



AGENDA

**PRESCOTT CITY COUNCIL
STUDY SESSION
Tuesday, September 17, 2013
3:00 PM**

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

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

◆ **CALL TO ORDER**

◆ **INVOCATION** Deacon Kimball Arnold, St. Luke's Episcopal Church

◆ **PLEDGE** Mayor Kuykendall

◆ **ROLL CALL**

MAYOR AND CITY COUNCIL

Mayor Kuykendall

Councilman Arnold

Councilman Blair

Councilman Carlow

Councilman Kuknyo

Councilman Lamerson

Councilman Scamardo

◆ **ANNOUNCEMENTS**

I. DISCUSSION ITEMS

A. Adoption of Ordinance No. 4866-1404 AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE X, LAND DEVELOPMENT CODE, OF THE PRESCOTT CITY CODE BY PROVIDING FOR CHANGES TO TABLE 2.3, SECTIONS 2.4.7 THROUGH 2.4.53, TABLE 6.2.3, SECTION 11.1.3, AND TABLE 11.2.5; PROVIDING A PROCESS ESTABLISHING DEFENSES FOR LEGAL NONCONFORMING USES; ESTABLISHING PENALTIES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY; and, adopt Resolution No. 4197-1406, declaring Ordinance No. 4866-1404 a public record and declaring an emergency.

B. Adoption of Resolution No. 4196-1405 approving an Intergovernmental

Agreement between Yavapai College and the City of Prescott for the Northern Arizona Regional Training Academy (City Contract No. 2014-042)

- C. Approval of purchase and installation of high density shelving for the Police Department Property and Evidence Section from Interior Solutions using State contract pricing in the amount of \$52,273.25 (City Contract No. 2014-044)
- D. Approval of Acker Trust Board grants for Fiscal Year 2014
- E. Authorization of Centrisys Corporation to perform on-site preventive maintenance and repairs to the centrifuge at the Airport Water Reclamation Facility in a net additional amount not to exceed \$15,775.00 (City Contract No. 2014-046).
- F. Award of bid and contract for the Airport Well No. 3 Equipping Project to Fann Environmental L.L.C., in the amount of \$2,831,730.00.
- G. Approval of a Professional Services Agreement, City Contract No. 2014-029, with Dibble Engineering to provide project design and construction management services in support of Airport Capital Improvement Projects.
- H. Request of the Adult Center of Prescott, Inc. for amendment of the facility lease to permit acquisition of a liquor license.
- I. Determine Consent Agenda for September 24, 2013 Voting Meeting.

II. ADJOURNMENT

EXECUTIVE SESSION

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

- (i) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (ii) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (iii) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));

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

Confidentiality

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

CERTIFICATION OF POSTING OF NOTICE

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

Lynn Mulhall, City Clerk

MEETING DATE/TYPES: **STUDY SESSION** **9-17-13**
 VOTING SESSION **9-24-13**

DEPARTMENT: **Community Development**

RECOMMENDED AGENDA CATEGORY: **Regular: X** **Consent:**

AGENDA ITEM: Adoption of Ordinance No. 4866-1404 for revisions to the Land Development Code related to single-family residences, community residences, and related residential use categories; and adoption of Resolution No. 4197-1406 to declare the ordinance as a public record

Approved By:

Date:

Director:	Guice, Tom	
City Manager:	McConnell, Craig	

Item Summary

The proposed revisions to the Land Development Code modify definitions and appropriate zoning districts for categories of residential uses. The primary intent of the proposal is to clarify uses compatible with single-family dwellings by amending the definition of family and adding a definition of single housekeeping unit. Additionally, the amendments revise the definition of and create appropriate development standards for community residences. The recommendations presented herein reflect similar state statute requirements for certain residential facilities.

Background

Several Land Development Code amendments have been enacted in recent years pertaining to various residential uses. Most recently, the Code was amended in 2011 for conformance with the Fair Housing Act with respect to community residences. Community residences, defined as group living arrangements, typically for persons with disabilities, were included as a permitted use in single-family and multi-family zoning districts.

In the last year the City has become increasingly aware of concerns related to community residences, specifically in single-family and multi-family neighborhoods where the community residences are clustered together. This issue was brought before the City Council at its June 18, 2013, caucus meeting. Council recommended that there be a joint workshop with the City Council and Planning and Zoning Commission, which was held on

July 16, 2013. After presentations by legal and planning staff, there was consensus at the workshop to move forward with further research and to draft code amendments to address the concerns. Draft amendments were brought to the Planning and Zoning Commission on August 29, 2013, which unanimously recommended approval.

Zoning Strategy

The focus of this proposal is a reconsideration of the definition of “family” for the purposes of maintaining the character of single-family neighborhoods. The existing Land Development Code defines family as any number of people who are related or a group of up to eight unrelated persons living together as a single housekeeping unit. However, the term “single housekeeping unit” is not defined. Because of this, the determination as to whether a group of people meet the definition of family rests entirely in the number of people living in a residence and not in whether the premises are operated in a manner comprising the functional equivalent of a traditional household.

The proposed revisions to the definition of “family” and “single housekeeping unit” are as follows:

Family: One or more persons living together as a single housekeeping unit, in a dwelling unit.

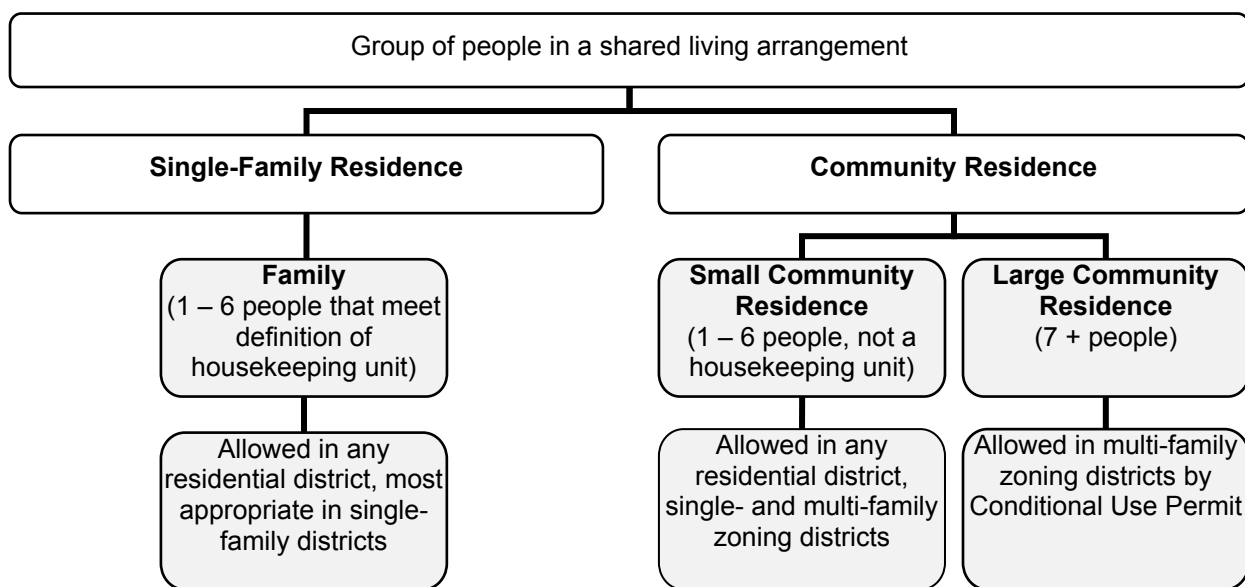
Single Housekeeping Unit: Any number of related, or up to six unrelated, persons living as the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities (e.g. meals, chores, household maintenance, expenses, etc.) and where, if the dwelling unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household is determined by the residents of the dwelling unit rather than the landlord or property manager.

The effect of these revisions is twofold. First, the allowable number of unrelated persons living together in single-family dwellings is reduced to six. As shown by Census data, there has been an overall decrease in the average household size by approximately 20% and this is reflective of that reduction. Certain state statutes also support the six resident maximum. Second, the term “single housekeeping unit” has been defined, specifying characteristics of groups of unrelated persons living together to meet the functional equivalency of a traditional household.

Consequently, groups of unrelated persons living together may or may not meet the definition of a single housekeeping unit. Those that do not meet the criteria of a single housekeeping unit are considered to be a form of congregate living. The congregate living

category is a residential category, and includes uses such as dormitories, boarding houses, and community residences. Community residences are the most general form of shared living arrangements for a group of people who do not meet the definition of a single housekeeping unit.

The proposed zoning strategy to better define single-family residences and community residences is shown in the chart below. Those community residences that are similar in scale to a single-family dwelling (1-6 people) are permitted in single-family and multi-family zoning districts. Development standards include a distance separation requirement. The larger community residences (7 + people) are allowed by conditional use permit in multi-family zoning districts and must also meet development standards.



In order to ensure compatibility of community residences located in residential areas, and to protect the character of those neighborhoods, the following development standards have been proposed for community residences:

- A. A complete application for a Community Residence shall be submitted to the Community Development Director. If a Conditional Use Permit is required, a separate application must be submitted as set forth in Section 9.3.
- B. No Community Residence in a residential zone shall be located within 1200 lineal feet of another Community Residence, whether in a residential or non-residential zone, and no Community Residence in a non-residential zone shall be located within 1200 lineal feet of another Community Residence in a residential zone, as measured from the primary entrances, along the shortest legal pedestrian route.
- C. If the facility is not required to be licensed by the State of Arizona, owners, managers, operators, and residents shall not provide any services onsite, which would otherwise require licensure of the facility under state law.
- D. No staff, clients, guests, or any other users of the facility may smoke in an area

from which the second hand smoke may be detected on any parcel other than the parcel upon which the facility is located.

- E. The Community Residence shall not involve changes in the exterior appearance of any structure or necessitate equipment that is not related to the primary residential use.
- F. The Community Residence shall not create a traffic or parking problem.
- G. Waivers for the reasonable accommodation of Community Residences for persons with disabilities, that do not otherwise meet the strict requirements of the LDC are considered and acted upon by the Community Development Director, or his designee. In all cases the Community Development Director shall make findings of fact in support of his determinations and shall render his decision in writing. The Community Development Director may meet with and interview the applicant to ascertain or clarify information sufficiently to make the required findings. To grant a Waiver for Reasonable Accommodation, the Community Development Director shall find affirmatively all of the following:
 - 1. The request will not increase the residential occupancy of the residence to more than 8 persons if such change will result in the inability to comply with the requirements of sections 2 through 4 below.
 - 2. The request will be in compliance with all applicable Building and Fire codes.
 - 3. The request will not create a substantial detriment injurious to neighboring properties by creating traffic impacts, parking impacts, impacts on the water or sewer systems, or other similar adverse impacts.
 - 4. The request will not create impacts such as smoke, fumes, fire hazards and other injurious or noxious impacts to neighboring properties.

Profitability or financial hardship of the owner/operator of a facility shall not be considered by the Community Development Director in determining to grant a Waiver for Reasonable Accommodation. Appeals of administrative decisions of the Director may be made regarding reasonable accommodations, pursuant to Section 9.17.

Arizona Revised Statutes for residential facilities (ARS 36-582) mirror the proposed definitions and development standards for community residences. The statutes require that residential facilities for persons with mental or developmental disabilities be permitted in single-family zoning districts, but also require a 1200-foot separation distance between those facilities. The provisions of the statute also allow cities to establish conditional use permit requirements for facilities serving seven or more persons.

Significant research and documentation has been done in regards to distance separation requirements. According to the prevailing studies in this subject, clustering of community residences can have a negative effect on both the residents of the facilities as well as the surrounding neighborhood, and should be located at a minimum distance of one to two blocks from each other. A block is approximately 600 – 800 feet in the City of Prescott.

Agenda Item: Adoption of Ordinance No. 4866-1404 for revisions to the Land Development Code related to single-family residences, community residences, and related residential use categories; and adoption of Resolution No. 4197-1406 to declare the ordinance as a public record

According to the available data, approximately 75% of the existing facilities meeting the definition of community residence are within 600 feet (one block) of another and approximately 85% of facilities are within 1200 feet (two blocks) of another. Given the significant level of clustering that exists already, it is important to take preventative measures in the form of a distance separation requirement to ensure a more even dispersal across residential areas in the City.

Excerpts from the aforementioned research are included below:

Joint statement of the Department of Justice and the Department of Housing and Urban Development:

“Density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community.”

American Planning Association:

“Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or on a single block. For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to one another, or be placed on the same block, the ability of the group homes to advance their residents’ normalization would be compromised. Such clustering would create a defacto social service district in which many facets of an institutional atmosphere would be recreated and would change the character of the neighborhood. . . . There is a legitimate government interest to assure that group homes do not cluster. While the research on the impact of group homes makes it abundantly clear that group homes a block or more apart produce no negative impacts, there is concern that group homes located more closely together can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization of their residents, which is, after all, their raison d’être.”

Dr. Daniel Lauber (legal expert on zoning for community residences):

“Clustering community residences only undermines their ability to achieve their central goals of normalization and community integration. A community residence needs to be surrounded by so-called “normal” or conventional households, the sort of households this living arrangement seeks to emulate. Clustering community residences adjacent to one

another or within a few doors of each other increases the chances that their residents will interact with other service-dependent people living in a nearby community residence rather than conventional households with non-service dependent people.”

Reasonable Accommodations

The Fair Housing Act requires local jurisdictions to make reasonable accommodations for community residences serving the disabled, when requested. A reasonable accommodation may be made in regards to the zoning requirements or applicable development standards. Those accommodations are made on a case-by-case basis and the decision as to whether the request is reasonable must take into account the scope and magnitude of the modification requested and the features of the surrounding neighborhood. The request cannot substantially alter the City’s zoning scheme and it cannot create negative impacts on neighboring properties in the form of traffic and parking impacts, impacts on the infrastructure system, or similar adverse impacts. Reasonable accommodation provisions are proposed to be included in Section 2.4.17 of the Land Development Code.

Review Criteria

Consistency with the General Plan: The General Plan is the guide for land use related decisions in the City. While the plan does not include a direct discussion of group residential uses, recurring themes throughout the text include neighborhood quality and housing needs. A continuing challenge for the City is to ensure housing affordability and availability for a range of lifestyles without adversely affecting stated neighborhood values. Transition and multi-use areas need to be planned with careful consideration of the impacts to existing neighborhoods. Reference Chapters 4 and 5 of the General Plan for more details regarding these issues.

Consistency with the purpose and intent of the Land Development Code: Section 1.5 states that the Code is intended to protect the health, safety, and general welfare of existing and future residents of the City of Prescott by:

- A. Implementing the goals, objectives and policies of the General Plan;
- B. Classifying the City of Prescott into zoning districts;
- C. Regulating and restricting the location and use of buildings, structures, recreation, trade, industry, residences and other uses;
- D. Regulating the intensity of uses and structures through density, dimensional and open space standards;
- E. Providing adequate privacy, light, air, and otherwise mitigating adverse impacts associated with development that occurs in the City of Prescott;
- F. Adding a level of protection from fire, flood, and other dangers;
- G. Promoting sustainable development;
- H. Promoting natural resource conservation and historic preservation;

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- I. Managing growth within the City of Prescott by concentrating development in areas where adequate sewage and water facilities, roads, and schools now exist or can be provided, and limiting development in areas where these facilities are not adequate;
- J. Protecting designated corridors, surrounding areas and scenic quality by establishing overlay zoning districts and by establishing regulations related to the maintenance of quality aesthetic, safe and functional access and environmental standards;
- K. Promoting land use patterns that increase efficiency in service provision and prudent use of fiscal resources and local government expenditures; and
- L. Protecting the tax base by managing growth within the City of Prescott.

Legal Non-conforming Uses

It is recognized that a number of existing Community Residences will not meet the proposed regulations. Those existing residences, if legally operating under the current LDC criteria, will be able to continue in operation as legal nonconforming uses. The City will offer these existing residences the option to fill out the application required for any new Community Residences as a means of registering their status with the City. If an owner or operator chooses not to register their nonconforming status they may be required to prove their status as provided in LDC Section 10.1.2, should any disputes arise as a result of siting new Community Residences.

Emergency Clause

Because of the substantial public interest and health, safety, and welfare benefit associated with this item, it is recommended that Ordinance No. 4866-1404 and Resolution No. 4197-1406 be adopted incorporating the emergency clause for each, making them effective immediately upon passage.

Attachments

- 1. Ordinance No. 4866-1404
- 2. Resolution No. 4197-1406

Recommended Actions (separate motions):

- 1) **MOVE** to adopt Ordinance No. 4866-1404 with the emergency clause;

AND
- 2) **MOVE** to adopt Resolution No. 4197-1406 with the emergency clause.

ORDINANCE NO. 4866-1404

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE X, *LAND DEVELOPMENT CODE*, OF THE PRESCOTT CITY CODE BY PROVIDING FOR CHANGES TO TABLE 2.3, SECTIONS 2.4.7 THROUGH 2.4.53, TABLE 6.2.3, SECTION 11.1.3, AND TABLE 11.2.5; PROVIDING A PROCESS ESTABLISHING DEFENSES FOR LEGAL NON-CONFORMING USES; ESTABLISHING PENALTIES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

RECITALS:

WHEREAS, the City of Prescott recognizes that the Fair Housing Act as amended (42 U.S.C. §3601) provides protections for persons with disabilities; and

WHEREAS, the Fair Housing Act does not preempt local zoning laws or preclude the adoption, amendment or enforcement of zoning regulations by the City of Prescott pursuant to its local police powers so long as such zoning regulations are consistent with state and federal laws, including the Fair Housing Act as amended; and

WHEREAS, the adoption of zoning ordinances and land use planning is a fundamental function and police power of local government; and

WHEREAS, zoning regulations are adopted and enforced in the City of Prescott for the protection of the health, safety and welfare of the public; and

WHEREAS, the State of Arizona licenses certain Community Residences for the disabled including certain addiction treatment facilities, which licensing necessitates the involvement of local jurisdictions in determining life safety code compliance of said Community Residences; and

WHEREAS, the requirement of additional scrutiny of Community Residences by the City of Prescott to meet the state requirements for licensing necessitates the adoption or amendment of certain zoning definitions and regulations; and

WHEREAS, the State of Arizona pursuant to A.R.S. Sec. 36-582(A) requires that, unrelated persons living together notwithstanding, a residential facility which serves six or fewer persons with certain enumerated developmental disabilities including autism, cerebral palsy, epilepsy or cognitive disability must be considered a residential use of property for the purposes of all local zoning ordinances and that the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property.

WHEREAS, the State of Arizona pursuant to A.R.S. Sec. 36-582(H) requires no residential facility with six or fewer residents with developmental disabilities be located within a twelve hundred foot radius of an existing residential facility in a residential

zoning district ; and

WHEREAS, the Fair Housing Act makes it unlawful to utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons, and

WHEREAS, the Fair Housing Act makes it unlawful to utilize land use policies or actions that treat groups of persons with certain enumerated disabilities less favorably than groups of with other disabilities, and

WHEREAS, credible evidence indicates clustering of Community Residences in certain geographical areas in the City of Prescott; and

WHEREAS, clustering of Community Residences undermines the ability of disabled residents to achieve normalization and community integration; and

WHEREAS, Single-family zoning districts in the City of Prescott permit only Single-family residences, parks, playgrounds and necessary utilities; and

WHEREAS, it is in the interest of public health, safety and welfare to establish specific criteria to be used to clarify that certain Community Residences are equivalent to Single-family residences and that certain Community Residences are not equivalent to Single-family residences; and

WHEREAS, the presence of a Housekeeping Unit is the defining characteristic of a family as defined by the Land Development Code; and

WHEREAS, Community Residences functioning with the presence of a Housekeeping Unit are equivalent to a Single-family residence; and

WHEREAS, Community Residences without the presence of a Housekeeping Unit are not the functional equivalent of Single-family residences; and

WHEREAS, a Single Housekeeping Unit definition limiting unrelated persons living as the functional equivalent of a traditional family to six (6) people reflects recent United States Census data showing a 20% overall decrease in household size; and

WHEREAS, Prescott is recognized throughout the state as having a disproportionate share of Community Residences, many located in Single-family zoning districts; and

WHEREAS, it is the desire of the City of Prescott to provide for adequate and appropriate districts for Community Residences that are equivalent to Single-family residences and adequate and appropriate districts for Community Residences that are not equivalent to Single-family residences; and

WHEREAS, current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status, and

WHEREAS, the Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others, provided however, that determining whether someone poses such a direct threat must be made on an individualized basis, and cannot be based on general assumptions or speculation about the nature of a disability, and

WHEREAS, the City Council makes the following findings in conjunction with this Ordinance:

1. The recitals set forth above are true and correct and are hereby incorporated by reference.
2. There are 110 known licensed and unlicensed community residences in the City of Prescott that provide medical and nonmedical recovery, treatment and detoxification services for users of alcohol and other drugs, or other care services where the residents agree to stay “clean and sober” during their residency. The latter facilities are commonly known as “sober living” homes. The residents of these facilities are transitory in nature.
3. Evidence has been presented that there is a high degree of transiency among persons living in treatment and sober living community residence settings and that transiency (either due to the failure of an occupant to comply with rules or the successful completion of a program) is an important element of certain community residence living arrangements.
4. Prescott has a disproportionately high number of licensed and unlicensed community resident facilities serving the disabled recovering from alcohol and other drug use. Specifically, Prescott has at least 880 licensed and unlicensed recovery beds, or 22 beds per thousand residents. The City is likely to have the highest ratio of beds per 1000 residents in Yavapai County and possibly the State of Arizona.
5. The fundamental precept of the Prescott’s Land Development Code provisions related to single-family residential zones is that individual dwelling units are intended for the occupancy of single housekeeping units in order to ensure adequate light, air, privacy and open space for each dwelling, and to protect residents from the harmful effects of excessive noise, population density, traffic congestion, or other adverse effects. Accordingly, the City prohibits assisted living facilities, dormitories, sororities, fraternities, multi-family units and large community residences in single-family residential zoning districts because such uses are frequently transient and institutional in nature and differ in character

and created impacts on residential neighborhoods from single housekeeping units.

6. The City is concerned with the impacts of community residences on the residential character of the neighborhood and how it impacts the disabled. The loss of residential characteristics of a neighborhood in which community residences serving the disabled cluster has an adverse effect on the welfare of the individuals receiving services from the facility and defeats the purpose of community-based recovery.
7. The Joint statement of the Department of Justice and the Department of Housing and Urban Development states that “density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community.”
8. The American Planning Association’s Policy Guide on Community Residences, which supports community residences, states that “Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or on a single block. For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to one another, or be placed on the same block, the ability of the group homes to advance their residents’ normalization would be compromised. Such clustering would create a defacto social service district in which many facets of an institutional atmosphere would be recreated and would change the character of the neighborhood. . . . There is a legitimate government interest to assure that group homes do not cluster. While the research on the impact of group homes makes it abundantly clear that group homes a block or more apart produce no negative impacts, there is concern that group homes located more closely together can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization of their residents, which is, after all, their raison d’ tre.”
9. Dr. Daniel Lauber (legal expert on zoning for community residences) states that “Clustering community residences only undermines their ability to achieve their central goals of normalization and community integration. A community residence needs to be surrounded by so-called “normal” or conventional households, the sort of households this living arrangement seeks to emulate. Clustering community residences adjacent to one another or within a few doors of each other increases the chances that their residents will interact with other service-dependent people living in a nearby community residence rather than conventional households with non-service dependent people.”
10. The California Research Bureau similarly found that facilities should be scattered

throughout residential districts, and facilities so densely clustered as to recreate an institutional environment would defeat the purpose of community-based care.

11. The City desires to maintain zoning provisions benefitting disabled persons by allowing disabled persons to live in residential districts in community residences, but desires to ensure that the uses are consistent with the residential character of neighborhoods and do not recreate an institutional environment that would defeat the purpose of community-based care.
12. The City desires to not distinguish between community residences for the disabled and able-bodied by adopting zoning regulations that treat all unrelated persons living together that do not meet the definition of a single housekeeping unit in the same manner
13. To ensure the City complies with federal and state law, the proposed ordinance contains provisions for granting a reasonable accommodation to its zoning and land use regulations, policies and practices, when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, where such an accommodation does not cause undue financial or administrative burden or does not result in a fundamental alteration in the nature of the City's zoning and land use regulatory scheme.

WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Prescott to have this Ordinance become effective immediately due to an emergency.

ENACTMENTS:

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

SECTION 1. Table 2.3 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

Use Table

PERMITTED USE TABLE																						
	RESIDENTIAL BASE ZONING DISTRICTS									NONRESIDENTIAL BASE ZONING DISTRICTS												
SPECIFIC USE	RE-2	SF-35	SF-18	SF-12	SF-9	SF-6	RT	MF-M	MF-H	SPC	NOS	RS	MU	RO	NOB	BG	BR	DTB	IT	IL	IG	Use Standards
Residential Use Categories (Sec. 11.1.3)																						
Assisted Living (Sec. 11.1.3 A)																						
Assisted Living	C						P	P	P				P	P	P	P	P	P				2.4.7
Nursing Home													P	P	P	P	P	P				2.4.7
Accommodations (Sec. 11.1.3 B)																						
Bed and Breakfasts	P						C	P	P				P	P	P	P	P	P	P			2.4.12
Casitas, Cabins, or Cottages	C												C	P	P	P	P	P	P			2.4.14
Motels or Hotels													C	P	P	P	P	P	P	P	P	--
Congregate Living (Sec. 11.1.3 C)																						
Boarding Houses							C	P	P				P	P	P	P		P	P			--
Community Residence, Small	P	P	P	P	P	P	P	P	P				P	P	P	P	P	P	P			2.4.17
Community Residence, Large							C	C	C				P	P	P	P	P	P	P			2.4.17
Community Residence, Family ⁷	P	P	P	P	P	P	P	P	P				P	P	P	P	P	P	P			2.4.17
Community Residence, Transitional ⁷	C	C	C	C	C	C	P	P	P				P	P	P	P	P	P	P			2.4.17
Community Residence ⁷	C	C	C	C	C	C	C	C	C				P	P	P	P	P	P	P			2.4.17
Congregate Living	C						C	P	P				P	P	P	P	P	P				2.4.18
Dormitories / Fraternities / Sororities							C	C	C				C	C	P	P	P	P	P	P		2.4.18
Fraternities or Sororities							C	P	P				P	P	P	P	P	P	P			2.4.18
Senior Family Home (9 — 10 residents)	C	C	C	C	C	C	P	P	P				P	P	P	P	P	P	P			2.4.46
Household Living (Sec. 11.1.3 D)																						
Single-family Dwellings / Modular Homes ²	P	P	P	P	P	P	P	P	P				P	P	P	P	P	P				2.4.46
Duplex Dwellings							P	P	P				P	P	P	P	P	P				2.4.20
Multi-family Dwellings (Apartments & MF Condos)							P	P	P				P	P	P	P	P	P	P			2.4.32
Patio Homes ³							P	P	P				P									2.4.35
Townhouses ⁴							P	P	P				P									2.4.51
Manufactured Housing ⁵																						2.4.29
Manufactured Home Parks							C	C	P							C	C					2.4.30
Foster Group Home (6 — 10 children)	C	C					C	P	P				C	P	P	P	P	S	P			2.4.18
Foster Homes (≤5 children)	P	P	P	P	P	P	P	P	P				P	P	P	P	P	P	P			2.4.18

¹ See Section 3.11.5 / Allowed Uses.

² Modular Homes must meet the Uniform Building Code (UBC) or International Building Code (IBC) Standards.

³ Patio homes may also be allowed on individual lots in the RO, NOB, BG and BR Districts and in the RE and SF districts in accordance with the Planned Area Development (PAD) procedures of

Sec.9.5.9.i.

- 4 Townhouses may also be allowed on individual lots in the RO, NOB, BG and BR Districts and in the RE and SF districts in accordance with the Planned Area Development (PAD) procedures of Sec. 9.5.9.i.
- 5 Manufactured housing may be permitted only in approved manufactured home parks and in zoning districts with the “-MH” floating zone designation (See Sec. 3.12, Manufactured Home Floating Zone).
- 6 “Stand Alone Professional Practice” (practices not having a residential component) are possible subject to the processing of a Conditional Use Permit.
- 7 ~~Refers to residences for the disabled of greater than 8 persons. Any residence of 8 or fewer people is permitted as a single family dwelling.~~

SECTION 2. Sections 2.4.7 through 2.4. 53 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

2.4.7 / Assisted Living and Nursing Homes (Residential Use Categories; Assisted Living)

Assisted living ~~facilities~~ and nursing home **facilities** shall be subject to the following standards:

- A. All ~~assisted living~~ facilities shall comply with all applicable federal, state and local requirements for the location and operation of such facilities and the provision of safe outdoor recreation areas and gross floor areas for every person that the facility is licensed to accommodate.
- B. ~~Assisted living~~ **Facilities** shall include 24-hour caregivers on site. ~~(See Sec. 11.1.3A)~~
- C. The ~~assisted living~~ structure shall contain a common food preparation area and may contain individual kitchenettes for occupants.
- D. The facility shall be in full compliance with all applicable requirements of the Americans with Disabilities Act.

2.4.17 / Community Residence ~~for the Disabled~~, Small and Large Family and Transitional (Residential Use Categories, Community Residence Congregate Living)

Small and Large Family Community Residences and Transitional Community Residences ~~greater than 8 residents~~ shall be subject to the following standards:

- A. ~~Community Residences for persons with disabilities for which a license or certification is required by any state, federal, or responsible accrediting agency is permitted as designated in Table 2.3. If a license or certification is required and denied to the applicant then the use is not permitted.~~

- ~~B. Community Residences for persons with disabilities for which a license or certification is not required by any state, federal, or responsible accrediting agency will be subject to a Conditional Use Permit requirement.~~
- ~~C. Live-in or shift staff are not counted towards the permitted number of residents.~~
- A. A complete application to permit a Community Residence shall be submitted to the Community Development Director. If a Conditional Use Permit is required, a separate application must be submitted as set forth in Section 9.3.**
- B. No Community Residence in a residential zone shall be located within 1200 lineal feet of another Community Residence, whether in a residential or non-residential zone, and no Community Residence in a non-residential zone shall be located within 1200 lineal feet of another Community Residence in a residential zone, as measured from the primary entrances, along the shortest legal pedestrian route.**
- C. If the facility is not required to be licensed by the State of Arizona, owners, managers, operators, and residents shall not provide any services onsite, which would require licensure of the facility under state law.**
- D. No staff, clients, guests, or any other users of the facility may smoke in an area from which the second hand smoke may be detected on any parcel other than the parcel upon which the facility is located.**
- E. The Community Residence shall not involve changes in the exterior appearance of any structure or necessitate equipment that is not related to the primary residential use.**
- F. The Community Residence shall not create a traffic or parking problem.**
- G. Waivers for the reasonable accommodation of Community Residences for persons with disabilities, that do not otherwise meet the strict requirements of the LDC are considered and acted upon by the Community Development Director, or his designee. In all cases the Community Development Director shall make findings of fact in support of his determinations and shall render his decision in writing. The Community Development Director may meet with and interview the applicant to ascertain or clarify information sufficiently to make the required findings. To grant a Waiver for Reasonable Accommodation, the Community Development Director shall find affirmatively all of the following:**
 - 1. The request will not increase the residential occupancy of the residence to more than 8 persons if such change will result in the inability to comply with the requirements of sections 2 through 4 below.**
 - 2. The request will be in compliance with all applicable Building and Fire codes.**
 - 3. The request will not create a substantial detriment injurious to neighboring properties by creating traffic impacts, parking impacts,**

impacts on the water or sewer systems, or other similar adverse impacts.

4. The request will not create impacts such as smoke, fumes, fire hazards and other injurious or noxious impacts to neighboring properties.

Profitability or financial hardship of the owner/operator of a facility shall not be considered by the Community Development Director in determining to grant a Waiver for Reasonable Accommodation. Appeals of administrative decisions of the Director may be made regarding reasonable accommodations, pursuant to Section 9.17.

~~2.4.18 / Congregate Living Facilities (Residential Use Categories; Congregate Living)~~

~~Congregate living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Household Living (See 11.1.3C). Examples include dormitories, fraternities, sororities, foster group homes, monasteries, and convents. All Congregate Living facilities shall be subject to the following standards:~~

- ~~A. Tenancy shall be arranged on a monthly or longer basis.~~
- ~~B. The following shall not be considered Congregate Living:~~
 - ~~1. Lodging where tenancy may be arranged for periods of less than 30 days is to be considered hotel or motel use and classified in the Retail Sales and Service category.~~
 - ~~2. See Sec. 2.4.7, Assisted Living.~~
- ~~C. All foster group homes may house up to a maximum of 10 foster children.~~

~~2.4.19~~ 2.4.18 . . .

~~2.4.20~~ 2.4.19 . . .

~~2.4.21~~ 2.4.20 . . .

~~2.4.22~~ 2.4.21 . . .

~~2.4.23~~ 2.4.22 . . .

~~2.4.24~~ 2.4.23 . . .

~~2.4.25~~ 2.4.24 . . .

~~2.4.26~~ 2.4.25 . . .

~~2.4.27~~ 2.4.26 . . .

~~2.4.28~~ 2.4.27 . . .

~~2.4.29~~ 2.4.28 . . .

~~2.4.30~~ 2.4.29 . . .

~~2.4.31~~ 2.4.30 . . .

~~2.4.32~~ 2.4.31 . . .

~~2.4.33~~ 2.4.32 . . .

~~2.4.34~~ 2.4.33 . . .

~~2.4.35~~ 2.4.34 . . .

~~2.4.36~~ 2.4.35 . . .

~~2.4.37~~ 2.4.36 . . .

~~2.4.38~~ 2.4.37 . . .

~~2.4.39~~ 2.4.38 . . .

~~2.4.40~~ 2.4.39 . . .

~~2.4.41~~ 2.4.40 . . .

~~2.4.42~~ 2.4.41 . . .

~~2.4.43~~ 2.4.42 . . .

~~2.4.44~~ 2.4.43 . . .

~~2.4.45~~ 2.4.44 . . .**~~2.4.46 / Senior Family Homes (Residential Use Categories, Household Living)~~**

~~All Senior Family Homes of 9 – 10 residents shall be subject to the following standards:~~

- ~~A. Senior Family Homes are subject to the same use standards as Single Family Dwellings.~~
- ~~B. Live in or shift staff are not counted towards the permitted number of residents.~~

~~2.4.47~~ 2.4.45 . . .**~~2.4.48~~ 2.4.46 / Single-family Dwellings (Residential Use Categories, Household Living)**

All single-family dwellings may be occupied by a single family **and housekeeping unit** or a maximum of 8 unrelated persons (See definition of “Family” and “Housekeeping Unit” in Sec. 11.2.5, General Terms).

~~2.4.49~~ 2.4.47 . . .**~~2.4.50~~ 2.4.48 . . .****~~2.4.51~~ 2.4.49 . . .****~~2.4.52~~ 2.4.50 . . .****~~2.4.53~~ 2.4.51 . . .**

SECTION 3. Table 6.2.3 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

Table 6.2.3

OFF-STREET PARKING REQUIREMENTS	
Use Type	Minimum Parking Requirements
Assisted Living	0.5 per dwelling bed + 1 / employee / shift
Bed and Breakfasts	1 per guest room, in addition to spaces otherwise required
Boarding House	1 per guest room, in addition to spaces otherwise required
Casitas, Cabins, or Cottages	2 per dwelling
Community Residence,	2 per dwelling + 1 / employee / shift

Small	
Community Residence, Large	0.5 per bed + 1 / employee / shift
Congregate Living	1 per 3 beds + 2 for resident family
Dormitories	0.5 per bed + 1 / employee / shift
Foster Homes	2 per dwelling
Fraternity / Sorority or Boarding House	1 per bedroom + 1 / employee / shift
Hotels, Inns, Motels Motels or Hotels	1 per guest room + 1 / employee / shift
Nursing Home	1 per 2 beds 0.5 per bed + 1 / employee / shift

SECTION 4. Section 11.1.3 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

11.1.3 / Residential Use Categories

A. Assisted Living

1. Characteristics

Assisted Living is characterized by **the residential** occupancy of a building **dwelling unit** by a group of aged people, those with disabilities, or those in immediate crisis not related to criminal or substance abuse conduct **persons requiring assistance with daily activities and who do not meet the definition of a single housekeeping unit. Assisted Living Facilities in single family dwelling units shall be considered a community residence (Congregate Living, Sec. 11.1.3 C). Tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. The residents do not function as a single housekeeping unit, and may live in individual or shared apartments. The residents may receive care or medical treatment. Care givers are present at all times, and may reside at the on site. Generally, Assisted Living** These structures may or may not have a common eating area for residents.

2. Accessory Uses

Accessory uses include offices, cafeterias, parking, and maintenance facilities.

3. Examples

Examples of ~~Assisted Living~~ include **assisted living**, nursing homes, convalescent homes, and hospice facilities.

B. Accommodations

1. Characteristics

Accommodations are characterized by the occupancy of a dwelling units where tenancy is arranged for short term stays of less than 30 days for rent, lease or interval occupancy.

2. Accessory Uses

Accessory uses may include pools and other recreational facilities, limited storage, and offices.

3. Examples

Examples include bed and breakfast establishments, **cabins**, hotels, motels, inns, and interval occupancy facilities. Also includes central reception and check-in facilities for resorts and interval occupancy facilities.

~~C. Community Residences for the Disabled~~

~~A Community Residence provides a living arrangement for a group of persons with disabilities. The intent of a Community Residence is to provide a residence that assists in normalization and community integration. The residence may provide socialization training, life skills instruction, incidental medical care, and help with personal living activities.~~

~~1. Family Community Residences for the Disabled~~

~~a. Characteristics~~

~~Family Community Residences are characterized by the residential occupancy of a dwelling unit by a group of 9 or more disabled persons living as a single housekeeping unit and functioning as a family. Care givers and associated staff may or may not be present and may or may not reside at the site. Residents may receive care, training, or treatment. Tenancy is typically measured in years and is often permanent in nature.~~

~~b. Accessory Uses~~

~~Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies, home occupations, greenhouses, storage of household goods, storage of supplies and equipment for maintaining the dwelling and associated yard, and parking and occasional maintenance of the occupants' vehicles.~~

~~c. Examples~~

~~Examples of Family Community Residences include group homes for the disabled and residential living facilities for groups of disabled persons.~~

~~d. Exceptions~~

~~Assisted living, nursing homes, institutions, congregate living, and any facility for sex offenders or juveniles.~~

~~2. Transitional Community Residences for the Disabled~~

~~a. Characteristics~~

~~Transitional Community Residences are characterized by the residential occupancy of a dwelling unit by a group of 9 or more disabled persons living as a single housekeeping unit and functioning as a family. Care givers and associated staff may or may not be present and may or may not reside at the site. Residents may receive care, training, or treatment. Tenancy is typically measured in months and is often transitional in nature.~~

~~b. Accessory Uses~~

~~Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies, home occupations, greenhouses, storage of household goods, storage of supplies and equipment for maintaining the dwelling and associated yard, and parking and occasional maintenance of the occupants' vehicles.~~

~~c. Examples~~

~~Examples of Transitional Community Residences are halfway houses, transitional homes, and recovery homes.~~

~~d. Exceptions~~

~~Boarding houses, treatment centers for alcohol and drug abuse, detoxification facilities, and any facility for sex offenders or juveniles.~~

C. Congregate Living

1. Characteristics

Congregate Living is characterized by the residential occupancy of a structure **dwelling unit** by a group of people who **do not meet the definition of a single housekeeping unit** ~~do not meet the definition of Household Living. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly~~ **month-to-month** or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. ~~They are considered to be a form of transient lodging (see Resort Accommodations and Community Service categories).~~ Generally, Congregate Living structures have a common eating area for residents. The residents may receive care, training, or treatment ~~as long as the and caregivers may also reside at the on site.~~

2. Accessory Uses

Accessory uses commonly associated with Congregate Living are recreational facilities, dining facilities and parking of vehicles for occupants and staff.

3. Examples

Examples of Congregate Living include **boarding houses, community residences**, dormitories, fraternities and sororities, monasteries and convents, **and assisted living facilities in single family dwelling units.**

4. ~~Exceptions~~

- ~~a. Lodging where tenancy may be arranged for periods of less than 30 days is classified in the Resort Accommodations category.~~
- ~~b. Lodging where the residents meet the definition of Household and where tenancy is arranged on a month-to-month basis or for a longer period is classified as Household Living.~~
- ~~c. Congregate care facilities where individual units meet the definition of a dwelling unit in Sec. 11.2 are classified as Household Living.~~
- ~~d. Foster homes where more than 4 children reside are classified as a Foster Group Home.~~

D. Household Living

1. Characteristics

Household Living is characterized by the residential occupancy of a dwelling unit by a household **single housekeeping unit**. Tenancy is ~~to be~~ arranged on a month-to-month or longer basis. Uses where tenancy is arranged for a shorter period are not considered residential. ~~They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories).~~

2. Accessory Uses

Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies, ~~home occupations~~, greenhouses, storage of household goods, storage of supplies and equipment for maintaining the dwelling and associated yard, and parking and occasional maintenance of the occupants' vehicles. Home occupations, caretaker's quarters and guest houses are accessory uses that are subject to additional regulations.

3. Examples

Examples of ~~household living use (structure) types~~ include Single-family Dwellings, Attached Single Family Dwellings, Duplexes, Patio Homes, Multi-family Dwellings, Townhouses, Workforce Housing, Mobile Home Parks, ~~Group Homes~~, Retirement Center Apartments, manufactured housing and other structures with self-contained dwelling units.

4. ~~Exceptions~~

~~Lodging in a dwelling unit or where units are rented on a less than monthly basis is classified in the Accommodations category.~~

SECTION 5. Table 11.2.5 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

Table 11.2.5 General Terms

Assisted Living	A combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need assistance with daily activities. A facility with a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility remains residential.
Bed and Breakfast	A dwelling unit , with a host or host family residing therein, where members of the public are lodged for compensation, with a morning meal provided as part of the normal charge for said room.
Boarding or Rooming House	A dwelling unit or apartment in which sleeping accommodations are provided, for any type consideration whatsoever, for 3 or more persons not members of the resident family, provided not more than 5 rooms in such building or apartment are used for such purpose.
Business or Commercial	The purchase, sale or other transaction involving the handling or disposition of any article, substance, service or commodity for profit, gain, livelihood (whole or partial), or consideration conducted at any location.
Cabin	A building used, or designed, or intended for use or occupancy by not more than one family as living quarters, including all necessary domestic employees of such family, having only one (1) kitchen or kitchen facility, and not having a private indoor toilet. No space hereafter constructed or altered for such purpose shall be used for such purpose unless it comprises not less than 320 square feet of gross floor area.
Cabin , Casita or Cottage	A small, detached house or dwelling unit that may be used for short-term rental purposes in the manner of a motel room.
Cottage	See Casita.
Community Residence, Small	A dwelling unit for a group of one (1) to six (6) unrelated persons, who do not meet the definition of a single housekeeping unit. One (1) additional supportive or supervisory staff person is allowed.
Community Residence, Large	A dwelling unit for seven (7) or more unrelated persons, who do not meet the definition of a single housekeeping unit. Additional supportive

	and supervisory staff are allowed.
Community Residence for the Disabled	A residential living arrangement for 9 or more unrelated individuals with disabilities, who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. The purpose of a Community Residence is to integrate residents into the community and is considered a residential use of property for purposes of all zoning and building codes. There are two categories of Community Residences for the Disabled: 1) Family Community Residence—Tenancy is typically measured in years and is often permanent in nature. 2) Transitional Community Residence—Tenancy is typically measured in months, and is transitional in nature.
Dormitory	Any structure with 6 or more rooms specifically designed for the exclusive purpose of housing students of a university, college or school, excepting resident staff.
Disability	Mental or physical impairment which substantially limits one or more major life activities. The term mental or physical impairment may include, but are not necessarily limited to, conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act or federal law, by virtue of that status.
Family	One or more persons living together as a single housekeeping unit, in a dwelling unit. A. An individual, or 2 or more persons related by blood, marriage, or adoption, including any live-in domestic help, living together as a single housekeeping unit in a dwelling unit; or B. A group of not more than 8 persons who need not

	be related, living together as a single housekeeping unit in a dwelling unit
Dwelling Unit	A residential unit providing complete, independent living facilities for one family including permanent provisions for living, sleeping, cooking, eating and sanitation. Tenancy is arranged on a month-to-month or longer basis.
Dwelling, Attached Single-family	A dwelling unit on its own individual lot that shares one or more common or abutting walls with one or more dwelling units. An attached single-family dwelling (or townhouse) does not share common floors/ceilings with other dwelling units.
Dwelling, Duplex	A building, or portion thereof, having 2 dwelling units on a single lot designed or intended for use or occupancy by 2 families living independently of each other, including all necessary domestic employees of each family, and having both kitchen or cooking facilities and private, indoor toilet within each such housekeeping unit, and conforming to the IBC of the City of Prescott.
Dwelling, Multiple-Family	A building, or portion thereof, having 3 or more dwelling units on a single lot, used, or designed or intended for use or occupancy as living quarters by 3 or more families living independently of each other, including all necessary domestic employees of each family and having both kitchen or cooking facilities, private, indoor toilet within each such housekeeping unit, conforming to the IBC of the City of Prescott. This definition shall also include any number of dwelling units in a nonresidential structure, but shall not include recreational vehicle parks, motels, or hotels. No such unit hereafter constructed or altered for such purpose shall be used for such purpose unless it comprises gross floor area in conformance with that specified in the IBC.
Dwelling, Senior Apartment	An age-restricted (generally 55 years or older) multi-unit housing development with self-contained living units for older adults who are able to care for themselves. Usually no additional services such as meals or transportation are provided but may be offered as an option.
Dwelling, Single-Family	A detached dwelling unit designed for occupancy by one family and built to IBC-Standards.
Foster Home	A home licensed by the Arizona Department of

	Economic Security maintained by persons having care or control of one to 5 minor children, other than those related by blood, marriage, or adoption.
Foster Home, Group	A foster home licensed by the Arizona Department of Economic Security suitable for the placement of 6, but not more than 10, minor children.
Fraternity or Sorority House	A residence hall or building used as living quarters for members of an approved college or university group while enrolled at an institution of higher learning
Medical Office	Including offices of Doctors, Dentists, Chiropractors, and similar offices.
Motel or Hotel	A building or group of two or more detached, semi-detached or attached buildings containing guest rooms or apartments for the purpose of transient occupancy with automobile storage space provided in connection therewith, which building or group is designed, intended or used primarily for the accommodation of automobile travelers.
Nursing Home	A combination of housing and health care designed to respond to individuals who require medical care because of illness, disease, or physical or mental infirmity. A facility with a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility is inpatient services for persons requiring regular medical attention.
Office, General and Professional	A place where a particular kind of business, excluding retailing, is transacted or a service is supplied according to the following: (1) Place in which the functions (such as consulting, record keeping, and clerical work) of a public or private agent are performed, or (2) A place in which a professional person conducts his professional business. (e.g., a psychologist, architect, or lawyer.)
Related	The following relationships resulting from marriage, blood, adoption, or guardianship: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, and aunt.
Senior Family Home	A residence for 9 — 10 people age 60 and over, who function as a family and a single housekeeping unit, with supportive staff as necessary to meet the needs of the residents.
Single	Any number of related, or up to six unrelated,

Housekeeping Unit	persons living as the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities (e.g. meals, chores, household maintenance, expenses, etc.) and where, if the dwelling unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household is determined by the residents of the dwelling unit rather than the landlord or property manager.
Transient occupancy	Residential occupancy of a building or structure for a period of less than 30 days.
Treatment Center	A facility offering temporary housing which typically includes, but is not limited to, alcohol, drug/substance abuse or other treatment programs and which provides 1) on-site staff who may provide supervision, personal care, meals, education, participation in community activities, counseling, treatment, or therapy for the residents thereof; 2) Administration of an in-house program of guidelines and goals for the expected conduct, achievement, performance and participation of the residents in an established treatment program; 3) Dispensing, storage and/or oversight of prescription medications by responsible individuals who are properly trained to do so; 4) Is recognized by potential referral agencies, public or private; and 5) A facility may be required to be licensed by, certified by, registered with, or otherwise authorized, funded or regulated, in whole or in part, by an agency or the State or the Federal government.

SECTION 6. Properties with a lawful, established community residence as of the effective date of this Ordinance may register such use with the City of Prescott Community Development Department within sixty (60) days of the effective date hereof. The registration of such use creates a rebuttable presumption of legal, non-conforming use status that a community residence exists as of the effective date. Any property owners claiming a legal, non-conforming community residence use who do not register with the Community Development Department pursuant to this Section will have the burden of proving such status pursuant to Section 10.1.2 of the City of Prescott Land

Development Code in the event an action is taken against the property owner, occupant or operator to enforce the provisions of this Ordinance

SECTION 7. Any person who violates any provision of this Ordinance shall be guilty of a civil violation subject to the provisions of Sections 1-3-2 and 10-1-2 of the Prescott City Code for each day the violation continues.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 9. THAT the immediate operation of the provisions of this Ordinance is necessary for the immediate preservation of the public peace, health or safety, and that an EMERGENCY is hereby declared to exist; and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE , ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

PASSED AND ADOPTED by the Council of the City of Prescott, Arizona, on this _____ day of _____, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL, City Clerk

JON M. PALADINI, City Attorney

RESOLUTION NO. 4197-1406

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PRESCOTT, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED “AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT CITY, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE X OF THE LAND DEVELOPMENT CODE BY PROVIDING FOR CHANGES TO TABLE 2.3, SECTIONS 2.4.7 THROUGH 2.4.53, TABLE 6.2.3, SECTION 11.1.3, AND TABLE 11.2.5; PROVIDING A PROCESS ESTABLISHING DEFENSES FOR LEGAL NON-CONFORMING USES; ESTABLISHING PENALTIES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY”.

BE IT RESOLVED by the Mayor and Council of the City of Prescott, Arizona;

That certain document entitled “AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT CITY, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE X OF THE LAND DEVELOPMENT CODE BY PROVIDING FOR CHANGES TO TABLE 2.3, SECTIONS 2.4.7 THROUGH 2.4.53, TABLE 6.2.3, SECTION 11.1.3, AND TABLE 11.2.5; PROVIDING A PROCESS ESTABLISHING DEFENSES FOR LEGAL NON-CONFORMING USES; ESTABLISHING PENALTIES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY”, three copies of which are on file in the Office of the Prescott City Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk.

WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Prescott, Arizona, an emergency is declared to exist, and this resolution shall be effective immediately upon passage and adoption.

PASSED AND ADOPTED by the Council of the City of Prescott, Arizona, on this _____ day of _____, 2013.

MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL, City Clerk

JON M. PALADINI, City Attorney



COUNCIL AGENDA MEMO

MEETING DATE/TYPES: **STUDY SESSION** **9-17-13**
 VOTING SESSION **9-24-13**

DEPARTMENT: Police

RECOMMENDED AGENDA CATEGORY: Regular: X Consent: ____

AGENDA ITEM: Adoption of Resolution No. 4196-1405 approving an Intergovernmental Agreement between Yavapai College and the City of Prescott for the Northern Arizona Regional Training Academy (City Contract No. 2014-042)

Approved By:

Date:

Police Chief:	Monahan, Jerald	
City Clerk:	Mulhall, Lynn	
City Manager:	McConnell, Craig	

Item Summary

The Prescott Police Department requests approval of an Intergovernmental Agreement (IGA) between Yavapai College and the City of Prescott. The purpose of this Agreement will be to formalize the contract extension of a Prescott Police Department sergeant to supervise the Northern Arizona Regional Training Academy (NARTA) at Yavapai College.

Background

The City of Prescott has cooperated with other regional jurisdictions authorized to employ peace officers to establish and maintain NARTA. As part of this cooperation, the Chief of Police has assigned a Prescott Police Department sergeant to serve as a full-time supervisor for the Academy. In return, Yavapai College pays the full salary and benefits of the assigned sergeant for the period of the Agreement.

The term of this Agreement is from January 1, 2014, through December 31, 2014, unless terminated sooner. Either party may terminate the Agreement for any reason effective 60 days after receipt of written notice.

Financial Impact

Agenda Item: Adoption of Resolution No. 4196-1405 approving an Intergovernmental Agreement between Yavapai College and the City of Prescott for the Northern Arizona Regional Training Academy (City Contract No. 2014-042)

There will be no net financial impact to the City as result of this Agreement.

Attachments

1. Resolution No. 4196-1405

Recommended Action: MOVE to adopt Resolution No. 4196-1405.

RESOLUTION NO. 4196-1405

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH YAVAPAI COLLEGE (CITY CONTRACT NO. 2014-042) TO FORMALIZE THE APPOINTMENT OF A PRESCOTT POLICE DEPARTMENT SERGEANT TO SUPERVISE THE NORTHERN ARIZONA REGIONAL TRAINING ACADEMY (NARTA) AT YAVAPAI COLLEGE AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE.

RECITALS:

WHEREAS, the City of Prescott and Yavapai College wish to enter into an Intergovernmental Agreement ("IGA") attached hereto as Exhibit "A," and made a part hereof, to supervise the Northern Arizona Regional Training Academy (NARTA) at Yavapai College; and

WHEREAS, the City of Prescott has cooperated with other regional jurisdictions authorized to employ peace officers to establish and maintain NARTA and pursuant to this IGA, the Chief of Police has assigned a Prescott Police Department sergeant to serve as a full-time supervisor for the academy. In return, Yavapai College will pay the full salary and benefits of the assigned sergeant for the period of the Agreement from January 1, 2014 through December 31, 2014 unless sooner terminated; and

WHEREAS, ARS §§11-951 AND 11-952 authorize "public agencies" such as City of Prescott and Yavapai College to enter into intergovernmental agreements to contract for services and facilities.

ENACTMENTS:

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

SECTION 1. THAT the City of Prescott hereby approves the attached Intergovernmental Agreement between the City of Prescott and Yavapai College attached hereto as Exhibit "A," and made a part hereof.

SECTION 2. THAT the Mayor and staff are hereby authorized to execute the attached Intergovernmental Agreement and to take any and all steps deemed necessary to accomplish the foregoing.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 24th day of September, 2014.

Marlin D. Kuykendall, Mayor

ATTEST:

APPROVED AS TO FORM:

LYNN MULHALL, City Clerk

JON M. PALADINI, City Attorney

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT
NORTHERN ARIZONA REGIONAL TRAINING ACADEMY (NARTA)
ACADEMY SERGEANT
Yavapai College
City of Prescott**

THIS INTERGOVERNMENTAL AGREEMENT – NORTHERN ARIZONA REGIONAL TRAINING ACADEMY (NARTA) – ACADEMY SERGEANT (the “Agreement”), is entered into this ____ day of ____, 2013, by and between the City Council of the CITY OF PRESCOTT, a municipal corporation of Arizona (hereinafter the “City”), for and on behalf of the City’s Police Department, and the Governing Board of YAVAPAI COUNTY COMMUNITY COLLEGE DISTRICT, doing business as YAVAPAI COLLEGE, a community college district of the State of Arizona (hereinafter the “College”);

WITNESSETH:

WHEREAS, the Arizona Peace Officer Standards and Training Board (“AZ POST”) prescribes minimum courses of training and minimum standards for training facilities of law enforcement officers in the state [ARS §41-1822 (A) (4)]; and,

WHEREAS, in accordance with said standards, the City, Yavapai County, the City of Chino Valley, the College, and other jurisdictions authorized to employ peace officers, have established the Northern Arizona Regional Training Academy (NARTA), a peace officer training academy approved by the AZ POST, at the College; and

WHEREAS, the Police Chief of the City has assigned a Sergeant in the Police Department of the City to spend a significant amount of the Sergeant’s time serving as supervisor of NARTA; and

WHEREAS, the College and City desire to formalize that assignment by assigning the Sergeant as full-time supervisor of NARTA, in return for the College’s payment of the salary and benefits of said officer; and

WHEREAS, The City is authorized to prescribe the powers and duties of its police officers [ARS §9-240(B) (12)]; and

WHEREAS, The College is authorized to enter into this contract [ARS §15-1444(B) (4)]; and

WHEREAS, ARS §11-952 authorizes two or more public agencies (including the City and the College) to contract for services or jointly exercise any powers common to the contracting parties, if the agreement meets certain requirements set forth in §11-952;

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

Section 1. TERM. The term of this Agreement shall be from January 1, 2014, through December 31, 2014, unless sooner terminated as set forth in Section 5 herein.

Section 2. PURPOSE. The purpose of this Agreement is to set forth the duties and responsibilities of the parties and to formalize the routine appointment by the City of a Police Sergeant to supervise NARTA at the College, in return for the College paying the cost of the salary and benefits of said officer.

Section 3. PERFORMANCE. The performance commitments of the respective parties are as follows:

The City shall:

- (a) ensure through its Police Department that a qualified Sergeant is appointed at all times to supervise NARTA at the College. In so doing, the Police Department shall make every effort to find a qualified substitute or make arrangements to reschedule classes if the designated Sergeant is unavailable for any reason;
- (b) ensure that the designated Sergeant is properly trained and oriented to fulfill the requirements of the position;
- (c) allow the designated Sergeant the time to:
 - (1) properly prepare for each NARTA class;
 - (2) interact with students of NARTA; and
 - (3) participate in any College staff orientation, faculty meetings, and in-service activities;
- (d) provide necessary supervision and evaluation of the designated Sergeant's performance so as to ensure an adequate level of performance; and
- (e) use funds provided by the College to defray the costs of providing this officer to the College.

The College shall:

- (a) provide office space for the designated Sergeant to carry out necessary supervisory responsibilities; and
- (b) provide regular evaluations of the effectiveness and ongoing needs of the officers.
- (c) provide travel funds to the Sergeant to assist the Sergeant in attending AZ POST meetings or any law enforcement trainings approved by College, including but not limited to reimbursement for use of the Sergeant's private

vehicle, auto rental, gas card, lodging and meals as provided under College policies for adjunct faculty.

- (d) provide to the Sergeant the adjunct faculty benefit of tuition reimbursement for up to 6 credit hours for each family member, as provided under College policies.
- (e) provide a Program Coordinator to liaise with the Sergeant to ensure that the NARTA program is carried out effectively and efficiently.

Section 4. BUDGETING AND FINANCING. The cost of the actual annual salary and benefits of the Sergeant shall be divided into twelve (12) equal monthly installments paid in arrears. Without demand or notice the College shall pay to City on or before the 15th of each month an equal monthly installment for the full cost of the annual salary and benefits for a Sergeant providing services to the College under the terms of this Agreement.

The College shall pay to the City during calendar year 2014 the full cost of salary and benefits for a sergeant compensated at an annual rate of \$116,678.67, which amount shall not be increased by more than 7% during the term of this Agreement. The College shall make its best efforts to include in its annual budgets the necessary appropriations to meet the cost of its performance hereunder.

Section 5. TERMINATION. This Agreement may be terminated by either party for any reason whatever, effective 60 days after receipt of written notice by the other party. In the event of termination prior to the full term of this Agreement, if the College has paid to the City the salary amount set forth in Section 4 above, the City shall prorate said amount based on the remaining term of this Agreement and shall return the unearned portion to the College within 60 calendar days. In the event of termination prior to the full term of this Agreement, if the College has not yet paid the salary amount set forth in Section 4 above, the College shall prorate said amount based on the remaining term of this Agreement and shall pay the earned portion to the City within 60 calendar days.

This Agreement is contingent upon College appropriating funds to finance the College's responsibilities under this Agreement. If College fails to appropriate sufficient funds, College shall immediately notify City, and this Agreement shall terminate at the end of the period for which sufficient funds were appropriated and available.

Section 6. INDEMNIFICATION. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') for, from and against any and all claims, losses, liability costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, any agreement by College to indemnify, defend and hold harmless the City shall be limited to, and payable only from, the

College's available insurance or self-insurance coverage for liability assumed by contract, if any.

Section 7. NO PARTNERSHIP; NOT EMPLOYEES. Nothing herein is intended to create a partnership or joint venture between the parties, nor does it create an employment relationship between the personnel of the City and the College. Rather, the Sergeant and other assigned personnel of the City's Police Department are independent contractors for purposes of Article 2, Chapter 7, Title 12, Arizona Revised Statutes.

Solely for the purposes of workers compensation, ARS §23-1022(D) and (E) shall apply and the City shall be solely liable for the payment of workers' compensation benefits for the Sergeant and other assigned personnel providing services under this Agreement.

Section 8. NOTICES. All notices provided in connection with this Agreement shall be in writing and shall be deemed to have been sufficiently delivered or served when presented personally or upon the third (3rd) day after being deposited in the United States mail, postage prepaid, by registered or certified mail, addressed as follows:

College: President, Yavapai College
 1100 E. Sheldon Street
 Prescott, Arizona 86301

City: Police Chief, Prescott Police Department
 222 South Marina Street
 Prescott, AZ 86303

Section 9. FURTHER INSTRUMENTS. Each party hereto shall, promptly upon the request of the other, acknowledge and deliver to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

Section 10. AMENDMENT AND CONSTRUCTION. This Agreement sets forth the entire understanding of the parties as to the matters set forth herein as of the date of this Agreement and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

Section 11. CONFLICT OF INTEREST. This Agreement may be canceled pursuant to ARS §38-511 in the event of a conflict of interest as described therein.

Section 12. DISPOSITION OF PROPERTY. The parties do not contemplate the joint purchase of any property under this Agreement. Upon termination of this Agreement for any reason, any property purchased by a party shall remain the property of that party, and any party having possession or use of the other party's property shall return such property to the owning party.

Section 13. NONDISCRIMINATION. The parties agree to comply with the nondiscrimination in government contract provisions of Executive Order No. 2009-09, and hereby incorporate by reference its terms into this Agreement as if fully set forth herein.

Section 14. RESOLUTIONS. Attached hereto are the authentic copies of each appropriate action by ordinance, resolution or otherwise of the governing body of each party authorizing the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives the day and year first above written.

CITY OF PRESCOTT, a municipal
corporation of Arizona, (City)

Marlin D. Kuykendall, Mayor

ATTEST:

Lynn Mulhall, City Clerk

The foregoing Intergovernmental Agreement has been submitted to me as Prescott City Attorney for review prior to its execution, pursuant to ARS §11-952(D), and I have determined that it is in proper form and is within the powers and authority granted to the City under the laws of Arizona.

Jon M. Paladini, City Attorney

YAVAPAI COLLEGE, a community college district of
the State of Arizona, (College)

Dr. Penelope Willis, President
Yavapai College

ATTEST:

Secretary

The foregoing Intergovernmental Agreement has been submitted to me as Attorney for Yavapai College for review prior to its execution, pursuant to ARS §11-952(D), and I have determined that it is in proper form and is within the powers and authority granted to the College under the laws of the State of Arizona.

Anthony W. Contente-Cuomo, Attorney for College

DEPARTMENT: Police

MEETING DATE: September 17, 2013

AGENDA ITEM: Approval of purchase and installation of high density shelving for the Police Department Property and Evidence Section from Interior Solutions using State contract pricing in the amount of \$52,273.25 (City Contract No. 2014-044)

Approved By:		Date:
Police Chief:	Monahan, Jerald	09/03/2013
City Clerk:	Mulhall, Lynn	09/10/2013
City Manager:	McConnell, Craig	09/10/2013

Item Summary

This item is for purchase and installation of high-density shelving in the Property and Evidence Section. The shelving is available on State contract from Interior Solutions, Tempe, in the amount of \$52,273.25 (including tax).

Background

The Prescott Police Department Evidence and Storage facility which is located in the lower level of the police department main building, is reaching full capacity. Evidence must be held while criminal cases are being adjudicated and during any appeals process that may follow. Additionally, Arizona state law requires evidence of certain types of crimes be held for up to 55 years. Over time, evidence accumulates despite active and timely disposal practices.

In order to extend the service life of the existing facility, high-density shelving was included as part of the current year budget (FY 2014). This movable shelving will increase the storage capacity by nearly 40% and extend usability for several years. The shelves will replace the existing shelving and will store current and future evidence.

Financial Impact

The proposed purchase in the amount of \$52,273.25 compares favorably to the figure of \$57,000.00 budgeted in FY 2014.

Attachments

1. Photos of shelving system

Agenda Item: Approval of purchase and installation of high density shelving for the Police Department Property and Evidence Section from Interior Solutions using State contract pricing in the amount of \$52,273.25 (City Contract No. 2014-044)

Recommended Action: MOVE to approve the purchase of high-density shelving, from Interior Solutions using State contract pricing in the amount of \$52,273.25.



**MEETING DATE/TYPES: STUDY SESSION 9-17-13
VOTING SESSION 9-24-13**

DEPARTMENT: Parks and Recreation

AGENDA ITEM: Approval of Acker Trust Board grants for Fiscal Year 2014

Approved By:

Date:

Director:	Baynes, Joe	
City Manager:	McConnell, Craig	

The Acker Trust Board was established in 1959 as part of a court adjudication of Mr. J.S. Acker's will, which left the majority of his estate to the City of Prescott, " ... for the use of our people, the children in particular." Trust Board members are appointed by and serve as advisors to the Mayor and Council for management of the Trust. All Trust expenditures are for parks or the promotion of youth music.

Every year music organizations apply for Acker Trust funding through a grant process. These organizations must be incorporated, provide a financial statement, and appear before the Board for a five-minute presentation. The Board, in determining recommended allocations within the limited resources available, considers the financial need of the applicant, the number of participants served by their programs, and benefit to the community.

Requests totaling \$18,000 were received for FY14; the balance in the trust is \$575,565.84, of which a maximum of \$10,000 is available for disbursement. The Board reviewed applications and presentations from Volante Academy of the Arts, Chaparral Music Fest, Sharlot Hall Museum, Trinity Presbyterian Church/ Park Avenue Theater, Yavapai College Foundation - New Horizons Matinee Series, and Yavapai Symphony Association.

Of the applications submitted for FY 2014 grants, the board is recommending the following for approval:

Chaparral Music Fest	\$ 2,500.00
Sharlot Hall Museum	\$ 1,100.00
Trinity Presbyterian Church/ Park Avenue Theater	\$ 1,150.00
Yavapai College Foundation- New Horizons Matinee Series	\$ 1,500.00
Yavapai Symphony Association	<u>\$ 2,700.00</u>
Total	\$ 9,000.00

Recommended Action: MOVE to approve Acker Trust Fund grant awards for Fiscal Year 2014 to Chaparral Music Fest - \$2,500.00; Sharlot Hall Museum - \$1,100.00; Trinity Presbyterian Church/ Park Avenue Theater - \$1,150.00; Yavapai College Foundation- New Horizons Matinee Series - \$1,500.00; and Yavapai Symphony Association - \$2,700.00.

MEETING DATE/TYPES: **STUDY SESSION** **9-17-13**
 VOTING SESSION **9-24-13**

DEPARTMENT: Public Works

RECOMMENDED AGENDA CATEGORY: Regular: X Consent: ____

AGENDA ITEM: Authorization of Centrisys Corporation to perform on-site preventive maintenance and repairs to the centrifuge at the Airport Water Reclamation Facility in a net additional amount not to exceed \$15,775.00 (City Contract No. 2014-043).

Approved By:

Date:

Director:	Nietupski, Mark	09/09/2013
City Manager:	McConnell, Craig	

Item Summary

This item is to retain Centrisys Corporation to perform on-site preventive maintenance and repairs to the centrifuge located at the Airport Water Reclamation Facility purchased from Centrisys in July 2007. The detailed scope of work required will be identified during preventive maintenance services to be performed on this specialized item of process equipment.

Background

The Centrisys CS14-4 Centrifuge was purchased for the Airport Water Reclamation Facility in July 2007 with a substantial completion date of April 2009. Included in the procurement was a service agreement in the amount of \$18,225.00 to cover preventive maintenance expenses when 48 months or 10,000 hours of runtime was achieved. The equipment has been in service 10,000 hours and now requires the recommended preventive maintenance. No work was charged to the \$18,225.00; this amount is available as a credit to offset the maintenance and repairs which are now necessary.

The attached Onsite Repair Estimate identifies work items typically needed at this point in the centrifuge service life. These total \$34,000.00. After applying the \$18,225.00 credit, the net additional amount needed to be authorized is \$15,775.00.

Agenda Item: Authorization of Centrisys Corporation to perform on-site preventive maintenance and repairs to the centrifuge at the Airport Water Reclamation Facility in a net additional amount not to exceed \$15,775.00 (City Contract No. 2014-043).

Currently, the Airport Facility has one centrifuge, the only means of dewatering sludge for final disposal at the landfill. Should this unit fail due to the lack of required preventive maintenance, another dewatering unit would have to be leased while repairs were being performed on the existing unit, adding additional expense and potential solids overloading at the facility.

Financial Impact

FY 2014 funding for the AWRF centrifuge maintenance in the total amount of \$15,775.00, including taxes, is available in the Wastewater Fund.

Attachments

1. Onsite Repair Estimate Centrisys

Recommended Action: MOVE to authorize Centrisys Corporation to perform on-site preventive maintenance and repairs to the centrifuge at the Airport Water Reclamation Facility in a net additional amount not to exceed \$15,775.00 (City Contract No. 2014-043).

Onsite Repair Estimate of CS14-4 Centrifuge – Rev 2

For

City of Prescott

Opp # 3506

**Attn: Jesse Holyfield
City of Prescott/Sundog WWTP
1500 Sundog Ranch Road
Prescott, AZ 86301**

09-04-13





This estimate is to preform the preventative maintenance onsite assuming the centrifuge has normal wear. It is recommended to balance the scroll and bowl if any repair work is needed, this can only be done at our repair facility. Shipping charges are not included and will be billed at the actual cost.

1. PARTS FOR ONSITE REPAIR

Part Number:	Description:	Quantity:
10607	Bearing Deep Groove Ball	1
10508	Bearing Needle	1
10518	Bearing Inner Race	1
10501	Bearing Cylindrical Roller	1
11087	Bearing	1
12818	Lip Seal	2
10505	Retaining Ring	2
10506	Retaining Ring	1
10519	Retaining Ring	1
11917	Retaining Ring	1
12819	Retaining Ring	1
14953	Laminar Ring	4
10509	Seal Anti-Centrifugal	2
10691	Seal Anti-Centrifugal	4
11379	Seal Anti-Centrifugal	1
10411	Discharge Nozzle Conical	4
10408	Feed Nozzle, Large	6
10409	Feed Nozzle, Small	6
16280	Tiles	50
10477	Adhesive	3

Parts for Repair: \$ 7,230.00

2. TECHNICIAN ONSITE FOR REPAIR

- 1. One (1) technician onsite to complete preventative maintenance**
- 2. Two (2) ten (10) hour travel days**
- 3. Three (3) eight (8) hour days onsite**
- 4. Expenses to include airfare, hotel, rental, per diem and mileage**

Repair of centrifuge: \$ 6,755.00

***Labor and expenses are estimated and will be billed at actual cost**

3. ROTODIFF PURCHASE

1. Purchase refurbished 1071 S/F rotodiff: \$ 17,885.00
2. Credit issued for return of damaged rotodiff: \$1,500 - \$3,500
*Credit is determined once rotodiff is received and inspected

3. Purchase new 1071 S/F rotodiff: \$ 29,805.00
*Listed for reference

Repairs Not to Exceed: \$ 34,000.00

Credit for Purchase of Service Agreement: \$-18,225.00

Additional Amount (Difference): \$ 15,775.00

*The original quote was for a minor repair onsite (bearings, seals and thorough inspection). Because the City is asking for a not to exceed amount we need to quote in anticipation of a more extensive repair. Until our technician is onsite and has the machine apart we cannot give a more definite estimate.

4. TERMS:

Terms: Net 30

Delivery: 1 (one) week onsite

FOB: Stockton, CA

Warranty: 6 (six) months on repaired/replaced parts

The plant is responsible for the following:

- ☐ Provide proper and safe lifting devices
- ☐ Provide an assistant to the technician to assist with the repair
- ☐ Clean up and disposal of replaced items and lubricants

Quote valid for 30 days.

Centrisys reserves the right to adjust this estimate.

If you have any questions please give us a call.

209-983-0800

MEETING DATE/TYPES: STUDY SESSION 9-17-13
VOTING SESSION 9-24-13

DEPARTMENT: Public Works

RECOMMENDED AGENDA CATEGORY: Regular: X Consent:

AGENDA ITEM: Award of bid and contract for the Airport Well No. 3 Equipping Project to Fann Environmental, L.L.C., in the amount of \$2,831,730.00

Approved By:

Date:

Director:	Nietupski, Mark	
City Clerk:	Mulhall, Lynn	
City Manager:	McConnell, Craig	

Item Summary

This item is to approve a contract with Fann Environmental, L.L.C., for construction and equipping of a new well facility including arsenic treatment north of the Airport (map attached), to augment system production/pumping capabilities.

Background

The City currently utilizes a wellfield located in Chino Valley for its primary water supply. As an integral component of water resource management, the City owns and operates a recharge/recovery facility (reclaimed and surface water recharge) located adjacent to the Airport Water Reclamation Facility. In 2005, the Arizona Department of Water Resources (ADWR) granted the City an increase in its Designation of Assured Water Supply. In conjunction with the increase, ADWR requested recovery well capacity be augmented within a one-mile proximity of the recharge facility.

The new well was drilled during Fall 2011 to a depth of 1,028 feet and produces 950 GPM of water at a sustainable pumping rate. New Source Approval water quality test results indicated the well water to be above the maximum contaminant level (MCL) of 10 parts per billion for arsenic, as regulated by the EPA. In order for the well to be utilized for potable water supply arsenic treatment is required at the wellhead.

Agenda Item: Award of bid and contract for the Airport Well No. 3 Equipping Project to Fann Environmental, L.L.C., in the amount of \$2,831,730.00

This project generally consists of constructing and equipping a new concrete block pump house and arsenic treatment facility for Airport Well No. 3 just north of Ruger Road. Other items of work include: 3,200 linear feet (LF) of access road along the north side of Bottleneck Wash, installation of 220 LF of 10-inch Ductile Iron Pipe (DIP) Water Main, and 341 LF of 12-inch DIP Water Main, a retention basin, 477 LF of chain link privacy fence and 779 LF of concrete masonry wall, chlorination facilities, well development, and all other appurtenances needed for a fully functioning water production site.

Bid Results

On August 22, 2013, seven bids were received from companies in six Arizona cities.

<u>Company Location</u>	<u>Bid</u>
Fann Environmental L.L.C. Prescott, Arizona	\$2,831,730.00
SunWestern Contractors Tucson, Arizona	\$2,978,352.13
PCL Construction Inc. Tempe, Arizona	\$2,981,014.79
Kear Civil Corporation Phoenix, Arizona	\$3,073,949.00
SDB Inc. Flagstaff, Arizona	\$3,075,431.38
CNB Excavating Inc. Dewey, Arizona	\$3,220,000.00
A. Miner Contracting Inc. Prescott, Arizona	\$3,517,658.00
Engineer's Estimate	\$2,672,928.00

Written confirmation of their bid has been received from the low bidder, Fann Environmental, L.L.C. Verification of the company's license, bonding, references, and successful performance of similar projects in the past has been completed.

Project Schedule

Commence Construction	October 2013
Completion	October 2014

Financial Impact

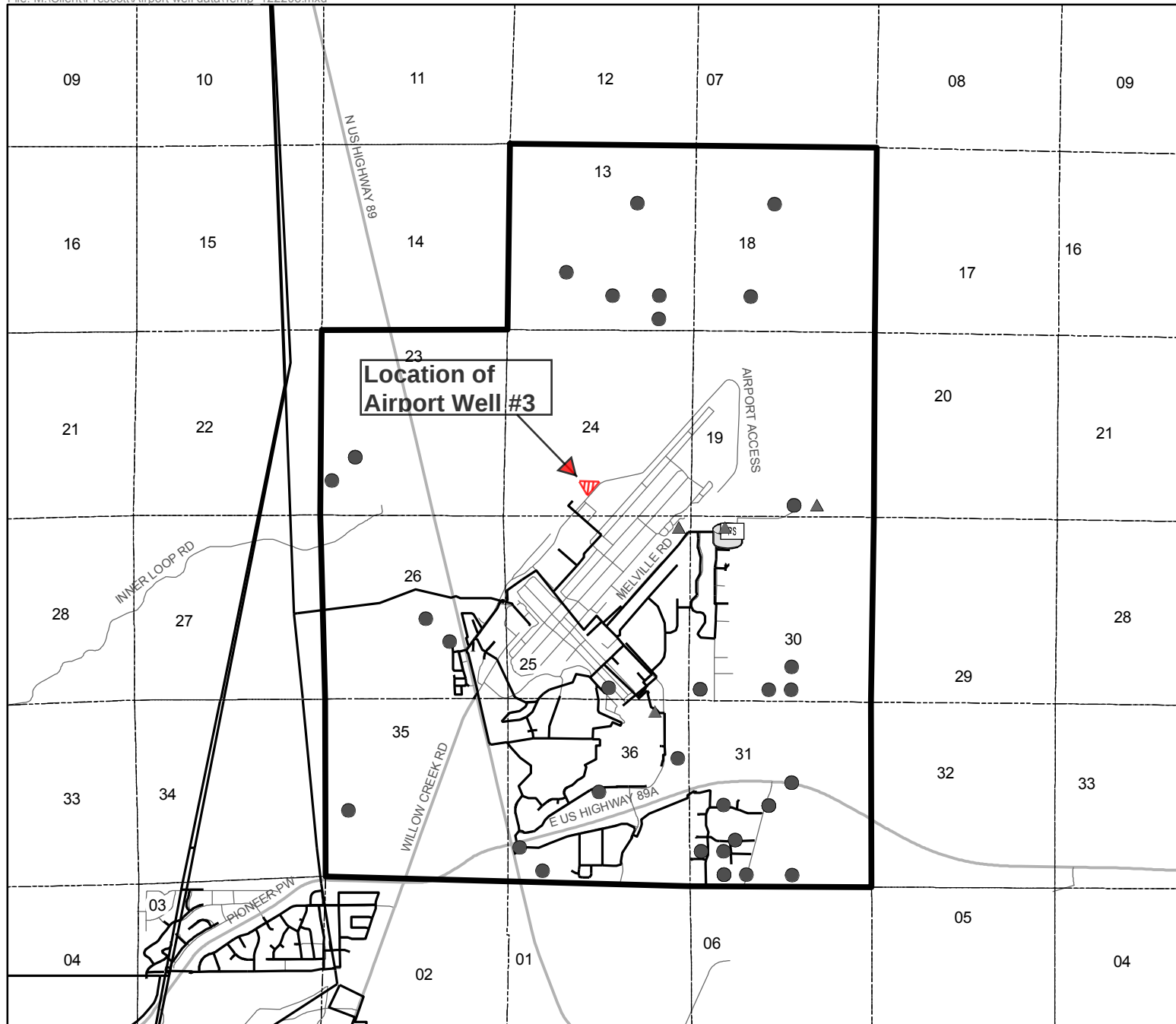
FY 2014 funding for the Airport Well No. 3 Equipping Project has been budgeted and is available in the Water Fund.

Attachments

1. Well Location Map

Recommended Action: MOVE to award the bid and contract for the Airport Well No. 3 Equipping Project to Fann Environmental, L.L.C., in the amount of \$2,831,730.00.

Agenda Item: Award of bid and contract for the Airport Well No. 3 Equipping Project to Fann Environmental, L.L.C., in the amount of \$2,831,730.00



PROJECT LOCATION MAP
 AIRPORT ZONE PRODUCTION / RECOVERY WELLS



EXHIBIT SITE MAP Love Field Airport Prescott, Arizona

- City of Prescott Well
- Other Area Well
- Area of Well Inventory
- Existing Water Mains
- Booster Pump Station
- Storage Tank
- Section Boundary
- Minor Road
- Major Road (Highway)



carollo

MEETING DATE/TYPES: **STUDY SESSION 9-17-13**
 VOTING SESSION 9-24-13

DEPARTMENT: Airport

RECOMMENDED AGENDA CATEGORY: Regular: X Consent:

AGENDA ITEM: Approval of a Professional Services Agreement, City Contract No. 2014-029, with Dibble Engineering to provide project design and construction management services in support of Airport Capital Improvement Projects

Approved By:

Date:

Airport Manager:	Tripp, Jeffrey	
City Manager:	McConnell, Craig	

Item Summary

This request is for approval of a Professional Services Agreement (PSA) with Dibble Engineering (Dibble) of Phoenix, Arizona to provide project design and construction management services, on an as-needed work order basis, in support of Airport capital improvement projects necessary for the Airport to meet the current and future air transportation needs of the region.

Background

Approximately every three years, the City selects a qualified firm to provide professional airport engineering services. This PSA is proposed for a three-year period from October 1, 2013, through September 30, 2016, with two additional 1-year extensions at the option of the City. The use of a multi-year, multi-project approach ensures continuity of planning, design, and construction of capital improvement projects by a single firm familiar the unique aspects of our airport.

The City published a Request for Statement of Qualifications (SOQ) in accordance with the FAA's Qualifications Based Selection procedures in April 2013; six (6) firms submitted written proposals. All submittals received were from companies with offices based in the Phoenix area. No local firms submitted proposals for the role of prime consultant, however, local firms were included as sub-consultants by several of the primes.

A selection committee consisting of the Airport Management Analyst, City Engineer, an airport business representative, an airport recreational pilot representative, and a citizen representative reviewed the submittals and interviewed the top three firms in July 2013. The committee ultimately evaluated Dibble Engineering (the incumbent engineering firm) to be the

Agenda Item: Approval of a Professional Services Agreement, City Contract No. 2014-029, with Dibble Engineering to provide project design and construction management services in support of Airport Capital Improvement Projects

highest ranking.

Contract negotiations have been completed and the contract is attached for Council review and approval. Dibble has extensive experience with airport projects since 1962 and was determined by the committee to be the best qualified firm to provide the design and engineering support services for the Airport. Dibble has conducted work at a wide range of airports across the state with an excellent record of successful project completion including the design and project management of the recently completed Runway 21L-3R Runway Safety Area Improvement Project.

As part of their efforts to utilize locally-based companies, Dibble will subcontract with the following Prescott-based firms to perform various aspects of potential projects listed in Exhibit "A" of the SOQ document: Civiltec Engineering, Inc.; Stroh Architecture; Engineering & Testing Consultants, Inc. (ETC); Huck Appraisal; T. Barnabas Kane & Associates (TBKA); and Grady's Excavating.

The use of Prescott-based companies helps provide local jobs while also affording local businesses with the opportunity to gain valuable training and experience in performing airport work. This experience can be used by these companies to perform similar airport design and/or construction work at other airports.

Financial Impact

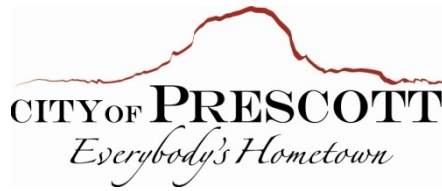
A negotiated individual *Authorization for Services* will be brought before Council for each design or construction project for approval prior to a project being initiated. Typically, up to ninety-seven point five (97.5%) percent of eligible project design and construction management expenditures are reimbursable for federally-funded projects (FAA 95%; ADOT 2.5%; City 2.5%) and up to ninety (90%) percent of eligible project costs are reimbursable for state-funded projects (ADOT 90%; City 10%).

Approval of this PSA does not obligate the City to design and/or construct any of the projects listed in Exhibit "A" of the Request for Statement of Qualifications (SOQ) document. Council will have multiple opportunities to review and approve each project during the annual budget process, upon acceptance of each federal/state grant, and at time of award of contract for each design or construction project.

Attachments

1. City Contract No. 2014-029

Recommended Action: **MOVE** to approve the Professional Services Agreement, City Contract No. 2014-029, with Dibble Engineering to provide project design and construction management services in support of airport capital improvement project.



Professional Services Agreement

City Contract No. 2014-029

DIBBLE ENGINEERING

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 State Law; and

WHEREAS, Dibble & Associates Consulting Engineers, Inc, *dba* DIBBLE ENGINEERING (hereinafter referred to as "Consultant"), has expertise in Airport Design and Engineering Services.

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 Consultant shall provide those services to the City on an as-needed basis, as indicated in Exhibit "A" (General Scope of Services) at the Prescott Municipal Airport/Ernest A. Love Field, and as requested by the Airport Manager or designee.
2. In addition to those services identified in Paragraph 1 above, the Consultant 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 Consultant 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 Consultant's project schedule identified in the attached Exhibit "A".
5. The term of this Agreement shall be for the three-year period of **October 1, 2013 through September 30, 2016**. The Agreement may be extended for up to two (2) additional years (in 1-year increments) at the sole discretion of the City through September 30, 2018.
6. Notwithstanding the foregoing, this Agreement may be terminated by both parties upon ten (10) days written notice, with or without cause or upon completion of services. If this Agreement is terminated, the Consultant shall be paid for authorized services satisfactorily performed to the date of the Consultant's receipt of such termination notice.
7. It is agreed by and between the parties that this Agreement incorporates the attached Exhibit "A", Exhibit "B", and Exhibit "C" 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 Consultant 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:

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

Dibble Engineering
7500 Dreamy Draw Drive, Suite 200
Phoenix, AZ 85020

10. It is expressly agreed and understood by and between the parties that the Consultant is an independent contractor, and, as such, Consultant 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, Consultant 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, Consultant 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 Consultant unless by sub-contract, as approved in advance by the City.
12. (A) The City shall pay to Consultant a total sum in accordance with the individual Authorization for Services prepared for each individual project for all services specified in Sections 1 and 2 of this Agreement, as specified in Exhibits "A" and "B".

(B) The foregoing sum includes payment for any and all services to be rendered by Consultant or sub-consultants which the Consultant may employ for this Contract. It is expressly agreed by and between the parties that the Consultant is solely responsible for any and all payment to such any other consultants or sub-contractor's retained by the Consultant.

(C) Payment of the total amount provided for under Section 12 (A) shall not relieve Consultant 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 Consultant shall charge and City shall pay Consultant in accordance with Exhibits "A" and "B".

(D) Prior to the final payment to the Consultant, 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 Consultant, and shall apply to those monies to the appropriate accounts. Consultant shall provide to the City any information necessary to determine the total amount(s) due.

(E) The Consultant shall bill the City monthly for the fee due the Consultant, based upon the percentage of the fee corresponding to the percentage of the Consultant's Services during the billing period for work completed for each itemized task pursuant to this Agreement and Exhibits "A" and "B" 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 Consultant 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 Consultant 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 Consultant 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, Exhibit "A", Exhibit "B", and Exhibit "C" represents the entire and integrated Agreement between the City and the Consultant 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 Consultant. 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 Consultant 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 Consultant'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 Consultant 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 Consultant has or may have against the City, its agents or employees, arising out of or in any way connected with the Consultant'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 Airport Manager. 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 Airport Manager 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 Airport Manager 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 Airport Manager 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 Airport Manager, which shall be written so as to indicate acceptance on the part of the Consultant 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 Consultant to proceed with the items in question to be reimbursed pursuant to the unit prices in the Consultant fee proposal.

(F) If the Consultant claims that any instructions involve extra cost under this Contract, it shall give the Airport Manager 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 Consultant shall do such extra work therefor upon receipt of an accepted Contract Amendment or other written order of the Airport Manager and in the absence of such Contract Amendment or other written order of the Airport Manager, the Consultant shall not be entitled to payment for such extra work. In no case shall work be undertaken without written notice from the Airport Manager to proceed with the work. Contract Amendments over \$10,000.00 must be approved by City Council.

23. (A) The Consultant 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 Consultant.”

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, Consultant 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

(B) City and Consultant 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.

(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 Consultant 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: Consultant 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 Consultant, 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-Consultants, including procurement of materials and leases of equipment. The Consultant 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. Consultant Immigration Warranty

Consultant 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 Consultant 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, Consultant hereby warrants to the City that the Consultant 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 “Consultant Immigration Warranty”).

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

The City retains the legal right to inspect the papers of any Consultant or Sub-Consultants employee who works on this Contract to ensure that the Consultant or Sub-contractor is complying with the Consultant Immigration Warranty. Consultant 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 Consultant and any of sub-contractors to ensure compliance with Consultant's Immigration Warranty. Consultant agrees to assist the City in regard to any random verification performed.

Neither the Consultant nor any Sub-contractor shall be deemed to have materially breached the Consultant Immigration Warranty if the Consultant 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 Consultant 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 Consultant or sub-contractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

26. Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily possessed and exercised by a Consultant under similar circumstances.
27. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Consultant.
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.
30. Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section, the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

Dated this _____ day of _____, 2013.

City of Prescott, a municipal corporation

DIBBLE ENGINEERING

Marlin D. Kuykendall, Mayor

By: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

Lynn Mulhall, City Clerk

Jon M. Paladini, City Attorney

EXHIBIT “A” GENERAL SCOPE OF SERVICES

AIRPORT DESIGN AND ENGINEERING SERVICES FY 2014 - FY 2018 PRESCOTT MUNICIPAL AIRPORT (ERNEST A. LOVE FIELD)

ARTICLE I SERVICES & PROJECTS

The CONSULTANT shall provide the services required in accordance with a Scopes of Services, to be included as part of each individual Authorization for Services for the projects at Prescott Municipal Airport which may include but are not limited to those projects listed below.

- Design and construction of Airport Perimeter Roads (Phases 1, 2 & 3)
- Design and construction of Runway 12/30 Relocation
- Design and construction of Runway 3R/21L - Runway 12/30 intersection grade modification
- Design and construction of new RSAT projects identified by the Runway Safety Action Team identified during the contract period
- Design and construction of runway guard lights on TWYs A, C, E, & F
- Design and construction of Airport Security Upgrades
- Design and construction of additional Taxiway A exits
- Design and construction of Taxiway C realignment.
- Design and construction of Taxiway E lighting system, replacement airfield emergency generator, and airfield electrical vault relocation
- Design and construction Taxiway F realignment
- Design and construction of Airport Pavement Preservation Program projects
- Design and construction of a replacement ARFF station
- Design and construction of an airport maintenance facility
- Design and construction of an aircraft wash rack facility
- Design and construction of an airport fuel storage facility expansion
- Design and construction of Storm Water Pollution Prevention Program projects
- Design and construction of replacement Airport Traffic Control Tower
- Perform airspace obstruction analysis and mitigation project(s)
- Conduct miscellaneous projects to include Tower Line of Sight Study(s), Airport Survey(s), Electrical Improvements, Airfield Lighting & Signage preventative maintenance program, etc., as necessary.
- Provide surveys and mapping services for leasehold development
- Land Acquisition

Services to be provided at the CITY’s request may include, but are not limited to, the following:

1. Development and use of a Project Management Plan
2. Preparation of Preliminary Engineering Designs and Cost Estimates
3. Preparation of Pre-applications and Applications for Grants
4. Field Surveys
5. Geotechnical Investigations
6. Pavement Designs
7. Preparation of Engineering Improvement Plans
8. Preparation of Specifications
9. Preparation of Bid Documents
10. Assistance in Bid Advertisement and Receipt of Bids

11. Bid Analysis and Construction Contract Award Assistance
12. Construction Observation
13. Construction Quality Assurance Testing
14. Construction Management
15. Construction Administration
16. Grant Administration
17. Grant Management
18. Airport Planning
19. Other tasks as directed by the Airport Manager

A specific Scope of Services will be prepared for each project authorized by the CITY and included in an "Authorization for Services." The CITY will provide written approval for each "Authorization for Services" prior to any work commencing.

ARTICLE II TIME OF PERFORMANCE

Individual Authorizations for Services will include times of performance for the work tasks covered in said Authorizations. CONSULTANT will perform the services for individual Authorizations for Services with reasonable diligence and expediency consistent with sound professional practices.

ARTICLE III CHANGES IN WORK

Significant changes in the scope, character, or complexity of the work or services in addition to those specified in the Scope of Services may be negotiated if the CITY determines that such changes are desirable and necessary. No changes in scope of work or amendments to this Agreement shall be made without prior written approval of the CITY, the Arizona Department of Transportation's Multimodal Planning Division – Aeronautics Group (hereinafter "ADOT"), and the Federal Aviation Administration (hereinafter "FAA"). CONSULTANT will supply fee estimates for such additional services on request of the CITY.

ARTICLE IV PROJECT MANAGEMENT PLAN AND FORM OF INVOICING

For each Authorization for Services, the CONSULTANT shall develop a Project Management Plan and baseline for tracking and updating progress on the project schedule and budget, unless other authorized by the City. The CONSULTANT shall develop and use the agreed upon work breakdown structure based on the contract fee schedule and which identifies activity tasks along with their associated dates, end dates and budgets for the project. The baseline data will be submitted for City approval within 10 days of the date on which the Authorization for Services is signed and delivered by the parties hereto.

The baseline and progress data will be used to verify CONSULTANT performance in relationship to fees claimed and to allow the City Project Manager to monitor the Consultant's efforts. The CONSULTANT shall be responsible for any updates to these schedules and for documenting in writing to the City any major deviations in the actual versus estimated projected time frames. On a monthly basis, by the 30th of each month, the CONSULTANT shall submit updated Project Reports, in a format acceptable to the City and conduct a Project Review with the City Project Manager for each assigned project.

The CONSULTANT shall submit monthly invoices to the City for the percentage of the fee corresponding to the percentage of the Consultant's services which have been performed. It is suggested that the CONSULTANT submit an advance draft of the invoice to the City Project Manager for review and comment prior to submitting the invoice for payment. Invoicing shall be supported by an Earned Value Report showing the actual tasks performed and their relationship to the percentage of fees claimed for each phase. Billings for each major task of work shall be for the percentage of work effort completed to date for that task (earned value). Invoices shall also include a completed FAA Standard Form 270 (Non-Construction) or Standard Form 271 (Construction) and State Grant reimbursement form as may be appropriate to the project

Should an invoiced amount for fees earned appear to exceed the work effort believed to be completed, the City may, prior to processing of the invoice for payment, require the CONSULTANT to submit

satisfactory evidence to support the invoice. If evidence provided is not adequate to support the claimed level of effort, the invoice may be rejected or the approved payment reduced below that billed.

All invoices requesting payment for direct reimbursable or expense items must have copies of actual invoices or receipts attached, which support the amounts invoiced. The City shall make payments to the CONSULTANT for work performed, based on approved invoices and supporting documentation and deliverables. The foregoing provisions regarding project monitoring, invoicing and payment supersede any conflicting provisions set forth in the RFP, the Consultant's response to the RFP or the Original Contract.

The CONSULTANT shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this contract, and shall make all such materials available to the CITY, or its duly authorized representatives at any reasonable time during the term of work on the contract, and for six (6) years after the date of final payment to the CONSULTANT by the CITY for work performed hereunder.

ARTICLE V RETENTION OF RECORDS

The CONSULTANT and any subcontractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this contract, and shall make all such materials available to the CITY, or its duly authorized representatives at any reasonable time during the term of work on the contract, and for six (6) years after the date of final payment to the CONSULTANT by the CITY for work performed hereunder.

ARTICLE VI AUTHORIZED PROJECT MANAGER AND SUB-CONTRACTORS

The CONSULTANT has designated Ken Snyder, PE, as the Project Manager and primary day-to-day contact for the term of this contract, who the City hereby accepts. The CONSULTANT may not assign a different project manager without the express written consent of the City.

The CONSULTANT may, utilize in the performance of this Agreement, without prior approval of the City, personnel or services of Aerometric; Argus Consulting; Civiltec Engineering, Inc.; Nicholas J. Pela & Associates; DWL Architects & Planners; Stroh Architecture; Oridian Construction Services; CR Engineers, Inc.; Delta/CTBX; Engineering & Testing Consultants Inc; Speedie & Associates, Inc.; SWCA Environmental Consultants; Huck Appraisal; Tierra ROW; T. Barnabas Kane & Associates; Grady's Excavating, and Pavement Consultants Inc (PCI) as may be appropriate for the services requested. Any other sub-contractors must first be approved in writing by the City.

ARTICLE VII RESPONSIBILITY OF CONSULTANT

CONSULTANT shall perform its services to the best of its ability in accordance with industry standards, this Agreement, and applicable laws and regulations.

CONSULTANT agrees to correct deficiencies resulting from the negligent performance of its services which are discovered and reported to CONSULTANT within one year from the date of completion of its services hereunder. If CONSULTANT does not correct deficiencies as written in this Article, then he shall be liable for the amount necessary to replace the services necessary for such corrections. Under no circumstances shall CONSULTANT, its subcontractors and suppliers, be liable to CITY for any consequential damages including loss of use or loss of profit, except that CONSULTANT shall be liable to CITY, and shall hold the CITY harmless therefrom, for loss or damage arising out of or in connection with CONSULTANT'S negligent performance of this agreement. It is understood by CONSULTANT and the CITY that CONSULTANT shall provide insurance against the possibility of such negligence, as provided by Paragraph 23 of this Agreement.

ARTICLE VIII STATE FUNDING REQUIREMENTS

The CONSULTANT agrees to comply with the provisions of the State of Arizona Executive Order 76-5, as amended by Arizona Executive Order 99-4, relating to equal opportunity which is herein incorporated by reference.

ARTICLE IX AUDIT

The CONSULTANT shall grant the City of Prescott, ADOT, the FAA, or its duly authorized representatives to have access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

ARTICLE X BREACH OF CONTRACT TERMS - SANCTIONS

Any violation or breach of the terms of this Agreement on the part of the CONSULTANT may result in the suspension or termination of this Agreement or such other action which may be necessary to enforce the rights of the parties of this Agreement.

ARTICLE XI CERTIFICATION OF THE ENGINEER

I hereby certify that I am an officer and duly authorized representative of the firm of Dibble Engineering, whose address is 7500 North Dreamy Draw Drive, Suite 200, Phoenix, AZ 85020, and that neither I nor the above firm represented has:

1. Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement.
2. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; except as here expressly stated.

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this Agreement involving participation of Airport Improvement Program (A.I.P.) funds and is subject to applicable State and Federal Laws, both criminal and civil.

DATE

Title: President

EXHIBIT "B"

FEE SCHEDULE

On the first day of July following the Effective Date of this Agreement and annually thereafter, the Fees in Item I and II may be adjusted to an amount determined by multiplying the line item Fees shown by a percentage equal to 100% plus the percentage increase between (1) the Consumer Price Index level most recently published April 1st prior to the Effective Date of this Agreement and (2) the Consumer Price Index level most recently published April 1st prior to the particular anniversary. As used herein, the term "Consumer Price Index" shall mean Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, not seasonally adjusted, or the successor of that Index, as published by the Bureau of Labor Statistics, U.S. Department of Labor. Should the Consumer Price Index, as above described cease to be published, a reasonably comparable successor index shall be selected by City.

I. DIRECT SALARY COSTS:

	JOB (i.e. Project Manager, Administrative Assistant, etc.)	TITLE	AVERAGE RATE (\$/HR)
A.	PRINCIPAL IN CHARGE		\$64.90
B.	SENIOR PROJECT MANAGER		\$50.96
C.	PROJECT MANAGER		\$47.11
D.	SENIOR PROJECT ENGINEER		\$41.35
E.	PROJECT ENGINEER		\$38.27
F.	DESIGNER		\$28.85
G.	ASSISTANT ENGINEER		\$26.00
H.	CAD TECHNICIAN		\$26.00
I.	ADMINISTRATIVE ASSISTANT		\$19.00

II. OVERHEAD EXPENSES & PAYROLL BURDEN

(AUDITABLE, ESTIMATED AND EXPRESSED AS
A FACTOR OF DIRECT SALARY)

1.7615 (OF I.)

III. DIRECT EXPENSES

A.	TRAVEL BY AUTO (Assume 200 miles per trip)	<u>\$ 100</u>	PER TRIP
B.	TRAVEL BY AIR (TBD per Authorization for Services as needed)	<u>\$ TBD</u>	PER TRIP
C.	PER DIEM	<u>\$ 120</u>	PER PERSON
D.	MISCELLANEOUS (TBD per Authorization for Services)	<u>\$ TBD</u>	

IV. FIXED FEE (PROFIT, LUMP SUM)

A.	LABOR PLUS OVERHEAD	<u>10%</u>	(OF I. & II.)
B.	DIRECT EXPENSES	<u>ZERO %</u>	(OF III.)

EXHIBIT "C"

FEDERAL PROVISIONS

1. CIVIL RIGHTS ACT OF 1964, TITLE VI – CONSULTANT CONTRACTUAL REQUIREMENTS

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

- 1.1 Compliance with Regulations. The CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 1.2 Nondiscrimination. The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 1.4 Information and Reports. The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY, the Arizona Department of Transportation's Multimodal Planning Division - Aeronautics Group (ADOT), or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the CITY, ADOT, or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 1.5 Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the CITY shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
- 1.6 Incorporation of Provisions. The CONSULTANT shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the CITY or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

- 1.7 The CONSULTANT shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurement of materials and leases of equipment unless exempted by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action, with respect to any subcontract or procurement, as the CITY, the FAA, or ADOT may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interest of the CITY and, in addition, the CONSULTANT may request the United States and/or the State of Arizona to enter into such litigation to protect the interest of the United States and/or the State of Arizona.

2. AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The CONSULTANT assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport CITY or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport CITY or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

3. DISADVANTAGED BUSINESS ENTERPRISES

1. Contract Assurance (§26.13) - The CONSULTANT or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
2. Prompt Payment (§26.29) - The prime CONSULTANT agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime CONSULTANT receives from the City of Prescott. The prime CONSULTANT agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Prescott. This clause applies to both DBE and non-DBE subcontractors.

4. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

1. No Federal appropriated funds shall be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

5. ACCESS TO RECORDS AND REPORTS

The CONSULTANT shall maintain an acceptable cost accounting system. The CONSULTANT agrees to provide the CITY, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The CONSULTANT agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

6. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the CONSULTANT or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7. RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the CITY of the Federal grant under which this contract is executed.

8. TRADE RESTRICTION CLAUSE

The CONSULTANT or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a CONSULTANT or subcontractor who is unable to certify to the above. If the CONSULTANT knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the CITY cancellation of the contract at no cost to the Government.

Further, the CONSULTANT agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The CONSULTANT may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The CONSULTANT shall provide immediate written notice to the CITY if the CONSULTANT learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances.

The subcontractor agrees to provide written notice to the CONSULTANT if at any time it learns that its certification was erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the CONSULTANT or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the CITY cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

9. TERMINATION OF CONTRACT

- a. The CITY may, by written notice, terminate this contract in whole or in part at any time, either for the CITY's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the CITY.
- b. If the termination is for the convenience of the CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the Consultant's obligations, the CITY may take over the work and prosecute the same to completion by contract or otherwise. In such case, the CONSULTANT shall be liable to the CITY for any additional cost occasioned to the CITY thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the CITY provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Certification Regarding Debarment and Suspension (Non-Procurement) – Title 2 CFR Part 180 & Title 2 CFR Part 1200

The contract agreement that ultimately results from this solicitation is a "covered transaction" as defined by Title 2 CFR Part 180. Bidder must certify at the time they submit their proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. The bidder with the successful bid further agrees to comply with Title 2 CFR Part 1200 and Title 2 CFR Part 180, Subpart C by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction".

2. Certification Regarding Debarment and Suspension (Non-Procurement) – Title 2 CFR Part 1200 and Title 2 CFR Part 180, Subpart C

The successful bidder by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction" must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder shall accomplish this by:

- i. Checking the System for Award Management at website: <http://www.sam.gov>
- ii. Collecting a certification statement similar to paragraph 1.
- iii. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that an individual failed to tell a higher tier that they were excluded or disqualified at the time they entered the covered transaction with that person, the FAA may pursue any available remedy, including suspension and debarment.

11. PUBLIC AVAILABILITY OF GRANT FUNDED DOCUMENTS/MATERIALS

All AIP funded projects which result in publically-available documents must be made available without restriction. No member of the public should be required to provide their name, address, telephone numbers, e-mail address, or other information in order to view or download the information. Airports should be advised that if they, or other agents of the airport, including CONSULTANT's, post documents, they must be available for download without restriction or registration. Further, no other entity, including CONSULTANT's, may post such documents on their own websites if those sites require registration, even if the document is posted elsewhere without registration requirements.

MEETING DATE/TYPES: STUDY SESSION 9-17-13
VOTING SESSION N/A

DEPARTMENT: City Manager

RECOMMENDED AGENDA CATEGORY: Regular: X Consent: ____

AGENDA ITEM: Request of the Adult Center of Prescott, Inc., for amendment of the facility lease to permit acquisition of a liquor license

Approved By:

Date:

City Manager: McConnell, Craig

Item Summary

Attached is correspondence from the Board of Directors of the Adult Center setting forth their request for Council consideration of amending the facility lease agreement to permit acquisition of a "club" liquor license for the management and financial reasons described therein.

Also attached for reference is the Lease Agreement, City Contract No. 2010-124, of February 9, 2010, between the City as owner of the real property, and the Adult Center. Key lease provisions include the following:

- The lease term extends through December 31, 2058
- Rent is \$1.00 per year
- City pays utilities for building common areas, sewer and sanitation services, and is responsible for parking lot snow removal
- City is responsible for repairs to the facility over \$500
- City has provided additional financial support to offset Adult Center operational costs, \$16,000 in the current fiscal year (FY14) payable in equally quarterly increments; this City monetary obligation ceases effective July 1, 2014.

The Site

The Adult Center is located within a node at the Rosser Street/South Blooming Hills Drive zoned Neighborhood Oriented Business (NOB) which is surrounded by residential development. The NOB district permits, by right, small retail shops, drug stores, offices, restaurants, and financial services, however, no such uses are presently in place. If an application for development of one or more of these nonresidential uses is received in the future, it could be accompanied by a liquor license application.

Agenda Item: Request of the Adult Center of Prescott, Inc., for amendment of the facility lease to permit acquisition of a liquor license

The 1999 purchase agreement between the Prescott Unified School District and the City provides to PSUD an irrevocable option to lease 8 acres of the 19 acre property upon which the Adult Center was constructed for a future school if needed. This could pose a future conflict with an Adult Center liquor license, and/or other application(s) related to the aforementioned, existing NOB zoning.

The Serving of Liquor in the Adult Center at Present

The City does not have a liquor license for the Adult Center; the City's only present license is for Antelope Hills.

When a liquor license is required for an event at the Adult Center, it is of the Series 15 Special Event type.

(Draft) First Addendum to the Adult Center of Prescott Lease Agreement

This draft document (attached) would authorize the Adult Center to obtain a liquor license "to be utilized in conjunction with Adult Center sponsored events," subject to associated insurance and other requirements. In the event that a school is constructed on the property, the authorization of the Adult Center to have a liquor license "... shall terminate unless continuation of the liquor license is formally approved at that time by the Prescott City Council."

Process for Consideration of a New Liquor License for the Adult Center

Should Council direct further consideration of the Adult Center request, an appropriate process would include the following steps:

1. Setting of a date certain for consideration of the lease amendment requested by the Adult Center. This could be the Council study session of October 15, 2013.
2. Written notification of property owners and homeowners associations within a specified distance (1000' is a common standard), at least two weeks prior to the study session.
3. Council discussion at the study session, and determination whether the lease amendment should be brought forward to a voting session (October 22nd or later).

If applicable

4. Council action on the lease amendment.
5. Following approval of the lease amendment, application for the liquor license by the Adult Center to the State of Arizona Department of Liquor Licenses and Control.
6. Setting of a public hearing by the Council on the Adult Center application.

Agenda Item: Request of the Adult Center of Prescott, Inc., for amendment of the facility lease to permit acquisition of a liquor license

7. Holding of the public hearing and action on the application by the Council.
8. Final action by the State of Arizona Department of Liquor Licenses and Control.

Attachments

1. Location and zoning map
2. Adult Center letter request of June 11, 2013
3. Lease Agreement (City Contract No. 2010-124)
4. (Draft) First Addendum to Adult Center of Prescott Lease Agreement

Recommended Action: No formal action. This item is for discussion of the Adult Center request and, if applicable, to identify steps for further consideration.



Adult Center OF PRESCOTT, INC.

Recreational, Social & Educational Opportunities for 18 Years & Older
Prescott's Place to Play!

in the Rowle P. Simmons Community Center
1280 E. Rosser Street, Suite B
Prescott, AZ 86301-5651
(928) 778-3000 - Fax (928) 541-0595
Email: acenter@adulcenter.org
Website: www.adulcenter.org

June 11, 2013

The Mayor and City Council
201 S. Cortez Street
Prescott, AZ 86302

Dear Mayor Marlin Kuykendall, and Council Members Charlie Arnold, Alan Carlow, Steve Blair,
Chris Kuknyo, Jim Lamerson, and Len Scamardo:

The Adult Center has for some time sought to obtain a "club" liquor license so that it may sell alcoholic beverages at events at the facility. Many social events take place here and we could greatly benefit from the income. As you know, the city's much-appreciated contributions will end soon, and we need to find new sources of funds. We are exploring many options, but the liquor license holds by far the greatest potential income stream.

In addition, by having this license the Adult Center can control the use of alcohol at the Center. This would provide greater protection against a private party serving minors, and from alcohol-related incidents that might arise absent the strict supervision of alcohol use that the Center can supply.

Approximately 1 year ago, Mr. Kidd sent us a rough draft of a lease addendum authorizing us to obtain a liquor license, with conditions. There has been no action since. Mr. Paladini suggested that we begin anew with this letter.

Accordingly, we request the Mayor and City Council take up consideration of the attached draft addendum to the lease agreement in all substantive parts identical to that prepared by Mr. Kidd. Also attached for your information are his original draft, and the existing lease.

The key aspects of the changes are: liquor license liability of \$1 million, and termination of the license (except in the case of re-approval by the City Council) should a school be built next to the Adult Center. Although Mr. Kidd proposed liquor liability of \$2 million, our insurance carrier has indicated that standard coverage is \$1 million and that to have \$2 million in coverage, we would have to buy another policy. It declined to offer a premium without knowing sales figures which we obviously do not have. Be assured that, should volume warrant, we will investigate increased coverage. The specific provision (paragraph 7, section I, page 7) holding the City harmless from any action arising out of use of the Adult Center remains in effect.

We are here to answer any questions you may have. We look forward to working with you on this matter.

Respectfully,



Deborah McCasland
President, Board of Directors
Adult Center of Prescott Inc.

Attachments: Draft Addendum
Mr. Kidd's Draft
Current Lease

2010-124
LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 9 day of FEBRUARY, 2010,
by and between the CITY OF PRESCOTT, a municipal corporation, hereinafter referred to as
"Lessor", and THE ADULT CENTER OF PRESCOTT, INC., an Arizona non-profit
corporation, hereinafter referred to as "Lessee";

WITNESSETH:

WHEREAS, Lessor owns certain real property upon which the new Prescott
Community Center has been built, which property is more particularly identified as Yavapai
County Assessor's Parcel Number 105-04-026; and

WHEREAS, Lessee made a significant financial contribution to the construction of the
Rowle P. Simmons Community Center, which contribution provided a significant benefit to the
public and is gratefully acknowledged by the City of Prescott on behalf of its citizens; and

WHEREAS, Lessor acknowledges the public benefit to be derived from Lessee's
operations at the Rowle P. Simmons Community Center and has complied with its charter
obligations pertaining to the lease of real property.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL
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, the
parties hereto agree as follows:

1. **LOCATION OF THE PRESCOTT COMMUNITY CENTER.** The real property upon which the Rowle P. Simmons Community Center ("RPSCC") has been constructed is herein described as Yavapai County Assessor's Parcel No. 105-04-026, which property is located at postal address 1280 E. Rosser Street, Prescott, Arizona (the "City Property").

2. **CONSTRUCTION OF THE PRESCOTT COMMUNITY CENTER.** Lessor was responsible for the construction of the RPSCC. The estimated cost of the design and construction of the RPSCC was in excess of \$3,650,000. In June, 2006, Lessee paid Lessor \$300,000 that was applied towards the cost of that construction.

3. **EFFECTIVE DATE OF LEASE AGREEMENT; PREMISES.** This term of this Lease Agreement shall begin upon the Effective Date, as defined in Paragraph 4 of this Lease Agreement. Upon the Effective Date, the terms of this Lease Agreement shall thereafter govern Lessee's right to possess and its actual possession of that part of the RPSCC as more fully described on Exhibit "A" (the "Leased Premises") Subject to the terms and conditions of this Lease Agreement, Lessee shall accept the Leased Premises in their "as-is" condition as of the Effective Date.

4. **TERM & CANCELLATION.** The initial term of this Lease Agreement shall begin on _____ (the "Effective Date") and shall continue through December 31, 2058; provided, however, that the term of this Agreement is subject to the annual review, cancellation and renewal provisions herein, and both parties reserve the right to review the performance of the other and maintenance and operations of the leased premises every year during the month of May proceeding the next fiscal year of this agreement. In the event that either City of Lessee or both of them determines based upon

such annual review for any reason not to continue with the Lease, either may give the other party one year (12 months) written notice of intent to cancel, and the lease shall be cancelled with no further obligations by either party upon the expiration of the one year period after a notice of intent to terminate by either party. Accordingly, the term of years for this Lease is intended to be subject to the right of either or both parties to cancel the lease after one year following written notice to the other of cancellation. Unless earlier terminated or cancelled as herein provided, at the expiration of this initial Lease term, Lessee shall have the option to renew this Lease Agreement for an additional forty-nine (49) year term on the same terms and conditions as set forth herein, except as the parties may otherwise mutually agree at the time the option is exercised. Lessee may exercise this option by providing Lessor with no less than six (6) months written notice thereof prior to the expiration of the initial lease term.

5. **RENT.** In consideration of the public benefit to be realized from Lessee's operations at the RPSCC, as more particularly set forth in Paragraph 7 and 9 of this Lease Agreement, and also in consideration Lessee's financial contribution to Lessor which was used to finance, in part, the development of the City Property, Lessee shall pay rent to Lessor in the annual amount of One Dollar (\$1.00) payable each year commencing on the Effective Date and each year thereafter on the anniversary of the Effective Date for the remainder of the term of this Lease Agreement and any extensions thereof.

6. **ABANDONMENT.** If Lessee abandons the Leased Premises, Lessee shall automatically forfeit any and all rights under this Lease Agreement, and Lessor may exercise any and all available remedies as set forth in Paragraph 13 of this Lease Agreement or as

allowed by law. Abandonment as used in this paragraph shall be deemed to have taken place upon the Lessee closing the Leased Premises to the public for seven (7) consecutive days, excluding, however, closures (i) required due to national or natural disaster or local emergency, (ii) necessary to allow Lessee or Lessor to comply with their obligations under this Lease Agreement, (iii) occurring due to circumstances beyond Lessee's control or (iv) for which Lessee has given prior written notice to Lessor and Lessor has approved thereof in writing before the date set for closure.

7. **LESSEE'S RESPONSIBILITIES.** During the term of this Lease Agreement, Lessee's responsibilities shall be as follows:

A. Lessee shall pay prior to delinquency any and all taxes which may be assessed against and levied upon trade fixtures, furnishings, equipment, and all other personal property of Lessee.

B. Lessee shall place all utilities that provide service to the Leased Premises in its name to the extent the existing metering system at the Leased Premises or the RPSCC will allow. Except as otherwise provided in this Lease Agreement, Lessee is responsible for the payment of any and all of utility bills for services provided to the Leased Premises, including, without limitation, telephone, gas, electric, cable and internet services. Further, Lessee shall pay for one-half of the utility bills for such services provided to common areas within the RPSCC. The common areas shall include all areas of the RPSCC that are not leased to any tenant. With respect to water service, which is provided by Lessor, Lessor shall not charge Lessee for water usage unless the combined total of water usage by all tenants of the RPSCC and the Lessor exceeds 360,000 gallons in any given year. If water

usage exceeds this amount, then the cost of the overage shall be apportioned amongst all tenants and the Lessor in equal amounts. Lessor shall ensure that all lease agreements with all other tenants of the RPSCC shall contain a lease provision identical in effect to the one provided for herein.

C. Lessee shall, at Lessee's expense, comply with all applicable statutes, ordinances, rules, regulations, orders, and requirements in effect during the term of this Lease Agreement.

D. Lessee shall ensure that no lien shall encumber, be placed upon or recorded against the Leased Premises, the RPSCC or upon any other estate or reversion of Lessor in the Leased Premises or in the RPSCC or upon any building or improvement thereon, and should any such lien arise, Lessee, at its own cost and expense, shall bond or otherwise discharge the same within ten days after receiving notice thereof.

E. Lessee shall make no alterations or additions to the Leased Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. Any alteration or addition of the Leased Premises, excepting movable furniture, machinery and trade fixtures, shall become part of the realty and shall belong to the Lessor upon termination of this Lease Agreement. Notwithstanding the foregoing, however, it is mutually agreed that the Audio Visual System shall be Lessee's property and Lessee may remove the same at the expiration of this Lease Agreement provided all damages caused thereby shall be repaired. It is further understood and agreed that under no circumstances is the Lessee to be deemed the agent of the Lessor for any alteration, repair or operation of the Leased Premises.

F. Subject to Lessor's prior written approval, which approval shall not unreasonably withheld, Lessee may install in the Leased Premises any new fixtures Lessee deems desirable and such shall remain Lessee's property. Lessee may remove these fixtures at any time, but shall repair any damage caused by the removal. No fixtures shall be installed which affect the structural integrity or external appearance of the Leased Premises or the RPSCC without Lessor's prior written consent, which consent Lessor may grant or withhold in its sole and absolute discretion. Any fixtures or other property of Lessee remaining on the premises after thirty (30) days after termination of this Lease Agreement shall become Lessor's property unless the parties have otherwise mutually agreed.

G. Lessee shall not assign, mortgage or encumber this Lease Agreement nor sublet the Leased Premises, without the prior written consent of the Lessor in each instance, which consent shall not be unreasonably withheld. The consent of the Lessor to an assignment or subletting shall not be construed to relieve the Lessee from obtaining the consent, in writing, of the Lessor to any further assignment or subletting.

H. Lessee shall not, at any time, without first obtaining the Lessor's express written consent, which consent Lessor may grant or withhold in its sole and absolute discretion:

i. Change, whether by alteration, replacement, rebuilding or otherwise, the exterior color or architectural treatment of the Leased Premises, the RPSCC, or the City Property, or any part thereof;

ii. Perform any act or carry on any practice which may damage, mar or deface the Leased Premises, the RPSCC or the City Property;

iii. Install, operate or maintain in the Leased Premises any electrical equipment which will overload the electrical system therein or any part thereof, beyond its reasonable capacity for proper and safe operation.

I. Lessee hereby agrees to indemnify, defend and hold harmless Lessor, its officers, employees, agents, successors or assigns herein (collectively the "Indemnified Party"), in both their public and private capacities, from and against any and all causes of action, claims, demands, expenses, liabilities, judgments, costs, losses or damages that any Indemnified Party may suffer or be subject to on account of, or in any way relating to or growing out of any and all known or unknown personal injuries, property damages, or claims of any type or any other matter in any way relating to the Leased Premises, to Lessee's operations at the Leased Premises, to such matters arising from acts or omissions by patrons or invitees of the Lessee, or to the Lessee's use of the RPSCC or the City Property; provided, however, that the Arizona laws, statutes, court cases and other laws pertaining to comparative fault apply to any and all of the matters subject to this paragraph and to Lessee's obligation to indemnify, defend and hold harmless any Indemnified Party.

J. Lessee undertakes to indemnify, defend and hold harmless any Indemnified Party from any and against any and all causes of action, claims, demands, expenses, liabilities, judgments, costs, losses or damages that any Indemnified Party may suffer or be subject to on account of, or in any way relating to or growing out of or relating to Lessee's or Lessee's patrons or invitees use of the common areas (as defined in Paragraph 7B) in the RPSCC and on the City Property, and all areas adjoining, or used to access the Leased Premises in any way relating to use by Lessee's patrons or invitees, provided,

however, that the Arizona laws, statutes, court cases and other laws pertaining to comparative fault apply to any and all of the matter subject to this paragraph and to Lessee's obligation to indemnify, defend and hold harmless any Indemnified Party.

K. Lessee expressly agrees that the provisions in Paragraphs 7I and 7J are intended to be as broad and inclusive as is permitted by City of Prescott Ordinances and the laws of the State of Arizona and that if any portion thereof is held invalid, it is agreed that the remaining provisions shall continue in full legal force and effect. Further, it is understood by Lessor that Lessee is not responsible for the acts or omissions of any other tenant or its patrons or invitees in the RPSCC or on the City Property and that the provisions of Paragraph 7I and 7J do not apply to thereto. Indemnification resulting from damage to portions of the RPSCC leased by any other tenant or from the actions of such tenant's officers, employees, agents, successors or assigns, patrons or invitees shall not be the responsibility of Lessee. In cases where damage shall be to the common areas of the RPSCC or the City Property shall be caused jointly by the Lessee and any other tenant, the Arizona laws, statutes, court cases and other laws pertaining to comparative fault shall apply.

L. Lessee shall obtain and maintain in continuous effect during the term of this Lease Agreement, a policy or policies of general liability and directors and officers insurance with minimum limits of not less than \$2,000,000 and shall obtain and maintain in continuing effect \$3,000,000 for casualty and risk related to damage caused by fire. Such policy or policies shall name Lessor and its agents, officers, employees and assigns as additional insureds. Lessee shall provide copies of such policy or policies to Lessor upon request. Liability insurance shall provide the following coverage:

a) General Liability/Premises and Property Coverage which shall include coverage for all risks associated with this Lease Agreement;

b) Bodily Injury and Property Damage coverage for all risks associated with this Lease Agreement;

All insurance required pursuant to this Lease 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.

Lessee may, but shall not be required, to procure and maintain a policy of insurance covering its personal property. Except in the case of damages caused due to the acts of Lessor or its agent or employees, Lessor shall not be liable for any damages to the personal property of Lessee.

If Lessee fails to procure and maintain any insurance that Lessee is required to procure pursuant to the terms of this Lease, Lessor may, but shall not be required to, procure and maintain the same at Lessee's expense.

M. The terms and conditions of this Lease Agreement shall be binding upon Lessee, its successors, heirs and assigns.

N. Should it become necessary for any Indemnified Party to incur costs and expenses to retain the services of an attorney to enforce the indemnity and defense provisions of this Lease Agreement, or any portion thereof, Lessee agrees to pay such Indemnified Party's reasonable costs and attorneys' fees thereby expended, or for which liability is incurred as provided by law; provided, however, that Lessee and the Indemnified

Party shall mutually select the attorney or attorneys providing the services. This paragraph shall not apply if Lessee provides written notice to Lessor of a necessary repair to be made which is the Lessor's responsibility under this Lease Agreement, and Lessor fails to perform said repairs within a reasonable time period after such written notice, and such failure of Lessor results in the bodily injury or property damage necessitating the services of an attorney.

O. Except as otherwise provide herein, Lessee shall be solely responsible for any and all costs associated with its programs and operations at the RPSCC, including but not limited to costs relating to materials, employees and reception services.

P. Lessee shall permit an inspection of the Leased Premises by Lessor, or Lessor's agents or representatives, during reasonable hours, at any time during the term of this Lease Agreement. If access to the Leased Premises for such purposes cannot be obtained, or if at any time an entry shall be deemed necessary for the protection of the PCC, whether for the benefit of the Lessor or Lessee, the Lessor, its agents or representatives, may enter the Leased Premises to accomplish such purposes. The provisions contained in this paragraph are not to be construed as creating or increasing any obligation on the part of the Lessor under this Lease.

Q. Lessee hereby agrees to provide proof of payments of any and all personal property taxes and insurance coverage required under the terms of this Lease Agreement.

R. Lessee shall keep the inside of the Leased Premises in a clean and neat condition at all times. Lessee shall, at its sole expense, including personnel costs, change all

air-conditioning filters on a monthly basis. Lessor shall make available, at no cost to Lessee, man-lift equipment to perform minor repairs in high ceiling areas. Lessor may offer training and certification to one or more Adult Center employee in safe operation of man-lift, if desired by Adult Center staff.

S. Lessee shall, at its expense and throughout the Lease term, maintain, service, replace, and keep in good repair the interior of that portion of the Leases Premises, including such items as floors, ceilings, walls, doors, glass, cleaning, partitions, and electrical fixtures, light bulbs, provided said repairs do not constitute "Major Repairs" as contemplated by Paragraph 8F of this Lease Agreement. If Lessor determines that any such maintenance, service or repairs are required, Lessor shall give Lessee written notice of the need for such repair, in order to give Lessee the opportunity to effectuate said repair or replacement. If Lessee does not effectuate the same within a reasonable time, Lessor may, but shall not be required to, effectuate said maintenance, service or repair, the costs of which Lessee shall reimburse to Lessor (unless said repairs are deemed "Major Repairs"); provided, however, that any damage caused by any negligent or intentional acts or omissions of Lessee, Lessee's agents, employees, or invitees, shall remain the responsibility of the Lessee, irrespective of the cost of repair or replacement.

8. **LESSOR'S RESPONSIBILITIES.** During the term of this Agreement, Lessor's responsibilities shall be as follows:

A. Lessor shall enforce any and all warranties relating to the design and construction of the RPSCC or any improvements on the City Property for deficiencies or other matter that come within the terms of any and all applicable warranties; provided, however,

that Lessor shall not be liable to Lessee or its patrons or invitees for any bodily injury or property damage should any warranty work fail to be timely completed through no fault of Lessor. Lessee shall be able to obtain warranty work for any defective construction, equipment or fixtures by advising Lessor in a timely fashion in writing so that Lessor can arrange for said repairs and/or replacement of defective equipment, etc. under the applicable warranty with the responsible party. No representations, statement or warranties, expressed or implied, have been made by or on behalf of Lessor as to the condition thereof.

B. Lessor shall keep all buildings, landscaping and site improvements and other buildings or fixtures on the City Property and in the RPSCC, including all alterations, additions and improvements, insured against loss or damage by fire, or other casualty losses, with all standard extended coverage, in an amount not less than the full replacement value. Nothing in this paragraph shall be deemed to require Lessor to procure a general liability insurance or fire casualty policy covering claims or losses for Lessee's operation or use of the Leased Premises, the RPSCC or Lessee's operation or use of the City Property. Further, Lessor shall not be responsible for insuring against any risk associated with the use of the RPSCC by Lessee or its invitees, licenses, guests or patrons.

C. Lessor will pay the electric and gas utilities, if any, for the common areas in the RPSCC and on the City Property, and will send a copy of said billing to the Lessee on a monthly basis. Within twenty days of its receipt of the billing, Lessee will reimburse Lessor for one-half the cost of the same. Further, Lessor shall be responsible for all landscape watering. Lessor will pay for any and all costs related to the operation and repair of the alarm

system, sewer and sanitation services relating to the Leased Premises. Other than as set forth herein, Lessor shall in no way be responsible for the expenses related to any utilities.

D. Lessor shall provide snow removal services to the parking lots (which will include cinder application and cinder removal if needed) of the City Property. It is expressly understood and agreed to by and between the parties that this service will only be available when all other public streets and municipal lots have been cleared of snow, and is subject to other demands of the City of Prescott. Notwithstanding the foregoing, Lessor shall use all reasonable efforts to ensure that snow removal services are provided for the parking lots on the City Property.

E. To help offset the Lessee's operational costs, Lessor will pay to Lessee the sum of sixty-four thousand dollars (\$64,000) for calendar year 1, which is defined as commencing on July 1, 2010, which sum shall be paid on a quarterly basis commencing on July 1, 2010, then payable in equal installments quarterly for that year. The next fiscal year, July 1, 2011, Lessor will pay to Lessee \$48,000 commencing on July 1, 2011, then payable in equal installments quarterly for that calendar year. The following calendar year, commencing on July 1, 2012, Lessor will pay to Lessee \$32,000 then payable in equal installments quarterly for that calendar year. For the final year, commencing on July 1, 2013, Lessor will pay to Lessee \$16,000 payable in equal installments quarterly for that calendar year. Thereafter, no further annual sums will be paid to Lessee by Lessor to offset any operational costs.

F. Any repairs which are required to be done to the Leased Premises, which repairs are not necessitated by the acts or omissions of the Lessee, its officers,

employees, agents, successors or assigns which exceed FIVE HUNDRED DOLLARS (\$500.00) in cost, shall be Lessor's responsibility for all repairs; provided however that the Lessor will not be obligated to pay for any repairs unless the Lessee first gives written notice to Lessor of the repairs needed, the reason for such repairs, and the estimated cost of said repairs, whereupon Lessor shall have the option to undertake said repairs by its own agents, contractors, or subcontractors. If Lessor undertakes to have repairs made by its own agents, contractors or subcontractors, and the repairs are not in excess of FIVE HUNDRED DOLLARS (500.00), the cost thereof shall be borne solely by the Lessee. In common areas, the repair expense shall be apportioned to and evenly born by all tenants of the RPSCC where the repair is necessitated. If the cost of such repairs exceeds FIVE HUNDRED DOLLARS (\$500.00), the costs thereof shall be borne by the Lessor to the extent that said repairs exceed FIVE HUNDRED DOLLARS (\$500.00).

If emergency repairs become necessary and providing written notice to Lessor is not practical (e.g., after hours, during holidays, etc.), Lessor will remain obligated to pay for such repairs provided the Lessee has made a good faith effort to contact the Lessor. Lessor and Lessee agree to attend necessary training regarding the operation of thermostats, exterior lighting clocks, fire alarm control panel, building water shut off and water meter billing and meter locations. One copy of the building equipment maintenance specifications shall be kept and maintained on the Leased Premises. Lessee shall promptly notify Lessor of any needed warranty repairs or maintenance.

G. In accordance with ARS Section 42-17107(A)(2), it is expressly agreed by and between the parties that the Lessor is a body politic, and as such can neither incur

debt in a succeeding fiscal year nor encumber future Prescott City Councils. As such, it is expressly agreed by and between the parties that in the event that in any subsequent fiscal year the Prescott City Council does not provide funding for the obligations provided for in this Paragraph 8, then and in that event this Lease Agreement shall be of no further force and effect; provided, however, that in the event of the termination of this Lease Agreement as a result of non-funding by the Prescott City Council during the first ten (10) years of this Lease Agreement, then and in that event the Lessee will be reimbursed for its capital contribution (as provided for in Paragraph 3) the sum of \$30,000 for each year prior to the tenth anniversary of this Agreement. This shall be the City's sole obligation for such termination of the agreement.

H. Lessor shall, at its expense and throughout the term of this Lease, at least annually inspect, maintain, service, replace needed parts, and keep in good repair the following items: electrical and mechanical equipment, plumbing, heating and cooling equipment, air conditioning, fire sprinkler system, fire extinguishers, security system, irrigation system, foundations, exterior walls, exterior roof, and adjacent parking lot which is owned by the Lessor.

I. Lessor's Human Resources Division may provide Lessee with City of Prescott human resource policies and materials upon request by Lessee. It shall be Lessee's responsibility to deal with its employees and employment issues.

J. Lessor shall perform periodic maintenance to the outside of the demised premises, including sidewalks, parking area, and front, rear and side yards. Lessee shall keep and maintain general liability insurance covering these areas during the duration of this

contract. Lessor shall be responsible for replacing any plants in the exterior of the Leased Premises.

9. **USE OF THE PROPERTY.** The prime consideration of this Lease Agreement is the public benefit to be realized from Lessee's operations at the Leased Premises. Therefore, compliance with this paragraph is of the utmost importance.

A. Lessee shall provide a broad range of adult activities to the community, on a non-discriminatory basis (other than differentiating fees between members and non-members, and between City of Prescott residents and non-City of Prescott residents, at Lessee's election).

B. Lessor may use the Leased Premises for a total of fifteen events, free of charge or at a reduced rate as the City requests, for City of Prescott programs, activities, sponsored or endorsed events, and other community functions (a "City Event"), provided, however, that the scheduling of said activities does not conflict with Lessee's programs, activities, and rental uses previously or regularly scheduled. The fifteen City Events shall include the use of a room for a polling place for statewide or countywide elections held in even-numbered years. It is further understood and agreed that special elections may be called by the County more frequently from time to time, and in accordance with Arizona Revised Statutes, elections may be held on four days of any year, but these would be an exception. Notwithstanding the forgoing provisions on scheduling conflicts, the City shall have priority for scheduling as to any and all election events.

All requests for use of the Premises for a City Event pursuant to this paragraph shall directed to Lessee through one City identified contact, be it the Parks, Recreations & Library

Director, the City Manager or any other person appointed by the City for such purpose. If anyone other than the City designated person contacts Lessee and purports to have authority to schedule a City Event, Lessee shall refer such person to the City designated contact and shall have no obligation to schedule the City Event except through the City designated contact.

In the event of conflict, other than for election events, between the Lessee's use of the Leased Premises and a use requested by the City of Prescott, the parties shall meet and resolve competing use issues on an equitable basis, and both parties agree to reasonably resolve such conflicts in a manner that accommodates equitable use by both parties. In the event that Lessor schedules an event at the Leased Premises, it shall be responsible for its own event associated activities, including meals, employee labor and cleanup. As an additional consideration for free use of the Leased Premises, Lessor hereby agrees to exempt, indemnify, and hold harmless the Lessee from any and all claims, costs, or judgments resulting from any acts or omissions by the Lessor, its officers, employees, agents, successors or assigns during the Lessor's use of the Leased Premises. For each such event subject to the provisions of this section, Lessor shall provide to lessee a Certificate of Insurance naming the Lessee as an additional insured for that particular event.

C. To insure compliance with the provisions of this paragraph, the Lessee, upon request by the City of Prescott Recreation Services Director, shall submit a list of programs and fees to the Recreation Services Director, or such other contract administrator as designated by the City of Prescott Manager.

10. **TERMINATION OF EXISTING LEASE.** The parties acknowledge that the parties have an existing lease for an Adult Center dated December 10, 2003, City of Prescott Contract #96-149. The parties hereto agree that the existing lease agreement, together with any amendments thereto, shall be mutually rescinded as of the Effective Date, and that from and after that date neither party shall have any obligation or right under said prior lease and that this Lease Agreement shall be deemed the sole agreement between the parties.

11. **SURRENDER OF PREMISES.** It is agreed that at the expiration of the term of this Lease Agreement, any extension thereof pursuant to the Lessee's irrevocable option to renew for an additional 49-year term, or any sooner termination of this Lease Agreement, Lessee will quit and surrender the Leased Premises in good order and condition as reasonable use and wear thereof will permit, damage by the elements excepted. If Lessee should hold over the said term with the consent, express or implied, of Lessor, such holding over shall be construed as a tenancy only from month to month, and the Lessee shall continue to abide by the terms of this Lease Agreement during said holdover period.

12. **DEFAULTS.**

A. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

- i. Lessee vacating or abandoning the Leased Premises.
- ii. Lessee's failure to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by Lessee, where such failure shall continue for a period of thirty (30) days after written notice hereof from Lessor to Lessee.

iii. (i) The making by Lessee of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt entity or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the premises or of Lessee's interest in the Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

B. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessor:

i. Lessee's failure to observe or perform any of the covenants, conditions, or provisions of this Lease Agreement to be observed or performed by Lessee, where such failure shall continue for a period of thirty (30) days after written notice hereof from Lessor to Lessee.

13. **REMEDIES.**

A. The parties hereto expressly covenant and agree that they will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement through negotiation. If, however, a matter has not been resolved within a reasonable period of time, upon the written demand of either party, the matter shall be resolved by arbitration in accordance with the Uniform Arbitration Act, A.R.S. § 12-1501 *et seq.* A party desiring

arbitration shall serve upon the other, a writing (the "Notice") describing, in general terms, the controversy and naming such party's Arbitrator. Within twenty (20) days after said Notice the other party shall serve upon the party demanding arbitration a writing (the "Response"), describing, in general terms, any additional issues to be arbitrated and naming its Arbitrator. Within seven (7) days thereafter the two Arbitrators shall meet, and at that time or within seven (7) days thereafter shall appoint a third Arbitrator. If the two Arbitrators cannot agree upon the third Arbitrator, either party may apply to the Arizona Superior Court in and for Yavapai County pursuant to the provisions of A.R.S. §12-1503 for appointment of the third Arbitrator. The three Arbitrators, immediately after appointment of the third Arbitrator, shall appoint a time and place and otherwise proceed under the provisions of A.R.S. §12-1505.

B. Subject to the arbitration provisions of Section 13A, if Lessor or Lessee determines that the other party has not fulfilled its duties or obligations under this Lease Agreement, this Lease Agreement may be terminated by that party upon twelve (12) months written notice to the other party, with or without cause. However, the party desiring to terminate this agreement must provide notice as to the specific manner in which the other party has not fulfilled the aforementioned duties. The party deemed to be failing its duties or obligations would then have 30 days to implement a solution before final notice of termination is issued.

C. If Lessee is in material breach of this Lease Agreement, Lessor may re-take possession of the Leased Premises and remove therefrom all of Lessee's property and all persons then thereon. Any entry and/or re-entry by the Lessor, whether had or taken under what is generally known as summary proceedings, or otherwise, as provided by the

terms of this Lease, shall not be deemed to absolve or discharge the Lessee from liability hereunder.

D. If Lessor is in material breach of this Agreement such that Lessee cannot reasonably comply with its obligation hereunder, Lessee may terminate this Lease Agreement by providing no less than thirty (30) days written notice thereof.

14. **NOTICES.** Any notice required or permitted to be given pursuant to this Lease Agreement shall be in writing and may be served personally or by regular mail, addressed to Lessor or Lessee respectively at the following addresses (until written notice of change of address is provided by either party to the other):

To Lessor:

City of Prescott
Recreation Services Director
P.O. Box 2059
Prescott, Arizona 86302

With a copy to the City of Prescott Manager at the following address;

City Manager
City of Prescott
201 South Cortez
Prescott, AZ 86301

To Lessee:

Adult Center of Prescott, Inc.
President, Board of Directors
1280 E. Rosser St.
Prescott, Arizona 86301

15. **WAIVER.** The waiver by any party hereto of any breach or breaches by the other party of any one or more of the covenants, agreements, conditions, or obligations herein contained or the acceptance of any delinquent payments shall not bar the party from

seeking a forfeiture or any other rights or remedies in the event of any subsequent breach of any such or other covenants, agreements, conditions, or obligations.

16. **SEVERABILITY.** The invalidity of any provision of this Lease Agreement as determined by a Court of competent jurisdiction, shall in no way effect the validity of any other provision hereof, so long as the original intent of the parties is not defeated thereby.

17. **CHANGE IN LEASE.** The making, execution and delivery of this Lease Agreement have not been induced by any representation, statement, warranties or agreements other than those herein expressed. The parties mutually agree that this Lease Agreement supersedes all other previous and/or other agreements bearing upon the above premises, and it is further agreed that no changes to or in this Lease shall be made without being in writing, agreed to and signed by all parties hereto.

18. **CONSTRUCTION.** The terms and conditions of this Lease Agreement shall be construed and governed in accordance with the laws of the State of Arizona.

19. **PREPARATION OF AGREEMENT.** This Lease Agreement is the result of negotiations by and between the parties. Therefore, any ambiguity in this Lease Agreement is not to be construed against either party.

20. **WAIVER OF ATTORNEY FEES.** Subject to Paragraph 7N, the parties hereto expressly covenant and agree that in the event of litigation arising from this Lease Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Lease Agreement, pursuant to A.R.S. Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

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

22. **NON-DISCRIMINATION CLAUSE.** The Lessee, with regard to the provisions of services to the general public pursuant to this Lease, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status. The Lessee will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Orders 99-4 and 2000-4.

23. **CONTRACT ADMINISTRATOR.** The Contract Administrator for the purposes of this Lease shall be the City of Prescott Recreation Services Director (or his designee), until such time that a different contract administrator is designated by the City of Prescott Manager. Whenever the consent of the City of Prescott is required pursuant to the terms of

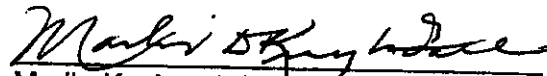
this Lease Agreement, the Contract Administrator is hereby empowered to give such consent on behalf of the Lessor, with the exception of changes to the Lease Agreement pursuant to Paragraph 17, which are required to be approved by the Prescott City Council.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this 9TH day of FEBRUARY, 2010.

APPROVED BY CITY COUNCIL

RES # ORD # 4723
DATE: 2/9/10 EFF: 3/11/10
ATTEST:


ELIZABETH A. BURKE
City Clerk

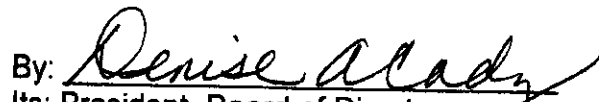

Marlin Kuykendall, Mayor

APPROVED AS TO FORM:


GARY D. KIDD
City Attorney

LESSEE:

PASSED, APPROVED AND ADOPTED by the Board of Directors of the ADULT CENTER OF PRESCOTT, INC., this 21 day of JUNE, 2010

By: 
Its: President, Board of Directors

DRAFT

FIRST ADDENDUM TO ADULT CENTER OF PRESCOTT LEASE AGREEMENT

THIS FIRST ADDENDUM TO THE LEASE AGREEMENT entered into on the ____ day of _____, by and between the CITY OF PRESCOTT, an Arizona municipal corporation (the "City"), and THE ADULT CENTER OF PRESCOTT, INC., an Arizona non-profit corporation, hereinafter referred to as "Lessee," (the foregoing parties hereinafter individually referred to as a "Party" and collectively referred to as the "Parties).

RECITALS

WHEREAS, the City and Lessee have entered into that certain lease agreement dated February 9, 2010 (the "Agreement"); and

WHEREAS, the Parties wish to enter into an addendum to such lease agreement, providing for a liquor license to be utilized by the Lessee, under certain specified terms and conditions and modify the "Agreement" accordingly; and

WHEREAS, the City and Lessee desire to amend Section H, page 7 of said lease to add a new provision, subsection iv, and to amend Section L of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the sufficiency of which consideration is acknowledged by the Parties hereto, it is hereby agreed as follows:

1. **INCORPORATION.** The above recitals are incorporated herein. Unless otherwise provided herein, defined terms, words and phrases shall have the same meaning as provided for in the Agreement.

2. Section H, subsection iv, shall be added to the Agreement, as follows:

iv. Lessee may, with the express approval of the Prescott City Council, obtain a liquor license to be utilized in conjunction with Adult Center sponsored events. (The City shall be permitted to utilize its own liquor license for all City sponsored events, however.) With respect to such liquor license, it shall be lessee's sole responsibility to operate such license in accordance with all applicable state laws and regulations. Lessee shall obtain, keep and maintain insurance not less than the minimum amounts specified in Section L below, and such insurance shall name the lessor as an additional named insured. It is understood by the Lessee that there is a potential school site adjacent to the Adult Center property. In the event that at some future point construction on any future school use commences, this provision in the lease shall terminate unless continuation of the liquor license is formally approved at that time by the Prescott City Council. It is

further agreed and understood that the City Council may elect to terminate its permission to utilize the liquor license on the City owned Adult Center premises at any time by providing sixty (60) days' written notice of intent to terminate.

3. Section L, page 9, shall be amended to read as follows:

L. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. Lessee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on the following form basis.

Commercial General Liability – Occurrence Form –

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

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000
• Fire Legal Liability (Damage to Rented Premises)	\$ 300,000
• Liquor Liability	\$1,000,000

The policies shall be endorsed to include The City of Prescott, its agents, representatives, directors, officers, officials and employees as Additional Insured using form CG2010 (10/01) or equivalent. The policies shall include Directors and Officers coverage of a minimum \$1,000,000.

Lessee shall provide copies of such policy or policies to Lessor upon request. Liability insurance shall provide the following coverage: General Liability/Premises and Property Coverage which shall include coverage for all risks associated with this Lease Agreement; and Bodily Injury and Property Damage coverage for all risks associated with this Lease Agreement. All insurance required pursuant to this Lease 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. Lessee may, but shall not be required, to procure and maintain a policy of insurance covering its personal property. Except in the case of damages caused due to the acts of Lessor or its agent or employees, Lessor shall not be liable for any damages to the personal property of Lessee.

If Lessee fails to procure and maintain any insurance that Lessee is required to procure pursuant to the terms of this Lease, Lessor may, but shall not be required to, procure and maintain the same at Lessee's expense.

4. **AMENDMENTS BINDING.** These amendments shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, transferees, and assigns. Each Party shall execute such further documents and instruments as may reasonably be requested by the other Party to fully effectuate the intent of the Lease amendments set forth in this addendum.

5. **COUNTERPARTS.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

6. **RECORDATION.** Upon execution, this Agreement shall be recorded in its entirety, by the City, in the Official Records of Yavapai County, Arizona.

7. **MISCELLANEOUS.** Except as expressly modified by the provisions of this Addendum, the Agreement shall continue unchanged and in full force and effect. In the event any inconsistencies exist between the terms of this Amendment and the Agreement, the Agreement shall control. The individuals who execute this Amendment represent and warrant that they are duly authorized to execute this Addendum on behalf of the City and Lessee, as the case may be, and the parties named are all of the parties and proper parties, and that no other signature, act or authorization is necessary to bind the Parties to the provisions of this Addendum

IN WITNESS WHEREOF, the parties have executed this First Addendum to the Lease Agreement between the City and Lessee, the Adult Center of Prescott as of the date first above written.

"CITY"

ATTEST:

CITY OF PRESCOTT

City Clerk

By: _____
Name: _____

Title: _____

APPROVED AS TO FORM:

Jon Paladini
City Attorney

LESSEE
THE ADULT CENTER OF PRESCOTT,
INC.,
An Arizona non-profit corporation,

By: _____

Name: _____

Title: _____