



AGENDA

**PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
Tuesday, December 15, 2015
3:00 PM**

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

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

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION** Chaplin Gary Sheldon
 Patriot Guard Riders
- ◆ **PLEDGE OF ALLEGIANCE** Councilman Lazzell
- ◆ **ROLL CALL**

MAYOR AND CITY COUNCIL

Mayor Oberg	
Mayor Pro Tem Lamerson	Councilwoman Orr
Councilman Blair	Councilman Sischka
Councilman Lazzell	Councilwoman Wilcox

◆ **ANNOUNCEMENTS**

I. CONSENT AGENDA

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

- A. Approval of minutes for the City Council meetings held on November 24, 2015, and December 1, 2015

- B. Approval of Water Service Agreement No. 14-007 (City Contract No. 2016-009) with SJ Homes, LLC, for the construction of two duplexes (340 Robinson Drive; APN 110-05-002E)
- C. Approval of Water Service Agreement No. 15-015 (City Contract No. 2016-090) with Eureka Apartments, LLC, for the remodel of an extended stay motel into an apartment complex (1141 E. Gurley Street; APN 114-06-084A)
- D. Approval of Water Service Agreement No. 15-006 (City Contract No. 2016-022) with the Jason Orefice 2014 Trust and the Colleen Johnson 2010 Trust for the remodel of a boarding home into an apartment complex (223 E. Willis Street; APN 113-16-067)
- E. Approval of a one-year contract with Fitness Appraisal, LLC, for comprehensive wellness/fitness testing of firefighters in the estimated amount of \$17,400.00 (City Contract No. 2016-091)
- F. Ratification of payment for emergency purchase of one (1) ea. heavy-duty equipment trailer from Titan Machinery, in the amount of \$19,121.89 (Water Fund)
- G. Adoption of Ordinance No. 4961-1499 authorizing purchase and acceptance of public utility easements from The Handley Family Revocable Trust, and from Benn A. Wagner and Karen M. Wagner, husband and wife, for the Smoke Tree Lane Reconstruction Project

ORDINANCE NO. 4961-1499 AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE AND ACCEPTANCE OF PUBLIC UTILITY EASEMENTS FROM THE HADLEY FAMILY REVOCABLE TRUST, AND FROM BENN A. WAGNER AND KAREN M. WAGNER FOR THE SMOKE TREE LANE RECONSTRUCTION PROJECT; AND AUTHORIZING THE MAYOR AND STAFF TO EXECUTE ANY AND ALL DOCUMENTS TO EFFECTUATE SAID PURCHASES AND ACCEPTANCES.

- H. Adoption of Ordinance No. 4960-1498 authorizing acceptance of donations of real property from the Harold James Family Trust and DW1 Investments, LLC, for Willow Creek Road Realignment Project right-of-way

ORDINANCE NO. 4960-1498 AN ORDINANCE OF THE MAYOR AND

COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF REAL PROPERTIES GIFTED TO THE CITY FROM THE HAROLD JAMES FAMILY TRUST, AND FROM DW1 INVESTMENTS, LLC, FOR THE WILLOW CREEK ROAD REALIGNMENT PROJECT; AND AUTHORIZING THE MAYOR AND STAFF TO EXECUTE ANY AND ALL DOCUMENTS TO EFFECTUATE SAID ACCEPTANCE.

- I. Approval to accept and acquire an International Navistar MaxxPro Mine Resistant Ambush Protected tactical rescue vehicle from the Law Enforcement Support Office of the Defense Logistics Agency through the National Defense Authorization Act of 1997 for use by the Police Department
- J. Approval to accept a grant award from the Arizona Department of Public Safety Victims of Crime Act, of \$101,571.00 for a one-year Victim Advocate position and related equipment and training

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

II. REGULAR AGENDA

- A. Public hearing and consideration of a new liquor license application for a Series 10 Beer & Wine Store license from Linda Gail Novak, applicant for D'Vino, located at 109 Grove Avenue

RECOMMENDED ACTION: (1) MOVE to close the Public Hearing; and (2) MOVE to approve/deny/make no recommendation for Liquor License Application No.10133298, for a Series 10 Beer & Wine Store license, for D'Vino, located at 109 Grove Avenue.

- B. Approval of a Water Fees Settlement Agreement with Yavapai-Prescott Indian Tribe (YPIT)

RECOMMENDED ACTION: MOVE to approve the Water Fees Settlement Agreement with Yavapai-Prescott Indian Tribe.

- C. Approval of the City of Prescott's 2016 Legislative Agenda

RECOMMENDED ACTION: MOVE to approve the City of Prescott's 2016 Legislative Agenda.

- D. Discussion of Council meeting schedule for 2016

RECOMMENDED ACTION: Presented for Council discussion/

direction.

III. ADJOURNMENT

EXECUTIVE SESSION

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

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

Confidentiality

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

CERTIFICATION OF POSTING OF NOTICE

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

Dana R. DeLona. CMC. City Clerk

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: City Clerk

AGENDA ITEM: Approval of minutes for the City Council meetings held on November 24, 2015, and December 1, 2015

Approved By:

Date:

City Clerk: DeLong, Dana	12/09/2015
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Item Summary

Attached for approval are the City Council minutes for the Regular Voting Meeting, and the Installation of New Officers and Voting Meeting held on November 24, 2015; and the Special Meeting for Council Training, the Special Meeting, and the Combined Workshop and Voting Meeting held on December 1, 2015.

Attachments

1. November 24, 2015, Regular Voting Meeting Minutes
2. November 24, 2015, Installation of New Officers and Voting Meeting Minutes
3. December 1, 2015, Special Meeting for Council Training Meeting Minutes
4. December 1, 2015, Special Meeting Minutes
5. December 1, 2015, Combined Workshop and Voting Meeting Minutes

Recommended Action: **MOVE** to approve the City Council meeting minutes as presented.

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, NOVEMBER 24, 2015
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL HELD ON NOVEMBER 24, 2015, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Kuykendall called the meeting to order at 3:00 p.m.

◆ **INTRODUCTIONS**

Mayor Pro Tem Kuknyo announced there were representatives from the three Sister Cities in attendance.

◆ **INVOCATION** by Reverend Kimball Arnold

◆ **PLEDGE OF ALLEGIANCE** by Mayor Kuykendall

◆ **ROLL CALL:**

Present:

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

Absent:

None

◆ **ANNOUNCEMENTS**

Mayor Kuykendall and Councilman Lamerson made a presentation to Butch Hampton for going above and beyond with his work in the community.

I. CONSENT AGENDA

- A. Approval of minutes for the City Council meetings held on November 10, 2015
- B. Approval of Final Plat FP14-003 for the Madison Park Cottages, a six lot single-family Planned Area Development (PAD) subdivision, Bashford

Addition [Zoning: Multifamily, Medium Density (MF-M); APN 113-14-053; Property Owner: Habitat for Humanity]

- C. Acceptance of two (2) grants and approval to purchase equipment from the grant funds: (1) Arizona Department of Homeland Security for eight (8) ea. Twin Port Specialist Responder Kits in the amount of \$9,000.00; and (2) U.S. Department of Justice through the Edward Byrne Memorial Justice Assistance Grant in the amount of \$12,460.00 for two (2) ea. Of PVS-14 Gen III night vision equipment with Ballistic Helmet (Police Department)
- D. Adoption of Resolution No. 4312-1521 regarding contracts with City Council members or City employees for Fiscal Year 2016

COUNCILMAN LAZZELL MOVED TO APPROVE CONSENT AGENDA ITEMS I.A. THROUGH I.D.; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

II. REGULAR AGENDA

- A. Adoption of Resolution No. 4311-1520 adopting the Prescott Pedestrian and Bicycle Plan

Ian Mattingly, City Traffic Engineer, presented. He noted that the current updated document would replace the 2003 Bicycle and Pedestrian Master Plan and was referenced in the Prescott General Plan. The 2003 Plan had undergone several reviews beginning in 2008, by the Bicycle Advisory Committee, then by Prescott Alternative Transportation in 2013. The revised versions were never moved forward for adoption and the effort to update the plan was stalled. He noted that in February 2015, a Pedestrian and Bicycle working group was formed to undertake final review and editing of the Master Plan update. The new plan took a broader approach than previous efforts and focused on planning to encourage alternative transportation modes and eliminating the location specific improvements that were included in the prior plans. The plan emphasized improving bicycle safety, improving infrastructure to that end and increasing non-motorized trips. Mr. Mattingly noted that it was a planning document with no financial impact to the City.

Mayor Kuykendall noted that Councilwoman Wilcox was responsible for bringing the item back to Council.

Councilwoman Wilcox said it was a pleasure working with the group. She thanked Paul Katan for turning the 2003 and 2009 drafts into a six page guide that was more of a plan than a project list.

Bill Fanelli said Bike Prescott had 100 members who wanted to work together to increase cycling and pedestrian safety. He thanked staff for working with them on the plan.

Councilman Blair said the Council made an effort to put money aside to connect sidewalks and said the City had come a long way with that infrastructure. He asked how the bicycles with motors would be treated within the plan.

Craig McConnell, City Manager, said he would confer with the Police Department and bring the answer back to Council.

There was a general discussion about the working plan and items that could be looked at in the future.

Jim Knaup, citizen, addressed the Council. He asked Council not to approve the resolution as presented. He encouraged them to act on one of the strategies outlined in the plan and reinstate an official Pedestrian and Bicycle Advisory Committee to provide regular input on City plans and projects that would impact pedestrian and bicycle use. He talked about the changes he would like to see in the plan.

Councilwoman Wilcox said the plan was a more general guide and Public Works would consult the plan with each new project. She said she was dedicated to complete streets and felt that Public Works was being very supportive in the first step of incorporating bicycle issues with the streets program.

Daniel Mattson, citizen, addressed the Council. He said that he had received a call from a bicyclist who was not supportive of the plan. He felt there was not enough time for public input. Mr. Mattson said it he would like to see the issue brought back at a later meeting.

Mayor Pro Tem Kuknyo thought it was important to move forward on the item.

Councilwoman Wilcox thought there was ample opportunity for public input. All the meetings had been noticed with a published agenda.

Mayor Kuykendall said this was a working document and a place to start.

COUNCILWOMAN WILCOX MOVED TO ADOPT RESOLUTION NO. 4311-1520; SECONDED BY MAYOR KUYKENDALL; PASSED 5-2, Councilman Blair and Mayor Pro Tem Kuknyo dissenting.

- B. Approval of Amendment No. 1 to City Contract No. 2013-171A1 for the Sundog Wastewater Master Plan and Phase 1 Design Project with Lyon Engineering in an amount not to exceed \$193,350.00

Charles Andrews, City Engineer, presented. He noted that the amendment would add a second capital improvement project (CIP), Sundog equalization lift station, starting the

centralization to wastewater treatment. Combining the two projects was financially advantageous to the wastewater and treatment system.

Councilman Arnold said this was a long-term strategy that the City needed to undertake.

Mayor Pro Kuknyo said the item would solve some problems with storm water flows that came into Sundog. He noted that there was not a valve to shut the storm water off if it got full.

COUNCILMAN ARNOLD MOVED TO APPROVE AMENDMENT NO. 1 TO CITY CONTRACT NO. 2013-171A1 FOR THE SUNDOG WASTEWATER MASTER PLAN AND PHASE 1 DESIGN PROJECT WITH LYON ENGINEERING IN AN AMOUNT NOT TO EXCEED \$193,350.00; SECONDED BY MAYOR PRO TEM KUKNYO; PASSED UNANIMOUSLY.

- C. Approval of: (1) Acceptance of an Arizona Department of Transportation funding grant in the amount of \$193,500.00; 2) Award of City Contract No. 2015-207 for Navigational Aids Improvements at the Prescott Municipal Airport (PRC) to Rural Electric, Inc., in the amount of \$178,865.33; 3) Authorization of Services No. 10 for construction phase services by Dibble Engineering in an amount not to exceed \$15,000.00 (City Contract No. 2014-029A9); and 4) night work for the Navigational Aids project

Jon Cox, Airport Manager, presented. The project was identified by the Federal Aviation Administration (FAA) and the Arizona Department of Transportation (ADOT) as a high priority, due to the safety component involved. Most of the current navigational aids had exceeded their useful lives. The grant was 90 percent ADOT shared. The local 10 percent match was \$21,500.00. Mr. Cox identified each of the four action items.

Councilman Blair asked if they had contemplated the extension of the runway in the design. Mr. Cox said the equipment was mobile and could be relocated if necessary.

Councilman Lazzell asked if this had to be done, regardless of future plans to the airport. Mr. Cox said, yes because it was identified as one of the highest priority needs by ADOT and the FAA. He noted that all of the components would be used by all of the training schools at the airport as well as general aviation.

Councilwoman Wilcox asked about the indemnification clause and if the Risk Pool would cover the City in the event that the City needed to indemnify ADOT.

Jon Paladini, City Attorney, said it depended on the reason for the indemnification. If the City had to indemnify things that it had no control over, the Pool would not cover the City.

Councilwoman Wilcox asked about the degree of risk. Mr. Paladini said the City had control over this project and felt it was worth the risk.

COUNCILMAN ARNOLD MOVED TO ACCEPT THE ARIZONA DEPARTMENT OF TRANSPORTATION 90% FUNDING GRANT IN THE AMOUNT OF \$193,500.00; TO AWARD CITY CONTRACT NO. 2015-207 TO RURAL ELECTRIC, INC. IN THE AMOUNT OF \$178,865.55; TO AUTHORIZATION OF SERVICES NO. 10 FOR CONSTRUCTION PHASE SERVICES BY DIBBLE ENGINEERING IN AN AMOUNT NOT TO EXCEED \$15,000.00 (CITY CONTRACT NO. 2014-029A9); AND, TO APPROVE NIGHT WORK FOR THE NAVIGATIONAL AIDS PROJECT; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

- D. Approval of purchase of one (1) ea. 2016 Ford F550 super cab 4x4 utility truck with 7,500 pound crane body from Berge Ford using Pima County Contract No. B508299-BC pricing in the total amount of \$111,691.80 (City Contract No. 2016-102)

Mayor Kuykendall departed at 3:46 p.m.

Stephanie Miller, Field and Facilities Director, presented. The Fleet Services Division requested authorization to purchase a new utility truck to replace an older utility truck that meets the City's criteria for replacement and was currently inoperable.

COUNCILMAN ARNOLD MOVED TO APPROVE CITY CONTRACT NO. 2016-102; SECONDED BY COUNCILWOMAN WILCOX; PASSED 6-0, MAYOR KUYKENDALL ABSENT/EXCUSED.

- E. Approval of an application to the Law Enforcement Support Office of the Defense Logistics Agency, pursuant to the National Defense Authorization Act of 1997 for acquisition of an armored tactical rescue vehicle for the Police Department

Mayor Kuykendall returned at 3:31 p.m.

Jon Brambila, Police Lieutenant, presented. He noted that the Prescott SWAT Team was using two armored personnel carriers. He noted that one of them was unreliable and not capable of traveling long distances without issues. The second vehicle was South African made and the company was no longer in business and parts were unavailable. He added that a vehicle was immediately available in Arizona that would need to be fitted with emergency equipment and said that parts were readily available.

Lieutenant Brambila explained that the equipment would not be used often and was only needed when it was needed to keep citizens and officers safe. The life expectancy was 15 to 20 years with a \$500.00 service per year in the City's garage. He said one of the current vehicles would be returned to the Defense Logistics Agency.

Lieutenant Brambila described how the vehicle would be used in Prescott and how many times it had been used across the country and the success stories.

Councilwoman Wilcox said she had concerns about acquiring this type of vehicle and what it said about the community. She said this type of vehicle sends a message that we are the military and would be militarizing the police force. She said it was a serious concern. She asked about the number of times the Peacekeeper and the MAMBA had been used and for what purpose.

Lieutenant Brambila said the mission of the Prescott Police Department was community based, although there were situations when they needed to keep officers and citizens safe. He said the number of uses depended on the year and it could be 6 to 15 times per year. He said the department was very mindful on what they used the SWAT team for.

Mayor Pro Tem Kuknyo said he received a letter from Ralph Hess with the same concerns. Mayor Pro Tem Kuknyo rejected the concerns and said there were no weapons on the truck.

Sandra Smith, citizen, addressed the Council. She said the item was about protecting the officers who protect us.

Steve Silvernail, citizen, addressed the Council. He said he was also concerned with the militarization of the police force, however, it was a great deal for the City of Prescott.

Carlos Lopez Ruiz, citizen, addressed the Council and supported the purchase.

Max Petit, citizen, addressed the Council. He said if the police department had cool stuff, they would want to use it. He had been SWAT trained in the 1980's. He asked Council to consider what the vehicle might become and how they would prevent the slow mission creep.

Larry Jacobs, citizen, addressed the Council. He was retired from the Phoenix Police Department and agreed with the purchase. It was about rescuing individuals under fire.

Dennis Duvall, citizen, addressed the Council. He said there needed to be some community discussion about the item.

MAYOR PRO TEM KUKNYO MOVED TO APPROVE SUBMISSION OF AN APPLICATION TO THE LAW ENFORCEMENT SUPPORT OFFICE OF THE DEFENSE LOGISTICS AGENCY FOR ACQUISITION OF AN ARMORED TACTICAL RESCUE VEHICLE FOR USE BY THE POLICE DEPARTMENT; SECONDED BY COUNCILMAN ARNOLD; PASSED 6-1, Councilwoman Wilcox dissenting.

F. Presentations to outgoing Council members

Mayor Kuykendall made a parting statement and thanked his family, also the new and continuing Council and staff.

Councilman Arnold said the past four years had been a rollercoaster. He thought Council left the City in better shape than they found it. He said it had been a privilege to serve with the Council members. He thanked his mother and fiancé for their support.

Mayor Pro Tem Kyknyo said he was happy to get his life back and thanked his family for their support. He said the Council was a good group of people to work with and said it was an experience he would never forget.

Councilman Lazzell presented a plaque to Mayor Pro Tem Kuknyo and thanked him for his service.

Councilwoman Wilcox presented a plaque to Councilman Arnold and said it had been her privilege to sit next to Councilman Arnold for the past two years and said that he would always agree to place something on the agenda, since it took two Council people to do so, even if he may end up voting against it. She noted that he was intelligent and studied things carefully. He was the master of compromise and was a good politician.

Councilman Blair presented a plaque to Mayor Kuykendall and thanked him for his service.

Bob Greninger, Board of Sister Cities International, said that Sister Cities was losing some great supporters of the program that day and was confident that they would be in good hands with the new Council. On behalf of the Sister City members, he expressed his gratitude to all of the Council members for their support over the years. He noted the Prescott had a 43 year relationship with Caborca, Sonora, Mexico, and 8 year relationship with Suchitoto, El Salvador and 3 years with Zeitz, Germany.

Mr. Greninger introduced the Honorable Enrique Melendez, Honorary Council, El Salvador.

Mr. Melendez said he was honored to be joined by Dr. Helge Jordan, Counsul for Germany and Jose Antonio Aguayo Vazquez, Council of Mexico. He thanked Mayor Kuykendall for the respect he received from the him over the years. He thanked Councilmen Lamerson and Blair for getting the El Salvador relationship going nine years prior.

Senor Aguayo Vazquez noted that on behalf of the Consul General of Mexico, he honored Mayor Kuykendall. He said the relationship had increased during the past two years, with stronger alliances of collaboration in order to provide support to build trust,

jointly educate the Mexican community about rights, obligations and to respect the law. He wished Mayor Kuykendall the best of luck.

Dr. Helge Jordan said in honor of Mayor Pro Tem Kuknyo, Council, staff and residents of Prescott, he was sending the best wishes from the German community in Arizona. He noted that Zeitz was in East Germany and the residents had not enjoyed freedom for a long time. It was a privilege for him to be in Prescott and see democracy in action at the City Council meeting, where members of the community could speak. He repeated the words of President Reagan who said that "Freedom was never more than one generation away from extinction".

The three Sister City representatives presented Mayor Kuykendall with a plaque of appreciation.

IV. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of November 24, 2015, adjourned at 4:40 p.m.

HARRY B. OBERG, Mayor

ATTEST:

DANA R. DeLONG, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on the 24th day of November, 2015. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2015.

AFFIX
CITY SEAL

DANA R. DeLONG, City Clerk

PRESCOTT CITY COUNCIL
INSTALLATION OF NEW
OFFICERS & VOTING MEETING
TUESDAY, NOVEMBER 24, 2015
PRESCOTT, ARIZONA

MINUTES OF THE INSTALLATION OF NEW OFFICERS & VOTING MEETING OF THE PRESCOTT CITY COUNCIL HELD ON NOVEMBER 24, 2015, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Dana DeLong, City Clerk, called the meeting to order at 4:45 p.m.

◆ **INSTALLATION OF NEW OFFICERS**

Prescott City Clerk, Dana DeLong, administered the Oath of Office to Mayor-Elect Harry Oberg.

Ms. DeLong introduced Yavapai County Attorney, Sheila Polk.

Ms. Polk administered the Oath of Office to Councilwoman-Elect Billie Orr.

Ms. Polk administered the Oath of Office to Councilman-Elect Jim Lamerson.

◆ **ROLL CALL:**

Present:

Absent:

Mayor Oberg
Councilman Blair
Councilman Lamerson
Councilman Lazzell
Councilwoman Orr
Councilman Sischka
Councilwoman Wilcox

None

◆ **INVOCATION** by Pastor Jack Shannon of the American Lutheran Church

Mayor Oberg made opening remarks by thanking the audience for attending the meeting. He thanked Mayor Kuykendall and previous Council members for their service and for setting the budget for the following year. He spoke of the work ahead, which involved a sustainable PSPRS, effective care of safety of residents and recovery homes, ensuring an adequate supply of water for the greater Prescott area and a sensible level of sustainable growth. He asked for the patience and constructive input from the citizens as they determined the appropriate level of services for the City.

Councilwoman Orr made remarks and said she made a commitment to Prescott that involved hearing all sides, doing her homework, studying the issues and being fair. She thanked her husband and committee for their hard work and support.

Councilman Lamerson made remarks and thanked the new Mayor and Councilwoman Orr for standing up to help the community. He thanked the citizens for the opportunity and privilege to serve.

Councilman Lazzell welcomed the Mayor and new council members.

I. ACTION ITEMS

A. Appoint of Mayor Pro Tempore

Dana DeLong, City Clerk, said the City Charter states that the Council designates one of its members as Mayor Pro Tem to serve at the pleasure of the Council and perform the duties of the Mayor during his absence. The appointment would be for the remainder of the calendar year 2015 and calendar year 2016.

COUNCILWOMAN ORR MOVED TO APPOINT COUNCILMAN LAMERSON AS MAYOR PRO TEMPORE; SECONDED BY COUNCIL LAZZELL; PASSED UNANIMOUSLY.

B. City Council meeting schedule for December 2015

Dana DeLong, City Clerk, presented. She noted that the item was presented for a revised City Council meeting schedule for the month of December 2015. The proposal was to have the first meeting on December 1st as a Combined Workshop and Regular Voting Meeting and hold the second meeting of the month on December 15th as a Regular Voting Meeting. The meetings on December 8th and 22nd would be cancelled.

Councilman Blair said he wanted to discuss a new meeting schedule at an upcoming meeting.

COUNCILWOMAN WILCOX MOVED TO APPROVE THE REVISED CITY COUNCIL MEETING SCHEDULE FOR DECEMBER 2015 SET FORTH IN THE COUNCIL AGENDA MEMO; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

II. ADJOURNMENT

There being no further business to be discussed, the Installation of New Officers and Voting meeting of November 24, 2015, adjourned at 5:07 p.m.

HARRY B. OBERG, Mayor

ATTEST:

DANA R. DeLONG, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Installation of New Officers and Voting Meeting of the City Council of the City of Prescott, Arizona held on the 24th day of November, 2015. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2015.

AFFIX
CITY SEAL

DANA R. DeLONG, City Clerk

PRESCOTT CITY COUNCIL
SPECIAL MEETING FOR
COUNCIL TRAINING
TUESDAY, DECEMBER 1, 2015
PRESCOTT, ARIZONA

MINUTES OF THE SPECIAL MEETING FOR COUNCIL TRAINING OF THE PRESCOTT CITY COUNCIL HELD ON DECEMBER 1, 2015, in the LOWER LEVEL CONFERENCE ROOM located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Oberg called the meeting to order at 10:03 a.m.

◆ **ROLL CALL:**

Present:

Mayor Oberg
Mayor Pro Tem Lamerson, departed at 10:36 a.m.
Councilman Blair, telephonically, arrived in person at 10:32 a.m.
Councilwoman Orr
Councilman Sischka

Absent:

Councilman Lazzell
Councilwoman Wilcox

I. DISCUSSION ITEMS

A. Training by the City Attorney, City Clerk, and Human Resources Director

- Open Meeting law
- Conflict of interest
- Public records and electronic communications
- Conduct in the work place

Jon Paladini, City Attorney, introduced the item. He gave information on the training and showed a PowerPoint presentation that included:

- Open Meeting Law
- Arizona's public policy

All public meetings are done openly and are intended to maximize public participation.

- What is a Meeting?

Mr. Paladini said a meeting was a gathering, in person or technologically, of a body, like Council, that requires a quorum to be present. A quorum is a majority of the seats, even if people have resigned. He noted that once a meeting was agendized, there must be a

quorum to move forward with it. If no quorum, the meeting must be postponed and agendized for another date and time.

Mr. Paladini said that three Council members could get together to discuss an issue, but one of those three may not have the same conversation with a fourth Council member who was not present at the first meeting.

- Executive Sessions

Mr. Paladini said there were seven specific reasons to have an executive session. He continued by saying that no vote may be taken or formal decision made at an executive session.

- Scheduling Executive Session

Mr. Paladini said for a public hearing with a schedule executive session item the Council would vote, by a majority, to go into the scheduled executive session. He added that Council could also vote to go into executive session at any time during a meeting on any issue, if the reason fit the seven reasons he discussed.

- Who Attends Executive Sessions

Mr. Paladini said the attendance at an executive session beyond a Council quorum was dependent on the topic. Generally, the City Council, City Manager, City Clerk and City Attorney were in attendance. Any individuals whose presence was reasonably necessary could also be in attendance. He said it was a benefit to allow a limited number of people into a session due to the confidentiality aspect of the meeting.

- Session Pitfalls

Mr. Paladini said if a topic was discussed in executive session and it was a public matter, Council should still not talk about the topic in public. He stressed that what happened in an executive session, stayed in the executive session.

- Personnel Matters

Mr. Paladini noted that for an executive session meeting regarding personnel matters the employee could demand that the issue be discussed in a public meeting.

- Confidential Information

- Legal Advice

Mr. Paladini said this was the most common reason for an executive session.

- What Constitutes Legal Advice

Legal advice had to be given by an attorney.

- Prohibited Acts/Violations

There could be no discussion amongst Council about how each member would vote on an item. Staff could get a consensus of the Council on how to move forward.

- Circumvention

Mr. Paladini said there could be no circumvention. Less than a quorum of Council members may not meet and then talk to other members about the discussion. He gave an example of the Water Issues Committee. Even though the meeting was open to the public, the three Council members should not talk to other Council members about the meeting. He noted that if there was a discussion outside of a meeting, it could be perceived as a de facto Council meeting.

Councilman Sischka asked about a meeting that he and the Mayor had and where that fell within the Open Meeting Law. Mr. Paladini said there were preferred methods and he would address the issue later in his presentation.

Councilwoman Orr asked about serial communications with email. Mr. Paladini said he would also get into that topic later in the discussion.

Mr. Paladini advised Council to run information through the City Manager if they heard something in a meeting or from a citizen that they would like the rest of Council to hear.

- Prohibited 2-Way Communications

Regarding Councilman Sischka's question, Mr. Paladini said councilmembers could share communications, but it could not contain comments like "we should try this" or "this is a good idea". Council members could not telegraph how they may vote on an item. They could suggest that the item be agendaized for a workshop or other Council meeting.

- Prohibited 1-Way Communication
- Proposing an Agenda Item
- Proposing Legal Action: More Examples
- Serial Communications: May violate OML

Mr. Paladini said verbal serial communications – going from one person to the next, sharing communications among a quorum or eventual quorum would violate Open Meeting Law.

- E-mail

Mr. Paladini said e-mails regarding City business were a public record and it did not matter whose computer was used. He said Council may not use e-mail to propose legal action, discuss legal action, deliberate on legal action, and take legal action.

- E-mail Communications

Regarding emails sent to one or more Council members, Council was warned not to hit "reply all". Council was advised to hit "reply", so they just responded to the person sending the email.

- Staff E-mail

Mr. Paladini said staff may not communicate positions of Council to other Council members.

Councilwoman Orr asked about doing City business on a personal e-mail. Mr. Paladini responded that all e-mail requested from her on a particular topic would have to be handed to the courts in case of a subpoena. He highly recommended against using personal e-mail for City business. If an e-mail was received on a personal e-mail account regarding City business, it should be forwarded to the City e-mail.

- Fact vs. Opinions?

There was no distinction between discussing facts vs. discussion opinions among a quorum.

- Internet Social Networking

Mr. Paladini said Council should avoid commentary on City business. That type of communication resulted in the creation of electronic public records, which must be maintained, preserved and produced upon request.

- Staff & Other Persons

Council may not direct staff to communicate in violation of the open meeting law.

- Communications with the Media

Mr. Paladini said it was legal for Council to state their opinion about an upcoming agenda item with the media prior to the meeting where the item would be discussed. He said the public perception was not good when Council said their mind was made up prior to hearing the item in a meeting.

- Social Events

Mr. Paladini noted that courtesy agendas were not required, but the City posted a Possible Quorum for the citizens to see, online and on the bulletin board. He noted that a statement was included that no business of the public body would be discussed and no action would be taken. He also warned about posting too many things, such as a daughter's wedding where all Council were invited, because the public would then, also be invited.

- Public Forums, Speeches and Community Events

If a quorum might be present when one or more Council members planned on speaking or discussing City business with those in attendance, an agenda must be posted and include a description of the general topic or topics of discussion and state that no action would be taken.

Mr. Paladini noted that if the public brought up a topic that was not on the agenda, the comment from the Council member might be that Council would be looking at that in the future, rather than talking about it at that time.

The Special Meeting recessed at 10:57 a.m. and reconvened at 11:00 a.m.

Council members present:

Mayor Oberg
Councilman Blair
Councilwoman Orr
Councilman Sischka

Mr. Paladini continued with the presentation.

- Penalties

A \$500.00 penalty may be levied against the official for each violation. The official must personally pay the fine and would be subject to removal from office.

- When in Doubt

Mr. Paladini advised to resolve all doubts in favor of openness. All legal action taken during a meeting held in violation of any provision of the open meeting law was null and void unless ratified.

- Public Records

Anything the City maintained regarding City business was a public record. Mr. Paladini noted that all records made or received by public officials in the course of their public duties were the property of the City. All public officers were responsible for preserving, maintaining, and caring for the public records within their offices. A Class 4 felony may be imposed on anyone destroying, altering or falsifying public records.

- Conflict of Interest Law

- Conflict of Interest Law: Involvement in Decisions

If Council or their family member had a substantial or monetary interest in a decision, which may hurt or benefit that individual, a conflict of interest must be disclosed.

- Conflict of Interest Law: Applicability
- Conflict of Interest Law: Substantial Interests
- Conflict of Interest Law: Identifying Conflicts
- Conflict of Interest Law: What To Do

Mr. Paladini said Council should make the conflict known in the official record and leave the room.

- Conflict of Interest Law: Remote Interests
- Conflict of Interest Law: Examples
- Conflict of Interest Law: Other Prohibitions

If Council received a gift from a vendor or citizen, the item should be displayed in their office or City Hall as a gift to the City. Council may not accept a gift of more than \$20.00 unless they paid the face value of the gift to the person giving it.

A councilmember may not receive financial compensation in matters before the Council.

- Conflict of Interest Law: Public Perceptions
- Conflict of Interest Law: Seeking Help

Council members should ask their staff liaison to forward requests for opinions to the City Attorney. Opinions by the City Attorney regarding conflicts of interest were matters of public record and filed with the City Clerk.

- Conflict of Interest Law: Remedies

Mr. Paladini noted that contracts were voidable, affected persons may sue and courts may assess attorneys' fees and costs.

- Conflict of Interest Law: Penalties

An intentional violation of the Conflict of Interest Law was a felony and a reckless violation of the law was a misdemeanor.

The Special Meeting recessed at 11:28 a.m. and reconvened at 11:38 a.m.

Council members present:

Mayor Oberg
Councilman Blair
Councilwoman Orr
Councilman Sischa

Mr. Paladini gave a PowerPoint presentation on Sexual Harassment in the Workplace

- Definition
- Breaking down the Definition
- Of a Sexual Nature
- Of a Non-Sexual Nature
- Severe or Pervasive
- Quid Pro Quo
- Hostile Work Environment
- Questions to ask yourself
- Steps to File a Complaint

II. ADJOURNMENT

There being no further business to be discussed, the Special Meeting of December 1, 2015, adjourned at 11:52 a.m.

HARRY B. OBERG, Mayor

ATTEST:

DANA R. DeLONG, City Clerk

PRESCOTT CITY COUNCIL
SPECIAL MEETING
TUESDAY, DECEMBER 1, 2015
PRESCOTT, ARIZONA

MINUTES OF THE SPECIAL MEETING OF THE PRESCOTT CITY COUNCIL HELD ON DECEMBER 1, 2015, in the LOWER LEVEL CONFERENCE ROOM located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Oberg called the meeting to order at 1:02 P.M.

ROLL CALL

Present:

Mayor Oberg
Mayor Pro Tem Lamerson
Councilman Blair
Councilman Lazzell
Councilwoman Orr
Councilman Sischka
Councilwoman Wilcox

Absent / Excused:

Staff

Craig McConnell, City Manager
Jon Paladini, City Attorney
Dana DeLong, City Clerk
Alison Zelms, Deputy City Manager
Mark Woodfill, Finance Director
Matt Podracky, Assistant City Attorney
Clyde Halstead, Assistant City Attorney
Linda Ripley, Legal Administrator
Henry Hash, Public Works Director, departed at 2:01 pm

CALL TO ENTER INTO EXECUTIVE SESSION

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

***COUNCILMAN LAZZELL MOVED TO RECESS INTO EXECUTIVE SESSION;
SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.***

The Prescott City Council recessed into Executive Session at 1:02 P.M.

EXECUTIVE SESSION

I. LEGAL MATTERS

- A. An executive session pursuant to A.R.S. 38-431.03(A)(3) and (4) for discussion or consultation for legal advice with the attorney or attorneys of the public body; for discussion or consultation with the attorneys of the public body regarding ongoing litigation. As part of City Council orientation, the City Attorney will brief the City Council on the status of active cases and pending or threatened litigation, including legal strategies and possible settlement options, for the following matters:
- 1) Greif vs. City of Prescott
 - 2) Riley vs. City of Prescott
 - 3) Pure Wafer vs. City of Prescott
 - 4) Hall vs. City of Prescott
 - 5) ADEQ Consent Orders
 - 6) Prescott Pines vs. City of Prescott
 - 7) Pending Claims: Ramirez, Henderson, and Bollinger
- B. The City Council will meet with the City Attorney for legal advice, discussion, consultation or consideration for negotiations by the city 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)
- 1) Water Settlement Agreement with Yavapai-Prescott Indian Tribe
- C. The executive session adjourned at 2:22 PM.

II. ADJOURNMENT

There being no further matters to come before the Special Meeting, the meeting was adjourned at 2:22 p.m.

HARRY B. OBERG, Mayor

ATTEST

DANA R. DeLONG, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Meeting of the City Council of the City of Prescott, Arizona held on the 1st day of December, 2015. I further certify the meeting was duly called and held and that a quorum was present.

Dated this _____ day of _____, 2015.

AFFIX
CITY SEAL

DANA R. DeLONG, City Clerk

PRESCOTT CITY COUNCIL
COMBINED WORKSHOP &
VOTING MEETING
TUESDAY, DECEMBER 1, 2015
PRESCOTT, ARIZONA

MINUTES OF THE COMBINED WORKSHOP AND VOTING MEETING OF THE
PRESCOTT CITY COUNCIL HELD ON DECEMBER 1, 2015, in the COUNCIL
CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Oberg called the meeting to order at 3:00 p.m.

◆ **INTRODUCTIONS**

No introductions were given.

◆ **INVOCATION** by Pastor Jack Shannon of the American Lutheran Church

◆ **PLEDGE OF ALLEGIANCE** by Councilwoman Wilcox

◆ **ROLL CALL:**

Present:

Mayor Oberg
Mayor Pro Tem Lamerson
Councilman Blair
Councilman Lazzell
Councilwoman Orr
Councilman Sischka
Councilwoman Wilcox

Absent:

None

◆ **ANNOUNCEMENTS**

No announcements were given

◆ **PRESENTATION**

A. Chamber of Commerce – Introduction of new business

Neal Sneller, Membership Director Chamber of Commerce, addressed the Council. He detailed the dates and times of upcoming holiday events. The new members of the Chamber were: Bill's Grill, Fresca Café, Gadget Doc, On Cue Financial, Pack 4

Enterprises, Prescott Yellow Cab, Rosebud Beauty Company, Sculpture by Foss, and Sun Mechanical Contracting.

CONSENT AGENDA

- A. Approval of City Contract No. 2016-103, a vendor-concession agreement with MoFun, LLC, for boat rental services at Watson and Goldwater Lakes

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

I. REGULAR AGENDA

- A. Approval of a contract with Geophex Ltd., for Aerial Imaging and Digital Terrain Mapping in an amount not to exceed \$68,000.00 (City Contract No. 2016-111; Water, Wastewater, Streets and Open Space Fund)

Cat Moody, GIS Coordinator/Historic Preservation Specialist, presented. She showed an overhead of previous flights and boundaries and the boundaries for the proposed flight. She added that the City was on a four year imaging cycle. The contract would be for four inch imagery, for better resolution than what was obtained in the past. She said that the imagery was used by all City departments

Councilwoman Wilcox asked if there was any coordination or cost sharing with the County or the Tribe. Ms. Moody said, no, not on the proposed flight, but the County shared their images with the City and vice versa.

COUNCILMAN LAZZELL MOVED TO APPROVE CITY CONTRACT NO. 2016-111 WITH GEOPHEX LTD., FOR AERIAL IMAGERY AND DIGITAL TERRAIN MAPPING, IN AN AMOUNT NOT TO EXCEED \$68,000.00; SECONDED BY COUNCILWOMAN WILCOX; PASSED UNANIMOUSLY.

- B. Approval of a Professional Services Agreement with The Aarons Company, LLC, in the amount of \$42,000.00, for lobbying services through November 30, 2016 (City Contract No. 2016-104; Various Funds)

Alison Zelms, Deputy City Manager, presented. She explained that the upcoming legislative session would involve concerns central to the City of Prescott. One was a perspective bill that the City of Prescott would likely be submitting through Representative Noel Campbell, regarding increased regulation for group homes. She noted that many of the individuals in the recovery industry throughout the state were opposed to any increased regulation or standards of group homes and the representative groups for group homes had active lobbyists on retainer.

Ms. Zelms reported that the City was expecting to have legislation submitted in the upcoming session through efforts that had been ongoing for the past 18 – 24 months with the public safety pension reform, which would have significant impact in the future. She said she would continue to maintain her relationship with the League of Cities and Towns and ensure that the City of Prescott was represented.

Councilman Lazzell said two of the Aarons Company's major clients were the Cities of Phoenix and Scottsdale. He was concerned about the company's loyalty to Prescott and if they would put the City of Prescott's concerns over their major client's concerns.

Ms. Zelms responded said that a number of their clients were quite small and she contacted some of those references. She noted that the Aaron's Company generally represented smaller issues within a municipality or smaller municipalities. She noted that Mr. Aarons had 40 years of expertise with the legislature and received great recommendations. She added that part of her job would be to determine that the City of Prescott was receiving the services they paid for.

Councilman Blair asked how well versed Mr. Aarons was with charter cities and how the City of Prescott would be assured that he would carry the City's message to the legislature.

Ms. Zelms responded that Council would hear from her at nearly every Council meeting regarding what was happening at the legislature. At different points during the legislative session, Council may hear directly from Mr. Aarons.

Councilman Blair hoped Council would get feedback when they needed to attend a legislative session to help the cause, especially for tax issues. Ms. Zelms said she would make sure that was part of the strategy.

Councilwoman Wilcox said she had concerns about potential conflicts of interest, because there was nothing in the contract that addressed how it would be handled if the Aarons Company represented another entity with issues contrary to the City of Prescott's.

Ms. Zelms said successful lobbyists say they are speaking on behalf of their client and based on their client's concerns, the lobbyist continues his presentation. She noted that Mr. Aarons would notify the City if the conflict presented itself. Ms. Zelms remarked that she would probably represent the City of Prescott if that happened.

Councilwoman Wilcox asked if Ms. Zelms had looked into Mr. Aarons' reputation. Ms. Zelms said his clients were very supportive and said he knew the issues, was concise and had 40 years of legislative history. He taught public policy and lobbying. He had also been on a planning commission and was well versed in zoning rules.

Councilwoman Orr said it sounded like Mr. Aarons had a lot of influence amongst legislators, which was important for a lobbyist. She spoke with a couple of legislators who said Mr. Aarons was one of the best lobbyists and had great integrity.

Councilman Sischka asked how this would affect the City's ability to influence legislation on group homes. Ms. Zelms responded that legislation was not generally made in committee, but in hallways, luncheons and special interest group events. It was important to have a lobbyist at the various events who knew the backgrounds and personalities of the different legislators to secure their votes

Mayor Pro Tem Lamerson said he did not see a deliverable product in the contract. He would like to see a report every 30 days from the Aarons Company. He also noted that the City Manager reported to the Council and he wanted Mr. McConnell's name in the contract and not Ms. Zelms, so the contract had ownership.

Ms. Zelms said the Council could change the name on the contract to the City Manager.

Councilman Blair agreed with Mayor Pro Tem Lamerson.

Mary Beth Hrin, citizen, addressed the Council. She talked about the group home problem and how it was viewed as a Prescott problem at the Legislature. She said a professional lobbyist was needed and there was no one better than Mr. Aarons.

Jeri Smith Fornara, citizen, addressed the Council. She said she had been lobbying at the legislature since 1964. She said that Prescott and the Quad Cities area were a joke for the way the recovery homes issue had been handled. Prescott let the issue get out of hand and it was no longer "Everybody's Hometown". One of the District's Representatives did not attend any of the meetings regarding the issue. She said Mr. Aarons was known all over the country for his integrity.

Councilwoman Orr said she had attended all four of the ad-hoc sessions and said all of the Representatives were there.

Ms. Smith Fornara said the issue could not be handled at a local level. She said Mr. Aaron's would make a big difference.

Thomas Slayback, citizen, addressed the Council. He thought Councilman Lazzell made a good point about the Mr. Aaron's clients and thought there should be a clause in the contract that stated that when there were conflicts of interest between his clients, Mr. Aarons would step outside and not represent either of them with his lobbying efforts.

Councilman Lazzell said the City would then lose out on what they were paying him for.

Jill Martin, citizen, addressed the Council. She said that she was there as a result of her son's death at a recovery home in California. She felt hiring a lobbyist would be extremely helpful.

Happy Oasis, citizen, addressed the Council. Having observed what happened in the Ad Hoc committee meetings in Phoenix, she felt the City would best be served by hiring a lobbyist.

Rick Jordon, citizen, addressed the Council. He said he and his wife moved to Prescott from Indianapolis because it was "Everybody's Hometown". They then realized that a recovery home had moved in behind them, which was accompanied by loud music, loud talking and fights on the back porch. He noted that he and his wife testified at the State House and realized that there was a lot of push back on the issue. He and his wife fear for their house when they are on vacation. He said the industry needed regulation and the City needed a lobbyist.

Mrs. Jordon addressed the Council. She said she was a registered nurse for many years in the chemical dependency area and talked about regulating the group homes. She said there needed to be comprehensive exit plans, licensing and registration for the group homes.

Connie Cantelme, citizen, addressed the Council. She had attended the Ad Hoc meetings and watched how the rehabilitation situation took hold and deteriorated the Prescott area. She talked about the cost and the number of calls to the police and fire departments related to the rehabilitation industry. In the past nine months there were 297 extra police calls, which averaged \$300.00 per call when one cruiser was sent out. She added that if two cruisers were sent on a call, it cost the City \$178,200.00. The Fire Department had 126 extra calls related to the rehab industry at a cost of \$1,800.00 per call or \$226,800.00. She approve of hiring the lobbyist.

Lauren Newington, citizen addressed the Council. She talked about a home in her neighborhood that turned into a rehab facility and how things changed overnight. She was afraid to have her visiting granddaughter on the front porch. She noted that she also had company for the holidays who asked why there were so many druggies and people on the street in Prescott. She said the rehab business was out of control and was ruining downtown Prescott. She agreed with the hire of a lobbyist.

Mayor Pro Tem Lamerson thought staff should remove the word Deputy from the contract and replace it with City Manager. He thought the ownership should be taken by the City Manager who led City staff.

Craig McConnell, City Manager, said staff could easily modify the contract to indicate City of Prescott's City Manager or his designee. In addition, in paragraph nine, the contact would say the "City Manager".

Councilman Lazzell said there were two issues that needed lobbying, group homes and the public safety retirement system. He asked if the firm had a client with competing interests.

Ms. Zelms responded that she did not believe they did, but she would work on ground rules for how it would work if they did.

COUNCILWOMAN ORR MOVED TO APPROVE CITY CONTRACT NO. 2016-104, WITH CHANGES STATED BY THE CITY MANAGER; SECONDED BY COUNCILMAN SISCHKA; PASSED UNANIMOUSLY.

II. DISCUSSION ITEMS

A. Public Works Department Capital Improvement Program Process and FY 2015 Accomplishments

Henry Hash, Community Development Director, presented. He showed a PowerPoint presentation that included:

- Public Works FY 15 Capital Improvement Program
- Public Works Department Divisions
- Identification and Delivery of Capital Improvement Projects

Mr. Hash discussed the steps, actions and approvals for the projects. He pointed out that Council approval or award was needed for the 5-Year Capital Improvement Program, the design and construction contracts.

- Public Works FY15 Capital Improvement Program

Mr. Hash reported that the completed projects equaled \$56,710.00.

Mayor Oberg asked about the Willow Creek scour improvements. Mr. Hash responded that the road was repaired due to erosion from water.

- Public Works Engineering Services

Mr. Hash noted that the lease with the Forest Service at the Airport had increased \$38,000 per year. He added that private development inspections were done so the City did not have to worry about private infrastructure for 25 – 30 years.

- Engineering In-House Design

Mayor Oberg asked what percentage of designs were done in-house. Mr. Hash responded, 10 to 12 percent. The City staff did simpler and smaller projects and the

more complex projects were contracted out. He hoped staff would be doing 30 percent of the design work in the next three to four years.

Mayor Pro Tem Lamerson asked if the 30 percent would be coming out of the private sector. He asked if the City would be taking work away from others and would the City then have more City employees, or would the employees be doing more work. Mr. Hash said there would need to be a few additional employees and he was also developing the staff to do more complicated designs. He said the City would not be taking business away from private businesses.

- Transportation Engineering

Mr. Hash noted that staff installed the street lighting on Park Avenue, the traffic signals at Prescott Lakes Parkway and Blooming Hills Drive and replaced street signs that the federal government required and paid for through the Central Yavapai Metropolitan Planning Organization (CYMPO).

- Utilities – Water and Wastewater

Mr. Hash noted that the water from the City wells went to one source to blend the water and decrease the arsenic level.

- Other Accomplishments

Mayor Oberg asked if the City was still working on the subsurface as-builts. Mr. Hash responded that they always worked on them and the quality had improved quite a bit. He said they had been poor to mediocre and were currently close to a rating of good. He said they were not where they needed to be.

Mayor Oberg asked about the mapping of underground pipes. Mr. Hash said there continued to be issues. Mayor Oberg asked if there were still as-builts in storage that staff did not know about. Mr. Hash said he believed staff scanned everything they had, which did not mean it was everything.

Councilwoman Orr asked for a description of the Lucity Software program. Mr. Hash said Lucity was a maintenance program. Whenever something was replaced in the field, like a water main, it was recorded in the program.

Councilman Blair asked if there was a policy in place that made it the City's or contractor's responsibility to remove retention rolls and orange fencing from a construction site. Mr. Hash responded that it was the City's expectation that when the project was completed, the contractor needed to remove those items. He said staff could come up with a policy.

B. Sign Code amendments

Jon Paladini, City Attorney, presented. He said the bulk of the discussion was about temporary rights-of-way signs. He was not talking about zoning or land development codes. He showed a PowerPoint presentation that included:

- Revision of City of Prescott Sign Code, Reed v. Town of Gilbert

Mr. Paladini said the bottom line of the case was that the City could not regulate signage based on the content of the sign. A commercial, political or event sign in the right-of-way all needed to be treated the same in terms of how they would be regulated. He discussed what might be allowed to regulate, which included, size, lights, placement on public and private property, total number of signs, and time limit for one-time events.

- Council of the City of Los Angeles v. Taxpayers for Vincent

The case preceded the Reed v. Town of Gilbert case by many years and states that the City had the authority to prohibit signs in the City rights-of-way or other City owned property.

Councilman Lazzell asked about the signs on light posts, such as those for Sharlot Hall Museum or Embry-Riddle. Mr. Paladini said there were ways of allowing for those. The government could have signs on its own light posts and could allow for certain entities to display banners.

- Prohibiting signs in the Right-of-Way and Other Public Property

Mr. Paladini said there was currently a ban on signs in the City rights-of-way, with some exceptions that made the rule meaningless.

Mr. Paladini added that signs on tables and benches on City property would also be prohibited. He said there was a possibility for the Council to allow for the sandwich boards, perhaps in certain geographic area.

Councilman Sischka asked if the City would be limiting content on the signs. Mr. Paladini said, no.

Councilman Sischka asked if a political sign could be placed on a business owner's sandwich board. Mr. Paladini said yes.

Mr. Paladini continued that the City currently allowed bus benches by a bus operator. He said the City of Prescott did not have a true public transportation system that was run by a transportation authority. He noted that they were privately owned. He discussed the banner program and how that might work.

Mr. Paladini said that the schools had been good at cooperating with the City on zoning issues.

Mr. Paladini said the Council could give some adjustment to temporary signs on private property. Currently temporary signs were limited on commercial buildings. To make up for pulling all of the signs out of the rights-of-way, Council could allow for some additional temporary signage on private property with various material and permit requirements.

Councilwoman Wilcox asked if there would be a fee for that permit. Mr. Paladini said there could be because it would be part of the zoning code and could help cover the cost of inspecting the plan.

There was a discussion about the state law that said staff could not remove political signs.

Councilman Lazzell said Council had to think about the cause and effect of what they ultimately voted on so they did not end up putting someone in jail for not paying a fine for a garage sale sign.

Mr. Paladini said if someone put a temporary sign in the right-of-way, it would just be removed. He noted that it would reduce visual clutter on the street.

A discussion ensued about location and intent of signs as well as where the rights-of-way were actually located.

Mayor Oberg asked that a draft be brought back to Council during the Workshop in January.

III. ADJOURNMENT

There being no further business to be discussed, the Combined Workshop and Voting Meeting of December 1, 2015, adjourned at 4:59 p.m.

HARRY B. OBERG, Mayor

ATTEST:

DANA R. DeLONG, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Combined Workshop and Voting Meeting of the City Council of the City of Prescott, Arizona held on the 1st day of December, 2015. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2015.

AFFIX
CITY SEAL

DANA R. DeLONG, City Clerk

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: City Manager

AGENDA ITEM: Approval of Water Service Agreement No. 14-007 (City Contract No. 2016-009) with SJ Homes, LLC, for the construction of two duplexes (340 Robinson Drive; APN 110-05-002E)

Approved By:		Date:
Water Resources Manager:	Graser, Leslie	12/01/2015
City Attorney:	Paladini, Jon	12/02/2015
City Manager:	McConnell, Craig	12/07/2015

Item Summary

This item is to approve a water service agreement to support two new duplexes (a total of four new dwelling units) being constructed at 340 Robinson Drive.

Background

The property (APN 110-05-002E) is zoned Multi-Family Medium Density (MF-M), and the proposed duplexes are a permitted use. Building Permits B1411-059 and B1411-060 have been issued for this project. The associated water allocation required is 1.0 acre-foot:

$$0.25 \text{ acre-foot per year} \times 4 \text{ units} = 1.0 \text{ acre-foot/year}$$

This water service agreement was submitted in September 2014, and is identified in Exhibit A of Resolution No. 4310-1519.

The Water Service Agreement requires that a certificate of occupancy be obtained for the project within three (3) years (Paragraph 2.b.)

Attachments

1. Agreement for Potable Water - SJ Homes, LLC

Recommended Action: **MOVE** to approve Water Service Agreement No. 14-007 (City Contract No. 2016-009).

AGREEMENT FOR POTABLE WATER (WSA No. 14-007)
SJ Homes, LLC
City Contract No. 2016-009

WHEREAS, SJ Homes, LLC, (hereinafter referred to as “Applicant”) is the owner of certain real property within the City of Prescott; and

WHEREAS, Applicant wishes to obtain provision of potable water for the property described herein from the City of Prescott (hereinafter referred to as “City”); and

WHEREAS, Applicant contemplates constructing four (4) multi-family dwelling units on the Property; and

WHEREAS, PCC Section 2-1-12(G) requires that an agreement be reached between the City and the Applicant in order to provide potable water; and

WHEREAS the City Council finds that compliance with this Agreement by the Applicant shall result in:

1. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to, the adopted Water Management Policy of the City; and
2. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to the adopted General Plan of the City; and
3. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to any applicable adopted plans, including but not limited to Specific Area Plans, Circulation Plans, Capital Improvement Plans, Open Space and Trail Plans, Neighborhood Plans, Local Historic District Plans, growth planning or growth management plans, and redevelopment plans; and
4. The project being in accord with the duly adopted Prescott Water Budget and availability within its Water Portfolio.

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

1. That this Agreement shall relate to that property identified as Yavapai County Assessor Parcel Number 110-05-002E, more particularly described in the attached Exhibit “A” (hereinafter referred to as the “Property”) and depicted by Exhibit “B”.

2. That the City will set designate and provide a maximum of one (1) acre-foot annually of potable water to serve the Property, subject to the following:

A. Any change in use of the Property exceeding a total of four (4) multi-family dwelling units shall result in the termination of this Agreement.

B. The quantity of one (1) acre-foot annually of potable water shall be reserved for the Property for a period of three (3) years from the date of this Agreement, which quantity shall be made available upon issuance by the City of a certificate of occupancy for four (4) residential dwelling units. In the event the Applicant has not satisfied all requirements for issuance of said certificate of occupancy within said three (3) year period, this Agreement shall automatically terminate, and in such case neither the Applicant shall have any entitlement to, nor shall the City have any obligation to provide, potable water to the Property.

C. In the event that the four (4) multi-family dwelling units identified on the preliminary plat are reduced in the final site plan, then and in that event, the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced by 0.25 acre-foot for each such dwelling unit not constructed.

D. That the installation of any new well on the Property, or the use of water on the Property from any other exempt well (less than 35 gpm), shall result in the termination of this Agreement.

E. The Property shall not be split.

3. This Agreement shall run with the land, and shall be binding upon the Applicant's successors in interest and assigns.

4. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

5. That the Applicant hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of this Agreement, arising from the acts or omissions of the Applicant, its agents, and/or employees.

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

7. Time is of the essence in this Agreement. The failure of either party to require strict performance of any provision of this Agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this Agreement in accordance with the terms hereof, and without notice.

8. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

[Seal]

Notary Public

Exhibit A
S.J. Homes, LLC

All that portion of that certain property described in Warranty Deed in Book 4869 of Official Records, Page 393, Records of Yavapai County, located in Section 3, Township 13 North, Range 2 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the intersection of the North line of said Section 3 and the West right-of-way of Robinson Drive, from whence the Northeast corner of said Section 3 bears North 89 degrees 35 minutes East, 521.0 feet (record);

THENCE South 89 degrees 35 minutes 37 seconds West, a distance of 298.95 feet (record South 89 degrees 35 minutes West, 299.0 feet) to a point on the North line of said Section 3;

THENCE South 08 degrees 46 minutes 27 seconds East (record South 08 degrees 50 minutes), a distance of 151.61 feet to the POINT OF BEGINNING;

THENCE South 08 degrees 46 minutes 27 seconds East, a distance of 178.39 feet;

THENCE North 89 degrees 36 minutes 19 seconds East, a distance of 310.71 feet (record North 89 degrees 35 minutes East, 310.46 feet) to a point on the West right-of-way of Robinson Drive;

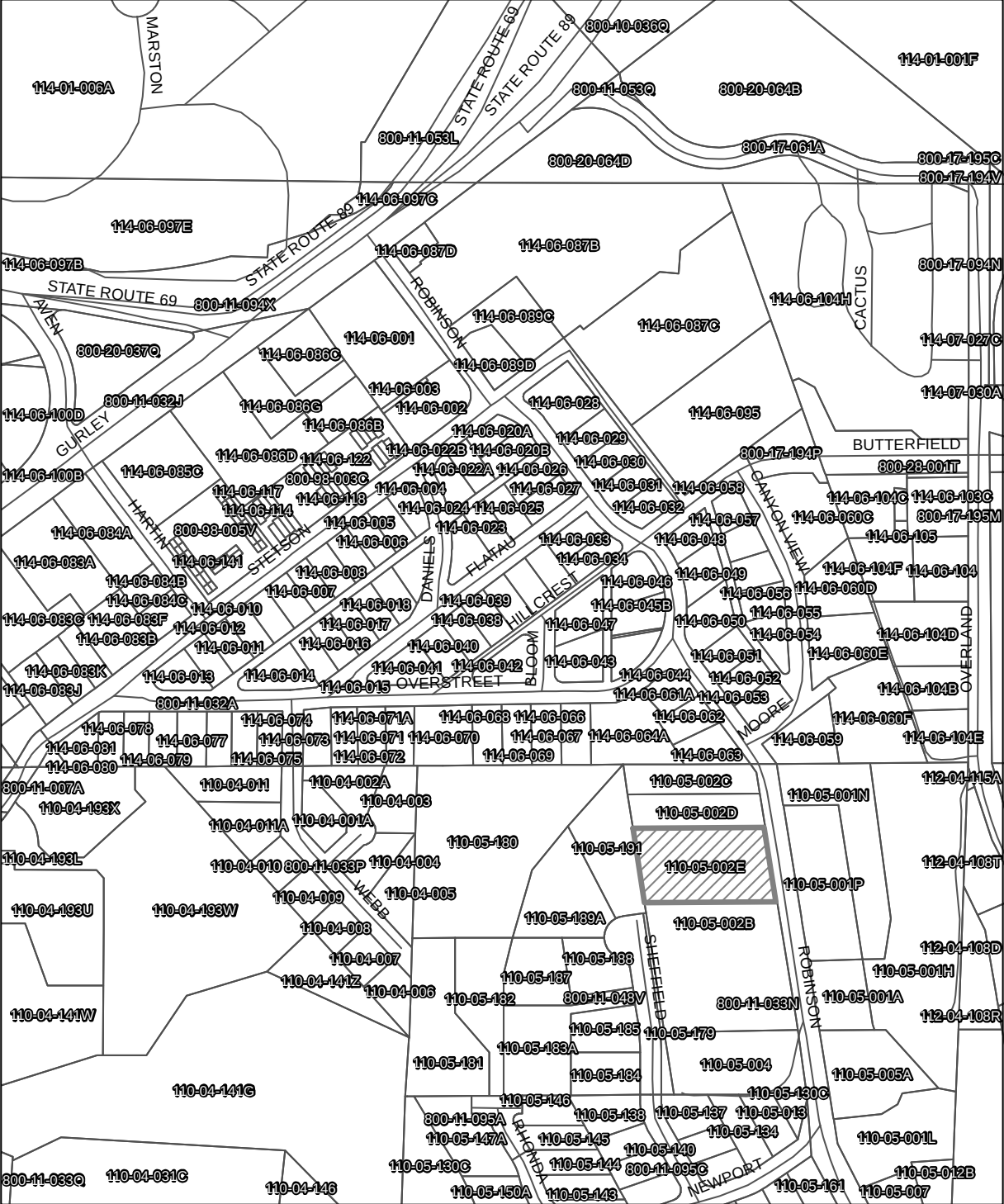
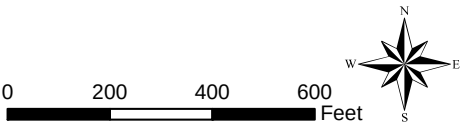
THENCE North 08 degrees 47 minutes 38 seconds West (record North 08 degrees 50 minutes West), a distance of 178.46 feet to a point on the West right-of-way of Robinson Drive;

THENCE South 89 degrees 35 minutes 37 seconds West, a distance of 310.64 feet to the POINT OF BEGINNING;

Containing 54,839 square feet, more or less.

Exhibit B
S.J. Homes

 Legal Description



MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: City Manager

AGENDA ITEM: Approval of Water Service Agreement No. 15-015 (City Contract No. 2016-090) with Eureka Apartments, LLC, for the remodel of an extended stay motel into an apartment complex (1141 E. Gurley Street; APN 114-06-084A)

Approved By:		Date:
Water Resources Manager:	Graser, Leslie	12/01/2015
City Attorney:	Paladini, Jon	12/02/2015
City Manager:	McConnell, Craig	12/07/2015

Item Summary

This application is for a water service agreement to support six (6) units of a thirty (30) unit apartment complex being remodeled at 1141 E. Gurley Street for affordable student housing.

Background

The original extended stay motel on the property subsequently transitioned to apartments. Since the motel was in existence prior to 1998, there is a corresponding quantity of grandfathered groundwater (6 acre-feet). Because renovation of the property does not involve a replat, the six (6) acre-feet remain available.

An updated water demand calculation was made for the new remodel using 0.25 acre feet per dwelling unit, according to the City's Water Management Policy. The grandfathered six (6) acre-feet are sufficient for twenty-four (24) multi-family dwelling units. Since the project consists of thirty (30) dwelling units, a water service agreement for an allocation of alternative water will be required for the six (6) other units, a total of one and one half (1.5) acre-feet.

$$0.25 \text{ acre-foot per year} \times 6 \text{ units} = 1.5 \text{ acre-feet/year}$$

The request for this water service agreement, submitted in September 2015, is identified in Exhibit A of Resolution 4310-1519 and meets Exception e. identified in therein: *Other*

AGENDA ITEM: Approval of Water Service Agreement No. 15-015 (City Contract No. 2016-090) with Eureka Apartments, LLC, for the remodel of an extended stay motel into an apartment complex (1141 E. Gurley Street; APN 114-06-084A)

current applications for redevelopment that may require a minor quantity of additional alternative water to augment a current quantity of grandfathered groundwater.

The Water Service Agreement requires that a certificate of occupancy be obtained for the project within three (3) years (Paragraph 2.D.)

Attachments

1. Agreement for Potable Water Eureka Apartments, LLC

Recommended Action: **MOVE** to approve Water Service Agreement No. 15-015 (City Contract No. 2016-090).

AGREEMENT FOR POTABLE WATER (WSA No. 15-015)
Eureka Apartments, LLC
City Contract No. 2016-090

WHEREAS, Eureka Apartments, LLC, (hereinafter referred to as "Applicant"), is the owner of certain real property located within the City of Prescott; and

WHEREAS, Applicant desires to obtain provision of potable water for the property described herein from the City of Prescott (hereinafter referred to as "City"); and

WHEREAS, an extended stay motel was in existence on said property and had water service prior to 1998; and

WHEREAS, six (6) acre-feet of current and committed groundwater supply recognized by the Arizona Department of Water Resources is appurtenant to the property; and

WHEREAS, Applicant intends to remodel the property into thirty (30) multi-family dwelling units; and

WHEREAS, the change of use from extended stay motel to multi-family dwelling units will require an additional water allocation by the City to augment said recognized pre-1998 current and committed groundwater resources in order to serve the increased water demand; and

WHEREAS, Prescott City Code Section 2-1-12(H) requires that an agreement be reached between the City and the Applicant in order to provide potable water; and

WHEREAS the City Council finds that compliance with this Agreement by the Applicant shall result in:

1. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to, the adopted Water Management Policy of the City; and
2. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to the adopted General Plan of the City; and
3. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to any other applicable adopted plans, including but not limited to Specific Area Plans, Circulation Plans, Capital Improvement Plans, Open Space and Trail Plans, Neighborhood Plans, Local Historic District Plans, growth planning or growth management plans, and redevelopment plans; and
4. The project being in accord with the duly adopted City of Prescott Water Budget.

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

1. That this Agreement shall relate to that property identified as Yavapai County Assessor Parcel Number 114-06-084A, more particularly described by the attached Exhibit "A" (hereinafter referred to as the "Property") and depicted by Exhibit "B".

2. The City will designate an additional one and one half (1.5) acre-feet annually of potable water to serve the Property, subject to the following:

A. Applicant shall be solely responsible for the costs of any water and sewer main extensions or upgrades required by the City to serve the Property.

B. Applicant shall connect the Property to the City's Sanitary Sewer System, and shall be responsible for any and all costs associated therewith, before water service to the property is initiated.

C. Any change in use of the Property exceeding a total of thirty (30) dwelling units shall result in the termination of this Agreement.

D. The quantity of one and one half (1.5) acre-feet annually of potable water shall be reserved for the Property for a period of three (3) years from the date of this Agreement, which quantity shall be made available upon issuance by the City of a certificate of occupancy for thirty (30) residential dwelling units. In the event the Applicant has not satisfied all requirements for issuance of said certificate of occupancy within said three (3) year period, this Agreement shall automatically terminate, and in such case neither the Applicant shall have any entitlement to, nor shall the City have any obligation to provide, potable water for this project.

E. In the event that the thirty (30) multi-family dwelling units identified on the building permit are reduced on the Certificate of Occupancy, then and in that event, the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced by 0.25 acre-foot for each such dwelling unit not constructed.

F. The installation of any new well on the Property, or the use of water on the Property from any other exempt well (less than 35 gpm), shall result in the termination of this Agreement.

3. This Agreement shall run with the land, and shall be binding upon the Property owner's successors in interest and assigns.

4. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

5. That the Property Owner hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of this Agreement arising from the Applicant, its agents, and/or employees.

7. Time is of the essence in this Agreement. The failure of either party to require strict performance of any provision of this Agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this Agreement in accordance with the terms hereof, and without notice.

9. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney's fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

DATED this _____ day of _____, 2015.

STATE OF ARIZONA)
)ss.
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed it.

Notary Public

DATED this _____ day of _____, 2015.

3

ATTEST:

APPROVED AS TO FORM:

DANA R. DeLONG
City Clerk

JON PALADINI
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Harry b. Oberg, Mayor, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

[Seal]

Notary Public

Exhibit A
Eureka Apartments, LLC

The Easterly 100 feet of Lots 3 and 4, Block B, of TRITLE TRACT, according to the plat of record in Book 4 of Maps, Page 71, records of Yavapai County, Arizona.

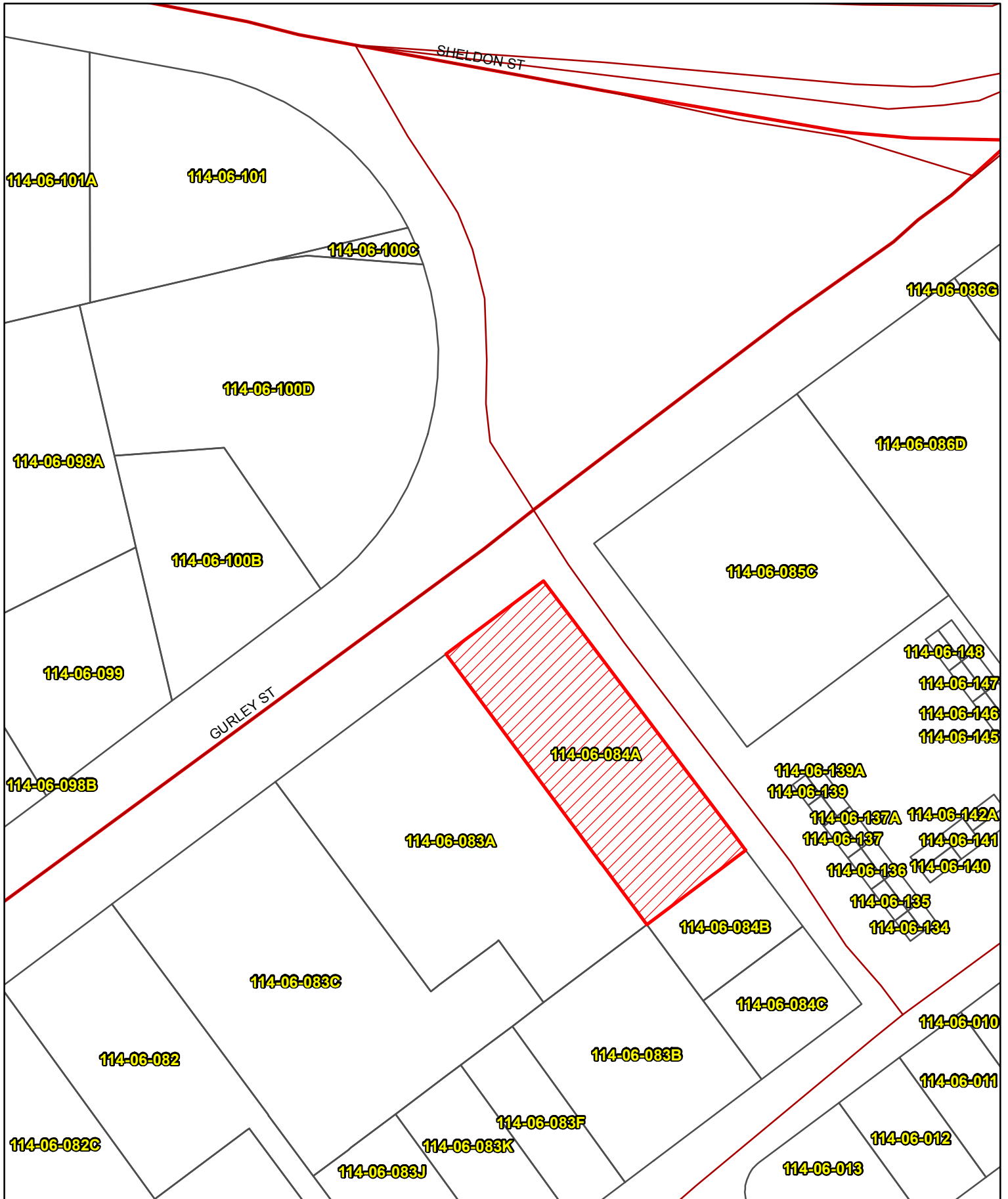
EXCEPT the South 150 feet thereof.



Legal Description

Exhibit B Eureka Apartments, LLC

0 50 100 150 200 Feet



MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: City Manager

AGENDA ITEM: Approval of Water Service Agreement No. 15-006 (City Contract No. 2016-022) with the Jason Orefice 2014 Trust and the Colleen Johnson 2010 Trust for the remodel of a boarding home into an apartment complex (223 E. Willis Street; APN 113-16-067)

Approved By:		Date:
Water Resources Manager:	Leslie Graser	12/01/2015
City Attorney:	Paladini, Jon	12/02/2015
City Manager:	McConnell, Craig	12/07/2015

Item Summary

This application is for a water service agreement to support four (4) units of an eight (8) unit apartment complex being remodeled at 223 E. Willis Street.

Background

This building was originally a boarding home; since it existed prior to 1998, it has a quantity of grandfathered groundwater (1 acre-foot). Because renovation of the property does not involve a replat, the one (1) acre-foot quantity will continue to be recognized by the Arizona Department of Water Resources.

The property is being converted to multi-family dwelling units (apartments) for which a building permit has been issued. An updated water demand calculation was conducted using 0.25 acre feet per dwelling unit, according to the City's Water Management Policy. The grandfathered one (1) acre-foot is sufficient for four (4) multi-family dwelling units. Since the project consists of eight (8) dwelling units in total, a water service agreement for an allocation of alternative water will be required for the four (4) other units:

$$\mathbf{0.25\ acre\text{-}foot\ per\ year\ x\ 4\ units\ =\ 1.0\ acre\text{-}foot/year}$$

The request for this water service agreement, submitted in May 2015, is identified in Exhibit A of Resolution 4310-1519 and meets Exception e. identified therein: *Other current applications for redevelopment that may require a minor quantity of additional alternative water to augment a current quantity of grandfathered groundwater.*

AGENDA ITEM: Approval of Water Service Agreement No. 15-006 (City Contract No. 2016-022) with the Jason Orefice 2014 Trust and the Colleen Johnson 2010 Trust for the remodel of a boarding home into an apartment complex (223 E. Willis Street; APN 113-16-067)

The Water Service Agreement requires that a certificate of occupancy be obtained for the project within three (3) years (Paragraph 2.D.).

Attachments

1. Water Service Agreement No. 15-006 (City Contract No. 2016-022)

Recommended Action: **MOVE** to approve Water Service Agreement No. 15-006 (City Contract No. 2016-022)

AGREEMENT FOR POTABLE WATER (WSA 15-006)
JASON OREFICE 2014 TRUST/COLLEEN JOHNSON 2010 TRUST
City Contract No. 2016-022

WHEREAS, Jason Orefice and Colleen Johnson (hereinafter referred to as "Applicant"), are owners of certain real property located within the City of Prescott; and

WHEREAS, Applicant wishes to obtain provision of potable water for the property described herein from the City of Prescott (hereinafter referred to as "City"); and

WHEREAS, a boarding home was in existence on said property and had water service prior to 1998; and

WHEREAS, one (1) acre-foot of current and committed groundwater supply recognized by the Arizona Department of Water Resources is appurtenant to the property; and

WHEREAS, Applicant intends to remodel the property to develop a total of eight (8) multi-family dwelling units; and

WHEREAS, the remodel will require an additional water allocation by the City to augment said recognized pre-1998 current and committed groundwater quantity in order to serve the increased water demand; and

WHEREAS, Prescott City Code Section 2-1-12(H) requires that an agreement be reached between the City and the Applicant in order to provide potable water; and

WHEREAS the City Council finds that compliance with this Agreement by the Applicant shall result in:

1. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to, the adopted Water Management Policy of the City; and
2. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to the adopted General Plan of the City; and
3. The project or development being consistent with and conforming to, furthering the implementation of, and not being contrary to any other applicable adopted plans, including but not limited to Specific Area Plans, Circulation Plans, Capital Improvement Plans, Open Space and Trail Plans, Neighborhood Plans, Local Historic District Plans, growth planning or growth management plans, and redevelopment plans; and
4. The project being in accord with the duly adopted City of Prescott Water Budget.

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

1. That this Agreement shall relate to that property identified as Yavapai County Assessor Parcel Number(s) 113-16-067, more specifically described in the attached Exhibit "A" (hereinafter referred to as the "Property") and depicted by Exhibit "B".

2. The City will designate an additional one (1) acre-foot annually of potable water to serve the Property, subject to the following:

A. Applicant shall be solely responsible for the costs of any water and sewer main extensions or upgrades required by the City to serve the Property.

B. Applicant shall connect the Property to the City's Sanitary Sewer System, and shall be responsible for any and all costs associated therewith, before water service to the property is initiated.

C. Any change in use of the Property exceeding a total of eight (8) multi-family dwelling units shall result in the termination of this Agreement.

D. The quantity of one (1) acre-foot annually of potable water shall be reserved for the Property for a period of three (3) years from the date of this Agreement, which quantity shall be made available upon issuance by the City of a certificate of occupancy for eight (8) residential dwelling units. In the event the Applicant has not satisfied all requirements for issuance of said certificate of occupancy within said three (3) year period, this Agreement shall automatically terminate, and in such case neither the Applicant shall have any entitlement to, nor shall the City have any obligation to provide, potable water for this project.

E. In the event that the eight (8) dwelling units identified on the building permit are reduced on the Certificate of Occupancy, then and in that event, the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced by 0.25 acre-foot for each such dwelling unit not constructed.

F. The installation of any new well on the Property, or the use of water on the Property from any other exempt well (less than 35 gpm), shall result in the termination of this Agreement.

3. This Agreement shall run with the land, and shall be binding upon the Property owner's successors in interest and assigns.

4. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

5. That the Property Owner hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of this Agreement arising from the Applicant, its agents, and/or employees.

7. Time is of the essence in this Agreement. The failure of either party to require strict performance of any provision of this Agreement shall not be deemed a waiver of the right of said party thereafter to require strict performance of that or any other provision of this Agreement in accordance with the terms hereof, and without notice.

9. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

DATED this _____ day of _____, 2015.

STATE OF ARIZONA)
)ss.
COUNTY OF YAVAPAI)

[Seal]

Notary Public

DATED this _____ day of _____, 2015.

3

ATTEST:

APPROVED AS TO FORM:

DANA R. DeLONG
City Clerk

JON PALADINI
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Harry B. Oberg, Mayor, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

[Seal]

Notary Public

Exhibit A
JASON OREFICE 2014 TRUST/COLLEEN JOHNSON 2010 TRUST

The East 52.8 feet of Lot 1, Block 10, City of Prescott, according to the plat of record in Book 4 of Maps, Page 22, records of Yavapai County Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of said Lot 1;

THENCE South $01^{\circ} 25' 2''$ West, a distance of 49.99 feet;

THENCE North $88^{\circ} 22' 00''$ West, a distance of 52.80 feet;

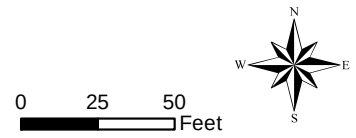
THENCE North $01^{\circ} 25' 52''$ seconds East, a distance of 50.01 feet;

THENCE South $88^{\circ} 20' 18''$ seconds East, a distance of 52.80 feet;

Containing 0.06 acres, more or less.

 Legal Description

Exhibit B
**Jason Orefice 2014 Trust/
Colleen Johnson 2010 Trust**



MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: Fire

AGENDA ITEM: Approval of a one-year contract with Fitness Appraisal, LLC, for comprehensive wellness/fitness testing of firefighters in the estimated amount of \$17,400.00 (City Contract No. 2016-091)

FUNDING SOURCE(S): General Fund

Approved By:		Date:
Fire Chief:	Light, Dennis	11/25/2015
City Attorney:	Paladini, Jon	12/07/2015
City Manager:	McConnell, Craig	12/09/2015

Item Summary

This item requests approval of a one-year contract with Fitness Appraisal, LLC, to perform on-site comprehensive fitness-for-duty physicals for firefighters assigned to response roles.

Background

A number of “national consensus standards” address safety measures related to the deployment of firefighting personnel. National Institute of Occupational Safety and Health (NIOSH), section 1910.134(c) (1) (i), requires medical evaluations for “anyone that dons or wears a respirator or a Self Contained Breathing Apparatus (SCBA) in Immediately Dangerous to Life and Health (IDLH) environments.”

National Fire Protection Association (NFPA) Standard 1582, Chapter 4, outlines the roles and responsibilities for career fire departments to ensure a sound occupational medical surveillance program for candidates and personnel. Medical surveillance is one aspect of a comprehensive occupational physical fitness/wellness program to ensure firefighters are in optimum condition to perform the work they may be assigned, which includes the many arduous tasks associated with firefighting. A secondary purpose is to detect any underlying medical conditions that could impact the ability to perform properly within anticipated work conditions. Any personnel determined to be less than qualified are placed in a supervised fitness/wellness program designed to return them to fully capable employment status in the shortest period of time.

In addition to the above guidelines, most, if not all, federal grant programs, including the

AGENDA ITEM: Approval of a one-year contract with Fitness Appraisal, LLC, for comprehensive wellness/fitness testing of firefighters in the estimated amount of \$17,400.00 (City Contract No. 2016-091)

recently received Assistance to Fire Fighters Grant, are predicated upon grantee compliance with the national consensus standards, in particular NFPA 1582.

In the past, the Department utilized Chino Valley Medical Group, at their Chino Valley site, to complete the physical assessments for each fire suppression employee. Although the costs of the physicals had been absorbed as part of the employee's annual wellness benefit included in medical insurance, the department was informed by the provider that due to their insurance billing agreement, employer-provided medical benefits would no longer be recognized for the firefighter wellness physicals.

Scheduling and completion of the off-site process was cumbersome, incomplete, and resulted in added costs associated with paying overtime to employees to complete the process while in an off-duty status. On-duty completion of the physical utilizing the current vendor was not practical due to the vendor being site-based, non-mobile, and out of the immediate vicinity of Prescott. Additionally, the Chino Valley Medical Group is no longer equipped to complete the entire physical at the Chino Valley location and have outsourced the certain elements to a different doctor in Prescott Valley, adding additional time and cost for completion of the regimen. The arrangement with Chino Valley Medical group resulted in aggregated overtime of approximately 3 hours per firefighter, at an annual estimated cost of \$3,420.00, to complete the required testing for all mandated personnel.

Prior to pursuing a different vendor, the Department requested a quote for continued comprehensive physical fitness testing by the Chino Valley Medical Group. The quote received was \$430.00 per employee, for a department cost of \$24,510.00 annually. A similar situation has been experienced by the neighboring fire districts, and they too are looking elsewhere for the services.

Fitness Appraisal, LLC, has proposed to provide a wellness/fitness physical for \$300.00 per employee. This vendor offers a fully inclusive examination in accordance with both the NIOSH and NFPA standards, on-site at a City fire station, enabling employees to remain on-duty and available for emergency response, and eliminating the overtime cost for off-site testing. The scheduling of physicals will result in crews rotating in and out of the station for the purpose of completing the tests required while they remain on-duty. Personal medical information from the physicals will be retained by the provider and not released to the City, however, the vendor will provide an individual report for each assessed employee indicating that the employee (1) is or (2) is not fit for duty.

Procurement

The City will be using its standard professional services format for this contract.

AGENDA ITEM: Approval of a one-year contract with Fitness Appraisal, LLC, for comprehensive wellness/fitness testing of firefighters in the estimated amount of \$17,400.00 (City Contract No. 2016-091)

Financial Impact

Funding is available in the FY 16 General Fund budget.

Attachments

1. Fitness Appraisal, LLC, Quote
2. Fitness Appraisal, LLC, Competitive Bidding Requirements Exemption
3. Fitness Appraisal, LLC, Professional Services Agreement

Recommended Action: **MOVE** to approve City Contract No. 2016-091.

PRESCOTT FIRE DEPARTMENT WELLNESS/FITNESS PRICE QUOTES FOR 2015

Fitness Appraisal, LLC will implement the following wellness/fitness services for firefighters at the Prescott Fire Department:

- ⇒ Complete blood profile- Lipids, glucose, uric acid, minerals, protein, liver and kidney function.
- ⇒ Lifestyle Questionnaire
- ⇒ SPO2
- ⇒ Blood Pressure
- ⇒ Body Fat Analysis-Skinfold & Bio electrical impedance
- ⇒ Respiratory Analysis, VC & VEV1
- ⇒ EKG Maximal Exercise Treadmill Test with O2-CO2 Analysis (Measured Max VO2)
- ⇒ Flexibility Assessment
- ⇒ Grip Strength
- ⇒ Vertical Jump
- ⇒ Two Minutes Abdominal Curls
- ⇒ Maximum Push-Ups
- ⇒ Maximum Pull-Ups
- ⇒ Firefighter Physical Performance Score
- ⇒ Physical Fitness Score
- ⇒ Health Age Score
- ⇒ Hearing and Vision Screening
- ⇒ Computer Reports And Consultation

Price Per Firefighter: \$300.00

Total Cost for 58 firefighters: \$17,400.00 (no tax).



Competitive Bidding Requirements Exemption

Date: 12/2/2015
Dollar Amount: \$17,400.00

Division: Fire Department

REQ/PO#: _____
Supplier: Fitness Appraisal LLC

Goods/Services to be purchased: Firefighter Annual Fitness/Wellness Examinations

BACKGROUND/JUSTIFICATION: The National Institute of Occupational Safety and Health (NIOSH), section 1910.134(c) (1) (i) requires medical evaluations for anyone that dons or wears a respirator or a Self Contained Breathing Apparatus (SCBA) in Immediately Dangerous to Life and Health (IDLH) environments. National Fire Protection Association (NFPA) Standard 1582, Chapter 4, outlines the roles and responsibilities for career fire departments to ensure a sound occupational medical surveillance program for candidates and members without cost to the members. This medical surveillance piece is one part of a comprehensive occupational physical/fitness/wellness efforts to ensure firefighters are in optimum condition to perform the work to which they may be assigned with the primary focus being to ensure a capable and fit workforce to perform the arduous tasks associated with firefighting and detect any underlying medical conditions that would impact that ability. Those that are found less than qualified are placed in a supervised fitness/wellness program designed to return them to a fully capable employee in the shortest period of time.

Unlike the more traditional wellness exam provided for by our health insurance benefits, this is specifically aligned with the fitness needs related to fire service professionals who are assigned to work in areas that are deemed to be Immediately Dangerous to Life and Health (IDLH).

We were informed by the previous vendor (Chino Valley Medical Group) verbally that they would no longer be able to utilize our group health insurance benefit for individual employees in order to complete their annual physicals, and as such an informal quote of \$430.00 per employee was rendered. In response to this increase in cost, the department opted to search out a vendor that provides this sort of specialty, which resulted in the selection of Fitness Appraisal, LLC. This vendor has tendered a very reasonable quote of \$300.00 per firefighter for a physical that covers all the components necessary under both the NIOSH and NFPA Standards.

Please check the appropriate Exemption Category:

- ☒ Professional or specialized services as defined in Section 1-27-16 of the Procurement Code.
- ☐ Emergency procurements, as defined in Section 1-27-10 of the Procurement Code.
- ☐ Situations where solicitations of bids or proposals would be impractical, unavailing, or impossible.
- ☐ Sole source procurements.
- ☐ Cooperative procurements as defined in Section 1-27-9 of the Procurement Code.
- ☐ Agreements negotiated by the City Attorney or Risk Manager in settlement of a claim of litigation or threatened litigation are exempt from the provisions of this chapter.

My recommendations are based upon a thorough, objective review of the currently available product(s)/services(s) and source(s) and are determined to be in the best interest of the City.

Requestor: Dennis Light

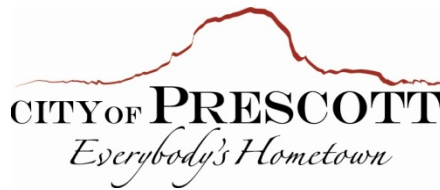
Date: 12/02/2015

Contract Specialist: _____

Date: _____

Department Director: _____

Date: _____



Professional Services Agreement

With

Fitness Appraisal, LLC for Wellness/Fitness Services for Prescott Fire Department Employees

WHEREAS, the City of Prescott (hereinafter referred to as “City”) is in need of certain services; and

WHEREAS, the City has solicited Requests for Qualifications in accordance with local and state law; and

WHEREAS, Fitness Appraisal, LLC (hereinafter referred to as “Professional”), has expertise in wellness and fitness services for municipal firefighter employees.

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

1. That Professional shall provide the services to the City in relation to wellness/fitness services as indicated in Exhibit "A" (Request for Statements of Qualifications and Scope of Work, Task and Fee Estimate, and Project Schedule) and as requested by the City of Prescott Fire Chief.
2. In addition to those services identified in Paragraph 1 above, the Professional shall also perform all subordinate tasks not specifically referenced in Paragraph 1, but necessary to the full and effective performance of the tasks specifically referenced.
3. The Professional shall provide sufficient qualified personnel to perform any and all services as required herein, including but not limited to inspections and preparation of reports, as reasonably requested by representatives of the City.
4. All services identified in Paragraphs 1 and 2 above shall be completed to the satisfaction of the City and shall be performed in compliance with the Professional's project schedule identified in the attached Exhibit "A".
5. The term of this Agreement shall be for a one year period beginning on the date the agreement is fully executed by the parties.
6. Notwithstanding the foregoing, this Agreement may be terminated by either party upon ten (10) days written notice, with or without cause or upon completion of services. If this Agreement is terminated, the Professional shall be paid for authorized services satisfactorily performed to the date of the Professional's receipt of such termination notice.

7. It is agreed by and between the parties that this Agreement incorporates the attached Exhibit "A" thereto as a part of this Agreement, and that the terms thereof shall be binding between the parties.
8. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a Professional to any other party of the Agreement with respect to the subject matter of the Agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.
9. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

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

Fitness Appraisal, LLC
P.O. Box 1771
Dewey, AZ 86327

10. It is expressly agreed and understood by and between the parties that the Professional is an independent Contractor, and, as such, Professional shall not become a City employee, and is not entitled to payment or compensation from the City, or to any fringe benefits to which other City employees are entitled. As an independent Contractor, Professional further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent Contractor, Professional further agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out nor claim to be an officer or employee of the City by reason thereof, and that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
11. This Agreement is non-assignable by the Professional unless by sub-contract, as approved in advance by the City.
12. (A) The City shall pay to Professional a not to exceed amount of seventeen thousand four hundred dollars and no cents (\$17,400.00) for all services specified in Sections 1 and 2 of this Agreement, as specified in Exhibit "A".

(B) The foregoing sum includes a "not to exceed" amount for any and all services to be rendered Professional or sub-contractors, which the Professional may employ for this Contract. It is expressly agreed by and between the parties that the Professional is solely responsible for any and all payment to such any other Professionals or sub-contractors retained by the Professional.

(C) Payment of the total amount provided for under Section 12 (A) shall not relieve Professional of its obligation to complete the performance of all those services specified in Sections, 1, 2, and 3. Should the City request in writing additional services beyond that specified in Sections 1, 2, and 3, then Professional shall charge and City shall pay Professional in accordance with Exhibit "A".

(D) Prior to the final payment to the Professional, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid monies due the City from the Professional, and shall apply to those monies to the appropriate accounts. Professional shall provide to the City any information necessary to determine the total amount(s) due.

(E) The Professional shall bill the City monthly for the fee due the Professional, based upon the rate for the services rendered for each itemized task pursuant to this Agreement and Exhibit "A" during the billing period. City shall pay such billings within thirty (30) days of the date of their receipt.

13. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.
14. This Agreement shall be construed under the laws of the State of Arizona.
15. All work products of the Professional for this Project are instruments of service for this Project only and shall remain the property of the City whether the Project is completed or not. All plans, drawings, specifications, data maps, studies and other information, including all copies thereof, furnished by the City shall remain the property of the City. They are not to be used on other work, and, with the exception of this Agreement, are to be returned to the City on request or at the completion of the work.
16. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Professional further agrees that this provision shall be contained in all sub-contracts related to the project, which is the subject of this Agreement.
17. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Agreement, pursuant to A.R.S. Section 12-341.01(A) and (B), or pursuant to any other state or federal statute, court rule, case law or common law. The Professional further agrees that this provision shall be contained in all sub-contracts related to the project, which is the subject of this Agreement.
18. This Agreement represents the entire and integrated Agreement between the City and the Professional and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Professional. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

19. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
20. The Professional hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the Professional's negligent acts, errors, or omissions, pursuant to this Agreement, except to the extent said claims, liabilities, expenses or lawsuits arise by the negligent acts or omissions of the City or his/her agents. The Professional further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the Professional has or may have against the City, its agents or employees, arising out of or in any way connected with the Professional's activities as set forth below, other than those acts which occur due to the negligence of the City, its employees or agents.
21. No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding.
22. (A) Changes in Work: The City, without invalidating the Contract, may order extra work, make changes by altering, or delete any portion of the work as specified herein, or as deemed necessary or desirable by the Prescott Fire Chief. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time and additional cost caused thereby shall be made at the time of ordering such change or extra work.

(B) Extra work shall be that work not indicated or detailed on the Scope of Work and not specified. Such work shall be governed by all applicable provisions on the Contract Document.

(C) In giving instructions, the Prescott Fire Chief shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work. No extra work or change shall be made unless in pursuance of a written order by the Prescott Fire Chief and no claim for an addition to the total amount of the Contract shall be valid unless so ordered.

(D) Payment for any change ordered by the Prescott Fire Chief which involves work essential to complete the Contract, but for which no basis of payment is provided for herein, shall be subject to agreement prior to said work being performed.

(E) Adjustments to price and/or Contract Time which are agreed upon shall be incorporated in the written order issued by the Prescott Fire Chief, which shall be written so as to indicate acceptance on the part of the Professional as evidenced by its signature. In the event prices cannot be agreed upon, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as it may deem necessary to complete the work, or it may direct the Professional to proceed with the items in question to be reimbursed pursuant to the unit prices in the Professional fee proposal.

(F) If the Professional claims that any instructions involve extra cost under this Contract, it shall give the Prescott Fire Chief written notice thereof within forty-eight (48) hours after the receipt of such instructions, and in any event before proceeding to execute the work. No such claim shall be valid unless so made. The Professional shall do such extra work therefor upon receipt of an accepted Contract Amendment or other written order of the Prescott Fire Chief and in the absence of such Contract Amendment or other written order of the Prescott Fire Chief, the Professional shall not be entitled to payment for such extra work. In no case shall work be undertaken without written notice from the Prescott Fire Chief to proceed with the work. All Contract Amendments must be approved by the Prescott Fire Chief. Contract Amendments over \$10,000.00 must be approved by City Council.

23. (A) The Professional shall obtain and maintain in effect during the term of, and until final acceptance of all work under this Agreement, a policy or policies of liability insurance with the following coverage:

1) Commercial General Liability – Occurrence Form (if applicable)

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

General Aggregate	\$ 2,000,000
Products – Completed Operations Aggregate	\$ 2,000,000
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 Professional.”

2) Professional Liability (Errors and Omissions Liability)

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

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.

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

3) Business Automobile Liability (if applicable) 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
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(B) City and Professional waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, sub-contractors and employees for damages covered by property insurance during and after completion of the Services.

Professional Services Agreement

(C) 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 ARS Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

(D) Prior to commencing work under this Agreement, the Professional shall provide City with evidence that it is either a “self-insured employer” or a “carrier insured employer” for Workers’ Compensation as required by ARS 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

(E) 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.

(F) 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. All insurance is to be placed with an insurer admitted in the state in which operations are taking place.

(G) Verification of Coverage: Professional 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. Please note the contract number on the Certificate.

24. The Professional, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The Professional will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

25. Contractor Immigration Warranty

Professional understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. § 34-302, as amended, “Residence Requirements for Employees”.

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its sub-contractors (“Sub-contractors”) will comply with, and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter “Contractor Immigration Warranty”).

A breach of the Professional Immigration Warranty shall constitute a material breach of this Contract and shall subject the Professional to penalties up to and including termination of this Contract at the sole discretion of the City.

Professional Services Agreement

The City retains the legal right to inspect the papers of any Professional or Sub-contractors employee who works on this Contract to ensure that the Professional or Sub-contractor is complying with the Professional Immigration Warranty. Professional agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Professional and any of sub-contractors to ensure compliance with Professional's Immigration Warranty. Professional agrees to assist the City in regard to any random verification performed.

Neither the Professional nor any Sub-contractor shall be deemed to have materially breached the Professional Immigration Warranty if the Professional or Sub-contractor establishes that it has complied with employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

The provisions of this Article must be included in any contract the Professional enters into with any and all of its sub-contractors who provide services under this Contract or any sub-contract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Professional or sub-contractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

26. Professional shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances.
27. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Professional.
28. In the event of a discrepancy between this Agreement and Exhibit "A", this Agreement shall control over Exhibit "A".
29. Non-Availability of Funds: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

Dated this _____ day of _____, 2015.

City of Prescott, a municipal corporation

PROFESSIONAL

Harry B. Oberg, Mayor

Fitness Appraisal, LLC

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

Dana R. DeLong, City Clerk

Jon M. Paladini, City Attorney

Exhibit "A"



P.O. Box 1771
Dewey, AZ 86327
928-899-0705
ckrogedal@gmail.com
fitnessappraisalinc.com

PRESCOTT FIRE DEPARTMENT WELLNESS/FITNESS PRICE QUOTES FOR 2015

Fitness Appraisal, LLC will implement the following wellness/fitness services for firefighters at the Prescott Fire Department:

- ⇒ Complete blood profile- Lipids, glucose, uric acid, minerals, protein, liver and kidney function.
- ⇒ Lifestyle Questionnaire
- ⇒ SPO2
- ⇒ Blood Pressure
- ⇒ Body Fat Analysis-Skinfold & Bio electrical impedance
- ⇒ Respiratory Analysis, VC & VEV1
- ⇒ EKG Maximal Exercise Treadmill Test with O2-CO2 Analysis (Measured Max VO2)
- ⇒ Flexibility Assessment
- ⇒ Grip Strength
- ⇒ Vertical Jump
- ⇒ Two Minutes Abdominal Curls
- ⇒ Maximum Push-Ups
- ⇒ Maximum Pull-Ups
- ⇒ Firefighter Physical Performance Score
- ⇒ Physical Fitness Score
- ⇒ Health Age Score
- ⇒ Hearing and Vision Screening
- ⇒ Computer Reports And Consultation

Price Per Firefighter: \$300.00

Total Cost for 58 firefighters: \$17,400.00 (no tax).

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: Field and Facilities Services

AGENDA ITEM: Ratification of payment for emergency purchase of one (1) ea. heavy-duty equipment trailer from Titan Machinery, in the amount of \$19,121.89

FUNDING SOURCE(S): Water Fund

Approved By:

Date:

Director:	Miller, Stephanie	11/30/2015
City Attorney:	Paladini, Jon	12/04/2015
City Manager:	McConnell, Craig	12/08/2015

Item Summary

Approval of this item will ratify the payment for emergency purchase of a heavy-duty equipment trailer which is used for transporting backhoes and other heavy equipment.

Council was notified of the necessity for this emergency procurement by memorandum dated November 2, 2015.

Background

In October 2015, it was discovered that a City truck/trailer combination was several thousand pounds overweight, and the trailer was loaded in excess of its gross vehicle weight (GVW). The incident led to review of all City truck/trailer combinations, which revealed that the City did not own a trailer with a sufficient load rating to permit hauling of a backhoe along with other equipment needed by crews working in the field.

Water Distribution uses its backhoe/trailer combination daily. Without a trailer large enough for hauling, crews had to begin "roading" the backhoe to work sites, a time-consuming, inefficient way of transport. While "roading" heavy equipment on-road is legal, it is not always a practical option where the trips are to remote locations, and is very hard on front-drive differentials. Accordingly, it is not recommended as a routine practice.

Fleet Services contacted several vendors; all but one stated that at least eight weeks would be required to build a trailer (40,000 pound trailers are not available "off the lot").

Without this procurement, Water Distribution would not have had access to a serviceable trailer until February 2016. Contact with local and Phoenix vendors

AGENDA ITEM: Ratification of payment for emergency purchase of one (1) ea. heavy-duty equipment trailer from Titan Machinery, in the amount of \$19,121.89

determined that this type of trailer was not available for rent, and retrofitting the axles on the current trailer was not an option due to axle sizes and age of the trailer.

A 40,000 pound capacity trailer was available only from Titan Machinery. Two other vendors, Interstate Trailers, Inc., and Larson Equipment, were contacted but did not have a 40,000 pound unit.

Two additional trailers, one for Wastewater and one tilt-trailer for Streets, will also need to be purchased to resolve the issue of trailers being over their rated weights. Approval to purchase these two trailers will be requested through the normal procurement process. Risk Management has further arranged for three CDL refresher training classes, which will include education regarding gross vehicle weight and driver responsibilities.

Section 10 of the City Procurement Code provides authorization for such emergency purchases, "... if a situation is determined to be necessary for the public interest," subject to subsequent ratification by the Council.

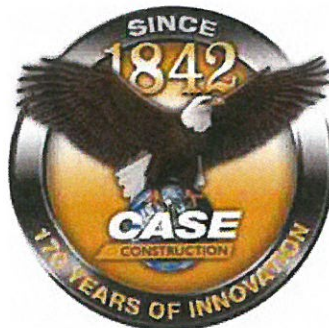
Financial Impact

Funding of \$19,121.89 is available in the FY16 Water Fund budget.

Attachment

1. Titan Machinery Invoice
2. Titan trailer picture

Recommended Action: **MOVE** to ratify payment for one (1) ea. heavy-duty equipment trailer, from Titan Machinery, in the amount of \$19,121.89.





MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Ordinance No. 4961-1499 authorizing purchase and acceptance of public utility easements from The Handley Family Revocable Trust, and from Benn A. Wagner and Karen M. Wagner, husband and wife, for the Smoke Tree Lane Reconstruction Project

FUNDING SOURCE(S): One-Cent Sales Tax for Streets Fund

Approved By:		Date:
Director:	Hash, Henry	11/30/2015
City Attorney:	Paladini, Jon	12/02/2015
City Manager:	McConnell, Craig	12/07/2015

Item Summary

With approval of this item, the City will acquire public utility easements from The Handley Family Revocable Trust, and from Benn A. Wagner and Karen M. Wagner, husband and wife, for the Smoke Tree Lane Reconstruction Project.

Background

Design of Smoke Tree Lane from Willow Creek Road to just east of Birchwood Cove is complete. During the design stage, it was determined that a waterline which is currently located beneath three storm water culverts crossing Smoke Tree Lane, should be relocated around the culverts. A public utility easement is required from two adjacent property owners to accomplish the work.

Compensation for the public utility easements was based on a broker price opinion provided by the City's Real Property Specialist.

With acceptance of these public utility easements, the Smoke Tree Lane Reconstruction Project will have all the easements required for reconstruction.

The City's standard easement agreement was used for each acquisition.

Financial Impact

Agenda Item: Adoption of Ordinance No. 4961-1499 authorizing purchase and acceptance of public utility easements from The Handley Family Revocable Trust, and from Benn A. Wagner and Karen M. Wagner, husband and wife, for the Smoke Tree Lane Reconstruction Project

FY 16 budgeted funds are available for the Smoke Tree Lane Reconstruction Project from the One-Cent Sales Tax for Streets Fund. The total amount required for the acquisitions is \$5,170.00 plus closing costs, estimated between \$500 and \$600 for each closing. The actual closing costs will determine the final amount for each transaction.

Attachments

1. Ordinance No. 4961-1499
2. Map Showing PUEs and surrounding area

Recommended Action: MOVE to adopt Ordinance No. 4961-1499.

ORDINANCE NO. 4961-1499

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE AND ACCEPTANCE OF PUBLIC UTILITY EASEMENTS FROM THE HADLEY FAMILY REVOCABLE TRUST, AND FROM BENN A. WAGNER AND KAREN M. WAGNER FOR THE SMOKE TREE LANE RECONSTRUCTION PROJECT; AND AUTHORIZING THE MAYOR AND STAFF TO EXECUTE ANY AND ALL DOCUMENTS TO EFFECTUATE SAID PURCHASES AND ACCEPTANCES.

RECITALS:

WHEREAS, the City Council has determined that certain public utility easements are needed by the City for the Smoke Tree Lane reconstruction project, and the purchase and acceptance of these public utility easements will be in the best interests of the health, safety and welfare of the City of Prescott; and,

WHEREAS, the proposed purchase prices of the following described public utility easements are deemed to be fair and equitable and will benefit the City of Prescott.

ENACTMENTS:

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

SECTION 1. THAT the City Council hereby accepts the offer to purchase that certain public utility easement more particularly described in that certain Agreement For Sale of Public Utility Easement dated November 2, 2015, and agrees to purchase and accept said easement from The Handley Family Revocable Trust, pursuant to the terms and conditions as set forth therein, for the purchase price of \$2,585.00 plus closing costs.

SECTION 2. THAT the City Council hereby accepts the offer to purchase that certain public utility easement more particularly described in that certain Agreement For Sale of Public Utility Easement dated November 2, 2015, and agrees to purchase and accept said easement from Benn A. Wagner and Karen M. Wagner, pursuant to the terms and conditions as set forth therein, for the purchase price of \$2,585.00 plus closing costs.

SECTION 3. THAT upon payment of the forgoing sums, the Mayor and staff are directed to execute any and all documents in order to effectuate the foregoing purchases and acceptance of public utility easements, including the payment of closing and other costs associated with the purchases and recording of the closing documents.

PASSED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, on this _____ day of _____, 2015.

HARRY B. OBERG, Mayor

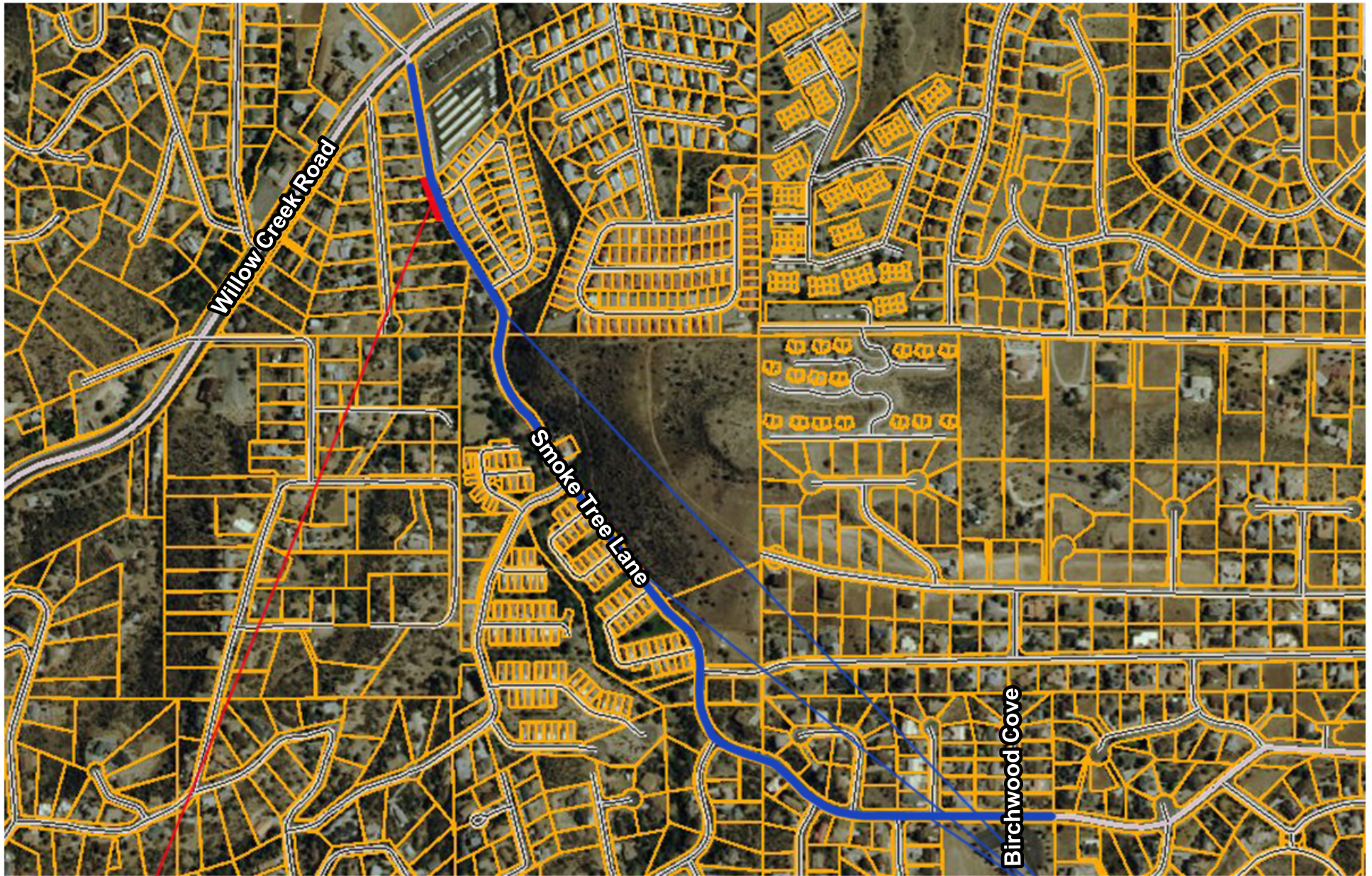
ATTEST:

APPROVED AS TO FORM:

DANA R. DELONG, City Clerk

JON M. PALADINI, City Attorney

Map Showing PUE's & Surrounding Area



PUE Areas

Smoke Tree Lane Reconstruction Area

MEETING DATE/TYPES: VOTING SESSION 12-15-2015

DEPARTMENT: Public Works

AGENDA ITEM: Adoption of Ordinance No. 4960-1498 authorizing acceptance of donations of real property from the Harold James Family Trust and DW1 Investments, LLC, for Willow Creek Road Realignment Project right- of-way

FUNDING SOURCE(S): Streets and Water Funds

Approved By:		Date:
Director:	Hash, Henry	12/04/2015
City Attorney:	Paladini, Jon	12/04/2015
City Manager:	McConnell, Craig	12/07/2015

Item Summary

With approval of this item, the City will accept donations of real property from the Harold James Family Trust and from DW1 Investments, LLC, for right-of-way necessary for the Willow Creek Road Realignment Project.

Background

The Willow Creek Road Realignment Project generally consists of construction of a new realignment of Willow Creek Road between Pioneer Parkway and Deep Well Ranch Road in the configuration of a two-lane collector with paved shoulders.

The Harold James Family Trust and DW1 Investments, LLC, have both agreed to donate the real property needed.

Financial Impact

The donated properties have a total appraised value of \$1,037,310.00. The expense to the City to accept them will be approximately \$10,000.00, consisting of appraisal and closing costs. Funding is available in the Streets and Water Funds for payment of these costs.

AGENDA ITEM: Adoption of Ordinance No. 4960-1498 authorizing acceptance of donations of real property from the Harold James Family Trust and DW1 Investments, LLC, for Willow Creek Road Realignment Project right-of-way

Attachments

1. Ordinance No. 4960-1498
2. Public Right of Way Gift Agreement Harold James Family Trust
3. Public Right of Way Gift Agreement DW1 Investments LLC
4. Map of Donated Properties

Recommended Action: MOVE to adopt Ordinance No. 4960-1498.

ORDINANCE NO. 4960-1498

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE OF REAL PROPERTIES GIFTED TO THE CITY FROM THE HAROLD JAMES FAMILY TRUST, AND FROM DW1 INVESTMENTS, LLC, FOR THE WILLOW CREEK ROAD REALIGNMENT PROJECT; AND AUTHORIZING THE MAYOR AND STAFF TO EXECUTE ANY AND ALL DOCUMENTS TO EFFECTUATE SAID ACCEPTANCE.

RECITALS:

WHEREAS, the City Council has determined that certain real properties are needed by the City for the Willow Creek Road Realignment Project, and the acceptance of these properties will be in the best interests of the health, safety and welfare of the City of Prescott; and,

WHEREAS, the proposed donations of said real properties, along with the terms and conditions in the City of Prescott's ("City") Public Right-of-Way Gift Agreements, are deemed to be fair and equitable.

ENACTMENTS:

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

SECTION 1. THAT the City Council hereby accepts certain real property more particularly described in that certain Public Right-of-Way Gift Agreement dated November 30, 2015, and agrees to accept said property from the Harold James Family Trust, pursuant to the terms and conditions as set forth therein.

SECTION 2. THAT the City Council hereby accepts certain real property more particularly described in that certain Public Right-of-Way Gift Agreement dated December 4, 2015, and agrees to accept said property from DW1 Investments, LLC, pursuant to the terms and conditions as set forth therein.

SECTION 3. THAT the Mayor and staff are directed to execute any and all documents in order to effectuate the foregoing gifts of real property and accepts the real property along with the terms and conditions contained in the subject Public Right-of-Way Gift Agreements , including the payment of closing and other costs associated with the recordation of the closing documents.

PASSED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, on this _____ day of _____, 2015.

HARRY B. OBERG, Mayor

ATTEST:

APPROVED AS TO FORM:

DANA R. DELONG, City Clerk

JON M. PALADINI, City Attorney

PUBLIC RIGHT OF WAY GIFT AGREEMENT FOR ROADWAY AND UTILITY PURPOSES

THIS AGREEMENT is made this 30 day of NOVEMBER, 2015, by and between the HAROLD JAMES FAMILY TRUST, a 501(c)(3) charitable foundation, (the "Donor" and may be hereinafter referred to as the "Donor"), and the City of Prescott, an Arizona municipal corporation (the "Donee" and may be hereinafter referred to as the "Donee").

In consideration of the covenants in this Agreement, the Donor and the Donee agree as follows:

ARTICLE I

Gift Property

1.1 The Property. The Donor agrees to gift to the Donee, and the Donee agrees to accept a gift from the Donor, in accordance with this Agreement, a portion of Sections 26 and 35, Township Fifteen (15) North, Range Two (2) West, Gila and Salt River Meridian, Yavapai County, Arizona, containing 30.44 acres, more or less, which property is more particularly described on Exhibit "1", which contains legal descriptions and maps of the subject parcels, hereinafter referred to as "the Property."

1.2 Survey of the Property. The Donee has, at Donee's expense, obtained a survey prepared by a registered land surveyor. Said survey produced the legal descriptions of the Property described and depicted in Exhibit "1".

1.3 Commitment for Title Insurance. Promptly following the execution of this Agreement, the Donor and the Donee shall cause Yavapai Title Agency, an Arizona corporation, located at 123 N. Montezuma Avenue, Prescott, Arizona 86301 (the "Title Company") to prepare a commitment for title insurance (standard owner's form) (the "Commitment"), with respect to the Property. The Donee shall pay for the cost of the Commitment, the title insurance policy, and any and all closing costs set forth in the Escrow Instructions and final Closing Statement.

ARTICLE II

Gift Value

2.1 The gift value ("Gift Value") for the Property shall be the appraised value of ONE MILLION TWO HUNDRED NINETY DOLLARS (\$1,000,290.00) as set forth in the appraisal prepared by Harding and Associates. The Donee shall request and require Harding and Associates to update the appraisal (at Donee's expense) after January 1, 2016, prior to close of escrow. The updated appraisal value shall be the final Gift Value. Donee shall provide Donor with a copy of the updated appraisal and Donor and Donee shall

take that action necessary to amend this agreement and the escrow instructions to confirm the value of the gift.

2.2 It is agreed by the parties that the final value of the gift shall be and shall constitute a charitable gift from the Donor to the Donee, which the Donee shall recognize and accept as a charitable donation in accordance with its normal practices and process for acceptance of such charitable donations to the Donee.

ARTICLE III

Completion of Gift

3.1 Place and Date. The gift of the Property shall be completed in accordance with Article VIII (the "Closing"). The Closing shall occur through an escrow with the Escrow Agent at Yavapai Title Agency, Prescott, Arizona, 86301, on or before March 1, 2016 (the "Closing Date").

3.1.1 The parties recognize that the Donor is a 501(c)(3) charitable foundation and the Donee is a municipal corporation and that all parties must comply with IRS regulations.

3.1.2 The parties recognize that the Donee is an Arizona Municipal Corporation and is required pursuant to its City Charter to accept the donated property by Ordinance. Such Ordinance will be presented at a public meeting of the City Council and the City Council has the ultimate discretion and authority to accept the donated property.

3.2 Extension of Closing Date. The parties shall have the right to extend the Closing Date, by agreement only and by providing written notice to the Escrow Agent, should the parties agree to extend the Closing Date.

ARTICLE IV

Title to and Condition of the Property

4.1 Conveyance of the Property. The Donor shall convey and gift to the Donee good and marketable fee title to the Property, by a duly executed and acknowledged special warranty deed (the "Special Warranty Deed") in "as is" condition, with no representation or warranties of any kind, express or implied, except as otherwise expressly provided herein.

4.2 Conveyance of Existing Willow Creek Roadway from Donee. All right, title and interest of the Donee and Yavapai County in the existing Willow Creek Roadway, utilities, and improvements shall be conveyed, transferred, and assigned to James Deep Well Ranches #1, LLC, in accordance with Yavapai Title Agency's requirements confirming ownership in James Deep Well Ranches #1, LLC at close of escrow. It is

expressly understood by the parties that the existing utility easements will remain after the completion of the property transfer.

ARTICLE V

Representations and Warranties

5.1 The Donor is a 501(c)(3) charitable foundation existing and in good standing under the laws of the State of Arizona. The Donor has full power and authority to enter into this Agreement and to perform this Agreement. This Agreement is a legal, valid and binding obligation of the Donor enforceable against the Donor in accordance with its terms, subject to enforceability of and to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

5.1.1 The Donor has not employed or engaged any broker or finder or incurred any liability for any commission or fee to any broker or finder in connection with the gift of the Property to the Donee.

5.2 The Donee. The representations and warranties of the Donee in this Section 5.2 are a material inducement for the Donor to enter into this Agreement. The Donor would not gift the Property to the Donee without such representations and warranties of the Donee. The Donee represents and warrants to the Donor as of the date of this Agreement as follows:

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

5.2.2 The Donee has not employed or engaged any broker or finder or incurred any liability for any commission or fee to any broker or finder in connection with the gift of the Property from the Donor.

ARTICLE VI

Covenants

6.1 The Donor. The Donor covenants and agrees with the Donee as follows:

6.1.1 The Donor shall indemnify and defend the Donee against and hold the Donee harmless from all claims, demands, liabilities, losses, damages, costs and

expenses, including reasonable attorneys' fees and disbursements, that may be suffered or incurred by the Donee if any representation or warranty made by the Donor in Section 5.1 was untrue or incorrect in any respect when made or at the Closing Date or that may be caused by any breach by the Donor of any such representation or warranty.

6.2 The Donee. The Donee covenants and agrees with the Donor as follows:

6.2.1 The Donee shall not assign its interest and obligations as the Donee under this Agreement to any entity without the Donor's consent.

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

6.2.3 Indemnification of Donor Against Liability. The Donee agrees to indemnify and save harmless the Harold James Family Trust, a 501(c)(3) charitable foundation, James Deep Well Ranches #1, LLC, an Arizona limited liability company, and James Deep Well Ranches #2, LLC, an Arizona limited liability company, and their employees, officers, agents and representatives from all suits, including attorneys' fees and cost of litigation, actions, loss, damage, expense, cost or claim, of any character or any nature arising out of the work done in fulfillment of the construction and maintenance of the public right of way plus improvements under the terms of this Agreement or on account of any act, claim or amount whether arising or recovered under Workmen's Compensation law or arising out of the failure of the Donee or those acting under Donee to conform to any statutes, ordinance, regulation, law or court decree. It is the intent of the parties to this Agreement that, the Harold James Family Trust, a 501(c)(3) charitable foundation, James Deep Well Ranches #1, LLC, an Arizona limited liability company, and James Deep Well Ranches #2, LLC, an Arizona limited liability company, in all instances, be indemnified against all liability, losses and damages of any nature whatever for or on account of any injuries to or death of persons or damages to or destruction of property belonging to any person arising out of or in any way connected with the performance of this Agreement. Any violation of Paragraph 10.11 of this Agreement (Conflict of Interest) is specifically exempted from this Indemnification and Hold Harmless Paragraph.

In addition, Donee shall name, and require all contractors and subcontractors involved in the construction of the Willow Creek Road public right of way, to name the Harold James Family Trust, a 501(c)(3) charitable foundation, James Deep Well Ranches #1, LLC, an Arizona limited liability company, and James Deep Well Ranches #2, LLC, an Arizona limited liability company, as additional insureds under the Donee's, contractor's, and subcontractors' insurance policies.

6.2.4 IGA Between Donee and Yavapai County. Donee will, in good faith, execute its duties under the Intergovernmental Agreement it has with Yavapai County

(IGA #2014-074), in reference to the Willow Creek Road Alignment project, a copy of which (IGA #2014-074) is attached hereto and incorporated herein as Exhibit "2".

6.2.5 Donee has entered into a contract for the construction of the Willow Creek Road public right of way with Fann Construction (City of Prescott Contract No. 2016-088) and Donee will in good faith fulfill its obligations under said contract and insure that the contractor fully complies with the terms of the contract and construction as required by the contract. A copy of said contract is attached hereto and incorporated herein as Exhibit "3" or has otherwise been provided to Donor.

6.2.6 The Donee agrees that the property shall be developed and used solely for the Willow Creek Road public right of way at Donee's sole expense. Additional obligations of the Donee with respect to fencing construction and improvements of the right of way and the maintenance thereof are set forth in City of Prescott Contract No. 2016-083. A copy of said contract is attached hereto and incorporated herein as Exhibit "4" or has otherwise been provided to Donor.

ARTICLE VII

Conditions Precedent

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

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

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

7.2 The Donee. The obligations of the Donee under this Agreement are subject to satisfaction of all of the conditions set forth in this Section 7.2. The Donee may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall

be treated as having been waived in writing. No such waiver shall constitute a waiver by the Donee of any of its rights or remedies if the Donor defaults in the performance of any covenant or agreement to be performed by the Donor under this Agreement or if the Donor breaches any representation or warranty made by the Donor in Section 5.1.

7.2.1 On or prior to the Closing Date, the Donee shall have approved the survey of the Property performed by the Donee's surveyor pursuant to Section 1.2.

7.2.2 On or prior to the Closing Date, the Donee shall approve the commitment for title insurance issued pursuant to Section 1.3.

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

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

7.2.5 On the Closing Date, the Title Company shall be irrevocably committed to issue a title insurance policy, with liability equal to the total Gift Value for the Property, insuring the Donee that fee title to the Property is vested in the Donee, subject only to the Permitted Exceptions.

ARTICLE VIII

Closing

8.1 Procedure. The Donor and the Donee shall cause the following to occur at the Closing on the Closing Date:

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

8.1.2 If required, an Affidavit of Property Value, as required by A.R.S. § 11-1133, duly executed and acknowledged by the Donor and the Donee, shall be filed in the office of the County Recorder of Yavapai County, Arizona.

8.1.3 The Donor shall execute and deliver to the Donee a Certificate of Non-Foreign Status, pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

8.1.4 The Donee shall accept the value of the gift as provided herein as a charitable contribution.

8.1.5 The Title Company shall issue the title insurance policy described herein.

8.2 Possession. The Donor shall transfer possession of the Property to the Donee on the Closing Date.

8.3 Closing Costs. The Donee shall pay all closing costs including, but not limited to, the premium for title insurance, policy, and escrow fees.

ARTICLE IX

Dispute Resolution

9.1 Mediation. The Donee and the Donor agree that in the event of any disputes, claims, questions, or disagreements arising out of or relating to this Agreement, or the breach of this Agreement, they shall first attempt in good faith to resolve the same through mediation before a mutually acceptable mediator.

9.2 Arbitration. If the parties cannot agree on a mutually acceptable mediator, either party may petition the Yavapai County Superior Court for the appointment of a mediator. If the parties cannot resolve their disputes, claims, questions or disagreements through mediation within 60 days, the parties agree to thereafter submit same to binding arbitration pursuant to the Arizona Rules of Arbitration. In the event of binding arbitration, the Donor shall appoint one arbitrator; the Donee shall appoint one arbitrator and those two arbitrators shall select the third arbitrator. If the parties' two arbitrators cannot agree on the appointment of the third arbitrator, either party may petition the Superior Court of Yavapai County, Arizona for the appointment of the third arbitrator. The third arbitrator shall serve as the chair of the Arbitration Panel. Judgment upon the Arbitration Award shall be entered by the Yavapai County Superior Court.

ARTICLE X

General

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

If to Donor, to:	The Harold James Family Trust 8400 N. US Highway 89 Prescott, AZ 86301
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With a copy to: Selmer D. Lutey, P.L.L.C.
Attorney at Law
125 North Granite Street
Prescott, AZ 86301

If to Donee, to: City of Prescott
c/o City Clerk
201 South Cortez Street
Prescott, AZ 86303

With a copy to: Prescott City Attorney
201 South Cortez Street
Prescott, Arizona 86303

If to Escrow Agent, to: Connie Allmon
Yavapai Title Agency
123 N. Montezuma Street
Prescott, AZ 86301

or to such other address as a party may hereafter specify for such purpose by notice to each other party hereto. Each such notice or other communication shall be effective (i) if delivered in person, on the date of delivery, (ii) if delivered by private courier, on the date of delivery, or (iii) if deposited with the United States Postal Service, on the third business day following the date of postmark.

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

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

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

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

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

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

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

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

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

10.11 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the Donee shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. §38-511.

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

THE DONOR:

HAROLD JAMES FAMILY TRUST,
a 501(c)(3) charitable foundation

By: 
Ronald E. James, President

THE DONEE:

CITY OF PRESCOTT, a municipal corporation

By _____,
_____, Mayor

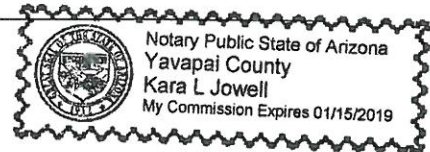
ATTEST:

_____, Secretary

STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this 30 day of November, 2015, by Ronald E. James, President of the Harold James Family Trust, a 501(c)(3) charitable foundation.

My Commission Expires:



STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, Mayor of the City of Prescott, a municipal corporation.

My Commission Expires:

_____.

Notary Public

EXHIBIT "1"
Legal Descriptions and Depictions for 30.44 Acres

EXHIBIT "2"
Copy of IGA #2014-074

EXHIBIT "3"
Copy of Contract with Fann Construction
City of Prescott Contract No. 2016-088

EXHIBIT "4"

Copy of Contract with American Fence Company of Arizona, Inc.
City of Prescott Contract No. 2016-083

PUBLIC RIGHT OF WAY GIFT AGREEMENT FOR ROADWAY AND UTILITY PURPOSES

THIS AGREEMENT is made this 4TH day of DECEMBER, 2015, by and between DW1 Investments, LLC, (the "Donor" and may be hereinafter referred to as the "Donor"), and the City of Prescott, an Arizona municipal corporation (the "Donee" and may be hereinafter referred to as the "Donee").

In consideration of the covenants in this Agreement, the Donor and the Donee agree as follows:

ARTICLE I

Gift Property

1.1 **The Property.** The Donor agrees to gift to the Donee, and the Donee agrees to accept a gift from the Donor, in accordance with this Agreement, a portion of Section 35, Township Fifteen (15) North, Range Two (2) West, Gila and Salt River Meridian, Yavapai County, Arizona, containing 0.61 acres, more or less, which property is more particularly described on Exhibit "1", which contains legal descriptions and maps of the subject parcels, hereinafter referred to as "the Property."

1.2 **Survey of the Property.** The Donee has, at Donee's expense, obtained a survey prepared by a registered land surveyor. Said survey produced the legal descriptions of the Property described and depicted in Exhibit "1".

1.3 **Commitment for Title Insurance.** Promptly following the execution of this Agreement, the Donor and the Donee shall cause Yavapai Title Agency, an Arizona corporation, located at 123 N. Montezuma Avenue, Prescott, Arizona 86301 (the "Title Company") to prepare a commitment for title insurance (standard owner's form) (the "Commitment"), with respect to the Property. The Donee shall pay for the cost of the Commitment, the title insurance policy, and any and all closing costs set forth in the Escrow Instructions and final Closing Statement.

ARTICLE II

Gift Value

2.1 The gift value ("Gift Value") for the Property shall be the appraised value of THIRTY SEVEN THOUSAND TWENTY DOLLARS (\$37,020.00) as set forth in the appraisal prepared by Harding and Associates. The Donee shall request and require Harding and Associates to update the appraisal (at Donee's expense) after January 1, 2016, prior to close of escrow. The updated appraisal value shall be the final Gift Value. Donee shall provide Donor with a copy of the updated appraisal and Donor and Donee shall take that action necessary to amend this agreement and the escrow instructions to confirm the value of the gift.

2.2 It is agreed by the parties that the final value of the gift shall be and shall constitute a charitable gift from the Donor to the Donee, which the Donee shall recognize and accept as a charitable donation in accordance with its normal practices and process for acceptance of such charitable donations to the Donee.

ARTICLE III

Completion of Gift

3.1 Place and Date. The gift of the Property shall be completed in accordance with Article VIII (the "Closing"). The Closing shall occur through an escrow with the Escrow Agent at Yavapai Title Agency, Prescott, Arizona, 86301, on or before March 1, 2016 (the "Closing Date").

3.1.1 The parties recognize that the Donee is an Arizona Municipal Corporation and is required pursuant to its City Charter to accept the donated property by Ordinance. Such Ordinance will be presented at a public meeting of the City Council and the City Council has the ultimate discretion and authority to accept the donated property.

3.2 Extension of Closing Date. The parties shall have the right to extend the Closing Date, by agreement only and by providing written notice to the Escrow Agent, should the parties agree to extend the Closing Date.

ARTICLE IV

Title to and Condition of the Property

4.1 Conveyance of the Property. The Donor shall convey and gift to the Donee good and marketable fee title to the Property, by a duly executed and acknowledged special warranty deed (the "Special Warranty Deed") in "as is" condition, with no representation or warranties of any kind, express or implied, except as otherwise expressly provided herein.

ARTICLE V

Representations and Warranties

5.1 The Donor is a limited liability corporation existing and in good standing under the laws of the State of Arizona. The Donor has full power and authority to enter into this Agreement and to perform this Agreement. This Agreement is a legal, valid and binding obligation of the Donor enforceable against the Donor in accordance with its terms, subject to enforceability of and to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

5.1.1 The Donor has not employed or engaged any broker or finder or incurred any liability for any commission or fee to any broker or finder in connection with the gift of the Property to the Donee.

5.2 The Donee. The representations and warranties of the Donee in this Section 5.2 are a material inducement for the Donor to enter into this Agreement. The Donor would not gift the Property to the Donee without such representations and warranties of the Donee. The Donee represents and warrants to the Donor as of the date of this Agreement as follows:

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

5.2.2 The Donee has not employed or engaged any broker or finder or incurred any liability for any commission or fee to any broker or finder in connection with the gift of the Property from the Donor.

ARTICLE VI

Covenants

6.1 The Donor. The Donor covenants and agrees with the Donee as follows:

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

6.2 The Donee. The Donee covenants and agrees with the Donor as follows:

6.2.1 The Donee shall not assign its interest and obligations as the Donee under this Agreement to any entity without the Donor's consent.

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

6.2.3 Indemnification of Donor Against Liability. The Donee agrees to indemnify and save harmless DW1 Investments LLC, an Arizona limited liability company, and their employees, officers, agents and representatives from all suits, including attorneys' fees and cost of litigation, actions, loss, damage, expense, cost or claim, of any character or any nature arising out of the work done in fulfillment of the construction and maintenance of the public right of way plus improvements under the terms of this Agreement or on account of any act, claim or amount whether arising or recovered under Workmen's Compensation law or arising out of the failure of the Donee or those acting under Donee to conform to any statutes, ordinance, regulation, law or court decree. It is the intent of the parties to this Agreement that, DW1 Investments LLC, an Arizona limited liability company, in all instances, be indemnified against all liability, losses and damages of any nature whatever for or on account of any injuries to or death of persons or damages to or destruction of property belonging to any person arising out of or in any way connected with the performance of this Agreement. Any violation of Paragraph 10.11 of this Agreement (Conflict of Interest) is specifically exempted from this Indemnification and Hold Harmless Paragraph.

In addition, Donee shall name, and require all contractors and subcontractors involved in the construction of the Willow Creek Road public right of way, to name DW1 Investments LLC, an Arizona limited liability company, as additional insured under the Donee's, contractor's, and subcontractors' insurance policies.

6.2.4 IGA Between Donee and Yavapai County. Donee will, in good faith, execute its duties under the Intergovernmental Agreement it has with Yavapai County (IGA #2014-074), in reference to the Willow Creek Road Alignment project, a copy of which (IGA #2014-074) is attached hereto and incorporated herein as Exhibit "2".

6.2.5 Donee has entered into a contract for the construction of the Willow Creek Road public right of way with Fann Construction (City of Prescott Contract No. 2016-088) and Donee will in good faith fulfill its obligations under said contract and insure that the contractor fully complies with the terms of the contract and construction as required by the contract. A copy of said contract is attached hereto and incorporated herein as Exhibit "3" or has otherwise been provided to Donor.

6.2.6 The Donee agrees that the property shall be developed and used solely for the Willow Creek Road public right of way at Donee's sole expense. Additional obligations of the Donee with respect to fencing construction and improvements of the right of way and the maintenance thereof are set forth in City of Prescott Contract No. 2016-083. A copy of said contract is attached hereto and incorporated herein as Exhibit "4" or has otherwise been provided to Donor.

ARTICLE VII

Conditions Precedent

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

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

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

7.2 The Donee. The obligations of the Donee under this Agreement are subject to satisfaction of all of the conditions set forth in this Section 7.2. The Donee may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by the Donee of any of its rights or remedies if the Donor defaults in the performance of any covenant or agreement to be performed by the Donor under this Agreement or if the Donor breaches any representation or warranty made by the Donor in Section 5.1.

7.2.1 On or prior to the Closing Date, the Donee shall have approved the survey of the Property performed by the Donee's surveyor pursuant to Section 1.2.

7.2.2 On or prior to the Closing Date, the Donee shall approve the commitment for title insurance issued pursuant to Section 1.3.

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

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

7.2.5 On the Closing Date, the Title Company shall be irrevocably committed to issue a title insurance policy, with liability equal to the total Gift Value for the

Property, insuring the Donee that fee title to the Property is vested in the Donee, subject only to the Permitted Exceptions.

ARTICLE VIII

Closing

8.1 Procedure. The Donor and the Donee shall cause the following to occur at the Closing on the Closing Date:

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

8.1.2 If required, an Affidavit of Property Value, as required by A.R.S. § 11-1133, duly executed and acknowledged by the Donor and the Donee, shall be filed in the office of the County Recorder of Yavapai County, Arizona.

8.1.3 The Donor shall execute and deliver to the Donee a Certificate of Non-Foreign Status, pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

8.1.4 The Donee shall accept the value of the gift as provided herein as a charitable contribution.

8.1.5 The Title Company shall issue the title insurance policy described herein.

8.2 Possession. The Donor shall transfer possession of the Property to the Donee on the Closing Date.

8.3 Closing Costs. The Donee shall pay all closing costs including, but not limited to, the premium for title insurance, policy, and escrow fees.

ARTICLE IX

Dispute Resolution

9.1 Mediation. The Donee and the Donor agree that in the event of any disputes, claims, questions, or disagreements arising out of or relating to this Agreement, or the breach of this Agreement, they shall first attempt in good faith to resolve the same through mediation before a mutually acceptable mediator.

9.2 Arbitration. If the parties cannot agree on a mutually acceptable mediator, either party may petition the Yavapai County Superior Court for the appointment of a mediator. If the parties cannot resolve their disputes, claims, questions or disagreements through mediation

within 60 days, the parties agree to thereafter submit same to binding arbitration pursuant to the Arizona Rules of Arbitration. In the event of binding arbitration, the Donor shall appoint one arbitrator; the Donee shall appoint one arbitrator and those two arbitrators shall select the third arbitrator. If the parties' two arbitrators cannot agree on the appointment of the third arbitrator, either party may petition the Superior Court of Yavapai County, Arizona for the appointment of the third arbitrator. The third arbitrator shall serve as the chair of the Arbitration Panel. Judgment upon the Arbitration Award shall be entered by the Yavapai County Superior Court.

ARTICLE X

General

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

If to Donor, to: DW1 Investments
1050 W. Washington Street
Suite 214
Tempe, AZ 85281

If to Donee, to: City of Prescott
c/o City Clerk
201 South Cortez Street
Prescott, AZ 86303

With a copy to: Prescott City Attorney
201 South Cortez Street
Prescott, Arizona 86303

If to Escrow Agent, to: Connie Allmon
Yavapai Title Agency
123 N. Montezuma Street
Prescott, AZ 86301

or to such other address as a party may hereafter specify for such purpose by notice to each other party hereto. Each such notice or other communication shall be effective (i) if delivered in person, on the date of delivery, (ii) if delivered by private courier, on the date of delivery, or (iii) if deposited with the United States Postal Service, on the third business day following the date of postmark.

10.2 Attorneys' Fees. If there is any legal action or proceeding between the Donor and the Donee arising from or based on this Agreement, the unsuccessful party to such

action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred by such prevailing party.

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

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

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

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

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

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

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

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

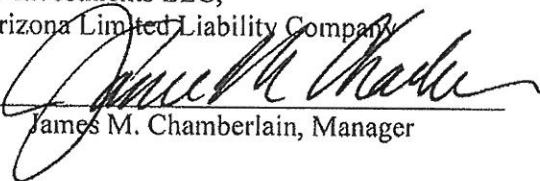
10.11 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the Donee shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. §38-511.

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

THE DONOR:

DW1 Investments LLC,
an Arizona Limited Liability Company

By: _____


James M. Chamberlain, Manager

By: _____

Carl J. Greenwood, Manager

THE DONEE:

CITY OF PRESCOTT, a municipal corporation

By _____

_____, Mayor

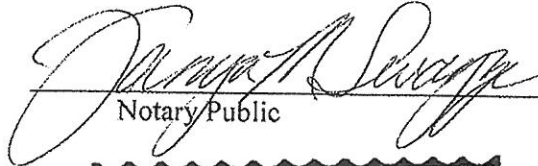
ATTEST:

_____, Secretary

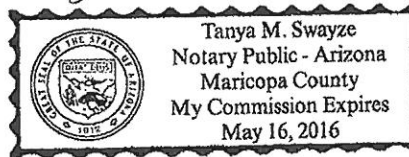
STATE OF ARIZONA)
) ss:
County of Maricopa)

The foregoing instrument was acknowledged before me this 3rd day of December, 2015, by James M. Chamberlain, Manager of DWI Investments LLC, an Arizona limited liability company.

My Commission Expires:
May 16, 2016



Notary Public



STATE OF ARIZONA)
) ss:
County of Yavapai)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, Mayor of the City of Prescott, a municipal corporation.

My Commission Expires:
_____.

Notary Public

10.11 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the Donee shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. §38-511.

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

THE DONOR:

DW1 Investments LLC,
an Arizona Limited Liability Company

By: _____
James M. Chamberlain, Manager

By: Carl J. Greenwood
Carl J. Greenwood, Manager

THE DONEE:

CITY OF PRESCOTT, a municipal corporation

By _____,
_____, Mayor

ATTEST:

_____, Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

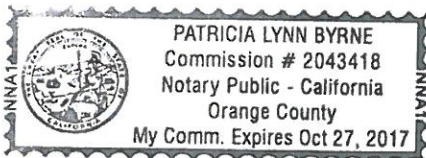
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Orange
 On December 4, 2015 before me, Patricia Lynn Byrne
 Date Here Insert Name and Title of the Officer
 personally appeared Carl J. Greenwood
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Public Right of Way Gift Agreement For Roadway + Utility Purposes
 Title or Type of Document: _____ Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

EXHIBIT "1"
Legal Descriptions and Depictions for 0.61 Acres

EXHIBIT "2"
Copy of IGA #2014-074

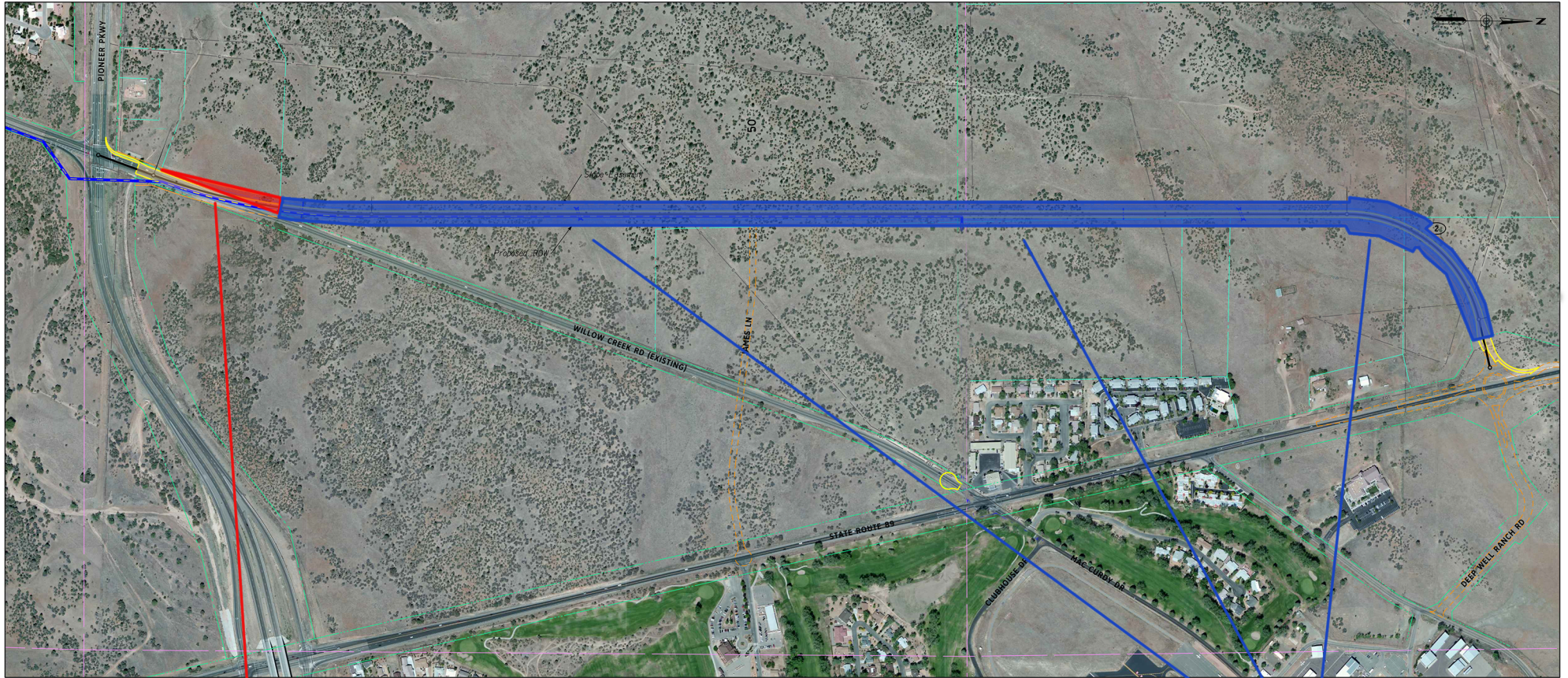
EXHIBIT "3"
Copy of Contract with Fann Construction
City of Prescott Contract No. 2016-088

EXHIBIT “4”

Copy of Contract with American Fence Company of Arizona, Inc.
City of Prescott Contract No. 2016-083

Willow Creek Road Realignment

Map Showing Location of Donated Properties & Surrounding Area



DW1 Investments LLC
Donated Property

Harold James Family Trust
Donated Property

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: Police

AGENDA ITEM: Approval to accept and acquire an International Navistar MaxxPro Mine Resistant Ambush Protected tactical rescue vehicle from the Law Enforcement Support Office of the Defense Logistics Agency through the National Defense Authorization Act of 1997 for use by the Police Department

Approved By:

Date:

Police Chief:	Monahan, Jerald	12/07/2015
City Attorney:	Paladini, Jon	12/07/2015
City Manager:	McConnell, Craig	12/07/2015

Item Summary

The Prescott Police Department requests approval to accept and acquire an International MaxxPro Mine Resistant Ambush Protected (MRAP) from the Law Enforcement Support Office through the federal 1033 program for use by the Police Department. This vehicle will be transferred to the Prescott Police Department at no cost for the vehicle.

Background

On November 24, 2015, approval to submit an application to the Law Enforcement Support Office was received for the acquisition of an MRAP through the federal 1033 program. The application was submitted and subsequently approved by the State Coordinator and the Law Enforcement Support Office for transfer of an International Navistar MaxxPro MRAP from the Pinetop-Lakeside Police Department to the Prescott Police Department.

Financial Impact

There are no requirements for matching funds by the City of Prescott. Maintenance costs will be addressed annually through the SWAT budget with the assistance of Fleet Services. The 1033 Program also offers parts for this vehicle that are not specific to the International chassis system.

Recommended Action: **MOVE** to accept and acquire an International Navistar MaxxPro Mine Resistant Ambush Protected tactical rescue vehicle from the Law Enforcement Support Office of the Defense Logistics Agency for use by the Police Department.

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: Police

AGENDA ITEM: Approval to accept a grant award from the Arizona Department of Public Safety Victims of Crime Act of \$101,571.00 for a one-year Victim Advocate position and related equipment and training

FUNDING SOURCE(S): In-kind Funds

Approved By:		Date:
Police Chief:	Monahan, Jerald	12/08/2015
City Attorney:	Paladini, Jon	12/08/2015
City Manager:	McConnell, Craig	12/08/2015

Item Summary

On September 8, 2015, the City Council approved the submittal of an application for grant funding being made available by the Arizona Department of Public Safety Victims of Crime Act. The Police Department has been notified that the City will be awarded a grant in the amount of \$101,571.00. If accepted, the funds will be used to implement victim advocacy services via a full-time advocate position. This grant is renewable for an additional year, and there is no obligation to retain the position after the end of the grant cycle.

Background

In 2014, the Police Department responded to over 673 domestic violence calls, many of which were repetitive, involving the same individuals. This position is designed to work in collaboration with the many resources in our community to assist in a successful intervention/outcome in these types of cases. Those resources include police officers and detectives, prosecutors, health care providers, and many others who provide services to victims of crime. In addition to working directly with victims of domestic violence this position will also work with victims of sexual assault, to ensure that the many needs these victims have are met, as well as to help play a role in offender accountability.

Financial Impact

Agenda Item: Approval to submit a grant award from the Arizona Department of Public Safety Victims of Crime Act of \$101,571.00 for a one-year Victim Advocate position and related equipment and training

This grant allows for the Victim Advocate salary, employee-related expenses, and equipment. The grant requires a 25% match (\$20,314.00). The match will be made through in-kind funds, including personnel costs directly related to victim services activities currently being performed by an existing employee of the Police Department who will continue to supplement and support the position requested. This would also include officers' time spent assisting victims on calls.

It is estimated that the amount would include \$101,571.00 for the salary and employee related expenses for training and necessary related equipment and services.

Recommended Action: **MOVE** to accept grant funding of \$101,571.00 through the Arizona Department of Public Safety Victims of Crime Act to support a Victim Advocate position.

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: City Clerk

AGENDA ITEM: Public hearing and consideration of a new liquor license application for a Series 10 Beer & Wine Store license from Linda Gail Novak, applicant for D’Vino, located at 109 Grove Avenue

Approved By:		Date:
City Clerk:	DeLong, Dana	12/08/2015
City Attorney:	Paladini, Jon	12/08/2015
City Manager:	McConnell, Craig	12/08/2015

Item Summary

Linda Gail Novak has applied for a new Series 10 liquor license for D’Vino.

New License	D’Vino, 109 Grove Avenue
Applicant	Linda Gail Novak
Requested License Type	Series 10, Beer & Wine Store
City Application No.	16-268
State Application No.	10133298
Sixty-day Processing Deadline	December 27, 2015

Staff Recommendation

Police Department	In Compliance
Community Development	In Compliance
Public Comments Received	None

NOTE: State law provides that for new license application, “In all proceedings before the governing body of a city...the applicant bears the burden of showing that the public convenience requires that the best interest of the community will be substantially served by the issuance of a license.” (A.R.S. §4-201)

Background

Agenda Item: Public hearing and consideration of a new liquor license application for a Series 10 Beer & Wine Store License, from Linda Gail Novak, applicant for D'Vino, located at 109 Grove Avenue

The application presented for consideration has complied with each of the following requirements.

1. The application has been filed with the State Liquor Department and released to the City for additional processing.
2. The City application fee, set by Section 4-7-3 of the Prescott City Code, has been paid.
3. The application has been posted at the proposed location for the required twenty days and statements of opposition or statements of support received by the City Clerk are attached.
4. The Police Department has reviewed the application according to State law, which precludes issuance of a license to any person who: (1) Within one year has violated any provision of a liquor license or had a liquor license revoked; or (b) Within five years of the date of application has been convicted of a felony involving moral turpitude.
5. The Community Development Department has reviewed the application to determine whether zoning is proper.

Public Hearing and Action Procedure

The City Council's recommendation of approval, disapproval or no recommendation will be forwarded to the Department of Liquor Licenses and Control ("Department") for their consideration.

Recommendation of Approval

If the City Council recommendation is for approval, no hearing is required unless the Director of the Department, the State Liquor Board ("Board"), or any aggrieved party, requests a hearing on the grounds that the public convenience and the best interest of the community will not be substantially served if a license is issued. If no hearing is requested, the Director may approve the license.

Recommendation of Disapproval

If the City Council recommendation is for disapproval of an application, a statement of the specific reasons along with a summary of the testimony or other evidence supporting the recommendation for disapproval is required to be attached to the order of disapproval and submitted to the Director, after which a public hearing will be held.

No Recommendation

Agenda Item: Public hearing and consideration of a new liquor license application for a Series 10 Beer & Wine Store License, from Linda Gail Novak, applicant for D'Vino, located at 109 Grove Avenue

If the City Council makes no recommendation, the Director may cancel the hearing and issue the license unless the Board or any aggrieved party protests and requests a hearing. If the reason for the protest is clearly removed or deemed satisfied by the Director, the Board shall cancel the hearing and the Department may issue the license.

Financial Impact

The application and license fees have been paid. According to State law, proceeds from liquor license fees are required to be used for hospitality promotion (tourism development) purposes.

Attachments

1. Liquor License Series Number Definitions
2. R19-1-702, Arizona Laws and Regulations Relating to Granting a Liquor License

Recommended Action: (1) **MOVE** to close the Public Hearing; and (2) **MOVE** to approve/deny/make no recommendation for Liquor License Application No. 10133298, for a Series 10 Beer & Wine Store license, for D'Vino, located at 109 Grove Avenue.

LIQUOR LICENSE SERIES NUMBER DEFINITIONS

- 1 **In-State Producer**, all spirituous liquor, produced on-premises, may sell to Arizona-licensed wholesalers only.
- 2 **Out-of-state Producer**, all spirituous liquor, produced on-premises, may sell to Arizona-licensed wholesalers only.
- 3 **Microbrewery**, less than 1,240,000 gallons of beer produced annually on premises, unlimited on- and off-sale, less than 93,000 gallons may be distributed to retail licensees annually.
- 4 **Wholesaler**, all spirituous liquor, purchased from in- and out-of-state Arizona licensed producers, may sell to Arizona-licensed retailers.
- 5 **Government**, all spirituous liquor, may sell to patrons to consume on premises.
- 6 **Bar**, all spirituous liquor, off-sale sales in original, unopened container may not exceed 30% of on-sale receipts, may sell to patrons to consume on premises.
- 7 **Beer and Wine Bar**, beer and wine only, off-sale sales in original, unopened container may not exceed 30% of on-sale receipts, may sell to patrons to consume on premises.
- 9 **Liquor Store**, all spirituous liquor, may sell "carry-out" to patrons to consume off-premises, on-site temporary sampling events hosted by producer or wholesaler.
- 9S **Liquor Store with Sampling Privileges**, all spirituous liquor, may sell "carry-out" to patrons to consume off-premises, provide limited residential delivery, on-site permanent sampling events using store inventory.
- 10 **Beer and Wine Store**, beer and wine only, may sell "carry-out" to patrons to consume off-premises, on-site temporary sampling events hosted by producer or wholesaler.
- 10S **Beer and Wine Store with Sampling Privileges**, beer and wine only, may sell "carry-out" to patrons to consume off-premises, on-site permanent sampling events using store inventory.
- 11 **Hotel/Motel w/Restaurant**, all spirituous liquor, may sell to patrons to consume on premises.
- 12 **Restaurant**, all spirituous liquor, may sell to patrons to consume on premises.
- 13 **Farm Winery**, produces at least 200 gallons, but not more than 40,000 gallons of wine annually, produced on premises and by other domestic farm wineries.
- 14 **Private Club**, all spirituous liquor, may sell to bona fide members & their guests for on-premises consumption.
- 15 **Special Event**, all spirituous liquor, temporary license, off-sale allowed by auction in closed, original container for off-sale consumption, may sell to patrons to consume on premises.
- 18 **In-State Craft Distillery**, less than 20,000 gallons of distilled spirits annually on-premises, may sell and ship to Arizona licensed wholesalers. May sell and ship to Arizona-licensed retailers when annual production is less than 1,189 gallons. On-and off-sale retail privileges on licensed premises.
- 19 **Remote Tasting Room**, owned and operated by a licensee that concurrently owns one of the following Arizona liquor licenses: (1) Series 2W, Out-of-state Farm Winery; (2) Series 2D, Out-of-state Craft Distillery; (3) Series 13, In-state Farm Winery; or (4) Series 18, In-state Craft Distiller.

**Arizona Laws and Regulations Relating to
Granting a Liquor License for a Certain Location
(pursuant to Arizona Revised Statute §4-201(I))**

R19-1-702. Determining Whether to Grant a License for a Certain Location

- A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
 2. Number and types of licenses within one mile of the proposed premises;
 3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
 4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
 5. Residential and commercial population density within one mile of the proposed premises;
 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
 7. Effect on vehicular traffic within one mile of the proposed premises;
 8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
 9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
 10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
 11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
 12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B. This Section is authorized by A.R.S. § 4-201(I).

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: Legal

AGENDA ITEM: Approval of a Water Fees Settlement Agreement with Yavapai-Prescott Indian Tribe (YPIT)

FUNDING SOURCE(S): Water Fund

Approved By:

Date:

City Attorney: Paladini, Jon	12/08/2015
City Manager: McConnell, Craig	12/08/2015

Item Summary

Approval of the Water Fees Settlement Agreement will compensate YPIT and various non-tribal account holders for water fee overcharges.

Background

The City and YPIT entered into a Water Rights Settlement Agreement in 1995, pursuant to the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994. The 1995 Water Rights Settlement Agreement resolved water-related litigation and permanently settled the water rights of YPIT.

The parties entered into a Water Service Agreement in 1995, which set forth various rights, duties, responsibilities and benefits of the City and YPIT. Inclusive in the 1995 Water Service Agreement were conditions under which the City could, and could not, bill certain fees to YPIT for the provision of water and sewer effluent services on the reservation.

Disputes arose as to the fees, charges and taxes the City collected over the years since the inception of the 1995 Water Service Agreement.

The Water Fees Settlement Agreement follows several years of the parties jointly reviewing the Water Service Agreement and all fees paid for water on the YPIT Reservation, and settles any and all monetary claims that YPIT has against the City for said fees. The City will pay the YPIT \$336,182.55 to settle the case. In addition, the City

Agenda Item: Approval of a Water Fees Settlement Agreement with Yavapai-Prescott Indian Tribe (YPIT)

will escrow \$163,636.67, for the various non-tribal accounts, and seek to reimburse these account holders.

Financial Impact

(1) \$336,182.56 payment to YPIT; (2) escrowed funds of \$163,636.67 for reimbursement to non-tribal account holders. These amounts will be paid from the Water Fund, which has a sufficient balance to support the settlement. No General Fund monies will be used.

Attachments

1. Settlement Agreement

Recommended Action: MOVE to approve the Water Fees Settlement Agreement with Yavapai-Prescott Indian Tribe.

WATER FEES SETTLEMENT AGREEMENT

WHEREAS the City of Prescott (the “City”) and the Yavapai-Prescott Indian Tribe (the “Tribe”) entered into a Water Rights Settlement Agreement in 1995 pursuant to the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Public Law 103-434, 108 Stat. 4526 (1994) (the “Act”);

WHEREAS the City and the Tribe (collectively, the “Parties”) entered the 1995 Water Rights Settlement Agreement expressly to resolve certain water-related litigation and permanently settle the water rights of the Tribe and its members by confirming to the Tribe sufficient water from various sources to develop and sustain lands within the Yavapai-Prescott Indian Tribe's Reservation (the “Reservation”);

WHEREAS the 1995 Water Rights Settlement Agreement confirmed that the Tribe would waive and release certain claims to water rights in exchange for certain benefits it would receive from the City under a Water Service Agreement that the Parties entered pursuant to the Act;

WHEREAS the Parties entered the Water Service Agreement Between Yavapai-Prescott Indian Tribe and City of Prescott in 1995, as ratified by the U. S. Congress in the Act (the “Water Service Agreement”);

WHEREAS the Water Service Agreement sets forth certain duties and obligations of the City with respect to, inter alia, the provision of water to residential, commercial and industrial areas of the Reservation;

WHEREAS the Water Service Agreement establishes the conditions under which the City may, and may not, bill fees, charges, taxes and other amounts for hook-ups and water, sewer and effluent service on the Reservation;

WHEREAS a dispute has arisen between the Parties regarding the fees, charges, taxes and other amounts the City has charged, and continues to charge, those receiving water, sewer and effluent service on the Reservation, including, without limitation, the Tribe and its members (“Reservation Users”);

WHEREAS on June 4, 2013, the Tribe gave the City written notice of the City’s breach of the Agreement; and

WHEREAS the Parties have tolled the deadlines for filing complaints and endeavored to reach an amicable and constructive resolution of this dispute; to that end, they wish to enter agreement to resolve the overpayment of any fees, charges and taxes paid by Reservation Users before the date of this Water Fees Settlement Agreement (hereinafter, the “Settlement Agreement”), and the fees, charges and other amounts that the City may charge Reservation Users under the Water Service Agreement in the future;

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

1. Intention of the Parties. The Parties acknowledge that certain fees, charges and taxes paid by Reservations Users in the past (the “Disputed Fees”) do not qualify as amounts the City was entitled to charge them under the Water Rights Settlement Agreement and Water Service Agreement. With respect to the Disputed Fees, the Parties acknowledge that the Reservation Users overpaid for City water and sewer service prior to the date of this Settlement Agreement. The Parties further acknowledge that they can reasonably estimate the overpayment amounts paid based upon the information available for accounts held by the Tribe and Tribal members (hereinafter, the “Tribal Accounts”) and, to a lesser degree, accounts held by non-Tribal persons and entities receiving water service on the Reservation (hereinafter, the “Non-Tribal Accounts”). By this Settlement Agreement, the Parties intend to settle these outstanding issues by (1) making a direct payment to the Tribe and (2) creating a reserve to reimburse Non-Tribal Accounts equal in amount to the estimated overpayments made by Non-Tribal Account holders prior to the date of the Settlement Agreement (the “Reserve”). With respect to the Reserve, the Parties intend reimbursement be made to Non-Tribal Account holders only if they bring a claim for reimbursement within one year after the date of this Settlement Agreement and provide sufficient evidence that the Non-Tribal Account holder paid Disputed Fees prior to the date of the Settlement Agreement. To the extent that a balance remains in the Reserve after the City resolves all claims brought within the one-year period, the Parties intend that the Tribe receive a credit in an amount equal to the amount remaining in the Reserve. The Parties also intend that the Tribe shall be allowed to use any credits received pursuant this Settlement Agreement to pay for future infrastructure on the Reservation that serves solely Reservation Users, or to offset any future water service fees owed by the Tribe. The Parties further intend that the City indemnify, defend and hold the Tribe harmless against any and all claims brought against the Tribe by Non-Tribal Account holders seeking reimbursement, both before and after the expiration date for Non-Tribal Account holders to file a claim. Finally, the Parties intend that the City, by this Settlement Agreement, stop charging all Reservation Users the Disputed Fees after the date of this Settlement Agreement.

2. Disputed Fees and Charges. The Parties agree that the following types of fees and charges were *not* owed by Reservation Users after the date of the Water Service Agreement, and that these fees and charges, or their equivalent, should not be billed to Reservation Users in the future.

(a) Alternate Water Charge. Following the date of the Water Service Agreement, the City should not have billed Reservation Users for a monthly Alternate Water Charge.

(b) City Tax on Water. Following the date of the Water Services Agreement, the City should not have billed Reservation Users a monthly City tax based on the volume of water used without having established a special user fee pursuant to of subparagraph 9.2 of the Water Service Agreement.

(c) Street Light Fee. The City should not have billed Reservation Users for a monthly Street Light Fee relating to the operation and maintenance of city-wide street lights.

(d) Water Development Fee. Following the date of the Water Service Agreement, the City should not have charged Reservation Users a Water Development Fee, sometimes referred to as a “Development Fee for Water Resources,” to hook up new water service on the Reservation.

(e) Water System Impact Fee. Following the date of the Water Service Agreement, the City should not have charged Reservation Users a Water System Impact Fee, sometimes referred to as a “System Impact Fee,” to hook up new water service on the Reservation.

(f) Sewer System Impact Fee. Following the date of the Water Service Agreement, the City should not have charged Reservation Users a Sewer Water System Impact Fee, sometimes referred to as a “Sewer Impact Fee” or “Sewer Buy-in Fee,” to hook up new sewer service on the Reservation.

3. Reimbursement of Monthly Alternate Water Charges and Street Light Fees. With respect to the estimated total amount of Alternate Water Charges, City Taxes and Street Light Fees described in subparagraphs 2(a), 2(b) and 2(c) above, the City agrees to reimburse Reservation Users as follows:

(a) Tribal Accounts. Within thirty (30) days of the execution of this Settlement Agreement, the City will pay the Tribe the amount of one hundred ninety-three thousand, five-hundred ninety dollars and fifty-five (\$193,590.55) to settle the amount of all monthly overpayments paid by Tribal Accounts prior to the date of this Settlement Agreement.

(b) Non-Tribal Accounts. The City will set aside a Reserve in the amount of one hundred sixty-three thousand, six-hundred thirty-six dollars and sixty-seven cents (\$163,636.67) to settle the amount of all monthly overpayments paid between January 1, 2000 and November 30, 2013 by Non-Tribal Accounts. The Parties agree that Non-Tribal Account holders must bring a claim for reimbursement within one year after the date of this Settlement Agreement, or the Non-Tribal Account holder’s right to reimbursement for monthly overpayments will be forfeited. The City agrees that the portion of the \$163,636.67 in the Reserve fund that is not reimbursed to Non-Tribal Account holders by the end of the one-year period will be promptly credited to the Tribe to use to offset its cost associated with future improvements to the water system on the Reservation that serve solely Reservation users, or to offset amounts owed by Tribal Accounts for water or sewer service fees.

4. Reimbursement of Water Development, Water System Impact, and Sewer System Impact Fees. With respect to the estimated total amount of Water Development, Water

System Impact and Sewer System Impact Fees described in subparagraphs 2(d), 2(e) and 2(f) above, the City will reimburse Reservation Users as follows:

(a) Tribal Accounts. Within thirty (30) days of the execution of this Settlement Agreement, the City will pay the Tribe the amount of one hundred forty-two thousand, five-hundred ninety-two dollars and zero cents (\$142,592.00) to settle the amount of overpayments by Tribal Accounts made prior to the date of this Settlement Agreement for one-time “hook up” or “buy-in” fees paid for new water and sewer service.

(b) Non-Tribal Accounts. The City will reimburse the amount of any overpayment by Non-Tribal Accounts prior to the date of this Settlement Agreement for one-time “hook up” or “buy-in” fees paid for new water and sewer service on the Reservation. Non-Tribal Account holders must bring a claim for reimbursement within one year after the date of this Settlement Agreement, or the Non-Tribal Account holder’s right to reimbursement for the overpayment of one-time “hook up” or “buy-in” fees for new water and sewer service will be forfeited.

5. Indemnification. The City agrees to indemnify, defend and hold the Tribe harmless against any and all claims brought against the Tribe by Non-Tribal Account holders for the reimbursement of any overpayments made by Non-Tribal Account holders to the City. The Parties further agree that each may assert any defense available to either the City or Tribe in defending against such claims.

6. Future Fees, Charges and Taxes. With respect to the Disputed Fees described in subparagraphs 2(a), 2(c), 2(d), 2(e) and 2(f), the City agrees not to charge Reservation Users such fees and charges in the future. With respect to subparagraph 2(b), the City agrees to abide by subparagraph 9.2 of the Agreement and not charge City sales tax, or other form of City tax, on hook-ups and water, sewer and effluent service in the future, unless and until the City establishes a special user fee in accordance with the terms of the Agreement.

7. Settlement. The Parties hereto expressly understand and agree that so long as the Tribe receives payment within thirty (30) days of the execution of this Settlement Agreement in the total amount of three hundred thirty-six thousand, one hundred eighty-two dollars and fifty-five cents (\$336,182.55) towards the total amount of overpayments made by Tribal Accounts, as described in paragraphs 3(a) and 4(a) above; (ii) the City sets aside the Reserve in the amount equal to one hundred sixty-three thousand, six-hundred thirty-six dollars and sixty-seven cents (\$163,636.67) to reimburse Non-Tribal Accounts, as described in paragraph 3(b) above, and agrees to credit the Tribe for amounts in the Reserve not reimbursed to Non-Tribal Account holders who submit a claim within the one-year period, as described in paragraphs 3(b) and 4(b); and (iii), the City immediately complies with paragraph 6 above upon the date of this Settlement Agreement and agrees to continue to comply thereafter, the foregoing shall operate as an accord and satisfaction of any breach of the Agreement by the City with respect to any and all overpayment by Tribe for fees, charges and other amounts paid by Reservation users prior to the date of this Settlement Agreement. Nothing herein shall be construed as a waiver of the City's continuing obligation to abide by the terms of the Water

Service Agreement in the future, or of any other rights and duties of the parties under the Water Service Agreement.

8. Continuing Applicability of the Agreement. Except as expressly modified herein, the 1995 Water Service Agreement governs the parties' respective rights and duties with respect to all water service matters. Specifically, and without limitation, the Performance and Default provisions of paragraph 8.0 of that Agreement remain in full force and effect.

9. Miscellaneous.

(a) To the extent consistent with the terms hereof, all Tribal and City laws, rules, regulations and policies that are now in effect or may hereafter be adopted by the City or Tribe shall apply to this Settlement Agreement.

(b) The provisions of this Settlement Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Parties hereto.

(c) Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Settlement Agreement.

(d) This Settlement Agreement shall be construed in accordance with all applicable laws of the United States of America and the State of Arizona. Nothing contained herein waives the right of the Tribe to object to the jurisdiction of the courts of the State of Arizona to adjudicate any disputes arising under this Settlement Agreement.

(e) The headings of this Settlement Agreement are for reference only and shall not limit or define the meaning of any provision of this Settlement Agreement.

(f) This Settlement Agreement constitutes the entire settlement agreement between the parties with respect to the Disputed Fees paid by Reservation Users for water and sewer service governed by the 1995 Water Service Agreement and no understandings or obligations not herein expressly set forth shall be binding upon them. This Settlement Agreement may not be modified or amended in any manner unless in writing and signed by the parties.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this 15th day of December, 2015.

HARRY B. OBERG, Mayor

ATTEST:

APPROVED AS TO FORM:

DANA R. DeLONG
City Clerk

JON M. PALADINI
City Attorney

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Yavapai-Prescott Indian Tribe this _____ day of _____, 2015.

ERNEST JONES, SR., President

ATTEST:

APPROVED AS TO FORM:

LORNA GALEANO
Tribal Secretary

DAVID J. BODNEY
Tribal Attorney

MEETING DATE/TYPES: VOTING SESSION

12-15-15

DEPARTMENT: City Manager

AGENDA ITEM: Approval of the City of Prescott's 2016 Legislative Agenda

Approved By:

Date:

Deputy City Manager:	Zelms, Alison	12/02/2015
City Attorney:	Paladini, Jon	12/08/2015
City Manager:	McConnell, Craig	12/08/2015

Item Summary

This item is to discuss and confirm the Council's support for policy objectives to guide City activity pertaining to the 2016 State of Arizona Legislative Session.

Background

Formulation of a legislative agenda for the City is intended to focus our efforts at the Capitol, communicating to the District 1 Legislative Delegation and the City's contracted lobbyist, The Aarons Company, the City's goals and interests for the upcoming session. Speaking with a uniform voice will provide a superior platform for well-developed input and responses to legislation. Time is often critical in being able to influence the outcome of decisions, and a clear agenda will enable the City to respond quickly and consistently throughout the session. This document will work in tandem with the League of Arizona Cities and Towns Municipal Policy Statement, created each year with input from the 91 cities and towns across the state.

Once finalized, Prescott's legislative agenda will be provided to our legislators to seek their support for the goals, policies, and actions set forth therein, and to inform and equip them with information regarding issues important to Prescott.

The proposed legislative agenda is meant to be somewhat broad in providing overall direction to protect the City's interests in local control and revenue generation, and focus on several key areas of known potential legislative impact. In addition to the items listed in the agenda, regular updates at City Council Sessions are anticipated, at which time revisions and updates to strategy based on developments at the Legislature will take place. This process will provide agility to be responsive and effective during the session.

The contract with The Aarons Company, approved at the December 1, 2015, voting session, in concert with a concise and formal legislative agenda, will complement our regular Council updates by adding a layer of active day-to-day engagement at the Capitol, to enhance the City's influence in legislative decisions.

Attachments

1. 2016 Legislative Agenda

Recommended Action: **MOVE** to approve the City of Prescott's 2016 Legislative Agenda.

2016 Legislative Agenda

The City of Prescott provides superior and financially sustainable municipal services, and leadership in the region. Prescott is a beautiful, growing city with a vibrant historic downtown, the regional economic center, and a first-class tourist destination. A livable, dynamic community, Prescott offers a range of housing choices, where residents and guests enjoy active lifestyles with great recreation and leisure amenities and a high quality of life.

State of Arizona - Guiding Principles

Oppose Preemption of Local Authority

SUPPORT the retention of local government decision-making authority. Prescott was enabled by its residents to provide an expanded degree of self-government via the City Charter, empowering the Prescott City Council to make decisions recognizing the unique needs and characteristics of the City in the best interests of the community. Unfunded mandates imposed by the State of Arizona legislature are little different than federal mandates placed upon the state of Arizona, which are vocally opposed by many of our legislators due to the cost of implementation and impact to states rights. Unfunded mandates and preemptive efforts remove the ability to set policy at the local level, and should be **OPPOSED**.

Preserve Local Funding

PROTECT existing funding and authorities that bring revenues necessary to the City of Prescott and support the quality of life our residents expect and are paying for. This includes protection of state-shared revenues, the ability to collect compensation for uses of public rights-of-way, and opposition to the imposition of new fees by other levels of governments that would increase costs to the City and its residents.

State Shared Revenues – Through a series of initiatives, Arizona voters chose to return a portion of tax revenues to local communities through revenue sharing. This was provided to municipalities in exchange for limitations to local taxing authority such as income and luxury taxes. The City's adopted FY 15/16 General Fund budget includes as revenue \$11M in state-shared revenues (\$3.8M Sales Tax, \$4.8M Income Tax, and \$2.4M Vehicle License Tax). Those state-shared revenues fund 34% of the City's General Fund Operating Budget of approximately \$31.9 Million, and 51% of the \$21.4 Million Public Safety Operating Budget. Since 2003, the City has lost over \$2.1 Million in street funding due to State HURF sweeps.

SUPPORT cooperative efforts by and among the State, League of Cities and Towns, and other stakeholders to streamline Arizona sales and use taxes in a manner that does not unduly jeopardize funding available to municipalities within rural areas of the state, including Prescott.

OPPOSE future sweeps of Highway User Revenue Funds (HURF) allocated to Arizona cities and towns.

SUPPORT the reinstatement of Highway User Revenue Fee (HURF) according to current funding formulas as an essential component to adequately fund the proper maintenance and preservation of the capital investment in our streets and roads.

SUPPORT the inclusion of “Use Tax” collected by the State of Arizona in the state sales tax sharing formula that distributes the funds to Cities and Towns. Use Tax replaces the Sales Tax when a purchase is made out of state for use in state.

MONITOR state collection of Sales Tax, and administration of new audit procedures (enacted by HB 2111). ***SUPPORT*** changes as necessary to insure successful implementation, providing revenue and useful information to the City in a timely manner. Request that the Department of Revenue be required to provide a report to the Legislature, Cities, and Towns detailing their progress toward full implementation, and meaningful performance information on an ongoing basis thereafter.

State Legislative Objectives for the 2016 Session

Adequately Fund and Reform State Pension Plans To remain solvent, Arizona's public pension systems must accumulate sufficient assets during members' working years to pay all promised benefits when members retire.

The City of Prescott participates in two of the four state pension plans, ASRS and PSPRS. Employees and employers pay a substantial amount for each employee in each respective system. In FY2016, ASRS employees continue to split the contribution rate equally with the City, with each contributing 11.47% of the employee's salary to the plan. Prescott will pay phased-in PSPRS contributions per employee for Police of 55.12% and for Fire of 63.44% while police and fire employees will pay a contribution of 11.65% of their salary. The employee share for PSPRS is at the maximum allowed by current law, 11.65%. In turn, the employer is expected to absorb significant continuing increases, with the full cost in FY 16 representing 66.97% for Police and 74.49% for Fire.

Review of the PSPRS system, actuarial assumptions, and the inequity of individual entity liability as it relates to smaller more rural communities, is essential to the continued sustainability of public safety models in these areas.

OPPOSE legislation that would increase the cost of pension programs to the employee or employer without addressing structural deficits in the existing systems.

SUPPORT legislation to create a new tier for incoming PSPRS-eligible employees that is adequately funded, sustainable, matches the employee-employer share of payment, and functions under realistic governance requirements.

SUPPORT legislation that improves the financial position of the “legacy” PSPRS system which should be closed to any future members upon creation of the new tier.

State Regulation of Community Residences for Drug and Alcohol Rehabilitation and Recovery – The City of Prescott is actively creating and implementing local tools for regulation of community residences, which have proliferated in residential neighborhoods. Efforts include more restrictive zoning procedures that seek to balance and disperse the number and location of homes, and implementation of an annual building safety inspection for all community residences. The City's efforts are restricted to zoning regulations and building safety requirements, not medical service or rehabilitation requirements, which are regulated by the State. The League of Arizona Cities and Towns has identified this as a policy issue for all 91 cities and towns this session. Representative Noel Campbell has convened a Legislative Ad Hoc Committee to seek solutions that better align State regulations and enforcement activities with the changing landscape of the substance abuse recovery industry in Arizona.

ENGAGE the Legislature in continuous dialogue regarding the application and active enforcement of state rules specific to licensing community residence operations, as applicable, and improve clarity within ADHS with regard to the role and application of state licensing procedures for various community residence uses.

SUPPORT legislation that would broaden the applicability of ADHS licensure to community residences, to assure proper oversight by the owner, regulate the patient or other care/services provided to those residing at the establishment, and require broader reporting due to a larger number of providers requiring regulation.

Static/Decreasing General Fund Revenue (State Shared Revenue, City Transaction Privilege Tax, Property Tax) – The revenue structure available to Prescott for operations pursuant to state law limits revenue sources primarily to state-shared revenue, local sales tax, and a small primary property tax (less than 5% of the General Fund budget) with minimal annual growth. The reliance on local sales tax and state shared revenue creates volatility that puts quality of life and public safety at risk.

There is currently no statutory authority provided to Cities and Towns to “reset” or “increase” the primary property tax, not even by placing the tax on a ballot for election. During the 2013 Legislative Session, SB 1470 attempted to provide the option to cities and towns, to enact a primary property tax specifically for the operation and maintenance of police, fire and medical emergency services, through majority approval of the qualified electorate at a municipal election. This bill would only have allowed entities without an existing primary property tax to place the public safety tax on the ballot, however, the City requests consideration of similar legislation that would allow voters to replace and increase the existing primary property tax with a public safety-specific levy.

SUPPORT legislation that provides greater flexibility in local funding sources to provide assured revenue for the provision of public safety services, including but not limited to statutory authority to place an increase to the local primary property tax, beyond the current allowable effective tax rate increase, on a local election ballot for approval of the qualified electorate.

OPPOSE legislation that further erodes the City's existing revenue base, such as elimination of taxable categories of retail sale, residential rental and construction sales tax (at point of construction).

MEETING DATE/TYPES: VOTING SESSION 12-15-15

DEPARTMENT: City Clerk

AGENDA ITEM: Discussion of Council meeting schedule for 2016

Approved By:

Date:

City Clerk:	DeLong, Dana	12/08/2015
City Attorney:	Paladini, Jon	12/08/2015
City Manager:	McConnell, Craig	12/08/2015

Item Summary

This item is presented for discussion of the meeting schedule for Calendar Year 2016.

Background

The Prescott City Charter, Article II, Section 13, requires the City Council to meet at least two times each month. Currently the City Council holds three regularly scheduled meetings during each month that begin at 3:00 p.m., as follows:

1st Tuesday of the Month - Workshop Meeting

Items for which significant discussion and/or public input is anticipated. Action on these items (when applicable) will be assigned to a Regular Voting Meeting.

2nd and 4th Tuesdays of the Month - Regular Voting Meeting

Items that require approval for purchases of goods and services; items from Workshop Meetings that require action; and other items that require discussion and action.

Other Special Meetings are scheduled on an as-needed basis.

Recommended Action: Presented for Council discussion/direction.