

AGENDA

AGENDA OF THE SPECIAL SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA TO BE HELD ON TUESDAY, MARCH 9, 2010, AT 5:30 PM IN THE BISBEE MUNICIPAL BUILDING, 118 ARIZONA STREET, BISBEE, ARIZONA.

THE MEETING CALLED TO ORDER BY _____ AT _____ PM.

ROLL CALL

COUNCIL

Councilmember Boyd Nicholl, Ward I
Councilmember Bennie Scott, Ward III
Councilmember Luche Giacomino, Ward II
Mayor W.J. "Jack" Porter
Councilmember Anna Cline, Ward III
Councilmember Raymond Rodgers, Ward II
Councilmember Kenneth "Ken" Budge, Ward I, Mayor Pro Tempore

STAFF

Stephen J. Pauken, City Manager
Gloria P. Gonzalez, Interim City Clerk
Dee L. Flanagan, Finance Director
John Charley, Community Development Director
Jim Elkins, Chief of Police
Jack Earnest, Fire Chief
Jennifer L. Graeme, Personnel Director
Russ McConnell, Public Works Director
Peg White, Library Director

CITY ATTORNEY

Mark J. Langlitz

THE FOLLOWING ITEM WILL BE DISCUSSED, CONSIDERED AND/OR DECIDED UPON AT THIS MEETING:

1. DISCUSSION AND POSSIBLE APPROVAL FOR THE WITHDRAWAL OF THE REQUEST FOR PROPOSALS FOR THE CITY OF BISBEE BLUES & MUSICAL FESTIVAL COORDINATOR.
MARK J. LANGLITZ, CITY ATTORNEY

ADJOURNMENT

Anyone needing special accommodations to attend this meeting should contact Gloria Gonzalez at (520) 432-6000 at least twenty-four hours before the meeting.



AGENDA ITEM NUMBER /

REQUEST FOR COUNCIL ACTION

DATE SUBMITTED: March 8, 2010	TYPE OF ACTION: <input type="checkbox"/> RESOLUTION	SUBJECT: DISCUSSION AND POSSIBLE APPROVAL FOR THE WITHDRAWAL OF THE REQUEST FOR PROPOSALS FOR THE CITY OF BISBEE BLUES & MUSICAL FESTIVAL COORDINATOR.
DATE ACTION REQUESTED: March 9, 2010	<input type="checkbox"/> ORDINANCE	
<input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> FORMAL ACTION	
<input type="checkbox"/> OTHER:		

TO: Mayor and Council
FROM: Mark J. Langlitz, City Attorney
RECOMMENDATION: Approve withdrawal of the Request for Proposals (RFP).
PROPOSED MOTION: I move to approve the withdrawal of the Request for Proposals for the City of Bisbee Blues & Musical Coordinator.

DISCUSSION: On March 2, 2010, the Mayor and Council approved a Request for Proposals for a qualified coordinator to provide services in connection with the City's Bisbee Blues & Music Festival to be held in September 2010 at the Warren Ball Field. The Request for Proposals has not yet been advertised. Under the Request for Proposals, the City was going to pay the coordinator the sum of \$10,000.00 to produce the Festival. Since that time, the City has been approached by Paul Orlando of Cherry Creek Radio informing the City that Cherry Creek Radio will produce the Festival at no cost to the City. By approving this item, the Request for Proposals will be withdrawn and will not be advertised.

FISCAL IMPACT:	No Impact
DEPARTMENT LINE ITEM ACCOUNT:	None
BALANCE IN LINE ITEM IF APPROVED:	None

Prepared by:

 Mark J. Langlitz, City Attorney

Reviewed by:

 Stephen J. Pauken, City Manager

**REQUEST FOR PROPOSALS
CITY OF BISBEE
BISBEE BLUES & MUSICAL
FESTIVAL COORDINATOR**

1. Introduction

The City of Bisbee is seeking sealed proposals in the manner specified herein from qualified coordinators ("Coordinator") capable of providing coordinator services in connection with the City's Bisbee Blues & Musical Festival to be held on September ___, 2010 at the Warren Ball Park, 300 Ruppe Street in Bisbee (the "Event").

2. Schedule for Submission

Submittal Due Date: _____, 2009 at __:00 __.M.
(Arizona, MST)

Submittal Location: City Clerk
City of Bisbee
118 Arizona Street
Bisbee, AZ 85603

Proposal Opening Date: _____, 2009 at __:00 __.M.
(Arizona, MST)

Target City Council
Award Date: _____, 2009

City Representative: John Charley
Community Development Director
118 Arizona Street
Bisbee, Arizona 85603
Tel: 520.432.6269

3. Nature of the Work

A description of the services required is described in the "Scope of Services" attached hereto as Exhibit A.

4. Preparation of Proposal

4.1 It is the responsibility of the Coordinator to examine the entire solicitation and to seek clarification of any requirements that may not be clear. This solicitation includes the City of Bisbee's standard form "Services Agreement" attached hereto as Exhibit B, which the successful Coordinator will be required to execute in connection with the Event.

4.2 The City will not reimburse any costs incurred in developing, presenting or providing a proposal. All materials and documents submitted in response become the property of the City and will not be returned.

4.3 A proposal that is submitted to the City becomes a public record. If the Coordinator believes that any information included in a proposal should remain confidential, the Coordinator must specifically identify that information and its reasons. In the event of any public request for this information, the City will provide the Coordinator with notice of this request and a reasonable opportunity to obtain a court order, at the Coordinator's sole expense, protecting this information from release prior to making it available.

4.4 The specifications stated in this solicitation are the minimum level required. All proposals submitted must be for products or services that meet or exceed the minimum level of all such specifications.

4.5 Any exceptions that are included with the proposal shall be submitted in a clearly identified separate statement by which the Coordinator specifically identifies the precise terms to which any exception is made and describes any alternative offer, if applicable. Any exception that is not clearly identified will be without force and effect. An attached preprinted form of the Coordinator's standard contract or terms will not be considered to be a specific statement of exception.

5. Submission of the Proposal

5.1 **Two copies** of the sealed proposals must be in the actual possession of the City Clerk on or prior to the exact time and date indicated in the Schedule of Events. Late proposals will not be considered.

5.2 Sealed proposals must be submitted in a sealed envelope or container with the following information clearly indicated on the outside:

- a. Name of the Solicitation, as indicated by the City.
- b. Name and address of the Coordinator

5.3 A proposal shall be submitted in writing, by a paper document that is printed, typed or in ink. Proposals submitted directly to the City by electronic means, by facsimile, electronic mail, or otherwise, shall not be accepted. Any substitute for any document forms provided with this solicitation must be legible and must contain the same information requested by any such form.

5.4 A proposal may be withdrawn upon the submission of written, signed request submitted by the Coordinator prior to the due date and time. A proposal may not be amended or withdrawn after the due date and time.

5.5 All proposals shall include the following:

- List of all principals who will conduct the scope of work with resumes or summaries of their experience as it relates to event production.
- Description of experience in producing music festivals, ability to manage and control a budget, and ability to manage the accounting and financial controls.
- Description of vision for the Event including talent.
- Information concerning availability to begin.
- A detailed revenue and expense budget, including the source of funds for each item.

6. Award of the Contract

6.1 The City reserves the right to waive any immaterial defect or informality in a proposal; to reject any or all submittals or portions thereof; to reissue this solicitation; and to award a contract on a partial basis, if in the best interests of the City.

6.2 Unless otherwise stated, a contract will be awarded to the most responsive, responsible coordinator who has demonstrated the ability to perform as required and whose proposal is most advantageous to the City. Factors that will be considered in making this award include technical capability of the Coordinator, performance history, demonstrated availability of the necessary people, equipment and timeliness of the performance.

7. Certification

7.1 By signing and submitting a proposal, the Coordinator certifies that the proposal did not involve any collusion or other anti-competitive practice; that the Coordinator will not discriminate against any employee, applicant, or customer in violation of applicable state and federal law; and that the Coordinator has not given, offered to give and will not give any economic opportunity, future employment, gift, loan, gratuity, trip, favor or discount to any City employee or official in connection with the proposal.

7.2 The Coordinator further certifies that the individual signing the proposal has the authority to make a binding legal commitment on behalf of the Coordinator to perform and deliver everything that is required in connection with the proposal. All proposals shall be effective for a period of thirty (30) days.

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**EXHIBIT A
TO
REQUEST FOR PROPOSALS
CITY OF BISBEE
BISBEE BLUES & MUSICAL
FESTIVAL COORDINATOR**

SCOPE OF SERVICES

General

- Provide full service Event planning and implementation including, financial, management, marketing, talent and vendor contracting, logistics, and evaluation of the Event.
- Manage day-to-day operation, supervise volunteers and sub-contractors, and act as the key contact for the City of Bisbee.
- Demonstrate continuous effort to improve operations, decrease turnaround times, streamline work processes, and work cooperatively and jointly to provide quality seamless customer service.

Planning

- Collect data for the Event with information regarding all aspects of the planning, financing, implementation, and evaluation of the Event.
- Develop plan to produce and stage Event.
- Coordinate with the City of Bisbee to identify and secure venue, finalize schedule, develop implementation plan with timeline, budget, and manpower needs.

Marketing

- Develop marketing material and assures its timely placement for the broadest audiences.
- Develop and produce posters to be posted locally and in Bisbee, Sierra Vista, Douglas, Tucson, Phoenix and other nearby communities.
- Assure full and proper representation of the City of Bisbee and the Bisbee Arts Commission on all marketing materials, posters, printed materials, and banners.
- Ensure that the City of Bisbee and the Bisbee Arts Commission are identified in all printed and media materials as "...presented by the City of Bisbee and the Bisbee Arts Commission" or "City of Bisbee and the Bisbee Arts Commission present..." No sponsor may be included in these statements but may be listed as sponsors or "sponsored by".
- Ensure that the City of Bisbee and the Bisbee Arts Commission are listed as major sponsors in all print and media material, and web based sites; that their logos are affixed to all print and media material and web based sites in a size and fashion no less than any other sponsor.
- Ensure that at least one banner is placed in a prominent place within the venue that includes the logos of the City of Bisbee logo and the Bisbee Arts Commission and the

words "Supporting Art – Promoting Artists" or other wording as may be decided upon by the City of Bisbee.

- The Coordinator may describe itself as producer of the Bisbee Blues and Music Festival in all printed material, media materials and web based sites.
- Ensure that the City of Bisbee has approved all visual and web based materials prior to their dissemination.

Event Sound Levels

- Ensure that sound levels are controlled at the Event and are kept at levels only necessary for the enjoyment of those at the venue without compromising the quality of the Event.

Logistics

- Input, retrieve, and update Event setup information and produce computerized Event reports.
- Determine placement of artists and vendors and advise artists and vendors on methods to best achieve the goals of the Event.
- Identify and contract with beverage vendors and local vendors.
- Direct the work of Event personnel including volunteers, ushers, security guards, and caterers, and functionally supervise all Event support staff including stage setup crews.
- Ensure that setup of chairs, tables, stages, decorations or other equipment is in accordance with requirements and with safety standards and fire and health codes.
- Ensure that all permits are secured for all Event activities including set-up and tear down.
- Ensure that park permits and liquor license permits are obtained not less than four weeks prior to the date of the Event.
- Ensure that beer and wine sales will cease at least 1 hour before the scheduled end of the Event.
- Ensure that all food, beverage, and other concession items are ordered and purchased in a timely manner so as to be available at the Event.
- Ensure that Police, Fire, Public Works, Parks and Recreation, and Community Development Departments of the City of Bisbee receive at least two briefings prior to the Event and one briefing after the Event.
- Ensure that adequate portable toilets and trash containers are available at all times during the Event.
- Ensure that all street and parking lot closings are posted in a timely manner and are included in the use permit application.
- Ensure that all props, decorations, signage, stage equipment, are secured and that a schedule for set up and take down are provided to the Public Works Department of the City.
- Prepare a detailed written plan of operations that indicates what level of City support is being requested for the Event, including police, fire, and public works support; waste collection and removal; park use, lighting, water, electricity, parking and other space requirements not less than six weeks prior to the Event.
- Ensure that adequate staffing including volunteers are made available and that all persons requiring food handler's permits obtain them.

- Take beginning and ending inventory of tickets, concession items, such as souvenir programs, records, and posters and collect appropriate fees.
- Ensure that the Event is advertised in the local paper of record.
- Resolve problems or complaints from the public.
- Open and secure facilities before and after the Event including all clean up.

Evaluation

- Provide post Event evaluation with recommendations for improvements and growth of the Event and develop an Event notebook that summarizes planning activities.

Required Knowledge, Skills and Abilities

- The Coordinator should have knowledge of operating procedures for music festival events, familiarity with all aspects of successful production of musical festival and artistic events, and the principles and practices of supervision.
- The Coordinator should have a minimum of two years of experience in coordinating a variety of events and activities at a public use facility, including one year at a supervisory or lead level, and a bachelor's degree in business administration, theater, facility management or a related field. Other combinations of experience and education that meet the minimum requirements may be substituted.

**EXHIBIT B
TO
REQUEST FOR PROPOSALS
CITY OF BISBEE
BISBEE BLUES & MUSICAL
FESTIVAL COORDINATOR**

SERVICES AGREEMENT
BETWEEN
THE CITY OF BISBEE
AND

THIS SERVICES AGREEMENT (this "Agreement") is made as of _____, 2010, between the City of Bisbee, an Arizona municipal corporation (the "City") and _____, a(n) _____ ("Coordinator").

RECITALS

A. The City issued a Request for Proposals (the "RFP") seeking proposals for musical festival coordinator services in connection with the City's Bisbee Blues & Musical Festival to be held on September ____, 2010 at the Warren Ball Park, 300 Ruppe Street in Bisbee (the "Event").

B. Coordinator submitted a proposal (the "Proposal") in response to the RFP and the City desires to enter into an Agreement with Coordinator for musical festival coordinator services (the "Services") in connection with the Event.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Coordinator hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until completion of the Event.

2. Scope of Work. Coordinator shall provide the Services as set forth in the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference.

3. Compensation. The City shall pay Coordinator a price not to exceed \$10,000.00 for the Services.

4. Payments. The City shall pay Coordinator monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall

document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Additional Consideration. As additional consideration for this Agreement, Coordinator agrees to the following:

a. Pay to the City a sum equal to fifteen percent (15%) of the gross ticket sales received from the Event. Coordinator shall make such payment within ten (10) days of completion of the Event. Coordinator shall include with the payment a written certification documenting the amount of gross ticket sales received.

b. Obtain the City's written consent to the selection of the non-profit organization that will apply for the Special Event Liquor License in connection with the Event.

c. Provide the City at no charge with four (4) vendor tables at the Event for the City's exclusive use.

d. Make every reasonable effort to obtain a Group Vendor General Liability Insurance Policy (excluding alcohol sales) providing coverage of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate for the Event. Coordinator may collect from each participating vendor the amount of the per vendor premium assessed by the insurance company(ies) providing such Policy. The Policy shall name the City as an additional insured at no cost to the City.

6. Coordinator Personnel. Coordinator shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Coordinator agrees to assign specific individuals to key positions. Coordinator agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Coordinator shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications. If deemed qualified, the Coordinator is encouraged to hire City residents to fill vacant positions at all levels.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Coordinator's performance. The Coordinator shall provide and maintain a self-inspection system that is acceptable to the City.

8. Licenses; Materials. Coordinator shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Coordinator. The City has no obligation to provide tools, equipment or material to Coordinator.

9. Indemnification. To the fullest extent permitted by law, Coordinator shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for,

from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Coordinator, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

10. Insurance.

10.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Coordinator, Coordinator shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

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

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

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. Coordinator's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

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

g. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Coordinator shall be solely responsible for any such deductible or self-insured retention amount.

h. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Coordinator shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Coordinator. Coordinator shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

i. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Coordinator will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Coordinator's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of the Coordinator's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Coordinator's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Coordinator’s insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Coordinator under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

10.2 Required Insurance Coverage.

a. Commercial General Liability. Coordinator shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. Coordinator shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Coordinator’s owned, hired and non-owned vehicles assigned to or used in the performance of the Coordinator’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest

extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

c. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Coordinator engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Coordinator shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Coordinator, or anyone employed by the Coordinator, or anyone for whose negligent acts, mistakes, errors and omissions the Coordinator is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services, and the Coordinator shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

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

10.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially change without 30 days' prior written notice to the City.

11. Applicable Law; Venue. In the performance of this Agreement, Coordinator shall abide by and conform to any and all laws of the United States, State of Arizona and City of Bisbee, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

12. Termination; Cancellation.

12.1 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, Coordinator shall promptly return to the City any payments made by the City to the Coordinator under this Agreement.

12.2 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Coordinator in the event that the Services are permanently

abandoned. In the event of such termination due to work stoppage, Coordinator shall promptly return to the City any payments made by the City to the Coordinator under this Agreement.

12.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Coordinator to any other party of the Agreement with respect to the subject matter of the Agreement.

12.5 Gratuities. The City may, by written notice to the Coordinator, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Coordinator or any agent or representative of the Coordinator to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Coordinator an amount equal to 150% of the gratuity.

13. Miscellaneous.

13.1 Independent Contractor. Coordinator acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Coordinator, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Coordinator, its employees or subcontractors. Coordinator, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Coordinator meets the requirements of its agreed scope of work as set forth in Section 2 above. Coordinator is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Coordinator do not intend to nor will they combine business operations under this Agreement.

13.2 Laws and Regulations. Coordinator shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom Coordinator is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (a) existing and future City and County ordinances and regulations, (b) existing and future state and federal laws and (c) existing and future Occupational Safety and Health Administration ("OSHA") standards.

13.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and Coordinator.

13.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not

correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

13.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

13.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Coordinator is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Coordinator agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

13.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

13.8 Assignment. No right or interest in this Agreement shall be assigned by Coordinator without prior, written permission of the City signed by the City Manager and no delegation of any duty of Coordinator shall be made without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by Coordinator in violation of this provision shall be a breach of this Agreement by Coordinator.

13.9 Subcontracts. No subcontract shall be entered into by Coordinator with any other party to furnish any of the material or services specified herein without the prior written approval of the City. Coordinator is responsible for performance under this Agreement whether or not subcontractors are used.

13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release Coordinator from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

13.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

13.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

13.13 Offset.

a. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Coordinator any amounts Coordinator owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

b. Offset for Delinquent Fees or Taxes. The City may offset from any money due to Coordinator any amounts Coordinator owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

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

If to the City: City of Bisbee
 118 Arizona Street
 Bisbee, Arizona 85603
 Facsimile: (520) 432-6069
 Attn: _____

With copy to: Mark J. Langlitz, Esq.
 City Attorney
 118 Arizona Street
 Bisbee, Arizona 85603
 Facsimile: (520) 432-6069

If to Coordinator: _____

 Facsimile: _____
 Attn: _____

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

13.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Coordinator and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Coordinator's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

13.18 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Coordinator certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the City determines that the Coordinator submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 13.2 above.

13.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the Agreement, the Scope of Work, the RFP and the Proposal, the documents shall govern in the order listed herein.

13.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“City”

“Coordinator”

CITY OF BISBEE, an Arizona
municipal corporation

_____,
a(n) _____

W. J. Porter, Mayor

By: _____

ATTEST:

Name: _____

Gloria P. Gonzalez, Interim City Clerk

Title: _____

APPROVED AS TO FORM:

Mark J. Langlitz, City Attorney

EXHIBIT A
TO
BISBEE BLUES & MUSICAL
FESTIVAL COORDINATOR
SERVICES AGREEMENT
BETWEEN
THE CITY OF BISBEE
AND

[Scope of Services]