

**CITY OF WILLCOX
MAYOR AND CITY COUNCIL
AGENDA**

**Monday, February 20, 2012
7:00 p.m.**

**City Council Chambers
300 W. Rex Allen Drive
Willcox, AZ 85643**

(Mayor or Designee will read only **BOLD** print of each agenda item,
except for Public Hearings, Petitions and Communications.)

**Resolution No. 2012- 11
Ordinance NS311**

NOTICE TO PARENTS: Valley Telecom Group records all Willcox City Council meetings. These recordings may be played and replayed on Valley Telecom Cable Channel 1. If you permit your child to participate in the Council Meeting, a recording will be made of your child's participation. If your child is seated in the audience, he or she may be recorded. If you desire, you may request that your child be seated in a designated area to avoid recording. To do so, please submit your request to the City Clerk prior to the meeting. (A.R.S. §1-602.A)

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. CALL TO THE PUBLIC

Mayor and Council consider comments or complaints from the public. Those wishing to address the Council are required to register by completing an individual speaker's form and filing it with the Clerk before the meeting. The speaker must be recognized by the Mayor before speaking. Time permitting each presentation will be given approximately three (3) minutes. It is probable that each organization will be limited to one speaker. Action taken as a result of public comment will be limited to directing staff to study or reschedule the matter for further consideration at a later date.

5. DECLARATION ON CONFLICT OF INTEREST

Council members and staff have a right to declare a conflict of interest. The declaration of a conflict of interest must be made prior to discussion of any agenda item in which Council members or staff member determine they have a conflict of interest.

6. ADOPTION OF THE AGENDA

The Council will at this time either adopt the agenda as presented or may remove or table any of the listed agenda items. Tabled items, unless otherwise directed, will appear on the next regular agenda. Council may not add any items to the agenda at this time. Should staff have any recommendations concerning the exclusion or tabling of agenda items they will voice these recommendations at this time.

7. CONSENT AGENDA

Items that are considered to be routine by the City Council will be enacted by one motion **without** discussion. The consent agenda is a timesaving device and Council members have received documentation on these items for their review prior to the open meeting. Any Councilmember may remove any item from the consent agenda for discussion and a separate vote as deemed necessary. The public may view the documentation relating to the consent agenda 24 hours prior to the meeting at the City Clerk's Office, 101 S. Railroad Avenue, Suite B, Willcox, AZ from 8:30 a.m. to 4:30 p.m. or at the Elsie S. Hogan Library, 100 N. Curtis Avenue during normal working hours Monday-Saturday.

7A. THE MINUTES OF THE WORK SESSION HELD ON FEBRUARY 6, 2012

Tab 1

8. **PUBLIC HEARINGS, PETITIONS AND COMMUNICATIONS** Tab 2
PUBLIC HEARINGS: The Mayor and Council will hold a public hearing on Monday, February 20, 2012, City Council Chambers, 300 W. Rex Allen Drive, Willcox, AZ regarding the Application for Liquor License Series #06 Quality Inn-Willcox, Person Transfer, Location Transfer, Corporation, Christina Selene Fraser, Harden Motel, Inc., 1100 W. Rex Allen Drive, Willcox, AZ
- PROCLAMATION:** The Mayor will proclaim (1) Celebrating the Arizona Centennial throughout the Month of February by Honoring 100 Years of Arizona History 1912 – 2012, *Happy Birthday Arizona Month*; and (2) February 19-25, 2012 as *Willcox FFA Week* Tab 3
- COMMUNICATIONS:** There are three (3) candidates running for the March 13, 2012 Primary Election. Candidates are: Earl B. Goolsby, Elwood "Woody" Johnson and William "Bill" Nigh. Polls open at 6:00 a.m. to 7:00 p.m., City Council Chambers, 300 W. Rex Allen Drive. There are no Write In Candidates for the Primary Election and Request for Early Ballots starts February 16, 2012 by calling 1-888-457-4513.
9. **DISCUSSION/DECISION REGARDING THE APPLICATION FOR LIQUOR LICENSE SERIES #06 QUALITY INN-WILLCOX, PERSON TRANSFER, LOCATION TRANSFER, CORPORATION, CHRISTINA SELENE FRASER, HARDEN MOTEL, INC., 1100 W. REX ALLEN DRIVE, WILLCOX, AZ** Tab 2
Consideration, discussion and/or decision regarding the Application for Liquor License Series #06 Quality Inn-Willcox, Person Transfer, Location Transfer, Corporation, Christina Selene Fraser, Harden Motel, Inc., 1100 W. Rex Allen Drive, Willcox, AZ
10. **DISCUSSION/DECISION REGARDING THE APPOINTMENT OF SHARON NIGH TO FILL THE UNEXPIRED TERM VACATED ON THE PLANNING AND ZONING COMMISSION, TERM TO EXPIRE JUNE 30, 2014** Tab 4
Consideration, discussion and/or decision regarding the Appointment of Sharon Nigh to fill the term expiring on the Planning and Zoning Commission on June 30, 2014.
11. **DISCUSSION/DECISION TO ACCEPT THE CHECK FROM THE LAMBDA CHI OMEGA ARIZONA BETA CHAPTER IN THE AMOUNT OF \$400 FOR THE SKATE PARK DEVELOPMENT FUND 17** Tab 5
Consideration, discussion and/or decision to accept check from the Lambda Chi Omega Arizona Beta Chapter in the amount of \$400 for the Skate Park Development Fund 17.
12. **DISCUSSION/DECISION REGARDING PURCHASE OF SERVICES FROM SCOUTTEN ENGINEERING UNDER EXISTING AGREEMENT** Tab 6
Consideration, discussion and/or decision regarding purchase of services from Scoutten Engineering under the existing Agreement.
13. **DISCUSSION/DECISION REGARDING RESOLUTION NO. 2012-06 APPROVING AND ADOPTING THE PUBLIC LIBRARY ADVISORY COMMITTEE ("COMMITTEE") RECOMMENDATION TO NAME THE NEWLY-RENOVATED AREAS OF THE LIBRARY IN HONOR OF A PROMINENT LOCAL CITIZEN AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST.** Tab 7
Consideration, discussion and/or decision regarding Resolution NO. 2012-06, as stated, relating to name the newly renovated areas of the Library.
14. **DISCUSSION/DECISION REGARDING RESOLUTION NO. 2012-08 APPROVING AND ADOPTING THE BID AWARD ON THE CDBG COMMUNITY CENTER PHASE III RENOVATIONS, AUTHORIZING CITY STAFF TO PROCEED WITH THE PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST** Tab 8
Consideration, discussion and/or decision regarding Resolution NO. 2012-08, as stated, relating to the bid award on the CDBG Community Center Phase III Renovations.
15. **DISCUSSION/DECISION REGARDING RESOLUTION NO. 2012-09 APPROVING AND AUTHORIZING THE RENEWAL AND EXTENSION OF THE USE, MAINTENANCE AND STIPEND AGREEMENT BETWEEN THE CITY OF WILLCOX ["CITY"] AND THE WILLCOX CHAMBER OF COMMERCE AND AGRICULTURE, A NON-PROFIT CORPORATION, ["CHAMBER"] AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AND EMERGENCY TO EXIST** Tab 9
Consideration, discussion and/or decision regarding Resolution NO. 2012-09, as stated, regarding Renewal and Extension of Agreement with Chamber.

16. DISCUSSION/DECISION REGARDING RESOLUTION NO. 2012-10 APPROVING AND ADOPTING AN AMENDED JOB DESCRIPTION FOR THE POSITION OF ADMINISTRATIVE ASSISTANT IN THE PUBLIC WORKS DEPARTMENT PURSUANT TO SECTION 208 OF THE EMPLOYEE HANDBOOK AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST. Tab 10
Consideration, discussion and/or decision regarding Resolution NO. 2012-10, as stated, relating to amended job description for the position of Administrative Assistant in the Public Works Department.

17. REPORTS BY THE CITY MANAGER PAT MCCOURT
Consideration, discussion, and/or decision regarding the following topics by the City Manager:

- **Report on City Election** – Primary Election to be held on Tuesday, March 13, 2012.
- **Skate Park**
- **Fence in Field Two**
- **New Budget Calendar**
- **New Businesses**-EA Glass and Rock & Row Flooring have moved in next to Trusty Rusty on S. Haskell.

18. COMMENTS NOT FOR DISCUSSION FROM MAYOR AND COUNCIL MEMBERS.

19. DISCUSSION/DECISION ENTER INTO AN EXECUTIVE SESSION PURSUANT TO ARIZONA REVISED STATUTES §38-431.03A(3) DISCUSSION OR CONSULTATION FOR LEGAL ADVICE WITH THE ATTORNEY OR ATTORNEYS OF THE PUBLIC BODY Tab 11
Consideration, discussion and/or decision to enter into an Executive Session pursuant to ARS §38-431.03A(3), as stated, relating to consultation for legal advice with the attorney(s) of the public body.

20. RECESS TO EXECUTIVE SESSION, IF APPROVED

21. RECONVENE FROM EXECUTIVE SESSION

22. DISCUSSION/DECISION/DIRECTION TO STAFF REGARDING MATTERS DISCUSSED IN EXECUTIVE SESSION
Consideration, discussion, decision and/or direction to staff regarding matters discussed in Executive Session relating to advice from City Attorney.

23. ADJOURN

NOTE: Documentation (if any) for items listed on the Agenda is available for public inspection, a minimum of 24 hours prior to the Council Meeting, at any time during regular business hours in the Office of the City Clerk, 101 S. Railroad Avenue, Suite B, or the Elsie S. Hogan Community Library during regular business hours Monday-Saturday and on the City's website www.cityofwillcox.org .
NOTE: People with disabilities may request reasonable accommodations. Requests must be made 48 hours prior to the meeting by contacting City Hall at 384-4271 during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday.

TAB 1

**THE MINUTES OF THE WORK SESSION MEETING OF THE MAYOR AND
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
HELD ON THIS 6TH DAY OF FEBRUARY 2012**

CALL TO ORDER- Vice Mayor Monika Cronberg announced the Work Session Meeting on Monday, February 6, 2012 at 6:02 p.m. we do not have a quorum present. Vice Mayor Cronberg announced we now have a quorum and called the Work Session Meeting to order at 6:07 p.m.

ROLL CALL-City Clerk Cristina Garcia Whelan, CMC, called the roll:

PRESENT

Vice Mayor Monika Cronberg
Councilman Elwood A. Johnson
Councilman Stephen Klump- arrived at 6:11 p.m.
Councilman William "Bill" Holloway
Councilman Robert "Bob" Irvin

ABSENT

Mayor Gerald W. Lindsey
Councilman Christopher Donahue

STAFF

City Manager Pat McCourt
City Attorney Hector M. Figueroa
City Clerk Cristina Garcia Whelan, CMC
Library Director Tom Miner
Public Finance Director Ruth Graham
Public Services & Works Director Dave Bonner
Development Services Jeff Stoddard

PLEDGE OF ALLEGIANCE TO THE FLAG-Vice Mayor Cronberg.

DECLARATION ON CONFLICT OF INTEREST-There was no response from the Vice Mayor, Council member or staff.

ADOPTION OF THE AGENDA

MOTION: Councilman Johnson moved to adopt the agenda as presented.

SECONDED: Councilman Holloway seconded the motion. **CARRIED.**

DISCUSSION REGARDING PRESENTATION AND REVIEW OF GAS SYSTEM AND RECOMMENDATIONS FROM WC SCOUTTEN, INC.

Mr. Larry Harmer, Engineer for W.C. Scoutten, Inc., addressed the Mayor and Council and began the presentation on the review of Gas Distribution System. The System is over 70 years old and experienced a few problems for a few years with cold snap in October 2009. Working with Scoutten, Inc., is the country's leading Gas Distribution System Engineer Brad Bean. All they do is evaluation of Natural Gas Distribution Systems. Depending on technical questions he may have to take them back or bring Mr. Bean for explanation. Mr. Harmer has spoken with Southwest Gas as to their intentions of service and at this point only dialogue. Referring to map from the 2009 General Plan Land Use Map and the overall outside boundaries of the City limits they have designated potential growth areas. Also at that time they did water adequacy. The next graphic outline is basically the current system and includes customers out on Airport Road which was extended years ago. Southwest only discussion is "eagerness and not willingness." Over the years upgrades and changes done with polyethylene (PE) pipe and has set up situation for long term because replacing 2" cast iron pipe with 2" PE. The inside diameter of the plastic is smaller than the iron and recommend continue with the plastic pipe. There are pipes especially for natural gas systems and do not erode. During cold snaps basic pressure at the meter is 28 psi and based on National Standards presume 14 psi. Cold snap in February 2011 dropped to 21 psi and couple locations hit 17 psi. The System operated above critical mass. In October 2009 there was real problem at the gate valve from El Paso and has been corrected. System is now in very good condition. Assumption 14 psi minimum the City still has capacity and could add 25% and could be as high as 35% with new customers. There is flexibility in percentage because we do not know if they will be high users, residential or commercial customers. Noting at some point in time the City will need to replace everything with PE and still have 15.5 psi.

Next question to consider is where to add customers? The City has Infill Incentive or the old platted town sites shown in Zoning and those are very favorable. The bottom line in their findings is it is a good system, all the right things have been done, maintenance with meetings with John Bowen, Utilities Supervisor, where he had to excavate the lines and still the City's gas system is in good condition. Mr. Harmer stated that they do have suggestions and potential recommendations. There are two (2) areas where pressures are such that it would be beneficial to finish the loop i.e. High School and Iron Wood Estates. Each area is about a block long and City would have redundancy and maintain the pressure. Long term they are suggesting that the

**THE MINUTES OF THE WORK SESSION MEETING OF THE MAYOR AND
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
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City consider building a redundancy all the way from El Paso or about 5-miles to City. They are also suggesting stay with 4" line and will need to meet with El Paso and see what there recommendation is and probably tie with parallel line and if we are in crisis situation ability to switch over. They do have high capacity up to 200 psi and at the valve right now we have 100 psi. In summer the system is in good shape and nothing pressing at all. If Gas Enterprise Fund suggest those two loops and long term the parallel line and the 5-miles has not been excavated for soft spots.

City Manager McCourt stated it has been his understanding pressure dropped on the fringe areas is that incorrect. Mr. Harmer explained those are areas of lowest pressure or 17 psi. Right now we are above necessary standards. Mr. McCourt then asked if the City has pressure regulating station North East part of town and line comes in from El Paso and if that is potential problem. Mr. Harmer stated his understanding still operating well and no indications it will fail but long term need a new redundant line and will check on that. The third question Mr. McCourt asked if there is any advantage bringing in second line not parallel into community and geographically separate. Mr. Harmer said they have not discussed that and thinks that is something to talk to El Paso because not sure how many taps onto the supply line and will check into that also. Mr. McCourt does not understand pressure regulating station urgency need to work on that, and the lines from El Paso do not show inconsistencies. Mr. Harmer replied that is correct and part of that is climate and that is preserving the lines. There are a couple of areas near the wash with some depressions that they need to look at. Mr. McCourt stated the PE pipe inside is smaller than old iron pipes and asked are there any other sizes needed to be address at this point. Mr. Harmer said not at this point it has already been adjusted. According to Mr. Bean better to continue with what you started. If changed to PE pipe operating pressure still 15.5 psi. Councilman Klump asked that is model 15.5. psi and Mr. Harmer said that is correct.

Vice Mayor Cronberg stated that is good news that we are not going to take on another huge cost for the regulator station and we will still have capacity. Mr. Harmer stated the final recommendation will probably be the redundant line in 5-10 years out. It is not a critical situation at this time.

John Cropper asked about water and asked any growth along Ft. Grant Road for about 20 miles. Mr. Harmer replied that is a policy decision whether they want to extend services outside or as an incentive to annex. Typically Cities and Town only provide service in their areas and if they do extend the lines the fees would be half or double. They model on existing limits and 25% is on areas that already exist in the City and are empty lots. The further the City extends the more pressure drops. Mr. McCourt said Southwest Gas has Certificate and in theory we could not encompass on that. Mr. Harmer added they are not inclined to step inside the City limits. Along Airport Road 1.5 miles is City gas line and only handful of customers, although they do put a drain on system.

Development Services Jeff Stoddard asked about what if new industry in City limits. Mr. Harmer explained that has to be modeled every time you have a new service. The 25% he spoke about is juggling Residential and Industrial. Each time significant customer added it can be remodeled and know what the impact is going to be. The Model has been prepared especially for the City of Willcox and the City owns the model. Mr. Harmer asked do you want to buy software or have Brad Bean do it. He estimates costs from \$2,400 or \$2,500 for the software. That purchase could come out of Enterprise Fund because it will be only for the Gas System. Mr. Harmer hopes to present suggestions or recommendation to the Mayor and Council soon.

Vice Mayor Cronberg asked if there are any questions and Mr. Harmer said to forward them to Mr. Bonner and he will forward them along or send to Mr. Bowen and their assistants.

ADJOURN

There being no further business before the Mayor and Council, Vice Mayor Cronberg adjourned the meeting at 6:35 p.m.

(Remainder of page left intentionally blank.)

**THE MINUTES OF THE WORK SESSION MEETING OF THE MAYOR AND
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
HELD ON THIS 6TH DAY OF FEBRUARY 2012**

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the work session meeting of the City Council of the City of Willcox held on the 6th day of February 2012. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 16th day of February 2012

City Clerk Cristina Garcia Whelan, CMC

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2012.

MAYOR GERALD W. LINDSEY
Signed: _____

ATTEST:

City Clerk Cristina Garcia Whelan, CMC

TAB 2



NOTICE OF PUBLIC HEARING
MAYOR AND CITY COUNCIL

In accordance with Resolution No. 370 of the City of Willcox, and Section 38-431.01 of the Arizona Revised Statutes **NOTICE IS HEREBY GIVEN** that the **MAYOR AND COUNCIL** of the City of Willcox, County of Cochise, Arizona, will hold a **PUBLIC HEARING**, during the **REGULAR** meeting, on **MONDAY** the **20th** day of **FEBRUARY**, 2012 at **7:00 p.m.**, in the **CITY COUNCIL CHAMBERS, 300 W. REX ALLEN DRIVE, WILLCOX, AZ.**

Public Hearing on:

APPLICATION FOR LIQUOR LICENSE

SERIES #06 QUALITY INN-WILLCOX

PERSON TRANSFER, LOCATION TRANSFER, CORPORATION

CHRISTINA SELENE FRASER

HARDEV MOTEL, INC.

1100 W. REX ALLEN DRIVE

WILLCOX, AZ.

All members of the public are invited to attend such meeting. For those persons unable to attend, written comments will be accepted until 4 p.m. the day of the public hearing in the Office of the City Clerk, 101 S. Railroad Avenue, Suite B, Willcox, AZ 85643.

DATED AND POSTED this 19TH day of JANUARY 2012 AT 4:30 P.M.

CITY OF WILLCOX, ARIZONA

Cristina Garcia Whelan CMC

IsiCristina G. Whelan, CMC

CITY CLERK

Please insert items from TABS
on 02-06-2012 packet.

Jfs
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Proclamation

TAB 3

WHEREAS, Arizona was a territory with limited rights prior to February 14, 1912; and

WHEREAS, on February 14, 1912 the Arizona Territory was officially joined into the Union of the United States of America as a State with all the rights, privileges, and responsibilities that entails; and

WHEREAS, one hundred years have passed since February 14, 2012; and

WHEREAS, the people of the State of Arizona have developed Arizona into a worldwide destination; and

WHEREAS, the people of Arizona have developed the State into a unique community with its own culture and personality.

NOW, THEREFORE, I, Gerald W. Lindsey, Mayor of the City of Willcox, Arizona, do hereby proclaim February 2012

*****HAPPY BIRTHDAY ARIZONA MONTH*****



In witness whereof, I have hereunto set my hand and caused the Seal of the City of Willcox to be affixed this 20th day of February 2012

MAYOR GERALD W. LINDSEY

Attest: _____

City Clerk Cristina Garcia. Whelan, CMC

"Mine, Yours, Ours"

BELIEVE

FFA Week February 18-25, 2012



PROCLAMATION

WHEREAS, the Willcox FFA and Willcox Agriculture Education provide a strong foundation for the youth of Willcox and the future of the food, fiber and natural resources systems; and

WHEREAS, the Willcox FFA promotes premier leadership, personal growth and career success among its members; and

WHEREAS, Willcox Agricultural Education and the Willcox FFA ensure a steady supply of young professionals to meet the growing demands in the science, business and technology of agriculture; and

WHEREAS, the Willcox FFA motto-"Learning to do, doing to learn, earning to live living to serve"-gives a direction of purpose to these students who take an active role in succeeding in agricultural education; and

WHEREAS, the Willcox FFA promotes: citizenship, volunteerism, patriotism and cooperation.

THEREFORE, BE IT RESOLVED, that I, Gerald W. Lindsey, Mayor of the City of Willcox, Cochise County, Arizona, do hereby proclaim, February 19th through 25th, 2012 to be

WILLCOX FFA WEEK



In witness whereof, I have hereunto set my hand and caused the Seal of the City of Willcox to be affixed this 20th day of February 2012.

MAYOR GERALD W. LINDSEY

Attest: _____
City Clerk Cristina Garcia Whelan, CMC

Willcox Agricultural Education Mission Statement

Willcox Agricultural Education prepares students for successful careers and a lifetime of informed choices in the global agriculture, food, fiber and natural resources systems.

Willcox FFA Mission

The Willcox FFA Organization is dedicated to making a positive difference in the lives of young people by developing their potential for premier leadership, personal growth and career success through agricultural education.

TAB 4

January 10, 2012

Mayor Sam Lindsey and the
Willcox City Council
124 Railroad Avenue
Willcox AZ 85643

RE: PLANNING AND ZONING
COMMISSION

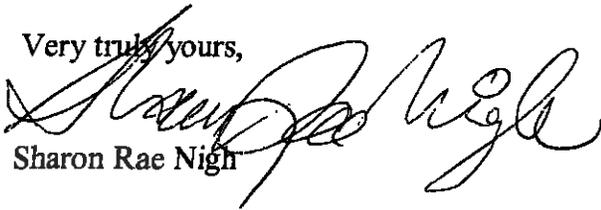
Gentlemen:

I wish to be considered for appointment by the Council to the Planning and Zoning Commission. I have always had a strong commitment and desire to help the city in their plans to improve Willcox. I wish to put forward some of my background, that I hope would apply to P&Z.

Willcox Parks and Recreation Committee – Chairman and Member.
Northern Cochise Fund – Founder and Board Member.
Sulphur Springs Valley Historic Society – Board Member.
Blackstone School of Law – Certified Paralegal.
Economic Development Institute, American Economic Development Council-2 years
Lumbliou School of Real Estate – Certified
Kingman City Parks and Board of Adjustment – Chairman

Thank you for your consideration. I can be reached at (602)796-9160 and I reside at 509 West Delos St, Willcox, AZ 85643. Mailing address is Box 1141, Willcox AZ 85644.

Very truly yours,



Sharon Rae Nigh

1-17-12
closed

JAN 15 REC'D

Nancy Guerrero
804 N. Flagstaff
Willecox, Az. 85643

December 5, 2011

Dear Mayor, Council Members and Planning & Zoning Commission,

It has been my pleasure to service on the Planning & Zoning commission the past few months. My circumstances have changed and I will be moving out of state before the first of the year and, therefore, must resign from my position.

I wish all of you and the City of Willecox a very bright future and thank you very much for the opportunity to help where I could.

Happy Holidays to all of you.

Nancy Guerrero

TAB 5

City of Willcox
Memo from Finance

To: Mayor and Council
From: Ruth Graham
Cc: City Manager Pat McCourt
Date: 2/9/2012
Subject: Skate Park Contributions and City Match up to \$20,000

At the February 20, 2012 Willcox City Council meeting the Council will consider acceptance of a gift in the amount of \$400 from the Lambda Chi Omega Arizona Beta Chapter.

In past actions, the City Council has agreed to match up to a total of \$20,000 on the Skate Park Project. The attached spreadsheet itemizes donations to date, the City's match, and expenses incurred. Gifts totaling \$11,600 were received prior to FY11-12. On November 8, 2011, the City Council accepted \$5,000 from the Northern Cochise Fund and the Arizona Community Fund, bringing the total contributed fund to \$16,600. With the current donation of \$400, the FY11-12 total appropriation for matching is \$17,000. In addition, the City's total match may increase by up to \$3,000 if additional donations are received.

Funds totaling \$14,100 were budgeted in Account No. 10-403-9734 for a Skate Park Match in FY11-12. That account also included an amount of \$3,500 for fireworks for a total of \$17,600. An additional FY11-12 appropriation to Account No. 10-403-9734, if necessary, will be requested from Account No. 10-403-2809, Economic Development. Appropriation of funds for the current fiscal year will be memorialized in the annual budget adjustment proposal that will come before the Council in May.



**Lambda Chi Omega Sorority
AZ Beta Chapter
P.O. Box 298
Willcox, AZ 85644**

February 1, 2012

**City of Willcox
Pat McCourt, City Manager
101 S. Railroad Ave. Suite B
Willcox, AZ 85643**

Dear Pat,

AZ Beta chapter of Lambda Chi Omega is happy to send this \$400 donation to be used in the building of the new Skate Park in Willcox. We understand that the City of Willcox will match any donations given to this project.

We hope this will help get construction of this facility under way.

Sincerely,

Debbie Regnier
**Debbie Regnier
LCO Beta Treasurer**

SPECIAL REVENUE FUND INFORMATION

SKATE PARK

DATE	EXPENSE ACCOUNT 17-439-1939	PROJECT COSTS	Total Costs to Date	DATE	REVENUE ACCOUNT 17-33-40939	DONATIONS	CITY MATCH	Total Funds Available
				9/7/2007	Willcox Skate Park	\$5,500.00		\$5,500.00
				11/24/2008	Chamber Skate Park	\$2,500.00		\$8,000.00
6/9/2010	San Pedro Valley News	\$126.00	\$126.00	9/30/2009	Donation	\$1,500.00		\$9,500.00
6/9/2010	Project Advertising	\$147.00	\$273.00					\$9,227.00
				2/8/2011	Donation	\$100.00		\$9,327.00
				5/2/2011	H Bethel donation	\$1,000.00		\$10,327.00
				5/12/2011	Sulphur Springs	\$1,000.00		\$11,327.00
				11/8/2011	NCF/CCF Grant	\$5,000.00		\$16,327.00
				11/8/2011	City Match-collected		\$16,600.00	\$32,927.00
				2/20/2012	Lamda Chi Omega			\$33,327.00
				2/20/2012	Arizona Beta Chapter	\$400.00		\$33,727.00
				2/20/2012	City Match-pending		\$400.00	\$33,727.00
2/20/2012	Concrete Cost- Work Underway	\$10,402.50	\$10,675.50			\$17,000.00	\$17,000.00	\$23,324.50

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item: _____ 12
Tab Number: _____ 6
Date: 02-20-2012

Date Submitted: 2-6-12
Date Requested: 2-20-12

Action: <input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Formal <input checked="" type="checkbox"/> Other

Subject: Purchase of Services from Scoutten Engineering under existing Agreement

TO: MAYOR AND COUNCIL

FROM: City Manager

DISCUSSION: The City of Willcox is under a Consent Order (CO) from the Arizona Department of Environmental Quality (AzDeq) in reference to the operation of the City's Waste Water Treatment Plant (WWTP).

One of the items in the CO is the requirement to update the City Code in reference to the requirement for regulation of Fats, Oils, and Greases (FOGs). This is a relatively complex requirement.

The City currently has a contract with Scoutten Engineering (City Engineer) to perform various services for the City. Section three (3) of that contract provides for "Other Miscellaneous Services". Scoutten has the technical ability to perform this contract: the estimated cost is \$6,240 cost and time to advertize and select a provider are disproportional to the possible benefit; The City Procurement Code Section 3-1-3.L "Special Procurement" provides the basis for this purchase upon the city Manager's determination: City Procurement Code Section 3-1-3.L "Small Purchases Over \$5000" Provide for the award.

This is the official notification that the City Manager is awarding under the City Purchasing Procedure.

RECOMMENDATION: Unless the Council has a concern about this award no further action is necessary: if the Council has a concern this would be a time to express that concern.

FISCAL IMPACT: Sewer Fund estimated \$6,240, this is budgeted.

Prepared by: Pat McCourt

Approved by: _____


Pat McCourt, City Manager

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item 13
Tab Number 7
Date: 02-20-2012

Date Requested:
2/9/2012

Resolution
 Ordinance
 Formal
 Other

Subject: Approval of recommendation by PLAC naming an area of ESH Library for Ms. Nancy Guerrero

TO: MAYOR AND COUNCIL

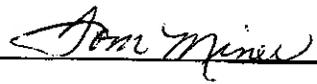
FROM: Tom Miner, Library Director

DISCUSSION: In Nov 2005, then-Mayor Mick Easthouse and I were discussing the Valuation of Library Assets report I had just submitted. During our discussion, he mentioned the upcoming relocation and consolidation of the Magistrate Court and Willcox Police Dept into a new Justice facility/complex, and the positive impact that 3000sf more space would have on the Library. He then made the suggestion of calling the vacated space in the Library the "Nancy Guerrero Annex", since she had planned and moved the Library from 450 W. Maley St. to our current location, as well as planning the subsequent expansion thereof, and had since just recently retired. I thought it was a great idea, and it "stuck" in my mind from that point on. By definition, an Annex is an "addition" to an existing building, so the Solarium is the obvious choice and most logical location in the Library to be named the Nancy Guerrero Annex. I ran it up through channels, and Mr. McCourt recommended that the PLAC take a look at it from the community perspective. Their recommendation is attached for your review. I fully support this proposal, and the PLAC's recommendation.

RECOMMENDATION: The City Council approve the PLAC's recommendation to approve naming the aforementioned area of the Elsie S. Hogan Community Library in honor of a prominent local citizen, Ms. Nancy Guerrero.

FISCAL IMPACTS: None

Submitted by:



Tom Miner, Library Director

Approved by:



Pat McCourt, City Manager

CITY OF WILLCOX
ELSIE S. HOGAN COMMUNITY LIBRARY
Phone: 520/766-4250 Fax: 520/384-0126



100 North Curtis Avenue
Willcox, Arizona 85643-2150
Email: tminer@willcoxcity.org

"Yours, Mine and Ours"

PUBLIC LIBRARY ADVISORY COMMITTEE

Jeffrey S. Shroyer, Chairman
Delah J. Aiman, Member

Terry DeWindt, Vice-Chair
Joseph L.T. Aiman, Member

Kay Boughton, Secretary
Chris Donahue, Ex-Officio

February 9, 2012

RE: Request to Name a Newly-Renovated Area of the Library in Honor of a Prominent Local Citizen

TO: Honorable Mayor and Members of the City Council

Lady and Gentlemen,

It is the recommendation of this Committee, by unanimous vote, that the City Council approve the naming of a newly-built portion of the Elsie S. Hogan Community Library, in honor of a person who directly made significant and substantial contributions to the success of our local Library over a period of several years.

The area concerned is the Library's newest "addition" or annex, the 400sf Solarium room. It is requested to be named the *Nancy Guerrero Annex*, in honor of Ms. Nancy Guerrero, the longest-serving Head Librarian and Library Director in the 88-year history of the Library – 25 years, from 1979 to 2004, a record which will most likely never be surpassed. She struggled for 9 years to move the Library from 450 W. Maley to its present location, quadrupling the square footage of space to better serve our community residents. She started planning the expansion of the current facility in 2001 until her retirement in 2004, passing the torch to her successor, Mr. Miner, to see it through. Last month, Nancy moved to Tulsa, OK to be near her daughter and grandchildren. She is most certainly deserving of this honor and recognition.

Sincerely,

Jeffrey S. Shroyer, Chairman

RESOLUTION NO. 2012-06

A RESOLUTION OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, (“CITY”) APPROVING AND ADOPTING THE PUBLIC LIBRARY ADVISORY COMMITTEE (“COMMITTEE”) RECOMMENDATION TO NAME THE NEWLY-RENOVATED AREAS OF THE LIBRARY IN HONOR OF A PROMINENT LOCAL CITIZEN AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST.

WHEREAS, the CITY is authorized pursuant to A.R.S. §§ 9-413; 9-419; 9-420, et seq. to establish a Library fund; to authorize the use of land and structures for a public library; to enter into agreements with the Arizona State Library, Archives and Public Records to provide supervision of expenditures of all monies involved in financing a library service; and

WHEREAS, the CITY is empowered to create a Public Library Advisory Committee “Committee” and to appoint five Committee Members pursuant to Title 2, Chapter 4 of the City Code; and

WHEREAS, the COMMITTEE is authorized to provide advisory assistance to the CITY in establishing rules, regulations and policy related to the use of the ELSIE S. HOGAN LIBRARY pursuant to Title 2, Chapter 4, Sections 2-4-4 and 2-4-5; and

WHEREAS, the COMMITTEE held a public meeting on January 10, 2012 regarding the naming of the newly-renovated areas (hereinafter the Library Annex) to forward to Mayor and Council; and

WHEREAS, the COMMITTEE desires to recommend to Mayor and Council for approval and adoption the official naming of the Library Annex in honor of Nancy Guerrero; and

WHEREAS, the City of Willcox, Cochise County, Arizona desires to have this Resolution presented at its February 20th, 2012 Council meeting and has determined that approval and adoption of the proposed recommendation is in the best interest of the CITY and its residents; and

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Willcox, Cochise County, Arizona, that an emergency be declared to exist to assure timely implementation of the stated naming of the Library Annex, and that this Resolution shall be effective immediately upon its passage and adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That approval and adoption of the recommendation from the COMMITTEE, as presented, is in the best interest of the residents of the City of Willcox.

Section 2: The CITY formally approves and adopts the recommendation to name the Library Annex in honor of Nancy Guerrero and authorizes the Library Director, Mr. Thomas Miner, to carry out the intent of the Resolution.

Section 3: That the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the City of Willcox, Cochise County, Arizona.

Section 4: The Mayor is authorized to execute this Resolution.

PASSED AND ADOPTED by the Council of the City of Willcox, Cochise County, Arizona, this _____ day of February, 2012.

APPROVED/EXECUTED:

MAYOR, GERALD W. LINDSEY

ATTEST:

City Clerk, Cristina Garcia Whelan, CMC

APPROVED AS TO FORM:

City Attorney, Hector M. Figueroa, Esq.

RESOLUTION NO. 2012-06

RESOLUTION NO. 2012-08

A RESOLUTION OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, ["CITY"] APPROVING AND ADOPTING THE BID AWARD ON THE CDBG COMMUNITY CENTER PHASE III RENOVATIONS, AUTHORIZING CITY STAFF TO PROCEED WITH THE PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST

WHEREAS, the CITY is authorized pursuant to A.R.S. §§ 9-240 and 9-276, to receive and distribute state and local monies which can be used for local planning and technical assistance as provided by SEAGO; and

WHEREAS, the CITY was awarded CDBG FY10 Grant funds for Phase III of the Community Center Renovations; and

WHEREAS, the CITY originally bid the project on May 9th, 2011 with an anticipated start date in mid May, received various Bid Responses, rejected all bids on the CDBG Community Center Phase III Renovations and authorized staff to re-bid the project; and

WHEREAS, the CITY issued a new bid package for the project and has received various Bid Responses; and

WHEREAS, the City Staff is recommendation the official Bid Award be made to Building Excellence, LLC ("CONTRACTOR") to carry out the project components for Phase III of the Community Center Renovations; and

WHEREAS, the Mayor and Council desire to have this Resolution presented at the February 20th, 2012 Council Meeting and have determined that the Bid Award to CONTRACTOR is in the best interest of the CITY and its residents; and

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Willcox, Cochise County, Arizona, that an emergency be declared to exist to assure timely action, and that this Resolution shall be effective immediately upon its passage and adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

Section 1: The Mayor and Council formally approve and adopt the Bid Award for the project as described above is in the best interests of the residents of the City of Willcox.

Section 2: That the CITY formally approves and adopts the Bid Award on the CDBG Community Center Phase III Renovations to CONTRACTOR and authorizes city staff to proceed with the Project.

Section 3: That the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the City of Willcox, Cochise County, Arizona.

Section 4: That the Mayor is authorized and empowered to execute this Resolution and city staff are authorized and directed to take appropriate action to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the City of Willcox, Cochise County, Arizona, this ____ day of February 2012.

APPROVED/EXECUTED:

MAYOR, GERALD W. LINDSEY

ATTEST:

City Clerk, Cristina Garcia Whelan, CMC

APPROVED AS TO FORM:

City Attorney, Hector M. Figueroa, Esq.

RESOLUTION NO. 2012-08

**CITY OF WILLCOX
COMMUNITY CENTER IMPROVEMENTS
CDBG #112-11**

**CONSTRUCTION AGREEMENT
CONTRACT AND GENERAL CONDITIONS
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT, made this 21st day of February 2012, by and between Building Excellence, L.L.C. hereinafter called the "Contractor", and the **City of Willcox**, Arizona, hereinafter called the "Owner":

WITNESSETH:

That the Contractor and the Owner agree as follows:

**ARTICLE 1
SCOPE OF WORK**

As required by the Contract Documents, the Contractor shall completely furnish and install all of the materials and labor and perform all of the work in a good, workmanlike and substantial manner and to the satisfaction of the Owner for the Owner's Project known as the **City of Willcox, Community Center Improvements Project, CDBG #112-11**.

The Contractor shall be under the direction and supervision of the Architect, or his properly authorized agents, and strictly pursuant to and in conformity with the Drawings and Specifications prepared by the Architect (**Dave Shambach Architects**), for the Owner, and with such modifications of the same and other documents that may be made by the Owner, through the Architect or his properly authorized agents, as provided herein.

This project is wholly or in part Federally Funded and this agreement is subject to the Federal Labor Standards Provisions, Davis-Bacon Act of 1931, Contract Work Hours and Safety Standards Act of 1962, Copeland Act of 1934 and the Fair Labor Standards Act of 1939.

The Contractor agrees to comply with the Federal Labor Standards Provisions (HUD Form 4010), which is incorporated by reference herein. The Contractor shall supply information to the Owner as necessary for monitoring of compliance to include, but not limited to, submission of Labor Standard Forms included in the bid package, on-site inspections, investigations and/or enforcement by the Owner. The Contractor agrees to comply with the current **Wage Rate Determination General Decision Number: Building AZ 20120005 1/6/12**, which is included in the bid package and incorporated by reference.

ARTICLE 2 THE CONTRACT DOCUMENTS

The following listed documents constitute the Contract Documents, and they are all as full a part of the Contract and General Conditions as if herein repeated:

This Contract and General Conditions between Owner and Contractor

Special Provisions

Project Technical Specifications

Standard Details

Sheet Index of Drawings

Drawings to this Contract

Addenda

Invitation to Bid

Information for Bidders

Bid Proposal

Bid Bond

Performance Bond

Labor & Material Payment Bond

List of Subcontractors

Non-Collusion Affidavit

Compliance Bid Document

LS-2 Contractor Certification

LS-3 Subcontractor Certification

Certification/Provisions

1. Certification Regarding Lobbying
2. Certification Regarding Conflict of Interest
3. Cement (Fly Ash) Certification
4. Civil Rights Provisions
5. Section 503 Clause & (Affirmative Action for Handicapped Workers) Certification
6. Section 3 Clause
7. Equal Employment Opportunity
8. Federal Labor Standards Provisions (HUD 4010)

Wage Rate Determinations: **Building AZ20120005, 1/6/12**

SLS Form B, Point of Contact Information Sheet

SLS Form C, Professional Firm's Sub-Firm's Certification

SLS Form E, Project Wage Rate Classifications and Additional Classifications

LS-4, Weekly Payroll Reports

LS-5, Statement of Compliance

LS-7, Notice to All Employees

Standard Form 1444, Request to Conform an Additional Classification

LS-14, Fringe Benefits Documentation

LS-15, Authorization for Deductions

LS-17, Certification of Applicable Fringe Benefit Payments

Non-Discrimination Poster

EEO - Certification Poster

EEO - It's the Law Poster

LS-9, Record of Employee Interviews
LS-10, On-Site Inspection Report
LS-11, Labor Standards Investigative Reports
LS-12, Labor Standards Enforcement Report
S3B-1, Section 3 Assurance
S3B-2, Estimated Project Work Force Breakdown
S3B-3, Section 3 Business Self-Certification
S3P-1, JOBS! JOBS! JOBS! Section 3 Notice
S3P-2, Preliminary Resident Eligibility Determination
S3P-3, Employment Survey
S3R-1, Notice Documentation
S3R-2, Business Utilization Report
S3R-3, Applicant and New Hire Employment Report
Environmental Conditions

In the event of any conflict in the provision of these Contract Documents, these respective documents shall prevail in the order listed.

ARTICLE 3 CONTRACT AMOUNT

3.1 **CONTRACT AMOUNT.** The Owner shall pay the Contractor the sum of **One Hundred and Ninety Six Thousand, Five Hundred Dollars (\$196,500.00)**, the Contract Amount. This sum is subject to additions or deductions made in accordance with the provisions of the Contract Documents.

3.2 **SOURCE OF FUNDS. NOT USED**

3.3 **CONTRACT TIME.** The Contract Time as used and defined in Article 11 herein shall be **One hundred twenty (120) calendar days**. If completion date occurs after the **120 calendar-day period**, Liquidated Damages will be assessed as stated in the Construction Agreement.

3.4 **LIQUIDATED DAMAGES.** Liquidated damages as used and defined in Article 11 herein shall be **Two Hundred Dollars (\$200.00) per calendar day**.

3.5 **OVERHEAD AND PROFIT.** The limits on the amount of overhead and profit as used in Articles 2, 15 and 17 herein shall be fifteen percent (15%) overhead and twelve percent (12%) profit for the Contractor and Subcontractors.

3.6 **CASH ALLOWANCES.** The Contractor agrees that he has included in the contract price all cash allowances, if any, specified in the Contract Documents, and shall cause the work so covered to be done by such contractors as the Owner may direct, the Contract Amount being adjusted in conformity therewith. The Contractor agrees that the Contract Amount includes all his expenses and such profit as he deems proper in connection with the Cash Allowance. No demand for any sum other than those included in the Contract Amount shall be allowed in connection with the Cash

Allowance and only direct costs may be charged against the Cash Allowance. If the cost, when determined, is more than or less than the allowance, the Contract Amount shall be adjusted accordingly by change order.

3.7 EXPENDITURE OF CASH ALLOWANCES. The Architect and a person designated in writing by Owner, acting jointly, are authorized to act for and on behalf of the Owner and as Special Agents of the Owner in the expenditure of the Cash Allowances, including any allowance later added to the Contract Documents pursuant to the provisions for modifying the Contract Documents. No act of such Special Agents purporting to authorize any charge against any Cash Allowance shall be valid unless in the form of a written Change Order, specifying the particular work to be done and the whole cost thereof to the Owner, and signed by both Special Agents. The cost of extra work or changes shall be determined under the provisions of Article 15 of this Contract and General Conditions.

Said Special Agents are not authorized to exceed the amount of the Cash Allowance hereinbefore listed.

The Contractor is warned of, and agrees to, these express limitations on the authority of the Owner's Special Agents.

ARTICLE 4 DEFINITIONS AND GENERAL PROVISIONS

4.1 OWNER, CONTRACTOR, AND ARCHITECT. The Owner, the Contractor, and the Architect are those herein defined in this Contract and General Conditions. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

4.2 SUBCONTRACTOR. See Article 8.

4.3 NOTICE. See Article 10.

4.4 TIME. See Article 11.

4.5 COST. The term "Cost" shall include all charges, costs, losses, and expenditures of every kind whatsoever for the Work, or portion thereof to which reference is made with respect to this term.

4.6 FINISH AND COMPLETION DATES. See Article 11.

4.7 CONTRACT DOCUMENTS. See also Article 1. A modification is:

- .1 A written amendment to the Contract and General Conditions signed by all parties;
- .2 A Change Order properly signed by all parties pursuant to Paragraph 15.1; or
- .3 A Field Order for a minor change in the Work issued by the Architect pursuant to Paragraph 15.4.

A modification may be made only after execution of the Contract and General Conditions.

4.8 CONTRACT AND GENERAL CONDITIONS. The Contract and General Conditions consist of all the Contract Documents enumerated in Article 2. The Contract and General Conditions represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The Contract and General Conditions may be amended or modified only by a Modification as defined in Subparagraph 4.7.

4.9 WORK. The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated, or to be incorporated in such construction to complete the Project.

4.10 PROJECT. The Project is the total construction designed by the Architect and depicted and described by the Contract Documents.

4.11 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS OF THE CONTRACT DOCUMENTS.

4.11.1 The Contract and General Conditions shall be signed by the Owner and the Contractor. By executing the Contract and General Conditions, each party accepts and agrees to be bound by each of the Contract Documents listed in Article 2.

4.11.2 By executing the Contract and General Conditions, the Contractor represents and warrants that he has examined closely the site and the existing structures, if any, including the materials and methods of construction utilized in and the condition of the existing structures, has familiarized himself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and correlated all of his observations with the provisions and requirements of the Contract Documents including, but not limited to, the details of demolition and construction indicated by the Plans and Specifications. Where discrepancies in quantities, materials, sizes or other conditions exist between the existing structure and the Plans and Specifications, the Contractor shall accomplish the Work required to carry out the intent of the Contract Documents and the actual requirements of the existing structure shall take precedence over the Plans and Specifications for purposes of determining the quantity and nature of the Work required herein.

4.11.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

4.11.4 The organization of the Specifications into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constituting part of the contract or having any legal or contractual significance.

4.11.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Architect in accordance with any schedule agreed upon or with reasonable promptness in any case. Such interpretations shall be consistent with and reasonable inferable from the Contract Documents, and may be effected or memorialized later by Field Order.

4.12 COPIES FURNISHED AND OWNERSHIP

4.12.1 The Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work, as determined by the Architect.

4.12.2 All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of the Owner. They are not to be used on any other project and, with the exception of one set for each party of the Contract and General Conditions, are to be returned to the Owner upon request at the completion of the Work.

4.12.3 It shall be the responsibility of the Contractor to insure that each subcontractor and material supplier has a current set of Drawings, Specifications and Addenda, as required for proper execution of their respective portions of the Work.

ARTICLE 5 ARCHITECT

5.1 DEFINITION

5.1.1 The Architect is the person or organization identified as such in this Contract and General Conditions and the term "Architect" means **Dave Shambach Architects**, or its authorized representative.

5.1.2 Nothing contained in the contract Documents shall create any contractual relationship between the Architect and the Contractor.

5.2 ADMINISTRATION OF THE CONTRACT

5.2.1 The Architect will provide construction services pursuant to its separate contract with the Owner, including performance of the functions hereinafter described.

5.2.2 The Architect will be the Owner's representative during construction to the extent described herein, until final payment and including the guarantee period. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise

modified by written instrument that will be shown to the Contractor. The Architect will advise and consult with the Owner, and the Owner may issue instructions to the Contractor either directly or through the Architect.

5.2.3 The Architect and Owner shall at all times have access to the Work wherever it is in preparation and progress.

5.2.4 The Architect shall make periodic visits to the site to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. These visits shall be of the frequency necessary to apprise the Architect of the progress and quality of the Work. On the basis of his on-site observations as an Architect, he shall endeavor to guard the Owner against defect and deficiencies in the Work of the Contractor.

5.2.5 Based on such observations and the Contractor's Applications for Payment, the Architect and Owner will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Subparagraph 12.4.1.

5.2.6 The Architect will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance there under by both the Owner and the Contractor, except where otherwise provided herein. The Architect will render interpretations necessary for the proper execution or progress of the Work within a reasonable time so as not to delay the prosecution of the Work.

5.2.7 Claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred to the Owner and the Architect in the manner provided by Subparagraph 12.4.4, within the time limits prescribed in Subparagraph 15.2.1, for decision by the Architect or Owner, as the subject of the matter may require, which decision will be rendered in writing within a reasonable time.

5.2.8 The interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to insure faithful performance by both the Owner and the Contractor.

5.2.9 The Architect's decisions in matters relating to artistic effect will be final.

5.2.10 If a decision of the Architect or the Owner is made pursuant to the terms of Subparagraph 5.2.7 which goes directly to the Contractor in writing, and it states that it is final but subject to appeal, no claim, dispute, or other matter covered by such decision may be made later than thirty (30) days after the date on which the party making the demand received the decision. Appeal shall be to the Owner, whose decision is final, subject to any rights that the Contractor may have at law.

5.2.11 The Architect and the Owner will each have authority to reject Work that does not conform to the Contract Documents. Whenever, in their reasonable opinion, either the Architect or Owner considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, they will have authority to require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work as provided in Subparagraph

10.8.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty of responsibility of the Architect to the Contractor, any subcontractor or material supplier, any of their agents or employees, or any other performing any of the Work.

5.2.12 Within a reasonable time the Architect will review Shop Drawings, Product Data and Samples promptly as provided in Subparagraphs 7.12.1 through 7.12.8, inclusive.

5.2.13 The Architect will prepare Change Orders in accordance with Article 15. The Architect will have authority to order minor changes in the Work not involving extra cost or an extension of the Contract time and not inconsistent with the Contract Documents as provided in Subparagraph 15.3.1.

5.2.14 The Architect will conduct site visits to determine the date of Final Completion, shall notify the Owner of a date for inspections, and shall issue a Certificate of Final Completion. The Architect will receive written warranties, record drawings, maintenance manuals and related documents required by the Contract and assembled by the Contractor, and will transmit a final Certificate for Payment to the Owner.

5.2.15 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction are set forth in Articles 1 through 18, inclusive, of this Contract and General Conditions. The Owner may, by agreement with the Architect, increase or diminish the responsibilities and duties of the Architect as he may see fit in his sole discretion.

ARTICLE 6 OWNER

6.1 DEFINITION

6.1.1 The Owner is the person or organization identified as such in the Contract and General Conditions.

6.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

6.2.1 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

6.2.2 The Owner may issue instructions directly to the Contractor or through the Architect.

6.2.3 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the Owner and this provision of the Contract shall take precedence over any other term hereof.

6.2.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Payment and Insurance in Articles 12 and 14, respectively.

ARTICLE 7 CONTRACTOR

7.1 DEFINITION

7.1.1 The Contractor is the person or organization identified as such in this Contract and General Conditions and the term "Contractor" means the Contractor or his authorized representative.

7.1.2 Whenever the words "as may be directed," "suitable," "or equal," "as approved," or other words of similar intent and meaning are used implying that judgment or discretion is to be exercised or a decision is to be made, it is understood that it is the judgment, discretion, or decision of the Architect to which reference is made.

7.1.3 All materials and articles of any kind necessary for this Work are subject to the approval of the Architect and his judgment and decision shall be final and conclusive.

7.1.4 Except as the Specifications may be modified (prior to the opening of Bids) by addenda and/or written approvals of equal items of equipment or materials as provided for in the bid documents, the successful contractor will be held to furnish all Work as specified in the bid documents.

7.1.5 After execution of the Contract, changes of brand named, trade named, trademarked, patented articles, or any other substitutions will be allowed only by written order signed by the Architect, in which case the Owner shall receive all benefit of the difference in cost involved, except where choice of material or method is designated "or equal" in the specifications.

7.2 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

7.2.1 By executing this Contract the Contractor warrants that he has carefully studied and compared the Contract and General Conditions, Drawings, Specifications, Addenda, all other Contract Documents and the existing structure and has determined that the Contract Documents describe a completely buildable and functional Project. The Contractor does not warrant the suitability or feasibility of the Owner's proposed operation of the Project. The Contractor shall at once report to the Architect and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or omissions so long as the Architect and the Owner are notified promptly thereof unless discovery of such error, inconsistency or omission should have been made by careful examination of the Contract Documents prior to submitting a Proposal. The Contractor shall do no Work without Drawings, Specifications or interpretations from the Architect.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale. In the absence of figured dimensions, the Architect shall be notified and the scale dimension verified.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present improvements, driveways, or other existing conditions, before executing any work.

7.2.4 The Contractor agrees to comply fully with all applicable state, federal and local laws. Contractor agrees to indemnify and hold harmless the Owner and Architect from all claims or whatever nature involving failure of the Contractor or any of its Subcontractors to comply with any federal, state or local law or ordinance in connection with this Project.

7.2.5 It is the Contractor's responsibility to inspect the site of the work to identify any surface or subsurface conditions or underground facilities that can be reasonably identified and that are materially different than what may be indicated in the Contract Documents prior to beginning the Work.

7.2.6 If the Contractor believes that any surface, subsurface or physical condition at the work site that is uncovered or revealed is of such a nature as to require a Change Order, because it either differs materially from that which is specifically designated on the Contract Documents or is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character required by the Contract at this location, then the Contractor shall promptly notify the Owner and Architect in writing prior to further disturbing the site and performing the Work. The Architect shall promptly review such notice and the conditions and advise the Owner and the Contractor whether additional tests may be required or a revision of the plans may be appropriate. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time if the Contractor knew or should have known of the existence of such conditions at the time of the Bid was submitted; the existence of the condition could reasonably have been discovered or revealed as a result of the investigation or study of the site as required of the Contractor, or the Contractor failed to provide written notice of condition, as required in this section.

7.2.7 The information and data shown or indicated on the Contract Documents with respect to underground facilities at or around the location of the work is based upon information and data provided by the owners of these facilities. The Owner and Architect are not responsible for the accuracy or completeness of this information. The Contractor is required to verify the location any such utilities and to comply with all applicable laws and regulation regarding the location and protection of utilities. No additional compensation shall be provided for complying with these obligations.

7.3 SUPERVISION AND CONSTRUCTION PROCEDURES

7.3.1 The Contractor shall supervise the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

7.3.2 Contractor shall hold periodic meetings as often as reasonably required, but at least one a week, with subcontractors to monitor the progress of the Work. A report of the results of each such meeting shall be included in the Daily Report required by Subparagraph 7.10.2 herein. Contractor shall inform the Architect at least twenty-four (24) hours in advance of the time for each meeting.

7.4 LABOR AND MATERIALS

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, material, equipment, tools, construction equipment, machinery, water, heat, utilities, waste and refuse disposal, transportation and any other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

7.4.2 Any work necessary to be performed after regular working hours, on Sundays, or legal holidays, shall be performed without additional expense to the Owner.

7.4.3 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. When requested in writing by the Architect or Owner, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Architect or Owner, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. If the Architect requests such a removal, he shall notify the Owner in writing of his action. The Contractor shall keep the Owner harmless from damages or claims for compensation that may occur in the enforcement of this requirement.

7.5 WARRANTY

7.5.1 The Contractor warrants to the Owner that all material and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. Faults or defects are considered to be any aspect of the Work that is found not to be in conformance with the Contract Documents or any aspect of the Work that deteriorates becomes non-functional or otherwise fails, in some functional or aesthetic manner, to meet the requirements of the Contract Documents, normal wear and tear excepted. All Work not so conforming to these standards may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.5.2 The warranty provided in this Paragraph 7.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

7.6 TAXES

7.6.1 The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law arising out of construction or other business activities of the Contractor in connection with the Project and in connection with the performance of this Contract, whether in force as of the date of this Contract or later imposed.

7.7 PERMITS, FEES AND NOTICES

7.7.1 Unless otherwise provided in the Plans, Specifications or by Addendum, Contractor will secure all permits, fees and licenses necessary for the proper execution and completion of the Work, including, but not limited to, building, plumbing, mechanical, electrical, and fire protection permits, but excluding plan check fees, which shall be paid for by the Owner. The Contractor shall pay for water meters, fire protection, water service, sewer connection, sewer fees or assessments, gas service, and electric service to procure all necessary utilities for the Project and for temporary utility hook-ups required during the course of construction. The Contractor shall pay for electric power and water necessary for the construction of the Project.

7.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect and Owner in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect and Owner, he shall assume full responsibility therefore and shall bear all costs attributable thereto, including any reasonable attorney's fees incurred by Owner in connection therewith.

7.8 SUPERINTENDENT

7.8.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall be satisfactory to the Architect and Owner and shall not be changed except with the consent of the Architect and Owner. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

7.9 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

7.9.1 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any nature with the Contractor.

7.10 PROGRESS SCHEDULE AND REPORTS

7.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Architect's and Owner's approval an estimated Progress Schedule for the Work. The progress schedule shall be related to the entire Project and shall indicate the dates for the starting 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 the approval of the Architect and Owner. The Contractor agrees to promptly respond to all inquiries by the Architect or Owner concerning substantial deviation of the progress of construction from the Progress Schedule. Failure to timely respond to such request or substantial delay from the schedule may result in progress payments being withheld.

The 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 considered critical or long lead time. The Contractor shall submit a biweekly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project.

7.10.2 The Contractor shall prepare and submit for the Owner's information, review and approval for the duration of the Work a Daily Report in a form acceptable to Owner. The Daily Report shall be completed daily and submitted to the Owner and Architect on a weekly basis as a statement and review of the progress of the Work.

7.10.3 The Contractor shall furnish sufficient labor force, materials, plant, and equipment to ensure the prosecution of the Work in accordance with the approved Progress Schedule. If the Contractor's prosecution of the Work falls behind the Progress Schedule, Contractor shall take such steps as may be necessary to regain compliance with the Progress Schedule including additional labor or services or work such overtime as may be necessary to bring his operations up to schedule. Failure to maintain schedule or to take the above steps to regain the agreed Progress Schedule shall constitute default under this Contract.

7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE

7.11.1 The Contractor shall maintain at the site for the Owner one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully and accurately to record all changes made during construction and shall be available to the Architect and Owner at all times. Upon completion of the Project, a clean set of Drawings shall be accurately marked to depict the as-built condition of the Project, and these Drawings along with all record drawing, shall be delivered to the Owner upon completion of the Work.

7.11.2 The Contractor shall also submit to the Architect for his record two copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Architect's specifications are a part thereof.

7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared or supplied by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work.

7.12.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

7.12.3 The Contractor shall review, stamp with his approval and submit, with promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently by the Architect as covered by Modifications. The Contractor shall, within ten (10) days after the

notice to proceed, submit to the Architect for his approval a schedule indicating the date that each required Shop Drawing and Product Data submittal will be delivered to Architect. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Architect may require. At the time of submission the Contractor shall inform the Architect in writing of any deviation of the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

7.12.4 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing, Product Data and Sample with the requirements of the Work and of the Contract Documents.

7.12.5 The Architect will review and return Shop drawings, Product Data and Samples with reasonable promptness so as to cause no delay, but such review is only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions.

7.12.6 The Contractor shall make any corrections required by the Architect to comply with the Contract Documents and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings or Product Data to revisions other than the corrections requested by the Architect on previous submissions.

7.12.7 The Architect's approval of Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect and Owner in writing of such deviation at the time of submission and the Architect and Owner have given written approval to the specific deviation, nor shall the Architect's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

7.12.8 No portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been approved by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings, Product Data and Samples.

7.13 CLEANING UP

7.13.1 The Contractor at all times during the progress of the Work shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials specified to be left at the site, and shall clean all glass surfaces.

7.13.2 If the Contractor fails to satisfactorily clean up, the Owner will do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 10.6.

7.14 COMMUNICATIONS

7.14.1 The Contractor shall forward all communications to the Architect except where otherwise required herein or otherwise directed by the Owner.

7.15 INDEMNIFICATION CLAUSE

7.15.1 Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, officers, 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 agents, employees, or any tier of Contractor's Subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, officers, officials and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by the Contractors' acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor, any tier of Contractor's Subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be in legally liable.

7.15.2 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.

ARTICLE 8 SUBCONTRACTORS

8.1 DEFINITION

8.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or to perform any of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.

8.1.3 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

8.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

8.2.1 Prior to the award of the contract, the Contractor shall supply to the Owner a complete list of subcontractors and material vendors. The Architect shall notify the apparent successful bidder in writing if the Owner has reasonable objection to any person or organization on the list of subcontractors and material vendors. Failure of the Owner to make an objection to any person or organization on the list prior to the award shall constitute acceptance of such person or organization.

8.2.2 If, prior to the award of the Contract, the Owner has a reasonable and substantial objection to any person or organization of such list, and refuses in writing to accept such person or organization, the apparent successful bidder may prior to the award, withdraw his bid without forfeiture of bid security. If the bidder submits an acceptable substitute with an increase in his bid price to cover the difference in cost occasioned by such substitution before the award, the Owner may, at his discretion accept the increased bid price or he may disqualify the bid. If, after the award, the Owner refuses to accept any person or organization on such list, the Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Amount shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting a name with respect thereto.

8.2.3 The Contractor shall not contract with any Subcontractor proposed for portions of the Work designated in the bidding requirements or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor against whom he has a reasonable objection.

8.2.4 If the Owner, without cause, requires a change of any proposed Subcontractor previously accepted by it, the Contract Amount shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

8.2.5 The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner unless the substitution is approved in writing by the Owner.

8.3 SUBCONTRACTUAL RELATIONS

8.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provision that:

- .1 preserve and protect the rights of the Owner and the Architect under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.
- .2 require that such work be performed in accordance with the requirements of the Contract Documents, including, but not limited to:

- a. require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;
- b. require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner pursuant to Paragraph 15.2;
- c. obligate such Subcontractor specifically to consent to the provisions of this Paragraph 8.3;
- d. require such Subcontractor to submit a lien waiver and release of claim in a form prescribed by the Owner along with each application for payment, which release and waiver shall in turn be given to the Owner and which shall cover all Work done prior to the date of the application for payment;
- e. require such Subcontractor to comply with all laws, indemnify Owner and agree to the provision of Paragraphs 7.2.4 and 7.15;
- f. require such Subcontractor to comply with all Labor Standards and other Federal regulations required by the Arizona Department of Housing, CDBG Program in accordance with Paragraph 7.2.4.

.3 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Article 14.

8.4 PAYMENTS TO SUBCONTRACTORS

8.4.1 The Architect may, on request and at this discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

8.4.2 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be provided in this Contract.

ARTICLE 9 SEPARATE CONTRACTS

9.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS

9.1.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract.

9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.

9.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Architect any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

9.2.3 Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly settle such other contractor's claim, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises there from, the Contractor shall promptly pay or satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorney's fees and court costs which the Owner has incurred.

9.3 OWNER'S RIGHT TO CLEAN UP

9.3.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 7.13, the Owner may clean up and charge the cost thereof to the several contractors as the Owner shall determine to be just.

ARTICLE 10 MISCELLANEOUS PROVISION

10.1 LAW OF THE PLACE

10.1.1 The contract shall be governed by the law of Arizona and any action relating to this Contract shall be brought in an Arizona court of competent jurisdiction located in the County of jurisdiction for the Owner.

10.2 SUCCESSORS AND ASSIGNS

10.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants' agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or any part hereof or sublet it as a whole or in part without the previous written consent of the Owner, nor shall the Contractor assign or pledge any monies due or to become due to him hereunder, without the previous written consent of the Owner.

10.3 WRITTEN NOTICE

10.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice as appropriate. Notice to the Architect is

notice to the Owner **except** for notice of inconsistencies, error or omission in the Contract Documents, request for extension of time, request for changes in the Contract Amount, appeal of decisions by Architect or Owner and notice of claim or legal process. All such notices shall be given to both Architect and Owner.

10.4 CLAIMS FOR DAMAGES

10.4.1 Should either party of the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. All claims made by the Contractor under this Contract are subject to the limitations set forth in Paragraph 15.2 herein.

10.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

10.5.1 The Contractor shall furnish performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising there under in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner.

10.6 OWNER'S RIGHT TO COMPLETE THE WORK

10.6.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the Contractor and his surety, and without prejudice to any other remedy he may have, proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including the attorneys' fees and other costs incurred by Owner.

10.7 ROYALTIES AND PATENTS

10.7.1 The Contractor shall pay all royalties and license fees and shall defend all suits or claims from infringement of any patent right and shall save the Owner harmless from loss of account thereof, including Owner's attorneys' fees and court costs, except that Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process or products specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives information to the Architect prior to starting the Work.

10.8 TESTS

10.8.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness and of the date arranged so the Architect may observe such inspection, testing or approval.

10.8.2 The Contractor shall be responsible that all equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended.

10.8.3 If after the commencement of the Work the Architect determines that any of the Work requires special inspection, testing, or approval, which subparagraph 10.8.1 does not include, he will, upon written authorization from the Owner, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 10.8.1.

10.8.4 If such special inspection or testing reveals a failure of the Work to comply:

- .1 with the requirements of the Contract Documents, or
- .2 with respect to the performance of the Work, with laws, ordinances, rules regulations or orders of any public authority having jurisdiction over the Work, the Contractor shall bear all costs thereof, including the Architect 's additional services made necessary by such failure, and the costs of such inspection or testing; otherwise the Owner shall bear such costs of special inspection.

10.8.5 Required certificates of re-inspections or testing to secure compliance with 10.8.4.1 or 10.8.4.2 above shall be paid for by the Contractor.

10.8.6 If the Architect wishes to observe the inspections, tests or approvals required by this Paragraph 10.8, he will do so promptly and, where appropriate, at the source of supply.

10.8.7 Neither the observations of the Architect in his administration of the Contract, nor inspections, tests or approvals by person other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

10.9 LEGAL FEES AND COSTS

10.9.1 The party substantially prevailing shall 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 in connection with any effort undertaken to enforce any of the terms of this Contract.

10.10 SEVERABILITY

10.10.1 In the event any provision in this contract is held invalid by any court of competent jurisdiction, the remaining provision in this Contract shall be deemed severable and shall remain in full force and effect.

**ARTICLE 11
TIME**

11.1 TIME AND LIQUIDATED DAMAGES.

11.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the Architect and shall be completed by the Contractor within the number of calendar days specified in Paragraph 3.3. hereof (the "Finish Date"). The Contract Time is the period of time specified in Paragraph 3.3. hereof running from (1) the date specified in the Notice to Proceed as the date upon which the Contractor is to commence the Work (the "Start Date"), through (2) the Finish Date. The date of beginning, rate of progress, and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly as such rate of progress as will insure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

11.1.2 If the Final Completion Date as defined in Subparagraph 11.1.4, occurs after the expiration of the Contract Time, the Contractor shall pay the Owner the sum specified in Paragraph 3.4 hereof as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain. It is expressly agreed that the amount of liquidated damages set forth herein is reasonable. Said amounts may be retained from time to time by the Owner from payments due the Contractor.

11.1.3 The date of Completion of the Work, or designated portion thereof, is the date certified in writing by the Architect when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that the Owner may occupy the project, or a designated portion thereof, if he so elects, for the use for which it is intended. Certification of a designated portion of the Work by the Architect as being "Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse, the Contractor from his duty to complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not completing the remainder of Work within the Contract Time including liability for liquidated damages.

11.1.4 The Final Completion Date is the calendar date when all items of the Work are one hundred percent (100%) finished, with no items of any scope, large or small, outstanding and remaining to be constructed, and all known defective work has been corrected. When the Architect certifies in writing, pursuant to the terms of paragraph 12.6.2, that the Final Completion Date is reached and it is approved by the Owner, the Contractor may make application for final payment pursuant to Subparagraph 12.6.2.

11.1.5 In any case where the terms of any other provision of the Contract may be construed to be in conflict with any term regarding time for completion of the Project, interpretation of the conflicting terms which gives precedence to the term regarding time for completion shall govern.

11.2 PROGRESS AND COMPLETION

11.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

11.2.2 The Contractor shall begin the Work on the Start Date as defined in Subparagraph 11.1.1 and shall carry the Work forward expeditiously, uninterruptedly and with adequate forces and shall complete it within the Contract Time.

11.3 DELAYS AND EXTENSION OF TIME

11.3.1 If the Contractor is delayed at any time in the progress of the Work by any cause which the Owner determines may justify the delay, including, but not limited to, acts of God, acts of the public enemy, acts of the Owner, acts of another contract in performance of a contract with the Owner, fires, floods, epidemics, quarantine restriction, freight embargoes and adverse weather detrimental to completion of the Work and, in the aggregate, materially different than weather normally experienced during the entire Contract Time, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. No extension of the Contract Time pursuant to this paragraph shall be limited to granting a time extension to the Contractor, and there is no other obligation, express or implied, on the part of the Owner to the Contractor for delay from any cause.

11.3.2 All claims for extension of time shall be made in writing to the Architect and Owner no more than fourteen (14) days after the occurrence of the delay; otherwise, they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. The Contractor shall promptly notify the Architect in writing of the date of the termination of the continuing cause of delay.

11.3.3 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 4.11.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for them, and not then unless such claim is reasonable.

ARTICLE 12 PAYMENTS AND COMPLETION

12.1 CONTRACT AMOUNT

12.1.1 The Contract Amount is as stated in this Contract and General Conditions and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, subject to credits or increases resulting from Change Orders. In no event shall Owner be responsible for more than the Contract Amount.

12.2 SCHEDULE OF VALUES

12.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a detailed schedule of values reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the total Contract Amount, prepared in such detail and such form as the Architect may require, and supported by such data to substantiate its correctness as the Architect may require. Each item in the schedule of values may include its proper share of overhead and profit or such overhead and profit may be shown as separate line items and shall be billed in proportion the percent of the Project completed.

12.3 PROGRESS PAYMENTS

12.3.1 On or about the twenty-fifth day of each calendar month during the course of construction, the Contractor shall submit to the Architect and Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require. Contractor shall also submit a release of claim and lien waiver covering all work performed to date, including the work of each Subcontractor and material supplier.

12.3.2 Payments shall be based on the Work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location under such conditions agreed upon in writing by the Architect and Owner to be transported to the site and installed at a later date.

12.3.3 Material delivered and suitably stored at the site, or at some other agreed upon location by the Contractor, subcontractors, sub-subcontractors, or material suppliers shall remain the responsibility of the Contractor until incorporated into the Work, shall be insured for the benefit of the Owner to the full value of the material and shall be suitably stored and protected. Only such material that is in accordance with the Contract Documents shall be installed into the Work. Until the final completion and acceptance of the Work by the Owner, it shall be the Contractor's responsibility to protect all materials to be installed in or delivered to the Project.

12.3.4 The Contractor warrants and guarantees that title for all work, materials and equipment covered by an Application for Payment shall pass to the Owner either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 12 as "claims."

12.4 APPROVALS FOR PAYMENT

12.4.1 If the Contractor has made application for payment as above, then not later than seven (7) days after the date of submission, the Architect shall issue his approval of the Application for Payment and forward his approval of the Application to the Owner for such amount as he determines to be properly due, or state in writing his reasons for withholding, in whole or in part the amount applied for as provided in Subparagraph 12.5.1.

12.4.2 Approval of the Application for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 5.2.4, and the data comprising the Application for Payment, the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole upon Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to final completion and to any specific qualifications stated in his approval of the Application of Payment); and that the Contractor is entitled to payment in the amount approved. In addition, the Architect final approval for payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment, as set forth in Subparagraph 12.6.2, have been fulfilled.

12.4.3 After the Architect has approved an Application for Payment and has promptly forwarded this approval to the Owner, the Owner shall make a payment to the Contractor as soon as grant funds become available from the State CDBG Program to the Owner, or sooner, at the OWNER's discretion, and subject to compliance with labor standard requirements. Payment will be based on ninety percent (90%) of the value of the Work actually performed during the preceding calendar month in accordance with Subparagraph 12.3.3 and approved by Architect until the contract is fifty percent (50%) completed. If the Contractor is making satisfactory progress when the contract is fifty (50%) completed, the Contractor shall be entitled to a reduction in the retention amount, as required by ARS §34-221.C. Any amounts retained by Owner shall be paid to the Contractor, as previously specified, after the Final Completion Date as specified in Paragraph 12.6.1 hereof, provided the Contractor has by that time duly furnished the Owner consent of surety, lien waivers, any and all operating manuals, wiring diagrams, control diagrams, maintenance manuals, equipment and appliance warranties, record drawings, warranties and other documents of any nature called for in the Contract Documents or required for the proper functioning of the Work as a whole and has otherwise performed all of Contractors' obligations under the Contract Documents. In lieu of this retention, the Contractor may provide alternative security in the manner authorized by law.

12.4.4 In this Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Architect or Owner shall require, all claims for additional compensation against the Owner arising under the Contract Documents or any covenant thereof, express or implied, or from any cause whatsoever, within the time limits prescribed in Subparagraph 15.2.1. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims, to permit the Owner to investigate claims as the same may arise. It is expressly covenanted that the Owner shall have no liability on any claim unless such claim was approved by Architect and was submitted in writing at the time and in the manner required hereby.

12.4.5 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

12.5 PAYMENT WITHHELD

12.5.1 The Architect or Owner may decline to approve an Application for Payment and the Architect may withhold his Certificate in whole or in part if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 12.4.2. The Architect may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective work not remedied,
- .2 claims filed or reasonable evidence indicating probable filing of claims,
- .3 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount,
- .4 damage to another contractor,

- .5 reasonable indication that the Work will not be completed within the Contract Time, or
- .6 unsatisfactory prosecution of the Work by the Contractor or other material breach of this Contract.
- .7 failure to complete all Labor Standards requirements

12.5.2 When the above grounds in Subparagraph 12.5.1 are removed or in the case of 12.5.1.3 above, when the Owner is satisfied that the Contractor will complete the Project at the agreed upon price, payment shall be made for amounts withheld because of them.

12.6 COMPLETION AND FINAL PAYMENT

12.6.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection and, when the Architect finds (1) the Work in accordance with and acceptable under the Contract Documents, (2) the Work completed under the Contract fully performed and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 11.1.4, then, and only then, the Architect shall promptly state in writing that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due the Contractor is payable. The Architect's written notice required by this paragraph shall state the Date of Final Completion.

12.6.2 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled claims,
- .2 faulty or defective Work,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any guarantees required by the Contract Documents.

12.6.3 The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

12.6.4 No earlier than three weeks before the expiration of the warranty period for the Work specified in Subparagraph 18.1 herein, or at such other additional earlier time or times as the Owner may agree, the Owner and/or the Architect, in company with the Contractor, shall make an inspection of the Project and certify that all defects in material and workmanship occurring during this period have been satisfactorily corrected.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

13.1 SAFETY PRECAUTIONS AND PROGRAMS

13.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

13.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss, to:

- .1 all employees engaged in the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities and property.

13.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

13.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or the acts or omissions of the Owner or Architect or anyone employed by either of them or for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

13.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated in writing by the Contractor or the Architect.

13.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

13.3 EMERGENCIES

13.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided by the applicable provision of the Contract Documents.

ARTICLE 14 INSURANCE

14.1 CONTRACTOR'S INSURANCE

14.2 The Contractor at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rate of A10, or approved by Owner in its sole discretion and licensed to do business in the State of Arizona with policies and forms satisfactory to the Owner.

14.3 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Owner, constitute a material breach of this Contract.

14.4 The Contractor's insurance shall be primary insurance as respects the Owner, and any insurance or self-insurance maintained by the Owner shall not contribute to it.

14.5 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Owner.

14.6 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Owner, its agents, officers, officials and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

14.7 The insurance policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Owner under such policies. The Contractor shall be solely responsible for the deductible and/or insured retention and the Owner, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

14.8 The Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The Owner shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the Owner's rights to insist on strict fulfillment of Contractor's obligations under this Contract.

14.9 The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the Owner, its agents, officers, officials and employees as Additional Insured.

14.10 REQUIRED COVERAGE

14.10.1 COMMERCIAL GENERAL LIABILITY

14.10.2 Contractor shall maintain Commercial General Liability insurance with a unimpaired limit of not **less than \$1,000,000.00 for each occurrence with a \$2,000,000.00 Products/Completed Operations Aggregate** and a **\$2,000,000.00 General Aggregate Limit**. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 0001 or any replacements thereof. The coverage shall not exclude X,C,U.

14.10.3 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

14.10.4 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc., Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

14.10.5 If required by this Contract, the Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of this Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a **limit not less than \$2,000,000.00 per occurrence**, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

14.11 AUTOMOBILE LIABILITY

14.11.1 Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of **not less than \$1,000,000,000 each occurrence** with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and **\$5,000,000.00 per accident limits for bodily injury and property damage** shall apply.

14.12 WORKER'S COMPENSATION

14.12.1 The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of **not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease for each employee, and \$1,000,000.00 disease policy limit.**

14.12.2 In case any work is sub-contracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

14.13 CERTIFICATES OF INSURANCE

14.13.1 Prior to commencing work or services under this Contract, Contractor shall furnish the Owner with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by the Contract are in full force and effect.

14.13.2 In the event any insurance policy(ies) required by this Contract, is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

14.13.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to the Owner fifteen (15) days prior to the expiration date.

14.14 CANCELLATION AND EXPIRATION NOTICE

14.14.1 Insurance required herein shall not expire, be cancelled, or materially changed without thirty (30) days prior written notice to the Owner.

ARTICLE 15 CHANGES IN THE WORK AND CLAIMS

15.1 CHANGE ORDERS

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Contract Amount and/or the Contract Time shall be adjusted pursuant to the terms of the Contract Documents.

15.1.2 A Change Order is a written amendment to the Contract Documents signed by the Owner, Architect, and the Contractor, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract amount and the Contract Time may be changed only by Change Order.

15.1.3 The cost or credit, as the case may be, to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways as mutually agreed:

- .1 by a lump sum properly itemized in a form acceptable to Architect and Owner including sufficient supporting substantiating data to permit evaluation.
- .2 by actual cost and the specified percentage fees covering overhead and profit, less applicable trade discounts, rebates, credits or other such reductions in cost made available to Contractor.
- .3 Unit price as stated in the Contract, subject to the provisions of 15.1.5 herein. Unit prices proposed on the bid form and included in the Contract are not subject to further overhead and profit adjustments. The Contract sum will be adjusted by the direct extension of the number of units and unit price.

The amount of Contractor's overhead and profit allowed for any change order, whether increase or decrease shall not exceed the percentages of overhead and profit specified in Paragraph 3.5 hereof on work performed by Contractor; and the percentage for profit specified in Paragraph 3.5 hereof of Subcontractor's quotation on all work performed by Subcontractors for profit, with no markup for overhead. Subcontractor's markup on Change Orders shall be limited by their subcontracts with Contractor to the percentages of direct cost for overhead and for profit as specified in Paragraph 3.5. hereof.

15.1.4 If none of the methods set forth in Subparagraph 15.1.3 is agreed upon to calculate a charge or credit to Owner, the Contractor, provided he otherwise receives a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be estimated in good faith by the Architect on the basis of the Contractor's reasonable expenditures and savings, including, an allowance for overhead and profit as provided in 15.1.3. The Architect shall use the unit price basis if available and, if not, then the actual cost basis for this determination. The Architect shall then submit that estimate, with all supporting information, to Owner for approval. In such case, and also under Subparagraph 15.1.3.1 above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease, including an allowance for overhead and profit, as confirmed by the Architect. When both additional costs and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

15.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in proposed Change Order that application of the agreed unit prices to the quantities or Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

15.1.6 If the Contractor claims that additional cost or time is involved because of:

- .1 any written interpretation issued pursuant to Paragraph 4.11.5,
- .2 any order by the Architect or Owner to stop the Work pursuant to Paragraph 5.2.11 where the Contractor was not at fault, or
- .3 any written order for a minor change in the Work issued pursuant to Paragraph 15.3, the Contractor shall make such claim as provided in Paragraph 15.2.

15.1.7 Impact costs. No claim for impact costs resulting from performance of a Change Order will be permitted against the Owner, Architect or any other party in privacy of Contract with the Owner with respect to the project subsequent to the time that the Change Order is signed by the Contractor.

15.1.8 Final Settlement. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum or the Contract Time. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Application for Payment as if such Work were originally part of the Contract or in separate notice as provided in 12.4.4.. Agreement on any Change Order releases the Owner, and any other party in privacy of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in the connection with, or in any way associated with, such change.

15.2 CLAIMS FOR ADDITIONAL COST OR TIME

15.2.1 If the Contractor is entitled, under the terms of the Contract, to make a claim for an increase in the Contract Amount or any other claim, he shall give the Architect and Owner written notice thereof within fourteen (14) days after the occurrence of the event giving rise to such claim or include such notice in the Application for Payment for the month in which the event giving rise to the claim occurred, whichever is earlier. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 12.4.4 within the time limits prescribed herein and no such claim shall be valid unless so made. Any change in the Contract Amount or Contract Time resulting from such claim to be effective shall be approved by the Owner and authorized by Change Order.

15.3 MINOR CHANGES IN THE WORK

15.3.1 The Architect or Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

15.4 FIELD ORDERS

15.4.1 The Architect or Owner may issue written Field Orders which interpret the Contract Documents or which order minor changes in the Work in accordance with Paragraph 15.3 without change in Contract Amount or Contract Time. The Contractor shall carry out such Field Orders promptly.

ARTICLE 16 UNCOVERING AND CORRECTION OF WORK

16.1 UNCOVERING OF WORK

16.1.1 If any Work should be covered contrary to the request of the Architect, it must, if required by the Architect, be uncovered for his observation and replaced all at the Contractor's expense.

16.1.2 If any other Work has been covered which the Architect has not requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement after approval by the Owner shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 9, and in that event the Owner shall be responsible for the payment of such costs.

16.2 CORRECTION OF WORK

16.2.1 The Contractor shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including the cost of the Architect's additional services thereby made necessary.

16.2.2 If, within the time provided in Paragraph 18.1 herein or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, including the original conformance with the Contractor Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall, at his sole expense, correct it promptly after receipt of a written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

16.2.3 All such defective or non-conforming Work under Paragraphs 16.2.1 and 16.2.2 shall be removed from the site where necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

16.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

16.2.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days after receipt of a statement of charges therefore, the Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof after deducting all the costs that should have been borne by the Contractor, including compensation for additional Architectural services and any attorneys' fees incurred by Owner in connection therewith. If such proceeds of

sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner, and all attorneys, fees and other costs that the Owner may incur in collecting same.

16.2.6 If the Contractor fails to correct such defective or non-conforming work, the Owner may correct it in accordance with Paragraph 10.6.

16.2.7 The obligations of the Contractor under this Paragraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 17 TERMINATION OF THE CONTRACT

17.1 TERMINATION BY THE CONTRACTOR

17.1.1 If the work is stopped for a period of One Hundred and Sixty (160) days, and the Architect and the Owner are immediately notified of such stopping, under an order of any court or other public authority having jurisdiction through no act or fault of the Contractor or any Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, and by reason of some act or omission of Owner, then the Contractor may, upon seven day's written notice to the Owner and the Architect as its sole remedy hereunder, terminate the Contract and recover from the Owner payment for all Work approved by Owner and for any proven loss sustained upon any materials, including reasonable profit for Work accomplished through the date the notice of termination is given and approved and accepted by Owner.

17.2 TERMINATION BY THE OWNER

17.2.1 If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the Contractor's obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the Contract, the Owner shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the Owner, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

17.2.2 Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

17.2.3 The Owner may terminate this Contract at any time by giving at least (10) days notice in writing to the Contractor. If the Contract is terminated by the Owner, the Contractor will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Contractor, the aforementioned clause relative to termination shall apply.

17.2.4 If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accord with the Progress Schedule and Contract Time, or he fails to make prompt payments to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to uninterruptedly complete the Work once he has the Notice to Proceed, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety seven (7) days written notice, terminate the employment of the Contractor and take possession of the site and all materials, and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. Termination of the Contract under this Paragraph shall not relieve the Contractor of any warranty obligations on Work performed hereunder, and such obligations shall survive termination of this Contract.

17.2.5 If the unpaid balance of the Contract Amount is exceeded by the costs of finishing the Work, including compensation for the Architect's additional services, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, the Contractor shall pay the difference to the Owner. The costs incurred by the Owner as herein provided shall be certified by the Architect.

17.2.6 Pursuant to A.R.S. § 38-511, OWNER reserves the right to cancel this Agreement, within three years after the effective date of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of OWNER is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of CONTRACTOR in any capacity or a subcontractor to CONTRACTOR with respect to the subject matter of this Agreement. Cancellation under this section by OWNER shall be effective when written notice from the City Manager is received by CONTRACTOR. The OWNER may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the OWNER from CONTRACTOR arising as the result of the Agreement.

ARTICLE 18 WARRANTY AND SITE CONDITIONS

18.1 TWO-YEAR WARRANTY

18.1.1 The Contractor shall warrant all Work under this Contract to be in accordance with the Contract Documents against defects of material and workmanship for a period of two years from the date of Final Completion; provided, however, that those items of the Work specified as having longer warranties shall be warranted for the period specified.

18.1.1.1 The Contractor shall be responsible for the total cost of repairing and restoring any Work found not in compliance with the Contract Documents or any defective Work to a new condition, at no cost to Owner.

18.1.1.2 In any case where the subject matter of the non-compliance or defect relates to Work done under a subcontract between the Contractor and any subcontractor, it is the responsibility of the Contractor, not the Owner, to secure the Subcontractor's performance in compliance with this paragraph and, in the event of the Subcontractor's failure or refusal within a reasonable time to perform after notice, it shall be the Contractor's responsibility to repair and restore such non-complying or defective Work to a new condition, at no cost to Owner.

18.1.1.3 In any case where the failure in complying or defective Work has been brought to the attention of the Contractor by the Owner and the Contractor fails or refuses to correct it within five (5) days of such notice, the Owner may elect, without precluding any other remedy it may have available to it, to have the defective Work repaired and restored to a new condition in whatever reasonable manner it deems appropriate, regardless of the cost, and the Contractor shall be liable to the Owner for the total cost thereof, including, by way of example only, any Architectural and legal fees related to effecting the repair, plus 10% of the total costs incurred.

18.1.2 Material and workmanship made good through compliance with such warranty shall be subject to the same warranty period as the original materials and workmanship. Such warranty period shall begin on the date the replaced material and work is certified as acceptable in writing by the Architect.

18.2 SANITATION

18.2.1 The Contractor shall provide temporary sanitation facilities for the use of employees on this construction. Following the period of necessity for such facilities, they shall be removed and all evidence thereof effaced.

18.3 JOB OFFICE

18.3.1 A job office as approved by the Architect shall be provided on the project site. The Contractor shall install at his own expense a job telephone for use of all trades in connection with the work and shall pay for all local calls. All long-distance calls and toll calls shall be paid for by the person making the call.

18.4 USE OF PREMISES

18.4.1 The Contractor shall confine his equipment and plant, the storage of materials, and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Architect and shall not unreasonably encumber the premises with materials or equipment.

18.4.2 The Contractor shall enforce the Architect's instructions regarding signs, advertisement, fires, and smoking.

18.5 SEVERABILITY

18.5.1 In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

ARTICLE 19 RECORDS ACCESS AND RETENTION REQUIREMENTS

19.1 Records Retention: The Contractor shall maintain and shall contractually require each subcontractor to maintain accounts and records including personnel, property and financial records adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner to assure proper accounting for all project funds both Federal and non-Federal shares. These records will be retained for five (5) years after the expiration of this Contract unless permission to destroy them is granted in writing by the Owner.

19.2 Access to Records: Legible copies of all records maintained by the Contractor shall be made available, upon request, to the Owner, the Arizona Department of Housing, the Office of the Inspector General (HUD), and any other body authorized by the Owner.

ARTICLE 20 COMPLIANCE WITH IMMIGRATION LAWS and E-VERIFY REQUIREMENT

20.1 As mandated by Arizona Revised Statutes ("A.R.S.") Section 41-4401, the Owner is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. Section 23-214(A). (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.") The Owner must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. Section 23-214(A). Therefore, in signing or performing any Contract (including this Agreement) for the Owner, the Contractor fully understands that:

a. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A);

b. A breach of the warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and

c. The Owner or its designee retains the legal right to inspect the papers or any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph (a).

**ARTICLE 21
SCRUTINIZED BUSINESS OPERATIONS**

21.1 Pursuant to A.R.S. Section 35-391.06 and 35-393.06, the contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393 as applicable. If the Owner determines that the contractor submitted a false certification, the Owner may impose remedies as provided by law including termination of this Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed original thereof, have been duly executed by the Parties herein above named, on the day and year first above written.

OWNER – City of Willcox:

By: _____
Gerald W. Lindsey, Mayor

Date: _____

Attest: _____
Cristina Garcia Whelan, CMC
City Clerk, City of Willcox

APPROVED AS TO FORM:

By: _____
Hector M. Figueroa, Attorney

Date: _____

CONTRACTOR:

By: _____
Jamie Olding, Building Excellence L.L.C.

Date: _____

Don Starnbach
2/7/2012

CITY OF WILLCOX

CDBG Contract # 112-11

BID TABULATION SHEET

4 P.M., FEBRUARY 7, 2012

Contractor	Non Coll AIT	Sub List	Bid Bond	LS-2	Cents	Addn #1	Addn #2	Addn #3	Base Bid	Add All #1	Add All #2 (allowance)	Add All #3	Add All #4 (allowance)	Total Base with #1 & 3	Grand total
* HICKAM	✓	✓	✓	✓	✓	✓	✓	✓	\$175,100.00	\$49,100.71	\$24,000	\$1,216.00	\$30,000		\$259,516.71
BE	✓	✓	✓	✓	✓	✓	✓	✓	\$119,500.00	\$21,500.00	\$24,000	\$1,200.00	\$30,000		\$176,500.00
CONCORD	✓	✓	✓	✓	✓	✓	✓	✓	\$134,000.00	\$24,000.00	\$24,000	\$2,000.00	\$30,000		\$215,000.00
											\$24,000		\$30,000		
											\$24,000		\$30,000		
											\$24,000		\$30,000		
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											\$24,000		\$30,000		
											\$24,000		\$30,000		

Signatures: Rob [Signature] Dominick [Signature] Ann Borna [Signature] Stacy [Signature]

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item: _____ 15
Tab Number: _____ 9
Date: 02-20-2012

Date Submitted:
2-10-12

Date Requested:
2-20-12

Action:
 Resolution
 Ordinance
 Formal
 Other

Subject: Renewal of Agreement with the Chamber on Use, Maintenance and Stipend Agreement on Cochise Visitor's Center

TO: MAYOR AND COUNCIL

FROM: City Manager

DISCUSSION: The City has an agreement with the Willcox Chamber of Commerce & Agriculture to operate the City's Visitor Center. The last renewal was in August of 2010. The renewal was by Resolution 2010-88. The agreement expires August 30, 2012. Under the original agreement entered August 21, 2006 the City pays the Chamber ½ of the Lodging receipts for the Chamber to operate the Visitor Center as per the "Use Maintenance, and Stipend Agreement (currently 357 days per year). Chamber pays all operating expenses. City owns the building and parking lot and maintains them.

RECOMMENDATION: Assuming that the City wishes to continue to provide the operation of the Visitor Center; Staff feels the current Agreement is the most economic manner to accomplish this goal. Therefore Staff recommends renewing the Agreement for approximately two (2) years. Staff is also recommending the agreement term coincide with the City Fiscal year and end June 30, 2014.

FISCAL IMPACT: The amount varies as it is based upon ½ of the Lodgers Tax; the amount budgeted for FY 13 is \$80,000 from the General Fund in the Community Programs Department.

Prepared by: Pat McCourt

Approved by:


Pat McCourt, City Manager

RESOLUTION NO. 2012-09

A RESOLUTION OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE RENEWAL AND EXTENSION OF THE USE, MAINTENANCE AND STIPEND AGREEMENT BETWEEN THE CITY OF WILLCOX ["CITY"] AND THE WILLCOX CHAMBER OF COMMERCE AND AGRICULTURE, A NON-PROFIT CORPORATION, ["CHAMBER"] AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AND EMERGENCY TO EXIST

WHEREAS, the CITY and the CHAMBER entered into the original Agreement between the parties for the period of September 12, 1978 to September 11, 2003 and entered into Agreement Extensions thereto up to and including August 30, 2006 which were formally approved by the CITY; and

WHEREAS, the CITY and the CHAMBER entered into a Two (2) year Agreement for the period of September 1, 2006 to August 30, 2008 pursuant to City Council approval; and

WHEREAS, the CITY and the CHAMBER entered into a Two (2) year Agreement Extension for the period of September 1, 2008 to August 30, 2010 pursuant to City Council Resolution No. 2008-51; and

WHEREAS, the CITY and the CHAMBER Renewed/Extended the Agreement between the Parties for an additional Two (2) year period of September 1, 2010 to August 30, 2012 pursuant to Resolution 2010-88; and

WHEREAS, the CITY and the CHAMBER desire to enter Renew/Extend/Amend the Agreement between the Parties for an additional Two (2) year period of July 1, 2012 to June 30, 2014 pursuant to Resolution 2012-09

WHEREAS, the City of Willcox, Cochise County, Arizona desires to have this Resolution presented at the February 20, 2012 Council meeting and has determined that approval of the CHAMBER Agreements Renewal/Extension/Amendment as noted above is in the best interest of the CITY and its residents; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

Section 1: The approval of the CHAMBER Agreement Renewal/Extension/Amendment, as described above, is in the best interests of the residents of the City of Willcox.

Section 2: The CITY formally approves the Agreement Extension/Amendment with the CHAMBER for the period of July 1, 2012 to June 30, 2014, by reference, as if set forth herein in full.

Section 3: The Mayor is authorized and empowered to execute this Resolution for the purpose of approving the CHAMBER Agreement Extension as authorized therein.

PASSED AND ADOPTED by the Council of the City of Willcox, Cochise County, Arizona, this ____ day of February 2012.

APPROVED/EXECUTED:

MAYOR, GERALD W. LINDSEY

ATTEST:

City Clerk, Cristina Garcia Whelan, CMC

APPROVED AS TO FORM:

City Attorney, Hector M. Figueroa, Esq.

RESOLUTION NO. 2012-09

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item: _____ 16
Tab Number: _____ 10
Date: 02-20-2012

Date Submitted: 2-15-12
Date Requested: 2-20-12

Action: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Formal <input type="checkbox"/> Other

Subject: Resolution to modify the Job description for the Part time Administrative Asst in Public Works
--

TO: MAYOR AND COUNCIL

FROM: City Manager

DISCUSSION: The Employee Handbook Section 208 "Job Descriptions" provides as follows: "All new job descriptions and modifications to existing job descriptions must be approved by resolution of the Mayor and City Council before becoming effective."

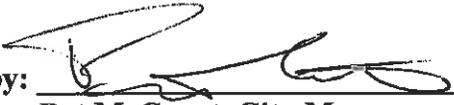
As part of the streamlining operations, One Stop for the customer and realignment of City Clerk duties, the day to day responsibility for the Cemetery plots is being moved to the Public Works Department. This provides for one contact point in the City for any dealings concerning the Cemetery.

There is currently no listing of responsibilities in the Public Works for the administrative duties of the Cemetery. Attached is the new proposed Job Description of the Part time Administrative Clerk; this includes the proposed duties of the Cemetery. This does not involve any change in Pay scale or grade.

RECOMMENDATION: Approve the Resolution for the Job Description for the part time Administrative Asst. for Public Works.

FISCAL IMPACT: The impact is difficult to determine, it is believed this will result in a more efficient operation of the City and save internal costs as well as time to the citizens and individuals having concerns about the cemetery.

Prepared by: Pat McCourt

Approved by: 
Pat McCourt, City Manager

RESOLUTION NO. 2012-10

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA (“CITY”) FOR THE PURPOSE OF APPROVING AND ADOPTING AN AMENDED JOB DESCRIPTION FOR THE POSITION OF ADMINISTRATIVE ASSISTANT IN THE PUBLIC WORKS DEPARTMENT PURSUANT TO SECTION 208 OF THE EMPLOYEE HANDBOOK AND AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST.

WHEREAS, the CITY is empowered pursuant to Section 208 of the City of Willcox Employee Handbook to approve and adopt any new job descriptions or amendments to existing job descriptions; and

WHEREAS, on May 23, 2007 the Mayor and Council formally approved and passed Resolution NO. 2007-10 adopting the Employee Handbook for the City of Willcox; and

WHEREAS, the Mayor and Council of the City of Willcox desire to have this Resolution presented at its February 20th, 2012 Council Meeting for the purpose of approving and adopting amended Job Description for the Administrative Assistant-Public Works Department; and

WHEREAS, the Mayor and Council have determined that formal action on this Resolution is in the best interest of the CITY, its citizens and its municipal system; and,

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Willcox, Cochise County, Arizona, that an emergency be declared to exist and that this Resolution shall be effective immediately upon its passage and adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

Section 1: The CITY formally adopts Resolution 2012-10 for the purpose of approving amended Job Description for the City of Willcox Administrative Assistant-Public Works Department position.

Section 2: That the immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the City of Willcox, Cochise County, Arizona.

Section 3: That the Mayor is authorized and empowered to execute this Resolution as presented.

PASSED AND ADOPTED BY MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA this _____ day of February 2012.

APPROVED/EXECUTED:

MAYOR, GERALD W. LINDSEY

ATTEST:

APPROVED AS TO FORM:

City Clerk, Cristina Garcia Whelan, CMC

City Attorney, Hector M. Figueroa, Esq.

RESOLUTION NO. 2012-10

JOB DESCRIPTION

CITY OF WILLCOX

APPROVED: 02-20-2012 Reso No. 2012-/0
SUPERSEDES: Reso No. 2007-10

FLSA: N
GRADE: 8

JOB TITLE: ADMINISTRATIVE ASSISTANT PUBLIC WORKS

PURPOSE OF CLASSIFICATION

The purpose of this classification is to provide administrative and secretarial support to the Streets and Parks Department, including administrative Cemetery duties.

ESSENTIAL FUNCTIONS

The following duties are normal for this position. The omission of specific statements of the duties does not exclude them from the classification if the work is similar, related, or a logical assignment for this classification. Other duties may be required and assigned.

Participates in the accomplishment of organizational, departmental and workgroup goals and objectives.

Exhibits a service orientation toward customers and maintains productive working relationships.

Prepares documents, records, and forms requiring knowledge of department programs and services; prepares operational, statistical, and financial reports; researches, compiles, consolidates, and/or tabulates information; incorporates information from source documents into the preparation of assigned materials; and composes, drafts and/or prepares correspondence and letters.

Prepares and/or processes administrative documents for the department to include purchasing documents, personnel forms, accounts payable documents, invoices, travel expense forms, and inventory records; calculates and maintains timesheets and leave information for employees; obtains signatures when necessary; and submits administrative documents to appropriate department or manager.

Prepares and/or processes administrative documents for Cemetery to include burial information, plot sales, plot inventory, and processes monthly cemetery billing. Also coordinates with Westlawn Chapel on gravesite opening and closings.

Assists department management with budget related activities; collects and reports information used in developing budget proposals; monitors and reports expenditures and fund balances; researches budget issues; and prepares budget reports and/or upon request.

Receives applications, administrative forms, work orders, registration forms, reservation requests or other documents from customers and/or employees; prepares documents for processing; receives and records payments; counts, balances and reconciles cash drawer; and prepares deposit paperwork.

Establishes updates and maintains databases, files and records in automated information systems; enters data into system files and databases; researches and retrieves information from

databases; incorporates data into assigned records and documents; creates statistical reports and summaries from data; and generates automated reports from systems.

Maintains department/program references; including but limited to, vendor lists, training manuals, standard operating procedures, and mailing lists.

Answers Department telephones; greets customers and visitors; provides customer assistance; retrieves requested documents; provides information regarding programs, services and procedures; refers callers or visitors to other staff members as appropriate; and takes messages.

Schedules appointments, maintains calendars for office staff; and makes travel arrangements for department staff; maintains a calendar for assigned meeting spaces, conference rooms or other facilities; coordinates logistical arrangements for meetings including audio/visual equipment and catering; prepares and distributes meeting agendas and minutes for assigned advisory committees. Conducts research and special projects; and may handle confidential information.

Established filing systems; prepares folders, records and files for program/department documents and paperwork; implements records management and retention practices; photocopies documents and distributes and/or files; and requests information from other departments as necessary to complete department records/files.

Receives, dates and distributes incoming mail; and prepares outgoing mail.

Operates a personal computer, telephones, copiers and other general office equipment as necessary to complete essential functions, including the use of word processing, spreadsheet, database, or other system software.

ADDITIONAL FUNCTIONS

Orders office supplies; and manages petty cash funds.

Performs other related duties as required.

MINIMUM QUALIFICATIONS

High school diploma or GED; supplemented by business classes and three years of clerical experience; or any equivalent combination of education, training, and experience which provides the requisite knowledge, skills, and abilities for this job. Ability to obtain Notary Public may be required.

PERFORMANCE APTITUDES

Data Utilization: Requires the ability to review, classify, categorize, prioritize, and/or analyze data. Includes exercising discretion in determining data classification, and in referencing such analysis to established standards for the purpose of recognizing actual or probable interactive effects and relationships.

Human Interaction: Requires the ability to provide guidance, assistance, and/or interpretation to others regarding the application of procedures and standards to specific situations.

Equipment, Machinery, Tools, and Materials Utilization: Requires the ability to operate, maneuver and/or control the actions of equipment, machinery, tools, and/or materials used in performing essential functions.

Verbal Aptitude: Requires the ability to utilize a wide variety of reference, descriptive, and/or advisory data and information.

Mathematical Aptitude: Requires the ability to perform addition, subtraction, multiplication, and division; the ability to calculate decimals and percentages; the ability to utilize principles of fractions; and the ability to interpret graphs.

Functional Reasoning: Requires the ability to apply principles of rational systems; to interpret instructions furnished in written, oral, diagrammatic, or schedule form; and to exercise independent judgment to adopt or modify methods and standards to meet variations in assigned objectives.

Situational Reasoning: Requires the ability to exercise judgment, decisiveness and creativity in situations involving evaluation of information against measurable or verifiable criteria.

ADA COMPLIANCE

Physical Ability: Tasks require the ability to exert light physical effort in sedentary to light work, but which may involve some lifting, carrying, pushing and/or pulling of objects and materials of light weight (5-10 pounds). Tasks may involve extended periods of time at a keyboard or work-station.

Sensory Requirements: Some tasks require the ability to perceive and discriminate sounds and visual cues or signals. Some tasks require the ability to communicate orally.

Environmental Factors: Essential functions are regularly performed without exposure to adverse environmental conditions.

The City of Willcox, Arizona is an Equal Opportunity Employer. In compliance with the Americans with Disabilities Act, the City will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the employer.

This description is intended to indicate the kinds of duties and responsibilities that will be required of employees given this title. It shall not be construed as determining what the specific duties and responsibilities of any particular position shall be. It is not intended to limit in any way the right of any supervisor to assign, direct and control the work of employees under their supervision.

Written 02/12 Saved as: Administrative Asst-PW

**CITY OF WILLCOX
EXECUTIVE SESSION**

AGENDA

MONDAY, FEBRUARY 20, 2012

7:00 p.m.

300 W. REX ALLEN DRIVE

Willcox, Arizona

1. CALL TO ORDER
2. ROLL CALL
3. **CONSIDERATION OF ARIZONA REVISED STATUTES 38-431.03(A)(3) – DISCUSSION OR CONSULTATION FOR LEGAL ADVICE WITH THE ATTORNEY OR ATTORNEYS OF THE PUBLIC BODY**
Consideration and/or discussion pursuant to Arizona Revised Statutes §38-431.03(A)(3), as stated relating to consultation with the City Attorney(s) of the public body.
4. ADJOURN

“Mine, Yours, Ours”



NOTICE OF EXECUTIVE SESSION

CITY COUNCIL

In accordance with Resolution No. 370 of the City of Willcox, and Section 38-431.01 of the Arizona Revised Statutes **NOTICE IS HEREBY GIVEN** that the **MAYOR AND COUNCIL** of the City of Willcox, County of Cochise, Arizona, will hold an **EXECUTIVE SESSION**, if approved, during the **REGULAR** meeting on **MONDAY**, the **20TH** day of **FEBRUARY** 2012 at **7:00 p.m.**, in the **CITY COUNCIL CHAMBERS, 300 W. REX ALLEN DRIVE, Willcox, AZ**

Item for Consideration and Discussion are:

A.R.S. §38.431.03A(3) DISCUSSION OR CONSULTATION FOR LEGAL ADVICE WITH THE ATTORNEY OR ATTORNEYS OF THE PUBLIC BODY,
Consideration and/or discussion regarding consultation for legal advice with the Attorney or Attorney's of the public body.

DATED AND POSTED this 16th day of FEBRUARY 2012, at 3:00 P.M.

CITY OF WILLCOX, ARIZONA

/s/ Cristina Garcia Whelan, CMC
City Clerk Cristina Garcia Whelan, CMC

"Mine, Yours, Ours"