



**Sierra Vista City Council**  
Meeting Agenda  
February 27, 2020

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**Call to Order**

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

**Roll Call**

**Invocation** – Pastor Chuck Carlson, Sierra Vista Community Church

**Pledge of Allegiance**

**Item 1** Acceptance of the Agenda

**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 February 13, 2020

**Item 2.2** Approval of the City Council Regular Meeting Minutes of February 13, 2020

**New Business**

**Item 3** Ordinance 2020-002, Adoption of Development Code Amendments to Section 151.22.006, Matrix of Use Permissions by Zoning District (Private schools of General Education)

**Item 4** Resolution 2020-012, Acceptance of Arizona Department of Homeland Security Grant Funding-Operation Stonegarden Grant Program (Agreement #190417-01)

**Item 5** Resolution 2020-013, Approval of an Intergovernmental Agreement with the Town of Huachuca City for Intercity Route Services

**Item 6** Resolution 2020-014, Amendment to the Intergovernmental Agreement with the Sierra Vista Unified School District

**Item 7** Resolution 2020-015, Establishing a West End Entertainment District

**Call to the Public**

**Comments and Requests of the Council**

**Adjournment**

For special needs and accommodations, please contact Jill Adams, City Clerk, 72 hours prior to the meeting or activity 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  
February 13, 2020

Mayor Mueller called the February 13, 2020 Special City Council Meeting to order at 3:30 p.m., City Hall, City Manager's Conference Room, 1011 N. Coronado Drive, Sierra Vista, Arizona.

Roll Call:

Mayor Rick Mueller – present  
Mayor Pro Tem Rachel Gray – present (arrived 3:37 p.m.)  
Council Member William Benning – present  
Council Member Gwen Calhoun – absent  
Council Member Sarah Pacheco – present  
Council Member Carolyn Umphrey - present  
Council Member Kristine Wolfe – present

Others present:

Chuck Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager  
Nathan Williams, City Attorney  
Jill Adams, City Clerk

Item 1 Acceptance of Agenda

Council Member Benning moved that the Agenda for the Special City Council Meeting of February 13, 2020, be approved as written. Council Member Wolfe seconded the motion. The motion carried, 5/0.

New Business

Item 2 Adjourn to Executive Session

The purpose of the meeting is to call an executive session in accordance with:

Arizona Revised Statute §38-431.03(A.1) discussion or consultation to obtain advice concerning potential and pending litigation.

Arizona Revised Statute §38-431.03(A.3) discussions or consultations for legal advice with the attorney or attorneys of the public body on current litigation in which the City is a party.

Arizona Revised Statute §38-431.03(A.7), discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property owned by the Sierra Vista Unified School District and Cochise County.

At 3:32 p.m. Council Member Umphrey moved to adjourn into Executive Session in accordance with Arizona Revised Statutes §38-431.03(A.1), §38-431.03(A.3) and §38-431.03(A.7) as set forth in the notice dated February 11, 2020. Council Member Wolfe seconded the motion. The motion carried, 5/0.

Item 3 Adjournment

Mayor Mueller adjourned the February 13, 2020 Executive Session and Special Meeting of the Sierra Vista City Council at 4:32 p.m.

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Mayor Frederick W. Mueller

Minutes prepared by:

Attest:

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Maria G. Marsh, Deputy Clerk

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Jill Adams, City Clerk



**Sierra Vista City Council**  
Meeting Minutes  
[February 13, 2020](#)

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Mayor Mueller called the February 13, 2020 City Council Regular Meeting to order at 5:00 p.m., City Hall Council Chambers, 1011 N. Coronado Drive, Sierra Vista, Arizona.

Roll Call:

Mayor Rick Mueller – present  
Mayor Pro Tem Rachel Gray – present  
Council Member William Benning – present  
Council Member Gwen Calhoun – present  
Council Member Sarah Pacheco – present  
Council Member Carolyn Umphrey - present  
Council Member Kristine Wolfe – present

Others Present:

Chuck Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager  
Adam Thrasher, Police Chief  
Brian Jones, Fire Chief  
Laura Wilson, Leisure and Library Services Director  
Sharon Flissar, Public Works Director  
Matt McLachlan, Community Development Director  
Jeff Pregler, Planner  
Jill Adams, City Clerk  
Nathan J. Williams, City Attorney  
Susan Papatrefon, Cochise County 9-1-1 Administrator  
Abe Rubio, IT Chief Officer

**Invocation** - Pastor Jeffery Anselmi, M.A., First Christian Church, conducted the invocation.

**Pledge of Allegiance** – Council Member Pacheco led the Pledge of Allegiance.

**Item 1** Acceptance of the Agenda

Council Member Wolfe moved that the Agenda for the Regular City Council Meeting of February 13, 2020 be approved as written. Council Member Benning seconded the motion. The motion passed by a unanimous vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Calhoun, Pacheco, Umphrey and Wolfe.

City Manager's Report: Mr. Potucek announced that City offices will be closed Monday, February 17, 2020 in observance of Presidents' Day. The next regularly scheduled City Council Work Session will be held at 3:00 p.m. in Council Chambers on February 25, 2020 and one of the items will be the mid-year budget review. The next regularly scheduled Council Meeting will be held at 5:00 p.m. in the Council Chambers on February 27, 2020. He reported that the Community Development Block Grant Projects for First Street Alleyway & Fifth Street Improvements bids close on February 21, 2020. The architect for the Nancy Brua Animal Care Center Improvement and Expansion Project is under advertisement and those qualifications

close on February 27, 2020. The Vista Transit Parking Lot Resurfacing Project has been posted and quotes will be accepted until March 4, 2020. The Environmental Operations Park Mechanical Bar Screen Replacement Project bids closed on March 10, 2020. The Annual Street Maintenance Chip Seal Project has been awarded to VSS International in the amount of \$637,000.00. Lastly, he reported on the following external meetings:

- JPA SEACOM Board met and are in budget discussions with a proposed budget by March to present to Council.
- Upper San Pedro Partnership Advisory Commission has received the grant from the Bureau of Reclamation for approximately \$100,000 to be matched \$100,000 between ADWR, Cochise County, City of Sierra Vista and the Nature Conservancy that will be for the construction of a web portal project. All relevance science and data for future reference for the public will be made available through the portal.

## **Item 2 Consent Agenda**

**Item 2.1** Approval of the City Council Regular Meeting Minutes of January 23, 2020

**Item 2.2** Resolution 2020 - 008, Appointment of Lawrence R. Goodhue, Adrienne Weiss, Brandy Kea-Robinson and Johanna Scott to the Industrial Development Authority, said terms to expire December 31, 2024

**Item 2.3** Resolution 2020 - 009, Acceptance of the Resignation of Kathy Calabrese, with regret and Appointment of Julia V. McCaa to the West End Commission, said term to expire December 31, 2020

Mayor Pro Tem Gray moved that the Consent Agenda consisting of the City Council Regular Meeting Minutes of January 23, 2020, Resolution 2020 - 008, appointment of Lawrence R. Goodhue, Adrienne Weiss, Brandy Kea-Robinson and Johanna Scott to the Industrial Development Authority, said terms to expire December 31, 2024 and Resolution 2020 - 009, acceptance of the resignation of Kathy Calabrese, with regret and appointment of Julia V. McCaa to the West End Commission, said term to expire December 31, 2020, be approved. Council Member Benning seconded the motion.

Mayor Pro Tem Gray stated that she is pleased to see four new members coming onto the Industrial Development Authority because it provides the ability to have more regular meetings. The Industrial Development Authority has been operating with only three members for a while. Lastly, she gave kudos to Mr. Simonton for his recruitment of excellent candidates.

Council Member Wolfe stated that she will recuse herself from the vote because she was not present at the January 23, 2020 meeting. She added that she is excited about the appointments.

The motion passed by a vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Calhoun, Pacheco and Umphrey. Council Member Wolfe abstained.

## **Public Hearing**

**Item 3** Resolution 2020 - 010, Development Code Amendments to Section 151.08.002 - Public Improvement Standards - General Regulations, Article 151.19-Subdivision Platting Procedures and Requirements and Declaring a 30-day Public Record

Council Member Calhoun moved that Resolution 2020 - 010, Development Code amendments to Section 151.08.002, Public Improvement Standards, General Regulations, Article 151.19, Subdivision Platting Procedures and Requirements and declaring a 30-day Public Record, be approved. Council Member Pacheco seconded the motion.

Mr. McLachlan stated that the proposed amendments are a product of multiple work session with the Planning and Zoning Commission and the feedback that was received from users of the platting process. With every update, the Department is looking at the practical aspect of how the Department reviews and evaluate submittals, making sure that each step serves a purpose and that the amount of information that is required is proportionate to the decision being rendered. The Department also factors in the feedback that is routinely received from applicants on potential improvements.

Some of the specific issues that the Department is seeking to resolve through the amendments is to redefine and providing for a more streamlined process for minor subdivisions of 10 lots or fewer where there are existing streets forming the boundary, outside of a floodplain or erosion setback area and utility services are readily available. In these cases, the applicant can go straight to final plat approval stage, saving time. This process is primarily oriented to infill sites where the infrastructure is already in place and where the City is trying to facilitate redevelopment. Also being built in is a process that does not currently exist for minor amendments to an existing approved plat. Currently any change, no matter the significance must be approved by Council. The proposed amendments would allow a property owner to correct errors, adjust a drainage or maintenance easement boundary or to adjust lots in a manner that does not increase the number of lots or changing existing utility easements, street access or other public dedications. The adjustments cannot exceed 50 percent of the total lots identified on the plat.

Mr. McLachlan stated that this would be useful in those cases where a developer wants to combine smaller lots into larger lots based on changes in market demand. Since the density is being reduced, the action would not affect the water adequacy certificate. The minor amendments would be approved administratively versus going through a full platting process.

There is also no mechanism in the Code for doing a land split in an existing platted subdivision without going through the full re-platting process. The Code requires owner permission on the application and in cases where there are lots within a subdivision that have been sold off it poses a challenge in gathering signatures from all the owners in the subdivision. Pursuant to State Law, this would apply to lot divisions consisting of two or three lots in property that is 2.5 acres or less. The review would be administrative and can be conducted under 30 days.

Performance security is in place to ensure that public improvements are constructed according to the City's standards, the Department is recommending allowing sidewalks to be deferred until after the home is constructed but no longer than five years from the date that the final plat is approved. This is a request by developers who are having to replace damaged sidewalks post construction from heavy equipment operators during the construction. The Americans Disability Act is a priority and that is why the Department is recommending a five-year maximum timeframe.

Mr. McLachlan noted that the Department has identified inconsistency between the definition of minor subdivision in the definition section under Article 151.01.02 and the definition of a minor subdivision in the proposed amendments. This discrepancy will be reconciled when the

amendments are brought back to Council for final adoption and should Council decide to proceed with the amendments.

The Planning and Zoning Commission voted unanimously to approve the amendments and to-date there have been no public comments received.

Mr. McLachlan stated that the Department is providing for consistency between the definition section of the Code and the subdivision regulations.

In response to Mayor Pro Tem Gray, Mr. McLachlan stated that any subdivision which matched the County's definition of a subdivision would need to apply to the State for water adequacy certification, which would be noted on the final plat.

Council Member Pacheco asked about the process for bringing forth regulations and adjusting them. She added that the Council has seen quite a few regulation adjustments to which she does not object since the processes are being streamlined. She also asked if the Department is systematically going through and streamlining as she would like to know the Department's process for choosing where the attention will be focused. Mr. McLachlan stated that as the Department administers the Development Code, staff notes conflicts or discrepancies between operating a smooth process or in this case, the Department is building avenues that do not exist to fulfill the purpose and intent of the Code legally without posing an undue burden on the applicant. The Department is responding to the Council's Strategic Guidance to remove unnecessary and obsolete Code provisions. The Planning and Zoning Commission is used as a sounding board for the proposals to vet from a community perspective whether they are appropriate and worthy of recommendation for approval to the Council.

The motion passed by a unanimous vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Calhoun, Pacheco, Umphrey and Wolfe.

## **New Business**

### **Item 4** Resolution 2020 - 011, Text to 9-1-1 Grant Agreement

Council Member Umphrey moved that Resolution 2020 - 011, acceptance of a grant through the Arizona Department of Administration, Office of Grants and Federal Resources, Arizona 9-1-1 Program to provide Text-to-911 services throughout the City of Sierra Vista and surrounding areas, be approved. Council Member Benning seconded the motion. The motion passed by a unanimous vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Calhoun, Pacheco, Umphrey and Wolfe.

Ms. Papatrefon stated that Text to 9-1-1 services ensures members of the public who are limited in their ability to use voice communication to communicate with primary service answering points. The Arizona Department of Administration State 9-1-1 Program has allocated funds specifically to implement Text to 9-1-1 services in the State of Arizona.

A grant has been secured in the amount of \$67,200 which will cover the cost for equipment, installation and maintenance for all primary service answering points in Cochise County. This award covers the period from the date of award through June 30, 2024 and the tentative schedule for initial deployment in Cochise County is between March 2021 and May 2021. Citizens requiring emergency services who are not able to communicate verbally will be able to utilize Text to 9-1-1 to reach a qualified dispatcher.

Mayor Mueller stated that this a big step forward and very important to folks that have disabilities in those areas.

Council Member Pacheco asked if dispatch currently accepts calls that go through a translator. Ms. Papatrefon stated that every counsel is equipped with the ability to accept those calls.

City Councilwoman Gwen Calhoun stressed that there are times when people may not want to use their voice to call 9-1-1, which is important for the public to hear that. This can also be resource for those who need to communicate quietly with 9-1-1.

### **Call to the Public**

Diana Wilcox voiced her concern about an island of land located north of Pet Smart that is continuously littered with garbage that is not being picked up. She noted that she does not know who the property owner is, but she picks up the garbage herself and needs help.

Demetry Simonton thanked Council for appointing new board members to the Industrial Development Authority and noted that it has been almost 10 years since the Industrial Development Authority has had a full board. He added that they have a new web site aligned with the City's marketing plan and have begun looking at the Vista 2030 to address housing needs and other issues. Lastly, he thanked Ms. Wilson for meeting with a group of community leaders looking into potential projects on the West End.

### **Comments and Requests of the Council**

Council Member Pacheco wished everyone a great Valentine's Day and Presidents' Day weekend.

Council Member Wolfe stated that it is good to be back and echoed Mayor Pro Tem Gray's comment regarding the Industrial Development Authority, voiced her excitement about the Text to 9-1-1 Grant because anything that can be done to make the system more accessible to everyone is a good thing. Lastly, she wished everyone a good weekend.

Council Member Benning also echoed Mayor Pro Tem Gray's comments about the Industrial Development Authority and stated that he is glad that Ms. Scott was able to make it to the meeting. He also thanked Mr. Simonton, who is very involved in the community, for stepping up and commenting on the Industrial Development Authority. He thanked Council Member Wolfe for the valentine card and the anonymous person for the beautiful flowers. In closing, he wished everyone a Happy Valentine's Day and good weekend.

Council Member Umphrey echoed everything stated and thanked Ms. McCaa for stepping up to serve on the West End Commission, wished Ms. Calabrese well, who will be missed and thanked Mr. Simonton for his touching comments.

Council Member Calhoun echoed what everyone else said.

Mayor Pro Tem Gray had nothing to report.

Mayor Mueller wished everyone a Happy Valentine's Day and Presidents' Day, asked everyone to be safe while travelling and reported on his meeting with Mr. Ricardo Pineda Albarran,



Consul General for Douglas coming to the community via Tucson, whose focus for discussion was to get to know the City and to re-instate the Across the Border Mayors group. He explained that the group had stopped meeting because of a Mexican Election Law, which was recently corrected, where the mayors could only be elected for three years and not reelected for a second term, which made it difficult to work with each other; therefore, things came to a dead stop for the mayors in trying to work on friendships/relationships. In closing, he welcomed Consul General Pineda Albarran and his family to the community.

**Adjournment**

Mayor Mueller adjourned the February 13, 2020 meeting of the Sierra Vista City Council at 5:31 p.m.

\_\_\_\_\_  
Mayor Frederick W. Mueller

MINUTES PREPARED BY:

ATTEST:

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Maria G. Marsh, Deputy Clerk

\_\_\_\_\_  
Jill Adams, City Clerk

February 27, 2020

MEMO TO: Honorable Mayor and City Council

THROUGH: Charles P. Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager

FROM: Matt McLachlan, AICP Community Development Director  
Jeff Pregler, AICP, Senior Planner

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT  
ORDINANCE 2020-002  
Adoption of Proposed Development Code Text Amendments-  
Section 151.22.006-Matrix of Use Permissions by Zoning District  
(Private general education schools)

REQUESTED ACTION:

Approval and adoption of proposed Development Code text amendments as shown in Exhibit A.

RECOMMENDATION:

The City Manager recommends approval.  
The Director of Community Development recommends approval.  
The Planning & Zoning Commission recommended unanimous approval 6-0.

APPLICANT:

City of Sierra Vista

30-DAY PUBLIC COMMENT PERIOD

The Mayor and City Council approved a 30-day public comment period for the proposed text amendments on January 23, 2020, with Resolution 2020-006.

The City has not received any public comments regarding the text amendments.

BACKGROUND:

The Community Development Department, through the annual work program, regularly reviews current code provisions and procedures to reduce obsolete or unnecessary code provisions in expectation of making city government accountable, collaborative and efficient. The proposed

code amendment relating to the permitting of private general education schools reflects these goals. The Planning & Zoning identified these amendments during discussion of the annual work program as medium to high priority.

## ANALYSIS

**Section 151.22.006-Matrix of Use Permissions by Zoning District**-The code amendment to this section revises the use permissions for both charter schools and private general education schools. The current language in the Code permits charter schools in every zoning district. While private schools of general education are required to obtain a Conditional Use Permit in the Urban Ranch (UR), Neighborhood Convenience (NC), Limited Commercial (LC), General Commercial (GC), and Office Professional (OP) zoning districts. The Code prohibits private general education schools in all other zoning districts including Single Family Residence zoning districts.

According to Arizona Revised Statutes 15.189.01, "municipalities and counties shall allow charter schools to be established and operate in at any location or in any facility for which the zoning regulations of the county or municipality cannot legally prohibit schools operated by school districts, except that a county or municipality may adopt zoning regulations that prohibit a charter school from operating on property that is less than an acre in size and that is located within an existing single family residence zoning district". Since public schools are exempt from locational standards, the same locational standards need to apply to charter schools. However, cities can prohibit the location of charter schools if they are located on property that is less than an acre and are located within an existing single-family residential zoning district. Since this is the case, the proposed amendment will prohibit charter schools on property less than once acre from locating within single family residential zoning districts.

According to Arizona Revised Statute 41-1493.03, Free Exercise of Religion, "government shall not impose or implement a land use regulation in any manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution, regardless of a compelling government interest". In discussions with the City attorney, religious institution or assembly extends to religious schools, thereby stating that the City cannot impose any additional regulations on religious schools that do not apply to non-religious or public schools. As a result, the proposed code amendment related to private general education schools, religious and non-religious, shall be to permit these schools in all zoning districts except that schools on property less than one acre and located within single family residential zoning districts shall be prohibited. This is the same standard that applies to charter schools.

## PLANNING & ZONING COMMISSION

The Commission discussed this item at a November 19, 2019 and voted unanimously to approve the amendments at a public hearing held on December 17, 2019.

Attachments:

Resolution

Exhibit A, Proposed Text Amendments

ORDINANCE 2020-002

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; ADOPTING AMENDMENTS TO THE DEVELOPMENT CODE, BY REFERENCE, REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY. NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

WHEREAS, the City of Sierra Vista is proposing Development Code text amendments to the following: Section 151.22.006, Matrix of Use Permissions by Zoning District; and

WHEREAS, the City Manager, and Director of Community Development recommend that the amendments to the Development Code, as shown on Exhibit A, be adopted; and

WHEREAS, as required by Article 151.31 of the Development Code, the Mayor and City Council held a public hearing on the amendments after proper notice had been given; and

WHEREAS, the amendments have gone through the 30-day public comment period and no comments have been received.

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

SECTION 1

That Resolution 2020-006 is hereby reaffirmed, and that the Development Code text amendments, as shown in Exhibit A, are hereby adopted.

SECTION 2

All other ordinances and parts of ordinances in conflict with the provisions of this provision are hereby repealed.

SECTION 3

Should any section, clause or provision of this Ordinance be declared by the courts to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 27TH DAY OF FEBRUARY 2020.

\_\_\_\_\_  
FREDERICK W. MUELLER  
Mayor

APPROVED AS TO FORM:

ATTEST:

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NATHAN WILLIAMS  
City Attorney

\_\_\_\_\_  
JILL ADAMS  
City Clerk

PREPARED BY:  
Jeff Pregler, AICP  
Senior Planner

**EXHIBIT A**  
**DEVELOPMENT CODE AMENDMENT**  
**SECTION 151.22.006- MATRIX OF USE PERMISSIONS BY ZONING DISTRICTS**  
**(APPLICABLE PORTION)**

USE CLASSIFICATIONS	ZONING DISTRICT												
	UR, Urban Ranch	SFR, Single Family Residence	MFR, Multiple Family Residence	MHR, Manufactured Home Residential	RVP, Recreational Vehicle Park	NC, Neighborhood Commercial	LC, Limited Commercial	OP, Office Professional	GC, General Commercial	LI, Light Industrial	IP, Industrial Park/LI, Light Industry	HI, Heavy Industrial	OS, Open Space
PUBLIC/SEMI-PUBLIC													
Accessory Telecommunications Antenna/Ancillary Structure	A <sup>(7)</sup>	A <sup>(7)</sup>	A <sup>(7)</sup>	A <sup>(7)</sup>	A <sup>(7)</sup>	A	A	A	A	A	A	A	A
Airport	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	P
Alternative Energy Systems	P	A	A	A	A	A	A	A	P	P	P	P	P
Cemeteries	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	P
Columbarium	C	C	C	C	C	C	C	C	C	C	C	C	C
Community Gardens	P	P	P	P	P	P	P	P	P	P	P	NC	P
Community Service Uses	NC	NC	NC	NC	NC	P	P	P	P	P	P	NC	P
Funeral Home/Mortuary	NC	NC	NC	NC	NC	P	P	P	P	NC	NC	NC	NC
Golf Courses, Public or Private	P	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	P
Heavy Utility Service	NC	NC	NC	NC	NC	NC	NC	NC	C	P	P	P	C
Light Utility Services	C	C	C	C	C	P	P	P	P	P	P	P	P
Museums, Cultural Centers & Similar Uses	P	P	P	P	P	P	P	P	P	NC	NC	NC	P
Parks and Recreation Facilities	A	A	A	A	A	A	A	A	A	NC	NC	NC	P
Place of Worship	C	C	C	C	C	C	C	C	C	C	C	NC	C
Private Clubs	C	C	C	NC	NC	P	P	P	P	C	C	NC	NC
Public Education Facilities & Charter Schools	P	P/NC <sup>(8)</sup>	P	P	P	P	P	P	P	P	P	P	P
School of General Education, Private	PG	P/NC <sup>(8)</sup>	PNG	PNG	PNG	PG	PG	PG	PG	PNG	PNG	PNG	PN G
School of Special Education, Private	C	NC	NC	NC	NC	P	P	P	P	NC	NC	NC	NC

**DEVELOPMENT CODE AMENDMENT  
SECTION 151.22.006- MATRIX OF USE PERMISSIONS BY ZONING DISTRICTS  
(APPLICABLE PORTION)**

USE CLASSIFICATIONS	ZONING DISTRICT												
	UR, Urban Ranch	SFR, Single Family Residence	MFR, Multiple Family Residence	MHR, Manufactured Home Residential	RVP, Recreational Vehicle Park	NC, Neighborhood Commercial	LC, Limited Commercial	OP, Office Professional	GC, General Commercial	LI, Light Industrial	IP, Industrial Park/LI, Light Industry	HI, Heavy Industrial	OS, Open Space
Social Service Agency/Non-Profit	C	C	C	NC	NC	P	P	P	P	C	C	NC	P
Telecommunications Tower													
When Located on Non-Residentially Used Property													
60 feet in height or less and not located within 150 feet of a property zoned or used for residential purposes	A	A	A	A	A	A	A	A	P	P	P	P	P <sup>(6)</sup>
60 feet in height or more and/or located within 150 feet of a property zones or used for residential purposes	C	C	C	C	C	C	C	C	C	C	C	C	C <sup>(6)</sup>
When Located on Residentially Used Property	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
<p>(6) Stand alone telecommunications towers on City-owned property with an active recreational use are not permitted.</p> <p>(7) Not permitted when attached to any single story building or residential building containing fewer than five dwelling units.</p> <p>(8) <u>Charter schools and private general education schools: Not permitted when located on property less than 1 acre in size.</u></p>													

February 21, 2020

MEMORANDUM TO: Honorable Mayor and City Council  
THRU: Charles P. Potucek, City Manager  
FROM: Adam D. Thrasher, Chief of Police  
SUBJECT: Request for Agenda Item Placement  
Resolution 2020-012, Authorization to Accept  
Arizona Department of Homeland Security Grant  
Funding-Operation Stonegarden Grant Program  
(Agreement #190417-01)

Recommendation:

The City Manager recommends approval.  
The Police Chief recommends approval.

Background:

The Operation Stonegarden (OPSG) Program supports enhanced cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and Federal, state, local, tribal, and territorial law enforcement agencies. The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders.

OPSG remains focused and committed to supporting State, local and Tribal law enforcement agencies in their goals to build capability to prevent, protect against, and respond to all threats dealing with border security issues by encouraging local operational objectives which serve as a "force multiplier" to enhance National and State Border Security Strategies. State and local agencies that participate in OPSG enforce state law and coordinate enforcement efforts with federal partners in order to provide overlapping layers of public safety for the communities they serve. OPSG deployments enhance SVPD's proactive enforcement of state drug trafficking and traffic statutes in Sierra Vista and the immediate surrounding areas.

The attached award notification and agreement will authorize the City to receive grant funding in the amount of \$60,794 for overtime/ERE and \$9,046 for mileage from the Arizona Department of Homeland Security under the OPSG program. There is no match required. This is a reimbursable grant that covers overtime, full employee related expenses (PSRS, ASRS, Worker's Compensation Insurance, Social Security, Medicare) and mileage expenses.

Budget Appropriation:

None.



RESOLUTION 2020-012

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; TO ENTER INTO A GRANT AGREEMENT WITH THE ARIZONA DEPARTMENT OF HOMELAND SECURITY; 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, it is the settled policy of the City Council to authorize the City Staff to seek, make application for, and accept any Federal and State funding assistance for improvement to our community that are beyond the funding capability of City Revenues, when it is determined by the City Council to be in the best interests of the City; and

WHEREAS, the City of Sierra Vista, through the Police Department, has made application and has been awarded grant funding of \$69,840 from the Arizona Department of Homeland Security under the FFY 2019 Operation Stonegarden Grant Program, these funds will support Personnel Services (overtime) and Employee Related Expenses; and

WHEREAS, the City of Sierra Vista is able to meet the terms of the agreement; and

WHEREAS, the City of Sierra Vista desires to enhance and support programs that improves public safety in the City of Sierra Vista and surrounding areas.

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 the City Council seeking grant funding be, and hereby is, reaffirmed.

SECTION 2

A grant agreement between the Arizona Department of Homeland Security and the City of Sierra Vista, attached as exhibit A, be, and hereby is approved.

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 27<sup>TH</sup> DAY OF FEBRUARY, 2020.

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Frederick W. Mueller  
Mayor

ATTEST:

APPROVED AS TO FORM:

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JILL ADAMS  
City Clerk

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NATHAN J. WILLIAMS  
City Attorney

PREPARED BY:  
ADAM D. THRASHER  
Chief of Police

**SUBRECIPIENT AGREEMENT  
OPERATION STONEGARDEN GRANT PROGRAM  
OVERTIME-MILEAGE**

**19-AZDOHS-OPSG-\_\_\_\_\_**  
(Enter Subrecipient Agreement number above (e.g., 190XXX-XX))

**Between**

**The Arizona Department of Homeland Security  
And**

\_\_\_\_\_  
(Enter the name of the Subrecipient Agency above)

**DUNS Number \_\_\_\_\_**  
(Enter the DUNS number above)

WHEREAS, A.R.S. section 41-4254 charges the Arizona Department of Homeland Security (AZDOHS) with the responsibility of administering funds.

THEREFORE, it is agreed that the AZDOHS shall provide funding to the

\_\_\_\_\_  
(Enter the name of the Subrecipient Agency above)

(Subrecipient) for services under the terms of this Agreement (the "Agreement").

**I. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to specify the rights and responsibilities of AZDOHS in administering the distribution of homeland security grant funds to the Subrecipient, and to specify the rights and responsibilities of the Subrecipient as the recipient of these funds.

**II. PERIOD OF PERFORMANCE, TERMINATION AND AMENDMENTS**

This Agreement shall become effective on **January 29, 2020 and shall terminate on January 31, 2021**. The obligations of the Subrecipient as described herein will survive termination of this agreement.

**III. DESCRIPTION OF SERVICES**

The Subrecipient shall provide the services for AZDOHS as set forth in writing in Subrecipient's grant application titled: "**OPSG Overtime-Mileage**" and funded at \$\_\_\_\_\_ (as may have been modified by the award letter).  
(Enter funded award amount above)

**IV. MANNER OF FINANCING**

The AZDOHS shall under the U.S. Department of Homeland Security grant #EMW-2019-SS-00002 and CFDA #97.067:

- a) Provide up to \$\_\_\_\_\_ to the Subrecipient for services provided under Paragraph III.
- b) Payment made by the AZDOHS to the Subrecipient shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the AZDOHS, to be submitted by the

Subrecipient. A listing of acceptable documentation can be found at [www.azdohs.gov](http://www.azdohs.gov). Payments will be contingent upon receipt of all reporting requirements of the Subrecipient under this Agreement.

**V. FISCAL RESPONSIBILITY**

It is understood and agreed that the total amount of the funds used under this Agreement shall be used only for the project as described in the application and award documentation. Therefore, should the project not be completed, the Subrecipient shall reimburse said funds directly to the AZDOHS immediately. If the project is completed at a lower cost than the original budget called for, the amount reimbursed to the Subrecipient shall be for only the amount of dollars actually spent by the Subrecipient in accordance with the approved application. For any funds received under this Agreement for which expenditure is disallowed by an audit exemption or otherwise by the AZDOHS, the State, or Federal government, the Subrecipient shall reimburse said funds directly to the AZDOHS immediately.

**VI. FINANCIAL AUDIT/PROGRAMMATIC MONITORING**

The Subrecipient agrees to comply with the record-keeping requirements and other requirements of A.R.S. 35-214 and 35-215.

- a) In addition, in compliance with the Federal Single Audit Act (31 USC 7501-7507) as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and 2 C.F.R. 200.501, the Subrecipient must have a Single Audit or program specific audit conducted in accordance with 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) if the Subrecipient expends more than \$750,000 from Federal awards in its previous fiscal year. If the Subrecipient has expended more than \$750,000 in Federal dollars, a copy of the Subrecipient's single audit or program specific audit report for the previous fiscal year and subsequent fiscal years that fall within the period of performance is due annually to AZDOHS within nine (9) months of the Subrecipient's fiscal year end.
- b) Failure to comply with any requirements imposed as a result of an audit will suspend reimbursement by AZDOHS to the Subrecipient until the Subrecipient is in compliance with all such requirements. Additionally, the Subrecipient will not be eligible for any new awards until the Subrecipient is in compliance with all such requirements.
- c) Subrecipients who do not expend more than \$750,000 in Federal dollars in the previous fiscal year and subsequent fiscal years that fall within the period of performance must submit to AZDOHS via [audits@azdohs.gov](mailto:audits@azdohs.gov), a statement stating they do not meet the threshold and therefore do not have to complete a single audit or program specific audit.
- d) Subrecipient will be monitored periodically by AZDOHS, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and on-site monitoring visits. Monitoring can involve aspects of the work involved under this Agreement including but not limited to the review and analysis of financial, programmatic, equipment, performance, and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. Subrecipient shall participate in and cooperate with all such monitoring by AZDOHS, and shall provide access to all personnel, documents, and other records as may be requested from time to time by AZDOHS. Subrecipient also shall comply with all requests of AZDOHS that AZDOHS deems necessary to assure the parties' compliance with their obligations under this Agreement.

e) The Subrecipient agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this Agreement.

## **VII. APPLICABLE STANDARDS AND REGULATIONS**

The Subrecipient must comply with the applicable Notice of Funding Opportunity (NOFO) and Code of Federal Regulations (C.F.R.) 2 C.F.R. 200. The NOFO for this program is hereby incorporated into this Agreement by reference. By accepting this award, the Subrecipient agrees that all allocation and use of funds under this grant will be in accordance with the requirements contained in the NOFO and all other applicable law.

### **Davis Bacon Act**

HSGP Program subrecipients using funds for construction projects must comply with the *Davis-Bacon Act* (40 U.S.C. 3141 *et seq.*). Subrecipients must obtain written approval from AZDOHS prior to use of any HSGP funds for construction or renovation. Subrecipients must ensure that their contractors or subcontractors for construction projects pay workers no less than the prevailing wages for laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the state in which the work is to be performed. Additional information regarding compliance with the *Davis-Bacon Act*, including Department of Labor (DOL) wage determinations, is available from the following website

<https://www.dol.gov/whd/govcontracts/dbra.htm>.

### **Insurance Coverage**

The Subrecipient affirms the organization maintain insurance coverage as described in 2 C.F.R. 200.310. The non-Federal (Subrecipient) entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal (Subrecipient) entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

### **National Incident Management System (NIMS)**

The Subrecipient agrees to remain in compliance with National Incident Management System (NIMS) implementation initiatives as outlined in the applicable NOFO.

### **Environmental Planning and Historic Preservation**

The Subrecipient shall comply with Federal, State and Local environmental and historical preservation (EHP) regulations, laws and Executive Orders as applicable. See FEMA publication FP 108-023-1, titled "Environmental Planning and Historic Preservation (EHP) Policy Guidance," available at [https://www.fema.gov/media-library-data/1533321728657-592e122ade85743d1760fd4747241776/GPD\\_EHP\\_Policy\\_Final\\_Amendment\\_GPD\\_final\\_508.pdf](https://www.fema.gov/media-library-data/1533321728657-592e122ade85743d1760fd4747241776/GPD_EHP_Policy_Final_Amendment_GPD_final_508.pdf). Subrecipients proposing projects that have the potential to impact the environment, including but not limited to construction of communication towers, modification or renovation of existing buildings, structures and facilities, or new construction including replacement of facilities, must participate in the Federal Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) EHP review process. The EHP review process involves the submission of a detailed project description that explains the goals and objectives of the proposed project along with supporting documentation so that DHS/FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties. In some cases, DHS/FEMA is also required to consult with other regulatory agencies and the public in order to complete the review process. The EHP review process must be completed before funds are released to carry out the proposed project. If ground disturbing activities occur during project implementation, the Subrecipient must ensure monitoring of ground disturbance and if any archeological resources are discovered, the Subrecipient shall immediately cease construction in that area and notify FEMA, AZDOHS and the appropriate State Historic

Preservation Office. DHS/FEMA will not fund projects that are initiated without the required EHP review. In addition, the following provisions must be adhered to:

### **Consultants/Trainers/Training Providers**

Invoices for consultants/trainers/training providers must include at a minimum: a description of services; dates of services; number of hours for services performed; rate charged for services; and, the total cost of services performed. Consultant/trainer/training provider costs must be within the prevailing rates; must be obtained under consistent treatment with the procurement policies of the Subrecipient and 2 C.F.R. 200; and shall not exceed the maximum of \$450 per day per consultant/trainer/training provider unless prior written approval is granted by the AZDOHS. This includes internal personnel hired on backfill/overtime to deliver training. In addition to the per day \$450 maximum amount, the consultant/trainer/training provider may be reimbursed reasonable travel, lodging, meal and incidental expenses not to exceed the State rate. Itemized receipts are required for lodging and travel reimbursements. The Subrecipient will not be reimbursed costs other than travel, lodging, meals and incidentals on travel days for consultants/trainers/training providers. See Travel Costs below.

### **Contractors/Subcontractors**

The Subrecipient may enter into written subcontract(s) for performance of certain of its functions under the Agreement in accordance with terms established in 2 C.F.R. 200 and the applicable NOFO. The Subrecipient agrees and understands that no subcontract that the Subrecipient enters into with respect to performance under this Agreement shall in any way relieve the Subrecipient of any responsibilities for performance of its duties. The Subrecipient shall give the AZDOHS immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Subrecipient by any subcontractor or vendor which may result in litigation related in any way to this Agreement.

### **Travel Costs**

All grant funds expended for travel, lodging, meals and incidentals are subject to the standards of the Subrecipient's policies and procedures, as well as the State of Arizona Accounting Manual (SAAM). These policies must be applied uniformly to both federally financed and other activities of the Subrecipient. AZDOHS will reimburse at the most restrictive allowability and rate. At no time will the Subrecipient's reimbursement(s) exceed the State rate established by the Arizona Department of Administration, General Accounting Office Travel Policies: <https://gao.az.gov/travel>.

### **Procurement**

The Subrecipient shall comply with its own procurement rules/policies and must also comply with Federal procurement rules/policies and all Arizona state procurement code provisions and rules. The Federal intent is that all Homeland Security Funds are awarded competitively. The Subrecipient shall not enter into a Noncompetitive (Sole or Single Source) Procurement Agreement, unless prior written approval is granted by the AZDOHS via the Noncompetitive Procurement Request Form. The Noncompetitive Procurement Request Form and instructions are located on the AZDOHS website: <https://azdohs.gov/grant-program-forms>.

### **Training and Exercise**

The Subrecipient agrees that any grant funds used for training and exercise must be in compliance with the applicable NOFO. All training must be included and approved in your application and/or approved through the DEMA/AZDOHS training request process prior to execution of training contract(s). All exercises must utilize and comply with the FEMA Homeland Security Exercise and Evaluation Program (HSEEP) guidance for exercise design, development, conduct, evaluation and reporting. The Subrecipient agrees to:

- a) Submit an exercise summary and attendance/sign-in roster to AZDOHS with all related reimbursement requests.
- b) Email the After Action Report/Improvement Plan (AAR/IP) to the local County Emergency Manager, the AZDOHS Strategic Planner, and the Arizona Department of Military Affairs (DEMA) Exercise Branch within 90 days of completion of an exercise or as prescribed by the most current HSEEP guidance.

### **Communications Equipment**

All Land Mobile Radio equipment purchased with Homeland Security funds is required to comply with the following:

- a) P25 (Project 25) standards;
- b) SAFECOM Guidance (see <https://www.dhs.gov/safecom>);
- c) Land Mobile Radio Minimum Equipment Standards as approved by the Statewide Interoperability Executive Committee (SIEC); and
- d) Arizona's State Interoperable Priority Programming Guide also as approved by the SIEC

### **Nonsupplanting Agreement**

The Subrecipient shall not use funds received under this Agreement to supplant Federal, State, Tribal or Local funds or other resources that would otherwise have been made available for this program/project. The Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt of expected receipt of Federal funds. Further, if a position created by a grant is filled from within, the vacancy created by this action must be filled within thirty (30) days. If the vacancy is not filled within thirty (30) days, the Subrecipient must stop charging the grant for the new position. Upon filling the vacancy, the Subrecipient may resume charging for the grant position.

### **E-Verify**

Compliance requirements for A.R.S. 41-4401—immigration laws and E-Verify requirement.

- a) The Subrecipient warrants its compliance with all State and Federal immigration laws and regulations relating to its employees and to employees of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, including but not limited to A.R.S. 23-214, Subsection A (that subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program").
- b) A breach of a warranty by Subrecipient regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and the Subrecipient may be subject to penalties to be determined at AZDOHS's discretion, up to and including termination of this Agreement.
- c) The AZDOHS retains the legal right to inspect the papers of any Subrecipient employee who works on the Agreement, and to those of any employee of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, to ensure that the Subrecipient is complying with the warranty under paragraph (a) above.

### **Property Control**

Effective control and accountability must be maintained by Subrecipient for all property/equipment purchased under this Agreement. The Subrecipient must adequately safeguard all such property/equipment and must assure that it is used for authorized purposes as described in the NOFO, the grant application as approved by AZDOHS, and 2 C.F.R. 200. The Subrecipient shall exercise caution in the use, maintenance, protection and preservation of such property.

- a) Property/equipment shall be used by the Subrecipient in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by federal grant funds. Subrecipient is required to maintain and utilize equipment as outlined in 2 C.F.R. 200.313 - Equipment. Any loss, damage, or theft shall be investigated by Subrecipient and reported by Subrecipient to the AZDOHS. Any equipment lost, damaged or stolen shall be replaced by the Subrecipient at the Subrecipient's expense and an updated Property Control Form shall be submitted to AZDOHS by Subrecipient.
- b) Nonexpendable Property/Equipment and Capital Assets:
  - a. Nonexpendable Property/Equipment is property which has a continuing use, is not consumed in use, is of a durable nature with an expected service life of one or more years, has an acquisition cost of \$5,000 (Five Thousand Dollars) or more, and does not become a fixture or lose its identity as a component of other equipment or systems.
  - b. A Capital Asset is any personal or real property, or fixture that has an acquisition cost of \$5,000 (Five Thousand Dollars) or more per unit and a useful life of more than one year.
- c) A Property Control Form (if applicable) shall be maintained for the entire scope of the program or project for which property was acquired through the end of its useful life and/or disposition. All Nonexpendable Property and Capital Assets must be included on the Property Control Form. The Subrecipient shall provide AZDOHS a copy of the Property Control Form with the final quarterly programmatic report. The Property Control Form can be located at <https://azdohs.gov/grant-program-forms>. The Subrecipient agrees to be subject to equipment monitoring and auditing by state or federal authorized representatives to verify information.
- d) A physical inventory of Nonexpendable Property/Equipment and Capital Assets must be taken and the results reconciled with the Property Control Form at least once every two years.
  - a. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated and reported by Subrecipient to AZDOHS immediately.
  - b. Adequate maintenance procedures must be developed to keep the property in good condition.
- e) When Nonexpendable Property/Equipment and/or Capital Assets are no longer in operational use by the Subrecipient, an updated Property Control Form must be submitted by Subrecipient to AZDOHS immediately. The disposition of equipment shall be in compliance with the AZDOHS Disposition Guidance and 2 C.F.R. 200. If the Subrecipient is requesting disposition of Capital Assets for reasons other than theft, destruction, or loss, the Subrecipient must submit an Equipment Disposition Request Form to AZDOHS and receive approval prior to the disposition. The Equipment Disposition Guidance and Request Form can be found at <https://azdohs.gov/grant-program-forms>.
- f) Equipment Record Retention  
Pursuant to 2 C.F.R. 200.333(c), records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.



### **Allowable Costs**

The allowability of costs incurred under this Agreement shall be determined in accordance with the general principles of allowability and standards for selected cost items as set forth in the applicable Code of Federal Regulations, authorized equipment lists, and guidance documents referenced above.

- a) The Subrecipient agrees that use of grant funds for any indirect costs that may be incurred must be in accordance with 2 C.F.R. 200 and the applicable NOFO. Indirect costs must be applied for and approved in writing by the AZDOHS prior to expenditure and reimbursement.
- b) The Subrecipient agrees that grant funds are not to be expended for any Management and Administrative (M&A) costs that may be incurred by the Subrecipient for administering these funds unless explicitly applied for and approved in writing by the AZDOHS and shall be in compliance with the applicable NOFO.

### **VIII. DEBARMENT CERTIFICATION**

The Subrecipient is to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

### **IX. FUNDS MANAGEMENT**

The Subrecipient must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with funds from other sources. The Subrecipient must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits.

The Subrecipient must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are:

- Financial Management
- Procurement
- Personnel
- Property
- Travel

A system is adequate if it is 1) written; 2) consistently followed – it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds.

### **X. REPORTING REQUIREMENTS**

Regular reports by the Subrecipient shall include:

- a) Programmatic Reports  
The Subrecipient shall provide quarterly programmatic reports to the AZDOHS within fifteen (15) calendar days of the last day of the quarter in which services are provided. The Subrecipient shall use the form provided by the AZDOHS to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the AZDOHS. The Subrecipient shall use the Quarterly Programmatic Report form, which is posted at <https://azdohs.gov/grant-program-forms>. Quarterly programmatic reports shall be submitted to the AZDOHS until the entire project is completed. If the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the AZDOHS.

- b) Subrecipients must provide substantial/detailed information as to the status of completion of the milestones included in the application as approved by AZDOHS. Failure to adequately provide complete information will result in the Quarterly Report being rejected and resubmission will be required.
- c) Quarterly Programmatic Reports are due:
  - January 15** (for the period from October 1– December 31)
  - April 15** (for the period from January 1 – March 31)
  - July 15** (for the period from April 1 – June 30)
  - October 15** (for the period from July 1 – September 30)
- d) Final Quarterly Report:
 

The final quarterly report is due no more than fifteen (15) calendar days after the end of the performance period. Subrecipient may submit a final quarterly report prior to the end of the performance period if the scope of the project has been fully completed and implemented. The Property Control Form is due with the final quarterly report (if applicable).
- e) Property Control Form – if applicable:
 

The Subrecipient shall provide the AZDOHS a copy of the Property Control Form with the final quarterly report.

  - a. In case of equipment disposition:
 

The Property Control Form shall be updated and a copy provided to AZDOHS no more than forty-five (45) calendar days after equipment disposition, if applicable. The Subrecipient's use and disposition of equipment must be in compliance with the AZDOHS Disposition Guidance and 2 C.F.R. 200.313.
- f) Financial Reimbursements
 

**The Subrecipient shall provide AZDOHS with requests for reimbursement as frequently as monthly but not less than quarterly.** Reimbursement requests are only required when expenses have been incurred. Reimbursement requests shall be submitted with the Reimbursement Form provided by the AZDOHS staff. The Subrecipient shall submit a final reimbursement request for expenses received and invoiced prior to the end of the period of performance. The final reimbursement must be received by AZDOHS no more than **forty-five (45) calendar days** after the end of the period of performance. Requests for reimbursement received by AZDOHS later than **forty-five (45) calendar** days after the end of the period of performance will not be paid. The final reimbursement request as submitted shall be marked as final.

Subrecipients will only be reimbursed for expenses that have been obligated, expended and received within the authorized Period of Performance as identified in Section II of this Agreement. Subrecipients are not authorized to obligate or expend funds prior to the start date of the Period of Performance. Any expenses obligated or expended prior to the Period of Performance start date will be deemed unallowable and will not be reimbursed. Any expenses/services that occur beyond the Period of Performance (i.e. cell phone service) will be deemed unallowable and will not be reimbursed.

The AZDOHS requires that all requests for reimbursement are submitted via United States Postal Service, FedEx, UPS, etc. or in person. Reimbursement requests submitted via fax or by any electronic means will not be accepted.

The AZDOHS reserves the right to request and/or require any supporting documentation and/or information it feels necessary in order to process reimbursements. Subrecipient shall promptly provide AZDOHS with all such documents and/or information.

All reports shall be submitted to the contact person as described in Paragraph XXXVII, NOTICES, of this Agreement.

**XI. ASSIGNMENT AND DELEGATION**

The Subrecipient may not assign any rights hereunder without the express, prior written agreement of both parties.

**XII. AMENDMENTS**

Any change in this Agreement including but not limited to the Description of Services and budget described herein, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by and between the duly authorized representatives of the Subrecipient and the AZDOHS. In the event of any new legislation, laws, ordinances, or rules affecting this Agreement, the parties agree that the terms of this Agreement shall automatically incorporate the terms of such new legislation, laws, ordinances, or rules.

Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the Subrecipient's compensation, if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding paragraph. The Subrecipient expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

**XIII. US DEPARTMENT OF HOMELAND SECURITY AGREEMENT ARTICLES**

**Article A - Disposition of Equipment Acquired Under the Federal Award**

When original or replacement equipment acquired in conjunction with this Agreement by the Subrecipient is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, the Subrecipient must request instructions from DHS/FEMA via AZDOHS by submitting an Equipment Disposition Request Form in order to make proper disposition of the equipment pursuant to 2 C.F.R. 200.313.

**Article B – Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to this Agreement after it has been entered into, including changes to period of performance or terms and conditions, the Subrecipient will be notified of the changes in writing. Once notification has been made, any subsequent request for funds by Subrecipient will constitute Subrecipient's acceptance of the changes to this Agreement and the incorporation of such changes into this Agreement.

**Article C - Procurement of Recovered Materials**

The Subrecipient hereby acknowledges and agrees that it must comply with section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6962) and that the requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Article D - Whistleblower Protection Act**

The Subrecipient hereby acknowledges and agrees that it must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. section 4304 and 4310.

**Article E - Use of DHS Seal, Logo and Flags**

Subrecipient hereby acknowledges that it must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**Article F - USA Patriot Act of 2001**

Subrecipient hereby acknowledges and agrees that it must comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act, P.L. 107-56), which amends 18 U.S.C. section 175-175c.

**Article G – Universal Identifier and System of Award Management (SAM)**

Subrecipient hereby acknowledges and agrees that it must comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A.

**Article H - Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and, Performance Matters located at 2 C.F.R. Part 200 Appendix XII, the full text of which is incorporated here by reference in the terms and conditions of your award.

**Article I - Rehabilitation Act of 1973**

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, P. L. No. 93-112 (1973) (codified as amended at 29 U.S.C. 794), which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

**Article J - Trafficking Victims Protection Act of 2000**

Subrecipient hereby acknowledges and agrees that it must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104). The award term is located at 2 C.F.R. Part 175.15, the full text of which is incorporated here by reference.

**Article K - Terrorist Financing**

The Subrecipient hereby acknowledges and agrees that it must comply with U.S. Executive Order 13224 and all U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Subrecipient to ensure compliance with all such laws and U.S. Executive Order 13224.

**Article L - SAFECOM**

The Subrecipient hereby acknowledges and agrees that recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

### **Article M - Reporting Subawards and Executive Compensation**

All subrecipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the terms and conditions of your award.

### **Article N – Department and Suspension**

The Subrecipient hereby acknowledges and agrees that it is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict Federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

### **Article O - Copyright**

The Subrecipient hereby acknowledges and agrees that it must affix the applicable copyright notices of 17 U.S.C. 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under Federal financial assistance awards.

### **Article P - Civil Rights Act of 1964 - Title VI**

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), codified at 6 C.F.R. Part 21 and 44 C.F.R. Part 7, which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

### **Article Q - Best Practices for Collection and Use of Personally Identifiable Information (PII)**

The Subrecipient hereby acknowledges and agrees that if it collects PII, it is required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII it collects. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Subrecipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as useful resources respectively.

### **Article R - Americans with Disabilities Act of 1990**

The Subrecipient hereby acknowledges and agrees that it shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including but not limited to Arizona Executive Order 2009-9 and the requirements of Titles I, II, and III of the Americans with Disabilities Act, P.L. No. 101-336 (1990) (codified as amended at 42 U.S.C. 12101-12213), which prohibit subrecipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

### **Article S - Age Discrimination Act of 1975**

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

### **Article T - Activities Conducted Abroad**

The Subrecipient hereby acknowledges and agrees that it must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

### **Article U - Acknowledgement of Federal Funding from DHS**

The Subrecipient hereby acknowledges and agrees that it must acknowledge its use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

### **Article V - DHS Specific Acknowledgements and Assurances**

Subrecipient hereby acknowledges and agrees—and agrees to require any contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Subrecipient hereby agrees to cooperate with any compliance review or complaint investigation conducted by DHS and/or AZDOHS.
2. Subrecipient hereby agrees to give DHS access and AZDOHS to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Subrecipient hereby agrees to submit timely, complete, and accurate reports to the appropriate DHS and AZDOHS officials and maintain appropriate backup documentation to support the reports.
4. Subrecipient hereby agrees to comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

### **Article W - Assurances, Administrative Requirements and Cost Principles, and Audit Requirements**

The Subrecipient hereby acknowledges and agrees that it must complete OMB Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs as applicable.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at 2 C.F.R. Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

### **Article X - Patents and Intellectual Property Rights**

Unless otherwise provided by law, the Subrecipient hereby acknowledges and agrees that it is subject to the Bayh-Dole Act, P.L. 96-517, codified in 35 U.S.C. 200 et seq., and that it is subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards that are in 37 C.F.R. Part 401 and the standard patent rights clause in 37 C.F.R. 401.14.

### **Article Y – Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. All subrecipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

### **Article Z – National Environmental Policy Act**

All subrecipients must comply with the requirements of the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 et seq., and the Council on Environmental Quality (CEQ) Regulations (40 C.F.R. Parts 1500-1508) for Implementing the Procedural Provisions of NEPA, which requires Subrecipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

### **Article AA - Lobbying Prohibitions**

The Subrecipient hereby acknowledges and agrees that it must comply with 31 U.S.C. 1352, and acknowledges and agrees that none of the funds provided under this Agreement may be used to pay any person to influence, or attempt to influence an officer or employee of any agency (whether State or Federal), a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action related to a Federal award or contract, including any extension, continuation, renewal, amendment, or modification.

### **Article AB - Limited English Proficiency (Civil Rights Act of 1964, Title VI)**

The Subrecipient hereby acknowledges and agrees that it must comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with Limited English Proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

### **Article AC - Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990 and the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. section 2225(a), the Subrecipient hereby acknowledges and agrees that it must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with all applicable fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. section 2225.

### **Article AD - Fly America Act of 1974**

The Subrecipient hereby acknowledges and agrees that it must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

### **Article AE - Federal Leadership on Reducing Text Messaging while Driving**

All subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in U.S. Executive Order 13513, including conducting initiatives described in Section 3(a) of the Order when on official Government business or when performing any work for or on behalf of the federal government.

### **Article AF - Federal Debt Status**

The Subrecipient hereby acknowledges and agrees that it is required to be non-delinquent in its repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

**Article AG - False Claims Act and Program Fraud Civil Remedies**

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of The False Claims Act (31 U.S.C. 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the Federal government. See also 31 U.S.C. 3801-3812 which details the administrative remedies for false claims and statements made.

**Article AH - Energy Policy and Conservation Act**

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of The Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. 6201 et. seq.) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**Article AI - Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX**

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. These regulations are codified at 6 CFR Part 17 and 44 CFR Part 19.

**Article AJ - Duplication of Benefits**

Any cost allocable to a particular Federal award, provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude a subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal award.

**Article AK - Drug-Free Workplace Regulations**

The Subrecipient hereby acknowledges and agrees that it must comply with the drug-free workplace requirements in Subpart B (or Subpart C, if the Subrecipient is an individual) of 2 C.F.R. part 3001, which adopts the Government-wide implementation (2 C.F.R. part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 8101-8106).

**Article AL - Civil Rights Act of 1968**

The Subrecipient hereby acknowledges and agrees that it must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 C.F.R. 100.201).

**XIV. OFFSHORE PERFORMANCE OF WORK PROHIBITED**

Due to security and identity protection concerns, all services under this Agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by the Subrecipient’s contractors and subcontractors at all tiers.



**XV. AGREEMENT RENEWAL**

This Agreement shall not bind nor purport to bind the AZDOHS for any contractual commitment in excess of the original Agreement period, which may not be changed except by a writing signed by all parties hereto in conformity with Paragraph XII, AMENDMENTS.

**XVI. RIGHT TO ASSURANCE**

If the AZDOHS in good faith has reason to believe that the Subrecipient does not intend to, or is unable to perform or continue performing under this Agreement, the AZDOHS may demand in writing that the Subrecipient give a written assurance of intent and ability to perform. If the Subrecipient fails to provide written assurance within the number of days specified in the demand, the AZDOHS at its option may terminate this Agreement.

**XVII. CANCELLATION FOR CONFLICT OF INTEREST**

The AZDOHS may, by written notice to the Subrecipient, immediately cancel this Agreement without penalty or further obligation pursuant to A.R.S. 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the State or its subdivisions (unit of Local Government) is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to the Agreement receive written notice from the AZDOHS, unless the notice specifies a later time.

**XVIII. THIRD PARTY ANTITRUST VIOLATIONS**

The Subrecipient hereby assigns to the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Subrecipient toward fulfillment of this Agreement.

**XIX. AVAILABILITY OF FUNDS**

Every payment obligation of the AZDOHS under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations under A.R.S. 35-154. If the funds are not allocated and available for the continuance of this Agreement, the AZDOHS may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to the AZDOHS in the event this provision is exercised, and the AZDOHS shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, including purchases and/or contracts entered into by the Subrecipient in the execution of this Agreement.

**XX. FORCE MAJEURE**

If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

**XXI. PARTIAL INVALIDITY**

Any term or provision of this Agreement that is hereafter declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

**XXII. ARBITRATION**

In the event of any dispute arising under this Agreement, written notice of the dispute must be provided to the other party within thirty (30) calendar days of the events giving the rise to the dispute. Any claim made by or against the State or any of its political subdivisions (including but not limited to AZDOHS) relating to this Agreement shall be resolved through the administrative claims process. In the event that the parties would otherwise be in court and/or if A.R.S. 12-1518 applies, the parties shall proceed in arbitration through the American Arbitration Association

(“AAA”), with the arbitrator to be selected pursuant to AAA rules and the arbitration to be conducted according to the applicable AAA rules, and with the costs of arbitration (including but not limited to the arbitrator’s fees and costs) to be divided 50/50 between the parties, subject to reallocation between the parties by the arbitrator. In the event that the parties become involved in litigation with each other relating to this Agreement for any reason in any other forum, both parties agree to have any claim(s) resolved in arbitration on the terms set forth in this part XXII. Any arbitration award may be enforced through the Maricopa County Superior Court or the U.S. District Court located in Phoenix, Arizona.

**XXIII. GOVERNING LAW AND CONTRACT INTERPRETATION**

- a) This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.
- b) This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document.
- c) Either party’s failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

**XXIV. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Paragraph XII, AMENDMENTS. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are hereby superseded or merged herein.

**XXV. LICENSING**

The Subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

**XXVI. SECTARIAN REQUESTS**

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

**XXVII. ADVERTISING AND PROMOTION OF AGREEMENT**

The Subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the AZDOHS.

**XXVIII. OWNERSHIP OF INFORMATION, PRINTED AND PUBLISHED MATERIAL**

The Subrecipient acknowledges that the DHS and the AZDOHS reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (a) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a subrecipient purchases ownership with Federal support. The Subrecipient shall consult with the AZDOHS regarding the allocation of any patent rights that arise from, or are purchased with, this funding

**XXIX. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS**

Any television public service announcement that is produced or funded in whole or in part by the Subrecipient shall include closed captioning of the verbal content of such announcement.

### **XXX. INDEMNIFICATION**

Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The State of Arizona (AZDOHS) is self-insured per A.R.S. 41-621.

In addition, should Subrecipient utilize a contractor(s) and subcontractor(s), the indemnification clause between Subrecipient and contractor(s) and subcontractor(s) shall include the following:

*Contractor shall defend, indemnify, and hold harmless the (insert name of other governmental entity) and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors shall name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and also include a waiver of subrogation in favor of the State.*

### **XXXI. TERMINATION**

- a) All parties reserve the right to terminate the Agreement in whole or in part due to the failure of the Subrecipient or AZDOHS to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses, and permits or to make satisfactory progress in performing the Agreement. A party invoking the right to terminate shall provide written thirty (30) day advance notice of the termination and the reasons for it to the other party.
- b) If the Subrecipient chooses to terminate the Agreement before the grant deliverables have been met, then the AZDOHS reserves the right to collect all reimbursements distributed to the Subrecipient.
- c) The AZDOHS may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those that otherwise would have been provided by Subrecipient under this Agreement. The Subrecipient shall be liable to the AZDOHS for any excess costs incurred by the AZDOHS in procuring materials or services in substitution for those due from the Subrecipient.

**XXXII. CONTINUATION OF PERFORMANCE THROUGH TERMINATION**

The Subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

**XXXIII. PARAGRAPH HEADINGS**

The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

**XXXIV. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one Agreement.

**XXXV. AUTHORITY TO EXECUTE THIS AGREEMENT**

Each individual executing this Agreement on behalf of the Subrecipient represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Subrecipient.

**XXXVI. SPECIAL CONDITIONS**

- a) The Subrecipient must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements.
- b) The Subrecipient is prohibited from transferring funds between programs (e.g., State Homeland Security Program, Urban Area Security Initiative, Operation Stonegarden).
- c) The Subrecipient agrees to comply with the U.S. Department of Homeland Security regulation 6 C.F.R Part 19, which prohibits discrimination based on religion in social service programs

**XXXVII. NOTICES**

Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing, be delivered in person, or shall be sent to the respective parties at the following addresses:

Arizona Department of Homeland Security  
1700 West Washington Street, Suite 210  
Phoenix, AZ 85007

The Subrecipient shall address all programmatic and reimbursement notices relative to this Agreement to the appropriate AZDOHS staff; contact information at [www.azdohs.gov](http://www.azdohs.gov).

The AZDOHS shall address all notices relative to this Agreement to:

\_\_\_\_\_  
Enter Title, First & Last Name Above

\_\_\_\_\_  
Enter Agency Name Above

\_\_\_\_\_  
Enter Street Address Above

\_\_\_\_\_  
Enter City, State, ZIP Above

**XXXVIII. IN WITNESS WHEREOF**

The parties hereto agree to execute this Agreement.

**FOR AND BEHALF OF THE**

\_\_\_\_\_  
Enter Agency Name Above

\_\_\_\_\_  
Authorized Signature Above

\_\_\_\_\_  
Print Name & Title Above

\_\_\_\_\_  
Enter Date Above

**FOR AND BEHALF OF THE**

Arizona Department of Homeland Security

\_\_\_\_\_  
Gilbert M. Orrantia  
Director

\_\_\_\_\_  
Date

*(Complete and mail two original documents to the Arizona Department of Homeland Security.)*

February 19, 2020

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager

FROM: Sharon G. Flissar, P.E., Director of Public Works

SUBJECT: Request for Agenda Item Placement  
Resolution 2020-013, Approval of an  
Intergovernmental Agreement with the Town of  
Huachuca City for Intercity Route Services

Recommendation:

The City Manager recommends approval.  
The Assistant City Manager recommends approval.  
The Public Works Director recommends approval.

Background:

Huachuca City operated their own transit system until about a year ago, when the Town Council made the difficult decision to end service due to funding limitations. Part of the financial challenge of the system, and the aspect which made it ineligible for Federal Transit Administration (FTA) funding, is that it provided services which were redundant with Vista Transit in some areas.

Huachuca City in partnership with the City of Tombstone recently received a grant from the Legacy Foundation to help re-establish bus service which would potentially be eligible for FTA funding. The buses would travel to Sierra Vista three days per week and drop passengers at the Vista Transit Center, Cochise College Main Campus, and the Canyon Vista Medical Center. Ridership and resulting revenue for the City are expected to be positive since passengers traveling to other locations within Sierra Vista would transfer to Vista Transit. Vista Transit would assist with schedule coordination and provide a dedicated bay at the Transit Center for the Huachuca City bus, similar to agreements which are already in place with Greyhound and the Cochise Connector. City personnel would also assist with installing commercial advertising on Town busses, with the costs of the installation being reimbursed by Huachuca City.

Budget Appropriation:

None required.

RESOLUTION 2020-013

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF HUACHUCA CITY; 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 Town of Huachuca City desires to operate an intercity bus route originating in Huachuca City and Tombstone, with stops in Sierra Vista; and

WHEREAS, the Town of Huachuca City has been awarded a grant from the Legacy Foundation to fund this intercity bus route for one year; and

WHEREAS, both the City of Sierra Vista and the Town of Huachuca City acknowledge demand for such service is warranted pursuant to the inter-city route feasibility study conducted by the SouthEastern Arizona Governments Organization (SEAGO) and that success of the service is dependent upon participation of public transportation providers; and

WHEREAS, pursuant to Arizona Revised Statutes, Section 11-952, which allows contracts/agreements between public agencies for cooperative actions, the Town of Huachuca City and the City of Sierra Vista desire to enter into an Intergovernmental Agreement whereby Sierra Vista agrees to allow the use of certain facilities and services, as stipulated in this agreement.

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 the City Council entering into Intergovernmental Agreements with other public agencies, be, and hereby is, reaffirmed.

SECTION 2

That the City Council hereby approves entering into an Intergovernmental Agreement with the Town of Huachuca City for Intercity Route Services.

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 further steps necessary to carry out the purposes and intent of this Resolution and finalize and sign the agreement.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 27<sup>th</sup> DAY OF FEBRUARY, 2020.

\_\_\_\_\_  
Frederick W. Mueller, II  
Mayor

Approval as to Form:

Attest:

\_\_\_\_\_  
Nathan Williams  
City Attorney

\_\_\_\_\_  
Jill Adams  
City Clerk

Prepared by:  
Sharon G. Flissar, P.E., Director of Public Works



**INTERAGENCY GOVERNMENTAL AGREEMENT**

**BETWEEN**

**THE TOWN OF HUACHUCA CITY**

**AND**

**THE CITY OF SIERRA VISTA**

**FOR**

**INTERCITY ROUTE SERVICES**

This Interagency Governmental Agreement (hereinafter referred to as AGREEMENT) is entered into, in accordance with Arizona Revised Statutes, Section 11-952, on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Town of Huachuca City, a municipal corporation, organized under the laws of the State of Arizona (hereinafter referred to as "TOWN") and the City of Sierra Vista, a municipal corporation, organized under the laws of the State of Arizona (hereinafter referred to as "SIERRA VISTA" or "Sierra Vista").

**BACKGROUND AND INTENT**

WHEREAS, TOWN desires to operate an intercity bus route originating in Huachuca City and Tombstone, with stops in Sierra Vista; and

WHEREAS, TOWN has been awarded a grant from the Legacy Foundation to fund this intercity bus route for one year; and

WHEREAS, both parties acknowledge demand for such service is warranted pursuant to the inter-city route feasibility study conducted by the SouthEastern Arizona Governments Organization (SEAGO) and that success of the service is dependent upon participation of public transportation providers in the TOWN and SIERRA VISTA; and

WHEREAS, pursuant to Arizona Revised Statutes, Section 11-952, which allows contracts/agreements between public agencies for cooperative actions, TOWN and SIERRA VISTA desire to enter into an Intergovernmental Agreement whereby SIERRA VISTA agrees to allow the use of certain facilities and services, as stipulated in this AGREEMENT.

THEREFORE, in consideration of the mutual promises contained in this AGREEMENT, and of the mutual benefits to result there from, the parties agree as follows:

### **TERM**

The initial term of this AGREEMENT shall be for a period of one year, from March 2, 2020 through February 26, 2021. Thereafter, it may be renewed for successive one-year terms, for up to two successive one-year terms, upon written agreement of the Parties.

### **FACILITY USE AND SIGNAGE**

SIERRA VISTA will make available for use the existing bus stops and station shown on Exhibit A, will allow TOWN to mount its bus stop signs and schedules on the existing poles at each of these locations, will allow Huachuca City's passengers access to its bus stops and the Vista Transit Center, and will allow TOWN to advertise its bus service at these locations.

Each party will allow reasonable bus window and other appropriate advertising of the cooperative bus services offered between them.

### **INSTALLATION OF COMMERCIAL ADVERTISING ON TOWN BUSES**

SIERRA VISTA has facilities and personnel capable of professionally installing commercial bus advertising on TOWN buses. SIERRA VISTA agrees, upon TOWN'S request, to use its facilities, personnel and printing vendor to install commercial advertising on TOWN buses. TOWN agrees to repay SIERRA VISTA for its costs in performing the work within 15 days of receiving SIERRA VISTA'S detailed invoice.

### **TERMINATION, DEFAULT, AND REMEDIES**

Either party may terminate this AGREEMENT at any time without cause by giving the other party written notice of the intent to terminate the AGREEMENT no less than 60-days prior to the date of termination.

### **INSURANCE**

It is understood that SIERRA VISTA and TOWN are both public bodies in the State of Arizona. Each party shall maintain workers' compensation insurance as required by statutes, general commercial liability insurance, property damage insurance, and automobile liability insurance with respect to its activities under this AGREEMENT.

## **INDEMNIFICATION**

To the fullest extent permitted by law, TOWN shall defend, indemnify, and hold harmless the SIERRA VISTA, its agents, officers, officials, and employees from and against all tortuous claims, damages, losses, and expenses, including but not limited to attorney fees, court costs, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, or services of TOWN, its agents, or employees. TOWN'S duty to defend, hold harmless, and indemnify the SIERRA VISTA, its agents, officers, officials, and employees shall arise in connection with any tortuous claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any TOWN acts, errors, mistakes, omissions, work, or services in the performance or failure to perform under this AGREEMENT, including any employee of the TOWN or any other person for whose acts, errors, mistakes, omissions, work, or services the TOWN may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

To the fullest extent permitted by law, SIERRA VISTA shall defend, indemnify, and hold harmless the TOWN, its agents, officers, officials, and employees from and against all tortuous claims, damages, losses, and expenses, including but not limited to attorney fees, court costs, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, or services of SIERRA VISTA, its agents, or employees. SIERRA VISTA's duty to defend, hold harmless, and indemnify the TOWN, its agents, officers, officials, and employees shall arise in connection with any tortuous claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by any SIERRA VISTA acts, errors, mistakes, omissions, work, or services in the performance or failure to perform under this AGREEMENT, including any employee of the SIERRA VISTA or any other person for whose acts, errors, mistakes, omissions, work, or services the SIERRA VISTA may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

## **ADMINISTRATION OF AGREEMENT**

Each party shall designate a representative or representatives, notice of the same to be provided to the other party, who shall be jointly responsible for developing procedures to be utilized in fulfilling this AGREEMENT and providing other administrative services as necessary. Any disputes arising under this AGREEMENT which cannot be resolved by the above-mentioned representatives, shall be referred to SIERRA VISTA'S City Manager and TOWN'S Town Manager for joint resolution. Disputes not resolved at this level shall

be referred to binding arbitration to be conducted by a panel of three arbitrators, one selected by each party, and the third selected by the two arbitrators.

### **NOTICES**

Unless otherwise specified herein, any notice or communication required or permitted under this AGREEMENT shall be in writing and sent to the address given below for the party to be notified.

#### **TOWN**

Huachuca City  
ATTN: Town Manager  
500 N. Gonzales Blvd.  
Huachuca City, AZ 85616  
Tel: 520.456.1354

#### **SIERRA VISTA**

City of Sierra Vista  
Attn: City Manager  
1011 North Coronado Drive  
Sierra Vista, AZ 85635  
Tel: 520.458.3315

### **ASSIGNMENT**

Neither party shall assign the rights or duties under this AGREEMENT to a third party without the written consent of the other party. Any such assignment in violation of this AGREEMENT will be grounds for termination of the AGREEMENT.

### **NON-DISCRIMINATION**

To the extent applicable, the parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order 75-5 which mandated all persons, regardless of race, religion, handicap, color, age, sex, political affiliation or national origin shall have equal access to employment opportunities. All parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, with all federal regulations regarding equal employment opportunity, with relevant orders issued by the U.S. Secretary of Labor and with all applicable provisions of the Americans with Disabilities Act, Public Act 101-336, 42 U.S.C. Sections 12101-12213, and all applicable Federal Regulations under the Act, including 28 C.F.R. Parts 35 & 36.

### **RIGHTS OF PARTIES**

The provisions of this AGREEMENT are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall create any rights or duties of any nature or kind in favor of any third party.

## **SEVERABILITY**

The parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended. In the event that any provision of this AGREEMENT or portion thereof is held invalid, illegal or unenforceable, such, provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.

## **OTHER TERMS**

1. **NON-DISCRIMINATION.** The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

2. **WORKERS' COMPENSATION:** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this intergovernmental agreement, is deemed to be an employee of both the Party who is her primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries she is then working, as provided in A.R.S. §23-1022(D). The primary employer of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required.

3. **CONFLICT OF INTEREST.** This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.

4. **NO BOYCOTT OF ISRAEL.** In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

5. **COMPLIANCE WITH IMMIGRATION LAWS.** The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

6. **INSPECTION AND AUDIT.** The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

7. PUBLIC RECORDS LAW. Notwithstanding any other provision of the agreement, the parties understand that all of the other parties are public entities and, as such, are each subject to Arizona's public records law, A.R.S. § 39-121 *et seq.*

8. JURISDICTION AND APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

IN WITNESS WHEREOF, two (2) identical counterparts of this AGREEMENT, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named on the date and year first above written.

**APPROVED BY:**

**TOWN**

By \_\_\_\_\_  
Eric Duthie, Town Manager  
DATED: \_\_\_\_\_

By \_\_\_\_\_  
Johann Wallace, Mayor  
DATED: \_\_\_\_\_

**APPROVED BY:**

**SIERRA VISTA**

By \_\_\_\_\_  
Procurement Manager  
DATED: \_\_\_\_\_

By \_\_\_\_\_  
Rick Mueller, Mayor  
DATED: \_\_\_\_\_

**ATTEST:**

By \_\_\_\_\_  
Janine Rustine, Town Clerk  
DATED: \_\_\_\_\_

By \_\_\_\_\_  
Jill Adams, City Clerk  
DATED: \_\_\_\_\_

Pursuant to A.R.S. §11-952, this AGREEMENT has been reviewed by legal counsel for each party to determine it is in proper form and is within the power and authority granted under the laws of the State of Arizona to the respective client SIERRA VISTA.

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas Benavidez, Town Attorney

\_\_\_\_\_  
Nathan Williams, City Attorney

## **EXHIBIT “A”**

### **List of Bus Stop Facilities**

1. Canyon Vista Medical Center (East end stop);
2. Cochise College Main Campus; and
3. Vista Transit Center.

February 20, 2020

MEMORANDUM TO: Honorable Mayor and City Council

THROUGH: Charles P. Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager

FROM: Laura Wilson, Director  
Department of Leisure and Library Services

SUBJECT: Request For Agenda Item Placement  
Resolution 2020-014  
Proposed Amendment to the Sierra Vista Unified School  
District Intergovernmental Agreement

STAFF RECOMMENDATION:

The City Manager recommends approval.  
The Director of Leisure and Library Services recommends approval.

INITIATED BY:

Leisure and Library Services

BACKGROUND:

In 2018, the City of Sierra Vista and the Sierra Vista Unified School District entered into an Intergovernmental Agreement which permitted the City to operate facilities located at the Rothery Sports Complex. At the time, the Agreement did not include city operation of the Rothery gymnasium. This proposed amendment would add the Rothery gymnasium to the list of approved facilities and would allow the Leisure Services Sports Division to fully operate that facility under the no-cost lease agreement.

A copy of the modified agreement showing tracked changes is attached for your review. The amendment is located in Schedule C, page 14, item D.



RESOLUTION 2020-014

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING AN AMENDMENT OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SIERRA VISTA AND THE SIERRA VISTA UNIFIED SCHOOL DISTRICT; 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, both the City of Sierra Vista and the Sierra Vista Unified School District recognize that the public is best served when costs are minimized with maximum benefits to governmental entities; and

WHEREAS, pursuant to Arizona Revised Statutes, Section 11-952, which allows two or more public agencies to pool property by entering into Interagency Governmental Agreements (IGA's); and

WHEREAS, the attached lease agreement reflects an amendment to the language to include the Rothery Gymnasium to the list of facilities that will be operated by the City of Sierra Vista for the remainder of the lease term; and

WHEREAS, it is established policy of the City of Sierra Vista; most recently affirmed by Resolution 2012-062, to work in partnership with governmental entities for improved service to the public.

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 the City Council on signing lease agreements with the Sierra Vista Unified School District for improved access to public facilities, last affirmed by Resolution 2012-062, be, and hereby is, reaffirmed.

SECTION 2

That the amended partnership agreement by and between the Sierra Vista Unified School District and the City of Sierra Vista for the purpose of sharing equipment, personnel, services or other assets, be attached and made a part hereof as Attachment A, be, and hereby is, approved.

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 27<sup>th</sup> DAY OF FEBRUARY, 2020.

\_\_\_\_\_  
Frederick J. Mueller  
Mayor

Approval as to Form:

Attest:

\_\_\_\_\_  
Nathan Williams  
City Attorney

\_\_\_\_\_  
Jill Adams  
City Clerk

Prepared by:  
Laura Wilson, Director, Department of Leisure and Library Services

**FIRST AMENDED  
INTERAGENCY GOVERNMENTAL AGREEMENT**

**BETWEEN**

**THE CITY OF SIERRA VISTA**

**AND**

**SIERRA VISTA UNIFIED SCHOOL DISTRICT #68**

**FOR**

**PARTNERSHIP BETWEEN AGENCIES**

This InterAgency Governmental Agreement (hereinafter referred to as Agreement) is entered into, in accordance with Arizona Revised Statutes, Section 11-952, retroactive to the 1st day of July, 2018, by and between the City of Sierra Vista, a municipal corporation, organized under the laws of the State of Arizona (hereinafter referred to as City) and Sierra Vista Public School District #68 (hereinafter referred to as Agency or DISTRICT).

**BACKGROUND AND INTENT**

WHEREAS, both Parties acknowledge that it is in the best interest of the local taxpayers to minimize costs and maximize benefits to both Parties; and

WHEREAS, pursuant to Arizona Revised Statutes, Section 11-952, which allows two or more public agencies to pool property by entering into an InterAgency Governmental Agreement (IGA) with City and Agency desiring to enter into an IGA.

WHEREAS, at times the City and/or Agency may have a need for equipment, personnel, services or other assets that can be more efficiently and effectively provided through partnering with another governmental Agency that may be in possession or have access to these assets.

THEREFORE, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result there from, Parties agree as follows:

## **SCOPE**

The City and/or Agency agrees to provide services to each other as set forth in the attached Schedules, subject to the terms and conditions set forth herein. The services pursuant to this Agreement are provided solely to the City and Agency for the purposes described herein. Each of the Schedules attached to this Agreement shall be deemed to include the each of the provisions of the overarching Agreement as if specifically written therein.

The City and/or Agency shall provide a list of items to be serviced and/or or services to be performed under this Agreement to facilitate service and accurate invoicing/billing information, when applicable. The facilities, services, and/or items that will be subject to this Agreement are listed in the attached Schedules.

The attached Schedules may be edited by the City or Agency at any time by mutual consent of both Parties. 60 days' notice shall be provided prior to instituting any changes to the fees and terms detailed in the attached Schedules.

City and/or Agency personnel will perform the services identified herein and in the attached Schedules in accordance with generally-accepted practices and procedures. Post-service disputes shall be remedied upon notice by one Party to the other that an issue exists, and both Parties agree to attempt to reach a mutually acceptable solution in a timely manner.

City and Agency agree to meet on no less than an annual basis to evaluate costs, expenses, and adjust terms, if needed, by mutual Agreement in order to ensure a mutually beneficial relationship.

## **TERM**

The initial term of this Agreement shall be from July 1, 2018, through June 30, 2019. Thereafter, it shall be deemed renewed for successive one-year terms as of July 1 of each year, unless terminated by mutual written Agreement of both Parties, or pursuant to the conditions of this Agreement.

## **TERMINATION, DEFAULT, AND REMEDIES**

Either Party may terminate this Agreement by written notice to the other Party at least sixty (60) days prior to the date of the termination.

If either the Agency or the City fails to honor the terms of this Agreement, to include timely payment of agreed upon fees, the Party at fault shall be deemed to be in default of this Agreement.

If either Party, after written notice, fails to remedy any default within 30 days, or if the remedy requires more than 30 days or fails to begin and diligently pursue remedy of the default within 30 days, the affected Party may, at its option, terminate this Agreement by providing written notice of such termination to the other Party. The aggrieved Party may also pursue any other remedies available to it under applicable law by reason of Party's default.

### **INSURANCE**

It is understood that Agency and City are both public bodies in the State of Arizona. Each Party shall maintain worker's compensation insurance as required by statute, general commercial liability insurance, property damage insurance and automobile liability insurance with respect to its activities under this Agreement.

Except as may be required by statute, the liability insurance referred to above shall provide, as a minimum, liability coverage for not less than \$1,000,000 combined single limit.

The limits of the required insurance shall be adjusted in accordance with the maximum limit of liability imposed on political subdivisions of the State of Arizona during the term of this Agreement.

The insurance shall stipulate that the coverage shall not terminate or be canceled without thirty days written notice first being given to the Insured Party's risk manager. If the insurance is canceled or terminated prior to termination of the Agreement, the Insuring Party shall provide a new policy with the same or greater limits. The Insuring Party agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement and to provide the Insured Party with evidence thereof on an annual basis.

### **INDEMNIFICATION**

To the fullest extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party, its agent's officers, officials and employees from and against all tortuous claims, damages, losses and expenses, including but not limited to attorney fees, court costs and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of each Party, its agents or employees. It is each Party's duty to defend, hold harmless and indemnify the other Party, its agents, officers, officials and employees shall arise in connection with any tortuous claim, damage, loss or expense that is

attributable to bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting there from caused by either Party's acts, errors, mistakes, omissions, work or services in the performance or failure to perform under this Agreement, including any employee of either Party or any other person for whose acts, errors, mistakes, omissions, work or services either Party may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

### **ADMINISTRATION OF AGREEMENT**

Each Party shall designate a representative or representatives, notice of the same to be provided to the other Party, who shall be jointly responsible for developing procedures to be utilized in fulfilling this Agreement and providing other administrative services as necessary. Any disputes arising under this Agreement which cannot be resolved by the above-mentioned representatives, shall be referred to the City Manager and Agency's representative for joint resolution. Disputes not resolved at this level shall be referred to binding arbitration to be conducted by a panel of three arbitrators, one selected by each Party, and the third selected by the two arbitrators.

### **NOTICES**

Unless otherwise specified herein, any notice or communication required or permitted under this Agreement shall be in writing and sent to the address given below for the Party to be notified.

#### City

City of Sierra Vista  
1011 North Coronado Drive  
Sierra Vista, AZ 85635  
520-458-3315  
Attn: Chief Procurement Officer

#### Agency

Sierra Vista Unified School District #68  
3555 East Fry Boulevard  
Sierra Vista, AZ 85635  
520-515-2701  
Attn: Chief Procurement Officer

### **ASSIGNMENT**

Neither Party shall assign the rights or duties under this Agreement to a third Party without the written consent of the other Party. Any such assignment in violation of this Agreement will be grounds for termination of the Agreement.

## **NON-DISCRIMINATION**

To the extent applicable, the Parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act and State Executive Order 2009-09 which mandated all persons, regardless of race, religion, handicap, color, age, sex, political affiliation, veteran's status or national origin shall have equal access to employment opportunities. All Parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, with all federal regulations regarding equal employment opportunity, with relevant orders issued by the U.S. Secretary of Labor and with all applicable provisions of the Americans with Disabilities Act, Public Act 101-336, 42 U.S.C. Sections 12101-12213 and all applicable Federal Regulations under the Act, including 28 C.F.R. Parts 35 & 36.

## **RIGHTS OF PARTIES**

The provisions of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing expressed herein shall create any rights or duties of any nature or kind in favor of any third Party.

## **SEVERABILITY**

The provisions of this Agreement are severable to the extent any provision or application held to be invalid shall not affect any other provision or application of the Agreement, which may remain in effect without the invalid provision, or application.

## **OTHER TERMS**

- 1. WORKER'S COMPENSATION:** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this intergovernmental Agreement, is deemed to be an employee of both the Party who is her primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries they are then working, as provided in A.R.S. §23-1022(D). The primary employer of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required.
- 2. CONFLICT OF INTEREST.** This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
- 3. NO BOYCOTT OF ISRAEL.** In accordance with A.R.S. § 35-393.01, the Parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to

engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

- 4. DISPUTE RESOLUTION.** The Parties mutually agree that any disputes arising pursuant to the Agreement shall be resolved through informal dispute resolution.
- 5. COMPLIANCE WITH IMMIGRATION LAWS.** The Parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the Parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Parties shall further ensure that each sub-consultant who performs any work for the Party under this Agreement likewise complies with the State and Federal Immigration Laws.
- 6. INSPECTION AND AUDIT.** The Parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.
- 7. PUBLIC RECORDS LAW.** Notwithstanding any other provision of the Agreement, the Parties understand that all of the other Parties are public entities and, as such, are each subject to Arizona's public records law, A.R.S. § 39-121 et. seq.
- 8. JURISDICTION AND APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Arizona and shall incorporate by reference all laws governing the mandatory contract provisions of public agencies required by statute or executive order. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.
- 9. SURRENDER OF EQUIPMENT.** If this Agreement is terminated for any reason, Agency and City shall surrender any equipment provided by either to the other for the purposes of utilizing products or services pursuant to this Agreement.
- 10. AUTHORITY OF PARTIES.** The persons executing this Agreement on behalf of the Parties hereby represent and guarantee that they have been authorized to do so, on behalf of themselves and the entity they represent. Further representation is made that due diligence has occurred, and that all necessary internal procedures and processes, including compliance with the open meeting law where necessary, have been satisfied in order to legally bind the entity to the terms of this Agreement.
- 11. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall constitute and original and together shall constitute the Agreement.

IN WITNESS WHEREOF, two identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Parties hereinabove named on the dates indicated below.



Dated this \_\_\_ day of \_\_\_\_\_, 2019.

CITY OF SIERRA VISTA:

By: \_\_\_\_\_  
FREDERICK W. MUELLER, Mayor

STATE OF ARIZONA, County of Cochise

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared before me Frederick W. Mueller, known by me to be the person whose name is subscribed the foregoing instrument, and acknowledged that he/she executed the same for the purpose and consideration therein expressed.

(Signature of Notary Public) \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

SIERRA VISTA UNIFIED SCHOOL DISTRICT NO. 68

By: \_\_\_\_\_  
Barbara Williams  
President, Governing Board

STATE OF ARIZONA, County of Cochise

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared before me Barbara Williams, known by me to be the person whose name is subscribed the foregoing instrument, and acknowledged that he executed the same for the purpose and consideration therein expressed.

(Signature of Notary Public) \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

APPROVAL AS TO FORM:

APPROVAL AS TO FORM:

\_\_\_\_\_  
NATHAN WILLIAMS  
City Attorney

\_\_\_\_\_  
CANDYCE B. PARDEE  
UDALL SHUMWAY, PLC  
On Behalf of Sierra Vista Unified  
School District

## **Schedule A**

**CITY OF SIERRA VISTA  
DEPARTMENT OF PUBLIC WORKS  
PEDRO CASTRO GOVERNMENT MAINTENANCE CENTER**

### **FUELING AND ACCESS RULES**

#### **FUEL CHARGES**

The City operates a fuel management program that uses smart key technology. Each Agency vehicle will be assigned a smart key that will be used when dispensing fuel. The operator will insert the key at the fuel island and enter the current vehicle odometer reading to activate the system and dispense fuel.

The City will charge Agency for fuel dispensed by Agency pursuant to this Agreement at a rate of which is comprised of the City's actual delivered cost for said fuel, including applicable taxes. In the event the City recoups any gas taxes as a result of the fuel used in student bus transportation, or is able to remove the taxes before charging the school district, this savings will be passed onto the District. Nothing in this Agreement shall preclude the Agency from independently seeking rebates for gas taxes should the City be unable to do so on behalf of the Agency.

The City's fuel management system will charge Agency's established fuel account with the City for each fueling transaction. Billing for fuel dispensed will occur monthly via invoice from the City. All invoices must be paid by the Agency within 30 calendar days of receiving the invoice. Invoices shall be paid to:

City of Sierra Vista  
Attn: Finance/Fuel Billing  
1011 North Coronado Drive  
Sierra Vista, AZ 85635

#### **NON-AVAILABILITY OF FUNDS**

Every payment obligation of the Agency under this Agreement is contingent upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Agency at the end of the period for which funds are available. No liability shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

## **HOURS OF OPERATION**

The fueling site is operated on a 24-hour/7 day schedule.

## **WORKING HOURS CONTACT**

Monday through Friday from 7:00 a.m. to 3:30 p.m., except holidays, the local phone contact is 520-458-5775.

## **AFTER HOURS CONTACT**

After hours, weekends, or holidays, the emergency phone contact is 520-227-4713 or the Sierra Vista Police Department at 520-458-3311. The Police Department will dispatch personnel to respond to problems with access to the site or fueling operations.

## **AREA MAINTENANCE**

The City shall maintain the area as the City's budget provides funding.

Pavement: The City will provide pavement maintenance, striping and sweeping as needed. The City will provide weed control within the paved areas.

Lighting: The City will maintain the lighting system as needed.

Trash: The City will provide a location for deposit of trash and litter.

Fencing: The City shall maintain the fencing system and block walls.

Damage: Agency will be responsible for any damage to fence line, pavement, lights, gates, landscaping, fueling equipment, walls or other fixtures located within the area that is caused by actions of the Agency's employees or guests.

Fuel Spills: Agency staff shall report any fuel spills that occur in the area within one (1) hour after the spill has occurred. It is the responsibility of the Agency to reimburse the City for the removal, cleanup, and repair of the pavement or dirt/landscape area where the spill has occurred.

## **SECURITY**

The City does not provide security for the site other than existing fencing and lighting.

## **SITE ACCESS**

The City's access system controls access to the fueling site. Upon request, access cards will be provided to Agency for afterhours fueling. Agency shall be responsible for maintaining access card assignments and accountability.

The City will provide access to a City facility for Agency staff, with workspace availability and an internet connection.

### **FUELING ACCESS**

Access to the fueling system is controlled by the City. Access to the fueling system is available to each Agency employee with authority to fuel Agency vehicles.

The City will issue individual vehicle smart keys to the Agency. The Agency shall be responsible for proper management of the issued smart keys and shall provide the City the following vehicle information: Vehicle number, make, model, year, type of fuel and fuel capacity.

### **LOST OR DAMAGED SMART KEYS**

It is the responsibility of the Agency to report any lost or damaged smart keys to the City immediately. The City will replace, at no cost, any smart key that does not work due to normal wear and tear. Agency will be responsible for the cost of any damaged smart keys. The cost of replacing a damaged or lost smart key is \$25.

**Schedule B**  
**Service Agreement**  
**between**  
**The Sierra Vista Unified School District #68**  
**and**  
**The City of Sierra Vista**

**PROVISIONS**

- 1. PURPOSE.** The purpose of this Agreement is to outline the purpose and responsibilities of each Party with respect to The School Resource Officer (SRO) Program.
- 2. COMPOSITION.** The SRO Program will consist of full-time Sierra Vista Police Department (SVPD) personnel who are Peace Officers for the State of Arizona and who meet all requirements as set forth by SVPD rules and regulations. SVPD will assign one officer to Buena High School and two officers to Joyce Clark Middle School.
- 3. SUPERVISION.** The day-to-day operation and administrative control of the SRO Program will be the responsibility of SVPD. Responsibility for the conduct of SRO personnel shall remain with SVPD.
- 4. JURISDICTION.** SROs are vested with the authority to enforce and investigate violations of State law. The City of Sierra Vista vests authority in SVPD officers to enforce all City ordinances.
- 5. DUTIES.** An illustrative list of each SRO's responsibilities is contained in Appendix A.
- 6. OFFICER AVAILABILITY.** Each SRO will be assigned to a Sierra Vista school during normal school hours and while school is in session. SVPD reserves the right to reassign any SRO to patrol duties at any time and without advance notice to the District if the need for the officer's law enforcement services arises. In such a situation, SVPD will first attempt to utilize services of officer(s) assigned to Joyce Clark Middle School. At its earliest opportunity, SVPD will notify the District of the officer reassignment, the expected duration of the reassignment, and whether the reassignment is temporary or permanent.
- 7. WORK SPACE.** The District shall provide office space for the SROs. The office(s) shall include the necessary equipment (e.g., telephone, desk, and chair) for the SROs to effectively perform their duties.
- 8. RECORDS.** SVPD will review SRO performance of services in an annual year-end report.
- 9. FINANCES.** SVPD's SRO services are provided in the course of its normal law enforcement duties and are not rendered to the District for any fee.

**10. CHAIN OF COMMAND.** Communications by SVPD to the District will begin with the school principal, and if necessary, progress to the Superintendent. Communications by the District to SVPD will begin with the SRO supervisor, and if necessary, progress to the Chief of Police and/or City Manager.

**11. CONFIDENTIALITY.** The Parties understand and agree that information secured by SVPD, even when secured in conjunction with an investigation being simultaneously conducted by school personnel, is not subject to the Family Rights and Privacy Act (FERPA), even though that information may result from an investigation conducted by SVPD on District property and involving District students. Similarly, information gathered solely by District personnel may be subject to FERPA and, in those instances, the District shall work with SVPD and the County Attorney's office to secure the necessary subpoenas and/or releases to best assist SVPD in its mission and in its duties under this Agreement.

**12. MANDATORY REPORTING.** SVPD understands and agrees that District personnel are subject to mandatory reporting requirements, including, but not limited to: A.R.S. §§13-3620, 13-3411, 15-341 (A)(33), and 15-828, which shall require District personnel to make reports to SVPD. SVPD will, therefore, make note of such reports in whatever manner deemed appropriate under existing SVPD protocols for purposes of proof of compliance by District personnel, even though SVPD may have no reason, or at times even the legal ability to act upon those reports.

**13. FINGERPRINTING.** SVPD warrants and agrees that its officers or other employees working directly with District students have complied with the fingerprinting requirements of A.R.S. §15-512 throughout the term of this Agreement.

## **Schedule C**

### **FACILITY USE AGREEMENT**

**between**

**The Sierra Vista Unified School District #68**

**and**

**The City of Sierra Vista**

#### **I. AGREEMENT TO USE:**

A. Subject to the availability of facilities, needs of the Parties, and terms and conditions contained herein, the District will allow the City to use the following District facilities for public recreation purposes at no cost.

- a. Rothery Center: Conference room, training room, multipurpose room, courtyard & ramadas, band room, and restrooms.
- b. Joyce Clark Middle School: Gym, classrooms, multipurpose room, library, courtyard & ramadas, band room, locker rooms, choir room, art room, and restrooms.
- c. District Elementary Schools (Bella Vista; Carmichael; Huachuca Mountain; Pueblo del Sol; Town & Country; Village Meadows): Classrooms, playgrounds, multipurpose room, library, restrooms and parking lot.
- d. Buena High School: Gymnasium(s), classrooms, cafeteria, commons, patio area, outside athletic facilities and parking lot

B. Subject to the availability of facilities, needs of the Parties, and terms and conditions contained herein, the City will allow the District to use at no cost the following City facilities in the interest of the community, to support District educational, recreational, intramural and interscholastic uses:

- a. Athletic Facilities: Brown Field, Howard Field, Stone Sports Complex, Domingo Paiz Sports Complex, Cole Field, Pat Arbenz Field, Roberts Field, soccer and football configurations, Cyr Center sports fields and adjacent parking lots.
- b. Oscar Yrun Community Center: Conference room, auditorium, classrooms 1&2, and "lobby" multipurpose room.
- c. Ethel H. Berger Center: Main room, meeting room 1 and meeting room 2.
- d. Sierra Vista "Cove" Aquatics Center: Main pool, diving well and "Pier" meeting space, along with such specialized lifesaving staff as may be needed to insure the safety of participants, staff, parents, visitors and their guests.
- e. Veterans Memorial Park: Ramadas #1, #2, and #3, children's play structures
- f. Len Roberts Park: Ramadas #4, #5, water feature
- g. Tompkins Park: Ramadas #6, #7
- h. Sierra Vista Activity Center: Entire facility, classroom, or any indoor/outdoor activities.

i. Centennial Pavilion: entire facility

C. In exchange for the use of the facilities as described in Paragraph A, the City agrees to share 20% of the profits from the Before/After-School, Summer, and Break programs, and any other program operated by the City in a District-owned facility for which the City charges a fee, with the District.

Funds owed to the District shall be remitted by the City on a regular basis, as determined by mutual Agreement.

The City agrees to rebate \$28,000 annually to the District through the most expedient method determined by the City.

The use of the Klein Center for the Performing Arts (KCPA), and special events that require substantial KCPA support, are not included in this rate and will be billed separately based on the number and type of services that are rendered at a Class II rate per EXHIBIT KF-EB under Policy KF and KF-EA. District staffing charges shall be billed to the City according to the event, the City's need and the use of the facilities by the City as published in the District Policy for wage-cost recovery.

D. The District agrees to allow the City to assume the operational and maintenance costs, and to invest in the improvement of the following facilities for the next 10 years with no lease cost to the City:

All recreational fields and vacant land located behind the District Administrative Building and Rothery Educational Center

Tennis courts located behind the Rothery Center

Rothery Center outdoor basketball courts

Sierra Vista Activity Center

Rothery Gymnasium (gym, loft(s), locker rooms, restrooms, adjacent storage shed)

The City agrees to pay all utilities, labor, and maintenance costs for the above described facilities. The District may receive preference for scheduling its school activities at no cost on any available sports facility owned and/or operated by City, inclusive of lining/field preparation.

The City will obtain approval by the District for all infrastructure improvement plans made on District property prior to the work taking place.

## II. USE OF FACILITIES

A. **USE BY THE PARTIES:** Both the City and the District may obtain the use of each other's facilities by executing the appropriate reservation form, hereinafter referred to as a "Use Agreement". The City will be given first priority for use of available District facilities, and the District will be given first priority for all available City facilities after the leasing Parties' own use.

B. **SCHEDULING OF USES:** Both the City and the District shall endeavor to schedule planned uses as far in advance as is practical. Both Parties shall execute the



appropriate use document prior to the anticipated date of use unless otherwise agreed by the two Parties.

- C. TERMINATION OR AMENDMENT OF USE AGREEMENTS: Both the City and the District shall endeavor to accommodate scheduled uses of each other's facilities. Both the City and the District reserve the right to terminate or amend Agreements for facility use for good cause. Due to scheduling demands, notice of an amendment for other than health or safety issues shall require five (5) business days' notice. Terminations shall require consultation between the City Manager and District School Superintendent or their authorized representatives.

III. ADMINISTRATION OF USE AGREEMENT: Each Party shall designate representatives who shall be jointly responsible for developing procedures necessary to effectuating this lease, processing use Agreements and providing other administrative services. Disputes arising under this Agreement, which cannot be resolved by the authorized representatives, shall be referred to the City Manager and District School Superintendent for joint resolution.

IV. CONTROL OF FACILITIES USE: The City and Agency shall be responsible for determining use policies for their respective facilities. Both Parties shall be responsible for providing written copies of relevant use policies where applicable. If violations of use policies are committed, each Party will be responsible for notifying the other in writing. The City and the Agency must identify a single point of contact (POC) that is responsible for reporting and resolving issues. The City POC is the Leisure Services Manager; Agency POC is Duane Chun, School Community Manager. The Parties agree that they shall not use or permit the leased premises be used in any manner that is not in conformity with all federal, state, county, and municipal laws, rules, and regulations, and the City shall not use or permit District premises to be used in any manner that is not also in conformity with District policies. District policies and Arizona state law include, but are not limited to, a prohibition against smoking (KFAA, A.R.S. §§15-341(A) (25), 36-798.03), drinking or possession of alcoholic beverages (GBECB), drug use or possession of drugs (GBECB, A.R.S. §§13-3411, 15-841), and possession of firearms on school property (JICI, A.R.S. §§13-3102 (A)(12), 15-341(A) (23), 15-841). District policies may be accessed via the internet at <http://lp.ctspublish.com/asba/public>

V. CONDITION OF PREMISES AT END OF USE PERIOD: At the completion of a use period, both Parties shall return the facilities to the same condition, as when the period began, allowing for reasonable wear, with the exception of special events where prior arrangements have been made. Both Parties are responsible for any damages caused in excess of reasonable wear.

VI: SCOPE OF USE: Exclusive use of facilities in accordance with this Agreement shall be limited to the period of time set forth in the use Agreement, and the activities specified in such an Agreement. Other restrictions as to the nature and scope of use may be part of any use Agreement.

VII. ALTERATIONS, ADDITIONS, SUPPLIES AND MAINTENANCE, ADVERTISING

- A. PURCHASE AND INSTALLATION OF EQUIPMENT: The purchase and installation of equipment in leased facilities, by either Party, is predicated on joint consultations and the

approval of City Council and the District Governing Board, if required. In the event that equipment and fixtures are installed on the premises of the other Party, such equipment and fixtures become the property of the owning Party. The Party removing the same will be responsible for repairing any damage caused by that removal.

- B. MAINTENANCE AND OPERATIONS COSTS: Both Parties are responsible for the routine maintenance and operating costs of their respective facilities unless maintenance and operating costs are specifically addressed elsewhere in this Agreement. Additional services will be charged at the current published rate agreed upon by mutual consent.
- C. SUPPLIES AND EQUIPMENT: Both Parties are responsible for all incidental supplies required in conjunction with use of each other's facilities, with the exception of facilities used by the City for the before/afterschool programs and special break camps, where the City agrees to provide supplies as requested by the District. If either Party requests the other to provide supplies, a method of payment shall be specified in the use Agreement.
- D. ADVERTISING: Both Parties may request promotion of each others' activities, programs, and services through the advertising medium(s) that makes the most sense to the other Party, and as deemed appropriate by the approving Party.
- E. LOCAL EMERGENCIES: In the event of a local emergency that requires the City to set up and operate shelters for evacuees, the City and Agency will jointly plan the use of school facilities.

VIII. SUPERVISION OF PROGRAMS AND ACTIVITIES: Both Parties shall provide qualified leaders, supervisors, coaches and instructors as appropriate and necessary to ensure the safety and health of program participants.

IX. TERMINATION/CANCELLATION OF FACILITY USE AGREEMENT:

- A. TERMINATION IF HEALTH OR WELFARE IS COMPROMISED: If either Party has reason to suspect that any aspect of activities undertaken pursuant to this Agreement presents a risk to the health or safety of children, that Party may request a meeting to be convened between the Parties within forty-eight (48) hours with said meeting to be promptly confirmed in writing. In such circumstances, the Parties to the Facility Use Agreement will attempt to reconcile differences or abate the risk to the health or safety of children within three (3) working days of being notified of such risk. If reconciliation is not achieved or the risk to the health or safety of children is not abated within the three (3) working day period, the Facility Use Agreement will automatically be suspended. Within three (3) working days, each Party shall submit three names to the other Party of a possible third Party to investigate the claim that either Party has identified as a risk to the health or safety of children until such time as a third Party agreed upon by the Parties can review the situation which either Party believes involves a risk to the health or safety of children. If the Parties can agree upon one of the names submitted by either Party, that individual shall be selected as a third Party to review the issue. If a third Party cannot be determined by this process, each Party shall be entitled to strike one name from the other Parties list. The names of the remaining individuals shall be placed on individual folded strips of paper in a container and the representative of the City may draw one name. The person whose name is drawn shall be deemed to be the third Party agreed upon to investigate the claim and attempt to secure a reconciliation. The third Party shall, within

the three (3) working days after having been selected, investigate the situation. If the third Party finds that there is a risk to the health or safety of children, the third Party shall so notify the Parties and, within five (5) working days, set a date and time to meet with the Parties to attempt to reconcile the situation. If no reconciliation is achieved, then the Facility Use Agreement shall automatically terminate. The Party advocating the position not upheld by the third Party shall be required to pay all charges, costs and expenses of bringing in the third Party. If the third Party finds both Parties in error, then each Party shall pay half of the charges, costs and expenses of the third Party. Both Parties agree to be fully bound by the decisions of the third Party regarding the safety of children and regarding payment of charges.

- B. In the event the Agency desires to end the facility use agreement for those properties detailed in Section I, Part D prior to the expiration of the agreement, the Agency agrees to compensate the City as follows:
- a. The Agency will compensate the City equal to the increased appraisal value of the property if the Agency sells the property prior to one year after the termination of the facilities use agreement.
  - b. The City shall be entitled to receive compensation equal to the remaining life of the asset(s) for any improvements completed on the properties.
  - c. The Agency will allow the City to have first right of refusal to purchase the property at market value if the Agency is willing and able to legally sell the property to the City.

X. ASSIGNMENT: Neither Party shall assign any rights nor duties under this Facility Use Agreement to a third Party without the written consent of the other Party. Any such assignment in violation of this Facility Use Agreement shall be grounds for termination of the Agreement.

XI. ACCESS: Parties agree that each of the facilities is accessible under the Americans with Disabilities Act to the full extent required by law for municipal facilities and school district facilities respectively.

XII. COMPLIANCE WITH CONCUSSION PROTOCOLS: Pursuant to A.R.S. § 15-341 (A) (24) (b), City shall guarantee that any individuals, groups, or organizations using District property or facilities for athletic activities under the terms of this Agreement shall comply with the concussion guidelines and protocols required by law.

**Schedule D**  
**Service Agreement**  
**between**  
**The Sierra Vista Unified School District #68**  
**and**  
**The City of Sierra Vista**

**PROVISIONS**

- 1. PURPOSE.** The purpose of this Agreement is to outline the purpose and responsibilities of each Party with respect to the Agency accessing the services of the City heating, ventilation and air conditioning (“HVAC”) technician on an “emergency” basis. In the future, should Agency hire its own HVAC technician, then to outline the purpose and responsibilities of each Party with respect to sharing the services of each Party’s HVAC technicians in emergency situations. For purposes of this Agreement, an “emergency” situation shall include when an HVAC system shuts down during the normal work/school day when the environmental factors are such that failure to return the HVAC system to working order may result in work/school having to be cancelled because of the potential for danger to the health and safety of those in the facility without a working HVAC system.
- 2. COMPOSITION.** The HVAC service program will consist of the City sharing the use, and cost, of the full-time City HVAC technician with the Agency in emergency situations. In the event the Agency is able to hire an HVAC technician, then it will also consist of the City and Agency sharing the use and costs of full-time City and Agency HVAC technicians in emergency situations.
- 3. SUPERVISION.** The day-to-day operation and administrative control of the HVAC Service Program will be the responsibility of City. Responsibility for the conduct of the HVAC technician shall remain with City. Should Agency secure an HVAC technician, then the responsibility for the day-to-day operation, administrative control and responsibility for the conduct of the HVAC technician will remain with the HVAC technician’s employer.
- 4. DUTIES.** The CITY HVAC technician will use the best of his/her skills and training to provide emergency care and repairs to Agency HVAC systems.

  - a.** When an Agency HVAC system is in need of emergency repairs in order to operate properly, the Agency’s facilities manager shall submit an emailed request to the City’s facilities manager at the City Public Works Department explaining the HVAC service emergency and requesting the City HVAC service technician respond to the emergency location.
  - b.** If City is able to do so, City facilities manager shall dispatch the HVAC technician as soon as possible, but not more than one calendar day after the request, to the Agency designated location. The City HVAC service technician shall:

- perform necessary repairs to return the Agency HVAC to proper working conditions, as long as the estimated labor and parts costs to perform the repair are equal to or less than one thousand dollars (\$1,000.00), or
  - if the estimated labor and parts costs to repair the HVAC unit will exceed one thousand dollars (\$1,000.00), in which case the City HVAC service technician will explain the costs of the repair to the Agency Facilities Director. Repairs will not proceed until the City HVAC service technician receives an email from the Agency approving of the repair in writing, or
  - advise Agency of the need to secure more specialized service to deal with the issue(s) causing the HVAC problem or
  - advise Agency of need to replace HVAC system at the Agency location.
- c. If City is unable to dispatch the HVAC technician to the Agency location, the City Facilities Direct shall immediately advise Agency of its inability to provide the HVAC technician within the time provided in 4 (b) above.
- d. City shall maintain records of the emergency repairs performed on each Agency HVAC system, including the date of the emergency call, the issue(s) discovered, the actions taken to remediate the problem, and the parts necessary to remediate the problem.

**5. FINANCE.** Agency and City agree to the following method of financing the shared use of the HVAC technician:

- a. Agency shall pay for the costs of the materials and parts needed to carry out the emergency repair of the Agency HVAC system(s). Prior to any major repair, the HVAC technician shall notify the Agency of the estimated cost so that the Agency may weigh the cost benefit of the repair as opposed to replacement of the HVAC system, taking into account the age and life expectancy of the unit. "Major repair" shall be deemed any repair in which the cost of the necessary parts and labor to carry out the repair are estimated to cost more than one thousand dollars (\$1,000.00). Technician shall not carry out a major repair until given written instructions to do so. "Written instructions" shall include e-mail to the e-mail address provided by City.
- b. In addition to the cost of materials and parts as listed above, Agency shall also pay City for the hourly labor cost of the HVAC technician, including overtime, if such time is brought about by the actions of Agency, for time spent carrying out the duties listed above.
- c. **City shall bill Agency for the costs of the parts, materials and labor within not less than thirty (30) days of the services being accessed by Agency.** Billing for materials, parts and services will occur monthly via invoice from the City. All invoices must be paid by the Agency within 30 calendar days of receiving the invoice. Invoices shall be paid to:

City of Sierra Vista  
 Attn: Finance/HVAC Billing  
 1011 North Coronado Drive  
 Sierra Vista, AZ 85635

**6. RECIPROcity.** If Agency hires an HVAC service technician during the term of the Agreement, the Parties agree that Schedule D shall allow for mutual aid and reciprocity under the terms listed above.

- a. City and Agency HVAC technicians may each request the assistance of the other if an emergency situation would be more expeditiously handled with the assistance of another HVAC service technician.
- b. Similarly, if the one HVAC technician is away from his/her job duties due to sickness, vacation, family emergencies, or other leave situations when the emergency occurs, the employing Party may call upon the HVAC technician employed by the other Party.
- c. The emergency email request procedures, HVAC technician responses, and HVAC technician financing in paragraphs 4 and 5 above shall be the same when the City needs to make an emergency request to Agency for the services of the Agency HVAC service technician, other than that the invoices shall be paid to:

Sierra Vista Unified School District #68  
Attn: Finance Department-HVAC Billing  
3555 E. Fry Blvd.  
Sierra Vista, AZ 85635

February 27, 2020

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager

FROM: Tony Boone, Economic Development Manager  
Matt McLachlan, Director of Community Development

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT  
Resolution 2020-015  
Establishing a West End Entertainment District

RECOMMENDATION:

The City Manager recommends approval.  
The Assistant City Manager recommends approval.  
The West End Commission recommends approval.

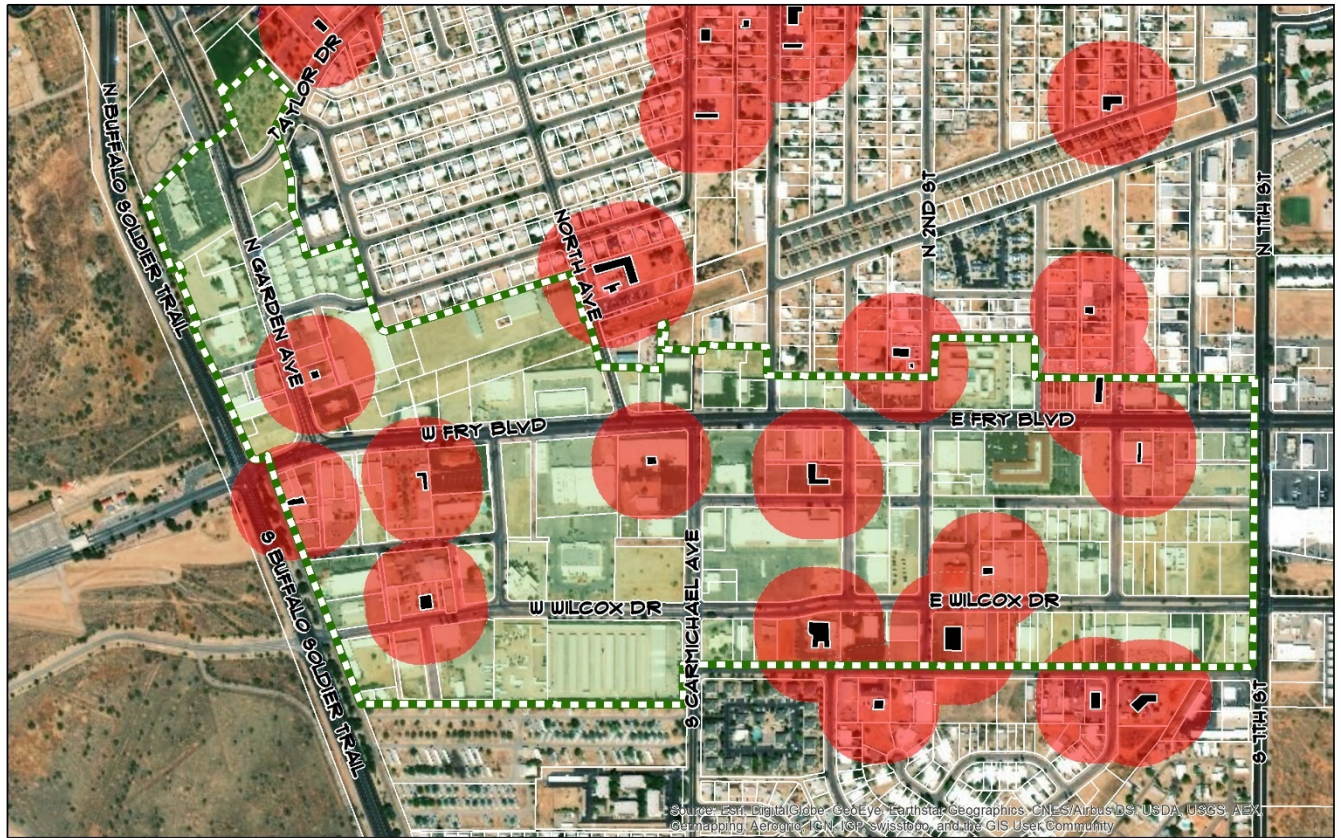
BACKGROUND:

The City Council's FY 2020-2022 Strategic Leadership Plan directs Staff to explore the feasibility of enacting an entertainment district as a revitalization initiative for the West End District. This designation would enable the City Council to grant a waiver, on a case-by-case basis, to state separation requirements for certain liquor license requests within the entertainment district.

A.R.S. § 4-207 prohibits the issuance of certain types of liquor license for any premises that are, at the time the license application is received by the director, within 300 horizontal feet of a church, school building, or fenced recreational area adjacent to the school building. This restriction is commonly referred to as the "300-foot rule". A church is defined as any building erected or converted for use as a church where services are regularly convened, that is used primarily for religious worship and schooling, and that a reasonable person would conclude is a church by reason of design, signs or architectural or other features (A.R.S. § 4-207(D)(1)). A school is defined as any public or private school with any grades Kindergarten through 12 (A.R.S. § 4-207(A)).

The following coverage map shows the geographic distribution of existing church/school facilities with 300-foot radius rings to illustrate properties potentially impacted by the rule.

## PROPOSED WEST END ENTERTAINMENT DISTRICT



 Proposed West End Entertainment District Boundary (0.28 SQ. MI. +/-)

 300 FT. BUFFER FROM CHURCH OR SCHOOL BUILDING

The 300-foot rule must be observed for the following license types:

- *Series 6 Bar*
- *Series 7 Beer & Wine Bar*
- *Series 8 Conveyance*
- *Series 9 Liquor Store*
- *Series 10 Beer and Wine Store*
- *Series 14 Private Club*
- *Series 16 Wine Festival/Fair*

The following license types are not impacted by the 300-foot rule:

- *Series 1 and 2 Producer*
- *Series 3 Microbrewery*
- *Series 4 Wholesaler*
- *Series 5 Government*



- *Series 11 Hotel-Motel*
- *Series 12 Restaurant*
- *Series 13 In-State Farm Winery*
- *Series 15 Special Event license*
- *Series 18 Craft Distillery*
- *Playing area of a golf course with an issued license*
- *A beer and wine license at a not-for-profit performing arts theatre with a permanent seating capacity of at least 250 persons*
- *Validly issued licenses that were in place prior to the location of a church or school (these licenses can be transferred to new owners at the same location)*

State law allows places of worship and schools to be located within most zoning districts. The State Legislature recognized the potential conflict between community desires to create day and night time activation in certain areas based on entertainment uses and amended A.R.S. § 207 to include a provision that allows the governing body of a city or town, on a case-by-case basis, to approve an exemption from the distance restrictions set for churches and schools through the formation of an entertainment district (A.R.S. § 4-207(C)(4)). The number of entertainment districts allowed in any jurisdiction is based on municipal population as follows:

- *Population of at least 500,000 may designate no more than 3*
- *Population of at least 200,000 may designate no more than 2*
- *Population less than 200,000 may designate no more than 1*

An entertainment district is defined as a contiguous area that is designated by a resolution adopted by the governing body of a city or town that consists of no more than one square mile, that is no less than one-eighth of a mile in width and that contains a significant number of entertainment, artistic and cultural venues including music halls, concert facilities, theaters, arenas, stadiums, museums, studios, galleries, restaurants, bars and other related facilities (A.R.S. § 4-207(C)(4)).

The proposed entertainment district covers just over one-quarter of a square mile of commercially zoned property in the West End north and south of Fry Boulevard, west of 7<sup>th</sup> Street and along both sides of North Garden Avenue as depicted in Exhibit “A” of the attached resolution. The City’s revitalization strategy seeks to augment the number of eating and drinking establishments to provide additional nighttime entertainment options for residents and visitors alike.

### **Fiscal Impact**

No fiscal impact.

ATTACHMENTS:  
Resolution 2020-015  
Exhibit A – Entertainment District Map

RESOLUTION 2020-015

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; ESTABLISHING THE WEST END ENTERTAINMENT DISTRICT WITHIN THE CITY OF SIERRA VISTA IN ACCORDANCE WITH ARIZONA REVISED STATUTES § 4-207(C)(4) 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 City of Sierra Vista seeks to promote the West End as a vibrant, pedestrian-oriented location with a mix of hotels, restaurants, shops, and office uses; and

WHEREAS, A.R.S. § 4-207 prohibits the issuance of a retail liquor license for premises within three hundred horizontal feet of a church, public or private school, or fenced recreational area adjacent to such a school building; and

WHEREAS, new businesses desiring to locate within the West End may be prevented from locating there because of the three hundred-foot separation requirement; and

WHEREAS, A.R.S. § 4-207(C)(4) permits the governing body of a city or town to approve, on a case-by-case basis, an exemption from the distance restrictions applicable to a church or public or private school for a retailer's liquor license in a designated entertainment district; and

WHEREAS, the Sierra Vista City Council has determined that the area to be established as the entertainment district consists of no more than one square mile, is no less than one-eighth of a mile in width, and contains a significant number of entertainment, artistic, and cultural venues; and

WHEREAS, the Sierra Vista City Council has determined that the creation of an entertainment district within the West End will provide a more active setting to welcome people to this area.

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

SECTION 1

The West End Entertainment District, as set forth in "Exhibit A", is hereby established and approved pursuant to and as defined in A.R.S. § 4-207.

SECTION 2

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 FEBRUARY 2020.

\_\_\_\_\_  
FREDERICK W. MUELLER  
Mayor

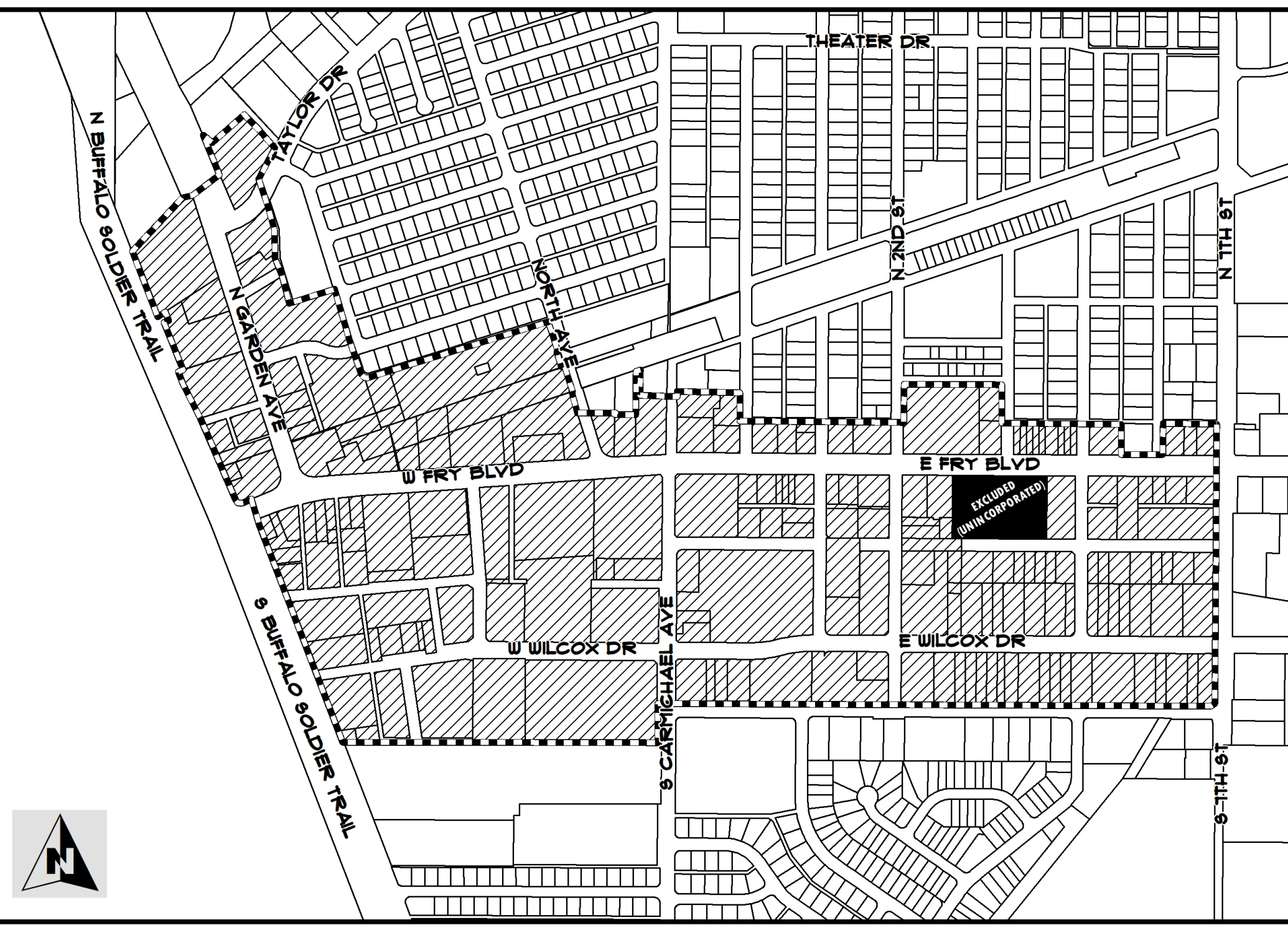
ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JILL ADAMS  
City Clerk

\_\_\_\_\_  
NATHAN WILLIAMS  
City Attorney

PREPARED BY:  
Matt McLachlan, AICP  
Director of Community Development



 West End Entertainment District Boundary (0.28 SQ. MI. +/-)