

A G E N D A

REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD NOVEMBER 15, 2011, AT 6:00 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. BRIEF SUMMARY OF CURRENT EVENTS BY MAYOR, CITY COUNCIL AND/OR CITY MANAGER—THE PUBLIC BODY DOES NOT PROPOSE, DISCUSS, DELIBERATE OR TAKE LEGAL ACTION ON ANY MATTER BROUGHT UP DURING THIS SUMMARY UNLESS THE SPECIFIC MATTER IS PROPERLY NOTICED FOR LEGAL ACTION.
- V. CALL TO THE PUBLIC—This portion of the agenda is set aside for the public to address the Council regarding an item that is not listed on the agenda for discussion. However, the Council cannot engage in discussion regarding any item that is not officially listed on the agenda for discussion and/or action (A.R.S. §38-431.02.H.) Comments are limited to a 5 minute time period.
- VI. PRESENTATION OF PLAQUES TO MIKE DOWNES, PAUL WURZER AND MARSHALL MARTIN FOR THEIR CONTRIBUTIONS TO THE DESIGN AND CONSTRUCTION OF THE COTTONWOOD DISC GOLF COURSE.
- VII. PRESENTATION OF PLAQUE FROM MATFORCE TO THE CITY IN APPRECIATION FOR ITS CONTRIBUTIONS AND SUPPORT TO ELIMINATE SUBSTANCE ABUSE AND ITS EFFECTS.
- VIII. PRESENTATION OF A PLAQUE OF APPRECIATION TO LDS CHURCH FOR THE “LOOKING GOOD COTTONWOOD” CLEANUP.
- IX. PRESENTATION OF A CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING TO RUDY RODRIGUEZ, ADMINISTRATIVE SERVICES GENERAL MANAGER, FROM THE GOVERNMENT FINANCE OFFICERS ASSOCIATION FOR THE CITY’S COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDING JUNE 30, 2010.
- X. INTRODUCTION OF NEW EMPLOYEES.
- XI. APPROVAL OF MINUTES—Regular Meeting of 11/1/11.

Comments regarding agenda items are limited to a 5 minute time period per speaker.
- XII. OLD BUSINESS—None.

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XIII. CONSENT AGENDA—The following items are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Council Member or a citizen so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

1. EXTENSION OF PREMISES LIQUOR LICENSE PERMIT FOR ERIC S. GLOMSKI, LICENSEE FOR ARIZONA STRONGHOLD VINEYARDS, LLC, LOCATED AT 1021 & 1023 NORTH MAIN STREET.
2. NEW LIQUOR LICENSE APPLICATION FOR JAMES E. NEWBERRY, APPLICANT FOR THE VINEYARD WINE BAR, LLC, LOCATED AT 1001 NORTH MAIN STREET.

XIV. NEW BUSINESS—The following items are for Council discussion, consideration, and possible legal action.

1. RESOLUTION NUMBER 2615—APPOINTING MEMBERS TO THE YOUTH COMMISSION.
2. AWARD OF BID FOR BIOSOLIDS HAULING AND DISPOSAL.
3. AWARD OF A CONSTRUCTION CONTRACT TO BALANCED HEATING AND AIR CONDITIONING FOR THE REPLACEMENT OF TWO ROOFTOP HVAC PACKAGE UNITS AT THE COTTONWOOD PUBLIC LIBRARY.
4. USE OF THE CITY OF COTTONWOOD'S VACANT PARKS & RECREATION BUILDING LOCATED AT 791 NORTH MAIN STREET TO THE ADOPT-FOR-LIFE CENTER FOR ANIMALS FOR USE AS A BOUTIQUE THRIFT STORE.
5. ORDINANCE NUMBER 582—APPROVING AN AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY BETWEEN THE CITY AND CLEMENCEAU TOWNSITE, LLC, AND DECLARING AN EMERGENCY.
6. CONSENT OF ASSIGNMENT OF LEASEHOLD RIGHTS TO HIGH FIVE HANGARS CONDOMINIUMS UNIT NO. 4 FROM BACKUS FAMILY INVESTMENTS, LLC, TO NATALE A. OR RHONDA H. MAFFARI.
7. MEMORANDUM OF UNDERSTANDING WITH THE CITY OF SEDONA REGARDING TRANSPORTATION SERVICES.

XV. CLAIMS & ADJUSTMENTS

XVI. ADJOURNMENT

Pursuant to A.R.S. § 38-431.03.(A) the Council may vote to go into executive session on any agenda item pursuant to A.R.S. § 38-431.03.(A)(3) Discussion or consultation for legal advice with the attorney or attorneys of the public body.

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The Cottonwood Council Chambers is accessible to the disabled in accordance with Federal "504" and "ADA" laws. Those with needs for special typeface print or hearing devices may request these from the City Clerk (TDD 634-5526.) All requests must be made 24 hours prior to the meeting.

Members of the City Council will attend either in person or by telephone conference call.

Notice is hereby given that pursuant to A.R.S. §1-602.A.9 , subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

Subject: Extension of Premises Liquor License Permit Application for Eric S. Glomski, Licensee for Arizona Stronghold Vineyards, LLC.

Department: City Clerk

From: Marianne Jiménez, City Clerk

REQUESTED ACTION

Council consideration of an Extension of Premises Liquor License Permit Application submitted by Eric S. Glomski, licensee for Arizona Stronghold Vineyards, LLC.

If the Council desires to approve this item the recommended motion is:

“I move to recommend approval of the Extension of Premises Liquor License Permit application submitted by Eric S. Glomski, licensee for Arizona Stronghold Vineyard's LLC, located at 1021 & 1023 N. Main Street.”

BACKGROUND

An Extension of Premises Liquor License Permit application was received from Eric S. Glomski, licensee for Arizona Stronghold Vineyards, LLC, located at 1021 & 1023 North Main Street in Old Town Cottonwood.

JUSTIFICATION/BENEFITS/ISSUE

All Liquor License applications that are submitted to the Arizona Department of Liquor Licenses & Control (ADLLC) for establishments located within the City of Cottonwood are presented to the Council for its recommendation of approval or denial of the application. The Council's recommendation is taken into consideration by the ADLLC prior to their final approval of the application.

REVIEWED BY:

City Manager: _____ City Attorney: _____

ATTACHMENTS

- Copy of the Liquor License Application for Eric S. Glomski

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
www.azliquor.gov
(602) 542-5141

APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT

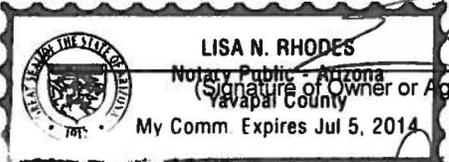
THIS APPLICATION MUST BE RETURNED TO THE DEPARTMENT OF LIQUOR

Permanent change of area of service - Give specific purpose of change: Case storage in building adjacent to current licensed premises. The space may also be used for wine club pick up, wine club events, and sales & marketing events

- 1. Licensee's Name: Glomski, Eric Steven
2. Mailing Address: 1500 N Page Springs Rd Cornville, AZ 86325
3. Business Name: Arizona Stronghold Vineyards, LLC LICENSE #: 13133020
4. Business Address: 1021 & 1023 N Main Street Cottonwood Yavapai Arizona 86326
5. Business Phone: (928) 639-3004 Residence Phone: (928) 301-0977
6. Do you understand Arizona Liquor Laws and Regulations? YES NO FAX # (866) 848-2192
7. Have you received approved Liquor Law Training? NO YES When? April 2011
8. What security precautions will be taken to prevent liquor violations in the extended area? This building will house our administrative staff. It will be alarmed and the public will only be allowed in when staff is present
9. Does this extension bring your premises within 300 feet of a church or school? YES NO
10. IMPORTANT: ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.

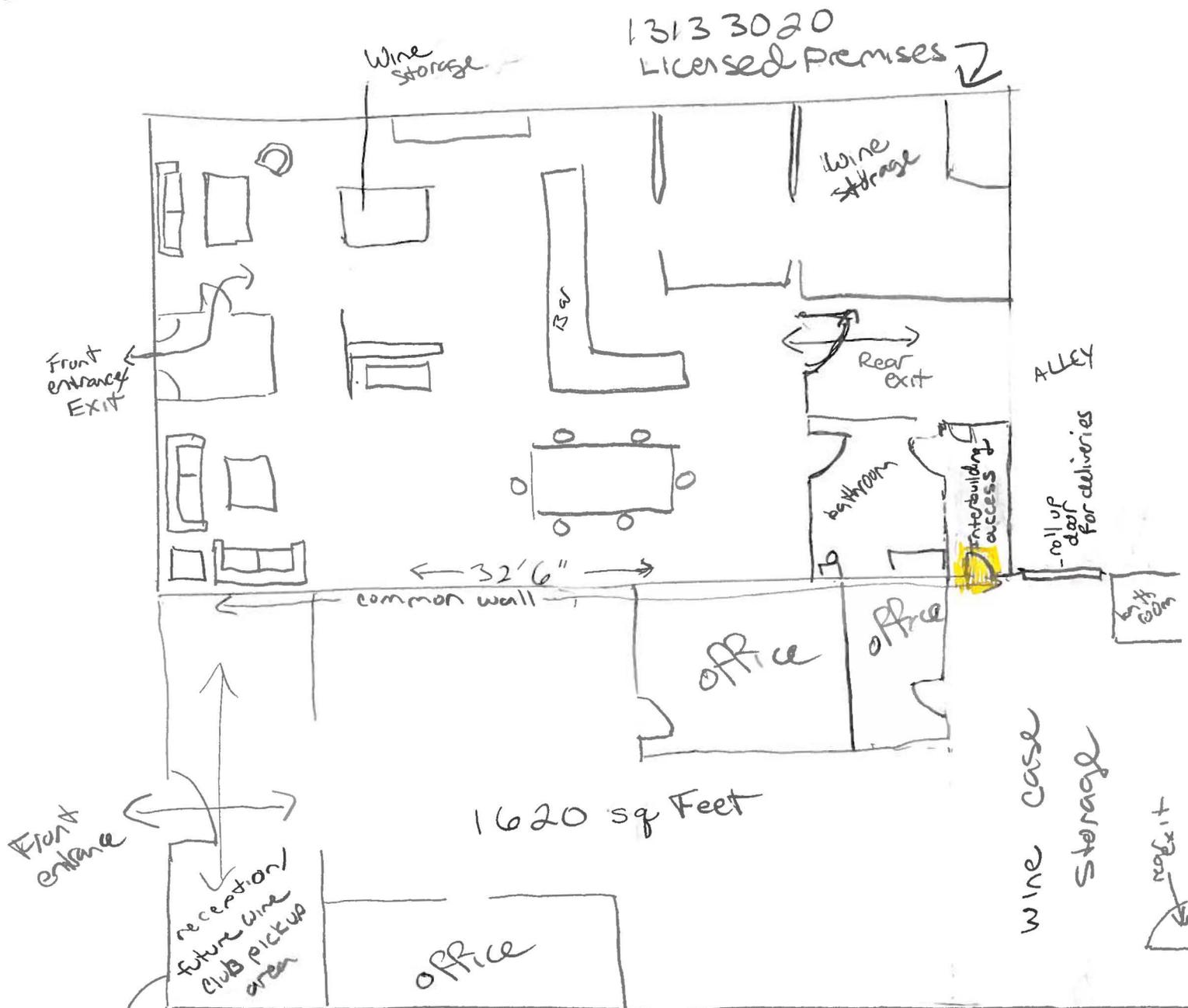
After completing sections 1-9, take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.
This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:
(Authorized Signature) (Title) (Agency)

I, Eric Steven Glomski, being first duly sworn upon oath, hereby depose, swear and declare, under penalty of perjury, that I am the APPLICANT making the foregoing application. I have read this application and the contents and all statements are true, correct and complete.



State of Arizona County of Yavapai
SUBSCRIBED IN MY PRESENCE AND SWORN TO before me this date
27 October 2011
(Signature of NOTARY PUBLIC)

Investigation Recommendation Approval Disapproval by: Date:
Director Signature required for Disapprovals Date:



Building address!

1019 N main Street, Ste B
Cottonwood, AZ 86326

Extension of premises for entire building, 1620 sq ft

door connecting the two buildings will be added
in the next month or so

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

Subject: New Liquor License Application for James E. Newberry (The Vineyard Wine Bar).

Department: City Clerk

From: Marianne Jiménez, City Clerk

REQUESTED ACTION

Council consideration of recommending approval or denial of a new Liquor License Application for James E. Newberry, applicant for the Vineyard Wine Bar located at 1001 North Main Street.

If the Council desires to approve this item the recommended motion is:

“I move to recommend approval of the new liquor license application for James E. Newberry, applicant for the Vineyard Wine Bar located at 1001 North Main Street.”

BACKGROUND

A new Liquor License Application was received from the Arizona Department of Liquor Licenses & Control for James E. Newberry, applicant for the Vineyard Wine Bar located at 1001 North Main Street. No comments for or against the application have been received.

JUSTIFICATION/BENEFITS/ISSUE

All Liquor License applications that are submitted to the Arizona Department of Liquor Licenses & Control (ADLLC) for establishments located within the City of Cottonwood are presented to the Council for its recommendation of approval or denial of the application. The Council’s recommendation is taken into consideration by the ADLLC prior to their final approval of the application.

REVIEWED BY:

City Manager: _____ City Attorney: _____

ATTACHMENTS

- Copy of the Liquor License Application for James E. Newberry.

Arizona Department of Liquor Licenses and Control
 800 West Washington, 5th Floor
 Phoenix, Arizona 85007
 www.azliquor.gov
 602-542-5141

APPLICATION FOR LIQUOR LICENSE
 TYPE-OR PRINT WITH **BLACK INK**

Notice: Effective Nov. 1, 1997, **All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business** must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

SECTION 1 This application is for a:

- MORE THAN ONE LICENSE
- INTERIM PERMIT *Complete Section 5*
- NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16*
- PERSON TRANSFER (Bars & Liquor Stores ONLY)
Complete Sections 2, 3, 4, 11, 13, 15, 16
- LOCATION TRANSFER (Bars and Liquor Stores ONLY)
Complete Sections 2, 3, 4, 12, 13, 15, 16
- PROBATE/WILL ASSIGNMENT/DIVORCE DECREE
Complete Sections 2, 3, 4, 9, 13, 16 (fee not required)
- GOVERNMENT *Complete Sections 2, 3, 4, 10, 13, 15, 16*

SECTION 2 Type of ownership:

- J.T.W.R.O.S. *Complete Section 6*
- INDIVIDUAL *Complete Section 6*
- PARTNERSHIP *Complete Section 6*
- CORPORATION *Complete Section 7*
- LIMITED LIABILITY CO. *Complete Section 7*
- CLUB *Complete Section 8*
- GOVERNMENT *Complete Section 10*
- TRUST *Complete Section 6*
- OTHER (Explain) _____

SECTION 3 Type of license and fees LICENSE #(s):

1. Type of License(s): 12 RESTAURANT 12133503
 2. Total fees attached: \$ Department Use Only
100

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.
 The fees allowed under A.R.S. 44-6852 will be charged for all dishonored checks.

SECTION 4 Applicant

1. Owner/Agent's Name: Mr. NEWBERY JAMES EDWARD
(Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: THE VINEYARD WINE BAR LLC
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: THE VINEYARD BISTRO WINE BAR (JV)
(Exactly as it appears on the exterior of premises)
4. Principal Street Location: 1001 N MAIN STREET COTTONWOOD YAVAPAT 86326
(Do not use PO Box Number) City County Zip
5. Business Phone: 928-634-2440 Daytime Contact: 928-266-2750
6. Is the business located within the incorporated limits of the above city or town? YES NO
7. Mailing Address: 1001 N MAIN STREET Cottonwood AZ 86326
City State Zip
8. Price paid for license only bar, beer and wine, or liquor store: Type _____ \$ _____ Type _____ \$ _____

DEPARTMENT USE ONLY

Fees: 100 Application Interim Permit Agent Change Club Finger Prints \$ 100
TOTAL OF ALL FEES

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? YES NO

Accepted by: KBR Date: 10/10/11 Lic. # 12133503

SECTION 5 Interim Permit:

1. If you intend to operate business when your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. _____
4. Is the license currently in use? YES NO If no, how long has it been out of use? _____

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

I, _____, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER,
 (Print full name)
 MEMBER, STOCKHOLDER, OR LICENSEE (circle the title which applies) of the stated license and location.

X _____ State of _____ County of _____
 (Signature) The foregoing instrument was acknowledged before me this
 _____ day of _____, _____
 Day Month Year
 My commission expires on: _____

 (Signature of NOTARY PUBLIC)

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 PROCESSING FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City State Zip

Partnership Name: (Only the first partner listed will appear on license) _____

General-Limited	Last	First	Middle	% Owned	Mailing Address	City State Zip
<input type="checkbox"/> <input type="checkbox"/>						
<input type="checkbox"/> <input type="checkbox"/>						
<input type="checkbox"/> <input type="checkbox"/>						
<input type="checkbox"/> <input type="checkbox"/>						

(ATTACH ADDITIONAL SHEET IF NECESSARY)

2. Is any person, other than the above, going to share in the profits/losses of the business? YES NO
 If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

Last	First	Middle	Mailing Address	City, State, Zip	Telephone#

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 PROCESSING FEE FOR EACH CARD.

- CORPORATION Complete questions 1, 2, 3, 5, 6, 7, and 8.
 L.L.C. Complete 1, 2, 4, 5, 6, 7, and 8.

1. Name of Corporation/L.L.C.: VINEYARD WINE BAR LLC
 (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: SEPT 2010 State where Incorporated/Organized: ARIZONA
3. AZ Corporation Commission File No.: L16303045 Date authorized to do business in AZ: _____
4. AZ L.L.C. File No: L16303045 Date authorized to do business in AZ: SEPT 2010
5. Is Corp./L.L.C. Non-profit? YES NO
6. List all directors, officers and members in Corporation/L.L.C.:

Last	First	Middle	Title	Mailing Address	City State Zip
NEWBERRY	JAMES	EDWARD	MEMBER	1850 S. RIVER VALLEY RD. FLAESTAFF, AZ.	86004
COO	DOUGLAS	ADAIR	MEMBER	3720 GILSMERE CANTONMENT IV	75001

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders who are controlling persons or who own 10% or more:

Last	First	Middle	% Owned	Mailing Address	City State Zip
NEWBERRY	JAMES	EDWARD	50%	1850 S. RIVER VALLEY RD FLAESTAFF AZ	86004
COO	DOUGLAS	ADAIR	50%	3720 GILSMERE CANTONMENT IV	75001

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach a percentage of ownership chart, and a director/officer/member disclosure for the parent entity. Attach additional sheets as needed in order to disclose personal identities of all owners.

SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 PROCESSING FEE FOR EACH CARD.

1. Name of Club: _____ Date Chartered: _____
 (Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)
2. Is club non-profit? YES NO
3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store License:

1. Current Licensee's Name: _____
(Exactly as it appears on license) Last First Middle
2. Assignee's Name: _____
Last First Middle
3. License Type: _____ License Number: _____ Date of Last Renewal: _____
4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

SECTION 10 Government: (for cities, towns, or counties only)

1. Governmental Entity: _____
2. Person/designee: _____
Last First Middle Contact Phone Number

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

SECTION 11 Person to Person Transfer:

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY-Series 06,07, and 09).

1. Current Licensee's Name: _____ Entity: _____
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
2. Corporation/L.L.C. Name: _____
(Exactly as it appears on license)
3. Current Business Name: _____
(Exactly as it appears on license)
4. Physical Street Location of Business: Street _____
City, State, Zip _____
5. License Type: _____ License Number: _____
6. If more than one license to be transferred: License Type: _____ License Number: _____
7. Current Mailing Address: Street _____
(Other than business) City, State, Zip _____
8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? YES NO
9. Does the applicant intend to operate the business while this application is pending? YES NO If yes, complete Section 5 of this application, attach fee, and current license to this application.

10. I, _____, hereby authorize the department to process this application to transfer the
(print full name)
privilege of the license to the applicant, provided that all terms and conditions of sale are met. Based on the fulfillment of these conditions, I certify that the applicant now owns or will own the property rights of the license by the date of issue.

I, _____, declare that I am the CURRENT OWNER, AGENT, MEMBER, PARTNER
(print full name)
STOCKHOLDER, or LICENSEE of the stated license. I have read the above Section 11 and confirm that all statements are true, correct, and complete.

(Signature of CURRENT LICENSEE)

State of _____ County of _____
The foregoing instrument was acknowledged before me this

Day Month Year

My commission expires on: _____

(Signature of NOTARY PUBLIC)

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: Name _____
(Exactly as it appears on license) Address _____
2. New Business: Name _____
(Physical Street Location) Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02)
- b) Hotel/motel license (§ 4-205.01)
- c) Government license (§ 4-205.03)
- d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 2640 ft. Name of school COTTONWOOD ELEMENTARY SCHOOL
Address 301 N. WILLARD COTTONWOOD AZ. 86326
City, State, Zip

2. Distance to nearest church: 320 ft. Name of church COTTONWOOD BAPTIST CHURCH
Address 102 PIMA COTTONWOOD AZ. 86326
City, State, Zip

3. I am the: Lessee Sublessee Owner Purchaser (of premises)

4. If the premises is leased give lessors: Name _____
Address _____
City, State, Zip

4a. Monthly rental/lease rate \$ _____ What is the remaining length of the lease ___ yrs. ___ mos.

4b. What is the penalty if the lease is not fulfilled? \$ _____ or other _____
(give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness for this license/location excluding the lease? \$ 0
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? RESTAURANT

SECTION 13 - continued

7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?

YES NO If yes, attach explanation.

8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? YES NO

9. Is the premises currently licensed with a liquor license? YES NO If yes, give license number and licensee's name:

License # 07130078 (exactly as it appears on license) Name JAMES EDWARD NEWBERZKY VINEYARD WINE BAR LLC

SECTION 14 Restaurant or hotel/motel license applicants:

1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? YES NO
If yes, give the name of licensee, Agent or a company name:

_____ and license #: _____
Last First Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.

3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.

4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this hotel/motel restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

James E Newberzky
applicant's signature

As stated in A.R.S. § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection visit www.azliquor.gov and click on the "Information" tab.

JN
applicants initials

SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

1. Check ALL boxes that apply to your business:

Entrances/Exits Liquor storage areas Contiguous
 Service windows Drive-in windows Non-Contiguous

2. Is your licensed premises currently closed due to construction, renovation, or redesign? YES NO
If yes, what is your estimated opening date? _____

month/day/year

3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.

4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).

5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows, or increase or decrease to the square footage after submitting this initial drawing.

JN
applicants initials

SECTION 15 Diagram of Premises

4. In this diagram please show only the area where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, bar stools, hi-top tables, dining tables, dining chairs, the kitchen, dance floor, stage, and game room. Do not include parking lots, living quarters, etc. When completing diagram, North is up ↑.

If a legible copy of a rendering or drawing of your diagram of premises is attached to this application, please write the words "diagram attached" in box provided below.

DIAGRAM ATTACHED

SECTION 16 Signature Block

JAMES EDWARD NEWBERRY, hereby declare that I am the OWNER/AGENT filing this application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X *James Edward Newberry*
(signature of applicant listed in Section 4, Question 1)

State of AZ County of Yavapai

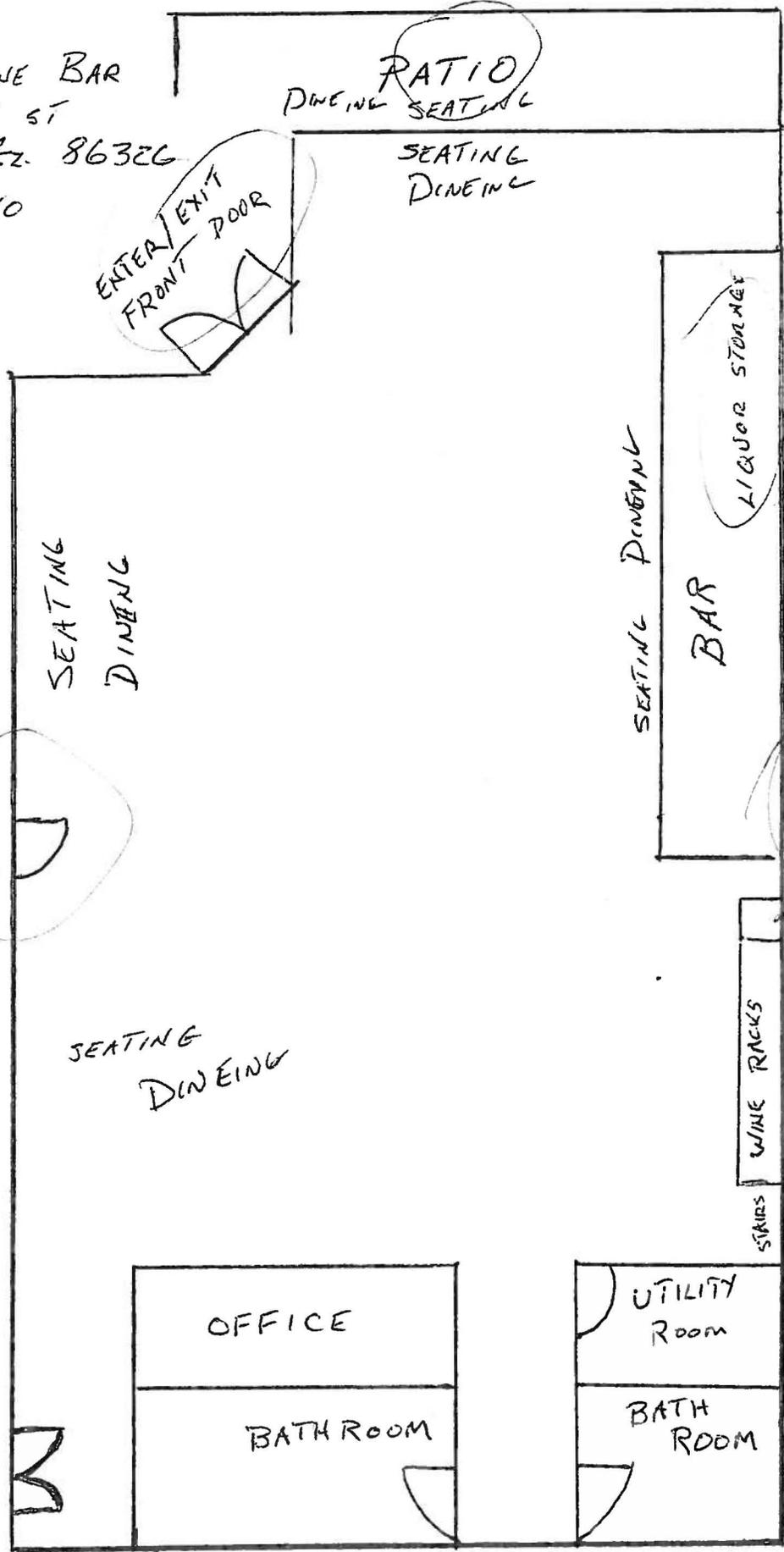
The foregoing instrument was acknowledged before me this

5 Day of October 2011 Year

Matthew Ogden
signature of NOTARY PUBLIC

My commission expires on: Sept 20 2013
Day Month Year

VINEYARD WINE BAR
1001 N. MAIN ST
COTTONWOOD AZ. 86326
928-634-2440



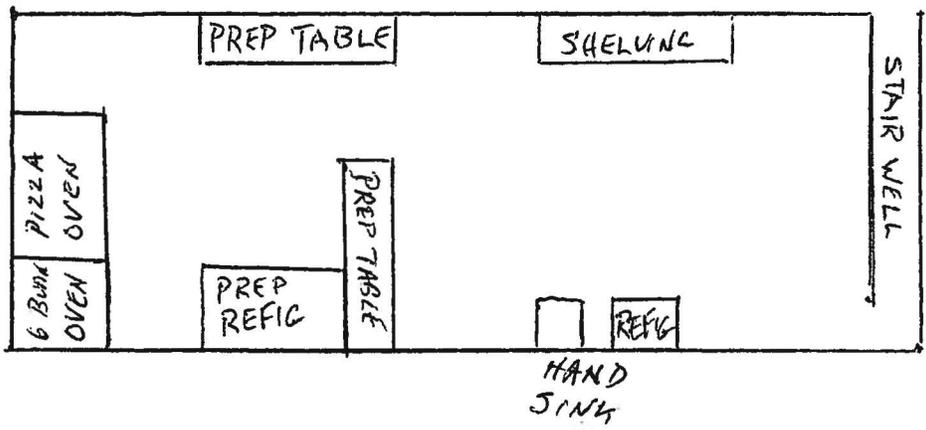
11001 N. MAIN ST
50 FEET

2300

711 OCT 18 10:46 AM 2020

THE VINEYARD WINE BAR
1001 N. MAIN STREET
COTTONWOOD, AZ. 86326
928-634-2440

UPSTAIRS KITCHEN



41 OCT 18 10:46 AM '14

The Vineyard Wine Bar LLC.

1001 N Main Street

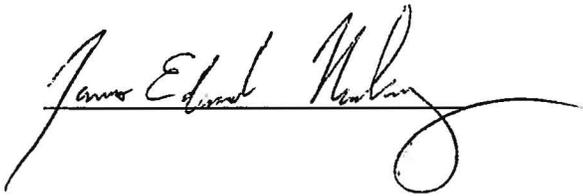
Cottonwood, AZ. 86326

Operating Agreement

James Edward Newberry is the President, General Manager and Operating Partner of The Vineyard Wine Bar LLC.

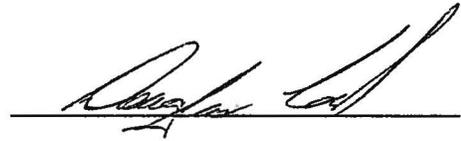
Signed:

James Edward Newberry

A handwritten signature in black ink, appearing to read "James Edward Newberry", written over a horizontal line.

Signed:

Douglas Adair Cord

A handwritten signature in black ink, appearing to read "Douglas Adair Cord", written over a horizontal line.

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

Subject: Recommendation for Council Consideration to select new Cottonwood Youth Advisory Commissioners

Department: Parks and Recreation

From: Jason Little, Recreation Manager and Cottonwood Youth Advisory Commission; Andrew Hickey, Emma Schraner

REQUESTED ACTION

Parks and Recreation staff and the Cottonwood Youth Advisory Commission respectfully request that council appoint 2010-2011 youth commission alternates Shaylor Dowling and Robert Valentine to fill two (2) vacancies on the youth commission in addition to Parker Kleck, Brooke Lindsey, Makenzie Maberry, Josh Nance, and Lacy O'Connel to fill the other five (5) vacancies on the Cottonwood Youth Advisory Commission. Moreover, staff would like to request that council approve the re-appointment of six youth commissioner to another one year term that expires August 1, 2012. In final, the Cottonwood Youth Advisory Commission and staff is also requesting that council appoint Britney Lawler to serve as the adult representative for the commission with a term that also expires August 1st, 2012.

If the Council desires to approve this item the suggested motion is:

"I move to approve Resolution Number 2615 appointing members to the Cottonwood Youth Commission."

BACKGROUND

Currently, in its seventh year, the youth commission continues to gain notoriety and popularity in the community. Due to the departure of seven commissioners and the expiration of terms of six commissioners, the commission would like to re-appoint these six youth commissioners and fill the seven vacated seats with five new applicants and 2010-2011 youth commission alternates Shaylor Dowling and Robert Valentine. This is necessary in order to accomplish the commission's outlined objectives.

The Cottonwood Youth Advisory Commission advertised the vacancies throughout a variety of city wide locations to try and reach all demographics in the City of Cottonwood. The commission advertised at each local school, the Guidance Clinic, Yavapai Broadcasting, and the Yavapai County Probation Department.

JUSTIFICATION/BENEFIT/ISSUES

The Cottonwood Youth Advisory Commission would like to respectfully request that Mayor Diane Joens and the Cottonwood City Council consider the appointment of the following applicants. The Cottonwood Youth Advisory Commission fully understands that the council has sole discretion to appoint any of the 13 applicants who have applied. However, after careful consideration, and the application of a blind point’s weighted matrix system, the Cottonwood Youth Advisory Commission would like to ask the city council to ratify their request and implement immediately so that the youth commission can embark on their resolute task of making a difference for the youth in the community. With the re-appointment of tenured youth commissioners and appointment of new applicants, the commission can continue to function as one cohesive unit, working closely with outside agencies, to give teens a voice in their local government, to accomplish philanthropic objectives and provide events for teens that are enjoyable and safe.

Commissioner Name	Re-Appoint	Appoint
Andrew Hickey	X	
Emma Schraner	X	
John Corey Lawler	X	
Jordan Westover	X	
Spencer Midkiff	X	
Charles Novak	X	
Shaylor Dowling		X (2010-11 alternate)
Robert Valentine		X (2010-11 alternate)
Parker Kleck		X
Lacy O’Connell		X
Brooke Lindsey		X
Makenzie Maberry		X
Josh Nance		X
Britney Lawler (Adult Representative)		X

All commission terms would be effective immediately upon council approval. Terms will expire August 1st, 2012. The points weighted matrix system has been included in the packet for council review.

COST/FUNDING SOURCE

Not Applicable

REVIEWED BY

City Manager: _____

City Attorney: _____

ATTACHMENTS

Scoring matrix for all applicants interviewed
Resolution Number 2615

	Spencer Midkiff	Andrew Hickey	Emma Schraner	Jordan Westover	Charles Novak	Shaylor Dowling	Rober Valentine	TOTAL:	
Rylee Hughes	50	45	50	40	46	61	53	345	
Parker Kleck	58	48	68	61	56	55	50	396	
Brooke Lindsey	64	58	65	61	57	62	63	430	
Makenzie Mabery	63	61	60	61	63	67	62	437	
Ashleigh Makuch	60	45	57	60	53	55	59	389	
Abigail McCabe	32	26	30	26	30	32	28	204	
Josh Nance	64	57	69	54	61	63	56	424	
Lacy O'Connell	64	58	63	59	67	65	55	431	
Joni Olsen	52	54	57	51	56	65	58	393	
Hailey Osborn	38	40	36	44	40	36	34	268	
Alex Stefanek	49	44	35	41	42	51	40	302	
Mitchell Vize	57	42	47	41	40	49	43	319	
Erica Wyles	36	40	42	44	42	40	46	290	
Shaylor Dowling 2010-11 Alternate	100	100	100	100	100	(Abstain)	(Abstain)	500	
Robert Valentine 2010- 2011 Alternate	100	100	100	100	100	(Abstain)	(Abstain)	500	

RESOLUTION NUMBER 2615

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, APPOINTING YOUTH COMMISSION MEMBERS AND ESTABLISHING THEIR TERMS OF OFFICE.

WHEREAS, on November 16, 2004, the City Council established a Cottonwood Youth Commission to act in an advisory capacity to the City Council on matters pertaining to the child and youth population, especially as it relates to municipal programs and projects; and

WHEREAS, the Commission shall be composed of fourteen (14) members who attend a public, private, or charter school within the city limits, or home schooled representatives who live within or outside the corporate city limits, and one non-voting Community Representative who resides either within or outside the corporate limits of the City of Cottonwood.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY ARIZONA:

THAT, the following individuals are hereby appointed members of the Cottonwood Youth Commission for a term beginning November 2, 2011, and ending August 1, 2012:

Andrew Hickey	Shaylor Dowling
John Corey Lawler	Robert Valentine
Charles Novak	Parker Kleck
Spencer Midkiff	Lacey O'Connell
Emma Schraner	Brooke Lindsey
Jordan Westover	Makenzie Mabery
Josh Nance	Britney Lawler (Adult Representative)

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 15TH DAY OF NOVEMBER 2011.

Diane Joens, Mayor

RESOLUTION NUMBER 2615
Page 2

ATTEST:

Marianne Jiménez, City Clerk

APPROVED AS TO FORM:

Steven B. Horton, Esq.
City Attorney

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

Subject: Biosolids Hauling and Disposal Bid

Department: Utilities/Wastewater

From: Roger Biggs

REQUESTED ACTION

Consider awarding the bid for biosolids hauling and disposal to D & K Farming Enterprises LLC in the amount of \$52.00 per ton for land application and \$55.00 per ton for landfill disposal. The bid is inclusive of all fees, surcharges and taxes.

If the Council desires to approve this item the suggested motion is: Approve the Biosolids Hauling and Disposal contract with D&K Farming Enterprises LLC and authorize the Mayor to execute the contract for these services.

BACKGROUND

The Cottonwood City Council awarded the current contract for biosolids hauling and disposal in 2008 as the result of a competitive bidding process. The contract called for an initial one-year term followed by two additional one-year extensions at Council discretion. Both extensions have been awarded and the biosolids hauling and disposal bid was re-advertised with bids due to be submitted by 3:00 PM on August 4, 2011. After review of the two bids received, it was determined that there was confusion regarding the calculation of sludge hauled per pull and after a staff recommendation, Council rejected both the initial bids on September 6, 2011. The biosolids hauling and disposal specifications were revised to require a single per ton price and the bid was re-advertised with bids due to be submitted by October 17, 2011.

Staff received two completed bid packets by the deadline; one from D&K Farming Enterprise LLC and the second from Waste Management. After reviewing the bid packets and utilizing the evaluation criteria supplied in the bid specifications, staff determined that D & K Farming Enterprises LLC provided the most economical selection for biosolids disposal. The bid received from D & K Farming Enterprises LLC was \$ 52.00 per ton for land application and

\$55.00 per ton for landfill disposal. The bid from Waste Management did not include a cost for land application and \$ 57.46 per ton for landfill disposal.

D & K Farming has been the contracted vendor to haul and dispose of the City's biosolids since 2008 and their performance has been satisfactory.

JUSTIFICATION/BENEFITS/ISSUES

The City's Wastewater Treatment Plant is required by State and Federal regulations to dispose of its biosolids subsequent to it being de-watered through the centrifuge process. Disposal of biosolids is a complex process which must comply with numerous State and Federal regulations. Land Application is a preferred method of disposal of biosolids for the benefits it has on areas where it is applied. Landfill disposal has been used as an alternative in the past when land application is not available. Another alternative to land application/land fill of the biosolids would be to further process the sludge into compost, which could potentially be marketed for sale. To produce the compost which would meet the regulations for marketing would require an extensive and expensive retrofit of the existing wastewater treatment plant. That coupled with an uncertain market for the processed compost does not make this a viable option at this time.

COST/FUNDING SOURCE

Wastewater operations fund

REVIEWED BY:

City Manager: _____

City Attorney: _____

ATTACHMENTS

D&K bid

Waste Management bid



City of Cottonwood, Arizona

NOTICE OF FORMAL SOLICITATION

SOLICITATION TYPE: Invitation for Bids
COMMODITY/SERVICE SOUGHT: Biosolids Disposal
SOLICITATION INVITATION NO.: 2012-PW-9
BID DUE DATE AND TIME: October 17, 2011 at 3:00 pm (local Arizona time)
LOCATION: City of Cottonwood
Administrative Services Department
Purchasing Division
816 N. Main Street
Cottonwood, Arizona 86326

The City of Cottonwood is soliciting sealed bids for hauling and disposal of sanitary sewer biosolids. The service requested consists of supplying roll-off containers, hauling and disposal of biosolids generated from the Cottonwood Wastewater Treatment Plant.

Complete specifications are included in the bid package which can be obtained from:

City of Cottonwood, Administrative Services Department
Purchasing Division
816 N Main Street
Cottonwood, AZ 86326
(928) 340-2714

PDF version of the bid package is available by email upon request.

Any questions should be directed to the Purchasing Division at (928) 340-2714.

Bids shall be enclosed in a sealed envelope clearly identified as **City of Cottonwood Biosolids Disposal**. The name and address of the entity submitting the bid shall also be clearly marked on the sealed envelope. All bids shall be submitted to the **City of Cottonwood, Purchasing Division, 816 N Main Street, Cottonwood, AZ 86326 by 3:00 p.m. on October 17, 2011** at which time all bids shall be opened and the name of each bidder and the amount of its bid shall be publicly read. Late bids will not be considered and will be returned unopened.

The City of Cottonwood will select a vendor based on the lowest responsible and responsive bid. The City reserves the right to reject any and all bids and to waive any informality in the bids received as deemed in the best interest of the City.

Publish Date: Verde Independent – September 25, 2011 and October 2, 2011

PUBLISHERS AFFIDAVIT REQUIRED

INVITATION FOR BIDS BIOSOLIDS DISPOSAL

SCOPE OF WORK

The Vendor shall furnish a minimum of three (3) roll-off containers to the Cottonwood Wastewater Treatment Plant (WWTP), located at 1480 W. Mingus Avenue. Upon demand, the containers shall be picked-up from the Wastewater Treatment Plant and hauled to an Arizona Department of Environmental Quality (ADEQ) registered disposal/application site. The successful Bidder will enter into a Contract with the City of Cottonwood for a one (1) year period, with the option of renewing the Contract for two (2) additional years, subject to the availability of funds for the period beyond the current fiscal year and at the sole discretion of the Cottonwood City Council. If the City exercises its option to renew the agreement for an additional term, the successful Bidder's compensation **may** be increased by up to three percent (3%) for the new term if successful Bidder demonstrates to the City's satisfaction that its costs of providing the services contemplated under this Invitation for Bids have increased by that amount. In no case, however, shall any increase awarded exceed three percent (3%).

The City utilizes high-speed centrifuges to dewater the sludge. The biosolids are dewatered to approximately an eighteen to twenty percent (18-20%) cake. The biosolids will pass a typical "paint-filter test." The biosolids consistently meet the ADEQ regulations for "Class B" pathogen reductions requirements (R18-9-1006 E.1-Alternative 1) Arizona Administrative Code (A.A.C.) Title 18, Chapter 9, Article 10. The vector attraction reduction procedure for land application is Alternate 10 (A.A.C R18-9-1010 A.10).

GENERAL CONDITIONS

1. **Term of Work:** The Contract is a for a one (1) year period, with the option of renewing the Contract for two (2) additional years, subject to the availability of funds for the period beyond the current fiscal year and at the sole discretion of the Cottonwood City Council.
2. **Insurance:** Bidder shall agree to carry all insurance which may be required by Federal and State laws, County and City ordinances, regulations and codes in the amounts specified below and shall keep such insurance coverage in force throughout the life of the Contract.

	Minimum Requirements
Worker's Compensation	Statutory Requirements
General Liability	\$2,000,000 Aggregate \$1,000,000 per Occurrence
Products/Completed Operations	\$1,000,000 per Occurrence
Automobile Liability	\$1,000,000 per Occurrence

Liability policy shall include coverage for:

- A. Liability assumed in agreements in effect in connection with insurer's operations.
- B. All owned, hired, or non-owned automotive and truck equipment used in connection with the insured operation.

Contractor must furnish to the City written evidence of the types and amounts of insurance coverage required by the City, including endorsements naming the City as an additional insured, and waiving subrogation against the City.

The Contractor's insurance is primary as to any claims resulting from the Contract.

These policies shall not expire within the term of this Contract. If a policy does expire during the term of the Contract, a renewal Certificate of the required coverage must be sent to the City of Cottonwood not less than ten (10) days prior to the expiration date. All policies shall contain an endorsement providing that

written notice be given to the City at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage on any policy. Neither the Contractor nor any subcontractor shall commence work under a Contract until the City has approved the insurance. The entire project covered by the Contract shall be at the Contractor's risk until final acceptance by the City.

3. Examination of Bid Documents: Bidder shall carefully examine and study the bid documents and shall satisfy themselves as to the materials and services which will be required to be furnished by the successful Bidder. The submission of a proposal shall mean that the Bidder has made such an examination and intends to supply the materials and services in accordance with the bid documents. Any exception so noted by Bidder is grounds for rejection of the bid in its entirety.
4. Qualification of Bidders: Bidder shall have sufficient personnel and equipment to provide service required by the City, and shall have a history of providing satisfactory service to their customers. Bidder shall have completed and submitted a Biosolids Land Application and/or Supplemental Request Form to Arizona Department of Environmental Quality (ADEQ).
5. Disqualification of Bidders: Any one of the following is sufficient grounds for the disqualification of a Bidder and the rejection of his/her bid:
 - A. Submission of more than one (1) proposal from an individual, firm, partnership, or corporation under the same or different names.
 - B. Evidence of collusion among Bidders.
 - C. Failure to fully complete all blanks or to submit the proposal in accordance with the requirements herein.
 - D. Failure to meet the qualifications for bidding or provide evidence of such qualifications when requested.
6. Submission of Bids: Bids will be received by City of Cottonwood, Arizona (herein called the "Owner"), Purchasing Division, at 816 N. Main Street, Cottonwood, AZ 86326 at the time and date indicated in the Invitation for Bid.

Each bid shall be submitted in a sealed envelope, addressed to the City of Cottonwood, Purchasing Division, 816 N. Main Street, Cottonwood, AZ 86326. Each sealed envelope containing a bid must be plainly marked on the outside as "**City of Cottonwood Biosolids Disposal**" and the envelope should bear on the outside the name of the Bidder, and his address. **If** forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to the City of Cottonwood, Purchasing Division, 816 N. Main Street, Cottonwood, Arizona 86326.

7. Consideration of Proposal: The award shall be based on the lowest responsible and responsive bid. The bid shall include all labor, transportation, fuel surcharges, disposal fees, and all applicable taxes and permit fees. The City reserves the right to waive minor technicalities or informalities, to reject any or all bids or to accept the bid deemed to be in the best interest of the City.
8. Award of Contract: The Contract will be considered by the City Council within forty-five (45) days after the opening of proposals unless all bids are rejected. The decision of the City Council shall be final. Notice of Award to the successful Bidder will be made in writing. However, award may be deferred beyond the forty-five (45) days by mutual written agreement between the City and the lowest qualified Bidder. Nothing herein shall be construed to require the City to award a Contract and all bids may be rejected.

9. Permits, Fees and Licenses: The successful Bidder shall secure and pay for all applicable Federal, State, County, or local permits and licenses, including a City Business Registration, and comply with all applicable Federal, State, County, or local laws, codes, ordinance, regulations, and safety standards.
10. Cooperative use of Contract: Any Contract resulting from this solicitation shall be for the use of the City of Cottonwood. In addition, other public and non-profit agencies that have entered into a Cooperative Purchasing Agreement with the City are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials?SAVE/save-members.pdf> for a listing of participating agencies. Any such usage, by other municipalities and government agencies must be in accord with the ordinances, charter and/or rules and regulations of the respective political entity.
11. Interpretations of Documents: Where requirements, specifications, or other directions appear ambiguous, or where any portion of same is not fully understood, the Bidder shall submit his questions in writing to the Wastewater Superintendent Debbie Breikreutz at least forty-eight (48) business hours prior to the bid closing. Verbal explanations shall not be binding.
12. Quantity: For the purposes of this bid, all quantities are approximate and are supplied to assist the Bidder. The bid schedule quantities are based on the last twelve (12) months of operation plus ten percent (10%).
13. Liability: The successful Bidder assumes and agrees to hold harmless, indemnify and defend the City, its officers, agents and representatives from and against all losses, claims, demands, payments, suits, action recoveries, judgments and all liability of every kind, nature, and description for injury to persons including wrongful death, of damage to property or both, occurring during, or in consequence, of the performance by the Bidder of this Contract where such injury or damage is due to any defect in services delivered hereunder, or to the action of negligence of the successful Bidder, his employees, subcontractor, or agents. The City assumes no liability, obligation, or responsibility of any nature, whatsoever, in connection with this Contract except for payment of price or consideration as stated or referred to herein or as allowed by law.
14. Payment: Payment shall be made by the City within thirty (30) days after receipt of a correct invoice.
15. Cancellation: Throughout its term, this agreement may be cancelled by either party at the end of thirty (30) days after the receipt of written notice by the other party (written notice shall mean upon the receipt and signing of return mail). There shall be no penalty to the canceling party for such early termination nor shall the other party be entitled to any damages due to the early cancellation. In the event that the City gives notice of cancellations, it shall only be responsible for paying any outstanding charges for work completed, in accordance with this agreement, no later than 5:00 pm, on the day following receipt of notice of cancellation.
16. Subcontractors: Subcontracting the work shall not be allowed without written approval of the City. A list of subcontractors is to be supplied on the bid schedule.
17. References: A minimum of three (3) references of sanitary sewer sludge hauling clients shall be submitted with the bid packet.

SPECIFICATIONS

1. Vendor shall furnish three (3) roll-off containers. Containers shall comply with A.A.C. R18-9-1011 for the transportation of biosolids. The containers shall have steel rollers with appropriate width so that the container can utilize existing steel pads and guide rails. The two (2) guide rails are five (5) feet eleven (11) inches apart with an outside dimension of six (6) feet. One (1) container will be typically placed under the centrifuge. The second and third containers shall be placed in locations as directed by Wastewater Treatment Plant staff.

2. Vendor must be able to pick-up loaded containers the same day if the order for pick-up is called in by 8:30 AM that same day. Vendor must be able to pick-up at least two (2) containers per day if requested.
3. The centrifuge machine is located on a second story with the container located directly below it. Dewatered sludge will fall from the centrifuge directly into the container. The container height cannot exceed eight (8) feet six (6) inches, as the clearance is nine (9) feet, zero (0) inches.
4. The preferred disposal method is land application, however if the biosolids are not able to be land applied due to inclement weather, etc., disposal to Waste Management's Grey Wolf Landfill or other registered solid waste landfill shall be accepted. The Vendor shall give the landfill their required notice prior to disposal.
5. The Wastewater Treatment Center staff shall complete a Bill of Lading.
6. The City can provide Bidders with laboratory analysis of the sludge that verifies the material is **not** a hazardous waste.

BID SCHEDULE

The bid for pickup, hauling and disposal of sludge shall include the use of roll-off containers, disposal fees, fuel surcharges and all services mentioned herein. Bids shall also include sales tax and all other applicable taxes and fees. No additional fees other than those included above shall be allowed.

Historical total wet tonnage and its disposal methods per year removed from the Wastewater Treatment Plant is as follows:

Year:	Total Tonnage:	Landfill Tonnage:	Land-Applied Tonnage:
2008	1790	21	1769
2009	1693	347	1346
2010	1471	210	1261

Please provide unit cost and information requested below:

Unit Cost Table:	
Unit Cost Landfill Disposal	Unit Cost Land Application
\$ 55.00 /ton	\$ 52.00 /ton

The bids submitted shall be evaluated with the averages of the three (3) years given above utilizing the average percentages of tons disposed of in landfill and tons that were land applied. These averages will then be multiplied by the price per ton for each method of disposal given in the Unit Cost Table above for a total weighted cost per ton for disposal.

LIST OF SUBCONTRACTORS

1. Subcontractor: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone: _____ Fax: _____
2. Subcontractor: _____

Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____

3. Subcontractor: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____

DISPOSAL LOCATION

Biosolids will be disposed at:

Landfill (All Bids must include this cost and indicate which method is preferred)

Other: Type: Land application

Location: Hauser Farms
Camp Verde, AZ

Type: Land application

Location: Arlington Valley Farms
Buckeye / Arlington AZ

Type: _____

Location: _____

Preferred method of disposal is _____ landfill or land application

The undersigned Bidder certifies that this proposal is made in good faith, without collusion or connection with any other person or persons.

Respectfully Submitted:

Bidder: D & K Farming Enterprise, LLC Address: 18107 W. Durley Rd.

Email Address: dkfarmingenterprises@hotmail.com Goodyear, AZ 85338

Phone: 602-228-2332 Fax: 623-853-0677

Representative: Donny King Title: manager / owner

Signature:  Date: 10/16/11

CONTRACT FOR SERVICES

THIS AGREEMENT, made and entered into this, 17 day of October, 2011 by and between the City of Cottonwood, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the OWNER, and Dik Family Enterprises organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the CONTRACTOR.

WITNESSETH: That the said CONTRACTOR, for and in consideration of the sum to be paid him by the said OWNER, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the Contract Documents provided, hereby agrees, themselves, their heirs, executors, administrators, successors, and assigns as follows:

ARTICLE I -- SCOPE OF WORK

The CONTRACTOR shall furnish a minimum of three (3) roll-off containers that meet the specifications of Article XI of this Agreement, to the Cottonwood Wastewater Treatment Plant (WWTP), 1480 W. Mingus Avenue. **If notified by 8:30 AM, the containers shall be picked-up the same day from the Wastewater Treatment Plant.** Disposal shall be in compliance with the applicable portions of the Arizona Administrative Code (A.A.C) Title 18 Chapter 9, Article 10 and

1. 40 CFR 503 subpart C: for biosolids that are placed on the land (surface disposal) for the purpose of disposal (dedicated land disposal sites or monofills);
2. 40 CFR 258: for biosolids disposed of in municipal solids waste landfills; and
3. 40 CFR 257: for all biosolids use and disposal practices not covered under 40 CFR 258 or 503.

ARTICLE II -- CONTRACT TIMES

- A. The Effective Term of this Agreement is from 10/17/2011 to 10/17/2012. This Contract may be extended for up to two (2) additional one (1) year terms, subject to the availability of funds for the period beyond the current fiscal year and at the sole discretion of the Cottonwood City Council. If the City exercises its option to renew the agreement for an additional term, CONTRACTOR'S compensation may be increased by up to three percent (3%) for the new term if CONTRACTOR demonstrates to the OWNER'S satisfaction that its costs of providing the services contemplated under this Invitation for Bids have increased by that amount. In no case, however, shall any increase awarded exceed three percent (3%).
- B. Throughout its term, this Agreement may be cancelled by either party at the end of thirty (30) days after the receipt of written notice by the other party (written notice shall mean upon the receipt and signing of return mail). There shall be no penalty to the canceling party for such early termination nor shall the other party be entitled to any damages due to the early cancellation. In the event that the OWNER gives notice of cancellation, it shall only be responsible for paying any outstanding charges for work completed, in accordance with this Agreement, no later than 5:00 pm, on the day following receipt of notice of cancellation.

ARTICLE III -- INDEMNIFICATION AND INSURANCE

- A. CONTRACTOR assumes and agrees to hold harmless, indemnify and defend OWNER, its officers, agents and representatives from and against all losses, claims, demands, payments, suits, actions for recovery, judgments and all liability of every kind, nature, and description for injury to persons including wrongful death, or damage to property or both occurring during or in consequence of the performance by CONTRACTOR where such injury or damage is due to any defect in services delivered hereunder, or to the action or negligence of CONTRACTOR, its employees, subcontractors, or agents. OWNER assumes

no liability, obligation, or responsibility of any nature, whatsoever, in connection with this Contract except for payment of price or consideration as stated or referred to herein or allowed by law. CONTRACTOR'S obligation under this section shall not extend to any liability caused by the sole negligence of OWNER or its employees.

- B. CONTRACTOR shall provide and maintain, and cause its subcontractors to provide and maintain, the following minimum insurance coverage in accordance with the insurance criteria included in the Bid Package:
 - B.1. Comprehensive general liability insurance with a minimum combined single limit of one million dollars (\$1,000,000) each occurrence, \$2,000,000 aggregate. The policy shall include coverage for bodily and personal injury, broad form property damage, blanket contractual, CONTRACTOR'S protective, and products and completed operations.
 - B.2. Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence with respect to CONTRACTOR'S vehicles (whether owned, hired, non-owned), assigned to or utilized in the performance of a Contract.
 - B.3. Products/Completed Operations insurance with a minimum single limit of not less than one million dollars (\$1,000,000) per occurrence.
 - B.4. Worker's Compensation (statutory limits).
- C. Additional insurance coverage may be required at OWNER'S discretion where the services to be performed are deemed to be hazardous in nature.
- D. The policies required by section B.1. and B.2. shall name OWNER, and its respective agents, officials, and employees as additional insured, and shall specify that the insurance afforded CONTRACTOR shall be primary insurance and that any insurance coverage carried by OWNER or its employees shall be excess coverage and not contributory insurance to that provided by CONTRACTOR. Said policy shall contain a severability of interests provision.
- E. Failure on the part of CONTRACTOR to procure and maintain the required liability insurance and provide proof thereof to OWNER within thirty (30) days following the commencement of a new policy period, shall constitute a material breach of a Contract upon which OWNER may immediately terminate the Contract. Prior to the effective date of the Contract, CONTRACTOR shall furnish OWNER with copies of the State of Arizona Certificate of Insurance (RM-7200.1), drawn in conformity with the above insurance requirements. OWNER reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

ARTICLE IV -- CANCELLATION OF AGREEMENT

Pursuant to A.R.S. Section 38-511, the provisions of which are incorporated herein by reference, all parties are hereby put on notice that this Contract is subject to cancellation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of one of the parties at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity, or a Consultant to any other party of the Contract with respect to the subject matter of the Contract.

ARTICLE V -- NON-DISCRIMINATION

CONTRACTOR shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975, and Federal Executive Order No. 11246, State Executive Order No.

94-4, and A.R.S. Section 41-1461 et. Seq., which mandates that all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, shall have access to employment opportunities.

CONTRACTOR shall comply with Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap.

CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, which prohibits the denial of benefits or participation in contract services on the basis of race, color, or national origin.

CONTRACTOR shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and with the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of handicap in delivering contract services.

ARTICLE VI -- NOTICE

Any notice given in connection with this Contract shall be given in writing and shall be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address stated below. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.

Contractor: D & K Farming Enterprises LLC City of Cottonwood
c/o Donny King c/o _____
18107 W. Dunlap Rd. _____
Goodyear, AZ 85338 _____

ARTICLE VII -- CHOICE OF LAW AND VENUE

Any dispute under this Contract or related to this Contract shall be decided in accordance with the laws of the State of Arizona and filed with the Arizona Superior Court of Yavapai County.

ARTICLE VIII – OBLIGATIONS/CERTIFICATIONS

Legal Worker Requirements: As mandated by Arizona Revised Statutes §41-4401, the City is prohibited from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A, which requires that employers verify the employment eligibility of their employees through the Federal E-verify system. An "employer" is an independent contractor, a self-employed person, the State of Arizona or any of its political subdivisions, or any individual or type of organization that transacts business in the State of Arizona, that has a license issued by an agency in the State and that employs one or more employees in the State (See A.R.S. §23-211-4). Therefore, in signing or performing any contract for the City of Cottonwood, CONTRACTOR fully understands and agrees that:

- A. Both it and any subcontractors it may use shall comply with all Federal immigration laws and regulations that relate to their employees and with A.R.S. §23-214-A;
- B. Any breach of that warranty is material and is subject to penalties up to and including immediate termination of the Contract; and
- C. OWNER or its designee is authorized by law to randomly inspect the employment records relating to an employee of CONTRACTOR or any of its subcontractors who works on the Contract to ensure compliance with the warranty made in Paragraph A above.

In accordance with A.R.S. §35-393.06, CONTRACTOR hereby certifies that CONTRACTOR does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, CONTRACTOR hereby certifies that CONTRACTOR does not have scrutinized business operations in Sudan.

ARTICLE IX -- SEVERABILITY

If any part of this Contract shall be held unenforceable, the rest of the Contract will nevertheless remain in full force and effect.

ARTICLE X -- PAYMENT

CONTRACTOR agrees that this Contract, as awarded, is for the stated work, and understands that payment for the total work will be made on the basis of the indicated amount(s), as bid in the Proposal. The Proposal is attached hereto as Exhibit A. Payment for services shall be made by OWNER within thirty (30) days after receipt of a correct invoice. CONTRACTOR will be utilized on an as needed basis with no guarantee regarding the amount or frequency of biosolids to be hauled.

ARTICLE XI -- SPECIFICATIONS

- A. CONTRACTOR shall furnish three (3) roll-off containers. Containers shall comply with A.A.C. R18-9-1011 for the transportation of biosolids. The containers shall have steel rollers with appropriate width so that the container can utilize existing steel pads and guide rails. The two (2) guide rails are five (5) feet eleven (11) inches apart with an outside dimension of six (6) feet. One (1) container will be typically placed under the centrifuge. The second and third containers shall be placed in locations as directed by Wastewater Treatment Plant staff.
7. CONTRACTOR must be able to pick-up loaded containers the same day if the order for pick-up is called in by 8:30 AM that same day. CONTRACTOR must be able to pick-up at least two (2) containers per day if requested.
8. The centrifuge machine is located on a second story with the container located directly below it. Dewatered sludge will fall from the centrifuge directly into the container. The container height cannot exceed eight (8) feet six (6) inches, as the clearance is nine (9) feet, zero (0) inches.
9. The preferred disposal method is land application, however if the biosolids are not able to be land applied due to inclement weather, etc., disposal to Waste Management's Grey Wolf Landfill or other registered solid waste landfill shall be accepted. CONTRACTOR shall give the landfill their required notice prior to disposal.
10. The Wastewater Treatment Center staff shall complete a Bill of Lading for each load.
11. OWNER can provide CONTRACTOR with laboratory analysis of the biosolids that verifies the material is **not** a hazardous waste.
12. OWNER shall notify CONTRACTOR of all CONTRACTOR'S requirements under A.A.C. Title 18 Chapter 9 Article 10 and Arizona Pollutant Elimination System (AZPDES) permit number AZ0024716.
13. OWNER shall test the biosolids according to sections I.1.a , I.2, I.6.e, I.10 and I.11 of AZPDES permit number AZ0024716 to ensure that the quality of the biosolids remain below ceiling pollutant concentrations levels.
14. OWNER shall supply CONTRACTOR with documentation of Pathogen Reduction method as required

by AZPDES permit number AZ0024716.

- 15. CONTRACTOR shall supply OWNER with records of the management practices and operational parameters used to achieve, Vector Attraction Reduction requirement Option 10 according to A.A.C. R18-9-1010. CONTRACTOR shall report required information on a City of Cottonwood Land Application Biosolid Tracking Sheet.
- 16. CONTRACTOR shall provide all information of land application sites to OWNER as required by section L.5.a-f of AZPDES permit number AZ0024716 prior to February 19 of each year.
- 17. CONTRACTOR assumes total liability for the sludge from the time it is loaded at OWNER'S Wastewater Treatment Plant up to and through its proper disposal.
- 18. CONTRACTOR shall secure and pay for all applicable Federal, State, County, or local permits and licenses, including a City Business Registration, and comply with all applicable Federal, State, County, or local laws, codes, ordinances, regulations, and safety standards.

ARTICLE XII -- ASSIGNMENT

OWNER and CONTRACTOR respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Agreement. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

Contractor

D# K Farming Enterprises
Company Name

Karu King
Signature

Owner/Manager
Title

Karri King
Printed Name

10/17/11
Date of Signing

City of Cottonwood

By: _____
Diane Joens, Mayor

Date of Signing

Attest:

Marianne Jimenez, City Clerk

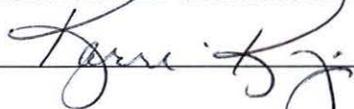
Approved as to form:

By: _____
Steve Horton, City Attorney

CONTRACTOR E-VERIFY STATEMENT

As required by Arizona Revised Statutes Section 41-4401 (Government procurement; E-verify requirement; definitions) CONTRACTOR warrants that it complies with all Federal immigration laws and regulations, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee who provides services or labor in Arizona for wages or other remuneration, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to CONTRACTOR. CONTRACTOR acknowledges that a breach of this warranty by CONTRACTOR or by any subcontractor or sub-subcontractor under this Contract shall be deemed a material breach of this Contract, and is grounds for penalties, including termination of this Contract, by OWNER. OWNER retains the legal right to inspect the papers of CONTRACTOR, and any subcontractor and sub-subcontractor employee who performs work under this Contract, and to conduct random verification of the employment records of CONTRACTOR and each subcontractor and sub-subcontractor who works on this Contract, to ensure that CONTRACTOR and each subcontractor and sub-subcontractor is complying with the warranties set forth above.

AUTHORIZED SIGNATURE:



PRINTED NAME:

Harri King

DATE:

10/17/11

TITLE:

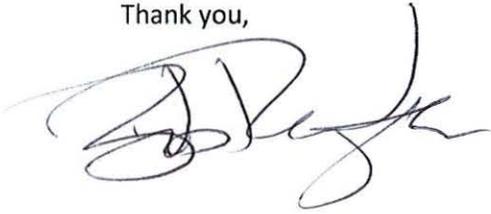
owner / manager

October 14, 2011

To Whom It May Concern:

D&K Farming Enterprises, LLC has been providing biosolids removal services to our company for several years. They have provided excellent service and I recommend this company with confidence that they will continue to provide quality and professional service.

Thank you,

A handwritten signature in black ink, appearing to read "Bob Register". The signature is stylized with large, sweeping loops and a long horizontal stroke at the end.

Bob Register
Biosolids Management, Inc



CITY OF TOLLESON

9555 West Van Buren • Tolleson, AZ 85353 • 623.936.7111 • fax 623.907.2629

October 17, 2011

To Whom It Concerns:

I want to acknowledge that D&K LLC has done Biosolids removal projects for the City of Tolleson. The City is pleased with all work completed. D&K LLC maintained professional, safe and clean working environment.

D&K handled large quantities of Biosolids for both hauling and land application

D&K LLC has been contracted by The City of Tolleson on a number of projects. The City would not hesitate to continue using there services when needed.

For any further questions just call me personally.

Sincerely,

A handwritten signature in cursive script that reads "Todd Dougherty".

Todd Dougherty
City of Tolleson

October 14, 2011

To Whom It May Concern:

D&K Farming Enterprises, LLC has been providing biosolids removal services to our city for the last three years. They have provided excellent service and I recommend this company with confidence that they will continue to provide quality and professional service.

Thank you,

A handwritten signature in cursive script that reads "Dave Rhodes".

Dave Rhodes,
Perc Water Technologies



City of Cottonwood, Arizona

NOTICE OF FORMAL SOLICITATION

SOLICITATION TYPE:	Invitation for Bids
COMMODITY/SERVICE SOUGHT:	Biosolids Disposal
SOLICITATION INVITATION NO.:	2012-PW-9
BID DUE DATE AND TIME:	October 17, 2011 at 3:00 pm (local Arizona time)
LOCATION:	City of Cottonwood Administrative Services Department Purchasing Division 816 N. Main Street Cottonwood, Arizona 86326

The City of Cottonwood is soliciting sealed bids for hauling and disposal of sanitary sewer biosolids. The service requested consists of supplying roll-off containers, hauling and disposal of biosolids generated from the Cottonwood Wastewater Treatment Plant.

Complete specifications are included in the bid package which can be obtained from:

City of Cottonwood, Administrative Services Department
Purchasing Division
816 N Main Street
Cottonwood, AZ 86326
(928) 340-2714

PDF version of the bid package is available by email upon request.

Any questions should be directed to the Purchasing Division at (928) 340-2714.

Bids shall be enclosed in a sealed envelope clearly identified as **City of Cottonwood Biosolids Disposal**. The name and address of the entity submitting the bid shall also be clearly marked on the sealed envelope. All bids shall be submitted to the **City of Cottonwood, Purchasing Division, 816 N Main Street, Cottonwood, AZ 86326 by 3:00 p.m. on October 17, 2011** at which time all bids shall be opened and the name of each bidder and the amount of its bid shall be publicly read. Late bids will not be considered and will be returned unopened.

The City of Cottonwood will select a vendor based on the lowest responsible and responsive bid. The City reserves the right to reject any and all bids and to waive any informality in the bids received as deemed in the best interest of the City.

Publish Date: Verde Independent – September 25, 2011 and October 2, 2011

PUBLISHERS AFFIDAVIT REQUIRED

INVITATION FOR BIDS BIOSOLIDS DISPOSAL

SCOPE OF WORK

The Vendor shall furnish a minimum of three (3) roll-off containers to the Cottonwood Wastewater Treatment Plant (WWTP), located at 1480 W. Mingus Avenue. Upon demand, the containers shall be picked-up from the Wastewater Treatment Plant and hauled to an Arizona Department of Environmental Quality (ADEQ) registered disposal/application site. The successful Bidder will enter into a Contract with the City of Cottonwood for a one (1) year period, with the option of renewing the Contract for two (2) additional years, subject to the availability of funds for the period beyond the current fiscal year and at the sole discretion of the Cottonwood City Council. If the City exercises its option to renew the agreement for an additional term, the successful Bidder's compensation **may** be increased by up to three percent (3%) for the new term if successful Bidder demonstrates to the City's satisfaction that its costs of providing the services contemplated under this Invitation for Bids have increased by that amount. In no case, however, shall any increase awarded exceed three percent (3%).

The City utilizes high-speed centrifuges to dewater the sludge. The biosolids are dewatered to approximately an eighteen to twenty percent (18-20%) cake. The biosolids will pass a typical "paint-filter test." The biosolids consistently meet the ADEQ regulations for "Class B" pathogen reductions requirements (R18-9-1006 E.1-Alternative 1) Arizona Administrative Code (A.A.C.) Title 18, Chapter 9, Article 10. The vector attraction reduction procedure for land application is Alternate 10 (A.A.C R18-9-1010 A.10).

GENERAL CONDITIONS

1. Term of Work: The Contract is a for a one (1) year period, with the option of renewing the Contract for two (2) additional years, subject to the availability of funds for the period beyond the current fiscal year and at the sole discretion of the Cottonwood City Council.
2. Insurance: Bidder shall agree to carry all insurance which may be required by Federal and State laws, County and City ordinances, regulations and codes in the amounts specified below and shall keep such insurance coverage in force throughout the life of the Contract.

	Minimum Requirements
Worker's Compensation	Statutory Requirements
General Liability	\$2,000,000 Aggregate
	\$1,000,000 per Occurrence
Products/Completed Operations	\$1,000,000 per Occurrence
Automobile Liability	\$1,000,000 per Occurrence

Liability policy shall include coverage for:

- A. Liability assumed in agreements in effect in connection with insurer's operations.
- B. All owned, hired, or non-owned automotive and truck equipment used in connection with the insured operation.

Contractor must furnish to the City written evidence of the types and amounts of insurance coverage required by the City, including endorsements naming the City as an additional insured, and waiving subrogation against the City.

The Contractor's insurance is primary as to any claims resulting from the Contract.

These policies shall not expire within the term of this Contract. If a policy does expire during the term of the Contract, a renewal Certificate of the required coverage must be sent to the City of Cottonwood not less than ten (10) days prior to the expiration date. All policies shall contain an endorsement providing that

written notice be given to the City at least thirty (30) calendar days prior to termination, cancellation, or reduction of coverage on any policy. Neither the Contractor nor any subcontractor shall commence work under a Contract until the City has approved the insurance. The entire project covered by the Contract shall be at the Contractor's risk until final acceptance by the City.

3. Examination of Bid Documents: Bidder shall carefully examine and study the bid documents and shall satisfy themselves as to the materials and services which will be required to be furnished by the successful Bidder. The submission of a proposal shall mean that the Bidder has made such an examination and intends to supply the materials and services in accordance with the bid documents. Any exception so noted by Bidder is grounds for rejection of the bid in its entirety.
4. Qualification of Bidders: Bidder shall have sufficient personnel and equipment to provide service required by the City, and shall have a history of providing satisfactory service to their customers. Bidder shall have completed and submitted a Biosolids Land Application and/or Supplemental Request Form to Arizona Department of Environmental Quality (ADEQ).
5. Disqualification of Bidders: Any one of the following is sufficient grounds for the disqualification of a Bidder and the rejection of his/her bid:
 - A. Submission of more than one (1) proposal from an individual, firm, partnership, or corporation under the same or different names.
 - B. Evidence of collusion among Bidders.
 - C. Failure to fully complete all blanks or to submit the proposal in accordance with the requirements herein.
 - D. Failure to meet the qualifications for bidding or provide evidence of such qualifications when requested.
6. Submission of Bids: Bids will be received by City of Cottonwood, Arizona (herein called the "Owner"), Purchasing Division, at 816 N. Main Street, Cottonwood, AZ 86326 at the time and date indicated in the Invitation for Bid.

Each bid shall be submitted in a sealed envelope, addressed to the City of Cottonwood, Purchasing Division, 816 N. Main Street, Cottonwood, AZ 86326. Each sealed envelope containing a bid must be plainly marked on the outside as "**City of Cottonwood Biosolids Disposal**" and the envelope should bear on the outside the name of the Bidder, and his address. **If** forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to the City of Cottonwood, Purchasing Division, 816 N. Main Street, Cottonwood, Arizona 86326.

7. Consideration of Proposal: The award shall be based on the lowest responsible and responsive bid. The bid shall include all labor, transportation, fuel surcharges, disposal fees, and all applicable taxes and permit fees. The City reserves the right to waive minor technicalities or informalities, to reject any or all bids or to accept the bid deemed to be in the best interest of the City.
8. Award of Contract: The Contract will be considered by the City Council within forty-five (45) days after the opening of proposals unless all bids are rejected. The decision of the City Council shall be final. Notice of Award to the successful Bidder will be made in writing. However, award may be deferred beyond the forty-five (45) days by mutual written agreement between the City and the lowest qualified Bidder. Nothing herein shall be construed to require the City to award a Contract and all bids may be rejected.

9. Permits, Fees and Licenses: The successful Bidder shall secure and pay for all applicable Federal, State, County, or local permits and licenses, including a City Business Registration, and comply with all applicable Federal, State, County, or local laws, codes, ordinance, regulations, and safety standards.
10. Cooperative use of Contract: Any Contract resulting from this solicitation shall be for the use of the City of Cottonwood. In addition, other public and non-profit agencies that have entered into a Cooperative Purchasing Agreement with the City are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials?SAVE/save-members.pdf> for a listing of participating agencies. Any such usage, by other municipalities and government agencies must be in accord with the ordinances, charter and/or rules and regulations of the respective political entity.
11. Interpretations of Documents: Where requirements, specifications, or other directions appear ambiguous, or where any portion of same is not fully understood, the Bidder shall submit his questions in writing to the Wastewater Superintendent Debbie Breitreutz at least forty-eight (48) business hours prior to the bid closing. Verbal explanations shall not be binding.
12. Quantity: For the purposes of this bid, all quantities are approximate and are supplied to assist the Bidder. The bid schedule quantities are based on the last twelve (12) months of operation plus ten percent (10%).
13. Liability: The successful Bidder assumes and agrees to hold harmless, indemnify and defend the City, it's officers, agents and representatives from and against all losses, claims, demands, payments, suits, action recoveries, judgments and all liability of every kind, nature, and description for injury to persons including wrongful death, of damage to property or both, occurring during, or in consequence, of the performance by the Bidder of this Contract where such injury or damage is due to any defect in services delivered hereunder, or to the action of negligence of the successful Bidder, his employees, subcontractor, or agents. The City assumes no liability, obligation, or responsibility of any nature, whatsoever, in connection with this Contract except for payment of price or consideration as stated or referred to herein or as allowed by law.
14. Payment: Payment shall be made by the City within thirty (30) days after receipt of a correct invoice.
15. Cancellation: Throughout its term, this agreement may be cancelled by either party at the end of thirty (30) days after the receipt of written notice by the other party (written notice shall mean upon the receipt and signing of return mail). There shall be no penalty to the canceling party for such early termination nor shall the other party be entitled to any damages due to the early cancellation. In the event that the City gives notice of cancellations, it shall only be responsible for paying any outstanding charges for work completed, in accordance with this agreement, no later than 5:00 pm, on the day following receipt of notice of cancellation.
16. Subcontractors: Subcontracting the work shall not be allowed without written approval of the City. A list of subcontractors is to be supplied on the bid schedule.
17. References: A minimum of three (3) references of sanitary sewer sludge hauling clients shall be submitted with the bid packet.

SPECIFICATIONS

1. Vendor shall furnish three (3) roll-off containers. Containers shall comply with A.A.C. R18-9-1011 for the transportation of biosolids. The containers shall have steel rollers with appropriate width so that the container can utilize existing steel pads and guide rails. The two (2) guide rails are five (5) feet eleven (11) inches apart with an outside dimension of six (6) feet. One (1) container will be typically placed under the centrifuge. The second and third containers shall be placed in locations as directed by Wastewater Treatment Plant staff.

2. Vendor must be able to pick-up loaded containers the same day if the order for pick-up is called in by 8:30 AM that same day. Vendor must be able to pick-up at least two (2) containers per day if requested.
3. The centrifuge machine is located on a second story with the container located directly below it. Dewatered sludge will fall from the centrifuge directly into the container. The container height cannot exceed eight (8) feet six (6) inches, as the clearance is nine (9) feet, zero (0) inches.
4. The preferred disposal method is land application, however if the biosolids are not able to be land applied due to inclement weather, etc., disposal to Waste Management's Grey Wolf Landfill or other registered solid waste landfill shall be accepted. The Vendor shall give the landfill their required notice prior to disposal.
5. The Wastewater Treatment Center staff shall complete a Bill of Lading.
6. The City can provide Bidders with laboratory analysis of the sludge that verifies the material is **not** a hazardous waste.

BID SCHEDULE

The bid for pickup, hauling and disposal of sludge shall include the use of roll-off containers, disposal fees, fuel surcharges and all services mentioned herein. Bids shall also include sales tax and all other applicable taxes and fees. No additional fees other than those included above shall be allowed.

Historical total wet tonnage and its disposal methods per year removed from the Wastewater Treatment Plant is as follows:

Year:	Total Tonnage:	Landfill Tonnage:	Land-Applied Tonnage:
2008	1790	21	1769
2009	1693	347	1346
2010	1471	210	1261

Please provide unit cost and information requested below:

Unit Cost Table:	
Unit Cost Landfill Disposal	Unit Cost Land Application
\$ 57.46 /ton	\$ 110 bid /ton

10 ton minimum
 The bids submitted shall be evaluated with the averages of the three (3) years given above utilizing the average percentages of tons disposed of in landfill and tons that were land applied. These averages will then be multiplied by the price per ton for each method of disposal given in the Unit Cost Table above for a total weighted cost per ton for disposal.

LIST OF SUBCONTRACTORS

1. Subcontractor: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone: _____ Fax: _____
2. Subcontractor: _____

Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____

3. Subcontractor: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____

DISPOSAL LOCATION

Biosolids will be disposed at:

Landfill (All Bids must include this cost and indicate which method is preferred)

Other: Type: _____

Location: _____

Type: _____

Location: _____

Type: _____

Location: _____

Preferred method of disposal is landfill or _____ land application

The undersigned Bidder certifies that this proposal is made in good faith, without collusion or connection with any other person or persons.

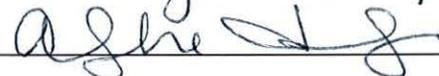
Respectfully Submitted:

Bidder: Waste Management of AZ Address: 2425 S. 40th street

Email Address: aisley@wm.com Phoenix, AZ 85034

Phone: 602.763.9222 Fax: 602.470.0692

Representative: Aleigha Isley Title: Industrial Acct. Manager

Signature:  Date: 10/06/11

CONTRACT FOR SERVICES

THIS AGREEMENT, made and entered into this, 6th day of October, 2011 by and between the City of Cottonwood, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the OWNER, and Waste Management of AZ organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the CONTRACTOR.

WITNESSETH: That the said CONTRACTOR, for and in consideration of the sum to be paid him by the said OWNER, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the Contract Documents provided, hereby agrees, themselves, their heirs, executors, administrators, successors, and assigns as follows:

ARTICLE I -- SCOPE OF WORK

The CONTRACTOR shall furnish a minimum of three (3) roll-off containers that meet the specifications of Article XI of this Agreement, to the Cottonwood Wastewater Treatment Plant (WWTP), 1480 W. Mingus Avenue. **If notified by 8:30 AM, the containers shall be picked-up the same day from the Wastewater Treatment Plant.** Disposal shall be in compliance with the applicable portions of the Arizona Administrative Code (A.A.C) Title 18 Chapter 9, Article 10 and

1. 40 CFR 503 subpart C: for biosolids that are placed on the land (surface disposal) for the purpose of disposal (dedicated land disposal sites or monofills);
2. 40 CFR 258: for biosolids disposed of in municipal solids waste landfills; and
3. 40 CFR 257: for all biosolids use and disposal practices not covered under 40 CFR 258 or 503.

ARTICLE II -- CONTRACT TIMES

- A. The Effective Term of this Agreement is from 10/6/11 to 10/6/12. This Contract may be extended for up to two (2) additional one (1) year terms, subject to the availability of funds for the period beyond the current fiscal year and at the sole discretion of the Cottonwood City Council. If the City exercises its option to renew the agreement for an additional term, CONTRACTOR'S compensation may be increased by up to three percent (3%) for the new term if CONTRACTOR demonstrates to the OWNER'S satisfaction that its costs of providing the services contemplated under this Invitation for Bids have increased by that amount. In no case, however, shall any increase awarded exceed three percent (3%).
- B. Throughout its term, this Agreement may be cancelled by either party at the end of thirty (30) days after the receipt of written notice by the other party (written notice shall mean upon the receipt and signing of return mail). There shall be no penalty to the canceling party for such early termination nor shall the other party be entitled to any damages due to the early cancellation. In the event that the OWNER gives notice of cancellation, it shall only be responsible for paying any outstanding charges for work completed, in accordance with this Agreement, no later than 5:00 pm, on the day following receipt of notice of cancellation.

ARTICLE III -- INDEMNIFICATION AND INSURANCE

- A. CONTRACTOR assumes and agrees to hold harmless, indemnify and defend OWNER, its officers, agents and representatives from and against all losses, claims, demands, payments, suits, actions for recovery, judgments and all liability of every kind, nature, and description for injury to persons including wrongful death, or damage to property or both occurring during or in consequence of the performance by CONTRACTOR where such injury or damage is due to any defect in services delivered hereunder, or to the action or negligence of CONTRACTOR, its employees, subcontractors, or agents. OWNER assumes

no liability, obligation, or responsibility of any nature, whatsoever, in connection with this Contract except for payment of price or consideration as stated or referred to herein or allowed by law. CONTRACTOR'S obligation under this section shall not extend to any liability caused by the sole negligence of OWNER or its employees.

- B. CONTRACTOR shall provide and maintain, and cause its subcontractors to provide and maintain, the following minimum insurance coverage in accordance with the insurance criteria included in the Bid Package:
 - B.1. Comprehensive general liability insurance with a minimum combined single limit of one million dollars (\$1,000,000) each occurrence, \$2,000,000 aggregate. The policy shall include coverage for bodily and personal injury, broad form property damage, blanket contractual, CONTRACTOR'S protective, and products and completed operations.
 - B.2. Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence with respect to CONTRACTOR'S vehicles (whether owned, hired, non-owned), assigned to or utilized in the performance of a Contract.
 - B.3. Products/Completed Operations insurance with a minimum single limit of not less than one million dollars (\$1,000,000) per occurrence.
 - B.4. Worker's Compensation (statutory limits).
- C. Additional insurance coverage may be required at OWNER'S discretion where the services to be performed are deemed to be hazardous in nature.
- D. The policies required by section B.1. and B.2. shall name OWNER, and its respective agents, officials, and employees as additional insured, and shall specify that the insurance afforded CONTRACTOR shall be primary insurance and that any insurance coverage carried by OWNER or its employees shall be excess coverage and not contributory insurance to that provided by CONTRACTOR. Said policy shall contain a severability of interests provision.
- E. Failure on the part of CONTRACTOR to procure and maintain the required liability insurance and provide proof thereof to OWNER within thirty (30) days following the commencement of a new policy period, shall constitute a material breach of a Contract upon which OWNER may immediately terminate the Contract. Prior to the effective date of the Contract, CONTRACTOR shall furnish OWNER with copies of the State of Arizona Certificate of Insurance (RM-7200.1), drawn in conformity with the above insurance requirements. OWNER reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

ARTICLE IV -- CANCELLATION OF AGREEMENT

Pursuant to A.R.S. Section 38-511, the provisions of which are incorporated herein by reference, all parties are hereby put on notice that this Contract is subject to cancellation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of one of the parties at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity, or a Consultant to any other party of the Contract with respect to the subject matter of the Contract.

ARTICLE V -- NON-DISCRIMINATION

CONTRACTOR shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975, and Federal Executive Order No. 11246, State Executive Order No.

94-4, and A.R.S. Section 41-1461 et. Seq., which mandates that all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, shall have access to employment opportunities.

CONTRACTOR shall comply with Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap.

CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, as amended, which prohibits the denial of benefits or participation in contract services on the basis of race, color, or national origin.

CONTRACTOR shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and with the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of handicap in delivering contract services.

ARTICLE VI -- NOTICE

Any notice given in connection with this Contract shall be given in writing and shall be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address stated below. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.

Contractor: <u>Waste Management of AZ</u>	City of Cottonwood
c/o <u>Alegha Isley</u>	c/o _____
<u>2425 S. 40th street</u>	_____
<u>Phoenix, AZ 85034</u>	_____

ARTICLE VII -- CHOICE OF LAW AND VENUE

Any dispute under this Contract or related to this Contract shall be decided in accordance with the laws of the State of Arizona and filed with the Arizona Superior Court of Yavapai County.

ARTICLE VIII – OBLIGATIONS/CERTIFICATIONS

Legal Worker Requirements: As mandated by Arizona Revised Statutes §41-4401, the City is prohibited from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A, which requires that employers verify the employment eligibility of their employees through the Federal E-verify system. An “employer” is an independent contractor, a self-employed person, the State of Arizona or any of its political subdivisions, or any individual or type of organization that transacts business in the State of Arizona, that has a license issued by an agency in the State and that employs one or more employees in the State (See A.R.S. §23-211-4). Therefore, in signing or performing any contract for the City of Cottonwood, CONTRACTOR fully understands and agrees that:

- A. Both it and any subcontractors it may use shall comply with all Federal immigration laws and regulations that relate to their employees and with A.R.S. §23-214-A;
- B. Any breach of that warranty is material and is subject to penalties up to and including immediate termination of the Contract; and
- C. OWNER or its designee is authorized by law to randomly inspect the employment records relating to an employee of CONTRACTOR or any of its subcontractors who works on the Contract to ensure compliance with the warranty made in Paragraph A above.

In accordance with A.R.S. §35-393.06, CONTRACTOR hereby certifies that CONTRACTOR does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, CONTRACTOR hereby certifies that CONTRACTOR does not have scrutinized business operations in Sudan.

ARTICLE IX -- SEVERABILITY

If any part of this Contract shall be held unenforceable, the rest of the Contract will nevertheless remain in full force and effect.

ARTICLE X -- PAYMENT

CONTRACTOR agrees that this Contract, as awarded, is for the stated work, and understands that payment for the total work will be made on the basis of the indicated amount(s), as bid in the Proposal. The Proposal is attached hereto as Exhibit A. Payment for services shall be made by OWNER within thirty (30) days after receipt of a correct invoice. CONTRACTOR will be utilized on an as needed basis with no guarantee regarding the amount or frequency of biosolids to be hauled.

ARTICLE XI -- SPECIFICATIONS

- A. CONTRACTOR shall furnish three (3) roll-off containers. Containers shall comply with A.A.C. R18-9-1011 for the transportation of biosolids. The containers shall have steel rollers with appropriate width so that the container can utilize existing steel pads and guide rails. The two (2) guide rails are five (5) feet eleven (11) inches apart with an outside dimension of six (6) feet. One (1) container will be typically placed under the centrifuge. The second and third containers shall be placed in locations as directed by Wastewater Treatment Plant staff.
7. CONTRACTOR must be able to pick-up loaded containers the same day if the order for pick-up is called in by 8:30 AM that same day. CONTRACTOR must be able to pick-up at least two (2) containers per day if requested.
8. The centrifuge machine is located on a second story with the container located directly below it. Dewatered sludge will fall from the centrifuge directly into the container. The container height cannot exceed eight (8) feet six (6) inches, as the clearance is nine (9) feet, zero (0) inches.
9. The preferred disposal method is land application, however if the biosolids are not able to be land applied due to inclement weather, etc., disposal to Waste Management's Grey Wolf Landfill or other registered solid waste landfill shall be accepted. CONTRACTOR shall give the landfill their required notice prior to disposal.
10. The Wastewater Treatment Center staff shall complete a Bill of Lading for each load.
11. OWNER can provide CONTRACTOR with laboratory analysis of the biosolids that verifies the material is **not** a hazardous waste.
12. OWNER shall notify CONTRACTOR of all CONTRACTOR'S requirements under A.A.C. Title 18 Chapter 9 Article 10 and Arizona Pollutant Elimination System (AZPDES) permit number AZ0024716.
13. OWNER shall test the biosolids according to sections I.1.a , I.2, I.6.e, I.10 and I.11 of AZPDES permit number AZ0024716 to ensure that the quality of the biosolids remain below ceiling pollutant concentrations levels.
14. OWNER shall supply CONTRACTOR with documentation of Pathogen Reduction method as required

by AZPDES permit number AZ0024716.

- 15. CONTRACTOR shall supply OWNER with records of the management practices and operational parameters used to achieve, Vector Attraction Reduction requirement Option 10 according to A.A.C. R18-9-1010. CONTRACTOR shall report required information on a City of Cottonwood Land Application Biosolid Tracking Sheet.
- 16. CONTRACTOR shall provide all information of land application sites to OWNER as required by section L.5.a-f of AZPDES permit number AZ0024716 prior to February 19 of each year.
- 17. CONTRACTOR assumes total liability for the sludge from the time it is loaded at OWNER'S Wastewater Treatment Plant up to and through its proper disposal.
- 18. CONTRACTOR shall secure and pay for all applicable Federal, State, County, or local permits and licenses, including a City Business Registration, and comply with all applicable Federal, State, County, or local laws, codes, ordinances, regulations, and safety standards.

ARTICLE XII -- ASSIGNMENT

OWNER and CONTRACTOR respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Agreement. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

Contractor

Waste Management of AZ
Company Name

[Signature]
Signature

Industrial Acet. Manager
Title

Alreigha Isley
Printed Name

10/06/11
Date of Signing

City of Cottonwood

By: _____
Diane Joens, Mayor

Date of Signing

Attest:

Marianne Jimenez, City Clerk

Approved as to form:

By: _____
Steve Horton, City Attorney

CONTRACTOR E-VERIFY STATEMENT

As required by Arizona Revised Statutes Section 41-4401 (Government procurement; E-verify requirement; definitions) CONTRACTOR warrants that it complies with all Federal immigration laws and regulations, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee who provides services or labor in Arizona for wages or other remuneration, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to CONTRACTOR. CONTRACTOR acknowledges that a breach of this warranty by CONTRACTOR or by any subcontractor or sub-subcontractor under this Contract shall be deemed a material breach of this Contract, and is grounds for penalties, including termination of this Contract, by OWNER. OWNER retains the legal right to inspect the papers of CONTRACTOR, and any subcontractor and sub-subcontractor employee who performs work under this Contract, and to conduct random verification of the employment records of CONTRACTOR and each subcontractor and sub-subcontractor who works on this Contract, to ensure that CONTRACTOR and each subcontractor and sub-subcontractor is complying with the warranties set forth above.

AUTHORIZED SIGNATURE:

Alegha Isley

PRINTED NAME:

Alegha Isley

DATE:

10/06/11

TITLE:

Industrial Acct. Manager

ACORD

CERTIFICATE OF LIABILITY INSURANCE

1/1/2012

DATE (MM/DD/YYYY)
6/8/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER LOCKTON COMPANIES, LLC 5847 SAN FELIPE, SUITE 320 HOUSTON TX 77057 866-260-3538	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: ACE American Insurance Company		22667
INSURER B: Indemnity Insurance Co of North America		43575
INSURER C: ACE Property & Casualty Insurance Co		20699
INSURER D:		
INSURER E:		
INSURER F:		

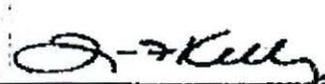
INSURED 1300299 WASTE MANAGEMENT HOLDINGS, INC. & ALL AFFILIATED, RELATED & SUBSIDIARY COMPANIES INCLUDING: WASTE MANAGEMENT OF ARIZONA 40404 SOUTH 99TH AVENUE MOBILE AZ 85239

COVERAGES AZMOBILE AJ CERTIFICATE NUMBER: 11295734 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NR	TYPE OF INSURANCE	ADDITIONAL	SUBROGATION	POLICY NUMBER	POLICY EFF DATE	POLICY EXP DATE	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU INCLUDED <input checked="" type="checkbox"/> ISO FORM CG 00011207 GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	Y	Y	HDO G25S24937	1/1/2011	1/1/2012	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 5,000,000 MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 6,000,000 PRODUCTS - COM/PROP AGG \$ 6,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> MCS-90	Y	Y	MMT H08631463	1/1/2011	1/1/2012	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	XOO G25828563	1/1/2011	1/1/2012	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000
B A A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WLR C46469768 (AOS) WLR C4646977A (CA & MA) SCF C46469781 (WI)	1/1/2011 1/1/2011 1/1/2011	1/1/2012 1/1/2012 1/1/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 3,000,000 E.L. DISEASE - EA EMPLOYEE \$ 3,000,000 E.L. DISEASE - POLICY LIMIT \$ 3,000,000
A	EXCESS AUTO LIABILITY	Y	Y	XTR H08631475	1/1/2011	1/1/2012	COMBINED SINGLE LIMIT \$9,000,000 (EACH ACCIDENT)

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
BLANKET WAIVER OF SUBROGATION IS GRANTED IN FAVOR OF CERTIFICATE HOLDER ON ALL POLICIES WHERE AND TO THE EXTENT REQUIRED BY WRITTEN CONTRACT WHERE PERMISSIBLE BY LAW. CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED (EXCEPT FOR WORKERS' COMP/EL) WHERE AND TO THE EXTENT REQUIRED BY WRITTEN CONTRACT.

CERTIFICATE HOLDER 11295734 FOR BID PURPOSES ONLY	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

References

Palo Verde Utilities/Global Waters

Edward Borromeo

Ed.borromeo@gwresources.com

City of El Mirage

Jamie McCullough – (623) 972-8116

jmccullough@cityofelmirage.org

City of Avondale

Todd Carpenter – (623) 333-4434

tcarpenter@avondale.org

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011
Subject: Library HVAC Replacement - Construction Contract Approval
Department: Engineering
From: Scott Mangarpan, Project Manager

REQUESTED ACTION

Approval from the City Council to proceed with the award of a construction contract to Balanced Heating and Air Conditioning for the replacement of two rooftop HVAC package units at the Cottonwood Public Library in the amount of \$18,790.00.

If the Council desires to approve this item the suggested motion is:

“Move to award a construction contract to Balanced Heating and Air Conditioning for the replacement of two rooftop package units at the Cottonwood Public Library in the amount of \$18,790.00, subject to final approval of the contract by the City Attorney.

BACKGROUND

On October 27, 2011 bids were received for the replacement of two rooftop package units at the Cottonwood Public Library. 5 Mechanical contractors submitted bid packages. The lowest bid of \$18,790.00 was received from Balanced Heating and Air Conditioning of Chino Valley.

JUSTIFICATION/BENEFITS/ISSUES

The existing two rooftop HVAC units we are replacing are original to the building. These units are over 20 years old and have started to fail and are in need of frequent maintenance. The existing units have a low efficiency rating compared to the high efficiency units manufactured today.

COST/FUNDING SOURCE

Funding was approved in the amount of \$32,000.00 from the American Recovery and Reinvestment Act, Arizona Balance of State Energy Efficiency Block Grant. There is no required cash match for this grant. Our contribution is staff time. Contract will be awarded to Balanced Heating and Air Conditioning in the amount of \$18,790.00.

REVIEWED BY:

City Manager: _____

City Attorney: _____

ATTACHMENTS

List of bidders and copy of lowest bid received.

City of Cottonwood SOLICITATION TABULATION

Project Name: Replacement of Library Rooftop Package Units

Solicitation Number: 2012-PW-8

Solicitation Opening Date: October 27, 2011 @ 4:00 p.m.

Firm Name	Bid Amount	Bonds?	Addends Acknow?	Cert of Insur?	Discl of Resp Stmt?	Non-Coll Affidavit?	Immigration Warranty?	List of Subs/Vend?
Balanced Heating & Air Conditioning	18,790.00	Y (CASHIER'S CHECK)	Y	Y	Y	Y	Y	Y
Caymus Corporation	No Bid	—	—	—	—	—	—	Y
Delta BAP, Inc.	27,900.00	Y	#1 only	Y	Y	Y	Y	Y
Energy Savings H&C	25,466.00	N	Y	Y	—	—	Y	—
Just In Time Refrigeration LLC	No Bid	—	—	—	—	—	—	—
TDK Comfort Systems	23,560.00	Y	Y	Y	Y	Y	Y	Y
Verde Sol-Air Services	No Bid	—	—	—	—	—	—	—
Yavapai Mechanical	24,590.00	Y	#1 only	Y	Y	Y	Y	Y

Notes: _____

BID FORM

Proposal of: City of Cottonwood Public Library Date: 10-26-11

A corporation duly organized and existing under the laws of the State of Arizona

A partnership consisting of _____

An individual doing business under the name and style of _____

PROJECT: Replacement of Two (2) Ten Ton Rooftop Package Units on the City Library located at 100 East 6th Street, Cottonwood, AZ 86326.

1. The Undersigned hereby proposes to furnish the plant, materials, labor, construction, equipment, rigging, services and transportation required for performing all the work for construction of the Project described above, and to construct the same and install the material within for the City, in a good and workmanlike manner and to the satisfaction of the City strictly in conformity with the specifications, plans, schedules and pertinent contract documents, for the base bid in the sum of:
Eighteen thousand seven hundred and ninety - dollars (\$ 18,790.00).
2. The Undersigned agrees to deliver to the City within ten (10) days of issuance of the Notice of Intent to Award, a Performance Bond and a Payment Bond, each equal to one hundred percent (100%) of the contract amount, and execute the contract at that time.
3. Enclosed is Bid Security as required by the Information and Instructions to Bidders payable to the City in the amount of One thousand Eight hundred Seventy nine dollars (\$ 1,879.00) which shall become the property of the City in the event that the contract and Bonds are not executed within the time set forth, as liquidated damages for the delay and additional work caused thereby.
4. The Undersigned agrees, if awarded the contract, that work shall commence on the date designated in the Notice to Proceed and shall be Substantially Complete no later than 45 CALENDAR DAYS after receipt of Notice to Proceed.
5. The Undersigned agrees that the base bid as stated herein includes the cost of insurance required as listed in the General Conditions, or as otherwise be required by the specifications.
6. The Undersigned hereby declares that he/she has visited the site and has carefully examined the contract documents relating to the work covered by this bid, and has checked carefully all of the figures in this bid and understands that the City will not be responsible for any errors or omissions on the part of the Undersigned in making this bid.
7. The Undersigned understands that the City reserves the right to reject any and all bids or any part thereof, or to accept any bid or any part thereof, or to waive any commissions or omissions of an insubstantial nature in any bid, or to withhold the award for any reason.
8. Non-Collusion Affidavit: The Undersigned certifies that this bid is genuine, and is not in any way collusive or a sham; that the bid is not made with the intent to restrict or prohibit competition; that the firm submitting the bid has not revealed the contents of the bid to, or in any way colluded with, any other firm which may compete for the contract; and that no other firm which may compete for the contract has revealed the contents of a bid to, or in any way colluded with, the firm submitting the bid.

By signing below, the Undersigned certifies that the statements provided herein are accurate and certifies the intent to be bound by such statements.

Name of Contractor: Balanced Heating & Air Conditioning Inc

Signature: V. McClellan

By: Veve McClellan

Title: President

Business Address: 1895 N. Rancho Santa Maria Dr.
China Valley, AZ 86323

Telephone: 928-308-4623

Bidder shall signify the receipt of all Addenda (if any):

Addenda No.: 1

Bidder's Initials: VM

Addenda No.: 2

Bidder's Initials: VM

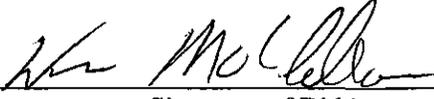
Addenda No.: _____

Bidder's Initials: _____

CERTIFICATE OF INSURABILITY

I hereby certify that as a Bidder to City of Cottonwood (City) for Solicitation No. _____, I am fully aware of insurance requirements contained in the Contract and by the submission of this bid. I hereby assure City that I am able to produce the insurance coverage required should I be selected to be awarded the Contract.

Should I be awarded the Contract by City and then become unable to produce the insurance coverage specified within ten (10) working days, I am fully aware and understand that I may not be considered for further projects by City.


Signature of Bidder

Balanced Heating & Air Conditioning, Inc
Company

10-26-11
Date

NON COLLUSION AFFIDAVIT

STATE OF: Arizona)
) ss
COUNTY OF:)

Balanced Heating & Air Conditioning, Inc, Veva McClellan
(Name of Company, Representative)

being first duly sworn, deposes and says:

That she/he is President of Balanced Heating & Air Conditioning, Inc.
(Title) (Name of Company)

and

That pursuant to Section 112 (C) of Title 23 USC or other applicable laws, he/she certifies as follows:

That neither he/she nor anyone associated with the said

Balanced Heating & Air Conditioning, Inc
(Name of Company)

has, directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding for the bid for the:

Replacement of two (2) ten ton rooftop package units on the City Library located at 100 East 6th Street, Cottonwood, AZ 86326.

This bid is genuine and not made in the interest of or on behalf of any undisclosed firm or corporations and is not submitted to conform to any agreement or rules of any group, association, organization or corporation. Bidder has not submitted a false bid or solicited whether directly or indirectly with any other Bidder to submit a false bid which would give one particular bid any advantage over others or the owner.

By: [Signature]
(Signature of Individual/Representative)

STATE OF)
) ss.
COUNTY OF)

On this the 27 day of OCT, 2011, before me, the undersigned NOTARY PUBLIC, personally appeared Veva McClellan, who acknowledged to me that they executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
NOTARY PUBLIC

My Commission Expires: Feb 14 2014



CONTRACTOR IMMIGRATION WARRANTY

(To Be Completed by Contractor Prior to Execution of Contract)

A.R.S. § 41-4401 requires as a condition of your Contract, verification of compliance by the Contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the Contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: 2012-PW-8		
Name (as listed in the contract): City Liberty		
Street Name and Number: 100 East 6th Street		
City: Cottonwood	State: Arizona	Zip Code: 86326

I hereby attest that:

1. The Contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this Contract;
2. All subcontractors performing work under this Contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:

Veva McClellan

Printed Name: Veva McClellan

Title: President

Date (month/day/year): 10-26-11

LIST OF SUBCONTRACTORS AND MATERIAL VENDORS

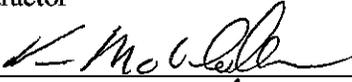
PROJECT: Replacement of Two (2) Ten Ton Rooftop Package Units on the City Library located at 100 East 6th Street, Cottonwood, Arizona 86326.

In compliance with the Information and Instructions to Bidders, the undersigned submits the following names of subcontractors and material vendors in a sealed envelope to be used in performing the work for the above referenced Project.

SUBCONTRACTOR'S OR MATERIAL VENDOR'S WORK	SUBCONTRACTOR'S NAME
1. Demolition	Balanced Heating
2. Site-Work	
3. Concrete	
4. Misc Steel	
5. Carpentry	
6. Masonry	
7. Carpet	
8. Misc Finishes	
9. Painting	
10. HVAC	Balanced Heating
11. Electrical	
12. Other	Maced Crane

Submitted By:

Balanced Heating & Air Conditioning Inc
Contractor

By: 

Title: President

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

**Subject: Lease of Old Recreation Center Building
To the Adopt-For-Life Center for Animals (AFLCFA)**

Department: Administration

From: Doug Bartosh, City Manager

REQUESTED ACTION

To approve the use of the City of Cottonwood's vacant old Parks and Recreation building located at 791 North Main Street as a boutique thrift store for the Adopt-For-Life Center for Animals.

Motion:

I move to approve the lease of the vacant Parks and Recreation Building at 791 N Main Street to the Adopt-For-Life Center for Animals, for use as a boutique thrift store, at the cost of \$1 annually.

BACKGROUND

The Adopt-For-Life Center for Animals (formerly Verde Valley Humane Society) has been in operation in the City since 1986. In that time the shelter has grown and taken on greater responsibility for animal care in the valley. Many years ago the shelter expanded, opening the "Good Buy Thrift Store" to help pay expenses at the shelter. Over the last 6-8 months there have been many changes at the shelter including an entirely new board and new Executive Management staff. Upon review of the financial records in September 2011, the Board found the "Animal Angels" thrift store (previously known as the Good Buy Shoppe) operating at a significant loss. Due to the delicate nature of the Center's finances at that time, they decided the best course of action would be to temporarily close the thrift store, while a better location with a better lease cost was located.

Over the last 30 days, the Centers staff has investigated numerous locations for the new thrift store. During this investigation the President of the Board had a discussion with both the City of Cottonwood Administrative Services and Development Services

Managers, who suggested the vacant maintenance building or old recreation center might be a good fit for the AFLCFA Thrift Store. The thought would be to lease either structure to the Center in a fashion similar to that lease being used for the Boys and Girls Club, for \$1 annually.

On October 19th, the Board of Directors of AFLCFA met during a regular board meeting and discussed the viability of this location. After much discussion, the benefits of being located in the Old Town area, the minimal cost to get into and lease the building, and the fact the City will continue to maintain the building should any major repairs be necessary, convinced all the board members to approve this offer.

JUSTIFICATION/BENEFIT/ISSUES

The thrift store for the Center was originally set up as a means of income to support the shelter. Per AFLCFA, due to past management, the new board found the store operating at a loss and these findings were supported by the recent audit of the 2009-2010 records. The 2010-11 audit began in October 2011 and the board anticipates it too will show a consistent loss.

In the interim, the AFLCFA new Executive Director has a hired new store manager, Linda Nuss, who provided the board with a breakdown of store profit increases while she was the manager in the past. These profits were significant and at times, tripled profits of previous years. With new management, a new location and new branding, the AFLCFA Board of Directors and staff anticipate the thrift store will be able to provide significant support to the shelter almost immediately and provide over 50% of the Center's financial needs within a year of opening.

The plan is to open the store with the name "Paw Boutique." AFLCFA staff will approach P&Z for approval of signage, mural requirements and other appropriate needs.

It is City staff's feeling that such a use of the building would benefit the Old Town area, attracting clientele that might not otherwise travel to Old Town. It will assist in sustaining the Center, helping them to continue providing critical shelter care to the animals in our community, and it is an ideal location for educational events in the future.

COST/FUNDING SOURCE

Cost to the AFLCFA was suggested to be an annual lease cost of \$1 per year, similar to that being supplied to the Boys and Girls Club. Staff reported that the building would still be under the care of the City for all major repairs, such as roof leaks or HVAC problems. With Council's approval, any building preparation expenses related to this lease will be taken from account 01-21-00-7008.

REVIEWED BY

City Manager: _____

City Attorney: _____

ATTACHMENTS

- Lease Document
- Building Legal Description

LEASE AGREEMENT

SECTION I. PARTIES

This lease is made and entered into by and between the CITY OF COTTONWOOD, an Arizona Municipality ("LANDLORD"), and VERDE VALLEY HUMANE SOCIETY, INC. ("TENANT"). This lease shall be effective as of November 1, 2011. TENANT covenants as a material part of the consideration for this lease to keep and perform each and all of these terms, covenants and conditions. Conditioned on this performance, LANDLORD lease to TENANT, and TENTANT leases from LANDLORD the property for the Term (as hereinafter defined).

SECION II. PROPERTY

- A) Property. LANDLORD hereby leases to TENANT, and TENANT hereby leases from LANDLORD, for the Term, at the Lease Rate (as hereinafter defined), and in accordance with the provisions set forth herein, the "Premises" or the "Property" which is the land and the building and improvements thereon located at 791 N Main Street, Cottonwood Arizona.
- B) Condition. TENANT has examined the physical condition of the Property, is familiar with and takes it "as is." Except as otherwise set forth herein, LANDLORD makes no express or implied warranties as to the physical condition of the property.
- C) Right of Entry. LANDLORD grants to TENANT the right of entry to the property.

SECTION III. TERM

The term of this lease is five (5) years (the "Term").

SECTION IV. LEASE RATE

Lease Rate. The lease rate (the "Lease Rate") for the premises is one dollar (\$1.00) per year.

SECTION V. TAXES AND ASSESSMENTS

TENANT is responsible for and must pay and discharge when due, all real and personal property taxes, state, municipal, and local taxes, general and special assessments and other charges of every description levied on or assessed against the Property and improvements located on or in the Property ("taxes"), to the full extent of installments due during the term of this lease, where chargeable against LANDLORDS or TENANT. TENANT shall pay the payments directly to the charging authority. TENANT further agrees on demand to produce and exhibit to LANDLORD receipts by proper official showing the payments agreed by LANDLORD to be made. TENANT may, however, defer the payment of any tax, assessment, or other charge so long as the validity of such items shall be contested by TENANT in good faith and by appropriate legal proceedings, provided that TENANT shall have furnished to LANDLORD the bond of a surety company or other security satisfactory to LANDLORD, in an amount satisfactory to LANDLORDS, securing LANDLORD against he payment of such tax, assessment , or other charge so contested and against any loss, damage or penalty whatsoever in

any way arising from such failure of TENANT to pay it. Payment of taxes shall commence on the effective date of this lease.

SECTION VI. USE OF THE PROPERTY AND PREMISES

- A) Uses. TENANT shall use the property solely as the Adopt-For-Life Center for Animals (Verde Valley Humane Society, Inc.) boutique thrift store and shelter educational events. All uses of the Property not permitted by this lease are prohibited unless specifically consented to by LANDLORD in writing.
- B) Zoning. TENANT agrees to abide by the applicable City of Cottonwood zoning ordinances.
- C) Nuisance. TENANT shall not conduct or permit to be conducted any public or private nuisance on the Premises, nor commit or permit to be committed any waste thereon. TENANT shall not cut or waste or allow to be cut or wasted, any timber or standing tress on the Property without written consent of the LANDLORD. TENANT shall report to the LANDLORD and appropriate laws enforcement authorities any material trespass or waste committed on the Property of which the TENANT has actual knowledge.
- D) Conformity to Law. TENANT shall maintain the Premises in a clean and safe condition. TENANT shall not use or permit the Premises to be used in any manner that is not inconformity with all applicable federal, state, county, and municipal laws, statutes, ordinances and regulations.
- E) Minerals. LANDLORD excepts and reserves out of the Property all oils, gases, geothermal resources, coal, ores, limestone, minerals, fossils and fertilizers of every name and description that may be found on the Property.
- F) Surrender. TENANT shall surrender peaceable possession of the Property upon the expiration of this lease.

SECTION VII. MAINTENANCE: REPAIRS

TENANT shall, throughout the TERM, at TENANT's sole cost and expense, maintain the premises and all improvements in clean and safe condition of maintenance and repair, in conformity with the requirements of any applicable law or regulation. LANDLORD shall be under no obligation to maintenance, repair, rebuild or replace any improvements on the Premises except that LANDLORD shall be responsible for maintenance of the ceiling, roof and structure components of the Premises and of the major mechanical equipment contained therein consisting of the heating and cooling system.

SECTION VII. LIEN

- A) Payment: Indemnity. TENANT shall be responsible for payment of all costs and charges for any work done by or for it on the Property or in connection with TENANT's occupancy thereof. THENANT shall keep the Property free and clear of all mechanic's lies and other liens and encumbrances on account of work done for or authorized by TENANT or persons or entities claiming under it. In no event shall any such lien attach to fee title to the property. TENANT expressly agrees to and shall

indemnify and hold LANDLORD harmless against liability, damages, costs attorney's fees and all other expenses or loss on account of claims of lien or other encumbrances of laborers or material men or others for work performed or materials or supplies furnished for or authorized by TENANT or persons or entities claiming under it. Further, any contracts between TENANT and any contractors or subcontractors shall expressly hold LANDLORD harmless against any liability arising from such contracts, as described above.

- B) NOTICE Should any claims or lien or other encumbrances be filed against fee title to the Property or any action purporting to affect fee title to the Property be commence, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

IX. OWNERSHIP OF IMPROVEMENTS

- A) During Term of Lease. All improvements constructed on the premises by the TENANT as permitted by this lease shall be owned by the TENANT until expiration off the term or sooner termination of this lease unless earlier dedicated to LANDLORD.
- B) Expiration of Lease. All improvements on the Premises at the final expiration of the term, other than trade fixtures, shall, without compensation to TENANT, become LANDLORD's property free and clear of all claims to or against them by TENANT or third person. At the final expiration of the term and renewals or extension, the premises shall be free and clear of all mortgages and liens.

X. INDEMNIFICATION

- A) Losses. TENANT shall hold harmless and indemnify LANDLORD from all liability, fees, costs, damages and penalties, including attorneys' fees, court costs and other legal expenses arising out of TENANT's use of Premises. TENANT agrees to indemnify LANDLORD for any such losses except such matters caused by or resulting from misconduct, misfeasance, or gross negligence of LANDLORD or its agents, employees or contractors.
- B) Defense. In case an action or proceeding is brought against LANDLORD by reason of any such occurrence, TENANT, upon LANDLORD's request and at TENANT's expense, will resist and defend such action or proceedings, or cause the same to be resisted and defended either by legal council designated by TENANT or, where such occurrence is covered by liability insurance, by legal counsel designated by the insurer if so required by such insurer.
- C) Environmental Damage. TENANT shall indemnify and hold LANDLORD harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs, fines and actions, suites, costs, taxes, charges expense and disbursements, including legal fees and expenses of whatsoever kind or nature (collectively, "claims" or "damages") imposed on incurred by, or release of any "Regulated Substance," on, under or from the Property occurring after the effective date of this lease ("Commencement Date"). For purposes of this Section, "cleanup costs" include any claims or damages in any way related to or arising out of removal, treatment, storage, disposition mitigation, clean up or remedying of the Regulated Substances on,

under or upon the Property. TENANT shall not indemnify LANDLORD for any claims or damages resulting from any Regulated Substances present on, under or upon the property before the "Commencement Date."

For the purposes of this lease, the term, "Regulated Substances" shall include but not be limited to substances defined as "regulated substances," "hazardous waste," "hazardous materials," "toxic substances," "pollutants," "toxic pollutants," "herbicides," "fungicides," "rodenticides," "insecticides," "contaminants," or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act; the Hazardous Materials Transportation Act; the Toxic Substance Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Clean Water Act; the Safe Drinking Water Act; the Arizona Environmental Quality Act; the Arizona Hazardous Waste Management Act and the Arizona Underground Storage Tanks Regulations Act; and any other relevant federal, local or state environmental or pollution laws and the regulations, rules and ordinance adopted or promulgated pursuant thereto.

This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable local, state or federal environmental laws, regulations or ordinances, or provisions thereof, regardless of any real or alleged fault, negligence, willful misconduct, gross negligence, breach of warranty or strict liability on the part of any of the indemnities. This environmental indemnification shall survive the expiration or termination of this lease and/or any transfer of all or any portion of the property.

In the event any such action or claim is brought or asserted against LANDLORD, LANDLORD shall give immediate notice thereof to TENANT, provide TENANT with such reports, tests, studies, analysis, or other information the LANDLORD may have with respect thereto and the TENANT shall have the right; (i) to participate in the conduct of any further required cleanup, removal or remedial citations and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operations / businesses located on the property; and (ii) to participate in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

XI. INSURANCE

A) Liability. TENANT shall provide, pay for and maintain during the Term of this lease, commercial general liability insurance that insures TENANT and LANDLORD against liability for injury to persons and property and death of any person or persons occurring in, on or about the Premises, or arising out of TENANT's development, construction, maintenance, use of occupancy thereof, the policy or policies for which shall name LANDLORD as an additional insured. Further, the policies shall provide that their coverage is primary over any other insurance coverage available to the LANDLORD, its servants, agents and employees. Further, TENANT shall procure an endorsement on this coverage requiring the insurance carrier to give LANDLORD at least forty-five (45) days written notice prior to alteration, amendment,

cancellation or any other action affecting the coverage. Prior to issuance of a building permit, TENANT shall furnish LANDLORD with certificates of insurance or other evidence that such insurance coverage will be in effect prior to beginning any construction activity.

- B) Amounts. The insurance shall afford protection of not less than \$1,000,000 with respect to injury to or death of one person, \$1,000,000 with respect to any one occurrence, and \$500,000 with respect to property damage; provided, however, that the minimum amount coverage for the above shall be adjusted upward on LANDLORD's reasonable request. If at any time TENANT shall fail, neglect or refuse to cause such insurance to be provided or maintained, then LANDLORD may, at its election, procure or renew such insurance, provided that LANDLORD has given TENANT notice of such failure and such failure continues for fifteen (15) days after such notice is given, and any amounts paid therefore by LANDLORD shall be added to the Lease Rate due on or before the next payment of such premium until repaid by TENANT. TENANT shall provide proof of renewal of insurance policies fifteen (15) days prior to the expiration of prior policies.
- C) Insurer. The insurance provided for pursuant to this Section shall be effected under a valid and enforceable policy or policies issued by insurers of recognized responsibility authorized to do business in the State of Arizona and may be maintained pursuant to blanket or umbrella policies of insurance maintained by TENANT so long as the coverage afforded is no less than that required under this Section.
- D) Copies. Copies of all the executed policies of insurance including endorsements or certificates thereof shall be delivered to LANDLORD prior to TENANT's use of the Property.

XII. DAMAGE

If the Premises or any portion thereof are damaged or destroyed during the term of this lease, TENANT may (but shall be under no obligation to) arrange, at its expense, for the repair, restoration and construction of the same substantially to its former condition. In any event, such damage or destruction shall not terminate this lease or relieve TENANT from its duties and liabilities hereunder.

XII. TRADE FIXTURES AND PERSONAL PROPERTY

Except as otherwise provided in this lease or as provided in separate agreements, any moveable trade fixtures, signs, equipment and other personal property installed in or on the Premises by TENANT so long as their removal will not result in structure damage, shall remain the property of TENANT. TENANT shall have the right, provided they are not then in Default (as hereinafter defined) at any time to remove or permit removal of any and all of the same. TENANT shall be considered to have abandoned same if not removed within fifteen (15) days of the termination of this Lease.

XIV. ASSIGNMENTS AND SUBLEASES

- A) Assignments and Subleases. TENANT may not assign this lease or sublet any or all of the property.
- B) Financing. TENANT shall not have the right to assign or otherwise encumber by way of mortgages, deeds of trust or other documents or instruments, all or any part of its right, title and interest in and to this Lease to any person or entity.

XV. NOTICE OF DEFAULT

- A) Events. Default shall be deemed to have occurred in the following situations;
 - 1. If TENANT fails to perform or comply with any material term of this lease and such failure continues for forty-five (45) days after the receipt of notice of Default from LANDLORD; provided, however, that with respect to any such failure which is of such nature that although curable, it cannot, with due diligence and adequate resources, but cured with forty-five (45) days, a Default shall not be deemed to exist if TENANT commences curing such failure within forty-five (45) day period and thereafter proceeds with reasonable diligence and action to complete curing such failure.
 - 2. To the extent then allowed by law, if TENANT files a voluntary petition in bankruptcy which is not dismissed within ninety (90) days after the filing thereof; is adjudicated bankrupt or insolvent; files any petitions or answers seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation; seeks, consents to or acquiescence's in the appointment of any trustee, receiver or liquidator of TENANT or of all or any substantial part of its respective property or of the pertinent portion of the Premises; makes any general assignments for the benefit of creditors; or admits in writing its inability to pay its debts generally as they come due.
 - 3. To the extent then allowed by law, if a petition is filed against the TENANT seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future, federal, state or other statute, law or regulation, which remains undismissed or unstayed for an aggregate of ninety (90) days (whether or not consecutive), or if a trustee, receiver, or liquidator of TENANT, or of all or any substantial part of the Premises is appointed without the consent or acquiescence of LANDLORD any such appointment remains unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive).
- B. Remedies. Subject to the notice and cure provisions set forth herein, if Default exists, LANDLORD may exercise, in addition to its rights at law or in equity, any of those remedies set fort below:
 - 1. LANDLORD may terminate this lease and declare all rights of TENANT ended.
 - 2. LANDLORD may enter upon the Premises as the agent of TENANT by force or otherwise, without being liable in any way therefor, and sublease or assign portions of the Premises as the agent of the TENANT at such price, upon such

terms and for the duration of time as LANDLORD may determine, and receive the lease payments or payments thereunder, in which event LANDLORD agrees to use its best efforts to sublease or rent the pertinent portions of the Premises.

C. Waiver. No waiver or breach of any term of this release shall be construed as a waiver of any succeeding breach of the same or any other term.

XVII. INSPECTION

TENANT acknowledges and agrees that LANDLORD and its authorized representatives shall have the right to enter the Premises and any portion thereof at all reasonable times following reasonable notice to inspect for compliance with the terms of this lease, and may take all such action as may be necessary or appropriate for such purposes. Furthermore, TENANT acknowledges and agrees that, at any time within one year prior to the expiration of the Term and upon reasonable notice, LANDLORD may enter the Premises or any portion thereof for the purpose of showing the same to prospective tenants, purchasers, and mortgagees and, with the prior approval of TENANT, may display on the Premises advertisements for sale or lease. No entry pursuant to this Section shall constitute an eviction.

XVII. HOLDING OVER

TENANT is not entitled, upon the expiration, termination or cancellation of this lease, to hold over for any reason.

XIX. ARBITRATION

- A) Jurisdiction. The parties hereby agree that all claims, disputes and other matters in question hereunder shall be subject to arbitration as set forth below; provided, however, that the arbitrators shall have no power to change any of the provisions of this lease in any respect nor shall they have any power to make an award of reformation and the jurisdiction of the arbitrators is hereby expressly limited accordingly.
- B) Request. Either party may serve the other with a written request for arbitration which shall also specify the name and address of one person designated to act as arbitrator on behalf of that party. Within thirty (30) days after the service of such request, the other party shall give to the first party written notice specifying the name and address of the person designated to act as arbitrator on its behalf. If the other party fails to so notify the first party within the time above specified, then the appointment of the second arbitrator shall be made by the first arbitrator. The two arbitrators chosen shall meet within ten (10) days after the second arbitrator is appointed and shall appoint a third arbitrator who shall be a competent, impartial person, and in the event their being unable to agree upon such appointment within ten (10) days after the time aforesaid, the said arbitrator shall be selected by the parties themselves if they can agree thereon within a further period of twenty (20) days. If the parties do not so agree, then either party on behalf of both may request the American Arbitration Association to appoint

such third arbitrator. At least one of the arbitrators chosen or appointed pursuant to this Section must be an attorney-at-law actively engaged in the practice of law in Arizona for at least ten (10) years.

- C) Rules. Said arbitration shall be conducted in accordance with the rules for Commercial Arbitration then in effect for the American Arbitration Association or any successor organization thereto.
- D) Decision. The arbitrators shall render their decision, upon the concurrence of at least two of their number, within sixty (60) days after the appointment of the third arbitrator. Their decision shall be in writing and counterpart copies shall be delivered to each of the parties. A decision in which any two of the arbitrators acting hereunder concur may be appealed de novo directly to the Superior Court of Arizona, Yavapai County, within thirty (30) days of the date of the decision. Unless so appealed, such decision shall in all cases be final, binding and conclusive upon the parties and judgment upon the decision may be entered by any court having jurisdiction thereof. If a party appealing the award to the Superior Court does not receive an award by that court greater than the award received in the arbitration, such party shall be responsible for all parties' reasonable costs and expenses of the appeal, including attorneys' fees.
- E) Fees. Each party shall pay the fees and expenses of the original arbitrator appointed by such party or in whose stead, as above provided, such arbitrator was appointed, and the fees and expenses of the third arbitrator shall be borne equally by the parties. Each party shall bear the expense of its own counsel, experts, and preparation and presentation of proof.
- F) Injunctive Relief. Nothing contained herein shall preclude either party from obtaining temporary restraining orders or other injunctive relief issued by courts of law or equity pending the outcome of arbitration pursuant hereto.

XX. MISCELLANEOUS

- A) Grant. This lease grants TENANT only those rights expressly granted herein. TENANT shall also be entitled to all rights available to it under any applicable laws, ordinances or rules.
- B) Successors. Each provision of the lease shall extend to, be binding on and inure to the benefit of LANDLORD and TENANT only, and not to their respective successors in interest and permitted assigns.
- C) Relationship. The relationship of the parties hereto is that of LANDLORD and TENANT, and it is expressly understood and agreed that LANDLORD does not in any way or for any purpose become a partner of TENANT or a joint venture with TENANT.
- D) Transfer of Ownership. After the expiration or termination of this lease, TENANT shall execute, acknowledge and deliver to LANDLORD within fifteen (15) days after written demand from LANDLORD to TENANT, any document reasonably requested by TENANT transferring the ownership, right, title or interest in the leasehold and to the improvements to LANDLORD or other document required by any reputable title company to resolve the cloud of this lease from the Premises.
- E) Severability. If any provision of this lease or any application thereof shall be invalid or unenforceable, the lease shall remain in full force and effect if such provision was

not a material inducement of the benefitted party and the remaining provisions permit the parties to achieve the practical benefits of the arrangements contemplated hereby.

- F) Amendments. LANDLORD and TENANT expressly agree that this lease may be amended from time to time, by only by mutual consent in writing.
- G) Memorandum. The parties shall execute and TENANT shall cause to be recorded, at TENANT's option, a memorandum of this lease suitable for recording purposes, in the Official Records of Yavapai County, Arizona. The TENANT shall be responsible for preparing and recording the necessary documents and all costs associated therein.
- H) Construction. The parties acknowledge that they have both had the benefit of legal counsel in negotiating and drafting this lease. They therefore agree that, notwithstanding anything contained herein to the contrary, this lease and all of its terms, provisions and conditions shall be construed fairly and not against either LANDLORD or TENANT.
- I) Notices. Any notice, application, request, demand, approval, or consent which may be given or is required to be given under this Lease, or any other document to be delivered by one party to the other shall be in writing sent by Federal Express or its equivalent, or sent by United States Mail, postage prepaid, certified or registered mail, return receipt requested, and addressed as follows:

To LANDLORD: City Manager
 City of Cottonwood
 827 N Main Street
 Cottonwood AZ 86326

To TENANT: Adopt-For-Life Center for Animals
 AKA: Verde Valley Humane Society Inc.
 PO Box 1429
 1250 W Mingus Ave
 Cottonwood AZ 86326

or to such other addresses as any party may from time to time designate in writing and deliver in a like manner to the other party.

- J) Attorneys Fees. If either party resorts to legal action to enforce any Lease term or to recover damages for the breach thereof, the prevailing party is entitled to recover reasonable attorneys' fees in addition to the amount of judgment costs and other expenses as determined by the court and not a jury. In the event LANDLORD is represented by a salaried City Attorney, LANDLORD's reasonable attorney's fees shall be calculated based upon a rate equal to the reasonable hourly rate for comparable work and attorney experience in the private sector in Yavapai County, Arizona.
- K) Future Sale. TENANT acknowledges that it has not been induced to enter into this lease by any promise from LANDLORD or any of its agents, servants or employees that the Property will be offered for sale at any time.
- L) Fee Interest. No provision of this lease shall create any right in TENANT to a fee interest in the property.

- M) Governing Law. This lease shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. Parties have agreed that any legal proceeding arising out of this Lease shall be brought in the Superior Court of Arizona, Yavapai County, and the parties consent to the jurisdiction thereof.
- N) Headings. The titles and any subtitles to the Sections and paragraphs of this lease are not a part of this lease and shall have no effect upon the construction or interpretation of any part of the Lease.
- O) Integration. This lease, together with any exhibits appended hereto, embodies the whole agreement of the parties. There are no other agreements or terms, oral or written. This document supersedes all previous communications, representations and agreements, oral or written, between the parties.
- P) The individual executing this lease agreement on behalf of TENANT swears / affirms under penalty of perjury that she / he is authorized to take such action.

DATED this ____ day of _____, 2011

LANDLORD: City of Cottonwood

By: _____
 Title: Mayor

Attest: _____
 City Clerk

TENANT: Verde Valley Humane Society, Inc.

By: _____
 Title: _____

STATE OF ARIZONA)
) ss.
 COUNTY OF Yavapai)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, as _____ of Verde Valley Humane Society, Inc., an Arizona nonprofit corporation, on behalf of the corporation.

Notary Public _____ My Commission Expires: _____

Approved as to form:

 City Attorney

I do hereby certify that the within instrument was filed and recorded at the request of
on JUL 6 '82 - 11 20 AM o'clock book 1471 Official Records Page 16-17
Records of Yavapai County, Arizona. WITNESS my hand and official seal the day and year first above written.

By PATSY C. JENNEY, County Recorder Deputy
Mary Young

when recorded, mail to
Town of Cottonwood
823 N. Main St.
Cottonwood, AZ. 86326
Order No. 32499

By _____
County Recorder
Deputy Recorder
Compared Photostated Fee 3'

WARRANTY DEED

For the consideration of Ten and NO/100 Dollars, and other valuable considerations, I or we,
EMIL KOVACOVICH and CARMEN E. KOVACOVICH, husband and wife

the GRANTORS

do hereby convey to
TOWN OF COTTONWOOD, a municipality

the GRANTEES

the following described real property situate in Yavapai County, Arizona

SEE EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

NO TRANSFER FEE NECESSARY
EXEMPT UNDER ARS-42-1614 A-3

SUBJECT TO: Existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

And the Grantor, do, warrant the title against all persons whomsoever, subject to the matters above set forth.

Dated this 13 th day of April, 1982

Emil Kovacovich
EMIL KOVACOVICH

Carmen E. Kovacovich
CARMEN E. KOVACOVICH

STATE OF ARIZONA }
County of Yavapai } ss.

This instrument was acknowledged before me this
17 day of May 1982 by
Emil Kovacovich and Carmen E. Kovacovich
Margaret F. W...
Notary Public

My commission expires: My Commission Expires July 22, 1983

BOOK 1471 PAGE 16

STATE OF ARIZONA }
County of } ss.

This instrument was acknowledged before me this
day of by

My commission expires:

Notary Public

ESCROW #01-032499

EXHIBIT "A"

All those certain pieces or parcels of land, situate, lying and being a part of Subdivision No. Two, Hopkins Ranch, an Addition to Cottonwood, Arizona, and being in Section Thirty Four, Township Sixteen North, Range Three East of the Gila and Salt River Base and Meridian, a plat of which is recorded in the office of the Yavapai County Recorder in Book 3 of Maps, page 23, and more particularly described as follows:

PARCEL 1: The surface only to a depth of 25 feet of the following described property BEGINNING at the Southwest Corner of Lot Fifteen, Block One, thence running North 76.26 feet to the Northwest corner of Lot Fourteen, Block One; thence East 230.00 feet to the Northeast corner of Lot Seven, in Block Two; thence South 38.00 feet to the bank of wash on Lot Seven, Block Two; thence in a Southwesterly direction along the bank of wash 146.92 feet to Main Street; thence in a Northwesterly direction along Main Street 114.81 feet to the place of BEGINNING.

PARCEL 2: The surface only to a depth of 25 feet of the following described property The East Half of that portion of that certain alley (abandoned) described as follows: BEGINNING at the Southwest corner of Lot Fifteen, Block One; thence North 76.26 feet to the Northwest corner of Lot Fourteen, Block One; thence Westerly to the Northeast corner of Lot Seven, Block One; thence Southeasterly along Main Street to the Point of Beginning.

BOOK 1471 PAGE 17

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

Subject: West Mingus Avenue Reconstruction Property Exchange

Department: Development Services

From: Dan Lueder

REQUESTED ACTION

Consider approval of Ordinance Number 582 including an emergency clause which authorizes a land exchange with Clemenceau Townsite, L.L.C. for right-of-way required for the reconstruction and improvement of west Mingus Avenue.

If the Council desires to approve this item the suggested motion is: Move to approve Ordinance Number 582 authorizing a land exchange agreement with Clemenceau Townsite L.L.C. to provide right-of-way for the West Mingus Avenue reconstruction project.

BACKGROUND

West Mingus Avenue from SR 89A to Willard Street is designed to be reconstructed as a 3-lane collector street with a modern roundabout at the intersection of Mingus and Willard. The wider street needs considerably more right-of-way for this project and to meet city design standards.

The City owns two parcels adjacent to the Clemenceau Townsite L.L.C. which contain three wells and booster stations along with four reservoirs and the associated pumps and appurtenances. The Council has previously authorized decommissioning of these sites subsequent to the former Clemenceau water system being connected via gravity supply from the former Cottonwood Water Works water system. This decommissioning was as a result of a determination that the cost to upgrade these well sites to current standards would cost far more than the value of the wells and reservoirs. Two 100,000 gallon water reservoirs have been relocated from the Clemenceau sites to the WWTP on West Mingus Avenue and will be utilized for reclaimed water storage. As a component of the land exchange, Clemenceau Townsite L.L.C. has agreed to remove and dispose of all remaining components of the well site including abandonment of the three wells per ADWR standards.

The two city owned parcels being exchanged total approximately 1.44 acres and the right of way being obtained from Clemenceau Townsite L.L.C. totals approximately 2.36 acres. An appraisal performed by Mr. Glenn Straub in April of 2010 determined the properties had the same approximately value of \$1.90 per square foot.

The actual construction of the West Mingus Avenue improvements is time sensitive due to the short time frame available for constructing the Mingus and Willard roundabout during summer recess of the Cottonwood Middle and Elementary Schools. To meet this time frame for construction it is necessary to begin relocation of the utilities immediately and this additional right-of-way being acquired is necessary for the utility relocations. It is for this reason that Council is being asked to approve this land exchange with an emergency clause.

JUSTIFICATION/BENEFITS/ISSUES

This is an exchange of the fee simple interest in the land. The agreement also gives the City the fee interest in the existing, 48'-wide, Mingus Avenue right-of-way that was granted in 1966.

COST/FUNDING SOURCE

REVIEWED BY:

City Manager: _____

City Attorney: _____

ATTACHMENTS

Purchase Agreement

Right-of-way dedications

Ordinance Number 582

REAL ESTATE EXCHANGE AGREEMENT

This Exchange Agreement ("Agreement") is made and entered into as of the _____ day of _____, 2011, by and between Clemenceau Townsite, L.L.C., an Arizona limited liability company (hereinafter referred to as "Clemenceau"), and the City of Cottonwood, Arizona, an Arizona municipal corporation (hereinafter referred to as "City").

RECITALS

- A. Clemenceau is the fee simple owner of a portion of undeveloped real property situated within the City of Cottonwood, Yavapai County, Arizona, and more particularly described by the legal description attached as Exhibit "A" (hereinafter referred to as "Right-of-Way Property").
- B. City is the fee simple owner of two parcels of real property developed as water well sites situated within the City of Cottonwood, Yavapai County, Arizona, and more particularly described by the legal description attached as Exhibit "B" (hereinafter referred to as "Well Properties").
- C. Clemenceau and City desire to exchange the Right-of-Way Property for the Well Properties upon the terms and for the consideration set out in this Agreement.
- D. City has legal authority to enter into this Agreement pursuant to A.R.S. § 9-407.

IN CONSIDERATION of the mutual promises, covenants and conditions herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Clemenceau and the City hereby agree as follows:

1. Closing

1.1 Time for Closing; Last Day to Close. The Transaction shall be closed in Yavapai County, Arizona. Clemenceau and City shall deposit in escrow with the closing agent all instruments and documents necessary to complete the exchange in accordance with this Agreement. The date that this transaction closes is herein called the "Property Closing Date," and shall be December 15, 2011.

1.2 Prorations; Closing Costs. Prorated taxes and assessments on the Right-of-Way Property for the period up and until the Property Closing Date shall be paid by Clemenceau at or before closing. Clemenceau and the City shall pay equal shares of the premiums and other charges for the cost of standard coverage title insurance for the exchange properties. Clemenceau and the City shall also pay in equal shares at closing any Arizona or local documentary transfer tax or other Arizona transfer taxes or fees arising from the conveyance of the exchange properties. Clemenceau and City shall pay equal shares of the escrow fee and recording charges. City warrants that there are no property taxes or assessments in favor of any governmental authority

due and owing, and that there will be no such taxes or assessments due and owing on the Closing Date.

1.3 City's Conditions to Closing. The closing of this Transaction is subject to and conditioned upon the satisfaction of, or City's written waiver of, the following conditions precedent in favor of City, at or prior to the Property Closing Date:

(a) City shall have received or the Title Company shall be unconditionally committed to issue a policy of title insurance dated as of the date the deed is recorded and insuring City's fee title to the Right-of-Way Property free and clear of any exceptions other than the printed general exceptions and exclusions in the policy form.

(b) Each and all of the representations and warranties made by Clemenceau herein shall be true and correct as of the Property Closing Date.

(c) Clemenceau shall have delivered the deed and fully performed all of the material covenants that Clemenceau, pursuant to the terms of this Agreement, has agreed to perform on or prior to the Property Closing Date.

1.4 Clemenceau's Conditions to Closing. Clemenceau's obligation to close shall be subject to and conditioned upon:

(a) Clemenceau shall have received or the Title Company shall be unconditionally committed to issue a policy of title insurance dated as of the date the deed is recorded and insuring Clemenceau's fee title to the Well Properties free and clear of any exceptions other than the printed general exceptions and exclusions in the policy form.

(b) Each and all of the representations and warranties made by City hereof shall be true and correct as of the Property Closing Date.

(c) City shall have delivered the deed and fully performed all of the material covenants that City, pursuant to the terms of this Agreement, has agreed to perform on or prior to the Property Closing Date.

2. Closing Documents. At or prior to closing, City and Clemenceau shall execute and deliver to the closing agent the following:

2.1 Clemenceau shall duly execute, acknowledge and deliver to City, at closing, a warranty deed, in recordable form, conveying good and marketable title to the Right-of-Way Property free and clear of any defects, liens or encumbrances.

2.2 City shall duly execute, acknowledge and deliver to Clemenceau, at closing, a warranty deed, in recordable form, conveying good and marketable title to the Well Properties free and clear of any defects, liens or encumbrances.

2.3 If required by the closing agent, Clemenceau shall execute and deliver a real estate transfer return, in form sufficient to satisfy Clemenceau's obligations regarding the documentary transfer or real estate transfer tax (if any) owing upon the transfer of the Right-of-Way Property.

2.4 City and Clemenceau shall cause the Title Company to issue or be unconditionally committed to issue the Title Policy for the respective properties.

2.5 Clemenceau shall execute and deliver an assignment of all Clemenceau's rights, interests, claims and privileges under any express or implied warranties or guaranties, benefiting the Right-of-Way Property, any plans, specifications, and designs of the Property, any property insurance policies and claims, and any condemnation awards or rights to same pertaining to the Property.

2.6 City and Clemenceau shall each execute and deliver such other documents as may be reasonably required to close the purchase and sale of the Property in accordance with this Agreement.

3. Title Insurance. Within thirty (30) days after the date this Agreement is signed, Clemenceau will provide a preliminary commitment for the Title Policy (the "Commitment") and issued by the Title Company, together with copies of all exceptions set forth therein. The Commitment (any supplements thereto) shall reflect no exceptions, unless agreed to in writing by City. If the Commitment or any supplement thereto reflects any exceptions other than the standard printed exclusions and general exceptions in the policy form and the Permitted Exceptions, City may elect to require Clemenceau to remove such exceptions at Clemenceau's sole expense at or prior to closing, provided, however, that Clemenceau may elect to cure the exception or withdraw from this Agreement thereby rescinding the same. In the event of such rescission, this Agreement shall be terminated with neither party owing the other any further obligation. The Title Policy shall be dated as of the date the deed to City is recorded, and shall insure City against loss or damage by reason of defect in City's title to the Property and such other matters as are insured against by such policy and endorsements, subject only to the standard printed exclusions and general exceptions appearing in the title insurance policy form.

4. Clemenceau's Representations. Understanding that City is relying on the following representations and warranties, Clemenceau makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder and which shall survive the closing.

4.1 Clemenceau represents to City that it has examined the Well Properties including a third-party, environmental review, that it is fully satisfied with the physical condition thereof, excepting any latent defects, and that neither the City nor any representative of the City has made any representation or promise upon which Clemenceau has relied concerning the physical condition of the Well Properties, except as to those representations expressly stated in this Agreement. Without limiting the generality of the foregoing, Clemenceau specifically

acknowledges the previously disclosed fact that when the City took possession of the Well Properties, it discovered approximately 13 barrels of sulfuric acid as well as several bags of lime on the property, all of which have since been removed.

4.2 To Clemenceau's actual knowledge, there has been no production, discharge, disposal, or storage on, from, or onto the Right-of-Way Property of any petroleum products or hazardous waste, hazardous materials, or other toxic substance or any activity which could have otherwise contaminated the Right-of-Way Property or adjacent real property excepting the fuel or other products that may have incidentally leaked on or near the Right-of-Way Property from vehicles and other equipment under normal operating conditions; and there is no proceeding or inquiry by any governmental agency with respect to contamination of the Right-of-Way Property. To Clemenceau's actual knowledge, the Right-of-Way Property is in compliance with all federal, state, and local environmental laws and regulations. To Clemenceau's actual knowledge, no environmental enforcement action exists with respect to the Right-of-Way Property, nor does Clemenceau have actual knowledge of any basis for such an action.

4.3 Clemenceau is currently the sole owner of the right-of-Way Property and has full power, authority, and legal capacity to enter into the transaction contemplated by this Agreement, to execute this Agreement and any and all other documents or instruments required in connection with this Agreement, and to carry out this Agreement and the transactions contemplated hereby.

4.4 There are no leases, options, contracts, or rights of first refusal, recorded or unrecorded, affecting the Right-of-Way Property. The Right-of-Way Property is free and clear of any encumbrances, liens, or exceptions to title.

4.5 No actions, lawsuits, proceedings, or claims are pending or threatened which would affect the Right-of-Way Property, the value of the Right-of-Way Property, Clemenceau's ownership thereof, or the conveyance of ownership to the City pursuant to the terms of this Agreement.

4.6 There are no parties in adverse possession of the Right-of-Way Property. There are no parties in possession of the Right-of-Way Property except Clemenceau, and no parties have been granted any license, lease, or other right relating to the use or possession of the Right-of-Way Property.

4.7 There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other laws for relief of debtors contemplated or filed by Clemenceau or pending against Clemenceau or affecting or involving the Right-of-Way Property.

4.8 Except for the obligations imposed by this Agreement, City does not and shall not have any liability with respect to any claim, obligation, or liability (including attorney's fees and court costs) arising out of or related to the Right-of-Way

Property as a consequence of any act or failure to act by Clemenceau prior to the closing.

4.9 Clemenceau is not prohibited from consummating the transaction contemplated by this Agreement, by any law, regulation, agreement, instrument, restriction, order, or judgment.

4.10 There is no default, nor has any event occurred which, with the passage of time or the giving of notice or both would constitute a default in any contract, mortgage, deed of trust, lease, or other instrument which relates to the Right-of-Way Property or which affects the Right-of-Way Property in any manner whatsoever.

5. City's Representations.

5.1 City represents that it has the legal authority and ability to enter into the transaction contemplated by this Agreement.

5.2 City represents to Clemenceau that it has examined the Right-of-Way Property, that it is fully satisfied with the physical condition thereof, excepting any latent defects, and that neither the Clemenceau nor any representative of the Clemenceau has made any representation or promise upon which City has relied concerning the physical condition of the Property, except as to those representations expressly stated in this Agreement.

5.3 City is currently the sole owner of the Well Properties and has full power, authority, and legal capacity to enter into the transaction contemplated by this Agreement, to execute this Agreement and any and all other documents or instruments required in connection with this Agreement, and to carry out this Agreement and the transactions contemplated hereby.

5.4 There are no leases, options, contracts, or rights of first refusal, recorded or unrecorded, affecting the Well Properties. The Well Properties are free and clear of any encumbrances, liens, or exceptions to title.

5.5 No actions, lawsuits, proceedings, or claims are pending or threatened which would affect the Well Properties, the value of the Well Properties, City's ownership thereof, or the conveyance of ownership to Clemenceau pursuant to the terms of this Agreement.

5.6 There are no parties in adverse possession of the Well Properties, There are no parties in possession of the Well Properties except the City, and no parties have been granted any license, lease, or other right relating to the use or possession of the Well Properties.

5.7 There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in

bankruptcy or pursuant to any other laws for relief of debtors contemplated or filed by City or pending against City or affecting or involving the Well Properties.

5.8 Except for the obligations imposed by this Agreement, Clemenceau does not and shall not have any liability with respect to any claim, obligation, or liability (including attorney's fees and court costs) arising out of or related to the Well Properties as a consequence of any act or failure to act by the City prior to the closing.

5.9 The City is not prohibited from consummating the transaction contemplated by this Agreement, by any law, regulation, agreement, instrument, restriction, order, or judgment.

5.10 There is no default, nor has any event occurred which, with the passage of time or the giving of notice or both would constitute a default in any contract, mortgage, deed of trust, lease, or other instrument which relates to the Well Properties or which affects the Well Properties in any manner whatsoever.

6. **Brokerage.** It is the expressed declaration of the Parties that no real estate commissions will be due from the City or Clemenceau resulting from the exchange of the Properties. If any person or entity shall assert a claim to a finder's fee, brokerage commission, or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the Party hereto under whom the finder or broker is claiming shall indemnify and hold the other Party harmless from and against any such claim and all costs, expenses, and liabilities incurred in connection with such claim or any action or proceeding, including, but not limited to, attorney and witness fees and court costs in defending against such claim. This indemnity shall survive the closing or the cancellation of this Agreement.

7. **Time Periods.** Time is of the essence in this Agreement. If the last day of any time period hereunder or a date for performance referenced herein is a Saturday, Sunday or legal holiday, the last day of such specified period or such date for performance shall be extended to the next business day. In construing the Parties' intent with regard to this Agreement and the applicable terms of this Agreement, no greater or stricter construction of any term or provision hereof shall be asserted against a Party by reason of such Party's being the drafter or alleged drafter thereof.

8. **Default and Remedies.** If a Party defaults with respect to this Agreement, the non-defaulting Party may seek specific performance, or any other remedy specified herein or permitted in equity or at law. However, good faith participation in mediation is a condition precedent to any enforcement action or claim for breach. Said mediation will be conducted in Yavapai County by a mutually-agreed-upon mediator. However, if the Parties cannot agree to a mediator, either Party can request the appointment of a mediator through the Yavapai County Superior Court. If any action is brought by either party in respect to its rights under this Agreement, the prevailing

party shall be entitled to reasonable attorney's fees and court costs as determined by the court.

9. Escrow.

9.1 Opening of Escrow. City shall open an escrow (the "Opening of Escrow") by delivering to the Cottonwood, Arizona, office of the Title Company, a copy of this Agreement. This Agreement, together with any additional instructions ("Instructions") hereinafter executed by the Parties, shall constitute the Escrow Holder's instructions in connection with the Escrow. In no event shall any Instructions modify the provisions of this Agreement except to the extent that such Instructions expressly state that they modify the provisions of this Agreement, and in the event of any inconsistency between the provisions of any Instructions and the provisions of this Agreement, the provisions of this Agreement shall govern.

9.2 The Escrow Holder. The duties of the Escrow Holder shall be as follows:

(a) To retain and safely keep all funds, documents and instruments deposited with it.

(b) To confirm that all conditions to the Closing specified in this Agreement have been met.

(c) Upon the Closing, to deliver to the Parties entitled hereto all documents and instruments to be delivered through Escrow.

(d) Upon the Closing, to cause the recordation of the deeds referred to herein with the Office of the Yavapai County Recorder,

(e) To comply with the terms of this Agreement and any additional instructions jointly executed by City and Clemenceau.

10. Insurance. Throughout the period between the date of this Agreement and the Property Closing Date, the City and Clemenceau shall maintain existing liability insurance on their respective Properties.

11. Conditions Subsequent to Closing by City. Following the Property Closing Date, and at times deemed appropriate by the City, the following actions shall be taken by the City with respect to the Property:

11.1 Sanitary Sewer Taps. City shall provide eight (8) 8" sanitary sewer taps to the edge of the proposed right-of-way. Prior to installing these taps, the City shall consult with Clemenceau regarding specific locations.

11.2 Reclaimed Water Taps. City shall provide five (5) 8" reclaimed water taps to the edge of the proposed right-of-way. Prior to installing these taps, the City shall consult with Clemenceau regarding specific locations.

11.3 **Water Taps.** City shall provide three (3) 8" water taps to the edge of the proposed right-of-way. Prior to installing these taps, the City shall consult with Clemenceau regarding specific locations.

12. **Conditions Subsequent to Closing by Clemenceau.** Within ninety (90) days of closing, Clemenceau will, at its expense, remove/render inoperable the existing water production facilities. This work includes but is not limited to the removal of buildings, tanks, piping and the abandonment of three wells by approved means as stipulated by the Arizona Department of Water Resources (ADWR).

13. **Conflicts of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511 and City and Clemenceau specifically state that neither is aware of any employee of City who has any affiliation with Clemenceau.

14. **Notices.** Notices shall be in writing and shall be given by personal delivery or by U.S. certified mail, return receipt requested, postage prepaid, addressed to Clemenceau or City, as applicable, at the addresses set forth below or at such other address as a party may designate in writing.

Clemenceau:

Clemenceau Townsite, L.L.C.
1490 Riordan Ranch Street
Flagstaff AZ 86001
Attn: Joe Nackard, Member

City:

City of Cottonwood
827 North Main Street
Cottonwood, AZ 86326
Attn: Mr. Doug Bartosh, City Manager

15. **Governing Law.** This Agreement shall be governed by the laws of the State of Arizona, and litigation can only be brought within the Yavapai County Superior Court.

16. **Binding Effect.** This Agreement shall be binding and inure to the benefit of the Parties and their respective successors, assigns, representatives, affiliates, directors, members, officers, and insurers of the Parties.

17. **Severability.** If a court of competent jurisdiction makes a final determination that any term or provision of this contract is invalid or unenforceable, all other terms and provisions shall remain in full force and effect, and the invalid or unenforceable term or provision shall be deemed replaced by a term or provision that is valid and enforceable and comes closest to expressing the intention of the invalid term or provision.

18. Headings. The headings of this Agreement are for the purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

19. Counterparts, This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

20. Merger. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations, and understandings, written or oral, are superseded by and merged in this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by City and Clemenceau.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Clemenceau has executed this Agreement as of the date indicated above.

CLEMENCEAU:

Clemenceau Townsite, L.L.C.

By: 
Joe Nackard, Member

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

The foregoing instrument was duly executed and acknowledged before me this 7 day December 2011, by Joe Nackard, Member, Clerenceau Townsite, L.L.C.

By: 
Notary Public

My commission expires:
July 20, 2014



THIS AGREEMENT was accepted this _____ day of _____, 2011, by the Mayor and City Council of the CITY OF COTTONWOOD, Cottonwood, Arizona.

By: _____
Diane Joens, Mayor City of Cottonwood

ATTEST:

Marianne Jimenez, City Clerk

APPROVED AS TO FORM:

Steven B. Horton City Attorney

LEGAL DESCRIPTION
Nackard Property
New Revised R.O.W Location of Mingus Avenue 10/04/11
R.O.W Dedication to City
S.W.I. Project #08139

A parcel of ground lying in Sections 33 & 34, Township 16 North, Range 3 East, G.&S.R.M., Yavapai County, Arizona described as follows:

Commencing at the East Quarter Corner of Section 33 as marked by a ½” rebar below the pavement (formerly had a plastic cap stamped “JJ&A LS 19853” – said cap now obliterated) from which, the locally accepted Center of Section 33 as marked by a 1” iron pipe lies North 89°21’02” West (Basis of Bearings per adjusted GPS observations) a distance of 2544.46 feet;

Thence North 89°21’02” West 360.37 feet to the True Point of Beginning from which point, a found 4-inch open pipe in concrete lies North 02°11’36” East a distance of 19.32 feet, also from which point, a found ½ inch rebar with plastic cap stamped “Mingus LS #23381” lies South 02°11’36” West a distance of 164.27 feet, both points accepted as angle points of that tract of land as described in Book 186 of Deeds, Page 412;

Thence South 02°11’36" West 14.27 feet;

Thence South 88°46’36" West 661.52 feet;

Thence South 44°24’16" West 21.44 feet;

Thence North 00°01’13" West 23.11 feet;

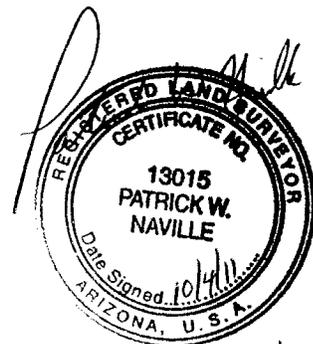
Thence South 89°37’17" West 19.66 feet;

Thence South 00°38’17" West 8.41 feet;

Thence South 88°46’31" West 30.26 feet;

Thence South 00°01’57" West 15.00 feet;

Thence North 45°35’46" West 21.60 feet;



EXPIRES 9/30/2012

LEGAL DESCRIPTION

Nackard Property

New Revised R.O.W Location of Mingus Avenue 10/04/11

R.O.W Dedication to City

S.W.I. Project #08139

Page 2 of 5

Thence South 87°11'02" West, a distance of 493.37 feet to a point from which, a found 5/8 inch smooth steel pin with tag stamped "LS 19853" lies South 05°34'07" West 134.51 feet;

Thence North 05°34'07" East 53.94 feet to a found ½ inch rebar with plastic cap stamped "LS 19853" accepted as the southwest corner of a parcel described in Book 2364 of Official Records, Page 486 from which, a found 4 inch iron pipe fencepost accepted as the northwest corner of the last referenced parcel, lies North 05°35'23" East 72.48 feet;

Thence North 05°35'23" East 26.93 feet;

Thence North 87°11'02" East 115.00 feet to a point on the east line of the last referenced parcel from which, a found ½ inch rebar with a plastic cap stamped "Mingus LS 23381" accepted as an angle point on the last referenced parcel lies North 01°26'22" East 48.18 feet;

Thence South 01°26'22" West along the east line of the last referenced parcel a distance of 29.92 feet;

Thence North 88°44'15" East, a distance of 126.50 feet to an angle point on the boundary line of a parcel described in Book 2364 of Official Records, Page 481 from which, a found ½ inch rebar with cap stamped "Mingus LS 23381" accepted as an angle point on the last referenced parcel lies North 01°03'02" East 204.32 feet;

Thence North 01°03'02" East 33.34 feet;

Thence North 87°11'02" East 225.26 feet;

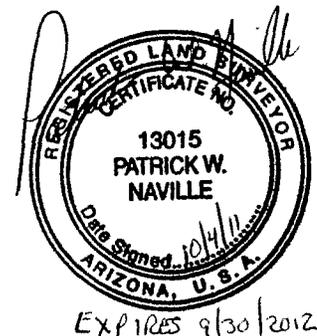
Thence North 88°46'31" East 378.80 feet;

Thence North 43°46'31" East 21.21 feet;

Thence North 88°46'31" East 45.00 feet;

Thence South 46°13'29" East 21.21 feet;

Thence North 88°46'31" East 262.27 feet to a point of curvature, the central point of which lies South 01°13'29" East 493.50 feet;



LEGAL DESCRIPTION

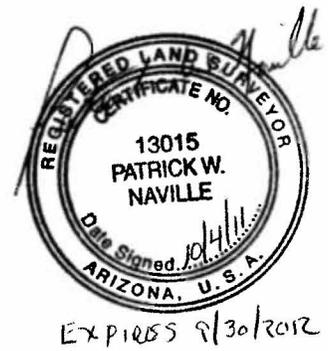
Nackard Property

New Revised R.O.W Location of Mingus Avenue 10/04/11

R.O.W Dedication to City

S.W.I. Project #08139

Page 3 of 5



Thence through a central angle of $16^{\circ}56'46''$ on a curve to the right an arc length of 145.96 feet;

Thence South $74^{\circ}16'43''$ East 65.50 feet;

Thence North $89^{\circ}30'16''$ East 139.75 feet;

Thence North $74^{\circ}26'34''$ East 37.68 feet to a non-tangent point of curvature, the central point of which lies North $15^{\circ}41'30''$ West 63.58 feet;

Thence through a central angle of $79^{\circ}32'35''$ on a curve to the left an arc length of 90.24 feet;

Thence North $05^{\circ}06'01''$ West 38.97 feet;

Thence North $81^{\circ}15'57''$ East 5.09 feet;

Thence South $09^{\circ}02'03''$ East 32.67 feet to a found $\frac{1}{2}$ inch rebar with cap stamped "LS 19853" accepted as an angle point on the parcel previously cited in Book 186 of Deeds, Page 412;

Thence South $00^{\circ}13'33''$ East 35.13 feet to a found $\frac{1}{2}$ inch rebar with cap stamped "LS 19853" accepted as an angle point on the parcel previously cited in Book 186 of Deeds, Page 412;

Thence South $20^{\circ}20'13''$ West 25.97 feet to a found $\frac{1}{2}$ inch rebar with cap stamped "LS 19853" accepted as an angle point on the parcel previously cited in Book 186 of Deeds, Page 412;

Thence South $51^{\circ}57'15''$ West 27.55 feet to a found $\frac{1}{2}$ inch rebar with cap stamped "LS 19853" accepted as an angle point on the parcel previously cited in Book 186 of Deeds, Page 412;

Thence South $72^{\circ}26'34''$ West 57.46 feet to a found $\frac{1}{2}$ inch rebar with cap stamped "LS 19853" accepted as an angle point on the parcel previously cited in Book 186 of Deeds, Page 412;

LEGAL DESCRIPTION

Nackard Property

New Revised R.O.W Location of Mingus Avenue 10/04/11

R.O.W Dedication to City

S.W.I. Project #08139

Page 4 of 5

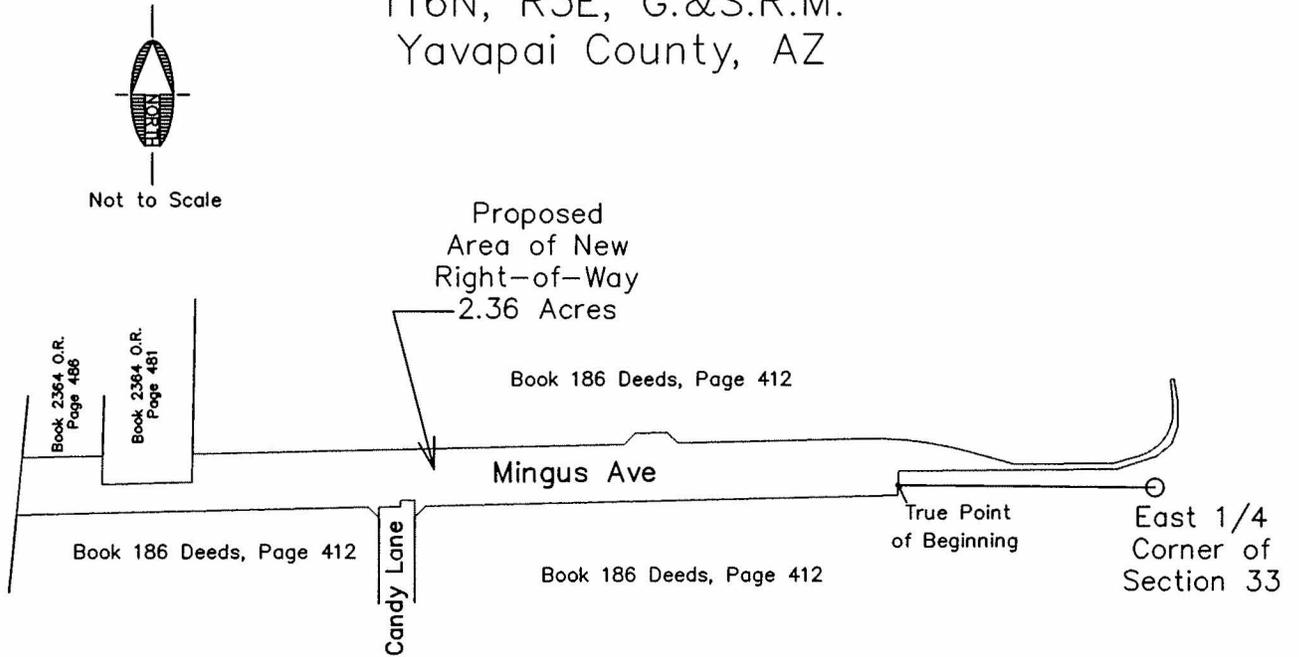
Thence South 89°30'16" West 306.09 feet to the previously referenced 4 inch open pipe in concrete accepted as an angle point on the parcel previously cited in Book 186 of Deeds, Page 412;

Thence South 02°11'36" West 19.32 feet to the True Point of Beginning containing 2.36 acres, more or less.



EXPIRES 9/30/2012

EXHIBIT DRAWING TO ACCOMPANY
 LEGAL DESCRIPTION
 Nackard to City
 New Revised
 Mingus Avenue 10/04/11
 City of Cottonwood
 Lying in Sections 33 & 34
 T16N, R3E, G.&S.R.M.
 Yavapai County, AZ



This sketch is not intended to be used as a boundary survey. Its purpose is merely to provide a graphic representation of the legal description.



Revised for new ROW configuration 10/04/11

 Shephard Wesnitzer, Inc.	75 Kallof Place Sedona, AZ 86336 928.282.1061 928.282.2058 fax www.swiaz.com	JOB NO: 08139 DATE: October 2011 SCALE: AS SHOWN DRAWN: PWN DESIGN: N/A CHECKED: PWN	City of Cottonwood Cottonwood AZ	SHEET 4 OF 5
	EXHIBIT DRAWING Nackard Dedication New ROW			

LEGAL DESCRIPTION
Existing Tank Site on Mingus Avenue
Less Revised R.O.W
Deed to Nackard
10/05/11
S.W.I. Project #08139



A parcel of ground lying in Section 33, Township 16 North, Range 3 East, G.&S.R.M., Yavapai County, Arizona described as follows:

All of that certain parcel of ground as described in a Warranty Deed recorded in Book 2364 of Official Records, Page 481 **EXCEPTING THEREFROM**, the following described parcel:

A parcel of ground lying in Section 33, Township 16 North, Range 3 East, G.&S.R.M., Yavapai County, Arizona described as follows:

Commencing at the East Quarter Corner of Section 33 as marked by a ½” rebar below the pavement (formerly had a plastic cap stamped “JJ&A LS 19853” – said cap now obliterated) from which, the locally accepted Center of Section 33 as marked by a 1” iron pipe lies North 89°21’02” West (Basis of Bearings per adjusted GPS observations) a distance of 2544.46 feet;

Thence North 89°21’02” West 1347.02 feet to point of intersection with that parcel described in Book 2364 of Official Records, Page 481 (hereafter referred to as R1) in the Yavapai County Recorder’s Office, and the True Point of Beginning;

Thence South 01°03’02” West along the property line referred to in R1, a distance of 6.09 feet to a point on the current northerly right-of-way line of Mingus Avenue;

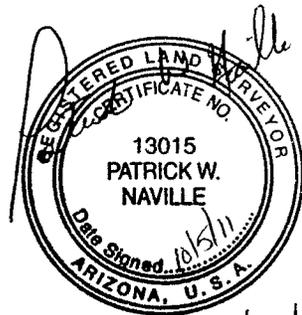
Thence South 88°44’15” West along said northerly right-of-way line a distance of 126.50 feet to the Southeast Corner of a parcel described in Book 2364 of Official Records, Page 486 in the Yavapai County Recorder’s Office (hereafter referred to as R2);

Thence North 01°26’22” East along the east line of R2 a distance of 29.92 feet;

LEGAL DESCRIPTION
Existing Tank Site on Mingus Avenue
Less Revised R.O.W
Deed to Nackard
10/05/11
S.W.I. Project #08139
Page 2 of 3

Thence North 87°11'02" East 126.49 feet to a point of intersection with the property line described in R1;

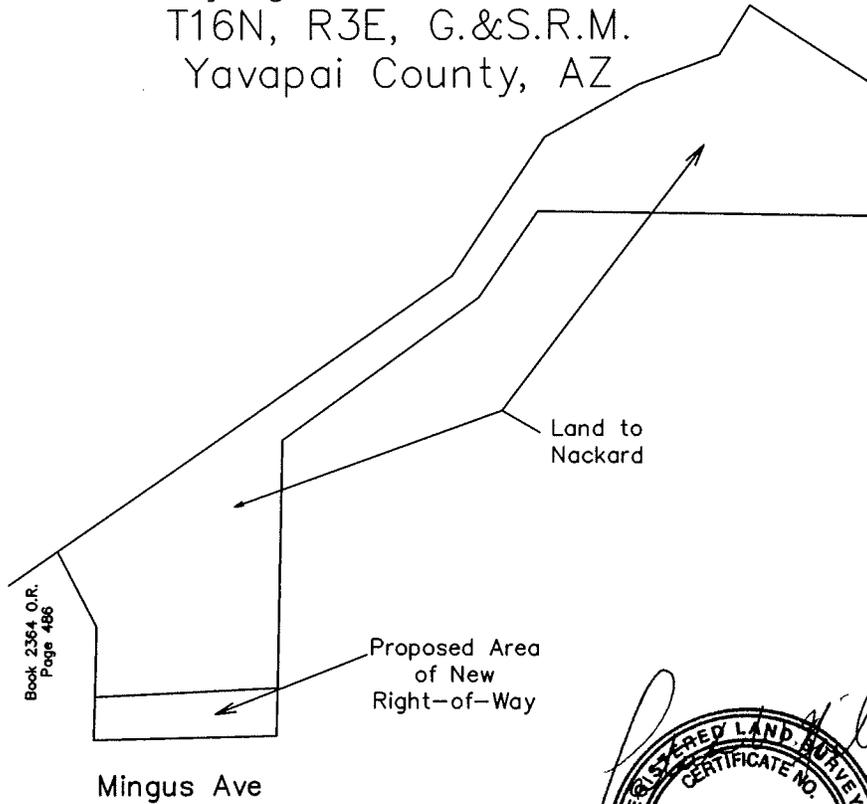
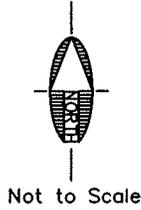
Thence South 01°03'02" West along said property line a distance of 27.25 feet to the True Point of Beginning containing 3994 square feet (in said exception parcel), more or less.



EXPIRES 9/30/2012

EXHIBIT DRAWING TO ACCOMPANY
LEGAL DESCRIPTION
Existing Tank Site
on Mingus Ave
Less Revised ROW
Deed to Nackard
10/05/11

City of Cottonwood
Lying in Section 33
T16N, R3E, G.&S.R.M.
Yavapai County, AZ



This sketch is not intended to be used as a boundary survey. Its purpose is merely to provide a graphic representation of the legal description.



Shephard Wesnitzer, Inc.

75 Kallof Place
Sedona, AZ 86336
928.282.1061
928.282.2058 fax

www.swiaz.com

JOB NO:	08139
DATE:	October 2011
SCALE:	AS SHOWN
DRAWN:	PWN
DESIGN:	N/A
CHECKED:	PWN

City of Cottonwood Cottonwood AZ

**EXHIBIT DRAWING
Nackard Dedication
New ROW**

SHEET

3

OF
3

ORDINANCE NUMBER 582

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, APPROVING AN AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY BETWEEN THE CITY AND CLEMENCEAU TOWNSITE, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, the City has undertaken to widen and improve Mingus Avenue between Willard Street and State Highway 89A; and

WHEREAS, in order to construct the necessary street improvements, the City must acquire additional rights-of-way; and

WHEREAS, the City owns two parcels of real property totaling approximately 1.44 acres in the area of the former Clemenceau Townsite that it acquired in connection with its purchase of the former Clemenceau Water Company, which it no longer requires; and

WHEREAS, the City requires certain real property owned by Clemenceau Townsite , LLC ("Clemenceau"); and

WHEREAS, the City and Clemenceau have successfully conferred for the purpose of exchanging the two parcels of real property owned by the city for a parcel of real property owned by Clemenceau totaling approximately 2.36 acres in the same area; and

WHEREAS, Arizona Revised Statutes Section 9-407 provides that a City may by ordinance authorize an exchange of a parcel of real property within the city for any other parcel of real property within the city, provided the parcels are of substantially equal value and the exchange meets the terms and conditions set forth in the ordinance; and

WHEREAS, the parcels to be exchanged by the City and Clemenceau are of substantially equal value; and

WHEREAS, in order to expedite the design and construction of the street improvements, which will significantly enhance public safety in that area of the City, the Council finds that an emergency situation exists.

ORDINANCE NUMBER 582

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NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD AS FOLLOWS:

Section 1. That the Exchange Agreement between the City and Clemenceau Townsite LLC is hereby approved.

Section 2. That a notice of intent to exchange real property pursuant to Arizona Revised Statutes Section 9-407 shall be published in accordance with the provisions of Arizona Revised Statutes Section 39-204 before the exchange is completed.

Section 3. That in order to expedite the commencement and completion of the Mingus Avenue widening and improvement project, and the significant public safety improvements that will be realized from this project, an emergency is hereby declared to exist, and this Ordinance shall become immediately effective upon its approval by no less than three-fourths of the members of the City Council, taken by ayes and noes, and its approval by the Mayor.

Section 4. That if any section, subsection, sentence, clause, phrase or portion of this Ordinance shall for any reason be held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance, and the City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion hereof in the absence of such invalid or unconstitutional section, subsection, sentence, clause, phrase or portion.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, ARIZONA, THIS 15TH DAY OF NOVEMBER 2011.

Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

Steven B. Horton, Esq., City Attorney

Marianne Jiménez, City Clerk

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

Subject: Consent of Assignment of Leasehold Rights to High Five Hangars Condominiums Unit No. 4 from Backus Family Investments, LLC, to Natale A. Maffari or Rhonda H. Maffari.

Department: Legal

From: Steve Horton, City Attorney

REQUESTED ACTION

Council consideration of a proposed Consent of Assignment of High Five Hangars Condominiums Unit No. 4 from Backus Family Investments, LLC, to Natale A. Maffari or Rhonda H. Maffari.

If the Council desires to approve this item the suggested motion is:

"I move to approve the proposed Consent of Assignment of High Five Hangars Condominiums Unit No. 4 from Backus Family Investments, LLC, to Natale A. Maffari or Rhonda H. Maffari ("Lessees")."

BACKGROUND

By prior action, both the Council and the Planning and Zoning Commission have approved the conversion of a 5-unit hangar development located on Lot 135 of Cottonwood Airpark Tract One, Parts B and C into a condominium-style development. The project was constructed by Backus Family Investments ("BFI"). Under this arrangement, BFI was allowed to transfer its leasehold rights to the common areas of the project (which is everything but the interior space of the individual condominium units) to an entity known as the High Five Condominium Association, which has a Board of Directors that manages the development in a manner that is similar to a residential condominium. BFI is now in the process of marketing and selling the individual condominium units (including the leasehold rights associated with those units) to subsequent purchasers, who will then become members of the Association, and Lessees of the City under the Ground Lease.

In accordance with the Council's previous direction, the documents have been drafted so as to require Council approval of all transfers of individual condominium units, both from BFI to the initial purchasers, and from initial purchasers to subsequent purchasers throughout the Term of the Lease.

Specifically, the *Consent of Assignment* authorizes BFI to transfer its lease rights in Condominium Unit No. 4 to purchasers Naale A. Maffari or Rhonda H. Maffari.

JUSTIFICATION/BENEFIT/ISSUES

Both the Council and the Planning and Zoning Commission have approved the conversion of the High Five Hangars project to a condominium-style project, and these documents will allow the developer of the project to sell one of the five condominium units created pursuant to that conversion, subject to the City's continuing rights as Owner and Lessor of the real property on which the project sits.

COST/FUNDING SOURCE

N/A

REVIEWED BY

City Manager: _____

City Attorney: _____

ATTACHMENTS

Assignment of Tenant Rights from BFI to Natale A. Maffari or Rhonda H. Maffari
Proposed Consent of Assignment

“CONSENT”

**CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
Unit # 4, OF THE HIGH FIVE HANGARS CONDOMINIUMS
PARCEL NUMBER 406-08-068D**

When recorded return to:
City Clerk
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86362

CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
UNIT #4 OF THE HIGH FIVE HANGARS CONDOMINIUMS
PARCEL NUMBER 406-08-068D

Once fully executed, this Consent is legally binding as of _____
_____ 2011 (the "Effective Date").

BACKGROUND

The Ground Lease

- A. The City of Cottonwood, formerly known as the Town of Cottonwood, an Arizona municipality, is the "Landlord" under a Ground Lease Agreement dated May 5, 1983, which seeks to serve the public interest by providing opportunities for industrial development, and by promoting economic development and the creation of new employment opportunities.
- B. Cottonwood Airpark L.C. ("CALC") is the successor in interest to Cottonwood Airpark I, L.C. as successor in interest to Cottonwood Airpark, Inc., which was originally named as "Tenant" under the Ground Lease Agreement.
- C. A memorandum of the Ground Lease dated May 23, 1983, was recorded January 4, 1984 in Book 1597, pages 576-581 and thereafter corrected by an instrument recorded July 1, 1985 in Book 1734, pages 11-15 of the records of the Yavapai County Recorder (the "Memorandum of Ground Lease").
- D. The Ground Lease Agreement recorded in Book 4797, Page 649; which was amended by the First Amendment dated November 30, 1983; the Second Amendment dated March 12, 1985; the Third Amendment dated August 21, 1985; the Fourth Amendment dated February 7, 1989; and the Fifth Amendment dated January 1, 1993; the Sixth Amendment dated July 5, 1994; the Seventh Amendment dated September 16, 1997; the Eighth Amendment recorded December 22, 1998, in Book 3626, Page 140; the Ninth Amendment recorded October 1, 2001, in Book 3867, Page 214; the Tenth Amendment recorded March 17, 2003, in Book 4011, Page 367; the Eleventh Amendment recorded July 20, 2005, in Book 4288, Page 640; the

- Twelfth Amendment recorded July 20, 2005, in Book 4288, Page 644; the Thirteenth Amendment recorded July 20, 2005, in Book 4288, Page 649; the Fourteenth Amendment recorded January 20, 2006, in Book 4356, Page 475; the Fifteenth Amendment recorded August 21, 2006, in Book 4427, Page 538; the Sixteenth Amendment which was recorded September 3, 2008, in Book 4619, Page 633; and the Seventeenth Amendment which was recorded on February 27, 2009, in Book B-4651, Page 879. The Ground Lease Agreement and all Amendments are collectively referred to as the "Ground Lease".
- E. Thereafter by Assignment, recorded January 20, 2006, in Book 4356, Page 473 of Official Records, CALC assigned an interest as tenant under the Ground Lease of approximately 8.91 acres located south of Lot #122 of the Replat of Cottonwood Airpark Tract One Parts A & B described on the Results of Survey performed by SEC dated June 16, 2005, together with all rights, privileges, easements, appurtenances and improvements thereon to Backus Family Investments, L.L.C. an Arizona Limited Liability Company.
- F. The City of Cottonwood and Backus Family Investments thereafter subdivided the above mentioned parcel of land which is now legally described as Cottonwood Airpark Tract One-Parts B & C, recorded in the office of the Yavapai County Recorder in Book 59, Page 57, dated March 13, 2007.
- G. Backus Family Investments, L.L.C., ("BFI") and with the Consent of the City of Cottonwood, as Recorded in the Official Records of Yavapai County, Book 4758 Page 624, has submitted the Lease of Lot # 135 of the Cottonwood Airpark Track One-Parts B&C to the condominium form of ownership, as a Leasehold Condominium, pursuant to A.R.S. § 33-1216, *et seq.*, and has submitted the Lease to the terms and conditions of the Declaration of Leasehold Condominium, as Recorded in the Official Records of Yavapai County, Book 4807 Page 941. Specifically, the Lease of the Common Areas designated in the Plat attached to the Declaration of Leasehold Condominium has been assigned to High Five Hangars Owners Association, Inc. It is contemplated that in the future, Units 1 through 5, designated in said Plat, shall be transferred to purchasers of said Units from BFI; however, it is specifically understood and agreed that the City of Cottonwood must consent to each of said transfers, and all subsequent transfers.
- H. The Ground Lease requires the written consent of the City of Cottonwood to the assignment by BFI of its rights as Tenant under the Ground Lease to ASSIGNEE. The City of Cottonwood has indicated that it will grant its consent to this transaction by execution and delivery of this Consent, in

consideration for and subject to the covenants and conditions recited below.

I. Landlord, BFI and ASSIGNEE hereby specifically reaffirm the following language from the First Amended Ground Lease dated May 5, 1983:

a. The City of Cottonwood ("Landlord") is an Arizona municipality which seeks to serve the public interest by providing opportunities for industrial development, and by promoting economic development and the creation of new employment opportunities.

b. Landlord and Tenant jointly will serve the public interest by providing residents of Cottonwood with access to improved job opportunities on the property.

AGREEMENT

Now, therefore, for valuable consideration received, The City of Cottonwood agrees that:

1. Consent. The City of Cottonwood hereby consents to the Assignment by BFI to ASSIGNEE of its rights under the Ground Lease to Unit # 4 of The High Five Hangars Condominiums as designated in the Condominium Plat and Declaration of Leasehold Condominium and further described as 668 S. Airpark Road, Unit #4, Cottonwood, AZ 86326, and parcel number 406-08-068D. Such consent to be effective upon execution of this instrument by ASSIGNEE, provided, however, that during the entire Term of the Lease and any extensions thereof, any and all transfers of individual condominium units shall be subject to review and approval by the Cottonwood City Council.
2. Acceptance of Assignment and Promise to Perform. By its signature below, ASSIGNEE hereby accepts, reaffirms and agrees to faithfully perform all of BFI's duties, obligations and undertakings with respect to the Unit.
3. Release. In exchange for ASSIGNEE's faithful performance hereunder, and as of Effective Date of this Agreement, the City as Landlord under the Ground Lease, hereby:
 - 3.1 Certifies that formal approval of the Assignment to ASSIGNEE is hereby granted by the City;
 - 3.2 Acknowledges and agrees that BFI has assigned its rights, duties and obligations to the Unit as designated in the Condominium Plat and Declaration of Leasehold Condominium to ASSIGNEE.

Landlord agrees to look solely to ASSIGNEE and the High Five Hangars Owners Association for collection of all rents and other amounts arising from the Ground Lease for the Unit after the Effective Date of this Consent and releases BFI (and its predecessors) as Tenant from all obligations or duties arising under the Ground Lease relative to the Unit;

- 3.3 Acknowledges receipt of all rent and other amounts owed by Tenant to Landlord under the Ground Lease with respect to the Unit as of the Effective Date;
 - 3.4 Ratifies, affirms and confirms the validity of all other terms and conditions of the Ground Lease;
 - 3.5 Confirms that, to Landlord's knowledge, there are no uncured defaults or breaches by Tenant under the Ground Lease;
 - 3.6 Agrees that the property taxes for the Unit shall be separately assessed and paid by ASSIGNEE;
 - 3.7 Acknowledges that ASSIGNEE may encumber its leasehold interest in the Unit to Purchase or construct certain improvements which may be subject to an encumbrance in favor of a Lender. Landlord agrees to provide notice to the Lender and in the event of a default by ASSIGNEE under the Ground Lease pertaining to the Unit if requested by such Lender, and will execute a separate instrument to that effect if asked to do so.
 - 3.8 Acknowledges that pursuant to Section 20 of the Ground Lease the address for the Tenant under the Unit is;
P.O. Box 130 Clarkdale, AZ 86334
 - 3.9 NAME OF ASSIGNEE: Natale A. Maffari or Rhonda H. Maffari
 - 3.10 Affirms that the Term of the Lease to the Lot runs until December 31, 2033.
4. Ratification of Ground Lease with Respect to the Unit. Except as modified herein, the terms and conditions contained in the Ground Lease with respect to the Unit are hereby ratified, confirmed and continue in full force and effect. The Term Commencement date of December 1983 began a 25-year term as to certain portions of the Lease and a 50- year Term as to certain other portions. The Lease also granted options for renewal. The parties intend to ratify and affirm the length of the Term and of all other rights and obligations under the Ground Lease with respect to the Unit. The parties represent that to the best of their knowledge and belief, there

are no other amendments, modifications, supplements or other agreements or understandings with respect to the subject matter of this Consent (i.e., the Unit) except for those identified herein. The City as Landlord further acknowledges (i) that BFI as Tenant has paid all rent due with respect to the Unit, and (ii) that, to the City's knowledge, BFI has fully performed all of its obligations and is in good standing under the Ground Lease with respect to the Unit.

5. Further Documentation. The City agrees in good faith to execute such further or additional documents as become necessary or appropriate to carry out the intent and purpose of this Consent.
6. Counterparts and Facsimiles. This Consent may be executed by facsimile or in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

This Consent is legally binding as of the Effective Date regardless of the actual date of signing, provided that it shall not take effect until it is fully executed by both the City and ASSIGNEE.

The undersigned Representatives of the City of Cottonwood hereby personally affirm and certify that there has been full compliance with all requirements for approval of the Assignment by the City and do further affirm and certify that this Consent is hereby approved, ratified and accepted by the City of Cottonwood.

THE CITY OF COTTONWOOD:

Diane Joens, Mayor

Approved as to Form:

Attest:

Steve Horton, Esq.
City Attorney

Marianne Jiménez, City Clerk

When recorded return to:
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86326

**ASSIGNMENT OF TENANT RIGHTS IN
HIGH FIVE CONDOMINIUMS UNIT #4**

This "Assignment" is legally binding between the parties described below as of _____, 2011 (the "Effective Date").

BACKGROUND

The Ground Lease

- A.** The City of Cottonwood, formerly known as the Town of Cottonwood, an Arizona municipality, is the "Landlord" under a Ground Lease Agreement dated May 5, 1983, which seeks to serve the public interest by providing opportunities for industrial development, and by promoting economic development and the creation of new employment opportunities.
- B.** Cottonwood Airpark L.C. is the successor in interest to Cottonwood Airpark I, L.C. as successor in interest to Cottonwood Airpark, Inc., which was originally named as "Tenant" under the Ground Lease Agreement.
- C.** A memorandum of the Ground Lease dated May 23, 1983 was recorded January 4, 1984 in Book 1597 Pages 576-581 and thereafter corrected by an instrument recorded July 1, 1985 in Book 1734, pages 11-15 of the records of the Yavapai County Recorder (the "Memorandum of Ground Lease").
- D.** The Ground Lease Agreement was amended by the First Amendment dated November 30, 1983; the Second Amendment dated March 12, 1985; the Third Amendment dated August 21, 1985; the Fourth Amendment dated February 7, 1989; and the Fifth Amendment dated January 1, 1993; the Sixth Amendment dated July 5, 1994; the Seventh Amendment dated September 16, 1997; the Eighth Amendment recorded December 22, 1998, in Book 3626, Page 140; the Ninth Amendment recorded October 1, 2001, in Book 3867, Page 214; the Tenth Amendment recorded March 17, 2003, in Book 4011, Page 367; the Eleventh Amendment recorded July 20, 2005, in Book 4288, Page 640; the Twelfth Amendment recorded July 20, 2005, in Book 4288, Page 644; the Thirteenth Amendment recorded July 20, 2005, in Book 4288, Page 649; the Fourteenth Amendment recorded January 20, 2006, in Book 4356, Page 475; the Fifteenth Amendment recorded August 21, 2006, in Book 4427, Page 538; the Sixteenth Amendment which was recorded September 3, 2008, in Book 4619, Page 633; and the Seventeenth Amendment which was recorded on February 27, 2009, in Book B-4651,

Page 879.. The Ground Lease Agreement and all Amendments are collectively referred to as the "Ground Lease".

E. Thereafter by Assignment, recorded January 20th, 2006, in Book 4356 , page 473 of Official Records, CALC assigned an interest as Tenant under the Ground Lease of approximately 8.91 acres located south of Lot #122 of the Replat Cottonwood Airpark Tract One Parts A&B described on the Results of Survey performed by SEC dated June 16th, 2005, together with all rights, privileges, easements, appurtenances and improvements thereon to Backus Family Investments, L.L.C. an Arizona Limited Liability Company

F. The CITY OF COTTONWOOD and BACKUS FAMILY INVESTMENTS thereafter subdivided the above mentioned parcel of land which is now legally described as COTTONWOOD AIRPARK TRACT ONE -PARTS B & C, recorded in the offices of the Yavapai County Recorder at Book 58, Page 57. Dated, March 13th, 2007

G. Backus Family Investments, LLC, hereafter referred to as ("BFI") with the consent of the City of Cottonwood, as Recorded in the Official Records of Yavapai County, Book 4758, Page 624, has submitted the lease of lot #135 of Cottonwood Airpark Tract One-Parts B&C to the condominium form of ownership, as a Leasehold Condominium, pursuant to A.R.S. # 33-1216, et seq., and has **Recorded the Original Ground Lease March 1st, 2011, in the official records of Yavapai County Book 4794, Page 649 and** submitted the Lease to the terms and conditions of the Declaration of Leasehold condominium, Recorded in the official records of Yavapai County Book **4807, Page 941** Specifically, the Lease of the Common Areas designated in the Plat attached to the Declaration of Leasehold Condominium has been assigned to High Five Hangars Owners Association, Inc. It is contemplated that in the future, Units 1 through 5, designated in said Plat., shall be transferred to purchasers of said Units from BFI; however, it is specifically understood and agreed that the City of Cottonwood must consent to each of said transfers, and all subsequent transfers.

ASSIGNMENT

Now, therefore, for valuable consideration received, the parties agree that:

1. Incorporation by Reference. The facts, circumstances, descriptions and definitions contained in the Background section of this Assignment are hereby incorporated by reference as an integral part of this Assignment, as are all Exhibits.

2. Assignment. As of the Effective Date, BFI hereby sets over, assigns and transfers to Assignee all of BFI's rights as Tenant to **Unit #4** of the above mentioned Units designated in said Plat. Specifically **Unit #4, Parcel # 406-08-068D** of The High Five Hangars Condominium Plat. BFI hereby specifically reserves all other rights to all other parcels which it possesses as Tenant under the Ground Lease.

3. Acceptance of Assignment and Indemnity. By signing below, ASSIGNEE hereby accepts the assignment of all BFI's rights, duties, obligations and undertakings under the Ground Lease as to the Assigned **Unit #4** designated in the Plat attached to the Declaration of Leasehold condominium and agrees to fully and faithfully perform all duties, obligations and responsibilities arising thereunder. Assignee hereby agrees to indemnify, defend and hold Landlord, BFI, its Members, Managers, attorneys and accountants harmless for, from and against all costs, claims or charges arising from the Ground Lease relating to the Assigned unit or from the Assigned unit arising after the Effective Date of this Assignment.

4. Legal Fees. If either party finds it necessary to employ legal counsel or to bring an action at law, at equity, or other proceeding against the other party to enforce or interpret any of the terms, covenants or conditions of this Assignment, then the prevailing party shall be paid its costs and actual attorneys' fees by the losing party, including those incurred in mediation, arbitration, on appeal, if any, and those incurred in Federal bankruptcy court. If judgment is secured by the prevailing party, then all costs and fees shall be included in that judgment which judgment shall bear interest at 12% per year until paid in full.

5. No Other Obligations. Except as stated herein, there are no other warranties, representations, promises or obligations on the part of BFI to ASSIGNEE. The Assigned Unit, the improvements, if any, located thereon and the Assigned Unit is transferred in "as-is" and "where-is" condition. This transfer and assignment is made without warranty or representation of any kind or nature by BFI or its agents or the City of Cottonwood or its agents. Assignee is relying on its own investigation and evaluation for the suitability of the Assigned Unit for its uses. No statements or promises concerning the condition of the Assigned Unit, the suitability of the Assigned Unit for the intended use, the condition of the air, water, ground, economic conditions, future development of the Airpark, air service, or any other fact have been made by any employee or agent of Backus Family Investments, LLC, or any other agent, member or representative of BFI. Assignee is relying solely and exclusively on its own independent evaluation and investigation regarding the price and terms for acquisition of this Assigned Unit. Assignee acknowledges that it has received a true and complete copy of the Ground Lease as amended and as defined above and that it must deal directly with the City as its Landlord for all matters arising after the Effective Date.

6. Notices. All notices, consents, approvals, waivers or other items given or required to be given by one party to the other shall be in writing; these "Notices" shall be delivered by one of these methods:

- a. If personally delivered, then notice is effective on the next business day following receipt; or
- b. If delivered by mail, Notice is deemed given and delivered 72 hours after being deposited in any duly authorized United States mail depository, postage prepaid, registered or certified, return receipt requested; or

- a. If sent by a reputable overnight courier service (e.g., Federal Express), addressed as set forth below, the Notice shall be deemed effective on the next business day following receipt, as evidenced by the receipt obtained by the courier service.
- b. If sent by telecopier to the phone number listed below, then Notice shall be deemed delivered on the next business day following receipt, as evidenced by a successful transmission report.
- c. Notice to an attorney is not complete until the next business day following actual receipt; addresses and fax numbers for an attorney should be confirmed by checking with the Arizona State Bar Association in Phoenix, Arizona. Notice addresses shall be changed by providing the new address to all of the other parties in conformance with these provisions.

All Notices shall be addressed as indicated below:

If to BFI : c/o Craig D. Backus, Member- Manager
841 Lanny Lane
Clarkdale, AZ 86324
Fax: 928-639-2890

If to Landlord: City of Cottonwood.
827 North Main Street
Cottonwood AZ. 86326

If to Assignee: Natale A. Maffari or Rhonda H. Maffari
P.O. Box 130
Clarkdale, AZ 86334

7. Further Documentation. Each party agrees in good faith to execute such further or additional documents as become necessary or appropriate to carry out the intent and purpose of this Agreement.

8. Counterparts and Facsimiles. This Agreement may be executed by facsimile or in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

ASSIGNEE:

Natale A. Maffari or Rhonda H. Maffari

By its authorized signatory:

By _____
Natale A. Maffari or Rhonda H. Maffari

STATE OF ARIZONA)
) ss.
County of Yavapai)

Before me, the undersigned Notary Public, on this ____ day of _____, 2011, personally appeared **Natale A. Maffari or Rhonda H. Maffari**, who is personally known to me (or satisfactorily proved to me) to be the person who executed the foregoing, acknowledging that he executed the same for the purposes therein contained, being authorized so to do.

Notary Public

My Commission Expires:

BFI:
BACKUS FAMILY INVESTMENTS,
an Arizona limited liability company
by its authorized signatory:

By _____
Craig D. Backus
Member-Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

Before me, the undersigned Notary Public, on this ____ day of _____, 2011, personally appeared Craig D. Backus an authorized signatory of High Five Hangars Owners Association Inc. a Tax Exempt Arizona non-profit Corporation, who is personally known to me (or satisfactorily proved himself to be) the person who executed the foregoing, acknowledging that he executed the same for the purposes therein contained, being authorized so to do.

Notary Public

My Commission Expires:

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: November 15, 2011

Subject: Discussion & Direction to Staff – Memorandum of Understanding Regarding Transportation Services between Cities of Cottonwood and Sedona

Department: Community Services

From: Richard Faust, Community Services General Manager

REQUESTED ACTION

Staff is presenting the current “Memorandum of Understanding” regarding transportation services between the Cities of Cottonwood and Sedona. Council approval would provide staff positive direction regarding the re-integration process of the CAT and Verde Lynx Systems back into the management of Cottonwood operations.

If the Council desires to approve this item the suggested motion is:

“I move to approve the Memorandum of Understanding regarding transportation services between the Cities of Cottonwood and Sedona and direct staff to apply for Section 5311 Rural Transportation funding as required by the State of Arizona”.

BACKGROUND

The attached MOU was drawn up and reviewed by staff from both municipalities with approval from both City Attorney’s. At the pleasure of the City Council at their October 11, 2011 Work Session, Council was provided information from both Cottonwood and Sedona staff as to issues involving NAIPTA and problematic situations involving yearly financials, budget problems and localized issues. In September 2011, Sedona staff expressed their interest towards the possibility of exploring in more detail, options available for a more localized transit operation thereby meeting the needs of the citizens more efficiently and effectively overall by re-integrating CAT and combining the Verde Lynx Route into the system. The City Manager has discussed with Clarkdale Town Manager and Chip Davis, Yavapai County Supervisor pertaining to the issues and recent developments whereby both have indicated strong interest in seeking this direction for our communities for a more localized “Verde Valley” transportation system.

Discussions have also ensued with NAIPTA General Manager, Jeff Meilbeck at a special meeting on October 20, 2011 with Linda Norman, Doug Bartosh and Richard Faust in attendance. Mr. Meilbeck indicated his positive support for this future separation and re-integration by Cottonwood, and identified his support of transferring the Cottonwood Transit Facility over to the City of Cottonwood when necessary.

Continued discussions with the State ADOT Transportation authorities have continued to be positive whereby they are very willing to assist, provide State support through current system operations (analysis of routes, frequency, and ridership needs). The State has requested that staff sign up for the up-coming Section 5311 Rural Transportation Program Grants application workshop for November 16, 2011. Staff, with Council approval and authorization to proceed will be actively involved in processing all grant applications and needed report data to State Transportation authorities.

JUSTIFICATION/BENEFITS/ISSUES

Benefits to such an opportunity would provide for a more holistic approach on a local/regional level for the future of transportation throughout the Verde Valley. This MOU will offer both Cottonwood and Sedona to explore more fully, avenues and opportunities available to both entities along with other stakeholders within the current system.

COST/FUNDING SOURCE

Funding Sources to be reviewed and studied for best option involving funding and public service opportunities in conjunction with State authorities.

REVIEWED BY

City Manager: _____

City Attorney: _____

ATTACHMENTS

One Attachment:

- "Memorandum of Understanding" Regarding Transportation Services Between the Cities of Cottonwood and Sedona

**Memorandum of Understanding
Regarding Transportation Services
Between the Cities of Cottonwood and Sedona, Arizona**

This memorandum of Understanding is entered into between the Cities of Cottonwood and Sedona, Arizona, (hereinafter referred to as the Parties) and is intended to set forth their common goals and intentions to work cooperatively to create a binding relationship designed to provide ground transportation services between their respective jurisdictions.

Recitals

WHEREAS, the Parties both now participate in the Northern Arizona Intergovernmental Public Transportation Authority (NAIPTA), which authority oversees the operation of the VERDE LYNX and CAT public transportation systems, and

WHEREAS, the Parties feel that more localized control and administration of these systems will yield improved customer service and economic efficiency, and

WHEREAS, the Parties have a mutual goal of entering into a comprehensive intergovernmental agreement that would provide for complete local control of the VERDE LYNX and CAT systems by October of 2012, and

WHEREAS, in order to take advantage of federal funding opportunities, it is necessary to begin the application process for Federal 5311 funding in December of 2011, and

WHEREAS, this memorandum of understanding will facilitate the ability of the Parties to make application for federal funds,

NOW THEREFORE, it is agreed that the Parties do hereby enter into this memorandum of understanding in order to more clearly articulate their ultimate intentions and the desired outcome of their efforts to provide a locally controlled transportation system to serve the needs of both communities. To this end, the Parties agree as follows:

1. The Parties do hereby agree that it is their mutual intentions to each respectively give the required 180-day notice to terminate their service intergovernmental agreements with NAIPTA on or before January 15, 2012.
2. The Parties will work towards negotiating an intergovernmental agreement (IGA) between them and will submit a final IGA for review and approval by their respective City Councils on or before February 15, 2012. It is contemplated that this agreement will authorize the City of Cottonwood to administer the VERDE LYNX and CAT systems with the City of Sedona making a fair and equitable financial contribution in consideration of the benefits derived from these transportation systems. However, nothing in this Memorandum of Understanding is intended to bind either party to ultimately approve an intergovernmental agreement.

3. The Parties hereby agree to apply for Federal 5311 transportation funding and to work cooperatively in making such application within time parameters that would assure that such funding is available for commencing complete local administration of the VERDE LYNX and CAT systems by October of 2012.

4. The Parties agree that every effort will be made to maintain, at a minimum, the same service levels that are currently provided and at the same or lesser cost as is currently incurred through NAIPTA's administration of the VERDE LYNX and CAT systems.

IN WITNESS WHEREOF, the Parties hereto have caused this memorandum of understanding to be executed by their duly authorized officers.

CITY OF COTTONWOOD, ARIZONA,
A municipal corporation of the State of Arizona

By: _____ Date: _____

Its: _____

CITY OF SEDONA, ARIZONA,
A municipal corporation of the State of Arizona

By: _____ Date: _____

Its: _____

CLAIMS REPORT OF November 15, 2011

FUND TOTAL	VENDOR NAME	DESCRIPTION	TOTAL \$0.00
CLAIMS EXCEPTIONS REPORT OF November 15, 2011			
FUND	VENDOR NAME	DESCRIPTION	TOTAL
All	City of Cottonwood	Payroll 11/11/11	\$380,762.80
All	APS	Utilities	\$32,979.38
All	Ferguson Waterworks Inc	Supplies	\$17,195.67
Utilities	Grand Canyon Pump LLC	PO 19012 danfoss pump	\$12,594.20
Gen	Richardsons LLC	Custodial Rec Center and City Wide	\$18,682.18
Gen	Sedona Fire District	Fire Dispatching and Telecom	\$11,082.43
Gen	Sutton Law	Prosecuting Atty	\$7,000.00
All	UNS Gas Inc	Utilities	\$5,576.22
All	APS	Utilities	\$47,246.71
Gen	AZ State Treasurer	Court Fines October	\$15,893.96
Gen	Insight Public Sector	Ipads for Planning	\$5,989.29
Capital	Joseph G Bock	Appraisal PO 19024	\$8,000.00
All	United Fuel	Gas	\$10,192.09
Gen	VV Rentals	Multiple rentals of equipment	\$6,284.45
TOTAL			\$579,479.38