



Sierra Vista City Council
Meeting Agenda
October 27, 2016

Call to Order

5:00 p.m., City Hall Council Chambers, 1011 N. Coronado Drive, Sierra Vista, Arizona

Roll Call

Invocation - Rev. Victor J. Sarrazin, St. Stephens Episcopal Church

Pledge of Allegiance

Item 1 Acceptance of the Agenda

Awards and Presentations

City Council Business for the Month of October: Peacock Restaurant

Proclamation declaring the month of October 2016 as National Cyber Security Awareness Month

Proclamation declaring the month of November as National Hospice and Palliative Care Month

City Manager's Report: Upcoming Meetings, Bid Openings and Bid Awards

Item 2 Consent Agenda

Item 2.1 Approval of the City Council Special Meeting Minutes of October 13, 2016

Item 2.2 Approval of the City Council Meeting Minutes of October 13, 2016

Public Hearing

Item 3 Resolution 2016-083, Sampling Privilege Application for a Series 9 Liquor License for Clare Hollie Abel on behalf of Wal-Mart Super Center #1240, 500 N. Highway 90, Sierra Vista, Arizona

Item 4 Resolution 2016-084, City-Initiated Amendments to Title IX, General Regulations, City of Sierra Vista Code of Ordinances, Adding Chapter 91: Public Rights-of-Way and Easements and Declaring a 30-day Public Record

Item 5 Resolution 2016-085, Procurement Code Revision and Declaring a 30-day Public Record

New Business

For special needs and accommodations, please contact Jenifer Thornton, Management Analyst, Department of Community Development, 72 hours prior to the meeting or activity. Ms. Thornton can be reached at (520) 458-3315 or through the Arizona Relay Service at 1-800-367-8939, or by simply dialing 7-1-1.

Item 6 Resolution 2016-086, Support for Improvement of the Veterans Memorial in Veterans Memorial Park

Item 7 Resolution 2016-087, Support of Civil Air Patrol's Cochise Composite Squadron 107 to Act as Pass-through Agent

Call to the Public

Comments and Requests of the Council

Adjournment

For special needs and accommodations, please contact Jenifer Thornton, Management Analyst, Department of Community Development, 72 hours prior to the meeting or activity. Ms. Thornton can be reached at (520) 458-3315 or through the Arizona Relay Service at 1-800-367-8939, or by simply dialing 7-1-1.

Sierra Vista City Council
Special Meeting Minutes
October 13, 2016

Mayor Mueller called the October 13, 2016 City Council Meeting to order at 2:30 p.m., City Hall, City Manager's Conference Room, 1011 N. Coronado Drive, Sierra Vista, AZ

Roll Call:

Mayor Rick Mueller – present
Mayor Pro Tem Bob Blanchard – present
Council Member Alesia Ash – present
Council Member Gwen Calhoun – present
Council Member Rachel Gray – present
Council Member Hank Huisking – present
Council Member Craig Mount – present

Others Present:

Chuck Potucek, City Manager
Nathan Williams, City Attorney
Jill Adams, City Clerk

Item 1 Acceptance of Agenda

Council Member Huisking moved that the Agenda for the Special City Council Meeting of October 13, 2016, be approved as written. Mayor Pro Tem Blanchard seconded the motion. The motion carried unanimously, 7/0.

New Business

Item 2 Request to adjourn into Executive Session in accordance with Arizona Revised Statute §38-431.03(A.3), discussions or consultations for legal advice with the attorney or attorneys of the public body regarding personnel issues - city manager evaluation

Council Member Mount moved to adjourn into Executive Session in accordance with Arizona Revised Statute §38-431.03(A.3) as set forth in the notice dated September 30, 2016. Council Member Ash seconded the motion. The motion unanimously carried, 7/0.

Ms. Adams and Mr. Williams left the room for the Executive Session.

Item 3 Adjournment

Mayor Mueller adjourned the October 13, 2016 Executive Session of the Sierra Vista City Council at 4:20 p.m.

Mayor Mueller adjourned the October 13, 2016 Special meeting of the Sierra Vista City Council at 4:21 p.m.

Mayor Frederick W. Mueller

Minutes prepared by:

Attest:

Maria G. Marsh, Deputy Clerk

Jill Adams, City Clerk

**Sierra Vista City Council
Meeting Minutes
October 13, 2016**

Mayor Mueller called the October 13, 2016 City Council Meeting to order at 5:00 p.m., City Hall Council Chambers, 1011 N. Coronado Drive, Sierra Vista, AZ

Roll Call:

Mayor Rick Mueller – present
Mayor Pro Tem Bob Blanchard – present
Council Member Alesia Ash – present
Council Member Gwen Calhoun – present
Council Member Rachel Gray – present
Council Member Hank Huisking – present
Council Member Craig Mount – present

Others Present:

Chuck Potucek, City Manager
Mary Jacobs, Assistant City Manager
Adam Thrasher, Police Chief
Ron York, Fire Chief
Victoria Yarbrough, Leisure and Library Services Director
Jing Luo, City Engineer
Mat McLachlan, Community Development Director
Linda Jones, Management Analyst
Abe Rubio, IT Manager
Nathan Williams, City Attorney
Jill Adams, City Clerk

Invocation – Council Member Mount conducted the invocation.

Pledge of Allegiance - Mayor Pro Tem Blanchard lead the Pledge of Allegiance.

Item 1 [Acceptance of the Agenda](#)

Council Member Ash moved that the agenda for the Regular City Council Meeting of October 13, 2016, be approved. Council Member Gray seconded the motion. The motion was approved by a unanimous vote, 7/0.

Awards and Presentations:

A Service Award was presented to City Manager Charles Potucek by Mayor and Council on behalf of the International City/County Management Association for 30 years of service to local government. Mr. Potucek stated that he and his family have truly been blessed to have been in Sierra Vista for the past 30 years and thanked present and past Council, great staff that he currently works with as well as past staff and the wonderful community.

A Proclamation declaring the month of October 2016 as Domestic Violence Awareness Month was presented to Corporal Jordan Boltinghouse with the Sierra Vista Police Department, Ms. Liz York and Ms. Lauri Owen, all from the Cochise County Family and Community Coalition. Ms. Lauri Owen introduced her group and explained that they were formed in 2012 and reformed in 2016 when the funding dried up and there are now about 20 volunteers and added that the Coalition analyzes data, collects information, identify trends and needs and then provide what is needed in the community, primary education. The Coalition's goal is to network and to bring the community together as there is a staggering amount of domestic violence, sexual assault, trafficking and a need for awareness. In closing, she stated that there were 800 arrests last year

for domestic violence, which means that at least twice that many were not arrested with at least 50 percent more than that out there that were never called in. Sexual assault was at 80 percent and everyone has a responsibility to help lower the numbers, to educate and to make every month Domestic Violence Awareness Month.

A Proclamation declaring October 28, 2016 as Arizona Veterans Hall of Fame Day was presented to members of the Arizona Veterans Hall of Fame. Mr. Tom Hessler explained that the Arizona Veterans Hall of Fame recognizes military veterans of the state for achievements outside of their military service. Sierra Vista is the only City that has a of proclamation that is tailored after the one that the Governor will issue on the next induction, October 28th. Cochise County has about four percent of the total population of veterans and they only have 10 percent of the members on the Hall of Fame Society that actually reside in Cochise County.

A Proclamation declaring November 5, 2016, as Empty Bowls Project Day was presented to Tracy Mills, Pottery Studio Recreation Leader and 2016 Committee Chair. Ms. Tracy Mills thanked Council for the recognition and encourage people to attend the event on November 5th.

Mayor Mueller added that for a small donation, one can get a bowl with soup and bread. There is entertainment at the event and people can donate items as well. Every year is more successful and the previous year and in closing he asked people to be generous with their donations and thanked the Pottery Studio for their help in the community.

City Manager's Report: Mr. Potucek made the following announcements:

- City Council Work Session on October 25, 2016 at 3:00 p.m., City Hall Council Chambers regarding normal update plus a discussion on the upcoming strategic planning process;
- Work is on-going and should be completed within the next two weeks for the Campus Drive & Colombo Traffic Signal; and
- Taxiway G & J Strengthening Project (FAA/ADOT funded) was awarded to Granite Construction in the amount of \$1,687,145.00.

Item 2 Consent Agenda

Item 2.1 [Approval of the City Council Special Meeting Minutes of September 22, 2016](#)

Item 2.2 [Approval of the City Council Regular Meeting Minutes of September 22, 2016](#)

Council Member Gray moved that the Consent Agenda consisting of the City Council Special Meeting Minutes of September 22, 2016 and the City Council Regular Meeting Minutes of September 22, 2016, be approved. Council Member Huisling seconded the motion. The motion was approved by a unanimous vote, 7/0.

New Business

Item 3 [Resolution 2016-081, Appointment of William Hargis to the Environmental Affairs Commission, said term to expire August 26, 2018](#)

Council Member Huisling moved that Resolution 2016-081, appointment of William Hargis to the Environmental Affairs Commission, said term to expire August 26, 2018, be approved. Council Member Gray seconded the motion. The motion was approved by a unanimous vote, 7/0.

Council Member Huisling and Mayor Mueller and Council Member Huisling thanked and congratulated Mr. Hargis on his appointment to the commission.

Item 4 Resolution 2016-082, Rescinding Resolution 2016-067, Tasking the Citizens Advisory Commission with Reviewing Boards

Council Member Calhoun moved that Resolution 2016-082, rescinding Resolution 2016-067, tasking the Citizens Advisory Commission with reviewing boards and commissions, be approved. Council Member Gray seconded the motion.

Mayor Mueller explained that a yes vote would remove the tasking from the Citizens Advisory Commission and a no vote would retain the tasking for the Citizens Advisory Commission.

The motion was approved by a unanimous vote, 7/0.

Call to the Public

Mr. Frank Jackson, Airport Commissioner, stated that the Airport Commission as one of their objections will attempt to increase the communication between the Commission and the Council both ways. He reported that Council Member Mount is their new liaison and that the Commission will now meet on the third Wednesday of each month. He further stated that he plans to attend the Council Meetings every other month to provide updates on the things that the Commission sees forthcoming, i.e., the \$1.6 Million Taxiway G & J Strengthening Project. In closing, he added that he wants to represent a face for when Council Members get questions from their constituents concerning the airport. The City is lucky to have Ms. Flissar, Public Works Director, as the airport manager and noted that there is tremendous experience on the Commission.

Comments and Requests of the Council

Council Member Mount thanked the Airport Commission for their flexibility with regard to changing their meeting date as it freed up another obligation that he has and it is a great Commission to be a part of. He also announced the HOG Rally for the weekend and stated that it is a big economic boost for the City and noted that on Wednesday night, as he was walking through the parking lot of a restaurant, he saw that everything was packed with people from out of town. If the City can string together a couple of nights like that, it will be great for the local businesses and asked the public to be welcoming to guests as this event is for a temporary period of time. There will be music and it will be loud; but it should be fun and the City is well prepared for the event.

Council Member Huisiking congratulated Mr. and Mrs. Potucek, announced that she will be out at Brown Canyon Ranch on October 14th with Kids World as there will be 80 kids of all different ages attending, which will be taught how to make adobe bricks, rope cows, go on nature walks and etc. She also congratulated Mr. Hargis for his willingness to serve on the Environmental Affairs Commission and wished everyone a safe weekend with all of the motorcycles out in the City.

Council Member Calhoun congratulated and thanked Mr. Hargis for serving on the Environmental Affairs Commission as well as Mr. Jackson for serving on Airport Commission and taking the step to come forth and opening up the line of communication to improve what they all do together.

Council Member Ash announced that SierraVistability Day is scheduled for October 22nd hosted by the City and the Commission on Disability Issues at the Sierra Vista Mall from 10:00 a.m. until 2:00 p.m. She encouraged people to attend because it is a great opportunity to get resources for services along with information about medical products.

Council Member Gray had nothing to report.

Mayor Pro Tem Blanchard congratulated Mr. Hargis on his appointment to the Environmental Affairs Commission.

Mayor Mueller thanked Mr. Potucek and his family for 30 years of service, stated that there are still kids out for the October Break as well as more motorcycles on the road and asked people to take their time as they go around town. He announced that on October 15th on the west end of Ramsey Road the County will be dedicating a new bicycle path near Brown Canyon. This path will run from there up into the mountains, which is connected to the City's bicycle path. Now people can go from the mountains through the City, to the Post, around the City and back again. In closing, he noted that he knows that everyone will be friendly with visitors as the City has a great reputation for hospitality.

Adjournment

Mayor Mueller adjourned the October 13, 2016 meeting of the Sierra Vista City Council at 5:25 p.m.

Mayor Frederick W. Mueller

Minutes prepared by:

Attest:

Maria G. Marsh, Deputy Clerk

Jill Adams, City Clerk

September 30, 2016

MEMORANDUM TO: Honorable Mayor and City Council
THRU: Charles P. Potucek, City Manager
FROM: Jill Adams, City Clerk
SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
Resolution 2016–083, a Series 9 Liquor License application to add
sampling privileges for Clare Hollie Abel on behalf of Wal-Mart
Super Center #1240

RECOMMENDATION:

The City Manager recommends approval of this license.
The City Clerk recommends approval of this license.

INITIATED BY:

Ms. Clare Hollie Abel
508 SW 8th Street
Bentonville, AR 72710

BACKGROUND:

The City received an application from Clare Hollie Abel on behalf of Wal-Mart Super Center #1240 for the addition of sampling privileges to their Series 9 Liquor License at 500 North Highway 90, Sierra Vista, Arizona. Wal-Mart Super Center is renewing their sampling privileges for an unlimited number of sampling events for its Series 9.

State law on liquor licenses requires the applicant apply for a liquor license from the Arizona Department of Liquor License and Control. That department then sends a copy of the liquor license application to the municipality for their approval. A notice of public hearing must be posted on the premises for 20 days prior to the public hearing. The Police Department has performed a background investigation and has given its approval. The public hearing notice was posted and there have been no responses received. The Council's decision concerning this liquor license application will be forwarded to the State Department of Liquor Licenses and Control, who will then issue the liquor license if no objections were received.

BUDGET APPROPRIATION:

Not applicable.

RESOLUTION 2016-083

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING SETTLED POLICY BY RECOMMENDING APPROVAL A SERIES 9 LIQUOR LICENSE APPLICATION FOR SAMPLING PRIVILEGES FOR CLARE HOLLIE ABEL ON BEHALF OF WAL-MART SUPER CENTER #1240; TO THE STATE DEPARTMENT OF LIQUOR LICENSES AND CONTROL; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, a Sampling Privileges Application for Clare Hollie Abel on behalf of Wal-Mart Super Center #1240, has been filed with the Arizona Department of Liquor Licenses and Control; and

WHEREAS, Arizona Revised Statutes §4-112 requires local municipalities to grant approval or disapproval of all liquor licenses being applied for within their jurisdiction; and

WHEREAS, the applications have been posted on the premises of the business for twenty (20) days as required by State law; and

WHEREAS, it is the settled policy of the City Council that liquor licenses be recommended for approval if no objections are raised.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

The City Council reaffirms its settled policy on liquor licenses within City limits.

SECTION 2

The City Council of the City of Sierra Vista recommends approval a Series 9 Liquor License application to add sampling privileges for Clare Hollie Abel on behalf of Wal-Mart Super Center #1240, to the State Department of Liquor Licenses and Control.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents, are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 27th DAY OF OCTOBER 2016.

Frederick W. Mueller
Mayor

Approved as to Form:

Attest:

Nathan J. Williams
City Attorney

Jill Adams
City Clerk

Prepared By:
Jill Adams, City Clerk



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

DLLC USE ONLY

Issuance fee: \$100.00
Issuance Date: _____
<input checked="" type="checkbox"/> Liquor Store (series 9)
<input type="checkbox"/> Beer and Wine Store (series 10)
CSR: _____

**SAMPLING PRIVILEGES APPLICATION
 SERIES 9 OR 10**

Applicant's Name: (Owner Agent) Clare Hollie Abel License #: 09023000

Business Name: Wal-Mart Supercenter #1240

Business Location: 500^N hwy 90, Sierra Vista, AZ Cochise 85635

Street Address	City	State	County	Zip Code
Mailing Address: <u>508 SW 8th Street, Bentonville, AR 72710</u>			<u>Benton</u>	
Street Address or P.O. Box	City	State	County	Zip Code

Business Phone Number: 520-458-8970 Daytime Contact Number: 602-234-9920

Email Address: chabel@bcattorneys.com

15 SEP 20 14 11:16 #901

Series #10 Beer and Wine Bar Only:

- I declare that my business qualifies as a
- Premises is 5,000 square feet or larger
 - At least 75% of shelf space is dedicated to beer and wine

A.R.S. §4-206.01(J) Bar, Beer and Wine Bar or Liquor Store licenses; number permitted; fee; sampling privileges

I (Signature), Clare Hollie Abel, attest that I am the OWNER/AGENT filing this form, that I have read, and assume responsibility for compliance with, A.R.S. §4-206.01 A.R.S. §4-206.01 at the licensed establishment, and verify all statements I have made on this document to be true, correct and complete. I understand that I am responsible for the \$100 issuance fee and the annual \$75 renewal fee for these sampling privileges. Sampling privilege renewal fees are due at the same time as the renewal for the "current license #" identified on page 1 of this application.

LOCAL GOVERNING BOARD

I, _____ recommend APPROVAL DISAPPROVAL

(Government Official Signature) (Title)

on behalf of _____

(City, Town, County) Phone Date

DLLC USE ONLY

Investigation Recommendation: Approval Disapproval by: _____ Date: ___/___/___

Director Signature required for Disapprovals: _____ Date: ___/___/___

October 20, 2017

Memorandum To: Honorable Mayor and City Council

Thru: Charles P. Potucek, City Manager
Mary Jacobs, Assistant City Manager

From: Matt McLachlan, AICP
Director, Community Development

Subject: REQUEST FOR AGENDA ITEM PLACEMENT
Resolution 2016-84, City-Initiated Amendments to Title IX, General
Regulations, City of Sierra Vista Code of Ordinances, Adding Chapter 91:
Public Rights-of-Way and Easements

STAFF RECOMMENDATION:

The City Manager recommends approval.

The Assistant City Manager recommends approval.

The Director of Community Development recommends approval.

APPLICANT:

The City of Sierra Vista.

BACKGROUND:

Article 151.08, Public Improvement Standards, defines the responsibility of the developer or sub-divider and the City in the planning, construction, and financing of public improvements, to establish the minimum acceptable standards and required public improvements for developments or subdivisions and to establish procedures for review and approval of engineering plans. Public improvements are defined as, but not limited to: streets and alleys, curbs and gutters, sidewalks, multi-use paths, striping, street signs, drainage facilities, sewage disposal facilities, street lights, fire hydrants, water facilities, landscaping, and all other public improvements required by the City, this article, or Arizona Revised Statutes. The developer or subdivider is responsible for financing, planning, designing and constructing all public improvements to City standards in the public right-of-way. The Code establishes the minimum submittal requirements and standards for Public Works and Landscape Improvement Plans which are generally prepared in connection with site plan and subdivision plat applications for new development.

Absent a development application for new construction, the City has required that a right-of-way permit issued by the Public Works Department prior to any work being performed inside a public right-of-way. Staff recommends that this practice be codified, with standards developed and use permissions established for existing public rights-of-way and easements.

This item was considered by the Planning and Zoning Commission on August 16, 2016. The Commission unanimously voted to recommend approval, with a change to Sec. 91.03(c)(5) to require any cafe tables or related fixtures to be of a design quality that would not be easily windblown into oncoming traffic. This edit has been made.

BUDGET IMPACT

None.

October 20, 2017

Memorandum To: Honorable Mayor and City Council

Thru: Charles P. Potucek, City Manager
Mary Jacobs, Assistant City Manager

From: Matt McLachlan, AICP
Director, Community Development

Subject: REQUEST FOR AGENDA ITEM PLACEMENT
Resolution 2016-84, City-Initiated Amendments to Title IX, General
Regulations, City of Sierra Vista Code of Ordinances, Adding Chapter 91:
Public Rights-of-Way and Easements

STAFF RECOMMENDATION:

The City Manager recommends approval.

The Assistant City Manager recommends approval.

The Director of Community Development recommends approval.

APPLICANT:

The City of Sierra Vista.

BACKGROUND:

Article 151.08, Public Improvement Standards, defines the responsibility of the developer or sub-divider and the City in the planning, construction, and financing of public improvements, to establish the minimum acceptable standards and required public improvements for developments or subdivisions and to establish procedures for review and approval of engineering plans. Public improvements are defined as, but not limited to: streets and alleys, curbs and gutters, sidewalks, multi-use paths, striping, street signs, drainage facilities, sewage disposal facilities, street lights, fire hydrants, water facilities, landscaping, and all other public improvements required by the City, this article, or Arizona Revised Statutes. The developer or subdivider is responsible for financing, planning, designing and constructing all public improvements to City standards in the public right-of-way. The Code establishes the minimum submittal requirements and standards for Public Works and Landscape Improvement Plans which are generally prepared in connection with site plan and subdivision plat applications for new development.

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This item was considered by the Planning and Zoning Commission on August 16, 2016. The Commission unanimously voted to recommend approval, with a change to Sec. 91.03(c)(5) to require any cafe tables or related fixtures to be of a design quality that would not be easily windblown into oncoming traffic. This edit has been made.

BUDGET IMPACT

None.

RESOLUTION 2016-84

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, DECLARING AS PUBLIC RECORD PROPOSED TEXT AMENDMENTS TO THE CITY OF SIERRA VISTA CODE OF ORDINANCES, TITLE IX, GENERAL REGULATIONS, BY AMENDING CHAPTER 91 TO ESTABLISH REGULATIONS FOR PUBLIC RIGHTS-OF-WAY AND EASEMENTS, AS SHOWN ON EXHIBIT "A"; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICES AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista Code of Ordinances do not currently regulate encroachments in public rights-of-way and easements;

WHEREAS, in order to protect the health, safety and welfare of its citizens, the City of Sierra Vista desires to implement a process for the approval and permitting of authorized uses within public rights-of-way and easements.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista relating to declaring proposed text amendments to the City Code as a public record be, and hereby is, reaffirmed.

SECTION 2

That the certain document entitled Exhibit "A", attached hereto, establishing Chapter 91, Public Rights-of-Way and Easements of the Sierra Vista City Code which is currently reserved, copies of which are on file in the office of the City Clerk, is hereby declared a public record for 30 days.

SECTION 3

That the City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
SIERRA VISTA, ARIZONA THIS 27TH DAY OF OCTOBER, 2016

FREDERICK W. MUELLER
Mayor

Approval as to Form:

Attest:

Nathan Williams
City Attorney

Jill Adams
City Clerk

PREPARED BY:
Matt McLachlan, AICP
Community Development Director

EXHIBIT "A"

CHAPTER 91: PUBLIC RIGHTS-OF-WAY AND EASEMENTS

GENERAL

§ 91.01. - CITY AUTHORITY

- (a) Rights-of-way and certain easements are managed by the City for public uses.
- (b) The City may issue, issue with conditions, or deny a permit to work or install improvements in the right-of-way or easement.
- (c) The City may remove, or direct the removal of, encroachments in the right-of-way or easement to promote the health, safety and general welfare of the public, and to promote the public uses of the right-of-way or easement.
- (d) The City is not obligated to remove, replace or restore any private improvements in the right-of-way unless the City has agreed to do so as part of the right-of-way permit.
- (e) The City is not obligated to remove, replace or restore any privately-installed public improvements that deviate from City standards.
- (f) The City is not obligated to accept any private street that is not constructed or maintained to City standards. Even if a private street is constructed and maintained in accordance with City standards, City acceptance of the private street is subject to City Council approval.
- (g) The City's issuance of a permit to work in the right-of-way or to place private improvements in the right-of-way does not create exclusive rights.
- (h) The City may require inspections of all uses in the right-of-way.
- (i) The City Engineer administers this chapter.

ENCROACHMENTS

§ 91.02. - REGULATION OF ENCROACHMENTS

- (a) There are several kinds of encroachments of the right-of-way, representing different uses and risks, and different degrees of permanency and interference with the right-of-way. Different kinds of encroachments warrant different types of government regulation.
- (b) The City Engineer is responsible for developing any necessary policies and regulations to manage encroachments of the right-of-way not covered by this chapter.

§ 91.03. - PROHIBITED RIGHT-OF-WAY ENCROACHMENTS; LIMITED ENCROACHMENTS

- (a) For purposes of this section, the owner of property adjacent to the right-of-way includes the occupant of the property.
- (b) Except as authorized in writing by the City, no person shall:
 - (1) Place or maintain any encroachment in the right-of-way.
 - (2) Place or maintain any tree, hedge, shrub or other plant, or any structure or other encroachment, on property adjacent to the right-of-way, which interferes with public uses of the right-of-way.
 - (3) Use the right-of-way, or areas below, adjacent to or above the right-of-way, in a manner that interferes with the public uses of the right-of-way.
 - (4) Damage the right-of-way or public improvements in the right-of-way.
- (c) However, without authorization from the City, an owner of property adjacent to the right-of-way may place and maintain the following private improvements in the area behind the curb, edge of the pavement or edge of the City-maintained dirt road or dirt shoulder which do not create traffic visibility conflicts or hazards. These improvements are not allowed in alleys.
 - (1) Ground-covers, vines or other plants that do not exceed eighteen (18) inches in height above the adjacent curb or other edge of the right-of-way.
 - (2) Rocks smaller than six (6) inches in diameter, bricks, pavers, gravel and similar landscape material that does not exceed eighteen (18) inches in height above the adjacent curb or other edge of the right-of-way.
 - (3) Irrigation conduits two (2) inches or smaller.
 - (4) A mailbox mounted on a break-away post no larger than four inches by four inches, outside the clear zone.
 - (5) Cafe tables, seating and related fixtures provided:
 - a. Said fixtures are located on the closest edge of a sidewalk directly adjacent to a commercial business provided a minimum accessible path no less than three feet in width is maintained at all times; and
 - b. Said fixtures are made of quality materials and workmanship. Lightweight plastic or similar material shall be prohibited.
 - (6) Certain temporary signs to the extent permitted by the City's sign code.
- (d) In addition, persons may perform routine property maintenance as set forth in this Section.

- (e) Except as authorized in writing by the City, the following limitations apply to all private improvements in the right-of-way:
- (1) No private improvement shall interfere with public uses of the right-of-way.
 - (2) The owner of the property adjacent to the right-of-way is responsible for maintaining the owner's private improvements in the right-of-way in an orderly condition.
 - (3) When the City or designee directs the removal of any private improvement from the right-of-way, the owner of the property adjacent to the right-of-way shall promptly remove the improvement.
 - (4) All improvements in the right-of-way shall comply with all applicable federal, state, county and City laws, ordinances, rules and regulations.
 - (5) No hedge, shrub, tree or other similar plant shall be allowed to interfere with public uses of the right-of-way.
 - (6) No structure, such as a wall, fence, basketball hoop, or sculpture, shall be placed in or maintained in any right-of-way, except for mailboxes, cafe tables and seating, allowed above.

§ 91.04. - PROHIBITED DRAINAGE AND UTILITY EASEMENT ENCROACHMENTS; LIMITED ENCROACHMENTS

- (a) For purposes of this section, the owner of property upon which a public easement has been recorded includes the occupant of the property.
- (b) Except as authorized in writing by the City, no person shall:
 - (1) Place or maintain any permanent structure or other physical items causing a physical obstruction to the function of a drainage easement or structure inside a drainage or utility easement.
 - (2) Install or maintain landscaping other than turf, mulch, or other ground cover inside a drainage or utility easement unless a swale is present, in which case no plantings are permitted within the swale unless otherwise approved by the City Engineer.
- (c) Temporary structures, including fences, may be permitted in a drainage or utility easement with the consent of the City Engineer or his or her designee provided the property owner signs and records an affidavit assuming full liability for all costs associated with the repair or replacement of the temporary structure should the City damage or remove it. The City shall consider the impact of the temporary structure will have on gaining access, drainage flow, and any known objections from outside utility companies or other affected party.

PERMITS

§ 91.05. - RIGHT-OF-WAY AND EASEMENT USE PERMIT REQUIRED.

No person shall construct, reconstruct, repair, alter, pave, or grade any sidewalk, curb, curb cut, driveway, parkway, or street within a public right-of-way or easement without first obtaining a permit from the City Engineer as provided by this chapter.

§ 91.06. - RIGHT-OF-WAY AND EASEMENT USE PERMITS.

- (a) Permits for paving, grading, or use of any portion of a public right-of-way or easement for any purpose may be granted by the City Engineer, when, in his or her discretion, the safety and convenience of the City can be protected. The City Engineer may impose any such conditions upon said permit which are deemed necessary to protect the safety and convenience of the City.
- (b) All such permits shall be clearly marked to indicate that they are revocable at the will of the City, and that their issuance in no way grants to the permittee or his or her successors any right to the continued use of such right-of-way or easement.
- (c) If any person undertakes any activity as a result of an emergency within a public right-of-way or easement without a permit as required by this Chapter, a permit shall be obtained within forty-eight (48) hours of the emergency activity. An emergency shall exist, if, without undertaking the activity in the right-of-way or easement, there is an immediate danger of damage occurring to life or property. If it is determined by the City Engineer that no emergency existed at the time of the activity, the City Engineer may require removal of any objects placed within the public right-of-way or easement and/or deny the requested permit. Additionally, the person shall be subject to enforcement action as provided for by this Code or as otherwise provided for by law.

§ 91.07. - APPLICATION PROCEDURE.

An applicant for a permit hereunder shall file with the City Engineer an application showing:

- (1) Name and address of the owner, or agent, in charge of the property abutting the proposed work area;
- (2) Name and address of the party doing the work;

- (3) Location of the work area;
- (4) Attached sample drawing showing necessary details of the proposal; and
- (5) Such other information as the City Engineer shall find reasonably necessary to the determination of whether a permit should be issued hereunder.

§ 91.08. - BOND REQUIREMENTS AND EXEMPTIONS.

The following bonds may be required to accompany an application for a right-of-way use permit hereunder:

- (1) Construction and maintenance. In cases where the estimated cost of the project shall exceed five thousand dollars (\$5,000), the City Engineer may require a maintenance and construction bond to be filed with the application for a permit hereunder in an amount equal to one hundred (100) percent of the estimated cost of the project and conditioned that such work shall be done in accordance with the City's standard specifications and guaranteeing the same for a period of two (2) years, thereafter the property owner shall maintain the improvement in a good and safe condition. Provided, however, for site plans and subdivision plats requiring the approval of a public works improvement plan, an improvement security meeting the requirements of Sec. 151.08.002(F) of the development code shall be provided.
- (2) Indemnity. The City Engineer shall have the authority to require an applicant to file a bond conditioned to protect and save harmless the City from all claims for damages or injury to persons and property sustained during the actual course of such alteration work.
- (3) Exemptions. Utility companies serving the public through a franchise agreement with the City shall be exempt from posting bonds for construction. However, they must obtain the required permits.

§ 91.09. - FEE.

Each application shall be accompanied by a fee equivalent to the amount established by Ordinance 2013-006 for right-of-way permit.

§ 91.10. - REVOCATION.

All permits or privileges issued or granted under this chapter may be revoked at any time upon order of the City Engineer, and upon such order of revocation, the owner or lessee or their agents, shall cause such municipally-owned property to be restored completely and to the entire satisfaction of the City Engineer without expense to the City.

October 18, 2016

MEMORANDUM TO: Honorable Mayor and City Council
THRU: Charles P. Potucek, City Manager
FROM: Laura Wilson, Chief Procurement Officer
SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT Resolution
2016-085, declaring a 30-day Public Record - Procurement
Code Revision

RECOMMENDATION:

The Chief Procurement Officer recommends approval.
The City Manager recommends approval.

INITIATED BY:

Laura Wilson, Chief Procurement Officer

BACKGROUND:

Historically, the City of Sierra Vista Purchasing Code follows Arizona Revised Statutes, Title 41, Chapter 23, the State Procurement Code. Since 2008, when the last major revision to our Code took place, there have been significant changes made to our operations and the State of Arizona Procurement Code. Consequently, the City's Purchasing Code has become somewhat outdated.

This revised Code, which has been reviewed by the City Attorney, eliminates much of operational language and incorporates and references the applicable laws in their relevant locations within our Code. These revisions will ensure that our Code remains current as laws and best practices change. Operational procedures are being developed to complement our Code and will be made available as a reference to determine day to day operations. The procedures will be developed for review and approval by the City Manager and will ensure that City operations remain consistently current and within the guiding parameters of Arizona Law.

City Code requires that any ordinance change be published or made a public record for a period of 30 days prior to being passed and adopted. After thirty days, an Ordinance will be presented to Council for approval.

BUDGET APPROPRIATION: Not Applicable.

RESOLUTION 2016-085

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING POLICY BY DECLARING A PUBLIC RECORD THE CITY PROCUREMENT CODE; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the Arizona State Procurement Code was revised in July of 2015; and

WHEREAS, the City Procurement Code follows the State Procurement Code; and

WHEREAS, revisions to the current City of Sierra Vista Procurement Code are needed in order to stay current; and

WHEREAS, the Procurement Division recommends the revised City Procurement Code be adopted in order to comply with the State Procurement Code; and

WHEREAS, it is a requirement of the City Code that the City Procurement Code be declared a public record for a period of thirty days prior to an Ordinance being passed and adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

That the established policy be, and hereby is reaffirmed.

SECTION 2

That the Procurement Code, as revised and on file in the office of the City Clerk, is hereby declared a public record.

SECTION 3

That the Chief Procurement Officer, City Clerk, City Attorney, or their duly authorized officers and agents, are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution,

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF
THE CITY OF SIERRA VISTA, ARIZONA THIS 27th DAY OF October, 2016.

Frederick Mueller
Mayor

ATTEST:

JILL S. ADAMS
City Clerk

APPROVED AS TO FORM:

Nathan Williams
City Attorney

PREPARED BY:
LAURA WILSON
Chief Procurement Officer

CHAPTER 39: PROCUREMENT CODE

General Provisions

- 39.01 Purpose; Scope
- 39.02 Definitions
- 39.03 Chief Procurement Officer

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GENERAL PROVISIONS

§ 39.01 PURPOSE; SCOPE.

- (A) *Purpose.* The purpose of this chapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.
- (B) *Application.* This chapter applies to contracts for the procurement of supplies, services, and construction, entered into by the City after the effective date of this chapter, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by a public agency for public purchasing, irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal laws and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement that is otherwise consistent with law.
- (C) *Unauthorized purchases.* Notwithstanding the provisions of § 39.03(D), any purchase ordered or contract made contrary to the provisions in this chapter shall not be approved by City officials, and the City shall not be bound thereby. Failure of a City employee to comply with the provisions of this paragraph may result in disciplinary action, termination, and/or pecuniary liability for misappropriation of City funds.

('76 Code, § 3-8-1) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ARCHITECT, ENGINEER, and LAND SURVEYING SERVICES. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the state, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.

BID. An offer in response to a solicitation, IFB (Invitation for Bid).

BLIND TRUST. An independently managed trust in which the beneficiary has no management rights and is not given notice of alterations in, or other dispositions of, the property subject to trust.

BRAND NAME OR EQUAL SPECIFICATION. A specification that uses one or more manufacturers' brand names, with identifying model numbers, used in a performance specification to describe the standards of quality, performance, and other characteristics needed to meet the requirements of the end user.

BRAND NAME SPECIFICATION. A specification limited to a name, term, symbol, design, or any combination thereof used in specifications to describe a product by a unique identifier specific to a particular seller or manufacturer that distinguishes it from its competition.

BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

CONFIDENTIAL INFORMATION. Any information which is available to an employee only because of the employee's status as an employee of the City, and is not a matter of public knowledge or available to the public on request.

CONSTRUCTION and/or CONSTRUCTION PROJECTS. The process of building, altering, repairing, improving, or demolishing any public infrastructure or facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair or routine maintenance of any existing public infrastructure facility, including any structures, buildings, or real property.

CONTRACT. 1. An obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent; legality of purpose; and definiteness. 2. A legally binding promise, enforceable by law. 3. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations.

CONTRACT MODIFICATION. Any written alteration in specifications, delivery point, frequency of delivery, period of performance, price, quantity, or other provisions of the contract, accomplished by mutual agreement of the parties to the contract.

COOPERATIVE PURCHASING. 1. The action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits. 2. A variety of arrangements, whereby two or more public procurement entities (or agencies) purchase from the same supplier or multiple suppliers using a single Invitation for Bids (IFB) or Request for Proposals (RFP). 3. Cooperative procurement efforts may result in contracts that other entities may "piggyback."

DISADVANTAGED BUSINESS. A business owned or controlled by a majority of persons who are determined to have been deprived of the opportunity to develop and maintain a competitive economic position because of specified social disadvantage. (Harney, 1992). Reference CFR § 124.105.

EMPLOYEE. An individual drawing a salary or wages from the City, whether elected or not; any non-compensated individual performing personal services for the City or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the City.

GRATUITY. Anything of more than nominal value given with the hope of obtaining influence. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

INVITATION FOR BIDS. All documents used to solicit competitive or multi-step sealed bids.

KICKBACK. The payment of something of value to an individual with the goal of persuading or influencing his or her decision or performance in a certain situation. May be in the form of cash or favors and is usually unethical.

PIGGYBACK (PIGGYBACK COOPERATIVES). A form of intergovernmental cooperative purchasing in which an entity will be extended the pricing and terms of a contract entered into by a larger entity. Generally, a larger entity will competitively award a contract that will include language allowing for other entities to utilize the contract which may be to their advantage in terms of pricing, thereby gaining economies of scale that they normally would not receive if they competed on their own. Example: A smaller government agency has the ability to use its state issued contract to obtain goods and services which is also known as riding a contract.

PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It includes all functions that pertain to the obtaining of any supply, service, or construction, including

description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. It also includes the proper disposal of surplus supplies, equipment, or real property.

PUBLIC AGENCY. A public entity subject to or created by the City.

PUBLIC NOTICE. The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the City and maintained for that purpose.

REQUESTS FOR PROPOSALS. The document used to solicit proposals from potential providers (proposers) for goods and services. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price prior to contract award. May include a provision for the negotiation of best and final offers. May be a single-step or multi-step process. Introduced in the Armed Services Procurement Act of 1962 as well as by the Competition in Contracting Act of 1984.

REQUESTS FOR QUOTATIONS. Purchasing method generally used for small orders under a certain dollar threshold. A request is sent to suppliers along with a description of the commodity or services needed and the supplier is asked to respond with price and other information by a predetermined date. Evaluation and recommendation for award should be based on the quotation that best meets price, quality, delivery, service, past performance, and reliability.

RESPONSIBLE BIDDER or OFFEROR. A person, contractor or business entity who is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required.

RESPONSIVE BIDDER. A person, contractor or business entity who has submitted a bid or request for proposal that fully conforms in all material respects to the IFB/RFP and all of its requirements, including all form and substance.

SERVICES. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

SMALL BUSINESS. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

SUPPLIES. All tangible items purchased or consumed by an entity.

('76 Code, § 3-8-1-B) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.03 CHIEF PROCUREMENT OFFICER.

(A) *Establishment and appointment.*

- 1) *Procurement Function.* The City Manager is authorized to establish an appropriate department or division to carry out City procurement functions.
- 2) *Chief Procurement Officer.* The City Manager shall designate a Chief Procurement Officer, who shall be

the City's principal public procurement official.

- 3) *Bond.* The Chief Procurement Officer shall have an official bond, to be approved by the City Attorney, in an amount determined appropriate by the City Attorney in consultation with the City Manager.

(B) *Authority and duties.*

- 1) *Principal public procurement official.* The Chief Procurement Officer shall serve as the central procurement officer for the City.
- 2) *Duties.* Except as otherwise provided in this chapter, and subject to the supervision of the City Manager, the Chief Procurement Officer shall:
 - a. Procure or supervise the procurement of all supplies, services, and construction needed by the City.
 - b. Exercise direct supervision over the City's central stores and general supervision over all other inventories of supplies belonging to the City.
 - c. Sell, trade, or otherwise dispose of surplus supplies belonging to the City.
 - d. Establish and maintain programs for specifications development, contract administration, and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.
 - e. Ensure compliance with this Code and implementing procedures by reviewing and monitoring City procurements by any designee, department, agency, or official delegated authority under paragraph (D) of this section.
 - f. Buy, sell, trade or lease real property.
- 3) *Authority to adopt operational procedures.* Consistent with this chapter, and with the approval of the City Manager, the Chief Procurement Officer may adopt operational procedures relating to the execution of his /her duties. (These may be set forth in a municipal procurement handbook, or other administrative manuals or directives.)

(C) *Centralized procurement authority.* Except as otherwise provided in this chapter, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction are vested in the Chief Procurement Officer.

(D) *Delegation.* Subject to these regulations and the authority vested by the City Manager, the Chief Procurement Officer may delegate authority to designees, or to any department, agency, or official.

('76 Code, § 3-8-2) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 2008-012, passed 6-12-08)

PUBLIC PROCUREMENT REGULATIONS

§ 39.10 SOURCE SELECTION AND CONTRACT FORMATION.

- (A) *Source selection.* Unless otherwise authorized by law, all City contracts shall be awarded under one of the following sections:
- (1) Competitive sealed bidding, IFB (Invitation for Bids) § 39.11.
 - (2) Competitive sealed proposals, RFP (Request for Proposals) § 39.12.
 - (3) Small purchases, § 39.14.
 - (4) Sole source procurement, § 39.15.
 - (5) Emergency procurements, § 39.16.
 - (6) Procurement of construction, architect, engineer, and land surveying services, § 39.25.
 - (7) Supply management, § 39.28.
- (B) *Special procurements.* Notwithstanding the provisions of paragraph (A), the Chief Procurement Officer may initiate a procurement using an alternate method of source selection, as provided in Title 41, Chapter 23, Article 3 of the Arizona Procurement Code. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Chief Procurement Officer in the contract file.

(Ord. 2008-012, passed 6-12-08)

§ 39.11 COMPETITIVE SEALED BIDDING – IFB (Invitation for Bids).

- (A) *Conditions for use.* All contracts to the City, to include all sales of personal property which has become obsolete and unusable, shall be awarded by competitive sealed bidding, except as otherwise provided in § 39.10 of this chapter. Contracts for construction shall be awarded by competitive sealed bidding, as defined in A.R.S. Title 41, Chapter 23 (Arizona Procurement Code) and A.R.S. Title 34 (Public Buildings and Improvements) except as otherwise provided in § 39.25 of this chapter.
- (B) *Invitation for bids.* An invitation for bids shall be issued, and shall include specifications and all contractual terms and conditions applicable to the procurement. The Chief Procurement Officer shall solicit sealed bids from responsible prospective suppliers who have requested their names to be added to a "Bidders' List" which the Chief Procurement Officer shall maintain, by sending them a copy of the newspaper notice or other notice as will acquaint them with the proposed purchase or sale, either electronically or via mail. Invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
- (C) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time, but not less than fourteen (14) calendar days prior to the date set forth therein for the opening of bids, unless otherwise allowed by state law. Notices shall meet all state Procurement Code requirements, and procedures shall be identified through administrative procedures which will be periodically updated and made available to prospective bidders.
- (D) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid, and other relevant information as the Chief Procurement Officer deems appropriate, together with the name of each bidder, shall be recorded. This record shall be open to public inspection. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder clearly designates, in writing, any trade secrets or other proprietary information, using the term "confidential" contained within the bid documents, and the City agrees, shall remain confidential, in accordance with Arizona State Law.
- (E) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the

invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.

- (F) *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before bid opening, or cancellation of awards or contracts, may be permitted where deemed appropriate by the Chief Procurement Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer.
- (G) *Award.* The contract shall be awarded, with reasonable promptness by appropriate written notice, to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds, as certified by the City's budget officer, the Chief Procurement Officer is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to direct an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- (H) *Multi-step sealed bidding RSoQ (Request for Statement of Qualifications).* When it is considered impractical to prepare initially a purchase description to support an award based on price, a RSoQ (Request for Statement of Qualifications) may be issued as defined in A.R.S, Title 41, Chapter 23.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.12 COMPETITIVE SEALED PROPOSALS – RFP (Request for Proposals).

- (A) *Conditions for use.* When the Chief Procurement Officer determines that the use of competitive sealed bidding (IFB) is neither practicable nor advantageous to the City, a contract for materials or services may be entered into by use of the competitive sealed proposals (Request For Proposals - RFP) method. This section does not apply to procurement of construction, construction services, or specified professional services pursuant to § 39.25. Construction services shall be procured pursuant to § 39.16 or § 39.25.
- (B) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in § 39.11(C) of this chapter.
- (C) *Receipt of proposals.* Proposals shall be handled so as to avoid disclosure of the contents to competing offerors during the process of negotiation. Proposals shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the request for proposals. Prices shall not be disclosed at this time. A register of proposals shall be prepared containing the name of each offeror, and shall be open for public inspection. The proposal shall be open for public inspection only after contract award.
- (D) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors. No other factors or criteria may be used in the evaluation.
- (E) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect

to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (G) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined to be most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

(’76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.13 [RESERVED]

§ 39.14 SMALL PURCHASES.

- A. *General.* Any contract not exceeding the aggregate dollar amount prescribed in A.R.S. § 41-2535, may be made in accordance with the Arizona Procurement Code, A.R.S. Title 41 Chapter 23. Contract requirements shall not be artificially divided or fragmented, otherwise described as a “split-purchase” so as to circumvent the source selection procedures in order to constitute a small purchase under this subchapter.
- B. *Small purchases.* For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the Chief Procurement Officer, or his/her designated representative(s) shall issue a request for quotation unless any of the following apply:
1. The purchase can be made utilizing a cooperative agreement, subject to the provisions of § 39.29, Cooperative Purchasing.
 2. The purchase is not expected to exceed the amount set within the Arizona State Procurement Code, Chapter 23. Operational procedures and best practices will be utilized for procurements.
 3. The Chief Procurement Officer makes a determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.
- C. *Purchasing cards.* Subject to the provisions of § 39.03, the Chief Procurement Officer may issue, to elected officials, and selected City employees by Department or Division Head request, a purchasing card for the purpose of making routine, small dollar, off-the-shelf purchases of supplies and services within designated limits. Purchasing card users are encouraged to utilize local businesses for their small dollar requirements whenever possible or when cost advantageous. The Chief Procurement Officer shall prepare operational procedures to enable the appropriate use of purchasing cards, and to prevent abuse thereof.

(’76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 1126, passed 2-8-01; Am. Ord. 2008-012, passed 6-12-08)

§ 39.15 SOLE SOURCE PROCUREMENT.

A contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Chief Procurement Officer shall require the submission of cost or pricing data in connection with an award under this section, and shall conduct negotiations, as appropriate, as to price, delivery, and terms. A

record of sole source procurements shall be maintained as a public record, and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.16 EMERGENCY PROCUREMENTS.

Notwithstanding any other provisions of this chapter, the Chief Procurement Officer may make or authorize others to make emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that the emergency procurements shall be made with the competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be prepared by the City official making the purchase, and shall be included in the contract file, and such purchases will require the approval of the City Manager.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 2008-012, passed 6-12-08)

§ 39.17 CANCELLATION OF BID OR PROPOSAL INVITATION.

An invitation for bids, a request for proposals or other solicitations may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is for good cause and in the best interests of the City. The reasons therefore shall be made part of the contract file.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.18 QUALIFICATIONS, RESPONSIBILITIES OF BIDDERS AND PROSPECTIVE CONTRACTORS.

(A) Responsibility of bidders and offerors.

- (1) *Determination of non-responsibility.* A written determination of non-responsibility of a bidder or offeror shall be made in accordance with the provisions of Rule R2-7-B313, Chapter 23 of the Arizona Procurement Code. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the bidder or offeror.
- (2) *Right of nondisclosure.* Confidential information furnished by a bidder or offeror pursuant to this subchapter shall not be disclosed by the City outside of the office of the Chief Procurement Officer, or using agency, without prior written consent by the bidder or offeror. For confidential information to be protected, respondents must clearly designate, in writing, any trade secrets or other proprietary information, using the term "confidential" within the response, and the City must agree to keep such information protected, in accordance with Arizona State Law.

(B) Substantiation of offered prices. A prospective contractor shall have the obligation of providing information or certifications as to the completeness and accuracy of the pricing data submitted with all proposals in accordance with administrative procedures established by the Chief Procurement Officer.

- (1) *Required submissions relating to change order, amendments, or contract modifications.* A contractor

shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, except that the submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when it is determined by the Chief Procurement Officer that the requirements of this division may be waived, and the determination states the reasons for the waiver.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.19 TYPES OF CONTRACTS.

- (A) *General authority.* Subject to the limitations of this subchapter, any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used, provided said procurement conforms with A.R.S. § 41-2544.
- (B) *Multi-term contracts.*
 - (1) *Determination and Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. The Chief Procurement officer will determine that a multi-term contract is in the best interests of the City.
 - (2) *Cancellation; unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for the purposes.
- (C) *Multiple source contracting.*
 - (1) *General.* A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the City's actual requirements is limited by the provisions of A.R.S. § 47-2306(A), the Arizona Uniform Commercial Code.
 - (2) *Limitations on use.* A multiple source award may be made when awarded to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source award shall be made in accordance with the provisions of § 39.11, 39.12, 39.14, and 39.16 of this chapter, as applicable, and shall be procured under the provisions of A.R.S. § 34-603. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of the bids.
 - (3) *Contract and solicitation provisions.* All eligible users, *i.e.*, departments, divisions, and cooperative provisions, if any, of the contract shall be named in the solicitation. It shall be mandatory that the actual requirements of the users that can be met under the contract be obtained in accordance with Arizona State

Law.

- (4) *Intent to use.* If a multiple source award is anticipated prior to issuing a solicitation, the City shall indicate its intent within the solicitation documents, along with the criteria for award.
- (5) *Determination required.* The Chief Procurement Officer will make a determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.20 CONTRACT CLAUSES; ADMINISTRATION.

- (A) (1) *Contract clauses.* All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Chief Procurement Officer, after consultation with the City Attorney, may issue clauses appropriate for supply, service, or construction contracts, in accordance with Arizona State Law.
- (2) *Noncollusion/restraint of trade or commerce.* The Chief Procurement Officer shall, at his or her discretion, require non-collusion affidavits as provided by A.R.S. § 34-253, and, if applicable, shall fully comply with A.R.S. § 34-251 through § 34-258. Failure of any respondent to return a signed affidavit, as requested, is grounds for disqualification of its quote, bid, or proposal.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.23 REPORTING ANTI-COMPETITIVE PRACTICES.

When for any reason, collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and the City Attorney.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.24 FORMULATION OF SPECIFICATIONS.

- (A) *Specifications.* All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. Brand name or equal specifications may be used when the Chief Procurement Officer determines that the use of a brand name or equal specification is in the City's best interests. The Chief Procurement Officer shall develop administrative procedures more specifically outlining the manner in which specifications shall be developed, said procedures to comply with City code and state law.

('76 Code, § 3-8-4) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 1126, passed 2-8-01; Am. Ord. 2008-012, passed 6-12-08)

§ 39.25 PROCUREMENT OF CONSTRUCTION, ARCHITECT, ENGINEER AND LAND SURVEYING SERVICES.

Provided the cost of the project exceeds the statutorily established amount, the procurement of both horizontal and vertical construction projects shall be governed by state law. The Chief Procurement Officer shall consult the Arizona Revised Statutes (Title 34 or Title 41, Chapter 23) when procuring goods and services related to construction.

When the cost of a construction project falls below the statutorily established amount, the project shall be procured pursuant to the provisions of this Code.

Alternative delivery methods, such as design bid build, construction manager at risk, design build, and job order contracting, may be utilized for applicable purchases. These purchases must be in compliance with Arizona Revised Statutes.

§ 39.26 [RESERVED]

§ 39.27 ALLOWABILITY OF REIMBURSING COSTS.

The City shall be governed by A.R.S. Title 41, Chapter 23, Article 7, Cost Principles, which establishes Code of Federal Regulations, 48 C.F.R., 31.000 et seq., as the measure of determining allocability of reimbursing costs under contract provisions which provide for the reimbursement of costs.

(’76 Code, § 3-8-7) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.28 SUPPLY MANAGEMENT.

(A) Central warehousing.

- (1) There is hereby appropriated out of any money in the City Treasury an intragovernmental service fund which shall be known as the Storerooms Revolving Fund.
- (2) The Chief Procurement Officer shall control and supervise storerooms and warehouses, and shall administer the Storerooms Revolving Fund.

(B) Inspection and testing. The Chief Procurement Officer shall develop and enforce procedures to ensure that deliveries of supplies or contractual services are inspected to determine their conformance with the specifications set forth in the order or contract.

(C) Surplus Stock. All using agencies shall submit to the Chief Procurement Officer, at times and in form as he or she shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out, or scrapped.

- (1) The Chief Procurement Officer shall have the authority to transfer surplus stock to other agencies.
- (2) Subject to any restrictions placed by the original funding agency, the Chief Procurement Officer shall have the authority to sell all supplies, by sealed bid or auction, as hereinabove provided, which have become unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies, or to sell the same to another political subdivision of the state at a price acceptable to both parties.
- (3) Sales under this section shall be made to the highest responsible bidder.

(4) Donations.

- (a) For items governed by this section which have an aggregate value of less than \$10,000, the Chief Procurement Officer, upon approval by the City Manager, may donate the same to another government entity or nonprofit organization, providing that it is determined that the donation is in the best interest of and contributes to the general welfare of the citizens of the City.
- (b) For items governed by this section which have an aggregate value over \$10,000, the City Council, by resolution, may make a donation, providing that the City Manager determines in writing that the donation is in the best interest of and contributes to the general welfare of the citizens of the City.

(D) *Disposal of real property.* The Chief Procurement Officer shall be responsible for the sale/disposition of real property in accordance with A.R.S. § 9-401, *et seq.*

('76 Code, § 3-8-8) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 2008-012, passed 6-12-08)

§ 39.29 COOPERATIVE PURCHASING.

Pursuant to A.R.S. § 41-2632 *et seq.*, the City may participate in, sponsor, conduct, or utilize cooperative purchasing agreements for the procurement of any materials, services, or construction with one or more eligible agencies in accordance with an agreement entered into between the parties.

('76 Code, § 3-8-10) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08; Am. Ord. 2015-006, passed 8-13-15)

§ 39.30 SMALL AND DISADVANTAGED BUSINESSES POLICY.

It is the policy of the City that disadvantaged business enterprises shall have the opportunity to participate to the maximum extent feasible in all required aspects of procurement and contracting in accordance with applicable statutes, regulations, and executive orders.

('76 Code, § 3-8-11) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

LEGAL AND CONTRACTUAL REMEDIES

§ 39.40 AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS.

- (A) *Right to protest.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer with appeal rights to the City Manager. The protest shall be submitted within fourteen (14) days after such aggrieved person knows, or should have known, of the facts giving rise thereto.
- (B) *Authority to resolve protests.* The City Manager shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

- (C) *Decision.* If the protest is not resolved by mutual agreement, the City Manager shall promptly issue a decision in writing. The decision shall:
 - (1) State the reasons for the action taken; and
 - (2) Inform the protestant of its right to judicial or administrative review.
- (D) *Notice of decision.* A copy of the decision under subsection (C) of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- (E) *Finality of decision.* A decision under subsection (C) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision commences an action in a court of competent jurisdiction.
- (F) *Stay of procurements during protests.* In the event of a timely protest under division (A) of this section, the Chief Procurement Officer shall not proceed further with the solicitation or award of the contract, until the City Manager makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the City.
- (G) *Entitlement to costs.* In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs, but not including attorney's fees incurred in conjunction with the bid preparation.

('76 Code, § 3-8-9) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.41 AUTHORITY TO DEBAR OR SUSPEND.

- (A) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer, after consulting with the City Manager and City Attorney, may recommend that the City Manager debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years. After consultation with the City Manager and City Attorney, the Chief Procurement Officer may recommend that the City Manager suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed six (6) months.
- (B) *Causes for debarment or suspension.* The causes for debarment include:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract.
 - (2) Conviction, under state or federal statutes, for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor.
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Violation of contract provisions, as set forth below, of a character regarded by the Chief Procurement Officer as so serious as to justify debarment action:
 - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

- (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 - (5) Any other cause the Chief Procurement Officer determines to be serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this chapter.
 - (6) Violation of the ethical standards as set forth in § 39.50 through 39.56 of this chapter.
 - (C) *Decision.* Upon direction of the City Manager, the Chief Procurement Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken, and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.
 - (D) *Notice of decision.* A copy of the decision required by division (C) of this section shall be sent certified mail or otherwise furnished immediately to the debarred or suspended person.
 - (E) *Finality of decision.* A decision under division (C) of this section shall be final and conclusive, unless fraudulent, or the debarred or suspended person files a written appeal with the City Manager within ten (10) days after receipt of the decision, or commences a timely action in court in accordance with applicable law.
- ('76 Code, § 3-8-6) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.42 AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES.

- (A) *Applicability.* This section applies to controversies between the City and a contractor, and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- (B) *Authority.* Prior to commencement of an action in a court concerning the controversy, the City Manager is authorized to settle and resolve a controversy described in subsection (A) of this section.
- (C) *Decision.* If such a controversy is not resolved by mutual agreement, the City Manager shall promptly issue a decision in writing. The decision shall:
 - (1) State the reasons for the action taken; and
 - (2) Inform the contractor of its right to judicial or administrative review.
- (D) *Notice of decision.* A copy of the decision under subsection (C) of this section shall be mailed or otherwise furnished immediately to the contractor.
- (E) *Finality of decision.* A decision under subsection (C) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision commences an action in court of competent jurisdiction.
- (F) *Failure to render timely decision.* If the Chief Procurement Officer, the City Manager, or the designee of either officer does not issue the written decision required under subsection (C) of this section within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the

parties, then the contractor may proceed as if an adverse decision had been received.

ETHICS IN PUBLIC CONTRACTING

Part A. Standards of Conduct

§ 39.50 GENERAL STANDARDS OF ETHICAL CONDUCT.

- (A) *General ethical standards for employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the City employee's duties is a breach of a public trust.
- (B) *General ethical standards for non-employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section and § 39.52 through 39.56 of this article is also a breach of ethical standards.

(Ord. 2008-012, passed 6-12-08)

§ 39.51 CRIMINAL SANCTIONS.

To the extent that violations of the ethical standards of conduct set forth in § 39.50 through § 39.56 of this chapter constitute violations of the State Criminal Code, they shall be punishable as provided therein. The penalties shall be in addition to the civil sanctions set forth in this subchapter. Criminal, civil, and administrative sanctions against City employees or non-employees which are in existence on the effective date of this chapter shall not be impaired.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.52 EMPLOYEE CONFLICT OF INTEREST.

- (A) *Conflict of interest.* It shall be a breach of ethical standards for any City employee to participate directly or indirectly in a procurement contract when the City employee knows that:
 - (1) The City employee or any member of the City employee's immediate family has a financial interest pertaining to the procurement contract;
 - (2) A business or organization in which the City employee, or any member of the City employee's immediate family, has a financial interest pertaining to the procurement; or
 - (3) Any other person, business, or organization with whom the City employee or any member of a City employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (B) *Financial interest in a blind trust.* A City employee or any member of a City employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (C) *Discovery of actual or potential conflict of interest, disqualification, and waiver.* Upon discovery of an actual

or potential conflict of interest, a City employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The City employee may, at the same time, apply to the City Manager, in accordance with § 39.57, for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(D) *Employee disclosure requirements.*

- (1) *Disclosure of benefit received from contract.* Any employee who has, or obtains any benefit from, any City contract with a business in which the employee has a financial interest shall report such benefit to the Chief Procurement Officer, provided, however, this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.
- (2) *Failure to disclose benefit received.* Any employee who knows or should have known of such benefit, and who fails to report such benefit to the Chief Procurement Officer, is in breach of the ethical standards of this section.

§ 39.53 GRATUITIES AND KICKBACKS.

- (A) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (B) *Kick backs.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.
- (C) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this subchapter shall be conspicuously set forth in every contract and solicitation therefor.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.54 CONTINGENT FEES PROHIBITED.

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.55 CONTEMPORANEOUS EMPLOYMENT PROHIBITED.

It shall be a breach of ethical standards for any City employee who is participating directly in the procurement

process to become or to be, while such a City employee, the employee of any person contracting with the City.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.56 USE OF CONFIDENTIAL INFORMATION.

For confidential information to be protected, respondents must clearly designate, in writing, any trade secrets or other proprietary information, using the term “confidential” within the quote, bid, or proposal responses, and the City must agree to keep such information protected, in accordance with Arizona State Law.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

§ 39.57 WAIVER FROM CERTAIN PROHIBITIONS.

The City Manager may grant a waiver from the employee conflict of interest provision (§ 39.52 of this subchapter) or the contemporaneous employment provision (§ 39.55 of this subchapter), upon making a determination that:

- (A) The contemporaneous employment or financial interest of the City employee has been publicly disclosed;
- (B) The City employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism; and
- (C) The award will be in the best interest of the City.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

Part B. Remedies

§ 39.60 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST CITY EMPLOYEES WHO BREACH ETHICAL STANDARDS.

- (A) *Existing remedies not impaired.* Civil and administrative remedies against City employees which are in existence on the effective date of this code shall not be impaired.
- (B) *Supplemental remedies.* In addition to existing remedies for breach of the ethical standards of this article, or regulations promulgated hereunder, the City Manager may impose disciplinary action up to and including termination of employment.
- (C) *Right to recovery from employee value received in breach of ethical standards.* The value of anything received by a City employee in breach of the ethical standards of this article, or regulations promulgated hereunder, shall be recoverable by the City as provided in § 39.62.

(D) *Due process.* All remedies under this section shall be in accordance with due process requirements more specifically outlined in procedures established by the City Manager and existing law.

(Ord. 2008-012, passed 6-12-08)

§ 39.61 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST NON-EMPLOYEES WHO BREACH ETHICAL STANDARDS.

(A) *Existing remedies not impaired.* Civil and administrative remedies against non-employees which are in existence on the effective date of this code shall not be impaired.

(B) *Supplemental remedies.* In addition to existing remedies for breach of the ethical standards of this article, or regulations promulgated hereunder, the City Manager may impose any one or more of the following:

- (1) Written warnings or reprimands;
- (2) Termination of transactions; and
- (3) Debarment or suspension from being a contractor or subcontractor under City contracts.

(C) *Right to recovery from non-employee value transferred in breach of ethical standards.* The value of anything transferred in breach of the ethical standards of this article, or regulations promulgated hereunder, by a non-employee shall be recoverable by the City as provided in § 39.62.

(D) *Right of the City to debar or suspend.* Debarment or suspension may be imposed by the City Manager, in accordance with the procedures set forth in § 39.41 for breach of the ethical standards of this article, provided that such action may not be taken without informing the City Attorney.

(E) *Due process.* All remedies under this section shall be in accordance with due process requirements more specifically outlined in procedures established by the City Manager.

(Ord. 2008-012, passed 6-12-08)

§ 39.62 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.

(A) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this article by a City employee or non-employee may be recovered from either the City employee or non-employee.

(B) *Recovery of kickbacks by the City.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City, and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

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October 19, 2016

MEMORANDUM TO: Honorable Mayor and City Council

THROUGH: Charles P. Potucek, City Manager
Mary Jacobs, Assistant City Manager

FROM: Victoria Yarbrough, Director
Leisure & Library Services Department

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
RESOLUTION 2016-086 - Support for Improvement of the
veterans memorial in Veterans Memorial Park

RECOMMENDATION:

The City Manager recommends approval.
The Assistant City Manager recommends approval.
The Director of Leisure & Library Services recommends approval.

INITIATED BY:

Victoria Yarbrough, Director of Leisure & Library Services

BACKGROUND:

In early spring, members of the Sierra Vista Veterans Memorial Improvement Foundation (SVVMIF) met with me to discuss the possibility of improving the veterans memorial in Veterans Memorial Park. We spoke about the current memorial and the need to incorporate it into any improvements, and the location of the memorial given that the master plan for Veterans Park needs to be updated in the future. Funding the project, and the care and maintenance of the memorial were also discussed.

The SVVMIF returned to meet with me in June with their proposal, which covered all of the issues we had discussed previously. The foundation has finalized incorporation as a 501(c)3 organization, and plans to raise all of the funds for the project, estimated at \$300,000-400,000, as well as plan to fund future care and maintenance of the memorial.

There is no concern from staff that the current location of the memorial and its expansion cannot be maintained regardless of any future planning or improvements to the park. Its location as the front and center of the park makes sense for a highly visible memorial. The proposed design does not impact any trees currently located in the park, current use of the space for events such as the holiday tree lighting, and adds capacity to the space by expanding possible use for ceremonies. The design also does not preclude future improvements such as widening the road that runs on that side of the park.

The memorial is designed to be low maintenance, without need for perpetual irrigation or electricity. Irrigation does exist in the area, and could be used to establish plants.

The plan and concept design have been reviewed by the Park & Recreation Commission and the Arts & Humanities Commission. Both commissions voted with unanimous approval, and recommend acceptance of the project and concept design.

The resolution tasks the City Manager with executing an appropriate agreement with details regarding the project, its construction, and perpetual maintenance.

BUDGET APPROPRIATION:

Not applicable at this time.

Attachment

RESOLUTION 2016-086

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, SUPPORTING EFFORTS TO IMPROVE THE VETERANS MEMORIAL AT VETERANS MEMORIAL PARK BY THE SIERRA VISTA VETERANS MEMORIAL IMPROVEMENT FOUNDATION; AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSE AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista named its largest park Veterans Memorial Park and installed a memorial to honor and recognize all area veterans, reflecting the community's strong support and value of current and former member of the United States Armed Forces; and

WHEREAS, the Sierra Vista Veterans Memorial Improvement Foundation has undertaken an effort to expand the veterans memorial through private funds in order to further recognize the contributions of area veterans to the country and local community; and

WHEREAS, the City Council wishes to reaffirm its commitment to recognizing the veterans in the community by supporting the expansion of the veterans memorial; and

WHEREAS, the City of Sierra Vista is honored to accept donations that improve the capacity and aesthetics of its parks, facilities, programs, and services;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA AS FOLLOWS:

SECTION 1

That the settled policy of the City Council supporting community efforts and contributions that enhance city parks and facilities be, and hereby is, reaffirmed.

SECTION 2

That the City Council hereby supports the plan by the Sierra Vista Veterans Memorial Improvement Foundation to improve the veterans memorial at Veterans Memorial Park consistent with the concept design approved by the Arts & Humanities Commission, and directs the City Manager execute an appropriate agreement with the Foundation more specifically identifying the project parameters, construction specifications and perpetual maintenance of said project.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 27th DAY OF OCTOBER 2016.

FREDERICK W. MUELLER
Mayor

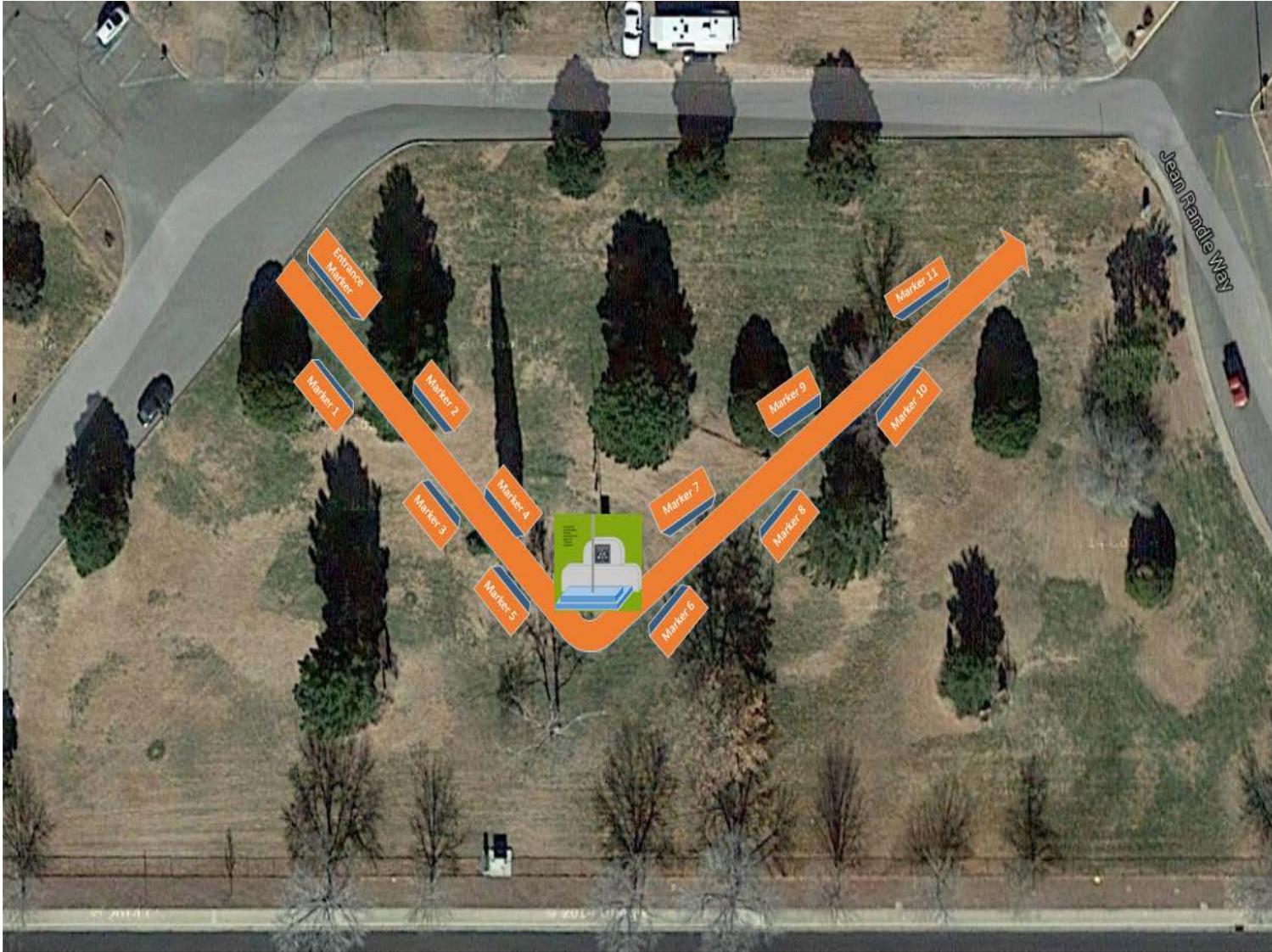
APPROVED AS TO FORM:

ATTEST:

Nathan Williams
City Attorney

Jill Adams
City Clerk

Prepared by: Victoria Yarbrough, Director, Department of Leisure & Library Services



Fry Boulevard

October 27, 2016

MEMORANDUM TO: Honorable Mayor and City Council
THRU: Charles P. Potucek, City Manager
FROM: David J. Felix, CPA, Finance Manager
SUBJECT: REQUEST FOR AGENDA ITEM
PLACEMENT Resolution 2016-087
Support of Civil Air Patrol's Cochise Composite
Squadron 107 to Act as Pass-through Agent

RECOMMENDATIONS:

The City Manager recommends approval.

BACKGROUND:

The Civil Air Patrol's Cochise Composite Squadron 107 received a grant from the Tohono O'odham Nation and Jack Dempsey has asked the City to be the pass-through entity for it.

The Tohono O'odham Nation, as part of its gaming license with the State of Arizona, offers grants to support cultural and educational activities within the State. The Civil Air Patrol's Cochise Composite Squadron 107 received a \$19,500 grant from the Tohono O'odham Nation for roof repair of the Civil Air Patrol Squadron's training facility. The State requires all of the grants be given to a governmental agency. This resolution indicates the City willingness to act as a pass-through agency so the Tohono O'odham Nation can give Civil Air Patrol's Cochise Composite Squadron 107 the grant.

There will be no liability to the City, as the funds will be dispersed directly to the Squadron.

In 2007, the City acted as a pass-through agent for the grant to the Southwest Association of Buffalo Soldiers by the Pascua Yaqui Tribe. In 2008, the City acted as a pass-through agent for a grant to the Sierra Vista Symphony Orchestra by the Tohono O'odham Nation.

The draft grant-in-aid agreement attached to this resolution has not yet been finalized by the Nation. The resolution authorizes the City Manager to complete the final negotiations prior to signature by the Mayor.

FISCAL IMPACT

None

RESOLUTION 2016-087

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; SUPPORTING THE CIVIL AIR PATROL'S COCHISE COMPOSITE SQUADRON 107 IN THEIR RECEIPT OF A TOHONO O'ODHAM NATION GRANT; AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the Tohono O'odham Nation offers grants to cities, towns, counties and non-profit organizations; and

WHEREAS, the Civil Air Patrol's Cochise Composite Squadron 107 received a Tohono O'odham grant for \$19,500 for roof repair of the Civil Air Patrol Squadron's training facility; and

WHEREAS, the grants awarded to non-profit organization must be passed through a city, town or county; and

WHEREAS, it is in the best interest of the citizens of Sierra Vista to support the Civil Air Patrol's Cochise Composite Squadron 107's grant application.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

That the settled policy of supporting beneficial causes, be, and hereby is, reaffirmed.

SECTION 2

That the City Council hereby supports the efforts of the Civil Air Patrol's Cochise Composite Squadron 107 in their receipt of a Tohono O'odham grant of \$19,500 by acting as the pass-through governmental entity, and hereby authorizes the City Manager to negotiate the final grant-in-aid agreement with the Nation for the Mayor's execution.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE
CITY OF SIERRA VISTA, ARIZONA, THIS 27th DAY OF OCTOBER, 2016.

FREDERICK W. MUELLER
Mayor

Approval as to Form:

Attest:

NATHAN J. WILLIAMS
City Attorney

JILL ADAMS
City Clerk

Prepared by:
David J. Felix, CPA
Finance Manager

**Draft Grant-in-Aid
Fiscal Agent Agreement
between
the Tohono O’odham Nation
and
The City of Sierra Vista, AZ
On behalf of
Cochise Composite Squadron 107**

THIS GRANT-IN-AID Fiscal Agent Agreement, (“Grant”) is entered into as of the _____ day of _____, 2016, by and between the Tohono O’odham Nation, a federally recognized Indian tribe (the “Nation”), The City of Sierra Vista, AZ, a [describe FLOW THROUGH MUNICIPALITY] (“Municipality”), and Civil Air Patrol’s Cochise Composite Squadron 107, a 501(c)3 nonprofit organization (“Grantee”).

RECITALS

A. The Constitution of the Tohono O’odham Nation, Article VI, Section 1(f) provides that the Tohono O’odham Legislative Council is authorized to negotiate and conclude agreements on behalf of the Tohono O’odham Nation with Federal, State and local governments.

B. The Constitution of the Tohono O’odham Nation Article VII, Section 2(f) provides that the Chairman of the Nation is the official representative of the Tohono O’odham Nation; and as such, upon passage of a Resolution by the Legislative Council approving of any agreement with Federal, State and local governments, the Chairman is authorized to sign such agreement on behalf of the Nation.

C. [Authorizing language for FLOW THROUGH MUNICIPALITY]

D. Cochise Composite Squadron 107, SWR-AZ-046, is an administrative subdivision of the Civil Air Patrol, a non-profit corporation incorporated by the U.S. Congress under what is now codified under Title 36 of the United States Code, Sections 40301 through 40307. Civil Air Patrol is recognized by the U.S. Internal Revenue service as a charity under Title 26 of the United States Code, Section 501(c)(3).

Now, therefore, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

PROVISIONS

1. **Purpose.** The purpose of this Grant is to set forth the rights and responsibilities of the parties with respect to the payment and distribution of the Contribution, as hereinafter defined.

2. **Acceptance of Duties; Monies Held in Trust.** Municipality agrees to perform the duties of fiscal agent, paying agent and registrar for all monies the Nation deposits with Municipality for the benefit of Cochise Composite Squadron. Municipality shall hold this funding separate from all other monies in the possession or control of Municipality. Municipality shall notify the Nation, at the address set forth in Paragraph 11, that the Contribution monies are provided to Cochise Composite Squadron within 5 business days after the distribution is made.

3. **Contribution.** The Nation shall make a payment to Municipality in the amount described in Exhibit "A" (the "Contribution") on or about November 30, 2016. Municipality shall then make this funding available to Grantee as quickly as is feasible. The Grantee may not change the scope of the project or use the funds for a project other than that explained in Exhibit "A" without the written consent of the Nation.

4. **Funding.** The Contribution payment shall be delivered to Municipality, without any further notice or invoice required, at the address set forth in Paragraph 11 below, upon the complete execution of this Grant.

5. **Disbursement of Contribution.** In accordance with Municipality's policies and procedures and upon satisfactory documentation, as quickly as is feasible Cochise County will distribute the funds to Cochise Composite Squadron.

6. **Money Unclaimed.** In the event that Municipality is unable to distribute the funding to Cochise Composite Squadron on or before January 1, 2017, Municipality shall immediately notify the Nation and the Nation will arrange for the funding to be returned. Any interest earnings on the Contribution funding between the time the Nation deposits the Contribution with Municipality and the time Municipality disburses the Contribution to Cochise Composite Squadron shall be paid to Cochise Composite Squadron.

7. **Consideration and Reliance.** It is acknowledged that Municipality's promise to accept and disburse the funds received by Municipality pursuant to this Grant is full and adequate consideration and shall render this promise to provide funding irrevocable.

8. **Fees.** Municipality shall not charge Cochise Composite Squadron and shall waive any applicable administrative or other fees related to this Grant and shall not deduct any funds from the amount designated for contribution to Cochise Composite Squadron.

9. **Dispute Resolution.** The parties mutually agree that any disputes arising between either 1) the Nation or Municipality or 2) Cochise Composite Squadron and Municipality pursuant to this Grant shall be resolved through informal dispute resolution. Nothing herein is intended to be or shall be construed as a waiver of sovereign immunity by either party. In the event of a dispute between Cochise Composite Squadron and Municipality,

both Cochise Composite Squadron and Municipality must notify the Nation within five (5) business days. All disputes that cannot be resolved through informal dispute resolution shall be resolved in the Courts of the Nation, subject to the laws of the Nation.

10. **Reports:** Unless otherwise extended by the Nation upon request of Cochise Composite Squadron, no later than July 31, 2017, Cochise Composite Squadron shall provide a report to the Nation explaining how and when the funds provided under this Grant were used. This report may be in the form of an affidavit signed by an officer of Cochise Composite Squadron and may be accompanied by supporting documentation. The report shall address: (i) changes in the scope of the project or purchase funded under this grant, (ii) the total expenses under the project or purchase funded by the Grant, (iii) a brief description of who has benefited from this Grant, and (iv) the Grantee's next steps with regard to the project or purchase made under this Grant. The Grantee will submit a final report to the Nation within thirty (30) days of the end of this Agreement.

11. **Notices.** Any notice, consent or other communication required or permitted under this Grant shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to the Nation: Edward D. Manuel
 Chairman
 P.O. Box 837
 Sells, Arizona 85634
 Fax: 520-383-3379

and

 Special Counsel
 P.O. Box 837
 Sells, Arizona 85634
 Fax: 520-383-3379

If to Sierra Vista, AZ:

(Name, Title)
(Address)
Phone:
Fax:
Email:

If to Cochise Composite Squadron 107:

Jack Dempsey Lt. Col.
Deputy Commander
1760 Airport Ave
Sierra Vista, AZ 85635
(520) 803-1288
Jack.dempsey@q.com

Martha Morris, Colonel
AZ Wing Commander
7383 North Litchfield Rd
Luke AFB, AZ 85309-1175
(623) 856-9964
Martha.morris@azwg.org

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

12. **Term of Grant.** The term of this Grant shall begin on the date of execution and shall terminate on the one-year anniversary of this Grant.

13. **Entire Grant, Waivers and Amendments.** This Grant is executed in three (3) duplicate originals, each of which is deemed to be an original. This Grant constitutes the entire understanding and agreement of the parties. This Grant integrates all of the terms and conditions mentioned herein or incident hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Grant and all amendments hereto must be in writing and signed by the appropriate authorities of each of the parties to this Grant.

14. **No Waiver.** Except as otherwise expressly provided in this Grant, any failure or delay by any party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

15. **Severability.** If any provision of this Grant shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Grant shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

16. **Sovereign Immunity.** Nothing in this Grant shall be deemed a waiver of any party's applicable sovereign immunity in any forum or jurisdiction.

TOHONO O'ODHAM NATION

SIERRA VISTA, AZ.

Edward D. Manuel, Chairman
Tohono O'odham Nation

Title

Date _____

Date _____

CIVIL AIR PATROL
COCHISE COMPOSITE SQUADRON 107

Title

Date _____

Attest:

Approved as to form:

Laura Berglan, Acting Attorney General
Tohono O'odham Nation

EXHIBIT "A"

<u>Program</u>	<u>Contribution</u>
Roof Repair of Civil Air Patrol Squadron's training facility	\$19,500.00
TOTAL	<u>\$19,500.00</u>