

TAB 1



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 **18TH** day of **OCTOBER** 2010 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 14TH day of OCTOBER 2010 at 3:00 P.M.

CITY OF WILLCOX, ARIZONA
Cristina G. Whelan, CMC
ISI CRISTINA G. WHELAN, CMC
CITY CLERK CRISTINA G. WHELAN, CMC

"Mine, Yours, Ours"

**CITY OF WILLCOX
EXECUTIVE SESSION**

AGENDA

MONDAY, OCTOBER 18, 2010

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"

TAB 2

**THE MINUTES OF THE WORK SESSION MEETING OF THE MAYOR
AND CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
HELD ON THIS 21ST DAY OF JUNE 2010**

CALL TO ORDER- Mayor Gerald W. Lindsey called the work session to order on Monday, June 21, 2010 at 6:30 p.m. welcomed and appreciates those present and any input they would like to hear.

ROLL CALL –City Clerk Cristina G. Whelan, CMC, called the roll.

PRESENT

Mayor Gerald W. Lindsey
Vice Mayor Monika Cronberg
Councilman Elwood A. Johnson
Councilman Christopher Donahue
Councilman William "Bill" Holloway
Councilman Robert "Bob" Irvin

STAFF

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

ABSENT
Councilman Stephen Klump

PLEDGE OF ALLEGIANCE TO THE FLAG-Mayor Lindsey.

DECLARATION ON CONFLICT OF INTEREST-There was no response from Council members or staff.

ADOPTION OF THE AGENDA

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

SECONDED: Vice Mayor Cronberg seconded the motion. **CARRIED.**

DISCUSSION REGARDING BILLBOARD CONTENT

City Manager Pat McCourt addressed the Mayor and Council and explained part of the direction to staff when we traded with Clear Channel for 2-billboards. The City received billboard space east bound between MP310 and Exit 340 and west between the New Mexico borders. The Chamber is working with the City and has agreed to provide the script covering for each billboard. The script can be moved around and not on any specific billboard but always one on each direction. Ms. Kathy Smith Chamber of Commerce, Clear Channel offered them their design person and discussed designs and concepts. One of the issues is if billboard is on the right side you have 7-seconds to get message across. If on the left you have less time. His advice was to keep it brief and concise and try to maximize the contrast. They sent him some ideas and forgot to mention the Visitor Center. He sent back a design that is included in the Councilmen's packet. Maximum contrast is 'City of Willcox' is printed in yellow to give best visual. This was brought to the Mayor and Council and Council indicated wanted to get some views, suggestions, scripts and that is why we are here this evening.

After discussion was held by members of the Mayor and Council, and public present on suggestions for wording, pictures, the Visitor Center Exit 340 should be included on the billboards, emphasis on our Historic Western Heritage and it should be kept simple and short to focus on Willcox.

ADJOURN

There being no further business before the Mayor and Council, Mayor Lindsey adjourned the meeting at 6:55 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 21ST DAY OF JUNE 2010**

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 21st day of June 2010. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 29th day of June 2010

City Clerk Cristina G. Whelan, CMC

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2010.

MAYOR GERALD W. LINDSEY

ATTEST:

City Clerk Cristina G. Whelan, CMC

**THE MINUTES OF THE WORK SESSION OF THE MAYOR AND
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
HELD ON THIS 2ND DAY OF OCTOBER 2010**

CALL TO ORDER- Mayor Gerald W. Lindsey called the work session to order on Saturday, October 2, 2010 at 1:30 p.m. The work session was held at the Northern Cochise Community Hospital Board Room, 901 W. Rex Allen Drive, Willcox, AZ.

ROLL CALL

PRESENT

Mayor Gerald W. Lindsey
Vice Mayor Monika Cronberg
Councilman Elwood A. Johnson
Councilman Christopher Donahue
Councilman Robert "Bob" Irvin

STAFF

City Manager Pat McCourt

ABSENT

Councilman Stephen Klump
Councilman William "Bill" Holloway

PLEDGE OF ALLEGIANCE TO THE FLAG – Dispense with the Pledge.

DECLARATION ON CONFLICT OF INTEREST There was no response from those present.

ADOPTION OF THE AGENDA

MOTION: Councilman Donahue moved to adopt the agenda.

SECONDED: Vice Mayor Cronberg seconded the motion. **CARRIED.**

DISCUSSION REGARDING TOPICS OF INTEREST WITH CONGRESSWOMAN GABRIELLE GIFFORDS

Discussion was held by those present regarding general matters concerning such topics as: Border Security; Immigration; work programs needed for migrant workers; support for military (financially) and Giffords work with local residents on border issues.

Mayor Lindsey complimented Congresswoman Giffords assistant Ms. Shay Saucedo on her work in our area and how supportive her staff has been.

ADJOURN

There being no further business before the Mayor and Council, Mayor Lindsey adjourned the work session meeting at 2:45 p.m.

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 2nd day of October 2010. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 4th day of October 2010

City Manager Pat McCourt

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2010.

ATTEST:

MAYOR GERALD W. LINDSEY
Signed: _____

City Clerk Cristina G. Whelan, CMC

**THE MINUTES OF THE WORK SESSION OF THE MAYOR AND
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
HELD ON THIS 4TH DAY OF OCTOBER 2010**

CALL TO ORDER- Mayor Gerald W. Lindsey called the work session meeting to order on Monday, October 04, 2010 at 6:00 p.m. and stated we have a couple of experts here tonight and is glad to have those present. Commented what staff we have present "looks like staff is a little thin tonight."

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

PRESENT

Mayor Gerald W. Lindsey
Vice Mayor Monika Cronberg
Councilman Elwood A. Johnson
Councilman Stephen Klump
Councilman Christopher Donahue-ABSENT
Councilman William "Bill" Holloway
Councilman Robert "Bob" Irvin

STAFF

City Manager Pat McCourt
City Clerk Cristina G. Whelan, CMC
Library Director Tom Miner
Finance Director Ruth Graham
Public Services & Works Director Dave Bonner

PLEDGE OF ALLEGIANCE TO THE FLAG-Mayor Lindsey.

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

ADOPTION OF THE AGENDA

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

SECONDED: Vice Mayor Cronberg seconded the motion. **CARRIED.**

DISCUSSION REGARDING THE GARBAGE ORDINANCE

City Manager Pat McCourt stated that Solid Waste is the politically correct term instead of "garbage ordinance." The City's old ordinance was written in the 1970's it is very outdated, the organization was not very strong and staff has to rewrite sections of the Code to straighten up. A lot of terminology has changed. Staff did not start from scratch and did plagiarized as much as possible from other communities to get a starting basis for this. The primary differences on what staff is doing is under the old State Law the City of Willcox was permitted to have exclusive franchise for the collection of Solid Waste and we are no longer able to do that. We are permitted to give exclusive franchise for residential customers but commercial customers have the right to choose their waste hauler. That has been included in the ordinance. Also staff took time to look at our system, how it is set up, how it is working and how it is not working on the billing, collections, and who gets charged and so on. Staff has attempted to make this ordinance more effective and efficient as far as setting up accounts and who has the responsibility and how we operate. The draft ordinance presented is dated 09-20-10 and it has been setup with numbered pages and numbered lines to make it easier to follow along. This draft continues to change and the City Manager has another draft dated 10-04-10 which he made today with additional changes and will not attempt to review that one today. The City Manager began the review of the Solid Waste Ordinance with the definitions of various terms, and section-by-section he gave explanation to each.

Discussion was held by the Mayor and Council members on topics such as haulers must be licensed; customers that have City utilities adding Solid Waste billing to the account; ability to setup senior or disabled rates; exceptions when customers would not be billed for Solid Waste; collection hours for residential and commercial customers; failure to pay Administration City Manager is responsible or designee; special pick ups for bulk materials (once a month) and encourage citizens to take green waste-clippings and tree limbs to green waste site; RFP looking to include smaller containers for small businesses; consider cardboard route pickup instead of placing them in dumpsters; concern County residence continue dumping in our dumpsters and how can we enforce people not using City receptacle; and setup more voluntary recycle barrels in public places such as Keiller Park.

The City Manager will make corrections to the draft and obtain answers to questions (i.e. abandoned vehicles, burning trash) that staff was not able to answer tonight. The City Manager will prepare updated draft ordinance, answer questions and changes will be in bold print and will use the same format with the numbered pages and numbered lines.

**THE MINUTES OF THE WORK SESSION OF THE MAYOR AND
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ
HELD ON THIS 4TH DAY OF OCTOBER 2010**

ADJOURN

There being no further business before the Mayor and Council, Mayor Lindsey adjourned the meeting at 6:53 p.m.

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 4th day of October 2010. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 5th day of October 2010

City Clerk Cristina G. Whelan, CMC

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2010.

MAYOR GERALD W. LINDSEY
Signed: _____

ATTEST:

City Clerk Cristina G. Whelan, CMC

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item 10B
Tab Number 3
Date: 10/18/10

<u>Date Submitted:</u>	<u>Action:</u>	<u>Subject:</u>
October 1, 2010	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Formal <input type="checkbox"/> Other	City Participation in a 457(b) Elective Deferral Retirement Plan Offered by the AZ State Retirement System (ASRS)

TO: MAYOR AND COUNCIL
FROM: Sherry Lynn Van Allen, HR Generalist

DISCUSSION:

The Arizona State Retirement System (ASRS) has introduced an elective deferral retirement plan under Section 457(b) of the Internal Revenue Code, known as the 457(b) Supplemental Salary Deferral Plan (SSDP). ASRS is offering this program through a partnership with TIAA-CREF. This partnership is committed to offering a plan that offers a wide variety of investment choices with competitive administrative fees.

The City currently offers a 457(b) plan to employees through DST Systems that offers investments in the Lord Abbett Funds Family. Our local agent is Tammy Paquette at Edward Jones. The City will continue to offer the current 457(b) plan and employees may voluntarily contribute to the provider of their choice.

If the City elects to participate in both plans, employees will have a better selection of investment opportunities for voluntary elective salary deferral contributions. Both of the elective salary deferral plans are fully funded by the employees. No employer contributions are required. The additional plan will offer an additional employee benefit to eligible City Employees beginning November 1, 2010 at no additional cost to the City.

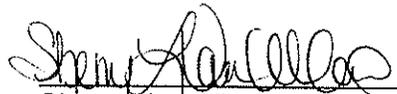
RECOMMENDATION:

Motion to approve Resolution No. 2010-105 authorizing the City of Willcox to participate in the Arizona State Retirement System Section 457(b) Supplemental Salary Deferral Plan (SSDP). The plan will allow eligible City employees to have a better selection of investment opportunities for voluntary elective salary deferral contributions at no additional cost to the City.

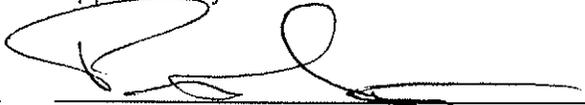
FISCAL IMPACT: None.

Submitted by:

Approved by:



Sherry Van Allen-Teeters, HR Gen.



Pat McCourt, City Manager

RESOLUTION NO. 2010-105

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA (CITY) APPROVING AND AUTHORIZING THE CITY OF WILLCOX TO PARTICIPATE IN THE ARIZONA STATE RETIREMENT SYSTEM (ASRS) SECTION 457(b) SUPPLEMENTAL SALARY DEFERRAL PLAN (SSDP) FOR THOSE CITY EMPLOYEES DESIRING TO ELECT SUCH PLAN, AUTHORIZING THE MAYOR TO EXECUTE THIS RESOLUTION AND DECLARING AN EMERGENCY TO EXIST.

WHEREAS, the CITY, is authorized and empowered to have control of the finances, property and employees of the corporation and to have power within the limits of the City to oversee all phases of services to the citizens of the City pursuant to Title 9, A.R.S. §§ 9-240 and 9-499.01 et seq.; and

WHEREAS, pursuant to Ordinance NS283, Mayor and Council adopted the Willcox City Code setting forth the city's personnel policy to regulate all city personnel including contract employees; and

WHEREAS, the CITY is empowered to permit employees to participate in the Arizona State Retirement System (ASRS); and

WHEREAS, the employees who have earned 80 points (80 points = Age plus Years of Service) can retire under the ASRS; and

WHEREAS, the ASRS has introduced an elective deferral retirement plan under Section 457(b) of the Internal Revenue Code, known as the 457(b) Supplemental Salary Deferral Plan (SSDP); and

WHEREAS, the CITY currently offers a 457(b) plan to employees through DST Systems that offers investments in the Lord Abbett Funds Family locally through Edward Jones and will continue to do so; and

WHEREAS, the Mayor and Council desire to have this Resolution presented at its October 18, 2010 Council Meeting for the purpose of approving and authorizing participation in the ASRS 457(b) SSDP investment option as presented; and

WHEREAS, the Mayor and Council have determined that formal action on this Resolution is in the best interest of the CITY, its employees and its citizens; 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 ASRS- 457(b) SSDP investment option 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: Mayor and Council formally approve Resolution 2010-105 for the purpose of approving and authorizing participation in the ASRS- 457(b) SSDP investment option as presented.

Section 2: The Mayor is authorized and empowered to execute this Resolution and CITY staff are authorized to carry out the intent of this Resolution.

Section 3: 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.

PASSED AND ADOPTED BY MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA this _____ day of October 2010.

APPROVED/EXECUTED:

MAYOR, GERALD W. LINDSEY

Signed: _____.

ATTEST:

APPROVED AS TO FORM:

City Clerk, Cristina G. Whelan, CMC

City Attorney, Hector M. Figueroa, Esq.

RESOLUTION NO. 2010-105

HELP YOUR EMPLOYEES PLAN FOR THEIR RETIREMENT



INTRODUCING THE NEW ARIZONA STATE RETIREMENT SYSTEM (ASRS) SUPPLEMENTAL SALARY DEFERRAL PLAN

Available from ASRS and TIAA-CREF, this new tax-deferred savings plan option gives your employees more choice, more flexibility, and more potential to build the kind of retirement they want.

ASRS and TIAA-CREF, the leading provider of retirement plans for the academic, medical, cultural, governmental and research fields, are introducing a unique tax-deferred investment product for your employees' retirement savings needs: the **ASRS 403(b) and 457(b) Supplemental Salary Deferral Plan (SSDP)**.

THE SSDP OFFERS YOUR EMPLOYEES:

- ※ **A competitive, low-cost alternative to other supplemental savings plan options:** ASRS has committed to keeping costs low for the plan and has negotiated fees that are typically lower than what employees may be paying with their current providers. None of the funds offered in this investment menu have sales charges, and there are no fees for transferring between investments.
- ※ **A supplemental savings plan your employees can use to supplement their ASRS Defined Benefit Plan:** The SSDP offers your employees a convenient way to supplement their Defined Benefit Plan, Social Security retirement benefits, and other personal savings and investments.
- ※ **A broad range of high-quality, pre-screened investment choices:** Your employees have access to a broadly diversified investment menu that includes a wide range of mutual funds and annuity accounts. These choices include "best in class" mutual funds, which are pre-selected funds within several different asset classes that have performed well against their benchmarks. (Past performance is no guarantee of future results.)
- ※ **Honest, objective advice:** TIAA-CREF offers an investment advice service that is available at no additional cost. When your employees use this service, a noncommissioned TIAA-CREF Individual Consultant will help them determine which investments are right for their retirement portfolio and if they are contributing enough to achieve their savings goals.¹
- ※ **High-quality customer service:** These services are available to your employees through a customized plan website, TIAA-CREF's Telephone Representatives, and one-on-one in-person investment counseling sessions with TIAA-CREF Individual Consultants.
- ※ **Investment options that are available as a 403(b) and/or a 457(b) plan:** Employees of school districts, charter schools, and community colleges are eligible to contribute to both a 403(b) plan and a 457 plan; employees of cities, counties, towns and special districts are eligible to contribute to a 457 plan.



FINANCIAL SERVICES
FOR THE GREATER GOOD[®]

HELP YOUR EMPLOYEES PLAN FOR THEIR RETIREMENT

ASRS AND TIAA-CREF: A STRONG PARTNERSHIP

ASRS and TIAA-CREF can help your employees meet their savings goals through:

- ⌘ A shared mission, and TIAA-CREF's not-for-profit operating philosophy
- ⌘ A consistent approach to long-term investing

TIAA's triple-A ratings — the highest possible — from the nation's four leading independent ratings agencies.²

A BROAD SPECTRUM OF CHOICES FOR YOUR EMPLOYEES' TAX-DEFERRED SAVINGS NEEDS

When they sign up for the SSDP, your employees have access to a diverse range of low-cost investment options designed to complement their ASRS Defined Benefit Plan.

INTERESTED IN ESTABLISHING THE SSDP FOR YOUR EMPLOYEES?

TIAA-CREF can help. Please e-mail ASRS@ttaa-cref.org for additional information about the SSDP and how the plan can help your employees enhance their tax-deferred savings.

¹ TIAA-CREF compensates its consultants through a salary-plus-incentive program based on client service excellence and financial results. Consultants will only recommend products that help achieve their clients' goals.

² These ratings are for TIAA as an insurance company and do not apply to variable annuities, mutual funds or any other product or service not fully backed by the claims-paying ability of TIAA. Ratings are subject to change. There is no guarantee that current ratings will be maintained.

You should consider the investment objectives, risks, charges and expenses carefully before investing. Please call 877.518.9161, or go to ttaa-cref.org for a prospectus that contains this and other information. Please read the prospectus carefully before investing.

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**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item: 11
Tab Number: 4
Date: 10-18-2010

Date Submitted:
10-13-10

Date Requested:
10-18-10

Action:
 Resolution
 Ordinance
 Formal
 Other

**Subject: Appointment
Parks & Recreation
Advisory Committee
member, term to expire
December 31, 2010.**

TO: MAYOR AND COUNCIL

FROM: City Clerk

DISCUSSION: In accordance with the Willcox City Code Title 2-Chapter 2-3 Appointment; Terms; Vacancies; Removals: vacancies shall be filled by appointment by the Mayor and City Council. Mr. Ben Martin was appointed and resigned in 2007 and Rebecca Chadburn was appointed to fill unexpired term (term to expire 12-31-2010). On December 31, 2008 Ms. Revonda Laws and Ms. Peggy Judd did not seek reappointment to the Committee and city staff advertised for the vacancies. Due to no response from the community they continued to serve for a few more months. In May 2009 the Mayor and Council appointed Ms. Tammy Baumler to fill one of the vacancies.

Recently Ms. Sharon Nigh and Mr. William M. Nigh were appointed to the P&R Committee. These terms (Laws and Judd vacancies) will expire December 31, 2012. We now have another letter of interest from RaeAnn Kiesling, 333 N. Phoenix, Avenue and this term if to fill the unexpired term and will expire December 31, 2010.

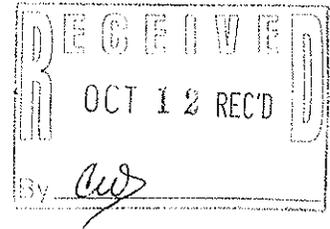
RECOMMENDATION: Mayor and Council to appoint member if they so desire to the P&R Advisory Committee.

FISCAL IMPACT: -0-

Prepared by: *Cristina G. Whelan, CMC*
Cristina G. Whelan, CMC

Approved by: _____
Pat McCourt, City Manager

Human Resources Office
101 S. Railroad Ave., Suite B
Willcox, AZ 85643.



Re: Parks and Recreation Advisory Committee – Letter of Interest

To Whom It May Concern;

Hello. Please allow me introduce myself. My name is RaeAnn Kiesling. I was raised in Arizona; most of the time, right here in Willcox. I attended Denver Business College in Mesa, where I studied in legal studies and received my degree in the paralegal field. In Phoenix and Tucson, I worked in a variety of professional and legal offices. In September 2001 I returned to Willcox, with my husband, to raise our family. I am a full time homemaker who has spent the last few years becoming involved in my community through volunteer opportunities. I am currently the community coordinator for Project Safe Place, a program of the Cochise County Children's Center. I have also worked as a volunteer with the Rex Allen Days Inc Board for the last two years. I am currently attending Cochise College where I will soon be receiving my associate's degree for Administration of Justice, with my American Sign Language Endorsement.

At this time, I desire to become more involved with the community of Willcox directly. I desire to serve on the Parks and Recreation Advisory Committee and have a goal of serving on the Willcox City Council. I have a strong background in public and community relations, public speaking skills & organizational and office skills. I have strong leadership abilities, am a team player, a hard worker, am creative, and a positive, fun person to be around.

I look forward to working with, and learning from the experienced Parks and Recreation committee members, the City Council, and members of this great community. I would be happy to answer any of your questions or to get to know you better. I may be reached at 384-9899 or by email at Send2RaeAnn@live.com

At this time, I respectfully submit my name for consideration of filling the vacancy on the Parks and Recreation Advisory Committee. If I am selected, I will work hard to accomplish the goals set forth by the committee and to fulfill my responsibilities as a committee member.

Thank you for your time and consideration.

Sincerely,

RaeAnn Kiesling
333 N Phoenix Ave.
Willcox, AZ 85643

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item: 12
Tab Number: 5
Date: 10-18-2010

Date Submitted: 10-7-10 Date Requested: 10-18-10

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

Subject: Request for extension of time to make rent payments by Stout's Cider Mill (Ron Stout)

TO: MAYOR AND COUNCIL

FROM: City Manager

DISCUSSION: Mr. & Mrs. Stout have a lease with the City of Willcox to use property located at 1510 N. circle I Rd. Willcox Az. On the property is a building known as Stout's Cider Mill. The property is adjacent to the City's Visitor Center and shares a parking lot with the Visitor Center.

The Lease provides that the Stouts pay a rental fee. The fee is paid after the fact; therefore the rent is not paid in advance. The rent is 2% of the sales in the preceding time period, with a minimum amount of five hundred dollars (\$500).

The rent for the time period January 2009 through June 2009 was due in July 2009. It has not been paid.

The rent for the time period July 2009 through December 2009 was due in January 2010. It has not been paid.

The rent for the time period January 2010 through June 2010 was due in July 2010. It has not been paid.

A letter requesting payment of the two (2) payments due for 2009 was sent by the Finance Director, February 25, 2010(see attached). An undated response was received by the City (se attached). The City Manager responded to that undated response on April 7, 2010 (see attached). No additional contact was received by the City.

On September 27, 2010 a certified letter was sent to the Stouts, by the City Attorney, (see attached) demanding payment for the Calendar year 2009 and the now delinquent payment for the first half of 2010; the letter also requested the required certificate of Insurance and to bring the utility account current (since the account is often delinquent in utility payments). Mr. Stout has provided a certificate of Insurance for the period 8-1-10 through 8-1-11. The Stouts have brought the utility accounts current.

Mr. Stout sent correspondence to the City Council members dated October 4, 2010 (see attached). Mr. Stout is requesting an extension of the time to bring the rent payments current from the requirements of the demand letter sent by the City attorney. The original time would have been October 2, 2010 for the rent payments. The time requested would take the date to November 26, 2010.

Staff does not have the authority to grant the extension.

RECOMMENDATION: Staff recommendation is that the amount owing should be paid immediately the delay to this meeting has already permitted an additional fourteen (14) days. The past record of payments on rent and utilities does not provide a strong expectation of payment.

FISCAL IMPACT: The actual amount is unknown since it is based upon 2% of sales during the time period in default, an estimate would be \$2,700.00.

Prepared by: Pat McCourt

Approved by:

A handwritten signature in black ink, appearing to read 'Pat McCourt', written over a horizontal line.

Pat McCourt, City Manager

Stout's Cider Mill
P.O. Box 1100
Willcox, Arizona 85644
520-384-3696

.....
Stout's Cider Mill

To the Members of the City Council, City of Willcox,
Willcox, Arizona

Oct 4, 2010

I am in receipt of a letter from the City Attorney directing Stout's to provide the City with lease payments for 2009, evidence of current insurance, and to make payment on the utility bill. These are to be made within five days.

The latter two items in the letter were taken care of today.

Unfortunately, we are unable to make the lease payment for 2009 at this time. We just don't have the money. I told the Council a year ago when we were called into a private session that we were against the wall then. This recession or depression has only gotten worse during the brutal spring and summer months of 2010. We have done whatever it takes to keep the business alive. For the summer months, we went all the way down to 3 employees. We have gone back up to 8 employees at the present time as we prepare to go into season. The "season" for us just started this past weekend. We have a full schedule on calendar throughout October and November including an invitation to sell at the PIR Stock Car Races in November.

We humbly ask you to extend the deadline of 5 days to 60 days – the end of November. That would take us through the Thanksgiving season – our biggest season. This would give us a fighting chance of generating enough revenue to bring our accounts current. This extension, to us, seems like a win-win situation. We hope you think so too.

We further ask that we be told promptly whether or not this extension is being granted as Mr. Figueroa's letter is time sensitive.

Respectfully,

Ronald L. Stout
Stout's Cider Mill

.....
"...that apple place in Arizona..."

Pat McCourt

From: Ruth Graham

Sent: Monday, October 04, 2010 1:06 PM

To: Pat McCourt

Subject: Stout's

This morning Ron brought a Certificate of Insurance issued for Stout's today for the one-year period beginning 8/1/10 and ending 8/1/11. I told him you were in if he wanted to chat. He said that he didn't need to talk to you then but he'd be at the meeting tonight.

Ruth

10/4/2010

CITY OF WILLCOX
Legal Department



135 E. Maley
Willcox, Arizona 85643
(520) 384-2316 Fax: (520) 384-3305
hmfigueroa@vtc.net

"Mine, Yours and Ours"

COPY

September 27, 2010

Ronald and Corinne Stout
1510 N. Circle I Road
Willcox, Arizona 85643

Certified 7006-2150-00025242-846
9-28-1

Dear Mr. and Mrs. Stout:

I serve as the City Attorney for the City of Willcox, Arizona. I have been directed to send this Formal Notice for non-payment of rent for the use of the City Property where Stout's Cider Mill is located. This Formal Notice shall also serve to put you on notice that your continued pattern of late payments for utility bills needs your immediate attention as does the submission of your Certificate of Insurance.

Lease provision #4 requires Lessee to pay before the 10th day of January and the 10th day of July of each year, the lease payment owing as of the preceding June 30th and December 31st respectively.

Lease provision #6 provides that Lessee, his agents, assigns or sub lessees shall procure and maintain in force at it or their expense during the term of the Lease and any extension thereof public liability insurance with insurers and through brokers approved by Lessor in the amounts specified therein.

Lease provision #15 provides that Lessee shall furnish and pay all utilities, including but not limited, to water, electricity, gas or other utilities to the demised premises.

Lease provision #16 specifies when Lessee shall be considered in default pursuant to the terms and conditions of the Lease. Sub-sections 16(3) and 16(4) require written notice to be provided to Lessee. Lessee shall be in default in cases of failure to pay any rent, failure to make rent payment within five (5) days after notice is made or failure to perform or comply with any of the covenants or conditions of the Lease for ten (10) days after notice is made.

Lease provision #17 provides contractual language to address a breach of the Lease terms and conditions. Lessor shall have the right to cancel and terminate the Lease, as well as all of the right, title and interest of Lessee after giving written notice not less than five (5) days of cancellation and termination.

Lease provision #18 provides that in case suit is brought for any breach of the terms of the Lease, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

The City Finance Department has provided my office with summaries of rent payments and utility payments. Account number 103960300 Ledger for the rent payments shows Lessee in default. The last payments received were the first and second payments for 2008. Lessee is delinquent for both payments for 2009. Demand letter was sent to Lessee and was dated February 25, 2010. No response or payment was made for 2009 rent payments. The same letter requested the 2010 Certificate of Insurance as required under the Lease. Again, no response was received nor was a Certificate provided. See attached copy of letter.

Lessor herein serves its demand for payment of the first half for rent for the period of January to June 2010 and delinquent as of the payment due date of July 10th, 2010.

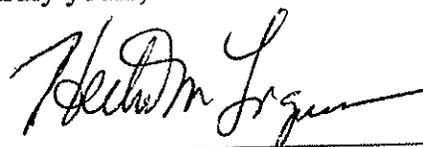
Lessee has utility account number 71515001 that shows a delinquent amount of \$319.45. The City Code provides for required deposits if a customer is delinquent three times in a year. City records show that Lessee has been delinquent far in excess of the allowable times per year. The observed pattern has been that Lessee pays when a shut off notice is provided.

Having enumerated Lease requirements and factual assertions above, I now provide required steps for Lessee to cure the defaults within the specified time periods provided for in the Lease and/or City Code as follows:

1. All rent payments due and owing for 2009 and 2010 must be paid within five (5) days of service of this Formal Notice;
2. The Certificate of Insurance must be provided to the City within ten (10) days of service of this Formal Notice.
3. The utility account is past due from 9/20/10 and must be paid within five (5) days of service of this Formal Notice. Failure to cure the default and future delinquent account activity will require the following deposits: (\$200 for gas) (\$15.00 for water) and (\$30.00 for sewer) for a total deposit of \$245.

I represent the City of Willcox and cannot provide you with any legal advice. This Formal Notice and Demands for payments have legal consequences and you may want to confer with independent legal counsel. The City expects your prompt attention to the required steps to cure defaults and delinquencies. Failure to cure said items may require the City to exercise its right to cancel and terminate the Lease and if suit is required, seek attorney fees and costs in accordance with the terms and conditions contained therein.

Very truly yours,

By: 
City Attorney, Hector M. Figueroa, Esq.

Memorandum

To: City Attorney, Hector Figueroa
CC: Finance Director, Ruth Graham, City Clerk, City Council
From: City Manager, Pat McCourt 
Date: June 15, 2010
Re: Rent Payments for lease from Stout's Cider Mill

Mr. & Mrs. Stout are currently using City Property located at 1510 N. Circle I Road in Willcox AZ. The rent payments on the land are based upon the gross sales. The payments are scheduled to be made every six (6) months after each six month period has ended.

No rent payments have been made for the period January 1 – June 30, 2009; or for July 1, 2009 – December 31, 2009.

Stout's were contacted February 25, 2010 by the City requesting payment (see attached letter). Mr. Stout responded in an undated letter which was received April 5, 2010 (see attached). I responded to Mr. Stout on April 7, 2010 (see attached letter). I have received no response.

Mr. Stout has recently visited City Hall and brought the utility accounts for the site current.

I need you to prepare the necessary legal notices/actions to proceed with cancelling the lease due to default.

CITY OF WILLCOX
City Manager



101 S Railroad Ave Ste B
Willcox, Arizona 85643-2198
(520) 384-4271 Fax: (520) 384-4271
pmccourt@willcoxcity.org

April 7, 2010

Stout's Cider Mill
PO Box 1100
Willcox AZ 85644

REF: Rent past due on City Land being used for Stout's Cider Mill

Mr. & Mrs. Stout,

I received your undated letter April 5, 2010. Your letter was in response to a letter written by Ruth E. Graham the City of Willcox Finance Director, dated February 25, 2010, in which she requests payment for the rent for the use of the City property located at 1510 North Circle I Road in Willcox Arizona and a request was made for a 2010 Certificate of Insurance to evidence coverage on the property with the City named as an additional insured. Thank you for providing the Certificate of Insurance.

The rent payments on the property in question are scheduled to be paid after the fact. The payment is due in the month following a six month period. Therefore for the time period January 2009 through June 2009 the payment was due in July 2009. The payment for the months July 2009 through December 2009 was due in January 2010. Neither of these payments have been received by the City and no other arrangements have been made with the City concerning the payments.

The rent being charged for the property is based upon 2% percent of the sales in the preceding time period, with a minimum amount of five hundred dollars per year (\$500.00). Therefore the dollar amount of the rent is directly based upon the volume of business, the City shares in the good fortune, or in the current case, the slow down in business. The City is very aware of the economic slow down as the City revenue from all sources has been reduced. The City does appreciate the existence of Stout's Cider Mill and the City has indicated an interest in working with you to develop a new lease when the existing lease ends August 2011. The City has never indicated that it is willing to provide you free use of the Public property to operate your business and this would be a violation of the Arizona State Constitution.

You are in default on the lease, nine months of the payment due in July 2009 and three months on the payment due January 2010.

Whether or not you chose to obtain Counsel, as indicated in your letter, is totally your choice. Regardless, you must immediately take steps to correct this default on the rent for the property located at 1510 North Circle I Road Willcox Az.

Please feel free to contact Ms. Graham to make the past due payments.

Sincerely,

Pat McCourt,
City Manager

Cc City Council
City Attorney
City Finance Director

.....

Stout's Cider Mill

Mr. Pat McCourt, City Manager
City of Willcox

Dear Mr. McCourt,

I recently received a request from Ruth Graham for our 2009 rent. I am sorry but we are unable to make that payment right now or even in the foreseeable future. I realize that puts us in default and jeopardizes our right to be here, but there is nothing I can do about it right now.

This recession is much deeper and longer than we had anticipated. We have been seriously hurt. With about half our normal staff, we are working twice as hard for about half as much. Someone driving by our store might see 6 or 8 RV's parked there and conclude we are doing well. Appearances can surely be deceiving. The number of visitors continues to be down AND the amounts of money they are spending is way down. It compounds. All this translates into an inability to keep up with our current bills.

My better business judgment tells me to shut down, liquidate assets, and get out. But my sentiment answers that we have built a marvelous national reputation in these last 21 years and we feel it would be folly to walk away from that. (Attached is a *partial list* of these accomplishments and recognitions). However, we cannot pay our bills with either sentiment or reputation. We have cut the staff to the absolute minimum and raised our prices about as far as we can.

As a matter of information, Mrs. Stout and I have not taken a salary or monies out of the business this decade. In fact, we have often put our personal monies into the business when sorely needed, to keep it afloat. Those reserves are now, for the most part, gone. I feel we are approaching a dead end.

As a precaution, we are in the process of obtaining Counsel to guide us through these precarious times. If the City really desires to keep us, as much as they expressed their pleasure in our local existence at our last meeting with them, we would hope they will be prepared to negotiate with us on these matters.

Sincerely,

Ronald L. Stout



Stout's Cider Mill

- Opened doors **May 17, 1989** and has been continuously open to date
- Was approached and received feature articles *with pictures* in

The Arizona Range News
The Tucson Citizen,
The Arizona Republic (twice -- one was a full-page spread)
The White Mountain Independent
Sunset Magazine
Reiman Publications: Country Magazine
Gourmet Magazine feature

- Stout's Cider Mill has been written up and continues to be included in Arizona Travel Books ---

Arizona Highways in article about the *Monster Pie*
Bill Weir's Arizona Handbook
Fodor's Travel Guide
Frommer's Travel Guide
Moon Handbook of Southern Arizona
National Geographic Travel Guide

- Stout's Cider Mill has been featured on several Television shows including

NBC News nationwide several times during the night
KVOA Channel 4, Tucson, several news shows
KGUN Channel 9, Tucson, several news shows
The Arizona Highways program -- Public TV several times
Alex Trebek's Jeopardy -- Stout's was an "answer"

- Stout's Products have been featured at --

A.J.'s Fine Food Stores in Arizona
Bashas' Stores throughout Arizona
Eddie's Country Store in Pinetop, Arizona
Sun Harvest Foods in El Paso, Texas
Weber's IGA in Sedona and Payson, Arizona
Wild Oats stores in Albuquerque, New Mexico

- Stout's have sponsored or hosted activities at the Cider Mill as

Annual Balloon Show for several years
Chili Cook-offs
Cross country "Hitch" stop -- Reiman's Red Wagon
Children's Dancing Recitals

- Stout's Cider Mill has maintained billboards on Interstate 10 since opening.

CITY OF WILLCOX
Department of Finance



101 S Railroad Avenue, Suite B
Willcox, Arizona 85643-2198
(520) 384-4271 x4202
rgraham@willcoxcity.org

"Mine, Yours and Ours"

February 25, 2010

Stout's Cider Mill
Attention: Mr. Ron Stout
PO Box 1100
Willcox, AZ 85644-1100

Re: Rent Payment to the City of Willcox

Dear Mr. Stout:

The City hereby requests payment in full of the 2009 rent for Stout's Cider Mill's use of the property at 1510 North Circle I Road in Willcox, Arizona. According to your agreement with the City, rent for the period from January through June is due in July each year, and the rent for the period from July through December is due in January of the following year.

Request is also made for a 2010 Certificate of Insurance to evidence coverage on the property with the City named as the loss payee. A new certificate is required each year, and we would ask that you provide it as soon as possible.

If you have questions or concerns, please let us know.

Thank you for your courtesy and consideration in this matter.

Yours very truly,

Ruth E. Graham
Finance Director

cc: Patrick McCourt

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item: _____ /3
Tab Number: _____ 6
Date: 10-18-2010

Date Submitted: 10-7-10 Date Requested: 10-18-10

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

Subject: Consent Order from AzDEQ concerning the WWTP
--

TO: MAYOR AND COUNCIL

FROM: City Manager

DISCUSSION: Attached is a draft Consent Order (CO) from the Arizona Department of Environmental Quality (AzDEQ). This is the result of the Notice of Violations (NOVs), which the City received in January 2009.

The Staff is scheduled to have had a teleconference with AzDEQ on 10-13-10 concerning the draft CO, a verbal update may be available at the meeting of the 18th of October.

While staff has some concerns on the assertions made in the draft CO, of primary concern to staff is the Section III "Compliance Schedule". Staff understands the need to correct the current situation and to have the corrections done in a timely manner. Staff is uncomfortable with the time lines presented and especially when taken in conjunction with Section V "Violations of Order/Stipulated Penalties" and the very limited extensions possible under Section VII "Force Majeure". There is some possible relief under Section XII "Modifications".

Mr. Bonner is very familiar with the proceedings and can fill in any blanks and answer questions on the subject.

The purpose of this item is to inform the Council. It is anticipated that the subject will be back on the council agenda on November 1, 2010 request permission to approve.

RECOMMENDATION: Input is welcomed and discussion and direction to staff is requested.

FISCAL IMPACT: The cost of upgrades at the Waste Water Treatment Plant (WWTP) has previously been presented to the Council and has been built into the City's budget. The necessary improvements will require multiple years to accomplish.

Prepared by: Pat McCourt

Approved by: 
Pat McCourt, City Manager



Janice K. Brewer
Governor

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Benjamin H. Grumbles
Director

September 20, 2010

Certified Mail

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

Re: Final Draft Consent Order for City of Willcox

Dear Mr. McCourt:

Please find attached a final draft copy of the Consent Order for City of Willcox which details a compliance schedule based on our discussions at the meeting on August 31, 2010. The Arizona Department of Environmental Quality compliance and enforcement policy includes the use of administrative Consent Orders to achieve mutually agreeable time frames for achieving compliance. The bilateral administrative order is issued with the complete written agreement of City of Willcox and ADEQ. It establishes reasonable expectations for both City of Willcox and ADEQ to resolve compliance issues relating to meeting and maintaining limits and conditions in the APP and AZPDES permits for the City of Willcox.

As the authorized representative of City of Willcox, your signature legally binds City of Willcox to the terms of this Consent Order. The effective date of this Consent Order is the date it is signed by City of Willcox and ADEQ. The later date of signature shall be the effective date of this Consent Order. Please note that in addition to your required signature on page 16 of the Consent Order, pages 1-15 must also include your initials in the area provided at the bottom of each page. Please return the original signed copy to ADEQ in the self addressed envelope included with this correspondence.

ADEQ is willing to spend 45 days negotiating the terms of this Consent Order and if you have any questions or would like to discuss the final draft, please give me a call at 602-771-4479.

Sincerely,

Nirupma Bhatia, Case Manager
Water Quality Enforcement Unit

FAX 602-771-4505
njb3@azdeq.gov

Enclosure: Final Draft Copy of Consent Order

Northern Regional Office
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733



BEFORE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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In the Matter of:)
)
City of Willcox - Wastewater Treatment Plant)
located at 151 W Maley St Willcox , Cochise)
County, Arizona)
)
Inventory Number: 102778)
)
)

CONSENT ORDER

Docket No. _____

City of Willcox in its capacity as owner and/or operator of City of Willcox - Wastewater Treatment Plant located at 151 W Maley St, Willcox, Cochise County, Arizona.

RECITALS

City of Willcox ("Willcox") acknowledges that no promise of any kind or nature whatsoever, was made to induce it to enter into this Consent Order, and Willcox has done so voluntarily.

Willcox acknowledges that by entering into this Consent Order, it does not resolve any liability it may have for civil penalties for violations of any State or Federal environmental law.

By entering into this Consent Order, Willcox does not admit to any civil or criminal liability, or waive any right including but not limited to the assertion of any defense available to Willcox under applicable law. Further, Willcox does not admit, and both the Arizona Department of Environmental Quality (ADEQ) and Willcox retain the right to controvert in any subsequent proceeding except proceeding to implement or enforce this Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent Order.

The undersigned representative of Willcox certifies that he is fully authorized to execute this Consent Order on behalf of Willcox and to legally bind Willcox to this Consent Order.

Willcox admits to the jurisdiction of the Director of ADEQ.

Initials _____

1 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of
2 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order,
3 Willcox consents to the terms and entry of this Consent Order and agrees not to contest the
4 validity or terms of this Consent Order in any subsequent proceeding.

5 **THEREFORE, IT IS HEREBY ORDERED** as follows:

6 **I. JURISDICTION**

7 The Director of ADEQ has jurisdiction over the subject matter of this action and is
8 authorized to issue this Consent Order pursuant to the Arizona Revised Statutes (A.R.S.) §§
9 49-261, and 41-1092.07(F)(5).

10 **II. FINDINGS**

11 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**
12 **CONCLUSIONS OF LAW:**

13 A. **Findings of Fact**

14 1. The City of Willcox Wastewater Treatment Plant (WWTP) is located at 151 W
15 Maley St, Willcox, Cochise County. Willcox is authorized under an Aquifer Protection Permit
16 APP # P-102778, to operate the WWTP with a maximum average monthly flow of 0.6 million
17 gallons per day (MGD).

18 2. Willcox has an Arizona Pollution Elimination Discharge System (AZPDES)
19 Permit # AZ0025771 for a discharge to Lake Cochise.

20 3. Willcox does not currently possess a permit for reuse of its effluent.

21 4. On May 20, 2008, ADEQ Southern Regional Office (SRO) inspected the
22 WWTP. During the inspection, SRO discovered that Willcox had upgraded the headworks lift
23 station and added an ultra-violet (UV) disinfection system. In addition, SRO discovered that six
24 ponds at the Twin Lakes Golf Course were being used by Willcox as part the WWTP process
25 instead of as reuse ponds. Also, a portion of the effluent produced by the WWTP was being used

1 by the Twin Lakes Golf Course for irrigation purposes in a way that allowed human contact with
2 the effluent. None of these modifications to the treatment process are identified in Willcox's
3 APP # P-102778.

4 5. During the May 20, 2008 inspection, SRO also observed that water from a
5 groundwater well, that had not been identified or included in the Willcox's AZPDES permit
6 application, was being pumped and directly discharged to Lake Cochise. The analytical data
7 subsequently submitted by Willcox showed a pH as high as 9.82 in the groundwater discharged
8 to Lake Cochise.

9 6. On December 3, 2008, SRO conducted another inspection of the facility and
10 observed that a valve was discharging partially treated effluent to Lake Cochise through its
11 AZPDES outfall, bypassing a portion of the treatment process.

12 7. On December 23, 2008, ADEQ issued a Notice of Violation (NOV) to
13 Willcox alleging the following AZPDES violations: a) a discharge to Lake Cochise without an
14 AZPDES permit; b) not registering the groundwater well with ADWR; c) failure to submit the
15 discharge monitoring reports (DMRs) for the results of sampling conducted at groundwater well
16 # 001 and Lake Cochise from May 30, 2003 through May 30, 2008.

17 8. On December 23, 2008, ADEQ issued a second NOV to Willcox alleging
18 the following APP permit violations: a) failure to report deficiencies to ADEQ, set discharge
19 limit (DL), or of an alert limit (AL) being exceeded; b) exceedances of the APP Aquifer Quality
20 Limit (AQL) and Aquifer Water Quality Standards (AWQS) for selenium on at least eighteen
21 (18) occasions and for cadmium on one occasion during 1st quarter of 2007; c) exceedances of
22 the AQL and AWQS for thallium on two occasions during 2nd and 3rd quarter of 2008; d)
23 exceedances of APP discharge limit for pH and fecal coliform for over three hundred (300)
24 occasions during the period January 2007 through November 2007.

25 9. On December 23, 2008, ADEQ issued a third NOV to Willcox alleging the

1 following reuse violations: a) Direct reuse of reclaimed water without a permit; b) Use of Class
2 C reclaimed water for a type of direct reuse requiring Class A or Class B reclaimed water; c)
3 Failure to use application methods that reasonably preclude human contact with reclaimed water
4 when irrigating with reclaimed water; c) failure to use application methods that reasonably
5 preclude human contact with reclaimed water when irrigating with reclaimed water; d) Failure to
6 place or maintain signage at required locations so the public is informed that reclaimed water is
7 in use.

8 B. Conclusions of Law

9 AZPDES Violations:

10 1. By discharging effluent and pumped water from the groundwater well into
11 Lake Cochise (listed as effluent dependent water under A.A.C. R18-11-113(D)(10)), a water of
12 the U.S. without a permit, Willcox violated A.R.S. § 49-255.01(A), which requires that a person
13 shall not discharge to a water of the U.S. except under conformance with an AZPDES or NPDES
14 permit.

15 2. By exceeding numeric Surface Water Quality Standards (SWQS) found at
16 A.A.C. R18-11-109(B), for pH in the water samples at groundwater well # 002 and at Lake
17 Cochise from 4th quarter of 2008 through 2nd quarter of 2009, Willcox violated A. A. C. R18-11-
18 109 B which provides a SWQS of 6.5-9.0 for pH .

19 3. By failing to submit DMRs for the periods May 2003 through March 2008,
20 and from April through June 2009, Willcox violated Part II.B.1 of AZPDES Permit #
21 AZ0024830 which requires the permittee to report monitoring results to ADEQ.

22 4. By failing to report to ADEQ, the quarterly results for trace substances
23 listed under Part I.B. Table 2.a, the annual results for trace substances listed under Part I.B. Table
24 2.b, the annual results for WET Testing listed under Part II.D. Table 4, Willcox violated Part

25

1 II.B.1 of AZPDES Permit # AZ0024830 which requires the permittee to report monitoring
2 results to ADEQ.

3 5. By exceeding the permit DLs for 5-Day biological oxygen demand (BOD)
4 on at least nine (9) occasions for the period April 2008 through June 2009, Willcox violated Part
5 I.A. Table 1 of AZPDES Permit # AZ0024830, which provides DLs of 68 Kg/day for monthly
6 average mass loading, and 30 mg/L for monthly average concentration for 5-Day BOD.

7 6. By exceeding the DLs for suspended solids (SS) on at least seven (7)
8 occasions during the period April 2008 through March 2009, Willcox violated Part I.A. Table 1
9 of AZPDES Permit # AZ0024830, which provides the DLs of 68 Kg/day for monthly average
10 mass loading, 102 Kg/day for weekly average mass loading, 30 mg/l for monthly average
11 concentration, and 45 mg/l for weekly average concentration for SS.

12 7. By exceeding the DLs for E-coli on at least seven (7) occasions during
13 the period April 2008 through February 2009; Willcox violated Part I.A. Table 1 of AZPDES
14 Permit # AZ0024830, which provides the DLs of 126 cfu/100ml for monthly average
15 concentration and 576 cfu/100ml for daily maximum concentration for E-coli.

16 8. By exceeding the DLs for the percentage of removal of suspended solids
17 on at least six (6) occasions during the period April 2008 through March 2009, Willcox violated
18 Part I.A. Table 1 of AZPDES Permit # AZ0024830, which provides a DL of 85 for the
19 percentage of removal of suspended solids

20 9. By exceeding the permit DLs for the percentage of removal of 5-Day
21 biological oxygen demand on at least four (4) occasions during the period April 2008 through
22 March 2009, Willcox violated Part I.A. Table 1 of AZPDES Permit # AZ0024830, which
23 provides a DL of 85 for the percentage of removal of 5-Day biological oxygen demand

24 APP Violations:

25

1 10. By exceeding the APP AQL and AWQS for selenium on at least nineteen
2 (19) occasions for the period June 2002 through December 2007, Willcox violated Section 4.0
3 Table II of APP # P-102778 which provides an AQL and AWQS of 0.05 mg/l for selenium.

4 11. By exceeding the APP AQL and AWQS for cadmium on one occasion
5 during 1st quarter of 2007, Willcox violated Section 4.0 Table II of APP # P-102778 which
6 provides an AQL and AWQS of 0.005mg/l for cadmium.

7 12. By exceeding the APP AQL and AWQS for thallium on four (4)
8 occasions during the 2nd and 3rd quarter of 2008, and 2nd quarter of 2009, Willcox violated
9 Section 4.0 Table II of APP # P-102778 which provides an AQL and AWQS of 0.002mg/l for
10 thallium.

11 13. By exceeding the APP AQL and AWQS for beryllium on one occasion
12 during 4th quarter of 2006, Willcox violated Section 4.0 Table II of APP # P-102778 which
13 provides an AQL and AWQS of 0.004mg/l for beryllium.

14 14. By exceeding the APP AQL and AWQS for total tri-halomethane
15 (TTHM) in significant amount on one occasion during the 4th quarter 2006, Willcox violated
16 Section 4.0 Table II of APP # P-102778 which provides an AQL and AWQS of 0.1 mg/l for
17 TTHM.

18 15. Willcox failed to report to ADEQ permit violations as required by APP
19 No. P-102778.

20 16. By exceeding the APP discharge limit for daily sampling of fecal
21 coliform on at least twenty nine (29) occasions from 4th quarter of 2008 through 2nd quarter of
22 2009, Willcox violated Section 4.0 Table I of APP No. P-102778 which provides a DL of
23 800cfu/100ml for daily sampling of fecal coliform.

24 17. By failing to conduct daily sampling of fecal coliform on over five
25 hundred (500) occasions from 4th quarter of 2002 through the 2nd quarter of 2009, Willcox

1 violated Section 4.0 Table I of APP No. P-102778 which lists the parameters which require
2 monitoring and the sampling frequency for those parameters.

3 18. By exceeding the APP discharge limit for 4 out of 7 weekly samples for
4 fecal coliform on at least thirty nine (39) occasions from 4th quarter of 2002 through 1st quarter of
5 2009, Willcox violated Section 4.0 Table I of APP No. P-102778 which provides a DL of 200cfu
6 /100ml for 4 out of 7 samples for fecal coliform.

7 19. By exceeding the APP discharge limit of 6-9 for pH on at least ninety
8 two (92) occasions from 1st quarter of 2007 through 2nd quarter of 2009, Willcox violated Section
9 4.0 Table I of APP # P-102778 which provides a DL of 6-9 for pH.

10 20. By failing to conduct verification sampling after exceeding AQLs for
11 total coliform, cadmium, selenium, thallium, and total tri-halomethane (TTHM); Willcox
12 violated Section 2.6.4.(1) of APP # P-102778 which requires the permittee to conduct
13 verification sampling within five (5) days of becoming aware of an AQL violation.

14 21. By failing to conduct verification sampling after exceeding DLs for
15 pH, fecal coliform, and monthly average flow, Willcox violated Section 2.6.3.(1) of APP # P-
16 102778 which requires the permittee to conduct verification sampling within 24 hours of
17 becoming aware of a DL violation.

18 Reuse Violations:

19 22. By operating a reuse facility at the Twin Lakes Golf Course without
20 an APP permit for reuse of reclaimed water, Willcox has violated A.A.C. R18-9-704(E) which
21 requires that a person shall not directly reuse reclaimed water unless permitted under this Article.

22 23. By applying reclaimed water that did not meet Class B standards at
23 Twin Lakes Golf Course, Willcox has violated A.A.C. R18-11-307(C) which requires that a
24 person shall not use Class C reclaimed water for a type of direct reuse listed as Class B.

25

1 **III. COMPLIANCE SCHEDULE**

2 **THE DIRECTOR HEREBY ORDERS** and Willcox agrees to comply with the provisions of
3 this Consent Order as follows:

4 A. Within thirty (30) days of the effective date of this Consent Order Willcox
5 shall schedule an APP pre-application meeting with the Water Quality Division Ground Water
6 Section.

7 B. Within sixty (60) days of the pre-application meeting, Willcox shall submit an
8 administratively complete application for an amendment to APP# 102778 to re-engineer the
9 WWTP using the appropriate technology so the discharge limits (DLs) and all other APP limits
10 and conditions are met and maintained. Willcox shall respond to any deficiencies noted by
11 ADEQ within the time prescribed by ADEQ.

12 C. Upon the effective date of this Consent Order, Willcox shall submit a
13 withdrawal of its current APP application to the Water Quality Division Ground Water Section.

14 D. Within ninety (90) days of the effective date of this Consent Order, Willcox
15 shall submit to ADEQ for approval, a Workplan to address solids removal, and restoration of the
16 ponds that are dry and not in use on the Twin Lakes Golf Course. Storage of the solids removed
17 must include measures detailed in the Workplan to prevent or minimize the likelihood of
18 adversely affecting human health or the environment, and shall include but is not limited to:

- 19 a. contamination of groundwater
20 b. nuisance such as odor and vectors
21 c. diversion of stormwater run-off

22 After review of the Workplan by ADEQ, Willcox shall respond to any
23 deficiencies noted within the time prescribed by ADEQ. Once approved, Willcox shall
24 implement the Workplan including any deadlines therein.

25

1 E. Within one hundred and eighty (180) days of the effective date of this
2 Consent Order, Willcox shall develop and submit to ADEQ for approval a Pretreatment Toxic
3 Control Plan that will ensure compliance with pretreatment methods for control of toxic
4 pollutants discharged to the WWTP. The PTCP shall include but is not limited to:

5 a. An industrial waste survey to identify all commercial and industrial
6 dischargers likely to discharge pollutants which may adversely impact the collection system or
7 treatment works.

8 b. Identification of operating problems known or suspected to have been
9 caused by commercial or industrial discharges.

10 c. Identification of Best Management Practices for commercial and
11 industrial discharges including septage haulers and restaurants with potential fats, oil and grease
12 discharges which are harmful to the treatment system.

13 d. Standard operating procedures that will be implemented to ensure
14 compliance with the PTCP and;

15 e. An updated Sewer Use Ordinance to reflect the necessary authorities to
16 implement and enforce the PTCP.

17 F. Upon the effective date of this Consent Order, Willcox shall conduct the
18 necessary actions to meet compliance with Conditions A. Table 5 and B. Table 6 under Part V
19 Special Conditions of AZPDES permit # AZ0025771. Willcox shall complete all monitoring
20 requirements, including whole effluent toxicity (WET) testing and verification sampling and
21 submit the results to ADEQ in accordance with Part IV of AZPDES permit # AZ0025771.

22 G. Upon the effective date of this Consent Order, Willcox shall continue all
23 monitoring in accordance with Section 4.0 of APP Permit P-102778 for the duration of this
24 Order or until the APP amendment is in effect.

25

1 H. Within three (3) years of ADEQ's issuance of the amended APP,
2 Willcox shall complete all implementation of the tasks and construction in the amended APP and
3 notify ADEQ in writing within fifteen days of completion of such tasks. Where required,
4 Willcox shall submit an Engineer's Certificate of Completion within thirty days of completion of
5 construction activities prior to discharging.

6 **IV. STATUS REPORTS**

7 A. Willcox agrees to submit a written status report to ADEQ every thirty (30)
8 calendar days beginning thirty (30) days from the effective date of this Consent Order, until
9 termination of this Consent Order. Each written status report shall describe what measures have
10 been taken under Section III, of this Consent Order, and shall certify when compliance with the
11 requirements of Section III of this Order has been achieved. Each report shall be accompanied
12 by evidence of compliance including, as appropriate, submittal of documents, photographs or
13 copies of any other supporting information that Willcox deems necessary.

14 B. ADEQ will review the status reports and relay any disputes in writing to Willcox.
15 Willcox shall incorporate all required modifications, changes or other alterations, as requested by
16 ADEQ, within a reasonable time specified by ADEQ.

17 **V. VIOLATIONS OF ORDER/STIPULATED PENALTIES**

18 A. Under A.R.S. § 49-262, violation of this Consent Order subjects Willcox to civil
19 penalties of up to \$25,000 per day per violation. ADEQ and Willcox agree that the calculation
20 of civil penalties for violation of this Consent Order would be very difficult.

21 B. ADEQ and Willcox therefore agree that if Willcox fails to comply with any
22 requirement of this Consent Order, Willcox shall pay a stipulated penalty pursuant to the
23 schedule below:

24 Period of Failure to Comply

Penalty Per Day of Violation

25 1st to 30th day

\$100 per day per violation

1	31 st to 60 th day	\$250 per day per violation
2	After 60 days	\$500 per day per violation

3 C. Except as otherwise provided herein, stipulated penalties shall begin to accrue on
4 the day that performance is due or that a violation of this Consent Order occurs and shall
5 continue to accrue until correction of the act of noncompliance is completed. Neither issuance
6 by ADEQ nor receipt by Willcox of a Notice of Violation of the terms and conditions of this
7 Consent Order are conditions precedent to the accrual of stipulated penalties.

8 D. Stipulated penalty payments shall be made pursuant to a civil settlement (e.g.,
9 Consent Judgment) with ADEQ filed in a court of competent jurisdiction. If ADEQ and Willcox
10 are unable to reach agreement for payment of stipulated penalties under a civil settlement, or if
11 Willcox fails to make payment of stipulated penalties due under a civil settlement, ADEQ may
12 file a civil action seeking the maximum civil penalty allowed under Federal or State law for
13 violation of this Consent Order.

14 E. The stipulated penalties required by this Consent Order shall be in addition to
15 other remedies or sanctions available to ADEQ by reason of any failure by Willcox to comply
16 with the requirements of Federal or State laws. The payment of stipulated penalties shall not
17 relieve Willcox from compliance with the terms and conditions of this Consent Order or Federal
18 or State laws, nor limit the authority of the State to require compliance with the Consent Order or
19 State law.

20 **VI. COMPLIANCE WITH OTHER LAWS**

21 A. This Consent Order does not encompass issues regarding releases, contamination,
22 sources, operations, facilities or processes not expressly covered by the terms of this Consent
23 Order, and is without prejudice to the rights of the State of Arizona or Willcox, arising under any
24 federal or Arizona environmental statutes and rules with regard to such issues.

25

1 B. Nothing in this Consent Order shall constitute a permit of any kind, or a
2 modification of any permit of any kind, or an agreement to issue a permit of any kind under
3 federal, state or local law, or relieve Willcox in any manner of its obligation to apply for, obtain,
4 and comply with all applicable permits. Nothing in this Consent Order shall in any way alter,
5 modify or revoke federal, state, or local law, or relieve Willcox in any manner of its obligation to
6 comply with such laws. Compliance with the terms of this Consent Order shall not be a defense
7 to any action to enforce any such permits or laws.

8 **VII. FORCE MAJEURE**

9 A. Willcox shall perform all the requirements of this Consent Order according to the
10 time limits set forth herein, unless performance is prevented or delayed by events which
11 constitute a *force majeure*. *Force majeure*, for the purposes of this Consent Order, is defined as
12 any event, arising from causes beyond the control of Willcox or its authorized representatives
13 which delays or prevents the performance of any obligation under this Consent Order and which
14 could not have been overcome or prevented by Willcox. The financial inability of Willcox to
15 comply with the terms of this Consent Order, shall not constitute a *force majeure*.

16 B. In the event of a *force majeure*, the time for performance of the activity affected
17 by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the
18 delay caused by the *force majeure*. The time for performance of any activity dependent on the
19 delayed activity shall be similarly extended. In the event of a *force majeure*, Willcox shall notify
20 ADEQ in writing within five (5) calendar days after Willcox or its agents become aware of the
21 occurrence. The written notice provided to ADEQ shall describe in detail the event, the
22 anticipated delay, the measures taken and to be taken by Willcox to prevent or minimize delay,
23 and a proposed timetable under which those measures will be implemented. Willcox shall take
24 all reasonable measures to prevent or minimize any delay caused by the *force majeure*. Failure
25

1 of Willcox to comply with any requirements of this paragraph for a particular event shall
2 preclude Willcox from asserting any claim of *force majeure* for that event.

3 **VIII. SITE ACCESS**

4 ADEQ may at any time, upon presentation of credentials to authorized personnel on duty,
5 enter upon the premises at the Facility for the purpose of observing and monitoring compliance
6 with the provisions of this Consent Order. This right of entry shall be in addition to, and not in
7 limitation of or substitution for, ADEQ's rights under applicable law.

8 **IX. CORRESPONDENCE**

9 All documents, materials, plans, notices, or other items submitted as a result of this
10 Consent Order shall be transmitted to the addresses specified below:

11 To ADEQ:

12 Arizona Department of Environmental Quality
13 Water Quality Division
14 Attention: Nirupma Bhatia, Case Manager
15 Water Quality Enforcement Unit
16 1110 West Washington Street
17 Phoenix, Arizona 85007-2935
18 Telephone: (602) 771-4479
19 Email: nb3@azdeq.gov

20 To Willcox:

21 Pat McCourt, City Manager
22 City of Willcox
23 101 S Railroad Ave
24 Ste B
25 Willcox, AZ 85643-2135

26 Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

27 **X. RESERVATION OF RIGHTS**

28 A. This Consent Order is based solely upon currently available information. If
29 additional information is discovered, which indicates that the actions taken under this Consent
30 Order are or will be inadequate to protect human health, safety, or the environment, or to

1 conform with applicable federal or state laws, ADEQ shall have the right to require further
2 action.

3 B. ADEQ shall have the right: to pursue civil penalties for violations of any and all
4 violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring before entry of this
5 Consent Order; to disapprove of work performed by Willcox that fails to comply with this
6 Consent Order; to take enforcement action for any and all violations of this Consent Order; and
7 to take enforcement action for any and all violations of A.R.S. Title 49, or the rules promulgated
8 thereunder, occurring after the entry of this Consent Order.

9 **XI. SEVERABILITY**

10 The provisions of this Consent Order are severable. If any provision of this Consent
11 Order is declared by a court of law to be invalid or unenforceable, all other provisions of this
12 Consent Order shall remain in full force and effect.

13 **XII. MODIFICATIONS**

14 Any modifications of this Consent Order shall be in writing and must be approved by
15 both Willcox and ADEQ.

16 **XIII. EFFECTIVE DATE**

17 The effective date of this Consent Order shall be the date this Consent Order is signed by
18 ADEQ and Willcox. If such signatures occur on different dates, the later date shall be the
19 effective date of this Consent Order.

20 **XIV. PARTIES BOUND**

21 No change in ownership, corporate status, or partnership status relating to the subject of
22 this Consent Order will in any way alter the responsibilities of Willcox under this Consent Order.
23 Willcox will be responsible, and will remain responsible, for carrying out all activities required
24 under this Consent Order.

25

1 **XV. TERMINATION**

2 The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be
3 terminated upon receipt of written notification from ADEQ that Willcox has demonstrated, to the
4 satisfaction of ADEQ, that all of the terms of this Consent Order have been completed. Any
5 denial of a request for termination from Willcox will be in writing and describe which terms of
6 the Consent Order have not been completed to the satisfaction of ADEQ. ADEQ reserves the
7 right to terminate this Consent Order unilaterally at any time for any reason. Any termination
8 will include a written explanation of the reason(s) for termination.

9 **ISSUED** this ___ day of _____, 2010.

10
11
12 _____
13 Michael A. Fulton, Director
14 Water Quality Division
15 Arizona Department of Environmental Quality
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CONSENT TO ORDER

The undersigned, on behalf of Willcox, hereby acknowledges that [he/she] has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that Willcox will abide by the same and waive any right to appeal therefrom.

DATED this ___ day of _____, 2010.

City of Willcox

By: _____
Pat McCourt, City Manager
City of Willcox

ORIGINAL of the foregoing Consent Order was sent certified mail, return receipt requested, this ___ day of _____, 2010, to:

Pat McCourt, City Manager
City of Willcox
101 S Railroad Ave
Ste B
Willcox, AZ 85643-2135

COPY of the foregoing Consent Order was filed this ___ day of _____, 2010, with:

Arizona Department of Environmental Quality
Office of Administrative Counsel
Attention: Hearing Administrator
1110 West Washington Street
Phoenix, Arizona 85007-2935

COPIES of the foregoing Consent Order were sent by regular/interdepartmental mail, this ___ day of _____, 2010, to the following:

Mark Horlings, Civil Unit Chief
Environmental Enforcement Section,
Office of the Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

Cynthia Campbell, Manager, WQCS, ADEQ
William Ellett, Acting SRO Director, ADEQ
Jerry Smit, Manager, GWS, ADEQ
Marnie Greenbie, Manager SWS, ADEQ
Marcia Colquitt, Manager, WQEU, ADEQ

Vaira Harik, Director
Cochise County Health Department
1415 W. Melody Ln. Bldg A
Bisbee, AZ 85603

Ken Greenberg, Manager
CWA Compliance Office (WTR-7)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

**CITY OF WILLCOX
REQUEST FOR COUNCIL ACTION**

Agenda Item 14
Tab Number 7
Date: 10/18/10

Date Submitted:

October 08, 2010

Action:

Resolution
 Ordinance
 Formal
 Other

Subject:

City Fleet Vehicle Policy
Promoting safety with
general vehicle safety and
reporting instructions.

TO: MAYOR AND COUNCIL
FROM: Sherry Lynn Van Allen, HR Generalist

DISCUSSION:

The Vehicle Policy was presented to Council on August 02, 2010 for comments and consideration by City Manager – Pat McCourt. There have been very slight modifications in grammar since the original presentation. This is a policy targeting safety, efficient vehicle maintenance, and operations.

The sole purpose of this policy is to promote safety while operating any City vehicle. It will also provide clear guidelines on preventative maintenance operations and detail how to properly report an accident. The policy also allows for yearly drivers license checks. This will be done through the Willcox Department of Public Safety. The license will only be checked for validation. Those who have an invalid or suspended license and are unable to perform the duties of their respective job description may be subject to disciplinary action up to and including termination of City employment.

During the research on this type of policy, we have found that other Cities, Towns and Schools Districts that have adopted similar policies has experienced a decrease in accidents and have seen a reduction in Workman's Compensation Claims due to vehicle accidents.

RECOMMENDATION:

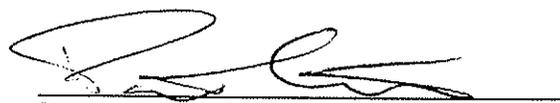
Motion to approve Resolution No. 2010-_____ authorizing the City of Willcox to adopt the Vehicle Policy as part of the current employee handbook under section #517.

FISCAL IMPACT: None at this time. However, our safety rating should improve reducing workmen's compensation claims resulting in a lower e-mod rate over the next couple of years.

Submitted by:


Sherry Van Allen-Teeters, HR Gen.

Approved by:


Pat McCourt, City Manager

517 Fleet Safety Policies and Program

Effective Date: September-7-2010

Resolution #2010-

517.1 - PURPOSE

The theme of this manual is safety: the purpose is ACCIDENT PREVENTION. Our aim in implementing this policy is to improve safety awareness and performance, in addition to creating a system of accountability for any individual who is entrusted with the serious responsibility of operating a vehicle for City of Willcox ("City") business. The primary objective of vehicular accident prevention is the prevention of injuries to people, with an additional goal of preventing damage to vehicles and other property.

517.2 - SCOPE

This policy formally establishes an accident prevention program with a minimum set of safety regulations, standards, and disciplinary procedures, which will be completely enforced. It is expected that all individuals driving vehicles for City business will fully understand these rules and the need to follow them, and it is expected that supervisors will enforce them. This policy supersedes all previous fleet safety policies.

This policy supplements the City of Willcox Employee Handbook ("Employee Handbook"). If there is any inconsistency between the terms of this policy and the Employee Handbook, the terms of the Employee Handbook shall control.

Public Safety, including the Police and Fire Departments, will be exempt from this policy if they have a policy in place that meets or exceeds the policies and procedures outlined here. Operators with a Commercial Drivers License must follow federal and state guidelines as well as City policy.

The City Vehicle Maintenance Department is responsible for the maintenance of all vehicles and equipment purchased by the City. The City Vehicle Maintenance Department will perform or commission all repairs on vehicles and equipment, unless otherwise directed.

The City requires that privately owned vehicles operated for City business be registered in the State of Arizona and insured as required by Arizona State law.

517.3 DEFINITIONS

"Accident" is any contact made by any City vehicle or equipment with any person or object that was not intended to come in contact with which causes, creates or leaves **any** damage to the vehicle, the person or the object, whether visible or not.

"Abuse" of a vehicle or equipment is any operation beyond the specified purpose or capabilities for the vehicle or equipment that may result in inordinate wear or damage.

"Driver/operator" of any vehicle or equipment is a person who is assigned, assumes, or takes responsibility, whether directly or indirectly, for the operation of any City vehicle or equipment; or any person who is at any time in actual physical control of any vehicle or equipment.

"Employee" is City employees, elected officials, and commission/committee members.

"Vehicle" is any motorized equipment that requires a license to operate or is registered through the Department of Transportation, Motor Vehicle Division.

517.4 MANAGEMENT RESPONSIBILITIES

1. Risk Management/Human Resources

- a. Ensure effective application of this policy by monitoring that the required programs are carried out and reporting to the City Manager.
- b. Work closely with the Risk Management Team in establishing goals and objectives of the accident prevention program.
- c. Review and log vehicular Incident Reports and Investigations. Oversee that quality and accuracy is maintained, and proper disciplinary and corrective action has been taken.
- d. Provide initial safe driver training for all new hires.
- e. Assist departments and divisions with resources and materials for annual refresher classes.
- f. Perform annual drivers license checks on an ongoing basis.

2. Vehicle Maintenance Department

- a. Ensure that all vehicles, vehicular equipment, and fleet facilities meet and are maintained at safe standards.

3. Supervisors

- a. See that drivers receive complete safety instruction at the first available opportunity.
- b. Enforce all safety rules, regulations, and standards.
- c. See that all accidents are properly and promptly reported to the Department Director and to the Human Resource Department.
- d. Ensure proper maintenance of equipment.

- e. Immediately remove from a driving position any driver whose license is cancelled, expired, refused, revoked, suspended, or restricted in a manner, which affects the individual's ability to drive on City business.
- f. Arrange for all new hires to attend an initial Safe Driver Awareness – Initial Course as soon as is feasible after starting employment.
- g. Arrange for all employees to receive annual refresher training.

4. Department Heads

- a. Ensure that supervisors have a clear understanding of their responsibilities as they relate to this policy.
- b. Ensure that effective programs are developed and administered in their respective departments, regarding maintenance, safety, and cleanliness standards.

517.5 MINIMUM STANDARDS FOR ALL DRIVERS

- Drivers/operators should always practice good, courteous, defensive driving habits. All drivers/operators shall comply with the applicable local, state and federal traffic laws at all times by observing posted laws and regulations, speeds, traffic control signals and signs pertaining to the operation of motor vehicles on public streets and highways.
- Seat belts must be used in all vehicles at all times.
- The possession, transportation, or consumption of any alcoholic beverage or any controlled substance within or upon any City vehicle is expressly prohibited.
- No personal business may be conducted using a City vehicle, unless specifically approved by the City Manager or designee.
- No unauthorized passengers may ride in a City vehicle, unless specifically approved by the City Manager or designee. Other City employees or individuals conducting business with the City are considered to be authorized.
- Any substantiated report of tailgating, speeding, or other unsafe driving behavior will be subject to disciplinary procedures up to and including termination.
- All moving violations or traffic citations are to be reported to the supervisor as soon as practical.
- License denials, suspensions and revocations or any change in driving status must be reported to the supervisor before the beginning of the next scheduled work shift.
- All moving violations or citations will be the responsibility of the driver, whether driving a City vehicle or not. The City will not pay for any costs associated with violations or citations.
- Smoking is expressly prohibited in all City vehicles. This applies to all employees of the City, as well as volunteers or employees of other agencies performing work for the City. It shall also apply to any member of the general public who has access to a City vehicle as a passenger. The assigned driver/operator is at all times responsible for insuring that no one smokes in the vehicle.
- No radio, tape player, or CD player will be played in a City vehicle at a volume that interferes with the driver/operator's ability to hear traffic and engine sounds.
- Follow procedures of Cellular Policy #516 regarding cell phone usages while driving.
- It is the full and total responsibility of the driver/operator assigned to a City vehicle to conduct inspections prior to operation of the City vehicle. Driver/operator of City pool vehicles must turn in an inspection form if repairs or services are needed.

- All accidents, regardless of circumstances or fault, are to be reported to a supervisor as soon as possible. The supervisor must *immediately* notify the Department Director, Human Resource Department, and the Vehicle Maintenance Department to expedite insurance claims and damage repair.
- It is the responsibility of the driver/operator to keep an Accident Reporting Kit in each City vehicle and to use it to collect information in the case of an accident. Refer to the "In Case of an Accident" portion of this program for specific details.
- A Damage Report Form must be filled out whenever a City vehicle encounters another vehicle, person, building, or other property, regardless of apparent lack of damage.
- It is the responsibility of the driver/operator of any City vehicle who is involved in an accident to file an accident report as required by law.

517.6 ABUSE OF CITY VEHICLES OR EQUIPMENT

Abuse of any City vehicle or equipment may subject the abuser to a suspension of driving privileges and/or other disciplinary action up to and including termination in accordance with the City Employee Manual. Examples of abuse include, but are not limited to:

- driving at excessive speeds,
- towing without proper equipment,
- overloading,
- failure to perform operator inspections/maintenance,
- failure to facilitate scheduled preventative maintenance, and
- general neglect and horseplay.

Any person observing such abuse may report incidents of abuse of equipment to any City Supervisor.

517.7 MOTOR VEHICLE RECORD GUIDELINES

1. New Hires

It is the responsibility of the Human Resources Department to request an MVR from each prospective employee. Volunteer coordinators are responsible for requesting an MVR for each volunteer driver prior to allowing them to operate a City vehicle. No one shall be allowed to drive a City vehicle who's MVR indicates:

- A current cancellation, expiration, refusal, revocation, suspension, or restriction that affects the applicant's ability to drive on City business.

Other factors such as a non-chargeable accident, zero point violation, or pending DUI charge are considered in determining if the applicant's driving record is permissible.

No person may be permitted to operate a vehicle for City business without possessing a valid, current driver's license. Out-of-State applicants may be required to furnish a copy of their driver's license record prior to the offer of employment and may be required to obtain an Arizona Drivers' License as a condition of employment. Depending on the vehicle to be driven, the license must be of the appropriate class.

517.8 ANNUAL DRIVERS LICENSE VALIDATION

At least annually, the City may request a driver's license validation through the Department of Public Safety for all City employees, elected officials, commission/committee members, and volunteer drivers. The City reserves the right to check at any time for proof of valid driver's license. License revocation or suspension, DUI, DWI or any drug violation shall be cause for disciplinary action up to and including termination.

517.9 ADMINISTRATIVE ACTIONS

Employees and volunteer drivers in Driving Positions are expected to obey all laws, regulations, policies, and mandates when operating City vehicles or when operating personal vehicles on City business. Failure to do so may result in disciplinary actions up to and including termination. Examples of violations include, but are not limited to:

- Employee or volunteer driver operating a vehicle with an expired license
- Employee or volunteer driver failing to notify supervisor that he/she is not in possession of a valid license, and driving
- Employee or volunteer driver driving without appropriate class of license
- Employee or volunteer driver driving contrary to a license restriction
- Employee or volunteer driver driving while license is cancelled, refused, revoked, or suspended
- Employee or volunteer driver failing to notify supervisor of change in driver's license status, or failing to notify supervisor of any citation concerning DUI/DWI by the beginning of the next scheduled work shift, or returning to active work status from leave status
- Violation of any policy concerning DUI/DWI, while on City business or driving a City vehicle

517.10 IN CASE OF AN ACCIDENT

1. Accident Reporting

The supervisor will ensure that all drivers/operators have been adequately trained in what to do when an accident occurs. All accidents will be reported immediately to a supervisor. The supervisor will immediately report the accident to the Department Director, the Finance Department, and the Vehicle Maintenance Department. All accidents are to be carefully investigated in a prompt manner to determine accident cause, responsibility, and preventability. It is the responsibility of the driver/operator to ensure an Incident report is completed and given to their supervisor in the event of any type of vehicle accident. Each department may obtain an incident report from the department supervisor or administrative assistant.

An Incident Report Form should be filled out whenever a City vehicle encounters another vehicle, person, building, or other property, regardless of apparent lack of damage. It is the responsibility of the driver/operator of any City vehicle who is operating the city vehicle at the time of the accident to file an accident report under the terms and conditions of the state in which he or she drives.

2. Vehicle Accident Review

Corrective action will be based on a number of factors such as employee history, how much the employee contributed to the incident, severity of damage or loss, etc. The Department Director will determine the final decision on corrective action or discipline, with the Human Resources Department reviewing all decisions. The Human Resources Department and the City Manager must also approve any decision involving demotion, suspension, or termination.

Action may consist of any combination of the following: warnings (verbal or written), retraining, evaluation by a professional, probation, suspension and/or termination. The Human Resources Department and City Manager must review all decisions. Any discipline involving demotion, suspension, or termination must be reviewed and approved by the Human Resources Department and the City Manager. The City Employee Handbook will govern any appeal. Any City vehicle or equipment which is involved in any accident or is reportedly or suspected to be involved in abuse must be driven, towed or transported to the Vehicle Maintenance Shop as soon as possible, but no more than three (3) days after the accident or incident report, for inspection and estimates for repair. Failure to properly report any accident or to deliver the vehicle or equipment to the Vehicle Maintenance shop in accordance with this policy may result in disciplinary action up to and including termination, in accordance with the City Employee handbook.

3. If You Are Involved In an Accident

DO:

- Stop at once. Turn off engine. Turn on emergency flashers. Extinguish fires.
- Make sure no one is injured. Call 911 if needed.
- Fill out a Damage Report immediately and thoroughly.
- Notify your supervisor and Fleet Services Manager *immediately*.
- Answer all questions truthfully when asked by the police agency investigating the accident

DO NOT:

- **Do not** admit that you did anything wrong, violated any policies/procedures or failed to act reasonably.
- **Do not** call insurance company: please let management do this.
- **Do not** give a signed statement to the claims adjuster representing the other driver's insurance company.
- **Do not** speak to the claims adjuster representing the other driver's insurance company without the presence of a representative of the Legal Department, Risk Management, the City's insurance administrator, or a law firm hired by the City's insurance administrator.
- **Do not** give a statement to the press.

517-11 TRAINING REQUIREMENTS

New Hires and Volunteer Drivers

All new employees and volunteer drivers who will operate City vehicles or personal vehicles while conducting City business should be enrolled in the first available Safe Driver Awareness – Initial course. The Risk Management Team will schedule this course on a periodic basis.

All Employees and Volunteer Drivers

All employees, elected officials, commission/committee members, and volunteer drivers who operate City vehicles or personal vehicles while conducting City business should participate in an annual Safe Driver Awareness – Refresher course. This course will be conducted as part of each Department's annual training program. Course materials will be prepared and distributed by the Risk Management Team. Options for providing the course may include Train-the-Trainer courses for departmental designees, outside training resources and/or computer based training programs.

Drivers Involved in Vehicular Accidents

Drivers involved in an accident deemed to be preventable under City guidelines may be required to complete additional safe driver training as provided for or arranged by the Risk Team.

Exemptions

Departments who conduct annual driver training courses specific to their department are not required to conduct additional annual refresher training.

