

## **SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (hereinafter “Settlement Agreement”) is entered into by **HOWARD L. MECHANIC**, as Trustee of The Social Justice Charitable Foundation dated October 16, 2016, an Arizona Charitable Trust (hereinafter the “Foundation”), and the **CITY OF PRESCOTT** (hereinafter the “Prescott” or “City”), for themselves, their officers, directors, executives, managers, employees, agents, attorneys, divisions, related and subsidiary entities, affiliates, successors and assigns (all of whom are collectively referred to as the “parties”).

### **RECITALS**

**WHEREAS**, the Foundation and the City are parties to litigation titled **HOWARD L. MECHANIC**, as Trustee of The Social Justice Charitable Foundation, Dated October 16, 2016, v. **THE CITY OF PRESCOTT**, Yavapai County Superior Court No. P-1300-CV201700872 (hereinafter the “Litigation”);

**WHEREAS**, the Foundation owns certain real property located at 509 S. Overland Rd. and legally described in **Exhibit “1”** attached hereto (hereinafter the “Subject Property”);

**WHEREAS**, a 1968 Agreement recorded at Book 504, Page 482, Official Records of Yavapai County, Arizona (“ORYC”) between the Foundation’s predecessor, an adjacent property owner and the City (“1968 Agreement”), permitted the owner of the Subject Property to connect to a 6-inch water main on the adjacent property for the purpose of receiving water service on the Subject property;

**WHEREAS**, the 1968 Agreement states in part at paragraph 1 thereof: “First Parties further agree to obtain the consent and approval of the **CITY OF PRESCOTT**, a municipal corporation, to providing water service to the property of Second Parties subject to the conditions and limitations of the aforesaid Water Service Agreement dated June 28, 1963, to which the **CITY OF PRESCOTT** is a party, and subject further to the condition and limitation that the **CITY OF PRESCOTT** shall not be required to collect water service or connection fees or any funds or monies whatsoever from persons who may purchase property or lots from Second Parties and receive water service through meters owned and serviced by the **CITY OF PRESCOTT**”;

**WHEREAS**, the July 22, 1968, City Council Meeting minutes approving the 1968 Agreement state in part that: “This agreement provides that the City would not collect any fee whatsoever, but would provide water service”;

**WHEREAS**, the parties disagree as to their rights and responsibilities under the 1968 Agreement;

**WHEREAS**, notwithstanding the parties’ belief in the merits of their respective legal positions, the parties desire to settle and resolve the Lawsuit and any claims based on the facts alleged in the Lawsuit, on the terms and subject to the conditions set for herein;

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings set forth below, the sufficiency of which is acknowledged, the parties agree as follows:

**I. Effective Date / City Council Approval.**

This Settlement Agreement shall not be effective nor binding on any party unless and until the Prescott City Council, at a duly noticed and agendaized public meeting, has voted to approve and accept the Settlement Agreement. This Settlement Agreement shall be effective upon such approval (“Effective Date”).

**II. Terms of Settlement.**

**A. Water Service:** The Foundation will limit the number of residential dwelling units on the Subject Property to 195. The City will provide water sufficient for service -- and to serve -- up to 195 residential dwelling units situated anywhere on the Subject Property including single family residences, multi-family dwelling units, and any accessory uses and structures as permitted by Yavapai County that will provide a minimum effluent return of fifty percent (50%), with the following exceptions: one (1) common-area swimming pool and two (2) common-area therapy spas will be allowed on the Subject Property. No Pools shall be allowed on privately owned lots. Spas for personal use shall be allowed on privately owned lots. A deed restriction will be recorded prohibiting the use of outdoor fountains and artificial ponds anywhere on the Subject Property. City water service will be of sufficient capacity, volume, and pressure to comply with Yavapai County code requirements, including emergency services requirements such as fire suppression. The City will meet current and future water quality requirements for municipal uses in connection with water delivered to the Subject Property.

Any portion of the water allocations set forth in this Section II.A shall be forfeited if not utilized within twenty (20) years of the Effective Date of this Settlement Agreement.

**B. Applicable Codes:** The Subject Property is situated in Yavapai County (the “County”). The Foundation is not required to annex into the City. Should the Subject Property remain in the County, it shall be subject to applicable County Codes and Regulations, and not to City Codes and Regulations, subject to the following exceptions and NO OTHERS, except as expressly stated and agreed to in this Settlement Agreement:

- i. Development of the Subject Property must comply with the Prescott Conservation Code (currently **Prescott City Code § 3-10**) in effect at the time of development.
- ii. Development of the Subject Property must comply with the City’s low water use landscaping requirements (**currently Prescott Land Development Code § 6.5.5**) in effect at the time of development.

**C. Water System Infrastructure; Sewer System Infrastructure; Dedication; Water Service**

- i. **Water System Infrastructure:** The City’s obligation to provide water service is contingent on the Foundation causing to extend the 6-inch water main to the Subject Property and causing to be installed the infrastructure for the water system, which shall be dedicated to the City upon completion of its construction. The subject 6-inch water main will be extended from the City’s existing water line at one of the following generally-described locations, which such connection point shall be at the discretion of the Foundation: (i) South Overland Road and South Onyx Pass; (ii) Emerald Trail adjacent to the Subject Property; (iii) Robinson Drive and Moore Drive; (iv) the Prescott Riviera subdivision; (v) any other location approved by the City. In the event that the connection location is the Prescott Riviera subdivision, City Code 7.4.7(c)(7), “Easements, Utility Easements,” shall not be applicable and it will be the City’s responsibility to obtain access as necessary or desired by the City. The water system shall meet the standards established **by the City’s**

**General Engineering Standards (currently Prescott City Code § 17).**

- ii. **Sewer System Infrastructure:** The City’s obligation to provide water service is further contingent on the Foundation causing to be installed the infrastructure for the City sewer system on the Subject Property so that the water can be reclaimed. The Foundation will cause the City sewer system on the Subject Property to be extended from the City’s existing sewer system at one of the following generally-described locations, which shall be at the discretion of the Foundation: (i) Butterfield Road and Canyon View; (ii) Robinson Drive and Moore Drive. The sewer system shall be dedicated to the City upon completion. The sewer system shall meet the standards established by the City’s **General Engineering Standards (currently Prescott City Code § 17)**.

**D. Meet-and-Confer to Discuss Special Improvement District:** The parties agree that, upon the request of either party hereto, the parties will meet and confer in good faith regarding the formation of a sewer special improvement district to include the Subject Property. Neither party, however, shall have any right or obligation to participate in the formation of such a district under the terms of this Settlement Agreement. The foregoing is only a meet-and-confer requirement.

**E. Fees:** In addition to the contingencies set forth in paragraph C, above, the City’s obligation to provide water service and wastewater service is contingent upon payment to the City of the following City utilities development impact fees, as said fees apply to the respective City Service Area that is situated at least partially within the City’s corporate limits closest in proximity to the Subject Property: (i) Wastewater Development Impact Fee, (ii) Water Infrastructure Development Impact Fee, and (iii) Water Resource Development Impact Fee (collectively, “Utilities Impact Fees”), together with standard costs and fees, such as meter connection fees, at the time that service connections are established. For purposes of this Settlement Agreement, the term “Service Area” means any specified area within the boundaries of Prescott in which development will be served by necessary public services or facilities expansions for Wastewater or Water and within which a substantial nexus exists between said necessary public services or facility expansions and the development being served as prescribed in the infrastructure

improvements plan. The City shall not assess or impose any other manner of City development impact fee.

The City water rates shall be no greater than the applicable City water rates set for residential consumers having a service connection within the City's corporate limits plus an additional fifteen percent (15%) of said rate.

The City wastewater service rates (a/k/a sewer fees) shall be consistent with the then-in-effect sewer rates applicable to the Subject Property as established by the City Code.

Water service to the Subject Property shall have equal priority with such consumers having a service connection within the City's corporate limits. The Subject Property shall not be subject to Section 2-1-8 of the City Code, as enacted as of the Effective Date of this Agreement.

There shall be no requirement or obligation on the part of the Foundation to pay any fee other than set forth above, that is enacted or adopted by the City after the Effective Date of this Settlement Agreement.

- F. 1980 Easement:** The Foundation shall be permitted to construct, install, and maintain a roadway and utilities within the 1980 water line Easement recorded at Book 1320, Pages 570-571, ORYC, so long as such construction and maintenance does not interfere with the City's ability to access said Easement for the purposes set forth in the 1980 Easement agreement, including but not limited to maintenance of a water main and pipe line.
  
- G. Open Space Plan:** Should the Foundation apply to the County to implement an open space and sustainable development plan ("Open Space plan"), the City will reasonably cooperate in good faith with the Foundation and the County to facilitate said Open Space plan. Provided, however, that the City shall have no affirmative obligation to amend or modify its ordinances, rules and regulations to accommodate the proposed Open Space plan. If the County approves the Open Space plan, and upon the City's request, the Foundation will reasonably cooperate in good faith with the City to provide a parking area, trailhead and non-motorized trail route from Overland Road to the Turley Trail/Circle Trail, similar to the City Parks and Recreation Department's request by email to Howard Mechanic on or near January 19, 2017; contemporaneously therewith, the City will reasonably cooperate in good

faith with the Foundation, County, and Arizona State Land Department to allow emergency vehicle access to and from the Subject Property and the above-referenced Turley Trail parking area.

**H. Termination of Litigation:** No later than seven (7) days after the effective date of this Settlement Agreement, the parties shall file a Stipulated Motion to Dismiss with prejudice, each party to bear its own cost and fees, and Form of Order for the Court's approval and signature in Yavapai County Superior Court Cause No. P-1300-CV201700872.

**I. Expiration/ Termination of 1968 Agreement:** The parties agree that upon execution of this Settlement Agreement, the 1968 Water Agreement is no longer binding on the parties.

### **III. Mutual Release.**

For and in consideration of the promises and covenants contained in this Settlement Agreement, each party on behalf of itself and its successors, heirs and executors, its past, present, and future agents, representatives, attorneys, affiliates, insurers, assigns and lien holders, and all others acting by, through or in concert with any of the foregoing, does hereby mutually release and forever discharge the other party from any and all actions, causes of action, claims, demands, liabilities, obligations, promises, agreements, damages, fines, penalties, assessments, attorneys' fees, costs, expenses and compensation and all damages, whether known or unknown, contingent or matured, joint, several or individual, sounding in contract, tort or otherwise, arising on or before the Effective Date in connection with any matter relating to or arising out of the facts that formed the basis of the Lawsuit, except for obligations undertaken pursuant to this Settlement Agreement.

### **IV. No Admission of Liability.**

It is understood and agreed that this Settlement Agreement represents the parties' compromise of disputed claims, that neither the consideration furnished nor the negotiations for or provisions of the Settlement Agreement shall constitute or be construed as an admission of liability by any party hereto as to any actionable claim, and each party hereto expressly denies any liability.

### **V. Voluntarily Entered.**

The parties represent and warrant that this Settlement Agreement is executed voluntarily, with full knowledge of the consequences and implications of the obligations

contained herein. The parties further represent and warrant that they were represented by counsel of their choice, if any, throughout the negotiations that preceded the execution of this Settlement Agreement and in connection with the preparation and execution of this Settlement Agreement, and carefully and thoroughly reviewed it in its entirety.

**VI. Capacity and Authority.**

The parties represent and warrant that they have the right and authority to enter into this Settlement Agreement. Each individual signing this Settlement Agreement on behalf of an organization further represents and warrants that the execution of this Settlement Agreement has been duly authorized by members, directors, officers, partners, or others, as required by the internal governing documents, practices, or policies of the organization on whose behalf the individual is signing. Each individual signing this Settlement Agreement on behalf of a governmental entity further represents and warrants that the execution of this Settlement Agreement has been duly authorized by the governing body or other authorized official of the governmental entity in accordance with applicable law.

**VII. Entire Agreement.**

This Settlement Agreement constitutes the entire agreement of the parties and all representations of the parties, and supersedes all prior agreements and representations, whether oral or in writing. This Settlement Agreement cannot be modified, supplemented, or amended unless agreed in advance, in writing, by the parties.

**VIII. Elective Rules of Construction.**

The legal principle that ambiguities are to be construed against the drafter shall not be employed to resolve the meaning of any asserted ambiguous term or condition herein. Headings appear solely for convenience of reference; they are not part of this Settlement Agreement and shall not be used to construe it.

**IX. Costs and Attorneys' Fees.**

The parties shall bear their own attorney's fees, costs and expenses related to the Litigation and this Settlement Agreement.

**X. Additional Documents.**

The parties agree to execute whatever documents may be reasonably necessary to carry out the terms, conditions and obligations of this Settlement Agreement.

**XI. Binding Effect.**

This Settlement Agreement shall be binding upon and inure to the benefit of the agents, successors, heirs and assigns of each of the parties and shall run with the Subject Property.

**XII. Applicable Law; Remedies.**

The validity, meaning and effect of this Settlement Agreement shall be determined in accordance with the laws of the State of Arizona, and proper venue shall be a court of competent jurisdiction in Yavapai County, Arizona.

Should either party breach any term of this Settlement Agreement, the non-breaching party will be entitled to immediate relief, including but not limited to injunctive relief and/or a temporary restraining order, as well as any other relief in law or equity. The parties agree that in any litigated dispute (whether in a court of law or any alternative dispute resolution forum) about the validity or interpretation of this Settlement Agreement, the party prevailing by an adjudication on the merits in such dispute shall be reimbursed by the non-prevailing party for all reasonable expenses associated with the resolution of the dispute, including without limitation, costs and expert fees, that are incurred by the prevailing party. Such reimbursement includes amounts spent in resolving the dispute in both trial courts and appellate courts.

**XIII. Notices.**

All notices in connection with this Settlement Agreement shall be in writing and delivered as follows:

To the Foundation:

Howard Mechanic, Trustee  
The Social Charitable Justice Foundation dated October 16, 2016  
309 Bloom Place  
Prescott, AZ 86303

With a copy to:

Mark W. Drutz, Esq.  
Musgrove Drutz Kack & Flack, PC  
PO Box 2720  
Prescott AZ 86302

To the City:  
City Manager  
City of Prescott  
201 S Cortez St  
Prescott, AZ 86303

With copy to:  
Prescott City Attorney  
201 S Cortez St  
Prescott, AZ 86303

Any and all notices required or permitted or given hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the party(s) at the addresses set forth above or to any other address designated by a party hereto in writing, and any such notice or communication shall be deemed to have been given as of the date of delivery, if hand delivered, or as of three (3) days after the date of mailing.

#### **XIV. Counterparts.**

This Settlement Agreement may be executed in counterparts and by facsimile or PDF, with facsimile or PDF signatures considered original signatures. The entire Settlement Agreement, consisting of eleven (11) pages and one (1) Exhibit, with the original signatures affixed thereto and notarized, shall be recorded with the Office of the County Recorder, Yavapai County, Arizona, within thirty-one (31) days of the Effective Date of the Agreement.

#### **XV. Severability.**

If any provision of this Settlement Agreement is determined by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, and enforceability of the remaining provisions and all remaining provisions shall remain in full force and effect. Any remaining provision shall be deemed replaced by a provision that is valid and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable provision.

**XVI. A.R.S. § 38-511 Notice.**

In accordance with A.R.S. § 38-511, the City may, at any time within three years after the Effective Date of this Settlement Agreement, cancel this Settlement Agreement without penalty or further obligation, if any person significantly involved on behalf of the City in initiating, negotiating, securing, drafting or creating this Settlement Agreement is, at any time while this Settlement Agreement or any extension of this Settlement Agreement is in effect, an employee or agent of any other party to this Settlement Agreement in any capacity or a consultant to any other party to this Settlement Agreement with respect to the subject matter of this Settlement Agreement.

**XVII. A.R.S. §12-1131.**

By entering into this Settlement Agreement, the Foundation waives any and all claims, suits, damages, compensation and causes of action for diminution in value of the Subject Property that the property owners may have now or in the future under the provisions of the Private Property Protection Act, A.R.S. §12-1131 et. seq. (“Act”), resulting from this Settlement Agreement, or any actions taken by the parties to execute or implement the Settlement Agreement. By signing this Settlement Agreement, the representative for the Foundation represents that he or she has the authority to bind the property owners to the waiver of rights under the Act. Additionally, any document entered into pursuant to the Settlement Agreement that implements the rights and obligations of the parties hereunder shall contain a waiver of rights under the Act.

**By the signatures of the parties, or their designated representatives, below, the parties agree to be bound by this Settlement Agreement.**

**CITY OF PRESCOTT:**

By: \_\_\_\_\_  
Its: Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**THE SOCIAL JUSTICE CHARITABLE  
FOUNDATION:**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Howard Lawrence Mechanic  
Its: Trustee

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned Notary Public, personally appeared Howard Lawrence Mechanic, Trustee, The Social Justice Charitable Foundation dated October 16, 2016, an Arizona Charitable Trust, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for said Trust for the purposes and considerations therein express, as its free act and deed, and by him voluntarily executed.