

AGENDA

REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD JUNE 18, 2013, AT 6:00 PM., AT THE 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
May 21, 2013 Regular Meeting
Comments regarding items listed on the agenda are limited to a 5 minute time period per speaker.
- VII. UNFINISHED BUSINESS
 1. ORDINANCE NUMBER 596--AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY ADDING A NEW SECTION 310., HISTORIC PRESERVATION ORDINANCE; SECOND AND FINAL READING.
 2. ORDINANCE NUMBER 597--AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY ADDING A NEW SECTION 427., "HP" ZONE, HISTORIC PRESERVATION OVERLAY ZONE; SECOND AND 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. NEW LIQUOR LICENSE APPLICATION FOR CLARE H. ABEL, APPLICANT FOR DOLLAR GENERAL STORE #12053, LOCATED AT 408 SOUTH MAIN STREET.
 2. CONSIDERATION OF A NEW LIQUOR LICENSE APPLICATION FOR JAIME L. FULLMER, APPLICANT FOR FIRE MOUNTAIN WINES LOCATED AT 1010 NORTH MAIN STREET.
 3. INTERGOVERNMENTAL AGREEMENT WITH MINGUS UNION HIGH SCHOOL FOR USE OF THE COTTONWOOD AQUATICS CENTER POOL FROM AUGUST, 2013 TO NOVEMBER, 2013.
 4. RESOLUTION NUMBER 2701--APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE YAVAPAI COUNTY EMERGENCY SERVICES DEPARTMENT FOR THE CONTINUATION OF UNIFIED EMERGENCY SERVICES.
- IX. NEW BUSINESS—The following items are for Council discussion, consideration, and possible legal action.
1. SPECIAL EVENT LIQUOR LICENSE APPLICATION SUBMITTED BY LANA TOLLESON, APPLICANT FOR THE COTTONWOOD CHAMBER OF COMMERCE, FOR THREE BUSINESS MIXERS SCHEDULED FOR SEPTEMBER 19, 2013, AT 597 E. STATE ROUTE 89A; AND DECEMBER 12, 2013, AT 500 E. CHERRY.
 2. NOTICE OF INTENT TO ADJUST WATER AND WASTEWATER RATES, FEES, AND CHARGES FOR THE CITY OF COTTONWOOD MUNICIPAL WATER & WASTEWATER UTILITIES.
 3. APPROVAL OF A CONSTRUCTION MANAGER AT RISK PRECONSTRUCTION SERVICES PROPOSAL FROM D.L. WITHER CONSTRUCTION FOR THE PROPOSED EMERGENCY COMMUNICATIONS CENTER PROJECT.
- X. CLAIMS AND ADJUSTMENTS
- XI. EXECUTIVE SESSION--UPDATE OF THE ANNUAL REVIEW OF THE CITY MANAGER—PURSUANT TO A.R.S. §38-431.03.(A)(1) DISCUSSION OR CONSIDERATION OF EMPLOYMENT, ASSIGNMENT, APPOINTMENT, PROMOTION, DEMOTION, DISMISSAL, SALARIES, DISCIPLINING OR RESIGNATION OF A PUBLIC OFFICER, APPOINTEE OR EMPLOYEE OF ANY PUBLIC BODY, EXCEPT THAT, WITH THE EXCEPTION OF SALARY DISCUSSIONS, AN OFFICER, APPOINTEE OR EMPLOYEE MAY DEMAND THAT THE DISCUSSION OR CONSIDERATION OCCUR AT A PUBLIC MEETING; THE COUNCIL MAY VOTE TO CONVENE INTO EXECUTIVE SESSION SUBJECT TO THE CITY MANAGER'S RIGHT TO COMPEL THE COUNCIL TO DISCUSS THIS MATTER IN OPEN MEETING.
- XII. ADJOURNMENT

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

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:	June 18, 2013
Subject:	Zoning Ordinance amendment adding new Section 310, "Historic Preservation Ordinance."
Department:	City Clerk
From:	Charlie Scully, Planner

REQUESTED ACTION

Consider the second and final reading of the Historic Preservation Ordinance--Ordinance Number 596.

SUGGESTED MOTION

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

I move to approve Ordinance Number 596.

BACKGROUND

The Historic Preservation Commission considered the proposed ordinance amendment at their April 10, 2013 meeting and recommended approval.

The Planning and Zoning Commission considered the proposed ordinance amendment at their April 15, 2013 meeting and recommended approval.

The Historic Preservation Commission (HPC) was established by the City Council in October 2010 and began meeting in January 2011. Their purpose is to make recommendations to the City Council and to implement recommendations adopted by the City Council for the "identification, evaluation, protection, preservation and enhancement of historic properties that have significance for the City of Cottonwood."

A primary goal for the HPC is to meet the requirements for the Certified Local Government (CLG) Program for Historic Preservation as administered by the State Historic Preservation Office (SHPO) and the National Park Service (NPS.) Adoption of a Historic Preservation Ordinance is a requirement for qualifying for the CLG program. Becoming part of the CLG program will offer additional resources from SHPO for further developing the program, such as updating the historic resources inventory and developing more detailed guidelines to assist with review of proposed rehabilitation and development projects. The program provides a framework for identifying and protecting historic resources in Cottonwood through a variety of

educational, regulatory and incentive-based programs.

CLG Requirements: A community must address the following minimum goals to demonstrate to the State and NPS that they are committed to historic preservation:

- Establish a qualified historic preservation commission.
- Enforce appropriate state or local legislation for the designation and protection of historic properties. In most cases this is done in the form of a local ordinance.
- Maintain a system for the survey and inventory of local historic resources.
- Provide for public participation in the local historic preservation program, including participation in the National Register process.
- Follow any addition requirements as outline in the State's Procedures for Certification.

Landmark Designation: The ordinance establishes criteria and procedures for designating properties with local “landmark” status. Property owners must support designating their properties as Landmarks.

Historic Property Inventory: A city-wide historic inventory was commissioned in 1986. The properties in the Historic District were surveyed and inventoried in 1999. One of the program goals for the HPC is to update the city-wide inventory and to identify other properties older than 50 years (pre-1963).

Certificate of Appropriateness: The HP Ordinance would authorize the Historic Preservation Commission to review and issue a Certificate of Appropriateness for exterior work done on properties designated as local landmarks and shown within a historic overlay zone. The procedures and review standards are based on national standards established by the National Park Service for review of work done on historic properties.

Approval and Appeal Process: As with the existing Design Review process, the Historic Preservation Commission would provide the same type of review and approval process. In this case they would be following a national outline used to review historic properties.

Administrative Approval: The ordinance provides exceptions to allow the Community Development Director /Staff to administratively approve Certificates of Appropriateness for certain minor activities, as described.

Hardship Exceptions. The ordinance allows exceptions where hardships are documented for both the rehabilitation process and proposed demolition. The criteria for these sections is based on similar language used nationally and in other Arizona cities.

Historic Preservation Design Guidelines: The ordinance allows more detailed historic design guidelines to be developed at a later time with additional public input. Design guidelines can be developed to address different styles of historic buildings, various architectural styles and periods of influence specific to Cottonwood.

JUSTIFICATION/BENEFITS/ISSUES

Preservation of historic resources provides a range of intangible values that are widely recognized by most people. Historic buildings, neighborhoods and districts provide a quality environment that serve as a source of community pride. Preservation for its own sake should be considered as the primary reason for program development; however, there are also attractive incentives available to property owners through the Certified Local Government (CLG) Program, including increased funding opportunities, tax incentives and increased technical assistance opportunities.

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

Name:	Description:	Type:
 Cottonwood_HP_Ordinance.doc	Proposed Section 310 Historic Preservation Ordinance	Cover Memo
 ord596.doc	Ordinance Number 596	Cover Memo

SECTION 310. HISTORIC PRESERVATION ORDINANCE

A. PURPOSE

The purpose of this Section is to further the preservation, protection, enhancement, rehabilitation and perpetuation of historic properties, structures, sites, landmarks, and historic districts, as necessary to promote the economic, cultural, educational, and aesthetic values of the community and the health, safety and general welfare of the public. In addition, the Historic Preservation Ordinance shall have the following purposes:

1. Protect and enhance the landmarks and historic districts which represent distinctive elements of Cottonwood's historic, architectural, economic, social and cultural heritage.
2. Protect and enhance Cottonwood's attractiveness to visitors, tourists, and residents and serve as an important support and stimulus to business and industry.
3. Stabilize and/or improve property values, and protect existing investment involving the restoration and preservation of historic resources.
4. Encourage maintenance and preservation of structures so as to protect the health, safety and lives of people in Cottonwood.
5. Promote the use of historic design review districts and landmarks for the education, pleasure, and welfare of the residents of Cottonwood.
6. Further the Goals and Policies of the City's General Plan.

B. DEFINITIONS

Unless specifically defined below or elsewhere in the Zoning Ordinance, words or phrases in this Section shall be interpreted so as to give them the same meaning they have in common usage and so as to give this ordinance its most reasonable application.

ALTERATION - Any act or process that changes one or more of the existing features of a structure, including, but not limited to exterior changes or modifications of a structure or any of its architectural details or visual characteristics, including paint color and surface texture, facade materials, surface paving, landscape features, and placement or removal of signs, plaques, light fixtures, walls, fences, and street furniture.

CERTIFICATE OF APPROPRIATENESS - A certificate issued by the Historic Preservation Commission indicating its approval of plans for alteration, restoration, reconstruction, demolition or removal, of a historic landmark; or for alteration, new construction, removal, or demolition of non-historic structures within a historic district.

COMMISSION - Refers to City of Cottonwood Historic Preservation Commission.

CONSTRUCTION - The act of building an addition to an existing structure or the erection of a new principal or accessory structure on a lot or property.

CONTRIBUTING PROPERTY - A classification applied to a building site, structure or object within a historic district or landmark property signifying that it contributes to the defining characteristics of the historic district or landmark.

DEMOLITION - Any act or process that destroys and removes a structure in part or in whole.

HISTORIC DISTRICT - A designated area that contains at least one or more landmarks within definable geographic boundaries, where a majority of structures are indicated as significant, and which may have within its boundaries other properties or structures that, while not of such historic and/or architectural significance or age to be designated as landmarks, nevertheless contribute to the overall quality and character of the district. The historic district shall be officially recognized as such by state and federal agencies.

HISTORIC PRESERVATION DISTRICT – A special overlay zoning district designated by ordinance of the City Council that includes regulations pertaining to historic preservation which modify the regulations of the underlying zoning district. May be applied to an individual property or a group of properties where a majority of properties are indicated as historically significant.

HISTORIC SITE, HISTORIC STRUCTURE, OR HISTORIC PROPERTY - A site, structure or property which has historic and/or architectural significance, and is at least fifty (50) years old from the date of construction; and which contributes to the historic, architectural, cultural, archaeological or other significant value as part of the heritage or history of the City, the State of Arizona, or the nation.

INTEGRITY - A measure of the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period in comparison with its unaltered state.

LANDMARK - A designation, as a result of processes provided in this Section, applied by the Commission to an individual property, structure, site or object, or group of properties, which has a historic value or expresses a distinctive character worthy of preservation.

MANAGER - Refers to the City of Cottonwood Community Development Manager.

MINOR ACTIVITY – Any change, modification, restoration, rehabilitation, or renovation of the features of a historic resource that does not materially change the historic characteristics of the property and is consistent with the criteria for the historic preservation district or landmark.

NATIONAL REGISTER OF HISTORIC PLACES - A listing of buildings, sites, and objects designated for historical, architectural or other special significance, as determined by established criteria, and which listing is maintained by the National Park Service under the National Historic Preservation Act of 1966, as amended. The program is administered by the State Historic Preservation Office at the state level.

NON-CONTRIBUTING PROPERTY - A classification applied to a property, site, structure or object within a historic district or as associated with a historic landmark property signifying that it does not contribute to the defining characteristics of the historic district or landmark property.

OBJECT – A material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. This term may include landscape features.

PRESERVATION - The act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

RECONSTRUCTION - The act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

REMOVAL - Any relocation of a structure or portion of a structure on its site or to another site.

REPAIR - Any restoration of a structure by replacing or fixing broken or deteriorated elements, which is not considered to be construction, removal or alteration.

REHABILITATION - The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

RESTORATION - The act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

SITE - The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure. A site may encompass more than one lot or parcel.

STABILIZATION - The act or process of applying measures designed to re-establish a weather resistant enclosure and the structural stability of unsafe or deteriorated property while maintaining the essential form as it exists at present.

STRUCTURE - Anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to, buildings, fences, walls, signs, bridges, utility facilities, communication towers, and recreational facilities.

C. HISTORIC PRESERVATION WAIVER.

For properties proposed for inclusion within a Historic Preservation Overlay Zoning District or designated as a Historic Landmark by the City of Cottonwood, the following procedures shall be available for affected property owners. Such procedures shall be available for affected property owners for up to three (3) years from the date of adoption of an ordinance for Historic Preservation Overlay Zoning or designation of Historic Landmarks.

1. Council Authority to Remove Property from a Proposed Designation. The City Council shall not include any property within a proposed Historic Preservation Overlay Zoning District or a proposed Historic Landmark when the owner has objected in writing or at a public hearing to such a designation, and may remove any property from a proposed designation if the owner of record has not responded to a request for comments on the proposed rezoning and designation as a Historic District or Historic Landmark. The City intends that these designations be voluntary and acceptable to affected property owners.
2. Procedure to Remove Property from District or Landmark Designation. An application for removal from a Historic Preservation Overlay District or Historic Landmark designation shall be submitted by the owner or agent of the subject property and involves the following steps:
 - a. Preliminary consultation. Prior to the submittal of an application for a landmark designation, the applicant should consult with the Manager or designee to discuss the application submittal requirements and process.
 - b. Application submittal requirements. An application for a landmark designation shall contain at a minimum the following:
 - 1) Completed and signed application forms that include the property owner's signature.
 - 2) Address, parcels number and other location information as needed to describe the property.
 - c. Upon receipt of an application for removal from the Historic Preservation Overlay District or Historic Landmark designation, the HPC Commission will make the initial decision about removal in consultation with the Manager and City Attorney, subject to appeal to the City Council.

D. INCENTIVES.

It is the intent of the city to make ownership of a landmark or contributing property within a historic district as beneficial as possible. In addition to the intangible benefits of owning a property recognized as an important community resource, the Commission may, when applicable and possible, provide such owners with one or more of the following:

1. Recommendation to the Community Development Department, Planning Commission and/or City Council that a new use other than the historic use be considered for a historic property where the applicants are able to demonstrate that the proposed use will assist in furthering the goals of historic preservation for that property and the surrounding district.
2. Provide information regarding potential sources of financial assistance and tax credits.
3. Provide support and endorsement for grant applications that further the goals of historic preservation.
4. Provide or direct applicants to available resources and technical information regarding construction, rehabilitation and repair of historic resources.
5. Provide information to community organizations, property owners, residents, businesses and others regarding proposed activities within historic districts; and
6. Provide information regarding any other benefits that may become available.

E. COTTONWOOD HISTORIC PROPERTY REGISTER.

A Cottonwood Historic Property Register is hereby established for the purpose of listing and defining historic districts and landmarks to be designated under the provisions of this Section. This Register may be periodically amended by the Commission and shall be held available for public reference and historical study.

F. HISTORIC LANDMARK DESIGNATION PROCESS.

1. The Commission may designate as a landmark an entire property, an identified portion of a property, or one or more individual structures on a property.
2. Application Submittal and Review. An application for a landmark designation shall be submitted by the owner or agent of the subject property and involves the following steps:
 - a. Preliminary consultation. Prior to the submittal of an application for a landmark designation, the applicant should consult with the Manager or designee to discuss the application submittal requirements and process.
 - b. Application submittal requirements. An application for a landmark designation shall contain at a minimum the following:
 - 1) Completed and signed application forms that include the property owner's signature.
 - 2) Address, parcels number and other location information as needed to describe the property.

- 3) The applicant shall provide a written description of the proposed landmark property describing the buildings, structures or objects and the known or estimated age of all such features. If available, include information on any special aesthetic, cultural, architectural, archaeological or engineering issues of a historic nature, including information about the architecture, notable construction features and other information indicating the historical significance of the property.
 - 4) The application may include any photographs, sketches, drawings, or other similar descriptive materials, including those showing historic or current conditions.
 - 5) A written statement of the condition of the property and/or structures with attention to any known concerns or threats to the maintenance or historic integrity of the property.
 - 6) Filing fee as set by City Council.
 - 7) Other information as may be requested by the City to accomplish these goals.
- c. Incomplete applications. Incomplete applications may be returned to the applicant and/or not be processed until all materials have been submitted. Following acceptance of a complete application, the staff shall review the application and prepare a report which shall be submitted to the Commission and made available to the applicant and public in advance of the Commission's public hearing on the landmark application.
 - d. Application acceptance. Upon acceptance of a complete application, no building or demolition activity shall occur and no permits affecting the proposed landmark shall be issued by the city until the process as described herein has been completed and the Commission has made its decision.
3. Notice of Commission Hearing.
 - a. Within 60 days of receipt of a complete application for a landmark designation, the application shall be placed on the HPC agenda for a public hearing. Public notice of this hearing shall be given as prescribed by this Ordinance. The city shall give notice of the date, time, and place of a public hearing for consideration of a proposed landmark, including general explanation of the matter to be considered and a general description of the area affected at least 15 days before the hearing in the following manner:
 - 1) Publication at least once in a newspaper of general circulation in the city.
 - 2) In addition to notice by the means set forth above, the city may give notice of the hearing in a specific case in such other manner as it deems necessary or appropriate.

- 3) As provided in A.R.S. § 9-462.04.A (7), or any successor statute, the failure of any person or entity to receive notice shall be as set forth in the statute or in A.R.S. § 9-400.05 15-10.
4. Landmark Designation Criteria. The Commission shall evaluate each structure, site, building or property within an area that is included in an application and may designate it as a landmark if it is determined to possess integrity of historic appearance, location, design, setting, materials, workmanship, feeling and association; and, being at least 50 years old or having achieved significance within the past 50 years if the property is of exceptional importance; and exhibits one or more of the following characteristics:
 - a. Association with events or activities that made significant contributions to the broad patterns of local, regional or national history;
 - b. Association with the lives of persons significant in the past;
 - c. Embodiment of distinctive characteristics of a type, period or method of construction, or representing significant architectural history, landscape history, or engineering achievements, or high artistic values or representing a significant and distinguishable entity whose components may lack individual distinctiveness; or
 - d. Information important in the understanding of the pre-history or history of our community; potential to yield information through archeological investigation about our past.
5. Commission Public Hearing and Designation.
 - a. The Historic Preservation Commission shall hold at least one (1) public hearing on each landmark application. At the public hearing, the Commission shall review the proposal with consideration given to the review criteria. Approval, conditional approval or denial of a landmark application shall be based on the findings of the Commission as they relate to the criteria as described in this Section.
 - b. The Commission's decision shall be final unless appealed to the City Council as provided for in this Ordinance. A recommendation for approval may be subject to conditions as the Commission deems applicable.
6. Six month bar on refilling. If the Commission denies an application, the Commission may refuse to accept another application for the same or substantially the same landmark on the same property or any part of it within six (6) months from the date the original application was filed on the same property or a portion of it.
7. Effect of Landmark Designation.
 - a. Upon approval of a landmark designation, the affected property shall be included in the Historic Property Register for the City of Cottonwood and on any other applicable documents as appropriate for its preservation.

- b. No person shall carry out any exterior alteration, restoration, renovation, reconstruction, new construction, demolition or removal, in whole or in part, on any landmark, without first obtaining a Certificate of Appropriateness from the Commission.
- c. No person shall make any material change in the exterior appearance of any landmark, its color, materials, light fixtures, signs, fences, steps or other elements which affect the appearance of the property without first obtaining a Certificate of Appropriateness.
- d. Each property designated as a landmark shall be maintained in good condition and faithful to its historic character.
- e. Nothing in this article shall be construed to prevent normal maintenance and repair, which does not involve change in the exterior design, material, color or appearance.

G. HISTORIC PRESERVATION DISTRICT DESIGNATION PROCESS.

1. General Regulations.

- a. A rezoning approval is required in order to receive a Historic Preservation (HP) Overlay District designation. The process for such is set forth in Article III. Section 301 of this Ordinance.
- b. The HP Overlay District is an overlay zoning designation as described in the Cottonwood Zoning Ordinance in which all uses of the underlying zoning district are maintained but which includes specific criteria and standards for development and rehabilitation that relate to historic preservation. The underlying zoning which describes the allowable land uses continues in effect.
- c. The overlay zoning designation may be applied to any zoning district where determined as appropriate by the City Council.
- d. The boundary of a proposed HP zoning designation can only be applied to a single property or a collection of properties where such property or properties have been designated as a historic landmark according to the procedures in this Ordinance.
- e. The Historic Preservation Commission shall administer the regulations as they relate to the historic preservation overlay district designation. In cases where the historic preservation regulations are in conflict with other zoning regulations, the Historic Preservation Ordinance shall take precedence in terms of design review criteria and approval process.
- f. The Historic Preservation Commission, the Planning and Zoning Commission, City Council, the Community Development Manager, or a property owner or their agent within the subject area may initiate a request to rezone with a Historic Preservation Overlay District. All other procedures for a change of zoning apply.

2. Application Submittal Requirements.

- a. Schedule of Public Hearings. Public hearings on the request for the overlay zoning designation shall be held by the Historic Preservation Commission, Planning and Zoning Commission and City Council. A tentative schedule of all meetings shall be included with initial public notification.
- b. Preliminary Staff Meeting. At the request of a property owner or their representatives a preliminary informal consultation with the Community Development Manager or designee may be scheduled to review the rezoning process and application submittal requirements.
- c. Code Review: All applications for the Historic Preservation Overlay District designation shall be reviewed by the Code Review Board.
- d. Application submittal requirements: In addition to the submittal requirements set forth in Section 301., “Amendments or Zone Changes,” all Historic Preservation Overlay District rezoning applications shall include the following:
 - 1) A vicinity ownership map showing all parcels adjacent to and surrounding the proposed designated property or district within a radius of at least 300 feet from the boundaries of the proposed district;
 - 2) A list of all properties within the proposed district and with 300 feet identified by parcel number and address along to include property owners with current mailing addresses;
 - 3) Written description of the proposed Historic Preservation Overlay District. The description of the district shall include the boundaries of the proposed district, the known or approximate construction dates of buildings and structures in the area, special aesthetic features, cultural, architectural, archaeological or engineering interest or value of a historic nature, including information about the architecture, notable construction features, and other information indicating the historical significance;
 - 4) Describe prospective contributing properties and how they each meet one or more of the criteria for Historic Districts as described by the National Park Service for listing on the National Register of Historic Places; or locations, dates of construction, and a statement of the general condition of each structure;
 - 5) Current photographs of each building or structure and any significant defining elements. Provide photographs in electronic format as per national standards for documentation; and
 - 6) Explanation of any known threats or concerns to the historic integrity of any property or structures included.

3. Notice of Public Hearing. Notice of public hearings shall be the same as set forth in Section 301 as relates to the change of zoning request. In addition, the public notification requirements shall include the following:
 - a. Notice of the public hearing and information on the proposed historic district and rezoning sent by first class mail to all property owners with the proposed district;
 - b. Notice posted in at least three conspicuous places within or near the proposed historic district boundaries;
 - c. Notice published in the local newspaper of record as required and at least 2 times prior to the meeting; and
 - d. Notification shall be provided to businesses, commercial lessees and residents within the proposed historic district to the extent possible through known sources, including mailings, postings or direct delivery.

4. Historic Preservation Overlay District Criteria. Each structure, site, building or property within an area that is included in a Historic Preservation District rezoning application will be evaluated using the following criteria to determine if it has historical or other cultural significance or integrity, and is suitable for preservation:
 - a. The Overlay District consists of one or more properties which individually or as a group include a substantial concentration of properties, buildings or structures which individually meet the criteria of this section and which contribute generally to the distinctive character of the area, and are united historically or visually in a coherent manner.
 - b. Being at least 50 years old, or having achieved significance within the past 50 years if the property is of exceptional importance.
 - c. Possessing integrity of location, design, setting, materials, workmanship, feeling or association.
 - d. Association with events that have made significant contributions to the broad patterns of our history.
 - e. Association with the lives of persons significant in our past.
 - f. Embodiment of distinctive characteristics of a type, period or method of construction, or representing the work of a master, or high artistic values or representing a significant and distinguishable entity whose components may lack individual distinctions.
 - g. Yielding information important in the understanding of the pre-history or history of the community.

- d. Approval. The ordinance approving a Historic Preservation Overlay District may include specific and unique standards for that district, including reference to design guidelines or other documents developed to meet the needs of that overlay district.
6. Revisions. Based on any conditions recommended by the Historic Preservation Commission or Planning and Zoning Commission, the applicant may provide minor revisions to their application submittal prior to the City Council hearing. All such revisions shall be documented in written format with a description of such changes. Major revisions to the plans shall be required to be resubmitted to the Historic Preservation Commission for review.
 7. Effect of Historic Preservation Overlay District Designation.
 - a. Upon approval of a Historic Preservation Overlay District designation by the City Council, the affected properties shall be included in the Cottonwood Historic Property Register and on any other applicable City documents as appropriate for its preservation. The city's zoning map shall be updated to reflect the new overlay zoning district boundaries. The city's parcel information database shall be updated to include those properties identified within the overlay district.
 - b. No person shall carry out any exterior alteration, restoration, renovation, reconstruction, new construction, demolition or removal, in whole or in part, without first obtaining a Certificate of Appropriateness from the Commission.
 - c. No person shall make any material change in the exterior appearance of a designated property, its color, materials, light fixtures, signs, sidewalks, fences, steps, paving or other elements which affect the appearance of the property without first obtaining a Certificate of Appropriateness.
 - d. Criteria may be established to determine work that may be approved administratively.
 - e. Each property designated as a contributing property shall be maintained in good condition and faithful to its historic character.
 - f. Nothing in this article shall be construed to prevent normal maintenance and repair which does not involve change in exterior design, material, color or appearance.
 - g. In addition to any other required review and/or approval, any proposed construction within a historic preservation overlay district shall also be subject to Commission review according to any design guidelines which may have been applied to that district or any other applicable criteria adopted for such purposes.

H. DEVELOPMENT PROCEDURES FOR LANDMARKS AND HISTORIC DISTRICTS.

1. Applicability. The provisions of this Section shall apply to Historic Landmarks and to properties within a Historic Preservation Overlay District.

2. Alteration of Historic Resources:

- a. No building, permanent sign, or other structure in a Historic Preservation District or part of a designated Historic Landmark shall be erected, demolished, moved, restored, rehabilitated, reconstructed, altered, or changed in exterior appearance, nor shall any historic resource be altered, moved, remodeled, demolished, enlarged or extended contrary to the district or landmark until plans for such activities have been submitted to and approved by the Historic Preservation Commission or as permitted administratively, and the City has issued a Certificate of Appropriateness, for such work on the subject property. This requirement is in addition to any other permit or approval required by law.
- b. Failure to comply with a stipulation, standard, or plan made a part of any of these approvals shall constitute a violation of the Zoning Ordinance of the City of Cottonwood. An approved plan shall apply to and run with the property and the rights and responsibilities shall be transferable to future successors and assignees of such property. No permit shall be issued for any building or structure not in compliance with the plan, except that temporary facilities shall be permitted in conjunction with construction. No structure or other element shall be eliminated, or altered or provided in another manner, unless an amendment is approved in conjunction with the procedures for original approval.
- c. Maintenance of the historic resource is required. Ordinary maintenance or repair of any structure that does not alter or modify the historic character of the structure will not require a Certificate of Appropriateness.

I. CERTIFICATE OF APPROPRIATENESS.

1. **Applicability:** A Certificate of Appropriateness is required before commencing any exterior improvements or development, including alteration, restoration, renovation, reconstruction, new construction, demolition or removal, in whole or in part, of any property located within a Historic Preservation Overlay District or to a Historic Landmark, whether or not the work will require a building permit. Building permits for exterior work on properties within historic overlay districts or landmarks cannot be issued without first obtaining a Certificate of Appropriateness.
2. **Exceptions for Minor Work:** A Certificate of Appropriateness may be approved administratively by the Community Development Manager or designee, where it is determined that the proposed activity constitutes a minor change and does not alter the essential appearance and character of the property. Activities that may be approved administratively include, but are not limited to the following: repair or replacement of architectural features with essentially the same materials and design; repair or replacement of signs within existing sign panels or frames; repainting with essentially the same design scheme and colors; or other minor changes or additions that are in conformance with approved Design Guidelines and are considered minor. In addition to the criteria described in this Section or in any Design Guidelines approved for historic preservation, the Commission may authorize staff to approve certain activities administratively. For projects that qualify for administrative approval, all other application requirements and review criteria shall remain in effect.

3. Application Submittal and Review Procedure. An application for Certificate of Appropriateness shall be submitted by the owner or agent of the subject property and involves the following steps:
 - a. Preliminary meeting. Prior to the submittal of an application for a Certificate of Appropriateness, the applicant shall meet with the Manager or designee to review the application submittal requirements.
 - b. Application Submittal requirements. An application for a Certificate of Appropriateness shall contain at a minimum the following:
 - 1) Completed application forms.
 - 2) Location and description of property with photographs of the subject property and surrounding area affected by proposed project.
 - 3) Filing fees as adopted by resolution of the City Council.
 - 4) A Project Narrative describing the overall project and specifically addressing the relationship of any proposed activity to the architectural style of the structure, its compatibility with the context of the surrounding structures and area, and a description of proposed building materials, colors, exterior lighting fixtures and types, signage and landscaping or other such development activity if applicable.
 - 5) Site plan identifying all existing and proposed structures and other defining aspects of the property, including, landscaping, sidewalks, parking, drainage and similar site features in relation to surrounding streets and other properties.
 - 6) Proposed building elevations drawn to scale describing any proposed new materials and colors, and any new features in relation to existing.
 - 7) Manufacturers' color and material samples of all proposed exterior paints and colors and samples of roof and other exterior materials to be used, with an explanation on how they relate to existing colors and materials.
 - 8) Proposed signs drawn to scale showing dimensions, lettering, colors, materials and any illumination. Indicate locations of signs on elevation drawing.
 - 9) Any additional information which the Commission may require to properly evaluate the proposed work.
4. Notice of Public Hearing.
 - a. The Certificate of Appropriateness shall be placed on the agenda for a public hearing within 60 days of receipt of a complete application. Public notice of this hearing shall be given as prescribed by Arizona law. The city shall give notice of the date, time and place of a public hearing for consideration of a Certificate of Appropriateness, including a general explanation of the matter to be considered and

a general description of the area affected at least 15 days before the hearing in the following manner:

- 1) Notice of the general nature of the proposed activity which is the subject of the Certificate of Appropriateness and the date and location of the meeting shall be posted on or in proximity to the property;
- 2) Posting of agendas and notice of hearing in the manner typically required for all such meetings; and
- 3) In addition to notice by the means set forth above, the city may give notice of the hearing in a specific case in such other manner as it deems necessary or appropriate.

5. Conduct of Public Hearing.

- a. Following acceptance of a complete application, staff shall review such application and prepare a report, which shall be submitted to the Commission along with other exhibits and materials necessary to describe the request.
- b. The hearing shall be conducted according to the rules and procedures proscribed for such by law. Staff, applicants and concerned persons may present testimony and/or documentary evidence which will become part of the record of the hearing and the deliberations of the Commission.

J. CRITERIA FOR APPROVAL OF CERTIFICATE OF APPROPRIATENESS

1. It is the intent of this Section to ensure, to the greatest extent possible, that activities requiring a Certificate of Appropriateness shall be compatible with the architectural and historical character of the property or district.
2. Review Context. Review of applications for Certificate of Appropriateness shall be considered in terms of the specific nature and condition of the property, as well as the context in which the property is located, including the historic characteristics and other influences of surrounding properties. Context shall be considered based on the following circumstances:
 - a. Overlay Zoning District: All properties within a Historic Preservation Overlay Zoning District shall be subject to the requirements for review and approval of a Certificate of Appropriateness for applicable activities, except where considered as exempt.
 - b. Landmark Property. Historic landmarks shall be subject to the requirements for obtaining a Certificate of Appropriateness. Alterations or additions to landmarks shall properly preserve the historic and architectural characteristics which make it unique, and any changes or additions shall conform to the intrinsic and unique character of the building or structure.

- c. **Contributing Property.** Alterations or additions to a Contributing Property within a Historic Preservation Overlay District shall reflect the architectural style and characteristics of the existing structure and its context with surrounding properties.
 - d. **New Construction or Noncontributing Property.** New construction or alterations or additions to a noncontributing property within a historic district shall reflect the architectural style of, and be compatible with, the contributing properties located in proximity to the subject property.
 3. **Review Criteria:** The review of the application for a Certificate of Appropriateness shall be considered based on the criteria described in this Section, including any general or specific guidelines that may be approved. The Commission shall use the following documents and criteria as guidelines when considering an application for a Certificate of Appropriateness:
 - a. Any criteria for approval of a Certificate of Appropriateness that may be included in this Section;
 - b. The Secretary of the Interior's Standards for Rehabilitation available from the National Park Service;
 - c. Any design guidelines that may be applicable to a Historic Preservation Overlay District or landmarks within the City of Cottonwood;
 - d. The Secretary of the Interior's Preservation Briefs and other information developed by the National Park Service, Arizona Historic Preservation Office (SHPO), National Trust for Historic Preservation, National Alliance of Preservation Commissions, Association of Preservation Technology, and other professionally prepared reference documents; and
 - e. Any other guidelines as adopted by the City Council.
 4. **Decision:** The decision shall be to approve, conditionally approve or deny a Certificate of Appropriateness based on the following:
 - a. The proposed work does not detrimentally alter, destroy or adversely affect any architectural or landscape feature;
 - b. The proposed work will be compatible with the relevant historic, cultural, educational or architectural qualities characteristic of the structure, or district and shall include but not be limited to elements of size, scale, massing, proportions, orientation, surface textures and patterns, details and embellishments and the relationship of these elements to one another;
 - c. The proposed work conforms with any design review guidelines and/or other applicable criteria as established; and
 - d. The exterior of any new improvement, building or structure in a designated historic preservation overlay district or upon a landmarked site will not adversely affect and

will be compatible with the external appearance of existing designated buildings and structures on the site or within such district.

5. Effect of Approval:

- a. Expiration: A Certificate of Appropriateness expires one (1) year from the date of issuance unless work is started within that time. Evidence of work shall include maintaining an active building permit from the City for the applicable work or similar evidence of intent to proceed through filing of applications for related permits and approvals from the City.
- b. Revisions After Approval: No change shall be made in the approved plans of a project after issuance of a Certificate of Appropriateness without re-submittal to the Commission and approval of the change in the same manner as provided.
- c. Non-Approved Work: If work exceeds that specified in the Certificate of Appropriateness, the Certificate of Appropriateness may be suspended or revoked by order of the Community Development Director. If so ordered, all work shall cease to allow review of the scope of approval. If necessary, the applicant may be required to resubmit the changes to the Commission for approval. Work in violation of the Certificate of Appropriateness may be subject to enforcement action as per applicable City codes and ordinances.
- d. The Certificate of Appropriateness required by this Section shall be in addition to any other permits, approvals or review required for the proposed project.

K. FINDING OF HARDSHIP FOR CERTIFICATE OF APPROPRIATENESS

1. An applicant shall submit an application for Finding of Hardship within ten (10) working days after receiving notification from the Commission of the denial of a Certificate of Appropriateness or of specific conditions to be considered. Application shall be in writing to the Director or designee and shall state the reasons for consideration of the hardship. In addition, the applicant shall provide detailed documentation of why the request shall be considered a hardship, including cost estimates, comparative studies, expert documentation or other such information as necessary to adequately present such new information.
 - a. Is infeasible from a technical, mechanical, or structural standpoint.
 - b. Would leave the property with no reasonable economic value because it would require an unreasonable expenditure taking in to account such factors as current market value, permitted uses of the property, and the cost of compliance with applicable local, state and federal requirements.
 - c. Costs necessitated by the neglect or failure of the current owner/s to maintain the property shall not be considered in making this finding.

- d. The Commission finds that the alterations of a contributing property would not have a substantial adverse impact on the historic significance or integrity of a Historic Preservation Overlay District.
2. The Commission shall hold a public hearing on the hardship application at their next regularly scheduled meeting. Decisions at that time shall be final.

M. DEMOLITION OF HISTORIC LANDMARK OR CONTRIBUTING PROPERTY WITHIN A HISTORIC DISTRICT.

It is the intent of this Section to encourage preservation and protection of historic structures and significant resources within designated Historic Districts and other designated Historic Landmarks. However, it is recognized that there can be circumstances beyond the control of a property owner which may result in the necessary demolition of a Landmark or structure within a designated District. These circumstances include a building which constitutes a non-repairable public nuisance, which involves a resource whose loss does not adversely affect or may even benefit the integrity of the District, or which imposes an economic hardship on the owner. This Section is intended to apply to demolition of buildings or structures and shall not include demolition permits issued for the purpose of interior remodeling or other purposes not applicable to the Historic Preservation Ordinance.

1. Non-Historic Demolition: Demolition of non-historic structures within a Historic District shall not be exempt from the requirements of the Historic Preservation Ordinance and will require first applying for a Certificate of Appropriateness. The area of a site left vacant by a demolition shall be maintained in a manner not detrimental to the surrounding vicinity in accordance with applicable City codes and ordinances, including dust-free surface treatment and abatement of weeds, trash, debris, outdoor storage or other public nuisances.
2. Landmark Demolition: Partial or complete demolition of designated historic properties and landmarks shall not be permitted without first applying for a Certificate of Appropriateness. Application for such a demolition shall be made to the Historic Preservation Commission, which shall hold a public hearing to determine if the applicant has shown that the preservation of the structure is physically and/or economically infeasible.
3. Consideration of Alternatives to Demolition: Before granting a request for demolition, the Commission shall review the historic or cultural value of the property and shall consider options including incentives to the owner for restoration or recommendation to Council that the city consider purchasing the property or seek other methods to ensure the preservation of the building or structure. The Commission shall review the request for demolition based on the following:
 - a. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return.

- b. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- c. If preservation is found to be physically and/or economically infeasible, the Commission shall approve the Certificate of Appropriateness, thereby allowing issuance of the Demolition Permit by the Community Development Department.
- d. A landmark or contributing property may be demolished if the chief building official has determined that an imminent safety hazard exists and that demolition of the structure is the only feasible means to secure the public safety.
- e. If preservation is considered feasible, the Commission shall delay issuance of the Certificate of Appropriateness for a period up to ninety (90) days in length so as to consider alternatives to demolition.
- f. The applicant, at their cost, may submit an independent third-party review of the structural integrity of the building or structure in relation to necessary improvements so as to determine the feasibility of alternatives to demolition. Such independent review shall be conducted by a registered professional in the State of Arizona, including an architect, structural engineer or other professional engineer, or other with demonstrated expertise in historic preservation and rehabilitation.
- g. During the delay period, the applicant shall consult in good faith with the Commission, City staff, the State Historic Preservation Office, local and state preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation or sale of the property so as to promote preservation. The applicant shall have ninety (90) days in which to advertise to have the property purchased at a fair market value or to receive appraisals, cost estimates, and proposals on the restoration of such properties.
- h. If no purchaser has been found within the initial ninety (90) day period and no other plan is shown to demonstrate a reasonable alternative, then the Certificate of Appropriateness for the proposed demolition shall be issued.
- i. The applicant shall bear the burden of proof for all findings required for approval of a Certificate of Appropriateness.
- j. If a preservation plan is presented to the Commission within the delay period specified above by any interested party who may be any member of the public, indicating a feasible and reasonable approach to saving a threatened historic resource, the Commission will consider the merits and feasibility of the preservation plan. The Commission may decide to provide copies of such preservation plan to the property owner so as to consider alternatives to demolition.
- k. In making its decision, the Commission shall consider testimony and the effects on the surrounding neighborhood, and advise the property owner on preservation alternatives.

1. The property owner shall have twenty-one (21) days from the date of approval to sign the Certificate of Appropriateness or to appeal any conditions contained therein.

N. FINDING OF HARDSHIP FOR DEMOLITION.

1. Economic Hardship Criteria for Demolition of Historic Structures. Separate standards and application requirements may be established by the city for granting economic hardship relief for income-producing properties and for non-income producing properties. The Commission shall issue the Certificate of Appropriateness if the Commission finds, after review, that maintenance, use and/or alteration of the designated property in accordance with the requirements of this article would cause immediate and substantial hardship on the property owner/s based on one or more of the following issues:
 - a. That a temporary delay period of up to ninety (90) days has elapsed and no reasonable alternative has been demonstrated by the applicant, the City, or any other interested parties.
 - b. Is infeasible from a technical, mechanical, or structural standpoint;
 - c. Would leave the property with no reasonable economic value because it would require an unreasonable expenditure taking in to account such factors as current market value, permitted uses of the property, and the cost of compliance with applicable local, state and federal requirements;
 - d. Costs necessitated by the neglect or failure of the current owner/s to maintain the property need not be considered in making this finding; and/or
 - e. The Commission finds that the demolition of a contributing property would not have a substantial adverse impact on the historic significance or integrity of a Historic Preservation Overlay District.
2. Limitations on Economic Hardship Criteria: Demonstration of an economic hardship shall not be based on or include any of the following circumstances:
 - a. Willful or negligent acts by the owner.
 - b. Purchase of the property for substantially more than market value.
 - c. Failure to perform normal maintenance and repairs.
 - d. Failure to diligently solicit and retain tenants.
 - e. Failure to provide normal improvements.

O. MAINTENANCE AND REPAIR.

Each property designated as a landmark, and properties designated as contributing properties within a Historic Preservation Overlay District shall be maintained in good condition and faithful to its historic character. Nothing in this Section shall be construed to prevent normal maintenance and repair of any exterior feature of any structure designated as a landmark or contributing property within a HP District, which does not involve change in design, material, color or outward appearance. The Commission shall not consider the interior arrangements or alterations to the interior of a building, unless designation specifically includes the interior or a portion thereof.

P. APPEALS.

Any person or persons aggrieved by a decision of the Commission may appeal to the City Council within fifteen (15) working days of the Commission's action, by filing with the City Clerk written notice of appeal and any applicable fee as may be adopted. The Council shall render a decision to sustain, conditionally overrule or overrule the Commission decision. The Council may choose to hold a public hearing if deemed appropriate.

Q. VIOLATIONS AND ENFORCEMENT.

All work performed pursuant to this Section shall conform to requirements thereof. Compliance shall be confirmed by inspections made by the City of Cottonwood officials, including the Building Official, Manager or designee. The appropriate City officials shall ensure that all matters are undertaken according to conditions of the approved plans. Noncompliance with the approved plans shall be grounds for stopping work on the project or for denial of a Certificate of Occupancy. Any person who causes unauthorized demolition, alteration, construction, or permits degradation or disrepair of a designated property as defined in this Section may be required to restore the property and site to its condition prior to the violation.

R. SEVERABILITY.

This article and its sections are hereby declared to be severable. If any section, subsection, clause, word or phrase of this article is held to be void, unlawful or unconstitutional, such holdings shall not affect the validity of the remainder of this article or of the Zoning Ordinance.

ORDINANCE NUMBER 596

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY ADDING A NEW SECTION 310., HISTORIC PRESERVATION ORDINANCE.

WHEREAS, the Historic Preservation Commission considered the Historic Preservation Ordinance at its April 10, 2013 meeting and recommended approval; and

WHEREAS, The Planning and Zoning Commission considered the Historic Preservation Ordinance amendment at their April 15, 2013 meeting and recommended approval; and

WHEREAS, the City Council has determined that the following changes to the City's Zoning Ordinance are appropriate and desirable.

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

Section 1. That the Zoning Ordinance is hereby amended by adding a new SECTION 310., HISTORIC PRESERVATION ORDINANCE, which was made a public record by Resolution Number 2700.

Section 2. That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be unlawful, invalid or unenforceable by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, ARIZONA, THIS 18TH DAY OF JUNE 2013.

Diane Joens, Mayor

ORDINANCE NUMBER 596

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APPROVED AS TO FORM:

ATTEST:

Steven B. Horton, Esq., City Attorney

Marianne Jiménez, City Clerk

**City of Cottonwood, Arizona
City Council Agenda Communication**



 Print

Meeting Date:	June 18, 2013
Subject:	Ordinance Number 597--Proposed Zoning Ordinance Amendment adding a new Section 427. "HP" Zone, Historic Preservation Overlay Zone.
Department:	City Clerk
From:	Charlie Scully, Planner

REQUESTED ACTION

First reading of Ordinance Number 597, pertaining to the "HP" Zone, Historic Preservation Overlay Zone.

SUGGESTED MOTION

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

"I move to approve Ordinance Number 597."

BACKGROUND

The Historic Preservation Commission considered the draft HP Overlay Zoning District at their meetings of July 13, 2011 and April 10, 2013 and recommended approval.

The Planning and Zoning Commission considered the proposed ordinance amendment at their April 15, 2013 meeting and recommended approval.

Overlay Zoning:

Arizona Revised Statutes § 9-462.01. Zoning regulations; public hearing; definitions provides the framework for the establishment of “**overlay zoning districts.**” This type of zoning district has not been used previously in Cottonwood but is an option permitted by state law to provide an “overlay” of specific zoning standards, while maintaining the existing uses of the underlying zone. Overlay zoning can be used for a variety of different types of applications because it offers flexibility on a particular issue while maintaining the stability of the existing zoning. "Overlay zoning district" means a special zoning district that includes regulations which modify regulations in another zoning district with which the overlay zoning district is combined.

Historic Preservation Overlay Zoning

In order to apply the historic preservation standards to properties as described in the proposed Historic Preservation (HP) Ordinance, it is typical to either create a separate zoning district classification or establish an “overlay” zone. The existing zoning classification for the Cottonwood Commercial Historic District, for example, is C-1 (Light Commercial) Zone. The overlay classification would not change the existing underlying uses but would add new procedures and standards specific to the goal of preserving the historic character of the district.

The HP Overlay Zone is different than the Historic District designation that is approved by the National Park Service for listing on the National Register of Historic Places. Designation of a Historic District through the national program provide recognition but does not place any specific regulations on any property. The HP Overlay Zoning District, on the other hand, has the potential to address specific standards and procedures for historic properties.

Process for Designating Properties with HP Overlay Zoning.

Application of the HP Overlay Zoning to properties would require the exact same steps and procedures as rezoning. Procedures to apply HP Overlay Zoning to an individual “Landmark” property or to a Historic District include notifying property owners, public notification and public hearings with both the Planning and Zoning Commission and the City Council.

Applicability: As per the Historic Preservation Ordinance, the only properties that can qualify for potential HP Overlay Zoning would be properties designated by the City of Cottonwood as Landmark properties. As per the proposed HP Ordinance, “Landmark” properties in Cottonwood will include properties designated as National Historic Districts. The Cottonwood Commercial Historic District, as designated, or other properties yet to be designated as Landmark or Historic Districts are the only ones that would qualify for the HP Overlay Zoning designation.

Opt-Out: So as to comply with State Statutes, individual property owners will have the opportunity to opt-out of the historic preservation program at any time for three years from the date of adoption of any HP overlay zoning. Of course they will also be opting out of various specific and general benefits of the program. Also, such properties would still be subject to the applicable Design Review standards.

-

JUSTIFICATION/BENEFITS/ISSUES

The proposed amendment creates a new “overlay” zoning classification for historic preservation. Creation of the Zoning District classification does not affect any specific properties at this time. Application of the HP Overlay Zone to any specific properties would occur at a later time through a separate process similar to rezoning.

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

Name:	Description:	Type:
6-4-13 Historic Preservation Overlay Zone.doc	Section 427. Historic Preservation Overlay Zone	Cover Memo
ord597.doc		

SECTION 427. "HP" ZONE, HISTORIC PRESERVATION OVERLAY ZONE.

A. PURPOSE.

The Historic Preservation Overlay (HP) Zoning District is intended to provide an effective, fair and appropriate set of standards to preserve and protect the historic character and integrity of properties.

B. APPLICABILITY.

1. This Section applies to properties, individually or groups of properties within an area, which have been designated as historic landmarks and are considered as worthy of special consideration for preservation through the overlay zoning designation.
2. The HP zoning classification is an overlay zone that is attached to a standard zoning district. Any zoning district may be considered as the base zone. Properties zoned with the Historic Preservation Overlay Zoning District designation shall retain the uses of and are subject to the regulations of the underlying zoning. The underlying zoning, which relates to land use and density, continues to remain in effect.
3. In cases where the historic preservation regulations are in conflict with other zoning regulations, the Historic Preservation Ordinance shall take precedence in terms of design review criteria and approval process for related matters.
4. To identify a Historic Preservation District on the City's Zoning Map, "HP" shall be added to the underlying zoning designation as a hyphenated suffix.

C. USE REGULATIONS.

The Historic Preservation (HP) Overlay Zoning District is to be used in conjunction with the underlying zoning districts, thereby permitting the same uses as the underlying base zoning district with the exception that requirements related to historic preservation shall apply, including for exterior alteration, restoration, renovation, reconstruction, new construction, demolition or removal, in whole or in part of buildings and structures. Permitted, Conditional and Temporary Uses shall be allowed as per the regulations applicable to the underlying zoning.

D. HISTORIC PRESERVATION WAIVER.

Properties may be removed from the requirements associated with Historic Preservation Overlay Zoning or Historic Landmark designation, at the request of property owners, as per the procedures described in Section 310. C. Historic Preservation Waiver.

E. HISTORIC PRESERVATION OVERLAY DISTRICT CRITERIA.

1. All properties with the HP Overlay Zone designation are subject to the requirements as described in the Cottonwood Zoning Ordinance, Section 310, Historic Preservation Ordinance, except as described in this Section for exempt uses.

2. Historic Preservation Design Guidelines: Where provided, any alteration, restoration, renovation, reconstruction, new construction, demolition or removal, in whole or in part, must conform to any City of Cottonwood design guidelines that are approved for historic preservation. In addition, the City Council may approve unique Design Guidelines for a specific HP Overlay Zone.
3. Exempt Uses:
 - a. Existing Uses. Any structure or use lawfully existing at the effective date of this ordinance may continue as permitted.
 - b. Interior Remodeling. Any renovation or remodeling to the interior that does not include any exterior changes or alterations to the building shall be exempt from this Section.
4. Certificate of Appropriateness. All such work that is subject to the Historic Preservation Ordinance, including applicable properties with the HP Overlay zoning designation, shall require granting of a Certificate of Appropriateness prior to commencement of any work.

E. AMENDMENTS TO THE OVERLAY ZONE BOUNDARIES.

An expansion or decrease in the boundaries of the HP Zone may be requested. Amendments shall be subject to the same procedures for a zone change as described in Section 301 of this Ordinance.

ORDINANCE NUMBER 597

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AMENDING THE CITY OF COTTONWOOD ZONING ORDINANCE BY ADDING A NEW SECTION 427., "HP" ZONE, HISTORIC PRESERVATION OVERLAY ZONE.

WHEREAS, the Historic Preservation Commission considered the draft HP Overlay Zoning District at its meetings of July 13, 2011, and April 10, 2013, and recommend approval; and

WHEREAS, The Planning and Zoning Commission considered the draft HP Overlay Zoning District at its April 15, 2013, meeting and recommended approval; and

WHEREAS, the City Council has determined that the following changes to the City's Zoning Ordinance are appropriate and desirable.

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

Section 1. That the Zoning Ordinance is hereby amended by adding a new SECTION 427., "HP" ZONE, HISTORIC PRESERVATION OVERLAY ZONE as follows:

SECTION 427. "HP" ZONE, HISTORIC PRESERVATION OVERLAY ZONE.

A. PURPOSE.

The Historic Preservation Overlay (HP) Zoning District is intended to provide an effective, fair and appropriate set of standards to preserve and protect the historic character and integrity of properties.

B. APPLICABILITY.

1. This Section applies to properties, individually or groups of properties within an area, which have been designated as historic landmarks and are considered as worthy of special consideration for preservation through the overlay zoning designation.
2. The HP zoning classification is an overlay zone that is attached to a standard zoning district. Any zoning district may be considered as the base zone. Properties zoned with the Historic Preservation Overlay Zoning District designation shall retain the

uses of and are subject to the regulations of the underlying zoning. The underlying zoning, which relates to land use and density, continues to remain in effect.

3. In cases where the historic preservation regulations are in conflict with other zoning regulations, the Historic Preservation Ordinance shall take precedence in terms of design review criteria and approval process for related matters.
4. To identify a Historic Preservation District on the City's Zoning Map, "HP" shall be added to the underlying zoning designation as a hyphenated suffix.

C. USE REGULATIONS.

The Historic Preservation (HP) Overlay Zoning District is to be used in conjunction with the underlying zoning districts, thereby permitting the same uses as the underlying base zoning district with the exception that requirements related to historic preservation shall apply, including for exterior alteration, restoration, renovation, reconstruction, new construction, demolition or removal, in whole or in part of buildings and structures. Permitted, Conditional and Temporary Uses shall be allowed as per the regulations applicable to the underlying zoning.

D. HISTORIC PRESERVATION WAIVER.

Properties may be removed from the requirements associated with Historic Preservation Overlay Zoning or Historic Landmark designation, at the request of property owners, as per the procedures described in Section 310. C. Historic Preservation Waiver.

E. HISTORIC PRESERVATION OVERLAY DISTRICT CRITERIA.

1. All properties with the HP Overlay Zone designation are subject to the requirements as described in the Cottonwood Zoning Ordinance, Section 310, Historic Preservation Ordinance, except as described in this Section for exempt uses.
2. Historic Preservation Design Guidelines: Where provided, any alteration, restoration, renovation, reconstruction, new construction, demolition or removal, in whole or in part, must conform to any City of Cottonwood design guidelines that are approved for historic preservation. In addition, the City Council may approve unique Design Guidelines for a specific HP Overlay Zone.
3. Exempt Uses:
 - a. Existing Uses. Any structure or use lawfully existing at the effective date of this ordinance may continue as permitted.

- b. Interior Remodeling. Any renovation or remodeling to the interior that does not include any exterior changes or alterations to the building shall be exempt from this Section.
- 4. Certificate of Appropriateness. All such work that is subject to the Historic Preservation Ordinance, including applicable properties with the HP Overlay zoning designation, shall require granting of a Certificate of Appropriateness prior to commencement of any work.

E. AMENDMENTS TO THE OVERLAY ZONE BOUNDARIES.

An expansion or decrease in the boundaries of the HP Zone may be requested. Amendments shall be subject to the same procedures for a zone change as described in Section 301 of this Ordinance.

Section 2. That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be unlawful, invalid or unenforceable by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, ARIZONA, THIS 18TH DAY OF JUNE 2013.

Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

Steven B. Horton, Esq., City Attorney

Marianne Jiménez, City Clerk

**City of Cottonwood, Arizona
City Council Agenda Communication**



 Print

Meeting Date:	June 18, 2013
Subject:	Liquor License Application for Clare H. Abel, applicant for the Dollar General Store located at 408 South Main Street.
Department:	City Clerk
From:	Marianne Jiménez, City Clerk

REQUESTED ACTION

Council consideration of recommending approval or denial of a new Liquor License Application for Clare H. Abel, applicant for the Dollar General Store located at 408 South Main Street.

SUGGESTED MOTION

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

I move to approve recommendation of the new liquor license application submitted by Clare H. Abel, applicant for the Dollar General Store located at 408 South Main Street.

BACKGROUND

A new Liquor License Application was received from the Arizona Department of Liquor Licenses & Control for Clare H. Abel, applicant for the Dollar General Store located at 408 South Main Street. No comments for or against the application have been received.

JUSTIFICATION/BENEFITS/ISSUES

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

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

Name:

Description:

Type:

 [6-18-13 Dollar General LL Application.pdf](#)

Dollar General LL Application

Cover Memo

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

*13 MAY 9 11:49 AM '09

APPLICATION FOR LIQUOR LICENSE
 TYPE OR PRINT WITH BLACK INK

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

SECTION 1 This application is for a:

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

SECTION 2 Type of ownership:

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

SECTION 3 Type of license and fees LICENSE #(s): Series 10 (Beer/wine Off-sale) 10133251

1. Type of License(s): 10 2. Total fees attached: \$ 1000 Department Use Only

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

SECTION 4 Applicant

1. Owner/Agent's Name: Mr. Abel Clare Hollie
 Ms. Abel Clare Hollie
 (Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: DG Retail, LLC
 (Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: Dollar General Store #12053
 (Exactly as it appears on the exterior of premises)
4. Principal Street Location: 408 South Main Street Cottonwood YAVAPAI 86326-6929
 (Do not use PO Box Number) City County Zip
5. Business Phone: 928-634-9485 Daytime Phone: 602-234-9920 Email: chabel@bcattorneys.com
6. Is the business located within the incorporated limits of the above city or town? YES NO
7. Mailing Address: 100 Mission Ridge, Goodlettsville, TN 37072
 City State Zip
8. Price paid for license only bar, beer and wine, or liquor store: Type _____ \$ _____ Type _____ \$ _____

DEPARTMENT USE ONLY

Fees: 1000 Application Interim Permit Site Inspection 1000 Finger Prints \$ 1000
TOTAL OF ALL FEES

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? YES NO
 Accepted by: AC Date: 5/9/2013 Lic. # 10133251

*Disabled individuals requiring special accommodation, please call (602) 542-9027.

SECTION 5 Interim Permit:

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

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

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

State of _____ County of _____

X _____
(Signature)

The foregoing instrument was acknowledged before me this

_____ day of _____
 Day Month Year

My commission expires on: _____

(Signature of NOTARY PUBLIC)

13 MAY 9 Lic. Lic. RM 9 09

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City State Zip

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

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

) Y R A S S E C E N F I

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

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

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

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

1. Name of Corporation/L.L.C.: DG Retail, LLC
 (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 9/1/2005 State where Incorporated/Organized: Tennessee
3. AZ Corporation Commission File No.: _____ Date authorized to do business in AZ: _____
4. AZ L.L.C. File No: R-1226423-6 Date authorized to do business in AZ: 9/1/2005
5. Is Corp./L.L.C. Non-profit? YES NO

6. List all directors, officers and members in Corporation/L.L.C.:

Last	First	Middle	Title	Mailing Address	City	State	Zip
See attached list of directors and officers.							
DG Promotions, Inc			Member	100 Mission Ridge, Goodlettsville, TN 37072			

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

Last	First	Middle	% Owned	Mailing Address	City	State	Zip
DG Promotions, Inc./Member			100	100 Mission Ridge, Goodlettsville, TN 37072			
See attached stock affidavit.							
No individual owns 10% or more							
of the stock in DG Promotions. Inc							

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

1. Name of Club: _____ Date Chartered: _____
 (Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)

2. Is club non-profit? YES NO

3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

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

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

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

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

SECTION 11 Person to Person Transfer:

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

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

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

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

(Signature of CURRENT LICENSEE)

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

My commission expires on: _____

Day Month Year

(Signature of NOTARY PUBLIC)

*13 MAY 9 11:41 AM '10

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

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

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

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

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

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

13 MAY 9 14P. 11. 9:10

1. Distance to nearest school: 582 ft. Name of school Accelerated Learning Charter School
Address 320 S Main St, Cottonwood, AZ 86326
City, State, Zip _____
2. Distance to nearest church: 2319 ft. Name of church River Community Fellowship
Address 1750 E Villa Dr # C, Cottonwood, AZ 86326
City, State, Zip _____
3. I am the: Lessee Sublessee Owner Purchaser (of premises)
4. If the premises is leased give lessors: Name Lehmer Investment Company
Address 1905 Market St., Concord, CA 94520
City, State, Zip _____
- 4a. Monthly rental/lease rate \$ \$9,069.39 What is the remaining length of the lease 12 yrs. 8 mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ 0 or other _____
(give details - attach additional sheet if necessary)
5. What is the total **business** indebtedness for this license/location excluding the lease? \$ 0
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Business is a discount general merchandise retailer.

SECTION 13 - continued

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

YES NO If yes, attach explanation.

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

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

License # _____ (exactly as it appears on license) Name _____

SECTION 14 Restaurant or hotel/motel license applicants:

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

_____ and license #: _____
Last First Middle

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

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

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

applicant's signature

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

applicants initials

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

1. Check ALL boxes that apply to your business:

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

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

month/day/year

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

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

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

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


applicants initials

FORM 9-11-14 Lic. 019-10

SECTION 15 Diagram of Premises

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

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

Total Square Footage: 8283

Public: 7195

Non-Public: 1088

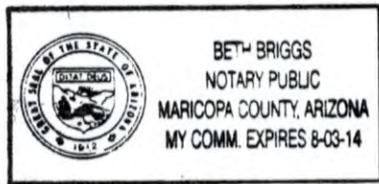
13 MAY 9 09:02 AM '10

SECTION 16 Signature Block

I, Clare Hollie Abel, hereby declare that I am the OWNER/AGENT filing this
(print full name of applicant)

application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X *Clare Hollie Abel*
(signature of applicant listed in Section 4, Question 1)



State of ARIZONA County of MARICOPA

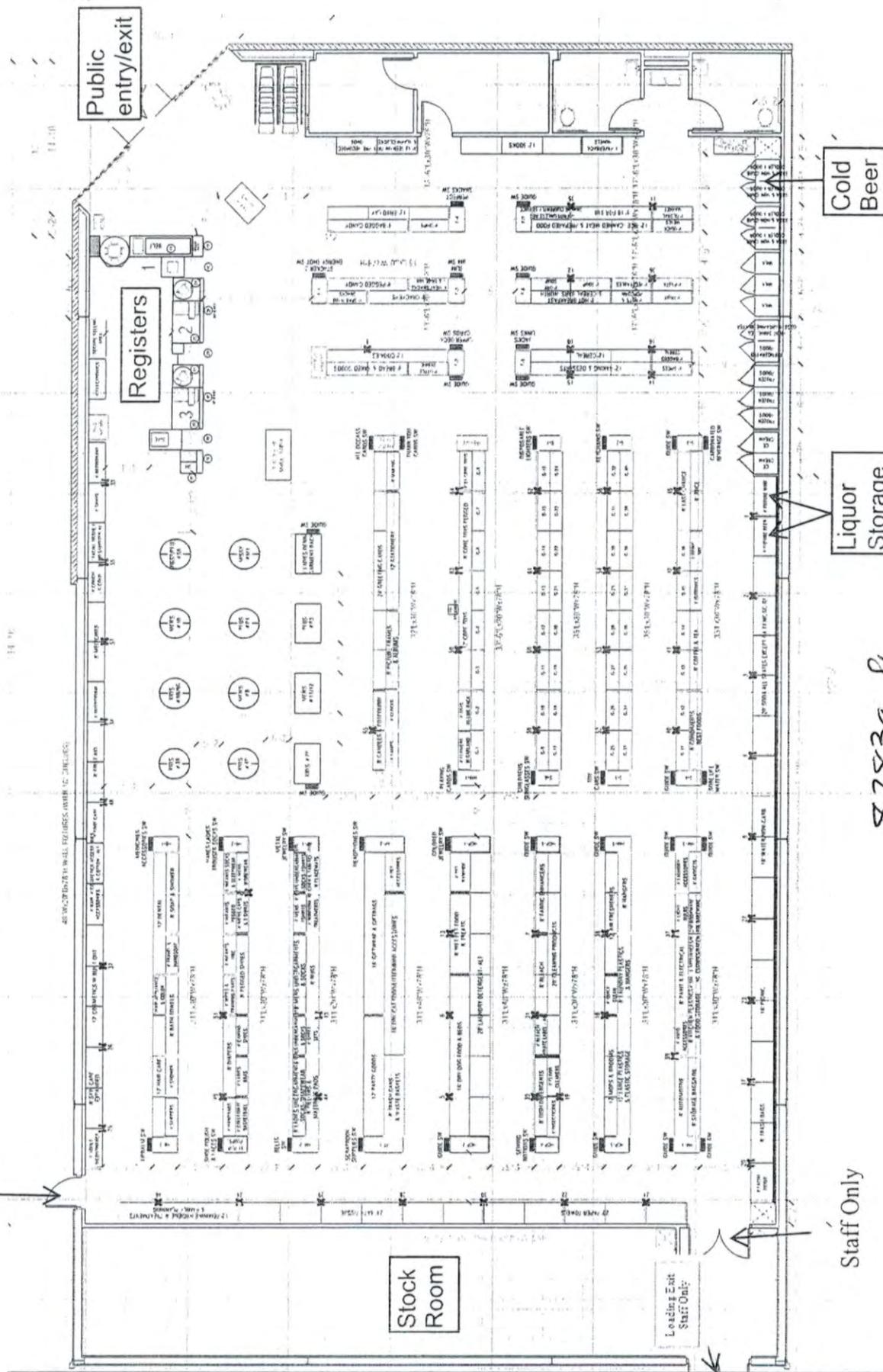
The foregoing instrument was acknowledged before me this
1st of MARCH, 2013
Day Month Year

Beth Briggs
signature of NOTARY PUBLIC

My commission expires on : _____
Day Month Year

Store 12053

Fire Exit



82839 ft.

13 MAY 9 11:47 AM '10

**City of Cottonwood, Arizona
City Council Agenda Communication**



 Print

Meeting Date:	June 18, 2013
Subject:	Liquor License Application for Jaime L. Fullmer, applicant for Fire Mountain Wines located at 1010 N. Main Street.
Department:	City Clerk
From:	Marianne Jiménez, City Clerk

REQUESTED ACTION

Council consideration of recommending approval or denial of a new Liquor License Application for Jaime L. Fullmer, applicant for Fire Mountain Wines located at 1010 North Main Street.

SUGGESTED MOTION

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

I move to recommend approval of a new Liquor License Application for Jaime L. Fullmer, applicant for Fire Mountain Wines located at 1010 North Main Street.

BACKGROUND

A new Liquor License Application was received from the Arizona Department of Liquor Licenses & Control for Jaime L. Fullmer, applicant for Fire Mountain Wines located at 1010 North Main Street. No comments for or against the application have been received.

JUSTIFICATION/BENEFITS/ISSUES

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

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

Name:

Description:

Type:

 [6-18-13 Fire Mountain Wine LL Application.pdf](#)

Fire Mountain LL Application

Cover Memo

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

APPLICATION FOR LIQUOR LICENSE
TYPE OR PRINT WITH BLACK INK

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

SECTION 1 This application is for a:

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

SECTION 2 Type of ownership:

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

SECTION 3 Type of license and fees LICENSE #(s): 13133036

1. Type of License(s): Domestic Farm Winery License
2. Total fees attached: \$ Department Use Only

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

SECTION 4 Applicant

1. Owner/Agent's Name: Mr. Fullmer Jamie Lynn
2. Corp./Partnership/L.L.C.: Fire Mountain Wines LLC
3. Business Name: Fire Mountain
4. Principal Street Location: 1010 N Main Street Cottonwood Yavapai 86326
5. Business Phone: 928-649-9135 Daytime Phone: 928-300-2917 Email: jfullmer@firemountainwines.com
6. Is the business located within the incorporated limits of the above city or town? YES NO
7. Mailing Address: P.O. Box 4120 Cottonwood Arizona 86326
8. Price paid for license only bar, beer and wine, or liquor store: Type NA \$ Type \$

DEPARTMENT USE ONLY

Fees: 100.00 Application Interim Permit Site Inspection Finger Prints \$ 100.00
TOTAL OF ALL FEES

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

Accepted by: [Signature] Date: 5/8/13 Lic. # 13133036

SECTION 5 Interim Permit:

*13 MAY 8 Lic. Lic. PM 4:32

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

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

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

State of _____ County of _____

X _____
 (Signature)

The foregoing instrument was acknowledged before me this

My commission expires on: _____

_____ day of _____, _____
 Day Month Year

 (Signature of NOTARY PUBLIC)

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City	State	Zip

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

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

) Y R A S S E C E N F I T

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

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

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

CORPORATION **Complete questions 1, 2, 3, 5, 6, 7, and 8.**

L.L.C. **Complete 1, 2, 4, 5, 6, 7, and 8.**

1. Name of Corporation/L.L.C.: Fire Mountain Wines LLC
(Exactly as it appears on Articles of Incorporation or Articles of Organization)

2. Date Incorporated/Organized: 04/20/2011 State where Incorporated/Organized: Arizona

3. AZ Corporation Commission File No.: _____ Date authorized to do business in AZ: _____

4. AZ L.L.C. File No: L1675821-6 Date authorized to do business in AZ: 04/26/2011

5. Is Corp./L.L.C. Non-profit? YES NO

6. List all directors, officers and members in Corporation/L.L.C.:

Last	First	Middle	Title	Mailing Address	City State Zip
Fullmer	Jamie	Lynn	Managing Member	4657 E Broken Saddle Drive, Cottonwood, AZ, 86326	
Mooers JR	John	Warren	Member	223 Grant Street #A, Newport Beach, CA, 92663	

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

Last	First	Middle	% Owned	Mailing Address	City State Zip
Fullmer	Jamie	Lynn	51%	4657 E Broken Saddle Drive, Cottonwood, AZ, 86326	
Mooers JR	John	Warren	49%	223 Grant Street #A, Newport Beach, CA, 92663	

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

1. Name of Club: _____ Date Chartered: _____
(Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)

2. Is club non-profit? YES NO

3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

13 MAY 8 Lique. Lic. PM 4 02

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

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

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

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

SECTION 11 Person to Person Transfer:

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

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

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

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

(Signature of CURRENT LICENSEE)

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

Day Month Year

My commission expires on: _____

(Signature of NOTARY PUBLIC)

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)
 APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

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

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

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

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

1. Distance to nearest school: 2640 ft. Name of school Cottonwood Elementary
 Address 301 N Willard Street, Cottonwood, AZ, 86326
 City, State, Zip

2. Distance to nearest church: 3168 ft. Name of church Cottonwood Seventh Day Adventist
 Address 51 West Mingus Avenue, Cottonwood, AZ 86326
 City, State, Zip

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

4. If the premises is leased give lessors: Name Pender Enterprises LLC
 Address P.O. Box 1245, Cottonwood, AZ 86326
 City, State, Zip

4a. Monthly rental/lease rate \$ 1550.00 What is the remaining length of the lease 10 yrs. 0 mos.

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

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

Last	First	Middle	Amount Owed	Mailing Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Administration, Sales, Distribution, Tasting and Storage

SECTION 13 - continued

13 MAY 8 Lior. Lic. PM 4:32

- 7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?
 YES NO If yes, attach explanation.
- 8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? YES NO
- 9. Is the premises currently licensed with a liquor license? YES NO If yes, give license number and licensee's name:

License # _____ (exactly as it appears on license) Name _____

SECTION 14 Restaurant or hotel/motel license applicants:

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

_____ and license #: _____
Last First Middle

- 2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.
- 3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.
- 4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this hotel/motel restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

applicant's signature

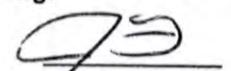
As stated in A.R.S. § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception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

applicants initials

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

- 1. Check ALL boxes that apply to your business:
 Entrances/Exits Liquor storage areas Patio: Contiguous
 Service windows Drive-in windows Non Contiguous
- 2. Is your licensed premises currently closed due to construction, renovation, or redesign? YES NO
 If yes, what is your estimated opening date? _____
month/day/year
- 3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.
- 4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spiritous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).
- 5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

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


applicants initials

SECTION 15 Diagram of Premises

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

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



SECTION 16 Signature Block

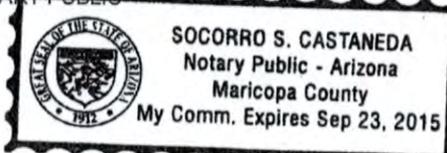
I, Jamie Lynn Fullmer, hereby declare that I am the OWNER/AGENT filing this application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X [Signature]
(signature of applicant listed in Section 4, Question 1)

State of ARIZONA County of MARICOPA

The foregoing instrument was acknowledged before me this 6th of MAY / 2013
Day Month Year
Socorro S. Castaneda
signature of NOTARY PUBLIC

My commission expires on: 09 23 2015
Day Month Year



Exit

13 MAY 8 11:41 AM '92

Wine Storage

1200' [100.00']

142' [11.83']

144' [12.00']

Wine Storage

136' [11.33']

Wine Storage

140' [11.67']

432' [36.00']

176' [14.67']

2583 Sq Ft

Tie to existing power in stairway closet

Existing Stairs

Construct 36" Door @ 3rd Stair

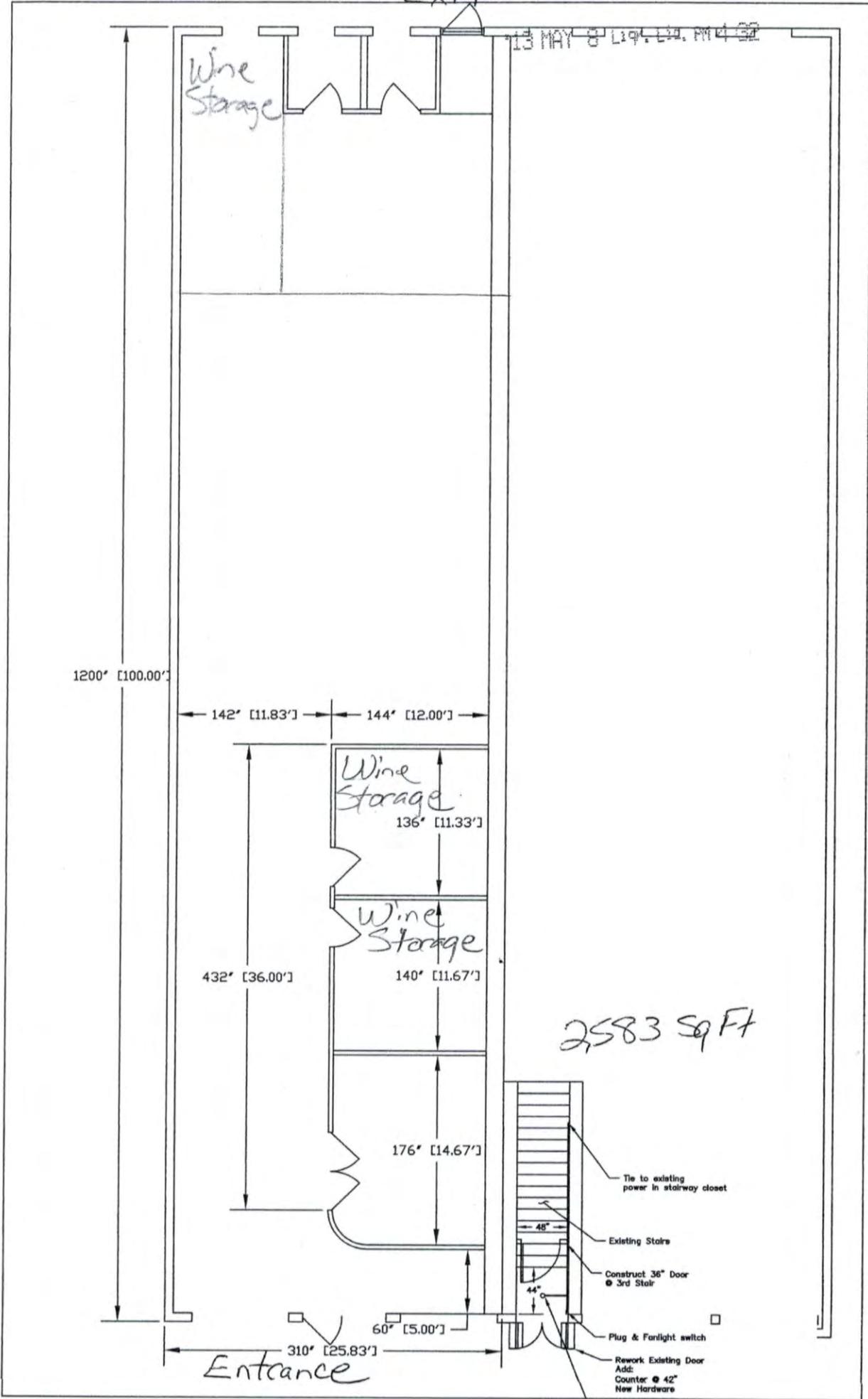
Plug & Fonlight switch

Rework Existing Door Add Counter @ 42" New Hardware

60' [5.00']

310' [25.83']

Entrance



**City of Cottonwood, Arizona
City Council Agenda Communication**



 Print

Meeting Date:	June 18, 2013
Subject:	Approving an Intergovernmental Agreement with Mingus Union High School for Use of the Cottonwood Aquatics Center
Department:	Community Services
From:	Richard Faust, Community Services General Manager

REQUESTED ACTION

Approval of an Intergovernmental Agreement with the Mingus Union High School - School District for full use of the Cottonwood Aquatics Center facility from August to November 2013.

SUGGESTED MOTION

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

“I move to approve the Intergovernmental Agreement with Mingus Union High School – School District for use of the Cottonwood Aquatics Center from August through November, 2013.”

BACKGROUND

Over the past twenty-five years, the City has provided Mingus Union High School use of facilities at the Cottonwood Aquatics Center without cost. Costs have continued to escalate over the past ten (10) years with higher chemical costs, utilities (electricity, natural gas and water) along with increases of transportation costs of chemicals. Costs have continued to rise over the past 24 months in that when staff first approached cost share options in 2010 and 2011, financing the summer/fall pool operations ran approximately \$17,000 to \$18,000. By 2012, costs for total High School Swim season operations totaled approximately \$28,500 from the months of mid-August through the first part of November. The City has continued to work with the School District in splitting costs for operations whereby the current IGA under Section 5. School District Payment, has a requirement for increasing the High School allocation by no more than 10% over its payment obligation in the preceding year.

5. School District Payment. Within 30 days of the date this Agreement is approved by both parties, the District shall pay the City the sum of nine thousand, three hundred and fifty dollars (\$9,350.00) as the District's proportional (50% cost recovery) share of the cost of operating the pool in 2013. In subsequent years, the City shall notify the District of its proportional share of

the cost of operating the pool in that year (based on the best available information, which shall be provided to the District on request) by or before July 1 of that year, and the District shall pay that sum to the City within 30 days of commencing to use the pool in that year, provided, however, that the District's payment obligation for any year of this Agreement shall not be increased by more than 10 percent over its payment obligation in the preceding year.

As discussed by the City Council at the June 4, 2013 regular meeting, Council identified their approval for costs to be increased by motion to \$9,350 which would incorporate the 10% increase from the previous year of \$8,500. Council also stated that they would like to see a unified approach by both agencies towards consensus in paying 50% of these costs in the future.

JUSTIFICATION/BENEFITS/ISSUES

Cottonwood has contributed approximately \$110,000 to \$130,000 to the Mingus Union High School swim team activities over the past ten (10) years involving total operational costs of the Aquatics Center facility from August to November of each year. The City is desirous of cost sharing pertaining to such activities whereby the High School has a need to utilize City facilities such as the Cottonwood Aquatics Center. With the incredibly high cost of operation to run a 300,000 gallon commercial pool facility, Council at the June 4, 2013 meeting indicated their desire to see that a 50% cost recovery obligation should be borne by both parties with this type of youth programming as staff identified within the 1993 Parks & Recreation Code, policy for costs towards youth programs and services are to be recovered at 50% of the total costs of programming. In review of other municipalities throughout the State, it was found that some agencies charge for the operational services on a majority cost basis for use by school systems. It was also noted that some municipalities charge only for chemicals and utilities during times of School use. Others charge a per lap lane charge of up to \$12 to \$15/hour use.

COST/FUNDING SOURCE

Under the agreement, costs for use of the Cottonwood Aquatics Center facility would be unilaterally shared by both agencies towards promoting youth programming into the future. All costs pertaining to pool chemicals, electricity, gas, water, sewer, maintenance operations, and custodial operations costs will be shared equally between the two agencies. Also in accordance with the agreement, in subsequent years, the City shall notify the District of its proportional share of the cost of operating the pool in that year (based on the best available information which shall be provided to the District on request) by or before July 1 of that year, and the District shall pay that sum to the City in accordance with the agreement (not to exceed 10% from the previous year's sum total).

ATTACHMENTS:

Name:	Description:	Type:
2012 - Council Communications Document - IGA with Mingus Union High School for Exclusive Use of the Cottonwood Aquatics Center - 6-19-12.doc	Resolution #2646 – Council Agenda Item, dated June 19, 2012	Cover Memo
	IGA between City of Cottonwood	Cover

☐ [IGA for MUHS Use of Outdoor Pool \(2011\) - Revised 6-5-13.docx](#)

and Mingus Memo
Union High
School District

City of Cottonwood, Arizona
City Council Agenda Communication



Meeting Date: June 19, 2012

Subject: Resolution No. 2646 - Approving an Intergovernmental Agreement with Mingus Union High School for Management and Operation at the Cottonwood Aquatics Center

Department: Community Services (Parks & Recreation)

From: Richard Faust, Community Services General Manager

REQUESTED ACTION

Approval of an Intergovernmental Agreement with the Mingus Union High School - School District for full use of the Cottonwood Aquatics Center facility from August to November each year.

SUGGESTED MOTION:

“I move to approve Resolution Number 2646, approving an Intergovernmental Agreement with Mingus Union High School - School District for use of the Cottonwood Aquatics Center from August to November of each year.”

BACKGROUND

Over the past twenty-five years, the City has provided Mingus Union High School use of facilities at the Cottonwood Aquatics Center without cost. Costs have continued to escalate over the past ten (10) years with high chemical costs, utilities (electricity, natural gas and water) along with increases of transportation costs of chemicals. Currently costs are fluctuating between \$17,000 and \$22,000 from the months of mid-August through the first part of November when the High School utilizes the facilities almost exclusively for their High School Swim Team activities. The City has been trying to work with the School District for the past 18 months in entering into some type of

governmental agreement; however it has continued to be challenging. The agreement provides a direction for this process each year whereby previous year's costs are assessed and divided between both agencies. The School paid \$8,500 to the City last year (2011) for the use of City facilities, however has not approved the agreement document. Our hopes are that as we see costs increase in the future, there will be a unified approach by both agencies towards consensus in paying 50% of these costs. According to the 1993 Parks & Recreation Code, costs for youth programs and services are to be recovered at 50% of the total costs. It was felt that this would in turn promote positive relations between the City and the High School in the future.

JUSTIFICATION/BENEFIT/ISSUES

Cottonwood has contributed approximately \$100,000 to \$120,000 to the Mingus Union High School swim team activities over the past ten (10) years involving total operational costs of the Aquatics Center facility from August to November of each year. The City is desirous of cost sharing pertaining to such activities whereby the High School has a need to utilize City facilities such as the Cottonwood Aquatics Center. With the incredibly high cost of operation to run a 300,000 gallon commercial pool facility, staff has felt that a 50% cost recovery obligation should be borne by both parties with this type of youth programming. In review of other City/Town entities throughout the State of Arizona, it was found that some City's charge for the operational services from the School Districts on a majority cost basis. In other words, the School Districts are required to pay for the major costs of operation of the pool facilities during these times of semi-exclusive use. It was also noted that several City entities charge only for chemicals and/or utilities during times of School use. Others still charge a per lap lane charge of up to \$12 to \$15 per hour use. It was therefore felt that an equitable solution was a 50% cost share basis with the High School which would be more beneficial to both parties.

Over the past two years, the City has not had need to utilize any High School facility for events or programming, especially since the construction of the Cottonwood Recreation Center in 2010. Prior to that time, the City utilized the High School Gym for several hours a week for the Adult Volleyball program during a three month period of time along with Police Department programming and utilization of School facilities. Even during these time frames, there was a disproportionate cost out for facility costs involving the massive pool facilities on the City side of the equation.

COST/FUNDING SOURCE

Under the agreement, costs for use of the Cottonwood Aquatics Center facility would be unilaterally shared by both agencies towards promoting youth programming into the future. All costs pertaining to pool chemicals, electricity, gas, water, sewer, maintenance operations, and custodial operations costs will be shared equally between the two agencies. Also in accordance with the agreement, in subsequent years, the City shall notify the District of its proportional share of the cost of operating the pool in that

year (based on the best available information which shall be provided to the District on request) by or before July 1 of that year, and the District shall pay that sum to the City in accordance with the agreement (not to exceed 10% from the previous year's sum total).

REVIEWED BY

City Manager: _____

City Attorney: _____

ATTACHMENTS

Resolution #2646
City IGA with Mingus Union High School

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF COTTONWOOD AND
MINGUS UNION HIGH SCHOOL
(Cottonwood Outdoor Aquatics Center)

This Intergovernmental Agreement (“Agreement”) is made and entered into this ___th day of _____, 2013, between CITY OF COTTONWOOD, an Arizona municipal corporation (“City”), and MINGUS UNION HIGH SCHOOL DISTRICT of YAVAPAI COUNTY, ARIZONA, a political subdivision of the State of Arizona (“School District”), hereinafter collectively referred to as the “parties”.

RECITALS:

- A. Pursuant to A.R.S. § 11-951 *et seq.*, City and School District may contract for services or jointly exercise any powers common to the contracting parties and may enter into intergovernmental agreements with one another for joint or cooperative action.
- B. City is authorized by A.R.S. §§ 9-240 and 9-276, to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of City.
- C. School District is authorized by A.R.S. § 15-364 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of School District.
- D. City upgraded and expanded its outdoor aquatics facility (“Aquatics Facility”) in July, 2010, and desires to make that facility available to School District for its use from a varying, agreed-upon date in August of each year this Agreement is in effect through a varying, agreed-upon date in November of each such year, under the terms and conditions set forth herein, which terms and conditions shall include the School District’s payment of a proportional share of the costs of utilities (APS, UNS Gas, Water and Sewer Utilities), chemicals, and labor (*i.e.*, lifeguards, pool maintenance, and custodial service) required and used to operate the facility during the months of use for each year that this Agreement is in effect.

NOW, THEREFORE, in consideration of the above recitals and mutual promises set forth below, City and School District agree as follows:

- 1. City Grant of License to Use Aquatics Facility. City hereby grants to School District a limited license subject to School District control pursuant to this Agreement to use the Aquatics Facility to provide physical education classes, lap swim programs, and extracurricular athletic activities at the Aquatics Facility for the benefit of students at Mingus Union High School, and to use the parking area of the Aquatics Facility for benefit of students and members of the public attending Mingus Union High School athletic events.
 - 1.1. The license granted to School District is subject to the terms and conditions stated in this Agreement.
 - 1.2. The license granted shall commence upon an agreed-upon date in August and last through November 15 of each year.

2. Scheduling and Use of Aquatics Facility by School District. On or before August 1 of each year that this Agreement is in effect, the parties shall develop a schedule for the School District's use of the Aquatics Facility for the upcoming season, including classes and other educational programs; practices; meets/tournaments; and other events and activities for which the School District anticipates a need to use the Aquatics Facility, including any use of the Aquatics Facility by third-parties associated with School District. All proposed uses shall be subject to City review and approval.
3. Aquatics Facility Operations & Maintenance. City shall provide all management of facilities for use of the Aquatics Facility involving pool mechanical operations, cleaning and overall maintenance and upkeep to keep facilities attractive and safe for all School District users. This will include all pool vacuuming, chemical feeding, monitoring of chemical feed systems, and management of pool pumps, motors and apparatus. City will make available all bath-house changing rooms/restroom/shower facilities for use and year-round deck space for a 12' x 16' storage shed area.
4. School District Operation/Ownership of Scoreboard and Electronic Touchpad Systems. City will authorize the School District's construction and installation of scoreboard/timing and underground electronic control systems at the Aquatics Facility. City will not be responsible for loss, damage or vandalism of the systems nor will City be responsible for the upgrades, maintenance, or repairs to such systems on City property at any time, unless damage is incurred by the negligence of City staff, or damages occur during the course of normal operating hours during a City program/event. (See Section 10).
5. School District Payment. Within 30 days of the date this Agreement is approved by both parties, the District shall pay the City the sum of nine thousand, three hundred and fifty dollars (\$9,350.00) as the District's proportional (50% cost recovery) share of the cost of operating the pool in 2013. In subsequent years, the City shall notify the District of its proportional share of the cost of operating the pool in that year (based on the best available information, which shall be provided to the District on request) by or before July 1 of that year, and the District shall pay that sum to the City within 30 days of commencing to use the pool in that year, provided, however, that the District's payment obligation for any year of this Agreement shall not be increased by more than 10 percent over its payment obligation in the preceding year.
6. Scope of School District Use:
 - 6.1. School District shall have use of the Aquatics Facility for all athletic competitions, practice and educational activities benefiting students at Mingus Union High School from 3:00 p.m. to 6:00 p.m. Monday through Friday, 7:00 a.m. to 10:00 a.m. on Saturdays, or as dictated by events or scheduling activities identified to City Recreation Center staff.
 - 6.2. School District shall be able to use the Aquatics Facility for school-related activities or other activities as authorized by City, whereby School District shall supervise all activities as scheduled.
 - 6.3. School District shall have the right to use any available parking spaces in the parking area for the benefit of students and members of the public attending any event, activity or program as scheduled.
7. City Responsibilities.

7.1. City shall have general responsibility for operation and maintenance of the Aquatics Facility. Without limiting the generality of the foregoing, City shall:

- a. Provide for American Red Cross certified lifeguards necessary for supervising safe use of the pool and the facility where necessary when School District does not have personnel available with these credentials. City shall charge School District for such staff and labor at normal City pay rates for personnel, not to exceed \$15.00 per hour per guard or supervisor.
- b. Reserve use of facilities, as necessary, for use by School District.
- c. Provide all necessary equipment for the operation of the Aquatics Facility safely and efficiently and ensure that City staff operate said the mechanical systems and pumps for proper facility operations.
- d. Provide proper supervision to ensure that the Aquatics Facility, including without limitation, diving structures, lane lines, and pool equipment, are properly used and that pool users follow established rules and regulations of the City's Aquatics Facility Manual in regards to safe use of the pool and outlying facilities.
- e. Provide all custodial maintenance operations for bathhouse and restroom facilities at City cost during the School District's use of the Aquatics Facility from the agreed-upon date in August through November 15 of each year. Custodial services will be provided three times a week with a local company in order to keep the facilities clean and sanitized for School District use.
- f. Have the right to operate or contract to have operated a concession stand at the Aquatics Facility, and any profits, fees or charges in connection therewith being retained by City.
- g. Charge School District all costs associated with energy needs at the Aquatics Facility from the agreed-upon date in August through November 15 pertaining to Arizona Public Service electrical use, UNS Gas use, City water use, all chemical charges to run mechanical chemical feed systems for the sanitation of water at the facility per State requirements and specifications, and any other costs associated with the School District's use of the Aquatics Facility. City shall invoice School District monthly and will provide copies of all billing information for School District review and records.
- h. Not charge admission fees or charges to the public, however it will allow School District to do so, should School District authorize such fees for program activities.
- i. Contact School District Athletic Director (or designee) in the event of any power outage or other condition which would prompt the shut-down of the Aquatics Facility pending power restoration or repairs.

7.2. Except as stated in Section 8.1(a) below, City shall have responsibility for general maintenance and upkeep of the Facility, including without limitation, maintenance of the pool equipment, heaters, diving structure, supplies, water chemistry, vacuuming and cleaning.

7.3. A cleaning and vacuuming schedule shall be coordinated with School District pursuant to which City shall be allowed three (3) days each week, for a minimum of four (4) hours per

day, to maintain proper cleaning and maintenance of the Aquatics Facility.

7.4. At all times, City shall oversee routine maintenance, including but not limited to, backwashing, daily equipment checks and/or adjustments, equipment repairs and/or replacement.

7.5. At all times, City shall have responsibility for the condition of the equipment and water chemistry of the Aquatics Facility. Periodically, City shall evaluate pool conditions for safe swimming, and shall have the authority to close the pool at any time when it determines that pool conditions are unsafe, subject to any ruling or determination made by the Yavapai County Health Department and regulations as specified.

8. School District Responsibilities.

8.1. While the School District is exercising its license to use the Aquatics Facility, School District shall:

- a. Be responsible for safe pool use and for hosing off the pool deck, trash pick-up and supervision of students, swim teams, or other persons using the Aquatics Facility for education, athletic or competition purposes. School District shall also be responsible for maintaining its storage area in a clean and orderly manner.
- b. Provide supervision to ensure that the pool facility, including without limitation, diving structures, lane lines, and pool equipment, are properly used and that pool users follow established rules and regulations of the City's Aquatics Facility Manual in regard to safe use of pool facilities. School District personnel **MUST KEEP POOL GATES AND DOORS LOCKED AT ALL TIMES**. School District personnel should also take proper action with students who abuse pool rules, equipment and diving structures in order to ensure a safe aquatic environment. School District personnel should provide adequate training on use of equipment and use of facilities.
- c. Provide American Red Cross certified lifeguards necessary for supervising safe use of the pool and Aquatics Facility. School District personnel supervising any activity must hold current American Red Cross life-saving certification to avoid the assignment of City staff to supervise the activity. If assistance of City staff is needed for any School District sponsored activity or function, School District shall reimburse City for the time and labor of City staff needed for the activity.
- d. Be responsible for training system, kick boards and other equipment associated with, and used by, swim teams.
- e. Pay in a timely manner the invoices submitted to it by the City on a monthly basis, as more fully described in Section 7.1(g).

9. Coordination of Use.

9.1. School District shall cooperate with City to coordinate use and scheduling of the Aquatics Facility through Cottonwood Community Services Department, Aquatics Division, whose mailing address and phone number are, respectively: 827 North Main Street, Cottonwood, Arizona 86326; (928) 639-3200.

9.2. Pool heaters on site at the Aquatics Facility shall be used as necessary for the School District. School District may require the use of such heaters during its use of the pool facility. In such event, City shall start, monitor, operate and turn off the pool heaters, as required. The heaters shall be operated at a "set" temperature mutually agreed upon by the parties. School District personnel shall not operate pool heaters.

9.3. City shall notify School District when maintenance or repairs will require the water to be shut off in and around the pool areas during any time period that the School District has a right to or is otherwise scheduled to use the Aquatics Facility.

9.4. City and School District shall mutually establish rules, regulations and policies, where necessary, including so called "pool rules," pertaining to the safe use of the pool and the Aquatics Facility in a cooperative manner. All formal pool rules shall be in accordance with the City's Aquatics Facility Manual, whereby it shall be in the best interest of both parties to cooperate with each other in effectively operating and maintaining the Facility.

10. Reimbursements and Capital Repairs.

10.1. City shall reimburse School District for any repair or replacement of School District property, or the School District storage area or equipment damaged by City or damaged during the use of the Aquatics Facility by City or during City sponsored or approved activities. School District shall reimburse City for any repair or replacement of City property, equipment or fixtures damaged by School District or damaged during the School District's use of the Aquatics Facility or during use of the Aquatics Facility for any School District sponsored activity at the Aquatics Facility.

10.2. In the event that damage to the Aquatics Facility requiring repair or replacement does not arise from the negligence or willful misconduct of either party, and is of a type that under generally accepted accounting principles is to be capitalized or depreciated, the parties shall equally share the cost of such repair or replacement. The parties shall mutually determine when the cost of such repair or replacement will be incurred.

11. Insurance.

11.1. Each of the parties shall secure and maintain during the life of this agreement: statutory worker's compensation insurance with employer's liability policy limits in the amount of \$1,000,000 for each incident for bodily injury, \$1,000,000 for bodily injury by disease, and \$1,000,000 for each employee for bodily injury by disease; commercial general liability, including contractual liability for assumption of the tort liability under this agreement, and personal injury liability, with limits of not less than \$10,000,000 per occurrence; and commercial automobile liability insurance for any owned, hired or non-owned autos, with a limit of not less than \$1,000,000 each accident. Each party shall retain the option of discharging this obligation by means of funded self-insurance, or by membership and participation in a statutorily authorized public-entity insurance pool. Should coverage be provided on a claims-made basis, the reporting period for claims shall be written so that it can be extended for not less than two (2) years.

11.2. City shall secure and maintain property insurance coverage protecting the Aquatics Facility, including the structural portion of the School District's storage area, and any City personal property at the Aquatics Facility against all risk of physical damage and loss for its full replacement cost. School District shall obtain similar coverage for the personal property

it maintains in the Aquatics Facility. School District and City hereby mutually waive their respective rights of recovery against each other for any loss insured by property insurance coverage existing for the benefit of the respective parties with the exception that City shall be entitled to any insurance proceeds received for damage loss to the swimming pool structure if the funds are not used to repair or rebuild the structure. City and School District shall provide at least thirty (30) days' notice of cancellation of material change in coverage. Each party shall list the other party as an additional insured on all applicable insurance policies. The parties agree to review annually the limits and types of insurance required herein and may, by mutual agreement, amend the requirements of Section 11, as they deem necessary.

11.3. City's responsibility, whether by insurance or self-insurance, shall be primary or designated as primary in respect to the acts and omissions of its employees and its operation of the Aquatics Facility. School District's responsibility, whether by insurance or self-insurance, shall be primary or designated as primary in respect to the acts and omissions of its employees and its operation or use of the Aquatics Facility.

12. Hold Harmless and Indemnification.

12.1. To extent permitted by law, City shall defend, indemnify and hold harmless School District, its officers, employees and agents, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, for damages to property or injuries to or death of any person or persons, including employees or agents of School District, and including, but not by way of limitation, worker's compensation claims, resulting from or arising out of the negligent or wrongful acts, errors or omissions of City, its officers, employees, agents, consultants, contractors or subcontractors. This paragraph 12.1 shall survive the termination of the Agreement.

12.2. To extent permitted by law, School District shall defend, indemnify and hold harmless City, its officers, employees and agents, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, for damages to property or injuries to or death of any person or persons, including employees or agents of City, and including, but not by way of limitation, worker's compensation claims, resulting from or arising out of the negligent or wrongful acts, errors or omissions of School District, its officers, employees, agents, students, guests, consultants, contractors or subcontractors. This paragraph 12.2 shall survive the termination of the Agreement.

12.3. In the event of any third party legal action against both School District and City, the parties agree to discuss and analyze the benefits of a common, mutual defense.

13. Expiration or Termination.

13.1. Unless renewed by mutual agreement of the parties, this Agreement and the license granted hereunder to School District to use the Aquatics Facility shall automatically terminate without further action required by either party on the yearly anniversary of the Commencement Date. However, if requested by City, School District shall execute and record an instrument evidencing the termination of the license granted under this Agreement.

13.2. In the event that the City fails to observe or perform any of the covenants, conditions and terms of this Agreement which are required to be observed or performed by City, where such failure shall continue for a period of thirty (30) days after written notice thereof from School District, then School District may terminate this Agreement within a 30-day period by

any lawful means or proceed with whatever steps School District may deem necessary in order to enforce the rights and remedies available to School District under this Agreement, at law or equity, including, without limitation, the right of specific performance of this Agreement or the right to recover its damages from City.

13.3. In the event that School District fails to observe or perform any of the covenants, conditions and terms of this Agreement which are required to be observed or performed by School District, where such failure shall continue for a period of thirty (30) days after written notice thereof from City, then City may terminate this Agreement within a 30 day period by any lawful means or proceed with whatever steps City may deem necessary in order to enforce the rights and remedies available to City under this Agreement, at law or equity, including, without limitation, the right of specific performance of this Agreement of the right to recover its damages from School District.

14. Assignment. This Agreement and the rights accorded to and the obligations required of the parties hereunder shall not be assigned, delegated, granted, conveyed or otherwise transferred to any third party without the express, written consent of the other party, and such assignment, delegation, grant, conveyance, or other transfer made by a party without the consent of the other party shall be deemed void and shall constitute good cause for the termination of this Agreement and the rights granted hereunder.
15. Nature of License to Use. The revocable license granted herein to School District is expressly intended *not* to run with the land or be appurtenant to the land upon which the Aquatics Facility is situated or Mingus Union High School is located, but is expressly intended to be personal for the benefit of the School District for the limited purposes stated herein.
16. No Third-party Beneficiaries. Failure to comply with the terms of this Agreement shall not provide the basis of any third party action against either of the parties, and there are no third party beneficiaries of this Agreement.
17. Lack of School District Funding. If funding is not available to School District pursuant to A.R.S. § 15-910 to discharge its financial obligations pursuant to this Agreement, the parties shall attempt to renegotiate the terms of this Agreement related to payment of utilities so as to establish or identify a source of funding for the obligations under Sections 6, 7.1(g), and 8.1(e). In the event the School District cannot or does not meet its financial obligations to the City under this Agreement for the reasons stated herein, City shall have the right to immediately discontinue heating of the swimming pool and all other operations on the School District's behalf at the Aquatics Facility, and/or to terminate this Agreement and School District's license hereunder.
18. Execution and Recordation. This Agreement shall become effective as of August 1, 2011. The terms and conditions of this Agreement shall remain in full force and effect unless modified in writing by the parties.
19. Notice. Whenever a notice or other communication is required or permitted to be given, it shall be given in writing and delivered personally, or delivered by the postal service, certified mail, return receipt requested, to the other party at the address indicated below, or at such other address as may be designated by either party:

If to City:	City of Cottonwood 827 North Main Street Cottonwood, Arizona 86326
-------------	--

With a Copy to: City of Cottonwood – City Attorney’s Office
827 North Main Street
Cottonwood, Arizona 86326

If to School District: Mingus Union High School
Superintendent
1801 East Fir Street
Cottonwood, Arizona 86326

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

21. Conflict of Interest. This Agreement is subject to termination pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing their names on the day and date first written above.

CITY OF COTTONWOOD

MINGUS UNION HIGH SCHOOL DISTRICT

By: _____
Mayor

By: _____
Board President

APPROVAL OF SCHOOL DISTRICT AND ATTORNEYS

The Undersigned hereby state that each has reviewed the proposed Intergovernmental Agreement between the City of Cottonwood and the Mingus Union High School District, and do declare the Agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the law of the State of Arizona.

By: _____
Cottonwood City Attorney

By: _____
Attorney for Mingus Union High School District

Date

Date

**City of Cottonwood, Arizona
City Council Agenda Communication**



 Print

Meeting Date:	June 18, 2013
Subject:	Resolution Number 2701--Approving an Intergovernmental Agreement with Yavapai County for Unified Emergency Management.
Department:	City Clerk
From:	Marianne Jimenez, City Clerk

REQUESTED ACTION

Consideration of Resolution Number 2701, which approves the annual Intergovernmental Agreement for Unified Emergency Management with Yavapai County.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is: “I move to approve Resolution Number 2701 approving the Intergovernmental Agreement with Yavapai County for Unified Emergency Management.”

BACKGROUND

The City has entered into an annual Intergovernmental Agreement with Yavapai County for Emergency Management since 1986. The Agreement establishes a unified emergency management organization for the purpose of preparing plans for the preservation and safety of life and property and making provision for the execution of these plans in the event of enemy attack upon the United States and/or in the event of any peacetime natural, technological, or man-made emergency or disaster within the County or City.

The City’s contribution to Yavapai County for management of the unified emergency management organization for the 2013-14 fiscal year is \$4,843.95, which is the same amount the City paid last fiscal year.

JUSTIFICATION/BENEFITS/ISSUES

Yavapai County has the capability to manage a unified emergency management organization in compliance with National Incident Management System and is able to include emergency operations of the City in the county Disaster Response Plan covering emergencies and disasters.

COST/FUNDING SOURCE

Funding to cover the contribution to the County for this service is budgeted out of the general

fund.

ATTACHMENTS:

Name:	Description:	Type:
📄 RES2701.doc	Resolution Number 2701	Cover Memo
📄 6-18-13 YC Emergency Services IGA.pdf	IGA	Backup Material

RESOLUTION NUMBER 2701

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH YAVAPAI COUNTY EMERGENCY SERVICES DEPARTMENT FOR THE CONTINUATION OF UNIFIED EMERGENCY SERVICES.

WHEREAS, Yavapai County and the City of Cottonwood have the authority to enter into this agreement pursuant to Arizona Revised Statutes, § 11-952, § 26-307, and § 26-308; and

WHEREAS, Yavapai County and the City of Cottonwood, recognize the need to cooperate in providing emergency services to our residents; and

WHEREAS, the City and County recognize the need for the establishment of a unified emergency services organization for the purpose of preparing plans for the preservation and safety of life and property and making provisions for the execution of these plans in the event of an enemy attack upon the United States of America and/or in the event of any nuclear or non-nuclear disaster within the County or City.

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

THAT, the Intergovernmental Agreement with Yavapai County for providing emergency services for the 2013-2014 fiscal year to City and County residents is hereby approved.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 18TH DAY OF JUNE 2013.

Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

Steve Horton, Esq., City Attorney

Marianne Jiménez, City Clerk

**INTERGOVERNMENTAL AGREEMENT FOR THE ESTABLISHMENT OF
UNIFIED EMERGENCY MANAGEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____ 2013, by and between YAVAPAI COUNTY, a political subdivision of the State of Arizona, hereinafter called "County" and the CITY OF COTTONWOOD, a municipal corporation of the State of Arizona, hereinafter called "City" as follows:

WHEREAS the County has established an Office of Emergency Management and;

WHEREAS the County has the capability to manage a unified emergency management organization in compliance with National Incident Management System (NIMS) guidelines and;

WHEREAS the parties are empowered to enter into this agreement pursuant to ARS " 11-952, 26-307, and 26-308.

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

1. The County and the City shall establish a unified emergency management organization for the purpose of preparing plans for the preservation and safety of life and property and making provisions for the execution of these plans in the event of enemy attack upon the United States of America and/or in the event of any peacetime natural, technological, or manmade emergency or disaster within the County or City. See Attachment A for list of definitions. See Attachment B for a comprehensive list of services provided.
2. The unified emergency management organization is hereby designated as the Yavapai County Joint Office of Emergency Management.
3. The County will perform the following services with the City:
 - a. Include emergency operations of the City in the County Disaster Response Plan (DRP) covering emergencies and disasters;
 - b. Aid and advise the City with regards to training of employees that may be responsible for emergency management/homeland security duties;
 - c. Review the City Disaster Response Plan for completeness, compatibility and compliance with the National Incident Management System (NIMS), County Disaster Response Plan and State Emergency Operations Plans and provide improvement and updates as necessary.

- d. Provide assistance to the City to develop/update emergency management plans, procedures, and programs in each of the following areas, such list not to be exclusive: Continuity of Government, Direction and Control, Law and Order, Fire Services, Emergency Evacuation, Shelter, Public Services, Recovery, Mitigation, Persons with Special Needs, Radiological Safety, Warning and Public Information, Transportation, Communications, Mass Care and Mass Casualty. The above plans and programs will be coordinated with and approved by the various City departments effected by said plans and programs;
 - e. Assist the City with developing and/or updating a current inventory of all equipment and supplies available in the City for use in the event of any disaster;
 - f. Provide a current inventory of all equipment and supplies available in the County to assist the City in the event of any disaster;
 - g. Provide technical assistance in obtaining Federal or State funds which may become available to the City for emergency services purposes, and in the acquisition of surplus or other property for emergency services purposes by the City;
 - h. Complete and submit all report requirements emanating from State or Federal Government Agencies;
 - i. In the event of disaster confined to the City, provide emergency assistance as requested, within the limits of the ability of the County to so provide, and coordinate assistance furnished by other agencies in accordance with mutual aid agreements, State and/or Federal laws.
4. That the City shall:
- a. By this agreement become a member of the Yavapai County Joint Office of Emergency Management;
 - b. Appoint an Emergency Management Coordinator who shall be responsible for the organization, administration, and operations of local emergency management, subject to the direction and control of the chief executive officer or governing body. Upon request by City officials, the county will provide assistance with emergency management under normal and/or emergency or disaster conditions.
 - c. Accept joint responsibility to maintain and keep current the Yavapai County Disaster Response Plan and Guides as it relates to the City;
 - d. Accept responsibility to maintain and keep current the City Disaster Response Plan

and Guides;

- e. In relation to emergency management issues, delegate to the County such lawful authority and responsibility as shall be deemed necessary by the City;
- f. Budget and contribute to the County for the fiscal year commencing July 1, 2013 and ending June 30, 2014, the sum of \$4,843.95.

5. It is hereby mutually agreed:

- a. The Yavapai County Office of Emergency Management will include representation of all signatory parties;
- b. The Yavapai County Office of Emergency Management shall be comprised of a County Director appointed by the Yavapai County Board of Supervisors, and other personnel as deemed necessary by the County Board of Supervisors;
- c. The County Emergency Management Director who is and shall be appointed by the Yavapai County Board of Supervisor's, shall act as the Director of the Yavapai County Joint Office of Emergency Management;
- d. The term of this agreement is for one year commencing July 1, 2013, and may be extended from year to year by mutual agreement of the parties prior to June 30 of the term, stating the compensation to be paid for service during such extended term and other charges;
- e. Pursuant to ARS ' 38-511, the parties may cancel this agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on behalf of that party is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the foregoing event, that party may further elect to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting, or creating this agreement on behalf of that party from any other party to the agreement arising as a result of this agreement.

YAVAPAI COUNTY

A political subdivision of the State of Arizona

By: _____ Date: _____

CHIP DAVIS
Chairman, Board of Supervisors

ATTEST:

_____ Date: _____

ANNA WAYMAN-TRUJILLO
County Clerk

Pursuant to ARS ' 11-952(D), the undersigned Deputy County Attorney has determined that this agreement is in proper form and within the powers and authority granted under the laws of the State of Arizona to Yavapai County.

_____ Date: _____

JACK FIELDS
Deputy County Attorney

CITY OF COTTONWOOD

A municipal corporation of the State of Arizona

By: _____ Date: _____

DIANE JOENS
Mayor

ATTEST:

_____ Date: _____

MARIANNE JIMENEZ
City Clerk

Pursuant to ARS ' 11-952 (D), the undersigned City Attorney has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Cottonwood.

_____ Date: _____

STEVEN HORTON
City Attorney

Attachment A

LIST OF DEFINITIONS

"EMERGENCY," as defined in ARS ' 26-301, means the existence of conditions of disaster or of extreme peril to the safety of persons or property within the territorial limits of the county, city, or town, which conditions are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of such political subdivision as determined by its governing body and which require the combined efforts of other political subdivisions.

"DISASTER," as defined in Section 102, Public Law 93-288, means any hurricane, tornado, storm, flood, high-water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to state and local governments under the Disaster Relief Act of 1974.

Attachment B

Yavapai County

EMERGENCY MANAGEMENT / HOMELAND SECURITY

Services provided by County Emergency Management/Homeland Security under the IGA for the establishment of unified Emergency Management:

SERVICES:

- 24/7 Real Time Hazard Alert/notifications/bulletins
- 24/7 Emergency alternative communications capability
- Emergency/Disaster Response & Recovery Notification, Operations, Coordination and Staff augmentation
- Disaster Response Plan, Continuity Plan development and maintenance
- Homeland Security Grant Participation
- Risk/Hazard Analysis
- Staff Training (EOC, Disaster Plan, Continuity Plans)
- Liaison to State and Federal Resources
- Public Education Program development and implementation assistance
- Hazard mitigation analyses and plan development
- Exercise Development/Training/Implementation/Evaluation
- Emergency Management, NIMS, Homeland Security Training
- EPA/LEPC Representation
- Special Studies/Projects
- Damage Assessments
- Provide brochures, booklets, pamphlets, checklists or other information in support of local Emergency Management issues or initiatives
- Other Emergency Management support as needed

RATE: \$.43 per person, per year based on the latest census.

**City of Cottonwood, Arizona
City Council Agenda Communication**



 Print

Meeting Date:	June 18, 2013
Subject:	Special Event Liquor License Applications for the Chamber of Commerce.
Department:	City Clerk
From:	Marianne Jimenez, City Clerk

REQUESTED ACTION

Consideration of recommendation of approval or denial of Special Event Liquor License applications submitted by Lana Tolleson, applicant for the Cottonwood Chamber of Commerce.

SUGGESTED MOTION

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

"I move to recommend approval of the Special Event Liquor License Application submitted by Lana Tolleson, applicant for the Cottonwood Chamber of Commerce, for Chamber mixers scheduled for September 19, 2013, and December 12, 2013."

BACKGROUND

Lana Tolleson has submitted three Special Event Liquor License Applications on behalf of the Cottonwood Chamber of Commerce for business mixers scheduled for the following dates and locations:

- September 19, 2013, 597 E. State Route 89A (Country Bank)
- December 12, 2013, 500 E. Cherry Street (Senior Center)

JUSTIFICATION/BENEFITS/ISSUES

All Special Event Liquor License applications that are submitted to the Arizona Department of Liquor Licenses & Control (ADLLC) for events 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:
 Chamber Special Event 09-19.pdf	September 19 Chamber Special Event	Backup Material
 Chamber Special Event 12-12.pdf	December 12 Chamber Special Event	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 5 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 Cottonwood Chamber of Commerce 100%
Percentage

Address 1010 S. Main Street, Cottonwood, AZ 86326

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)

0 # Police Fencing
4 # Security personnel Barriers

Staff personal trained and aware of state liquor laws and will enforce. Security at front door and serving area. Event is being held at a place of business.

TIPS Concessions Trained: ID# 2689196 and ID# 2689200

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

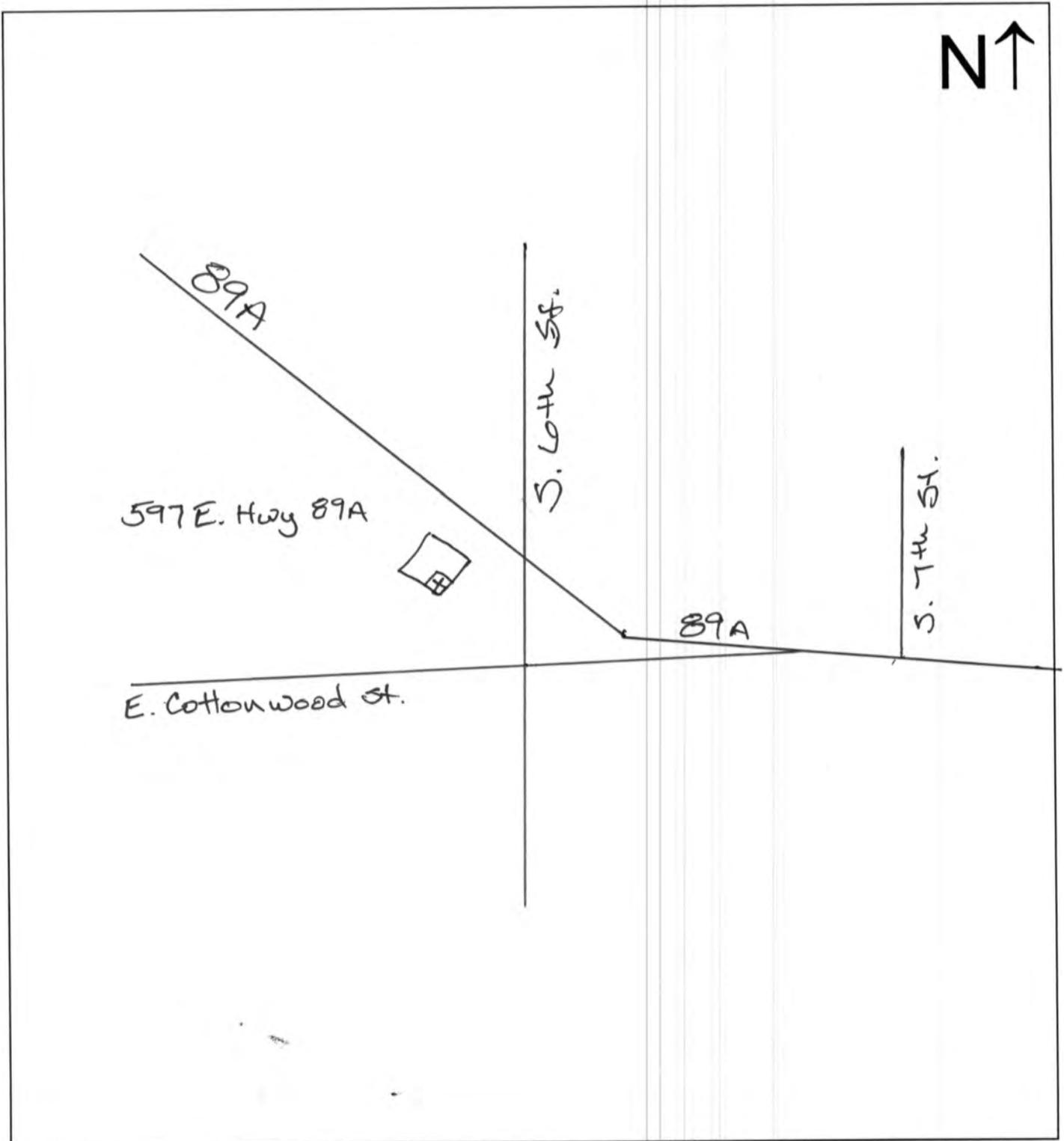
(ATTACH COPY OF AGREEMENT)

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.

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.



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

18. I, Lana Tolleson 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 *Lana Tolleson* President/CEO 6-7-13 (928) 634-7593
(Signature) (Title/Position) (Date) (Phone #)



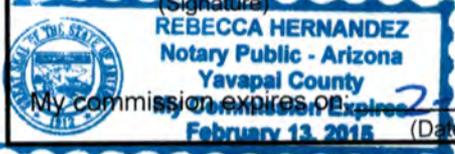
State of Yavapai County of Arizona
The foregoing instrument was acknowledged before me this 7th June 2013
Day Month Year

My Commission expires on: 2-13-2015 (Date) *Rebecca Hernandez* (Signature of NOTARY PUBLIC)

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

19. I, Lana Tolleson 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 *Lana Tolleson* State of Arizona County of Yavapai
(Signature) The foregoing instrument was acknowledged before me this



7th June 2013
Day Month Year
Rebecca Hernandez (Signature of NOTARY PUBLIC)

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)

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix, Arizona 85007-2934
(602) 542-5141

APPLICATION FOR SPECIAL EVENT LICENSE

Fee = \$25.00 per day for 1-10 day events only
A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. § 44-6852)

NOTE: THIS DOCUMENT MUST BE FULLY COMPLETED OR IT WILL BE RETURNED.
PLEASE ALLOW 10 BUSINESS DAYS FOR PROCESSING.

****Application must be approved by local government before submission to Department of Liquor Licenses and Control. (Section #20)**

DLLC USE ONLY
LICENSE #

1. Name of Organization: Cottonwood Chamber of Commerce
2. Non-Profit/I.R.S. Tax Exempt Number: 86-0209700
3. The organization is a: (check one box only)
- Charitable Fraternal (must have regular membership and in existence for over 5 years)
 Civic Religious Political Party, Ballot Measure, or Campaign Committee
4. What is the purpose of this event? on-site consumption off-site consumption (auction) both
- Business Networking - Chamber of Commerce Business Mixer

5. Location of the event: 500 E. Cherry Cottonwood YAVAPAI 86326

Address of physical location (Not P.O. Box) City County Zip

Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Question #1. (Signature required in section #18)

6. Applicant: Tolleson Lana B 10/30/1960

Last First Middle Date of Birth

7. Applicant's Mailing Address: 1010 S. Main Street Cottonwood AZ 86326

Street City State Zip

8. Phone Numbers: (928) 639-0020 (928) 634-7593 (928) 451-5600

Site Owner # Applicant's Business # Applicant's Home #

9. Date(s) & Hours of Event: (see A.R.S. 4-244(15) and (17) for legal hours of service)

	Date	Day of Week	Hours from A.M./P.M.	To A.M./P.M.
Day 1:	<u>December 12, 2013</u>	<u>Thursday</u>	<u>6:00 PM</u>	<u>8:00 PM</u>
Day 2:	_____	_____	_____	_____
Day 3:	_____	_____	_____	_____
Day 4:	_____	_____	_____	_____
Day 5:	_____	_____	_____	_____
Day 6:	_____	_____	_____	_____
Day 7:	_____	_____	_____	_____
Day 8:	_____	_____	_____	_____
Day 9:	_____	_____	_____	_____
Day 10:	_____	_____	_____	_____

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

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 6 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 Cottonwood Chamber of Commerce 100%
Percentage

Address 1010 S. Main Street, Cottonwood, AZ 86326

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)

0 # Police Fencing
4 # Security personnel Barriers

Staff personal trained and aware of state liquor laws and will enforce. Security at front door and serving area. Event is being held at a place of business.

TIPS Concessions Trained: ID# 2689196 and ID# 2689200

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

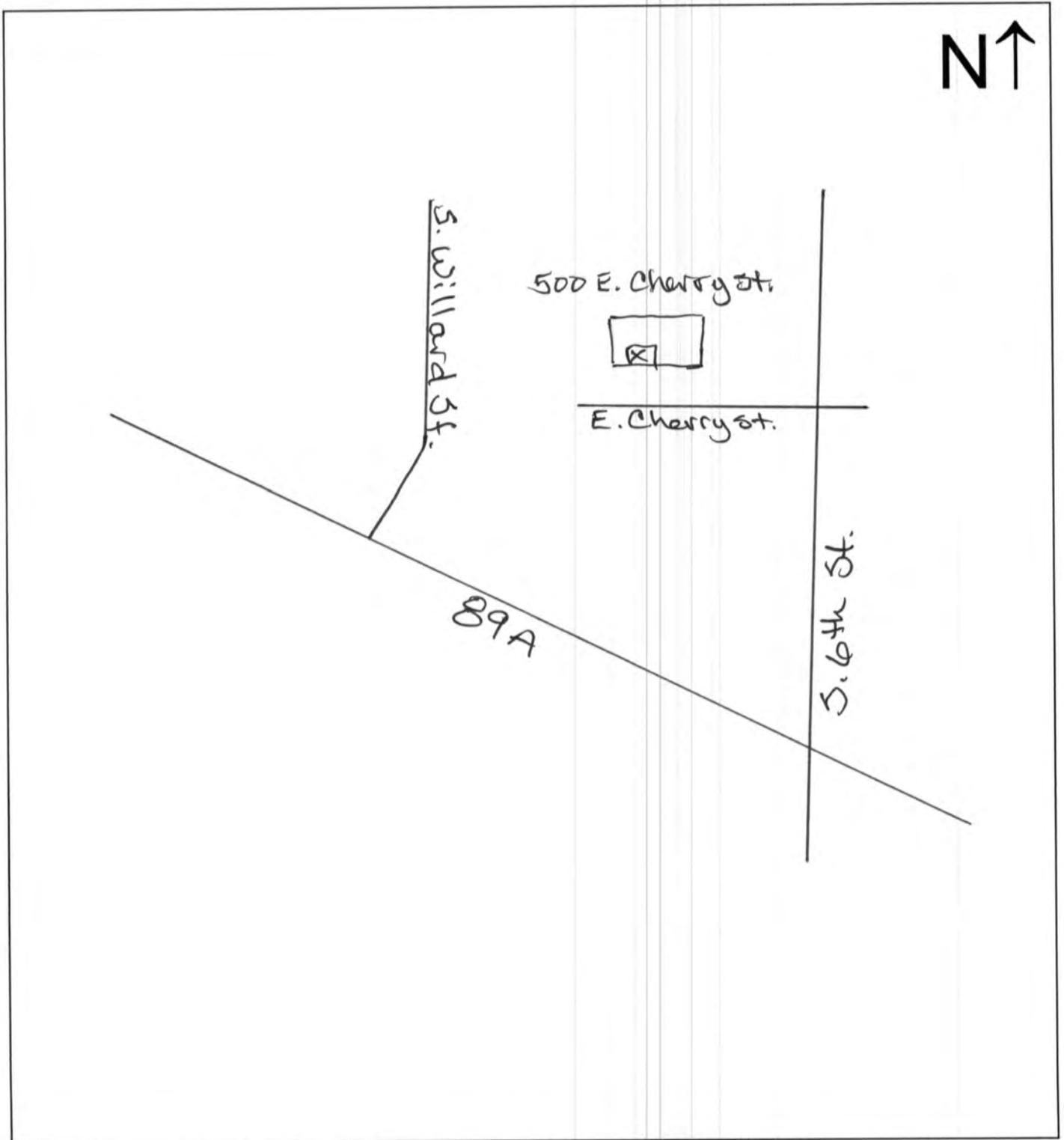
(ATTACH COPY OF AGREEMENT)

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.

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.



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

18. I, Lana Tolleson 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 *Lana Tolleson* (Signature) President/CEO (Title/Position) 6-7-13 (Date) (928) 634-7593 (Phone #)



State of Arizona County of Yavapai
The foregoing instrument was acknowledged before me this 7th Day June Month 2013 Year

My Commission expires on: 2-13-2015 (Date) *Rebecca Hernandez* (Signature of NOTARY PUBLIC)

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

19. I, Lana Tolleson 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 *Lana Tolleson* (Signature) State of Arizona County of Yavapai
The foregoing instrument was acknowledged before me this 7th Day June Month 2013 Year



My commission expires on: 2-13-2015 (Date) *Rebecca Hernandez* (Signature of NOTARY PUBLIC)

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, _____ (Government Official) _____ (Title) hereby recommend this special event application 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)

City of Cottonwood, Arizona City Council Agenda Communication



 Print

Meeting Date:	June 18, 2013
Subject:	Notice of Intent to Increase Water and Wastewater Rates
Department:	Administrative Services
From:	Jesus R. Rodriguez, CGFM, Administrative Services General Manager

REQUESTED ACTION

Staff is requesting that the City Council approve a Notice of Intent to Adjust Water and Wastewater Rates, Fees, and Charges for the City of Cottonwood Municipal Water & Wastewater Utility

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:
I move to provide a Notice of Intent to Adjust Water and Wastewater Rates, Fees, and Charges for the City of Cottonwood Municipal Water & Wastewater Utility.

BACKGROUND

At a work session on August 17, 2011 the City Council directed the City of Cottonwood Finance Department to begin work on a comprehensive water and wastewater rate study. Water and wastewater rates have not increased since October 2010 and October 2001, respectively. To begin the process, a Rate Study Committee was assembled as a way to get feedback on the correct approach to making the rate increases a reality.

This committee consisted of some council members, city representatives and city staff. We also requested some county representation. A kick off meeting was held on October 12, 2011 to introduce all the members to the rate setting objectives and tasks ahead.

This committee reviewed Cottonwood's Water & Wastewater infrastructure accomplishments as well as future needs and developed a Water & Wastewater Information Pamphlet with major accomplishments of both systems since 2004. This pamphlet reflected the \$29.7M and the \$6.1M that the Water and Wastewater systems have respectively invested in improvements and upgrades. The committee also discussed rate concepts to determine which of the many approaches was best suited to the City of Cottonwood. They even met to discuss the coverage calculations.

Nearly twenty five months later we finally made a presentation to the City Council with our findings and recommendations. There are reasons for the delays, such as the timing of elections, budgetary issues, Permanent Base Adjustment needing to be passed, and other issues. The presentation at a work session on June 11, 2013 was very comprehensive and provided the rationale for the rate adjustment needs. There was a consensus by the City Council to move forward with the Notice of Intent and bring it before the Council.

There are some requirements that will need to be met as prescribed by statute:

The Arizona statute governing water and wastewater rates is ARS 9-511.01 which states:

Water and wastewater business; rates; procedures

A. A municipality engaging in a domestic water or wastewater business shall not increase any water or wastewater rate or rate component, fee or service charge without complying with the following:

1. Prepare a written report or supply data supporting the increased rate or rate component, fee or service charge. A copy of the report shall be made available to the public by filing a copy in the office of the clerk of the municipality governing board at least thirty days prior to the public hearing described in paragraph 2 of this subsection.

2. Adopt a notice of intention by motion at a regular council meeting to increase water or wastewater rates or rate components, fee or service charge and set a date for a public hearing on the proposed increase which shall be held not less than thirty days after adoption of the notice of intention. A copy of the notice of intention showing the date, time and place of such hearing shall be published one time in a newspaper of general circulation within the boundaries of the municipality not less than twenty days prior to the public hearing date.

B. After holding the public hearing, the governing body may adopt, by ordinance or resolution, the proposed rate or rate component, fee or service charge increase or any lesser increase.

C. Notwithstanding section 19-142, subsection B, the increased rate or rate component, fee or service charge shall become effective thirty days after adoption of the ordinance or resolution

The timeline for adjusting water rates is as follows:

Adopt a notice of intent to adjust water and wastewater rates at today's regular Council meeting, June 18, 2013

Hold a public hearing on rate changes on August 6, 2013, followed by the first reading of an ordinance authorizing the rate adjustment. Hold a second reading of the ordinance authorizing the rate adjustment at the August 20, 2013, regular Council meeting.

Rate changes would become effective no sooner than October 1, 2013

JUSTIFICATION/BENEFITS/ISSUES

As explained at the recent work session, an adequate rate structure to support the operational and capital needs of the City's water and wastewater systems, and to comply with the bond covenants of the City's outstanding water system revenue bonds is a critical component of a viable, sustainable operation. Our bonding agreements also require a periodic, comprehensive rate analysis and adjustment to ensure that the system is sustainable and that the City maintains a 1.35X debt service coverage ratio.

COST/FUNDING SOURCE

ATTACHMENTS:

Name:	Description:	Type:
No Attachments Available		

City of Cottonwood, Arizona City Council Agenda Communication



 Print

Meeting Date:	June 18, 2013
Subject:	Emergency Communications Center - CMAR Preconstruction Services Proposal Approval
Department:	Development Services
From:	Scott Mangarpan, Development Services

REQUESTED ACTION

Consider approval of a CMAR Preconstruction Services proposal from D.L. Withers Construction for the Emergency Communications Center.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is: **I move to approve the proposal submitted by D.L. Withers Construction for pre-construction services for the Emergency Communications Center for a not to exceed amount of \$22,500.**

BACKGROUND

The City is currently designing a new Emergency Communications Center to support communications for the City of Cottonwood's police, fire and EMS services with the potential to add subscribing agencies in the future.

A Request for Qualifications was issued for CMAR services for the Emergency Communications Center and nine (9) construction firms responded with Statements of Qualifications. A selection committee made up of City staff from Development Services, Purchasing, the Police department, the Fire department, a local contractor and a local architect ranked the submittals based on qualifications. The top four ranked firms were selected to be interviewed. The same committee interviewed the four firms and the top ranked firm, D.L. Withers Construction was invited to submit a pre-construction services fee proposal for the Emergency Communications Center.

The attached fee proposal was negotiated between City staff and D.L. Withers Construction. The proposed services shall include the following; development of a Construction Management Plan and Project Schedules, Design Document Review/ Constructibility review, Alternate

System Evaluation, Cost Estimates, Sub-contractor Selection Plan and at the end of the design phase a Guaranteed Maximum Price and Construction Fee proposal. The initial contract for Pre-construction Services will be written as not-to-exceed the amounts listed, without prior approval from the City.

JUSTIFICATION/BENEFITS/ISSUES

Contracting with a CMAR for pre-construction services will provide design document and constructibility reviews, cost estimates and scheduling support during the design process. This will help the project team provide an on schedule, cost effective, quality facility for the City of Cottonwood.

COST/FUNDING SOURCE

Capital Funds

ATTACHMENTS:

Name:	Description:	Type:
Preconstruction Proposal Revised.pdf	CMAR Preconstruction Services Proposal	Cover Memo
City of Cottonwood Contract for CM@R Design Services. Final Draft.doc	Draft Contract for Preconstruction Services	Cover Memo



May 30, 2013

City of Cottonwood
1490 W. Mingus Ave.
Cottonwood, AZ 86326

Attention: Scott Mangarpan, Project Manager

Re: Cottonwood Emergency Communications Center
RFQ #2013-PW-08
Construction Manager @ Risk Services & Construction Fees

Dear Mr. Mangarpan:

As requested, we respectfully submit our fee schedule for Pre-Construction and Construction Services for the City of Cottonwood as follows:

Pre-Construction Services	\$20,000.00 – Not to Exceed
Blueprinting Allowance	\$ 2,500.00
Construction Fee	5%

We look forward to working with the City of Cottonwood on this project.

Sincerely,

John Norbut
Project Manager

JN/an



City of Cottonwood
Emergency Communications Center
Pre-Construction Scope of Services

Project Meetings:

DLW will attend Project Team Meetings which will include, but are not limited to Monthly Project Management Meetings, Project Workshops, Special Project Meetings, Contract Document Rolling Reviews and Partnering Sessions.

Construction Management Plan:

Prepare a Construction Management Plan that will include:

- A) Project Schedule with key milestone dates
- B) Investigation of site conditions
- C) Strategies for fast-tracking and/or phasing of construction
- D) Pre-qualifying subcontractors and suppliers for project construction
- E) Safety and training
- F) Permitting strategy
- G) Construction quality control plan
- H) Commissioning program
- I) Cost estimating
- J) Matrix of project team members' responsibilities and roles

Project Schedule:

The project schedule will use the critical path method (CPM) technique unless required otherwise. The project schedule shall be presented in graphical and tabular reports. If project phasing is requested, the project schedule will indicate milestone dates for each phase of construction.

Design Document Review/Constructability Review:

DL Withers will routinely conduct constructability and bidability reviews of drawings and specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents for those related to clarity and coordination of work of subcontractors and suppliers. DL

Withers will promptly notify the Project Team in writing of any discrepancies and deficiencies in the Project Documents.

Alternate System Evaluation:

DL Withers team will routinely identify and evaluate using Value Engineering and any alternate systems, approaches, design changes that have the potential to reduce project cost. The Project Team will decide which alternatives will be incorporated into the project. DL Withers will include the cost of alternatives into the cost estimate and any GMP proposals.

Cost Estimates:

DL Withers shall provide a baseline cost estimate within 14 days after receipt of documents for the various phases of design. Each estimate shall have a detailed breakdown per trade to assist the project team to make appropriate recommendations on methods and materials. If any estimate exceeds the City project budget, DL Withers shall make appropriate recommendations on materials or methods to the project team to bring the project back into project budget. At each team meeting, DL Withers shall have a revised budget for any design or material change that occurred.

Guaranteed Maximum Price (GPM):

DL Withers shall prepare a Guaranteed Maximum Price (GMP) Proposal in a format acceptable to the City. A project schedule will be included that reflects the scope of work. Our GMP shall include clarifications and assumptions upon which the GMP proposal is based.

Subcontractor Selection:

DL Withers will prepare a subcontractor selection plan and submit the plan to the City for approval. DL Withers shall apply the plan in their evaluation of the qualifications of each subcontractor and provide the City with its review and recommendations.

PRECONSTRUCTION SERVICES PROPOSAL FOR

City of Cottonwood - 911 Center

May 29, 2013

Rev.

PRECONSTRUCTION TEAM

PROJECT MANAGER	48 HRS	\$132 PER HOUR	\$6,336
ESTIMATING	65.04 HRS	\$87 PER HOUR	\$5,658
BUILDING SUPERINTENDENT	42 HRS	\$86 PER HOUR	\$3,612
PRECONSTRUCTION MANAGER	20 HRS	\$87 PER HOUR	\$1,740
PROJECT/ESTIMATING ASSISTANT	52 HRS	\$49 PER HOUR	\$2,549
		SUBTOTAL, MANAGEMENT	\$19,895
		INSURANCE	\$105
		TOTAL MANAGEMENT	\$20,000

**CITY OF COTTONWOOD
EMERGENCY COMMUNICATIONS CENTER
CONSTRUCTION MANAGER AT RISK**

DESIGN PHASE SERVICES CONTRACT

THIS CONTRACT, made and entered into this by the CITY of Cottonwood, a municipal corporation hereinafter designated the "CITY" and D.L. Withers Construction, an Arizona corporation, hereinafter designated the "Construction Manager at Risk" or "CM@R."

RECITALS

- A. The CITY is authorized and empowered by action of the Cottonwood City Council, hereinafter "Council", in open public meeting, to execute this Contract for professional services and related construction services.
- B. The CITY intends to construct an Emergency Communications Center, as more fully described in the Project Background (Exhibit A) attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project, the CITY has entered into a Contract with (TBD) hereinafter referred to as the "Design Professional."
- D. The CM@R has represented to the CITY the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the CITY intends to enter into a Contract with the CM@R for the design phase services identified in this Contract. At the end of the design phase, at the CITY's sole discretion, the CITY may enter into a separate construction contract with the CM@R for construction phase services.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the CITY and the CM@R as follows:

1. ARTICLE 1 – TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the Gross Maximum Price (GMP) Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement (Contract) – This written document signed by the CITY and CM@R covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets the CITY's requirements.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the CITY, CM@R and other parties as may be required or appropriate, stating their agreement upon all of the following: the addition, deletion or revision in the Scope of Services or Deliverables; the amount of the adjustment to the Contract Amount; the extent of the adjustment to the Contract Time; or modifications of other Contract terms.

City (Owner) - The CITY, with whom CM@R has entered into this Contract and for whom the services are to be provided pursuant to said Contract.

Construction Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial and Final Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CM@R's administrative costs, home office overhead, and profit, applicable to this work, whether at the CM@R's principal or branch offices.

Construction Manager at Risk (CM@R) - The firm, corporation, or other approved legal entity with whom the CITY has entered into this Contract to provide services as detailed in this Contract.

Contingency, CM@R's - A fund to cover cost growth during the Project used at the discretion of the CM@R usually for costs that result from Project circumstances. The amount of the CM@R's Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@R's Contingency is described in Section 2.7.

Contingency, Owner's – A fund to cover cost growth during the Project used at the discretion of the CITY usually for costs that result from CITY directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the CITY and will be in addition to the project costs included in each CM@R's GMP package. Use and management of the Owner's Contingency is described in Section 2.7.

Contract Amount - The cost for services for this Contract as identified in Article 4.

Contract Documents – Includes the following items and documents in descending order of precedence executed by the CITY and the CM@R: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications; (v) Request for Qualifications (RFQ) issued by the CITY relative to the Project.

Cost of the Work - The direct costs necessarily incurred by the CM@R in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by CITY), materials testing, and related items. The Cost of the Work shall not include the CM@R's Construction Fee, General Conditions Cost, or taxes.

Critical Path Schedule - The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will cause a delay in achieving Substantial Completion.

Day - Calendar day unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM@R in performing the Scope of Work described in this Contract. Some of the major deliverables to be prepared and provided by the CM@R during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Professional - The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@R during the construction phase and which have been prepared or approved by the Design Professional and the CITY. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g. Conceptual Design Drawings, Preliminary Design Drawings, Detailed Design Drawings at 30%, 60%, 90% or 100% or Schematic, Design

Development, Construction Documents), but “*not for construction*”. Shop Drawings are not Drawings as so defined.

Final Completion – 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.

Float - The number of days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

General Conditions Costs – Includes, but is not limited to the following types of costs for the CM@R during the construction phase: payroll costs for CITY Representative or construction manager for Work conducted at the site; payroll costs for the superintendent and full-time general foremen; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); administrative office personnel; costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses; utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@R or Subcontractors; and fees for licenses.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the Work including the Cost of the Work, CM@R’s Construction Fee, General Conditions Costs, sales tax, and CM@R Contingency. 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.

GMP Plans and Specifications – The three (3) sets of plans and specifications provided pursuant to paragraph 2.7.7 upon which any Guaranteed Maximum Price Proposal is based. Separate GMP Plans and Specifications are required for each GMP.

Guaranteed Maximum Price (GMP) Proposal - The Offer or Proposal of the CM@R submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) is to be developed pursuant to Article 2 of this Contract. As stated above, 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.

Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Notice to Proceed (NTP) - A written notice given by CITY to the CM@R fixing the date on which the CM@R will start to perform the CM@R’s obligations under this Contract.

Payment Request - The form that is accepted by the CITY and used by the CM@R in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and/or the CITY.

Project - The works to be completed in the execution of this Contract as described in the Recital above and the Project Background (Exhibit A) attached.

Project Team – Design phase services team consisting of the Design Professional, CM@R, City Representative(s), and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) – Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on if the Progress Schedule is cost-loaded or not.

Shop Drawings - All drawings, diagrams, schedules and other data specifically prepared for the Work by the CM@R or a Subcontractor, Sub-subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the Work.

Site – The land or premises on which the Project is located.

Specifications - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the CM@R to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor - An individual or firm having a direct contract with the CM@R or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@R is responsible. Subcontractors will be selected through the Subcontractor selection plan described in Paragraph 2.8 of this Contract.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that the CITY can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by the CITY Fire Marshall and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to the CITY or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by the CITY; (vi) draft O&M manuals and record documents reviewed and accepted by the CITY; (vii) CITY operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum thirty (30) days prior to projected substantial completion); (ix) landscaping and site work; and (x) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to the Construction Phase Contract.

Supplier - A manufacturer, fabricator, Supplier, distributor, materialman or vendor having a direct contract with the CM@R or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@R or any Subcontractor.

Work - The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the Construction Phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

2. ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

2.1.1 The CM@R, to further the interests of the CITY, will perform the services required by, and in accordance with this Contract, to the satisfaction of the CITY, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Arizona would exercise at such time, under similar conditions. The CM@R will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the CITY.

2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@R will provide to the CITY, City Representative(s), and Design Professional, at such time or times as the CITY at its sole discretion may request, a written evaluation of the CITY's Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

2.1.3 Project Meetings: The CM@R will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings,

construction document rolling reviews and partnering sessions.

- 2.1.4 The CM@R will provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@R will promptly notify the CITY in writing whenever the CM@R determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the Scope of Work requiring an adjustment in the cost estimate, Project Schedule, any GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@R, when requested by the CITY, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The CM@R will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@R shall prepare a Construction Management Plan (CMP), which may include the CM@R's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM@R may, and at the written request of the CITY shall, add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may, and at the written request of the CITY shall, take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the CITY, Design Professional or the CM@R, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the CITY.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and for the Project Team to utilize that Deliverable as a basis for managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@R will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the CITY. The CM@R will use scheduling software to develop the Project Schedule that is acceptable to the CITY. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.

- 2.3.2** The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
- 2.3.2.1** The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 2.3.2.2** The CPM diagram schedule shall indicate all relationships between activities.
- 2.3.2.3** The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
- 2.3.2.4** The CPM diagram schedule shall be based upon activities, which coincide with the schedule of values.
- 2.3.2.5** The CPM diagram schedule shall show all submittals associated with each Work activity and the review time for each submittal.
- 2.3.2.6** The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@R activities.
- 2.3.2.7** The schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other source approved by the CITY.
- 2.3.3** The Project Schedule shall consider the CITY's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 2.3.4** Float time shall be as prescribed below:
- 2.3.4.1** The total Float within the overall schedule, is not for the exclusive use of either the CITY or the CM@R, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
- 2.3.4.2** The CM@R shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a legitimate delay, recognized in the Contract Documents, occurs which extends the Work beyond the Substantial Completion date.
- 2.3.4.3** Since Float time within the schedule is jointly owned, it is acknowledged that CITY-caused delays on the Project may be offset by CITY-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CM@R, etc.). In such an event, the CM@R shall not be entitled to receive a time extension or delay damages until all CITY-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

- 2.3.5** The Project Schedule will be updated and maintained by the CM@R throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@R's plan for the performance of the construction phase Work. The CM@R will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@R will include with such submittals a narrative describing its analysis of the progress achieved to-date versus that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6** Project Phasing: If phased construction is deemed appropriate and the CITY and Design Professional approve, the CM@R will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@R will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1** The CM@R will evaluate periodically and at such times as the CITY in its sole discretion may direct, the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, any GMP Proposals and/or the Project Schedule.
- 2.4.2** The CM@R will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@R to construct the Project. Before initiating construction operations, the CM@R may request additional investigations in any of their GMP Proposals to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.
- 2.4.3** The CM@R will meet with the Project Team as required to review designs during their development. The CM@R will familiarize itself with the evolving documents through the various design phases. The CM@R will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@R will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@R will recommend cost effective alternatives.
- 2.4.4** The CM@R will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1** Constructability Reviews: The CM@R will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging

of site facilities, construction parking, and other similar pertinent issues.

- 2.4.4.2** Bidability Reviews: The CM@R will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 2.4.4.3** The results of the reviews will be provided to the CITY in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the CITY, the CM@R will meet with the CITY and Design Professional to discuss any findings and review reports.
- 2.4.4.4** The CM@R's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@R.
- 2.4.5** Notification of Variance or Deficiency: It is the CM@R's responsibility to assist the Design Professional in ascertaining that, in the CM@R's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@R recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and CITY in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6** Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, or design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@R in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@R will include the cost of the alternatives into the cost estimate and any GMP Proposals.

2.5 COST ESTIMATES

- 2.5.1** Unless otherwise agreed by both parties, within fourteen (14) days after receipt of the documents for the various phases of design, and such other times as the CITY may direct or the CM@R may deem helpful or necessary, the CM@R shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CM@R shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the CITY will make the final determination.
- 2.5.2** If any estimate submitted to the CITY exceeds previously accepted estimates or the CITY's Project Budget, the CM@R shall make appropriate recommendations on methods and materials to the CITY and Design Professional that he believes will bring the project back into the Project Budget.
- 2.5.3** In between these milestone estimates, the CM@R shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering, scope

changes or other factors. It shall be the responsibility of the CM@R to keep the CITY and Design Professional informed as to the major trend changes in costs relative to the CITY's budget.

2.5.4 If requested by the CITY, the CM@R shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the CITY in the financing process.

2.6 [SECTION LEFT INTENTIONALLY BLANK]

2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

2.7.1 Any proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the CITY (see Exhibit "D" attached). The CITY may request a GMP Proposal for all or any portion of the Project, at any time during the design phase, and at such other times and for such other purposes as may be beneficial to the CITY. Any GMP Proposals submitted by the CM@R will be based on and consistent with the current updated/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based. The CM@R guarantees to complete any portion of the Project subject to a separate GMP at or less than the approved GMP Proposal amount for that portion of the Project and the Project at or less than any final approved GMP Proposal amount, plus approved Change Orders, and agrees that it will be responsible for any increase in the actual cost of the Work above these amounts.

2.7.2 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; procure materials, equipment and/or supplies as may be advantageous to the CITY; and/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 2.7 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 CM@R 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 only as expressly provided for in this Contract.

1.7.3 If a GMP, or any one of multiple or phased GMPs, is not established or agreed to by the CITY, all references in this Contract 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 this Contract. There shall be no termination fees, penalties or payments due, payable or paid from or by CITY to CM@R in the event that this Contract or any construction agreement arising from this Contract between the parties is rescinded, modified or terminated due to the rejection of, failure to agree to, or failure to establish for any and whatever reason any GMP that may be proposed or considered. No amount shall be paid for any services not established or agreed to by the CITY absent a written agreement between the parties to the contrary.

2.7.4 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

2.7.4.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.

2.7.4.2 The General Conditions Costs and the Construction Fee are firm fixed lump sums.

2.7.4.3 CM@R's Contingency is an amount the CM@R may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the CITY for increases in General Condition Costs. CM@R's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.

2.7.4.4 Taxes are deemed to include all sales, use, consumer and other taxes which are legally

enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

- 2.7.5 Owner's Contingency is funds to be used at the sole discretion of the CITY. Owner's Contingency will be added to the Contract Price to cover any increases in Project costs that result from CITY directed changes or unforeseen site conditions. At the time that Owner's Contingency is used, the appropriate markups will be applied.
- 2.7.6 GMPs are cumulative except for CM@R Contingency. The amount of CM@R Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@R's risk from that point in the project forward.
- 2.7.7 The CM@R, in preparing any GMP Proposal, will obtain from the Design Professional, three (3) sets of signed, sealed, and dated plans and specifications (including all addenda). The CM@R will prepare any GMP in accordance with the CITY's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@R will mark the face of each document of each set upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications. The CM@R will send one set of those documents to the City Representative, keep one set and return the third set to the Design Professional.
- 2.7.8 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications for that GMP. Any such Project Schedule updates/revisions will continue to comply with the requirements of Paragraph 2.3.
- 2.7.9 GMP savings resulting from a lower actual project cost than anticipated by the CM@R remaining at the end of the project will revert to CITY.
- 2.7.10 GMP Proposal(s) Review and Approval**
 - 2.7.10.1 The CITY may request one or more GMPs from the CM@R at any time during the Design Phase or at such other times as may be beneficial to the CITY. It is the CITY's expectation that any GMP shall not exceed the CITY stated Project Budget or the portion of the Project Budget designated for that portion of the Project for which a GMP is requested.
 - 2.7.10.2 The CM@R will meet with the CITY and Design Professional to review any and all GMP Proposal(s) and the written statement of its basis. In the event the CITY or Design Professional discovers inconsistencies, inaccuracies or confusion in the information presented, the CM@R will make adjustments as necessary to any or all GMP Proposals, their basis or both.
 - 2.7.10.3 The CM@R's detailed construction cost estimates and any and all GMPs will be reviewed by the Design Professional and the CITY for reasonableness and compatibility with the CITY's Project and the CITY's budget or portions thereof. The CM@R shall provide a response to the Design Professional's and CITY's questions and an explanation of differences between the CITY's Project Budget and the CM@R's construction cost estimate and any corresponding GMP. CITY may require that such responses and explanations be submitted in writing. The CM@R, CITY and Design Professional shall engage in a mutually agreeable process in an effort to achieve clearly understood mutually acceptable GMPs.
 - 2.7.10.4 In the event that any GMP, either individually or collectively, exceeds the CITY's Project Budget, or a portion thereof, the CITY reserves the right to direct the CM@R (and the CM@R shall) work in conjunction with the Design Professional to assist in the

re-design of the Project as necessary to meet the agreed upon program and the stated Project Budget as follows:

- a) After direction from the CITY, the CM@R shall coordinate and cooperate with the Project Team to assist the Design Professional in altering and re-drafting Construction Documents as necessary to accomplish the required reduction in cost.
- b) The CM@R shall develop and provide to the CITY new GMPs in connection with the altered Construction Documents to accomplish the necessary reductions in cost.
- c) The CM@R shall analyze the Design Professional's original submittal and as altered and redrafted Construction Documents, and make recommendations to the CITY as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the stated Project Budget.

Notwithstanding anything in the RFQ or the CM@R's response to the contrary, the CM@R shall perform the Work set forth in this section without additional compensation.

- 2.7.10.5** The CITY upon receipt of any GMP proposal from the CM@R, may submit the applicable GMP Proposal, Plans and Specifications to a third party for review and verification.
- 2.7.10.6** If any CM@R GMP Proposal is greater than the third party estimate or if the CITY, for some other stated reason may desire, the CITY may require the CM@R to reconfirm its applicable GMP Proposal. The CM@R will accept the third party's estimate for the cost of Work as part of the applicable GMP, or present a report within seven (7) days of a written request by the CITY for such a report identifying, explaining and substantiating the differences and/or explaining other concerns the CITY may raise. The CM@R may be requested to, or may at its own discretion, submit one or more revised GMP Proposals for consideration by the CITY.
- 2.7.10.7** If during the review and negotiation of any GMP Proposal design changes are required, the CITY will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@R. The CM@R will promptly notify the Design Professional and CITY in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.
- 2.7.10.8** After final submission of any GMP, the CITY may do any of the following:
 - a) Accept the CM@R original or revised GMP Proposal, if within the CITY's budget, without comment.
 - b) Accept the CM@R original or revised GMP Proposal that exceeds the CITY budget, and indicate in writing to the CM@R that the Project Budget has been increased to fund the differences.
 - c) Reject the CM@R original or revised GMP Proposal in which event, the CITY may terminate this Contract and/or elect to not enter into a separate contract with the CM@R for the construction phase associated with the Scope of Work reflected in the GMP Proposal
- 2.7.10.9** Upon acceptance by the CITY of any GMP, the CITY shall prepare and the CM@R shall execute the CITY's specified form of Contract to reflect the applicable GMP, and

the applicable GMP as approved shall become part of the Construction Services Contract. Within ten (10) days after execution of the Construction Services Contract and prior to initiating any construction services, the CM@R shall provide to the City Representative a Performance Bond and a Labor and Material Payment Bond each for 100% of the full Contract price.

2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

2.8.1 There are two (2) 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 CM@R 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, CM@R shall ensure compliance with Arizona Revised Statutes § 34-603(C)(2)(e) and 34-605(K)(2), and as they may be modified relative to the selection of Subcontractors and Major Suppliers.

2.8.2 The CITY may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when the CM@R 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.

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

2.8.2.2 The CM@R will prepare a Subcontractor or Supplier selection plan and submit the plan to the CITY for approval. The CM@R 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.

2.8.2.3 The CM@R must receive CITY approval of the selected Subcontractor(s) or Supplier(s). If the CM@R is to self-perform under this alternative the CM@R must submit a detailed explanation and demonstration of the cost of the Work it will self-perform. The CM@R 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 CM@R self-performance of any part of the Work and the cost therefore prior to accepting any GMP proposal.

2.8.2.4 The CM@R will negotiate costs for services/supplies from each Subcontractor or Supplier selected under this method.

2.8.2.5 Within three (3) days of negotiating cost for services/supplies from all Subcontractors or Suppliers selected under this method, the CM@R 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 Representative and shall include, among other things, the amount of each such cost. The CM@R may, at its discretion or at the request of the City Representative, request written verification of any costs selected. The CM@R shall provide an explanation of the qualifying factors for each selection.

- 2.8.3** In all other cases, the CM@R 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. The CM@R shall ensure that any such process is fully compliant with the above referenced Arizona law.
- 2.8.3.1** The CM@R will develop Subcontractor interest, submit the names of a minimum of three (3) 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 (3) qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the CM@R may request approval by the CITY to submit less than three (3) names. Without prior approval by the CITY, no change in the CITY-approved Subcontractors will be allowed.
- 2.8.3.2** If the CM@R desires to self-perform certain portions of the construction, it shall comply with and be subject to the requirements set forth in Paragraph 2.8.2.3.
- 2.8.3.3** If the CITY objects to any nominated Subcontractor or to any nominated self-performed construction for good reason, the CM@R will nominate a substitute Subcontractor.
- 2.8.3.4** The CM@R will distribute drawings and specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.
- 2.8.3.5** The CM@R shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their bids. In evaluating the responsiveness of bid proposals the CM@R, 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 CM@R will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the cost of the construction.
- 2.8.4** Upon completion of the Subcontractor selection process, the CM@R 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 2.8.1 and the selected Subcontractors for each category of Work.
- 2.8.5** The selected Subcontractors will provide a schedule of values, which will be used to create the overall project schedule of values.
- 2.8.6** The CM@R shall employ only Subcontractors who are duly licensed in Arizona and qualified to perform the Work per the requirements of the Contract Documents.
- 2.8.7** Regardless of the selection procedure, the CM@R 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.
- 2.8.8** Regardless of the selection procedure and in any case, the CM@R 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 CM@R's responsibility and obligation to perform as set forth in this Contract 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.

3 ARTICLE 3 – PERIOD OF SERVICES

3.1 The design phase services described in this Contract will be performed by CM@R in accordance with the most current update/revised, CITY approved, Project Schedule. Failure on the part of the CM@R to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the CITY.

3.1.1 Upon failure to adhere to the approved schedule, CITY may provide written notice to CM@R that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within three (3) days of CM@R’s receipt of such notice.

4 ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

4.1.1 Based on the Design Phase Services fee proposal submitted by the CM@R and accepted by the CITY (which by reference is made a part of this Contract); the CITY will pay the CM@R a fee not to exceed Twenty Two Thousand and Five Hundred dollars (\$22,500.00) as follows:

For the Basic Services described in Article 2, the CM@R shall receive a fee not to exceed:	\$20,000.00
<u>Additional Services and Allowances</u> , as described in subsection 4.3:	\$ 2,500.00
Total Contract Amount, not to exceed,	\$22,500.00

4.2 PAYMENTS

4.2.1 Requests for monthly payments by the CM@R for Design Phase Services will be submitted on the CITY’s “Contract Payment Request” form and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants’ requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

4.2.2 The fees for the CM@R and any Subconsultants will be based upon the hourly rate schedule included as Exhibit C attached hereto and made a part hereof.

4.2.3 The CM@R will pay all sums due Subconsultants for services and reimbursable expenses within fourteen (14) calendar days after the CM@R has received payment for those services from the CITY. In no event will the CITY pay more than ninety percent (90%) of the Contract Amount until final acceptance of all Design Phase Services, and award of all final approved GMPs for the entire Project by the City Council.

4.2.4 The CM@R agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the CITY during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@R to

proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the CITY of any of its legal rights herein.

- 4.2.5 No compensation to the CM@R will be allowed contrary to Arizona law.
- 4.2.6 If any service(s) executed by the CM@R is abandoned or suspended in whole or in part, for a period of more than one hundred eighty (180) days through no fault of the CM@R, the CM@R is to be paid for the services performed prior to the abandonment or suspension minus amounts claimed by the CITY for deficient performance.
- 4.2.7 All progress payments shall be made in compliance with A.R.S. § 34-609(B)(2-7), except that there shall be no retention of design phase services payments.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 The following additional services may be required for the successful completion of this Project. Mark-ups are not authorized. Only the reimbursables specifically identified below will be reimbursed as authorized herein. It is assumed that the CM@R will provide all service necessary for the performance of this Contract as Basic Services and that additional services will only be allowed and paid due to extraordinary circumstances approved by the CITY prior to performing and/or accruing expenses relative to any such additional services.
 - 4.3.1.1 If not available within the CM@R's staff, and if approved by CITY prior to the CM@R procuring the subject services, the CM@R will secure services of a qualified individual or firm to provide Drawings and Specifications reviews as required. The CM@R will forward invoices from the individual or firm to the CITY for payment of costs. The cost of such services will not exceed an amount to be set by the CITY at the time of the CITY's approval without further written approval of the CITY.
 - 4.3.1.2 If approved by the CITY prior to the CM@R procuring the subject services, the CM@R will secure the services of a qualified cost estimating individual or firm to provide cost estimating services in addition to those required under this Contract. The CM@R will forward copies of the invoices from the individual or firm to the CITY with the CM@R's payment request. The cost for such service will not exceed an amount to be set by the CITY at the time of the CITY's approval without further approval of the CITY.
 - 4.3.1.3 If approved by the CITY prior to the CM@R procuring the subject services, the CM@R will provide services related to evaluations of and recommendations for long-lead time procurements in addition to those required under this Contract, in order to meet the Project Schedule requirements. The cost for such service will not exceed an amount to be set by the CITY at the time of CITY's approval without further approval of the CITY.
 - 4.3.1.4 When authorized by the CITY, the CM@R will be entitled to reimbursement at cost of Design Phase Services related expenses incurred for the following items:
 - a) All reimbursables relative to project-related travel shall be in compliance with the current Federal Travel Regulations (FTR) and there shall be no other reimbursables except as expressly set forth herein.
 - b) Non-overhead printing expenses incurred including the printing of Construction Documents for bidding, courier services or other Project-related services not included in the basic services that may be requested by the CITY. The cost of such service will not exceed an amount to be set by the CITY at the time of the CITY's

approval without further approval of the CITY.

5 ARTICLE 5 - CITY'S RESPONSIBILITIES

5.1 The CITY, at no cost to the CM@R, will furnish the following information:

5.1.1 One (1) copy of data the CITY determines pertinent to the Work. However, the CM@R will be responsible for searching the records and requesting information it deems reasonably required for the Project.

5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

5.1.3 The name of the CITY employee or CITY's representative who will serve as the City Representative during the term of this Contract. The City Representative has the authority to administer this Contract and will monitor the CM@R's compliance with all terms and conditions stated herein. All requests for information from or decisions by the CITY on any aspect of the Work or Deliverables will be directed to the City Representative.

5.2 The CITY additionally will:

5.2.1 Contract separately with one (1) or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@R for its information. The CM@R will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the CITY and Design Professional.

5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@R except for those copies whose cost has been reimbursed by the CITY.

5.2.3 Provide the CM@R with adequate information in its possession or control regarding the CITY's requirements for the Project.

5.2.4 Give prompt written notice to the CM@R when the CITY becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the CITY may provide written notice to the CM@R that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within three (3) days of the CM@R's receipt of such notice.

5.2.5 Notify the CM@R of changes affecting the budget allocations or schedule.

5.3 The CITY may also contract separately with a Project and/or Program Manager (PM) and delegate such matters, authority and participation as the CITY desires. The CITY shall inform the CM@R of any such Project or Program Manager and the parameters of such PM's responsibility, authority and participation.

6 ARTICLE 6 – INSURANCE REQUIREMENTS

The CM@R and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the CM@R, its agents, representatives, employees, Subconsultants, Subcontractors and such other related parties.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The CITY in no way warrants that the minimum limits contained herein are sufficient to protect the CM@R from

liabilities that might arise out of the performance of the Work under this Contract by the CM@R, his agents, representative, employees, or Subconsultants. The CM@R is free to purchase such additional insurance as may be determined necessary.

6.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

6.1.1 The CM@R will provide coverage at least as broad and with limits of liability not less than those stated below.

6.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, direct operations, sublet work, completed operations, sexual predator coverage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000
Maximum Deductible	\$2,000

a) The policy shall be endorsed to include the following additional insured language: “The CITY shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R”.

6.1.1.2 Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$2,000,000
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a) The policy shall be endorsed to include the following additional insured language: “The CITY shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@R”, including automobiles owned, leased or hired or borrowed by the CM@R”.

6.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

a) Policy shall contain waiver of subrogation against the CITY.

6.2 ADDITIONAL INSURANCE REQUIREMENTS:

The policies shall include, or be endorsed to include the following provisions:

6.2.1 On insurance policies where the CITY is named as additional insured, the CITY shall be an additional insured to the full limits of liability purchased by the CM@R even if those limits of liability are in excess of those required by this Contract.

6.2.2 The CM@R's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

6.2.3 Coverage provided by the CM@R shall not be limited to the liability assumed under the indemnification provisions of this Contract.

6.3 SUBCONTRACTOR INSURANCE

6.3.1 CM@R's certificate(s) shall include all Subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the CM@R, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

6.4 NOTICE OF CANCELLATION

6.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the CITY. Such notice shall be sent by certified mail, return receipt requested and sent directly to the CITY's named Risk Management Representative at:

Iris Dobler
816 North Main Street
Cottonwood, AZ 86326
(928) 340-2717

6.5 ACCEPTABILITY OF INSURERS

6.5.1 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona, and with an "A.M. Best" rating of not less than B+ VI. The CITY in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@R from potential insurer insolvency.

6.6 VERIFICATION OF COVERAGE

6.6.1 The CM@R will furnish the CITY, Certificates of Insurance (ACORD form or equivalent approved by the CITY) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

6.6.2 All certificates and endorsements are to be received and approved by the CITY before Work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of Work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

6.6.3 All certificates required by this Contract will be sent directly to the City Representative assigned to this Project. The CITY project/contract number and project description shall be noted on the certificates of insurance. The CITY reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

6.7 APPROVAL

6.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the CITY, whose decision will be final. Such action will not require a formal Contract Amendment, but may be made by administrative action.

7 ARTICLE 7 – CONTRACT CONDITIONS

7.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 7.1.1 CITY Ownership of Project Documents:** All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the CITY and are to be delivered to the City Representative before the final payment is made to the CM@R. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@R, which consent the CM@R will not unreasonably withhold, the CITY agrees to hold the CM@R harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the CITY's alteration, modification or adaptation of the Project Documents.
- 7.1.2 CM@R to Retain Copyrights:** The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@R, its Subcontractors or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@R.
- 7.1.3 License to CITY for Reasonable Use:** The CM@R hereby grants, and will require its Subcontractors to grant, a license to the CITY, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, Works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the CITY to alter or modify the Project Documents, then Paragraph 7.1.1 applies.
- 7.1.4 Documents to Bear Seal:** When applicable and required by state law, the CM@R and its Subcontractors will endorse by an Arizona professional seal all plans, Works, and Deliverables prepared by them for this Contract.

7.2 COMPLETENESS AND ACCURACY OF CM@R'S WORK

The CM@R will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other Design Phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its Work or Deliverables. Any damage incurred by the CITY as a result of additional construction cost caused by willful or negligent errors, omissions or acts shall be chargeable to the CM@R to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@R in Arizona, at the site of the Work, would exercise under similar conditions. The fact that the CITY has accepted or approved the CM@R's Work or Deliverables will in no way relieve the CM@R of any of its responsibilities under the Contract, nor does this requirement to correct the Work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the CITY. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the design architect.

7.3 ALTERATION IN CHARACTER OF WORK

- 7.3.1** In the event an alteration or modification in the character of Work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the Scope of Services, cost of performance, or Project Schedule, the Work or Deliverable will nonetheless be performed as directed by the CITY. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the CITY and the CM@R. Such

Change Order or Amendment will not be effective until approved by the CITY.

- 7.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@R may accordingly be adjusted by mutual agreement of the contracting parties.
- 7.3.3 No claim for extra Work done or materials furnished by the CM@R will be allowed by the CITY except as provided herein, nor will the CM@R do any Work or furnish any material(s) not covered by this Contract unless such Work or material is first authorized in writing by the CITY. Work or material(s) furnished by the CM@R without such prior written authorization will be at the CM@R's sole jeopardy, cost, and expense, and the CM@R hereby agrees that without prior written authorization no claim for compensation for such Work or materials furnished will be made.

7.4 DATA CONFIDENTIALITY

- 7.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM@R in the performance of this Contract.
- 7.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@R in connection with the CM@R's performance of this Contract is confidential and proprietary information belonging to the CITY.
- 7.4.3 The CM@R will not divulge data to any third party without prior written consent of the CITY. The CM@R will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
 - 7.4.3.1 Data which was known to the CM@R prior to its performance under this Contract unless such data was acquired in connection with work performed for the CITY;
 - 7.4.3.2 Data which was acquired by the CM@R in its performance under this Contract and which was disclosed to the CM@R by a third party, who to the best of the CM@R's knowledge and belief, had the legal right to make such disclosure and the CM@R is not otherwise required to hold such data in confidence; or
 - 7.4.3.3 Data, which is required to be disclosed by the CM@R by virtue of law, regulation, or court.
- 7.4.4 In the event the CM@R is required or requested to disclose data to a third party, or any other information to which the CM@R became privy as a result of any other contract with the CITY, the CM@R will first notify the CITY as set forth in this Article of the request or demand for the data. The CM@R will timely give the CITY sufficient facts, such that the CITY can have a meaningful opportunity to either first give its consent or take such action that the CITY may deem appropriate to protect such data or other information from disclosure.
- 7.4.5 The CM@R, unless prohibited by law, within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the CITY, will promptly deliver, as set forth in this section, a copy of all data to the CITY. All data will continue to be subject to the confidentiality agreements of this Contract.
- 7.4.6 The CM@R assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the CITY if any of the provisions of this section are violated by the CM@R, its employees, agents or Subcontractors. Solely for the purposes of seeking injunctive

relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

7.5 PROJECT STAFFING

- 7.5.1** Prior to the start of any Work or Deliverable under this Contract, the CM@R will submit to the CITY, an organization chart for the CM@R staff and Subcontractors and detailed resumes of key personnel listed in its response to the CITY's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the CITY hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@R desires to change such key personnel from performing such services under this Contract, the CM@R will submit the qualifications of the proposed substituted personnel to the CITY for prior approval. Key personnel will include, but are not limited to, principal-in-charge, City Representative, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.
- 7.5.2** The CM@R will maintain an adequate number of competent and qualified persons, as determined by the CITY, to ensure acceptable and timely completion of the Scope of Services described in this Contract throughout the period of those services. If the CITY objects, with reasonable cause, to any of the CM@R's staff, the CM@R will take prompt corrective action acceptable to the CITY and, if required, remove such personnel from the Project and replace with new personnel acceptable to the CITY.
- 7.5.3** CM@R shall take all steps necessary to ensure that all persons working on their behalf or for whom they are responsible are appropriate for work in a governmental environment and pose no threat to the health, safety and welfare of CITY's residents and staff.

7.6 INDEPENDENT CONTRACTOR

- 7.6.1** The CM@R is and will be an independent contractor and whatever measure of control the CITY exercises over the Work or any Deliverable pursuant to the Contract will be as to the results of the Work only. No provision in this Contract will give or be construed to give the CITY the right to direct the CM@R as to the details of accomplishing the Work or any Deliverable. These results will comply with all applicable laws and ordinances.

7.7 SUBCONSULTANTS

- 7.7.1** Prior to beginning the Work or any Deliverable, the CM@R will furnish the CITY for approval, the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of the CITY.

7.8 TERMINATION

- 7.8.1** The CITY and the CM@R hereby agree to the full performance of the covenants contained herein, except that the CITY reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@R.
- 7.8.2** In the event the CITY abandons any or all of the services or any part of the services as herein provided, the CITY will so notify the CM@R in writing, and the CM@R will immediately after receiving such notice discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 7.8.3** The CM@R, upon such termination or abandonment, will promptly deliver to the CITY all reports, estimates and other Work or Deliverable entirely or partially completed, together with all

unused materials supplied by the CITY.

- 7.8.4 The CM@R will appraise the Work completed and submit an appraisal to the CITY for evaluation. The CITY will have the right to inspect the CM@R's Work or Deliverables to appraise the Work completed.
- 7.8.5 The CM@R will receive compensation in full for services satisfactorily performed to the date of such termination. In no event shall claims be made for nor shall the CITY pay any amounts for lost profit, lost opportunity and/or related claims. The fee will be paid in accordance with Article 4 of this Contract, and will be an amount mutually agreed upon by the CM@R and the CITY. If there is no mutual agreement, the final determination will be made in accordance with Paragraph 7.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with Paragraph 7.3, "Alteration in Character of Work". The CITY will make the final payment within sixty (60) Days after the CM@R has delivered the last of the partially or otherwise completed Work items and the final fee has been agreed upon.

7.9 DISPUTES

- 7.9.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@R and CITY each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 7.9.2 The CM@R and CITY will first attempt to resolve disputes or disagreements at the field level through discussions between CM@R's Representative and City Representative, or their designee(s).
- 7.9.3 If a dispute or disagreement cannot be resolved through field level discussions, the CM@R's Representative and City Representative, upon the request of either party, shall meet in a separately scheduled formal meeting, as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. If the Representatives so agree other persons or parties may participate in this meeting.
- 7.9.4 For any disputes not resolved pursuant to the foregoing provisions, the following procedures shall apply:

7.9.4.1 MATTERS IN QUESTION/DISPUTE RESOLUTION

In signing this Contract, CM@R agrees that any cause CM@R may have against the CITY arising in relation to this Procurement and Project, including but not limited to, Contract claims and controversies, including claims related to assignees of the CM@R, 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.

7.9.4.2 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.

7.10 DUTY TO CONTINUE PERFORMANCE

7.10.1 Unless provided to the contrary in the Contract Documents, the CM@R shall continue to perform the Work and CITY shall continue to satisfy its payment obligations to the CM@R, pending the final resolution of any dispute or disagreement between the CM@R and CITY.

7.11 REPRESENTATIVES OF THE PARTIES

7.11.1 CITY's Representative CITY designates the individual listed below or his designee as its Representative ("City Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 7.9:

Doug Bartosh, CITY Manager
827 North Main Street
Cottonwood, AZ 86326
(928) 634-5526

7.11.2 CM@R's Representative CM@R designates the individual listed below as its Representative ("CM@R's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 7.9:

John Norbut, Senior Project Manager
D.L. Withers Construction
3220 E. Harbour Drive, Phoenix, AZ 85034
602-438-9500

7.12 WITHHOLDING PAYMENT

7.12.1 The CITY reserves the right to withhold funds from the CITY's progress payments up to the amount equal to the claims the CITY may have against the CM@R, until such time that a settlement on those claims has been reached. Should the CITY withhold payments or portions of payments pursuant to this paragraph they shall do so in compliance with A.R.S. § 34-609(B)(2-7).

7.13 RECORDS/AUDIT

7.13.1 Records of the CM@R's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the CITY and the CM@R will be kept on a generally recognized accounting basis and shall be available for up to three years following Final Completion of the Project. The CITY, its authorized representative, and/or the appropriate state or federal agency, reserve the right to audit the CM@R's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The CITY reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@R's records, the audit discloses the CM@R has provided false, misleading, or inaccurate cost and pricing data.

7.13.2 The CM@R will include a provision similar to Paragraph 7.13.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the CITY, its authorized representative, and/or the appropriate state or federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The CITY reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one (1) or more of those parties do not allow the CITY to audit their records to verify the accuracy and appropriateness of pricing data.

7.14 INDEMNIFICATION

7.14.1 The CM@R agrees to defend, indemnify and hold harmless the CITY, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter individually and collectively referred to as “indemnatee”, from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the Work or Deliverables done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workmen's Compensation Law, or arising out of the failure of the CM@R to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM@R will be responsible for primary loss investigation, defense and judgment costs where this Contract of indemnity applies.

7.15 NOTICES

7.15.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Contract by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To CM@R	Address: 3220 E. Harbour Drive, Phoenix, AZ 85034 Phone: 602-438-9500 Fax: 602-438-9600 Attn: John Norbut
To CITY:	Address: 827 N. Main Street, Cottonwood, AZ 86326 Phone: 928-634-5526 Fax: 928-634-5520 Attn: Doug Bartosh
Copy to: City Representative	Address: 111 N. Main Street, Cottonwood, AZ 86326 Phone: 928-634-0186 x 3327 Fax: 928-639-4254 Attn: Scott Mangarpan
Copy to: Design Professional (if applicable)	Address: 5240 N. 16 th Street, Phoenix, AZ 85016 Phone: 602-279-4373 Fax: 602-279-9110 Attn: Kyle Swanson
Copy to: Project Manager (if applicable)	

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

7.16 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

7.16.1 The CM@R will comply with the provisions of this Contract, and applicable laws pertaining to equal opportunity and non-discrimination pertaining to discrimination and accepting applications or hiring employees. The CM@R will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The CM@R will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all

other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The CM@R further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@R.

7.17 COMPLIANCE WITH FEDERAL LAWS

7.17.1 The CM@R understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to CM@R. The CM@R agrees to comply with these and all laws in performing this Contract and to permit the CITY to verify such compliance.

7.18 CONFLICT OF INTEREST

7.18.1 To evaluate and avoid potential conflicts of interest, the CM@R will provide written notice to the CITY, as set forth in this section, of any Work or services performed by the CM@R for third parties that may involve or be associated with any real property or personal property owned or leased by the CITY. Such notice will be given seven (7) business days prior to commencement of the Project by the CM@R for a third party, or seven (7) business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

Doug Bartosh, CITY Manager
827 North Main Street
Cottonwood, AZ 86326
(928) 634-5526

7.18.2 Actions considered to be adverse to the CITY under this Contract include but are not limited to:

- a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the CITY;
- b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the CITY; and
- c) Using data to produce income for the CM@R or its employees independently of performing the services under this Contract, without the prior written consent of the CITY.

7.18.3 The CM@R represents that except for those persons, entities and projects previously identified in writing to the CITY, the services to be performed by the CM@R under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the CITY.

7.18.4 The CM@R's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

7.19 CONTRACTOR'S LICENSE

7.19.1 Prior to award of the Contract, the CM@R must provide to the CITY Representative, its Contractor's License Classification and number and its Federal Tax I.D. number.

7.20 SUCCESSORS AND ASSIGNS

7.20.1 The CITY and the CM@R each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the CITY nor the CM@R will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the CITY.

7.21 FORCE MAJEURE

7.21.1 If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

7.22 COVENANT AGAINST CONTINGENT FEES

7.22.1 The CM@R warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement 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. The CITY will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

7.23 NON-WAIVER PROVISION

7.23.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

7.24 JURISDICTION

7.24.1 This Contract will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, in the Arizona County in which the Work is to be constructed, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

7.25 SURVIVAL

7.25.1 All warranties, representations and indemnifications by the CM@R will survive the completion or termination of this Contract.

7.26 MODIFICATION

7.26.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

7.27 SEVERABILITY

7.27.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

7.28 INTEGRATION

7.28.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

7.29 TIME IS OF THE ESSENCE

7.29.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

7.30 PERIOD OF SERVICES

7.30.1 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the CITY, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal CITY holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (local time) on the day of performance.

7.31 THIRD PARTY BENEFICIARY

7.31.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the CITY and the CM@R. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the CITY and the CM@R and not for the benefit of any other party.

7.32 COOPERATION AND FURTHER DOCUMENTATION

7.32.1 The CM@R agrees to provide the CITY such other duly executed documents as may be reasonably requested by the CITY to implement the intent of this Contract.

7.33 CONFLICT IN LANGUAGE

7.33.1 All Work or Deliverables performed will conform to all applicable CITY codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

7.34 CITY'S RIGHT OF CANCELLATION

7.34.1 All parties hereto acknowledge that this Contract is subject to cancellation pursuant to applicable provisions of Arizona Revised Statutes and the Arizona Administrative Code.

7.35 CM@R'S CERTIFICATION

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

7.36 CM@R'S COMPLIANCE WITH IMMIGRATION LAWS

By entering the contract, the CM@R 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 CM@R 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 CM@R and its Subcontractors shall also maintain Employment Eligibility Verification Forms (Form 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.

CM@R also warrants and certifies by execution of this Contract that CM@R 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.

7.37 CM@R’S WARRANTY OF BACKGROUND CHECKS

CM@R, by its signature below, warrants and certifies that it has reviewed the background of all of its employees and will also require all of CM@R’s Subconsultants and major Suppliers to review the backgrounds of their employees and warrant that any employee, Subcontractor or employee of Subcontractor or others for whom CM@R is responsible (hereinafter collectively referred to as “CM@R and agents”) and the CM@R and agents do not have backgrounds which include convictions for crimes of violence, crimes against people, crimes relating to controlled substances or any other crimes or backgrounds which would make them inappropriate to work or be present on CITY property.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized CITY officials.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this _____ day of _____, 20____.

CITY OF COTTONWOOD

CONSTRUCTION MANAGER AT RISK

Diane Joens, Mayor

By: _____

Title: _____

APPROVE AS TO FORM

ATTEST (If Corporation):

Steven Horton, CITY Attorney

Secretary

ATTEST

SEAL

Marianne Jimenez, CITY Clerk

EXHIBIT A PROJECT BACKGROUND

All documentation provided is for informational purposes only and not intended for construction.

A. PROJECT BACKGROUND

During the design phase of the Project, the CM@R shall submit for review and approval by the CITY:

- Regular, detailed cost estimates to ensure budget adherence and integrity.
- Calculations
- Progress plans and specifications
- Details on equipment selection including manufacturer, materials of construction, and electrical requirements at key milestones in the project that will be determined during contract negotiations with the selected CM@R.

B. PROJECT SPECIFIC INFORMATION

1. General Building Requirements

The CITY is interested in building an Emergency Communications Center to support the CITY of Cottonwood’s police, fire and EMS services with the potential to add subscribing agencies in the future. The new facility will support approximately 20,000 police incidents and 3,200 Fire/EMS runs per year. It has been recommended that the CITY plan for 4 CAD dispatch positions (with potential growth to 8 positions) and the required support facilities. Initially the CITY may plan for approximately 4,800 sf of building with the potential to expand up to an additional 3,000 sf.

2. Selected Site, Permitting and Available Information

a. Selected Site Description

The CITY has selected a CITY owned 2.7 acre parcel located at the intersection of East Aspen Street and South Seventh Street for the location of the Emergency Communications Center. This parcel is adjacent to the Cottonwood Public Safety Building.

b. Permitting

All permits required for plan approval, construction and final acceptance will be coordinated through the CM@R or CITY as noted in Table 1. This Table may not be complete and it is the CM@R’s responsibility to obtain all permits, except as herein noted, for the Project.

Table 1 - Listing of Regulatory Reviews, Plans, Approvals, Permits and Certifications

Requirement	Responsible Party	Regulatory Agency
Architectural Approval	Design Professional	CITY of Cottonwood
Site Plan/Conditional Use Permit approval	Design Professional	CITY of Cottonwood
Building Permit	CM@R	CITY of Cottonwood

EXHIBIT B
RESPONSE SECTION

(Including all information required to be submitted with Response)

1. Respondent Information:

Firm Name: _____

Contact Name: _____

Principal Address: _____

Phone: _____ Fax: _____

E-Mail: _____

Local Address: _____

Type of Organization: _____

Tax ID #: _____ License #: _____

2. Receipt of Addenda:

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

<u>Addendum No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

By submitting a SOQ in response to this RFQ, the Respondent expressly agrees to indemnify and hold harmless the CITY of Cottonwood and any of its departments, agencies, officers, employees, representatives, and the engineering firms, from any and all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from the use of information provided by the Respondent. By submitting a SOQ, Respondent expressly acknowledges their independent obligation to review and verify all such documentation. The Undersigned hereby offers and agrees to enter into negotiations with the CITY to provide the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the solicitation.

For clarification of this Response, contact:

Company Name

Name: _____

Signature of Person Authorized to Sign

Phone: _____

Printed Name

Fax: _____

Title

Email: _____

EXHIBIT C
HOURLY RATE SCHEDULE

(To be completed ONLY during Contract negotiations, do NOT submit with Response)

The schedule of hourly labor rates for employees of _____, the Construction Manager at Risk and its Subcontractors follow and are based on the approved Proposal submitted to the City of Cottonwood on the _____ day of _____, 20____.

LIST OF CLASSIFICATIONS:

Classification	Direct Labor Rate	Total Labor Rate
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EXHIBIT D
SUBMITTAL REQUIREMENTS FOR GROSS MAXIMUM PRICE
 (To be completed ONLY during Contract negotiations, do NOT submit with Response)

THE FOLLOWING APPLIES TO SUBMITTAL OF ANY GROSS MAXIMUM PRICE (GMP).

GMP submittal, one (1) copy for review.

Eight (8) copies will be requested by the CITY prior to Contract execution. The eight (8) copies will be punched as required for contract preparation.

Table of Contents:

1. Scope of Work
2. Summary of the GMP
3. Schedule of Values – summary spreadsheet and backup documents
4. List of Plans and Specifications used for GMP Proposal
5. List of clarifications and assumptions
6. Project Schedule

1. Scope of Work. The Scope of Work will consist of a brief description of the work to be performed by the Construction Manager at Risk (CM@R) and major points that the CM@R and the CITY must be aware of pertaining to the Scope (normally one (1) paragraph is sufficient).

2. Summary of the Gross Maximum Price (GMP). A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

The general conditions fee includes bond and insurance cost. **Do not acquire bond or insurance until notified by the CITY.** All costs should be listed individually for future use.

PROJECT #:

DATE:

PROJECT NAME:

GMP Summary				Amount
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			\$
B.	CM@R's Contingency			\$
Indirect Costs			Rate	
C.	Construction Fee		%	\$
D.	General Conditions		%	\$
	D1	Payment and Performance Bond	\$	%
	D2	Insurance	\$	%
E.	Sales Taxes		%	\$
			F. TOTAL GMP	\$
			G. Owner's Contingency	\$
			H. Contract Amount	\$

Formulas:

Total GMP: $A+B+C+D+E = F$

Rates (Percentages) are calculated by dividing each amount by F, such as B/F , D/F , and $D1/F$

3. **Schedule of Values.** A spreadsheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@R's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
4. **List of Plans and Specifications Used for GMP Proposal.** A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM@R, Design Consultant, and CITY Representative using the format below.

Plans Used For Preparation of GMP No.

CM@R	Date
Design Consultant	Date
CITY Representative	Date

5. **List of Clarifications and Assumptions.** A list of the clarifications and assumptions made by the CM@R in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. **Project Schedule.** A Critical Path Method (CPM) diagram of the construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. Eight (8) copies of the GMP (perforated as requested by the CITY) Velo or three (3) hole punched.
2. One (1) copy of the plans and technical specifications used to arrive at the GMP (signed by Design Consultant, CM@R and the CITY Representative).

EXHIBIT E
CERTIFICATE OF INSURABILITY

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

Should I be awarded the Contract by CITY and then become unable to produce the insurance coverage specified within ten (10) working days, I am fully aware and understand that this shall constitute a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract at the sole discretion of the CITY. I also understand and am fully aware that I may not be considered for further projects by CITY.

Signature of Respondent

Company

Date

EXHIBIT F CM@R IMMIGRATION WARRANTY

A.R.S. § 41-4401 (Government procurement, E-verify requirement, definitions) requires as a condition of your Contract, verification of compliance by the CM@R 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 CM@R shall attest that it and all subcontractors performing work under the cited Contract meet all conditions contained herein.

Contract Number:		
Name (as listed in the contract):		
Street Name and Number:		
CITY:	State:	Zip Code:

I hereby attest that:

1. The CM@R 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 CM@R 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 CM@R.
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 CM@R acknowledges that a breach of this warranty by the CM@R 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 CM@R, and any Subcontractor and sub-subcontractor employee who performs work under this Contract, and to conduct random verification of the employment records of CM@R and each Subcontractor and sub-subcontractor who works on this Contract, to ensure that CM@R and each Subcontractor and sub-subcontractor is complying with the warranties set forth above.

Signature of CM@R (Employer) or Authorized Designee:

Printed Name: _____

Title: _____

Date (month/day/year): _____

EXHIBIT I
STATUTORY PERFORMANCE BOND
(Penalty of this bond must be 100% of the Contract amount.)

KNOW ALL MEN BY THESE PRESENTS: That the City of Cottonwood, Arizona, a municipal corporation, by action of the Purchasing Agent on _____, 20__ has awarded to _____

hereinafter designated as the "Principal", a Contract for the construction of _____

which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein; and

WHEREAS, said Principal is required under the terms of said Contract, and the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we the Principal and _____ a corporation organized and existing under the laws of the State of _____ with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Cottonwood, a municipal corporation, (hereinafter called the Obligee), in the penal amount of _____ dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article to the extent as if it were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court of a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named, on the _____ day of _____, 20__.

Principal Seal

Surety Seal

Agency of Record

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the City Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

EXHIBIT J
STATUTORY PAYMENT BOND
(Penalty of bond must be 100% of the Contract Amount.)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ as Principal, and _____ as Surety, are held and firmly bound unto the City of Cottonwood, Arizona, a municipal corporation (hereinafter called the Obligee) in the penal sum of _____ dollars (\$_____), for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain Contract with said Obligee dated _____, 20____, hereinafter called the Contract, for _____ which Contract shall be deemed a part hereof as fully as if set forth herein, and under the terms thereof the Principal has agreed to furnish a bond such as herein set forth;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, or in any amendment or extension of or addition to said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all rights and remedies on this bond shall insure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to the same extent as if they were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named, on the _____ day of _____, 20____.

Principal

Seal

Surety

Seal

Agency of Record

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

