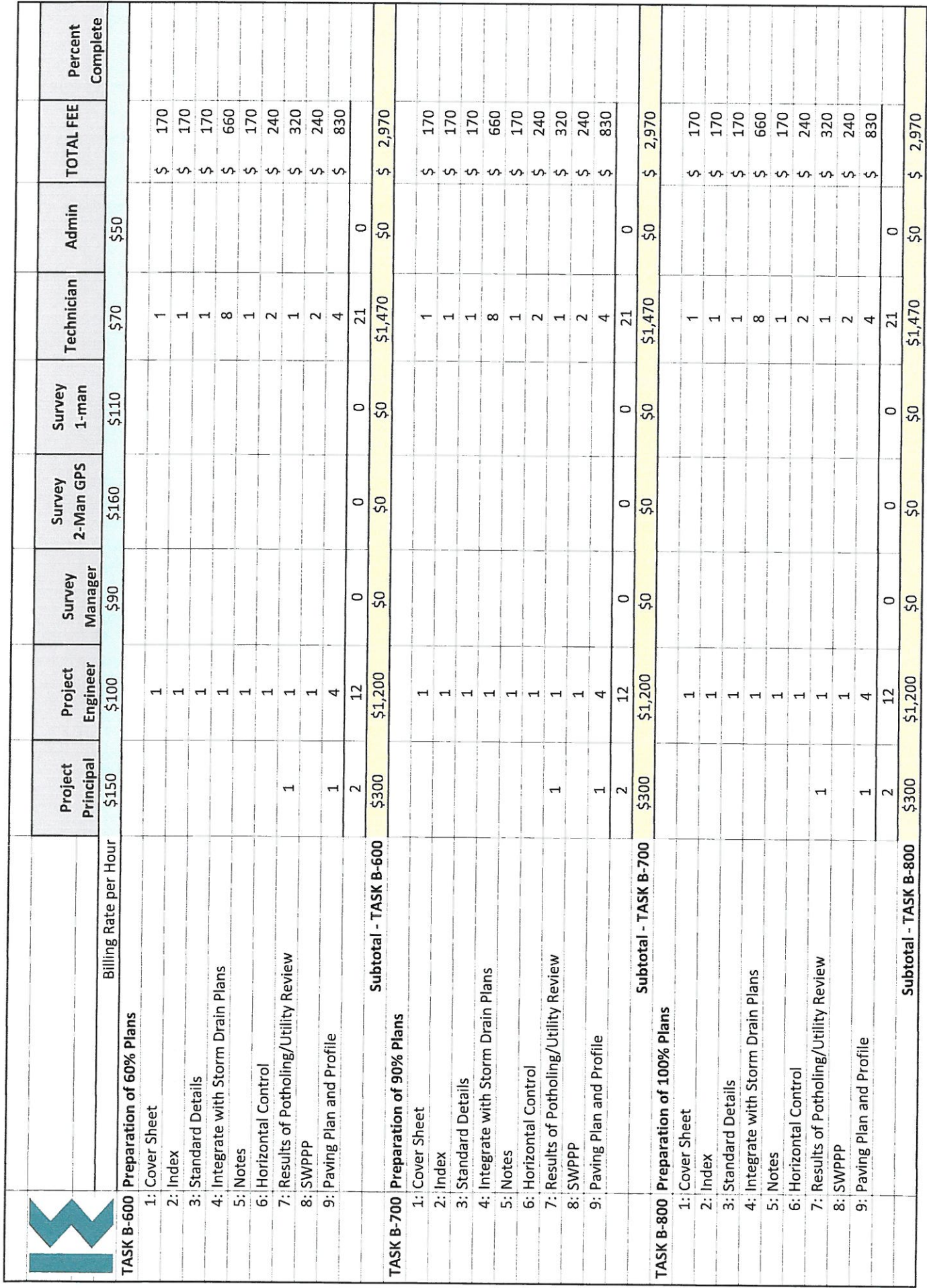


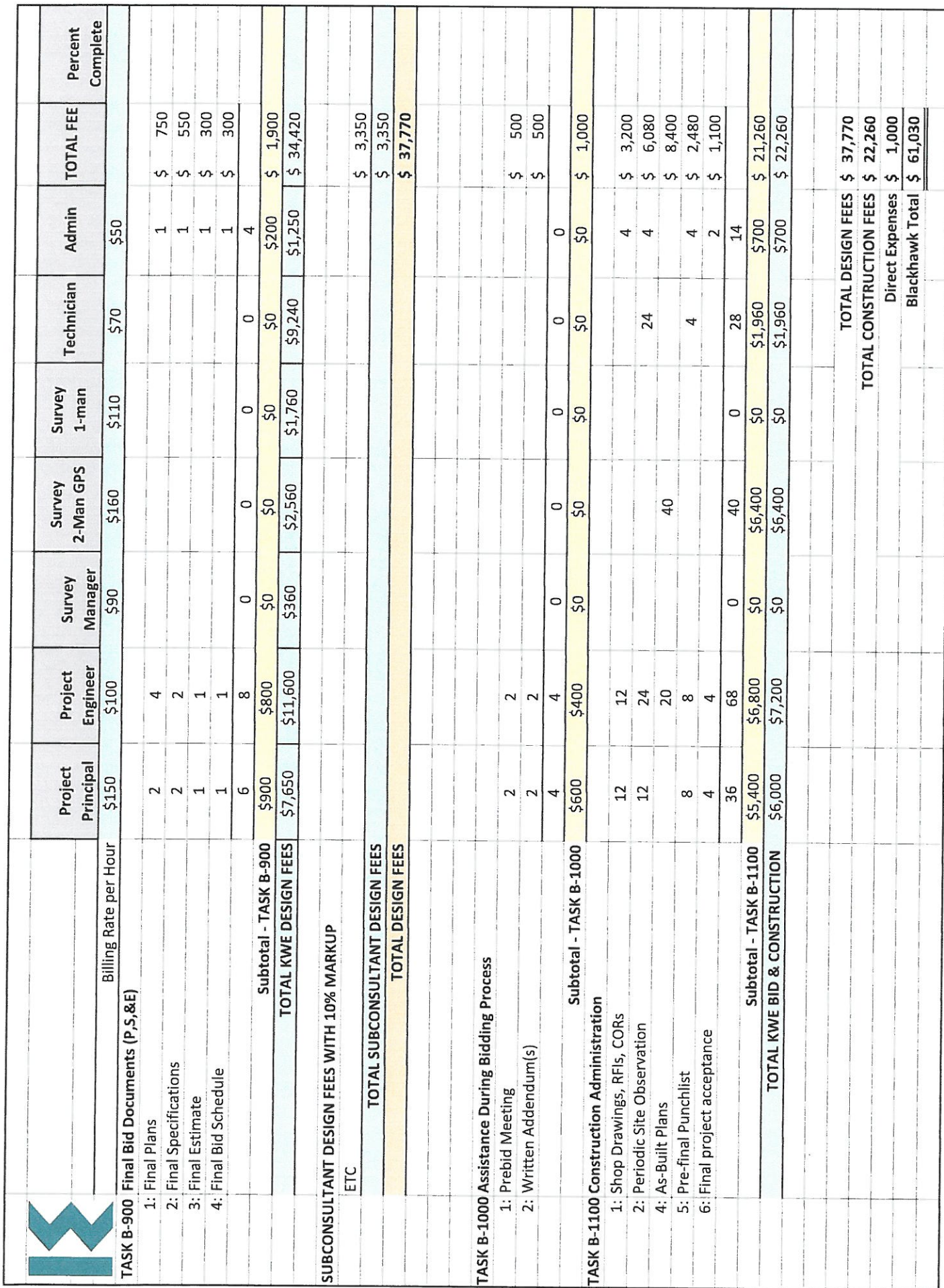


Billing Rate per Hour											Complete
TASK A-1000 Preparation of 90% Plans											
1: Cover Sheet											\$ -
2: Index	1	1								1	\$ 320
3: Standard Details	1	1								1	\$ 320
4: Pipe Connection Details	1	2								1	\$ 420
5: Notes											\$ -
6: Horizontal Control											\$ 140
7: Striping	1	2								2	\$ 490
8: Results of Potholing/Utility Review	4	4									\$ 1,000
9: SWPPP											\$ 140
10: Water Main Plan and Profile	14	32								8	\$ 5,860
11: Paving Plan and Profile	18	36								8	\$ 6,860
	40	78	0	0	0	25	0				
Subtotal - TASK A-1000											\$ 15,550
TASK A-1100 Preparation of 100% Plans											
1: Cover Sheet											\$ -
2: Index											\$ -
3: Standard Details											\$ -
4: Pipe Connection Details											\$ -
5: Notes											\$ -
6: Horizontal Control											\$ -
7: Striping											\$ -
8: Results of Potholing/Utility Review	4	4									\$ 1,000
9: SWPPP											\$ -
10: Water Main Plan and Profile	14	20								8	\$ 4,660
11: Paving Plan and Profile	18	24								8	\$ 5,660
	36	48	0	0	0	16	0				
Subtotal - TASK A-1100											\$ 11,320
TASK A-1200 Final Bid Documents (P,S,&E)											
1: Final Plans	2	4								4	\$ 900
2: Final Specifications	2	4								4	\$ 900
3: Final Estimate	1	1								1	\$ 300
4: Final Bid Schedule	1	1								1	\$ 300
5: Yavapai County (ADEQ delegated permit)	2	4								2	\$ 800
	8	14	0	0	0	0	12				
Subtotal - TASK A-1200											\$ 3,200
TOTAL KWE DESIGN FEES											\$110,440

										
		Project Principal	Project Engineer	Survey Manager	Survey 2-Man GPS	Survey 1-man	Technician	Admin	TOTAL FEE	Percent Complete
Billing Rate per Hour		\$150	\$100	\$90	\$160	\$110	\$70	\$50		
SUBCONSULTANT DESIGN FEES WITH 10% MARKUP										
ETC										
ERC (allowance for 30 potholes)										
TOTAL SUBCONSULTANT DESIGN FEES									\$ 6,700	
TOTAL DESIGN FEES									\$ 18,600	
									\$ 25,300	
									\$135,740	
TASK A-1300 Assistance During Bidding Process										
1: Prebid Meeting	4	6						3	\$ 1,350	
2: Written Addendum(s)	4	2						3	\$ 950	
	8	8	0	0	0	0	0	6		
Subtotal - TASK A-1300		\$1,200	\$800	\$0	\$0	\$0	\$0	\$300	\$ 2,300	
TASK A-1400 Construction Administration										
1: Shop Drawings, RFIs, CORs	24	24					12	4	\$ 7,040	
2: Periodic Site Observation	12	24					48	4	\$ 7,760	
3: Utility Testing-Water disinfection, hydrostatic, Bac-1	2	2					16	4	\$ 1,820	
4: As-Built Plans	4	36	2	36	8		8	2	\$ 11,680	
5: Pre-final Punchlist	4	4							\$ 1,000	
6: Final project acceptance	4	4						2	\$ 1,100	
	50	94	2	36	8	84	16			
Subtotal - TASK A-1400		\$7,500	\$9,400	\$180	\$5,760	\$880	\$5,880	\$800	\$ 30,400	
TOTAL KWE BID & CONSTRUCTION		\$8,700	\$10,200	\$180	\$5,760	\$880	\$5,880	\$1,100	\$ 32,700	

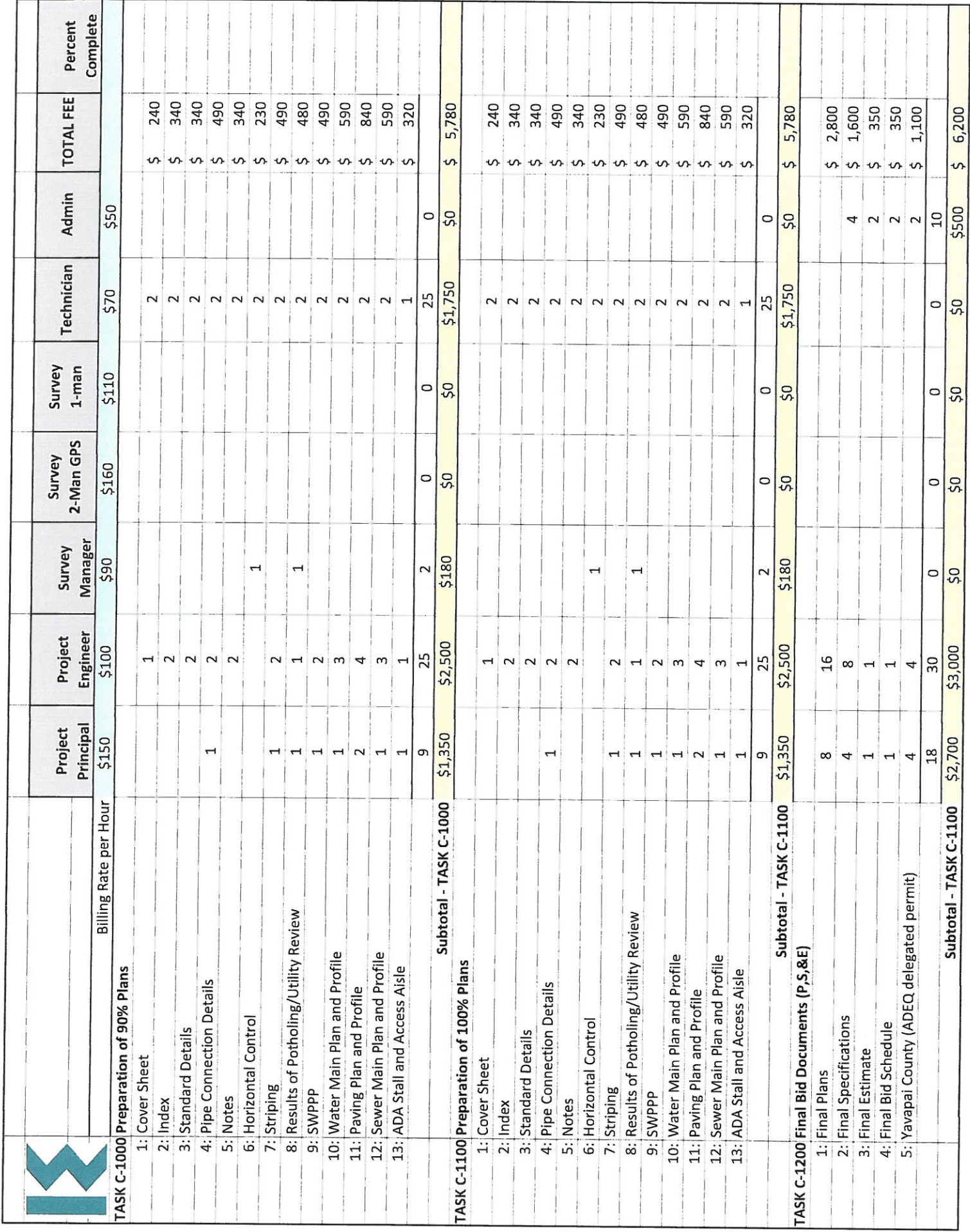
	Billing Rate per Hour									
	Project Principal	Project Engineer	Survey Manager	Survey 2-Man GPS	Survey 1-man	Technician	Admin	TOTAL FEE	Percent Complete	
	\$150	\$100	\$90	\$160	\$110	\$70	\$50			
TASK B-200	30% Construction Plans									
1: Cover Sheet		1				1		\$ 170		
2: Index		1				1		\$ 170		
3: Standard Details		1				1		\$ 170		
4: Integrate with Storm Drain Plans		1				8		\$ 660		
5: Notes		1				1		\$ 170		
6: Horizontal Control		1				2		\$ 240		
7: Results of Potholing/Utility Review	1	1				1		\$ 320		
8: SWPPP	1	1				2		\$ 240		
9: Paving Plan and Profile	1	4				4		\$ 830		
	2	12	0	0	0	21	0			
	Subtotal - TASK B-200									
	\$300	\$1,200	\$0	\$0	\$0	\$1,470	\$0	\$ 2,970		
TASK B-300	Technical Specifications/Special Provisions									
1: 90% Specifications	8	16				8	4	\$ 3,560		
2: 100% Specifications	4	8				4	2	\$ 1,780		
	12	24	0	0	0	12	6			
	Subtotal - TASK B-300									
	\$1,800	\$2,400	\$0	\$0	\$0	\$840	\$300	\$ 5,340		
TASK B-400	Engineer's Opinion of Probable Construction Costs									
1: 30% Plans	2	4				4	2	\$ 1,080		
2: 60% Plans	1	2				2	1	\$ 540		
3: 90% Plans	1	2				2	1	\$ 540		
4: 100% Plans	1	2				2	1	\$ 540		
	5	10	0	0	0	10	5			
	Subtotal - TASK B-400									
	\$750	\$1,000	\$0	\$0	\$0	\$700	\$250	\$ 2,700		
TASK B-500	Bid Schedule									
1: 90% Specifications	2	4					2	\$ 800		
2: 100% Specifications	2	4					2	\$ 800		
	4	8	0	0	0	0	4			
	Subtotal - TASK B-500									
	\$600	\$800	\$0	\$0	\$0	\$0	\$200	\$ 1,600		





										
Billing Rate per Hour										
	Project Principal	Project Engineer	Survey Manager	Survey 2-Man GPS	Survey 1-man	Technician	Admin	TOTAL FEE	Percent Complete	
	\$150	\$100	\$90	\$160	\$110	\$70	\$50			
Montezuma Street										
(±800 LF, Gurley to north of Willis)										
TASK C-100 Data Collection										
1: Reconnaissance	2	2				2		\$ 640		
2: Kick-off Meeting / Coordination Meetings	12	12					4	\$ 3,200		
3: Topographic Survey and Mapping	2	2	12	24	24	24		\$ 9,740		
4: Review Available As-Built Mapping	2	2						\$ 500		
	18	18	12	24	24	26	4			
Subtotal - TASK C-100 \$2,700 \$1,800 \$1,080 \$3,840 \$2,640 \$1,820 \$200 \$ 14,080										
TASK C-200 30% Construction Plans										
1: Cover Sheet		1				2		\$ 240		
2: Index		2				2		\$ 340		
3: Standard Details		2				2		\$ 340		
4: Pipe Connection Details	1	2				2		\$ 490		
5: Notes		2				2		\$ 340		
6: Horizontal Control			1			2		\$ 230		
7: Striping	1	2				2		\$ 490		
8: Results of Potholing/Utility Review	1	1	1			2		\$ 480		
9: SWPPP	1	2				2		\$ 490		
10: Water Main Plan and Profile	1	3				2		\$ 590		
11: Paving Plan and Profile	2	4				2		\$ 840		
12: Sewer Main Plan and Profile	1	3				2		\$ 590		
13: ADA Stall and Access Aisle	1	1				1		\$ 320		
	9	25	2	0	0	25	0			
Subtotal - TASK C-200 \$1,350 \$2,500 \$180 \$0 \$0 \$1,750 \$0 \$ 5,780										
TASK C-300 Potholing										
1: Identify Potential Utility Conflicts	2	8						\$ 1,100		
2: Survey Pothole Locations			1	2	2			\$ 630		
3: Coordinate Pothole Activities			1			8		\$ 650		
4: Tabulate Pothole Results		4						\$ 400		
	2	12	2	2	2	8	0			
Subtotal - TASK C-300 \$300 \$1,200 \$180 \$320 \$220 \$560 \$0 \$ 2,780										
TASK C-400 Water and Sewer Main Re-Alignment										
1: Refine Horizontal Alignment	2	4						\$ 700		
2: Refine Vertical Alignment	2	4						\$ 700		
3: Pipe Tie-ins	2	8						\$ 1,100		
4: Service Connections	2	8						\$ 1,100		
	8	24	0	0	0	0	0			
Subtotal - TASK C-400 \$1,200 \$2,400 \$0 \$0 \$0 \$0 \$0 \$ 3,600										

											
Billing Rate per Hour											
	Project Principal	Project Engineer	Survey Manager	Survey 2-Man GPS	Survey 1-man	Technician	Admin	TOTAL FEE	Percent Complete		
	\$150	\$100	\$90	\$160	\$110	\$70	\$50				
TASK C-500	Water and Sewer Main Abandonment										
1: "Blue-stake" alignment				4	4	4		\$ 1,360			
2: Abandonment call-outs	2	4						\$ 700			
3: Coordinated tie-over	1	2						\$ 350			
	3	6	0	4	4	4	0				
	Subtotal - TASK C-500										
	\$450	\$600	\$0	\$640	\$440	\$280	\$0	\$ 2,410			
TASK C-600	Technical Specifications/Special Provisions										
1: 90% Specifications	4	8					6	\$ 1,700			
2: 100% Specifications	4	8					2	\$ 1,500			
	8	16	0	0	0	0	8				
	Subtotal - TASK C-600										
	\$1,200	\$1,600	\$0	\$0	\$0	\$0	\$400	\$ 3,200			
TASK C-700	Engineer's Opinion of Probable Construction Costs										
1: 30% Plans	2	4					1	\$ 750			
2: 60% Plans	2	4					1	\$ 750			
3: 90% Plans	2	4					1	\$ 750			
4: 100% Plans	2	4					1	\$ 750			
	8	16	0	0	0	0	4				
	Subtotal - TASK C-700										
	\$1,200	\$1,600	\$0	\$0	\$0	\$0	\$200	\$ 3,000			
TASK C-800	Bid Schedule										
1: 90% Complete	2	3				2	1	\$ 790			
2: 100% Complete	2	3				2	1	\$ 790			
	4	6	0	0	0	4	2				
	Subtotal - TASK C-800										
	\$600	\$600	\$0	\$0	\$0	\$280	\$100	\$ 1,580			
TASK C-900	Preparation of 60% Plans										
1: Cover Sheet		1				2		\$ 240			
2: Index		2				2		\$ 340			
3: Standard Details		2				2		\$ 340			
4: Pipe Connection Details	1	2				2		\$ 490			
5: Notes		2				2		\$ 340			
6: Horizontal Control			1			2		\$ 230			
7: Striping	1	2				2		\$ 490			
8: Results of Potholing/Utility Review	1	1	1			2		\$ 480			
9: SWPPP	1	2				2		\$ 490			
10: Water Main Plan and Profile	1	3				2		\$ 590			
11: Paving Plan and Profile	2	4				2		\$ 840			
12: Sewer Main Plan and Profile	1	3				2		\$ 590			
13: ADA Stall and Access Aisle	1	1				1		\$ 320			
	9	25	2	0	0	25	0				
	Subtotal - TASK C-900										
	\$1,350	\$2,500	\$180	\$0	\$0	\$1,750	\$0	\$ 5,780			



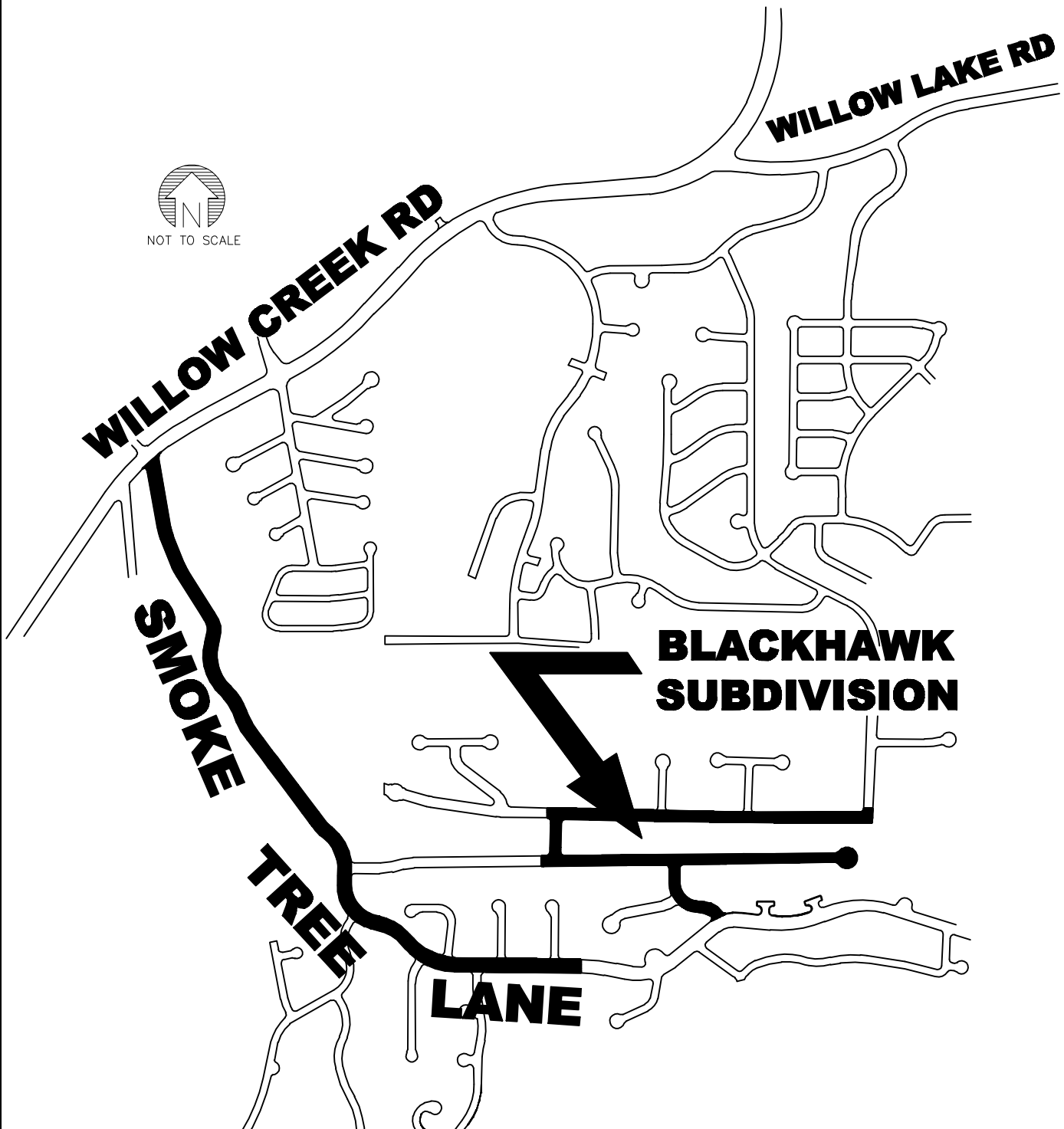
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	Project Principal		Project Engineer	Survey Manager	Survey 2-Man GPS	Survey 1-man	Technician	Admin	TOTAL FEE	Percent Complete
	Billing Rate per Hour		\$150	\$100	\$90	\$160	\$110	\$70	\$50	
SUMMARY										



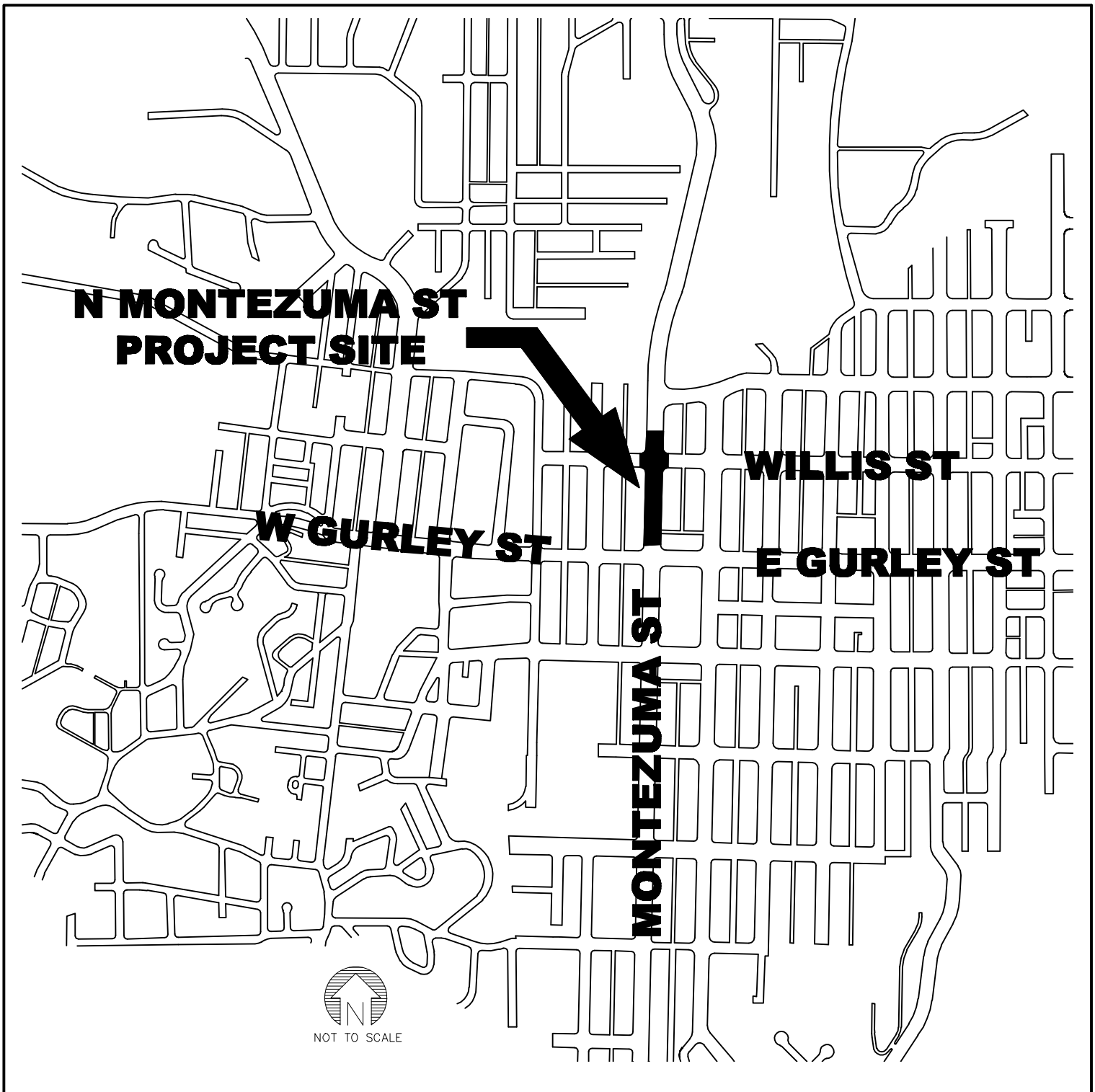
NOT TO SCALE



VICINITY MAP NO. 1

FY 2015 PAVEMENT RECONSTRUCTION PROJECT SMOKE TREE LANE / BLACKHAWK SUBDIVISION

CITY OF PRESCOTT - PUBLIC WORKS DEPARTMENT



VICINITY MAP NO. 2

FY 2015 PAVEMENT RECONSTRUCTION PROJECT N MONTEZUMA STREET

CITY OF PRESCOTT - PUBLIC WORKS DEPARTMENT

MEETING DATE/TYPES: STUDY SESSION 1-21-14
VOTING SESSION 1-28-14

DEPARTMENT: Recreation Services

AGENDA ITEM: Adoption of Resolution No. 4213-1422 authorizing an Intergovernmental Agreement with Yavapai County for Pioneer Park Recreational Facilities (City Contract No. 2014-121)

Approved By:		Date:
Director:	Baynes, Joe	01/08/2014
City Manager:	McConnell, Craig	01/15/2014

Background

Since the early 1990s, a series of agreements between the City and Yavapai County have provided for the design and construction of various recreation improvements at Pioneer Park.

- A 1992 IGA defined Phase I construction, management, and maintenance of the existing four-plex ballfield complex and associated parking.
- A 2002 IGA defined Phase II improvements that included the existing Kuebler Field and associated improvements.
- A 2007 IGA identified enhancements to be implemented with \$750,000 transferred to Yavapai County via a Real Property Transfer/Development Agreement between the City and Yavapai County. The agreement allowed for completion of the in-line hockey complex, parking and landscaping improvements, spectator shade improvements, and utilities work.

The new IGA (attached) better reflects current conditions at Pioneer Park as well as anticipates future uses and developments including expansion of Kuebler Field.

Exhibit A depicts ownership of the lands comprising Pioneer Park. Exhibit B illustrates the general maintenance and operation boundaries of respective City and County recreation facilities.

Similar to the current IGA, the new one delineates the division of responsibility for City

Agenda Item: Adoption of Resolution No. 4213-1422 authorizing an Intergovernmental Agreement with Yavapai County for Pioneer Park Recreational Facilities (City Contract No. 2014-121)

and County maintenance and operations in defined areas of the Park. The Agreement further provides for joint City-County approval for improvements or expansions to existing facilities, and construction of new facilities within the Pioneer Park Recreation Area.

The most significant changes to the Agreement include the following:

- Contemplating expansion of Kuebler Field, the County will provide up to 7.2 million gallons of water annually, which is sufficient for build-out of a new, complete multi-use field.
- Provides for planning and expansion of the area trail system for recreation and competitive event uses.
- City maintenance and operation of both the expanded sports facilities and the additional trail system.
- Extends the initial term to June 30, 2023, and provides for successive automatic extensions; either party may provide notice of intent to terminate within 90 days of expiration.

The Yavapai County Board of Supervisors will consider the new IGA following approval by the Prescott City Council.

Financial Impact

The financial impact to the City will consist of electricity costs for lighting an additional field, and miscellaneous maintenance costs for the new facilities. These costs will be identified with each new park development project that comes forth for consideration.

Attachments

1. 2014 Pioneer Park IGA
2. Exhibit A - Pioneer Park Ownership
3. Exhibit B - Park Facilities
4. Kuebler Expansion Area
5. Resolution No. 4213-1422

Recommended Action: MOVE to adopt Resolution No. 4213-1422.

**INTERGOVERNMENTAL AGREEMENT
CITY OF PRESCOTT/YAVAPAI COUNTY**

PIONEER PARK RECREATIONAL FACILITIES MANAGEMENT

City Contract No. 2014-121

THIS AGREEMENT, made and effective this ____ day of January, 2014 by and between the CITY OF PRESCOTT, an Arizona municipal corporation (hereinafter the "CITY"), and YAVAPAI COUNTY, a political subdivision of the State of Arizona (hereinafter the "COUNTY");

WHEREAS, the CITY and the COUNTY each own and control portions of Pioneer Park (hereinafter the "Park"), with those portions of the Park owned and controlled by each party being more fully described in Exhibit A to this Agreement; and

WHEREAS, each of the Parties has developed, or caused to be developed, public recreation facilities on their respective portions of the Park; and

WHEREAS, the Parties have previously entered into Recreation Management Agreements for joint and cooperative planning, development and management of recreational facilities within the Park; and

WHEREAS, the parties agree that the CITY, through its Parks and Recreation Department is best equipped to manage public recreation facilities in the Park, wherever located; and

WHEREAS, the Parties wish to execute a revised comprehensive Recreation Management Agreement which reflects the full discharge of certain of the Parties' obligations as set forth in prior Management Agreements and to reflect recent proposals which would affect the rights and responsibilities of the Parties with regard to management of recreational facilities in the Park and activities related thereto;

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

- I. **Assumption of Maintenance and Management Responsibilities.** Except as expressly provided herein the CITY shall, as of the effective date of this Agreement, assume responsibility for maintenance and management within the Pioneer Park County Recreational Area as more fully described in Exhibit B to this Agreement.
2. **Improvements to Managed Facilities.** In the event that either Party wishes to make improvements to a recreational facility within the Pioneer Park County Recreational Area (hereinafter a "Managed Facility"), the Party proposing the improvement shall prepare an Improvement Plan for review by the other Party. It is understood and agreed that neither Party may undertake any improvements to a Managed Facility without the prior written consent of the other Party. The maintenance and management responsibilities of improvements shall be collectively agreed to by the Parties before such improvements are undertaken,
3. **Additional Managed Facilities.** The COUNTY may, from time to time, construct or cause to be constructed, additional recreational facilities in its portion of the Pioneer Park County Recreational Area. The Parties may, at any time, by written amendment to this Agreement, agree that such

facilities shall be considered to be Managed Facilities for purposes of this Agreement. Upon such amendment, the CITY shall be deemed to have agreed to manage the facility subject to the terms and conditions of this Agreement and upon such additional terms and conditions as may be included in the approved amendment. In the event that the CITY declines to approve the proposed addition of a facility to the list of Managed Facilities, the COUNTY may construct and manage the facility at its sole expense.

4. Fees, Charges and Access. The CITY may charge reasonable charges and fees for the public's use of the Managed Facilities. It is understood and agreed that such charges and fees shall be the same for both County and City residents. Except as expressly provided otherwise herein, the CITY shall allow County and City residents equal, non-discriminatory access to the Managed Facilities.
5. Utilities Costs for Recreational Facilities. Except as expressly provided herein, the CITY shall be responsible for the cost of all utilities required for the operation of Managed Facilities including, but not limited to water, sewer and electricity. The County shall be responsible for the cost of water for irrigation and ancillary uses at Kuebler Field subject to the limitations set forth herein. As of the effective date of this Agreement, the COUNTY's payments for water pursuant to this Section shall be based upon the most favorable rate payable by commercial customers whose water is delivered through an 8-inch water meter. On or before the effective date of this Agreement, the CITY shall install, at its sole expense, an 8-inch meter at the Kuebler Field Facility. Water payments by the COUNTY shall initially be payable monthly based on the billed amount for monthly water usage. As of the month when irrigation at a second Kuebler Field ballfield, commences the COUNTY's obligation for water costs shall, thereafter, be limited to 7,200,000 gallons for each 12-month period following commencement of irrigation. The COUNTY shall continue to make payments based on monthly usage until usage for the 12-month period exceeds the specified gallon limit at which time no further payment shall be due for the remainder of the 12-month period. The COUNTY shall adjust its payment as required for a pro-rata payment reduction for the month in which the gallon limit is exceeded.
6. Park Patrol. The COUNTY shall be responsible for the cost of patrol services as provided by the Yavapai County Sheriffs Jeep Posse in that portion of the Pioneer Park County Recreational Area designated as the Patrol Area on Exhibit B. It is understood and agreed that at any time, should the COUNTY, in its sole discretion, determine that it will longer contract with the Jeep Posse for patrol services, it shall so advise the CITY that the service shall be discontinued and, thereafter, shall have no further obligation pursuant to this Section 7.
7. Indemnification and Insurance. Each party as Indemnitor as agrees to indemnify, defend, and hold harmless the other party as Indemnitee from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") due to the negligent acts or omissions arising from the Indemnitor's performance pursuant to this Agreement. Each Party further agrees to obtain and maintain liability insurance coverage with minimum annual policy limits of \$3,000,000 naming the other party as an additional insured and shall, on or before the effective date of this Agreement provide the other party with a certificate of insurance confirming the existence of the required coverage and the addition of the other Party as an additional insured.

8. **Severability.** The invalidity of any provision of this Agreement as determined by a Court of competent jurisdiction, shall in no way effect the validity of any other provision hereof, so long as the original intent of the parties is not defeated thereby.
9. **Applicable Law.** The terms and conditions of this agreement shall be construed and governed in accordance with the laws of the State of Arizona.
10. **Entire Agreement.** This Intergovernmental Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and it may only be amended, modified or waived by a written instrument signed by the authorized agents of the parties hereto.
- II. **Notices.** Notices relating to this Intergovernmental Agreement shall be deemed to have been duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

Prescott:

City of Prescott
City Manager
P.O. Box 2059
Prescott, AZ 86302

Yavapai County:

Yavapai County
County Administrator
1015 Fair Street, Room 310
Prescott, AZ 86305

or to such other addresses as the Parties may specify in writing

12. **Conflict of Interest.** Either Party to this Agreement may cancel this Agreement pursuant to ARS §38-511, the pertinent provisions of which are incorporated herein by reference.
13. **Term of Agreement.** The initial term of this Revised Agreement shall commence on January __, 2014 and shall terminate on June 30, 2023 unless otherwise terminated as provided herein. Thereafter, it shall be deemed renewed for successive 10-year terms unless one Party provides written notice of intent not to renew to the other party no less than 90 days prior to expiration of the then-current term.
14. **Termination.**
 - a. *Termination for Convenience.* This Agreement may be terminated at any time by mutual agreement of the Parties.
 - b. *Termination for Breach.* In the event of a breach of this Agreement by either Party, the Party claiming that a breach has occurred shall send written notice thereof to the other party specifying the factual basis for the claimed breach and the action deemed necessary to cure the Breach. In the event that the Breach is not cured, or meaningful corrective action initiated, within 21 days of the date of receipt of the notice of breach, the Party claiming breach may terminate this Agreement without further notice. This provision shall not be deemed to foreclose any other legal remedies available to the Parties arising from the circumstance giving rise to a claim of breach.

15. **Prior Agreements Superseded.** Except as expressly provided herein this Agreement shall supersede all prior agreements between the parties with respect to development, operation, maintenance or management of recreational facilities in Pioneer Park.

16. **Bureau of Land Management.** The Parties understand and agree that since this Agreement may affect uses on property occupied pursuant to agreements with the United States Bureau of Land Management, that, upon execution, it will submitted to the Bureau of Land Management for review.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials with an effective date as first above written.

APPROVALS

COUNTY: Yavapai County

By:

Chairman, Board of Supervisors Date

ATTEST:

Clerk, Board of Supervisors Date

CITY: City of Prescott

By:

Mayor Date

ATTEST:

Clerk, City of Prescott Date

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.

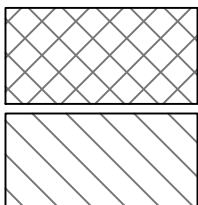
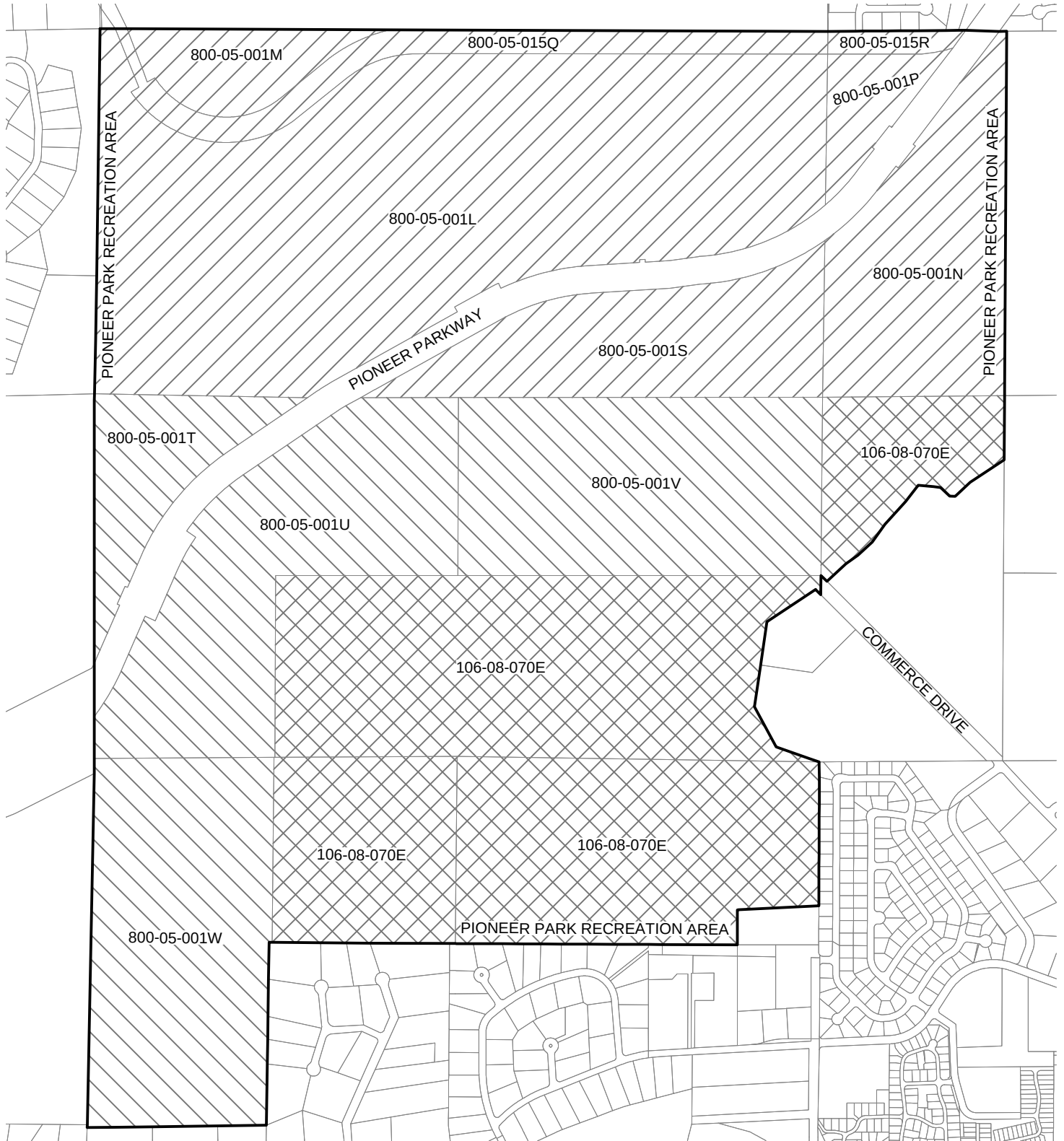
Jon M. Paladini
City Attorney

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned Deputy County Attorney, 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 County of Yavapai.

Jack Fields
Deputy County Attorney

EXHIBIT 'A'

PIONEER PARK OWNERSHIP



OWNED BY COUNTY

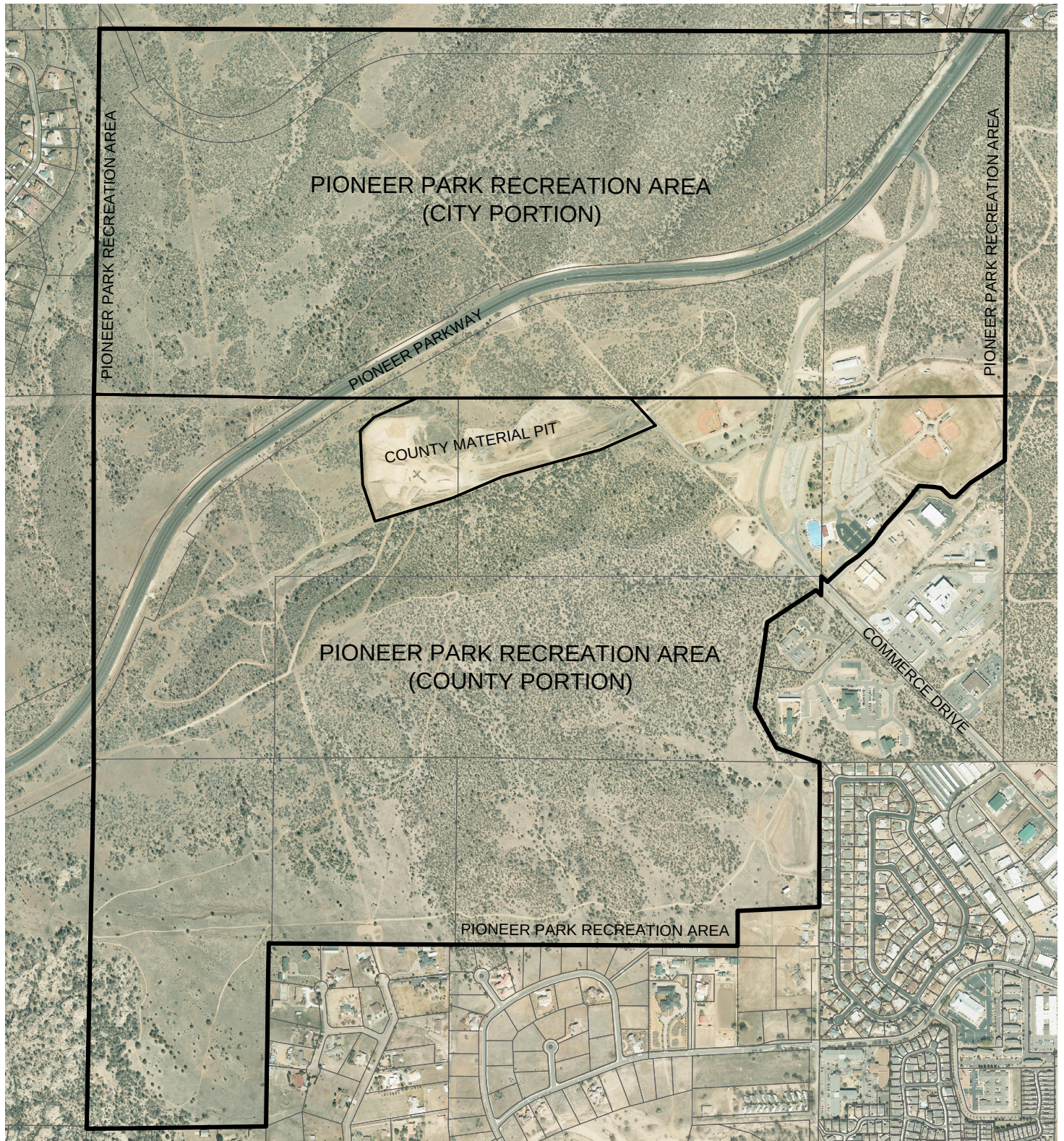
LEASED FROM BLM
BY COUNTY



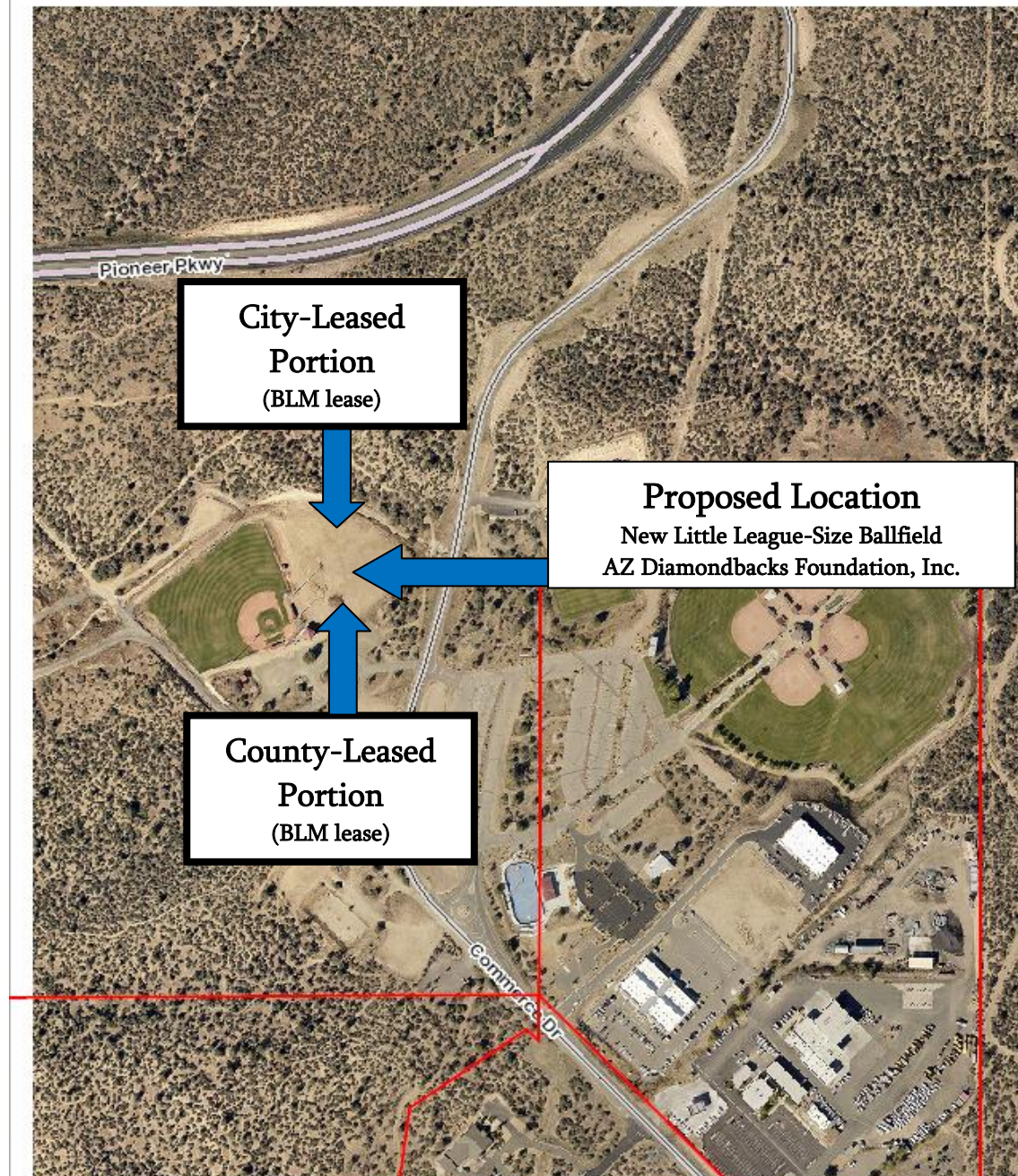
LEASED FROM BLM
BY CITY

EXHIBIT 'B'

PIONEER PARK RECREATIONAL FACILITIES



Kuebler Expansion Area



RESOLUTION NO. 4213-1422_____

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, TO APPROVE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PRESCOTT AND YAVAPAI COUNTY FOR RECREATION MANAGEMENT OF PIONEER PARK.

RECITALS:

WHEREAS, the City of Prescott, a municipal corporation of the State of Arizona ("Prescott") has the authority pursuant to its Charter, A.R.S. §9-240, §11-951, and §11-952 to enter into intergovernmental agreements ("IGA") with Yavapai County, a political subdivision of the State of Arizona, for the joint exercise of any powers common to public entities; and

WHEREAS, the above-referenced public entities each own and control certain portions of Pioneer Park; and,

WHEREAS, the parties have developed public recreation facilities on their respective portions of Pioneer Park; and,

WHEREAS, the parties have previously entered into Recreation Management Agreements for Pioneer Park; and,

WHEREAS, the parties desire to assist each other through a new IGA for the maintenance and management of Pioneer Park; and,

WHEREAS, it is in the best interests of the health, safety and welfare of the City of Prescott to enter into an IGA with Yavapai County for Recreation Management of Pioneer Park.

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby authorizes entering into an IGA with Yavapai County, for the Recreation Management of Pioneer Park.

Section 2. THAT the Mayor and Staff are hereby authorized to execute the IGA between the City of Prescott and Yavapai County for the Recreation Management of Pioneer Park 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 _____, 2014.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

DANA R. DELONG
City Clerk

JON M. PALADINI
City Attorney

MEETING DATE/TYPES: STUDY SESSION 1-21-14
VOTING SESSION 1-28-14

DEPARTMENT: Recreation Services

AGENDA ITEM: Adoption of Resolution No. 4214-1423 authorizing a Memorandum of Understanding among the Arizona Diamondbacks Foundation, Inc., Pimmex General Contracting, Nelson Architects, Yavapai County, and the City of Prescott (City Contract No. 2014-124)

Approved By:

Date:

Director:	Baynes, Joe	01/08/2014
City Manager:	McConnell, Craig	01/15/2014

Item Summary

The Recreation Services Department is seeking approval to enter into a Memorandum of Understanding providing for design and construction of a Little League-sized baseball field at Kuebler Field, at no cost to the City, through services provided by the Arizona Diamondbacks Foundation, Inc., and their architectural and construction partners.

Background

The existing Kuebler Multi-Use Field was completed in 2005 via an IGA between the City and Yavapai County; the improvements included earthwork for future expansion. In 2008 the infield portion of Kuebler Field was modified to accommodate baseball use, and discussions began about adding a second diamond and multi-use field. In 2009-10 design work was completed for build-out of the Kuebler complex, and Parks Impact Fees were requested for the project through the five-year Capital Improvement Plan. The most recent discussion by City Council occurred on October 2, 2012, with the project being placed on hold while seeking a public-private partnership for the expansion.

Since 2000 the Arizona Diamondbacks Foundation, Inc., (ADF), has built or refurbished over 32 baseball fields under their "Diamonds Back" Youth Field Building Program. The fields are built through the aid of corporate sponsor APS, local businesses, funds from the Arizona Diamondbacks Foundation, and monetary donations from players.

Fields are dedicated with naming rights as agreed upon by ADF and the beneficiary city; and generally feature new lights, an electronic scoreboard, new fencing and backstops, new irrigation, and new dirt work and/or grass. The sites of the fields are determined through a grant process.

During summer 2013, the ADF informed Prescott Little League that Prescott had been

Agenda Item: Adoption of Resolution No. 4214-1423 authorizing a Memorandum of Understanding among the Arizona Diamondbacks Foundation, Inc., Pimmex General Contracting, Nelson Architects, Yavapai County, and the City of Prescott (City Contract No. 2014-124)

selected as the preferred location to construct a baseball field as part of their grant program. With plans already available for the baseball field portion of the larger multi-use field expansion contemplated at Pioneer Park, Kuebler Field was identified as the logical site for construction, and after a tour of the location, ADF representatives agreed.

The Memorandum of Understanding sets forth the structure under which the field is to be completed and operated: ADF will provide the final design, construction, management, and funding; plans will require approval by the City and County before construction begins. Pimmex General Contracting and Nelson Architects have agreed to donate their services to ADF, with a goal of completion by June 2014.

The project includes grading and installation of irrigation, sod, ballfield lighting, a scoreboard, fencing, bleachers, and dugouts. The completed project, when accepted by the City, will be donated to and become property of the City, which will maintain it to standards specified within the MOU. These are consistent with the City's overall ballfield maintenance program.

Because the City-County boundary for leased Bureau of Land Management land bisects the project location, this MOU will also require the additional approval of Yavapai County, per the IGA for Pioneer Park Recreation Facilities.

The new Little League will require about one-half of the Kuebler expansion area. Further future expansion will accommodate one (1) regulation size soccer field and one (1) junior size soccer field that can also be used for youth football, as well as additional parking facilities.

Financial Impact

Financial impact to the City for this specific project will consist of electricity costs for lighting the new field, and additional labor and materials costs for turf, irrigation, and other items. User fees will be used to offset these operations and maintenance costs estimated to be \$4,300 annually.

Attachments

1. Memorandum of Understanding
2. Resolution No 4214-1423

Recommended Action: MOVE to adopt Resolution No. 4214-1423.

MEMORANDUM OF UNDERSTANDING
Kuebler Field

This Memorandum of Understanding ("MOU") is entered into as of this ____ day of January, 2014, by and between the Arizona Diamondbacks Foundation, Inc. ("ADF"); Pimmex General Contracting ("Contractor"), Nelsen Architects ("Architect") the City of Prescott (the "City") and Yavapai County (the "County"). This MOU memorializes the intent and agreement of the parties with respect to the construction of a "Little League" sized youth baseball field at Kuebler Field, located at 1185 Commerce Drive, Prescott, Arizona (the "Project").

RECITALS

A. ADF is a charitable organization that facilitates the donation of construction funds for field building and/or field refurbishing projects similar to the Project and arranges for Project construction. ADF's role in the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor and architect. ADF has no role in design or construction of the Project.

B. The Contractor and Architect have agreed to provide charitable in-kind donation of services, in the manner described herein.

C. The City is the Lessee of a portion recreational land on which the Project will be constructed under that certain United States Department of Interior, Bureau of Land Management Recreation and Public Purposes Lease (1982-001) and amendments thereto (the "City Parcel" as shown on Exhibit D to this MOU).

D. The County is the Lessee of a portion of the recreational land on which the Project will be constructed under that Certain United States Department of Interior, Bureau of Land Management Recreation and Public Purposes Lease #AZA17365 (the "County Parcel") as shown on Exhibit D to this MOU.

E. Pursuant to the County's acknowledgment and grant of rights in Section 2.E of this Agreement, the City will be the donee of the Project and will assume all maintenance, control and supervision of the Project upon completion.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. SCOPE OF THE PROJECT

The intent of the parties regarding the Project is for the design and construction of a "Little League" sized baseball field at Kuebler Field (the "Park"), utilizing charitable donations. ADF has agreed to arrange for and provide construction funds to the Contractor for the purpose of building the Project. The Architect has agreed to donate time for the sole purpose of project design. The Contractor has agreed to donate profit and overhead for purposes of building the Project as the general contractor. After the Project has been accepted by the City, the improvements constructed pursuant to the Project will be donated to the City as Project Owner.

ADF's role on the Project is strictly limited to facilitating donation of project monies and arranging for a general contractor and architect.

The scope of the Project shall include, but is not limited to: general grading, installation of irrigation system and new sod, installing a new scoreboard, installation of new lights, installation of field fencing and dugouts and installing new stabilizer. Additional scope items may be included at the discretion of ADF. The parties shall use reasonable efforts to complete the Project by no later than June, 2014.

2. ROLES OF THE PARTIES.

A. THE CONTRACTOR.

The Contractor is an independent contractor that will comply with all applicable laws, statutes, ordinances, rules and/or regulations governing its work on the Project. The Contractor shall be solely responsible for all means and methods of project work, construction and any and all similar tasks on the Project. The Contractor represents and warrants that it is qualified to perform the undertaking that is the subject of this Agreement. The Contractor shall retain exclusive supervision and control of the Project until final completion. The Contractor acknowledges that the Park will remain in use during construction of the Project, and Contractor agrees to protect the work as required to protect the safety of persons using the Park.

B. THE ARCHITECT

The Architect is an independent contractor that will comply with all applicable laws, statutes, ordinances, rules and/or regulations governing its work. The Architect shall be responsible solely for Project design, subject to the terms, provisions and conditions precedent in this Agreement. The Architect has no role in construction, and the Architect's scope of services and work will conclude after the Architect performs and completes its design tasks.

C. THE ARIZONA DIAMONDBACKS FOUNDATION.

ADF will facilitate the donation of construction funds for the Project and will arrange for Project construction. ADF's role on the Project is limited strictly to facilitating donation of project monies and arranging for the general contractor and architect. ADF has no role in design or construction of the Project. Contractor understands and agrees that ADF will make checks jointly payable to the Contractor and each subcontractor, and will make a final payment of funds due solely to the Contractor upon substantial completion of the Project.

D. THE CITY.

The City is the Lessee of the City Parcel and will be the donee of the improvements constructed pursuant to the Project upon completion ("Project Owner"). When the Project is substantially complete and accepted, the City will assume ownership, maintenance (in accordance with the Maintenance Guidelines set forth in Exhibit A hereto), control and

supervision of the Project and shall be responsible for maintaining and providing appropriate liability insurance or coverage through its self-insurance retention program.

E. THE COUNTY.

The County is the Lessee of the County Parcel and hereby grants permission (1) to the Contractor, its employees, agents and contractors to enter upon the County Parcel for purposes of ingress and egress and construction activities related to the construction of the Project as approved by the City and the County pursuant to Section 3(B) of this MOU, and (2) to the City to operate and maintain that portion of Project located on the County Parcel subject to the terms and conditions of this MOU and existing Intergovernmental Agreements between the City and the County.

3. CONSTRUCTION ACTIVITIES AND RESPONSIBILITIES.

A. THE CONTRACTOR.

Upon execution and approval of this MOU, the Contractor will make the necessary arrangements to begin scheduling Project construction. Only after all requirements, conditions precedent and obligations under this MOU are met will Project construction activities begin. Construction is to commence upon the full execution of this MOU, and the parties shall use reasonable efforts to complete the Project on or before June, 2014.

The City, on its own behalf and on behalf of the County, hereby grants permission to the Contractor, its employees, agents and contractors to enter upon a portion of the Park for purposes of ingress and egress and construction activities related to the construction of the Project for the benefit of the City. The Contractor agrees to keep the Park and all adjoining property free and clear of trash, debris and unauthorized materials and to restore the surface of the Park to its original state, to the satisfaction of the City, prior to Project completion. All tools, equipment, supplies and other personal property brought to the Park by the Contractor shall remain the property of the Contractor and shall be removed by the Contractor at its sole expense upon completion of the Project.

The Contractor shall provide bonds covering the faithful performance of this MOU and the payment of obligations arising hereunder. The Contractor shall file with the City a performance bond and a payment bond on state-approved forms to cover the full amount of the anticipated cost of the work to be performed, as agreed upon by the Contractor and ADF. The bonds shall be provided solely by one or more surety companies holding a Certificate of Authority to transact business in the State of Arizona, issued by the Director of the Department of Insurance pursuant to A.R.S. Section 20, Chapter 2, Article 1. The Contractor shall deliver the required bonds to the City upon execution of this MOU.

B. THE ARCHITECT.

The Architect will commence design activities only after all requirements, conditions precedent, and obligations under this Agreement are met. The Architect shall provide

full design and construction document services to accomplish all items outlined in the ADF “Diamonds Back” Field Building Program, attached hereto as Exhibit A. The Architect shall prepare all other details and documentation necessary to make proper connection to the existing and future Park elements. The City and the County, pursuant to an existing Intergovernmental Agreement, shall review and approve all plans proposed by the Architect related to this Project, such approval not to be unreasonably withheld, delayed or conditioned.

C. THE CITY.

The City shall obtain all required zoning and use permits and approvals needed for the Project, including lighting if required by Arizona law.

4. NAMING OF PROJECT.

ADF shall propose a name for the Project, including recognition of all parties donating money, labor and/or materials to the Project, and shall install appropriate dedication/naming signs. The proposed name of the Project will be subject to the approval of the City and the County, which approval shall not be unreasonably withheld, conditioned or delayed. Any signs shall reasonably conform to applicable regulations, ordinances and laws. In the event that either the City or ADF determines that the name of the Project is not in the best interest of the City or ADF and/or any of its affiliates, subsidiaries, employees, representatives, sponsors, donors, charities and/or other similar entities or persons, such party may request a name change at the requesting party’s expense. Such request shall be made and kept privileged and confidential to the extent permitted by Arizona law. A name change may be implemented only upon the express written consent of the City, the County, and ADF, which consent may not be unreasonably withheld, delayed or conditioned.

5. USE, OPERATION AND MAINTENANCE OF THE PROJECT.

The City shall take appropriate measures to ensure that the Project is appropriately, adequately and permanently maintained for the benefit of persons served by the City and the County. The City and the County covenant and acknowledge that the primary purpose of the Project is youth baseball. The City further warrants that it shall take appropriate measures to supervise, protect and maintain the Project for such purpose.

Specifically, the City expressly covenants and agrees to repair, maintain and operate the Project in strict conformance with the Maintenance Guidelines attached as Exhibit B. ADF shall have reasonable access to the Project for purposes of determining the City’s compliance with its repair and maintenance obligations. If requested by ADF, the City shall take such steps as are reasonably necessary to ensure the Project facilities are maintained adequately. This provision does not alter the City’s independent obligations to maintain, repair and operate the Project and keep it in a habitable, safe and substantially good condition.

6. INSURANCE REQUIREMENTS.

The Contractor and the Architect and their respective subcontractors shall procure and maintain until all of their obligations have been discharged, including such time that any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor or Architect, or their respective agents, representatives, employees or subcontractors.

The insurance requirements herein (which are attached hereto as Exhibit C and incorporated herein by this reference) are minimum requirements for this MOU and in no way limit the indemnity covenants contained in this MOU. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor or the Architect from liabilities that might arise out of the performance of the work under this MOU by the Contractor or the Architect or their respective agents, representatives, employees, or subcontractors. The Contractor and the Architect are free to purchase such additional insurance as may be determined necessary.

The policy (or certificate of insurance evidencing the required insurance) shall be endorsed to include the following additional insured language: "The City of Prescott, Yavapai County and the Arizona Diamondbacks Foundation shall be named as additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor (or Architect, as appropriate), including completed operations". The policy shall contain a waiver of subrogation against the City of Prescott and Yavapai County. The Contractor and Architect are responsible for payment of all policy deductibles. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

Each insurance policy required by the insurance provisions of this MOU shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor and the Architect from potential insurer insolvency.

The Contractor and the Architect shall each furnish the City and the County with certificates of insurance (ACORD form or equivalent approved by the City and the County) for all policies required by this MOU. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the City and the County before work commences. Each insurance policy required by this MOU must be in effect at or prior to commencement of work under this MOU and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this MOU or to provide evidence of renewal is a material breach of contract.

Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor; however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

7. CONTRACTOR AND ARCHITECT INDEMNITY OBLIGATIONS.

The Contractor and the Architect (hereinafter referred to as Indemnitors) agree to indemnify and save harmless the City, the County and ADF, their respective officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the project, their officers, agents and employees (hereinafter referred to as Indemnitees) from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the performance of work done in fulfillment of the terms of this MOU or on account of any negligent or improper act, claim or amount arising or recovered under workers' compensation law or arising out of the failure of the Indemnitors to conform to applicable statutes, ordinances, regulation, law or court decree. It is agreed that the Indemnitors will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this Project, the Indemnitors agree to waive all rights of subrogation against the City, the County and ADF, their respective officers, officials, agents and employees for losses arising from the work performed by the Contractor or the Architect (as applicable) for the City, the County and ADF.

8. CITY INDEMNITY OBLIGATIONS.

To the fullest extent permitted by law, the City shall indemnify and hold harmless the County, ADF, and any and all of their respective affiliates, subcontractors, subsidiaries, employees, agents, representatives, sponsors, donors, charities, and/or any other similar entities and/or persons, from any and all claims, damages, causes of action, losses, expenses, demands, judgments or liabilities, including costs of defense and attorney's fees, arising directly or indirectly from any alleged safety violations or failure to comply with applicable safety laws, rules, regulations and/or ordinances regarding maintenance of the Project and/or the City's role as the Project Owner. To the fullest extent permitted by law, the City shall indemnify and hold harmless the County, ADF and any and all of their respective affiliates, subsidiaries, employees, agents, representatives, sponsors, donors, charities, and/or any other similar entities and/or persons, from any and all claims, damages, causes of action, losses, expenses, demands, judgments or liabilities, including costs of defense and attorney's fees, directly or indirectly related to (1) the Project, not related to design and/or construction activities, (2) the City's role as Project Owner, (3) use of the Project and/or (4) uninsured losses. These indemnification obligations shall apply to the extent that the claim, damage, cause of action, loss, demand, judgment and/or liability is caused in whole or in part by any negligent or improper act or omission of the City or any of the City's agents, employees, subcontractors, suppliers and/or materialmen.

9. TERMINATION.

This MOU may be terminated by ADF, at its option, if the City or the County fail to fulfill its obligations hereunder. In the event of any such termination, at ADF's request (and at the City's expense), the City shall remove all signage that affiliates the ADF and/or the Arizona Diamondbacks' Major League Baseball Team or its officers, employees, consultants or player(s) with the Project (as well as any other signage installed pursuant to Section 4 hereof, if requested by ADF).

10. INTEGRATION CLAUSE.

The parties to this MOU understand that each party entered into this MOU in reliance on the agreement of each of the other parties to perform its obligations hereunder. This MOU (including the Recitals set forth above and any and all Exhibits hereto, all of which are incorporated herein by this reference) is the final, complete and exclusive statement and expression of the agreement of the parties hereto with relation to the subject matter of this MOU, it being understood that there are no oral representations, understandings or agreements covering the same subject matter as this MOU. This MOU supersedes, and cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind. This MOU is binding and enforceable with respect to the subject matter hereof, and may be modified or amended only by a writing signed by all parties. This MOU shall be governed by and construed in accordance with Arizona law, and shall be subject to the provisions of Arizona Revised Statute § 38-511.

11. AUTHORITY.

Each individual executing this MOU on behalf of, or as a representative for, a person, partnership, corporation or other entity represents that he/she is duly authorized to execute and deliver this MOU on behalf of such person or entity and that this MOU is binding upon such person or entity in accordance with its terms.

12. COUNTERPARTS; ELECTRONIC SIGNATURES.

This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same Agreement. Facsimile and electronic copies of the fully executed MOU shall be deemed an original.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

**ARIZONA DIAMONDBACKS
FOUNDATION, INC.**

By _____

Title _____

Date _____

PIMMEX GENERAL CONTRACTING

By _____

Title _____

NELSEN ARCHITECTS

By _____

Title _____

YAVAPAI COUNTY:

By _____

Rowle Simmons
Chairman, Board of Supervisors

ATTEST:

By _____

Ana Wayman Trujillo
Clerk of the Board

APPROVED AS TO FORM

By: _____

Jack Fields
Deputy County Attorney

CITY OF PRESCOTT

By _____

MARLIN D. KUYKENDALL

Title Mayor

Date _____

ATTEST:

By _____

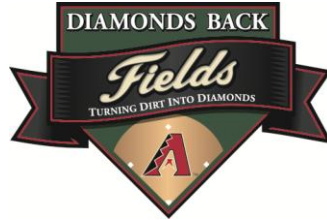
Dana R. DeLong
City Clerk

APPROVED AS TO FORM:

By _____

Jon M. Paladini
City Attorney

EXHIBIT A



ARIZONA DIAMONDBACK FOUNDATION **“DIAMONDS BACK” FIELD PROGRAM**

Scope of work:

- Field Layout: All Field layout including; grass areas, lighting, fencing, etc.
- Ball Field Fencing:
 - Chain link fencing, backstop and field access gate.
 - 6ft tall chain link fencing at dugouts (dugouts 30' x 6')
 - Dugouts to have a roof structure covering
 - Bullpens
 - Foul ball poles
 - Note: All fencing to be standard 9-gage chain link fencing with 2" mesh. Top rails to be 1 5/8" and terminal posts to be 2 3/8".
- Field Accessories:
 - Dugout benches (2ea)
 - Bleachers (2 ea – 21' 3 row Type) (see attached detail)
 - Bases and Anchors (3ea.)
 - Youth Pitchers Plate (3ea if Bullpens are included)
 - Home Plate (3ea if Bullpens are included)
 - Fence Guard – Bright yellow decorative fence guard on outfield fencing.
 - Wind screening
 - Fiberglas Kickboard on Backstop fencing
- Scoreboard
 - One double-sided illuminated scoreboard
- Landscaping
 - Complete ball field sprinkler and irrigation system.
 - Sod – infield and outfield (approximately 40,000sf)
 - Ball field Material
 - Warning Track Material – approximately 5,750sf (2" depth)
 - Home plate and Pitchers mound clay – approximately 6 tons of material.
 - Infield Mix – approximately 50-60 tons.
- Lighting
 - 4 ea light standards with spill and glare components.
- Finish Grade
 - Finish grade to be plus or minus 1/10th.
 - Top 6" of grade to be free of debris/rock (less than 1/2" size is acceptable.)

- Electrical
 - Conduit, wire and junction box to future scoreboard location.
 - Conduit and Junction boxes to all light locations.
- Irrigation
 - Sprinkler irrigation system will require connection to 2ea. – 2 ½” stubs as provided.
 - Ball field irrigation system will require 10 to 12 stations.
 - Note: irrigation materials may or may not be similar to that of the existing facility.

EXHIBIT B

Maintenance Guidelines **Kuebler Field**

The Arizona Diamondbacks Foundation (“ADF”) is proud to provide these fields for youth baseball. To ensure that the facility is continually and permanently maintained in a first class condition, ADF has outlined these maintenance guidelines for owners/users of this facility. As reflected on the guidelines, the City of Prescott (“City”) agrees to the following maintenance obligations subject to fiscal and legal authority of its governing board.

Grass:

The City will mow and keep grass trimmed at fence lines, and other boundaries, on a regular basis.

The City will provide herbicide control for weeds as needed.

The City will water grass at regular intervals, outside of dormant period, to maintain healthy and green grass.

The City will treat grass with such additives as gypsum, fertilizer, and aerate as needed.

The City will replace or repair malfunctioned or dangerous irrigation equipment.

The City will control and remove overgrowth of grass on infield dirt, home plate area, pitchers mound and warning track prior to start of each baseball season.

The City will regularly roll, rake, drag and tamp infield, mound and home plate area during each baseball season, to prevent erosion and promote safety and playability.

The City will inspect and repair or replace home plates, pitching rubbers, bases and base anchor supports as needed, on an on-going basis, particularly before each baseball season.

The City will maintain the foul pole, including painting the foul pole and repairing the fair screen, as needed.

Scoreboard:

The City will provide electricity for purposes of scoreboard operation and other electrical needs, installed by contractor.

The City will clean or repaint any graffiti or other surface damage caused by vandalism as soon as reasonably practicable.

The City will check scoreboard prior to each baseball season for proper operation. Burned out scoreboard bulbs should be replaced prior to each season, including digits, indicators and backlit bulbs. Scoreboard manufacturer will provide some additional bulbs upon completion of project.

The City will be responsible for repairs to the scoreboard. The City will report any malfunction of the scoreboard immediately to manufacturer/dealer.

The City will inspect and repair or replace immediately any locks, boxes or other items to protect scoreboard controls.

Fencing/Backstop:

The City will inspect and repair all fencing and backstop, as needed. Foul poles are to remain intact and straight.

The City must install, clean, repair or replace plastic guard rail and shade screens and tarps in case of any damage. In the event the replacement becomes a cost burden to the City, the City may request approval from ADF to discontinue use of one or all of these elements.

Bleachers:

The City will inspect and repair bleachers, checking for loose benches, loose or exposed bolts or other potentially hazardous conditions. Bleachers and area under bleachers are to be cleaned at regular intervals.

Dugouts:

The City will maintain benches in a safe condition on an on-going basis.

The City will maintain dugout roof and dugout area in a safe and clean condition.

Shade tarps:

The City will clean and maintain shade tarps, pads and screens on fencing. Tears and holes (other than wind holes) are to be repaired as soon as reasonably practicable.

Lights:

Light controls are to be locked and secured at all times. The City will routinely inspect, clean, re-lam and re-aim sports lighting as necessary.

Exhibit C -Insurance Requirements
Kuebler Field Building Project

A. Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

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

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

NOTICE OF CANCELLATION: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

ACCEPTIBILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

VERIFICATION OF COVERAGE:

A. Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in Paragraph 3 of the “Contractor’s Affidavit Regarding Settlement of Claims and Certification of Completion of Warranties”. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Special Projects Administrator, Parks and Recreation Department, 824 E. Gurley Street, Prescott, AZ 86301. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

B. MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

C. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

• General Aggregate	\$ 3,000,000
• Products – Completed Operations Aggregate	\$ 3,000,000
• Personal and Advertising Injury	\$ 1,000,000
• Each Occurrence	\$ 1,000,000
• Fire Legal Liability (Damage to Rented Premises)	\$ 100,000

The policy shall be endorsed to include the following additional insured language:

“The Contractor agrees to endorse the City of Prescott, Yavapai County and the Arizona Diamondbacks Foundation as Additional Insureds on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$ 1,000,000

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott, Yavapai County and the Arizona Diamondbacks Foundation shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker’s Compensation and Employer’s Liability

Workers’ Compensation	Statutory
Employer’s Liability	
Each Accident -	\$1,000,000
Disease – each employee -	\$1,000,000
Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott, Yavapai County and the Arizona Diamondbacks Foundation for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

Each Claim	\$ 1,000,000
Annual Aggregate	\$ 2,000,000

1. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.

2. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

D. Such policy shall not exclude coverage for the following:

1. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
2. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the

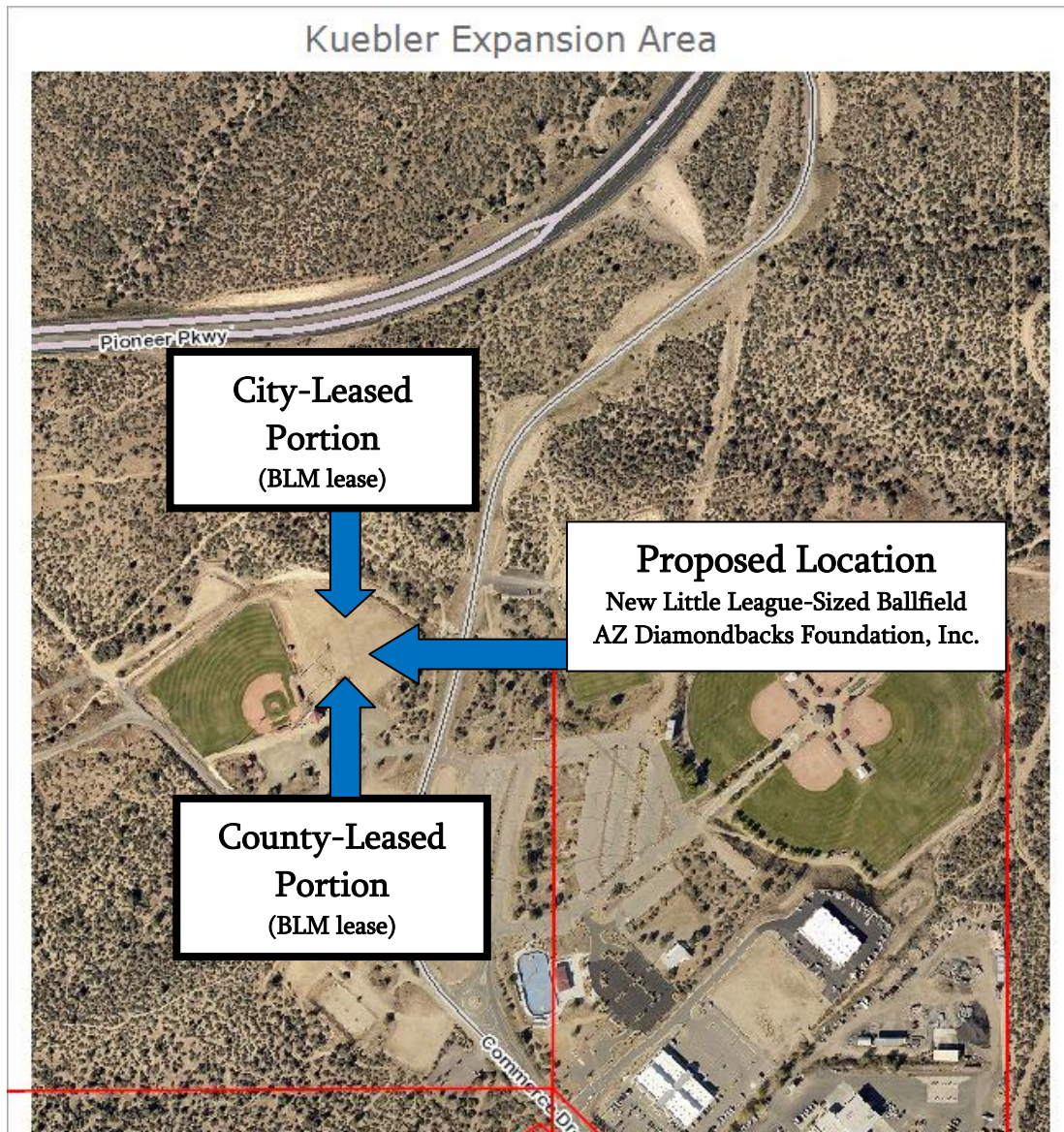
purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.

3. Injury to or destruction of any property arising out of blasting or explosion.
4. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.
- E. The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor's name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).
- F. The Contractor shall secure "all risk"-type builder's risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

NOTICE TO PROCEED. The Contractor or subcontractor shall not work on any part of the project or incur any expenses or obligations until a Notice to Proceed has been issued by the City. The Notice to Proceed will be sent to the Contractor by first class mail or delivered to him in person.

ASSIGNMENT OF PAYMENTS. MAG Specifications, Section 109.3, including assignment of contract clause included in the "Information for Bidders" in this set of specifications.

EXHIBIT D
Federal Leased Lands



RESOLUTION NO. 4214-1423_____

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, TO APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF PRESCOTT, YAVAPAI COUNTY, THE ARIZONA DIAMONDBACKS FOUNDATION, PIMMEX GENERAL CONTRACTING AND NELSEN ARCHITECTS FOR THE CONSTRUCTION OF A “LITTLE LEAGUE” SIZED YOUTH BASEBALL FIELD AT KUEBLER FIELD, LOCATED IN PIONEER PARK.

RECITALS:

WHEREAS, the City of Prescott, a municipal corporation of the State of Arizona (“Prescott”) desires to enter into a Memorandum of Understanding (“MOU”) with Yavapai County, the Arizona Diamondbacks Foundation (“ADF”), Pimmex General Contracting and Nelsen Architects for the design and construction of a “Little League” youth sized baseball field at Kuebler Field, located in Pioneer Park; and

WHEREAS, ADF will facilitate the donation of charitable funds to finance the design and construction of the project; and,

WHEREAS, Pimmex General Contracting will donate profit and overhead for the purpose of constructing the ballfield; and,

WHEREAS, Nelsen Architects will donate time for the purpose of project design; and,

WHEREAS, the Prescott and Yavapai County both hold interests in the land where the project is to be built; and,

WHEREAS, it is in the best interests of the health, safety and welfare of the City of Prescott to enter into the proposed MOU.

ENACTMENTS:

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

Section 1. THAT the City of Prescott hereby authorizes entering into a MOU with Yavapai County, the Arizona Diamondbacks Foundation (“ADF”), Pimmex General Contracting and Nelsen Architects for the design and construction of a “Little League” sized youth baseball field at Kuebler Field, located in Pioneer Park.

Section 2. THAT the Mayor and Staff are hereby authorized to execute the MOU between the City of Prescott, Yavapai County, the Arizona Diamondbacks Foundation (“ADF”), Pimmex General Contracting and Nelsen Architects for the design and construction of a “Little League” sized youth baseball field at Kuebler Field, located in

RESOLUTION NO. 4214-1423
Pioneer Park.

PAGE 2

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of
Prescott this ____ day of _____, 2014.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

DANA R. DELONG
City Clerk

JON M. PALADINI
City Attorney