

## A G E N D A

REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD JULY 5, 2011, AT 6:00 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. BRIEF SUMMARY OF CURRENT EVENTS BY MAYOR, CITY COUNCIL AND/OR CITY MANAGER--THE PUBLIC BODY DOES NOT PROPOSE, DISCUSS, DELIBERATE OR TAKE LEGAL ACTION ON ANY MATTER BROUGHT UP DURING THIS SUMMARY UNLESS THE SPECIFIC MATTER IS PROPERLY NOTICED FOR LEGAL ACTION.
- V. INTRODUCTION OF NEW EMPLOYEES--POLICE OFFICERS JOHN RANKIN & JAMES REPP; AND PROCUREMENT OFFICER LISA ELLIOTT.
- VI. PRESENTATION OF THE 2ND QUARTER SAFETY AWARD TO CHERYL MISKIEL, FIRE DEPARTMENT ADMINISTRATIVE COORDINATOR.
- VII. PRESENTATION OF THE EMPLOYEE OF THE QUARTER AWARD TO CHARLIE SCULLY, LONG-RANGE PLANNER.
- VIII. 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.A.(H).) Comments are limited to a 5 minute time period.
- IX. APPROVAL OF MINUTES--1/12/11 Special Work Session; 2/15/11 Regular Meeting; 4/5/11 Regular Meeting; 4/19/11 Regular Meeting; 4/26/11 Special Meeting; 5/25/11 Special Meeting; 6/7/11 Regular Meeting; and 6/14/11 Work Session.  
  
*Comments regarding items listed on the agenda are limited to a 5 minute time period per speaker.*
- X. UNFINISHED BUSINESS--None.
- XI. 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

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considered in its normal sequence on the Agenda.

1. RESOLUTION NUMBER 2591--APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF CLARKDALE, ARIZONA, FOR POLICE DISPATCHING.
  2. RESOLUTION NUMBER 2592--APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF JEROME FOR POLICE DISPATCHING.
  3. RESOLUTION NUMBER 2593--APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH YAVAPAI COUNTY, EMERGENCY SERVICES DEPARTMENT FOR THE CONTINUATION OF UNIFIED EMERGENCY SERVICES.
  4. NEW LIQUOR LICENSE APPLICATION FOR LORI MABERY, APPLICANT FOR THE BLAZIN' M RANCH, SUITE 1, LOCATED AT 1875 MABERY RANCH ROAD.
  5. NEW LIQUOR LICENSE APPLICATION FOR LORI MABERY, APPLICANT FOR THE BLAZIN' M RANCH, SUITE 2, LOCATED AT 1875 MABERY RANCH ROAD.
  6. ACCEPTANCE OF YAVAPAI COUNTY COMMUNITY FOUNDATION 2011 CANINE ENFORCEMENT GRANT, CONTRACT NUMBER 20120854.
  7. APPROVING A SERVICE AGREEMENT WITH MINGUS UNION HIGH SCHOOL (MUHS) FOR THE COTTONWOOD POLICE DEPARTMENT TO PROVIDE A SCHOOL RESOURCE OFFICER FOR MUHS.
  8. APPROVAL OF AN EIGHT FOOT SANITARY SEWER EASEMENT AND THIRTY FOOT TEMPORARY CONSTRUCTION EASEMENT ACROSS A CITY OWNED PARCEL OF LAND IDENTIFIED AS APN 406-04-024A.
- XII. NEW BUSINESS--The following items are for Council discussion, consideration, and possible legal action.
1. PUBLIC HEARING REGARDING ADOPTION OF THE CITY'S TENTATIVE BUDGET FOR FISCAL YEAR 2011-12.
  2. ADOPTION OF CITY'S TENTATIVE BUDGET & EXPENDITURE LIMITATION FOR FISCAL YEAR 2011-12.
  3. AGREEMENT WITH WOOD PATEL FOR ON-CALL UTILITY ENGINEERING SERVICES
  4. APPROVAL OF A DESIGN/BUILD CONTRACT FOR THE INSTALLATION OF PHOTOVOLTAIC SOLAR PANELS AT THE COTTONWOOD AIRPORT
  5. IMPLEMENTATION OF AN ADMINISTRATIVE FEE NOT TO EXCEED \$150 FOR COSTS RELATING TO THE REMOVAL, IMMOBILIZATION, IMPOUNDMENT,

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STORAGE AND/OR RELEASE OF VEHICLES, IN ACCORDANCE WITH ARIZONA REVISED STATUTES SECTION 28-3513.

6. RESOLUTION NUMBER 2590—DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2011 AMENDMENTS TO THE TAX CODE OF THE CITY OF COTTONWOOD."
7. ORDINANCE NUMBER 578—RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING "THE 2011 AMENDMENTS TO THE TAX CODE OF THE CITY OF COTTONWOOD" BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS; FIRST READING.
8. APPROVAL OF A DUAL AWARD OF THE CITY'S PHASED RETIREMENT PROGRAM TO ESI, INC., AND SMARTWORKS PLUS.

XIII. CLAIMS & ADJUSTMENTS

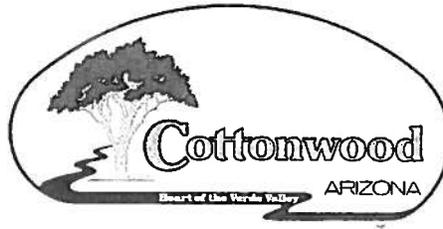
XIV. ADJOURNMENT

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.



## MEMORANDUM

**DATE:** June 27, 2011  
**TO:** Honorable Mayor & City Council  
**THRU:** Doug Bartosh, City Manager  
**FROM:** Iris Dobler, Human Resources / Risk / Safety Manager *id*  
**SUBJECT:** 2011 2<sup>nd</sup> Quarter Safety Employee Award Winner – Cheryl Miskiel

The Safety Awareness and Risk Management Committee reviewed the following nominations:

- Mike Kuykendall, Fire Dept. – nominated by Cheryl Miskiel, Fire Dept.
- Cheryl Miskiel, Fire Dept. – nominated by Mike Casson, Fire Dept.
- Jim Wixom, Maint. Dept. (Temp.) – nominated by Howard Harkey, Maint. Dept.

All three employees nominated this quarter could have been nominated for either the Safety Employee OR the Employee of the Quarter award. Their efforts really crossed into both categories. After debate and discussion, Cheryl Miskiel was selected the winner for her work with several Life and Fire Safety (LAFS) programs for the Cottonwood Fire Department (CFD). The programs include:

- ❖ Verde Valley LAFS Group – This is a partnership of many Fire/EMS agencies in the Verde Valley and the U.S. Forest Service and Verde Valley Ambulance Company. This program is presented to over 2600 students twice each year. Cheryl has served in many capacities with this group over the past four years and done a tremendous job.
- ❖ Vacation Fire School – This two-day program is geared towards students 9-12 years old. It covers home fire drills/exits, water safety, CPR, etc. Cheryl is coordinating this summer's schedule and she instructs in the school.
- ❖ Fire Corp – This nationally recognized program has helped the CFD receive some volunteer work as the need arises. Cheryl has assisted the Fire Marshal in coordinating and maintaining this program for the CFD.
- ❖ Juvenile Fire Setter – Cheryl assists the Fire Marshal and Fire Inspector in interviewing and working with Juvenile Fire Setters who need educating.

- ❖ **Safe Sitter – this two-day nationally recognized program focuses on the fundamental practices of safety for the baby sitter and the children they attend. Cheryl is a major contributor in scheduling, coordinating and teaching this program.**

**Cheryl has found ways of developing costumes and props by finding volunteers in the community to sew costumes, and she has located donated fabrics and materials. She searches yard sales and second hand shops on her own to find items for these endeavors. This has been extremely beneficial in this time of declining economy and severe budget cuts.**

**For all these reasons, and more listed in the attached nomination form, I request Cheryl Miskiel receive the Safety Employee of the Quarter Award for the 2<sup>nd</sup> Quarter of 2011.**

**Attachment: Nomination Submission**



**2<sup>nd</sup> QUARTER, 2011**  
**EMPLOYEE or SAFETY EMPLOYEE**  
**RECOGNITION NOMINATION**

(Please circle the category for which you are nominating this employee.)

**Submit to the HR office by Friday, June 17, 2011**

**Please use the format shown below. You may write or type on an additional sheet of paper, if you wish.**

**SUBMISSION DATE:** May 26, 2011  
**NAME OF EMPLOYEE:** Cheryl Miskiel  
**DEPARTMENT:** Fire  
**POSITION:** Administrative Coordinator

**WHAT ACTION DID THE EMPLOYEE DO TO DESERVE THIS NOMINATION:**

Cheryl Miskiel is very dedicated and has a great passion with leading/assisting in a multitude of Fire and Life Safety programs for the Cottonwood Fire Department. **Cheryl consistently goes over and beyond her assigned duties that are not part of her job requirements.** They include:

**Verde Valley LAFS Group** - This Fire and Life Safety Program is a partnership of many other Fire/EMS agencies including Cottonwood, Clarkdale, Verde Valley, Sedona, Rimrock and Camp Verde Fire Departments along with the U.S. Forest Service and Verde Valley Ambulance Company. This program is presented to and affects over 2,600 students 2 times per year. Cheryl has served as the Secretary / Treasurer, scheduler, presenter, character (E.D.I.T.H.) and puppeteer for the last 4 years and she has done a tremendous job. Cheryl participated as a character this spring in all elementary schools throughout the Verde Valley and Sedona.

**Vacation Fire School** - This 2 day program is geared towards students that are 9 to 12 years old. Some of the things that are taught to the kids are Exit Drills in the Home, Preplans for the Home, CPR, Water Safety Swimming lessons and Smoke out / Black out Drills along with general Fire and Life Safety training. Cheryl is currently coordinating this summer's schedule and she instructs in the school. Cheryl's proactive teaching style has been very beneficial to the success of the Cottonwood Fire Department in educating all ages of people within the Community. Her commitment to service is well received by all of our visitors.

**Fire Corp** - This Nationally recognized program has helped the Cottonwood Fire Department to receive some volunteer work as the need arises. Cheryl has assisted the Fire Marshal in coordinating and maintaining this program for the Cottonwood Fire Department.

**Juvenile Fire Setter** - Cheryl assists the Fire Marshal and the Fire Inspector in the interview process with Juvenile Fire Setters that need educating. Cheryl's support is mission critical to the Dept. and sets a great example for the parents and students who participate in the program.

**Safe Sitter** - This 2 day nationally recognized program focuses on the fundamental practices of safety for the baby sitter and the children that they are attended to. The Cottonwood Fire Department will again be providing two sessions of Safe Sitter a year. Cheryl is a major contributor in scheduling, coordinating and teaching this program. We have had great success that will have a long lasting effect to the students that receive this training.

All of these programs are geared towards Fire and Life Safety Education and are inclusive of all ages. Cheryl's continued participation with all of these programs has been paramount to the safety of our citizens and visitors. Cheryl consistently continues to be very outstanding.

#### **WHAT IS THE IMPACT/BENEFIT TO THE CITY:**

Because of the declining economy and severe budget cuts Cheryl has found ways of developing costumes and props by finding volunteers within the community to sew costumes with donated fabrics and materials. She also obtained many goods searching yard sales on her own time and searching the local Goodwill and Antique stores so that the items purchased can be used in educating our public. Cheryl has donated her own money on more than one occasion so that the LAFS group can have the proper supplies to finish costumes and props for our shows. She has been able to use her creative skill set to create very effective Fire and Life Safety Props that are able to be used again and again for various programs.

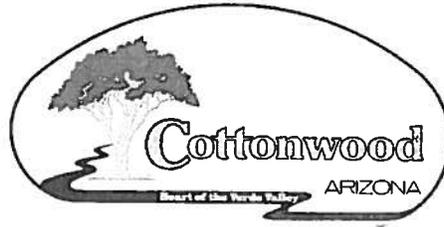
Cheryl's outstanding ability as a creative leader in establishing new programs that are tactfully out of the box thinking results in people of all ages staying engaged with the safety message that is being presented.

Cheryl is very professional, personable and polite in her dealings with colleagues and customers in the Fire service and within the community. Her integrity is above reproach and her sense of humor makes for an enjoyable work environment. Her work ethic and drive is exceptional with a very high initiative. Cheryl can be counted on over and over to perform all of her duties at a very high level. Her interactive skills within the community teaching Fire and Life Safety with our Firefighters are outstanding. Cheryl is a true asset to the Cottonwood Fire Department and the entire Community.

Cheryl is very bright, hard working, energetic, compassionate and genuinely very well rounded. Her initiative has been consistently above average in all of the courses she teaches to the Community. She has actively participated in a diverse assortment of extracurricular activities in the Fire and Life Safety Public Education arena. Cheryl has also spent considerable time outside the Fire Station involved in the Community. Cheryl is an excellent team player/leader that provides a great value to the City of Cottonwood. Citizens that are trained with the enhanced skills in Fire and Life Safety and other Fire Safety aspects provide a safer environment to all residents and businesses in Cottonwood and the Verde Valley.

SIGNATURE OF NOMINATOR: Fire Chief Mike Casson DATE: 5-26-2011

PRINT NAME OF SUBMITTING NOMINATOR: Fire Chief Mike Casson



## MEMORANDUM

**DATE:** June 27, 2011  
**TO:** Honorable Mayor & City Council  
**THRU:** Doug Bartosh, City Manager  
**FROM:** Iris Dobler, Human Resources Manager *id*  
**SUBJECT:** 2011 2<sup>nd</sup> Quarter Employee Award Winner – Charlie Scully

The Personnel Board reviewed the following nominations:

- Mike Kuykendall, Fire Dept. – nominated by Cheryl Miskiel
- Cheryl Miskiel, Fire Dept. – nominated by Mike Casson
- Steve Phoenix, Police Dept. – nominated by Corby Rice
- Charlie Scully, P&Z – nominated by Leslie Wager & Tom Hall

From the four employees nominated this quarter, Charlie Scully was voted the unanimous winner.

Charlie was nominated by Leslie Wager and Tom Hall for his work on writing various City regulations and ordinances, including:

- ❖ The Swimming Pools, Spas and Hot Tub regulations. These will help save children's lives, because they require fencing and barriers around pools.
- ❖ The Residential Rental Maintenance and Inspection Program Ordinance. This is being used to help clean up older properties in the City and hold owners liable for making sure renters are living in safe and healthy conditions.
- ❖ The Medical Marijuana Ordinance and map. This entailed many hours of research of State regulations, as well as what other municipalities were doing. He has represented the City well in his dealings with this controversial topic. He also handles contacts with inquiring individuals and businesses with the utmost professionalism when informing them of the process and resources of information.

In addition, Charlie was the starting and support staff/engine for the Historic Preservation Commission. He has written the Ordinance for this Commission, again spending hours on research of other municipalities and the National Registrar of Historic Places. He is currently working with State representatives of the National Historic

**Places to get staff trained on completing the proper paperwork to obtain the historic label on a building. These efforts are expected to bring funding and tourism to the City.**

**Charlie is a true example of a City employee who takes pride in the City he works for. He is constantly working towards upgrading our Zoning Ordinance. He is also involved in the Verde Valley Regional Trails Plan, and attends information conferences on topics so that he can better serve the public and the City.**

**For these reasons, the Board selected Charlie Scully winner of the Employee of the Quarter Award. I request Charlie Scully receive the Employee of the 2<sup>nd</sup> Quarter Award of 2011.**

**Attachment: Nomination Submission**



**2<sup>nd</sup> QUARTER, 2011**

**EMPLOYEE or SAFETY EMPLOYEE  
RECOGNITION NOMINATION**

(Please circle the category for which you are nominating this employee.)

**Submit to the HR office by Friday, June 17, 2011**

**Please use the format shown below. You may write or type on an additional sheet of paper, if you wish.**

SUBMISSION DATE: 6-1-11

NAME OF EMPLOYEE: Charlie Scully

DEPARTMENT: Planning and Zoning

POSITION: Long-Range Planner

WHAT ACTION DID THE EMPLOYEE DO TO DESERVE THIS NOMINATION:

SEE ATTACHED

WHAT IS THE IMPACT/BENEFIT TO THE CITY:

SEE ATTACHED

SIGNATURE OF NOMINATOR:

*Tom Hall*  
*Leslie Wager*

DATE: 6-1-11

PRINT NAME OF SUBMITTING NOMINATOR: Leslie Wager AND Tom Hall

## **Nomination for Employee of the Quarter**

**Charlie Scully**

**Planning and Zoning Long-Range Planner**

We would like to nominate Charlie Scully for the Employee of the Quarter.

Charlie has written the Swimming pools, spas and hot tub regulations for the City. It is our belief that because of these regulations children's lives have been saved and eliminates the possibility of children drowning by adding the regulation for fence and barriers around pools.

Charlie has written and enacted the Residential Rental Maintenance and Inspection program ordinance which is used today to clean up older properties in the City and hold owners liable for making sure renters are living in safe and healthy conditions.

Charlie has developed and written the Medical Marijuana Ordinance and map. This entailed many hours of research of other municipalities and State Regulations. He has handle with the upmost professionalism many inquiring individuals and businesses to inform them of the process and best resources of information. On this very controversial topic, we believe he has made a good name for the City and represented us well.

Charlie was the starting and supporting staff/engine for the Historic Preservation Commission. Charlie has written the Ordinance for this Commission with hours of research into other municipalities and the National Registrar of Historic Places. Charlie is currently working with State representatives of National Historic Places to bring in someone to train the Commission on how to fill out the proper paperwork to obtain the Historic label on a building, which in turn can bring funding and tourism to the City.

Charlie is a true example of a City Employee who takes pride in the City he works for. Charlie is constantly working towards upgrading our Zoning Ordinance, being involved in the Verde Valley Regional Trails, Historic Preservation Commission, takes any training available and attends any informational conferences he can to better serve the public and City.

Respectfully submitted,

Tom Hall, Building Inspector, Community Development

Leslie Wager, Administrative Coordinator, Community Development

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject: Resolution Number 2591 – Approving an Intergovernmental Agreement with the Town of Clarkdale for Police Dispatching Service.**

Department: Police

From: Gary Eisenga, Support Services Commander

**REQUESTED ACTION**

Council consideration of Resolution Number 2591, which approves an Intergovernmental Agreement with the Town of Clarkdale for police dispatching services.

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

“Move to approve Resolution Number 2591 approving the intergovernmental agreement with the Town of Clarkdale for police dispatching services.”

**BACKGROUND**

The city has entered into an annual Intergovernmental Agreement with the Town of Clarkdale to provide police dispatching services for the town for several years. The only change to the Agreement this year is an increase in fees due to Clarkdale’s increase in call volume.

**JUSTIFICATION/BENEFITS/ISSUE**

The city has provided dispatch services to the Town of Clarkdale for many years.

**COST/FUNDING SOURCE**

The proportional cost to provide dispatching services to the Town of Clarkdale is paid to the city by the Town of Clarkdale.

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

- Resolution Number 2591.
- Intergovernmental Agreement with the Town of Clarkdale for Police Dispatching.

RESOLUTION NUMBER 2591

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF CLARKDALE, ARIZONA, FOR POLICE DISPATCHING.

WHEREAS, the City Council of the City of Cottonwood has determined it to be in the best interests of the citizens of Cottonwood and Clarkdale to cooperate in providing police dispatching services; and

WHEREAS, the City of Cottonwood has the facilities and manpower necessary to provide such services; and

WHEREAS, the Town of Clarkdale wishes to utilize said facilities and manpower; and

WHEREAS, both parties are authorized to enter into this agreement pursuant to A.R.S. § 9-240(B)(12) and (23).

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

THAT, the Intergovernmental Agreement between the City of Cottonwood and the Town of Clarkdale to provide police dispatching is hereby approved.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 5TH DAY OF JULY 2011.

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

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Steve Horton, Esq.  
City Attorney

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

After Recording Return To:  
City of Cottonwood  
826 N. Main Street  
Cottonwood, AZ 86326  
Folder

**INTERGOVERNMENTAL AGREEMENT  
FOR  
POLICE DISPATCHING**

This Agreement, made by and between the CITY OF COTTONWOOD, ARIZONA, a municipal corporation, hereinafter called "COTTONWOOD," and the TOWN OF CLARKDALE, ARIZONA, hereinafter called "CLARKDALE."

**WITNESSETH**

WHEREAS, both parties are authorized to enter into this agreement pursuant to A.R.S. § 9-240(B)(12) and (23) and both parties are authorized to enter into Intergovernmental Agreements in general pursuant to A.R.S. § 11-951 through 11-954; and

WHEREAS, it would be in the best interest of COTTONWOOD and CLARKDALE to consolidate emergency dispatching systems in their adjoining areas for economical operation and better response time; and

WHEREAS, COTTONWOOD has facilities and equipment for providing said emergency dispatch services.

NOW THEREFORE, the parties mutually agree as follows:

1. Purpose. This Agreement is made to provide centralized and uniform dispatch for police units on a twenty-four (24) hour basis in the areas of COTTONWOOD AND CLARKDALE.
2. Service. COTTONWOOD agrees to relay or use its best efforts in attempting to relay messages received by the dispatch center of the Police Department of COTTONWOOD to personnel of CLARKDALE authorized to receive such messages. Messages shall be transmitted by radio-telephone first, and then by telephone or any other reasonable and appropriate method on a twenty-four (24) hours basis. COTTONWOOD shall not be under a duty to send its employees or equipment to CLARKDALE in response to any message received (excluding mutual aid required by state law.) CLARKDALE shall at all times maintain a list at the COTTONWOOD dispatcher's office of CLARKDALE personnel

authorized to receive messages, their telephone numbers, and any preference as to order of calls.

3. Dispatch of Towing Carriers. In addition to using its best efforts to relay messages to personnel of CLARKDALE as provided in Paragraph 2 above, COTTONWOOD will also dispatch towing carriers on its towing rotation list to remove vehicles from accident scenes, no-parking zones, and posted private property upon a proper request by personnel from CLARKDALE. COTTONWOOD assumes no responsibility or liability for the negligent or intentional acts and/or omissions of any towing carrier so dispatched, and by its execution of this agreement, CLARKDALE specifically warrants: (1) that its personnel are and will in each case be authorized to request towing services; (2) that all requests for vehicle removals and impoundments are and shall be duly authorized under state and/or local law; and (3) that COTTONWOOD shall in each case be held harmless and indemnified from any and all costs, losses, damages, suits and claims of any kind or nature whatsoever arising out of COTTONWOOD'S dispatch of a towing carrier to provide towing and/or impoundment services within CLARKDALE'S corporate limits.
4. Compensation. CLARKDALE will pay COTTONWOOD for such dispatching services, the sum of \$36,408 per quarter, payable in advance on the last day of each preceding quarter.
5. Indemnity. CLARKDALE will hold COTTONWOOD harmless from any and all claims for damages made by third parties arising from or relating to the dispatching services contemplated herein and will indemnify COTTONWOOD against any damages that may be paid or ordered paid to third parties, together with costs of the defense, including reasonable attorney's fees. Those claims solely arising out of the errors and omissions of COTTONWOOD are exempted from the provisions of this paragraph.
6. Communications Committee. It is hereby agreed by both COTTONWOOD and CLARKDALE that a Communications Committee shall be formed with representatives from each of the agencies being dispatched by COTTONWOOD. This purpose of the Committee will be 1) to discuss and resolve concerns regarding dispatch services, 2) to discuss system issues and improvements and, 3) to review and make recommendations on the formula to be used to determine fees for dispatching services. The Committee will meet on a monthly basis, and minutes will be kept and distributed to the Committee members. Committee membership shall appoint two permanent members to serve on the Communications Committee, one administrative representative

and one patrol officer. In addition to representation on the Communications Committee, it is understood by both COTTONWOOD and CLARKDALE that CLARKDALE may bring communications concerns to the attention of COTTONWOOD, either through the committee meeting agendas or directly to the Communications Director, Police Chief and/or City Manager of COTTONWOOD.

7. Duration. This Agreement shall be for a period of one (1) year, commencing on July 1, 2011 and expiring on June 30, 2012.
8. Records. COTTONWOOD will provide CLARKDALE a monthly report on calls for service and other figures used in computing charges for future dispatching services by COTTONWOOD.
9. Repairs. COTTONWOOD will be responsible for repairs to the system, which will be addressed in a timely manner.
10. Termination. This Agreement may be terminated by either party, with or without cause, upon ninety (90) days written notice to the other party. If CLARKDALE terminates for cause it shall be entitled to a proportionate refund of its most recent quarterly payment.
11. Cancellation for Conflict of Interest

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

IN WITNESS WHEREOF, this Agreement is executed on the date and year below written. It shall be effective as provided in Paragraph 6.

CITY OF COTTONWOOD:

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Diane Joens, Mayor

ATTEST:

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Marianne Jiménez, City Clerk

The forgoing Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona to the City of Cottonwood.

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Steve Horton, Esq.  
City Attorney

TOWN OF CLARKDALE:

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Douglas Von Gausig, Mayor

ATTEST:

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Kathy Bainbridge, Town Clerk

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona to the Town of Clarkdale.

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Robert S. Pecharich, Town Attorney

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject: Resolution Number 2592 – Approving an Intergovernmental Agreement with the Town of Jerome for Police Dispatching Service.**

Department: Police

From: Gary Eisenga, Support Services Commander

**REQUESTED ACTION**

Council consideration of Resolution Number 2592, which approves an Intergovernmental Agreement with the Town of Jerome for police dispatching services.

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

“Move to approve Resolution Number 2592 approving the intergovernmental agreement with the Town of Jerome for police dispatching services.”

**BACKGROUND**

The city has entered into an annual Intergovernmental Agreement with the Town of Jerome to provide police dispatching services for the town for several years. There are no changes to the agreement this year, other than the amount charged for this service which increased due to an increase in call volume.

**JUSTIFICATION/BENEFITS/ISSUE**

The city has provided dispatch services to the Town of Jerome for many years.

**COST/FUNDING SOURCE**

The proportional cost to provide dispatching services to the Town of Jerome is paid to the City by the Town of Jerome.

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

- Resolution Number 2592.
- Intergovernmental Agreement with the Town of Jerome for Police Dispatching.

RESOLUTION NUMBER 2592

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF JEROME, ARIZONA, FOR POLICE DISPATCHING.

WHEREAS, the City Council of the City of Cottonwood has determined it to be in the best interests of the citizens of Cottonwood and Jerome to cooperate in providing police dispatching services; and

WHEREAS, the City of Cottonwood has the facilities and manpower necessary to provide such services; and

WHEREAS, the Town of Jerome wishes to utilize said facilities and manpower; and

WHEREAS, both parties are authorized to enter into this agreement pursuant to A.R.S. § 9-240(B)(12) and (23.)

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

THAT, the Intergovernmental Agreement between the City of Cottonwood and the Town of Jerome to provide police dispatching is hereby approved.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 5TH DAY OF JULY 2011.

---

Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

---

Steve Horton, Esq.  
City Attorney

---

Marianne Jiménez, City Clerk

After Recording Return To:  
City of Cottonwood  
826 N. Main Street  
Cottonwood, AZ 86326  
Folder

**INTERGOVERNMENTAL AGREEMENT  
FOR  
POLICE DISPATCHING**

This Agreement, made by and between the CITY OF COTTONWOOD, ARIZONA, a municipal corporation, hereinafter called "COTTONWOOD," and the TOWN OF JEROME, ARIZONA, hereinafter called "JEROME."

WITNESSETH

WHEREAS, both parties are authorized to enter into this agreement pursuant to A.R.S. § 9-240(B)(12) and (23) and both parties are authorized to enter into Intergovernmental Agreements in general pursuant to A.R.S. § 11-951 through § 11-954; and

WHEREAS, it would be in the best interests of COTTONWOOD and JEROME to consolidate emergency dispatching systems in their adjoining areas for economical operation and better response time; and

WHEREAS, COTTONWOOD has facilities and equipment for providing said emergency dispatching services.

NOW THEREFORE, the parties mutually agree as follows:

1. Purpose. This Agreement is made to provide centralized and uniform dispatching of police units on a twenty-four (24) hour basis in the areas of COTTONWOOD and JEROME.
2. Service. COTTONWOOD agrees to relay or use its best efforts in attempting to relay messages received by the dispatch center of the Police Department of COTTONWOOD to personnel of JEROME authorized to receive such messages. Messages shall be transmitted by radio-telephone first, and then by telephone or any other reasonable and appropriate method on a twenty-four (24) hour basis. COTTONWOOD shall not be under a duty to send its employees or equipment to JEROME in response to any message received

(excluding mutual aid required by state law.) JEROME shall at all times maintain a list at the COTTONWOOD dispatcher's office of JEROME personnel authorized to receive messages, their telephone numbers, and any preference as to order of calls.

3. Dispatch of Towing Carriers. In addition to using its best efforts to relay messages to personnel of JEROME as provided in Paragraph 2 above, COTTONWOOD will also dispatch towing carriers on its towing rotation list to remove vehicles from accident scenes, no-parking zones, and posted private property upon a proper request by personnel from JEROME. COTTONWOOD assumes no responsibility or liability for the negligent or intentional acts and/or omissions of any towing carrier so dispatched, and by its execution of this agreement, JEROME specifically warrants: (1) that its personnel are and will in each case be authorized to request towing services; (2) that all requests for vehicle removals and impoundments are and shall be duly authorized under state and/or local law; and (3) that COTTONWOOD shall in each case be held harmless and indemnified from any and all costs, losses, damages, suits and claims of any kind or nature whatsoever arising out of COTTONWOOD'S dispatch of a towing carrier to provide towing and/or impoundment services within JEROME'S corporate limits.
4. Compensation. JEROME will pay COTTONWOOD for such dispatching services, the sum of \$7,642.50 per quarter, payable in advance on the last day of each preceding quarter.
5. Indemnity. JEROME will hold COTTONWOOD harmless from any and all claims for damages made by third parties arising from or relating to the dispatching services contemplated herein and will indemnify COTTONWOOD against any damages that may be paid or ordered paid to third parties, together with costs of the defense, including reasonable attorney's fees. Those claims solely arising out of the errors and omissions of COTTONWOOD are exempted from the provisions of this paragraph.
6. Communications Committee Representation. It is hereby agreed by both COTTONWOOD and JEROME that JEROME shall have a representative on the Communications Committee to represent police department concerns regarding dispatch services. It is further understood by both parties that JEROME will appoint a permanent member to serve on the Communications Committee, plus an alternate. In addition to representation on the Communications Committee, it is understood by both COTTONWOOD and JEROME that JEROME'S representative or alternate may bring communications concerns to the attention of COTTONWOOD, either through the committee meeting agendas or directly to the Communications Director,

Police Chief and/or City Manager of COTTONWOOD.

7. Duration. This Agreement shall be for a period of one (1) year, commencing on July 1, 2011, and expiring on June 30, 2012.
8. Termination. This agreement may be terminated by either party, with or without cause, upon ninety (90) days written notice to the other party. If JEROME terminates for cause it shall be entitled to a proportionate refund of its most recent quarterly payment.
9. Cancellation for Conflict of Interest

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

**CITY OF COTTONWOOD:**

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Diane Joens, Mayor

ATTEST:

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Marianne Jiménez, City Clerk

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona to the City of Cottonwood.

---

Steve Horton, Esq., City Attorney

**TOWN OF JEROME:**

---

Jay Kinsella, Mayor

ATTEST:

---

Candace Gallagher, Town Manager/Clerk

The foregoing Intergovernmental Agreement is in proper form and is within the powers and authority granted under the laws of Arizona to the Town of Jerome.

---

Bill Sims  
Town Attorney

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject: Resolution Number 2511 – Approving an Intergovernmental Agreement with Yavapai County for Unified Emergency Management.**

Department: City Clerk

From: Marianne Jiménez, City Clerk

**REQUESTED ACTION**

Consideration of Resolution Number 2593, which approves the annual Intergovernmental Agreement for Unified Emergency Management with Yavapai County.

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

“Move to approve Resolution Number 2593 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 manmade 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 2010-11 fiscal year is \$4,843.95, which is an increase of \$988.95 over 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.

**REVIEWED BY:**

City Manager \_\_\_\_\_

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

**ATTACHMENTS**

- Resolution Number 2593
- Intergovernmental Agreement for the Establishment of Unified Emergency Management.

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

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2012, 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, 2011 and ending June 30, 2012, 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, 2011, 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: \_\_\_\_\_  
CAROL SPRINGER  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_ Date: \_\_\_\_\_  
JULIE AYERS  
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: \_\_\_\_\_  
DAVID S. HUNT  
Deputy County Attorney

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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)
- Free Freedom Corps Training
- 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.

RESOLUTION NUMBER 2593

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 2011-2012 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 5TH DAY OF JULY 2011.

---

Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

---

Steve Horton, Esq., City Attorney

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Marianne Jiménez, City Clerk

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011  
Subject: New Liquor License Application for Lori J. Mabery (Blazin M')  
Department: City Clerk  
From: Marianne Jiménez, City Clerk

**REQUESTED ACTION**

Council consideration of recommending approval or denial of a new Liquor License Application for Lori J. Mabery, applicant for the Blazin' M Ranch, Suite 1, located at 1875 Mabery Ranch Road.

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

"I move to recommend approval of the new liquor license application for Lori J. Mabery applicant for the Blazin' M Ranch, Suite 1."

**BACKGROUND**

A new Liquor License Application was received from the Arizona Department of Liquor Licenses & Control for Lori J. Mabery, applicant for Blazin' M Ranch, Suite 1, located at 1875 Mabery Ranch Road. No comments for or against the application have been received.

**JUSTIFICATION/BENEFITS/ISSUE**

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

**REVIEWED BY:**

City Manager: \_\_\_\_\_ City Attorney: \_\_\_\_\_

**ATTACHMENTS**

- Copy of the Liquor License Application for Lori J. Mabery.

Arizona Department of Liquor Licenses and Control

800 West Washington, 5th Floor

Phoenix, Arizona 85007

www.azliquor.gov

602-542-5141

11 MAY 26 1997 Lic. # 4 27

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 12

1. Type of License(s): RESTAURANT

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. MABERY LORI Ms. JEAN
2. Corp./Partnership/L.L.C.: MABERY RANCH COMPANY L.L.C.
3. Business Name: BLAZIN' M RANCH
4. Principal Street Location: 1875 Mabery Ranch Road, Ste #1 Cottonwood Yavapai 86326
5. Business Phone: (928) 634-0334 Daytime Contact: (928) 634-0334
6. Is the business located within the incorporated limits of the above city or town? YES NO
7. Mailing Address: P.O. Box 160 Cottonwood Arizona 86326
8. Price paid for license only bar, beer and wine, or liquor store: Type \$ Type \$

DEPARTMENT USE ONLY

Fees: Application 100.00 Interim Permit Agent Change Club Finger Prints \$ 48.00 TOTAL OF ALL FEES 148.00

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

Accepted by: JB Date: 05-27-11 Lic. # 12133490

**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. HEIDORF'S Liq. Lic. PM 4 27
3. Enter the license number currently at the location. \_\_\_\_\_
4. Is the license currently in use?  YES  NO If no, how long has it been out of use? \_\_\_\_\_

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

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

X \_\_\_\_\_  
(Signature)

State of \_\_\_\_\_ County of \_\_\_\_\_  
 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 \$24 PROCESSING FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City State Zip

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

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

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

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

**SECTION 7 Corporation/Limited Liability Co.:**

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

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

1. Name of Corporation/L.L.C.: MABERY RANCH COMPANY, L.L.C.  
 (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 9/24/1993 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: L-0702327-4 Date authorized to do business in AZ: 9/24/1993
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
Mabery	Dan	Franklin	Mngr/Mbr.	P.O. Box 279	Cottonwood, Arizona 86326
Mabery	Lori	Jean	Mngr/Mbr.	P.O. Box 279	Cottonwood, Arizona 86326

(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
Mabery	Dan	Franklin	30%	P.O. Box 279	Cottonwood, Arizona 86326
Mabery	Lori	Jean	30%	P.O. Box 279	Cottonwood, Arizona 86326
<i>NO OTHER PERSONS OR ENTITY OWNS 10% OR MORE. GPK</i>					

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

**SECTION 8 Club Applicants:**

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

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

Last	First	Middle	Title	Mailing Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

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

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

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

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

**SECTION 11 Person to Person Transfer:**

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

- 1. Current Licensee's Name: \_\_\_\_\_ Entity: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
- 2. Corporation/L.L.C. Name: \_\_\_\_\_  
(Exactly as it appears on license)
- 3. Current Business Name: \_\_\_\_\_  
(Exactly as it appears on license)
- 4. Physical Street Location of Business: Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_
- 5. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
- 6. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
- 7. Current Mailing Address: Street \_\_\_\_\_  
(Other than business) City, State, Zip \_\_\_\_\_
- 8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer?  YES  NO
- 9. Does the applicant intend to operate the business while this application is pending?  YES  NO If yes, complete Section 5 of this application, attach fee, and current license to this application.
- 10. I, \_\_\_\_\_, hereby authorize the department to process this application to transfer the  
(print full name)  
privilege of the license to the applicant, provided that all terms and conditions of sale are met. Based on the fulfillment of these conditions, I certify that the applicant now owns or will own the property rights of the license by the date of issue.  
I, \_\_\_\_\_, declare that I am the CURRENT OWNER, AGENT, MEMBER, PARTNER  
(print full name)  
STOCKHOLDER, or LICENSEE of the stated license. I have read the above Section 11 and confirm that all statements are true, correct, and complete.

11 MAY 26 11:41 AM '02

\_\_\_\_\_  
(Signature of CURRENT LICENSEE)

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this

\_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_



**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 # 12133477 (exactly as it appears on license) Name Robin Lee Brean, Agent

**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:

Brean Robin Lee and license #: 12133477  
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.

*Hori Jean Madero*  
 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](http://www.azliquor.gov) and click on the "Information" tab.

*HJM*  
 applicants initials

11 MAY 26 11:41 AM '08

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

- 1. Check ALL boxes that apply to your business:
 

<input checked="" type="checkbox"/> Entrances/Exits	<input checked="" type="checkbox"/> Liquor storage areas	Patio: <input checked="" type="checkbox"/> Contiguous
<input type="checkbox"/> Service windows	<input type="checkbox"/> Drive-in windows	<input type="checkbox"/> 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.

*HJM*  
 applicants initials

**SECTION 15** Diagram of Premises

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

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

DIAGRAM ATTACHED

11 MAY 26 12:41 PM '11

**SECTION 16** Signature Block

I, Lori Jean Mabery, 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 *Lori Jean Mabery*  
(signature of applicant listed in Section 4, Question 1)



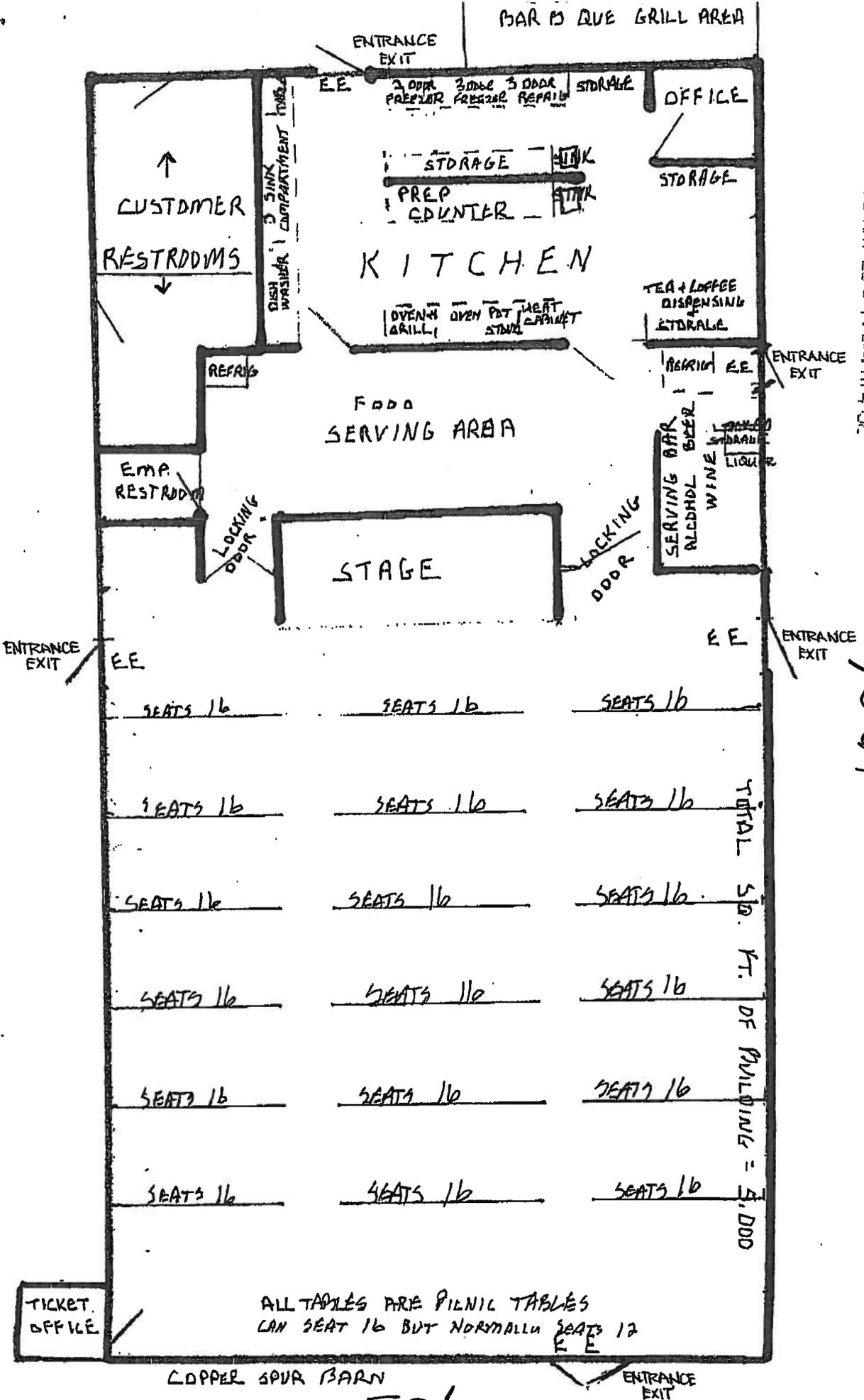
State of Arizona County of Yavapai

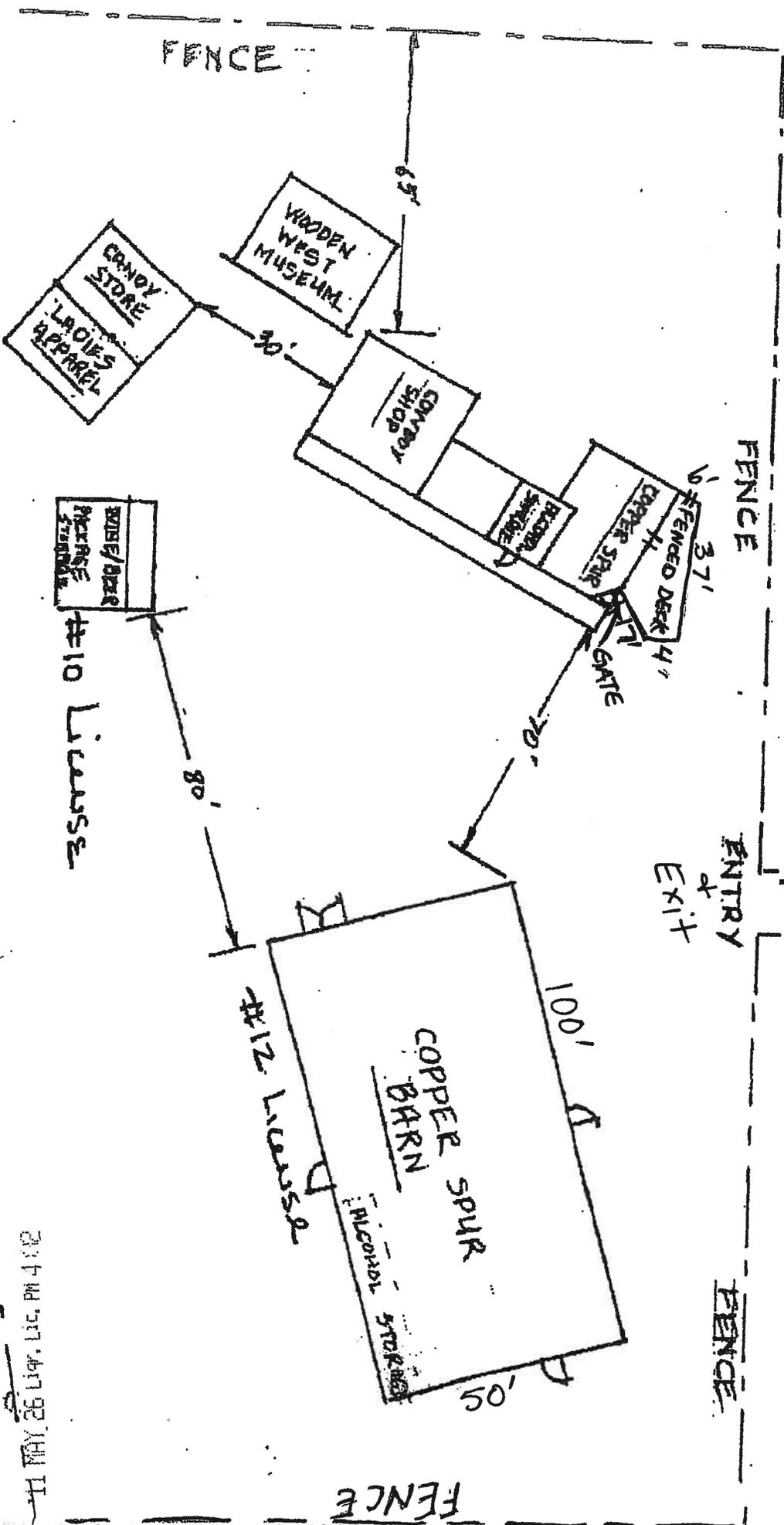
The foregoing instrument was acknowledged before me this

23 of May, 2011  
Day Month Year

*Jennifer Mathe*  
signature of NOTARY PUBLIC

My commission expires on: 19 06 2013  
Day Month Year





BLAZIN' M RANCH

MAY 26 1997 4:12 PM

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011  
Subject: New Liquor License Application for Lori J. Mabery (Blazin M')  
Department: City Clerk  
From: Marianne Jiménez, City Clerk

**REQUESTED ACTION**

Council consideration of recommending approval or denial of a new Liquor License Application for Lori J. Mabery, applicant for the Blazin' M Ranch, Suite 2, located at 1875 Mabery Ranch Road.

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

"I move to recommend approval of the new liquor license application for Lori J. Mabery applicant for the Blazin' M Ranch, Suite 2."

**BACKGROUND**

A new Liquor License Application was received from the Arizona Department of Liquor Licenses & Control for Lori J. Mabery, applicant for Blazin' M Ranch, Suite 2, located at 1875 Mabery Ranch Road. No comments for or against the application have been received.

**JUSTIFICATION/BENEFITS/ISSUE**

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

**REVIEWED BY:**

City Manager: \_\_\_\_\_ City Attorney: \_\_\_\_\_

**ATTACHMENTS**

- Copy of the Liquor License Application for Lori J. Mabery.

Arizona Department of Liquor Licenses and Control

800 West Washington, 5th Floor

Phoenix, Arizona 85007

www.azliquor.gov

602-542-5141

11 MAY 31 11:29 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/DEGREE 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

1. Type of License(s): BEER AND WINE STORE

2. Total fees attached:

10133232
Department Use Only
\$ 2240

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

- Owner/Agent's Name: Mr. MABERY LORI JEAN Ms. Last First Middle
Corp./Partnership/L.L.C.: MABERY RANCH COMPANY L.L.C.
Business Name: BLAZIN' M RANCH
Principal Street Location: 1875 Mabery Ranch Road, Ste #2 Cottonwood Yavapai 86326
Business Phone: (928) 634-9071 Daytime Contact: (928) 634-9071
Is the business located within the incorporated limits of the above city or town? YES NO
Mailing Address: P.O. Box 160 Cottonwood Arizona 86326
Price paid for license only bar, beer and wine, or liquor store: Type \$ Type \$

DEPARTMENT USE ONLY

Fees: Application 100 Interim Permit 100 Agent Change Club Finger Prints 240 TOTAL OF ALL FEES 2240

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

Accepted by: AC Date: 5/31/2011 Lic. # 10133232

**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. 10133223
4. Is the license currently in use?  YES  NO If no, how long has it been out of use? \_\_\_\_\_

MAY 31 11:49 AM 2011

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

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

X ROBINLEE BROWN (Signature)

State of Arizona County of Yavapai  
 The foregoing instrument was acknowledged before me this 31 day of May, 2011  
 Day Month Year

Jennifer Mathe  
 (Signature of NOTARY PUBLIC)

My commission expires on: June 19, 2013



**SECTION 6 Individual or Partnership Owners:**

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

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City State Zip

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

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

(ATTACH ADDITIONAL SHEET IF NECESSARY)

2. Is any person, other than the above, going to share in the profits/losses of the business?  YES  NO

If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

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

**SECTION 7 Corporation/Limited Liability Co.:**

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

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

1. Name of Corporation/L.L.C.: MABERY RANCH COMPANY, L.L.C. 11 MAY 31 11:47 AM '99  
 (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 9/24/1993 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: L-0702327-4 Date authorized to do business in AZ: 9/24/1993
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
Mabery	Dan	Franklin	Mngr/Mbr.	P.O. Box 279	Cottonwood, Arizona 86326
Mabery	Lori	Jean	Mngr/Mbr.	P.O. Box 279	Cottonwood, Arizona 86326

(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
Mabery	Dan	Franklin	30%	P.O. Box 279	Cottonwood, Arizona 86326
Mabery	Lori	Jean	30%	P.O. Box 279	Cottonwood, Arizona 86326
There are no other persons or					
entities greater than a 10% interest					

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

**SECTION 8 Club Applicants:**

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

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

2. Is club non-profit?  YES  NO

3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

MAY 31 1997 Lic. PM 1 80

# Arizona Department of Liquor Licenses and Control

## Section 7

Attachment 6. List all directors, officer and members in Corporation/L.L.C (Continuation):

Last	First	Middle	Title	Mailing Address	% Owned
Mabery	Lloyd	Richard	Member	234 N. Montezuma St., Prescott, Az. 86301	8%
Mabery	Sue	Ann	Member	234 N. Montezuma St., Prescott, Az. 86301	8%
Mabery	Scott	Franklin	Member	P.O. Box 678, Clarkdale, AZ. 86324	6%
Mabery	Gayle	Lynette	Member	P.O. Box 678, Clarkdale, AZ. 86324	6%
Gemmill	James	Franklin	Member	P.O. Box 36, Clarkdale, AZ. 86324	5%
Gemmill	Dinah	Lee	Member	P.O. Box 36, Clarkdale, AZ. 86324	5%
Trumbull	Edwin		Member	P.O. Box 121 Clarkdale, AZ. 86324	2%

**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: \_\_\_\_\_  
MAY 31 1997 Lic. # 1030
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 \_\_\_\_\_

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_



**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.
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\_\_\_\_\_  
applicant's signature

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\_\_\_\_\_  
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.
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\_\_\_\_\_  
applicants initials

APR 31 1994 LIC 011207

**SECTION 13 - continued**

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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 # 10133223 (exactly as it appears on license) Name Robin Lee Brean, Agent

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If yes, give the name of licensee, Agent or a company name:

\_\_\_\_\_ and license #: \_\_\_\_\_  
Last First Middle

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\_\_\_\_\_  
applicants initials

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 Service windows       Drive-in windows       Non Contiguous

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If yes, what is your estimated opening date? \_\_\_\_\_

month/day/year

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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.

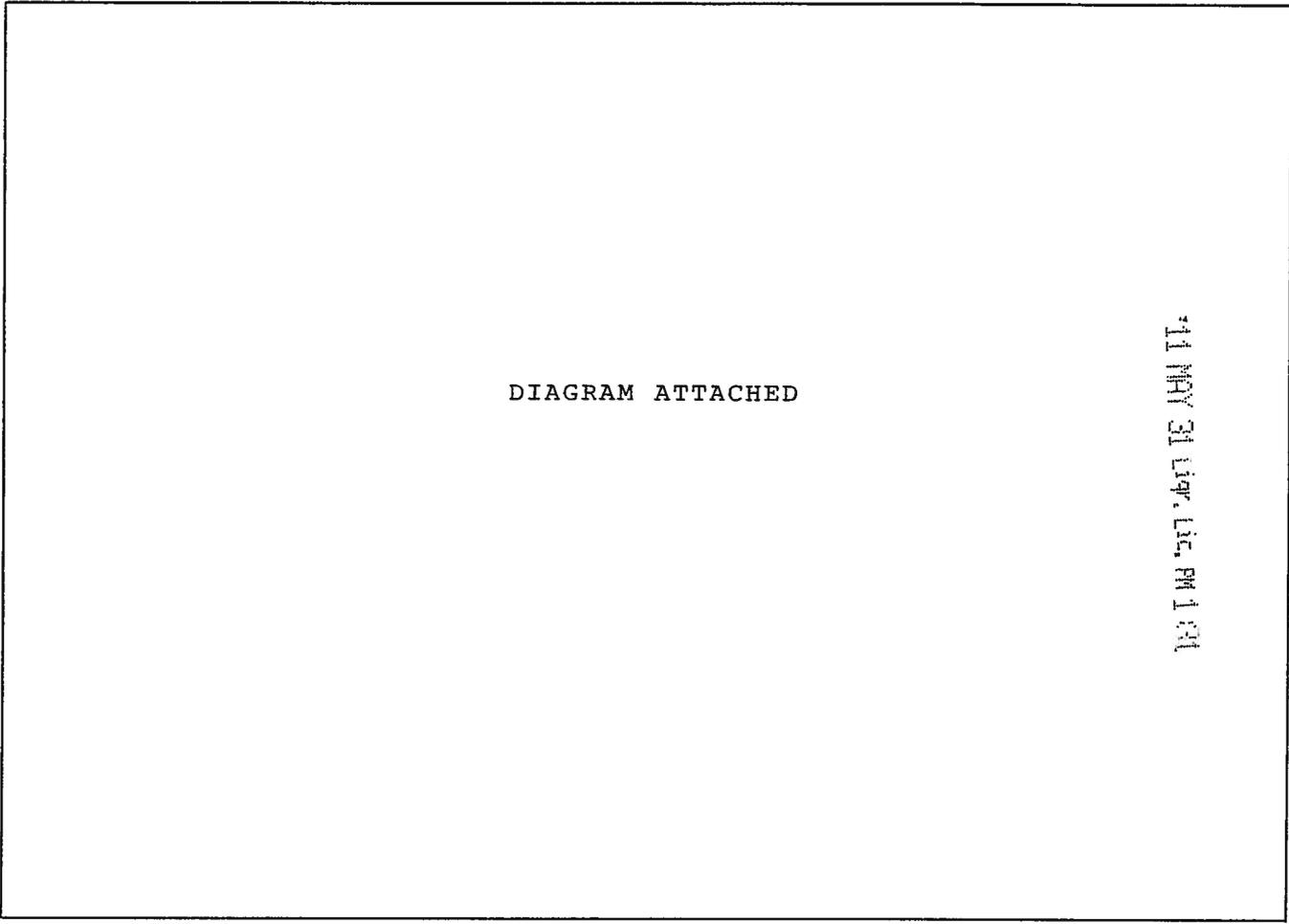
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applicants initials

**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, Lori Jean Mabery, 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 *Lori Jean Mabery*  
(signature of applicant listed in Section 4, Question 1)



State of Arizona County of Yavapai

The foregoing instrument was acknowledged before me this 23rd of May, 2013

Jennifer Mathe  
signature of NOTARY PUBLIC

My commission expires on: 19 06 2013  
Day Month Year

FENCE

\*11 MAY 31 Lic. Lic. PM 1 31

BLAZIN M' RANCH

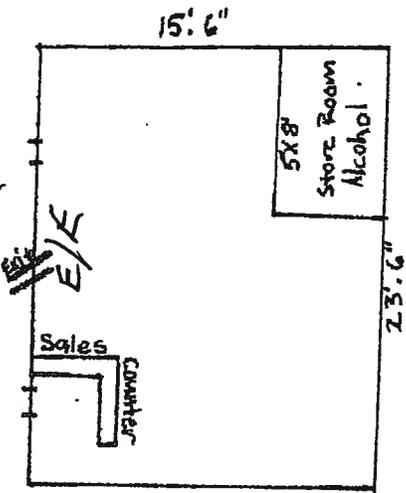
PARKING

FENCE

ENTRY  
EXIT

FENCE

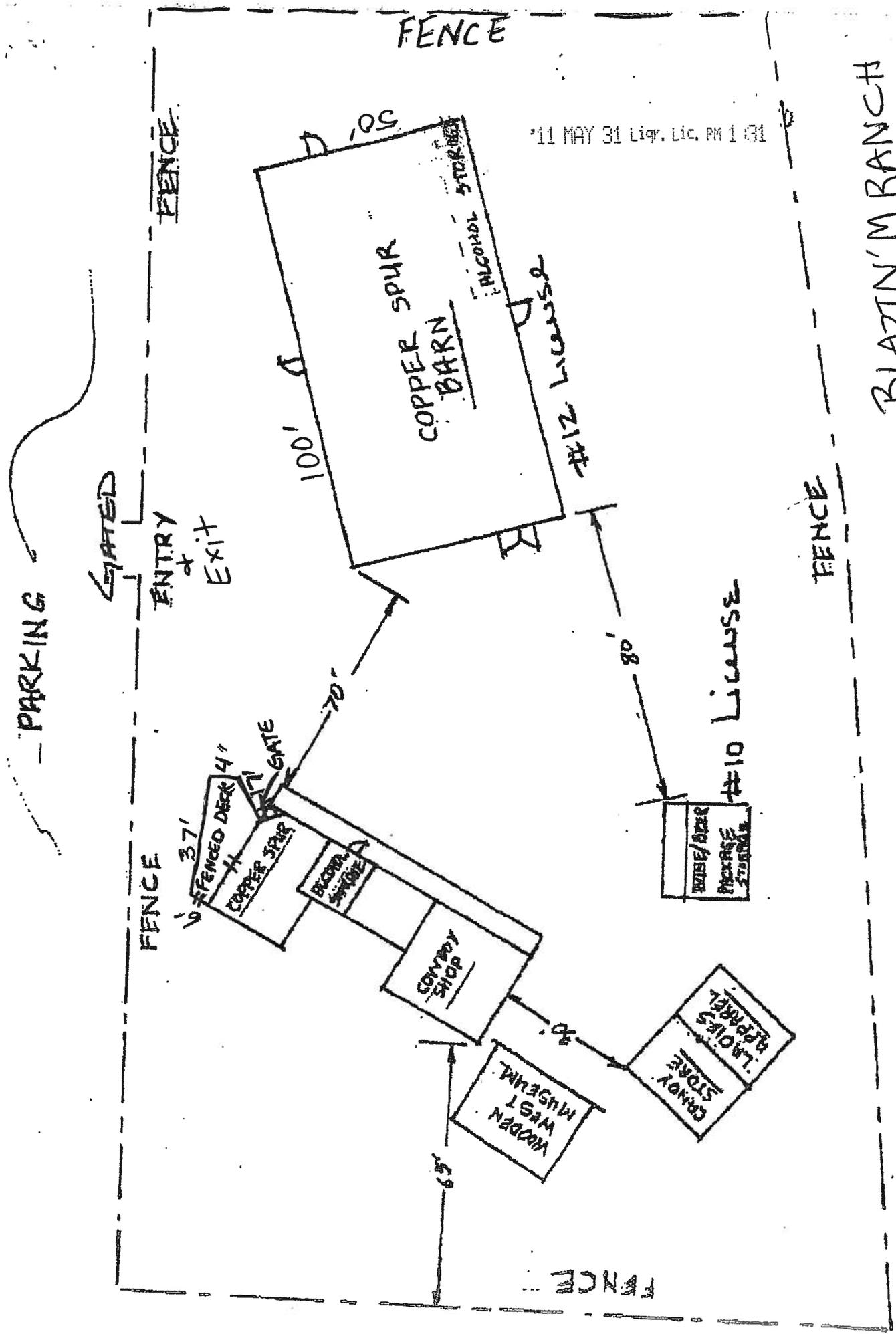
Bootleggers  
Gift Store  
345 Square feet



FENCE

FENCE

BIATIN' M RANCH



City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject:** Yavapai County Community Foundation 2011 Canine Enforcement Grant

Department: Cottonwood Police Department

From: Jody Fanning

**REQUESTED ACTION**

Approval for the Chief of Police to sign the attached YCCF contract to provide \$4,091.00 for fuel and per diem for narcotic canine training and veterinary expenses for two (2) K-9 Units.

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

“I move to approve the Yavapai County Community Foundation 2011 Canine Enforcement Grant, Contract Number 20120854, and authorize the Police Chief to sign said contract.”

**BACKGROUND**

The Department will be replacing Dakota and this new canine and handler will need training to become certified. The training that the Department is considering will be held in Tucson. There is no charge for the training or lodging. The only expense will be the fuel to drive to Tucson and back and the meals. Both K-9 Units will be attending the training, since Officer Shilling and Rio need to be re-certified. The grant request is for funds to help cover the cost of fuel and per diem for both K-9 Units and to assist with the expenses for veterinary care. The YCCF has been instrumental in keeping the Department’s K-9 Unit successful. Throughout the last few years they have helped purchase canines, paid for training, provided training equipment, purchased a light weight bite suit and funded veterinary costs.

**JUSTIFICATION/BENEFITS/ISSUES**

This grant will help with the cost of the necessary training for both K-9 Units and to assist with the veterinary expenses.

**COST/FUNDING SOURCE**

Yavapai County Foundation Committee

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

The Yavapai County Foundation Committee 2011 Grant



## **GRANT AGREEMENT**

**Date:** June 23, 2011

**Grantor:** Arizona Community Foundation (ACF), on behalf of Yavapai County Community Foundation (YCCF)

**Grant recipient:** Grant Number: 20120854  
Cottonwood Police Department

**Grant Period:** July 2011 through July 2012

**Grant Amount:** \$4091

**Special Conditions:**

**Final Report Due:** August 1, 2012

As consideration for the grant, the Grantee agrees to the following conditions:

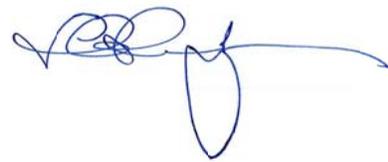
- 1. Use of Grant Money.** The Grantee shall use the Grant Money only for the Project, in accordance with the proposal and budget previously submitted to and approved by the Yavapai County Community Foundation (YCCF). The Grantee shall not make any significant change in the Project without the prior approval of YCCF. At the end of the grant period, the Grantee shall promptly return to YCCF any unused portion of the Grant Money.
- 2. Reports.** The Grantee shall submit a written, final report on the accomplishments of this Project as well as an accounting of expenditure of grant funds. Reporting and documentation required by YCCF shall be provided as outlined in the Grantee Final Report. The Grantee shall provide YCCF with copies (if available) of any press releases, photographs and published material about the Grant Money and the work it made possible.
- 3. Meeting Requirement.** The Grantee may be asked to attend a meeting at YCCF, to be set later, to discuss your project. Discussions on capacity building in the future and other topics will also take place.
- 4. Publicity.** You will allow YCCF to review and approve the text, including quotes, of any proposed publicity concerning this grant *prior* to its release. ACF and YCCF may include information regarding this grant, including the amount and purpose of the grant, any photographs you may have provided, your logo or trademark, or other information or materials about your organization and its activities, in ACF's or YCCF's periodic public reports, newsletters, news releases or any other printed materials distributed by the Foundations. Please ensure that all publicity (including printed material, press releases and Web sites) states "*funding provided by the Yavapai County Community Foundation, an affiliate of the Arizona Community Foundation*" If you require an electronic copy of ACF's or YCCF's official logo please contact ACF's Marketing/Communications department at 800.222.8221.

5. **Retention of Records.** The Grantee shall keep all financial records pertaining to the Project for at least four years and shall make such records available to YCCF at reasonable times upon the YCCF request.
6. **Revocation of Grant Money.** The Grantee must return all unexpended grant funds immediately upon request by YCCF if (1) the Foundation, at its sole discretion, determines that the Grantee has not performed in accordance with this Agreement, or (2) the Grantee loses its exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code" and is classified as other than a private foundation under Section 509(a) of the IRS Code.
7. **Grant Does Not Create a Partnership.** The Grantee shall not in any manner indicate, nor shall the grant or any documents related thereto be in any manner deemed to create or construed as creating, any kind of partnership, joint venture or other similar relationship between YCCF and the Grantee or other party. YCCF shall not be deemed in any manner responsible for the debts, liabilities or other obligations of the Grantee, including any such debts relating to this Project.
8. **Amendment.** This Grant Agreement shall not be amended or revised except by a written document signed by the parties hereto.
9. **Changes or Problems Occurring During Grant Year.** Any changes or problems in the Grantee Agency that affects the Project must be reported to YCCF immediately.

The parties have entered into this Grant Agreement as of the day and year first above written.

**Arizona Community Foundation, on  
behalf of Yavapai County Community  
Foundation**

By:



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Steve Seleznow, CEO

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The Grantee

By:

---

Name/Title

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject: Service Agreement Between Mingus Union High School District and the City of Cottonwood Police Department for a School Resource Officer - SRO**

Department: Police Department

From: Jody Fanning, Police Chief

**REQUESTED ACTION**

Staff is requesting approval to enter into a service agreement between the Mingus Union High School District and the City of Cottonwood through its Police Department for a School Resource Officer for fiscal year 2012.

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

“I move to approve the service agreement between the Mingus Union High School District and the City of Cottonwood for a School Resource Officer for fiscal year 2012.”

**BACKGROUND**

Staff is requesting approval to continue the service agreement between the City of Cottonwood, through its Police Department, and Mingus Union High School District to provide a school resource officer for the high school.

This service agreement is similar to that used in previous years, with the exception of the reimbursement amount indicated, which generally increases each year with the officer's salary. This agreement allows the school district to apply for grant funding to maintain this SRO position.

**JUSTIFICATION/BENEFITS/ISSUES**

The presence of a School Resource Officer is clearly beneficial to students, teachers, and administrators alike. This officer is able to respond rapidly in the event of an emergency or conflict. He teaches police/safety oriented courses at the school and attends special school functions such as chaperoning dances and sports activities.

**COST/FUNDING SOURCE**

This program is a reimbursement type, whereby the City of Cottonwood provides the SRO and the District provides a reimbursement for his salary. The cost to the District is approximately \$68,019.53.

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

Service agreement between the Mingus Union High School District and the Cottonwood Police Department

**A SERVICE AGREEMENT**  
**BETWEEN**  
**MINGUS UNION HIGH SCHOOL DISTRICT**  
**AND**  
**CITY OF COTTONWOOD, ARIZONA**

This AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between the Mingus Union High School District # 4 ("District") and the City of Cottonwood, Arizona ("City").

In 1994 the Arizona Legislature created a Joint Legislative Committee on School Safety ("JLCS") for the purpose of approving funding for school safety programs and law-related education programs ("School Safety Programs") developed by Arizona school districts, which utilize the services of School Resource Officers. An appropriation was made from the state general fund to the Arizona Department of Education to place School Resource Officers in Arizona schools in accordance with approved School Safety Programs.

The District and the City desire to work in cooperation with one another to further the goals of the approved School Safety Program. The purpose of this agreement is to implement the School Safety Program in the District and to define the roles and responsibilities of the parties to this Agreement.

The City, through this Agreement, will assign one School Resource Officer (SRO) to the District to perform the services listed in paragraph two herein. Therefore, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**1. TERM OF AGREEMENT**

This agreement shall begin on July 1, 2011 and terminate on June 30, 2012.

**2. RESPONSIBILITIES OF PARTIES**

The parties to this agreement understand and accept the Arizona Department of Education School Safety Program Guidelines ("Guidelines"). The parties accept their roles and responsibilities as established by the Guidelines, which are incorporated by reference herein.

**3. SRO POSITION DESCRIPTION AND SERVICES**

The SRO shall fulfill his / her duties as a sworn law officer for the State of Arizona and shall be responsible for:

- Establishing liaison with school administrators, staff, students and parents.
- Informing students of their rights and responsibilities as lawful citizens through presentation of law-related education in the classroom.
- Networking with community agencies that may or do provide services to the school.
- Acting as a resource in the investigation of school related criminal activities.
- Participating in the Parent Advisory Committee activities, if requested.
- Providing a visible deterrence to crime while presenting a positive impression of a law-enforcement officer.
- Providing information when requested to students, parents and staff in law-related situations.
- Working full-time, 40 hours a week, 12 months per year, in the job assignment as specified by the District's grant application and the Arizona Department of Education School Safety Program Guidance Manual.

- Maintaining a Monthly Activity Log for tracking work performed and presenting this Activity Log to the assigned supervisor and school administration on a monthly basis.
- Participating in an annual performance evaluation to be performed by the assigned school administrator.
- Attending grant required Law-Related Training programs provided by the Arizona Foundation for Legal Services and Education (LRE).

**SUMMER BREAK INTERSESSION ACTIVITIES**

The SRO is under a 12 month contract and will be available to: (Examples of possible activities).

- Assist school administrators to plan school security improvements.
- Prepare law-related education lessons and/ or presentations.
- Develop collaborations with community resources; identifying services offered that could benefit students.
- Conduct school safety assessments.
- Work with the school safety team to review and update the school safety plan.
- Plan in-service training.
- Collaborate with school administration to analyze criminal incident reports and disciplinary records to identify patterns and develop strategies to address programs.
- Attend training opportunities.
- Work with community-based and youth recreational and leadership development activities that complement and reinforce the School Safety Program.

**4. FINANCE PAYMENT**

Upon receiving the grant approval for fiscal year 2012 and receipt of funds from the Arizona Department of Education, the District will pay invoices submitted by the Department within 30 days of receipt of the invoice.

The District’s total payment to the Department:

Salary and employee related expenses..... \$68,019.53

**5. REPORTING AND RECORDS**

All books, accounts, reports, files, and other records related to this Agreement shall be kept for five (5) years after termination of this agreement. The assigned SRO shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in the SRO’s records or obtained from the City or from others carrying out its functions shall be disclosed by the SRO, or anyone under his supervision, except as necessary in the performance of the officer’s duties as described herein.

**6. MODIFICATION AND TERMINATION**

(A) Termination

This agreement may be terminated by either party if in its judgment such action is necessary due to: (a) funding availability; (b) statutory changes in the program; either party’s failure to implement or operate the approved School Program; or (c) either party’s non-compliance with this Agreement. Any termination must be in writing, stating the reason therefore, be sent by certified mail and provide thirty (30) days notice of termination to the other party.

(b) Modifications

Any modifications to this Agreement must be by mutual written consent of the parties.

## **7. EMPLOYEE STATUS OF SRO**

Except as otherwise provided in law, in the performance of this Agreement and the School Safety Program both parties hereto will be acting in their individual governmental capacities and not as agents, employees, partners, joint ventures, or associates of each other. The employees, agents, or subcontractors of one party shall not be deemed or construed to be employees or agents of the other party.

The City is the employer of the SRO. The District understands that the SRO is a sworn law enforcement officer and the District shall not interfere with the SRO's duties as a sworn law enforcement officer.

The City agrees to consult with the District during the selection and hiring process, and to select an SRO that possesses the qualifications set forth in the Arizona Department of Education School Safety Program Guidelines. The Department and the District will determine the SRO's hours consistent with the School Safety Grant guidelines.

The District shall provide office space that provides privacy for the SRO to conduct confidential business. The District shall provide the necessary equipment for an officer to effectively perform his/her duties as provided in the District's grant application.

The District shall provide a complete copy of the grant application and award to the SRO by July 31, 2011, or on the date that the officer begins service at the District.

The District shall send the SRO to law-related education training on an annual basis and provide for all related travel expenses as provided in the grant.

The City shall have the sole authority over discipline of the SRO. The Department and District will jointly obtain or prepare a written document describing the general chain of command and channels of communication for the SRO.

The District and City may assign tasks to the SRO in relation to the School Safety Program. Although the SRO is a City employee placed under supervision of the District, all efforts will be made to ensure cooperation and coordination of the School Safety Program between the District and the City. If a problem occurs, the District shall attempt to resolve the problem at the site level between the officer and administration. If the problem is not resolved at the site level, the City and the District will resolve the problem through communication between administrators of the District and City.

The District shall conduct an annual performance evaluation of the SRO and share such evaluation with the SRO's City Supervisor.

Limited to this paragraph only, and in accordance with A.R.S. 23-1022(D), for the purpose of Worker's Compensation, the officer is deemed to be an employee of both the District and the City. The City shall be solely liable for the payment of Worker's Compensation benefits.

In accordance with A.R.S. 23-1022(E), both the City and the District shall post and maintain the following notice:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purpose or Workers' Compensation."

## **8. DISPOSING OF PROPERTY:**

Each party is the owner of any personal property it purchases or pays under the Agreement. When the Agreement expires or is terminated, each party will be entitled to exclusive possession and control of the personal property and may dispose of it as it sees fit.

## **9. ENTIRE AGREEMENT**

This Agreement contains the entire understanding of the parties hereto. There are no representations or other provisions other than those contained or referenced herein, and any amendment or modification of this Agreement shall be made only in writing and signed by the parties to this Agreement.

## **10. INVALIDITY OF PART OF THE AGREEMENT**

The parties agree that should any part of this agreement be held to be invalid or void, the remainder of the agreement shall remain in full force and effect and shall be binding upon the parties.

## **11. GOVERNING LAW**

This agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing the intergovernmental agency agreements and mandatory contract provisions of state agencies required by statute or executive order.

## **12. COMPLIANCE WITH NON-DISCRIMINATION LAWS**

The City and District shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No 75-5, which mandates that all persons, regardless of race, color, religion, sex, national origin, or political affiliation, shall have equal access to employment opportunities. The City and the District shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

## **13. DISPUTE RESOLUTION NOTICE**

If there is a dispute related to this Agreement or any of the terms contained herein, and the dispute is subject to the mandatory arbitration provisions of A.R.S. 12-133, the parties shall submit the matter to binding arbitration in compliance with A.R.S. 12-1518.

## **14. CONFLICT OF INTEREST**

The parties acknowledge that this Agreement is subject to cancellation provisions pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein and made a part hereof.

## **15. NOTICES**

All notices, requests for payment, or other correspondence between the parties regarding this agreement shall be mailed or delivered to the respective parties at the following address:

Kirk Waddle, Business Manager  
Mingus Union High School  
1801 East Fir Street  
Cottonwood, AZ 86326

Jody Fanning, Police Chief  
Cottonwood Police Department  
199 S. 6<sup>th</sup> Street  
Cottonwood, AZ 86326

IN WITNESS THEREOF, the parties hereto have executed this AGREEMENT on the date written below:

District: \_\_\_\_\_

Agency: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

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

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

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

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned who have determined that this Agreement is in proper form and within the powers and authority granted to each respective public body.

This \_\_\_\_ day of \_\_\_\_\_, 2011.

This \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Attorney for District

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

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject: Sewer Easement for Veterans' Clinic**

Department: Development Services

From: Dan Lueder

**REQUESTED ACTION**

Consider approval of a sanitary sewer easement across a city owned parcel of land identified as APN 406-04-024A.

If the Council desires to approve this item the suggested motion is: **Move to approve an eight foot (8') sanitary sewer easement and thirty foot (30') temporary construction easement across APN 406-08-024Y.**

**BACKGROUND**

The veterans' administration is constructing a new clinic at 501 South Willard Street. That section of Willard Street does not have sanitary sewer mains on either side of the street; the closest main is at the rear of a city owned parcel west of Willard Street. To access this sewer main for the sanitary sewer service line to serve the clinic it is necessary to cross the northern boundary of the city owned parcel. The placement of this easement will not affect future use of this parcel. The temporary construction easement will be in effect only during the construction of the sewer line and then would become void and only the eight foot sewer easement would remain.

**JUSTIFICATION/BENEFITS/ISSUES**

The veterans' clinic will provide much needed local medical care for those who have served our country and connection to a sanitary sewer system is a vital component of its operation. The city is being asked to provide an easement to allow connection to the nearest sewer collection main however actual construction of the sewer line through the proposed easement and the associated cost will be the responsibility of the contractor installing the sewer line.

**COST/FUNDING SOURCE**

N/A

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

Map of proposed easement

Legal description of the 8' sewer easement

Legal description of the 30' temporary construction easement



# TRUE NORTH SURVEYS, INC.

Job # 11003  
SJS:ss  
May 26, 2011

Pender Engineering  
1010 N. Main St  
Cottonwood, AZ 86326



Expires: 06/30/2013

## Re: LEGAL DESCRIPTION - 8' EASEMENT: CITY PARCEL

A parcel of land located in the NE 1/4 of Section 4, T15N, R3E, G&SRB&M, Yavapai County, Arizona, more particularly described as follows:

Commencing at the NE corner of said NE 1/4, from which the NW corner of said Section 4 bears N89°54'42"W, a distance of 5293.57 feet; thence N89°54'42"W, along the north line of said Section 4, a distance of 288.95 feet to the southerly right-of-way of U.S. Highway 89-A; thence S58°31'48"E, along said right-of-way, a distance of 44.52 feet; thence S13°37'44"E, along said right-of-way, a distance of 46.73 feet; thence S30°48'04"W, along the westerly right-of-way of South Willard Street, a distance of 252.05 feet; thence S31°28'37"W, along said westerly right-of-way, a distance of 251.08 feet; thence along said westerly right-of-way, along the arc of a curve to the right, said curve having a radius of 543.00 feet, arc length of 58.29 feet, central angle of 06°09'02", a chord bearing of S34°35'08"W, and a chord length of 58.26 feet; thence N52°00'03"W, along the southwest lines of the parcels of land described in Book 4390, Page 665, and Book 4351, Page 686, Official Records of Yavapai County, a distance of 177.29 feet; thence S61°40'49"W, along the northwest line of the parcel of land described in Book 3894, Page 73, Official Records of Yavapai County, a distance of 9.68 feet to the TRUE POINT OF BEGINNING; thence S61°40'49"W along said northwest line, a distance of 8.64 feet; thence N50°32'39"W, a distance of 199.00 feet; thence N11°51'59"W, a distance of 18.18 feet; thence S52°00'03"E, along the southwest line of said parcel of land described in Book 4390, Page 665, Official Records of Yavapai County, a distance of 12.41 feet; thence S11°51'59"E, a distance of 5.89 feet; thence S50°32'39"E, a distance of 199.46 feet to the TRUE POINT OF BEGINNING.

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1219 S. Pioneer Drive

~~1140 Western Drive~~

~~Suite A~~

Cottonwood, AZ 86326

Phone & Fax (928) 646-5951



# TRUE NORTH SURVEYS, INC.

Job # 11003  
SJS:ss  
May 26, 2011



Pender Engineering  
1010 N. Main St  
Cottonwood, AZ 86326

Expires: 06/30/2013

## Re: LEGAL DESCRIPTION - EASEMENT: CITY PARCEL

A parcel of land located in the NE 1/4 of Section 4, T15N, R3E, G&SRB&M, Yavapai County, Arizona, more particularly described as follows:

Commencing at the NE corner of said NE 1/4, from which the NW corner of said Section 4 bears N89°54'42"W, a distance of 5293.57 feet; thence N89°54'42"W, along the north line of said Section 4, a distance of 288.95 feet to the southerly right-of-way of U.S. Highway 89-A; thence S58°31'48"E, along said right-of-way, a distance of 44.52 feet; thence S13°37'44"E, along said right-of-way, a distance of 46.73 feet; thence S30°48'04"W, along the westerly right-of-way of South Willard Street, a distance of 252.05 feet; thence S31°28'37"W, along said westerly right-of-way, a distance of 251.08 feet; thence along said westerly right-of-way, along the arc of a curve to the right, said curve having a radius of 543.00 feet, arc length of 58.29 feet, central angle of 06°09'02", a chord bearing of S34°35'08"W, and a chord length of 58.26 feet; thence N52°00'03"W, along the southwest lines of the parcels of land described in Book 4390, Page 665, and Book 4351, Page 686, Official Records of Yavapai County, a distance of 177.29 feet to the TRUE POINT OF BEGINNING; thence S61°40'49"W, along the northwest line of the parcel of land described in Book 3894, Page 73, Official Records of Yavapai County, a distance of 32.76 feet; thence N52°00'03"W, a distance of 226.08 feet; thence N45°01'28"E, along the northwest line of the parcel of land described in Book 3920, Page 499, Official Records of Yavapai County, a distance of 30.23 feet; thence S52°00'03"E, along the southwest line of said parcel of land described in Book 4390, Page 665, Official Records of Yavapai County, a distance of 235.54 feet to the TRUE POINT OF BEGINNING.

\\works\legals\11\11003e2a.wps

1219 S. Pioneer Drive

~~1140 Western Drive~~

~~Suite A~~

Cottonwood, AZ 86326

Phone & Fax (928) 646-5951



City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

Subject: Adoption of the City of Cottonwood Fiscal Year 2012 Tentative Budget and Establishing an Expenditure Limitation

Department: Administrative Services, Finance Division

From: Jesus R. Rodriguez, Administrative Services General Manager  
Carol Brown, Budget Analyst

**REQUESTED ACTION**

Submitted for City Council consideration and adoption is the Fiscal Year 2012 Tentative Budget. This adoption will also establish the FY 2012 expenditure limitation.

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

I move to adopt the Fiscal Year 2012 Tentative Budget and establish the City's fiscal year 2012 expenditure limitation as presented.

**BACKGROUND**

The Adoption Process

Prior to the adoption of the tentative budget, the City Council conducts a public hearing. During this public hearing, the Council invites public comment on the tentative budget. After the close of the public hearing, the Council convenes into the regular meeting and votes on the adoption of the tentative budget.

The tentative budget for the upcoming fiscal year is \$78,422,500. This is higher by \$17,742,635 than the 2011 Revised Budget due to updated numbers agreed to during this year's budget sessions, increase to the indirect costs, and adjustments to rollovers due to construction in progress, but not completed in the 2011 fiscal year. Changes to the budget can still be made between the tentative and the final budget as long as the final budget does not exceed the expenditure limitation established during the tentative budget adoption. The budget document has guidelines for such budgetary adjustments.

Within the motion to adopt the tentative budget, I would like the Council to again note many of the more general issues that were considered and approved during the budget preparation process:

-  Funding for the City's Merit program;
-  Frozen positions discussed during the work-study sessions;
-  There were no reclassifications or salary adjustments as discussed during the work-study sessions;
-  Initiate a comprehensive compensation study;
-  Continue the present employee contribution structure toward dependent health insurance coverage;
-  Give permission to purchase budgeted equipment on a delayed schedule using existing procurement procedures;
-  Approved the acquisition, planning, and/or construction of budgeted capital projects using established guidelines and;
-  Accepted the expenditures as noted in the budget document, as presented and discussed during the budget workshop sessions.

**JUSTIFICATION/BENEFITS/ISSUES**

This budget reflects the changes identified during the budget work sessions with the Department Heads and Council during the June work study sessions. Also included are any adjustments for every item that may have been overlooked or needed revision. A schedule of major changes from the proposed to the tentative budget is attached.

**COST/FUNDING SOURCE**

This is a balanced budget, meaning all expenditures have a revenue source. The nature of the income sources range from everyday operating revenues to grants and outside financing for major projects. The City is covering all operational and maintenance, current staffing, and capital equipment and projects costs. It is also maintaining its current reserve structure, and providing for a merit increase.

**REVIEWED BY:**

City Manager: \_\_\_\_\_ City Attorney: \_\_\_\_\_

**ATTACHMENTS**

Change details from Proposed to Tentative Budget

**Major Changes to 2012 Proposed Budget**

C=Carryover R=Revenues E=Expenditures

Department	Description of Change	FY Affected	R/E/C	Inc. / (Dec.)
<b>General Fund Revenues</b>				
General Fund Revenues	Moved FEMA AFG from FY 11 to FY 12	11	R	(40,090)
General Fund Revenues	Moved FEMA AFG from FY 11 to FY 12	12	R	40,090
General Fund Revenues	Increased Carryover	12	R	259,015
General Fund Revenues	Increased Indirect Costs From all Funds	12	R	764,065
General Fund Revenues	Increased Indirect 10K Memorial Run Rev	11	R	9,050
General Fund Revenues	Reduced City Sales Tax - Latest Projections	12	R	(287,565)
<b>General Fund Expenditures</b>				
Fire	Increased Capital - Grant Funded AGF	12	E	40,090
Fire	Decreased Capital - Grant Funded AGF	11	E	(40,090)
Fire	Decreased Capital - Fire Truck Chasis	11	E	(253,815)
Fire	Increased Capital - Fire Truck Chasis	12	E	253,815
City Clerk	Decrease Capital - Agenda Software	11	E	(9,650)
City Clerk	Increase Capital - Agenda Software	12	E	9,650
IT	Increased Capital - Security Software	12	E	15,000
Fire	Increased Salaries - Certification Pay	12	E	18,000
Fire	Increased Benefits for above	12	E	3,030
Council	Increased Youth Commision	12	E	1,600
Court	Increased Salaries & Benefits (Judge)	12	E	5,040
Engineering	Increased Salaries & Benefits (Civil Engineering Tech)	12	E	52,145
Public Works	Increased Salaries & Benefits (PW&Utilities Mtce Spec)	12	E	44,045
Legal	Decreased Contractual Svs	12	E	(35,000)
Finance	Increased Capital (City-Wide Software Program)	12	E	300,000
Operating Transfers	Increased Transfers Out - Library	12	E	31,255
Operating Transfers	Increased Transfers Out - Cemetery	12	E	5,900
Operating Transfers	Increased Transfers Out - Airport	12	E	14,835
Parks & Rec	Increased Brian Mickelson Run - Typo 1,500-15,000	11	E	13,500
Parks & Rec	Increased Brian Mickelson Run - Typo 1,800-18,000	12	E	16,200

**Major Changes to 2012 Proposed Budget**

C=Carryover R=Revenues E=Expenditures

Department	Description of Change	FY Affected	R/E/C	Inc. / (Dec.)
<b>Special Revenue Fund Expenditures</b>				
Hurf	Increased Carryover	12	R	339,000
Hurf	Increased Streets Contingency	11	E	339,000
Hurf	Decreased Streets Contingency	12	E	(299,545)
Hurf	Pavement Preservation - Proj Rollover	11	E	(57,000)
Hurf	Pavement Preservation - Proj Rollover	12	E	57,000
Hurf	Sidewalks - Proj Rollover	11	E	(282,000)
Hurf	Sidewalks - Proj Rollover	12	E	282,000
Hurf	Increased Indirect Costs to General Fund	12	E	299,545
Library	Increased Operating Transfers In - RFID Conversion	12	R	10,000
Library	Increased Operating Transfers In	12	R	21,255
Library	Increased Capital - RFID Conversion	12	E	10,000
Library	Increased Indirect Costs to General Fund	12	E	21,255
Cemetery	Increased Operating Transfers In	12	R	5,900
Cemetery	Increased Indirect Costs to General Fund	12	E	5,900
Airport	Increased Operating Transfers In	12	R	12,335
Airport	Increased Indirect Costs to General Fund	12	E	9,835
Airport	Increased Transfers-Out - Grants	12	E	2,500
<b>Capital Improvements Fund Revenues &amp; Expenditures</b>				
Cap Imp Fund	Increased Carryover	12	R	6,600
Cap Imp Fund	Increased Reserves	11	E	6,600
Cap Imp Fund	Old Court Bldg - Increase Proj Rollover	11	E	(12,800)
Cap Imp Fund	Old Court Bldg - Increase Proj Rollover	12	E	12,800
Cap Imp Fund	Old Town Jail - Reduce Proj Rollover	11	E	4,800
Cap Imp Fund	Old Town Jail - Reduce Proj Rollover	12	E	(4,800)
Cap Imp Fund	Riverfront Park - Reduce Proj Rollover	11	E	1,400
Cap Imp Fund	Riverfront Park - Reduce Proj Rollover	12	E	(1,400)
Airport Improvements Fund	Increased Grant Revenue - Beacon & LED Windsocks	12	R	22,500
Airport Improvements Fund	Increased Transfers-In - 90/10 Grant	12	E	2,500
Airport Improvements Fund	Increased Grant Expenditure - Beacon & LED Windsock	12	E	25,000
<b>Debt Service Fund Revenues &amp; Expenditures</b>				
None				
<b>Enterprise Funds Revenues &amp; Expenditures</b>				
Water	Decrease Bond Proceeds	12	R	(33,690,000)
Water	Decrease Bonding Expense	12	E	(33,690,000)
Sewer	Increased Indirect Costs to General Fund	12	E	261,055
Sewer	Decreased Reserves	12	E	(261,055)
Water	Decreased Reserves	12	E	(665,875)
Water	Increased Capital - Water System Improvements	12	E	500,000
Water	Decreased Postage	12	E	(13,500)
Water	Increased Indirect Costs to General Fund	12	E	165,375
Water	Increased Equipment Maint & Repair	12	E	14,000

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject: Utility Engineering Services**

Department: Development Services

From: Dan Lueder

**REQUESTED ACTION**

Consider approval of an agreement for on-call utility engineering services.

If the Council desires to approve this item the suggested motion is: **Move to approve the agreement with Wood Patel for on-call utility engineering services. This authorization is subject to final review and approval of the agreement by the City Attorney.**

**BACKGROUND**

The city utility department has not had an agreement with an engineering consultant firm for on-call utility engineering services since the previous agreement with Coe and Van Loo lapsed several months ago. Having a qualified engineering consultant under contract and available to assist the City's engineering division when the project is large and complex or the workload is more than the current staff can adequately complete, is a vital component of successful operation. The engineering division has dramatically increased the amount of engineering services completed in-house however with the increase in projects and development they require periodic assistance.

A statement of qualifications for engineering services was developed and advertised and eight (8) proposals were submitted by the deadline advertised. The submitted proposals were reviewed by a committee composed of utility engineer Troy Odell PE, utility administrative manager Roger Biggs and engineering technician David Hausaman. After the committee reviewed and scored all of the submitted proposals, the top three rated forms were invited to attend an interview process at which they were asked to verbally respond to five questions which were submitted to them prior to the interviews. The top three firms and their scores from the interviews are as follows:

	<u>Hausaman</u>	<u>Odell</u>	<u>Biggs</u>	<u>Total</u>
Greely & Hanson:	71	69	75	215
Shephard Wesnitzer/Carollo:	31	64	72	167
Wood Patel	83	85	84	252

Staff recommends that the utility engineering services contract be for a one-year period with the option to renew the agreement for 4 additional one-year terms on Council approval. This would allow for continuity of engineering services if the selected firm is performing well, yet at the same time allow the City to deny the annual renewal should the work product be substandard.

The engineering services contract would cover the entire scope of utility engineering services and then as projects were developed, a specific scope of work and cost proposal would be presented to staff for review and possible modification. Should the scope amount exceed the established threshold for Council approval it would then be presented to Council for consideration as an agenda item at a Council meeting.

**JUSTIFICATION/BENEFITS/ISSUES**

While the city has greatly reduced the amount of engineering consultant services required with the establishment of the engineering division, it is not possible to adequately and properly complete all of the engineering projects in-house.

**COST/FUNDING SOURCE**

Sewer and Water enterprise funds

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

Utility engineering services agreement

## CITY OF COTTONWOOD

### CONTRACT FOR UTILITY ENGINEERING SERVICES

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between Wood/Patel and Associates, Inc., 2051 West Northern Avenue Suite 100, Phoenix, Arizona 85021, hereinafter designated the ENGINEER, and City of Cottonwood, an Arizona municipality, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the CITY.

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

#### ARTICLE I -- SCOPE OF WORK

The ENGINEER shall furnish any and all labor, materials, equipment, transportation, services, and facilities required to provide professional utility engineering services to CITY when and as requested by CITY. All requests for engineering services will be submitted in memorandum form from the CITY Utilities Engineer to the party listed by the ENGINEER to receive NOTICE under section eight of this contract.

Engineering services shall include, but not be limited to:

1. Preparing and/or checking design plans for:

- Water and Wastewater treatment plants
- Wastewater lift stations
- Water distribution systems
- Storage reservoirs
- Wastewater collection systems
- Wastewater constructed effluent wetlands
- Wastewater effluent disposal systems

2. Consulting services relating to:

- Wastewater process control
- Biosolids treatment and disposal
- Wastewater master plans
- Wastewater system infrastructure
- Capital improvement planning

Water treatment and quality compliance  
Water and wastewater regulatory permitting and compliance  
Wastewater effluent wetlands

3. Construction surveying and land surveying.
4. Construction contract administration.
5. Inspection of construction.
6. Cost estimates of design, engineering, construction, and other matters as requested.
7. Evaluation of bid proposals.
8. Studies for projects concerning state and federal environmental requirements.
9. Review development proposals as requested.
10. Presentations to the CITY Council
12. Any other engineering services related to water and wastewater management requested by the CITY.

## **ARTICLE II -- CONTRACT DOCUMENTS**

The Request for Proposals, Technical Specifications and Details, Special Provisions, Addenda, if any, as accepted by the City Council, Certificates of Insurance, are by this reference made a part of this Contract to the same extent as if set forth herein in full.

This document constitutes the entire Agreement between the parties with respect to the subject matter hereto and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings, agreements and other communications between the parties. It may not be changed or modified except by and instrument in writing signed by a duly authorized representative of each party.

The ENGINEER will:

- a. Submit all reports and invoices specified in the Scope of Work in this Agreement.
- b. Preserve and make available all records for a period of five (5) years from the date of final payment under this Agreement and for such period as required by any other paragraph of this Agreement including the following:
  - i. If this Agreement is completely or partially terminated, the records

relating to the work terminated shall be preserved and made available for such a period of five (5) years from the date of any such termination;

- ii. Records which related to disputes, litigation or the settlement of claims arising out of the performance of this Agreement or to costs and expenses of this Agreement to which exception has been taken by the City shall be retained by the ENGINEER until such appeals, litigation, claims or exceptions have been finally resolved;
- iii. If any litigation, claim or audit is started before the expiration of the five-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

### **ARTICLE III -- CONTRACT TIMES**

This Agreement shall be effective on the date of signing by CITY and shall continue through June 30, 2012. The Agreement may be renewed annually thereafter subject to the CITY's approval by an action of the City Council for a period of up to five (5) years.

### **ARTICLE IV – PAYMENTS**

For the engineering services requested by CITY as described in Article 1 – Scope of Work, the Engineer will submit the total estimated cost of the services to CITY in accordance with the Fee Schedule which is attached to this Agreement and is a part thereof. Upon agreement and acceptance of the proposed cost, CITY will issue a purchase order (if required) to the Engineer. The Engineer shall submit invoices monthly for services provided and CITY will process said invoices through the CITY Finance Department following their normal procedure and timeline.

### **ARTICLE V- INDEPENDENT CONTRACTOR STATUS**

ENGINEER shall operate as an independent contractor and not as an officer, agent, servant, or employee of the City. ENGINEER shall be solely responsible for the acts and omissions of its officers, agents, servants, and employees. As an independent contractor, ENGINEER is responsible for providing all workers' compensation insurance required by law.

The ENGINEER understands that the ENGINEER is responsible to pay, according to law, the ENGINEER'S income tax. If the ENGINEER is not a corporation, the ENGINEER further understands that the ENGINEER may be liable for self-employment (social security) tax, to be paid by the ENGINEER according to law.

The ENGINEER has no authority to enter into contracts or agreements on behalf of the CITY. This Agreement does not create a partnership between the parties.

The ENGINEER declares that the ENGINEER has complied with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the work to be performed under this Agreement.

## **ARTICLE VI -- INDEMNIFICATION AND INSURANCE**

- A. The ENGINEER shall indemnify, defend, and save harmless the CITY and any of its agents, officials, and employees, from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney fees and/or litigation expenses, which may be brought or made against or incurred by the CITY on account of loss of or damage to any property, or for injuries to or death of any person caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the ENGINEER, its employees, agents, or representatives, or subcontractors, their employees, agents, or representatives, in connection with, or incident to the performance of this Contract, or arising out of Worker's Compensation claims of employees of the ENGINEER and/or its subcontractors, or claims under similar such laws or obligations. The ENGINEER'S obligation under this section shall not extend to any liability caused by the negligence of the CITY or its employees.
- B. The ENGINEER shall provide and maintain, and cause its subcontractors to provide and maintain, the following minimum insurance coverage:
1. Commercial general liability insurance with a minimum combined single limit of two million dollars (\$2,000,000) each occurrence. The policy shall include coverage for bodily and personal injury, broad form property damage, blanket contractual, ENGINEER'S protective, and products and completed operations.
  2. Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence with respect to ENGINEER'S vehicles (whether owned, hired, non-owned), assigned to or utilized in the performance of a Contract.
  3. Worker's Compensation (statutory limits), and Employer's Liability Insurance (\$500,000 each occurrence).
  4. Professional liability insurance covering damages resulting from errors or omissions of the Engineer. The limit of liability shall be not less than \$1,000,000.

The Engineer shall name CITY, its agents, officials and employees as Additional Insured (except for Professional Liability and Workers Compensation Insurance, which does not

apply) and shall specify that the insurance afforded by the Engineer shall be primary insurance and that any insurance coverage carried or self-insurance of the CITY, or any employee shall be excess coverage and not contributory insurance to that provided by the Engineer. Said policy shall contain a severability of interest provision. CITY reserves the right to continue payment of premium for which reimbursement shall be deducted from amounts due or subsequently due Engineer.

The Engineer shall provide the CITY with Certificates of Insurance with Additional Insured endorsements within ten (10) days of Agreement award evidencing the coverage's required above. Such certificates shall provide that the CITY is given at least thirty- (30) day's prior written notice of any cancellation of, intention not to renew, or material change in such coverage. Engineer must provide Certificates of Insurance before commencing work in connection with the Agreement.

- C. Additional insurance coverage may be required at the CITY'S discretion where the nature of the services to be performed is deemed to be hazardous in nature.
- D. The policies required by section B.1. and B.2. shall name the CITY, and its respective agents, officials, and employees as additional insured's and shall specify that the insurance afforded the ENGINEER shall be primary insurance and that any insurance coverage carried by the CITY or its employees shall be excess coverage and not contributory insurance to that provided by the ENGINEER. Said policy shall contain a severability of interests provision.
- E. Failure on the part of the ENGINEER to procure and maintain the required liability insurance and provide proof thereof to the CITY within thirty (30) days following the commencement of a new policy period, shall constitute a material breach of Contract upon which the CITY may immediately terminate the Contract. The CITY reserves the right to request and receive copies of any or all of the above policies and/or endorsements.

Regardless of any other term of this Agreement, in no event shall either party be responsible or liable to the other for any incidental, consequential, or other indirect damages.

## **ARTICLE VII -- CANCELLATION OF AGREEMENT**

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

**ARTICLE VIII -- NON-DISCRIMINATION**

The ENGINEER shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975, and Federal Executive Order No. 11246, State Executive Order No. 75-5, and A.R.S. Section 41-1461 et. Seq., which mandates that all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, shall have access to employment opportunities. The ENGINEER shall comply with Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The ENGINEER shall comply with Title 6 of the Civil Rights Act of 1964, as amended, which prohibits the denial of benefits or participation in contract services on the basis of race, color, or national origin. The ENGINEER shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and with the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of handicap in delivering contract services.

**ARTICLE IV-- NOTICE**

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

ENGINEER

City of Cottonwood

c/o \_\_\_\_\_

c/o \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ARTICLE X -- CHOICE OF LAW**

Any dispute under this Contract or related to this Contract shall be decided in accordance with the laws of the State of Arizona.

## **ARTICLE XI -- SEVERABILITY**

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

## **ARTICLE XII-WAIVER**

The failure of either party at any time to require performance by the other party of any provisions hereof shall in no way affect the party's subsequent rights and obligations under that provisions. Waiver by either party of the breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provisions or as waiver of such provision itself.

The ENGINEER agrees that this Contract, as awarded, is for the stated work, and understands that payment for the work will be made on the basis of the indicated amount(s), as stated in the "FEE SCHEDULE"

**ARTICLE XII- E-VERIFY**

**CONTRACTOR E-VERIFY STATEMENT**

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

**AUTHORIZED SIGNATURE:**

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

**PRINTED NAME:**

\_\_\_\_\_

**DATE:**

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

**TITLE:**

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

Wood/Patel and Associates, Inc.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date of Signing

\_\_\_\_\_  
Title

CITY

City of Cottonwood

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

\_\_\_\_\_  
Date of Signing

Attest:

\_\_\_\_\_  
Marianne Jimenez, City Clerk

Approved as to form:

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



Meeting Date: June 21, 2011

**Subject:** Approval of a Design / Build contract for the installation of photovoltaic solar panels at the Cottonwood Airport as funded by the American Recovery and Reinvestment Act, Arizona Balance of State Energy Efficiency Block Grant

Department: Engineering

From: Scott Mangarpan, Engineering - Project Manager

### **REQUESTED ACTION**

It is requested that the mayor and council approve Engineering staff proceeding with a contract with Kinney Construction Services for the design, purchase and installation of a Photovoltaic Solar system at the Cottonwood airport. The amount of the design/build contract is \$89,950.

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

"I move to authorize the Mayor to sign the contract with the Kinney Construction Services in the amount of \$89,950 for the design / build contract to install a PV system at the Cottonwood Airport as funded by the American Recovery and Reinvestment Act through the Arizona Commerce Authority, Energy Office. This authorization is subject to final review and approval of the contract documents by the City Attorney."

### **BACKGROUND**

The City was awarded a grant in the amount of \$92,995.66 from the American Recovery and Reinvestment Act, Arizona Balance of State Energy Efficiency Block Grant. The grant funds development, implementation and installation of an onsite solar electric (PV) system at the Cottonwood Airport to help offset City utility bills. The proposed system could qualify for APS rebates to help maximize the funds available to construct the PV system.

A notice was published requesting Statements of Qualifications from Design / Build firms. 14 firms requested copies of the "Request For Qualifications" and 5 firms submitted Statements of Qualifications. The selection committee ranked these firms and selected the top three firms to interview with the committee. These three firms were again ranked with Kinney Construction Services earning the highest ranking. We have worked with Kinney Construction Services to develop a proposal that is satisfactory to the City and within the approved funding. The exact size of the solar panel array will adjust to fit the design and location requirements as well as future panel costs within the approved funding.

**JUSTIFICATION/BENEFITS/ISSUES**

This is an excellent opportunity for the City of Cottonwood to demonstrate a dedication to the development, implementation and installation of an onsite renewable energy resource. At the same time there will be a positive impact to the utility costs for the City of Cottonwood.

**COST/FUNDING SOURCE**

Funding was approved in the amount of \$92,995.66 from the American Recovery and Reinvestment Act, Arizona Balance of State Energy Efficiency Block Grant. There is no required cash match for this grant. Our contribution is staff time.

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

Design Build Contract  
Design Build Proposal

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

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

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## **TABLE OF ARTICLES**

1. AGREEMENT
  2. GENERAL PROVISIONS
  3. CONTRACTOR'S RESPONSIBILITIES
  4. CITY & PROJECT MANAGER'S RESPONSIBILITIES
  5. SUBCONTRACTS
  6. CONTRACT TIME
  7. COMPENSATION
  8. COST OF THE WORK
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  11. INSURANCE AND BONDS
  12. TERMINATION OF THE AGREEMENT AND CITY'S RIGHT TO  
PERFORM CONTRACTOR'S RESPONSIBILITIES
  13. DISPUTE RESOLUTION
  14. MISCELLANEOUS PROVISIONS
  15. EXISTING CONTRACT DOCUMENTS
- AMENDMENT NO. 1
- AMENDMENT NO. 2

**ARTICLE 1****AGREEMENT**

This Agreement is made this 14th day of April in the year 2011 by and between the

**CITY: City of Cottonwood, 827 North Main Street, Cottonwood, Arizona 86326**

Organized and operating in Yavapai County, Arizona (hereinafter "City" or "Owner;"

and the **CONTRACTOR:**

**Kinney Construction Services, Inc. (KCS)  
120 N Beaver St – Suite 100  
Flagstaff, AZ 86001**

an Arizona corporation (hereinafter "Contractor").

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

The Photovoltaic Solar Project for the Cottonwood Airport includes Design/Build services for the project components listed below:

- The design services, construction services, and construction of the Cottonwood Photovoltaic Solar Project, installation of a Photovoltaic power generation system for the Cottonwood Airport, all as more fully described in the RFQ issued relative to this contract and which is adopted herein by reference.
- All site work, including paving, connections and utilities, associated with the above.

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

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

## **2.2 RELATIONSHIP OF THE PARTIES**

### **2.2.1 CONTRACTOR SERVICES**

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

### **2.2.2 CITY REPRESENTATIONS**

**2.2.2.1** The Project Manager, Scott Mangarpan, of the City's Department of Public Works, will provide construction program management services. None of the activities of the Project Manager supplant or conflict with the designing, budgeting, or any other services and responsibilities customarily furnished by the Contractor or subconsultants in accordance with generally accepted Design/Build architectural/engineering or construction practices except as otherwise modified by this Agreement. The Contractor understands and agrees that the Project Manager is the City's representative to the Contractor and his consultants and subcontractors insofar as this Agreement is concerned. All instructions by the City to the Contractor relating to services performed by the Contractor will be issued or made through the Project Manager. All communications and submittals of the Contractor to the City shall be issued or made through the Project Manager unless the City otherwise directs in writing. The Project Manager will not unreasonably withhold approval for the Contractor to communicate directly with the City. The Project Manager will have the authority to establish procedures, consistent with this Agreement, to be followed by the Contractor and to call periodic conferences to be attended by the Contractor, and the Contractor's consultants and subcontractors, throughout the term of this Agreement.

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

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

### **2.2.3 CONTRACTOR REPRESENTATION**

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

consultants lacked the qualifications and/or certifications to provide the services or unless the City can demonstrate a good cause basis for its rejection.

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

#### **2.2.4 ARCHITECT/ENGINEER**

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

#### **2.2.5 EXTENT OF AGREEMENT**

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

### **2.3 DEFINITIONS**

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

- a. Change Orders and written amendments to this Agreement signed by both the City and Contractor, including a GMP Amendment if executed;
- b. Amendment No. 1;
- c. Documents approved by the City pursuant to Subparagraphs 3.1.4, 3.1.5 or 3.1.6;
- d. This Agreement;
- e. The information provided by the City pursuant to Clause 4.1.2.a;
- f. The Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;
- g. The City's Program provided pursuant to Subparagraph 4.1.1.
- h. The City's RFQ for this project;

- i. The Contractor's responses to the City's RFQ to the extent they do not conflict with the above;
- j. The Contractor's Guaranteed Maximum Price Proposal dated 04.29.2011, if any.

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

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

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

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

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

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

**2.3.7** **Final acceptance/completion** of the Work means 100% completion of all construction Work noted in or reasonably inferred from the Contract Documents, including but not limited to all Punch Lists work, all record and close-out documents specified in Owner's Project specifications and Owner training/start up activities.

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

**2.3.9** **City** - means the City of Cottonwood, Arizona, a municipal corporation.

**2.3.10** **City Project Manager** is the City official administering the Contract for the City of Cottonwood.

**2.3.11 Completion Time** is the number of calendar days agreed to by the City and Contractor for completion of the Work, which may be revised by written Change Order.

**2.3.12 Contract Officer** is the City official who acts under the authority and direction of the City's Administrative Services General Manager and in accordance with the Cottonwood Procurement Code.

**2.3.13 Contractor** is the person, firm or corporation with whom the City has entered into the Contract.

**2.3.14 Administrative Services General Manager** is the person acting as Director of the City's Department of Procurement and who has authority to award and revise City solicitations and contracts for construction, construction services, and construction-related services as necessary.

**2.3.15 Cottonwood Procurement Code** – in addition to applicable State statutes and applicable Federal regulations and requirements, the municipal ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

## ARTICLE 3

### CONTRACTOR'S RESPONSIBILITIES

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

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

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

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

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

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

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

When sufficient Project information has been identified or upon City's reasonable demand, the Contractor shall prepare for the City's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The

estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the City's budget, the Contractor shall make written recommendation to the City as to methods for resolving the issue.

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

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

#### **3.1.5 DESIGN DEVELOPMENT DOCUMENTS**

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

#### **3.1.6 CONSTRUCTION DOCUMENTS**

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

#### **3.1.7 DESIGN PHASE MEETINGS**

Throughout the Design Phase, the Contractor and Architect/Engineer shall meet at least weekly with the City to solicit the City's input into the design and to review the progress of the design. The Architect/Engineer shall record and distribute meeting minutes of design phase meetings, noting all City directives and requests.

#### **3.1.8 OWNERSHIP OF DOCUMENTS**

The City acknowledges the Contractor's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the City upon completion of the construction documents and payment in full of all monies due to the Contractor for the Design Phase Services as identified in this Article, or upon termination of this Agreement at an earlier time and upon City payment of any pro rata amount due Contractor at the time of such termination. The Contractor shall not use the drawings and specifications, therefore, for any purpose not related to the Project without City's consent. The City will not reuse, for matters unrelated to the work and its subsequent usage, or make any modification to the plans and specifications without the prior written authorization of the Contractor. The City agrees to the fullest extent permitted by law, to indemnify and hold the Contractor

harmless from any claim, liability or cost (including reasonable attorney's fees and defense cost) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the City or any person or entity that acquires or obtains the plans and specifications from or through the City without the written authorization of the Contractor.

### **3.1.9 MANDATORY STANDARDS AND SPECIFICATIONS**

As follows, the project design must meet all applicable Cottonwood and Yavapai County standard specifications for public improvements (2000 3<sup>rd</sup> Edition or latest edition available). Further, the project specifications must include all applicable City supplemental conditions and special provisions as may be provided in the RFQ or by separate cover.

## **3.2 GUARANTEED MAXIMUM PRICE PROPOSAL**

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

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

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

### **3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE**

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

- a. a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP proposal;
- b. a list of allowances and a statement of their basis;

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

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

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

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

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

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

### **3.3 CONSTRUCTION PHASE SERVICES**

**3.3.1** The Construction Phase will commence upon the issuance by the City of a written notice to proceed with construction. If construction commences prior to execution of a GMP Amendment, the City's written notice to proceed will list the documents that are applicable to the part of the Work which the City has authorized. No Work shall commence until Contractor secures and provides, to the City, proof of all

bonds as required by Arizona law to include, but not be limited to, performance and payment bonds.

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

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

**3.3.4** The Contractor shall prepare and submit a Preliminary Master Schedule of Work for the City's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the Project including the dates when information and approvals are required from the City. At the time a GMP proposal is submitted, a bar graph Construction Progress Schedule for each major element of construction shall also be submitted. The Progress Schedule is subject to review by the City. The Progress Schedule must be directly related to Substantial and Final Completion and shall indicate the dates for the start and completion of the various components and phases of construction and shall be revised as required by the conditions of the Work, upon request of and subject to review by the City. This shall be done no less than monthly. Contractor agrees to promptly respond to all inquiries by the City concerning any deviation of the progress of construction from the Progress Schedule and to provide a recovery schedule for approval by the City upon request. Progress payments, in whole or in part, may be withheld if Contractor fails to timely respond to such request or if there is a significant delay from the Progress Schedule.

- a. The Construction Progress Schedule shall illustrate the planned, logical progression of construction activities and shall include all work to be performed under this contract. Individual work activities shall be limited to a two (2) week maximum duration.
- b. This section not used.
- c. The Construction Progress Schedule shall include projected dates of submittal of all items of material for which submittals are required and shall include delivery dates of all items of material and equipment that are critical or have a long lead time. Contractor shall submit a monthly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project. Contractor shall prepare, not less frequently than monthly, a schedule summary report in a form and of sufficient detail and character as approved by City. The report, at a minimum, shall specify whether the Project is on schedule, and, if not, the reasons therefore, and the new schedule.
- d. Contractor shall also prepare a report not less than thirty calendar days after the GMP proposal is submitted which shall include a complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication and the scheduled delivery dates for each item.

- e. Contractor shall prepare a monthly updated Construction Progress Schedule. The updated Schedule shall identify the status of all change requests, bulletins, and modifications. Progress Schedule updates shall indicate work completed to date and shall adjust the schedule to reflect any change in the planned sequence of activities. The Contractor shall at all times manage the Work in substantial conformance with the Progress Schedule. Failure of the Contractor to manage the Work in substantial conformance with the Progress Schedule may be considered as a material default of this Contract. Failure to submit the update when required may delay processing of the Application for payment until acceptable submission is made.
- f. In the event of significant delays, lags or changes in the planned sequence of activities as determined by City, Contractor shall provide to City a revised Progress Schedule indicating proposed rescheduling of activities to achieve completion of the Project by the Substantial completion date.
- g. Additions to or deletions from the Contract authorized by Change Orders shall be reflected in the Progress Schedule.
- h. In conjunction with the Progress Schedule, Contractor shall provide a Procurement Schedule for all major or time critical components to be acquired and incorporated in the Project, which schedule shall be integrated into the Progress Schedule.
- i. The City will hold weekly construction progress meetings at the Site. The Project Manager will record and distribute the official meeting minutes. The Contractor shall report the progress of the Work in detail with reference to construction schedules. Contractor shall ensure that each then active subcontractor shall have present a competent representative to report the condition of its work and to receive information.

**3.3.5** The Contractor shall secure and pay for all permits necessary for complete Project construction.

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

the performance of their work, nor for compliance with all applicable provisions of relevant laws.

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

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

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

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

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

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

**3.3.13** At the date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to City: Record Drawings showing the field changes and selections (all changes and selections to be approved by City in advance) affecting the general construction, mechanical, electrical, plumbing, and all other work, and indicating the Work as actually installed. These shall consist of scaled and accurately drawn markings on a set of reproducible prints of the Drawings obtained and paid for by Contractor. Contractor shall maintain at the Site one set of Drawings and indicate thereon each field change as it occurs. Within thirty (30) days of Substantial Completion, the Contractor shall furnish a computer disk of the record

drawings, drawn in an AutoCAD format approved by the City. The record drawings shall include, but not be limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Construction Drawings.

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

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

**3.3.16** **Protection and Use of Site - (Signs, Utilities, Water, Sanitation, Traffic, etc.)**

**3.3.16.1** The City will provide land, rights-of-way and easements for all work specified in the Contract. The Contractor shall confine their apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the City Project Manager, and shall not unreasonably encumber the premises with their material and equipment.

**3.3.16.2** Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the City harmless from damages for any injury done to such pipes, structures or property during the course of the Work.

**3.3.16.3** Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public. The Contractor shall maintain sufficient barricades, flares, signs, etc., as outlined in the Traffic Control Plan or "Street Barricading and Channelization Manual for Temporary Traffic Control" prepared by the City's Department of Transportation. If it becomes necessary to close a street entirely during certain phases of the work permission shall be obtained from the

City Project Manager and City or County Traffic Engineer, as the location of the Work may require. Police and Fire Departments must be notified twenty-four (24) hours in advance of the closing and opening of said street and the Contractor must furnish and place all necessary detour signs.

**3.3.16.4** The Contractor shall supply safe drinking water for all Contractor employees at the Work site.

**3.3.16.5** If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The City Project Manager will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the City Project Manager. Extensions in the Completion time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 13 of these General Conditions.

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

#### **3.4 HAZARDOUS MATERIAL**

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

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

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

**3.4.4** The City will be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures will be the sole responsibility of the City, and will be performed in a manner minimizing any adverse effect upon the Work of the Contractor. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written notification by the City that the Hazardous Material has been removed or rendered harmless.

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

#### **3.4.6 INDEMNIFICATION**

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

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

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

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

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

### **3.6 WARRANTIES AND COMPLETION**

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

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

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

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

### **3.7 ADDITIONAL SERVICES**

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

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

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

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

- o. Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the City.

## **ARTICLE 4**

### **CITY RESPONSIBILITIES**

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

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

**4.1.2** The City will provide:

- a. all available information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
- b. inspection and testing services made during construction at the City's own discretion or as mutually agreed; and
- c. unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessment, including legal and other required services.

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

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

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

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

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

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

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

The City's Project Manager is Scott Mangarpan of the City's Department of Public Works.

The Project Manager:

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

### **ARTICLE 5**

#### **SUBCONTRACTS**

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

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

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

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

Absent special circumstances documented in writing by the Contractor as set forth below, the combination of qualifications and price derived through competitive bidding process shall be used to select Subcontractors and Major Suppliers. The City has the sole discretion as to whether or not to allow the purely qualitative selection of Subcontractors and Suppliers. In any event, Contractor shall insure compliance with A.R.S. § 34-603(C)(2)(e) and A.R.S. § 34-605(K)(2) and as they may be further modified relative to the selection of Subcontractors and Major Suppliers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **5.2 RETAINING SUBCONTRACTORS**

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

## **5.3 MANAGEMENT OF SUBCONTRACTORS**

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

## **5.4 ASSIGNMENT OF SUBCONTRACT AGREEMENTS**

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

# **ARTICLE 6**

## **CONTRACT TIME**

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

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

### **6.2 SUBSTANTIAL AND FINAL COMPLETION**

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

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

the City in its educational process should the Work not be Substantially Complete by the LD Date.

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

### **6.3 DELAYS IN THE WORK**

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

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

## **ARTICLE 7**

### **COMPENSATION**

#### **7.1 DESIGN PHASE COMPENSATION**

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

a separate agreement between the contractor and Architect/Engineer and shall be the responsibility of the Contractor.

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

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

## **7.2 CONSTRUCTION PHASE COMPENSATION**

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

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

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

**7.2.2** The compensation to be paid under this Paragraph will be limited to the GMP established by Amendment, as the GMP may be adjusted under Article 9. In the event the Cost of the Work plus the Contractor's Fee shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be credited back to the City.

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

## **7.3 CONTRACTOR'S FEE**

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

- a. salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in Subparagraph 8.2.2;

- b. general and administrative expenses of the Contractor's principal and branch offices other than the field office, except as may be expressly included in Article 8; and
- c. the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- d. costs related to the Contractor's safety program.

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

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

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

#### **7.5 SEGREGATION OF DESIGN AND ENGINEERING SERVICES**

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

Taxes, the City will be responsible for the payment of applicable taxes provided that any such taxes are not assessed as a result of any act or omission by Contractor.

## **ARTICLE 8**

### **COST OF THE WORK**

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

#### **8.1 COST ITEMS FOR DESIGN PHASE SERVICES**

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

#### **8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES**

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

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

**8.2.3** Cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

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

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

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

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

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

Contractor shall reimburse the City for the salvage value of items used or salvage the items to the City.

**8.2.9** Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area.

**8.2.10** Cost of premiums for normal and customary contractor's and subcontractor's liability, workman's compensation and builders risk insurance as outlined in Article 11, is to be identified as a separate line item within the GMP.

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

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

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

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

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

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

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

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

### **8.3 DISCOUNTS**

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

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

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

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

## **ARTICLE 9**

### **CHANGES IN THE WORK**

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

#### **9.1 CHANGE ORDERS**

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

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

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

- a. unit prices set forth in this Agreement or as subsequently agreed;
- b. a mutually accepted, itemized lump sum;
- c. costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Contractor's Fee as determined in Subparagraph 7.4.1.
- d. if an increase or decrease cannot be agreed to as set forth in subparagraphs 9.2.a through 9.2.c and the City issues a written order for

the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Contractor's Fee shall be adjusted as set forth in Subparagraph 7.4.1. In case of a net decrease in the GMP, the Contractor's Fee shall not be adjusted. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings.

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

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

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

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

### **9.5 UNKNOWN CONDITIONS**

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

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

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

## **9.7 EMERGENCIES**

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

## **ARTICLE 10**

### **PAYMENT FOR CONSTRUCTION PHASE SERVICES**

#### **10.1 PROGRESS PAYMENTS**

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

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

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

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

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

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

**10.1.5** Upon Substantial Completion of the Work, the City will pay the Contractor the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less a sum equal to the Contractor's estimated cost of completing any unfinished items and correction of any noted defects as agreed to between the City and Contractor as to extent and time for completion. The City thereafter will pay the Contractor monthly the amount retained for unfinished items or correction of noted defects as each item is completed.

## **10.2 FINAL PAYMENT**

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

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

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

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

**ARTICLE 11****INSURANCE AND BONDS****11.1 INSURANCE REPRESENTATIONS AND REQUIREMENTS**

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

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

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

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

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

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

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

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

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

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

- a.** The City, the Project Manager, their agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
  - (i) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") current Form CG 20 10 or equivalent.
  - (ii) Auto Liability - Under current ISO Form CA 20 48 or equivalent.
  - (iii) Excess Liability - Follow Form to underlying insurance.
- b.** Contractor's insurance shall be primary insurance as respects performance of the work included in this Agreement.

- c. All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
- d. A 60-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
- e. Certificates of Insurance and any notice of cancellation or material change should be addressed as follows:

## **11.2 REQUIRED INSURANCE COVERAGE**

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

**11.2.2** If this Agreement is the subject of any professional services or work, or if Contractor engages in or procures any professional services or work adjunct or residual to performing the work under this Agreement, Contractor shall maintain Professional occurrence based Liability insurance covering negligent errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose negligent acts, mistakes, errors and omissions Contractor is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.

**11.2.3** Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles

assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" current policy form CA 00 01 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, the Project Manager, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

**11.2.4** Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

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

### **11.3 CERTIFICATES OF INSURANCE**

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

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

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

### **11.5 FAILURE OF COMPLIANCE**

Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, or should a dispute

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

#### **11.6 INDEMNITY**

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

#### **11.7 PERFORMANCE AND PAYMENT BONDS**

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

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

bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

**11.7.2** After the City and the Contractor have agreed to a GMP but prior to commencing Construction, the Contractor shall be required to furnish the City with an irrevocable security for the protection of all persons supplying labor and material to the Contractor or any subcontractor for the performance of any work related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to Construction and be payable to the City. Payment security shall be in the form of a payment bond, as required by Arizona law. All payment bonds shall be executed on State of Arizona approved forms, duly executed by the Bidder as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. The conditions and provisions of the bonds regarding the surety's obligation shall follow the form required under A.R.S. § 34-222; Subsection G and Subsection F and A.R.S. § 34-611. The cost of the bonds shall be included in the contract sum. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of bonds A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

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

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

## **ARTICLE 12**

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

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

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

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

- c. if the City materially delays the Contractor in the performance of the Work;
- d. if the City otherwise materially breaches this Agreement.

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

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

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

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

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

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

**12.3 TERMINATION BY THE CITY FOR CONVENIENCE**

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

**12.4 SUSPENSION BY THE CITY FOR CONVENIENCE**

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

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

**12.5 TERMINATION UPON FAILURE TO OBTAIN GMP**

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

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

**ARTICLE 13****CLAIMS AND DISPUTES****13.1 CITY PROJECT MANAGER'S RESOLUTION OF CLAIMS AND DISPUTES;  
REVIEW BY ADMINISTRATIVE SERVICES GENERAL MANAGER**

**13.1.1** This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.

**13.1.2** All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the City Project Manager for action. The responsibility to substantiate claims shall rest with the party making the claim.

**13.1.3** Claims by the Contractor must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

**13.1.4** Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract.

**13.1.5** The City Project Manager shall, within twenty-one (21) days of receipt of a claim, issue one of the following:

- (1) Issue a decision either rejecting or approving the claim.
- (2) Suggest an equitable compromise of the claim.
- (3) Provide a schedule to the Contractor indicating when they expect to be able to take action, which shall be within a reasonable time.

**13.1.6** The City Project Manager may require the submission of additional documentation from the Contractor to facilitate a decision.

**13.1.7** The Contractor shall have ten (10) days from the date of the City Project Manager's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of the Contractor to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Project Manager in writing within such ten (10) day period, the matter shall be referred to the Contract Officer for de novo review.

**13.1.8** The Contract Officer shall have sixty (60) days from receipt of a written objection by the Contractor to the City Project Manager's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the Cottonwood Procurement Code. During such period, the Contract Officer may require such additional documentation or testimony as deemed necessary to support his/her response.

## **13.2 OTHER PARTIES**

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

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

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

**14.2 GOVERNING LAW**

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

**14.3 SEVERABILITY**

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

**14.4 NO WAIVER OF PERFORMANCE**

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

**14.5 TITLES**

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

**14.6 ASBESTOS FREE MATERIALS**

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

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

**14.7 EXTENT OF AGREEMENT**

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

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

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

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

**If to the City:** Scott Mangarpan  
Project Manager  
City of Cottonwood Department of Public Works  
1490 West Mingus Ave, Cottonwood, AZ 86326  
928-634-8033 extension 11  
smangarpan@ci.cottonwood.az.us

**If to the Contractor:** Tim Kinney  
President  
Kinney Construction Services, Inc.  
120 N. Beaver St – Suite 100  
Flagstaff, AZ 86001  
928.779.2820  
tk@kinneyconstruction.net

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

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

In connection with the performance of Work under the Contract, the Contractor agrees (as prescribed in A.R.S. Title 41, Chapter 9, Article 4 and except as may be allowed or required by other applicable law) not to discriminate against any employee or applicant for employment because of race, color, religion, or national origin. These provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay for

other forms of compensation, and selection or training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, required legal notices or notes to be provided by the City or the Contractor, setting forth the provisions of the nondiscrimination clause. The Contractor further agrees to insert these provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies of raw materials.

#### **14.10 JOB OFFICE**

Contractor will be provided a space at the site for a job trailer for purposes of this project.

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

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

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

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

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

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

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

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

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

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

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

Contractor also warrants and certifies by execution of this contract that Contractor and all Subcontractors have or shall, prior to construction, comply and maintain compliance

with FINA and A.R.S. § 41-4401 and 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

#### **14.16 ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT**

This project is funded by a Energy Efficiency and Conservation Block Grant (EECBG) administered by the Arizona Department of Commerce. **Contractor will be required to follow ALL EECBG guidelines and Special Terms and Conditions (copies of the guidelines and Special Terms and Conditions are included in the RFQ).**

### **ARTICLE 15**

#### **EXISTING CONTRACT DOCUMENTS**

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

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

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

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

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

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

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

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

CONTRACTOR: Kinney Construction Services, Inc.

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

PRINT NAME: Tim Kinney

PRINT TITLE: President

STATE OF ARIZONA                    )  
  ) SS.  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010  
by \_\_\_\_\_ on behalf of \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA                    )  
  ) SS.  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010  
by \_\_\_\_\_ on behalf of \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

**AMENDMENT NO. 1****DATED 04.14.2011****DESIGN AND PRECONSTRUCTION FEES UP TO GMP SUBMITTAL****I. Scope**

- A. The Project scope is generally as set forth in the KCS GMP Proposal dated 04.14.2011 and as the parties may subsequently agree in writing.
- B. The Project's scope includes, but is not limited to, site preparation and construction of all infrastructure needed relative to the housing.
- C. The Project's scope includes all design services needed for the Project including, but not limited to, the requisite consultants such as mechanical engineering, civil engineering, electrical engineering, landscape design, and other such services reasonably necessary for this Project.
- D. The scope also includes all construction activity necessary to complete the Project and includes, but is not limited to, fees, inspections and testing, as required; however, the permits, fees, inspections and testing may be treated as reimbursables to save mark up and sales taxes. Budget money may be allocated to allow treatment of these necessary expenses outside of this contract at the City's sole discretion.
- E. We hereby incorporate Section "Scope of Services", from the Request for Qualifications Design Build Services, RFQ No. \_\_\_\_\_, as if fully rewritten herein.

**II. List of Assumptions**

- A. The Project will be delivered using two distinct amendments under this single agreement.
- B. The first phase will be for design services and will include pre-construction services, including scheduling, cost estimating, schematic and design development, value engineering and constructability analysis, and construction documents. The first phase will have cost breakdown as follows:
  - 1. Design services through 50% design development;
  - 2. Design services for the balance;
  - 3. Pre-construction services through 50% design development;
  - 4. Pre-construction services for the balance up to proposal and possible establishment of the GMP.

- C. The second phase will be for construction services and shall be performed pursuant to an agreed upon GMP or series of GMPs. The GMPs shall fully set forth all factors and assumptions relative to establishing the GMP.
- D. If the City does not accept a GMP, the second phase for construction services, will not be initiated, or if a prior construction services under a phased or multiple GMP has been accepted, subsequent GMPs and the construction services therein will not be performed nor be considered a liability against the City.
- E. All contingencies, cost savings and unused allowances shall be returned to the City for their use, or redirected for additional improvements as needed.
- F. Additional assumptions that may arise must be agreed to by the parties in writing.

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

- A. The following items clarify further Project scope, intent and scope of services:
  - 1. The contract will be between City of Cottonwood and Kinney Construction Services, Inc. (KCS)
  - 2. KCS will contract directly with Christian Vernosky Architects, LLC for all design services and will include all consultants, contract administration, and requisite errors and omissions insurance coverage naming KCS as insured with City of Cottonwood as additional insured;
  - 3. KCS's primary representative on this Project in all stages is Michael Thomas.
  - 4. This represents the foreseeable clarifications at this time. This list can be amended by mutual written agreement by the parties prior to incorporation into the final contract.

### **IV. Proposed Schedule**

- A. Substantial Completion shall occur no later than January 11<sup>th</sup>, 2012, and Final Completion on February 1<sup>st</sup>, 2012 per attached schedule dated 04.14.2011
- B. Phased delivery of a portion of the units shall be incorporated in to the final schedule as agreed to by the parties.
- C. An initial proposed Project schedule is attached hereto, subject to modification by mutual written agreement of the parties.

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

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

1. Design services through 50% design development \$4,125.00
2. Design services through completion, including documents and construction administration \$4,125.00
3. Pre-construction services through GMP \$2,900.00
4. Construction Fees n/a.

\_\_\_\_\_  
Date

\_\_\_\_\_

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_

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

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

**AMENDMENT NO. 2****DATED 04.14.2011****TO DESIGN/BUILD AGREEMENT BETWEEN CITY & CONTRACTOR**

Pursuant to Paragraph 3.2 of the Agreement dated 04.14.2011 between the City, City of Cottonwood, and the Contractor, Kinney Construction Services, Inc. for the Project as previously described in the agreement and amendments, the City and the Contractor desire to establish a GMP for the Work. Therefore, the City and the Contractor agree as follows.

**ARTICLE 1****GUARANTEED MAXIMUM PRICE:**

The Contractor's GMP for the Work, including the Cost of the Work as defined in Article 8 of the Agreement and the Contractor's Fee as set forth in Paragraph 7.3s EightyNineFifty8950the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

**GMP Proposal by KCS dated 04.14.2011**

**ARTICLE 2**

**DATE OF SUBSTANTIAL COMPLETION:**

The date of Substantial Completion of the Work is:February 1<sup>st</sup>, 2012

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

**CONTRACTOR: Kinney Construction Services, Inc. (KCS)**

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

PRINT NAME: Tim Kinney

PRINT TITLE: President

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

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

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

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

[Date]

[Name of Company]

[Address]

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

Dear [Contact – Name of Company]:

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

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

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

Please contact me with any questions.

Sincerely,

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# GMP Proposal dated 04.14.2011

*Revised 04.29.2011*

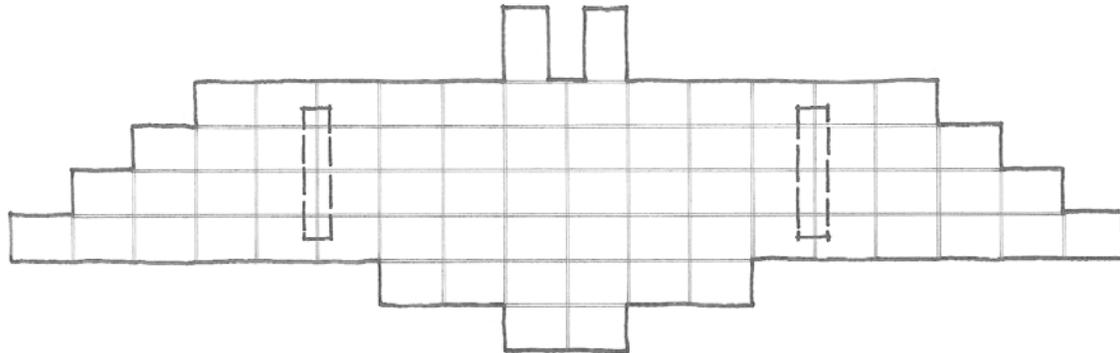
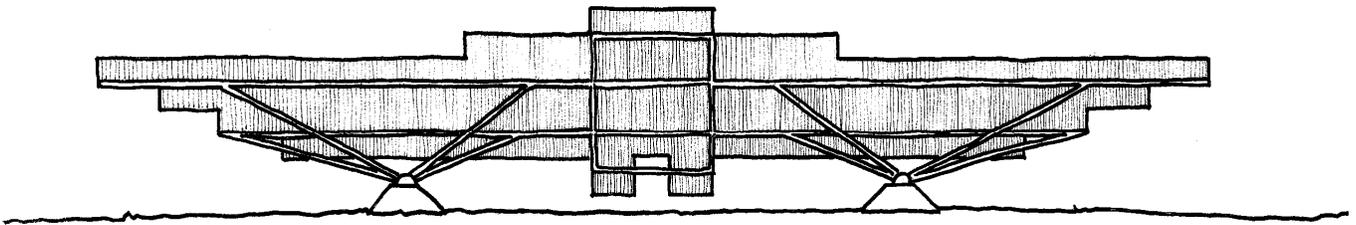
*Includes:*

*Qualifications & Clarifications*

*Concept Exhibits*

*Preliminary Master Schedule*

*GMP Estimate*



**Prepared by:**

Mike Thomas – Project Manager  
Kinney Construction Services, Inc.  
120 N. Beaver St – Ste 100  
Flagstaff, AZ 86001

**Presented to:**

Scott Mangarpan – Project Manager  
City of Cottonwood  
1490 West Mingus Ave  
Cottonwood, AZ 86326

## Qualifications & Clarifications

---

### **Basis of qualifications:**

Concept Design proposals by Christian Vernosky Architects, LLC dated 04.14.2011

City of Cottonwood RFQ for Design Build Services for Cottonwood Photovoltaic Solar Project

Initial project programming scope is based on a 9,000 watt photovoltaic system with a budget of \$90,000. Final system size may range between 8,000 and 15,000 watts.

### **Purpose & Intent**

The intent of the qualifications is to provide a supplemental scope design and cost control guide. They are included to further the "Teams" understanding of what is included in the scope of this project based on Kinney Construction Services' interpretation of the design intent.

Since cost control is largely the result of scope control, we have clarified and elaborated on the basis of this proposal for areas where systems were incomplete and where scope was unclear.

### **General Clarifications**

1. Pricing is based on a 10 month design and construction schedule commencing April 2011.
2. A payment and performance bond for Kinney Construction Services, Inc. is included. KCS is NOT requesting that subcontractors provide payment and performance bonds. Therefore, these costs are NOT included.
3. All manufacturers referenced in the following clarifications are included as a means to suggest the level of function and quality assumed in the pricing.
4. Permits required by the City of Cottonwood are NOT included.
5. Costs associated with geotechnical exploration and soils testing are included.
6. Material testing and special inspections are included as an allowance

7. All temporary utility consumption costs are assumed to be by the Owner and are therefore not included. KCS will provide generator for electricity. General water use is assumed to be able to be used from site.
8. Costs for preconstruction and design services are included as part of this proposal.

**Division 1**      **General Conditions**

Supervision

KCS will provide adequate project management and full time supervision for the duration of this project. Includes base pay, bonus pay, FICA, FUTA, Worker's Comp, unemployment, retirement, vacation time, holiday time, personal time, sick time, medical insurance, and dental insurance.

Computers

Provide computers, software, and maintenance for associated personnel

Temporary Telephone

Cell phones for all personnel noted above

Temporary Office

A temporary office is not included.

Temporary Fencing

Temporary fencing consisting of chainlink and orange vinyl fencing will be used to delineate construction operations from airport operations for duration of project.

Temporary Toilets

Temporary toilets and sanitation facilities will be provided for duration of project

Project Signage

Wayfinding and KCS site signage will be provided during duration of project. This also includes traffic control.

Safety

KCS will provide adequate safety related equipment (hard hats, safety glasses, vests, lanyards) and signage as required including site specific safety program

Expendables

Expendables includes misc site related items not covered under other misc general condition items including misc fasteners, lien services, and project wide safety meetings

Drinking Water

KCS will provide drinking water for all employees at job-site

#### Postage

Postage includes all required USPS, UPS, FedEx, and other carrier services for shipping and transmitting of submittals and other items between KCS and subs, suppliers, and design professionals

#### Reproductions

Provide all electronic and paper reproductions of contract documents for contractor and subcontractor use throughout the project. This does not include electronic as-builts.

#### As-Builts & Close-out Documents

KCS will provide all required paper reproductions of as-built plans including .pdf files. AutoCAD as-builts will not be provided. KCS will provide all required documentation for O&M Manuals and audit reports.

#### Project Documentation

KCS will provide on-site copies of all required ASIs, submittals, RFIs, weekly reports, meeting minutes, safety logs, equipment logs, and other required contract documents.

#### Fuel

KCS will provide required fuel for on-site equipment including fork-lift and generator

#### Misc Tools & Equipment

KCS will provide misc small tools including ladders, shovels, brooms, and other expandable small tools required to manage the project.

## **Division 2            Site Work**

#### Survey

Professional surveying will be provided for layout of buildings and site elements

#### Demolition

Provide removal of all existing site appurtenances as required for construction of this facility

#### Site Utilities

Provide extension of electrical conduits and feeders to SES as required for new PV system tie-in. No road crossings are figured.

#### Landscape & Irrigation

KCS will provide repairs to landscape and irrigation as required to bring area back to condition prior to construction. No gravel will be placed at array.

#### Tree Protection

Tree protection will be provided at site for all trees within the fence line of the project

#### Grading & Excavation

KCS will provide all required utility excavation for this scope of work. All excavation spoils will be hauled off site as required. Mass grading to make site flat is not included; KCS will work with existing grades. Trenching across roads or parking areas are not included. Asphalt repairs are not included.

#### Fencing

KCS will provide a 6' tall permanent fence around perimeter of PV array including 8' wide gate for access. An access road will not be provided as part of this scope.

### **Division 3            Concrete**

#### Concrete

KCS will provide all structural concrete supports for PV structure. This includes all concrete rebar, forms, etc for a complete system. Color may be added to concrete for aesthetics.

### **Division 5            Metals**

#### Metal Fabrications

Provide a steel support structure for PV array including all required welding, supports, embeds, and fasteners. Structure will be engineered for proper wind and seismic loads as required.

### **Division 9            Finishes**

#### Painting

Provide painting of exposed steel structure including concrete embeds, conduits, and combiner boxes. Aluminum rails will not be painted. Back of panels will not be painted.

## **Division 16**      **Electrical**

### Power Generation & Electrical

Basis of design is Kyocera 210GX\_LPU modules. These panels will be installed on a aluminum racking system attached to steel structure on concrete foundations as per preliminary concept plans. Appropriately sized inverter(s) will be installed to accommodate DC to AC conversation and tie into new SES. KCS assumes that existing SES will remain and modifications to existing will not be required; confirming this will occur during the design phase. Inverter(s) will be mounted on a uni-strut type racking system either at the existing SES location or at the array.

### Data Acquisition & Cabling

KCS will provide a data acquisition system that is integral to the inverters. This will not be a 3<sup>rd</sup> party system. Maintenance of the system is not included. The data acquisition system may require a yearly or monthly fee; this fee will be paid by City of Cottonwood. City of Cottonwood will provide cat-5 cable connection to inverter locations and KCS to provide conduit as for this cabling.

### **Additional Clarifications**

- KCS reserves the right to make changes to systems in order to meet budget as outlined per attached spreadsheet based upon material substitutions and system substitutions. Final construction documents and as-builts to reflect these changes.
- Proposal includes liability and builders risk insurance, general conditions, overhead and profit, and bond costs.
- Sales tax is not included based on PV system being tax-exempt
- City of Cottonwood will provide, coordinate, and submit necessary documents to FAA including environmental study. KCS will assist in providing necessary documents that are created as part of this scope of work
- City of Cottonwood to provide Davis-Bacon wage determination

### **Exclusions**

- Rock excavation
- 3<sup>rd</sup> Party Commissioning costs
- Security system
- Soil Treatment for Termites, Pest Control, or Weed Control
- Changes due to City of Cottonwood or FAA permit review
- Horizontal borings
- System Maintenance
- Performance Guarantees
- Extended warranties

**City of Cottonwood  
New PV System for Cottonwood Airport**

**GMP Proposal**

**04.14.2011  
Rev 1 04.29.11**

**Prepared for:  
City of Cottonwood  
Scott Mangarpan**

**Prepared by  
Kinney Construction Services, Inc.  
Estimator: Mike Thomas**

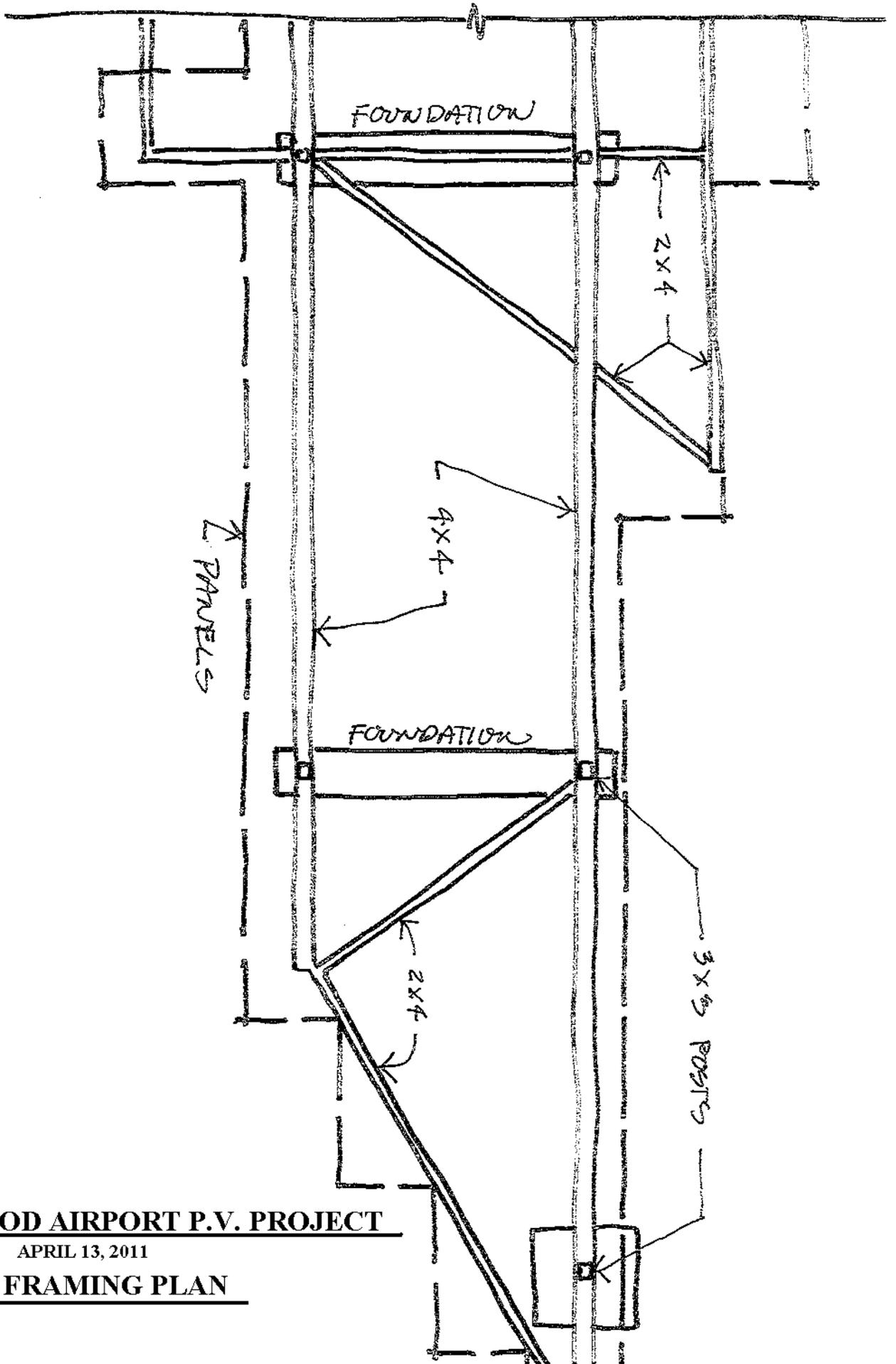


# Building Detail

DESCRIPTION	QUANTITY (UNITS)	UNIT	UNIT COST	TOTAL
<b>DIVISION 2 - SITEWORK/DEMO</b>				<b>\$9,240.00</b>
Grading/Clear and grub	1.00	ls	\$ 400.00	\$400.00
Fencing + Gate	270.00	lf	\$ 18.00	\$4,860.00
Rock Excavation	1.00	ls	\$ -	\$0.00
Misc Landscape and irrigation repair	1.00	ls	\$ 300.00	\$300.00
Surveying	1.00	ls	\$ 980.00	\$980.00
Electrical and data trenches	300.00	lf	\$ 9.00	\$2,700.00
				\$0.00
<b>DIVISION 3 - CONCRETE</b>				<b>\$5,700.00</b>
Colored concrete foundations	5.00	ea	\$ 1,140.00	\$5,700.00
				\$0.00
				\$0.00
<b>DIVISION 5 - METALS</b>				<b>\$8,100.00</b>
Steel support structures	1.00	ls	\$ 8,100.00	\$8,100.00
				\$0.00
<b>DIVISION 9 - FINISHES</b>				<b>\$1,950.00</b>
Paint support structures	1.00	ls	\$ 1,950.00	\$1,950.00
<b>DIVISION 16 - ELECTRICAL</b>				<b>\$30,080.00</b>
Electrical Installation	1.00	ls	\$ 8,780.00	\$8,780.00
PV Collectors	1.00	ls	\$ 16,100.00	\$16,100.00
Inverters with data cards - no extended warranty	1.00	ls	\$ 4,900.00	\$4,900.00
Inverter uni-strut supports	1.00	ls	\$ 300.00	\$300.00

## General Conditions Detail

DESCRIPTION	QUANTITY (UNITS)	UNIT	UNIT COST	TOTAL
<b>DIVISION 1 - GENERAL CONDITIONS</b>				<b>\$8,080.00</b>
Project Manager	24.00	hr	\$ 87.00	\$2,088.00
Superintendent	60.00	hr	\$ 60.00	\$3,600.00
Temporary Toilets	2.00	mth	\$ 84.00	\$168.00
Project Signage & Traffic Control	1.00	ls	\$ 600.00	\$600.00
Expendables	1.00	ls	\$ 100.00	\$100.00
Drinking Water	1.00	ls	\$ 75.00	\$75.00
Reproductions	1.00	ls	\$ 90.00	\$90.00
Dumpster (40 yd)	1.00	ls	\$ 400.00	\$400.00
Misc tools & equipment	1.00	ls	\$ 275.00	\$275.00
Closeout Docs	1.00	ls	\$ 300.00	\$300.00
General labor for clean-up, protection, and misc prep	12.00	hr	\$ 32.00	\$384.00



**COTTONWOOD AIRPORT P.V. PROJECT**

APRIL 13, 2011

**1/2 FRAMING PLAN**

# COTTONWOOD AIRPORT P.V. PROJECT

APRIL 13, 2011

## EXIST. HEIGHT RESTRICTION:

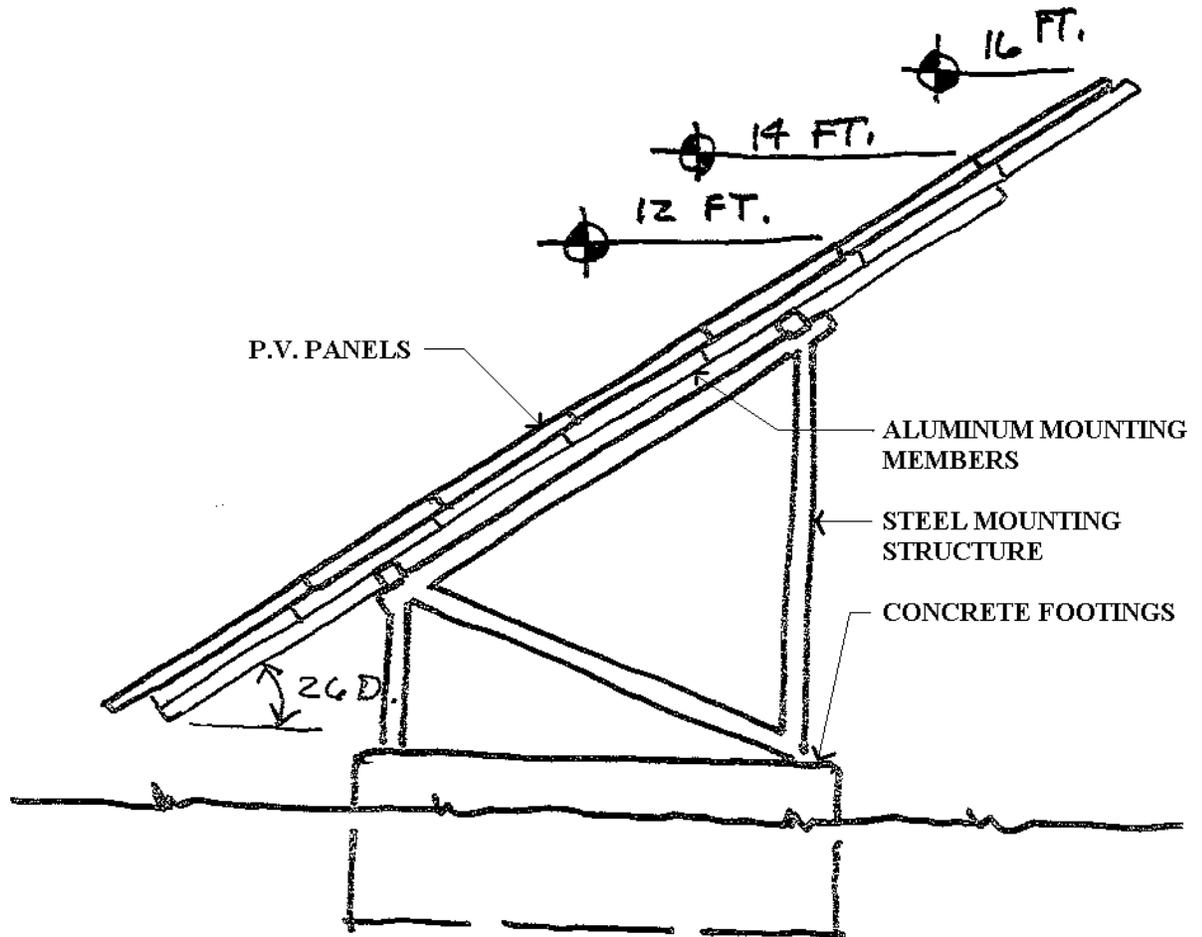
- 125 FT (± RUNWAY)

+ 7:1 SLOPE

## FUTURE H. RESTRICTION:

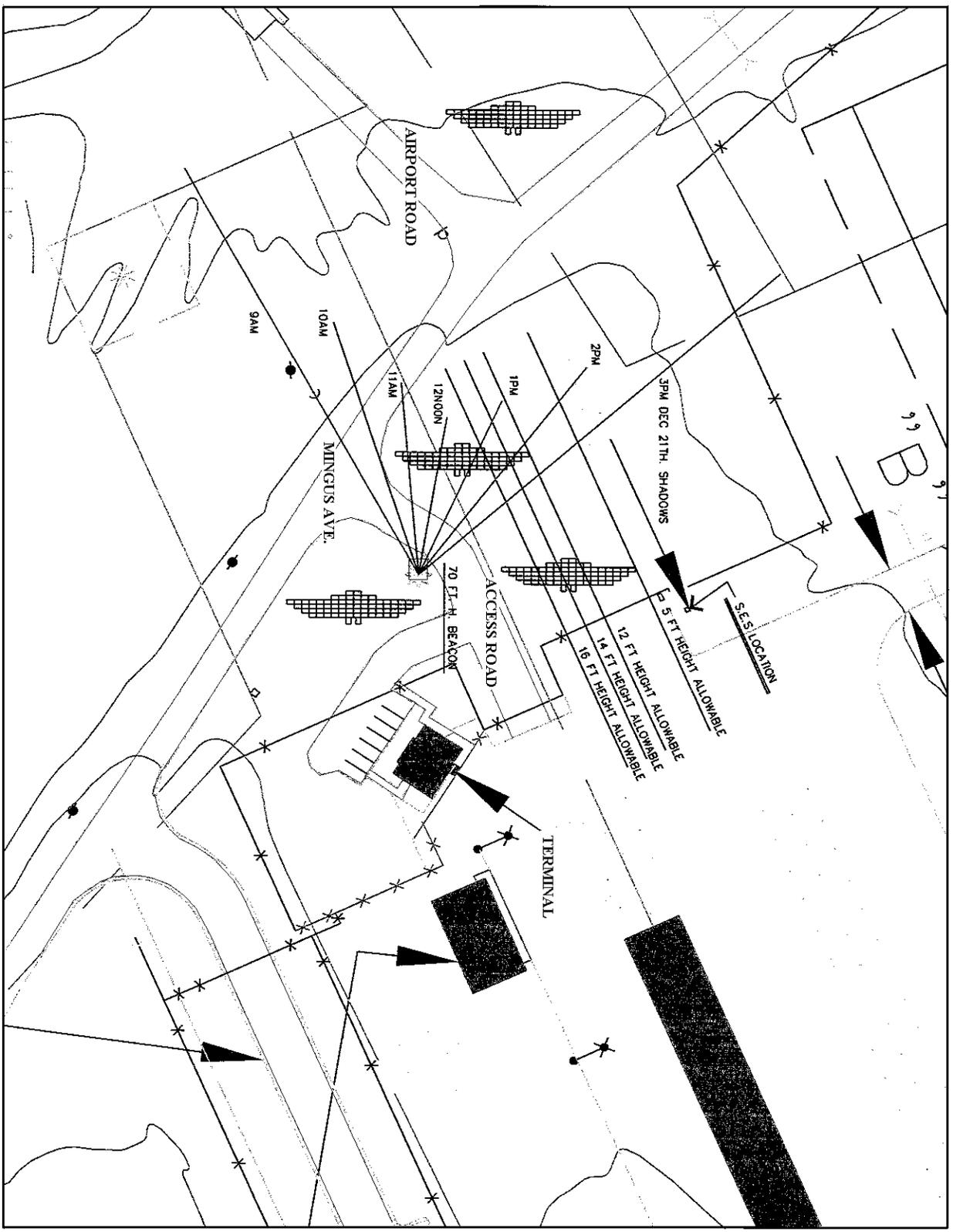
- 250 FT. (± RUNWAY)

+ 7:1 SLOPE



ARRAY SECTION

COTTONWOOD AIRPORT P.V. LAYOUTS



CHRISTIAN VERNOSKY ARCHITECT LLC 4/13/2011



City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject: CPD Vehicle Impound Administrative Fee**

Department: Police

From: Commander Eisenga/Officer Del Munday

**REQUESTED ACTION**

Council authorization for the implementation of an administrative fee not to exceed \$150.00 for costs relating to the removal, immobilization, impoundment, storage and/or release of vehicles, in accordance with Arizona Revised Statutes Section 28-3513.

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

"I move to authorize the Cottonwood Police Department to charge an administrative fee not to exceed \$150.00 in connection with the removal, impoundment, storage and release of vehicles, in accordance with 28-3513."

**BACKGROUND**

ARS 28-3511 allows police departments to impound vehicles for a period of 30 days for various reasons such as suspended driver's license, extremely impaired drivers, and at accidents when the driver has no insurance. When these vehicles are impounded the owner has the ability to request a hearing for early release of the vehicle. Per ARS 28-3513, police departments are allowed to charge an administrative fee of not more than \$150.00. ARS 28-3513 also stipulates that these monies must be "deposited in a special fund" used for the furtherance of traffic related enforcement and administrative costs involved with impoundment.

Cottonwood Police Department has held 79 of these hearings in 2010. To date we have not charged for these hearings.

**JUSTIFICATION/BENEFIT/ISSUES**

Monies received from this fee can be used for purchasing new traffic equipment that would be used in the enforcement of traffic related laws to further the enforcement of legal drivers on our roadways and keep our streets safe.

Some of these items of equipment could be, but are not limited to, new preliminary breath testers, window tint meters, radars, accident investigation equipment and much more.

**COST/FUNDING SOURCE**

Numerous man hours are involved in the impoundment and early release of impounded vehicles. Currently the breakdown of these hours looks similar to:

<u>Approx. Minutes</u>	<u>Action taken</u>
15	Traffic Stop
45	Tow Documentation and Standby for the Tow
120	DUI
60	Report Writing
15	Sending notices to Persons of Interest in the vehicle
20	Filing of Report with Records Clerks
20	Post Storage Hearing

TOTAL TIME SPENT: 4.9 hours or 295 minutes

**REVIEWED BY**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

N/A

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject:** 2011 Amendments to the Tax Code of the City of Cottonwood, Arizona – Resolution # 2590 – Declaring a Public Record

Department: Administrative Services, Finance Division

From: Jesus R. Rodriguez, CGFM, Administrative Services General Manager

**REQUESTED ACTION**

Submitted for City Council approval is Resolution #2590 – Declaring the 2011 amendments to the Model City Tax Code of the City of Cottonwood, Arizona a public record.

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

I move that the City Council approve Resolution Number 2590 declaring the 2011 Model City Tax Code Amendments of the City of Cottonwood, Arizona to be a public record.

**BACKGROUND**

Prior to adopting the 2011 Amendments to the Model City Tax Code, the City Council must make them a public record via resolution. This communication and attached documents will take care of this requirement.

**JUSTIFICATION/BENEFITS/ISSUES**

State Statute requires the need to make these amendments a public record.

**COST/FUNDING SOURCE**

No cost to the City

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

Resolution #2590 – Declaring a Public Record

RESOLUTION NUMBER 2590

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2011 AMENDMENTS TO THE TAX CODE OF THE CITY OF COTTONWOOD."

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA:

THAT certain document entitled "THE 2011 AMENDMENTS TO THE TAX CODE OF THE CITY OF COTTONWOOD," three copies of which are on file in the office of the City Clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 5TH DAY OF JULY 2011.

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Diane Joens, Mayor

APPROVED AS TO FORM:

ATTEST:

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Steven B. Horton, Esq.  
City Attorney

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Marianne Jiménez, City Clerk

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011

**Subject:** 2011 Amendments to the Tax Code of the City of Cottonwood, Arizona - Ordinance #578

Department: Administrative Services - Finance Division

From: Jesus R. Rodriguez, CGFM, Administrative Services General Manager

**REQUESTED ACTION**

First Reading of Ordinance #578 - adopting the 2011 amendments to the Model City Tax Code of the City of Cottonwood, Arizona.

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

N/A - First Reading

**BACKGROUND**

The Model City Tax Code is a coordinated effort on the part of Arizona cities to achieve uniformity in tax administration. The 2011 amendments include technical and conforming changes to ease administrative burdens and align the Model City Tax Code more closely to State Statutes.

The business community has reviewed and concurred with the housekeeping changes. The Municipal Tax Code Commission, established by the State Legislature to review changes to the Model City Tax Code, approved these amendments at their April meeting.

**JUSTIFICATION/BENEFITS/ISSUES**

State Statute requires that the governing bodies of local taxing jurisdictions implement the changes approved by the Municipal Tax Code Commission.

**COST/FUNDING SOURCE**

There is no cost involved with this matter.

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

Outline of proposed conforming changes to Model City Tax Code  
Ordinance #578

The attached Model City Tax Code changes, summarized below, were approved by the Municipal Tax Code Commission in April 2011.

### **Section 1**

This section adds language to the existing definitions of "Food" and "Prosthetic", and creates a new definition for the phrase "Medical marijuana". These changes were made for the purpose of specifically excluding medical marijuana from those definitions, and thus excluding sales of medical marijuana from the related exemptions available under the Retail classification of the Model City Tax Code (MCTC). The additional language makes it clear that medical marijuana sales are taxable at the regular Retail tax rate in all cities and towns. This section shall be effective from and after June 1, 2011.

### **Sections 2-4**

The changes in these sections are to comply with the 2010 regular legislative session passage of [HB 2700](#). HB2700 changed the sunset date under Contracting in A.R.S. 42-5075(B)(14) for installed solar energy devices, extending the deadline from January 1, 2011 to 2017. The three affected sections of the MCTC have the same language and these changes align the sunset date in the MCTC with the State statute. A technical correction adding reference to the Arizona Revised Statutes is also being added to the exemption for development fees in each section. These sections shall be effective from and after July 29, 2010.

### **Section 5**

New subsection 445(s) is added to incorporate [HB2510](#), passed during the 2010 regular legislative session, which prohibited cities and towns from taxing commercial rentals between two corporations when either the landlord or lessor corporation owns at least 80% of the voting stock of the other corporation. Also allows exemption if a third corporation owns 80% of both the landlord and the lessor corporations, and treats a "reciprocal insurer" as if it were a "corporation" for purposes of the exemption. This section shall be effective from and after July 29, 2010.

### **Section 6**

The changes in this section were made based on cooperation and compromise between the Unified Audit committee and banking interests. The changes address the treatment of successor privilege tax liability in the event of a foreclosure. The new language allows for the deferral of payment of the delinquent privilege tax until after the creditor subsequently sells the property, aligning the cash flow related to the property with payment of the tax liability.

In addition, this amendment will allow for the creditor's tax base to be based on their subsequent selling price, and also provides for tax credits in the event the debtor comes forward to pay their liability after the creditor's payment. This section shall be effective from and after May 1, 2010.

### **Section 7**

During the 2009 regular legislative session, [SB1196](#) created a use tax exemption for school districts and charter schools which was not previously incorporated into the MCTC. This preemption in A.R.S. 42-6004(F) exempts the storage, use, or consumption of tangible personal property by a school district or charter school. This section shall be effective from and after September 30, 2009

ORDINANCE NUMBER 578

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING "THE 2011 AMENDMENTS TO THE TAX CODE OF THE CITY OF COTTONWOOD" BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

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

Section 1: That certain document known as "The 2011 Amendments to the Tax Code of the City of Cottonwood," three copies of which are on file in the office of the City Clerk of the City of Cottonwood, Arizona, which document was made a public record by Resolution Number 2590 of the City of Cottonwood, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

Section 2: Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class two misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 3: If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4: The provisions of this Ordinance shall be effective from and after August 18, 2011.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, ARIZONA, THIS 19TH DAY OF JULY 2011.

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Diane Joens, Mayor

ORDINANCE NUMBER 578  
Page 2

ATTEST:

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Marianne Jiménez  
City Clerk

APPROVED AS TO FORM:

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Steven B. Horton, Esq.  
City Attorney

City of Cottonwood, Arizona  
City Council Agenda Communication



Meeting Date: July 5, 2011  
**Subject: Awarding Phased Retirement Contract**  
Department: Administrative Services  
From: Jesus R. Rodriguez, CGFM – Administrative Services General Manager

**REQUESTED ACTION**

Staff is requesting approval to dual award the Phased Retirement program to ESI, Inc., and SmartWorks Plus.

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

I move to approve that the City of Cottonwood dual award the Phased Retirement program and enter into agreements with ESI, Inc. and SmartWorks Plus for the administration of the program.

**BACKGROUND**

Fiscal year 2011 was the first year the City went out for a Phased Retirement Program. At the time SmartWorks Plus received a one year contact and has been doing a fine job. At the request of a local firm, ESI Inc., the City decided to entertain a presentation from both companies for comparison purposes.

The presentations from both companies were very informative and professional. Here is how we came to the conclusion to dual award.

1. Rates were very similar:

Company	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
ESI	4%	4%	3.535%
SmartWorks+	4%	4%	4%

If you look at the amount of money we are paying Robert Hardy and if he stays on with SmartWorks Plus the third year, the difference would be \$55.80 annually in additional fees.

2. Contacted Mohave on their 1% administrative fee and it is included in ESI's 4% fee, so that is not an issue with ESI.
3. Contacted Phil Tavasci about the 8.5% charge for individuals that work for less than one year and they have removed that clause from all existing contracts, so that is a non-issue with ESI.
4. Contacted Phil Tavasci about their electronic timesheets and they do not provide that method of timekeeping, minor issue with ESI.
5. Smartworks Plus is not local, ESI has a local office, minor issue for Smartworks.

Again, both companies are good companies and have been around for several years. Both have the financial resources to continue in existence, and both provide good customer service. I did however, talk to Bob Hardy about the electronic timesheets, and he is a little concerned that with his job, and traveling all the time, electronic timesheets work well because it is simple, quick, and can be done on the go. He also mentioned that all his documentation is available to him on the web portal, from original contracts to work history and much more.

**JUSTIFICATION/BENEFITS/ISSUES**

My recommendation is that we dual award and let the employees decide who they would like to deal with. I did not want to disqualify Smartworks Plus on the sole basis of not being local, and I did not want to disqualify ESI, Inc, because they did not have the on-line data entry presence. We believe that this is a fair compromise to allow ESI in the door and provide yet another option for our retiring employees to choose from. This option has been presented to both companies and is accepted by both.

**COST/FUNDING SOURCE**

The Administrative fees will be paid by the respective department and fund. In the current agreements we have in place both individuals, Robert Hardy and Robert Combs will be funded by the General Fund.

**REVIEWED BY:**

City Manager: \_\_\_\_\_

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

**ATTACHMENTS**

<b>CLAIMS REPORT OF JULY 5, 2011</b>			
<b>FUND TOTAL</b>	<b>VENDOR NAME</b>	<b>DESCRIPTION</b>	<b>TOTAL \$0.00</b>
<b>CLAIMS EXCEPTIONS REPORT OF JULY 5, 2011</b>			
<b>FUND</b>	<b>VENDOR NAME</b>	<b>DESCRIPTION</b>	<b>TOTAL</b>
All	City of Cottonwood	Payroll 06/10/2011	\$404,353.24
All	City of Cottonwood	Payroll 06/24/2011	\$418,274.00
All	City of Cottonwood	2.5% check 06/24/2011	\$208,978.80
Utilities	Asphalt Paving and Supply, Inc.	PO 18963 Potable water line	\$55,622.70
Gen	AZ Treasurer	May 2011 Court Fines	\$10,923.12
Gen	Creative Communications	PO 18925 E Ticket	\$30,338.40
Utilities	HD Supply - Waterworks	PO 18944 Water meters	\$41,904.33
Gen Utilities	Hill Brothers Chemicals	Pool Chemicals and Utility Chemicals	\$6,133.13
Gen	Sedona Fire District	Dispatching and Police Dispatch Map	\$10,465.60
Utilities	Town of Clarkdale	Bulk Water	\$7,076.55
All	APS	Utilities	\$74,718.05
Utilities	Envirogen	Arsenic Contract	\$32,569.87
All	United Fuel	Fuel	\$8,231.98
Utilities	APS	Utilities	\$13,420.80
All	Arizona Public Health Employers Pool	June Insurance Premiums	\$130,952.31
Utilities	D&K Farming	Sludge Hauling	\$5,737.99
Gen	General Code	PO 18934 Agenda Software	\$5,790.00
Hurf	Traffic Safety Inc	PO 18590 Street Stripe	\$20,124.73
All	United Fuel	Gas	\$10,423.55
Utilities	US Postmaster	Postage	\$5,350.00
Gen	VV Chamber of Commerce	Bed Tax May 2011	\$11,162.19
All	APS	Utilities	\$5,527.90
Utilities	Alliance Services & Control Specialist Inc	PO 18954, Programer and installation	\$7,673.00
Utilities	HD Supply - Waterworks	Po 18958 Pressure reducing valve	\$8,009.06
Utilities	James Cooke and Hobson	PO18952 Submersible pump	\$8,954.48
Gen	Merit Technology	PO 18968 phone lines due to Old Court Demo	\$10,282.87
Gen	Suntrust Leasing	Lease Payment	\$45,000.00
Gen	Suntrust Leasing	Lease Payment	\$50,909.08
Debt Svc.	USDA Rural Development	Principal & Interest Payment Debt Service	\$70,000.00
Gen	Zions National Bank	Lease Payment	\$42,028.70
<b>TOTAL</b>			<b>\$1,760,936.43</b>