

**CITY OF WILLCOX**  
**MAYOR AND CITY COUNCIL MEETING**  
**WORK SESSION**  
**AGENDA**

**Monday, September 20, 2010**

**6:00 p.m.**

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

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

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE OF ALLEGIANCE TO THE FLAG**
4. **DECLARATION ON CONFLICT OF INTEREST**  
The 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 may have a conflict of interest.
5. **ADOPTION OF THE AGENDA**  
The Council will at this time either adopt the agenda as presented by the City Clerk 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.
6. **DISCUSSION REGARDING THE PROFESSIONAL SERVICE AGREEMENT –TWIN LAKES GOLF COURSE**  
Consideration and/or discussion regarding the Professional Service Agreement-Twin Lakes Golf Course.
7. **ADJOURN**

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**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, ext. 4204, during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday.



## NOTICE OF MEETING

### 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 **SESSION MEETING** on **MONDAY** the **20<sup>th</sup>** day of **SEPTEMBER** 2010, at **6:00 P.M.**, at the **CITY COUNCIL CHAMBERS, 300 W. REX ALLEN DRIVE, WILLCOX, AZ.**

Item for consideration and/or discussion relating to:

# PROFESSIONAL SERVICE AGREEMENT TWIN LAKES GOLF COURSE

All members of the public are invited to attend such meeting.

DATED AND POSTED this 16<sup>TH</sup> day of SEPTEMBER 2010, at 2:30 P.M.

CITY OF WILLCOX, ARIZONA

*Cristina G. Whelan, CMC*

/s/CRISTINA G. WHELAN, CMC

City Clerk Cristina G. Whelan, CMC

Agenda\2010\wsmtgnotice092010

*"Mine, Yours, Ours"*

**CITY OF WILLCOX  
REQUEST FOR COUNCIL ACTION**

**Agenda Item:** \_\_\_\_\_

**Tab Number:** \_\_\_\_\_

**Date:** 09-20-2010

**Date Submitted:**  
9-13-10  
**Date Requested:**  
9-20-10

**Action:**  
 Resolution  
 Ordinance  
 Formal  
 Other

**Subject: Contract for  
operation of the Twin  
Lakes Golf Course**

**TO: MAYOR AND COUNCIL**

**FROM: City Manager**

**DISCUSSION:** The City of Willcox owns and operates the Twin Lakes Golf Course. The City has chosen to use a private Contractor for the operation of this recreational facility.

The current Contractor was chosen after a Request for Proposal process in November 2003. The agreement was amended in May 2004 and again in July 2008. The amendments substantially reassigned duties, waived fees for use of effluent, and provided additional compensation to the Contractor.

Under the current contract: the Contractor receives \$52,000 (\$40,000 from General Fund Parks & \$12,000 from Sewer Fund). The Contractor is also permitted to use the City Liquor License and is permitted to operate various golf related concessions at the course and retain the revenue (memberships, greens fees, cart rental, food, beverage, driving range, etc.).

The current agreement ends December 31, 2010.

The current Contractor has indicated a desire to continue; he has also indicated he is considering having the new contract assigned. Any assignment requires City Council approval.

The new proposed contract is much more detailed in describing the responsibilities of the Contractor and the City. A great deal of time was spent with current Contractor and Public Works staff defining responsibilities.

The Council retains ratification of the amount charged for Greens Fees and Memberships: which the Pro recommends. Pro sets all other fees at the Course. The Council may not set free or reduced fees without the Pro's agreement. There are also provisions to provide free use of the course by the High School Golf Team, and free greens fees for active city employees.

The subsidy is increased slightly (\$2,500/yr), this is because of additional duties the Pro has undertaken, primarily the irrigation system. The new total annual subsidy is \$54,500 (Sewer Fund \$12,000, General Fund \$42,500). The subsidy may be reduced if there are across the board reductions in the City Budget.

There is 2% of the Greens Fees and Memberships that the General fund receives. Current fees are listed. There are also partial year membership rates.

9 holes	\$10
18 holes	\$15
Yr membership	\$525
Yr couple	\$650
Yr Family	\$700

From the 2% that the City General Fund receives; there is a set aside (reserve) of \$2,500 [this is not included in the subsidy above]; for improvements to the irrigation system, the amounts over the \$2,500 set aside, go unrestricted into the General Fund.

The course has the priority on all the effluent water produced during the life of the contract.

The Contractor is permitted, with City approval to make capital improvements. If the Contractor does make improvements and the agreement is ended early the City is obligated to repay the Contractor a Pro Rata amount.

The proposed term of the agreement is five (5) years.

The Agreement provides for unspecified renewal.

Pro is permitted to have other employment, but must have an onsite supervisor, whom the City approves.

The number of rounds (18 holes) played over the last seven years is as follows:

8-1-03 through 7-31-04	7307
8-1-04 through 7-31-05	8103
8-1-05 through 7-31-06	8564
8-1-06 through 7-31-07	7034
8-1-07 through 7-31-08	7163
8-1-08 through 7-31-09	8280
8-1-09 through 7-31-10	7104

**RECOMMENDATION:** Staff is comfortable with the existing Contractor and the proposed contract. Without going out for a Request for Proposals, it is unknown if there is interest in managing this course by other parties.

**FISCAL IMPACT:** \$54,500/year

**Prepared by:** Pat McCourt

**Approved by:** \_\_\_\_\_



**Pat McCourt, City Manager**

## **Professional Service Agreement Twin Lakes Golf Course**

This Agreement (hereinafter referred to as the "Agreement") is made by and between the City of Willcox (herein referred to as the "City") and \_\_\_\_\_ (herein referred to as the "Pro").

Whereas, the City is the owner of the Twin Lakes Golf Course (herein referred to as the "Course"); and

Whereas, the City wishes to engage, as an independent contractor, a competent professional to manage and operate the Course. Further the City wishes to lease its Governmental Liquor License as part of the agreement.

Whereas, the Pro is a professional with demonstrated abilities in the operation of similar facilities and wishes to lease the liquor license and manage the Course as an independent contractor.

Whereas, the PRO accepts the conditions and requirements of this agreement and the Exhibits, A, B, C, & D.

Now therefore, in consideration of the mutual benefit to be derived by both parties herein, it is agreed as follows:

1. **ENGAGEMENT OF THE PRO.** City shall engage the Pro as an independent contractor to operate the course, which operation shall include the golf course, driving range, club house facilities, and liquor license as more particularly described herein, in accordance with the terms, conditions and covenants contained herein.
2. **INDEPENDENT CONTRACTOR STATUS** Pro and City, in performing obligations under the agreement, understand and agree that:
  - a) City will require Pro to use Pro's own methods,
  - b) Pro will receive no training from the City,
  - c) Services provided by the Pro are not subject to direction and control by City,
  - d) City is not interested in the methods which Pro employs, but is interested in the results which Pro achieves,
  - e) Pro may hire, supervise, and pay such assistants as Pro may require to provide services under agreement,
  - f) A continuing relationship between Pro and City is not established by agreement,
  - g) In performing duties under agreement, Pro is the master of Pro's time. City shall not establish hours of work for Pro. The City does reserve the right to set times when the course must be available for play.
  - h) City shall not require the Pro to work exclusively for the City. Pro can work when and for whom Pro chooses. City understands that Pro can provide services to other third parties who are not related to City during the time Pro's obligations under agreement are being performed,

- i) City shall not require Pro to perform services in the order or sequence set by the City,
- j) Pro shall not be paid by the hour, week, or month, but shall be entitled to the retainer set out in Section 5 of the agreement,
- k) City shall not pay the Pro's business or travel expense,
- l) City understands the Pro has a significant investment in the equipment and supplies which Pro uses in providing services under agreement.
- m) City and Pro understand that Pro can make a profit or suffer a loss in providing services under agreement,
- n) City understands that Pro is an independent contractor, who makes professional services available to the general Public.

### 3. TERM

- a) Agreement shall be for a term of five (5) years, beginning on January 1, 2011 and ending December 31, 2015.
- b) Should the Governing Body of the City choose to end the agreement as per Section 4 of the agreement, City may:
  - i. Reimburse the Pro for new, unused pro shop inventory upon presentation of paid invoices.
  - ii. Reimburse Pro for the depreciated value of the trade fixtures and equipment that the Pro does not wish to remove and that the City wishes to retain, and that there are no liens upon. The depreciated value shall be calculated on the 5 year straight-line method over a class life that does not exceed the term of agreement. Prior to February 1, 2011, Pro will provide a report of trade fixtures dated as of January 1, 2011 showing the depreciated schedule for each fixture/equipment; (Exhibit C)
  - iii. Reimburse the Pro within ninety (90) days of end of agreement, at the depreciated rate for any capital improvements made by Pro, to Clubhouse facility or any other capital improvements made on the course, provided such improvements have been approved in advance by the City. The depreciated rate shall be straight line over the class life of the improvement, such life having been approved by the City in writing prior to the installation. Prior to December 31, 2014, Pro will provide a report showing any and all Capital Improvements made by Pro that were approved by the City, supporting documentation indicating the City's approval, and the depreciated value for each Capital Improvement. (Exhibit C)
  - iv. Assume Pro's obligations under contracts for the purchase or rental of capital equipment used by Pro in performing services under agreement, at the course, including, but not limited to a contract for the purchase or rental of golf carts, provided the City has approved the contracts prior to execution, such approval shall not be unreasonably withheld. (Exhibit C)
  - v. Reimburse Pro for the cost of usable inventories remaining in restaurant/Bar, upon presentation of paid invoices.
- c) Should the Pro choose to end the agreement as per Section 4 of the Agreement the City shall be required to follow the items in Section 3 b) i. – v.

- d) Should the Pro choose to end the agreement other than Section 4 or Section 28, the City shall be under no obligation to follow any of the provisions of this Section 3.

**4. TERMINATION/BREACH**

If either the City or the Pro fail to comply with any of the provisions of agreement; and fail to cure same, or are unable to provide justification for such noncompliance; then agreement may be terminated by the complying party. Said termination shall be effective thirty (30) days mailing notice to the address provided in this agreement by 1<sup>st</sup> class US mail, or hand delivery of notice.

**5. COMPENSATION.**

- a) Concessions – Pro shall be given the exclusive privilege and shall be permitted, during the term of agreement, to operate the following concessions on the premises of the course. City shall receive the percent of income indicated after each service below. The remaining portion of the income collected is due the Pro; City income shall be accounted for and turned into the City finance office on a monthly basis. For the purposes of this section, revenues shall be the gross revenues prior to the application of Sales Tax. These payments are not in lieu of Sales Tax, these are additional payments for the use of the Course. At no time shall the City be responsible for any operating losses of concessions.
  - 1) Services for which the Pro establishes the maximum charge with City Council ratification:
    - i. Membership fees -- 2%
    - ii. Greens fees-- 2%
  - 2) Services for which Pro establishes the maximum charge:
    - i. Sales in the Pro Shop -- 0%
    - ii. Golf Instruction -- 0%
    - iii. Golf Club Cleaning , rental and storage -- 0%
    - iv. Locker rental -- 0%
    - v. Driving Range facilities -- 0%
    - vi. Rental of Golf Cars -- 0%
    - vii. Shed rental Fees -- 0%
    - viii. Trail Fees -- 0%
    - ix. Club Rental, hand pull carts -- 0%
    - x. Any other service or goods sold at the Course -- 0%
- b) The amounts due to the City shall be turned into the City finance office by the twentieth (20<sup>th</sup>) working day following the close of the month. At no time shall the City be responsible for any operating losses.
- c) Retainer – This is a payment by the City to the Pro for delivery of services under agreement. The amount shall be \$ 54,500.00 per year. Payments will be made on a monthly basis, by the tenth (10<sup>th</sup>) working day following the close of each month.
  - i. This amount may be held by the City in trust if the Pro fails to provide the reports or pay the amounts owed the City as indicated in this contract.

- ii. If the City reduces General Fund expenditures due to revenue shortfalls, the amount of subsidy paid may be reduced the like amount for the remainder of that fiscal year.
- d) Pro shall maintain, in accordance with generally accepted accounting methods, in the clubhouse, a complete set of books for operations under this Agreement. The books shall be available to the City finance staff for review upon request from the City. An annual compilation of these books shall be prepared by a certified public accountant, at the Pro's sole expense, and this annual compilation shall be submitted to the City Clerk's office within 120 days of the close of the year. Pro shall provide to the City's Finance Director a quarterly Golf Course Activity Report which shall include the total amount of revenues collected from each source identified in Sections 5.a) of this Agreement, the total number of rounds played, and number of memberships sold. The required activity report shall be submitted to the City's Finance Director no later than the 15<sup>th</sup> day of the month following the end of the quarter.
- e) Water hole concession – The Pro shall have the exclusive right to retrieve golf balls from the water hazards or other bodies of water located within the Course and retain any proceeds from the sale of the retrieved balls. Pro shall use an experienced and reputable company for this purpose and shall exercise due care so as not to harm any pipes, drainage equipment, irrigation facilities or other similar apparatus located within the water hazards or bodies of water

**6. DUTIES AND AUTHORITIES OF PRO** – In the performance of the duties under agreement the Pro shall work with the City Manager or designee on matters relative to the Agreement. The general functions of the Pro shall be as follows:

- a) The Pro may discount fees, package green fees, or provide membership discounts when the Pro determines that a such discounting or packaging would encourage play. Discounting or packaging shall be limited as follows:
  - 1) The discounted green fee shall not be less than 50% of the regular green fee unless otherwise consented to in writing by the City Manager;
  - 2) Discounts or packaging shall be for limited periods or consist of an “upfront” payment program such as discount cards;
  - 3) The Pro shall keep a record of all such discount or packaging programs which shall be provided to City staff upon request.

The Pro may permit up to 1000 Complimentary/Promotional Rounds (each round is equal to 18 holes of golf) to be played in each calendar year of the agreement at no charge. There is no “carry over” nor “borrowing”. Pro shall maintain a record of Complimentary/Promotional Rounds. No unpaid use of the Course shall be allowed, except under this paragraph or paragraph 6.g) and 6h) of this Agreement.
  - 5) The Pro may also make the membership discounts when consented to by the City Manager in writing.:

In no case shall a membership extend beyond the Termination date of this Agreement.
- b) Performance of the services as stated in the Exhibit B which is incorporated into this document by reference.



- c) Provide supervision and coordination on the Course.
- d) Pro shall pay all operating expenses of the Course (excepting the area used by the Food Pantry).
- e) Pro may with City's prior written approval, which shall not be unreasonable withheld, make capital modifications, alterations and other changes to the interior of the Clubhouse, which shall be recorded on Exhibit C.
- f) Pro shall obtain and keep current, all necessary licenses or permits necessary to accomplish duties under the Agreement.
- g) Pro shall allow the Willcox High School Golf Team to play without charge by the Pro in accordance with the Exhibit B. This play includes use of the driving range and 3 – 5 days annually for tournaments.
- h) As an enticement to encourage use of the Course, the Pro shall permit individuals who are at the time of play current City of Willcox employees to use the Course, when the Course is available for general play, at no cost of Greens fees; all other costs shall be charged. These rounds are not included in 6.a) 3) above.
- i) The Pro shall maintain the interior of the structures, provide the necessary maintenance of the interior, including but not limited to painting and cleaning. .
- j) The Pro shall use best current practices for maintenance of the all vegetation on the Course (including the requirements of Exhibit D), including vegetation in and surrounding the water hazards/lakes (if any).
- k) The Pro will be responsible for the maintenance and repair of the irrigation system from and including the individual control valves to the irrigation heads. This will also include the controller and wiring to the control valves.
- l) The Pro shall maintain the cart paths.

**7. DUTIES AND RESPONSIBILITIES OF THE CITY**

- a) The City shall at its sole expense be responsible for the upkeep on: parking lot, exterior of buildings, heating and cooling equipment, ventilation equipment, fences, replacement of plate glass, upkeep of utility connections to any buildings, plumbing, electrical, and maintenance of the water hazards/lakes (Maintenance of the water hazards/lakes means the maintaining the integrity of the body of water to hold water-not Leak. At the time of this agreement the water hazards /lakes are not capable of holding water and the City does not have any funds budgeted or planned to bring them to usable condition, neither is the City providing assurance that if/when they are brought to usable condition that there will be sufficient water to fill the water hazards/lakes).
- b) The City shall maintain the pumps for delivery of effluent water to the Course in proper operating condition and pay the utility cost of operation of the pumps. The City shall maintain and repair all main lines and electrical lines on the course up to the individual control valves as well as the individual gate valves which feed the control valves. The City shall maintain and repair all main line valves on Course used to isolate various sections of the Course and the various pipes and valves used to feed effluent to the Course from the City's Waste Water Treatment Plant.
- c) The determination of good and serviceable condition of the Course shall be made by the City Manager in conjunction with the Pro.(See exhibit D for details)

- d) The City shall budget in each fiscal year during the term of this contract an amount to be used, by the Pro, to purchase materials as listed in section 6.k) above.
- e) Additionally, the City shall reserve the amounts received under section 5.a)1)i. & ii. Until the amount reserved equals \$2,500.00. Once the amount equals or exceeds \$2,500.00 any additional sums will be unrestricted deposits into the General Fund. Monies within this restricted account maybe used to provide improvements to the irrigation system, with the approval of the City Manager.
- f) The City agrees to; within one year of the approval of this agreement provide all the necessary parts, equipment, and labor to convert the existing practice green from potable water to effluent water

**8. GOLF CARS**

- a) The provision of golf cars for use on the course shall be the sole and exclusive responsibility of the Pro, except as noted in Section 8.b.
- b) Pro understands that the individuals have privately owned golf cars and may use them on the course subject to reasonable rules and regulations set by the Pro. These individuals are subject to reasonable storage and trail fees as provided herein

**9. EQUIPMENT AND TRADE FIXTURES**

Pro shall have the authority to purchase, at Pro's sole cost and expense, such trade fixtures and equipment as the Pro may feel necessary or appropriate. Disposition of these items will be as set forth in section 4 of agreement. (Exhibit C). The Pro further acknowledges that the items listed on Exhibit A are the property of the City and shall be returned to the City in as good of a condition as received excepting normal wear.

**10. COMPLIANCE WITH LAWS**

Pro shall comply with all applicable Federal, State, and local laws and ordinances governing the operation of the course. Violation of any such laws or ordinances may be considered as cause for termination under section 4 of Agreement.

**11. PAYMENT OF OBLIGATIONS**

Pro shall promptly pay all debts incurred by him for the purchase of goods or services used in the operation of the Course. Pro shall not permit any lien to be established against the Course.

**12. INSURANCE**

- a) Liability Insurance Throughout the term of Agreement, City will maintain in effect a policy of liability insurance, or self insure, against all risks for which a municipality may be held liable under the laws of the State of Arizona. The amounts of such insurance shall not be a limitation of City's agreement to indemnify, defend and hold Pro harmless.
- b) Pro Liability Insurance Pro shall secure public liability, property damage and products liability insurance with policy limits not less than the minimum amount which the City is liable under the Arizona Tort Claims Act. The amounts of such

insurance shall not be a limitation of Pro's agreement to indemnify, defend and hold City harmless.

- c) Fire and Casualty Insurance City shall at all times maintain in effect, with Pro as an additional insured, insurance against loss by fire or other casualty for buildings or improvements located on the Course.
- d) Evidence of Insurance. Each party shall deliver to the other a certified copy of the relevant policies of insurance or a certificate evidencing such insurance, upon written request. Each policy or certificate evidencing such insurance shall contain a provision requiring thirty (30) days' notice to the certificate holder before cancellation or a material change of the policy.

**13. NOTICE OF CLAIMS**

Each party shall give the other prompt notice of any claim coming to that party's knowledge that in any way directly or indirectly affects either party, and both parties shall have the right to participate in the defense of any such claim or suit instituted against that party where the liability is fully covered by insurance maintained by that party under the provisions of Agreement.

**14. INDEMNITY**

- a) Pro agrees to indemnify, defend and hold harmless City from any and all liability or loss against all claims, or actions based on or arising out of damage or injury to persons or property, caused by or sustained in connection with the performance of Pro's duties as provided herein.
- b) City agrees to indemnify, defend and hold harmless Pro for any and all liability or loss, and against all claims or actions based on or arising out of damage or injury to persons or property caused by or sustained in connection with the performance of the obligations and conditions of City as provided herein.

**15. HAZARDOUS SUBSTANCE**

City and Pro hereby affirm and agree that Pro is in no way responsible for the maintenance and upkeep of the Course prior to this Agreement. City hereby agrees to indemnify and defend Pro from any and all liability, claims or causes of action arising out of or based on claims or alleged causes of action or damages that there was, is or has been use of hazardous substances on the Course prior to this Agreement.

**16. EMPLOYEES**

The Pro shall employ any assistants necessary to effectively carry out the duties enumerated in Agreement. Pro shall be considered the employer of all assistants to be employed, shall pay them the salary stipulated in connection with their employment, and shall pay such federal, state and social security payments as are required by law, and shall comply with all federal and state laws in connection therewith.

**17. UTILITIES**

- a) Electrical service and electricity and other utility services used on or serving the Course, including but not limited to, gas, wastewater/sewage (shall be charged to the Pro at a rate established for a Commercial sewage account of like sized meter with a

flow as determined by the parties and approved by the City Manager), cable services, telephone, and potable water, are the responsibility of the Pro. The City shall work in cooperation with the Pro to make sure the Pro can secure the services at the rate charged for similar facilities, activities or uses by the applicable utility company to City. Pro shall timely pay all charges incurred for said services.

- b) The City shall be responsible for payment of all utilities necessary to deliver Effluent Water to the Course.
- c) Utility services used by the Food Pantry are the responsibility of the City. This was on original agreement highlighted for reference only

**18. FORCE MAJEURE**

If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, labor trouble, inability to procure material, failure of power, restrictive governmental laws or regulations, including, but not limited to, any laws or regulations imposed by City, riots, insurrection, war or other reason of a like nature, not the fault of the party delayed in performing work or doing acts required under Agreement, at the option of the party delayed, Agreement may be terminated or the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**19. PERSONNEL**

- a) City retains approval of the person performing the on-site duties of Pro. Pro may hire a qualified on-site principal, with prior approval from City, to perform the day to day responsibilities.
- b) If the Pro and the on-site principal are unable to perform the duties due to illness or death, the City may declare the Pro to be in default.

**20. MISCELLANEOUS PROVISIONS**

- a) The waiver by either party of a breach or violation of any provision of Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.
- b) No modification, amendment, addition to or termination of Agreement, nor waiver of any of its provisions, shall be valid or enforceable unless in writing and signed by all of the parties, except as herein otherwise provided.
- c) Agreement shall be binding on the parties, their distributees, legal representatives, successors and permitted assigns. Agreement is personal to each of the parties, and neither party may assign nor delegate any of its rights or obligations hereunder without first obtaining the written consent of the other party.
- d) Any and all notices required or permitted to be given under Agreement will be sufficient if furnished in writing, sent by registered mail to the address listed in this agreement.
- e) In any action or proceeding brought by any party under Agreement, the prevailing party shall be entitled to recover from the other party attorneys' fees, investigating costs, and other legal expenses and court costs incurred by such prevailing party in such action or proceeding as the court may find to be reasonable.
- f) Agreement shall be interpreted, construed, and governed according to the laws of the State of Arizona.

- g) In the event that any one or more of the provisions contained in Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions hereof, and Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.
- h) The paragraph or section headings contained in the Agreement are for convenience only and shall in no manner be construed as a part of Agreement.
- i) Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.
- j) Each party which is a signatory to Agreement has full authority to enter into Agreement.
- k) The books and records, of the Pro, relating to this Agreement, shall be made available to city officials, or city agents, within forty-eight (48) hours of request for auditing purposes.
- l) The City understands that the Pro maintains a Travel Trailer on site, for which approval was received from the City Planning & Zoning Commission, the purpose being for a caretakers residence. The City has no objection to the Travel Trailer as long as it is fit for human habitation and used for that purpose.

**21. GRANT OF CONCESSION**

City grants to Pro, exclusive right to food and beverage services in the Clubhouse and any other location on the Golf Course which Pro deems appropriate for the operation of the services described herein and grants to Pro the exclusive privilege to sell, at prices Pro deems appropriate, food, beverages and, if applicable, alcoholic beverages on the Course, as Pro deems appropriate.

**22. LEASE OF ALCOHOLIC BEVERAGE LICENSE**

- a) Governmental License City has a Class 6 license to sell alcoholic beverages at Course. Pro understands that a license may be leased to a qualified lessee as determined by the State of Arizona. City agrees to lease said license to Pro during the term of Agreement upon such terms and conditions as may be set forth in law and regulation including, but not limited to those promulgated by the State of Arizona. City represents and warrants that during the term of Agreement no other party shall be given authority to sell alcoholic beverages from anywhere on Course.
- b) Professional License Should City fail to retain a governmental license to sell alcoholic beverages or the authority to lease said license, Pro shall have full authority to obtain a license for the sale of alcoholic beverages on Course. Should Pro obtain the license to sell alcoholic beverages, it shall pay the City, as set forth in section 5 of this agreement.
- c) Sales Tax Statements. Pro shall be required to provide to City monthly copies of the gross receipts tax statements and total sales volume from alcoholic and non-alcoholic sales within fifteen (15) days after the due date to the State of Arizona.

**23. PERSONAL PROPERTY AND FIXTURES**

Upon commencement of Agreement, Pro may take possession of, clean, repair and use those items of equipment identified in Exhibit A attached hereto and made part hereof. The items listed in Exhibit A shall remain the property of City. Additions or deletions shall be noted in writing to the City and by the City. All other equipment necessary to provide the services enunciated in Agreement shall be furnished by Pro. All equipment not on Exhibit A (furnishings and the like which have been purchased by Pro) may become the property of City upon termination of Agreement as provided in Paragraph 3 of this Agreement.

**24. USE OF PREMISES**

The Course may be used for any purpose permitted under the City Zoning Codes.

**25. HOURS OF OPERATION**

Pro shall maintain the concession business open, at a minimum, three hundred (300) days, during each calendar year, during daylight hours.

**26. CITY ACCESS**

Upon reasonable notification to Pro, City shall have reasonable access to all leased premises for the purpose of inspecting the same and making the repairs for which City is responsible as provided herein.

**27. PARKING**

Patrons of Pro shall have the right to use Course parking area which shall otherwise be under the exclusive control of City. City shall maintain the parking area in good order throughout the term of Agreement.

**28. DAMAGES TO PREMISES**

- a) If at any time during the term of Agreement, the Course, or any improvements located thereon, including, but not limited to, the heating, air conditioning, ventilation and sewage systems, are damaged by fire, act of nature, act of City or other cause beyond Pro's control, such that it is impractical or impossible for Pro to operate the Course or provide the other services contemplated by Agreement, Pro may terminate Agreement. To so terminate Agreement, Pro shall deliver written notice to City within twenty-one (21) days after the damage occurs, specifying the reasons for termination. Upon delivery of the notice, Pro shall have no further liability to City beyond payment of fees provided herein accrued to the date of termination. The City shall be required to follow the steps required in Section 3 c).
- b) If Pro elects not to terminate Agreement, Pro shall give written notice to City of its election not to terminate. Failure to provide notice within twenty-one (21) days of the damage is notice to continue operation. As soon as reasonably possible after receipt of said notice, City shall restore Course, and/or, if applicable, any major improvements located thereon, including, but not limited to, the heating, air conditioning and sewage systems, to the condition they were in before the damage occurred. After giving notice, Pro shall restore the interior of Buildings, including, but not limited to, trade fixtures and equipment to the condition they were in before the damage occurred.

c) If at anytime during term of the Agreement the Course, or any improvements are damaged by causes within the Pro's control, Pro shall be responsible, at Pro's sole cost, to return the Course, or any improvements to the same or better state as prior to the damage. Failure of the Pro to immediately restore the damage may be basis for termination under Section 4.

**29. NOTICES**

City and Pro agree that any notices sent pertaining to this Agreement shall be sent by the mailing of written notice, by United States mail, postage pre-paid, to the address of the other party as set forth below or to such other address as the party may designate in writing:

For City:

City Clerk  
City of Willcox  
101 S. Railroad Ave Suite B  
Willcox Az 85643

For Pro:

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

**30. RENEWAL/EXTENSION**

Either party shall notify the other party at least twelve months prior to the expiration of this Agreement of their interest in renewal or extension. The second party shall within ten days of the request respond to the notice. The City Manager shall establish a schedule for discussion of renewal/extension within thirty days of acknowledgement of the request. Either or both parties may waive the notice requirements of this section by written notice to the other party; waiver is not automatic and must be accepted by the nonrequesting party.

**31. LIABILITY OF CITY**

City and Pro intend that an independent contractor-employer relationship exist by and between City and Pro. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Pro. Pro is not to be considered an agent or employee of City for any purpose, and the employees of Pro are not entitled to any of the benefits that City provides for City's employees. City shall not be liable to Pro if governmental authorities suspend, revoke or cancel the City's Class 6 Liquor License.

**32. ASSIGNMENT**

City and Pro agree that this Agreement may not be assigned by Pro without the prior written consent of City; which shall not be unreasonably withheld. If Pro wishes to assign the Agreement written notice shall be provided as per the requirements of this Agreement. The City may require background information on the proposed Assignee prior to placing the item for City Council action.

**IN WITNESS WHEREOF**, City and Pro have executed this Agreement on the date set opposite their signatures.

CITY OF WILLCOX, ARIZONA  
An Arizona municipality

By Mayor: \_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Christy Whelan, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Hector Figueroa, City Attorney

Name of Pro \_\_\_\_\_.

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

\_\_\_\_\_  
Date

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



## **Exhibit A**

### **List of City owned Property at the Twin Lakes Golf course as of January 1, 2011**

1. There are three (3) easy-go carts. All of them are very old and used up. One of them is used for repair parts for the other two. There are two (2) chargers with them and they both need timers in order for them to work.
2. There are three (3) display cases; all of them are in storage in poor condition.
3. There are three (3) tables 4'x6' and 59 chairs in fair condition.
4. There are two (2) riding Greens mowers. One of them was involved in a fire some years ago and has been used for parts for the remaining Greens mower.
5. The Greens Aerator runs, but it burns a lot of oil. All bushings need to be replaced and the engine rebuilt or replaced in order for this machine to perform efficiently and effectively.
6. Top-dressing/Sand spreading machine is functional but very old. It also burns a lot of oil and should be rebuilt.
7. The Ball Picker is very old and there are no parts available.
8. The Utility Cart is home made and old; but is functional.
9. There are two (2) Fuel Tanks in working order and are presently in use.

(Items listed 1-9 remainder of page blank.)



## **Exhibit B**

### **To operate and maintain Twin Lakes Municipal Golf Course under a Professional Service Agreement for a minimum of five (5) years starting January 1, 2011.**

The City of Willcox (City) is seeking to engage a Professional (Pro) to operate the Twin Lakes Municipal Golf Course (Course) as an independent contractor. The Pro is required to demonstrate experience and skills in the operation of similar type ventures. The Pro will have control of the operation and maintenance of the Course during the term of the Professional Service Agreement (Agreement). The City will provide Class B effluent water to the Course at no cost to the Pro.

#### **Description of the Course**

The course is located at 1000 South Rex Allen Jr. Road in Willcox Arizona. The Course consists of approximately 75 Acres of developed land that contains the nine (9) holes, 3 water hazards, 3 buildings, Driving Range, parking lot, and storage area. The playing area is a 9-hole, par 36 course, with a 69.3 PGA rating and a 107 slope rating. The playing area provides from 2727 yards of play from the ladies red tees, to 3303 yards of play from the men's blue tees. Typically the Course could be available for play 365 days per year during daylight hours. The heaviest use has been during the spring season.

**Attachment 1** is information concerning the number of rounds played in recent years.

#### **Ownership of Property and Equipment**

The City owns all Real Property and maintains the same. The City uses the water retention areas (ponds/water hazards) on the Course as part of the City's effluent disposal system and will retain control of the ponds. One building (Pro Shop) appears to have termite damage; the City may replace or substitute other building space on the Course if the building is deemed by the City to be unusable. The Pro shall have the control and use of all other building and space excepting the space currently used by the Food Pantry and described as follows: The City currently utilizes space within one of the buildings of approximately \_\_\_\_ square feet and anticipates continued use by the City during the term of this agreement.

The City has a Class 6 Liquor License (License) which the City will retain; the Pro may become the designated operator under the License if the Pro agrees to pay all associated fees.

The Pro will be expected to provide all equipment necessary for the maintenance and operation of the Course. Any Capital improvements made by the Pro will require prior approval by the City, which approval will establish any recapture of costs by the Pro. All equipment furnished by the Pro will remain the property of the Pro.

#### **Responsibilities of Pro and City**

Pro shall furnish all of the necessary labor, supervision, tools, vehicles, equipment, supplies, inventories, materials, utilities, insurance, and all other items incidental to the operation of the Course during the term of the Agreement and any extensions of the Agreement. All services, equipment, or other items provided by the Pro must comply with all applicable rules and regulations of the City and any other Federal, State, County,

or Local agency, which now exercises or may exercise control over the type of service provide by the Pro at the Course.

Pro shall establish fees and charges for services, sales, or rental of equipment. Information on these shall be available to the Public upon request. Pro may establish with City Council approval Greens fees and memberships.

Pro shall make the Course available for play a minimum 300 days per year, during daylight hours, tournament play shall be considered days available to the public.

Pro shall cooperate with the Willcox Unified School District Golf Program (School) by permitting active team members a reasonable number of rounds of golf and/or use of the driving range during and immediately preceding the High School Golf season, and must permit at no charge to the School for rounds at least one match play (tournament) between schools per calendar year. (Pro may charge for supplies, carts, food, etc.)

Pro will use the Class B effluent water, as permitted under State requirements, as necessary to properly water the Course; Pro is not required to use all effluent produced by the City.

Pro shall establish and make payments to maintain the necessary utilities (including potable water from the City) during the term of this Agreement.

Pro shall maintain the Course in good repair (**See exhibit D for further detail**) during the term of this agreement to include but not be limited to; the proper use of fertilizers, pesticides, mowing, irrigating, weeding, over seeding of Fairways, Tee boxes, and Greens, cleaning and maintaining the interior of buildings, maintenance of the cart paths, and policing the grounds.

Pro shall operate the irrigation system and maintain the irrigation system from and including the individual control valves to and including the sprinkler heads. (See attached drawing for clarification)

Pro shall only permit the application of Herbicides and Pesticides by a properly licensed applicator.

Pro shall maintain a Liability Insurance policy, naming the City additionally insured, in an amount not less than One Million dollars (\$1,000,000.00), which Policy shall cover public liability, personnel Liability, product liability, fire damage, and shall be in addition to any insurance coverage provided by the City.

Pro shall agree to protect, indemnify, subrogate, and hold harmless the City from any and all liability resulting from operation of the Course.

Pro shall be responsible for preparing any and all reports and payments.

Pro shall be responsible for providing to the City an amount of money as reflected in the Contract to reflect the % collected from various activities/services performed on the Course.

Pro shall indicate the name and background of the individual who shall be responsible for on site duties at the Course, this individual is subject to City approval which shall not be unreasonable withheld.

City shall provide Class B effluent water, year round, at no charge to the Pro, delivered to the Course, up to the amounts produced by the City's Waste Water Treatment Plant.

City shall maintain the irrigation system including pumps, piping, up to, but not including the individual control valves. (See attached drawing for clarification).

City shall maintain the exterior of the structures, parking lot, roadways, and ponds.

City shall provide payment, within 10 working days of the 1<sup>st</sup> of each month, 1/12 of the amount listed in the Contract for subsidy.

City shall maintain insurance on the Real Property sufficient to replace or repair the same if they are damaged.

**Term of Agreement**

City is establishing the initial term of the Agreement will be from January 1, 2011 to December 31 2015 (five years). City anticipates permitting up to three (3) one (1) year extensions to the agreement upon consent of both City and Pro.

(Remainder of page is blank.)



**Exhibit C**

**List of capital improvements and equipment showing: date of improvement; date authorized by the City; dollar cost of improvement; and Depreciation schedule.**

**(Remainder of page is blank.)**

**Exhibit D**  
**to the Professional Service Contract Twin Lakes Golf Course**

The Pro shall maintain the course and grounds in a professional manner using turf maintenance and improvement techniques which he deems appropriate. Such techniques include mowing, aeration, fertilization, weed and pest control, de-thatching, over seeding, etc. The timing and frequency will be at the discretion of the Pro. Public Services & Works Staff, including the Public Works Director, may inspect the course at any time. An active dialogue concerning golf course conditions shall exist between the City Staff and the Pro to address questions or concerns of the course condition. Unusual conditions such as water shortages, storms, equipment failures, revenue declines, etc. will be discussed and documented. In the event a disagreement arises between City Staff and Pro concerning the upkeep or quality of course conditions, the City Manager will be used to settle the dispute.