

## A G E N D A

REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD FEBRUARY 21, 2012, 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. APPROVAL OF MINUTES—Regular Meeting of 2/7/12.  
  
*Comments regarding agenda items are limited to a 5 minute time period per speaker.*
- VII. OLD BUSINESS
  1. ORDINANCE NUMBER 584—APPROVING AN AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY BETWEEN THE CITY AND ANTHONY M. LOZANO, TONI G. LOZANO, EDWARD M. LOZANO AND ELEANOR LOZANO, FOR THE WEST MINGUS AVENUE RECONSTRUCTION PROJECT; SECOND & FINAL READING
- VIII. 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 APPLICATION FROM ERIC S. GLOMSKI, LICENSEE FOR ARIZONA STRONGHOLD VINEYARDS, TO EXTEND THE CURRENT LIQUOR LICENSE TO INCLUDE THE ADMINISTRATION OFFICE BUILDING LOCATED AT 1019 NORTH MAIN STREET AND THE FRONT SIDEWALK AND BACK COURTYARD AREAS OF THE ADJACENT 1021 AND 1023 NORTH MAIN STREET BUILDING.

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- IX. NEW BUSINESS—The following items are for Council discussion, consideration, and possible legal action.
1. WAIVER TO ALLOW SERVING ALCOHOL AND OVERNIGHT CAMPING AT THE COTTONWOOD KIDS PARK LOCATED AT 350 SOUTH 12TH STREET, FOR THE ANNUAL ARIZONA BIKE MULTIPLE SCLEROSIS FOUNDATION'S VORTEX RIDE.
  2. SPECIAL EVENT LIQUOR LICENSE APPLICATION SUBMITTED BY THE NATIONAL MULTIPLE SCLEROSIS SOCIETY, ARIZONA CHAPTER, FOR AN EVENT SCHEDULED FOR APRIL 14, 2012, AT THE COTTONWOOD KIDS PARK LOCATED AT 350 SOUTH 12TH STREET.
  3. CONTRACT WITH EMCOR SERVICES ARIZONA IN THE AMOUNT OF \$32,000 FOR THE DESIGN AND PRECONSTRUCTION SERVICES PORTION OF THE DESIGN/BUILD CONTRACT TO PROVIDE A SOLAR THERMAL SYSTEM AT THE COTTONWOOD RECREATION CENTER.
  4. RECONSTRUCTION OF EAST SKYLINE DRIVE WITH THE REMAINDER OF THE PAVEMENT PRESERVATIONS FUNDS FOR FISCAL YEAR 2011-12.
  5. POSSIBLE INSTALLATION OF A FOUR WAY STOP AT THE INTERSECTION OF FIR STREET AND MONTE TESORO DRIVE.
  6. POSSIBLE AWARD AND APPROVAL OF A CONTRACT FOR CITY VEHICLE FLEET MAINTENANCE OPERATIONS TO REESE & SONS TIRE AND AUTOMOTIVE, INC.
  7. APPROVAL OF SECTION I. INTRODUCTION, AND SECTION 11, SOCIAL MEDIA POLICY, FOR THE CITY'S NEW INFORMATION TECHNOLOGY GUIDE.
  8. AWARD OF THE CONTRACT FOR LEASE PURCHASE FINANCING TO PROCURE VEHICLES AND EQUIPMENT APPROVED IN THE 2011-2012 BUDGET.
  9. AUTHORIZATION FOR CITY MANAGEMENT TO TREAT THE UPCOMING HIRING PROCESS FOR THE CAT/VERDE LYNX SYSTEM AS AN INTERNAL RECRUITMENT UNDER SECTION 19 OF THE COTTONWOOD EMPLOYEE MANUAL WITH RESPECT TO NAIPTA EMPLOYEES CURRENTLY PERFORMING JOBS WITHIN THE CAT/VERDE LYNX SYSTEM; TO GIVE MANAGEMENT THE DISCRETION TO OFFER CURRENT NAIPTA EMPLOYEES HIRED THROUGH THIS PROCESS THE SAME RATES OF PAY THAT THEY ARE CURRENTLY RECEIVING FROM NAIPTA, EVEN IF THOSE RATES ARE HIGHER THAN THE MIDPOINT FOR THE POSITION; AND TO AUTHORIZE MANAGEMENT TO CREDIT THE CURRENT LEAVE BALANCES OF NAIPTA EMPLOYEES HIRED THROUGH THIS PROCESS.
- X. CLAIMS & ADJUSTMENTS
- XI. ADJOURNMENT

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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.

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



Print

Meeting Date: February 21, 2012

**Subject:** Second Reading and adoption of Ordinance Number 584-- Approving an Agreement for the Exchange of Real Property for Right-of-Way for the West Mingus Avenue Reconstruction Project.

Department: Development Services

From: Morgan Scott, Development Services Operations Manager

### **REQUESTED ACTION**

Adoption of Ordinance 584, approving an agreement with Anthony M. Lozano, Toni G. Lozano, Edward M. Lozano and Eleanor Lozano for the exchange of real property.

### **SUGGESTED MOTION**

I move to adopt Ordinance 584, approving an agreement with Anthony M. Lozano, Toni G. Lozano, Edward M. Lozano and Eleanor Lozano for the exchange of real property.

### **BACKGROUND**

West Mingus Avenue is designed to be a 3-lane collector street from SR 89A to Willard Street, with a modern roundabout at the intersection of Mingus and Willard. This easement provides a portion of the right-of-way for this improvement. The attached agreement sets forth the compensation and conditions for the land trade from Anthony M. Lozano, Toni G. Lozano, Edward M. Lozano and Eleanor Lozano . The City will be trading 1,366.47 square feet of land it owns (APN: 406-33-054) for 1,366.48 square feet of land owned by the Lozano's (APN: 406-33-014S).

### **JUSTIFICATION/BENEFITS/ISSUES**

The reconstruction of Mingus Avenue from Hwy 89A to Willard is a priority of the City Council and obtaining sufficient right-of-way to build the street to city standards is a critical component of this project.

### **COST/FUNDING SOURCE**

There is no monetary cost associated with this trade. The land that the City owns was purchased with HURF funds.

### **ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">Map for Council, 2-10-12.pdf</a>	Map of Land Trade	Cover Memo
<a href="#">ord584.doc</a>	Ordinance 584	Ordinance
<a href="#">2-21-12 Lozano Agreement (A1).pdf</a>	Lozano Agreement	Backup Material



 CITY TO LOZANO

 LOZANO TO CITY

**CITY OF COTTONWOOD  
MAP OF LAND TRADE WITH LOZANOS**



ORDINANCE NUMBER 584

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 ANTHONY M. LOZANO, TONI G. LOZANO, EDWARD M. LOZANO AND ELEANOR LOZANO.

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 a parcel of real property totaling approximately 1,366 square feet in the area along West Mingus Avenue, which it no longer requires; and

WHEREAS, the City requires certain real property owned by Anthony M. Lozano, Toni G. Lozano, Edward M. Lozano and Eleanor Lozano ("Lozanos"); and

WHEREAS, the City and Lozanos have successfully conferred for the purpose of exchanging a parcel of real property owned by the City for a parcel of real property owned by Lozanos totaling approximately 1,366 square feet 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 Lozanos are of substantially equal value.

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 Anthony M. Lozano, Toni G. Lozano, Edward M. Lozano and Eleanor Lozano is hereby approved.

ORDINANCE NUMBER 584

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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 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 \_\_\_\_\_ DAY OF FEBRUARY.

\_\_\_\_\_  
Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Steven B. Horton, Esq., City Attorney

\_\_\_\_\_  
Marianne Jiménez, City Clerk

## REAL ESTATE EXCHANGE AGREEMENT

This Exchange Agreement (“Agreement”) is made and entered into as of the \_\_\_\_ day of January, 2012, by and between Anthony M. Lozano, Toni G. Lozano, Edward M. Lozano and Eleanor Lozano (hereinafter referred to as “Lozano”), and the City of Cottonwood, Arizona, an Arizona municipal corporation (hereinafter referred to as "City").

### RECITALS

A. Lozano 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 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 "B" (hereinafter referred to as "City Property").

C. Lozano and City desire to exchange the Right-of-Way Property for the City Property 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, Lozano 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. City and Lozano shall deposit in escrow with the closing agent all instruments and documents necessary to complete the exchange in accordance with this Agreement no later than March 30, 2012, hereinafter referred to as the “Property Closing Date.”

**1.2 Prorations; Closing Costs.** Each party shall pay and discharge on or before the Property Closing Date any and all taxes, assessments, debts and liabilities on the property it is transferring to the other party for the period up to the Property Closing Date. The parties shall also pay equal shares of the premiums and other charges for the cost of standard coverage title insurance for the exchange properties. City shall also pay at closing any Arizona or local documentary transfer tax or other Arizona transfer taxes or fees arising from the conveyance of the exchange properties, as well as the escrow fee and recording charges.

**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 Lozano hereof shall be true and correct as of the Property Closing Date.

(c) City shall have received a survey of the Property, which is satisfactory to City in all respects.

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

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

(a) Lozano 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 Lozano's fee title to the City Property free and clear of any exceptions other than the printed general exceptions and exclusions in the policy form.

(b) The closing agent has not received instructions or conditions of closing from City that are inconsistent with or in addition to those provided in this Agreement.

(c) City shall have performed all of the material obligations required herein.

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

**2.1** Lozano 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 Lozano, at closing, a warranty deed, in recordable form, conveying good and marketable title to the City Property free and clear of any defects, liens or encumbrances.

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

**2.4** City shall cause the Title Company to issue or be unconditionally

committed to issue the Title Policy insuring Lozano's title to the City Property.

**2.5** Lozano shall cause the Title Company to issue or be unconditionally committed to issue the Title Policy insuring City's interest in the Right-of-Way Property.

**2.6** The parties shall execute and deliver an assignment of any and all rights, interests, claims and privileges under any express or implied warranties or guaranties benefitting the properties; any plans, specifications, and designs for development thereof; any property insurance policies and claims; and any condemnation awards or rights to same pertaining to the properties.

**2.7** The parties 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.**

**3.1** Within thirty (30) days after the date this Agreement is signed, each party will cause to be issued a preliminary commitment for the Title Policy (the "Commitment") for their respective properties 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 the party in whose favor the Commitment is issued. 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 (a "qualified Commitment"), the party in whose favor the qualified Commitment was issued may elect to require the other party to remove such exceptions at the other party's sole expense at or prior to closing.

If a party in whose favor the qualified Commitment is issued elects to require the other party to remove such exceptions at or prior to closing, then that party's failure to remove such exceptions at its sole expense by the Property Closing Date shall constitute a default by that party, and the party in whose favor the qualified Commitment is issued may, in its sole discretion, pursue any one or more of the following remedies: cancel this agreement without penalty or obligation; extend the Property Closing Date by a period that it determines is reasonably required for the removal or endorsement over by the Title Company of such disapproved exceptions and reserving all rights, claims and remedies; and/or elect to close subject to such disapproved exceptions and retain all rights and remedies to recover damages from the other party after closing in an amount equal to the diminution in the value of the Property caused by such disapproved exceptions.

The Title Policies shall be dated as of the date(s) the deeds to the exchange properties are recorded, and shall insure the transferee against loss or damage by reason of defect in transferor'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. Lozano's Representations.** Understanding that City is relying on the following

representations and warranties, Lozano 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** 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. The Right-of-Way Property is in compliance with all federal, state, and local environmental laws and regulations. To Lozano's actual knowledge, no environmental enforcement action exists with respect to the Property, nor does Lozano have actual knowledge of any basis for such an action.

**4.2** Lozano 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.

**4.3** 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.

**4.4** 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, Lozano's ownership thereof, or the conveyance of ownership to the City pursuant to the terms of this Agreement.

**4.5** 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 Lozano, and no parties have been granted any license, lease, or other right relating to the use or possession of the Right-of-Way Property.

**4.6** 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 Lozano or pending against Lozano or affecting or involving the Right-of-Way Property.

**4.7** 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 Lozano prior to the closing.

**4.8** Lozano is not prohibited from consummating the transaction contemplated

by this Agreement, by any law, regulation, agreement, instrument, restriction, order, or judgment.

**4.9** 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.** Understanding that Lozano is relying on the following representations and warranties, City makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder and which shall survive the closing.

**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 Lozano 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 Lozano nor any representative of Lozano has made any representation or promise upon which City has relied concerning the physical condition of the Right-of-Way Property, except as to those representations expressly stated in this Agreement.

**6. Brokerage.** It is the expressed declaration of the Parties that no real estate commissions will be due from either Party to any other person or party resulting from the exchange of these 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 funds, documents and instruments to be delivered through Escrow.

(d) Upon the Closing, to cause the recordation of the deed 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 Lozano.

**10. Insurance.** Throughout the period between the date of this Agreement and the Property Closing Date, Lozano shall maintain liability insurance on the Right-of-Way Property and the City shall maintain liability insurance on the City Property.

**11. Conditions Subsequent to Closing.** 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 Curb Cuts.** City, at its expense, will install one (1) curb cut at a mutually agreeable location on the City Property for the benefit of Lozano.

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

**13. 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 Lozano or City, as applicable, at the addresses set forth below or at such other address as a party may designate in writing.

Lozano:

Anthony M. Lozano, Toni G. Lozano, Edward M. Lozano and Eleanor Lozano  
P.O. Box 306  
Jerome, AZ 86331  
Attn: Anthony Lozano

City:

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

**14. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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 Lozano.

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IN WITNESS WHEREOF, the City and Lozano have executed this Agreement as of the date indicated above.

**FOR LOZANO:**

**Anthony M. Lozano:**

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF YAVAPAI    )

The foregoing instrument was duly executed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

**Toni G. Lozano:**

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF YAVAPAI    )

The foregoing instrument was duly executed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

**Edward M. Lozano:**

By: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF YAVAPAI    )

The foregoing instrument was duly executed and acknowledged before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

**Eleanor Lozano:**

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF YAVAPAI    )

The foregoing instrument was duly executed and acknowledged before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

**FOR CITY:**

By: \_\_\_\_\_  
Mayor Diane Joens

**ATTEST:**

By: \_\_\_\_\_  
Marianne Jiménez, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Steve Horton, City Attorney

**EXHIBITS A and B**

EXHIBIT A

**LEGAL DESCRIPTION**  
**Lozano to City**  
**New R.O.W. Mingus Avenue**  
**SWI 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:

Commencing at a found ½ inch iron pipe, locally accepted as the Northeast Corner of the West Half of the West Half of the Southeast Quarter of Section 33 (said point also accepted as the Northeast Corner of a parcel described in Book 1533 of Official Records, Page 154, hereafter referred to as "R1") from which, a found 5/8 inch smooth steel pin accepted as a point on the East line of the West Half of the West Half of the Southeast Quarter of Section 33 lies South 00°06'48" East 409.19 feet;

Thence South 00°06'48" East along the east line of R1 a distance of 68.77 feet to the True Point of Beginning;

Thence continuing South 00°06'48" East along the east line of R1 a distance of 12.29 feet to a non-tangent point of curvature on the northerly right-of-way line of Mingus Avenue, the central point of said non-tangent curve lies South 29°28'16" East 633.20 feet;

Thence along said right-of-way line through a central angle of 11°19'33" on a curve to the left in a southwesterly direction an arc length of 125.17 feet (central angle of 11°18'39"; arc length of 125.00 feet per R1) to the southernmost corner of R1;

Thence North 36°53'42" West (North 36°02'52" West per R1) along the west line of R1 a distance of 10.50 feet to a non-tangent point of curvature, the central point of which lies South 40°51'11" East 633.20 feet;

Thence through a central angle of 11°48'34" on a curve to the right in a northeasterly direction an arc length of 132.57 feet to the True Point of Beginning containing 1368 square feet, more or less.



EXPIRES 9/30/2012

PLOTTED: Oct 05, 2011-2:21pm

FILE: P:\2008\08139\SURVEY\LEGALS\08139 Mingus Ave ROW Lozano Dedication 10-4-11.dwg <<C3D\_Imperial>>

# EXHIBIT DRAWING TO ACCOMPANY LEGAL DESCRIPTION

MINGUS AVENUE  
LOZANO PARCEL  
RIGHT-OF-WAY DEDICATION TO  
CITY OF COTTONWOOD  
LYING IN SECTION 33  
T16N, R3E, G.&S.R.M.  
YAVAPAI COUNTY, AZ

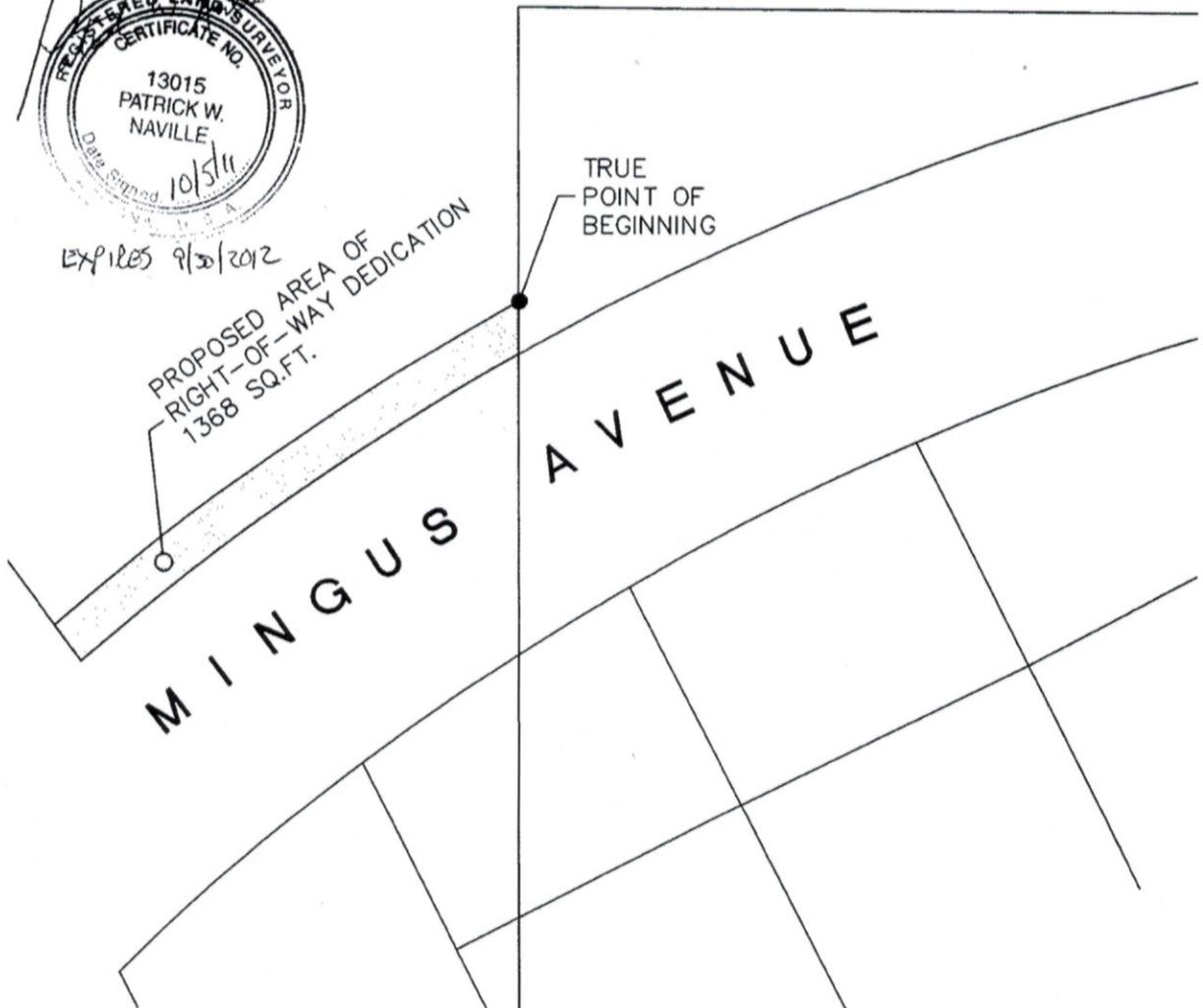


NOT TO SCALE

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.



EXPIRES 9/30/2012



Shephard & Wesnitzer, Inc.

75 Kallof Place  
Sedona, AZ 86336  
928.282.1061  
928.282.2058 fax

www.swiaz.com

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

CITY OF COTTONWOOD COTTONWOOD ARIZONA

EXHIBIT DRAWING  
LOZANO PARCEL

SHEET

2

OF  
2

## EXHIBIT B

### LEGAL DESCRIPTION City Property to Lozano Parcel SWI 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:

Beginning at a found ½ inch iron pipe, locally accepted as the Northwest Corner of the East Half of the West Half of the Southeast Quarter of Section 33 (said point also accepted as the Northeast Corner of a parcel described in Book 1533 of Official Records, Page 154, hereafter referred to as "R1") from which, a found ½ inch rebar in the pavement locally accepted as the East Quarter Corner of Section 33 lies South 89°21'31" East (Measured by GPS and Basis of Bearings for this description) a distance of 1906.76 feet;

Thence South 89°21'31" East along the north line of the Southeast Quarter of Section 33 a distance of 8.78 feet;

Thence South 25°41'52" East 57.04 feet to a non-tangent point of curvature, the central point of which lies South 25°41'43" East 643.20 feet;

Thence through a central angle of 03°20'54" on a curve to the left in a southwesterly direction an arc length of 37.59 feet to a point on the east line of R1;

Thence North 00°06'48" West (North 00°30'19" West per R1) a distance of 68.77 feet to the Point of Beginning containing 1368 square feet, more or less.



EXPIRES 9/30/2012

FILE: C:\DOCUME~1\ADMINI~1\LOCALS~1\Temp\AcPublish~1\LOCALS~1\Temp\AcPublish\_1744\08139 Mingus Ave ROW Lozano Dedication 10-4-11.dwg <<C3D\_1007110> Oct 05, 2011-2:18pm

# EXHIBIT DRAWING TO ACCOMPANY LEGAL DESCRIPTION

MINGUS AVENUE  
CITY OF COTTONWOOD  
TRANSFER TO LOZANO  
LYING IN SECTION 33  
T16N, R3E, G.&S.R.M.  
YAVAPAI COUNTY, AZ



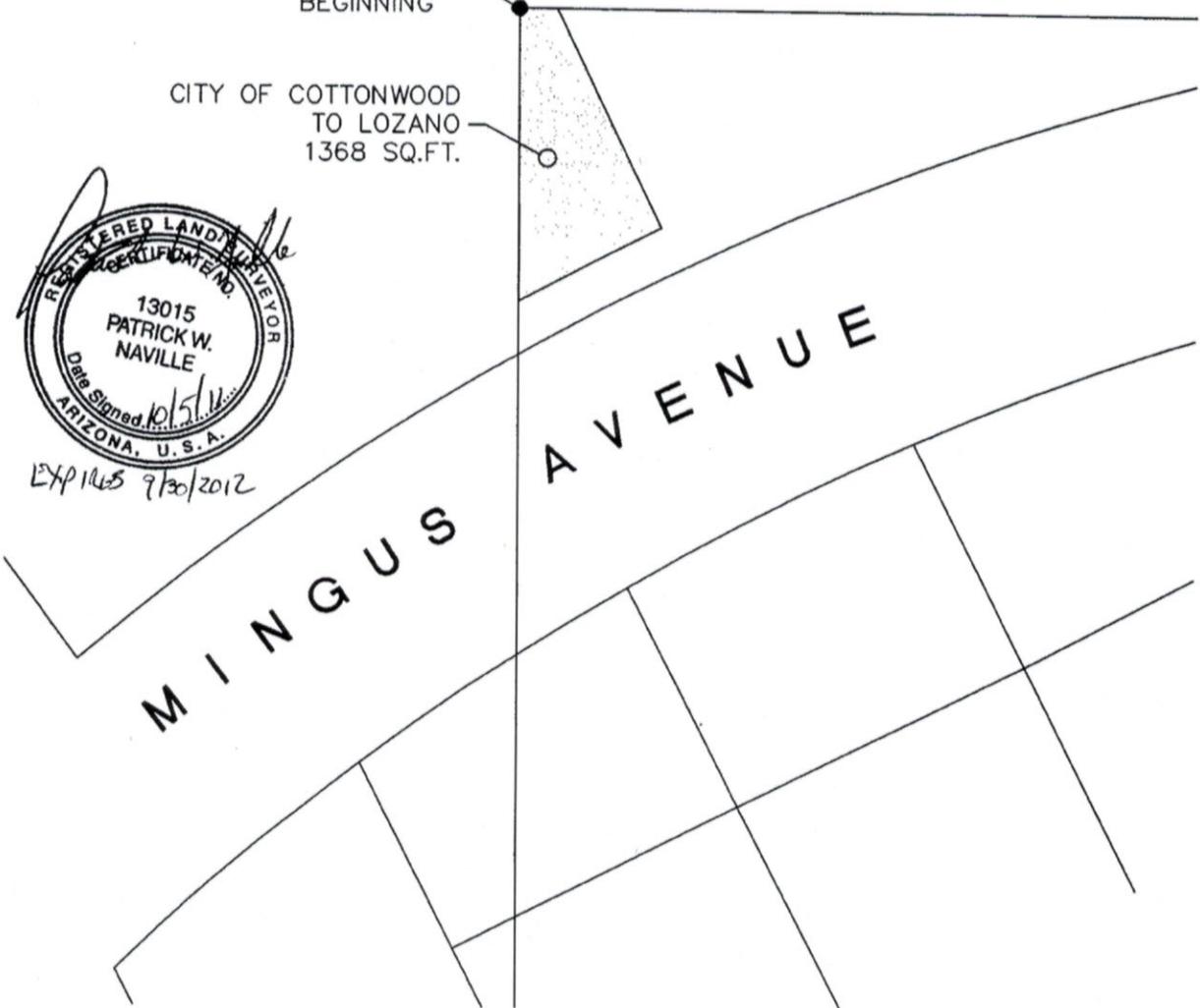
This sketch is not intended to be used as a boundary survey. Its purpose is merely to provide a graphic representation of the legal description.

TRUE POINT OF BEGINNING

CITY OF COTTONWOOD TO LOZANO  
1368 SQ.FT.



EXPIRES 9/30/2012



	75 Kallof Place Sedona, AZ 86336 928.282.1061 928.282.2058 fax www.swiaz.com	JOB NO: 08139	CITY OF COTTONWOOD	COTTONWOOD	SHEET
		DATE: OCT. 2011	ARIZONA		
SCALE: AS SHOWN	EXHIBIT DRAWING				
DRAWN: TKH	CITY OF COTTONWOOD				
DESIGN: N/A	PARCEL TRANSFER				
CHECKED: PWN				OF 2	

# City of Cottonwood, Arizona

## City Council Agenda Communication



Print

Meeting Date: February 21, 2012

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

Department: City Clerk

From: Marianne Jimenez, City Clerk

### **REQUESTED ACTION**

Council consideration of recommending approval or denial of an application for an Extension of Premises Liquor License permit submitted by Eric S. Glomski, Licensee for Arizona Stronghold Vineyards.

### **SUGGESTED MOTION**

"I move to recommend approval of the Extension of Premises Liquor License Permit application submitted by Eric S. Glomski, Licensee for Arizona Stronghold Vineyards, to include the 1019 building and the front sidewalk area and back courtyard of the 1021 and 1023 North Main Street building."

### **BACKGROUND**

An Extension of Premises Liquor License Permit application was received from Eric S. Glomski, Licensee for Arizona Stronghold Vineyards, to extend the current liquor license to include the administration office building located at 1019 North Main Street and the front sidewalk and back courtyard areas of the adjacent 1021 and 1023 North Main Street building.

### **JUSTIFICATION/BENEFITS/ISSUES**

All applications for Extension of Premises Liquor License Permits that are requested of 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.

### **COST/FUNDING SOURCE**

N/A

### **ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">11-15-11_Glomski_LL_Extension.pdf</a>	Application from Eric Glomski	Backup Material

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

[X] 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

[ ] Temporary change for date(s) of:

- 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? [X] YES [ ] NO FAX # (866) 848-2192
7. Have you received approved Liquor Law Training? [ ] NO [X] 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 [X] 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.

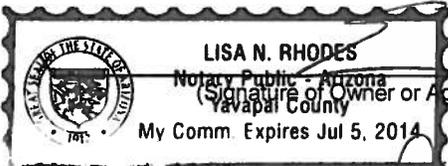
This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

(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.

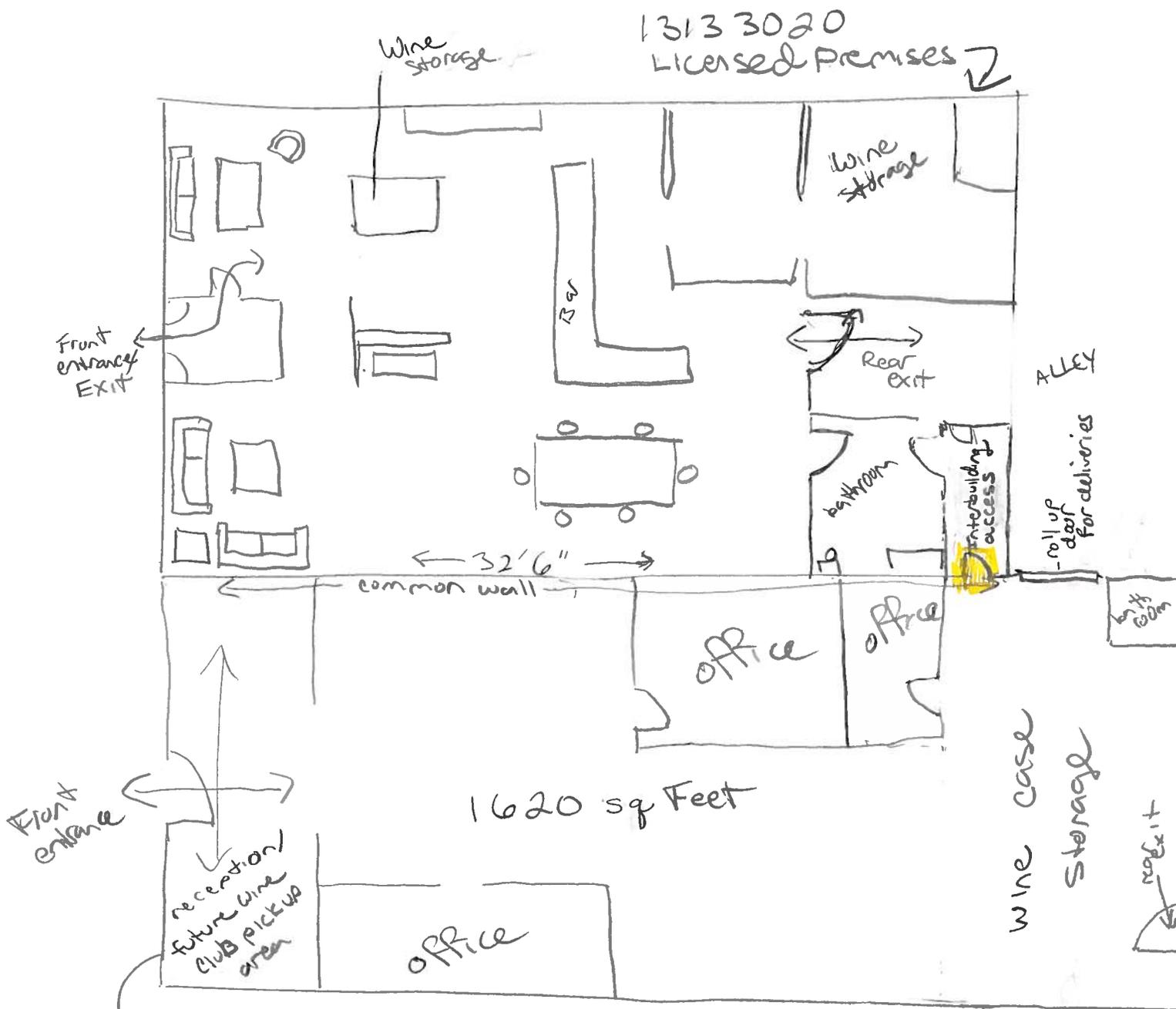


State of Arizona County of Yavapai
SUBSCRIBED IN MY PRESENCE AND SWORN TO before me this date
27 October 2011
Day Month Year

(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**



 Print

Meeting Date: February 21, 2012

Subject: Council Consideration of Usage of The Cottonwood Kids Park by the Arizona Bike M.S. Foundation to serve alcohol at the event and allow for overnight camping at the park facility.

Department: Community Services

From: Jason Little, Recreation Manager

**REQUESTED ACTION**

Council consideration and recommendation of approval or denial of usage of the Cottonwood Kids Park for the Annual Arizona Bike M.S. Vortex Ride submitted by Blaine King, applicant for the Arizona Chapter M.S. Foundation to serve alcohol at the Bike MS event and waive the "no camping" ordinance.

**SUGGESTED MOTION**

"I move to recommend approval of the use of the Cottonwood Kids Park for the Bike Arizona M.S. Event submitted by Blaine King, applicant for the Arizona M.S. Chapter Foundation, for an event to serve alcohol and allow for overnight camping on-site, thereby waiving Section 12.12.020(B) of the City Code during the event for April 13-15, 2012.

**BACKGROUND**

The City Manager and Community Services General Manager were approached by the Arizona M.S. Chapter in April of 2011 pertaining to the possibility of creating a partnership whereby the Annual Bike M.S. Ride would be hosted in Cottonwood, Arizona. Staff and representatives from the Arizona M.S. Foundation agreed that the Cottonwood Kids Park would be the most suitable location for this event. The M.S. Foundation could utilize the parking facilities around the Verde Valley Fairgrounds and the Kids Park as the hub for this event thereby giving the 1,000 participants adequate space for an event of this magnitude. Additionally, Mr. King has been working with the Planning and Zoning department to attain his Temporary Use Permit which allows all departments involved with this event the opportunity to offer suggestions and work out event logistics. Moreover, Mr. King is working closely with A.D.O.T. to secure authorization to access public roadways for event routes. Many of the event participants will obtain overnight accommodations at local hotel/motels; however, there will also be spill over whereby, some participants will choose to stay in small pup tents on-site at the Cottonwood Kids Park facility. Council is requested to waive the current City Code under Section 12.12.020(B) Camping in Parks and Recreation facilities which states: "Overnight camping or parking is prohibited at all parks and recreation facilities, including all adjacent parking areas. Overnight camping or parking is defined as camping or parking after 10 p.m., unless otherwise posted."

**JUSTIFICATION/BENEFITS/ISSUES**

The event has been warmly received by the Chamber of Commerce, local business owners, and local service organizations because of the revenue potential and media coverage the event will receive on a local and regional level. The three day event has the potential to reach a rider/participant threshold of 1,000 attendees. Of the 1,000 participants over 80 percent of the attendees live outside of the jurisdictional boundaries of Yavapai County and will be staying overnight for one to two days.

**COST/FUNDING SOURCE**

N/A

**ATTACHMENTS:**

Name:	Description:	Type:
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No Attachments Available

# City of Cottonwood, Arizona

## City Council Agenda Communication



 [Print](#)

Meeting Date: February 21, 2012

**Subject:** Special Event Liquor License for National Multiple Sclerosis Society, Arizona Chapter.

Department: City Clerk

From: Marianne Jimenez, City Clerk

### **REQUESTED ACTION**

Council consideration and recommendation of approval or denial of a Special Event Liquor License Application submitted by the National Multiple Sclerosis Society, Arizona Chapter, for an event scheduled for April 14, 2012, at the Cottonwood Kids Park.

### **SUGGESTED MOTION**

" I move to recommend approval of the Special Event Liquor License Application submitted by the National Multiple Sclerosis Society, Arizona Chapter, for an event scheduled for April 14, 2012, at the Cottonwood Kids Park located at 350 South 12th Street."

### **BACKGROUND**

A Special Event Liquor License Application has been received from the National Multiple Sclerosis Society, Arizona Chapter, for an event scheduled for April 14, 2012, at the Cottonwood Kids Park located at 350 South 12th Street.

### **JUSTIFICATION/BENEFITS/ISSUES**

All Special Event Liquor License applications that are submitted to the Arizona Department of Liquor Licenses & Control (ADLLC) for events held in 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.

### **COST/FUNDING SOURCE**

N/A

### **ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">2-21-12 Special Event LL for MS.pdf</a>	Application from the National Multiple Sclerosis Society, Arizona Chapter	Backup Material



10. Has the applicant been convicted of a felony in the past five years, or had a liquor license revoked?  
 YES  NO (attach explanation if yes)

11. This organization has been issued a special event license for <sup>2</sup>\_\_\_\_\_ days this year, including this event  
(not to exceed 10 days per year).

12. Is the organization using the services of a promoter or other person to manage the event?  YES  NO  
If yes, attach a copy of the agreement.

13. List all people and organizations who will receive the proceeds. Account for 100% of the proceeds.  
**THE ORGANIZATION APPLYING MUST RECEIVE 25% OF THE GROSS REVENUES OF THE SPECIAL  
EVENT LIQUOR SALES.**

Name National Multiple Sclerosis Society, Arizona Chapter 100%  
Percentage

Address 5025 E. Washington St., Suite 102, Phoenix, AZ 85034

Name \_\_\_\_\_ Percentage

Address \_\_\_\_\_  
(Attach additional sheet if necessary)

14. Knowledge of Arizona State Liquor Laws Title 4 is important to prevent liquor law violations. If you have any questions regarding the law or this application, please contact the Arizona State Department of Liquor Licenses and Control for assistance.

NOTE: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.  
"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT PREMISES."

15. What security and control measures will you take to prevent violations of state liquor laws at this event?  
(List type and number of security/police personnel and type of fencing or control barriers if applicable)

\_\_\_\_\_ # Police  Fencing  
<sup>1</sup>\_\_\_\_\_ # Security personnel  Barriers

We will have one off duty officer checking ID at the entrance of the  
secure area as well as a paid bartender checking ID to confirm  
before serving.

16. Is there an existing liquor license at the location where the special event is being held?  YES  NO  
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use?  YES  NO

**(ATTACH COPY OF AGREEMENT)**

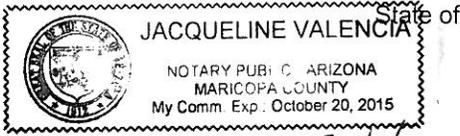
\_\_\_\_\_  
Name of Business ( ) \_\_\_\_\_  
Phone Number

17. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your special event licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

**THIS SECTION TO BE COMPLETED ONLY BY AN OFFICER, DIRECTOR OR CHAIRPERSON OF THE ORGANIZATION NAMED IN QUESTION #1**

18. I, Morgan Blaine King declare that I am an Officer/Director/Chairperson appointing the applicant listed in Question 6, to apply on behalf of the foregoing organization for a Special Event Liquor License.

X [Signature] Development Manager 2-10-12 (480) 721.5188  
(Signature) (Title/Position) (Date) (Phone #)



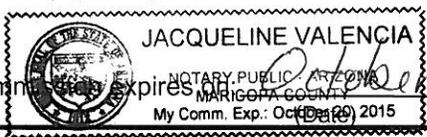
State of Arizona County of Maricopa  
The foregoing instrument was acknowledged before me this 10 February 2012  
Day Month Year

My Commission expires on: October 20, 2015 Jacqueline Valencia  
(Date) (Signature of NOTARY PUBLIC)

**THIS SECTION TO BE COMPLETED ONLY BY THE APPLICANT NAMED IN QUESTION #6**

19. I, Morgan Blaine King declare that I am the APPLICANT filing this application as listed in Question 6. I have read the application and the contents and all statements are true, correct and complete.

X [Signature] State of Arizona County of Maricopa  
(Signature) The foregoing instrument was acknowledged before me this



10 February 2012  
Day Month Year  
Jacqueline Valencia  
(Signature of NOTARY PUBLIC)

My commission expires on: October 20, 2015

**You must obtain local government approval. City or County MUST recommend event and complete item #20. The local governing body may require additional applications to be completed and submitted 60 days in advance of the event. Additional licensing fees may also be required before approval may be granted.**

**LOCAL GOVERNING BODY APPROVAL SECTION**

20. I, \_\_\_\_\_ hereby recommend this special event application  
(Government Official) (Title)  
on behalf of \_\_\_\_\_  
(City, Town or County) (Signature of OFFICIAL) (Date)

**FOR DLLC DEPARTMENT USE ONLY**

Department Comment Section:

\_\_\_\_\_  
(Employee) (Date)

APPROVED  DISAPPROVED BY: \_\_\_\_\_  
\_\_\_\_\_  
(Title) (Date)

**SPECIAL EVENT LICENSED PREMISES DIAGRAM**  
**(This diagram must be completed with this application)**

Special Event Diagram: (Show dimensions, serving areas, and label type of enclosure and security positions)

NOTE: Show nearest cross streets, highway, or road if location doesn't have an address.

*See attached.*



**SERIES: 15 SPECIAL EVENT LICENSE (Temporary)**

**Non-transferable  
On-sale retail privileges**

**PURPOSE:**

**Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.**

**ADDITIONAL RIGHTS AND RESPONSIBILITIES:**

**The applicant for a special event license must request a special event application from the Department and file the application with the governing body of the city or town, or Board of Supervisors of an unincorporated area of a county (where the special event is to take place) for approval or disapproval. Some local governing bodies may require approximately 60 days prior notice.**

**If the application is approved by the local authority, and the event meets the requirements for granting the license, the Director will issue a special event license to the qualifying organization.**

**Qualifying organizations will be granted a special event license for no more than ten (10) days in a calendar year. Events must be held on consecutive days and at the same location or additional licenses will be required. The license is automatically terminated upon closing of the last day of the event or the expiration of the license, whichever occurs first.**

**The qualified organization must receive at least twenty-five percent (25 %) of the gross revenues of the special event liquor sales.**

**A person selling spirituous liquor under a special event license must purchase the spirituous liquor from the holder of a license authorized to sell off-sale; except that, in the case of a non-profit organization which has obtained a special event license for the purpose of charitable fund raising activities, a person may receive the spirituous liquor from a wholesaler as a donation.**

**AVERAGE APPROVAL TIME: One (1) to seven (7) days.**

**PERIOD OF ISSUANCE:**

**Issued for no more than a cumulative total of ten (10) days in a calendar year. A special event may be held for more than one (1) day, but it must be held on consecutive days and at the same location or additional licenses will be required.**

**FEES: \$25.00 per day.**

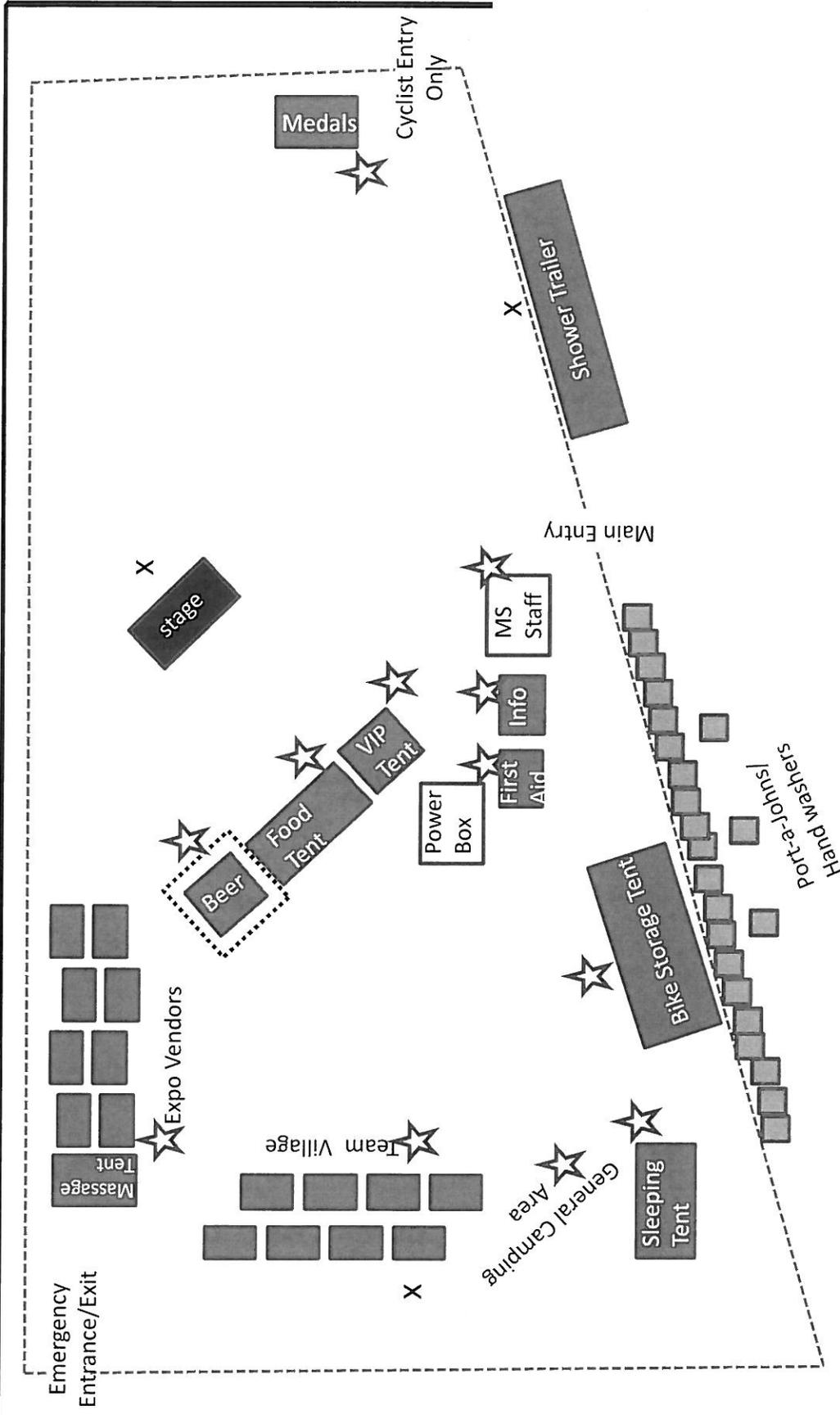
**ARIZONA STATUTES AND REGULATIONS:**

**ARS 4-203.02, 4-244, 4-261; Rule R19-1-228, R19-1-235, R19-1-309.**

**Disabled individuals requiring special accommodations please call (602) 542-9027**

12th Street

Gravel Entry



- Signs
- Fence
- Existing Structures
- Parking
- Generators
- Tents
- Stage

# City of Cottonwood, Arizona

## City Council Agenda Communication



 Print

Meeting Date: February 21, 2012  
Subject: Recreation Center - Design/Build Contract for a Solar Thermal System  
Department: Development Services  
From: Engineering Department Scott Mangarpan, Project Manager

### **REQUESTED ACTION**

Council direction for Staff to proceed with the contract with Emcor Services Arizona in the amount of \$32,000.00 for the design and preconstruction services portion of the Design/Build contract to provide a solar thermal system at the Cottonwood Recreation Center.

### **SUGGESTED MOTION**

"I move to direct staff to proceed with the contract with Emcor Services Arizona in the amount of \$32,000.00 for the design and preconstruction services portion of the Design/Build contract to provide a solar thermal system at the Cottonwood Recreation Center."

### **BACKGROUND**

Per the Council's request to proceed with a solar thermal system for the Recreation Center the Engineering Department issued a Request for Qualifications (RFQ) for firms interested in the design and construction of a solar thermal system for the Cottonwood Recreation Center. Six firms responded with Statements of Qualifications (SOQs). These SOQs were reviewed and ranked by a selection committee. Members of the committee included Troy Odell - City Engineer, Jason Little - Recreation Center Manager, Lisa Elliot - Purchasing Manager, Mark Millar - General Contractor and Scott Mangarpan - Project Manager. The four top ranked firms were invited to come to Cottonwood and interview as part of the next phase in the selection process. After the interviews the selection committee again ranked the firms and Emcor Services Arizona was the highest ranked firm. Negotiations between Emcor and Staff have resulted in the attached proposal for the design and preconstruction services portion of the design/build contract in the amount of \$32,000.00. The construction fee for the construction portion of the contract will be 6% of the Guaranteed Maximum Price (GMP) if the City elects to proceed with the construction of the solar thermal system.

### **JUSTIFICATION/BENEFITS/ISSUES**

The City is spending approximately \$25,000 per year to heat the Recreation Center Pools (indoor and outdoor), the spa and the domestic water (showers and sinks). It is believed that solar thermal systems provide a favorable return on investment, performing even better than Solar Photovoltaic systems. Part of the initial design process will be to put together a full economic analysis to help City Staff and the Council decide if proceeding with the project is justified.

### **COST/FUNDING SOURCE**

Both the design and preconstruction costs of \$32,000.00 and the system construction costs of up to an additional \$350,000.00 to be funded with interest earned from the GADA revenues.

### **ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">1-27-2012 Cottonwood - Recreation Center Thermal Solar Design Build Agreement - Final.doc</a>	Design/Build Contract	Backup Material
<a href="#">Emcor Services proposal 1.23.12.pdf</a>	Emcor Services Arizona Proposal	Backup Material

## **DESIGN/BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN CITY AND CONTRACTOR**

**(Where the Basis of Payment is the Cost of the Work plus a Fee,  
with a Guaranteed Maximum Price Option)**

---

### **TABLE OF ARTICLES**

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONTRACTOR'S RESPONSIBILITIES
4. CITY & PROJECT MANAGER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. COMPENSATION
8. COST OF THE WORK
9. CHANGES IN THE WORK
10. PAYMENT FOR CONSTRUCTION PHASE SERVICES
11. INSURANCE AND BONDS
12. TERMINATION OF THE AGREEMENT AND CITY'S RIGHT TO  
PERFORM CONTRACTOR'S RESPONSIBILITIES
13. DISPUTE RESOLUTION
14. MISCELLANEOUS PROVISIONS
15. EXISTING CONTRACT DOCUMENTS

AMENDMENT NO. 1 (Attached)

AMENDMENT NO. 2 (Will be included in next phase of Contract)

**ARTICLE 1**  
**AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2012 by and between the

**CITY:**

City of Cottonwood  
Cottonwood City Hall  
827 North Main Street  
Cottonwood, AZ 86326

Organized and operating in Yavapai County, Arizona;

and the **CONTRACTOR:**

Emcor Services Arizona  
4050 East Cotton Center Boulevard  
Suite 40  
Phoenix, AZ 85040

for Design/Build services in connection with the following **PROJECT:**

The Cottonwood Recreation Center Thermal Solar project includes Design/Build services for the project components listed below:

- The design services, construction services, and construction as identified in the RFQ for the Cottonwood Recreation Center Thermal Solar project, to include but not be limited to, the following:
- Obtaining all required permits; designing; providing all material, equipment and labor necessary to construct the a thermal solar system for the Recreation Center and the exterior pool; acceptance testing; and, commissioning of the system (s).
- All related site work, roof work and utility work associated with the above.

**ARTICLE 2****GENERAL PROVISIONS****2.1 TEAM RELATIONSHIP**

The City and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and will take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the date of Substantial Completion, as and if they are established by Amendment. The Contractor agrees to procure the architectural and engineering services set forth below, and to furnish construction and administration of the construction of the Work.

**2.2 RELATIONSHIP OF THE PARTIES****2.2.1 CONTRACTOR SERVICES**

The Contractor shall provide professional architectural/engineering services for the Project in accordance with the terms and conditions of this Agreement. The Contractor's performance of services to the City shall be to carry out the activities of Project design, furnish construction and administration of the construction for the work, and to provide the technical documents and supervision of the design team as necessary to achieve the City's Project objectives.

**2.2.2 CITY REPRESENTATIONS**

**2.2.2.1** The Project Manager for the City of Cottonwood is Scott Mangarpan. None of the activities of the Project Manager supplant or conflict with the designing, budgeting, or any other services and responsibilities customarily furnished by the Contractor or subconsultants in accordance with generally accepted Design/Build architectural/engineering or construction practices except as otherwise modified by this Agreement. The Contractor understands and agrees that the Project Manager is the City's representative to the Contractor and his consultants and subcontractors insofar as this Agreement is concerned. All instructions by the City to the Contractor relating to services performed by the Contractor will be issued or made through the Project Manager. All communications and submittals of the Contractor to the City shall be issued or made through the Project Manager unless the City otherwise directs in writing. The Project Manager will have the authority to establish procedures, consistent with this Agreement, to be followed by the Contractor and to call periodic conferences to be attended by the Contractor, and the Contractor's consultants and subcontractors, throughout the term of this Agreement.

**2.2.2.2** The Contractor understands and agrees that it is not a third-party beneficiary of any contract between the City and the Project Manager, and the Contractor waives any rights, claims, or causes of action it may have as an alleged third-party beneficiary of any such contract.

**2.2.2.3** Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City, the Project Manager, or the Contractor.

### **2.2.3 CONTRACTOR REPRESENTATION**

**2.2.3.1** The Contractor shall provide a list of all consultants that the Contractor intends to use relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the City. The City reserves the right to review the consultants proposed, and the Contractor shall not retain a consultant to which the City expresses a reasonable objection. The City will pay the Contractor any increased costs of obtaining the services of consultants to replace those rejected by the City unless the rejected consultants lacked the qualifications and/or certifications to provide the services or unless the City can demonstrate a good cause basis for its rejection.

**2.2.3.2** The Contractor shall provide to the City a list of the proposed key project personnel of the Contractor and its consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the City. Such key personnel and consultants shall be satisfactory to the City and shall not be changed except with the consent of the City. The City's approval of substituted personnel will not be unreasonably withheld.

### **2.2.4 ARCHITECT/ENGINEER**

Architectural and engineering services shall be provided by Arizona licensed, independent design professionals retained by the Contractor or furnished by licensed employees of the Contractor and as required or as permitted by the laws of the state of Arizona. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Architect/Engineer. The Engineering Firm is Henderson Engineers, Inc.

### **2.2.5 EXTENT OF AGREEMENT**

This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. In the event language in this document contradicts or is in conflict with any other agreement, written or oral, this agreement language takes precedence.

## **2.3 DEFINITIONS**

**2.3.1** The **Contract Documents** consist of:

- a) Change Orders and written amendments to this Agreement signed by both the City and Contractor, including a GMP Amendment if executed;
- b) Amendment No. 1 and 2;

- c) This Agreement;
- d) Documents approved by the City pursuant to Subparagraphs 3.1.4, 3.1.5 or 3.1.6;
- e) The information provided by the City pursuant to Clause 4.1.2.a;
- f) The Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;
- g) The City's Program provided pursuant to Subparagraph 4.1.1.
- h) The City's RFQ for this project;
- i) The Contractor's responses to the City's RFQ to the extent they do not conflict with the above;
- j) The Contractor's Guaranteed Maximum Price Proposal, if any.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

**2.3.2** The **Work** is the Design Phase Services procured in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.7, and other services which are necessary to complete the Project that are in accordance with and are reasonably inferable from the Contract Documents.

**2.3.3** The term **Day** shall mean calendar day.

**2.3.4** A **Subcontractor** is a person or entity who has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the City or Project Manager or any separate contractor's subcontractors.

**2.3.5** A **Sub-subcontractor** is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

**2.3.6** **Substantial completion** of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete and in accordance with the Contract Documents so that the City can safely fully utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the City and Contractor. The certificate shall state the respective responsibilities of the City and Contractor for security, maintenance, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction.

**2.3.7** **Final acceptance/completion** of the Work means 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents,

including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

**2.3.8** The City's **Program** is an initial description of the City's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

## ARTICLE 3

### CONTRACTOR'S RESPONSIBILITIES

The Contractor shall be responsible for the procurement of the design and the construction of the Work consistent with the City's Program; as such Program may be modified by the City during the course of the Work. The Contractor shall exercise reasonable skill and judgment in the performance of its services to accomplish the goals of the City's program.

#### **3.1 DESIGN PHASE SERVICES**

##### **3.1.1 PRELIMINARY EVALUATION**

The Contractor shall provide a preliminary evaluation of the Project's feasibility based on the City's Program and other relevant information.

##### **3.1.2 PRELIMINARY MASTER SCHEDULE**

The Contractor shall prepare a preliminary Master Schedule of the Work for the City's written approval. The schedule shall show the activities of the City, Architect/Engineer and Contractor necessary to meet the City's completion requirements. The schedule shall be updated periodically according to the City's direction with the level of detail necessary to provide clarification as requested by the City in order to assure compliance with the Master Schedule. If an update indicates that a previously approved schedule will not be met, the Contractor shall recommend corrective action to the City in the form of a detailed, realistic, recovery schedule. The work will be scheduled, planned and reported using the Critical Path Method with Primavera, Sure Trak or other approved software.

##### **3.1.3 PRELIMINARY ESTIMATE**

When sufficient Project information has been identified or upon City's reasonable demand, the Contractor shall prepare for the City's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the City's budget, the Contractor shall make written recommendation to the City as to methods for resolving the issue.

##### **3.1.4 SCHEMATIC DESIGN DOCUMENTS**

The Contractor shall submit for the City's written approval Schematic Design Documents, based on the City's Program and other relevant information. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale and their relationship to the site and other structures. This submittal shall include an update of the preliminary

schedule and a Schematic Design cost estimate. Eight sets of these documents shall be furnished to the City.

### **3.1.5 DESIGN DEVELOPMENT DOCUMENTS**

The Contractor shall submit for the City's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. Ten sets of these documents shall be furnished to the City. The Contractor shall update the schedule and estimate based on the Design Development Documents.

### **3.1.6 CONSTRUCTION DOCUMENTS**

The Contractor shall submit for the City's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications, including City supplied general conditions and general requirements, based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Construction Documents. Twelve sets of these documents shall be furnished to the City prior to commencement of construction.

### **3.1.7 DESIGN PHASE MEETINGS**

Throughout the Design Phase, meetings between the City, the Contractor and Architect/Engineer shall be conducted at the discretion of the City as required to fully support the project and the City's needs, but no less than monthly to solicit the City's input into the design and to review the progress of the design. The Contractor or Architect/Engineer shall record and distribute meeting minutes of design phase meetings, noting all City directives and requests.

### **3.1.8 OWNERSHIP OF DOCUMENTS**

The City acknowledges the Contractor's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the City upon completion of the construction documents and payment in full of all monies due to the Contractor for the Design Phase Services as identified in this Article, or upon termination of this Agreement at an earlier time and upon City payment of any pro rata amount due Contractor at the time of such termination. The Contractor shall not use the drawings and specifications, therefore, for any purpose not related to the Project without City's consent. The City will not reuse, for matters unrelated to the work and its subsequent usage, or make any modification to the plans and specifications without the prior written authorization of the Contractor. The City agrees to the fullest extent permitted by law, to indemnify and hold the Contractor harmless from any claim, liability or cost (including reasonable attorney's fees and defense cost) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the City or any person or entity that acquires or obtains the plans and specifications from or through the City without the written authorization of the Contractor.

**3.2 GUARANTEED MAXIMUM PRICE PROPOSAL**

**3.2.1** At an appropriate stage of design as established by the City, the Contractor shall, if requested by the City, and at the sole discretion of the City, propose a GMP, which shall be the sum of the estimated Cost of the Work as defined in Article 8 and the contractor's Fee as defined in Article 7. At the City's sole discretion, the City may require multiple GMPs for specific elements of the Project to expedite and/or phase the Work or for such other purpose that may be in the City's best interest. If multiple or phased GMPs are utilized, they shall comply with all requirements set forth in this section 3.2 and all other sections of this Agreement. Acceptance of one GMP does not obligate the City to accept subsequent or any other GMPs, nor does it obligate the City in any manner beyond the GMP actually accepted. The Contractor shall provide the GMP document and a detailed schedule of values in a format that will be provided by the City. The GMP is subject to modification as provided in Article 9.

**3.2.2** If a GMP, or any one of multiple of phased GMPs, is not established or agreed to by the City, all references in this Agreement to the GMP shall not be applicable, and the parties shall proceed on the basis of reimbursement of design phase services as set forth in Article 7. No amount shall be paid for construction or construction services not established or agreed to by the City absent a written agreement between the parties to the contrary.

**3.2.3** The estimated Cost of the Work may include a contingency, a sum established by the Contractor and approved by the City, for use upon approval by the City to cover costs that are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.

**3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE**

The Contractor shall include with the GMP proposal a written statement of its basis, which shall include:

- a. a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP proposal;
- b. a list of allowances and a statement of their basis;
- c. a list of the assumptions and clarifications made by the Contractor in the preparation of the GMP proposal to supplement the information contained in the drawings and specifications;
- d. the date of Substantial Completion upon which the proposed GMP is based, and the Schedule of Work upon which the date of Substantial Completion is based;
- e. a schedule of applicable alternate prices;
- f. a schedule of applicable unit prices;
- g. a statement of Additional Services included, if any; and
- h. the time limit for acceptance of the GMP proposal.

**3.2.5** The Contractor shall meet with the City and Project Manager to review the GMP proposal. In the event that the City and Project Manager discover any inconsistencies or inaccuracies in the information presented, the City will promptly give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

**3.2.6** Unless the City accepts the GMP proposal in writing on or before the date specified in the GMP proposal for such acceptance and so notifies the Contractor, the GMP proposal shall not be effective.

**3.2.7** Prior to the City's acceptance of the Contractor's GMP proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the City may specifically authorize in writing.

**3.2.8** Upon acceptance by the City of the GMP proposal, the GMP and its basis shall be set forth in an Amendment. The GMP and the date of Substantial Completion shall be subject to modification by changes in the Work as provided in Articles 6 and 9.

**3.2.9** The GMP shall include in the Cost of the Work those taxes which are applicable at the time the GMP is established. If in accordance with the City's express written direction an exemption is claimed for taxes, the City agrees to indemnify, defend and hold the Contractor harmless for any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the City's direction relative to the taxes as described in this section only.

### **3.3 CONSTRUCTION PHASE SERVICES**

**3.3.1** The Construction Phase will commence upon the issuance by the City of a written notice to proceed with construction. If construction commences prior to execution of a GMP Amendment, the City's written notice to proceed will list the documents that are applicable to the part of the Work which the City has authorized. No Work shall commence until Contractor secures and provides, to the City, proof of all bonds as required by Arizona law to include, but not be limited to, performance and payment bonds.

**3.3.2** In order to complete the Work, the Contractor shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

**3.3.3** The Contractor shall give all notices, obtain all approvals and comply with all laws and ordinances legally enacted at the date of execution of the Agreement, which govern the proper performance of the Work. The Contractor shall secure and the City will pay all fees for required permits.

**3.3.4** The Contractor shall prepare and submit a Preliminary Master Schedule of Work for the City's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the Project including the dates when information and approvals are required from the City. Schedule software shall be Primavera,

SureTrak or other approved software. At the time a GMP proposal is submitted, a bar graph Construction Progress Schedule for each major element of construction shall also be submitted. Schedule software shall be Primavera, SureTrak, or other approved software. The Progress Schedule is subject to review by the City. The Progress Schedule must be directly related to Substantial and Final Completion and shall indicate the dates for the start and completion of the various components and phases of construction and shall be revised as required by the conditions of the Work, upon request of and subject to review by the City. This shall be done no less than monthly. The contractor shall provide an electronic copy of the original schedule and each monthly update to the Project Manager. Contractor agrees to promptly respond to all inquiries by the City concerning any deviation of the progress of construction from the Progress Schedule and to provide a recovery schedule for approval by the City upon request. Progress payments, in whole or in part, may be withheld if Contractor fails to timely respond to such request or if there is a significant delay from the Progress Schedule.

- a) The Construction Progress Schedule shall illustrate the planned, logical progression of construction activities and shall include all work to be performed under this contract.
- b. The Construction Progress Schedule shall have been derived from a network analysis. The Progress Schedule shall clearly indicate the path of critical activities and shall further indicate activity duration, earliest and latest start and finish dates, and float time for all except critical activities. The Progress Schedule shall also indicate all relationships between activities, shall not contain more than one critical path, and shall be presented in a time scaled graphical format for the project as a whole, with milestone dates shown for various required phases. The schedule will be rejected if the float is not able to be accurately calculated due to faulty activity logic.
- c. The Construction Progress Schedule shall include projected dates of submittal of all items of material for which submittals are required and shall include delivery dates of all items of material and equipment that are critical or have a long lead time. Contractor shall submit a monthly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project. Contractor shall prepare, not less frequently than monthly, a schedule summary report in a form and of sufficient detail and character as approved by City. The report, at a minimum, shall specify whether the Project is on schedule, and, if not, the reasons therefore, and the new schedule.
- d. Contractor shall also prepare a report not less than thirty calendar days after the GMP proposal is submitted which shall include a complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication and the scheduled delivery dates for each item.
- e. Contractor shall prepare a monthly updated Construction Progress Schedule. The updated Schedule shall identify the status of all change requests, bulletins, and modifications. Progress Schedule updates shall indicate work completed to date and shall adjust the schedule to reflect

any change in the planned sequence of activities. The Contractor shall at all times manage the Work in substantial conformance with the Progress Schedule. Failure of the Contractor to manage the Work in substantial conformance with the Progress Schedule may be considered as a material default of this Contract. Failure to submit the update when required may delay processing of the Application for payment until acceptable submission is made.

- f. In the event of significant delays, lags or changes in the planned sequence of activities as determined by City, Contractor shall provide to City a revised Progress Schedule indicating proposed rescheduling of activities to achieve completion of the Project by the Substantial completion date.
- g. Additions to or deletions from the Contract authorized by Change Orders shall be reflected in the Progress Schedule.
- h. In conjunction with the Progress Schedule, Contractor shall provide a Procurement Schedule for all major or time critical components to be acquired and incorporated in the Project, which schedule shall be integrated into the Progress Schedule.
- i. The City will hold weekly construction progress meetings at the Site, or other location as designated by the City. The Project Manager will record and distribute the official meeting minutes. The Contractor shall report the progress of the Work in detail with reference to construction schedules. Contractor shall ensure that each currently active subcontractor shall have present a competent representative to report the condition of its work and to receive information.
- j. The Contractor shall provide to the City an anticipated monthly pay draw schedule based on percentage completed or some other approved method to be determined.

**3.3.5** In determining responsibility for permit acquisition, the Contractor shall abide by the Permit responsibilities. The Contractor shall secure and the City will pay all fees for required permits.

**3.3.6** The Contractor shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state, county and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Contractor, directly, or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the City and Project Manager or their employees, agents, separate contractors or tenants, unless said hazards are identified within the Scope of Work as agreed upon within the GMP. The City agrees to cause their employees, agents separate contractors and tenants to abide by and fully adhere to all applicable provisions

of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

**3.3.7** The Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The City and the Project Manager will be afforded access to all Contractor records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Contractor shall preserve all such records for a period of five years after the final payment or longer where required by law.

**3.3.8** The Contractor shall document, or provide daily written reports to the City on the progress of the Work. Such reports shall include at a minimum: weather conditions, equipment and manpower on site, and a narrative of each element of Work in progress.

**3.3.9** The Contractor shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the City at mutually agreeable intervals.

**3.3.10** At all times the Contractor shall maintain the site of the Work in a clean and hazard-free state. Debris and waste materials resulting from the Work shall be removed at the end of each work day. At the completion of the Work, the Contractor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris including disbursed waste materials.

**3.3.11** **The City will be conducting operations within the Recreation Center, nearby buildings and outdoor areas. The Contractor will be required to perform work in a manner that will minimize the disruption of activities. Prior to beginning construction operations, the Contractor shall propose and receive City approval of the perimeter of a work area necessary for safe and efficient operations over which the Contractor shall maintain control during the construction period. Contractor shall not unreasonably encumber the site with materials or equipment. Contractor shall perform in a manner that safeguards the health, safety and welfare of visitors, staff and community.**

**3.3.12** Contractor shall maintain at the Site (or other location approved by City) for City one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections (all changes and selections to be approved by City in advance) made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to City and shall be delivered to City upon completion of the Work.

**3.3.13** At the date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to City: Record Drawings showing the field changes and selections (all changes and selections to be approved by City in advance) affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of scaled and accurately drawn markings on a set of reproducible prints of the Drawings

obtained and paid for by Contractor. Contractor shall maintain at the Site one set of Drawings and indicate thereon each field change as it occurs. Within thirty (30) days of Substantial Completion, the Contractor shall furnish a computer disk of the record drawings, drawn in an AutoCAD format approved by the City.

**3.3.14** Contractor shall maintain at the Site at all times a daily log ("Daily Log"), which describes daily manpower (by type and trade) working at the Site on the Project, any special or heavy equipment on Site and its use, weather conditions, labor disputes, tests conducted, persons visiting the Site, and any events that might affect the Progress Schedule or the quality of the Work. Contractor shall provide a current copy of the Daily Log to Project Manager at the weekly construction meetings.

**3.3.15** Contractor is responsible for completing the Project consistent with City's existing property and other projects. **Contractor accepts full and exclusive responsibility for any damage to any portion of the Project, whether in full or in part, due to cutting, patching, alterations, excavation or other actions which may affect City or the work of other contractors. In the event Contractor feels that an alteration is necessary regarding the above, it is Contractor's affirmative responsibility to request and receive written consent by City for such action.** All parties to this Contract agree that they will perform this provision of this Agreement in good faith and in a commercially reasonable manner.

**3.3.16 All areas requiring cutting and patching shall be restored to a completely finished condition, matching adjacent unpatched areas, and acceptable to City.**

#### **3.4 HAZARDOUS MATERIAL**

**3.4.1** A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and /or clean-up. The Contractor shall not be obligated to commence or continue Work until any known or suspected Hazardous Material(s) discovered at the Project site has been removed, or rendered or determined to be harmless by the City as certified by an independent testing laboratory and approved by the appropriate government agency.

**3.4.2** If, after the commencement of the Work, a known or reasonably suspected Hazardous Material is discovered at the Project site, the Contractor shall be entitled to immediately stop Work in the affected area. Under such conditions the Contractor shall immediately report the condition to the City and Project Manager and, if required, the government agency with jurisdiction.

**3.4.3** The Contractor shall not be required to perform any Work relating to, or in the area of, known or suspected Hazardous Material without written mutual agreement.

**3.4.4** The City will be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures will be the sole responsibility of the City, and will be performed in a manner minimizing any adverse

effect upon the Work of the Contractor. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written notification by the City that the Hazardous Material has been removed or rendered harmless.

**3.4.5** If the Contractor reasonably incurs actual and direct additional costs and/or is actually delayed in achieving substantial and/or final completion due directly to the presence of known or suspected Hazardous Material, which the Contractor did not in whole or part introduce to the site, the Contractor shall be entitled to an equitable adjustment in the GMP and/or the date of Substantial Completion.

### **3.4.6 INDEMNIFICATION**

**3.4.6.1** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, Project Manager, Project Manager's Consultants, and agents and employees (collectively "Indemnities") of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of or resulting from, either directly or indirectly, the performance of the Work or the conditions of the Site, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself) including loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this paragraph. The Contractor, at its own expense and risk, shall defend all legal proceedings that may be brought against the Indemnities on any such claim, damage, loss or expense, and satisfy any resulting judgment that may be rendered against any of them.

**3.4.6.2** In claims against any person or entity indemnified under this paragraph by anyone directly or indirectly employed by the Contractor, a Subcontractor, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, employee benefit acts or other insurance.

**3.4.7** The terms of this Paragraph 3.4 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

### **3.5 ROYALTIES, PATENTS AND COPYRIGHTS**

**3.5.1** The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the City and Project Manager harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

**3.6 WARRANTIES AND COMPLETION**

**3.6.1** The Contractor warrants that all materials and equipment furnished for the Construction of this Project will be new unless otherwise approved by City; of good quality, in conformance with the Contract Documents, and free from defective workmanship, materials and hazardous materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion of the Work if the warranted items are fully installed, operational, and available for use and if not, at such time after the date of Substantial Completion as they are. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship and materials within a period of two years from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents or as may be allowed by law.

**3.6.2** The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the City.

**3.6.3** The Contractor shall collect all written warranties and equipment manuals and deliver them to the City.

**3.6.4** The Contractor shall perform the checkout of utilities and operations of systems and equipment for readiness, perform their initial start-up and testing, and conduct a training program for City personnel in their operation.

**3.7 ADDITIONAL SERVICES**

**3.7.1** Any Additional Services must be authorized in advance by the City in writing; the Contractor shall furnish or obtain from others the authorized services. The Contractor shall be paid for these additional services by the City as herein provided to the extent they exceed the obligation or reasonably inferable obligation of the Contractor under this Agreement. Examples of potential additional services are as follows:

- a. Providing additional financial feasibility or other special studies other than as required by or reasonably inferable from this Agreement.
- b. Providing additional planning surveys or alternative site evaluations other than as required by or reasonably inferable from this Agreement.
- c. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and Master Planning for future work as may be indicated by the Program of Requirements.
- d. Making major revisions in Drawing, Specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the City or are due to causes beyond the control and without the fault or negligence or partial fault or negligence of the Contractor or its consultants or agents.
- e. Providing additional soils sampling, classification, and analysis other than as required by or reasonably inferable from this Article. However,

analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Project are not considered to be additional services under any event.

- f. Preparing to serve or serving as an expert witness for the City in connection with any public hearing (with the exception of those outlined in scope), arbitration proceeding, or legal proceeding wherein the Contractor or Subcontractor of the Contractor is not a party or allegedly at fault; however, preparing to serve or serving as a fact witness for the City or rendering testimony necessary to secure governmental approval of zoning or land-use clearances for the Project shall not constitute an additional service.
- g. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required by or reasonably inferable from this Agreement.
- h. Providing additional services and costs necessitated by out-of-town travel required of and approved in writing by the City other than visits to the Project and other than for travel required to accomplish the Work and/or as expressly required by the Contract Documents.
- i. Providing any other services not otherwise included in this Agreement, reasonably inferable from this Agreement, or not customarily furnished in accordance with generally accepted Contractual practices consistent with the term of this Agreement.
- j. Providing design and engineering of any work outside the property line if said work is not expressly identified and included in the scope of Work subject to this Agreement.
- k. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Contractor's action or inaction during construction or furnishing services required in connection with the replacement of such work.
- l. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Construction Documents Phase, other than as required by or reasonably inferable from this Agreement.
- m. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the project, other than as required by or reasonably inferable from this Agreement.
- n. Providing extensive analyses of owning and operating costs.
- o. Providing interior design and other similar services required for or in connection with the selection, procurement, or installation of furniture,

furnishings, and related equipment other than as required or reasonably inferable from this Agreement.

- p. Making revisions to design documents after they have been approved by the City when revisions are due to causes beyond the control and not the fault or partial fault of the Contractor.
- q. Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the City.

## ARTICLE 4

### CITY RESPONSIBILITIES

#### **4.1 INFORMATION AND SERVICES PROVIDED BY CITY**

**4.1.1** The City will provide full information in a timely manner regarding requirements for the Project, including the City's Program and other relevant information.

**4.1.2** The City will provide:

- a. all available information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
- b. inspection and testing services made during construction at the City's own discretion or as mutually agreed; and
- c. unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessment, including legal and other required services.
- d. The City shall furnish all information, requirements, reports, data, surveys and instructions in its possession relative to the Project for Contractor's use as Contractor may deem appropriate.

#### **4.2 CITY RESPONSIBILITIES DURING DESIGN PHASE**

**4.2.1** The City will provide the Program at the inception of the Design Phase and will review and approve schedules, estimates, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1.

#### **4.3 CITY RESPONSIBILITIES DURING CONSTRUCTION PHASE**

**4.3.1** The City will review and approve the Schedule of the Work as set forth in Subparagraph 3.3.4.

**4.3.2** If the City and Project Manager know or become informed of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the City and Project Manager will give prompt written notice to the Contractor.

**4.3.3** For this specific project, the City and Project Manager will communicate with the Contractor's Subcontractors, suppliers and Architect/Engineer only through the Contractor. The City and Project Manager will have no contractual obligations to Subcontractors, suppliers, or the Architect/Engineer.

#### **4.4 THE PROJECT MANAGER**

The City's Project Manager is Scott Mangarpan

The Project Manager:

- a. is employed by the City as Project Manager
- b. will be fully acquainted with the Project;
- c. will furnish the information and services required of the City pursuant to Paragraph 4.1 so as not to delay the Contractor's Work; and
- d. will have authority to bind the City in all matters requiring the City's approval, authorization or written notice, unless such authority and/or action is limited by law or City policy to the City Council or City Administration. If the City changes their representative or the representative's authority as listed above, the City will notify the Contractor in advance in writing.

### **ARTICLE 5**

#### **SUBCONTRACTS**

Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

#### **5.1 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

**5.1.1** There are two ways to select Subcontractors and major Suppliers prior to submission of any GMP Proposal. They are:

- a) A combination of qualifications and price derived through competitive bidding;
- b) Qualitative selection with the subsequent negotiation of a price that is reasonable, a prudent use of public funds and in the City's best interest.

Absent special circumstances documented in writing by the Contractor as set forth below, the combination of qualifications and price derived through competitive bidding process shall be used to select Subcontractors and Major Suppliers. The City has the sole discretion as to whether or not to allow the purely qualitative selection of Subcontractors and Suppliers. In any event, Contractor shall ensure compliance with Arizona Revised Statutes § 34-603(C)(2)(c), (e)(i-ii) and as they may be further modified relative to the selection of Subcontractors and Major Suppliers.

**5.1.2** The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the Contractor can demonstrate, in writing, that it is in the best interest of the Project and that the selection process will constitute a prudent use of public funds.

**5.1.3** A purely qualification based selection of a Subcontractor(s) or Supplier(s) should only occur prior to the submittal of any applicable GMP Proposal.

**5.1.4** The Contractor will prepare a Subcontractor or Supplier selection plan and submit the plan to the City for approval. The Contractor shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation.

**5.1.5** The Contractor must receive City approval of the selected Subcontractor(s) or Supplier(s). If the Contractor is to self-perform under this alternative the Contractor must submit a detailed explanation and demonstration of the cost of the work it will self-perform. The Contractor must further provide documentation to demonstrate that for any work that is self-performed, the cost of any such work is a reasonable and prudent use of public funds. The City must approve the Contractor self-performance of any part of the work and the cost therefore prior to accepting any GMP proposal.

**5.1.6** The Contractor will negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.

**5.1.7** Within three (3) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, the Contractor shall then prepare a report for the City's approval identifying the recommended Subcontractor or Supplier for each category of the Work to be performed. The report shall be in a format approved by the City's representative and shall include, among other things, the amount of each such cost. The Contractor may, at its discretion or at the request of the City's representative, request written verification of any costs selected. The Contractor shall provide an explanation of the qualifying factors for each selection.

**5.1.8** In all other cases, Contractor shall select Subcontractors and Major Suppliers pursuant to the following process which includes a combination of qualifications and price derived through competitive bidding or as may otherwise be agreed in writing by the parties. Contractor shall ensure that any such process is fully compliant with the above referenced Arizona law.

**5.1.9** The Contractor will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors selected pursuant to a qualifications based procedure, for each trade in the Project for approval by the City and solicit bids for the various construction categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the Contractor may request approval by the City to submit less than three names. Without prior approval by the City, no change in the City-approved Subcontractors will be allowed.

**5.1.10** If the Contractor desires to self-perform certain portions of the construction, it shall comply with and be subject to the requirements set forth in paragraph 5.1.5.

**5.1.11** If the City objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the Contractor will nominate a substitute Subcontractor.

**5.1.12** The Contractor will distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

**5.1.13** The Contractor shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the Contractor, in addition to bid price, shall consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor bids will be done with the City Representative in attendance to observe and witness the process. The Contractor will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the construction.

**5.1.14** Upon completion of the Subcontractor selection process, the Contractor shall submit a summary report to the City of the entire Subcontractor selection process. The report will indicate, by bid process, all Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received and costs negotiated, compliance with Arizona law as cited in paragraph 5.1.1(b) and the selected Subcontractors for each category of Work.

**5.1.15** The selected Subcontractors will provide a schedule of values, which will be used to create the overall project schedule of values.

**5.1.16** Contractor shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.

**5.1.17** Regardless of the selection procedure, the Contractor is responsible for ensuring that the costs of the Subcontractor's and/or Supplier's services are reasonable and a prudent use of public funds.

**5.1.18** Regardless of the selection procedure and in any case, the Contractor is solely responsible for the cost and performance of the selected Subcontractors or Suppliers. The City's approvals under this section are not and shall not be construed to be a waiver, in part or in whole of Contractor's responsibility and obligation to perform as set forth in this Agreement or subsequent Construction Agreement or GMP and for the cost or less than the cost set forth in any GMP to which the parties agree.

**5.1.19** Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

1. Assignment is effective at the sole option of the City and only upon termination of the Contract for cause, and only for those subcontract agreements which the City determines to accept by notifying the subcontractor in writing, and
2. Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

## **5.2 RETAINING SUBCONTRACTORS**

The Contractor shall not retain any Subcontractor to whom the City has a reasonable and timely objection. The Contractor shall not be required to retain any Subcontractor to whom the Contractor has a reasonable objection. Any objections shall be made in writing and shall identify the specific nature of the objection.

## **5.3 MANAGEMENT OF SUBCONTRACTORS**

The Contractor shall be responsible for the management of the Subcontractors in the performance of their work.

## **5.4 ASSIGNMENT OF SUBCONTRACT AGREEMENTS**

The Contractor shall provide for assignment of subcontract agreements in the event that the City terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the City will notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

# **ARTICLE 6**

## **CONTRACT TIME**

### **6.1 COMMENCEMENT OF THE WORK**

The Work shall commence on or about the date established by Amendment and shall proceed in general accordance with the Preliminary Master Schedule of Work, or subsequent approved schedules pursuant to articles 3.1.2 and 3.3.4.

## **6.2 SUBSTANTIAL AND FINAL COMPLETION**

**6.2.1** At such time as a GMP is accepted, a date of Substantial Completion of the Work shall be established as set forth in an Amendment. If a GMP is not established and the parties desire to establish a date of Substantial Completion, it shall be set forth in an Amendment. If such a date is established, time shall be of the essence of this Agreement.

**6.2.2** The Contractor acknowledges that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, or within any proper extension granted in writing by the City, City will suffer damages which are difficult to accurately specify and ascertain. The Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (such date hereinafter referred to as the "LD Date"), The Contractor agrees to pay Liquidated Damages, and further agrees that the City may deduct any or all sums for liquidated damages from any unpaid monies. Liquidated Damages are agreed to equal the sum of One Thousand dollars per day (\$1,000.00) for each day that actual Substantial Completion extends past the LD Date. All parties agree that the above stated liquidated damages amount and rate is reasonable given the needs, extreme scheduling and space difficulties, and disruption of the City in its educational process should the Work not be Substantially Complete by the LD Date.

**6.2.3** Final Acceptance/Completion. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and Contractor will jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 2.3.7. Upon the City's determination that Final Completion has been achieved, the City will issue a Final Acceptance/Completion Letter and payment pursuant to Section 10.2. Contractor understands that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Final Acceptance/Completion is not attained within the Contract Time as adjusted, Contractor shall pay the City (\$1,000.00) as liquidated damages for each Day that Final Completion extends beyond the date determined by the Contract Time as adjusted and further agrees that such amount is reasonable under the circumstances.

## **6.3 DELAYS IN THE WORK**

**6.3.1** If due to unexpected causes beyond the Contractor's control for which the City is responsible, and not due entirely or in part, to Contractor's or Subcontractors of Contractor's, actions or inactions a delay is incurred in the progress of the Work and Contractor incurs actual direct damages from such delay; then City and Contractor shall engage in negotiations regarding the above. In such case, the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion may be modified by written agreement as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the City and Project Manager or separate contractors employed by the City, preventing the Contractor from performing the Work, Hazardous Materials, differing site conditions not reasonably foreseeable, adverse weather conditions not reasonably anticipated, fire not due to fault or partial fault of the Contractor.

**6.3.2** In the event delays to the project are encountered for any reason, all parties agree to undertake reasonable steps to mitigate the effect of such delays.

**ARTICLE 7**

**COMPENSATION**

**7.1 DESIGN PHASE COMPENSATION**

**7.1.1** The cost of services performed directly by the Architect/Engineer shall be identified in Amendment No. 1, attached hereto, and subsequently as a line item in the GMP, shall be computed separately, and is independent from the Contractor's compensation for work or services directly performed by the Contractor. These costs shall be shown as separate items on the application for payment for both the Design Phase fees, and services through project completion. If an Architect/Engineer is retained by the Contractor, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the contractor and Architect/Engineer and shall be the responsibility of the Contractor.

**7.1.2** The City will compensate the Contractor in the amounts specified in Amendment 1 for Design and Preconstruction Services performed during the Design Phase as described in Paragraph 3.1 and preparation of a GMP proposal as described in Paragraph 3.2.

**7.1.3** Payments for Design Services will be due and payable within thirty (30) days following approval of the Contractor's monthly invoice to the City. Payments due the contractor remaining unpaid for more than thirty (30) days from the due date of the invoice will bear interest at the legal rate.

**7.2 CONSTRUCTION PHASE COMPENSATION**

**7.2.1** If a GMP is established and accepted by the City pursuant to Amendment No. 2, attached hereto, the City will, up to the amount of the GMP established in a GMP Amendment, and as it may be adjusted under Article 9, compensate the Contractor for Work performed following the commencement of Construction on the following basis:

- a. the Cost of the Work as allowed in Article 8; and
- b. the Contractor's Fee, including General Conditions, as detailed in the GMP Amendment, subject to adjustment as provided in Paragraph 7.4.1. The Contractor's Fee will be paid proportionately to the ratio that the monthly cost of the Work bears to the total estimated Cost of the Work.

The City shall not pay any amount for construction or construction services absent a prior written acceptance of a GMP and a GMP amendment or alternative written agreement between the parties.

**7.2.2** The compensation to be paid under this Paragraph will be limited to the GMP established by Amendment, as the GMP may be adjusted under Article 9. In the event

the Cost of the Work plus the Contractor's Fee shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be credited back to the City.

**7.2.3** Payment for Construction Phase Services will be as set forth in Article 10. If Design Services continue to be provided after construction has commenced, the Contractor shall also continue to be compensated as provided in Paragraph 7.2, or as mutually agreed.

### **7.3 CONTRACTOR'S FEE**

The Contractor's Fee includes the following if they are directly related to the Work:

- a. salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in Subparagraph 8.2.2;
- b. general and administrative expenses of the Contractor's principal and branch offices other than the field office, except as may be expressly included in Article 8; and
- c. the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- d. costs related to the Contractor's safety program.

### **7.4 ADJUSTMENT IN THE CONTRACTOR'S FEE**

**7.4.1** Adjustment of the Contractor's Fee shall be made as follows:

- a. for changes in the Work as provided in Article 9, the Contractor's Fee shall be adjusted as follows as mutually agreed by the parties:
- b. for delays in the Work not caused, or not caused in part, by the Contractor, Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. There will be an equitable adjustment in the Contractor's Fee to compensate the Contractor for increased expenses actually incurred which are directly related to the Project; and
- c. if the Contractor is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Contractor, Subcontractors or other parties for whom Contractor and/or Subcontractor are responsible, the contractor shall be paid an additional Fee in the same proportion that the Contractor's Fee bears to the estimated Cost of the Work, or as otherwise agreed to by the parties.

**7.5 SEGREGATION OF DESIGN AND ENGINEERING SERVICES**

**7.5.1** Contractor and City agree that design and engineering services under this Agreement are substantial in relation to the other services required by this Agreement and are not inconsequential or merely incidental to the business of Contractor. Contractor and City further agree that assessment of Arizona Transaction Privilege Taxes on such services is not appropriate and that Contractor shall not charge City and City shall not be responsible for payment of, directly or indirectly, any such taxes arising from the design and engineering services provided under this Agreement. Contractor affirms the need and his obligation to segregate and separately document, account and charge design and engineering services separately from construction services so as to avoid any inappropriate assessment of Arizona Transaction Privilege Taxes on such services. Contractor will indemnify City against the payment of any such taxes arising from the design and engineering services provided under this Agreement in the event such taxes are assessed as a result of Contractor's failure to properly segregate, separate, document, account and charge for said design and engineering services not otherwise required by operation of law. Should the separate accounting and documentation of design and engineering services be found to be void or otherwise barred by law as a means of precluding the assessment of Arizona Transaction Privilege Taxes, the City will be responsible for the payment of applicable taxes provided that any such taxes are not assessed as a result of any act or omission by Contractor.

**ARTICLE 8****COST OF THE WORK**

The City agrees to pay the Contractor for the Cost of the Work as defined in this Article. This payment shall be in addition to the Contractor's Fee stipulated in Article 7. However, in no event will the City pay the Contractor total compensation greater than the amount of the GMP established by Amendment, and as it may be adjusted under Article 9.

**8.1 COST ITEMS FOR DESIGN PHASE SERVICES**

**8.1.1** Compensation for Design Phase Services as provided in Paragraph 7.1.

**8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES**

**8.2.1** Wages paid for labor in the direct employ of the Contractor in the performance of the Work.

**8.2.2** Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below, if such functions are directly related to the Work.

**8.2.3** Cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's

standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

**8.2.4** Reasonable transportation, travel and hotel expenses of the Contractor's personnel incurred in connection with the Work.

**8.2.5** Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.

**8.2.6** Payments made by the Contractor to Subcontractors for work performed under this Agreement.

**8.2.7** Fees and expenses for design services procured by the Contractor except as provided by the Architect/Engineer and compensated in Paragraph 7.1.

**8.2.8** Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value; and cost less salvage on such items used, but not consumed that remain the property of the Contractor. The Contractor shall reimburse the City for the salvage value of items used or salvage the items to the City.

**8.2.9** Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area. Rates for Contractor-owned equipment, quantities of equipment and actual use of equipment shall be subject to the City's prior approval and shall be submitted in the appropriate, detailed, specific, line items in the schedule of values, as part of any GMP proposal for the Work including the use of such equipment. In order for the City to responsibly monitor the equipment costs, the use, non-use or other status of said equipment shall be specifically and fully documented in writing in daily reports as a precondition for payment of said costs. City shall not be required to pay charges for such Contractor-owned equipment at rates invoiced unless the above conditions have been met, the rates are reasonable for the project's geographical area and the invoice reflects actual use as documented in daily reports.

Contractor shall identify all such equipment that may be required under this Contract and the expected amount of time equipment will be used in the performance of this Contract. Contractor shall develop an equipment pricing list, using the Rental Rate Blue Book (Bluebook), or such other rate book as the parties may mutually agree, to develop an equipment pricing list upon which the parties agree. The equipment pricing list shall be attached as an exhibit to any GMP proposal, and shall be used to support the line item amounts for such equipment in the GMP, and as a basis for equipment charges in any change orders. This equipment list shall identify the appropriate Bluebook, or other rate book, ownership rate (monthly, weekly, daily, and hourly) used and written justification therefor. Notwithstanding the foregoing, it remains the Contractor's obligation to demonstrate that the rental charges set forth in the GMP and actually charged are reasonable and appropriate for a project in Cottonwood, Arizona, and charges in excess of those reasonable rates will not be paid.

**8.2.10** Cost of premiums for normal and customary contractor's and subcontractor's liability, workman's compensation and builders risk insurance as outlined in Article 11, is to be identified as a separate line item within the GMP. Professional liability insurance cost directly attributable to the actual Cost of Work may be included in the GMP as a separate line item; however, professional liability cost relative to the design phase of this Agreement and overall design liability was included in the design phase cost and shall not be included in the GMP or payable as part of the Cost of Work.

**8.2.11** Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.

**8.2.12** Permits, fees, and licenses, as well as testing and inspection of all materials as may be required by construction codes or generally accepted industry practice.

**8.2.13** All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

**8.2.14** Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the site and reasonable petty cash expenses at the field office.

**8.2.15** All water, power and fuel costs necessary for the Work.

**8.2.16** Cost of removal of all non-hazardous substances, debris and waste materials.

**8.2.17** Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Contractor or any person or entity for whom the Contractor is responsible.

**8.2.18** All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contractor's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

### **8.3 DISCOUNTS**

All discounts for prompt payment shall accrue to the City to the extent payments are made by the City. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor, but shall be appropriately recorded, accounted and available for review by the City. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

### **8.4 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

**8.4.1** Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- a. conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. the availability of labor, water, electric power, and roads
- c. uncertainties of weather or physical conditions at the site;
- d. the conformation and conditions of the ground; and
- e. the character of equipment and facilities needed preliminary to and during work performance.

## **ARTICLE 9**

### **CHANGES IN THE WORK**

Changes in the Work, which are within the general scope of this Agreement, may be accomplished by Change Order or other written instrument without invalidating this Agreement.

#### **9.1 CHANGE ORDERS**

A Change Order is a written instrument, issued after execution of this Agreement, signed by the City and Contractor stating their agreement upon a change and the adjustment in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. Each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase Services, other cost of the Work and the Contractor's Fee.

#### **9.2 DETERMINATION OF COST**

An increase or decrease in the GMP resulting from a change in the Work shall be determined by one or more of the following methods:

- a. unit prices set forth in this Agreement or as subsequently agreed;
- b. a mutually accepted, itemized lump sum;
- c. costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Contractor's Fee as determined in Subparagraph 7.4.1.
- d. if an increase or decrease cannot be agreed to as set forth in subparagraphs 9.2.a through 9.2.c and the City issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Contractor's Fee shall be adjusted as set forth in Subparagraph 7.4.1. In case of a net decrease in the GMP, the

Contractor's Fee shall not be adjusted. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings.

### **9.3 NO OBLIGATION TO PERFORM**

The Contractor shall not be obligated to perform changed Work until a Change Order or other written instrument has been executed by the City and Contractor, except as provided in Subparagraph 9.2.d.

### **9.4 ADJUSTMENT OF UNIT PRICES**

If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the City or the Contractor, the unit prices and the GMP shall be equitably adjusted.

### **9.5 UNKNOWN CONDITIONS**

If in the performance of the Work the Contractor finds latent, concealed or subsurface physical conditions which differ from the conditions the Contractor should have reasonably anticipated, or substantially different from available soils reports, or if physical conditions are substantially and materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in these areas), then the GMP compensation for Design and Construction Phase Services, the Contractor's Fee, and/or the date of Substantial Completion may be equitably adjusted by Change Order or other written instrument within ten (10) days after the conditions are first observed for delays actually and directly arising from said conditions.

### **9.6 CLAIMS FOR ADDITIONAL COST OR TIME**

For any claim for an increase in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or an extension in the date of Substantial Completion, the Contractor shall give the City written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the City, but which do not proceed, shall be made within ten (10) days after the decision is made not to proceed. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee, and/or date of Substantial Completion resulting from such claim shall be authorized by Change Order or other written instrument.

### **9.7 EMERGENCIES**

In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or extension of the date of Substantial Completion on account of emergency work shall be determined as provided in this Article.

**ARTICLE 10****PAYMENT FOR CONSTRUCTION PHASE SERVICES****10.1 PROGRESS PAYMENTS**

**10.1.1** At the last construction meeting of each month after the Construction Phase has commenced, the Contractor shall submit to the City a draft Application for Payment consisting of the Cost of the Work performed up to the last day of the month, including the cost of material stored on the site or at other locations approved by the City, along with a proportionate share of the Contractor's Fee. The format of the application document shall be as provided to the Contractor by the City. Prior to submission of the next Application for Payment, the Contractor shall furnish to the City a statement accounting for the disbursement of funds received under the previous Application. The extent of such statement shall be as agreed upon between the City and Contractor. All payments shall be made pursuant to and in compliance with A.R.S. § 34-609(B)(2-7), (C), (F-K).

**10.1.1.1** Ten percent (10%) retainage will be held from each Progress Payment until fifty percent (50%) of the total Project is deemed complete by the City. At the fifty percent (50%) completion, the retention may be reduced to five percent (5%) subject to the relevant Arizona Revised Statutes. All retention shall be withheld pursuant to and in compliance with A.R.S. § 34-609(B)(2-7), (C), (F-K).

**10.1.1.2** Any securities submitted by Contractor in lieu of retainage as may be allowed by law, shall be deposited in an escrow account as directed by the City. The City shall be listed as Payee or Multiple Payee with Contractor on said securities.

**10.1.2** Within fourteen (14) days after receipt by the City of each monthly Application for Payment which has been certified by the Architect and is approvable by the City, the City will pay directly to the Contractor the appropriate amount for which Application for Payment is made, less amounts previously paid by the City and less amounts sufficient to pay expenses the City reasonably expects to incur in correcting deficiencies which are set forth in writing and provided to the Contractor.

**10.1.3** The Contractor warrants and guarantees the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the City upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."

**10.1.4** The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of the Contract Documents.

**10.1.5** Upon Substantial Completion of the Work, the City will pay the Contractor the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less a sum equal to the Contractor's estimated cost of completing any unfinished items and correction of any noted defects as agreed to between the City

and Contractor as to extent and time for completion. The City thereafter will pay the Contractor monthly the amount retained for unfinished items or correction of noted defects as each item is completed.

## **10.2 FINAL PAYMENT**

**10.2.1** Final payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Services and the Contractor's Fee shall be due and payable when the Work is fully completed and accepted by the City. Before issuance of final payment, the City will request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

**10.2.2** In making final payment the City waives all claims except for:

- a. outstanding liens;
- b. deficient design, improper workmanship or defective materials;
- c. Work not in conformance with the Contract Documents;
- d. terms of any special warranties required by the Contract Documents;
- e. right to audit Contractor records for a period of five years; and
- f. claims previously made in writing and which remain unsettled.

**10.2.3** In accepting final payment, the Contractor waives all claims except those previously made in writing and which remain unsettled.

## **ARTICLE 11**

### **INSURANCE AND BONDS**

#### **11.1 INSURANCE REPRESENTATIONS AND REQUIREMENTS**

**11.1.1** Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

**11.1.2** By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Contractor. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but City has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its

obligation to maintain the required insurance at all times during the performance of this Agreement.

**11.1.3** All insurance coverage and self insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of the work included in this Agreement, the City, the Project Manager, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

**11.1.4** All insurance required herein shall remain in effect until the City has issued a certificate of Final Completion for the entire Work, and the Contractor and the City have agreed in writing that the work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

**11.1.5** Contractor's insurance shall be primary insurance with respect to performance of the work included in this Agreement and in the protection of City as an Additional Insured. The policies required by the Contract Documents shall be endorsed to include the City, the Project Manager, as well as their agents, officials, and employees as insured parties and shall stipulate that the insurance afforded by the policies shall be by primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the City, or their agents, officials or employees shall be excess and not contributory to insurance required herein.

**11.1.6** In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the Work or services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

**11.1.7** All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

**11.1.8** The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City. Contractor shall be solely responsible for any such deductible or self-insured retention amount. City, at its option, may require Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

**11.1.9** If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreement with Subcontractor containing the indemnification provisions set forth in Section 11.6 below and insurance requirements set forth herein protecting the City and Contractor. At Contractor's option and at Contractor's risk, Contractor may, subject to the City's prior, written approval, which approval shall not be unreasonably withheld, allow subcontractors to deviate from these insurance requirements due to insurance market availability or affordability issues. Contractor shall

be responsible for executing the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

**11.1.10** Prior to commencing any work or services under this Agreement, Contractor shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by the insurers of the Contractor, Consultants, and Subcontractors as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City will reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Additionally, certificates of insurance submitted without referencing this Agreement will be subject to rejection and returned or discarded. Certificates of insurance shall specifically include the following provisions:

- a. The City, the Project Manager, their agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
  - (i) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") current Form CG 20 10 or equivalent.
  - (ii) Auto Liability - Under current ISO Form CA 20 48 or equivalent.
  - (iii) Excess Liability - Follow Form to underlying insurance.
- b. Contractor's insurance shall be primary insurance as respects performance of the work included in this Agreement.
- c. All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
- d. A 60-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
- e. Certificates of Insurance and any notice of cancellation or material change should be addressed as follows:

**11.2 REQUIRED INSURANCE COVERAGE**

**11.2.1** Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO current policy form CG 00 010 or equivalent thereof, including but not limited to, separation of insured’s clause. Further, the policy shall include coverage for the hazards commonly referred to as X (explosion), C (collapse), U (underground). The products and completed operations coverage shall extend for five years past acceptance, cancellation or termination of the Work. Said policy shall contain a severability of interest provision. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, the Project Manager, their agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO current Commercial General Liability Additional Insured Endorsement form CG 20 10, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

**11.2.2** If this Agreement is the subject of any professional services or work, or if Contractor engages in or procures any professional services or work adjunct or residual to performing the work under this Agreement, Contractor shall maintain Professional occurrence based Liability insurance covering negligent errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose negligent acts, mistakes, errors and omissions Contractor is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. The Contractor’s professional liability policy shall include a per project endorsement providing that the limits of such insurance specified in Contract Documents shall apply to the project without erosion of such limits by other claims or occurrences.

**11.2.3** Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” current policy form CA 00 01 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, the Project Manager, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope then underlying insurance.

**11.2.4** Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor’s employees engaged in the performance of work or services under this Agreement and

shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

**11.2.5** The Contractor shall be responsible for purchasing and maintaining Builder's Risk and Course of Construction insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Project Manager, the Contractor, the Contractor's subcontractors and sub subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

### **11.3 CERTIFICATES OF INSURANCE**

Prior to commencing the Work under this Agreement, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by this Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Agreement are in full force and effect. Unless otherwise specified in this Agreement, in the event any insurance policy(ies) required by this Agreement is(are) written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of the Contractor's work or services and as evidenced by annual certificates of insurance. If a policy does expire during the life of the Agreement, a renewal certificate must be sent to the City 30 days prior to the expiration date. All certificates of insurance required by this Agreement shall be identified by project name. The City reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

### **11.4 CANCELLATION AND EXPIRATION NOTICE**

Insurance required herein shall not expire, be canceled, or materially changed without 60 days' prior written notice to the City.

### **11.5 FAILURE OF COMPLIANCE**

Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, or should a dispute arise between the City and any insurance company of Contractor over policy coverage or limits of liability as required herein, the City will be entitled to recover from the Contractor all amounts payable, as a matter of law, to the City or any other parties, including, but not limited to the Project Manager, had the required insurance or insurance coverage been in force. Said recovery will include, but is not limited to, interest for the loss of use of such amounts of money, plus all attorney's fees costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

**11.6 INDEMNITY**

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, the Project Manager, their agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to reasonable attorney fees, court costs and the cost of appellate proceedings) to the extent relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify the City, the Project Manager, their agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of tangible real or personal property, including loss of use resulting therefrom. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

**11.7 PERFORMANCE AND PAYMENT BONDS**

Bonds shall be provided by Contractor pursuant to and in compliance with A.R.S. § 34-610-611.

**11.7.1** After the City and the Contractor have agreed to a GMP but prior to commencing any Construction, the Contractor shall be required to furnish the City with an irrevocable security binding the Contractor to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to Construction, payable to the City. Performance security shall be in the form of a performance bond, as required by Arizona law. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of the Agreement, permitting the City to terminate this Agreement. In case of default the City reserves all rights. All performance bonds shall be executed on State of Arizona approved forms, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. The conditions and provisions of the bonds regarding the surety's obligation shall follow the form required under A.R.S. § 34-610-611 and 34-222; Subsection G and Subsection F. The cost of the bonds shall be included in the contract sum. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

**11.7.2** After the City and the Contractor have agreed to a GMP but prior to commencing Construction, the Contractor shall be required to furnish the City with an irrevocable security for the protection of all persons supplying labor and material to the Contractor or any subcontractor for the performance of any work related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to Construction and be payable to the City. Payment security shall be in the form of a payment bond, as required by Arizona law. All payment bonds shall be executed on State of Arizona approved forms, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the City and holding a

Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. The conditions and provisions of the bonds regarding the surety's obligation shall follow the form required under A.R.S. § 34-222; Subsection G and Subsection F. The cost of the bonds shall be included in the contract sum. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

**11.7.3** The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.

**11.7.4** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## **ARTICLE 12**

### **TERMINATION OF THE AGREEMENT AND CITY'S RIGHT TO PERFORM CONTRACTOR'S RESPONSIBILITIES**

#### **12.1 TERMINATION BY THE CONTRACTOR**

**12.1.1** Upon fourteen (14) days' written notice to the City, and if the City fails to cure or initiate reasonable action to cure within fourteen (14) days of said notice, the Contractor may terminate this Agreement for any of the following reasons:

- a. if the Work has been stopped for a forty-five (45) day period
  - (i) under court order or order of other governmental authorities having jurisdiction;
  - (ii) as a result of the declaration of a national emergency or other governmental act during which, through no act, omission or fault of the Contractor, materials are not available; or
- b. if the Work is suspended by the City for sixty (60) days;
- c. if the City materially delays the Contractor in the performance of the Work;
- d. if the City otherwise materially breaches this Agreement.

**12.1.2** Upon termination by the Contractor in accordance with Subparagraph 12.1.1, the Contractor shall be entitled to recover from the City payment for all Work executed to the date of termination plus demobilization costs. The City shall not pay any amounts for cost profits or opportunities. The City may subtract reasonable estimates of costs for deficient work from the payments noted above.

**12.2 CITY'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATIONS AND TERMINATION BY THE CITY FOR CAUSE**

**12.2.1** If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially or materially violates or breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for fifteen (15) days after the Contractor receives from the City written notice of such nonperformance or violation, then the City may, without prejudice to any right or remedy otherwise available to the City, terminate this Agreement.

**12.2.2** Upon termination of this Agreement by the City, the City will be entitled to furnish or have furnished the Services to be performed hereunder by the Contractor by whatever method the City may deem expedient. Also, in such case, the Contractor shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Contractor under this Agreement shall be the amount that is equitable under the circumstances. If the City and the Contractor are unable to agree on the amount to be paid under the foregoing sentence, the City will fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and will make payment accordingly. The Contractor may dispute the City's assessment of the termination amount by any method of dispute resolution permitted under this Agreement.

**12.2.3** Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the City may terminate this Agreement, without prejudice to any right or remedy otherwise available to the City, upon giving three (3) working days' written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the City may terminate this Agreement by giving three (3) working days' written notice to the Contractor unless the Contractor or the trustee:

- a. Promptly cures all breaches.
- b. Provides adequate assurances of future performance.
- c. Compensates the City for actual pecuniary loss resulting from such breaches.
- d. Assumes the obligations of the Contractor within the statutory time limits.

**12.3 TERMINATION BY THE CITY FOR CONVENIENCE**

The City may terminate this Agreement, in whole or in part, at any time for the convenience of the City, without prejudice to any right or remedy otherwise available to the City. Upon receipt of notice of termination, the Contractor shall immediately discontinue all services affected as of the stated effective date, unless such notice directs otherwise. In the event of a termination for convenience by the City, the Contractor's sole and exclusive right and remedy shall be to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination minus City's claims. The Contractor shall not be entitled to be paid any amount as profit for unperformed services or any other consideration for the terminated portions of the work.

**12.4 SUSPENSION BY THE CITY FOR CONVENIENCE**

**12.4.1** The City may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may determine to be appropriate for its convenience.

**12.4.2** Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. No adjustment shall be made if the Contractor is or otherwise would have been responsible for or could have mitigated the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

**12.5 TERMINATION UPON FAILURE TO OBTAIN GMP**

**12.5.1** Should there be a failure to establish a GMP and/or should the City elect not to agree to a GMP, this Agreement shall terminate automatically absent any further written agreement between the parties.

**12.5.2** Upon such a termination, the City shall pay Contractor fees for design phase services provided under this Agreement, to the date of termination. The City shall not be obligated to pay any other fees, except as may be specifically provided in an addendum or other separate subsequent written agreement of the parties.

**ARTICLE 13****DISPUTE RESOLUTION****13.1 MATTERS IN QUESTION/DISPUTE RESOLUTION**

In signing this Agreement, Contractor agrees that any cause Contractor may have against the Owner arising in relation to this Procurement and Project, including but not limited to, contract claims and controversies, including claims related to assignees of Contractor, shall be resolved through an Alternative Dispute Resolution (ADR) process as agreed between the parties. If the parties fail to agree to an ADR procedure or if ADR is unsuccessful then disputes shall be resolved by litigation in which venue shall be in Yavapai County Superior Court and liberal joinder shall be allowed.

**13.2 OTHER PARTIES**

The parties agree that the Architect/Engineer, Design Consultants, or other parties involved in the Project, may be joined in the resolution of disputes, at the request of either party.

**ARTICLE 14****MISCELLANEOUS PROVISIONS****14.1 ASSIGNMENT**

Neither the City nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

**14.2 GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Arizona and venue shall be the County in which the work is to be constructed.

**14.3 SEVERABILITY**

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

**14.4 NO WAIVER OF PERFORMANCE**

The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition right with respect to further performance.

**14.5 TITLES**

The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

**14.6 ASBESTOS FREE MATERIALS**

**14.6.1** The Project is to be constructed by the Contractor with asbestos free materials. A written, notarized statement on company letterhead is to be submitted to the City by Contractor with the final payment request certifying that the Contractor has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted.

**14.6.2** Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of its subcontractors or agents and were not specified in the design or required by the contract document, Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City notwithstanding any statute of limitations or other legal bar to any claim by the City.

**14.7 EXTENT OF AGREEMENT**

This Agreement (i) is solely for the benefit of the parties, (ii) represents the entire and integrated agreement between the parties and (iii) supersedes all prior negotiations, representations or agreements, either written or oral. In the event the terms of this

Agreement contradict or conflict with any other agreement, written or oral, the terms of this Agreement shall govern.

#### **14.8 NOTICES AND REQUESTS**

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

**If to the City:** Doug Bartosh, City Manager  
City of Cottonwood  
827 North Main Street  
Cottonwood, AZ. 86326

**If to the Contractor:** Mike Diaz, Project Manager  
Emcor Services Arizona  
4050 East Cotton Center Boulevard  
Suite 40  
Phoenix, AZ 85040

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

#### **14.9 FAIR EMPLOYMENT PRACTICES CLAUSE**

In connection with the performance of Work under the Contract, the Contractor agrees (as prescribed in A.R.S. Title 41, Chapter 9, Article 4 and except as may be allowed or required by other applicable law) not to discriminate against any employee or applicant for employment because of race, color, religion, or national origin. These provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay for other forms of compensation, and selection or training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, required legal notices or notes to be provided by the City or the Contractor, setting forth the provisions of the nondiscrimination clause. The

Contractor further agrees to insert these provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies of raw materials.

#### **14.10 JOB OFFICE**

Contractor will be provided a space at the Recreation Center for a job trailer for purposes of this project, if required.

#### **14.11 LEGAL FEES AND COSTS**

City will be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred by City in connection with any effort undertaken by City to enforce any term of this Agreement against Contractor.

#### **14.12 DISSEMINATION OF CONTRACT INFORMATION**

Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract or work to be performed under this Contract, without the prior consent of the City.

#### **14.13 NON-AVAILABILITY OF FUNDS**

Every payment obligation of the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the City at the end of the period for which funds are available.

#### **14.14 CERTIFICATION/SCRUTINIZED BENEFITS**

In accordance with A.R.S. § 35-397 the Contractor hereby certifies that the Contractor does not have scrutinized business operations in Iran or Sudan.

#### **14.15 COMPLIANCE WITH IMMIGRATION LAWS**

By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor shall obtain statements from its Subcontractors certifying compliance with the foregoing requirements and shall furnish the statements to the City upon request. These warranties shall remain in effect through the term of the contract.

The Contractor and its Subcontractors shall also maintain employment eligibility verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under this contract. I-9 Forms are available for download at USCIS.GOV.

Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance with FINA and A.R.S. § 41-4401 and 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

**ARTICLE 15**

**EXISTING CONTRACT DOCUMENTS**

The Contract Documents in existence at the time of execution of this Agreement are as follows:

- a.** Amendment No. 1
- b.** This Agreement;
- c.** The information provided by the City pursuant to Clause 4.1.2.a;
- d.** The City's Program provided pursuant to Subparagraph 4.1.1;
- e.** The City's RFQ for this project;
- f.** The Contractor's responses to the City's RFQ to the extent they do not conflict with the above;
- g.** Amendment No. 2 (unexecuted);
- h.** Other Amendments as may be executed by the parties.

In case of an inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the date and year first written above.

CITY: CITY OF COTTONWOOD, ARIZONA

BY: \_\_\_\_\_

\_\_\_\_\_  
Diane Joens

\_\_\_\_\_  
Mayor

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) SS.  
COUNTY OF YAVAPAI        )

          This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011  
by \_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

STATE OF ARIZONA            )  
  ) SS.  
COUNTY OF YAVAPAI        )

          This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011  
by \_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

**AMENDMENT NO. 1**

**DATED January 5, 2012**

**DESIGN AND PRECONSTRUCTION FEES UP TO GMP SUBMITTAL**

**I. Scope**

- A. The Project scope is generally as set forth in THE CITY OF COTTONWOOD REQUEST FOR QUALIFICATIONS For Design Build Services for Cottonwood Recreation Center Thermal Solar Project and as the parties may subsequently agree in writing.
- B. The Project's scope includes, but is not limited to, site preparation and construction of all infrastructure needed.
- C. The Project's scope includes all design services needed for the Project including, but not limited to, the requisite consultants such as solar design, mechanical engineering, civil engineering, electrical engineering, and other such services reasonably necessary for this Project.
- D. The scope also includes all construction activity necessary to complete the Project and includes, but is not limited to, permits, fees, inspections and testing, as required; however, the actual cost of the permits, fees, inspections and testing may be treated as reimbursables to save mark up and sales taxes. Budget money may be allocated to allow treatment of these necessary expenses outside of this contract at the City's sole discretion.

**II. List of Assumptions**

- A. The Project will be delivered using two distinct amendments under this single agreement.
- B. The first phase will be for design services and will include pre-construction services, including scheduling, cost estimating, schematic and design development, value engineering and constructability analysis, and construction documents. The first phase will have cost breakdown as follows:
  - 1. Design services through 30%, 60% and 90% design development;
  - 2. Design services for the balance;
  - 3. Pre-construction services through 30%, 60% and 90% design development;
  - 4. Pre-construction services for the balance up to proposal and possible establishment of the GMP.
- C. The second phase will be for construction services and shall be performed pursuant to an agreed upon GMP or series of GMPs. The GMPs shall fully set forth all factors and assumptions relative to establishing the GMP.

- D. If the City does not accept a GMP, the second phase for construction services, will not be initiated, or if a prior construction services under a phased or multiple GMP has been accepted, subsequent GMPs and the construction services therein will not be performed nor be considered a liability against the City.
- E. All contingencies, cost savings and unused allowances shall be returned to the City for their use, or redirected for additional improvements as needed.
- F. Additional assumptions that may arise must be agreed to by the parties in writing.
- G. Amendment No. 1 and attachments thereto are supplementary to the contract between the parties and do not limit the contract between the parties. In the event of a conflict between Amendment No. 1 and attachments thereto and the contract between the parties, the contract between the parties shall control.

### **III. List of Clarifications**

- A. The following items clarify further Project scope, intent and scope of services:
  - 1. The contract will be between the CITY OF COTTONWOOD AND EMCOR SERVICES ARIZONA
  - 2. EMCOR SERVICES ARIZONA will contract directly with HENDERSON ENGINEERS, INC. AND GREENFIELD DYNAMICS for all design services and will include all consultants, contract administration, and requisite errors and omissions insurance coverage naming EMCOR SERVICES ARIZONA, HENDERSON ENGINEERS, INC. AND GREENFIELD DYNAMICS as insured with the CITY OF COTTONWOOD as additional insured;
  - 3. EMCOR SERVICES ARIZONA's primary representative on this Project in all stages is MIKE DIAZ.
  - 4. This represents the foreseeable clarifications at this time. This list can be amended by mutual written agreement by the parties prior to incorporation into the final contract.

### **IV. Proposed Schedule**

- A. Substantial Completion shall occur no later than (tbd) months after receipt of Notice to Proceed for the beginning of Construction, and Final Completion within 30 calendar days after Substantial Completion.
- B. Phased delivery of a portion of the units shall be incorporated in to the final schedule as agreed to by the parties.
- C. An initial proposed Project schedule is attached hereto, subject to modification by mutual written agreement of the parties.

**V. Design and Pre-construction Services Fee**

A. The following are the fees for the design and pre-construction services anticipated for this Project. These and all other fees, costs, and other expenditures relative to this Project shall be provided to the City, without request, pursuant to the open book policy of this agreement.

- 1. Design services through 30% design development \$ 8,400.00;
- 2. Design services through 60% design development \$ 8,400.00;
- 3. Design services through completion, including documents \$11,200.00;
- 4. Pre-construction services through GMP \$ 4,000.00;
- 5. Construction Fees at 6% of the actual Cost of Work.

\_\_\_\_\_  
Date

EMCOR Services Arizona

By: Mike Diaz

Its: Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

**AMENDMENT NO. 2**

**DATED \_\_\_\_\_,**

**TO DESIGN/BUILD AGREEMENT BETWEEN CITY & CONTRACTOR**

Pursuant to Paragraph 3.2 of the Agreement dated \_\_\_\_\_, 2011 between the City, \_\_\_\_\_, and the Contractor, \_\_\_\_\_, for the Project as previously described in the agreement and amendments, the City and the Contractor desire to establish a GMP for the Work. Therefore, the City and the Contractor agree as follows.

**ARTICLE 1**

**GUARANTEED MAXIMUM PRICE:**

The Contractor's GMP for the Work, including the Cost of the Work as defined in Article 8 of the Agreement and the Contractor's Fee as set forth in Paragraph 7.3 is

\_\_\_\_\_ dollars (\$\_\_\_\_\_).

The GMP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

**EXHIBIT 1** Request for Qualifications , including Addenda, if any,  
Dated \_\_\_\_\_, \_\_\_pages.

**EXHIBIT 2** Drawings and specifications, as annotated,  
Dated \_\_\_\_\_, \_\_\_\_\_pages.

**EXHIBIT 3** A Guaranteed Maximum Price (GMP) proposal,  
Dated \_\_\_\_\_, \_\_\_\_\_pages.

**EXHIBIT 4** Assumptions and clarifications,  
Dated \_\_\_\_\_, \_\_\_\_\_pages.

**EXHIBIT 5** Allowance items  
Dated \_\_\_\_\_, \_\_\_\_\_pages.

**EXHIBIT 6** Alternate Prices  
Dated \_\_\_\_\_, \_\_\_\_\_pages.

**EXHIBIT 7** A Construction Progress Schedule of Work  
Dated \_\_\_\_\_, \_\_\_\_\_pages.

**EXHIBIT 8** Unit Prices  
Dated \_\_\_\_\_, \_\_\_\_\_pages.

**EXHIBIT 9** Additional Services included

Dated \_\_\_\_\_, \_\_\_\_\_ pages.

**ARTICLE 2**

**DATE OF SUBSTANTIAL COMPLETION:**

The date of Substantial Completion of the Work is: \_\_\_\_\_

**PLEASE NOTE: TIME IS OF THE ESSENCE. SEE SECTION 6.2.2 FOR EXPLANATION OF THE APPLICATION OF LIQUIDATED DAMAGES FOR EACH DAY AFTER THE DATE OF SUBSTANTIAL COMPLETION THAT THE WORK IS NOT SUBSTANTIALLY COMPLETE.**

**CONTRACTOR:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**CITY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

[Date]

[Name of Company]

[Address]

**Re: Procurement for \_\_\_\_\_**

Dear [Contact – Name of Company]:

We are pleased to inform that you were the highest ranked firm in our recent procurement for \_\_\_\_\_ (hereinafter Project). The next step in this process is for us to attempt to negotiate a contract with the highest ranked firm. We are allowing \_\_\_\_ days to complete this part of the process.

In order for us to proceed with this negotiation phase, please provide us with a proposal containing your understanding of the following elements:

1. Scope;
2. List of Assumptions;
3. List of Clarifications;
4. Proposed Schedule;
5. Design and Pre-construction Services Fee;
6. Construction Fee for Construction Phase Services; and any other matters that you believe should be included in Amendment No. 2 to the Agreement.

Please contact me with any questions.

Sincerely,

---



EMCOR Services Arizona  
4050 East Cotton Center Boulevard  
Suite 40  
Phoenix, AZ 85040  
602.685.4600 • Fax: 602.685.4614

January 5, 2012

Mr. Scott Mangarpan  
Project Manager  
City of Cottonwood

Re: Recreation Center Thermal Solar Design/Build Project

EMCOR Services Arizona would like to thank the City of Cottonwood for selecting our team to perform the design / build for your upcoming solar thermal project at the Recreation Center. We are excited about this opportunity to showcase the latest in solar thermal technology. We are proud to be working with a municipality that is actively moving forward as a leader in renewable energy.

A brief synopsis of this project will include, but is not limited to:

- Approximately 80 roof mounted solar thermal panels for indoor pool heating
- 4 plate and frame heat exchangers, transferring thermal energy for (2) indoor pool heating, (1) indoor spa heating, and (1) domestic hot water
- Polyethylene direct flow roof mounted solar thermal panels for outdoor pool heating
- All necessary piping, insulation, electrical, pumps, separators, supports, and controllers
- All metering devices necessary to document the BTUs captured

Please see our attached Amendment 1, which outlines our fees for the design services and pre-construction portion of this project. These fees are inclusive of our team, consisting of EMCOR Services Arizona, Henderson Engineers, Inc, and Greenfield Dynamics.

EMCOR Services Arizona has 24 hour service 7 days a week.

I can be reached directly at 602-685-4765. If you have any questions or require additional information, please feel free to contact me.

Sincerely,

Mike Diaz  
Project Manager

**AMENDMENT NO. 1**DATED January 5, 2011**DESIGN AND PRECONSTRUCTION FEES UP TO GMP SUBMITTAL****I. Scope**

- A. The Project scope is generally as set forth in THE CITY OF COTTONWOOD REQUEST FOR QUALIFICATIONS For Design Build Services for Cottonwood Recreation Center Thermal Solar Project and as the parties may subsequently agree in writing.
- B. The Project's scope includes, but is not limited to, site preparation and construction of all infrastructure needed.
- C. The Project's scope includes all design services needed for the Project including, but not limited to, the requisite consultants such as solar design, mechanical engineering, civil engineering, electrical engineering, and other such services reasonably necessary for this Project.
- D. The scope also includes all construction activity necessary to complete the Project and includes, but is not limited to, permits, fees, inspections and testing, as required; however, the actual cost of the permits, fees, inspections and testing may be treated as reimbursables to save mark up and sales taxes. Budget money may be allocated to allow treatment of these necessary expenses outside of this contract at the City's sole discretion.

**II. List of Assumptions**

- A. The Project will be delivered using two distinct amendments under this single agreement.
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  - 2. Design services for the balance;
  - 3. Pre-construction services through 30%, 60% and 90% design development;
  - 4. Pre-construction services for the balance up to proposal and possible establishment of the GMP.
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- D. If the City does not accept a GMP, the second phase for construction services, will not be initiated, or if a prior construction services under a phased or multiple GMP has been accepted, subsequent GMPs and the construction services therein will not be performed nor be considered a liability against the City.
- E. All contingencies, cost savings and unused allowances shall be returned to the City for their use, or redirected for additional improvements as needed.
- F. Additional assumptions that may arise must be agreed to by the parties in writing.
- G. Amendment No. 1 and attachments thereto are supplementary to the contract between the parties and do not limit the contract between the parties. In the event of a conflict between Amendment No. 1 and attachments thereto and the contract between the parties, the contract between the parties shall control.

### **III. List of Clarifications**

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  - 2. EMCOR SERVICES ARIZONA will contract directly with HENDERSON ENGINEERS, INC. AND GREENFIELD DYNAMICS for all design services and will include all consultants, contract administration, and requisite errors and omissions insurance coverage naming EMCOR SERVICES ARIZONA, HENDERSON ENGINEERS, INC. AND GREENFIELD DYNAMICS as insured with the CITY OF COTTONWOOD as additional insured;
  - 3. EMCOR SERVICES ARIZONA's primary representative on this Project in all stages is MIKE DIAZ.
  - 4. This represents the foreseeable clarifications at this time. This list can be amended by mutual written agreement by the parties prior to incorporation into the final contract.

### **IV. Proposed Schedule**

- A. Substantial Completion shall occur no later than TBD months after receipt of Notice to Proceed for the beginning of Construction, and Final Completion within 30 calendar days after Substantial Completion.
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- C. An initial proposed Project schedule is attached hereto, subject to modification by mutual written agreement of the parties.

**V. Design and Pre-construction Services Fee**

A. The following are the fees for the design and pre-construction services anticipated for this Project. These and all other fees, costs, and other expenditures relative to this Project shall be provided to the City, without request, pursuant to the open book policy of this agreement.

1. Design services through 30% design development \$ 8,400.00;
2. Design services through 60% design development \$ 8,400.00;
3. Design services through completion, including documents \$11,200.00;
4. Pre-construction services through GMP \$ 4,000.00;
5. Construction Fees at 6% of the actual Cost of Work.

1-5-12  
Date

EMCOR Services Arizona

By: Michael Diaz

Its: Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

# City of Cottonwood, Arizona

## City Council Agenda Communication



 Print

Meeting Date:	February 21, 2012
<b>Subject:</b>	Skyline Drive Reconstruction
Department:	Development Services
From:	Morgan Scott

### **REQUESTED ACTION**

Consider approval of the reconstruction of East Skyline Drive.

### **SUGGESTED MOTION**

I move to approve staff moving forward with the reconstruction of east Skyline Drive.

### **BACKGROUND**

East Skyline way, located west of SR 89A behind Maytag Laundry, was recently reconstructed in 2011. The road was scheduled for pavement preservation; however, after inspection from the Engineering Department the road could not be preserved and was completely reconstructed.

A nearby road, east Skyline Drive, is also in need of repair, but was unable to be reconstructed with Skyline Way. Staff would now like to reconstruct east Skyline Drive with the remaining pavement preservation funds for FY 2011-12. The remaining funds in the pavement preservation account are \$66,128.28 and staff estimates that total cost to reconstruct the remainder of Skyline Drive will be approximately \$48,000.

A vicinity map and a map of the proposed reconstruction area are attached.

### **JUSTIFICATION/BENEFITS/ISSUES**

-The road is in need of repair in the near future.

-Now would be an opportune time to reconstruct the road as staff is familiar with the site.

### **COST/FUNDING SOURCE**

HURF

### **ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">Map for Council, 2-10-12.pdf</a>	Construction Area Map	Cover Memo
 <a href="#">Map for Council, 2, 2-10-12.pdf</a>	Vicinity Map	Cover Memo





# City of Cottonwood, Arizona

## City Council Agenda Communication



 Print

Meeting Date:	February 21, 2012
<b>Subject:</b>	Four Way Stop at the Intersection of Fir Street and Monte Tesoro Drive
Department:	Development Services
From:	Morgan Scott, Development Services Operations Manager

### **REQUESTED ACTION**

Consider approval of the installation of a four way stop at the intersection of Fir Street and Monte Tesoro Drive.

### **SUGGESTED MOTION**

I move to approve staff moving forward with the installation of a four-way stop at the intersection of Fir Street and Monte Tesoro Drive.

### **BACKGROUND**

Currently the intersection of Monte Tesoro Drive and Fir Street is a two-way stop intersection with Monte Tesoro stopping and Fir Street being the through street. With the construction of the Willard Street extension project in 2009 traffic on Monte Tesoro has increased substantially and City staff has received complaints about the intersection. After a brief observation of the intersection, which indicated the intersection was not functioning optimally, City staff took on a further detailed study of the intersection.

The detailed study counted traffic on each leg of the intersection and found that Monte Tesoro had a greater amount of vehicles per day than Fir Street. The Average Daily Trips (ADT) can be found on the aerial image attached. Due to this change in the local traffic staff is recommending the a four-way stop be installed at the intersection.

Should the council choose to approve the four-way stop staff will install "Traffic control change ahead" and "Stop Ahead" signs in addition to releasing a public notice of the traffic control change.

### **JUSTIFICATION/BENEFITS/ISSUES**

-The installation of a four way stop will allow for more efficient movement of traffic as well as safer crossing conditions for pedestrians.

-Warning signs will be left in place until the public is aware of the traffic control change.

### **COST/FUNDING SOURCE**

The news signs will be HURF funded.

### **ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">Appendix A, Map and ADTs, 9-7-11.pdf</a>	Aerial Image of intersection	Cover Memo



MONTE TESORO  
NORTH OF FIR  
ADT= 2,655.3

FIR STREET  
EAST OF MONTE TESORO  
ADT= 1,107.9

MONTE TESORO  
SOUTH OF FIR  
ADT= 1,819.5

FIR STREET  
WEST OF MONTE TESORO  
ADT= 706.2

1 inch = 100 feet

**Legend**

-  Cottonwood City Boundary
-  Parcel Lines



**CITY OF COTTONWOOD  
APPENDIX A: INTERSECTION OF FIR AND MONTE TESORO**

# City of Cottonwood, Arizona

## City Council Agenda Communication



 [Print](#)

Meeting Date:	February 21, 2012
<b>Subject:</b>	Possible award and approval of the contract for Vehicle Fleet Maintenance Operations to Reese & Sons Tire and Automotive, Inc.
Department:	Administrative Services
From:	Rudy Rodriguez, Administrative Services General Manager Lisa Elliott, Purchasing Manager

### **REQUESTED ACTION**

Staff is requesting that Council award and approve the contract for Vehicle Fleet Maintenance Operations to Reese & Sons Tire and Automotive, Inc.

### **SUGGESTED MOTION**

I move to award and approve the contract for Vehicle Fleet Maintenance Operations to Reese & Sons Tire and Automotive, Inc.

### **BACKGROUND**

Staff issued a Request for Proposals in December 2011 for Vehicle Fleet Maintenance Operations. Prior to the issuance of the RFP, staff held two (2) pre-bid conferences with area service providers to obtain help in developing the requirements of the proposal as well as address any concerns/questions that they may have. There were thirteen (13) RFP packages requested and only four (4) proposals were received back completed.

The intent of this solicitation was to consolidate vehicle and fleet maintenance services and repairs to a single vendor to assist in developing a comprehensive vehicle maintenance program that would allow for better tracking of maintenance and repairs as well as improved pricing.

The proposals were reviewed and ranked by a panel of five (5) employees. Proposals were ranked based on the following criteria:

- Cost
- Approach to Requested Proposal
- Location
- References
- Site Visit
- Vehicle Information Database

Reese & Sons Tire and Automotive, Inc. had the highest average score.

### **JUSTIFICATION/BENEFITS/ISSUES**

Consolidating vehicle fleet maintenance operations to a single provider will allow for the development of a comprehensive vehicle fleet maintenance program wherein maintenance can be tracked more easily. Cost savings will also be obtained through the reduced pricing offered. It is also anticipated that improved fleet maintenance will also save the City of Cottonwood money in the long run by prolonging the life of some of our vehicles.

### **COST/FUNDING SOURCE**

Invoices for maintenance and repairs will continue to be paid for out of the individual departments' budgets. No additional funding is needed.

**ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">📄 Proposal Evaluation Scores.pdf</a>	Proposal Evaluation Scores	Cover Memo
<a href="#">📄 Reese Sons Tire, Inc. Proposal (page 1).pdf</a>	Reese & Sons Proposal (Page 1)	Cover Memo
<a href="#">📄 Reese Sons Tire, Inc. Proposal (page 2).pdf</a>	Reese & Sons Proposal (Page 2)	Cover Memo
<a href="#">📄 Reese Sons Tire, Inc. Proposal (page 3).pdf</a>	Reese & Sons Proposal (Page 3)	Cover Memo
<a href="#">📄 Reese Sons Tire, Inc. Price Matrix.pdf</a>	Price Matrix	Cover Memo
<a href="#">📄 STANDARD TERMS AND CONDITIONS.docx</a>	Standard Terms & Conditions	Cover Memo

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# Vehicle Fleet Maintenance Proposal Evaluations

## Reviewer Total Scores and Average by Vendor

Vendor	Reviewer Scores					Average Score
	Reviewer 1	Reviewer 2	Reviewer 3	Reviewer 4	Reviewer 5	
A & B Motors	67	63	66	51	2	61.75
R & T Repair	45	43	68	38	4	48.5
Reese & Sons	70	73	88	68	1	74.75
Tire Pro	70	59	43	26	3	49.5

\*Reveiwer 5 ranked the proposals in order of best to worst - did not use the point scoring system

\*\*The average score is based off of the four reviewers who used the point scoring system

**EXHIBIT B**  
**OFFEROR'S PROPOSAL/RESPONSE**

- A. OFFEROR**  
Firm Name: Reese & Sons Tires & Automotive Inc.  
Contact Name: Neil Dixon  
Principal Address: 2435 E. State Rte. 89A  
Cottonwood, AZ 86326  
Local Address: same as above  
  
Phone: 928-634-5243 Fax: 928-634-9703  
E-Mail: nda@commspeed.net  
Type of Organization: New Tires & Automotive REPAIR Tax ID #: 86-0693264  
License #: 13-026905E City of Cottonwood Business Registration #: NA
- B. Exceptions to RFP:** NO exceptions  
(See Information & Instructions §4.5.4 Exceptions to Solicitation)
- C. Disclosure of Debarment information:** NONE  
(See Information & Instructions §4.5.5 Disclosure)
- D. Disclosure of Related Party Transactions:** NONE  
(See Information & Instructions §4.5.6 Related Party Transactions)
- E. COST:** Offeror will state a cost for:
- a. Hourly rate for repairs. \$ 55.00
- b. Hourly cost of overtime repairs. \$ 75.00
- F.** Offeror certifies that they  **(are)** or  are not able to provide vehicle maintenance services for the entire fleet for the City of Cottonwood.
- G.** Offer certifies that they  **(do)** or  do not have a computerized records management system accessible by the City that contains the vehicle maintenance data. If Offer does have a computerized records management system, is the system capable of importing and exporting vehicle maintenance files?  Yes  No
- H. PRICE MATRIX:** Offeror will provide the price matrix for percentage markup on parts and supplies for City repairs and maintenance.
- I. LIST OF MAJOR SUPPLIERS:** see attached

J. **APPROACH TO PROPOSAL:** Offeror will describe their approach to the City's need for a turnkey fleet vehicle maintenance solution (attach as separate document if needed).

See Attached

**TURNAROUND TIME:** Offer will provide a turnaround time for all public safety vehicles of See Attached days/hours.

K. **REFERENCES** (Must be provided):

Provide names, addresses and telephone numbers of a minimum of three (3) references (public or private sector) to which you have provided similar goods or equipment. An additional sheet may be attached if needed.

1. Entity: Taylor Waste  
Address: P.O. Box 3218 Cottonwood, AZ 86326  
Contact: Chris Taylor  
Phone: 928-649-2662  
Goods or Services supplied and when provided: Tires on all vehicles  
Preventative Maintenance on smaller vehicles  
Duration of Contract: Since 6/15/02 to current
2. Entity: Westcott Funeral Home  
Address: P.O. Box 352 Cottonwood, AZ 86326  
Contact: Steve Palmer  
Phone: 928-634-9566  
Goods or Services supplied and when provided: Tires & Preventative  
maintenance on all vehicles  
Duration of Contract: Since 1/24/02 to current
3. Entity: Tom Pender Engineering  
Address: P.O. Box 1245 Cottonwood, AZ 86326  
Contact: Tom Pender  
Phone: 928-639-0776  
Goods or Services supplied and when provided: Tires & Preventative  
Maintenance  
Duration of Contract: 1/18/02 to current

**L. FACILITY INFORMATION:** Offeror will state the location of their proposed facility, its principal maintenance and safety features (number of bays, lube racks, lifts, special equipment, etc.) and the distance from 816 N Main Street, Cottonwood, AZ 86326.

Facility Location: 2435 E. State Rte 89A Cottonwood, AZ

Distance from 816 N Main Street, Cottonwood, AZ 86326: 2.9 miles / 8 minutes

Principal Maintenance and Safety Features (attach as separate document if needed): \_\_\_\_\_

see attached

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**M. RECEIPT OF ADDENDA:**

Offeror acknowledges receipt of the following Solicitation Addendum(s):

<u>Addendum No.</u>	<u>Date</u>
<u>Addendum 1</u>	<u>01-12-2012</u>
_____	_____
_____	_____

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: Reese & Sons Tires & Automotive

Signature: Neil Dixon

By: Neil D. Dixon

Title: President/owner

Business Address: 2435 E. State Rte. 89A

Cottonwood, AZ 86326

Telephone: 928-634-5243

Email Address: nda@commspeed.net

# Price Matrix

All Parts will be marked up from cost as follows:

Part cost \$1-\$199 35%

Part cost \$200-\$399 25%

Part cost \$400 and up 15%

# STANDARD TERMS AND CONDITIONS

Project No.: 2012-AS-01  
Project Name: Vehicle Fleet Maintenance Operations

THIS Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Cottonwood, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Reese & Sons Tire and Automotive, Inc., hereinafter referred to as "OFFEROR".

WHEREAS, the Mayor and City Council of the City of Cottonwood are authorized and empowered by provisions of the City Code to execute contracts for professional services; and

WHEREAS, OFFEROR represents that OFFEROR has the expertise and is qualified to perform the services as described in the Contract.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

## 1. CONTRACT ADMINISTRATOR

- 1.1. To provide the vehicle fleet maintenance operations services required by this Contract, OFFEROR shall act under the authority and approval of Jim Wixom, Maintenance Specialist or designee, (the Contract Administrator), who shall oversee the execution of this Contract, assist the OFFEROR with any necessary information, audit billings, and approve payments. The OFFEROR shall channel reports and special requests through the Contract Administrator.
- 1.2. The CITY reserves the right to review and approve any/all changes to OFFEROR'S key staff assigned to the CITY project by the firm during the term of this Contract.
2. **SCOPE OF WORK:** OFFEROR shall provide those services described in Specifications/Scope of Work (Exhibit A) attached hereto and made a part hereof by reference.
3. **ACCEPTANCE AND DOCUMENTATION:** Each project shall be reviewed and approved by the CITY to determine acceptable completion. All documents, including but not limited to, data compilations, studies, packing slips / bills of lading and reports which are prepared in the performance of this Contract, shall be and remain the property of the CITY and shall be delivered to the CITY before final payment is made to OFFEROR.
  - 3.1. **Records.** OFFEROR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract.
  - 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, OFFEROR'S books and records shall be subject to audit by the CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, OFFEROR shall produce a legible copy of any or all such records.
4. **COST:** For the services described in Paragraph 2 of this Contract, CITY shall pay OFFEROR in accordance with the Offeror's Proposal/Response attached hereto as Exhibit B and incorporated herein by reference.
  - 4.1. **IRS W9 Form.** In order to receive payment, OFFEROR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
5. **TERM:** Term of this Contract will be three (3) years with options to renew for two (2) additional one (1) year periods at the discretion of the City.

## 6. **TERMINATION:**

- 6.1. Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, OFFEROR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services or deliveries performed to the date of such termination, the OFFEROR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the OFFEROR and CITY, based on the agreed Scope of Work. If there is no mutual Contract, the Finance Director shall determine the percentage of work performed for each task detailed in the Scope of Work and the OFFEROR'S compensation shall be based upon such determination and OFFEROR'S fee scheduled included herein.
- 6.2. Termination for Cause:** City may terminate this Contract for Cause upon the occurrence of any one or more of the following events:
- 6.2.2.** If OFFEROR fails to perform pursuant to the terms of this Contract.
  - 6.2.3.** If OFFEROR is adjudged a bankrupt or insolvent;
  - 6.2.4.** If OFFEROR makes a general assignment for the benefit of creditors;
  - 6.2.5.** If a trustee or receiver is appointed for OFFEROR or for any of OFFEROR'S property;
  - 6.2.6.** If OFFEROR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
  - 6.2.7.** If OFFEROR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
  - 6.2.8.** Where Contract has been so terminated by CITY, the termination shall not affect any rights of CITY against OFFEROR then existing or which may thereafter accrue.
- 6.3. Availability of Funds for the Next Fiscal Year.** Funds may not presently be available under this Contract beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this Contract beyond the current fiscal year until funds are made available for performance of this Contract. The CITY may reduce services or terminate this Contract without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole discretion in determining the availability of funds.

- 7. INDEMNIFICATION:** The OFFEROR agrees to indemnify, defend, and save harmless the City of Cottonwood, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including employees of the OFFEROR or of any Sub-Contractor employed by the OFFEROR (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the OFFEROR for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Cottonwood, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

8. **INSURANCE REQUIREMENTS:** OFFEROR shall provide and maintain the insurance as listed in Section 4.5.7 of the Information and Instruction to Offerors and the Certification of Insurability (Exhibit C) attached hereto and made a part hereof by reference.
9. **ENTIRE CONTRACT:** This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
10. **ARIZONA LAW:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
  - 10.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the OFFEROR and each of its subcontractors (“Subcontractors”) will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter “Contractor Immigration Warranty”).
  - 10.2 A breach of the Contractor Immigration Warranty (Exhibit D) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
  - 10.3 The City retains the legal right to inspect the papers of any OFFEROR or Subcontractor employee who works on this Contract to ensure that the OFFEROR or Subcontractor is complying with the Contractor Immigration Warranty. The OFFEROR agrees to assist the City in the conduct of any such inspections.
  - 10.4 The City may, at its sole discretion, conduct random verifications of the employment records of the OFFEROR and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The OFFEROR agrees to assist the City in performing any such random verification.
  - 10.5 The provisions of this Article must be included in any contract the OFFEROR enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
  - 10.6 In accordance with A.R.S. §35-393.06, the OFFEROR hereby certifies that the OFFEROR does not have scrutinized business operations in Iran.
  - 10.7 In accordance with A.R.S. §35-391.06, the OFFEROR hereby certifies that the OFFEROR does not have scrutinized business operations in Sudan.
11. **CONFLICT OF INTEREST:**
  - 11.1 **No Kickback.** OFFEROR warrants that no person has been employed or retained to solicit or secure the Contract upon a Contract or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. §38-501. Any such interests were disclosed in OFFEROR’S proposal to the CITY.
  - 11.2 **Kickback Termination.** CITY may cancel any contract or Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the CITY is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or an OFFEROR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice for CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
  - 11.3 **No Conflict.** OFFEROR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept

employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

**11.4 Alternative Dispute Resolution.** The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by Contractor during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

**11.5 Arizona Law.** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

**11.6 Jurisdiction and Venue.** The parties agree that this Contract is made in and shall be performed in Yavapai County. Any lawsuits between the Parties arising out of this Contract shall be brought in the courts of Yavapai County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

**11.7 Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Contract is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

**12. NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY:

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

In the case of OFFEROR:

Company Name: Reese & Sons Tire and Automotive, Inc.  
Contact: Neil Dixon  
Address: 2435 E State Route 89A  
City, State, Zip: Cottonwood, AZ 86326  
Telephone Number: (928) 634-5243

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date and year appearing below.

**City of Cottonwood**, A Municipal Corporation:

**Contractor:** Reese & Sons Tire and Automotive, Inc.

By: \_\_\_\_\_  
Diane Joens, Mayor

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Steven B. Horton, City Attorney

# City of Cottonwood, Arizona

## City Council Agenda Communication



 Print

Meeting Date:	February 21, 2012
<b>Subject:</b>	Approval of Section I - Introduction and Section II - Social Media Policy for the Newly Developed Information Technology Guide and Providing for an Effective Date
Department:	Administrative Services
From:	Jesus R. Rodriguez, C.G.F.M., Administrative Services General Manager

### **REQUESTED ACTION**

Staff is requesting review and approval of Section I - Introduction and Section II - Social Media Policy for the newly developed Information Technology Guide and provide for an effective date.

### **SUGGESTED MOTION**

I move to approve Section I - Introduction and Section II - Social Media Policy for the newly developed Information Technology Guide effective February 22, 2012.

### **BACKGROUND**

The City of Cottonwood has goals of keeping up with ever expanding information technology, the need for transparency, and prompt communications with our citizens. To this end, the City has developed a Social Media Policy to provide guidelines to accomplish these goals through proper usage of social media. As everyone is aware, there are several means of social media, MySpace, Twitter, LinkedIn, Facebook and many others. The City has chosen to use Facebook as its medium to communicate with the public. Delays to getting this policy in place were due to the amount of control that the City will exert on its Facebook account. First of all, the City Manager's office will control all content that will be posted on the City's Facebook account. This was decided in order to ensure that the City Manager is aware of all happenings throughout the City. Currently we have a couple of accounts that will be integrated into the one account. All Facebook postings will refer to the website for further information. The website has and will continue to be the primary source of important information. The Facebook account will allow citizen comments within certain parameters and will have a notice displaying that the City has control of the account such as : "Please avoid making any defamatory comments or using bad language as any inappropriate comments will be removed. The City of Cottonwood (COC) does not moderate posts prior to posting however we do reserve the right to remove them based on the following: - Posts containing profanity, offensive, vulgar or inappropriate language. - Personal attacks on COC staff, administrators, COC Facebook fans - Posts containing illegal activity, fund raising, promotion, spam, or copyright/trademark infringement. COC reserves the right, at our discretion, to remove any post or to revoke a user's privilege to post to our page. Please do not include your full name, phone number, email address or any other personal information in your posts. Comments posted by others on the COC Facebook page do not reflect the opinions of COC or its employees. Our concern was to make this an information page and not a medium from which the public may pursue bashing the City of Cottonwood or posting of false information, hence the above statement.

### **JUSTIFICATION/BENEFITS/ISSUES**

The use of Social Media is probably long overdue at the City of Cottonwood. This communication medium will allow us to get notices of events, road closures, meetings, and more importantly emergencies out to the public expeditiously.

### **COST/FUNDING SOURCE**

Cost to the City will be minimal and staff will handle all postings.

**ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">2-21-12 II Social Media Policy (A1).doc</a>	I Social Media Policy	Cover Memo
<a href="#">2-21-12 II Social Media Policy (A2).pdf</a>	II Social Media Policy	Cover Memo

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SOCIAL MEDIA POLICY

I. PURPOSE:

The purpose of this policy is to outline to all departments, employees, appointed and elected officials, the protocol and procedures for use of social media to provide public outreach and communication of official City services and events. In addition, this policy addresses the responsibilities of individual employees and City officials with regard to social media and the use of City resources (time/equipment), as well as responsibilities related to public records and open meetings law.

II. DEFINITION:

A. **Social Media** - a term that defines the various activities that integrate technology, social interaction and content creation. Social media uses the "wisdom of crowds" to connect information in a collaborative manner online. Through social media, individuals or collaborations of individuals create web content, organize content, edit or comment on content, combine content and share content. These take on various forms of discussion and dissemination, including social networks, blogs, video sharing, podcasts, wikis, message boards and online forums. Technologies include: RSS and other syndicated web feeds, picture-sharing, wall-postings, fan pages, e-mail, instant messaging and music sharing. Examples of social media applications include, but are not limited to, Google and Yahoo Groups (reference, social networking), Wikipedia (reference), MySpace (social networking), Facebook (social networking), YouTube (social networking and video sharing), Flickr (photo sharing), Twitter (social networking and microblogging), LinkedIn (business networking), and news media comment sharing/blogging.

B. **Social Networking** – the practice of expanding business and/or social contacts by making connections through Web-based applications. This policy focuses on social networking as it relates to the Internet to promote such connections for official City business and for employees, elected and appointed officials who are using this medium in the conduct of official City business.

### III. POLICY AND PROCEDURES

#### A. Administration

1. All official City social media sites will be administered by the City Manager's Office. These social media sites shall be used for the limited purpose of informing the public about City business, services and events. The City Manager's Office may designate members of City staff to monitor and administer all official City social media sites. Individual departments, Commissions, Committees or Boards may not have their own pages/sites. Individual departments wishing to add content to official City social media sites may submit a request to the City Manager or designee.
2. The City's Web site, [www.cottonwoodaz.gov](http://www.cottonwoodaz.gov), will remain the official location for content regarding City business, services and events. Whenever possible, links within social media formats should direct users back to the City's Website for more information, forms, documents or online services necessary to conduct business with the City of Cottonwood. Each social media site used by the City shall include an introductory statement that clearly specifies the purpose of the site and directs the user back to the City's website.
3. City of Cottonwood employees and appointed and elected officials shall not disclose information about confidential City business on either the City's social media sites or their personal social media sites. In addition, all use of social media sites by elected and appointed officials shall be in compliance with Arizona's open meeting laws. Employees and elected or appointed officials' posts are a reflection of their own views and not necessarily those of the City.
4. Posting/Commenting Guidelines - All postings made by the City to social media sites will contain information and content that have already been published or broadcast in an official manner. All official social media postings by the City will be done solely on the City's social media sites or in response to postings made on the City's social media sites.
5. Responses to Comments and Messages - The City Manager's Office will determine whether the City will engage in responses to comments on social media sites. The City Manager's designee will be responsible for responding to comments and messages as appropriate. Whenever possible, the designee will direct users back to the City's official Web site for more information, forms, documents or online services necessary to conduct business with the City of Cottonwood.

The City may invite others to participate in its social media sites. Such invitations will be based upon the best interests of the City as determined by the City Manager or designee.

6. Department Requests for Posting to Social Media Sites - The City Manager or designee will determine if a request is appropriate and adheres to the guidelines of this policy.
7. Requests for Pursuing/Using New Social Media Sites - All requests for new social media sites and services to promote City business, services or events must be submitted to the City Manager's Office and will be reviewed by the IT Department and the City Manager's Office for approval. Requests should be accompanied by an explanation of:
  - a. the purpose of the social media site or service;
  - b. primary audience served;
  - c. the reason internal or existing resources will not meet these needs; and
  - d. a date range for the project (i.e. when will it launch, how long will it be in effect). Requests should identify appropriate resources, including staff and funding for production and management of services, when applicable.
8. All content posted on official City social media sites must comply with City Web standards, unless otherwise agreed upon between the requesting department/division, the City Manager's Office and the IT manager. Employee or City confidentiality shall be maintained in accordance with all applicable laws and City policies. If a question arises regarding the use or posting of confidential information on a social media site, the matter shall be referred to the Legal department office for review. The information in question shall not be posted, or if already posted, shall be removed until an opinion is rendered by the Legal department. Notwithstanding the opinion of the Legal department, the City Manager's Office reserves the right to restrict or remove City information from an official City social media site if the City Manager believes that the information does not serve the best interests of the City.
9. All social media-based services to be developed, designed, managed by or purchased from any third-party source for use requires appropriate budget authority and approval from the IT manager. The requesting department will be responsible for all costs related to the purchase, maintenance and support of third-party products.
10. IT Procedures - IT will work with the City Manager's designee to ensure that new social networking sites and proposed content meet City standards. Once a new request is determined to meet technology guidelines and City policies, it will be forwarded to the City Manager's Office for review. If the request is approved, the IT director will allow open Internet access to the applicable social media site for the Communications manager and designee(s).

11. City Manager Office Procedures - The City Manager's office will review requests approved by IT and the Communications manager and authorize final approval. In addition to the City staff provided by this policy, the City Manager's Office shall determine/approve additional employee access to social media sites from City computing equipment.

**B. Rights and Responsibilities**

1. It is the responsibility of employees, and appointed and elected officials to understand the procedures as outlined in this policy.
2. Designated staff for City social media sites will be trained regarding the terms of this policy, including their responsibilities to review content submitted for posting to ensure compliance with the policy.
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4. Postings and comments (if City Manager's Office has determined that City will engage in responses to comments) to City of Cottonwood social media sites containing any of the following forms of content will not be allowed:
  - a. Comments not topically related to the administrator's posting.
  - b. Content that violates City policy, including abusive, harassing, intimidating, vulgar, obscene and offensive communications; communications that defame or libel others; and communications that infringe upon the privacy rights of others.
  - c. Disparaging communications or jokes that are based on race, national origin, marital status, sex, sexual orientation, disability, age, religion, or any other characteristic protected under federal, state or local law.
  - d. Communications of any copyrighted materials, trade secrets, proprietary information, or any other highly sensitive confidential information.
  - e. Solicitation of others for commercial ventures or religious, social or political causes.
5. Content that is in violation of the City's Internet use policy The City of Cottonwood reserves the right to remove content that is deemed in violation of this policy or any applicable law. Any participants on the City's official social media sites who are in continual violation of the posting/commenting guidelines may be permanently removed from the City's site.

SOCIAL MEDIA POLICY

6. The City will only post photos for which it has copyright or owner's permission to use.
7. Direct messages sent to social media accounts will be treated as general correspondence and kept in accordance with retention schedules provided by the Arizona State Library and Archives Records Management Division.
8. Chat functions in any social media sites will not be used.
9. Links to all social media networks to which the City belongs will be listed on the City's official Web site. Interested parties wishing to interact with these sites will be directed to visit the City's Web site for information on how to participate.
10. The City of Cottonwood reserves the right to temporarily or permanently suspend access to official City social media sites at any time.

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  - e. Solicitation of others for commercial ventures or religious, social or political causes.
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10. The City of Cottonwood reserves the right to temporarily or permanently suspend access to official City social media sites at any time.

# City of Cottonwood, Arizona

## City Council Agenda Communication



Print

Meeting Date: February 21, 2012

**Subject:** Possible award of contract for Lease Purchase Financing of Equipment.

Department: Administrative Services

From: Rudy Rodriguez, Administrative Services General Manager Lisa Elliott, Purchasing Manager

### **REQUESTED ACTION**

Staff is requesting that Council award the contract for Lease Purchase Financing to Midwest Leasing, Inc. (SunTrust Equipment Financing & Leasing Corp.) for the acquisition of necessary equipment.

### **SUGGESTED MOTION**

I move to award the contract for Lease Purchase Financing to Midwest Leasing, Inc. (SunTrust Equipment Finance & Leasing Corp.) for the acquisition of necessary equipment, and authorize Staff to negotiate a final agreement for execution by the Mayor.

### **BACKGROUND**

Staff issued a Request for Proposals for Lease Purchase Financing in January 2012 to finance a total of \$601,035 for the acquisition of vehicles and equipment. Six (6) proposals were received. Of these proposals, Midwest Leasing, Inc. (SunTrust Equipment Financing & Leasing Corp.) offered the City the best interest rate of 2.0%. The term of the financing will be five (5) years and will include bi-annual payments of \$63,262.06 beginning July 1, 2012.

Midwest Leasing, Inc. listed one exception to the Request for Proposals requirements stating an exception to Section 3.5 Prepayment. Midwest Leasing, Inc. charges a 2.2% prepayment penalty on the remaining principal balance.

Awarding of the contract for Lease Purchase Financing will allow Staff to negotiate any contract terms with Midwest Leasing, Inc. and enter into an agreement for funding.

Items to be acquired with this lease purchase are as follows:

Vehicles and Equipment Needing to be Financed		
Department	Description	Amount
City Clerk	Desktop Computer	\$1,500
Finance	City Wide Software Plan	300,000
	Necessary Servers for Municipal Software	60,000
Economic Development	Desktop Computer	1,500
Police	Computers and Peripherals	2,000
	Vehicles	88,030
	Audio/Visual Equipment	11,505
Fire	Computer Replacement Program	3,000
	Command/Staff Vehicle Replacement	50,000
Streets-Operations	Message Board	19,500
Water Construction	Arsenic Trailer	55,000
Water O&M	Trailer Mounted Air Compressor	9,000

**JUSTIFICATION/BENEFITS/ISSUES**

The award of the contract for Lease Purchase Financing will allow the City to procure vehicles and equipment approved in the 2011-2012 budget while ensuring that revenues received throughout the remainder of the fiscal year are available to support continued operations.

**COST/FUNDING SOURCE**

Funding will be provided by the various departments that will be using the equipment. In this case the General Fund, HURF, Utility Fund, and the Public Safety Reserve Fund will provide a proportionate share of the repayments.

**ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">Solicitation Tabulation Form.pdf</a>	Solicitation Tabulation Form	Backup Material
<a href="#">Midwest Leasing, Inc. page 1.pdf</a>	Midwest Leasing, Inc. Proposal (Page 1)	Backup Material
<a href="#">Midwest Leasing, Inc. pages 2-3.pdf</a>	Midwest Leasing, Inc. Proposal (Page 2-3)	Backup Material
<a href="#">Midwest Leasing, Inc. page 4.pdf</a>	Midwest Leasing, inc. Proposal (Page 4)	Backup Material
<a href="#">Midwest Leasing, Inc. page 5.pdf</a>	Midwest Leasing, inc. Proposal (Page 5)	Backup Material
<a href="#">Midwest Leasing, Inc. page 6.pdf</a>	Midwest Leasing, inc. Proposal (Page 6)	Backup Material
<a href="#">Midwest Leasing, Inc. page 7.pdf</a>	Midwest Leasing, inc. Proposal (Page 7)	Backup Material

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# City of Cottonwood

## SOLICITATION TABULATION

Project Name: Lease Purchase Financing

Solicitation Number: 2012-AS-02

Solicitation Opening Date: February 3, 2012 at 11:00 a.m.

Firm Name	Pymt Period	Pymt Amt	Interest Rate	Date Avail	Addend Ack?
National Bank of Arizona	5 yrs	\$64,053.23	2.46%	2/15/12	Y
Holman Capital	5 yrs	\$64,969.99	2.90%	3/1/12	N (amount included)
Municipal Leasing Consultants	5 yrs	* \$57,320.47	2.27%	15 days after contract execution	Y
Midwest Leasing, Inc.	5 yrs	\$63,262.06	2.0%	3/1/12	Y
Pinnacle Public Finance	5 yrs	\$64,004.29	2.43%	2/15/12	N (amount included)
De Lage Landen Financial Services	5 yrs	* \$58,223.99	2.99%	Prior to 4/15/12	N

Notes: \*Payment amount based off incorrect total amount financed. Does NOT include the Additional amount from Addendum One.



"Providing Lease Financing Since 1985"

Wednesday February 1<sup>st</sup>, 2012

City of Cottonwood  
Administrative Services Dept.  
Purchasing Division  
816 N. Main Street  
Cottonwood, AZ 86326

Thank you for the opportunity to be of service in the acquisition of equipment listed in your Solicitation 2012-AS-02.

Midwest Leasing, Inc., specializes in leasing equipment to municipal tax-exempt entities such as yours. We appreciate working with you to provide your district with a very cost-effective solution to your lease purchase financing requirements.

As a result, we are pleased to furnish you with a lease proposal for the equipment, based upon a net amount financed of \$601,035.00

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5 Year Lease Purchase                      \$63,262.06/Semi-Annual Payment (see attached amortization schedule) 2.0%

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**Option at the end of the lease term:**

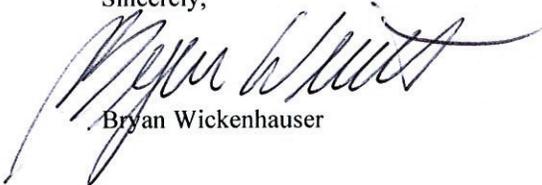
1. After the last payment you own the equipment.

The Buy Rate outlined in this proposal is valid for funding through March 1, 2012. After March 1, 2012, the proposed Buy Rate will be adjusted two (2) days prior to the Funding Date, and will be indexed to the three (3) year LIBOR/SWAP Rate (Index Rate). The Index Rate on the date of this proposal is 0.71%. Should the Index Rate change prior to funding, an adjustment to the Buy Rate would then become necessary. For each basis point change in the Index Rate, the Buy Rate will be adjusted by 65%. Once a given schedule is funded, the Buy Rate will be fixed for the entire term. This proposal will expire in 30 days and is subject to final credit approval and acceptable lease documentation.

**SunTrust Equipment Finance & Leasing Corp. will be named first security lien holder in the equipment and would be the ultimate lessor on this financing. SunTrust Bank will act as the Escrow Agent were one needed. Rated quoted assumes a penalty equal to 102.2% of the remaining principal balance.**

We look forward to providing you with a very cost efficient leasing solution in acquiring the equipment.

Sincerely,



Bryan Wickenhauser

---

**Midwest Leasing Inc.**  
**Bryan Wickenhauser, Vice President**  
414 North Pine Street  
Gunnison, CO 81230  
800.398.2604 / Fax 800.652.0377  
[www.financing-equipment.com](http://www.financing-equipment.com)

**OFFER SECTION**

(Including all information required to be submitted with Offer)

1. Offeror Information

Firm Name: Midwest Leasing, Inc and/or its assigns

Contact Name: Bryan Wickenhauser

Principal Address: 414 N. Pine St.

Gunnison CO 81230

Phone: (970) 641-0848 Fax: \_\_\_\_\_

Email: bwick@financing-equipment.com

Local Address: \_\_\_\_\_

Type of Organization: \_\_\_\_\_

Tax ID #: 20-2770307 License #: \_\_\_\_\_

2. Exceptions to RFP: We have an Exception to 3.5 Prepayment, We charge a 2.2%  
(See Information & Instructions §4.5.4 Exceptions to Solicitation)

Prepayment penalty on remaining principal balance.

3. Disclosure of Debarment Information: \_\_\_\_\_  
(See Information & Instructions §4.5.5 Disclosure)

4. Financing Terms:

A. Payment Period: Five Year term

B. Payment Amount: \$ 63,262.06 / Semi Annual Payment in Arrears

C. Fixed Annual Rate: 2%

D. Date Funds Will Be Available: Once our credit review is approved, lease docs are signed by you. Expected date is 01/1/12

5. References (Must be provided):

Provide names, addresses and telephone numbers of government agencies/business to which you have provided similar goods or services.

A. Entity: Little Rock School District

Address: Little Rock, AR

Contact: Darrell Paradis

Phone: 501-447-2262

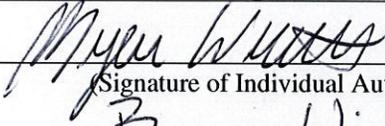
B. Entity: City of Anchorage, AK  
Address: RisvoldRH@ci.anchorage.ak.us  
Contact: Ross Risvold  
Phone: 907-343-6606

C. Entity: Chesapeake Public Schools  
Address: Chesapeake, VA amy.george@cpschools.com  
Contact: Amy George  
Phone: 757-547-0265

6. Receipt of Addenda:  
Offeror acknowledges receipt of the following Solicitation Addendum(s):

<u>Addendum No.</u>	<u>Date</u>
<u>One</u>	<u>1/31/12</u>
_____	_____
_____	_____

7. Other Information Requested (see Evaluation Criteria). \_\_\_\_\_

8. Intent to be Bound by Offer:   
(Signature of Individual Authorized to Sign Bid)  
Bryan Wickenhausen  
(Printed Name of Individual Authorized to Sign Bid)

**NON-COLLUSION AFFIDAVIT**

STATE OF: )  
 ) ss  
CITY OF: )

Midwest Leasing, Inc Bryan Wickenhauser  
(Name of Company, Representative)

being first duly sworn, deposes and says:

That she/he is Vice President of Midwest Leasing, 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

Midwest Leasing, 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:

**City of Cottonwood Lease Purchase Financing**

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 1 day of February, 2012, before me, the undersigned NOTARY PUBLIC, personally appeared Bryan Wickenhauser, 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.

Brandy Rivera  
NOTARY PUBLIC  
My Commission Expires: 11/17/12



My Commission Expires 11/17/2012

## DISCLOSURE OF RESPONSIBILITY STATEMENT

- A. List any convictions of any person, subsidiary, or affiliate of the company, arising out of obtaining, or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

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- B. List any convictions of any person, subsidiary, or affiliate of this company for offenses such as embezzlement, theft, fraudulent schemes, etc. or any other offenses indicating a lack of business integrity or business honesty, which affects the responsibility of the contractor.

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- C. List any convictions or civil judgments under state or federal antitrust statutes.

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- D. List any violations of contract provisions such as failing to perform (without good cause), or unsatisfactory performance, in accordance with the specifications of a contract.

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- E. List any prior suspensions or debarments by any governmental agency.

---

- F. List any contracts not completed on time.

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- G. List any penalties imposed for time delays and/or quality of materials and workmanship.

---

- H. List any documented violations of federal or state labor laws, regulations, or standards, occupational safety and health rules.

---

I, Bryan Wickenhauser, as Vice President  
Name of individual Title & Authority

of Midwest Leasing, Inc., declare under oath that the above statements, including  
Company Name

any supplemental responses attached hereto, are true.

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

STATE OF: \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF: \_\_\_\_\_ )

On this the 1 day of February, 2012, before me, the undersigned NOTARY PUBLIC, personally appeared Bryan Wickenhauser, 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.

Brandy Rivera  
 NOTARY PUBLIC  
 My Commission Expires: 11/17/12



My Commission Expires 11/17/2012

02/01/2012 6:46:50 AM Page 1

Compound Period ..... : Semiannual

Nominal Annual Rate .... : 2.007 %

## CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	03/01/2012	601,035.00	1		
2 Payment	07/01/2012	63,262.06	1		
3 Payment	01/01/2013	63,262.06	9	Semiannual	01/01/2017

## AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
Loan 03/01/2012				601,035.00
1 07/01/2012	63,262.06	4,032.78	59,229.28	541,805.72
2012 Totals	63,262.06	4,032.78	59,229.28	
2 01/01/2013	63,262.06	5,438.16	57,823.90	483,981.82
3 07/01/2013	63,262.06	4,857.77	58,404.29	425,577.53
2013 Totals	126,524.12	10,295.93	116,228.19	
4 01/01/2014	63,262.06	4,271.56	58,990.50	366,587.03
5 07/01/2014	63,262.06	3,679.47	59,582.59	307,004.44
2014 Totals	126,524.12	7,951.03	118,573.09	
6 01/01/2015	63,262.06	3,081.43	60,180.63	246,823.81
7 07/01/2015	63,262.06	2,477.40	60,784.66	186,039.15
2015 Totals	126,524.12	5,558.83	120,965.29	
8 01/01/2016	63,262.06	1,867.29	61,394.77	124,644.38
9 07/01/2016	63,262.06	1,251.07	62,010.99	62,633.39
2016 Totals	126,524.12	3,118.36	123,405.76	
10 01/01/2017	63,262.06	628.67	62,633.39	0.00
2017 Totals	63,262.06	628.67	62,633.39	
Grand Totals	632,620.60	31,585.60	601,035.00	

## CONTRACTOR IMMIGRATION WARRANTY

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

A.R.S. § 41-4401 (Government procurement, E-verify requirement, definitions) 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.

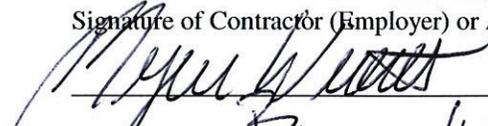
By completing and signing this form the Contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:	2012-AS-02	
Name (as listed in the contract):	Midwest Leasing Inc	
Street Name and Number:	414 N. Pine St	
City:	State:	Zip Code:
Durham	CO	81230

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. The Contractor 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.
3. 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.
4. The Contractor acknowledges that a breach of this warranty by the 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.
5. 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.

Signature of Contractor (Employer) or Authorized Designee:

  
Printed Name: Bryan Wickenhauer

Title: Vice President

Date (month/day/year): 2/1/12

# City of Cottonwood, Arizona

## City Council Agenda Communication



 Print

Meeting Date:	February 21, 2012
<b>Subject:</b>	Request for Internal Recruitment - CAT & Verde Lynx Employees - Community Services Department
Department:	Community Services
From:	Richard Faust, Community Services General Manager

### **REQUESTED ACTION**

Council authorization to treat the upcoming hiring process for the CAT/Verde Lynx system as an internal recruitment under Section 19 of the Cottonwood Employee Manual with respect to current NAIPTA employees performing jobs within the system. This would include allowing City management to offer incumbent NAIPTA employees hired through this process the same compensation that they are currently receiving upon transfer and to retain their current leave balances.

### **SUGGESTED MOTION**

"I move to authorize City management to treat the upcoming hiring process for the CAT/Verde Lynx system as an internal recruitment under Section 19 of the Cottonwood Employee Manual with respect to NAIPTA employees currently performing jobs within the CAT/Verde Lynx system; to give management the discretion to offer current NAIPTA employees hired through this process the same rates of pay that they are currently receiving from NAIPTA, even if those rates are higher than the midpoint for the position; and to authorize management to credit the current leave balances of NAIPTA employees hired through this process."

### **BACKGROUND**

As part of the re-integration/integration of the CAT and Verde Lynx systems into the City's management structure, staff proposes and recommends that the City treat incumbent NAIPTA employees currently performing jobs within those systems as City employees for the purpose of allowing them to participate in an internal recruitment for their equivalent positions with the City under Section 19 of the City's Employee Manual. This would include (1) allowing, but not requiring City management to hire incumbent NAIPTA employees into equivalent positions within the City's re-constituted public transportation system without conducting an external recruitment; (2) allowing City management to pay employees hired through this process more than the midpoint for the position if required to pay that employee an equivalent rate to what they are currently receiving from NAIPTA; (3) treating NAIPTA employees hired in this manner as having completed their probationary periods, if they have previously completed a successful probationary period with the City or NAIPTA; and (4) allowing City management to transfer and credit the leave balances of employees hired through this process.

### **JUSTIFICATION/BENEFITS/ISSUES**

Many of the employees who would be eligible for hiring under an internal recruitment were CAT employees before the merger of CAT into NAIPTA. The other employees who would be subject to hiring under these procedures have been employed by NAIPTA in positions within the CAT and Lynx systems over the past year, and have either successfully completed their 12-month probationary periods with NAIPTA or are performing satisfactorily within their probationary periods - although employees who have not yet completed a probationary period with either the City or NAIPTA at the time they begin working for the City on July 1 would be hired as a probationary employee (the City's probationary period is 6 months). The procedures and accommodations that are being recommended here are designed and intended to minimize the anxiety, uncertainty and disruption that these employees face as a result of their second change in employers within 18 months.

### **COST/FUNDING SOURCE**

The CAT and Verde Lynx systems will continue to be funded through a combination of Rural Transportation (Section 5311) funding from the Federal Transportation Authority (administered by ADOT), local match funds, fare revenues, service contracts, funding from other system partners (currently the Town of Clarkdale and Yavapai County), along with other sources. The positions within the City service that will be re-established and re-filled in order to operate the CAT and Verde Lynx systems beginning on July 1, 2012 will be similar to the positions that were required when the City operated CAT previously, both in terms of the required qualifications and duties of those positions and in terms of compensation.

**ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">Cottonwood Employee Manual - Section 19.doc</a>	Cottonwood Employee Manual - Section 19	Cover Memo
<a href="#">192-Transportation Dispatcher-Revised 6-02.doc</a>	Transit Dispatcher Position Description	Cover Memo
<a href="#">193-Transportation Driver 10-04-06.doc</a>	Transportation Driver Position Description	Cover Memo
<a href="#">193PT- Part-Time-Transit Driver 10-31-08.doc</a>	Part Time Transportation Driver Job Description	Cover Memo
<a href="#">194-Transportation Dispatcher Driver 02-10-06.doc</a>	Part time Transportation Dispatcher & Driver Job Description	Cover Memo
<a href="#">NAIPTA Copy of CAT Verde Lynx employee list wages etc.xlsx</a>	NAIPTA CAT & Verde Lynx Personnel	Cover Memo
<a href="#">NAIPTA CAT Lynx employee salary steps.xlsx</a>	NAIPTA Salary Step and Range Description	Cover Memo
<a href="#">NAIPTA EMPLOYEES Vacation-Sick Leave Accruals.xls</a>	NAIPTA Vacation and Sick Leave Accruals	Cover Memo
<a href="#">NAIPTA VACATION AND SICK POLICIES.docx</a>	NAIPTA Vacation and Sick Leave Policies	Cover Memo

CITY OF COTTONWOOD Sec: 19  
EMPLOYEE MANUAL Rev: 06-07  
Date: 06-07  
SUBJECT: Hiring Page: 1 of 7

**SECTION 19:  
HIRING**

A. **Purpose:** To outline the City policy for filling vacant positions in the City's service.

B. **Policy:**

It is the policy of the City to promote from within when practical and feasible.

C. **Announcements:** All vacancies for positions in the City shall be published on the City of Cottonwood Human Resources bulletin board and be distributed to each Department Head to be posted in common areas (i.e., employee lounges). The announcements shall specify the title and pay for the positions, the closing date, and where to file an application.

D. **Method of Filling Vacancies:** When a vacancy is to be filled, recruitment shall be performed in the following sequence:

1. All vacancies will be publicized for internal applicants only for seven (7) calendar days prior to being publicized to external applicants.

City fire and police department volunteers and reserves may apply for internally posted positions within their assigned departments. All applicants must meet the minimum qualifications and must have completed the orientation period for the position in which they currently serve. The City reserves the right to open any position to the general public prior to the seven (7) calendar day mentioned above, when deemed in the best interest of the City under the then prevailing facts and circumstances.

2. When a vacancy is not filled through existing employees, the City will provide appropriate notice to the general public. The Human Resources Manager will conduct an appropriate search for all vacancies using the following guidelines:

Non-exempt personnel: announcement, local advertising.

Supervisory personnel: announcement, local advertisement, and/or regional advertising.

Department Heads and City Manager: Announcement, local advertising, regional advertising, and/or national advertising.

**E. Application Forms:**

1. All applicants for City employment SHALL complete the APPROVED CITY APPLICATION form provided by the Human Resources Manager. A resume may be supplied in addition to a completed application, HOWEVER, IN NO CIRCUMSTANCES SHALL A RESUME REPLACE THE APPROVED CITY APPLICATION FORM. Application forms require information covering training, experience, and other pertinent information, and must be signed by the applicant. The HRM will use the information to determine whether the applicant is eligible to continue in the selection process for a given class of employment. Failure to accurately complete the application for employment form may be cause for disqualification. At the direction of the City Manager, appointed positions and Department Head positions may necessitate deviation from this general process. In those cases, the City Manager, Mayor and City Council may direct how the selection process shall proceed.

2. The City may require certain job classes to meet specific standards and/or possess specific, specialized education, experience and training.

**F. Disqualifications:** The Human Resources Manager may reject any application which indicates on its face that the applicant does not possess the minimum qualifications required for the position. Applicants shall be rejected if the applicant is unqualified for the performance of duties of the position to which he seeks appointment, has made any misstatement of any material fact, or has practiced any deception or fraud in the application or the application process.

**G. Oral Interviews:** Oral interviews for all certain positions may be held prior to appointment to the City's service.

**H. Background and Criminal Checks:** The City of Cottonwood will perform a background and criminal records check on all newly hired, classified employees. All newly hired, classified employees, shall submit their fingerprints to the City as a condition of employment.

**I. Listing and Posting of Job Openings:** To assist Department Heads in meeting their equal opportunity responsibility, all staff employment openings (other than those appointed by the City Council) for full time, part time, and temporary staff employment, must be transmitted to the City Manager as soon as the need is known. The City Manager will approve the solicitation, and the Human Resource Manager will ensure that all necessary information on employment is provided to the public and all other City departments.

**J. Personnel Applications:** The Human Resources Manager will maintain employment applications to be filled out by prospective employees. No question, in any application form, shall be so framed as to attempt to elicit information concerning race, ethnicity, religion, color, age, sex, national origin, sexual orientation, veteran's status, or non-disqualifying handicap of an applicant. Applications will be kept on file as required by State and/or Federal law.

**K. Fair Employment:** No appointment, promotion, or termination from a position in the City, shall be affected or influenced in any manner by consideration of race, ethnicity, religion, color, age, sex, national origin, sexual orientation, veteran's status, or non-disqualifying handicap.

**L. Minimum Qualifications:** The minimum qualifications required of applicants will be realistically related to the duties of the specific position.

**M. Recruiting Procedures:** When a position is not filled by promotion or transfer, new applicants will be considered. The Human Resources Manager or respective Department Head will review applications and arrange for applicants to be interviewed by an appropriate screening committee or the standing committee of the department seeking applicants. The Human Resources Manager will be a member of this committee whenever possible.

1. **Employment:** Each hiring decision (other than those appointed by the Mayor and City Council) will be the responsibility of the City Manager. The respective Department Head will initiate a memo thru the Human Resources Manager to the City Manager justifying a recommendation for hiring the most qualified candidate. The memo shall be accompanied by the selection process documentation, along with the recommended starting salary and start date.

2. **Disposition of Non-Selected Applicants:** The Human Resources Manager shall notify those applicants who were considered but not selected. Records of these applicants shall be retained as required by State and/or Federal law.

3. **Recruiting Costs:** Advertising costs shall be the responsibility of the Human Resources Manager. All other costs (i.e., reasonable relocation expense, employment agency fees, interview and recruitment travel, and telephone calls) shall be borne by the City, if authorized by the City Council and/or the City Manager prior to the expenditure.

CITY OF COTTONWOOD Sec: 19  
EMPLOYEE MANUAL Rev: 06-07  
Date: 06-07  
SUBJECT: Hiring (continued) Page: 4 of 7

**N. Examinations and Testing for Sworn Peace Officers:** All employment applicants seeking a position with the Police Department shall be required to pass an examination given by the Chief of Police or the Chief's designee. The Chief of Police shall be responsible for setting all qualifications and requirements and for the filling of all sworn positions. The selection techniques used in the examination process shall be impartial, of a practical nature, and relate to those subjects which, in the opinion of the Chief of Police, fairly measure the relative capacities of the class to which they seek to be appointed. Examinations shall consist of selection techniques which will test fairly the qualifications of candidates such as, but not necessarily limited to, achievement and aptitude tests, other written tests, personal interviews, performance tests, physical agility, evaluation of daily work performance, work records, medical tests, mental tests, polygraph tests, or any combination of these or other tests. The Chief of Police shall ensure that the hiring of all sworn personnel shall be in concert with the Arizona Peace Officers Standards and Training requirements (AZPOST).

1. **Promotional Examinations:** Promotional examinations may be conducted when deemed necessary by the Chief of Police and City Manager. Only classified employees who meet the requirements set forth in the examination announcement may compete in the examinations.

2. **Notification of Examination Results:** Each candidate in an examination shall be given written notice by the Police Department of the results, including the candidate's final earned score and/or rank on the employment or promotion list.

3. **Review of Examination Papers:** Any candidate shall have the right to inspect his own examination papers within five working days after the date the exam was given. Any error in computation shall be corrected. However, such change shall not necessarily invalidate appointments previously made, nor entitle a candidate to be appointed.

**O. Orientation Period:** The orientation period shall be regarded as a part of the testing process and shall be utilized for closely observing the employee's work and for securing the most effective adjustment of a new employee for the position.

1. **Regular Appointment:** All appointments, except as specified herein, shall be tentative and subject to a six-month orientation period. Part-time employees (i.e., anyone working less than an assigned work week of forty hours) shall serve as at-will employees. The orientation period for police officers shall be for a period of twelve months.

**2. Rejection During Orientation Period:** At any time during the orientation period, an employee may be rejected by the appointing authority without a statement of reasons. Notification or rejection in writing shall be approved by the City Manager and sent to the employee and the Human Resources Manager for inclusion in the employee's personnel file. Any employee who has obtained the status of classified employment with the City, and who has accepted another position within the City's classification plan subject to a new orientation period, will be allowed the rights as set forth in the Grievance, Discipline, and Personnel Board Sections of this Employee Manual, if terminated.

**3. Extension of Orientation:** The orientation period may be extended three additional months, based on the recommendation of the Department Head and with the prior approval of the City Manager. Additional evaluation will be performed monthly during this period.

**P. Employee Evaluations:** The designated departmental supervisors will review the performance of each employee at the end of the third (3) and sixth (6) month during the employee's orientation period, and annually thereafter. The evaluations shall address the responsibilities, duties, and skills, etc., required to successfully perform the employee's duties. An evaluation form will be filled out, and the document must be signed and dated by the employee and the supervisor. The City Manager will be responsible for the administration of this program, and with the assistance of the Human Resources Manager, will perform a continual review of each classified position.

**Q. Appointed Officials:** Appointed officials, except as specifically provided in this Ordinance, or by law, serve at the pleasure of the City Council. These include elected officials, City Manager, City Attorney, City Magistrate, members of City Boards or Commissions, persons engaged under contract to supply technical or professional service, temporary employees and volunteer firefighter, or other volunteer personnel who receive no regular compensation from the City. The City Council may waive, or make more stringent, any requirement in this Employee Manual not otherwise mandated by State or Federal law, in the selection process of appointed officials.

**R. Conditions of Employment:** Certain conditions of employment are required of each employee by either Federal, State, and/or local law or policy. Examples are as follows:

1. **Loyalty Oath:** All employees are required to sign a loyalty oath as required by state law.

CITY OF COTTONWOOD Sec: I9  
EMPLOYEE MANUAL Rev: 06-07  
Date: 06-07  
SUBJECT: Hiring (continued) Page: 6 of 7

**2. Political Activity Prohibited:** The political activity of certain employees of the City is limited by Federal law. Employees shall comply with all provisions in the U.S. Code., and all applicable provisions of Arizona Revised Statutes.

**3. Solicitation of Political Support Prohibited:** No elected or appointed officer or employee of the City shall solicit any contribution, in cash or services, from any person or entity to support any candidate for public office while on-the-job.

**4. Residence Requirement:** All employees shall be required to be at work by their scheduled start time. Certain employees may be required by their Department Heads to live within a specified response time to emergency calls.

**5. Physical Examination:** A physical examination will be required prior to the completion of the final employment process. In addition, the City may require a fitness-for-duty examination at any time by a physician selected by the City. The City will pay all costs associated with physical examinations.

**6. Draft Registration:** Male employees between the ages of 18 and 26 must be registered for the draft if they are a citizen of the United States, an immigrant, or as may be required by State and Federal law. Exceptions are permitted in accordance with A.R.S. § 38-201, and the U.S. Code.

**7. Background/Polygraph Checks:** New employees may be subjected to one or more of the following tests or reviews, depending on the position classification: finger printing, driving record, criminal record, polygraph, medical examination, mental examination, drug screening and other background checks as the City deems appropriate for a position.

**8. Employment of Relatives:**

Pursuant to A.R.S. § 38-481 *et seq.*, it is a Class 2 Misdemeanor for “an executive, legislative, ministerial or judicial officer to appoint . . . any person related to him by affinity or consanguinity within the third degree to any . . . position [or] employment . . . when the salary . . . of such appointee is to be paid from public funds . . .” *Id.*

This statute applies to all “incorporated cit[ies] within the state . . .” *Id.*



Job Description  
Job Code: 192 Revised (6/20/2002)

## **TRANSPORTATION DISPATCHER**

**DEFINITION:** Under general supervision, provides door-to-door transportation to the public from home to shopping, doctor's appointment, work, school, day care, in a safe and timely manner; operates a city bus in accordance with city, state, and federal regulations; and performs related duties as assigned.

**ESSENTIAL FUNCTIONS:** Essential functions, as defined under the Americans with Disabilities Act, may include the following tasks, knowledge, skills and other characteristics. This list is ILLUSTRATIVE ONLY, and is **not** a comprehensive listing of all functions and tasks performed by incumbents of this classification.

### **TASKS:**

Receives calls to schedule passengers for rides; accepts additional passengers or cancels other passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc.; operates a vehicle in a safe manner; obeys all traffic rules; maintains courteous attitude toward other drivers and passengers; completes safety checks of vehicle daily watching for fluid levels, tire pressure, lights, lift operation, etc; refuels each day.

Dispatches calls to and from drivers to pick up additional passengers and/or cancel previous calls; drivers and the public to inform drivers of other passengers to pick up, accept passengers, or cancel other passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc.; operates a vehicle in a safe manner; obeys all traffic rules; maintains courteous attitude toward other drivers

Coordinates the transportation program efficiently to assure the maximum number of passengers are served with a minimum time period; interacts with transit operators in performing radio dispatch/customer scheduling; provides office clerical support; performs secretarial functions for the department; completes administrative functions for the department; schedules services for customers; completes safety checks of vehicle; watches fluid levels, tire pressure, lights, etc.

Works in harmony with transit operators in performing radio dispatch/customer scheduling and secretarial/ clerical functions; assumes office responsibilities during periods that the Transportation Manager is not present; provides general supervision of transit operators and makes administrative decisions requiring immediate attention; maintains dispatching functions during high volume traffic on the radio and with customers wanting to be returned to their home.

### **KNOWLEDGE, SKILLS, AND OTHER CHARACTERISTICS:**

Knowledge of proper radio communications practices.  
Knowledge of the various medical, dental, and social organizations in the Verde Valley.  
Knowledge of the practices and procedures of the Transportation Department.  
Knowledge of the traffic patterns in the Verde Valley.  
Knowledge of vehicular preventive maintenance.

## Transportation Dispatcher – (Continued)

Skill in conducting two-way radio communications.  
Skill in developing and maintaining effective interpersonal relations.  
Skill in performing multiple tasks simultaneously.  
Skill in maintaining composure during crisis situations.  
Skill in interacting with the general public in scheduling transportation routes.  
Skill in routing drivers around the Verde Valley.

**PHYSICAL REQUIREMENTS:** This classification involves work of a sedentary nature with occasional periods of moderate to heavy radio traffic. Otherwise, there are no hazardous or excessive difficulties to the work performed.

**MINIMUM QUALIFICATIONS:** The equivalent of a high school diploma or GED and two (2) years dispatching or public contact experience. The possession of a Commercial Drivers License (CDL) is required or the ability to obtain upon employment.

**SPECIAL CONDITIONS:** All new hires for the Cottonwood Area Transit System department are required to pass a post job offer, pre-employment drug and alcohol test. All employees who work in the Cottonwood Area Transit System department will be subject to random drug and alcohol testing.

Prepared by: Shirley Scott/DLP 6/20/2002

Reviewed by: Shirley Scott



Job Description  
Job Code: 193  
Revised – 11/27/2007

## **TRANSPORTATION DRIVER**

**DEFINITION:** Under general supervision, provides door-to-door transportation to the public from home to shopping, doctor's appointment, work, school, day care, etc. in a safe and timely manner; operates a city bus in accordance with city, state, and federal regulations; and performs related duties as assigned.

**CLASSIFICATION:** This is a non-exempt, full-time, classified position with full benefits.

**ESSENTIAL FUNCTIONS:** Essential functions, as defined under the Americans with Disabilities Act, may include the following tasks, knowledge, skills and other characteristics. This list is ILLUSTRATIVE ONLY, and is **not** a comprehensive listing of all functions and tasks performed by incumbents of this classification.

### **TASKS:**

Receives calls from dispatcher to schedule passengers for rides. Accepts additional passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc.; operates a vehicle in a safe manner; obeys all traffic rules. Maintains courteous attitude toward other drivers and passengers; completes safety checks of vehicle daily watching for fluid levels, tire pressure, lights, lift operation, etc; refuel each day.

Receives radio transmissions from dispatcher allowing the continuity among drivers. Dispatches to drivers of other passengers to pick up, accept passengers, or cancel other passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc.; operates a vehicle in a safe manner; obeys all traffic rules; maintains courteous attitude toward other drivers

Coordinates the transportation program efficiently to assure the maximum number of passengers are served with a minimum time period; interacts with transit operators in performing radio dispatch/customer scheduling; provides office clerical support; performs secretarial functions for the department; completes administrative functions for the department; schedules services for customers; completes safety checks of vehicle; watches fluid levels, tire pressure, lights, etc.

### **KNOWLEDGE, SKILLS, AND OTHER CHARACTERISTICS:**

Knowledge of proper radio communications practices.  
Knowledge of the various medical, dental, and social organizations in the Verde Valley.  
Knowledge of the practices and procedures of the Transportation Department.  
Knowledge of the traffic patterns in the Verde Valley.  
Knowledge of vehicular preventive maintenance.  
Skill in conducting two-way radio communications.  
Skill in developing and maintaining effective interpersonal relations.  
Skill in performing multiple tasks simultaneously.  
Skill in maintaining composure during crisis situations.  
Skill in interacting with the general public in scheduling transportation routes.  
Skill in routing drivers around the Verde Valley.

**Transportation Driver – (Continued)**

**PHYSICAL REQUIREMENTS:** This classification involves light to heavy lifting and carrying due to passengers/parcels as required on and off the van/wheelchair lift. This classification involves work driving transportation vehicles around the Verde Valley.

**MINIMUM QUALIFICATIONS:** The equivalent of a high school diploma or GED and two (2) years driving multi-passenger commercial vehicles. The possession of a Commercial Drivers License (CDL) with passenger endorsement is required or the ability to obtain upon employment.

**SPECIAL CONDITIONS:** All new hires for the Cottonwood Area Transit System department are required to pass a post job offer, pre-employment drug and alcohol test. All employees who work in the Cottonwood Area Transit System department will be subject to random drug and alcohol testing.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Prepared by: Shirley Scott/DLP REVISED-11/27/2007

Reviewed by: Shirley Scott



Job Description  
Job Code: 193 - PT

## **PART- TIME / TEMPORARY TRANSIT DRIVER**

**DEFINITION:** Under general supervision, provides door-to-door transportation to the public from home to shopping, doctor's appointment, work, school, day care, etc. in a safe and timely manner; operates a city bus in accordance with city, state, and federal regulations; and performs related duties as assigned.

**CLASSIFICATION:** This is a part-time / temporary position with no benefits.

**ESSENTIAL FUNCTIONS:** Essential functions, as defined under the Americans with Disabilities Act, may include the following tasks, knowledge, skills and other characteristics. This list is ILLUSTRATIVE ONLY, and is **not** a comprehensive listing of all functions and tasks performed by incumbents of this classification.

### **TASKS:**

Receives calls from dispatcher to schedule passengers for rides. Accepts additional passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc.; operates a vehicle in a safe manner; obeys all traffic rules. Maintains courteous attitude toward other drivers and passengers; completes safety checks of vehicle daily watching for fluid levels, tire pressure, lights, lift operation, etc; refuel each day.

Receives radio transmissions from dispatcher allowing the continuity among drivers. Dispatches to drivers of other passengers to pick up, accept passengers, or cancel other passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc.; operates a vehicle in a safe manner; obeys all traffic rules; maintains courteous attitude toward other drivers

Coordinates the transportation program efficiently to assure the maximum number of passengers are served with a minimum time period; interacts with transit operators in performing radio dispatch/customer scheduling; provides office clerical support; performs secretarial functions for the department; completes administrative functions for the department; schedules services for customers; completes safety checks of vehicle; watches fluid levels, tire pressure, lights, etc.

### **KNOWLEDGE, SKILLS, AND OTHER CHARACTERISTICS:**

Knowledge of proper radio communications practices.  
Knowledge of the various medical, dental, and social organizations in the Verde Valley.  
Knowledge of the practices and procedures of the Transportation Department.  
Knowledge of the traffic patterns in the Verde Valley.  
Knowledge of vehicular preventive maintenance.  
Skill in conducting two-way radio communications.  
Skill in developing and maintaining effective interpersonal relations.  
Skill in performing multiple tasks simultaneously.  
Skill in maintaining composure during crisis situations.  
Skill in interacting with the general public in scheduling transportation routes.  
Skill in routing drivers around the Verde Valley.

**Part-Time / Temporary Transit Driver – (Continued)**

**PHYSICAL REQUIREMENTS:** This classification involves light to heavy lifting and carrying due to passengers/parcels as required on and off the van/wheelchair lift. This classification involves work driving transportation vehicles around the Verde Valley.

**MINIMUM QUALIFICATIONS:** The equivalent of a high school diploma or GED and two (2) years driving multi-passenger commercial vehicles. The possession of a Commercial Drivers License (CDL) with passenger endorsement is required or the ability to obtain upon employment.

**SPECIAL CONDITIONS:** All new hires for the Cottonwood Area Transit System department are required to pass a post job offer, pre-employment drug and alcohol test. All employees who work in the Cottonwood Area Transit System department will be subject to random drug and alcohol testing.

**TEMPORARY/PART-TIME DRIVERS:** Scheduled work hours – Posted monthly (times subject to change).

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Prepared by: Shirley Scott/DLP REVISED-11/27/2007

Reviewed by: Shirley Scott



Job Description  
Job Code: 194

## **TRANSPORTATION DISPATCHER / DRIVER**

**DEFINITION:** Under general supervision, provides door-to-door transportation to the public from home to shopping, doctor's appointment, work, school, day care, in a safe and timely manner; operates a city bus in accordance with city, state, and federal regulations; and performs related duties as assigned.

**CLASSIFICATION:** This is a non-exempt, full-time, classified position with full benefits.

**ESSENTIAL FUNCTIONS:** Essential functions, as defined under the Americans with Disabilities Act, may include the following tasks, knowledge, skills and other characteristics. This list is ILLUSTRATIVE ONLY, and is **not** a comprehensive listing of all functions and tasks performed by incumbents of this classification.

### **TASKS:**

When functioning as a dispatcher, receives calls to schedule passengers for rides; accepts additional passengers or cancels other passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc. Dispatches calls to and from drivers to pick up additional passengers and/or cancel previous calls; drivers and the public to inform drivers of other passengers to pick up, accept passengers, or cancel other passengers; informs transit operators of cancellations, traffic conditions causing delays, receipt of additional passengers, etc

Coordinates the transportation program efficiently to assure the maximum number of passengers are served with a minimum time period; interacts with transit operators in performing radio dispatch/customer scheduling; provides office clerical support; performs secretarial functions for the department; completes administrative functions for the department; and schedules services for customers.

Works in harmony with transit operators in performing radio dispatch/customer scheduling and secretarial/ clerical functions; assumes office responsibilities during periods that the Transportation Manager is not present; provides general supervision of transit operators and makes administrative decisions requiring immediate attention; maintains dispatching functions during high volume traffic on the radio and with customers wanting to be returned to their home.

When functioning as a driver, operates a vehicle in a safe manner; obeys all traffic rules; maintains courteous attitude toward other drivers and passengers; completes safety checks of vehicle daily watching for fluid levels, tire pressure, lights, lift operation, refuels each day. Operates a vehicle in a safe manner; obeys all traffic rules; maintains courteous attitude toward other drivers, and receives radio transmissions from dispatcher allowing the continuity among drivers.

### **KNOWLEDGE, SKILLS, AND OTHER CHARACTERISTICS:**

Knowledge of proper radio communications practices.  
Knowledge of the various medical, dental, and social organizations in the Verde Valley.  
Knowledge of the practices and procedures of the Transportation Department.  
Knowledge of the traffic patterns in the Verde Valley.  
Knowledge of vehicular preventive maintenance.

**Transportation Dispatcher / Driver – (Continued)**

Skill in conducting two-way radio communications.  
Skill in developing and maintaining effective interpersonal relations.  
Skill in performing multiple tasks simultaneously.  
Skill in maintaining composure during crisis situations.  
Skill in interacting with the general public in scheduling transportation routes.  
Skill in routing drivers around the Verde Valley.

**PHYSICAL REQUIREMENTS:** The dispatcher classification involves work of a sedentary nature with occasional periods of moderate to heavy radio traffic. The driver classification involves work driving transportation vehicles around the Verde Valley. This classification while driving involves light to heavy lifting and carrying due to passengers/parcels as required on and off the van/wheelchair lift.

**MINIMUM QUALIFICATIONS:** The equivalent of a high school diploma or GED and two (2) years dispatching or public contact experience and two (2) years driving multi-passenger commercial vehicles. The possession of a Commercial Drivers License (CDL) with a passenger endorsement is required or the ability to obtain upon employment.

**SPECIAL CONDITIONS:** All new hires for the Cottonwood Area Transit System department are required to pass a post job offer, pre-employment drug and alcohol test. All employees who work in the Cottonwood Area Transit System department will be subject to random drug and alcohol testing.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Prepared by: Shirley Scott/DLP 7/22/2005

Reviewed by: David Puzas 7/22/2005

NAIPTA Cottonwood Employee Listing  
 Sort Order: Name (Last, First MI)(Asc)

Employee Name	Number	Seniority Date	NAIPTA Hire		Position	Job		FT, PT, OC	
			Date or FT Date			Complexity	ASSIGNMENT	STATUS	PAY STEP
1 Allen, Sherman	5927	3/29/2010	7/1/2011		TRANSIT BUS OPERATOR	2	CAT	FT	2
2 Bond, John	6642	8/12/2001	1/1/2011		TRANSIT BUS OPERATOR	2	CAT	FT	8
3 Bottjer, Russell	6641	2/9/2009	1/1/2011		FIELD SUPERVISOR	3	CAT	FT	2
4 Conway, Monik	6644	9/6/1999	1/1/2011		ACCT TECH I	2	ADMIN	FT	8.5
5 Cook, Richard	6653	1/16/2000	1/1/2011		TRANSIT BUS OPERATOR	2	CAT	FT	10+
6 Graham, David	4350	7/14/2008	12/26/2010		TRANSIT BUS OPERATOR	2	LYNX	FT	2
7 Green, William F.	4234	7/10/2006	7/10/2006		TRANSIT BUS OPERATOR	2	LYNX	FT	5
8 Leadbetter, Leigh F.	4282	4/7/2008	4/7/2008		FIELD SUPERVISOR	3	LYNX	FT	1
9 Talbert, Ashton	6655	9/1/2005	1/1/2011		DISPATCHER	3	CAT	FT	5
10 Waterbury, William	6657	10/19/2009	1/1/2011		SPEC NEEDS OP	2	CAT	FT	1.5
11 Boyd, Donald	6643	10/2009	1/1/2011		TRANSIT BUS OPERATOR	2	CAT	OC	1
12 Draeger, William	7088	7/21/2011	7/21/2011		SPEC NEEDS OP	2	CAT	OC	1
13 Thornbury, John	6645	1/2006	1/1/2011		TRANSIT BUS OPERATOR	2	CAT	OC	1
14 Wallison, Russell	6658	11/15/2011	11/15/2011		TRANSIT BUS OPERATOR	2	CAT	OC	6.75
15 Weisberg, Kenneth	4286	3/12/2007	3/12/2007		TRANSIT BUS OPERATOR	2	LYNX	OC	4

Report Count

FT	10
OC	5
PT	0
TOTAL	15

LYNX	4
CAT	10
ADMIN	1
	15

**HOURLY RATE**

13.6250  
16.6730  
16.9603  
17.0227  
17.9474  
13.6250  
15.3932  
15.6109  
15.3575  
13.0132  
12.6089  
12.6089  
12.6089  
15.9289  
14.4886

NAIPTA 2009 PAY PLAN RECOMMENDATION

Northern Arizona Intergovernmental Public Transportation Authority  
 FY12 PayPlan (market adj of 3%, pay freeze for FY11 approved by BOD on June 15, 2011)

Positions	Step 1		Step 2		Step 3		Step 4		Step 5		Step 6		Step 7		Step 8		Step 9
	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized
	figures in <b>bold</b> are maximum entry pay for position																
Accounting Technician I	\$24,924	\$11.9827	\$26,793	\$12.8813	\$28,209	\$13.5620	\$29,145	\$14.0120	\$30,975	\$14.8918	\$32,646	\$15.6952	\$33,897	\$16.2966	\$35,063	\$16.8572	\$35,979
Dispatcher	\$28,489	\$13.6967	\$30,001	\$14.4233	\$31,643	\$15.2131	\$33,216	\$15.9692	\$35,400	\$17.0193	\$36,291	\$17.4478	\$37,501	\$18.0295	\$38,520	\$18.5194	\$39,592
Field Supervisor	\$32,277	\$15.5180	\$35,277	\$16.9603	\$36,802	\$17.6935	\$38,736	\$18.6233	\$40,221	\$19.3368	\$42,997	\$20.6716	\$43,785	\$21.0505	\$45,712	\$21.9770	\$47,554
Special Needs Operator	\$26,070	\$12.5337	\$28,171	\$13.5437	\$29,957	\$14.4022	\$30,902	\$14.8567	\$31,827	\$15.3015	\$32,520	\$15.6346	\$33,298	\$16.0085	\$34,053	\$16.3717	\$34,873
Transit Bus Operator*	\$26,070	\$12.5337	\$28,171	\$13.5437	\$29,957	\$14.4022	\$30,902	\$14.8567	\$31,827	\$15.3015	\$32,520	\$15.6346	\$33,298	\$16.0085	\$34,053	\$16.3717	\$34,873
* training wages for Operators:	<b>Annually</b>	<b>HOURLY</b>															
NO CDL - TRAINING or	\$23,424	\$11.26															
CDL, < 6 mo exp																	

NAIPTA 2009 PAY PLAN RECOMMENDATION

Northern Arizona Intergovernmental Public Tra  
 FY12 PayPlan (market adj of 3%, pay freeze for

Positions	Step 10	
	Hourly	Annualized
Accounting Technician I	\$17.2976	\$37,222
Dispatcher	\$19.0346	\$42,414
Field Supervisor	\$22.8627	\$48,389
Special Needs Operator	\$16.7660	\$35,671
Transit Bus Operator*	\$16.7660	\$35,671

\* training wages for Operators:  
 NO CDL - TRAINING or  
 CDL, < 6 mo exp

NAIPTA Cottonwood Employee Listing  
 Sort Order: Name (Last, First MI)(Asc)

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			Date or FT Date			Complexity	ASSIGNMENT	STATUS	PAY STEP
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7 Green, William F.	4234	7/10/2006	7/10/2006		TRANSIT BUS OPERATOR	2	LYNX	FT	5
8 Leadbetter, Leigh F.	4282	4/7/2008	4/7/2008		FIELD SUPERVISOR	3	LYNX	FT	1
9 Talbert, Ashton	6655	9/1/2005	1/1/2011		DISPATCHER	3	CAT	FT	5
10 Waterbury, William	6657	10/19/2009	1/1/2011		SPEC NEEDS OP	2	CAT	FT	1.5
11 Boyd, Donald	6643	10/2009	1/1/2011		TRANSIT BUS OPERATOR	2	CAT	OC	1
12 Draeger, William	7088	7/21/2011	7/21/2011		SPEC NEEDS OP	2	CAT	OC	1
13 Thornbury, John	6645	1/2006	1/1/2011		TRANSIT BUS OPERATOR	2	CAT	OC	1
14 Wallison, Russell	6658	11/15/2011	11/15/2011		TRANSIT BUS OPERATOR	2	CAT	OC	6.75
15 Weisberg, Kenneth	4286	3/12/2007	3/12/2007		TRANSIT BUS OPERATOR	2	LYNX	OC	4

Report Count

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OC	5
PT	0
TOTAL	15

LYNX	4
CAT	10
ADMIN	1
	15

**HOURLY RATE**

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17.0227  
17.9474  
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12.6089  
12.6089  
12.6089  
15.9289  
14.4886

NAIPTA 2009 PAY PLAN RECOMMENDATION

Northern Arizona Intergovernmental Public Transportation Authority  
 FY12 PayPlan (market adj of 3%, pay freeze for FY11 approved by BOD on June 15, 2011)

Positions	Step 1		Step 2		Step 3		Step 4		Step 5		Step 6		Step 7		Step 8		Step 9
	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized	Hourly	Annualized
	figures in <b>bold</b> are maximum entry pay for position																
Accounting Technician I	\$24,924	\$11.9827	\$26,793	\$12.8813	\$28,209	\$13.5620	\$29,145	\$14.0120	\$30,975	\$14.8918	\$32,646	\$15.6952	\$33,897	\$16.2966	\$35,063	\$16.8572	\$35,979
Dispatcher	\$28,489	\$13.6967	\$30,001	\$14.4233	\$31,643	\$15.2131	\$33,216	\$15.9692	\$35,400	\$17.0193	\$36,291	\$17.4478	\$37,501	\$18.0295	\$38,520	\$18.5194	\$39,592
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Special Needs Operator	\$26,070	\$12.5337	\$28,171	\$13.5437	\$29,957	\$14.4022	\$30,902	\$14.8567	\$31,827	\$15.3015	\$32,520	\$15.6346	\$33,298	\$16.0085	\$34,053	\$16.3717	\$34,873
Transit Bus Operator*	\$26,070	\$12.5337	\$28,171	\$13.5437	\$29,957	\$14.4022	\$30,902	\$14.8567	\$31,827	\$15.3015	\$32,520	\$15.6346	\$33,298	\$16.0085	\$34,053	\$16.3717	\$34,873
* training wages for Operators:	Annually	HOURLY															
NO CDL - TRAINING or	\$23,424	\$11.26															
CDL, < 6 mo exp																	

NAIPTA 2009 PAY PLAN RECOMMENDATION

Northern Arizona Intergovernmental Public Tra  
 FY12 PayPlan (market adj of 3%, pay freeze for

Positions	Step 10	
	Hourly	Annualized
Accounting Technician I	\$17.2976	\$37,222
Dispatcher	\$19.0346	\$42,414
Field Supervisor	\$22.8627	\$48,389
Special Needs Operator	\$16.7660	\$35,671
Transit Bus Operator*	\$16.7660	\$35,671

\* training wages for Operators:  
 NO CDL - TRAINING or  
 CDL, < 6 mo exp

NORTHERN ARIZONA  
INTERGOVERNMENTAL PUBLIC  
TRANSPORTATION AUTHORITY  
FLAGSTAFF, AZ 86004

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Employee Number: **5927**

<u>Pay Type</u>	<u>Current Balance</u>
Sick	53.92
Vacation	18.75

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Employee Number: **6642**

<u>Pay Type</u>	<u>Current Balance</u>
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Sick	267.01
Vacation	110.06

Employee Number: <b>6641</b>	
<u>Pay Type</u>	<u>Current Balance</u>
Sick	145.84
Vacation	223.27

Employee Number: <b>6643</b>	
<u>Pay Type</u>	
Sick	not eligible
Vacation	not eligible

Employee Number: <b>6644</b>	
<u>Pay Type</u>	<u>Current Balance</u>
Comp Time	0.00
Sick	52.42
Vacation	134.77

Employee Number: <b>7088</b>	
<u>Pay Type</u>	
Sick	not eligible
Vacation	not eligible

Employee Number: <b>4350</b>	
<u>Pay Type</u>	<u>Current Balance</u>
Sick	102.38
Vacation	115.58

Employee Number: <b>4234</b>	
<u>Pay Type</u>	<u>Current Balance</u>
Sick	181.32
Vacation	170.32

Employee Number: <b>6654</b>	
<u>Pay Type</u>	<u>Current Balance</u>
Sick	460.64
Vacation	138.86

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Employee Number: **4282**

<u>Pay Type</u>	<u>Current Balance</u>
Sick	186.64
Vacation	127.90

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Employee Number: **6655**

<u>Pay Type</u>	<u>Current Balance</u>
Sick	123.71
Vacation	200.84

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Employee Number: **6645**

<u>Pay Type</u>	
Sick	not eligible
Vacation	not eligible

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Employee Number: **6657**

<u>Pay Type</u>	<u>Current Balance</u>
Sick	37.96
Vacation	91.00

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\_\_\_\_\_

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Employee Number: **4286**

<u>Pay Type</u>	
Sick	not eligible
Vacation	not eligible

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# Employee Accrual

## Information

Employee Name:	<b>ALLEN, SHERMAN</b>	
TITLE:	TRANSIT BUS OPERATOR - FT	
		<u>Through Date</u>
		01/24/2012
		01/24/2012

Employee Name:	<b>BOND, JOHN</b>	
TITLE:	TRANSIT BUS OPERATOR - FT	
		<u>Through Date</u>

01/24/2012  
01/24/2012

Employee Name: **BOTTJER, RUSSELL**  
TITLE: FIELD SUPERVISOR - FT

Through Date  
01/24/2012  
01/24/2012

Employee Name: **BOYD, DONALD**  
TITLE: TRANSIT BUS OPERATOR - OC

Employee Name: **CONWAY, MONIK**  
TITLE: ACCOUNT TECH I - FT

Through Date  
02/01/2012  
02/01/2012  
02/01/2012

Employee Name: **DRAEGER, WILLIAM**  
TITLE: SPECIAL NEEDS OPERATOR - OC

Employee Name: **GRAHAM, DAVID**  
TITLE: TRANSIT BUS OPERATOR - FT

Through Date  
01/24/2012  
01/24/2012

Employee Name: **GREEN, WILLIAM**  
TITLE: TRANSIT BUS OPERATOR - FT

Through Date  
02/01/2012  
02/01/2012

Employee Name: **KLEISS, RAYMOND**  
TITLE: SPECIAL NEEDS OPERATOR - FT

Through Date  
01/24/2012  
01/24/2012

Employee Name: **LEADBETTER, LEIGH**  
TITLE: FIELD SUPERVISOR - FT

Through Date  
02/01/2012  
02/01/2012

Employee Name: **TALBERT, ASHTON**  
TITLE: DISPATCHER - FT

Through Date  
01/24/2012  
01/24/2012

Employee Name: **THORNBURY, JOHN**  
TITLE: SPECIAL NEEDS OPERATOR - OC

Employee Name: **WATERBURY, WILLIAM**  
TITLE: TRANSIT BUS OPERATOR - FT

Through Date  
01/24/2012  
01/24/2012

Employee Name: **WEISBERG, KENNETH**  
TITLE: TRANSIT BUS OPERATOR - OC

As of Friday, February 03, 2012



## 6.1 VACATION LEAVE

The primary intent of vacation leave is to enable each eligible employee to return to work mentally and physically refreshed.

Employees shall request vacation leave far enough in advance of the dates of the desired leave to allow the employee's supervisor to schedule around the employee's absence in order to meet NAIPTA's needs. It is the supervisor's responsibility to determine the vacation calendar, and appointed officials have the discretion to approve or deny vacation leave requests for their employees. Reasonable policies shall be developed within each Division that establishes standards and procedures for the request and approval of leave. In addition, Divisions shall establish procedures to address requests for leave in emergency situations when advance approval cannot be obtained. A Division may establish a "no vacation" policy for certain heavy work periods.

The rate at which vacation leave is accrued by full-time employees increases incrementally in accordance with their years of continuous service with NAIPTA. The schedule of accrual rates is as follows:

Full-time employees accrue vacation leave at the rate of thirteen working days per year (4.00 hours per pay period) during their first three years of employment.

At the beginning of an employee's fourth year (37th month), the rate of accrual is increased to fifteen working days per year (4.62 hours/pay period).

At the beginning of an employee's sixth year (61st month), the rate of accrual is increased to eighteen working days per year (5.54 hours/pay period).

At the beginning of an employee's eleventh year (121st month), the rate of accrual is increased to twenty working days per year (16 hours/pay period).

At the beginning of an employee's sixteenth year (181st month), the rate of accrual increases to twenty five working days per year (7.69 hours/pay period).

At the beginning of an employee's twenty-first year (241st month), the rate of accrual increases to thirty working days per year (9.23 hours/pay period).

Part-time employees accrue vacation leave in proportion to the number of hours worked per pay period. Vacation leave shall not be charged against an employee's accrual leave balance for an authorized holiday which occurs while the employee is using vacation leave.

Vacation leave is not accrued during an approved leave of absence without pay. Unless a request for leave is approved by the appointed official prior to hire, each full-time and part-time employee must complete six months of his or her initial probationary period before becoming eligible to use vacation (the exception to this is military leave). Under certain circumstances, an employee may be eligible to use vacation leave concurrently with Victim Leave (see Policy 6.12 for more information).

Employees who are paid through grant funding may be required to use all or part of accrued vacation time prior to the end of the expiration of the grant.

Employees transferring between NAIPTA regional offices or Divisions and employees who are promoted retain accumulated leave.

Vacation leave may not be advanced.

A maximum of 240 hours of vacation leave may be accrued; any excess is forfeited. Employees, who leave NAIPTA employment will be compensated for vacation days accrued at a rate equal to hourly rate at time of termination, provided the employee has completed 6 months of continuous service as a regular employee with NAIPTA. Service in a temporary position does not count toward the 6 month service requirement.

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## **6.2 SICK LEAVE**

Sick leave is provided so that all regular employees will not suffer financially because of an inability to work due to illness or injury. Sick leave is a privilege and not an entitlement, and is to be used in case of actual illness or injury suffered by an employee or immediate family; that is, mother, father, spouse, child, foster child, sibling, spouse's mother and father, grandparents, and grandchildren, or for certain approved related purposes as outlined below:

- Physical or mental illness (including counseling) or injury
- Medical, mental, maternity or dental care
- An exposure to a contagious disease and possible endangering of others by attendance on duty
- Critical illness or death of a member of the immediate family, as listed above. In the case of death, up to five days is allowed. Additional sick leave may be granted at the discretion of the appointed official.
- Physician or practitioner appointments for employee and members of the immediate family as listed above, that cannot be scheduled outside of working hours.

Under certain circumstances an employee may be eligible to use sick leave concurrently with Victim Leave (see Policy 6.12 for more information).

Employees must be under the care of a physician or practitioner during an extended sick leave of five days or more and appropriate documentation must be provided during the period of extended leave. Employee must provide a release from physician or practitioner prior to returning to work.

Full-time employees accrue sick leave at the rate of 12 days per year (3.6 hours per pay period). Part-time employees accrue it in proportion to the number of hours worked per pay period. Sick leave does not accrue during a leave of absence without pay. A maximum of 1040 hours of sick leave may be accumulated. Any excess is forfeited.

Sick leave may not be advanced to an employee.

If an appointed official has reason to believe that an employee is abusing the sick leave privilege, he or she may require the employee to submit substantiating evidence including, but not limited to, a certificate from a practitioner licensed under A.R.S. Title 32, Ch. 7, 8, 11, 13, 14, 17, 19, 19.1, 29 and 33. If the appointed official does not consider the evidence adequate, he or she may disapprove the request for sick leave and charge the time taken to vacation leave or leave without pay.

Employees transferring between NAIPTA regional offices or Divisions and employees who are promoted retain accumulated sick leave.

Employees who leave NAIPTA employment will be compensated 25% of sick days accrued, provided they have a minimum of 20 years of continuous service to NAIPTA.

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### **6.3 CONVERSION OF SICK LEAVE TO ANNUAL VACATION LEAVE**

An eligible employee is any regular full-time or part-time employee who has completed five or more years of continuous employment as a regular employee with NAIPTA, and who has used fewer than 48 hours of sick leave during a rolling twelve-month period measured backward from the employee's anniversary date.

For example, if the employee's date of hire was December 12, 1997 the employee would be eligible to convert for the first time on December 12, 2002. The anniversary based year would be December 12, 2001 through December 11, 2002. If only eight (8) hours of sick leave are used during the anniversary year, NAIPTA will transfer forty (40) hours of sick leave to annual vacation leave. If forty-eight or more sick leave hours have been used during the year, no sick leave will be transferred.

Sick leave conversion will be automatically made during the second pay period of the month following the eligible employee's anniversary date. An employee may not accrue annual leave hours in excess of 160 hours. An employee who does not desire conversion shall notify the Internal Services Division in writing and the accounting reversal shall be made.

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