

CITY OF WILLCOX MAYOR AND CITY COUNCIL AGENDA

A REGULAR MEETING OF THE MAYOR AND CITY COUNCIL
OF WILLCOX, ARIZONA
March 17, 2016 AT 6:30 P.M.
AT THE CITY COUNCIL CHAMBERS,
300 W. REX ALLEN DRIVE, WILLCOX, ARIZONA

Resolution 2016-04
Ordinance NS324

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. Arizona Revised Statutes §1-602(A) (9)

AGENDA

The Council may discuss, consider and take possible action pertaining to the following:

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. CALL TO THE PUBLIC

The Call to the Public is provided as a courtesy to allow citizens an opportunity to voice any concerns or opinions they may have regarding the City of Willcox or other matters properly addressed to the Mayor and City Council. Those wishing to address the City 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 presenter will be given approximately three (3) minutes. Organizations may be limited to one (1) speaker. In accordance with Arizona law, the City Council is not permitted to respond directly to the citizen speaking. Action will be limited to directing staff or rescheduling 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.

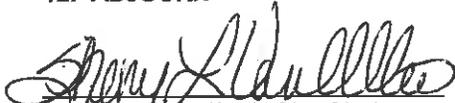
6. ADOPTION OF THE AGENDA

The Council will either adopt the agenda as presented or may remove or table any of the 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. APPROVE THE MARCH 3, 2016 COUNCIL MEETING MINUTES

Tab 1

8. RESOLUTION 2016-02 - A RESOLUTION APPROVING A LICENSE AGREEMENT WITH WILLCOX FIREARMS TRAINING CENTER AND RANGE TO USE THE CITY'S SHOOTING RANGE Tab 2
9. RESOLUTION 2016-03 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN COCHISE COUNTY AND THE CITY OF WILLCOX FOR SHARING THE WIRELESS EMERGENCY NOTIFICATION SYSTEM Tab 3
10. CITY MANAGER REPORT
11. COMMENTS NOT FOR DISCUSSION FROM MAYOR AND COUNCIL MEMBERS
12. ADJOURN


Virginia A. Mefford, City Clerk

3/11/16
Date

8:00 AM
Time

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, Willcox, AZ; at the Elsie S. Hogan Community Library during regular business hours; and on the City's website www.cityofwillcox.org.

NOTE: The City Council Chambers are handicapped accessible. People with special accessibility needs 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.

THE MINUTES OF THE REGULAR MEETING OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ HELD ON THIS 3RD DAY OF MARCH, 2016

CALL TO ORDER - Mayor Bob Irvin called the meeting to order at 6:30 p.m.

ROLL CALL - City Clerk Virginia A. Mefford called the roll.

PRESENT

- Mayor Robert A. Irvin
- Vice Mayor Earl Goolsby
- Councilman Elwood A. Johnson
- Councilman Gerald W. Lindsey
- Councilman William "Bill" Nigh
- Councilman Timothy A. Bowlby
- Councilman Michael J. Laws

STAFF

- City Manager Ted Soltis
- City Clerk Virginia Mefford
- City Attorney Ann P. Roberts
- Finance Director Crystal Hadfield

PLEDGE OF ALLEGIANCE TO THE FLAG - Led by Mayor Irvin

CALL TO THE PUBLIC – Rob Jones thanked Councilmember Bowlby for his help with the nursing home. He suggested Council "toot their own horn" once in a while, so people know you are helping out the community in various capacities. He added that he appreciates everything Council **does**.

DECLARATION ON CONFLICT OF INTEREST - None

ADOPTION OF THE AGENDA

MOTION: Councilmember Johnson made a motion to adopt the agenda.
SECONDED: Councilmember Bowlby seconded the motion.
MOTION CARRIED

APPROVAL OF MINUTES OF THE REGULAR MEETING OF JANUARY 21, 2016

MOTION: Councilmember Lindsey made a motion to approve the minutes as presented.
SECONDED: Councilmember Bowlby seconded the motion.
MOTION CARRIED

FISCAL YEAR 2015 AUDIT REPORT PRESENTATION - STEVE PALMER

Steve Palmer gave the Fiscal Year 2015 audit report presentation. He explained the new Governmental Accounting Standard Board (GASB 68) requirement which is to improve accounting and financial reporting by state and local governments for pensions. All municipalities are required to do this. Councilmembers asked several questions and Mr. Palmer answered them. City Manager Soltis thanked Mr. Palmer for his explanation on the GASB 68 changes.

2nd QUARTER FINANCIAL REPORT - CRYSTAL HADFIELD

Crystal Hadfield gave the 2nd Quarter Financial report.

CITY MANAGER'S REPORT

- City Manager Soltis attended the Arizona City Manager Association (ACMA) conference in Sedona.
- He attended the Southeastern Arizona Government Organization (SEAGO) meeting. He was recently voted Vice Chairman and looks forward to this new role.
- He attended an Arizona Department of Transportation (ADOT) public input plan update meeting
- He gave an update on the skate park. The new pad has been installed. The Skate Park committee hopes to get a grant to fund new equipment to put on it.
- He thanked the Historical Preservation Advisory Committee, Jeff Stoddard, and the Railroad for assisting with getting the Mascot Car awning installed.
- He thanked John Cropper for volunteering to paint the Mascot Car. The paint will match the existing color.
- The asbestos results should arrive soon for all the demolition properties. Once the results are in, the abatement will be advertised.
- He thanked the City crews, Nalo Galovale, and Jeff Stoddard for the clean-up work they are doing on the buildings being demolished as well as clean-up around the City.

**THE MINUTES OF THE REGULAR MEETING OF THE MAYOR AND
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
HELD ON THIS 3RD DAY OF MARCH, 2016**

- He noted the weed-eating has been delayed due to employees being sick; they will pick it up again next week.
- The residential gas and water meter replacement program is on schedule. With the street bond refinancing, the City saved \$90,000 on interest payments. He thanked the placement agent and bond attorney for their help.

COMMENTS NOT FOR DISCUSSION FROM MAYOR AND COUNCIL MEMBERS

- Councilmember Bowlby apologized for not making the meeting in January. He thanked the Council for being a great group to work with.
- Councilmember Laws stated he has received a lot of positive feedback about the clean-up around the City.
- Vice Mayor Goolsby gave kudos to the City Manager and the Finance Director. He stated "keep doing what you have been doing."
- Councilmember Johnson gave kudos to Crystal Hadfield for doing a great job as Finance Director. He noted he would like to have a couple of work sessions on the budget. He also would like to have a plan once the buildings are demolished for what will happen to the properties.
- Councilman Lindsey stated everything looks good with the financial report.

ADJOURN

With no further business before the Mayor and Council, the meeting was adjourned at 7:11 p.m. by Mayor Irvin.

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the City Council of the City of Willcox held on the 3rd day of March 2016. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 3rd day of March 2016

City Clerk Virginia Mefford, CMC

PASSED, APPROVED AND ADOPTED this 7th day of April 2016.

Mayor Robert A. Irvin

ATTEST:

City Clerk Virginia A. Mefford, CMC

CITY OF WILLCOX
Request for Council Action

Agenda Item: 8
Tab Number: 2

Meeting Date:

March 17, 2016

Action:

Resolution
 Ordinance
 Other

Subject: Resolution 2016-02
License Agreement with
Willcox Firearms Training
Center and Range

To: Mayor and City Council

From: Jose Rios, Police Chief

Discussion: The Willcox Firearms Training Center and Range, an Arizona nonprofit corporation in good standing, desires permission to use City owned training facilities for the purpose of independently operating a shooting range. The Willcox Firearms Training Center and Range will provide qualified personnel to manage and supervise the operation of the range and its use by Center members and the general public.

This agreement will further promote firearms safety and shooting sports. The Willcox Firearms Training Center and Range will pay an annual rental fee of \$1,000.00 to the City of Willcox.

It has been determined that both parties would benefit by the City of Willcox entering into this License Agreement with Willcox Firearms Training Center and Range.

Recommendation: Approve the License Agreement with Willcox Firearms Training Center and Range.

Fiscal Impact: + \$1,000.00.

Submitted by:


Jose Rios, Police Chief

Approved by:


Ted Soltis, City Manager

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

RESOLUTION 2016-02

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA (“CITY”) APPROVING A LICENSE AGREEMENT WITH WILLCOX FIREARMS TRAINING CENTER AND RANGE (“CENTER”) TO USE THE CITY’S SHOOTING RANGE

WHEREAS, in 1971 property was donated to the CITY for the purpose of establishing a shooting range, and

WHEREAS, in 1995 the CITY moved to allow staff to approve organizations and law enforcement agencies the use of the gun range, and

WHEREAS, the CITY and CENTER believe it is to the mutual benefit of the CITY to partner to once again allow public use of the CITY’S shooting range.

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

SECTION 1: The Mayor and City Council approve the License Agreement presented herein as Exhibit “A”.

SECTION 2: The Mayor is authorized and empowered to execute this Resolution.

SECTION 3: The City Manager is authorized and directed to take all action necessary and required to carry out the intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, this 17th day of March, 2016.

APPROVED/EXECUTED:

ROBERT A. IRVIN, Mayor

APPROVED AS TO FORM:

ATTEST:

VIRGINIA A. MEFFORD, City Clerk

ANN P. ROBERTS, City Attorney

Exhibit "A"
License Agreement between
City of Willcox
and
Willcox Firearms Training Center and Range

This Agreement ("Agreement") is entered into by and between the City of Willcox ("City"), an Arizona municipal corporation, and the Willcox Firearms Training Center and Range ("Center") an Arizona nonprofit corporation in good standing.

WHEREAS, City owns and maintains certain training facilities on its property located in Cochise County, State of Arizona; and

WHEREAS, Center, as Licensee, desires permission to use City owned training facilities for the purpose of independently operating a shooting range.

NOW THEREFORE, in consideration of the City granting permission to the Center for use of its training facilities, the parties agree that said use shall be governed by the following terms and conditions:

1. **Location of Property.** City hereby agrees to grant a license to the Center to use property located at 1389 W. Saguaro Road, Willcox, AZ 85643 ("Property").
2. **Duration of Agreement.** The term of the License shall be for an initial one (1) year period commencing on the date of this Agreement, with an annual rental fee of \$1,000.00 payable on the first day of each calendar year subsequent to the execution of this Agreement. This agreement may be extended for additional one-year terms by mutual agreement of the parties.
3. **Use.** The Property shall be utilized by the Center solely for the purpose of operating an independent shooting range.
4. **Center as Independent Contractor.** The Center as a nonprofit organization qualified to operate and maintain a shooting range shall be acting as an independent contractor and the City of Willcox shall not assume any liability by virtue of granting this license and entering into this Agreement. The Center, its officers, directors, employees, agents, or contractors shall not be considered employees, contractors, or agents of the City of Willcox. The City of Willcox shall not be responsible for any acts of the officers, directors, employees, agents, or contractors of the Center, whether intentional or negligent. Further, neither Center nor its carrier shall be entitled to recover from City any costs, settlements or expenses of Worker's Compensation claims arising out of this agreement.
5. **Financial Responsibility for Operation and Maintenance.** All facilities and improvements constructed upon the Property by the Center shall be at the Center's expense. The Center shall furthermore provide at its own expense personnel for the operation and maintenance of the shooting range.
6. **Facility Inspections.** The City may conduct periodic inspections of the shooting range and the Center shall be required to promptly comply with any item identified requiring

correction as a result of such inspections.

7. **City Indemnity.** The Center represents that it has inspected the premises, accepts the condition thereof and fully assumes any and all risks incidental to the use thereof by the Center. City shall not be liable to Center for its officers, agents, employees, subcontractors or independent contractors for any death, personal injury or property damage suffered by them which may result from hidden, latent or other dangerous conditions in, on, upon or within the premises. Center hereby agrees to indemnify and hold harmless the City of Willcox, and their representatives, officers and employees ("Indemnitees") from any and all claims, demands, actions, judgments, liabilities, losses, and costs caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Center or any of its owners, officers, directors, agents, employees or contractors or members of the public arising out of or related to Center's occupancy and use of the Property. The Center shall defend at its expense, including without limitation attorney's fees, expert fees, investigation expenses, City, its officers, agents, employees and contractors in any legal action based upon alleged acts or omissions. This indemnification shall survive any action fully or finally claimed to be barred by the applicable statute of limitations.
8. **Insurance.** The Center shall procure and maintain in full force and effect for the duration of this Agreement insurance against claims for injury to persons or damage to property for acts or conduct occurring at or on the Property. The insurance shall be placed with an insurer authorized to do business in the State of Arizona with an A.M. Best rating of not less than A-VII. The City of Willcox in no way warrants that the above-required minimum insurer rating is sufficient to protect the Center from potential insurer insolvency.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Center from liabilities that might arise under this Agreement by the Center. The Center is free to purchase additional insurance.

A. General Liability Insurance:

The Center shall secure and maintain in force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for personal injury, and one million (\$1,000,000) per occurrence/aggregate for property damage.

The City shall be named as an additional insured. The Center's policy shall be primary and non-contributory.

The Center shall not cancel said policy except upon thirty (30) days prior written notice to the City and the Center shall forthwith provide the City with any notice of cancellation that it may receive.

- B. Verification of Coverage:** The Center shall furnish the City with certificates of insurance (ACORD form or equivalent) approved by the City as required by this Agreement. The certificates for each insurance policy are to be signed by a person

authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements shall be sent directly to the City for review and approval at the time this Agreement is executed by the Parties and must be in effect at or prior to commencement of the license and remain in effect for the entire term of the License. Failure to maintain the insurance policies as required by this Agreement, or to provide timely evidence of renewal, is a material breach of the Agreement.

The Center shall thereafter furnish to the City evidence of insurance policy renewal due on or before the first day of January for each year thereafter. The number designated for this Agreement shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

C. Approval: Any modification or variation from the insurance requirements in this Agreement shall be approved by the City.

D. Notification of Change in Policy Status: The Center shall immediately notify the City of any cancellation, termination or material alteration of any policy of insurance required by this Agreement. Any notices of cancellation, termination or alteration shall be sent directly to the City in accordance with the Notices provision of this Agreement. Notwithstanding any other provision of this Agreement, failure to maintain the required minimum scope or limits of coverage required by this agreement is grounds for immediate termination of this Agreement.

9. Conformity with Law. The Center agrees that during its use and occupancy of the Property, the Center will comply with all applicable laws, rules, regulations, and ordinances of every governmental body or agency whose authority extends to the premises or to any activities conducted upon the Property, whether or not such laws, rules, regulations, and ordinances are specifically referred to in this Agreement. The Center shall operate the range in accordance with this agreement.

10. Property Improvements. The City is charged with providing the oversight required to ensure that capital projects implemented by the Center meet professional design, engineering and construction practices and comply with standard specifications, applicable building codes, local ordinances and federal guidelines such as the Americans with Disabilities Act. Any improvements proposed by the Center on City owned property involving the development or preservation of real property and infrastructure assets must be reviewed and approved by the City. The Center is responsible for submitting to City appropriate information for technical review and approval.

The Center agrees that at its own expense it will keep and maintain the Property and all improvements placed thereon by the Center in good condition and repair.

11. No Liens on Improvements. The Center agrees to keep the Property, premises, structures and improvements thereon free and clear from any and all liens of laborers, mechanics, or materialmen and all liens of a similar character arising out of the design, construction, repair, or alteration and maintenance of such improvements.

12. City-owned Improvements. All improvements placed on the premises by the Center shall become the property of the City.

The Center agrees that all improvements placed or affixed upon the Property shall thereupon become the property of the City, and that upon the expiration of the term of this Agreement or any extension thereof, or upon the termination or cancellation of this Agreement, the Center will promptly surrender to the City the premises together with all permanent structures, facilities, fixtures and improvements thereon. The Center shall have the right to remove from the premises all items of personal property not permanently affixed to the real property.

The City shall not be liable or responsible to Center or its contractors for the payment of the cost or value of any structures, facilities, fixtures or improvements of whatsoever kind and nature placed upon the Property, which shall be deemed to be surrendered to and the ownership thereof vested in the City and such ownership in the City shall be without any right to or claim for reimbursement by the Center or its successors or assigns.

13. Center Responsibilities.

The Center shall provide sufficient qualified personnel to manage and supervise the operation of the Range and its use by Center members and the general public. A certified Range Safety Officer shall be present any time a member of the Center or the general public uses the Range. A copy of the Range Safety Officer's Certifications must be on file with the Willcox Police Department (WPD) prior to the use of the shooting Range.

The Center shall operate the Range in accordance with this agreement. Any violation of or failure to comply with any of the terms or provisions of this Agreement or any laws of the City shall be cause for termination of this Agreement.

The Center shall provide, at its cost, routine maintenance of the Range including the provision of operation consumables including, but not limited to target frames and other similar items required for operation. Except as otherwise provided herein, the Center shall at its own expense furnish all furniture, fixtures, and equipment needed for the operation of the range.

In addition to the improvements outlined herein above, the Center may, in the Center's sole discretion, provide additional facilities and improvements. If the Center elects to provide such additional facilities and improvements, notwithstanding any contrary provisions contained herein, it shall be the Center's responsibility to obtain and pay for any necessary permits, approvals or to secure and pay for utility services.

The Center shall establish and enforce safety policies, subject to review and approval by the WPD, which such approval shall not be un-reasonably withheld. The safety policies shall be designed to prevent damage to life and property. The Center shall utilize a Waiver of Liability and Hold Harmless Agreement that shall be provided to and executed each time a member of the Center or the general public utilizes the Range.

The Center shall be responsible for the regular maintenance of the Range and improvements thereon. The Center shall dispose of refuse resulting from its Range operations including waste materials, garbage, and rubbish of all kinds, in accordance with federal, state, and local

law and regulation.

The Center shall take reasonable measures to prevent and discourage vandalism or disorderly conduct and when necessary will call the WPD.

14. Willcox Police Department Responsibilities.

The WPD will provide its own targets and target stands. WPD presently has facilities located upon the Property that it utilizes in connection with officer training. The Center shall not have access to such facilities and shall not be responsible for their maintenance.

The WPD will only be responsible for repairs of any damage to the Range caused by the intentional or negligent acts of the WPD.

15. Hours of Operation. Operation of the Range by the Center will be on the first Saturday of the month from 0800 to 1700. Additional days of operation may be arranged through the WPD. The WPD reserves the privilege of first right-of-use of the range for law enforcement training.

16. Non-Assignability. The Center shall not assign this Agreement without the prior written consent of the City. Further, this Agreement shall not create any rights on behalf of any third parties.

17. Termination Due to Noncompliance. In the event of a material breach of this Agreement, or in the event the Center fails to correct any default or fails to be in full compliance with the terms and conditions of this Agreement within sixty (60) days after written notice by the City itemizing the breach or default and the terms for returning into compliance, then this Agreement and any and all of City's obligations hereunder shall terminate at the option of the City without prejudice to the right of City to recover from Center all damages, losses or sums payable incurred as a result of the Center's breach or default with any term of this Agreement. A waiver by the City of any breach or default or any extension of time granted to the Center to cure any breach or default shall not constitute a waiver of any other requirement of this Agreement or a waiver of the requirement that time is of the essence of this Agreement.

18. Termination Due to Changes in Center Status. In the event the Center ceases to exist as a nonprofit corporation in good standing in the State of Arizona, or ceases to be active in the management and/or development of the Property and/or ceases to maintain the shooting range, the City shall terminate this Agreement and may negotiate with any other public or private entity for the purpose of assuming the continued maintenance and the operation of the Property, all without any liability or obligation whatsoever by the City to the Center.

19. Amendments. The Agreement may be modified only through a written amendment signed by the Parties to this Agreement. Unauthorized written amendments shall be void and without effect, and the Center shall not be entitled to any claim under this Agreement based on those changes.

20. Governing Authority. This Agreement shall be construed under the laws of the State of Arizona. In the event that any action or proceeding is filed to interpret, enforce, challenge, or

invalidate any term of this Agreement, venue shall lie in Cochise County.

21. Clause Numbers and Headings. Clause numbers and headings are for convenience only and are not to be construed as part of this Agreement.

22. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect.

23. Notices. Notices shall be in writing and shall be delivered in person to the other party or forwarded by mail, addressed as follows:

(a) For the City:
City Manager
City Hall
101 S. Railroad Ave., Suite B
Willcox, AZ 85643

(b) For the Center:
Willcox Firearms Training Center and Range
28640 S. Fort Grant Rd.
Willcox, AZ 85643

Or to other addressees as either party may from time to time furnish in writing to the other party. Notice shall be deemed to have been given upon receipt.

IN WITNESS WHEREOF, each person signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the parties herein.

APPROVED/EXECUTED:

Robert A. Irvin, Mayor

ATTEST:

APPROVED AS TO FORM:

Virginia A. Mefford, City Clerk

Ann P. Roberts, City Attorney

THE CENTER:

Tedd Hass, President

CITY OF WILLCOX
Request for Council Action

Agenda Item: 9
Tab Number: 3

Meeting Date:
March 17, 2016

Action:
 Resolution
 Ordinance
 Other

Subject: Resolution 2016-03
Intergovernmental Agreement
with Cochise County for
sharing Wireless Emergency
Notification System

To: Mayor and City Council

From: Jose Rios, Police Chief

Discussion: Cochise County wishes to share the Wireless Emergency Notification System (WENS) with other governmental public safety entities, which will ultimately enhance emergency response services within Cochise County and increase safety and well-being for a greater number of Cochise County residents.

Cochise County will provide administrative access to use all messaging capabilities and databases within the WENS system for the purpose of notifying residents and businesses within their jurisdictional boundaries of immediate life and health threats.

It has been determined that both parties would benefit by the City of Willcox entering into this Intergovernmental Agreement with Cochise County.

Recommendation: Approve the Intergovernmental Agreement with Cochise County.

Fiscal Impact: None.

Submitted by: 
Jose Rios, Police Chief

Approved by: 
Ted Soltis, City Manager

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

RESOLUTION 2016-03

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA (“CITY”) APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH COCHISE COUNTY TO PROVIDE WIRELESS EMERGENCY NOTIFICATION SYSTEM

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

SECTION 1: The Mayor and City Council approve the Intergovernmental Agreement (IGA) presented herein as Exhibit “A”.

SECTION 2: The Mayor is authorized and empowered to execute this Resolution.

SECTION 3: The City Manager is authorized and directed to take all action necessary and required to carry out the intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, this 17th day of March, 2016.

APPROVED/EXECUTED:

ROBERT A. IRVIN, Mayor

ATTEST:

APPROVED AS TO FORM:

VIRGINIA A. MEFFORD, City Clerk

ANN P. ROBERTS, City Attorney

EXHIBIT "A"
INTERGOVERNMENTAL AGREEMENT
BETWEEN COCHISE COUNTY AND CITY OF WILLCOX
FOR SHARING THE
WIRELESS EMERGENCY NOTIFICATION SYSTEM

THIS INTERGOVERNMENTAL AGREEMENT dated March 17, 2016 ("**Agreement**"), is made by and between COCHISE COUNTY, a political subdivision of the State of Arizona ("**Cochise County**") and the CITY OF WILLCOX, a political subdivision of the State of Arizona ("**Willcox**"). Cochise County and Willcox are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

RECITALS

WHEREAS, Cochise County pays the lease for and maintains the Wireless Emergency Notification System ("**WENS**"), a voice and text messaging service system that provides emergency notification alerts to members of the public of Cochise County who are registered in the system database to receive notifications via this service; and

WHEREAS, Cochise County wishes to share the WENS with other governmental public safety entities, which will ultimately enhance emergency response services within Cochise County and increase safety and wellbeing for a greater number of Cochise County residents; and

WHEREAS, the Parties desire to cooperate and collaborate beyond statutory requirements to assure that disaster preparedness efforts are efficiently coordinated and effectively integrated within their jurisdictions; and

WHEREAS, the Parties have reached an agreement on the sharing of WENS and an understanding of the responsibilities of each Party in implementing this Agreement; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to the provisions of Arizona Revised Statutes ("**A.R.S.**") § 11-952;

AGREEMENT

NOW, THEREFORE, the Parties hereto, in consideration of the stipulations, covenants, and agreements hereinafter set forth, hereby agree as follows:

ARTICLE 1. LICENSE AND SUPPORT

A. Under this Agreement Cochise County agrees to provide Willcox the following:

1. A non-exclusive, non-transferable, non-sub licensable administrative access to use all messaging capabilities and databases within the WENS system for the purpose of notifying residents and businesses within their jurisdictional boundaries of immediate life and health threats.
2. Two hours of consultation and training from Cochise County Public Safety staff on best practices and requirements for set-up, configuration, and use of WENS.

B. Parties shall comply with all WENS policies and terms of use. Violation of this provision shall be grounds for Cochise County's immediate termination of this Agreement. If the Agreement is terminated pursuant to this section, Cochise County is indemnified as outlined in Article Four of this Agreement.

ARTICLE 2. INFORMATION CONTROL, RELEASE, AND ACCURACY

A. The Parties agree that public notifications using WENS shall only be notification to the Party's residential base as follows:

1. Public notifications using WENS shall only be sent to the residents and businesses within the agency's jurisdictional boundaries.
2. Public notifications using WENS shall never be used for purposes other than emergency notifications or periodic tests.
3. For purposes of this agreement, "emergency" is defined to mean "circumstances where residents' lives, health, and/or safety are at immediate and serious risk."
4. Before Willcox initiates a WENS public notification, Willcox Police Chief or designee shall determine, and document in writing, that an emergency exists, and then shall authorize an emergency notification.
5. Violation of this provision shall be grounds for Cochise County's immediate termination of this Agreement. If the Agreement is terminated pursuant to this section, Cochise County is indemnified as outlined in Article Four of this Agreement.
6. Willcox may use WENS internally to send and receive messages between agency employees, and may conduct monthly test notifications, without violating this Agreement.

B. Willcox specifically disclaims any warranty concerning the functionality of the WENS System or its suitability for Cochise's purposes or systems.

C. Data in which third party copyright is in place or have other usage and distribution restrictions shall not be distributed via this Agreement. The Parties shall be responsible for removing any such information from data before it is supplied to the other Party.

D. Cochise County has, and shall retain, final decision-making authority regarding the use, of all data, contained in WENS. Cochise County shall also retain authority to authorize, modify, and veto proposals by Willcox to issue informational and emergency alerts using WENS.

ARTICLE 3. FINANCIAL CONSIDERATIONS

A. Cochise County retains responsibility for the basic WENS subscription cost for participation in this Agreement. Nothing included in this Agreement requires either Party to fund the activities of the other Party. Upon termination of this Agreement, all data within the WENS database will remain the property of Cochise County.

B. This Agreement shall be subject to available funding, and nothing in this Agreement shall bind either party to expenditures in excess of funds appropriated and allocated for the purposes outlined in this Agreement.

C. Willcox shall be solely responsible for any costs Willcox causes to be incurred above the normal contract lease rate Cochise County pays for WENS.

D. The employees of each party to this Agreement will not for any purpose be considered employees or agents of the other party. Each party assumes full responsibility for the actions of its personnel while performing services under this Agreement, and shall be solely responsible for their supervision, direction, and control.

ARTICLE 4. INDEMNIFICATION

To the extent permitted by law, each Party (as “**Indemnitor**”) agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “**Claims**”) arising out of actions taken in performance of this Agreement, and including WENS failures, to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

ARTICLE 5. TERMINATION

This Agreement may be terminated for any reason by either Party upon thirty days written notice to the other Party. Upon termination of this agreement, either party may

continue to contract with the WENS provider for services upon formation of a new contract binding only that party and the WENS direct provider.

ARTICLE 6. TERM

The term of this Agreement shall be for one year from the date of the last-signing party's signature, and for a period of nine years will automatically renew for an additional year twenty days before the scheduled end date, unless one party notifies the other at least thirty days before the end date of its intent to terminate the agreement. This agreement will terminate at the end of the ten-year period unless this agreement is amended in writing.

ARTICLE 7. MISCELLANEOUS PROVISIONS

A. NOTICES: All notices to the other Party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

///

If to Cochise County: Lauri Owen, Civil Deputy County Attorney
Cochise County Attorney's Office
P.O. Drawer CA
Bisbee, Arizona 85603

If to Willcox: City Manager
101 S. Railroad Ave. Suite B
Willcox, AZ 85643

B. WAIVER OF TERMS AND CONDITIONS: The failure of Cochise County or [Willcox] to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights, or privileges, and they shall remain in full force and effect.

C. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona and County of Cochise.

D. NONASSIGNMENT: This Agreement has been entered into based upon the personal reputation, expertise, and qualifications of the Parties. Neither Party shall assign its interest in this Agreement, either in whole or in part.

E. ENTIRE AGREEMENT: This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties.

E. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

F. CONFLICTS OF INTEREST: The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

G. COMPLIANCE WITH CIVIL RIGHTS: The Parties agree to comply with A.R.S. Title 41, Chapter 9 (Civil Rights), Arizona Executive Orders 75-5 and 99-4, and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

H. ARBITRATION: To the extent required by A.R.S. §§ 12-133 and 12-1518(B), the Parties agree to resolve any dispute arising out of this Agreement by arbitration.

I. WORKER'S COMPENSATION: Each Party shall comply with the notice of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022, each Party shall be considered the primary employer of all personnel currently or hereafter employed by that Party, irrespective of the operations of protocol in place, and said Party shall have the sole responsibility for the payment of Worker's Compensation benefits or other fringe benefits of said employees.

J. COMPLIANCE WITH LAWS: The Parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this Agreement and any disputes hereunder.

K. NO JOINT VENTURE: It is not intended by this Agreement to, and nothing contained in this Agreement shall, be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.

L. NO THIRD PARTY BENEFICIARIES: Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement or affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

M. AUDITS: Audits may be conducted at a time, mutually agreed upon, by any appropriate political subdivision or agency of Cochise County when required by applicable federal regulations. The parties further agree that all accounts, reports, files and other records relating to this agreement shall be kept for three (3) years after termination of this agreement and shall be open to reasonable inspection by the other party during that period.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth below.

“Willcox”
CITY OF WILLCOX, a political
subdivision of the State of Arizona

“Cochise County”
COCHISE COUNTY, a political
subdivision of the State of Arizona

By: _____
Mayor, Robert A. Irvin

By: _____
Chairperson, Board of Supervisors

Dated: _____

Dated: _____

ATTEST:

ATTEST:

Clerk of the City of Willcox

Clerk of the Board of Supervisors

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The attached Agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the each of the undersigned Attorneys who has independently determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to each of the above-identified parties.

SIGNATURE _____
Cochise County Attorney

Date

SIGNATURE _____
City of Willcox Attorney

Date