

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF EL MIRAGE
EL MIRAGE CITY COUNCIL CHAMBERS
14010 N. EL MIRAGE ROAD
6:00 PM – TUESDAY, SEPTEMBER 6, 2016**

Members of the El Mirage City Council will attend either in person or by telephone conference call.

Please silence all electronic communication devices (including cell phones and pagers) before the meeting is called to order. Thank you.

Note: The Common Council of the City of El Mirage, by a duly passed motion, may vote in public session to adjourn to executive session on any agenda item in conformation with A.R.S. Section 38.431.03 including legal advice from the City Attorney.

Agenda

I. ROLL CALL

Mayor Lana Mook
Councilmember Roy Delgado
Councilmember Jack Palladino
Councilmember David Shapera

Vice Mayor Joe Ramirez
Councilmember Bob Jones
Councilmember Lynn Selby

II. CALL TO ORDER

Pledge of Allegiance
Moment of Silence
Silence Cell Phones & Pagers

III. CALL TO THE PUBLIC

Citizens desiring to speak on a matter that IS NOT on this agenda may do so at this time. Comments shall be limited to three (3) minutes per person and shall be addressed to the City Council as a whole. At the conclusion of the Call to the Public, individual City Council Members may (1) respond to criticism made by those who have spoken (2) direct staff to review or respond to the matter, and/or (3) direct that the matter be put on a future agenda.

IV. CONSENT AGENDA

All items listed under the Consent Agenda will be voted on with one motion. If discussion is desired regarding any Consent Agenda Item, that item will be removed from the Consent Agenda and voted on separately.

1. Consideration and action approving the minutes of the Regular Council Meeting held Tuesday, August 16, 2016. (City Clerk)
2. Consideration and action to authorize the Finance Director to transfer budget authority from the Special Projects Fund to the Utility Enterprise fund in an amount not to exceed \$281,500. (Public Works)

- 3. Consideration and action to approve a modification to the current IGA with the Arizona Department of Revenue (ADOR) for the collection and administration of Transaction Privilege Tax (TPT – Sales Tax). (Finance)

V. REGULAR AGENDA

- A. Consideration and action to approve Resolution R16-09-19 declaring as a public record that certain document filed with the City Clerk and entitled "The 2012-2014 Amendments To The Tax Code Of The City Of El Mirage" for publishing per A.R.S.§9-802. (Finance)
- B. Consideration and action to approve Ordinance O16-09-07 adopting "the 2012-14 amendments to the tax code of the City of El Mirage" and declared to be a public record by reference in Resolution R16-09-19. (Finance)
- C. Consideration and action to approve Resolution R16-09-20 amending Chapter 30, Section §30.07 *Meet and Confer* of the City Code and declaring the Resolution and update included in Exhibit "A" as a public record for publishing per A.R.S. §9-802. (Administration)
- D. Consideration and action to approve Ordinance O16-09-08 amending Chapter 30, Section §30.07 *Meet and Confer* and adopting and making part of the El Mirage City Code that certain document titled "Chapter 30, ADMINISTRATION GENERALLY, *Meet and Confer*" and declared to be a public record by reference in Resolution R16-09-20. (Administration)

VI. CITY MANAGER SUMMARY OF CURRENT EVENTS

The City Council may not act upon any matter in the City Manager’s summary but may have general comment or questions. Items to be discussed will include, but not be limited to, the following:

VII. MAYOR’S COMMENTS and COUNCIL SUMMARY OF CURRENT EVENTS

The Mayor and City Council may not discuss or act upon any matter in the summary unless the specific matter is properly noticed for legal action.

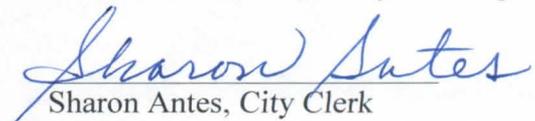
VIII. ADJOURNMENT

Accommodations for Individuals with Disabilities - Alternative format materials, sign language interpretation, assistive listening devices or interpretation in languages other than English are available upon 72 hours advance notice through the Office of the City Clerk, 12145 NW Grand Avenue, El Mirage, Arizona, (623) 876-2943, TDD (623)933-3258, or FAX (623) 876-4603. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request.

AFFIDAVIT OF POSTING – CITY COUNCIL MEETING OF SEPTEMBER 6, 2016

I hereby certify that this agenda was posted by 5:00 p.m. on September 2, 2016 at the following locations:

1) the City of El Mirage Exterior Bulletin Board at 12145 N.W. Grand Avenue, and 2) the City of El Mirage website at www.cityofelmirage.org.


Sharon Antes, City Clerk

REQUEST FOR COUNCIL ACTION

<p>DATE SUBMITTED: <u>08/30/2016</u></p> <p>DATE ACTION REQUESTED: <u>09/06/2016</u></p> <p><input type="checkbox"/> REGULAR <input checked="" type="checkbox"/> CONSENT</p>	<p>TYPE OF ACTION:</p> <p><input type="checkbox"/> RESOLUTION # </p> <p><input type="checkbox"/> ORDINANCE # </p> <p><input checked="" type="checkbox"/> OTHER: Approval of Minutes</p>	<p>SUBJECT: Consideration and action approving the minutes of the Regular Council Meeting held Tuesday, August 16, 2016.</p>
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TO: Mayor and Council
FROM: Sharon Antes, City Clerk
RECOMMENDATION: Approve minutes of the Regular Council Meeting held Tuesday, August 16, 2016.
PROPOSED MOTION: I move to approve minutes of Council meetings as presented.
ATTACHMENTS: Draft Minutes

DISCUSSION: Draft minutes are attached for Council's review and approval.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

Deputy City Manager/Finance Director:

9/2/16
Robert Nilles Date

Approved as to Form:

9/2/16
Robert M. Hall Date

City Manager:

9/2/16
Dr. Spencer A. Isom Date

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF EL MIRAGE
EL MIRAGE CITY COUNCIL CHAMBERS
14010 N. EL MIRAGE ROAD
6:00 PM – TUESDAY, AUGUST 16, 2016**

Minutes

I. ROLL CALL

Present: Mayor Lana Mook, Vice Mayor Joe Ramirez, Councilmember Roy Delgado, Councilmember Bob Jones, Councilmember Jack Palladino, Councilmember David Shapera

Excused: Councilmember Lynn Selby

II. CALL TO ORDER

Meeting was called to order at 6:00 pm
Pledge of Allegiance
Moment of Silence

III. PROCLAMATIONS

- P1.** Proclamation to recognize National Stepfamily Day, September 16, 2016
(Administration)

Intergovernmental and Public Relations Manager Amber Wakeman reported this is the 20th year for the recognition of National Stepfamily Day on September 16, 2016. Approximately half of all families are involved in some form of stepfamily scenario. National Stepfamily Day is committed to support the stepfamilies of our nation in their mission to raise their children, create strong family structures, and instill a sense of responsibility to all extended family members.

Mayor Mook proclaimed September 16, 2016 as National Stepfamily Day in the City of El Mirage.

- P2.** Proclamation to recognize Grandfamily/Kinship Care Month, September, 2016 (Administration)

Intergovernmental and Public Relations Manager Amber Wakeman reported the Arizona Grandparent Ambassadors is a growing support network for grandparents who are raising their grandchildren. Their mission is to support, educate, and advocate for Arizona's grandparents who are raising their grandchildren. According to the U.S. Census, 67,000 children in Arizona are being raised by their grandparents which represents 5% of Arizona's children. This proclamation will be on display at the Department of Economic Security (DES) Office in downtown Phoenix.

Mayor Mook proclaimed the month of September, 2016 as Grandfamily/Kinship Care Month in the City of El Mirage.

IV. PRESENTATION

P3. Presentation of the “Running Man Challenge” (Police Department)

Police Chief Terry McDonald reported community relations is not something that is developed following a problem. Assistant Police Chief Liuzzo came to him with an idea that he supported and he thanked her for her foresight and the participation of all the others who participated in her idea. Officer Myron Williams was most instrumental in assisting Asst. Chief Liuzzo in the Running Man Challenge project.

Assistant Police Chief Laura Liuzzo gave a history of the “Running Man Challenge” and saw it as an opportunity to work with the Dysart Community Center. The teens at the Center have a summer program with videography instruction and she contacted Director Mike Cassidy about partnering on the idea of having the teens not only participate in the Running Man Challenge but film it as well. She asked Officer Myron Williams to take the lead and he did a phenomenal job in working with the teens and adding community involvement in creating this project. She stated she was very proud of the teens who participated and the end result of the project. Director Cassidy and several teens were present at this meeting. The “Running Man Challenge” video was viewed by all present.

Mike Cassidy stated even though he has seen this video many times he enjoyed watching it with the audience present. He believes this was an excellent effort to bring the Police Department, the teens and the community together in a fun and positive project. He thanked the Police Department for their assistance and participation. He also stated this was a very exciting project for the teens and he recognized the teens who worked on the project by name: Savannah Rameriz, Giofano Fuente, Francisco Portillo, Sylvia Flores, Alex Ramirez and Miguel Cruz (absent).

Chief Liuzzo presented certificates and gift cards to the teens and noted that Mario’s restaurant offered free pizza when they can get together. Photos were then taken.

Mayor Mook stated she is pleased the teens had the opportunity to interact directly with the excellent Police Department in El Mirage to see firsthand that they are interested in being good representatives for the people and in helping our citizens.

P4. Presentation by Operational Services Department to inform City Council about the current condition, location, and cost for block wall maintenance throughout the City (Public Works)

Field Operations Management Administrator Nick Russo presented an overview of the wall areas identified within the City. There are 16,000 sq. ft. of City-owned walls; 798,000 sq. ft. of shared walls and 684,000 sq. ft. of privately owned walls. Staff performed a wall assessment of all City owned and shared wall areas. Walls

were evaluated and scored based on 1) needs to be painted, 2) paint within the next 1-5 years and 3) paint within the next 6-10 years. The average score was 1.9. The Block Wall Maintenance Program is modeled after the Pavement Management Program and the 12 neighborhood sections would be scheduled for painting on a 10-year rotating schedule. At an average cost of \$.75 per sq. ft., the total cost to maintain City owned and shared walls is estimated at \$700,000, or \$70,000 per year on the 10-year rotating schedule.

Dr. Isom recommended addressing and discussing this program at the upcoming Goal Setting session in December which will assist Council in contemplating the goals for the community.

Councilor Shapera said the presentation was very well done and thanked staff. He stated there is obviously catch up to do but he believed the way the costs were broken down would be satisfactory for the citizens.

Councilor Delgado thanked Mr. Russo and stated it is necessary to keep up the City's appearance and believes this program would be very beneficial.

Vice Mayor Ramirez questioned the new and substantial cost for this program and the potential impact on other departments. Mayor Mook reminded Vice Mayor about the ranking of the goals process in which Council ranks the importance of various programs. Dr. Isom stated the cost of the program is substantial and while a maintenance item the dollar amount requires it to be a capital expense; it will be a consideration as Council goes through the next goal setting session. This Council has been very realistic when it comes to the available dollars and project priorities.

V. CALL TO THE PUBLIC

Citizens desiring to speak on a matter that IS NOT on this agenda may do so at this time. Comments shall be limited to three (3) minutes per person and shall be addressed to the City Council as a whole. At the conclusion of the Call to the Public, individual City Council Members may (1) respond to criticism made by those who have spoken (2) direct staff to review or respond to the matter, and/or (3) direct that the matter be put on a future agenda.

No Comment Cards were received.

VI. CONSENT AGENDA

All items listed under the Consent Agenda will be voted on with one motion. If discussion is desired regarding any Consent Agenda Item, that item will be removed from the Consent Agenda and voted on separately.

1. Consideration and action approving the minutes of the Regular Council Meeting held Wednesday, July 13, 2016. (City Clerk)

2. Consideration and action to approve the destruction of municipal documents that have reached the end of their retention period as authorized under ARS §41-151.12(3). (City Clerk)
3. Consideration and action to approve destruction of Personnel Records that have reached the end of their retention period as authorized under ARS §41-151.12(3). (Human Resources)
4. Consideration and action to approve the destruction of municipal documents that reached the end of their retention period as authorized under ARS §41-151.12(3). (Building & Life Safety)
5. Consideration and action to authorize the Deputy City Manager/Finance Director to make budget adjustments for FY 2016/17 revenue accounts. (Finance)
6. Consideration and action to authorize the City Manager to order 508 acre feet (AF) of Central Arizona Project (CAP) sub-contract water and pay the associated delivery and recharge fees in the estimated amount of \$105,156. (Public Works)

Vice Mayor Ramirez moved to approve all items listed on the Consent Agenda as presented; seconded by Councilor Jones. Motion carried unanimously (6/0).

VII. REGULAR AGENDA

- A. Consideration and action to approve the purchase of three (3) new marked patrol vehicles and one (1) new unmarked patrol vehicle, at a total cost of \$200,000, under State Contract #DSPO13-038802, that were approved in the FY 2016/17 CIP Budget. (Police Department).

Support Services Manager Michael Ashley presented a request for the purchase of three new marked patrol vehicles and one new unmarked patrol vehicle at a total cost of less than \$200,000 approved in the FY 2016/17 CIP Budget. There is an 8-year vehicle replacement program in the Police Department. This request will be replacing the four oldest vehicles. The vehicles are Ford receptor vehicles with a 5-year/500,000 mile warranty.

Mayor Mook asked how many more needed to be replaced and Mr. Ashley reported every year they will have four new vehicles on the replacement list.

Councilor Jones stated he is pleased to see a rotation program and pleased with the price of the vehicles.

Councilor Shapera asked if replacements are traded in and Mr. Ashley responded that the replacement vehicles are required to be sent to auction.

Councilor Delgado asked if the vehicles are pre-marked and was told the vehicles received are already marked. Mr. Ashley reported the vehicles are purpose built when the order is placed and will be completely marked when received.

Dr. Isom reported it has taken years of planning to manage the budget and be able to have replacement vehicles. The technology the officers have available to them is phenomenal thanks to Council's sound fiscal planning.

Vice Mayor Ramirez moved to approve the purchase of three (3) new marked patrol vehicles and one (1) new unmarked patrol vehicle, at a total cost of \$200,000, under State Contract #DSPO13-038802, that were approved in the FY 2016/17 CIP Budget; seconded by Councilor Delgado. Motion carried unanimously (6/0).

- B.** Consideration and action to approve the purchase of one (1) Fire command vehicle in the total amount of \$30,942.52, under State Contract ADSPO13-049554, that was approved in the FY 2016/17 CIP Budget. (Fire Department)

Fire Chief Jim Wise reported the CIP Program affords the Fire Department to replace an aging vehicle with a completely outfitted command vehicle which is attributable to the planning process.

Councilor Jones stated it is an excellent price and the Dodge vehicle will be far more useful than the Expedition.

Councilor Delgado asked if the Ford will be kept and Chief Wise stated the Expedition will stay as backup and other vehicles will be phased out.

Vice Mayor Ramirez moved to approve one (1) Fire command vehicle in the total amount of \$30,942.52, under State Contract ADSPO13-049554, that was approved in the FY 2016/17 CIP Budget; seconded by Councilor Jones. Motion carried unanimously (6/0).

- C.** Public hearing, closure of public hearing, followed by Council's consideration and action to recommend to the Arizona Department of Liquor Licenses & Control approval/disapproval of an application for a license for R-G Mini Mart at 12239 NW Grand Avenue. (Police Department)

Mayor Mook opened the Public Hearing.

Assistant Police Chief Laura Liuzzo reported Kamal Daoud, Application License #10076785 for the R-G Mini Mart has applied for an interim permit and new license for a Series 10 (Beer & Wine Store) liquor license. The owner/applicant has no criminal history and no significant alcohol related activity related to calls for service. Currently, active licenses, schools, and churches within ½ mile include three active liquor licenses, 3 existing churches and no schools. R-G Mini Mart has an active El Mirage Business License. The application lists Kamal Daoud as the applicant/owner for the liquor license. A comprehensive ACIC/NCIC records check conducted on Mr. Daoud revealed no warrants. A records check of R-G Mini Mart with the

Arizona Corporation Commission revealed no significant incidents or actions. Applicant's location is in compliance with A.R.S. §4-207(A)(B). Based on the investigation conducted and information obtained, the Police Department provides a "no recommendation" regarding the pending liquor license application. Mr. Daoud was present at the meeting for any questions.

No public comments were received and Mayor Mook closed the Public Hearing.

Vice Mayor Ramirez moved to approve recommendation to the Arizona Department of Liquor Licenses & Control of an application for a license for R-G Mini Mart at 12239 NW Grand Avenue; seconded by Councilor Jones. Motion carried unanimously (6/0).

- D.** Public hearing, closure of public hearing, followed by consideration and action to approve a Conditional Use Permit for a Wireless Communication Facility (monopole) at 12800 N. 127th Lane, and authorize the City Manager to enter into a lease agreement. (Development & Community Services)

Mayor Mook opened the Public Hearing.

GID/Development Services Coordinator Jose Macias presented a Conditional Use Permit for a wireless communication facility for Verizon Wireless at 12800 N. 127th Lane within an existing well site and occupying 484 sq. ft. of the well site area. The zoning is Suburban Neighborhood (NS) with a land use of Civic Services in the General Plan under The Neighborhoods. To the north, east and west are single family dwellings. To the south is open space. No public comments were received at the Planning and Zoning Public Hearing. The lease agreement has been negotiated and accepted by the City of El Mirage and Verizon representatives. City staff has no objections or stipulations. At the July 12, 2016 Planning and Zoning Commission Public Hearing approval was recommended with a 4-0 vote. Ms. Melissa Parker of Reliant Land Services was present to answer questions.

Councilor Jones asked what the north 2-story houses will be looking at and Mr. Macias responded that the poles will blend with the existing trees. A resident in the area expressed concern about her satellite dish but nothing about the view. Councilor Jones asked why the height of the pole was changed from 40 feet to 50 feet and Mr. Macias stated the change was to allow the pole to blend better with the existing trees. Councilor Jones also asked about the ratio of property sales value and Ms. Parker from Reliant Land Services stated there have been studies of the ratio regarding land lines vs. cell phones and there are not indications that the poles cause devaluation.

Councilor Shapera stated he believed City Manager Dr. Isom did a great job on negotiating the contract to which Dr. Isom gave the credit to City Engineer Jorge Gastelum.

Councilor Delgado commented that he likes the monopine design.

Vice Mayor Ramirez made note that Luke Air Force Base did not see anything negative about the height of the proposed structure.

Councilor Jones asked about the signal range of the new tower and Ms. Parker stated that it depends on the area; the signal can travel farther on flat land but it is anticipated that this signal can travel approximately 1-3 miles depending on any other blocking. Councilor Jones stated he is excited to see the pine tree pole design.

No Public Comments were received and Mayor Mook closed the Public Hearing.

Vice Mayor Ramirez moved to approve a Conditional Use Permit for a Wireless Communication Facility (monopole) at 12800 N. 127th Lane, and authorize the City Manager to enter into a lease agreement; seconded by Councilor Jones. Motion carried unanimously (6/0).

- E. Public hearing, closure of public hearing, followed by consideration and action to approve a subdivision final plat, “Dysart & Thunderbird Center Two” at the southeast corner of Dysart Road and Thunderbird Road. (Development & Community Services)

Mayor Mook opened the Public Hearing.

GIS/Development Services Coordinator Jose Macias presented PZ16-06-09 Subdivision Final Plat for Park West Partnership, Dysart & Thunderbird Center Two. City Staff has reviewed this Final Plat and has no objections or stipulations and recommends approval. Staff received one phone call requesting additional information regarding the subdivision content. At the August 9, 2016 Planning and Zoning Commission meeting, the Commission recommended approval of the Final Subdivision Plat with a 4-0 vote.

Councilor Shapera asked City Attorney Bob Hall if this plat supersedes the 2008 agreement and Mr. Hall reported that it is consistent with the previous agreement.

No Public Comments were received and Mayor Mook Closed the Public Hearing.

Vice Mayor Ramirez moved to approve a subdivision final plat, “Dysart & Thunderbird Center Two” at the southeast corner of Dysart Road and Thunderbird Road; seconded by Councilor Delgado. Motion carried unanimously (6/0).

VIII. CITY MANAGER SUMMARY OF CURRENT EVENTS

The City Council may not act upon any matter in the City Manager’s summary but may have general comment or questions.

1. “Running Man Challenge”

In follow up to the “Running Man Challenge,” City Manager Dr. Spencer Isom asked Assist Police Chief Liuzzo to introduce Officer Myron Williams who had joined the meeting after the earlier presentation. Officer Williams addressed Council and stated he hoped everyone enjoyed the video. He explained he was recently in a barber shop watching a couple of teenagers doing the “Running Man Challenge” and he got the idea to bring it to the El Mirage Police Department. He wanted to expand it to include the community and show what the City of El Mirage has to offer. He believes that the Police relationship with the community is expressed in the video but also determined by what they do every day. Mayor Mook reported she frequently hears how the citizens appreciate the positive actions of the El Mirage Police Department and expressed her thanks.

2. El Mirage “Salute to Veterans” Event Grant Donations

Grants Writer Janeen Gaskins, Public Relations Manager Amber Wakeman and Special Events Coordinator Jeffrey Anderson reported on funds received. Ms. Gaskins reported she submitted a \$3,000 grant application to the Arizona Commission for the Arts and received the funding specifically for the upcoming Veteran’s memorial event.

Mr. Anderson reported he secured \$4,000 by applying to the Arizona State Lottery and received the funding for the “Salute to Veterans” event. He reported that he has received funding in the past for various special events from the State Lottery but has generally only received on average \$750. To receive such an increase was a bonus for this special event. He noted other donations received during the summer months both in monetary donations and in-kind stating \$11K plus has been received already for this event; he acknowledged Jimmy Farley from Coco’s Towing who generously and regularly participates in the City special events and was present at this meeting.

Mr. Anderson then explained plans for the upcoming special event, “Salute to Veterans” which will be held Saturday, November 5, 2016 at Gateway Park from Noon to 9:00 P.M. The highlight of the event will be the Viet Nam Traveling Wall which will be open for viewing 24 hours a day from Thursday, November 3, 2016 at 11:00 am through Sunday, November 6, 2016 at 2:30 pm. The Wall is an 80% replication of the permanent Viet Nam Wall located in Washington D.C., which measures 8 feet tall at the highest point and is 360 feet long. Other activities at the event will include a 5K run in partnership with the YMCA. Donations will be accepted for the 5K run and will be given to the veterans. There will be a car show with Sun City West Restoration Club featuring 100-150 cars as well as a motorcycle rally, free kid’s zone with rides, skateboard demonstrations, food trucks, bands, a beer garden and a giant hot air balloon glow.

Councilor Delgado asked where the veterans guarding the wall would be housed and Mr. Anderson responded that RV Sales and Consignment on Grand Avenue is donating an RV to house the veterans for the duration of the event; the owner has agreed to deliver and set up the RV free of charge.

Amber Wakeman took a moment to recognize Jeffrey Anderson for the hard work he has done and improvements made at all of the recent community events from securing donations to coordinating the events.

Councilor Delgado advised that Mr. Anderson is also the liaison to the Dysart Education Foundation and he has been a tremendous help in their events organizing; he is very highly thought of by the Dysart Education Foundation.

Dr. Isom stated he is reminded of how the City came through the recession and tried to determine what was important regarding the needs of the community. This Council did not waiver in determining special events to be important in order to create a sense of place and memories for the community. Developing the Special Events Program has been a journey. Mr. Anderson has definitely been an asset in moving the program forward and he also acknowledged Ms. Wakeman, Ms. Gaskins, Ms. Crider, Ms. Antes, along with Police, Fire, Building Safety and Public Works in coordinating excellent events.

3. Elections

City Clerk Sharon Antes presented handouts regarding the upcoming Primary Election and reported that City Hall is currently an Early Voting site through Friday, August 26, 2016. Any voter from Maricopa County can stop by City Hall, ballots can be printed and voters can vote early in person. Or voters can also drop off voted ballots at City Hall during this time. On Election Day, Tuesday, August 30, 2016, there will be a bin at City Hall to only collect voted ballots, but voters voting in person on Election Day must vote at one of four assigned Precincts in El Mirage. She also advised that Maricopa County is desperately seeking poll workers for the Primary Election and explained how to sign up if interested in working at the polls.

4. New Employees – Public Works

Dr. Isom introduced Mr. James Shano the new Deputy City Manager and Public Works Director.

Mr. Shano stated he feels welcome and looks forward to working with the City over the years; this is a professional organization and he looks forward to continuing the work staff has set forth to improve the quality of life for the citizens of El Mirage. He previously spent 10 years in the City of Peoria, 9 years in the City of Surprise and then the last 4 years with the Town of Paradise Valley. He is a Registered Professional Engineer.

5. New Employees – Police

Chief McDonald presented Kathy Weekly who came to the City of El Mirage in August 2014 and is the public records “guru.” She retired from the Phoenix Police Department in 2014 after 35 years of service. She worked as a dispatcher for 17 years and 18 years as the detective coordinator.

He also introduced Janice Friemark who came to the Police Department as an Administrative Assistant in April 2015. She has had a variety of administrative positions in real estate mortgage and the senior living industry and also worked 17 years for the Birmingham Police Department.

Police Department Professional Services Manager Michael Ashley reported that when Kathy Weekly was hired in August 2014, there was a considerable backlog of materials that needed to be destroyed which was a serious concern. Under the supervision of Senior Management Analyst Sue Stites, Kathy addressed 8,200 backlogged reports and on March 20, 2016, that file was completely eliminated. Since that time she has been able to keep everything within a 30-day window. Kathy then took on 90 old case files which required disposition. She continues to play a major role within the department of records and essentially quality control. She is part of the team with Ms. Friemark who also assisted in cleaning out files going back to 2011. Her previous experience with law enforcement has made our records section shine under the direction of Ms. Stites. They are now fully staffed in the records section and this team is doing a great job. He congratulated them all.

6. Website Re-design Presentation

Information Technology Director Tom Bacome presented the website redesign that went live on August 11, 2016. Project goals included reducing clutter and moving to a cleaner look (less is more), giving the website a contemporary look and feel, providing easier navigation and consistency across pages, updating content, deleting outdated and unused pages, and incorporating the City Logo, colors and social media connectors. The process included an evaluation of the current site, identification of goals and discussion of design direction, production of a preliminary model and working test site, conducting webmaster meetings, conducting departmental meetings, conversion of content from old to new, training, and ultimately going live on August 11, 2016. Mr. Bacome then compared the old site with the new site and reviewed examples of the pages. The next steps include changing of website address from www.cityofelmirage.org to www.elmirageaz.gov. There will be more consistency with website updates regarding news, departmental content and front page images.

Council consensus was the new website design is very nice looking and more user friendly.

Dr. Isom stated this is just an example of projects staff present and complete; they see something that needs to be adjusted and start working toward that

goal. Other examples include Public Works identifying markers for Basin Park so people will be encouraged to walk and mark their distance; Basin Park is approximately 1.1 mile long. Public Works is adjusting irrigation lines and arranging for carpeting replacement in the Community Room at the YMCA.

IX. MAYOR’S COMMENTS and COUNCIL SUMMARY OF CURRENT EVENTS

The Mayor and City Council may not discuss or act upon any matter in the summary unless the specific matter is properly noticed for legal action.

Councilor Delgado reported plans are underway for Dysart Education Foundation Golf Tournament and he will be taking donations for signs. The DEF has teamed up with the Dysart 66 Team Alumni who has provided \$38,000 worth of scholarships. The golf tournament will be held October 2nd at Luke Air Force Base.

Mayor Mook stated she is amazed at the lack of negative comments received with all the road work and construction. Most people have been extremely patient, considerate and knowledgeable and it will be great when finished. She thanked Public Works and everyone who is working very hard to get these projects completed.

X. EXECUTIVE SESSION

E1. Discussion and consultation for legal advice with the City Attorney, pursuant to A.R.S. §38-431.03A.3 (Administration)

Vice Mayor Ramirez moved to convene into Executive Session at 7:30 pm; seconded by Councilor Delgado. Motion carried unanimously (6/0).

Vice Mayor Ramirez moved to adjourn the Executive Session and convene into Regular Session at 9:09; seconded by Councilor Palladino. Motion carried unanimously (6/0).

XI. ADJOURNMENT - The meeting was adjourned at 9:10 pm.

Lana Mook, Mayor

ATTEST:

Sharon Antes, City Clerk

I hereby certify the aforementioned minutes are a true and accurate record of the El Mirage Regular Council Meeting held on Tuesday, August 16, 2016 and a quorum was present.

Sharon Antes, City Clerk

CITY OF EL MIRAGE
Council Meeting Report

MEETING DATE	January 5, 2016		
ROLL CALL	Present: Mayor Lana Mook, Vice Mayor Joe Ramirez, Councilor Bob Jones, Councilor David Shapera, Councilor Jack Palladino, Councilor Roy Delgado, Councilor Lynn Selby		
MEETING AGENDA ITEM DESCRIPTION	VOTE TALLY	APPROVED	OTHER
Consideration and action approving the minutes of the Work Session and Regular Council Meeting held Tuesday, December 1, 2015. (City Clerk)	7/0	YES	
Consideration and action to approve Resolution R16-01-01 in continued support of the Tohono O'odham Nation's Desert Diamond Casino – West Valley Project. (Administration)	7/0	YES	
Consideration and action to approve revenue and expense budget transfers from the Special Projects Fund to the Community Development Block Grant (CDBG) Fund. (Finance)	7/0	YES	
Public Hearing, closure of public hearing, followed by consideration and action to adopt Ordinance O16-01-01 amending City Code Section §50.066 DEPOSITS; SERVICE CONNECTIONS CHARGES; INTERRUPTION FEES. (B), requiring developers and property owners to be responsible for off-site utility improvements. (Development & Community Services)	7/0	YES	
Consideration and action to authorize the City Manager to enter into a construction contract with Axiom Contracting, LLC to construct a new water main along El Mirage Road between Thunderbird and Santa Fe Lane in an amount not to exceed \$579,827 including contingency. (Development & Community Services)	7/0	YES	
Consideration and action to utilize a Mohave County JOC with Southwest Waterworks Contractors for repair services to the City's well sites "as-needed" in an amount not-to-exceed \$100,000 annually based on budget authorization and contract renewal/extensions. (Public Works)	7/0	YES	
Consideration and action to utilize a City of Peoria JOC with Felix Construction to repair the Odor Scrubbers and Chemical Storage system at the Wastewater Treatment Facility, in an amount not-to-exceed \$109,000. (Public Works)	7/0	YES	
Consideration and action to utilize a City of Peoria JOC with Felix Construction, for labor associated with repairing the Fine Screen and Grit Removal System at the Wastewater Treatment Facility, in an amount not-to-exceed \$102,000. (Public Works)	7/0	YES	
Consideration and action to approve a sole source purchase, from Goble Sampson Associates, for parts and equipment to rebuild the Fine Screen and Grit Removal system at the Wastewater Treatment Facility, in an amount not-to-exceed \$217,000. (Public Works)	7/0	YES	

CITY OF EL MIRAGE
Council Meeting Report

MEETING DATE	March 15, 2016		
ROLL CALL	Present: Mayor Lana Mook, Vice Mayor Joe Ramirez, Councilor Bob Jones, Councilor David Shapera, Councilor Jack Palladino, Councilor Roy Delgado, Councilor Lynn Selby		
MEETING AGENDA ITEM DESCRIPTION	VOTE TALLY	APPROVED	OTHER
Consideration and action approving the minutes of the Regular Council Meeting held Tuesday, March 1, 2016, 2016. (City Clerk)	7/0	YES	
Consideration and possible action to approve Resolution R16-03-07 for submitting a grant application and accepting funds, if awarded, from the Governor's Office of Highway Safety (GOHS) for Impaired Driving Prevention through marketing and branding. (Police Department)	7/0	YES	
Consideration and possible action to approve Resolution R16-03-08 for submitting a grant application and accepting funds, if awarded, from the Governor's Office of Highway Safety (GOHS) for Police Department Selective Traffic Enforcement associated with RADAR Units. (Police Department)	7/0	YES	
Consideration and possible action to approve Resolution R16-03-09 for submitting a grant and accepting funds, if awarded, from the Governor's Office of Highway Safety (GOHS) for Police Department Driving-Under-The-Influence (DUI) Enforcement overtime and associated marketing materials. (Police Department)	7/0	YES	
Consideration and possible action to approve Resolution R16-03-10 for submitting a grant application and accepting funds, if awarded, from the Governor's Office of Highway Safety (GOHS) for the "Click It or Ticket" campaign. (Police Department)	7/0	YES	
Consideration and possible action to approve Resolution R16-03-11 for submitting a grant application and accepting funds, if awarded, from the Governor's Office of Highway Safety (GOHS) for equipment to facilitate the Fire Department Traffic Safety Education Campaign. (Fire Department)	7/0	YES	
Consideration and action to utilize a City of Chandler contract with Weber Water Resources to upgrade the programmable logic controllers at four of the City's well sites, in an amount not-to-exceed \$230,000 and authorizing a budget transfer of \$200,000 from the Special Projects Fund to the Water Fund. (Public Works)	7/0	YES	
Consideration and action to authorize the City Manager to transfer budget and funds in an amount not to exceed \$28,500 from Council Contingency into the Sanitation Fund to support the Spring 2016 Bulk Trash Program. (Public Works)	7/0	YES	

Utilities Division Projects

<i>Odor Scrubbers & Chemical Storage CIP Project</i>	<i>54-408-670</i>
Council approved - Fiscal Year 2015/2016	\$ 109,000.00
Felix Construction PO - Fiscal Year 2015/2016	\$ 109,000.00
Total amount expended - Fiscal Year 2015/2016	\$ 57,687.58
Remaining balance	\$ 51,312.42

The existing Chemical Storage tanks were located on the concrete deck that covers the SBR basin. After removing the existing tanks it was discovered the coatings protecting the SBR deck deteriorated and the structural integrity of the concrete deck was compromised. Staff determined it would be more cost effective to relocate the facilities than rehab the damaged concrete deck. Due to this unforeseen issue, this project was delayed and the City was unable to complete the project in FY15/16.

<i>Well Site PLC Upgrade</i>	<i>53-403-617</i>
Council approved - Fiscal Year 2015/2016	\$ 230,000.00
Weber Water Resources PO - Fiscal Year 2015/2016	\$ 230,000.00
Total amount expended - Fiscal Year 2015/2016	\$ -
Remaining balance	\$ 230,000.00

The City contracted Weber Water Resources to complete the PLC upgrades at the City's well sites. Immediately following the kickoff of the project, the contractor experienced unanticipated staffing issues. Due to the age and complexity of the City's existing PLC's, the City's contractor found it a challenge to hire qualified programmers who have the expertise to complete the PLC programming. The contractor has outsourced this portion of the project and the programming has been completed. Due to these challenges, this project was delayed and the City was unable to complete in FY15/16.

Total Project Funding Transfer	\$ 281,500.00
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STATE OF ARIZONA

Department of Revenue



Arizona Department of Revenue
Program Cities Unit

Tom Johnson
Assistant Director

Vivian Soza
Administrator

July 10, 2015

Finance Director
City of El Mirage
12145 NW Grand Ave
El Mirage, AZ 85335

RE: Intergovernmental Agreement

Dear Finance Director:

Please find attached the fully executed Intergovernmental Agreement between the Arizona Department of Revenue and City of El Mirage. The new Agreement is effective July 1, 2015.

Please contact the Cities Unit at (602) 716-6906 or CitiesUnit@azdor.gov if you have any questions.

Sincerely,

Vivian Soza
Program Cities Unit
CitiesUnit@azdor.gov

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE STATE OF ARIZONA AND
THE CITY OF EL MIRAGE, ARIZONA**

THIS AGREEMENT is entered into this 16th day of June, 2015, by and between the Arizona Department of Revenue, hereinafter referred to as Department, and the City of El Mirage, an Arizona municipal corporation, hereinafter referred to as City. This Agreement shall supersede and replace all previous intergovernmental agreements, including amendments thereto, entered into by the Department and City regarding the administration, collection, audit and/or licensing of transaction privilege tax, use tax, severance tax, jet fuel excise and use taxes and rental occupancy taxes imposed by the State, cities or towns.

RECITALS

WHEREAS, Title 11, Chapter 7, Article 3 (A.R.S. § 11-952) authorizes two or more public agencies to enter into intergovernmental agreements to contract for services, if authorized by their legislative or governing bodies.

WHEREAS, A.R.S. § 42-6001 et seq. was amended effective January 1, 2015 to provide that the Department shall collect and administer any transaction privilege and affiliated excise taxes imposed by any city or town in Arizona and that the Department and each city or town shall enter into an intergovernmental contract or agreement pursuant to A.R.S. § 11-952 to provide a uniform method of administration, collection, audit and licensing of transaction privilege and affiliated excise taxes imposed by the State, cities or towns.

WHEREAS, City has taken appropriate action by ordinance, resolution or otherwise, pursuant to the laws applicable to the governing body of City, to approve and authorize City to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Department and City enter into this intergovernmental agreement as follows:

1. Definitions

- 1.1 A.R.S.** means the Arizona Revised Statutes.
- 1.2 Adoption of an Ordinance** means final approval by majority vote of the City council.
- 1.3 Audit** means a review to determine the correct amount of tax owed by a taxpayer and includes, but is not limited to, desk reviews and reviews of claims for refund.
- 1.4 Closing Agreement** means an agreement to compromise or settle a tax liability.
- 1.5 Confidential Information** means all such information as defined in A.R.S. § 42-2001.

- 1.6 **Confidentiality Standards** means the standards set forth in Appendix A or such other written standards mutually agreed to by the Department and City.
- 1.7 **Federal Tax Information** means federal return or return information the Department receives from the Internal Revenue Service including any information created by the Department derived from that information. Documents obtained from a taxpayer or State records are not considered Federal Tax Information.
- 1.8 **Model City Tax Code** means the document defined in A.R.S. § 42-6051. The official copy of the Model City Tax Code is published at modelcitytaxcode.az.gov.
- 1.9 **Modification** means a change to an assessment required or authorized by statute.
- 1.10 **Municipal Tax(es)** means transaction privilege and affiliated excise taxes, including use tax, severance tax, jet fuel excise and use tax, and rental occupancy tax, imposed by City in accordance with the Model City Tax Code. Unless the context provides otherwise, this definition includes tax, license fees, penalties, interest and other similar charges.
- 1.11 **State** means the State of Arizona.
- 1.12 **State and Local Uniformity Group ("SLUG")** means an advisory group comprised of four representatives from municipal taxing jurisdictions and four representatives of the Department as set forth in Section 13 below.
- 1.13 **Taxpayer Information** means information protected from disclosure pursuant to Model City Tax Code § 510.

2. Disclosure of Information by City to Department

- 2.1 **Qualified Recipients of Information:** The Department shall provide a list of the names and job titles of Department employees authorized to request and receive Taxpayer Information from City. The Department shall inform City of any additions, deletions or changes to this list within fifteen calendar days after the change occurs and shall provide an updated list at least annually. This information shall be sent via email to City at rnilles@cityofelmirage.org. The City will not disclose Taxpayer Information to a Department employee whose name is not included on this list. City may contact the Department with any questions related to qualified recipients by contacting the Cities Unit at CitiesUnit@azdor.gov.
- 2.2 **Use of Information:** Any Taxpayer Information released by City to the Department may only be used by the Department for tax administration and collection purposes, and may not be disclosed to the public in any manner that does not comply with the Model City Tax Code. All Taxpayer Information shall be stored and destroyed in accordance with the Confidentiality Standards.
- 2.3 **Municipal Ordinance:**

- (a) City shall provide the Department with a copy of its Municipal Tax code or any City ordinances imposing the taxes to be collected hereunder within ten calendar days of a request for such information from the Department. This information shall be sent via email to the Cities Unit at CitiesUnit@azdor.gov.
- (b) City shall provide the Department with a copy of any ordinance adopted by City after execution of this Agreement that imposes or modifies the Municipal Taxes to be collected hereunder, including a new or different tax rate as defined by A.R.S. § 42-6053(E), within ten calendar days of Adoption of an Ordinance. This information shall be sent via email to the Cities Unit at CitiesUnit@azdor.gov. No such ordinance shall take effect on a date other than the first day of the month that is at least sixty calendar days after City provides notice to the Department unless City and the Department agree otherwise. The Department shall add the change to the official copy of the Model City Tax Code within ten business days of receipt of notice from City. City is responsible for confirming the change has been made. Pursuant to A.R.S. § 42-6053(E)(2), changes in tax rates have no effect unless reflected in the official copy of the Model City Tax Code.
- (c) Within fifteen calendar days following the adoption of an annexation ordinance, one copy of the ordinance and notification of the effective date of such ordinance shall be sent to the Department via email at GIS@azdor.gov. City shall also include with the notice a list of businesses City knows to be located in the annexed area. The Department shall not be obligated to begin collection of Municipal Tax any sooner than the first day of the month that is at least sixty calendar days after the date the Department received notice from City of the annexation.

- 2.4 Development and Impact Fees:** Upon request, City shall provide to the Department any information regarding development and impact fees to assist the Department with the auditing of taxpayers and billing and collection of taxes.
- 2.5 Audits:** Upon request by the Department, City shall allow inspections and copies of any City tax audits.
- 2.6 Other Information:** City shall also provide other relevant information necessary for tax administration and collection purposes as requested by the Department.
- 2.7 Statutory Authority:** The disclosure of confidential City tax information is governed by Model City Tax Code Section 510.

3. Disclosure of Information by Department to City.

- 3.1 Qualified Recipients of Information:** City shall provide a list of the names and job titles of City employees and any independent auditors acting on behalf of City

authorized to receive Confidential Information. City shall inform the Department of any additions, deletions or changes to this list within fifteen calendar days after the change occurs and shall provide an updated list at least annually. This information shall be sent via email to the Cities Unit at CitiesUnit@azdor.gov. The Department will not disclose any Confidential Information to a City employee or independent auditor whose name is not included on this list. The Department may contact City with any questions related to qualified recipients by contacting milles@cityofelmirage.org.

3.2 Suspension of Information: The Department will not withhold Confidential Information from City so long as City complies with A.R.S. § 42-2001 et seq. and the Confidentiality Standards.

- (a) If the Department has information to suggest City, or any of its duly authorized representatives, has violated A.R.S. § 42-2001 or the Confidentiality Standards, the Department will send written notice to City detailing the alleged breach as understood by the Department and requesting a response to the allegation within twenty calendar days of the date of the letter.
- (b) The Department will review the written response from City and consider the information contained therein and all relevant circumstances surrounding the alleged violation before making a written determination as to whether a suspension of information is warranted and the length of the suspension.
- (c) If City is dissatisfied with the Department's determination it may within ten calendar days, submit a written request to SLUG requesting the group review the determination.
- (d) If the Department has information to suggest City has violated the Confidentiality Standards, the Department may inspect City's records, facilities, and equipment to confirm whether there has been a violation.

3.3 Information to be Provided: Within the restrictions outlined in this Section, the Department shall provide all of the information detailed in Appendix B, which may be modified by the mutual agreement of the parties. The Department shall not provide Federal Tax Information to City. In addition to the information detailed in Appendix B, City may obtain upon request:

- (a) Inspections and/or copies of Department tax audits, including all information related to all cities and towns included in the tax audit; and
- (b) Other relevant information necessary for tax administration and collection purposes, including all information necessary to verify City received all revenues collected by the Department on behalf of City.

3.4 Storage and Destruction of Confidential Information: All Confidential Information provided by the Department to City shall be stored, protected, and destroyed in accordance with the Confidentiality Standards.

3.5 Statutory Authority: The Department may disclose Confidential Information to City pursuant to A.R.S. § 42-2003(H) if the information relates to a taxpayer who is or may be taxable by a county, city or town. Any Confidential Information released to City:

- (a) May only be used for internal tax administration purposes as defined in A.R.S. § 42-2001(4); and
- (b) May not be disclosed to the public in any manner that does not comply with the Confidentiality Standards.

A.R.S. § 42-2003(H)(2) provides that any release of Confidential Information that violates the Confidentiality Standards will result in the immediate suspension of any rights of City to receive taxpayer information pursuant to A.R.S. § 42-2003(H).

3.6 Specificity of Data: A.R.S. § 42-6001 provides that taxpayers shall file and pay Municipal Taxes to the Department if the Department has developed the electronic and nonelectronic tools necessary to capture data with sufficient specificity to meet the needs of all taxing jurisdictions, including specific data regarding each tax classification and any corresponding deductions at each business location of the taxpayer. Pursuant to A.R.S. § 42-5015, the electronic system utilized by the Department must be able to capture data with sufficient specificity to meet the needs of the taxing jurisdiction. The Department and City agree that JT2 and TPT2 (as summarized in Appendix C) are required to meet the specificity needs of City.

(a) Non-Program City: If City performed its own Municipal Tax administration, collection, and licensing prior to July 1, 2015, then if the Department is unable to commit by September 1, 2015 that the data detail behind the JT2 and TPT2 will be provided to City beginning and from January 1, 2016, the following shall take place:

- (1) The term of the agreement entered into by the Department and City pertaining to City performing municipal licensing services on behalf of the Department shall be extended for one (1) year; and
- (2) All provisions in this Agreement pertaining to the administration, collection, and licensing of Municipal Taxes shall not go into effect until such time as the Department is able to meet the requirements of A.R.S. § 42-6001 and A.R.S. § 42-5015, however all language in this Agreement related to audit functions shall remain in full force and effect.

(b) Program Cities/Towns: If the Department performed Municipal Tax administration, collection and licensing for City prior to July 1, 2015, then if the Department is unable to commit by September 1, 2015 that the data detail behind the JT2 and TPT2 will be provided to City beginning and from January

1, 2016, the Department will continue to perform those functions. The continued provision of such service, however, shall not be deemed waiver of any legal rights or remedies afforded to City including, but not limited to, a failure to meet the requirements of A.R.S. § 42-6001 and A.R.S. § 42-5015.

4. Audit.

The Department shall administer the audit functions for City in accordance with the following provisions.

- 4.1 Training:** All auditors and supervisors shall be trained in accordance with the policies of the Department. Auditors who have not completed the training may only work in connection with a trained auditor and cannot be the only auditor assigned to the audit. The Department shall:
- (a) Provide audit training at least three times per year, or more frequently if there is a demonstrated need, and be responsible for its costs of the training and any associated materials;
 - (b) Provide additional training when practical;
 - (c) Notify City of any training sessions at least thirty calendar days before the date of the training session;
 - (d) Provide copies of State tax statutes, audit reference materials and audit procedures and manuals;
 - (e) Permit City auditors and supervisors to attend any scheduled training as space permits at designated training location: and
 - (f) Provide additional training as needed to inform auditors and supervisors regarding changes in State law or Department policy.
- 4.2 Conflict of Interest:** An auditor or supervisor trained and authorized to conduct an audit may not conduct any of the following prohibited acts:
- (a) Represent a taxpayer in any tax matter against the Department or City while employed or in an independent contractor relationship with the Department or City.
 - (b) Attempt to use his/her official position to secure any valuable thing or valuable benefit for himself/herself or his/her family members.
 - (c) Represent a taxpayer before the Department or City concerning any matter in which he/she personally participated for a period of one year after he/she ends employment or the independent contractor relationship with the Department or City.
 - (d) Use information he/she acquires in the course of the official duties as an auditor or supervisor in a manner inconsistent with his/her official duties without prior written approval from the Department.

- (e) For a period of one year after he/she ends employment or an independent contractor relationship with the Department or City, work in the same firm as a person who represents a taxpayer against the Department or City unless the firm institutes formal barriers to prevent any sharing of information between the trained auditor or supervisor and the remainder of the firm.

The Department may revoke an individual's authority to audit and prohibit the use of any auditor or supervisor who violates this provision.

4.3 Audits and Refunds:

- (a) City may conduct an audit of a taxpayer engaged in business only in City. Before commencing such audit, City shall notify the Department to ensure the taxpayer is not already scheduled for an audit. The Department will provide City with a written response within fifteen calendar days of the notice from City.
- (b) Except as permitted below, the Department shall conduct all audits of taxpayers having locations in two or more cities or towns. A City auditor may participate in any audit City requested the Department to perform.
- (c) City shall notify the Department if it wants an audit of a taxpayer having locations in two or more Arizona cities or towns and whose primary business activity is in the following business classifications taxable by City, but not a taxable activity under State law:
 - 1. Residential rentals;
 - 2. Commercial rentals;
 - 3. Speculative Builders; or
 - 4. Advertising.

The Department will authorize such audits, to be overseen by the Department, unless there is already an audit of the taxpayer scheduled, or the Department determines the audit selection is discriminatory, an abuse of process or poses other similar defects. The Department will notify City of its determination within thirty calendar days. No initial audit contact may occur between City and a taxpayer until the Department approves the audit notice.

- (d) City may request the Department conduct an audit of a taxpayer having locations in two or more Arizona cities or towns and whose primary business is subject to both city and state tax. The request must be made using the Department's audit request form. Copies of the form can be obtained from the Department's TPT Hub Unit at HubUnit@azdor.gov. The Department shall notify City of the decision regarding the request within thirty calendar days of receipt of the request.

- (e) The Department may deny a request for an audit for the following reasons:
 - 1. An audit is already scheduled or planned for the taxpayer within six months of the request;
 - 2. The requested audit would interfere with strategic tax administration planning;
 - 3. The audit selection is discriminatory, an abuse of process or poses other similar defects;
 - 4. The request lacks sufficient information for the Department to determine whether it is appropriate;
 - 5. The Taxpayer was audited within the previous two years;
 - 6. The Department lacks sufficient resources to conduct the audit; or
 - 7. The scope or subject of the audit does not justify the use of Department resources.

- (f) If the Department denies a request to conduct an audit because it either lacks resources to conduct the audit itself or the scope or subject of the audit does not justify the use of Department resources then City shall notify the Department if it wants to conduct the audit under the supervision of the Department. No initial audit contact may occur between City and a taxpayer until the Department appoints someone to supervise the audit.

- (g) Any decision by the Department denying City's request to conduct any audit may be referred to SLUG in accordance with Section 13 of this Agreement.

- (h) All audits conducted by City shall be in accordance with standard audit procedures defined in the Department audit manual. All auditors shall be trained in accordance with Section 4.1 above.

- (i) The Department may appoint a manager to supervise any audit conducted by City.

- (j) All audits shall include all taxing jurisdictions in the State regardless of which jurisdiction's auditors participate in the audit. All desk reviews must include all taxing jurisdictions for which there is information available.

- (k) The Department shall issue all audit assessments on behalf of all taxing jurisdictions in a single notice to the taxpayer.

- (l) The Department shall issue Modifications to audit assessments on behalf of all taxing jurisdictions in a single notice to the taxpayer.

4.4 Claims for Refund:

- (a) When a taxpayer files a request for refund, including refunds requested by filing amended returns, the Department shall process the request and review it for mathematical errors or for the failure of the taxpayer to properly compute the tax based on the taxable income reported on the return or refund request.
- (b) The Department will notify City of all refund requests that are processed involving City's Municipal Taxes within thirty calendar days of processing the refund. City may request an audit of the taxpayer as set forth in Section 4.3 above. .
- (c) The Department may assign an auditor to review requests for refunds. The Department will notify City, within thirty calendar days of initiating a review, of all refunds under review by an auditor pertaining to a taxpayer who engages in business within City's taxing jurisdiction and may request that City assign an auditor to assist with such reviews.
- (d) City is responsible for payment of all amounts to be refunded to taxpayers for Municipal Tax incorrectly paid to City. The Department may offset a remittance to City under this Agreement to cover the amounts of allowed refunds. If there are insufficient funds available to pay the refund, City must pay the Department within sixty days of written demand from the Department.
- (e) The Department shall issue refund approvals/denials on behalf of all taxing jurisdictions in a single notice to the taxpayer. City may request copies of such determinations.

4.5 Protests: Taxpayer protests of audit assessments and desk review assessments and refund denials shall be directed to the Department. Appeals of audit assessments, desk review assessments and refund denials shall be administered pursuant to Title 42, Chapter 1, Article 6, Arizona Revised Statutes. Upon request, the Department shall notify City of any appeals within 30 days of receipt of the protest.

4.6 Notice of Resolution: The Department shall notify City when a protest is resolved, including information concerning the resolution of the protest, within 30 days after the resolution of a protest.

4.7 Status Reports: The Department shall keep SLUG apprised of the status of each protested matter involving the imposition of Municipal Taxes. City may request to be on a distribution list for monthly status reports by contacting the Department's Cities Unit.

5. Voluntary Disclosure Agreements

The Department may enter into a voluntary disclosure agreement with a taxpayer. A voluntary disclosure agreement may limit the years subject to audit and waive penalties. City may request

to be kept informed of voluntary disclosure agreements involving City Municipal Tax. If City makes that request, the Department will notify City of the Department's intent to enter into an agreement and the Department will provide the taxpayer's identity within thirty calendar days of disclosure. City may request an audit of a taxpayer subject to a voluntary disclosure agreement pursuant to Section 4.3 above.

6. License Compliance

6.1 License Issuance and Renewal: The Department shall issue new Municipal Tax licenses and renew such licenses for City Municipal Tax. The Department of Revenue shall provide City with information about all persons obtaining and renewing tax licenses as set forth in Appendix B.

6.2 License Checks: The Department and City shall coordinate efforts to conduct tax license compliance checks through canvassing and other compliance methods.

6.3 Confidentiality: Any tax license information City obtains from the Department is considered Confidential Information and may only be disclosed as authorized by A.R.S. § 42-2003. Any tax license information City obtains through its own efforts may be disclosed as allowed by applicable City laws.

6.4 Changes to License Fees: Within fifteen calendar days following the Adoption of an Ordinance (or official acknowledgment of approval of an ordinance by voters in an election of a charter city) issuing or modifying a tax license fee, one copy of the ordinance and notification of the effective date of such ordinance shall be sent to the Department via email at CitiesUnit@azdor.gov. The Department shall not be obligated to begin collection of the new or modified fee any sooner than sixty calendar days after the date the Department received the ordinance from City. Notice of an ordinance concerning a renewal tax license fee must be received by the Department by July 31 in order to be collected the following calendar year.

7. Closing Agreements

7.1 Approval - The Department shall notify City before entering into a Closing Agreement related to the tax levied and imposed by City. The Department shall seek approval from either City or SLUG before entering into such Closing Agreement. If the Closing Agreement concerns only City, then the Department will attempt to obtain approval from City first, and will only seek approval from SLUG if City is unresponsive or the Department and City cannot reach an agreement. Approval and notice is not required for Modifications of assessments.

7.2 Litigation - During the course of litigation, the Department shall seek a range of settlement authority from City or SLUG, unless the circumstances prevent such

action. The Department may also request a telephonic meeting of SLUG if time and circumstances require immediate action.

8. Responsibility for Representation in Litigation.

- 8.1 Administrative Proceedings:** The Department shall be responsible for coordinating the litigation and defending the assessment or refund denial in any administrative appeals before the Office of Administrative Hearings or the Director of the Department regardless of who conducted the audit. The Department shall be reasonably diligent in defending the interests of City and City shall assist in such representation as may be requested by the Department.
- 8.2 Further Appeals:** The Arizona Attorney General is responsible for defending the assessment or refund denial at the Board of Tax Appeals, the Arizona Tax Court and all higher courts. City shall assist the Attorney General in such representation and litigation as requested by the Attorney General's Office.
- 8.3 Mutual Cooperation:** The Department and City agree they shall cooperate in the appeal and litigation processes and shall ensure their auditors, supervisors, and other necessary employees are available to assist the Department and the Attorney General for informal interviews, providing documents and computer records, preparing for depositions, attending depositions and trial as witnesses, and assisting in trial/hearing preparation as needed.
- 8.4 Administrative Decisions:** The Department shall provide a copy of any and all administrative hearing level decisions, including Director's decisions issued by the Department to all jurisdictions on a distribution list. City may request to be on the distribution list by contacting the Department's Cities Unit. Administrative decisions are Confidential Information and must be stored and destroyed in accordance with the Confidentiality Standards.

9. Collection of Municipal Taxes

- 9.1 Tax Returns:** Taxpayers who are subject to City Municipal Taxes shall pay such taxes to the Department. Tax payments shall be accompanied by a return prepared by taxpayer on a form prescribed by the Department.
- 9.2 Collection:** The Department shall collect any Municipal Tax imposed by City recorded on the Department's tax accounting system. Amounts the Department collects for delinquent City Municipal Tax accounts after the termination of this Agreement shall be forwarded to City.
- 9.3 Remittance:** All amounts collected by the Department for Municipal Taxes under this Agreement shall be remitted to City weekly on the basis of actual collections.

The Department shall initiate the electronic payment by noon on the Monday after the end of the week in which the collections were made. Remittance shall be made in the form of immediately available funds transferred electronically to the bank account designated by City.

- 9.4 Abatement:** The Department, with the approval of the Attorney General, may abate tax under certain circumstances. During the ordinary course of business, the Department may determine for various reasons that certain accounts shall be closed or cancelled. The Department shall seek input from City or SLUG before abating tax or closing accounts. The Department may request a telephonic meeting of SLUG if time and circumstances require immediate action.
- 9.5 Funds Owed to City:** At all times and under all circumstances payments remitted by a taxpayer to the Department for City Municipal Taxes will be considered property of City. The Department may not retain or fail to remit such funds to City for any reason not specifically set forth in this Agreement including, but not limited to, during the course of a dispute between City and the Department.

10. Financing Collection of Taxes.

The costs incurred by the Department in administering this Agreement shall be financed through the State general fund appropriation to the Department.

11. Inter-Jurisdictional Transfers.

All inter-jurisdictional transfers of Municipal Tax monies by the Department shall be handled in the following manner:

- 11.1 Requests:** Requests for inter-jurisdictional transfers shall be made to the Department. The Department will review the request and will not automatically accept the request.
- 11.2 Notice:** The Department shall notify City and any other city or town implicated in the requested transfer a minimum of thirty calendar days prior to any inter-jurisdictional transfer of money.
- 11.3 Dispute Resolution:** Any city or town subject to an inter-jurisdictional transfer shall resolve any dispute over the allocation of the tax in accordance with A.R.S. § 42-6003 and the Department shall transfer the funds subject to an inter-jurisdictional transfer in accordance with the agreed upon allocation in a timely manner.

12. Educational Outreach.

City may conduct, at its own expense, educational outreach to taxpayers who are conducting business activities within City's taxing jurisdiction concerning the Model City Tax Code and the collection and administration of Municipal Taxes. Educational outreach shall be consistent with applicable law and Department written guidance. Upon request, City shall provide information to the Department concerning such educational outreach efforts.

13. SLUG.

The Department shall create an advisory group to help resolve issues

- 13.1 Members:** The members shall consist of four seats representing municipal taxing jurisdictions and four seats representing the Department. Member seats may be split so some people fill the position for only certain issues, such as audit selection or collection abatement. There shall also be a list of alternate members, who may be asked by a regular member who is unable to attend a meeting to take that member's place at a SLUG meeting.
- 13.2 Selection:** The Director of the Department shall appoint people to serve as members of SLUG. Municipal taxing jurisdictions shall nominate members from municipal taxing jurisdictions. All members shall serve for a period of one year unless they resign at an earlier date. Members may be appointed to serve consecutive terms. Members appointed to fill vacancies shall serve for the time remaining on the term.
- 13.3 Meetings:** SLUG shall meet on a regular basis and at least monthly unless the members agree to cancel the meetings due to a lack of agenda items. It can schedule additional meetings as necessary to timely discuss issues presented. Alternate members may attend meetings, but cannot participate in any discussion or voting, unless filling the seat of a regular member.
- 13.4 Issues:** City may refer issues to SLUG involving the following:
- (a) Decisions by the Department to not audit a taxpayer;
 - (b) Amendments to Department audit procedures or manuals;
 - (c) Closing Agreements or a range of settlement authority;
 - (d) Abatement or account closure in collections;
 - (e) Suspension of disclosure of information from the Department; and
 - (f) Other issues as authorized by the Director of the Department or agreed upon by the parties.

13.5 Recommendations: SLUG shall make recommendations to the Director of the Department. If the recommendation is approved by at least five members of SLUG, the Director will accept the recommendation of SLUG. If SLUG cannot reach a recommendation agreeable to at least five members of the group, the Director may act as he deems to be in the best interests of all parties.

13.6 Voting: Voting shall be by secret ballot.

13.7 Procedures: SLUG may develop procedures concerning the operation of the group as long as they are not inconsistent with this Agreement.

14. Funding of Additional Auditors by City.

14.1 Funding: At the sole discretion of City, City may contribute funding to the Department to pay for additional auditors to assist the Department in the performance of audits of Municipal Tax owed to City. Such additional auditors funded by City shall at all times be deemed to be employees of the Department and under no circumstances shall be deemed to be employees or agents of City. It is the parties' intention that City funding be used to increase the capabilities of the Department to perform Municipal Tax audits and not to subsidize or replace State funding required for audit and collection of taxes.

14.2 Use of Funds: City funding for additional auditors under this Section shall be used to fund the auditors' salaries and employee related expenses and shall not be used to pay for Department office space, utilities, equipment, supplies, or similar kinds of overhead.

14.3 Pool of Funds: The Department may pool any City funding with any other similar funding provided by other municipal taxing jurisdictions to pay for additional auditors. The Department shall separately account for such funds in its annual budget.

14.4 Accounting: The Department shall provide an annual accounting to City, by August 31 each year describing how City funding was used during the prior fiscal year.

15. Satellite Offices for Department Auditors.

15.1 Funding: City, at its own expense and at its sole discretion, may provide one or more satellite offices and associated amenities for use by Department employees to provide audit and/or customer service to taxpayers. Use of such facilities by Department employees shall be at the sole discretion of the Department. Nothing in this section shall require the Department to make use of such facilities provided by City.

- 15.2 Requirements:** Any Department employee using a City satellite office must meet reasonable requirements of City related to the use of the facility. City shall be responsible for notifying the Department of any concerns, and the Department shall be responsible for taking appropriate actions to resolve those concerns.
- 15.3 Termination:** Once a satellite office is established, City shall provide at least 180 calendar days written notice to the Department prior to the termination or relocation of a satellite office. The Department may discontinue the use of a satellite office at any time upon notice to City and shall promptly remove all Department property.
- 15.4 License:** All requirements of City and the Department related to the satellite office shall be outlined in a mutually acceptable form of license and subject to separate approval.

16. Non-availability of Funds.

Every payment obligation of the Department and the City pursuant to this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation, except for the rendering of funds to City paid by a taxpayer for Municipal Taxes or tax license fees of City. If funds are not appropriated, allocated and available or if the appropriation is changed resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section. The termination of this Agreement shall not entitle the Department to retain any Municipal Tax collected on behalf of City pursuant to this Agreement.

17. Waiver.

Nothing in this Agreement should be interpreted as City relinquishing its legal rights under the Arizona Constitution or other applicable law, nor that City is conceding the administration and collection of its Municipal Tax is not of a local interest or should not be under local control.

18. Cancellation

The requirements of A.R.S. § 38-511 apply to this Agreement. The Department or City may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Department or City is, at any time while this Agreement or any extension is in effect, an employee, agent or consultant of the other party with respect to the subject matter of this Agreement.

19. Notice.

- (a) When any Notice to City is required under the terms of this Agreement, such Notice shall be mailed to City at the following address, directed to the attention of:

City of El Mirage
Attn: Finance Director
12145 NW Grand Avenue
El Mirage, AZ 85335

- (b) When any Notice to the Department is required under the terms of this Agreement, such Notice shall be mailed to:

Arizona Department of Revenue
Attn: Director, Division Code 20
1600 W. Monroe
Phoenix, AZ 85007

Notice to the Department's Hub Unit or City Unit may be mailed to:

Arizona Department of Revenue
Division Code 16
1600 W. Monroe
Phoenix, AZ 85007

20. Non-discrimination.

The Department and City shall comply with Executive Order 2009-9, which mandates all persons, regardless of race, color, religion, sex, age, or national origin, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Department and City shall take affirmative action to ensure applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

21. Compliance with Immigration Laws and A.R.S. § 41-4401.

- 21.1** The Department and City shall comply with all Federal immigration laws and regulations relating to employees and warrants compliance with A.R.S. § 23-214(A) which reads in part: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program."

21.2 A breach of compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and may be grounds for the immediate termination of this Agreement.

21.3 The Department and City retain the legal right to inspect the papers of any employee who works on the Agreement to ensure the Department and City is complying with the applicable Federal immigration laws and regulations and State statutes as set forth above.

22. Audit of Records.

City and the Department shall retain all data, books, and other records ("Records") relating to this Agreement for at least six (6) years (a) after termination of this Agreement, and (b) following each annual renewal thereof. All Records shall be subject to inspection by audit by the State at reasonable times. Upon request, the Department and City shall produce any or all such records. This Agreement is subject to A.R.S. §§ 35-214 and -215.

23. Amendments.

Any amendments to or modifications of this Agreement must be executed in writing in accordance with the provisions of this Agreement.

24. Mutual Cooperation.

In the event of a disagreement between the parties with regard to the terms, provisions and requirements of this Agreement or in the event of the occurrence of any circumstances bearing upon or affecting this Agreement, parties hereby agree to mutually cooperate in order to resolve the said disagreement or deal with the said circumstance.

25. Arbitration.

To the extent required by A.R.S. § 12-1518(B) and as provided for in A.R.S. § 12-133, the parties agree to resolve any dispute arising out of this Agreement by arbitration. The parties agree that any lawsuit filed by City relating to the issues outlined in Section 17 of this Agreement is not considered to be a dispute arising out of this Agreement.

26. Implementation.

The implementation and execution of the provisions of this Agreement shall be the responsibility of the Director of the Department or his representative and the Mayor his/her designee, or another party with designated authority pursuant to applicable law or City charter on behalf of City.

27. Limitations.

Nothing in this Agreement shall be construed as limiting or expanding the statutory responsibilities of the parties in performing functions beyond those granted to them by law, or as requiring the parties to expend any sum in excess of their appropriations.

28. Duration.

- 28.1 The term of this Agreement shall be from July 1, 2015 through June 30, 2016. This Agreement shall automatically be renewed for successive one year terms thereafter unless either party shall terminate this Agreement by notice, in writing, no later than sixty calendar days prior to the expiration of the term then in effect.
- 28.2 If State legislation enacted subsequent to the date of this Agreement substantially affects the performance of this Agreement by either party or substantially diminishes the benefits either party would receive under this Agreement, either party may then terminate this Agreement by giving at least thirty calendar days' notice to the other party. The termination will become effective immediately upon the expiration of the notice period unless otherwise agreed to by the parties.
- 28.3 Notwithstanding any provision to the contrary herein, both parties may by mutual agreement provide for the termination of this contract upon such terms and at such time as is mutually agreeable to them.
- 28.4 Any notice of termination shall be mailed and served on the other party in accordance with Section 19 of this Agreement.
- 28.5 During the term of this Agreement, the terms and conditions of this Agreement will undergo an annual review to be completed no later than March 1st of each year. The review will be performed by a committee made up of equal parts representatives of the Department and representatives of the municipal taxing jurisdictions entering into an IGA with the Department for the administration and collection of Municipal Taxes.

29. Choice of Law.

The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement, and any disputes arising from this Agreement.

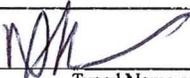
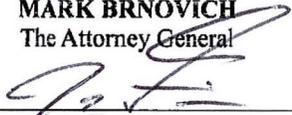
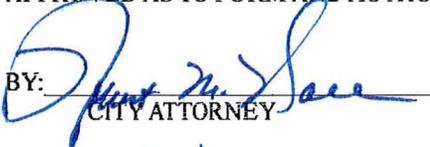
30. Entire Agreement.

This document, including other documents referred herein, and any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the parties and shall supersede all other understandings, oral or written.

31. Signature Authority.

31.1 By signing below, the signer certifies he or she has the authority to enter into this Agreement on behalf of his or her respective party, and he or she has read the foregoing and agrees to accept the provisions herein on said party's behalf.

31.2 This Intergovernmental Agreement may be executed in counterpart.

Signature  Date <u>7/2/15</u>	Signature <u>Lana Mook</u> Date <u>6/16/2015</u>
Typed Name and Title <u>David Raber, Director</u>	Typed Name and Title <u>LANA MOOK, MAYOR</u>
Entity Name <u>Arizona Department of Revenue</u>	Entity Name <u>CITY OF EL MIRAGE</u>
Address <u>1600 W. Monroe</u>	Address <u>12145 NW GRAND AVENUE</u>
City State Zip <u>Phoenix AZ 85007</u>	City State Zip <u>EL MIRAGE AZ 85335</u>
RESERVED FOR THE ATTORNEY GENERAL:	RESERVED FOR CITY ATTORNEY:
<p>This agreement between public agencies has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Department of Revenue represented by the Attorney General.</p> <p>MARK BRNOVICH The Attorney General</p>  Signature Assistant Attorney General	<p>APPROVED AS TO FORM AND AUTHORITY:</p> <p>BY:  CITY ATTORNEY</p> <p>Date: <u>6/15/2015</u></p>
Date: <u>7/2/15</u>	

**MODIFICATION TO INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA AND CITY/TOWN**

WHEREAS, The Arizona Department of Revenue, hereinafter referred to as Department of Revenue and City of El Mirage, hereinafter referred to as City, have entered into an Intergovernmental Agreement regarding the administration of taxes imposed by the State or City dated June 16, 2015, hereinafter referred to as the IGA, and

WHEREAS, the Department of Revenue and the City intend to continue with the IGA for an additional one year term in order to determine whether the general terms of the IGA meet the parties' needs, with the exception of the modifications set forth below.

The parties agree to modify the IGA as follows effective July 1, 2016:

1. Add the following new subsection to Section 9, Collection of Municipal Taxes:

9.6 Adjustments to Reported Taxes: If the Department of Revenue determines that a payment remitted by a taxpayer incorrectly identifies the city or town to which the payment should be made, the Department of Revenue may temporarily hold the payment until the distribution of the payment is corrected so that the appropriate city or town receives the payment.

2. Add the following new subsection to Section 9, Collection of Municipal Taxes:

9.7 Taxpayer Rulings and Uniformity: Recognizing taxpayer written requests for interpretation of the statutes and/or the Model City Tax Code, as well as guidance regarding uniform application and interpretation of the statutes and the Model City Tax Code impact all taxing jurisdictions, and further recognizing responsibility for such rulings and interpretation of the Model City Tax Code had previously been the sole domain of the municipalities, the Department shall include at least two representatives of the municipalities as regular members of any group established to respond to such taxpayer ruling requests and to issue such uniform interpretations and guidance promulgated by the Department. Participation by the two representatives of the municipalities on any such group is limited to instances when there is an issue raised that solely involves the Model City Tax Code and/or presents an issue of first impression, including requests for private taxpayer rulings. The municipal representatives may also be consulted by the Department on information letters, or when issuing statements of general guidance. Written requests involving common questions or issues that have previously been addressed, whether unique to the Model City Tax Code or not, may be handled in the regular course of Department processes without consulting the representatives of the municipalities.

3. Amend Section 10, Financing Collection of Taxes as follows:

10. Financing Collection of Taxes.

The costs incurred by the Department in administering this Agreement shall be financed through the State general fund appropriation to the Department. This provision does not relieve City/Town of any financial obligation imposed by statute.

4. Amend subsection 28.1 of Section 28, Duration, relating to automatic renewal of the agreement as follows:

28.1 The term of this Agreement shall be from July 1 through June 30 of each year. This Agreement shall automatically be renewed for successive one year terms thereafter unless either party shall terminate this Agreement by notice, in writing, no later than sixty calendar days prior to the expiration of the term then in effect. Any agreed upon modifications to the terms and conditions of this agreement shall be incorporated to be effective during the term identified by the review committee provided for in section 28.5.

5. Amend subsection 28.5 of Section 28, Duration, relating to annual review of the agreement as follows:

28.5 During the term of this Agreement, the terms and conditions of this Agreement will undergo an annual review to be initiated no later than June 1st of each year. The review will be performed by a committee made up of equal parts representatives of the Department and representatives of the municipal taxing jurisdictions entering into an IGA with the Department for the administration and collection of Municipal Taxes.

Signature Authority.

By signing below, the signer certifies that he or she has the authority to enter into this Agreement and has read the foregoing and agrees to accept the provisions herein. This modification may be executed in counterparts.

Signature	Date	Signature	Date
Typed Name and Title		Typed Name and Title	
Entity Name		Entity Name	

RESERVED FOR THE ATTORNEY GENERAL:	RESERVED FOR CITY/TOWN ATTORNEY:
<p>Attorney General no. _____, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Department of Revenue represented by the Attorney General.</p> <p style="text-align: center;">MARK BRNOVICH The Attorney General</p> <hr/> <p style="text-align: center;">Signature Assistant Attorney General</p> <p>Date: _____</p>	<p>APPROVED AS TO FORM AND AUTHORITY:</p> <p>BY: _____ CITY ATTORNEY</p> <p>Date: _____</p>

SUMMARY OF CHANGES TO THE IGA FOR TRANSACTION PRIVILEGE TAX COLLECTION BY THE ARIZONA DEPARTMENT OF REVENUE

The attached “Modification to Intergovernmental Agreement Between the State of Arizona And City/Town” incorporates five agreed upon changes into the existing intergovernmental agreement between the city/town and the Department related to the collection of the city/town transaction privilege tax. Below is a summary of the intent and impact of each change by section. The key terms for each section have been highlighted for quick reference.

1) 9.6 Adjustments to Reported Taxes

The addition of this new section addresses an issue that came up during the past year. In some cases, the Department knew there was an error by the taxpayer in identifying which city or town was supposed to receive the tax, but there was no mechanism allowing them to hold the distribution while the error was being corrected. As a result there were instances when the DOR had to send funds to a city or town knowing it was incorrect, only to pull those funds back in a subsequent distribution after the error had been resolved. This change allows the Department to avoid these incorrect distributions and recoveries when they are aware of a problem from the outset.

2) 9.7 Taxpayer Rulings and Uniformity

The addition of this new section provides for municipal input in the drafting of rulings and interpretations that impact the Model City Tax Code, including interpretations of State statute that flow through to the MCTC because the Model language matches the State language. Under current statute, the DOR is responsible for addressing all taxpayer written requests for rulings, even when the question is based on the Model City Tax Code. This section allows the cities to have some influence over issues raised by taxpayers that have a direct impact on local tax imposition and interpretation, without disrupting the normal course of business within the Department on routine matters.

3) 10. Financing Collection of Taxes

This section is being amended by adding the second sentence. This addition recognizes that the cities and towns have agreed to a statutory financial obligation to contribute to the State for the operation of the DOR, and this obligation is not in conflict with the Department’s TPT collection and administration efforts being financed through the State general fund appropriation.

4) 28.1 (relating to automatic annual renewal of the agreement)

This section has been changed to remove the specific years in the original document, so this section will not need to be changed annually. Also, this section added a provision stating any agreed upon changes that arise from the annual review in Section 28.5 are retroactive to July 1st of each year. The agreement automatically renews without any action unless there are modifications agreed upon in any given year, and if so, you only need to adopt the modifications.

5) 28.5 (relating to annual review of the IGA)

This section has been changed to state the review period begins on June 1st, rather than requiring the review being completed by March 1st. The March 1st deadline was simply unrealistic given the legislative session responsibilities of many of the typical reviewers.

RESOLUTION R16-09-19

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA, DECLARING AS A PUBLIC RECORD FOR PUBLISHING PER A.R.S. §9-802 THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2012-2014 AMENDMENTS TO THE TAX CODE OF THE CITY OF EL MIRAGE".

WHEREAS, Arizona Revised Statutes §9-802 provides a procedure whereby a municipality may enact the provisions of a code or public record by reference, without setting forth such provisions provided that the adopting ordinance is published in full.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA:

THAT certain document entitled "THE 2012-2014 AMENDMENTS TO THE TAX CODE OF THE CITY OF EL MIRAGE", three copies of which are on file in the office of the city clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the city clerk.

PASSED AND ADOPTED BY THE Mayor and Council of the City of El Mirage, Arizona, this 6th day of September, 2016.

Mayor Lana Mook

ATTEST:

City Clerk Sharon Antes

APPROVED AS TO FORM:

City Attorney Robert M. Hall

**2012-2014 AMENDMENTS TO THE
TAX CODE OF THE CITY OF EL MIRAGE**

Section I. Model City Tax Code Section 9-100 is amended as follows, with an effective date of January 1, 2007.

Sec. 9-100. General definitions.

For the purposes of this Chapter, the following definitions apply:

"Assembler" means a person who unites or combines products, wares, or articles of manufacture so as to produce a change in form or substance of such items without changing or altering component parts.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Business" ~~means-INCLUDES~~ all activities or acts, personal or corporate, engaged in ~~and-OR~~ caused to be engaged in with the object of gain, benefit, or advantage, either direct~~LY~~ or indirect~~LY~~, but DOES not INCLUDE EITHER: casual activities or sales; OR THE TRANSFER OF ELECTRICITY FROM A SOLAR PHOTOVOLTAIC GENERATION SYSTEM TO AN ELECTRIC UTILITY DISTRIBUTION SYSTEM.

"Business Day" means any day of the week when the Tax Collector's office is open for the public to conduct the Tax Collector's business.

"Casual Activity or Sale" means a transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by this Chapter. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable by this Chapter shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

"Combined Taxes" means the sum of all applicable Arizona Transaction Privilege and Use Taxes; all applicable transportation taxes imposed upon gross income by this County as authorized by Article III, Chapter 6, Title 42, Arizona Revised Statutes; and all applicable taxes imposed by this Chapter.

"Commercial Property" is any real property, or portion of such property, used for any purpose other than lodging or lodging space, including structures built for lodging but used otherwise, such as model homes, apartments used as offices, etc.

"Communications Channel" means any line, wire, cable, microwave, radio signal, light beam, telephone, telegraph, or any other electromagnetic means of moving a message.

"Construction Contracting" refers to the activity of a construction contractor.

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TAX CODE OF THE CITY OF EL MIRAGE**

"Construction Contractor" means a person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement to real property, or to do any part thereof. "Construction contractor" includes subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

"Delivery (of Notice) by the Tax Collector" means "receipt (of notice) by the taxpayer".

"Delivery, Installation, or Other Direct Customer Services" means services or labor, excluding repair labor, provided by a taxpayer to or for his customer at the time of transfer of tangible personal property; provided further that the charge for such labor or service is separately billed to the customer and maintained separately in the taxpayer's books and records.

"Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

"Equivalent Excise Tax" means either:

- (1) a Privilege or Use Tax levied by another Arizona municipality upon the transaction in question, and paid either to such Arizona municipality directly or to the vendor; or
- (2) an excise tax levied by a political subdivision of a state other than Arizona upon the transaction in question, and paid either to such jurisdiction directly or to the vendor; or
- (3) an excise tax levied by a Native American Government organized under the laws of the federal government upon the transaction in question, and paid either to such jurisdiction directly or to the vendor.

"Federal Government" means the United States Government, its departments and agencies; but not including national banks or federally chartered or insured banks, savings and loan institutions, or credit unions.

"Food" means any items intended for human consumption as defined by rules and regulations adopted by the Department of Revenue, State of Arizona, pursuant to A.R.S. Section 42-5106. Under no circumstances shall "food" include alcoholic beverages or tobacco, or food items purchased for use in conversion to any form of alcohol by distillation, fermentation, brewing, or other process. Under no circumstances shall "food" include an edible product, beverage, or ingredient infused, mixed, or in any way combined with medical marijuana or an active ingredient of medical marijuana.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

"Jet Fuel" means jet fuel as defined in A.R.S. Section 42-5351.

**2012-2014 AMENDMENTS TO THE
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"Job Printing" means the activity of copying or reproducing an article by any means, process, or method. "Job printing" includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

"Lessee" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Lessor" includes the equivalent person in a rental or licensing agreement for all purposes of this Chapter.

"Licensing (for Use)" means any agreement between the user ("licensee") and the owner or the owner's agent ("licensor") for the use of the licensor's property whereby the licensor receives consideration, where such agreement does not qualify as a "sale" or "lease" or "rental" agreement.

"Lodging (Lodging Space)" means any room or apartment in a hotel or any other provider of rooms, trailer spaces, or other residential dwelling spaces; or the furnishings or services and accommodations accompanying the use and possession of said dwelling space, including storage or parking space for the property of said tenant.

"Manufactured Buildings" means a manufactured home, mobile home or factory built building, as defined in A.R.S. Section 41-2142.

"Manufacturer" means a person engaged or continuing in the business of fabricating, producing, or manufacturing products, wares, or articles for use from other forms of tangible personal property, imparting to such new forms, qualities, properties, and combinations.

"Medical marijuana" means "marijuana" used for a "medical use" as those terms are defined in A.R.S. Section 36-2801.

"Mining and Metallurgical Supplies" means all tangible personal property acquired by persons engaged in activities defined in Section 9-432 for such use. This definition shall not include:

- (1) janitorial equipment and supplies.
- (2) office equipment, office furniture, and office supplies.
- (3) motor vehicles licensed for use upon the highways of the State.

"Modifier" means a person who reworks, changes, or adds to products, wares, or articles of manufacture.

"Nonprofit Entity" means any entity organized and operated exclusively for charitable purposes, or operated by the Federal Government, the State, or any political subdivision of the State.

"Occupancy (of Real Property)" means any occupancy or use, or any right to occupy or use, real property including any improvements, rights, or interests in such property.

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

- (1) transference of title and possession occur without the City; and
- (2) the stock from which such personal property was taken was not within the corporate limits of the City; and
- (3) the order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales

**2012-2014 AMENDMENTS TO THE
TAX CODE OF THE CITY OF EL MIRAGE**

activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

"Out-of-State Sale" means the sale of tangible personal property and job printing if all of the following occur:

- (1) the order is placed from without the State of Arizona; and
- (2) the property is delivered to the buyer at a location outside the State; and
- (3) the property is purchased for use outside the State.

"Owner-Builder" means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

"Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, this State, or any political subdivision or agency of this State. For the purposes of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

"Prosthetic" means any of the following tangible personal property if such items are prescribed or recommended by a licensed podiatrist, chiropractor, dentist, physician or surgeon, naturopath, optometrist, osteopathic physician or surgeon, psychologist, hearing aid dispenser, physician assistant, nurse practitioner or veterinarian:

- (1) any man-made device for support or replacement of a part of the body, or to increase acuity of one of the senses. Such items include: prescription eyeglasses; contact lenses; hearing aids; artificial limbs or teeth; neck, back, arm, leg, or similar braces.
- (2) insulin, insulin syringes, and glucose test strips sold with or without a prescription.
- (3) hospital beds, crutches, wheelchairs, similar home health aids, or corrective shoes.
- (4) drugs or medicine, including oxygen.
- (5) equipment used to generate, monitor, or provide health support systems, such as respiratory equipment, oxygen concentrator, dialysis machine.
- (6) durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by Medicare, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

- (7) ORTHODONTIC DEVICES DISPENSED BY A DENTAL PROFESSIONAL WHO IS LICENSED UNDER TITLE 32, CHAPTER 11 TO A PATIENT AS PART OF THE PRACTICE OF DENTISTRY.

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~~(7)~~(8) Under no circumstances shall "prosthetic" include medical marijuana regardless of whether it is sold or dispensed pursuant to a prescription, recommendation, or written certification by any authorized person.

"Qualifying Community Health Center"

- (1) means an entity that is recognized as nonprofit under 501(c)(3) of the United States Internal Revenue Code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:
 - (A) the sole provider of primary care in the community.
 - (B) a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this State.
- (2) includes clinics that are being constructed as qualifying community health centers.

"Qualifying Health Care Organization" means an entity that is recognized as nonprofit under Section 501(c) of the United States Internal Revenue Code and that uses, saves or invests at least eighty percent (80%) of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted accounting standards and filed annually with the Arizona Department of Revenue. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent (80%) requirement.

"Qualifying Hospital" means any of the following:

- (1) a licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- (2) a licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.
- (3) a hospital, nursing care institution or residential care institution which is operated by the federal government, this State or a political subdivision of this State.
- (4) a facility that is under construction and that on completion will be a facility under subdivision (1), (2) or (3) of this paragraph.

"Receipt (of Notice) by the Taxpayer" means the earlier of actual receipt or the first attempted delivery by certified United States mail to the taxpayer's address of record with the Tax Collector.

"Remediation" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment such that the waters of the State are or may be affected, such actions as may be necessary to monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to

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the public health or welfare or to the waters of the State which may otherwise result from a release or threat of release of a hazardous substance that will or may affect the waters of the State. Remediation activities include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, nonopportunistic and that are naturally occurring. Remediation activities may include community information and participation costs and providing an alternative drinking water supply.

"Rental Equipment" means tangible personal property sold, rented, leased, or licensed to customers to the extent that the item is actually used by the customer for rental, lease, or license to others; provided that:

- (1) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (2) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Rental Supply" means an expendable or nonexpendable repair or replacement part sold to become part of "rental equipment", provided that:

- (1) the documentation relating to each purchased item so claimed specifically itemizes to the vendor the actual item of "rental equipment" to which the purchased item is intended to be attached as a repair or replacement part; and
- (2) the vendee is regularly engaged in the business of renting, leasing, or licensing such property for a consideration; and
- (3) the item so claimed as "rental equipment" is not used by the person claiming the exemption for any purpose other than rental, lease, or license for compensation, to an extent greater than fifteen percent (15%) of its actual use.

"Repairer" means a person who restores or renews products, wares, or articles of manufacture.

"Resides within the City" means in cases other than individuals, whose legal addresses are determinative of residence, the engaging, continuing, or conducting of regular business activity within the City.

"Restaurant" means any business activity where articles of food, drink, or condiment are customarily prepared or served to patrons for consumption on or off the premises, also including bars, cocktail lounges, the dining rooms of hotels, and all caterers. For the purposes of this Chapter, a "fast food" business, which includes street vendors and mobile vendors selling in public areas or at entertainment or sports or similar events, who prepares or sells food or drink for consumption on or off the premises is considered a "restaurant", and not a "retailer".

"Retail Sale (Sale at Retail)" means the sale of tangible personal property, except the sale of tangible personal property to a person regularly engaged in the business of selling such property.

"Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

"Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a

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consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

"Solar Daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

"Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

"Speculative Builder" means either:

- (1) an owner-builder who sells or contracts to sell, at any time, improved real property (as provided in Section 9-416) consisting of:
 - (A) custom, model, or inventory homes, regardless of the stage of completion of such homes; or
 - (B) improved residential or commercial lots without a structure; or
- (2) an owner-builder who sells or contracts to sell improved real property, other than improved real property specified in subsection (1) above:
 - (A) prior to completion; or
 - (B) before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

"Substantially Complete" means the construction contracting or reconstruction contracting:

- (1) has passed final inspection or its equivalent; or
- (2) certificate of occupancy or its equivalent has been issued; or
- (3) is ready for immediate occupancy or use.

"Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

"Tax Collector" means the City Manager or his designee or agent for all purposes under this Chapter.

"Taxpayer" means any person liable for any tax under this Chapter.

"Taxpayer Problem Resolution Officer" means the individual designated by the City to perform the duties identified in Sections 9-515 and 9-516. In cities with a population of 50,000 or more, the Taxpayer

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Problem Resolution Officer shall be an employee of the City. In cities with a population of less than 50,000, the Taxpayer Problem Resolution Officer need not be an employee of the City. Regardless of whether the Taxpayer Problem Resolution Officer is or is not an employee of the City, the Taxpayer Problem Resolution Officer shall have substantive knowledge of taxation. The identity of and telephone number for the Taxpayer Problem Resolution Officer can be obtained from the Tax Collector.

"Telecommunication Service" means any service or activity connected with the transmission or relay of sound, visual image, data, information, images, or material over a communications channel or any combination of communications channels.

"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty (30) consecutive days.

"Utility Service" means the producing, providing, or furnishing of electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.

Section II. Model City Tax Code Section 9-120 and Model Option #2 is repealed, with an effective date of July 1, 2013.

~~Sec. 9-120. Definitions: food for home consumption.~~

~~(a) For the purposes of this Section only, the following definitions shall be applicable:~~

~~(1) "Eligible grocery business" means an establishment whose sales of food are such that it is eligible to participate in the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.), according to regulations in effect on January 1, 1979. An establishment is deemed eligible to participate in the Food Stamp Program if it is authorized to participate in the program by the United States Department of Agriculture Food and Nutrition Service Field Office on the effective date of this Section, or if, prior to a reporting period for which the return is filed, such retailer proves to the satisfaction of the Tax Collector that the establishment, based on the nature of the retailer's food sales, could be eligible to participate in the food stamp program established by the Food Stamp Act of 1977 according to regulations in effect on January 1, 1979.~~

~~(2) "Facilities for the consumption of food " means tables, chairs, benches, booths, stools, counters, and similar conveniences, trays, glasses, dishes, or other tableware and parking areas for the convenience of in-car consumption of food in or on the premises on which the retailer conducts business.~~

~~(3) "Food for consumption on the premises" means any of the following:~~

~~(A) "Hot prepared food" as defined below.~~

~~(B) Hot or cold sandwiches.~~

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- ~~(C) — Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters, and similar conveniences and within parking areas for the convenience of in-car consumption of food.~~
- ~~(D) — Food served with trays, glasses, dishes, or other tableware.~~
- ~~(E) — Beverages sold in cups, glasses, or open containers.~~
- ~~(F) — Food sold by caterers.~~
- ~~(G) — Food sold within the premises of theatres, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, fairs, races, contests, games, athletic events, rodeos, billiard and pool parlors, bowling alleys, public dances, dance halls, boxing, wrestling and other matches, and any business which charges admission, entrance, or cover fees for exhibition, amusement, entertainment, or instruction.~~
- ~~(H) — Any items contained in subsections (a)(3)(A) through (G) above even though they are sold on a "take-out" or "to go" basis, and whether or not the item is packaged, wrapped, or is actually taken from the premises.~~
- ~~(4) — "Hot prepared food" means those products, items, or ingredients of food which are prepared and intended for consumption in a heated condition. "Hot prepared food" includes a combination of hot and cold food items or ingredients if a single price has been established.~~
- ~~(5) — "Premises" means the total space and facilities in or on which a vendor conducts business and which are owned or controlled, in whole or in part, by a vendor or which are made available for the use of customers of the vendor or group of vendors, including any building or part of a building, parking lot, or grounds.~~
- ~~(b) — "Food for home consumption" means all food, except food for consumption on the premises, if sold by any of the following:~~
 - ~~(1) — An eligible grocery business.~~
 - ~~(2) — A person who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged, and sold in a similar manner as an eligible grocery business.~~
 - ~~(3) — A person who sells food and does not provide or make available any facilities for the consumption of food on the premises.~~
 - ~~(4) — A person who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers and which are used to record taxable and tax exempt sales, or a retailer who conducts a delicatessen business who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.~~
 - ~~(5) — (Reserved)~~
 - ~~(6) — Vending machines and other types of automatic retailers.~~

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~~(7) — A person's sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the State Department of Corrections, the Department of Public Safety, the Department of Juvenile Corrections or a county sheriff.~~

Model Option #2: Sec. 9-120. (Reserved)

Section III. Model City Tax Code Section 9-200 is amended as follows, with an effective date of July 1, 2013.

Sec. 9-200. Determination of gross income: in general.

- (a) Gross income includes:
- (1) the value proceeding or accruing from the sale of property, the providing of service, or both.
 - (2) the total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.
 - (3) all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.
 - (4) all other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.
- (b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.
- (c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

(D) FOR THE PURPOSES OF THIS CHAPTER THE TOTAL AMOUNT OF GROSS INCOME, GROSS RECEIPTS OR GROSS PROCEEDS OF SALES FOR NUCLEAR FUEL SHALL BE DEEMED TO BE THE VALUE OF THE PURCHASE PRICE OF URANIUM OXIDE USED IN PRODUCING THE FUEL. THE TAX IMPOSED BY THIS CHAPTER MAY BE IMPOSED ONLY ONCE FOR ANY ONE QUANTITY OR BATCH OF NUCLEAR FUEL REGARDLESS OF THE NUMBER OF TRANSACTIONS OR FINANCING ARRANGEMENTS WHICH MAY OCCUR WITH RESPECT TO THAT NUCLEAR FUEL.

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Section IV. Model City Tax Code Article III is REPEALED AND REPLACED IN ITS ENTIRETY with the following sections 9-300 through 9-380, effective January 1, 2015.

Article III - Licensing and Recordkeeping

Sec. 9-300. Licensing requirements.

- (a) The following persons shall make application to the Tax Collector for a Transaction Privilege and Use Tax License and no person shall engage or continue in business or engage in such activities until he shall have such a license:
 - (1) Every person engaging or continuing in business activities within the city or town upon which a Transaction Privilege Tax is imposed by this Chapter.
 - (2) Every person engaging or continuing in business within the city or town and storing or using tangible personal property in this municipality upon which a Use Tax is imposed by this Chapter.
 - (3) (Reserved)
- (b) For the purpose of determining whether a Transaction Privilege and Use Tax License is required, a person shall be deemed to be "engaging or continuing in business" within the city or town if:
 - (1) engaging in any activity as a principal or broker, the gross receipts of which may be subject to Transaction Privilege Tax under Article IV of this Chapter, or
 - (2) maintaining within the city or town directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business; maintaining within the city or town directly, or if a corporation by a subsidiary, any real or tangible personal property; or having any agent or other representative operating within the city or town under the authority of such person, or if a corporation by a subsidiary, irrespective of whether such place of business, property, or agent or other representative is located here permanently or temporarily, or
 - (3) soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the city or town from customers, consumers, or users located within the city or town, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this city or town.
 - (4) A person shall also be deemed to be "engaging or continuing in business" if engaging in any activity subject to Use Tax under Article VI of this Chapter for business purposes. Individuals who acquire items subject to Use Tax for their own personal use or their family's personal use are not required to obtain a license.
 - (5) (Reserved)
- (c) A person engaging in more than one activity subject to Transaction Privilege Tax at any one business location is not required to obtain a separate license for each activity, provided that, at the

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time such person makes application for a license, he shall list on such application each category of activity in which he is engaged.

- (d) The licensee shall inform the Tax Collector of any changes in his business activities, location, or mailing address within thirty (30) days.
- (e) Limitation. The issuance of a Transaction Privilege and Use Tax License by the Tax Collector shall in no way be construed as permission to operate a business activity in violation of any other law or regulation to which such activity may be subject.
- (f) Casual activity. For the purposes of this Chapter, individuals engaging in a “casual activity or sale” are not subject to the license requirements imposed under this Article provided that they are only engaged in private sales activities, such as the sale of a personal automobile or garage sale, on no more than three separate occasions during any calendar year.

Sec. 9-310. Licensing: special requirements.

- (a) Partnerships. Application for a Transaction Privilege and Use Tax License for a partnership engaging or continuing in business shall provide, as a minimum, the names and addresses of all general partners. Licenses issued to persons engaging in business as partners, limited or general, shall be in the name of the partnership.
- (b) Limited Liability Companies. Application for a Transaction Privilege and Use Tax License for a Limited Liability Company (LLC) engaging or continuing in business shall provide, as a minimum, the names and addresses of all members and the manager. Licenses issued to persons engaging in business as Limited Liability Companies, shall be in the name of the LLC.
- (c) Corporations. Application for a Transaction Privilege and Use Tax License for a corporation engaging or continuing in business shall provide, as a minimum, the names and addresses of both the Chief Executive Officer and Chief Financial Officer of the corporation. Licenses issued to persons engaging in business as corporations shall be in the name of the corporation.
- (d) Multiple Locations or Multiple Business Names. A person engaging or continuing in one or more businesses at two (2) or more locations or under two (2) or more business names shall procure a license for each such location or business name. A "location" is a place of a separate business establishment.
- (e) Real Property Rental, Leasing, and Licensing for Use. In all cases the Transaction Privilege and Use Tax License shall be issued only to the owner of the real property regardless of the owner engaging a property manager or other broker to oversee the owner's business activity including filing tax returns on behalf of the owner. Each rental property that can be independently sold or transferred is deemed to be a separate business establishment. Each platted parcel of real property subject to the tax imposed by this Chapter is deemed to be a separate business establishment and requires a separate license, regardless of the number of rental units located on that platted parcel. If one structure is located on multiple parcels in a manner such that ownership of an individual parcel cannot be sold or transferred without requiring alteration to divide the structure, one license shall be required for all affected parcels.

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Sec. 9-320. License fees; annual renewal; renewal fees.

- (a) The Transaction Privilege and Use Tax License shall be valid upon receipt of a non-refundable license fee of fifteen dollars (\$15.00), except for a license to engage in the business activity of residential or commercial real property rental, leasing, and licensing for use as separately identified in this Section. The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of zero dollars (\$0.00) for each license, subject to the limitations in A.R.S. 42-5005. Such annual renewal fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.
- (b) The Transaction Privilege and Use Tax License to engage in the business activity of residential real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of fifteen dollars (\$15.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of zero dollars (\$0.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.
- (c) The Transaction Privilege and Use Tax License to engage in the business activity of commercial real property rental, leasing, and licensing for use shall be valid only upon receipt of a non-refundable license fee of fifteen dollars (\$15.00). The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of zero dollars (\$0.00) for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January.

Sec. 9-330. Licensing: duration; transferability; display; penalties; penalty waiver; relicensing; fees collectible as if taxes.

- (a) The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying the applicable license renewal fee for each license, subject to the limitations in A.R.S. Section 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. Application and payment of the annual fee must be received in the Tax Collector's office to be deemed paid and received.
- (b) The Transaction Privilege and Use Tax License shall be nontransferable between owners or locations, and shall be on display to the public in the licensee's place of business.

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- (c) Any person required to be licensed under this Chapter who fails to obtain a license on or before conducting any business activity requiring such license shall be subject to the license fees due for each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each period of time for which such fee would have been imposed, from and after the date on which such activity commenced until paid. This penalty shall be in addition to any other penalty imposed under this Chapter and must be paid prior to the issuance of any license. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 9-540.
- (d) Any licensee who fails to renew his license on or before the due date shall be deemed to be operating without a license following such due date, and shall be subject to all penalties imposed under this Chapter against persons required to be licensed and operating without a license. The non-licensed status may be removed by payment of the annual license fee for each year or portion of a year he operated without a license, plus a license fee penalty of 50% of the license fee due for each year. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 9-540.
- (e) Any licensee who permits his license to expire through cancellation as provided in Section 9-340, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for a license, shall be granted a new license as a new applicant and shall pay the current license fee imposed under Section 9-320.
- (f) Any licensee who needs a copy of his Transaction Privilege and Use Tax License which is still in effect shall be charged the current license fee for each reissuance of a license.
- (g) Any person conducting a business activity subject to licensing without obtaining a Transaction Privilege and Use Tax License shall be liable to the city for all applicable fees and penalties and shall be subject to the provisions of Sections 9-580 and 9-590, to the same extent as if such fees and penalties were taxes and penalties under such Sections.

Sec. 9-340. Licensing: cancellation; revocation.

- (a) Cancellation. The Tax Collector may cancel the Transaction Privilege and Use Tax License of any licensee as "inactive" if the taxpayer, required to report monthly, has neither filed any return nor remitted any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector.
- (b) Revocation. If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector may revoke the Transaction Privilege and Use Tax License of said licensee.
- (c) Notice and Hearing. The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the Transaction Privilege and Use Tax License. If the licensee requests a hearing

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within twenty (20) days of receipt of such notice, he shall be granted a hearing before the Tax Collector.

- (d) After cancellation or revocation of a taxpayer's license, the taxpayer shall not be issued a new license until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with all provisions of this Chapter.

Sec. 9-350. Operating without a license.

It shall be unlawful for any person who is required by this Chapter to obtain a Transaction Privilege and Use Tax License to engage in or continue in business without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter.

Sec. 9-360. Recordkeeping requirements.

- (a) It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by this Article; or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Arizona Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Tax Collector during any business day.
- (b) The Tax Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:
 - (1) only for future reporting periods, and
 - (2) only by express determination of the Tax Collector that such specific recordkeeping is necessary due to the inability of the taxing jurisdiction to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

Sec. 9-362. Recordkeeping: income.

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

- (a) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the City.
- (b) The gross income taxable under this Chapter, divided into categories as stated in the official City tax return.

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- (c) The gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return.
- (d) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed:
 - (1) If the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease, or license for use of rental equipment:
 - (A) The City Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent city, if applicable, and state tax numbers of the city and state where the customer resides), and
 - (B) The name, business address, and business activity of the customer, and
 - (C) Evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation.
 - (2) If the transaction is claimed to be exempt for any other reason:
 - (A) The name, business address, and business activity of the customer, and
 - (B) Evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation.
- (e) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.
- (f) With respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.

Sec. 9-364. Recordkeeping: expenditures.

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

- (a) The total price of all goods acquired for use or storage in the City.

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- (b) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City.
- (c) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.
- (d) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (e) As applicable to each taxpayer, documentation sufficient to the Tax Collector, so that he may ascertain:
 - (1) All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
 - (2) Disbursement of collected gratuities and related payroll information required of restaurants.
 - (3) (Reserved)
 - (A) (Reserved)
 - (B) (Reserved)
 - (4) The validity of any claims of proof of exemption.
 - (5) A claimed alternative prior value for reconstruction.
 - (6) All claimed exemptions to the Use Tax imposed by Article VI of this Chapter.
 - (7) (Reserved)
 - (8) Payments of tax to the Arizona Department of Transportation and computations therefor, when a motor-vehicle transporter claims such the exemption.
 - (9) (Reserved)
- (f) Any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.

Sec. 9-366. Recordkeeping: out-of-City and out-of-State sales.

- (a) Out-of-City Sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations.
- (b) Out-of-State sales. Persons engaged in a business claiming out-of-State sales shall maintain accounting records or books indicating for each out-of-State sale the following documentation:

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- (1) documentation of location of the buyer at the time of order placement; and
- (2) shipping, delivery, or freight documents showing where the buyer took delivery; and
- (3) documentation of intended location of use or storage of the tangible personal property sold to such buyer.

Sec. 9-370. Recordkeeping: claim of exclusion, exemption, deduction, or credit; documentation; liability.

- (a) All deductions, exclusions, exemptions and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required under A.R.S. Section 42-5022 or by this Chapter or Regulation.
- (b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

Sec. 9-372. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

Sec. 9-380. Inadequate or unsuitable records.

In the event the records provided by the taxpayer are considered by the Tax Collector to be inadequate or unsuitable to determine the amount of the tax for which such taxpayer is liable under the provisions of this Chapter, it is the responsibility of the taxpayer either:

- (a) to provide such other records required by this Chapter or Regulation; or
- (b) to correct or to reconstruct his records, to the satisfaction of the Tax Collector.

This change also eliminates the following Regulations, effective January 1, 2015:

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Regulation 9-300.1. Who must apply for a license.

Regulation 9-300.2. (Reserved)

Regulation 9-310.1. (Reserved)

Regulation 9-310.2. (Reserved)

Regulation 9-310.3. (Reserved)

Regulation 9-350.1. Recordkeeping: income.

Regulation 9-350.2. Recordkeeping: expenditures.

Regulation 9-350.3. Recordkeeping: out-of-City and out-of-State sales.

Regulation 9-360.1. Proof of exemption: sale for resale; sale, rental, lease or license of rental equipment.

Regulation 9-360.2. Proof of exemption: exemption certificate.

Section V. Model City Tax Code Section 9-422, Local Option #LL is amended as follows to correct an obsolete reference, with an effective date of July 20, 2011.

Sec. 9-422. (Reserved)

Section VI. Model City Tax Code Section 9-425 is amended as follows to eliminate Local Option #MM, which will no longer be used by any city or town, effective July 1, 2012. New Subsection (7) is added with an effective date of September 21, 2006.

Sec. 9-425. Job printing.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.
- (b) The tax imposed by this Section shall not apply to:
 - (1) job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.
 - (2) out-of-City sales.
 - (3) out-of-State sales.
 - (4) (Reserved)

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- (5) sales of job printing to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (6) (Reserved)
- (7) SALES OF POSTAGE AND FREIGHT EXCEPT THAT THE AMOUNT DEDUCTED SHALL NOT EXCEED THE ACTUAL POSTAGE AND FREIGHT EXPENSE THAT IS PAID TO THE UNITED STATES POSTAL SERVICE OR A COMMERCIAL DELIVERY SERVICE AND THAT IS SEPARATELY ITEMIZED BY THE TAXPAYER ON THE CUSTOMER'S INVOICE AND IN THE TAXPAYER'S RECORDS.

Section VII. Model City Tax Code Section 9-445 is amended as follows, with an effective date of July 20, 2011.

Sec. 9-445. Rental, leasing, and licensing for use of real property.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further that:
 - (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
 - (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
 - (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 9-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) (Reserved)

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- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
- (i) (Reserved)
- (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 9-444 of this code.
- (k) (Reserved)
- (l) (Reserved)
- (m) (Reserved)
- (n) Notwithstanding the provisions of Section 9-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.
- (o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.
- (p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.
- (r) Income received from the rental of any "low-income unit" as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the "gross rent" defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory "low-income unit" rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the "gross rent" limitation for the unit and the rent received from that unit.

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- ~~(S) The gross proceeds of sales or gross income derived from a commercial lease in which a reciprocal insurer or a corporation leases real property to an affiliated corporation is exempt. For the purposes of this paragraph:~~
- ~~(1) "Affiliated corporation" means a corporation that meets one of the following conditions:~~
- ~~(A) The corporation owns or controls at least eighty per cent of the lessor.~~
- ~~(B) The corporation is at least eighty per cent owned or controlled by the lessor.~~
- ~~(C) The corporation is at least eighty per cent owned or controlled by a corporation that also owns or controls at least eighty per cent of the lessor.~~
- ~~(D) The corporation is at least eighty per cent owned or controlled by a corporation that is at least eighty per cent owned or controlled by a reciprocal insurer.~~
- ~~(2) For the purposes of subsection (1), ownership and control are determined by reference to the voting shares of a corporation.~~
- ~~(3) "Reciprocal insurer" has the same meaning as prescribed in A.R.S. Section 20-762.~~
- (S) THE GROSS PROCEEDS OF A COMMERCIAL LEASE OF REAL PROPERTY BETWEEN AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS ARE EXEMPT. FOR THE PURPOSES OF THIS PARAGRAPH:
- (1) "AFFILIATED COMPANIES, BUSINESSES, PERSONS OR RECIPROCAL INSURERS" MEANS THE LESSOR HOLDS A CONTROLLING INTEREST IN THE LESSEE, THE LESSEE HOLDS A CONTROLLING INTEREST IN THE LESSOR, AN AFFILIATED ENTITY HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND THE LESSEE OR AN UNRELATED PERSON HOLDS A CONTROLLING INTEREST IN BOTH THE LESSOR AND LESSEE.
- (2) "CONTROLLING INTEREST" MEANS DIRECT OR INDIRECT OWNERSHIP OF AT LEAST EIGHTY PER CENT OF THE VOTING SHARES OF A CORPORATION OR OF THE INTERESTS IN A COMPANY, BUSINESS OR PERSON OTHER THAN A CORPORATION.
- (3) "RECIPROCAL INSURER" HAS THE SAME MEANING AS PRESCRIBED IN A.R.S. SECTION 20-762.

Section VIII. Model City Tax Code Section 9-450 is amended as follows, with an effective date of September 1, 2004.

Sec. 9-450. Rental, leasing, and licensing for use of tangible personal property.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing

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for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.

- (b) Special provisions relating to long-term motor vehicle leases. A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.
- (c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:
- (1) rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
 - (2) rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
 - (3) rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 9-410, or to a radio station, television station, or subscription television system.
 - (4) rental, leasing, or licensing for use of the following:
 - (A) prosthetics.
 - (B) income-producing capital equipment.
 - (C) mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

- (5) rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (6) separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.

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- (7) charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
- (8) (Reserved)
- (9) rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) rental, leasing and licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (11) rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the department of revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and city, as applicable, for examination.
- (12) LEASING OR RENTING CERTIFIED IGNITION INTERLOCK DEVICES INSTALLED PURSUANT TO THE REQUIREMENTS PRESCRIBED BY A.R.S. SECTION 28-1461. FOR THE PURPOSES OF THIS PARAGRAPH, "CERTIFIED IGNITION INTERLOCK DEVICE" HAS THE SAME MEANING PRESCRIBED IN A.R.S. SECTION 28-1301.

Section IX. Model City Tax Code Section 9-460 is amended as follows, with an effective date of October 1, 2007.

Sec. 9-460. Retail sales: measure of tax; burden of proof; exclusions.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.
- (b) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.
- (c) Exclusions. For the purposes of this Chapter, sales of tangible personal property shall not include:
 - (1) sales of stocks, bonds, options, or other similar materials.
 - (2) sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.

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- (3) sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
- (4) gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.
- (5) sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(6) SALES OF CASH EQUIVALENTS. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM THE REDEMPTION OF ANY CASH EQUIVALENT BY THE HOLDER AS A MEANS OF PAYMENT FOR GOODS OR SERVICES THAT ARE TAXABLE UNDER THIS ARTICLE IS SUBJECT TO THE TAX. "CASH EQUIVALENTS" MEANS ITEMS OR INTANGIBLES, WHETHER OR NOT NEGOTIABLE, THAT ARE SOLD TO ONE OR MORE PERSONS, THROUGH WHICH A VALUE DENOMINATED IN MONEY IS PURCHASED IN ADVANCE AND MAY BE REDEEMED IN FULL OR IN PART FOR TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES. CASH EQUIVALENTS INCLUDE GIFT CARDS, STORED VALUE CARDS, GIFT CERTIFICATES, VOUCHERS, TRAVELER'S CHECKS, MONEY ORDERS OR OTHER INSTRUMENTS, ORDERS OR ELECTRONIC MECHANISMS, SUCH AS AN ELECTRONIC CODE, PERSONAL IDENTIFICATION NUMBER OR DIGITAL PAYMENT MECHANISM, OR ANY OTHER PREPAID INTANGIBLE RIGHT TO ACQUIRE TANGIBLE PERSONAL PROPERTY, INTANGIBLES OR SERVICES IN THE FUTURE, WHETHER FROM THE SELLER OF THE CASH EQUIVALENT OR FROM ANOTHER PERSON. CASH EQUIVALENTS DO NOT INCLUDE EITHER OF THE FOLLOWING:

- (A) ITEMS OR INTANGIBLES THAT ARE SOLD TO ONE OR MORE PERSONS, THROUGH WHICH A VALUE IS NOT DENOMINATED IN MONEY.
- (B) PREPAID CALLING CARDS OR PREPAID AUTHORIZATION NUMBERS FOR TELECOMMUNICATIONS SERVICES MADE TAXABLE BY SUBSECTION (g) OF THIS SECTION.

- (d) (Reserved)
- (e) When this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.
- (f) The appropriate tax liability for any retail sale where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location.

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- (g) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section.

Section X. Model City Tax Code Section 9-462 is added as follows, with an effective date of July 1, 2013.

SEC. 9-462. RETAIL SALES: FOOD FOR HOME CONSUMPTION.

- (a) THE TAX RATE SHALL BE AT AN AMOUNT EQUAL TO THREE PERCENT (3%) OF THE GROSS INCOME FROM THE BUSINESS ACTIVITY UPON EVERY PERSON ENGAGING OR CONTINUING IN THE BUSINESS OF SELLING FOOD FOR HOME CONSUMPTION AT RETAIL.
- (b) FOR THE PURPOSES OF THIS SECTION ONLY, THE FOLLOWING DEFINITIONS SHALL BE APPLICABLE:
- (1) "ELIGIBLE GROCERY BUSINESS" MEANS AN ESTABLISHMENT WHOSE SALES OF FOOD ARE SUCH THAT IT IS ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF 1977 (P.L. 95-113; 91 STAT. 958.7 U.S.C. SECTION 2011 ET SEQ.), ACCORDING TO REGULATIONS IN EFFECT ON JANUARY 1, 1979. AN ESTABLISHMENT IS DEEMED ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM IF IT IS AUTHORIZED TO PARTICIPATE IN THE PROGRAM BY THE UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE FIELD OFFICE ON THE EFFECTIVE DATE OF THIS SECTION, OR IF, PRIOR TO A REPORTING PERIOD FOR WHICH THE RETURN IS FILED, SUCH RETAILER PROVES TO THE SATISFACTION OF THE TAX COLLECTOR THAT THE ESTABLISHMENT, BASED ON THE NATURE OF THE RETAILER'S FOOD SALES, COULD BE ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF 1977 ACCORDING TO REGULATIONS IN EFFECT ON JANUARY 1, 1979.
- (2) "FACILITIES FOR THE CONSUMPTION OF FOOD" MEANS TABLES, CHAIRS, BENCHES, BOOTHS, STOOLS, COUNTERS, AND SIMILAR CONVENIENCES, TRAYS, GLASSES, DISHES, OR OTHER TABLEWARE AND PARKING AREAS FOR THE CONVENIENCE OF IN-CAR CONSUMPTION OF FOOD IN OR ON THE PREMISES ON WHICH THE RETAILER CONDUCTS BUSINESS.
- (3) "FOOD FOR CONSUMPTION ON THE PREMISES" MEANS ANY OF THE FOLLOWING:
- (A) "HOT PREPARED FOOD" AS DEFINED BELOW.
- (B) HOT OR COLD SANDWICHES.

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- (C) FOOD SERVED BY AN ATTENDANT TO BE EATEN AT TABLES, CHAIRS, BENCHES, BOOTHS, STOOLS, COUNTERS, AND SIMILAR CONVENIENCES AND WITHIN PARKING AREAS FOR THE CONVENIENCE OF IN-CAR CONSUMPTION OF FOOD.
- (D) FOOD SERVED WITH TRAYS, GLASSES, DISHES, OR OTHER TABLEWARE.
- (E) BEVERAGES SOLD IN CUPS, GLASSES, OR OPEN CONTAINERS.
- (F) FOOD SOLD BY CATERERS.
- (G) FOOD SOLD WITHIN THE PREMISES OF THEATRES, MOVIES, OPERAS, SHOWS OF ANY TYPE OR NATURE, EXHIBITIONS, CONCERTS, CARNIVALS, CIRCUSES, AMUSEMENT PARKS, FAIRS, RACES, CONTESTS, GAMES, ATHLETIC EVENTS, RODEOS, BILLIARD AND POOL PARLORS, BOWLING ALLEYS, PUBLIC DANCES, DANCE HALLS, BOXING, WRESTLING AND OTHER MATCHES, AND ANY BUSINESS WHICH CHARGES ADMISSION, ENTRANCE, OR COVER FEES FOR EXHIBITION, AMUSEMENT, ENTERTAINMENT, OR INSTRUCTION.
- (H) ANY ITEMS CONTAINED IN SUBSECTIONS (A)(3)(A) THROUGH (G) ABOVE EVEN THOUGH THEY ARE SOLD ON A "TAKE-OUT" OR "TO GO" BASIS, AND WHETHER OR NOT THE ITEM IS PACKAGED, WRAPPED, OR IS ACTUALLY TAKEN FROM THE PREMISES.
- (4) "HOT PREPARED FOOD" MEANS THOSE PRODUCTS, ITEMS, OR INGREDIENTS OF FOOD WHICH ARE PREPARED AND INTENDED FOR CONSUMPTION IN A HEATED CONDITION. "HOT PREPARED FOOD" INCLUDES A COMBINATION OF HOT AND COLD FOOD ITEMS OR INGREDIENTS IF A SINGLE PRICE HAS BEEN ESTABLISHED.
- (5) "PREMISES" MEANS THE TOTAL SPACE AND FACILITIES IN OR ON WHICH A VENDOR CONDUCTS BUSINESS AND WHICH ARE OWNED OR CONTROLLED, IN WHOLE OR IN PART, BY A VENDOR OR WHICH ARE MADE AVAILABLE FOR THE USE OF CUSTOMERS OF THE VENDOR OR GROUP OF VENDORS, INCLUDING ANY BUILDING OR PART OF A BUILDING, PARKING LOT, OR GROUNDS.
- (6) "FOOD FOR HOME CONSUMPTION" MEANS ALL FOOD, EXCEPT FOOD FOR CONSUMPTION ON THE PREMISES, IF SOLD BY ANY OF THE FOLLOWING:

 - (A) AN ELIGIBLE GROCERY BUSINESS.
 - (B) A PERSON WHO CONDUCTS A BUSINESS WHOSE PRIMARY BUSINESS IS NOT THE SALE OF FOOD BUT WHO SELLS FOOD WHICH IS DISPLAYED, PACKAGED, AND SOLD IN A SIMILAR MANNER AS AN ELIGIBLE GROCERY BUSINESS.

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- (C) A PERSON WHO SELLS FOOD AND DOES NOT PROVIDE OR MAKE AVAILABLE ANY FACILITIES FOR THE CONSUMPTION OF FOOD ON THE PREMISES.
 - (D) A PERSON WHO CONDUCTS A DELICATESSEN BUSINESS EITHER FROM A COUNTER WHICH IS SEPARATE FROM THE PLACE AND CASH REGISTER WHERE TAXABLE SALES ARE MADE OR FROM A COUNTER WHICH HAS TWO CASH REGISTERS AND WHICH ARE USED TO RECORD TAXABLE AND TAX EXEMPT SALES, OR A RETAILER WHO CONDUCTS A DELICATESSEN BUSINESS WHO USES A CASH REGISTER WHICH HAS AT LEAST TWO TAX COMPUTING KEYS WHICH ARE USED TO RECORD TAXABLE AND TAX EXEMPT SALES.
 - (E) VENDING MACHINES AND OTHER TYPES OF AUTOMATIC RETAILERS.
 - (F) A PERSON'S SALES OF FOOD, DRINK AND CONDIMENT FOR CONSUMPTION WITHIN THE PREMISES OF ANY PRISON, JAIL OR OTHER INSTITUTION UNDER THE JURISDICTION OF THE STATE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF PUBLIC SAFETY, THE DEPARTMENT OF JUVENILE CORRECTIONS OR A COUNTY SHERIFF.
- (c) INCOME DERIVED FROM THE FOLLOWING SOURCES IS EXEMPT FROM THE TAX IMPOSED BY THIS SECTION:
- (1) SALES OF FOOD FOR HOME CONSUMPTION TO A PERSON REGULARLY ENGAGED IN THE BUSINESS OF SELLING SUCH PROPERTY.
 - (2) OUT-OF-CITY SALES OR OUT-OF-STATE SALES.
 - (3) CHARGES FOR DELIVERY OR OTHER "DIRECT CUSTOMER SERVICES" AS PRESCRIBED BY REGULATION.
 - (4) FOOD PURCHASED WITH FOOD STAMPS PROVIDED THROUGH THE FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF 1977 (P.L. 95-113; 91 STAT. 958.7 U.S.C. SECTION 2011 ET SEQ.) OR PURCHASED WITH FOOD INSTRUMENTS ISSUED UNDER SECTION 17 OF THE CHILD NUTRITION ACT (P.L. 95-627; 92 STAT. 3603; AND P.L. 99-669; SECTION 4302; 42 UNITED STATES CODE SECTION 1786) BUT ONLY TO THE EXTENT THAT FOOD STAMPS OR FOOD INSTRUMENTS WERE ACTUALLY USED TO PURCHASE SUCH FOOD.
 - (5) SALES OF FOOD PRODUCTS BY PRODUCERS AS PROVIDED FOR BY A.R.S. SECTIONS 3-561, 3-562 AND 3-563.
 - (6) SALES OF FOOD, BEVERAGES, CONDIMENTS AND ACCESSORIES TO A PUBLIC EDUCATIONAL ENTITY, PURSUANT TO ANY OF THE PROVISIONS OF TITLE 15, ARIZONA REVISED STATUTES, INCLUDING A REGULARLY

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ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. 15-802 ; TO THE EXTENT SUCH ITEMS ARE TO BE PREPARED OR SERVED TO INDIVIDUALS FOR CONSUMPTION ON THE PREMISES OF A PUBLIC EDUCATIONAL ENTITY DURING SCHOOL HOURS. FOR THE PURPOSES OF THIS SUBSECTION, "ACCESSORIES" MEANS PAPER PLATES, PLASTIC EATING UTENSILS, NAPKINS, PAPER CUPS, DRINKING STRAWS, PAPER SACKS OR OTHER DISPOSABLE CONTAINERS, OR OTHER ITEMS WHICH FACILITATE THE CONSUMPTION OF THE FOOD.

(7) SALES OF FOOD, BEVERAGES, CONDIMENTS AND ACCESSORIES TO A NONPROFIT CHARITABLE ORGANIZATION THAT HAS QUALIFIED AS AN EXEMPT ORGANIZATION UNDER 26 U.S.C. SECTION 501(C)(3) AND REGULARLY SERVES MEALS TO THE NEEDY AND INDIGENT ON A CONTINUING BASIS AT NO COST. FOR THE PURPOSES OF THIS SUBSECTION, "ACCESSORIES" MEANS PAPER PLATES, PLASTIC EATING UTENSILS, NAPKINS, PAPER CUPS, DRINKING STRAWS, PAPER SACKS OR OTHER DISPOSABLE CONTAINERS, OR OTHER ITEMS WHICH FACILITATE THE CONSUMPTION OF THE FOOD.

(d) REPORTING. SUCH PERSONS WHO SELL FOOD FOR HOME CONSUMPTION SHALL, IN CONJUNCTION WITH THE RETURN REQUIRED PURSUANT TO SECTION 9-520, REPORT TO THE TAX COLLECTOR IN A MANNER PRESCRIBED BY THE TAX COLLECTOR ALL SALES OF FOOD FOR HOME CONSUMPTION EXEMPTED FROM TAXES IMPOSED BY THIS CHAPTER.

(e) RECORDKEEPING.

(1) RETAILERS SHALL MAINTAIN ACCURATE, VERIFIABLE, AND COMPLETE RECORDS OF ALL PURCHASES AND SALES OF TANGIBLE PERSONAL PROPERTY IN ORDER TO VERIFY EXEMPTIONS FROM TAXES IMPOSED BY THIS CHAPTER. A RETAILER MAY USE ANY METHOD OF REPORTING THAT PROPERLY REFLECTS ALL PURCHASES AND SALES OF FOOD FOR HOME CONSUMPTION, AS WELL AS ALL PURCHASES AND SALES OF ITEMS SUBJECT TO TAXES IMPOSED BY THIS CHAPTER, PROVIDED THAT SUCH RECORDS ARE MAINTAINED IN ACCORDANCE WITH ARTICLE III, AND REGULATIONS OF THE TAX COLLECTOR.

(2) ANY PERSON WHO FAILS TO MAINTAIN RECORDS AS PROVIDED HEREIN SHALL BE DEEMED TO HAVE HAD NO SALES OF FOOD FOR HOME CONSUMPTION, AND IF UPON REQUEST BY THE TAX COLLECTOR, A PERSON CANNOT DEMONSTRATE TO THE TAX COLLECTOR THAT SUCH RECORDS AND REPORTS DO PROPERLY REFLECT ALL SALES OF FOOD FOR HOME CONSUMPTION, THE TAX COLLECTOR MAY RECOMPUTE THE AMOUNT OF TAX TO BE PAID AS PROVIDED IN SECTIONS 9-370 AND 9-545(B).

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Section XI. Model City Tax Code Section 9-465 is amended as follows. All changes are effective July 1, 2013, except new subsection (mm), which is effective January 1, 2007.

Sec. 9-465. Retail sales: exemptions.

Income derived from the following sources is exempt from the tax imposed by Section 9-460:

- (a) sales of tangible personal property to a person regularly engaged in the business of selling such property.
- (b) out-of-City sales or out-of-State sales.
- (c) charges for delivery, installation, or other direct customer services as prescribed by Regulation.
- (d) charges for repair services as prescribed by Regulation, when separately charged and separately maintained in the books and records of the taxpayer.
- (e) sales of warranty, maintenance, and service contracts, when separately charged and separately maintained in the books and records of the taxpayer.
- (f) sales of prosthetics.
- (g) sales of income-producing capital equipment.
- (h) sales of rental equipment and rental supplies.
- (i) sales of mining and metallurgical supplies.
- (j) sales of motor vehicle fuel and use fuel which are subject to a tax imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes; or sales of use fuel to a holder of a valid single trip use fuel tax permit issued under A.R.S. Section 28-5739, or sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
- (k) sales of tangible personal property to a construction contractor who holds a valid Privilege Tax License for engaging or continuing in the business of construction contracting where the tangible personal property sold is incorporated into any structure or improvement to real property as part of construction contracting activity.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) sales of tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines, or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) sales made directly to the Federal government to the extent of:

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- (1) one hundred percent (100%) of the gross income derived from retail sales made by a manufacturer, modifier, assembler, or repairer.
- (2) fifty percent (50%) of the gross income derived from retail sales made by any other person.
- (o) sales to hotels, bars, restaurants, dining cars, lunchrooms, boarding houses, or similar establishments of articles consumed as food, drink, or condiment, whether simple, mixed, or compounded, where such articles are customarily prepared or served to patrons for consumption on or off the premises, where the purchaser is properly licensed and paying a tax under Section 9-455 or the equivalent excise tax upon such income.
- (p) sales of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or sales of tangible personal property purchased in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (q) ~~food purchased with food stamps provided through the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786) but only to the extent that food stamps or food instruments were actually used to purchase such food. (RESERVED)~~
- (r) (Reserved)
 - (1) (Reserved)
 - (2) (Reserved)
 - (3) (Reserved)
 - (4) (Reserved)
- (s) sales of groundwater measuring devices required by A.R.S. Section 45-604.
- (t) (Reserved)
- (u) sales of aircraft acquired for use outside the State, as prescribed by Regulation.
- (v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
- (w) (Reserved)
- (x) ~~(Reserved)~~ SALES OF FOOD AND DRINK TO A PERSON WHO IS ENGAGED IN BUSINESS THAT IS CLASSIFIED UNDER THE RESTAURANT CLASSIFICATION AND THAT PROVIDES SUCH FOOD AND DRINK WITHOUT MONETARY CHARGE TO ITS EMPLOYEES FOR THEIR OWN CONSUMPTION ON THE PREMISES DURING SUCH EMPLOYEES' HOURS OF EMPLOYMENT.
- (y) (Reserved)

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- (z) (Reserved)
- (aa) the sale of tangible personal property used in remediation contracting as defined in Section 9-100 and Regulation 9-100.5.
- (bb) sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
 - (1) printed or photographic materials.
 - (2) electronic or digital media materials.
- (cc) sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. Section 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (dd) in computing the tax base in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a customer to enter into or continue a contract for telecommunication services that are taxable under Section 9-470, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.
- (ee) for the purposes of this Section, a sale of wireless telecommunication equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 9-470 is considered to be a sale for resale in the regular course of business.
- (ff) sales of alternative fuel as defined in A.R.S. Section 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.
- (gg) sales of food, beverages, condiments and accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, INCLUDING A REGULARLY ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. SECTION 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (hh) sales of personal hygiene items to a person engaged in the business of and subject to tax under Section 9-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.

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- (ii) for the purposes of this Section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
- (jj) sales of food, beverages, condiments and accessories to a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (kk) sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (ll) sales of solar energy devices, for taxable periods beginning from and after July 1, 2008. The retailer shall register with the department of revenue as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department of revenue and city, as applicable, for examination.

(MM) SALES OR OTHER TRANSFERS OF RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.

(NN) SALES OF MAGAZINES OR OTHER PERIODICALS OR OTHER PUBLICATIONS BY THIS STATE TO ENCOURAGE TOURIST TRAVEL.

(OO) SALES OF PAPER MACHINE CLOTHING, SUCH AS FORMING FABRICS AND DRYER FELTS, SOLD TO A PAPER MANUFACTURER AND DIRECTLY USED OR CONSUMED IN PAPER MANUFACTURING.

(PP) SALES OF OVERHEAD MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS USED IN PERFORMING A CONTRACT BETWEEN THE UNITED STATES GOVERNMENT AND A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, INCLUDING PROPERTY USED IN PERFORMING A SUBCONTRACT WITH A GOVERNMENT CONTRACTOR WHO IS A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, TO WHICH TITLE PASSES TO THE GOVERNMENT UNDER THE TERMS OF THE CONTRACT OR SUBCONTRACT.

(QQ) SALES OF COAL, PETROLEUM, COKE, NATURAL GAS, VIRGIN FUEL OIL AND ELECTRICITY SOLD TO A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR AS DEFINED IN A.R.S. SECTION 41-

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1514.02 AND DIRECTLY USED OR CONSUMED IN THE GENERATION OR PROVISION OF ON-SITE POWER OR ENERGY SOLELY FOR ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING OR ENVIRONMENTAL PROTECTION. THIS PARAGRAPH SHALL APPLY FOR TWENTY FULL CONSECUTIVE CALENDAR OR FISCAL YEARS FROM THE DATE THE FIRST PAPER MANUFACTURING MACHINE IS PLACED IN SERVICE. IN THE CASE OF AN ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR WHO DOES NOT MANUFACTURE PAPER, THE TIME PERIOD SHALL BEGIN WITH THE DATE THE FIRST MANUFACTURING, PROCESSING OR PRODUCTION EQUIPMENT IS PLACED IN SERVICE.

(RR) SALES OR GROSS INCOME DERIVED FROM SALES OF MACHINERY, EQUIPMENT, MATERIALS AND OTHER TANGIBLE PERSONAL PROPERTY USED DIRECTLY AND PREDOMINANTLY TO CONSTRUCT A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING FACILITY AS DESCRIBED IN A.R.S. SECTION 41-1514.02. THIS SUBSECTION APPLIES FOR TEN FULL CONSECUTIVE CALENDAR OR FISCAL YEARS AFTER THE START OF INITIAL CONSTRUCTION.

Section XII. Model City Tax Code Section 9-480 is amended as follows, with an effective date of January 1, 2007, except new Local Option #PP which is available to be selected effective August 1, 2014.

Sec. 9-480. Utility services.

- (a) The tax rate shall be at an amount equal to three percent (3%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:
- (1) consumers or ratepayers who reside within the City.
 - (2) consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.
- (b) Exclusion of certain sales of natural gas to a public utility. Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 9-460 and 9-465, and not considered gross income taxable under this Section.

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- (c) Resale utility services. Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.
- (d) (Reserved)
- (e) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.
- (g) The tax imposed by this Section shall not apply to:
 - (1) revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.
 - (2) revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.
- (h) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. Section 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.
- (I) THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO SALES OR OTHER TRANSFERS OF RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.
- (J) THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO THE PORTION OF GROSS PROCEEDS OF SALES OR GROSS INCOME ATTRIBUTABLE TO TRANSFERS OF ELECTRICITY BY ANY RETAIL ELECTRIC CUSTOMER OWNING A SOLAR

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PHOTOVOLTAIC ENERGY GENERATING SYSTEM TO AN ELECTRIC DISTRIBUTION SYSTEM, IF THE ELECTRICITY TRANSFERRED IS GENERATED BY THE CUSTOMER'S SYSTEM.

(K) (RESERVED)

Section XIII. Model City Tax Code Section 9-485 is amended as follows, with an effective date of July 1, 2013.

Sec. 9-485. (~~Reserved~~)WASTEWATER REMOVAL SERVICES

(a) THE TAX RATE SHALL BE AN AMOUNT EQUAL TO ZERO PERCENT (0%) OF THE GROSS INCOME FROM THE BUSINESS ACTIVITY UPON EVERY PERSON ENGAGING OR CONTINUING IN THE BUSINESS OF PROVIDING WASTEWATER REMOVAL SERVICES BY MEANS OF SEWER LINES OR SIMILAR PIPELINES TO:

(1) CONSUMERS OR RATEPAYERS WHO RESIDE WITHIN THE CITY.

(2) CONSUMERS OR RATEPAYERS OF THIS CITY, WHETHER WITHIN THE CITY OR WITHOUT, TO THE EXTENT THAT THIS CITY PROVIDES SUCH PERSONS WASTEWATER REMOVAL SERVICES, EXCLUDING CONSUMERS OR RATEPAYERS WHO ARE RESIDENTS OF ANOTHER CITY OR TOWN WHICH LEVIES AN EQUIVALENT EXCISE TAX UPON THIS CITY FOR PROVIDING SUCH WASTEWATER REMOVAL SERVICES TO SUCH PERSONS.

(b) THE TAX IMPOSED BY THIS SECTION SHALL NOT APPLY TO GROSS INCOME RELATING TO THE PROVIDING OF WASTEWATER REMOVAL SERVICES FROM A QUALIFYING HOSPITAL, QUALIFYING COMMUNITY HEALTH CENTER OR A QUALIFYING HEALTH CARE ORGANIZATION.

Section XIV. Model City Tax Code, Appendix IV, Section 9-570 is amended as follows to conform the Appendix language with prior changes made to Section 9-570 of the Model language, with an effective date of July 1, 2008.

Sec. 9-570. Administrative review; petition for hearing or for redetermination; finality of order. (State Administration and Audits)

(a) Closing agreements between the Tax Collector and a taxpayer have no force of law unless made in accordance with the provisions of A.R.S. Section 42-1113.

(b) Administrative review.

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- (1) Petitions of appeal shall be made to, and hearings shall be conducted by, the Arizona Department of Revenue, in accordance with the provisions of A.R.S. Section 42-1251, as modified by Section 9-571.
 - (2) (Reserved)
 - (3) (Reserved)
 - (4) (Reserved)
 - (5) Hearings shall be held by the Arizona Department of Revenue in accordance with the provisions of A.R.S. Section 42-1251. The Department's decision may be appealed to the State Board of Tax Appeals, in accordance with the provisions of A.R.S. Section 42-1253.
 - (6) (Reserved)
 - (7) (Reserved)
 - (8) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) Taxpayers shall be subject to the state taxpayer bill of rights (A.R.S. Section 42-2051 et. seq.).

**Sec. 9-570. Administrative review; petition for hearing or for redetermination; finality of order.
(Local Audits)**

For the purposes of this section, "Municipal Tax Hearing Office" means the administrative offices of the MUNICIPAL Tax Hearing Officer.

- (a) Informal Conference. A taxpayer shall have the right to discuss any proposed assessment with the auditor prior to the issuance of any assessment, but any such informal conference is not required for the taxpayer to file a petition for administrative review.
- (b) Administrative Review.
 - (1) Filing a Petition. Other than in the case of a jeopardy assessment, a taxpayer may contest the applicability or amount of tax, penalty, or interest imposed upon or paid by him pursuant to this Chapter by filing a petition for a hearing or for redetermination with the Tax Collector as set forth below:
 - (A) within forty-five (45) days of receipt by the taxpayer of notice of a determination by the Tax Collector that a tax, penalty, or interest amount is due, or that a request for refund or credit has been denied; or
 - (B) by voluntary payment of any contested amount when accompanied by a timely filed return and a petition requesting a refund of the protested portion of said payment; or

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- (C) by petition accompanying a timely filed return contesting an amount reported but not paid; or
 - (D) by petition requesting review of denial of waiver of penalty as provided in subsection 9-540(g).
- (2) Extension to file a petition. In all cases, the taxpayer may request ~~only one (1) AN~~ extension from the Tax Collector. Such request must be in writing, state the reasons for the requested delay ~~and time of delay requested~~, and must be filed with the Tax Collector within the period allowed above for originally filing a petition. The Tax Collector shall allow ~~such~~ A FORTY-FIVE (45) DAY extension to file a petition, when such written request has been properly and timely made by the taxpayer, ~~but such extension shall not exceed forty five (45) days beyond the time provided for originally filing a petition.~~ THE TAX COLLECTOR MAY GRANT AN ADDITIONAL EXTENSION AND MAY DETERMINE THE CORRESPONDING TIME OF ANY SUCH EXTENSION AT HIS SOLE DISCRETION.
- (3) Requirements for petition.
- (A) The petition shall be in writing and shall set forth the reasons why any correction, abatement, or refund should be granted, and the amount of reduction or refund requested. The petition may be amended at any time prior to the time the taxpayer rests his case at the hearing or such time as the Hearing Officer allows for submitting of amendments in cases of redeterminations without hearings. The Hearing Officer may require that amendments be in writing, and in that case, he shall provide a reasonable period of time to file the amendment. The Hearing Officer shall provide a reasonable period of time for the Tax Collector to review and respond to the petition and to any written amendments.
 - (B) The taxpayer, as part of the petition, may request a hearing which shall be granted by the Hearing Officer. If no request for hearing is made the petition shall be considered to be submitted for decision by the Hearing Officer on the matters contained in the petition and in any reply made by the Tax Collector.
 - (C) The provisions of this Section are exclusive, and no petition seeking any correction, abatement, or refund shall be considered unless the petition is timely and properly filed under the Section.
- (4) Transmittal to Hearing Officer. The city/town shall designate a Hearing Officer, who may be other than an employee of the (city/town). The Tax Collector, if designated to receive petitions, shall forward any petition to the Municipal Tax Hearing Officer within twenty (20) days after receipt, accompanied by documentation as to timeliness. In cases where the Hearing Officer determines that the petition is not timely or not in proper form, he shall notify both the taxpayer and the Tax Collector; and in cases of petitions not in proper form only, the Hearing Officer shall provide the taxpayer with an extension up to forty-five (45) days to correct the petition.
- (5) Hearings shall be conducted by a Hearing Officer and shall be continuous until the Hearing Officer closes the record. The taxpayer may be heard in person or by his

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authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same.

- (6) Redeterminations upon a "petition for redetermination" shall follow the same conditions, except that no oral hearing shall be held.
 - (7) Hearing Ruling. In either case, the Hearing Officer shall issue his ruling not later than forty-five (45) days after the close of the record by the Hearing Officer.
 - (8) Notice of Refund or Adjusted Assessment. Within sixty (60) days of the issuance of the Hearing Officer's decision, the Tax Collector shall issue to the taxpayer either a notice of refund or an adjusted assessment recalculated to conform to the Hearing Officer's decision.
- (c) Stipulations that future tax is also protested. A taxpayer may enter into a stipulation with the Tax Collector that future taxes of similar nature are also at issue in any protest or appeal. However, unless such stipulation is made, it is presumed that the protest or appeal deals solely and exclusively with the tax specifically protested and no other. When a taxpayer enters into such a stipulation with the Tax Collector that future taxes of similar nature will be included in any redetermination, hearing, or court case, it is the burden of that taxpayer to identify, segregate, and keep record of such income or protested taxable amount in his books and records in the same manner as the taxpayer is required to segregate exempt income.
- (d) When an assessment is final.
- (1) If a request for administrative review and petition for hearing or redetermination of an assessment made by the Tax Collector is not filed within the period required by subsection (b) above, such person shall be deemed to have waived and abandoned the right to question the amount determined to be due and any tax, interest, or penalty determined to be due shall be final as provided in subsections 9-545(a) and 9-555(f).
 - (2) The decision made by the Hearing Officer upon administrative review by hearing or redetermination shall become final thirty (30) days after the taxpayer receives the notice of refund or adjusted assessment required by subsection (b)(8) above, unless the taxpayer appeals the order or decision in the manner provided in Section 9-575.
- (e) The provisions of the state taxpayer bill of rights (A.R.S. Section 42-2051 et. seq.) shall not apply.

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Section XV. Model City Tax Code Section 9-660 is amended as follows. All changes are effective July 1, 2013, except new subsection (mm), which is effective January 1, 2007, and new Local Option #PP which is available to be selected effective August 1, 2014.

Sec. 9-660. Use tax: exemptions.

The storage or use in this City of the following tangible personal property is exempt from the Use Tax imposed by this Article:

- (a) tangible personal property brought into the City by an individual who was not a resident of the City at the time the property was acquired for his own use, if the first actual use of such property was outside the City, unless such property is used in conducting a business in this City.
- (b) tangible personal property, the value of which does not exceed the amount of one thousand dollars (\$1,000) per item, acquired by an individual outside the limits of the City for his personal use and enjoyment.
- (c) charges for delivery, installation, or other customer services, as prescribed by Regulation.
- (d) charges for repair services, as prescribed by Regulation.
- (e) separately itemized charges for warranty, maintenance, and service contracts.
- (f) prosthetics.
- (g) income-producing capital equipment.
- (h) rental equipment and rental supplies.
- (i) mining and metallurgical supplies.
- (j) motor vehicle fuel and use fuel which are used upon the highways of this State and upon which a tax has been imposed under the provisions of Article I or II, Chapter 16, Title 28, Arizona Revised Statutes.
- (k) tangible personal property purchased by a construction contractor, but not an owner-builder, when such person holds a valid Privilege License for engaging or continuing in the business of construction contracting, and where the property acquired is incorporated into any structure or improvement to real property in fulfillment of a construction contract.
- (l) sales of motor vehicles to nonresidents of this State for use outside this State if the vendor ships or delivers the motor vehicle to a destination outside this State.
- (m) tangible personal property which directly enters into and becomes an ingredient or component part of a product sold in the regular course of the business of job printing, manufacturing, or publication of newspapers, magazines or other periodicals. Tangible personal property which is consumed or used up in a manufacturing, job printing, publishing, or production process is not an ingredient nor component part of a product.
- (n) rental, leasing, or licensing for use of film, tape, or slides by a theater or other person taxed under Section 9-410, or by a radio station, television station, or subscription television system.

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- (o) food served to patrons for a consideration by any person engaged in a business properly licensed and taxed under Section 9-455, but not food consumed by owners, agents, or employees of such business.
- (p) tangible personal property acquired by a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property is in fact used in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (q) ~~food purchased with food stamps provided through the food stamp program established by the Food Stamp Act of 1977 (P.L. 95-113; 91 Stat. 958.7 U.S.C. Section 2011 et seq.) or purchased with food instruments issued under Section 17 of the Child Nutrition Act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-669; Section 4302; 42 United States Code Section 1786).~~ (RESERVED)
- (r) (Reserved)
 - (1) (Reserved)
 - (2) (Reserved)
 - (3) (Reserved)
 - (4) (Reserved)
- (s) groundwater measuring devices required by A.R.S. Section 45-604.
- (t) (Reserved)
- (u) aircraft acquired for use outside the State, as prescribed by Regulation.
- (v) sales of food products by producers as provided for by A.R.S. Sections 3-561, 3-562 and 3-563.
- (w) (Reserved)
- (x) ~~(Reserved)~~ FOOD AND DRINK PROVIDED BY A PERSON WHO IS ENGAGED IN BUSINESS THAT IS CLASSIFIED UNDER THE RESTAURANT CLASSIFICATION WITHOUT MONETARY CHARGE TO ITS EMPLOYEES FOR THEIR OWN CONSUMPTION ON THE PREMISES DURING SUCH EMPLOYEES' HOURS OF EMPLOYMENT.
- (y) (Reserved)
- (z) (Reserved)
- (aa) tangible personal property used in remediation contracting as defined in Section 9-100 and Regulation 9-100.5.
- (bb) materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:
 - (1) printed or photographic materials.
 - (2) electronic or digital media materials.

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- (cc) food, beverages, condiments and accessories used for serving food and beverages by a commercial airline, as defined in A.R.S. Section 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (dd) wireless telecommunication equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunication services that are taxable under Section 9-470.
- (ee) (Reserved)
- (ff) alternative fuel as defined in A.R.S. Section 1-215, by a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.
- (gg) food, beverages, condiments and accessories purchased by or for a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, INCLUDING A REGULARLY ORGANIZED PRIVATE OR PAROCHIAL SCHOOL THAT OFFERS AN EDUCATIONAL PROGRAM FOR GRADE TWELVE OR UNDER WHICH MAY BE ATTENDED IN SUBSTITUTION FOR A PUBLIC SCHOOL PURSUANT TO A.R.S. SECTION 15-802; to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (hh) personal hygiene items purchased by a person engaged in the business of and subject to tax under Section 9-444 of this code if the tangible personal property is furnished without additional charge to and intended to be consumed by the person during his occupancy.
- (ii) the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.
- (jj) food, beverages, condiments and accessories purchased by or for a nonprofit charitable organization that has qualified as an exempt organization under 26 U.S.C. Section 501(c)(3) and regularly serves meals to the needy and indigent on a continuing basis at no cost. For the purposes of this subsection, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.
- (kk) sales of motor vehicles that use alternative fuel if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and sales of equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.

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- (II) The storage, use or consumption of tangible personal property in the city or town by a school district or charter school.
- (MM) RENEWABLE ENERGY CREDITS OR ANY OTHER UNIT CREATED TO TRACK ENERGY DERIVED FROM RENEWABLE ENERGY RESOURCES. FOR THE PURPOSES OF THIS PARAGRAPH, "RENEWABLE ENERGY CREDIT" MEANS A UNIT CREATED ADMINISTRATIVELY BY THE CORPORATION COMMISSION OR GOVERNING BODY OF A PUBLIC POWER UTILITY TO TRACK KILOWATT HOURS OF ELECTRICITY DERIVED FROM A RENEWABLE ENERGY RESOURCE OR THE KILOWATT HOUR EQUIVALENT OF CONVENTIONAL ENERGY RESOURCES DISPLACED BY DISTRIBUTED RENEWABLE ENERGY RESOURCES.
- (NN) MAGAZINES OR OTHER PERIODICALS OR OTHER PUBLICATIONS BY THIS STATE TO ENCOURAGE TOURIST TRAVEL.
- (OO) PAPER MACHINE CLOTHING, SUCH AS FORMING FABRICS AND DRYER FELTS, SOLD TO A PAPER MANUFACTURER AND DIRECTLY USED OR CONSUMED IN PAPER MANUFACTURING.
- (PP) OVERHEAD MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY THAT IS USED IN PERFORMING A CONTRACT BETWEEN THE UNITED STATES GOVERNMENT AND A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, INCLUDING PROPERTY USED IN PERFORMING A SUBCONTRACT WITH A GOVERNMENT CONTRACTOR WHO IS A MANUFACTURER, MODIFIER, ASSEMBLER OR REPAIRER, TO WHICH TITLE PASSES TO THE GOVERNMENT UNDER THE TERMS OF THE CONTRACT OR SUBCONTRACT.
- (QQ) COAL, PETROLEUM, COKE, NATURAL GAS, VIRGIN FUEL OIL AND ELECTRICITY SOLD TO A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR AS DEFINED IN A.R.S. SECTION 41-1514.02 AND DIRECTLY USED OR CONSUMED IN THE GENERATION OR PROVISION OF ON-SITE POWER OR ENERGY SOLELY FOR ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING OR ENVIRONMENTAL PROTECTION. THIS PARAGRAPH SHALL APPLY FOR TWENTY FULL CONSECUTIVE CALENDAR OR FISCAL YEARS FROM THE DATE THE FIRST PAPER MANUFACTURING MACHINE IS PLACED IN SERVICE. IN THE CASE OF AN ENVIRONMENTAL TECHNOLOGY MANUFACTURER, PRODUCER OR PROCESSOR WHO DOES NOT MANUFACTURE PAPER, THE TIME PERIOD SHALL BEGIN WITH THE DATE THE FIRST MANUFACTURING, PROCESSING OR PRODUCTION EQUIPMENT IS PLACED IN SERVICE.
- (RR) MACHINERY, EQUIPMENT, MATERIALS AND OTHER TANGIBLE PERSONAL PROPERTY USED DIRECTLY AND PREDOMINANTLY TO CONSTRUCT A QUALIFIED ENVIRONMENTAL TECHNOLOGY MANUFACTURING, PRODUCING OR PROCESSING FACILITY AS DESCRIBED IN A.R.S. SECTION 41-1514.02. THIS SUBSECTION APPLIES FOR TEN FULL CONSECUTIVE CALENDAR OR FISCAL YEARS AFTER THE START OF INITIAL CONSTRUCTION.

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(SS) (RESERVED)

Section XVI. Model City Tax Code Regulation 9-120.1 is repealed, with an effective date of July 1, 2013.

~~Reg. 9-120.1. Food for home consumption: recordkeeping and reporting requirements.~~

- ~~(a) — **Reporting.** Such persons who sell food for home consumption shall, in conjunction with the return required pursuant to Section 9-520, report to the Tax Collector in a manner prescribed by the Tax Collector all sales of food for home consumption exempted from taxes imposed by this Chapter.~~
- ~~(b) — **Recordkeeping.**~~
- ~~(1) — Retailers shall maintain accurate, verifiable, and complete records of all purchases and sales of tangible personal property in order to verify exemptions from taxes imposed by this Chapter. A retailer may use any method of reporting that properly reflects all purchases and sales of food for home consumption, as well as all purchases and sales of items subject to taxes imposed by this Chapter, provided that such records are maintained in accordance with Article III, and regulations of the Tax Collector.~~
- ~~(2) — Any person who fails to maintain records as provided herein shall be deemed to have had no sales of food for home consumption, and if upon request by the Tax Collector, a person cannot demonstrate to the Tax Collector that such records and reports do properly reflect all sales of food for home consumption, the Tax Collector may recompute the amount of tax to be paid as provided in Sections 9-370 and 9-545(b).~~

~~Reg. 9-120.1. (Reserved)~~

Section XVII. Model City Tax Code Regulation 9-270.1 is amended as follows, with an effective date of July 1, 2013.

Reg. 9-270.1. Proprietary activities of municipalities are not considered activities of a governmental entity.

The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 9-270:

- (a) rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.

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- (b) producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.
- (c) sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.
- (d) ~~(Reserved)~~ PROVIDING WASTEWATER REMOVAL SERVICES TO CONSUMERS OR RATEPAYERS BY MEANS OF SEWER LINES OR SIMILAR PIPELINES.

Section XVIII. Model City Tax Code Regulation 9-460.1 is amended as follows, with an effective date of July 1, 2013.

Reg. 9-460.1. Distinction between retail sales and certain other transfers of tangible personal property.

- (a) Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 9-460:
 - (1) tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 9-415 through 9-418.
 - (2) (Reserved)
 - (3) job printing, per Section 9-425.
 - (4) mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted From the ground, per Section 9-430.
 - (5) publication of newspapers, magazines, and other periodicals, per Section 9-435.
 - (6) rental, leasing, and licensing of real or tangible personal property, per Sections 9-445 or 9-450.
 - (7) restaurants and bars, per Section 9-455.
 - (8) FOOD FOR HOME CONSUMPTION, PER SECTION 9-462.
 - ~~(8)~~ (9) telecommunications services, per Section 9-470.
 - ~~(9)~~ (10) utility services, per Section 9-480.
 - (11) WASTEWATER REMOVAL SERVICES, PER SECTION 9-485.
- (b) Distinction between construction contracting, retail, and certain direct customer service activities.
 - (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.

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- (2) Items attached or installed on tangible personal property are retail sales.
- (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).
- (4) Demolition, earth moving, and wrecking activities are considered construction contracting.
- (c) The sale of sand, rock, and gravel extracted from the ground shall be deemed a sale of tangible personal property and not mining or metallurgical activity.
- (d) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.
- (e) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
 - (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
 - (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
 - (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
 - (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

ORDINANCE O16-09-07

AN ORDINANCE OF THE CITY OF EL MIRAGE, ARIZONA, RELATING TO THE TRANSACTION PRIVILEGE TAX; ADOPTING "THE 2012-2014 AMENDMENTS TO THE TAX CODE OF THE CITY OF EL MIRAGE" BY REFERENCE; ESTABLISHING EFFECTIVE DATES; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA:

Section 1: That certain document known as "The 2012-2014 Amendments to the Tax Code of the City of El Mirage", three copies of which are on file in the office of the city clerk of the City of El Mirage, Arizona, which document was made a public record by Resolution R16-09-19 of the City of Mirage, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

Section 2: Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 3: If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4: The provisions of this ordinance conforms this local code to the Model City Tax Code, which is controlling. The provisions of each section are effective as stated in each section and are as provided by the Municipal Tax Code Commission upon approval of the stated change to the Model City Tax Code. Provisions subject to a retroactive effective date at the time of approval by the Municipal Tax Code Commission favor taxpayers by reducing an imposition of the tax or increasing an allowable deduction, exemption, or exclusion. Provisions that increase the imposition of the tax or decrease the application of a deduction, exemption, or exclusion had a prospective effective date at the time of approval by the Municipal Tax Code Commission. Provisions creating a new Option state the first effective date the new Option is available for selection. Provisions eliminating an existing Option state the last effective date of the eliminated Option.

PASSED AND ADOPTED by the Mayor and Council of the City of El Mirage, Arizona, this 6th day of September, 2016.

Mayor Lana Mook

ATTEST:

City Clerk Sharon Antes

APPROVED AS TO FORM:

City Attorney Robert M. Hall

ORDINANCE O16-09-07

AN ORDINANCE OF THE CITY OF EL MIRAGE, ARIZONA, RELATING TO THE TRANSACTION PRIVILEGE TAX; ADOPTING "THE 2012-2014 AMENDMENTS TO THE TAX CODE OF THE CITY OF EL MIRAGE" BY REFERENCE; ESTABLISHING EFFECTIVE DATES; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA:

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Section 2: Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

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Section 4: The provisions of this ordinance conforms this local code to the Model City Tax Code, which is controlling. The provisions of each section are effective as stated in each section and are as provided by the Municipal Tax Code Commission upon approval of the stated change to the Model City Tax Code. Provisions subject to a retroactive effective date at the time of approval by the Municipal Tax Code Commission favor taxpayers by reducing an imposition of the tax or increasing an allowable deduction, exemption, or exclusion. Provisions that increase the imposition of the tax or decrease the application of a deduction, exemption, or exclusion had a prospective effective date at the time of approval by the Municipal Tax Code Commission. Provisions creating a new Option state the first effective date the new Option is available for selection. Provisions eliminating an existing Option state the last effective date of the eliminated Option.

PASSED AND ADOPTED by the Mayor and Council of the City of El Mirage, Arizona, this 6th day of September, 2016.

Mayor Lana Mook

ATTEST:

City Clerk Sharon Antes

APPROVED AS TO FORM:

City Attorney Robert M. Hall

RESOLUTION R16-09-20

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA DECLARING AS PUBLIC RECORD THAT CERTAIN DOCUMENT TITLED “CHAPTER 30: ADMINISTRATION GENERALLY, *MEET AND CONFER*”

WHEREAS, Arizona Revised Statutes §9-802 provides a procedure whereby a municipality may enact the provisions of a code or public record by reference, without setting forth such provisions, provided that the adopting ordinance is published in full,

NOW, THEREFORE, BE IT RESOLVED, BY THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA, as follows:

- Section 1. That the document attached hereto as Exhibit “A” amending Chapter 30, of the City Code of the City of El Mirage, Arizona, and titled “CHAPTER 30: ADMINISTRATION GENERALLY, *Meet and Confer*,” is hereby declared to be a public record.
- Section 2. That the Memorandums of Understanding (MOUs) between the City of El Mirage and the El Mirage Police Employees Association (EMPEA) and the El Mirage Fire Fighters Association (EMFFA) shall continue in full force and effect through their termination dates; June 30, 2017 and June 30, 2019, respectively.
- Section 3. It is the intent of Council not to reduce wages and benefits afforded to the members of the EMPEA and EMFFA as of the adoption of this document, which are identified on the attached Appendix 1 and 2. Additional “wages and benefits” will be established in accordance with Section §31.20 CITY MANAGER of the City Code.
- Section 4. That the documents attached hereto as Appendix 1 and 2, containing the wages and benefits afforded to the members of the EMPEA and EMFFA, are hereby ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the Mayor and Council of the City of El Mirage, Arizona, this 6th day of September, 2016.

Lana Mook, Mayor

ATTEST:

APPROVED AS TO FORM:

Sharon Antes, City Clerk

Robert Hall, City Attorney

EXHIBIT "A"

CHAPTER 30: ADMINISTRATION GENERALLY, *MEET AND CONFER*

AMENDMENTS

§ 30.07 MEET AND CONFER

(A) *Findings and purpose.*

(1) The citizens of El Mirage have a fundamental interest in the development of harmonious and cooperative relations between city management, elected officials, administrators, and the employees of El Mirage;

(2) Recognition by the city of the fundamental rights of public employees to organize and full acceptance of the principle and procedure of full communication between public employers and public employees, can alleviate various forms of strife and unrest;

(3) The city, its employees and employee organization, have a basic obligation to the public to assure the orderly and continuous operation and functions of government;

(4) Strikes, work stoppages, slowdowns, and other concerted efforts designed to disrupt city services, are contrary to the public good and are strictly prohibited. Participation in these efforts may be grounds for termination;

(5) It is the purpose of this section to obligate the city management, city employees and their representatives, acting within the framework of law, to enter into discussions with affirmative willingness to resolve issues, grievances, and disputes relating to working conditions, ~~wages, benefits,~~ and hours of work. It is also the purpose of this section to promote harmonious employer-employee relations by providing a uniform basis for recognizing the right of public employees to join, or refrain from joining, an organization of their own choice. Also, it is their right to be represented by the organization in their dealings with the city in accordance with the provisions of this section. Representation shall only be provided on matters subject to meeting and conferring, in accordance with Section (C)(1)(a) herein, which expressly exclude wages and benefits. Additionally, this section provides that the results of agreements between the employer and its employees shall be drafted into written memorandums of understanding.

(6) It is not the intent of this ordinance to conflict with the Arizona Revised Statutes with regard to wages and benefits as it relates to Public Safety employee organizational rights. In the event such a conflict exists, the Statutes are intended to prevail.

(B) *Employee groups.*

(1) There shall be two groups within the city. It shall include:

(a) All police officers in classifications up to and including Sergeants. ~~Lieutenants, dispatchers, records clerks;~~

(b) Firefighters up to and including the rank of Captain.

(2) Authorized representation of an employee group shall be determined by the presentation of a petition (or membership applications) to the City Manager containing the signatures of at least 51% of the employees in the above designated groups. The petition shall designate the employee group and the employee organization designated to represent those employees. Upon verification of the signatures, the City Manager shall designate the named employee organization, as the official and exclusive employee organization for representation purposes provided for by this section. The designated employee organization shall have the right to bi-weekly or monthly dues deductions, if approved by the employees of the organization.

(C) Meeting and conferring.

(1) (a) An employee organization that has been verified by the City Manager, shall submit a proposal to the City Manager relating to ~~wages, benefits, hours,~~ safety regulations and other working conditions, by December 1 of each year.

(b) In the first year of this section, the employee organization shall submit its initial proposal by April 1.

(2) Upon receiving a proposal from a verified employee organization, the City Manager, shall submit a written response to the proposal to the employee organization within 30 days from receipt of the proposal.

(3) Within ten days from receipt of the City Manager's response, representatives of the employee organization and the City Manager, as determined by the employee organization, shall begin "meeting and conferring" at mutually agreed upon locations and times, for the purpose of entering into a written memorandum of understanding relating to the proposal regarding working conditions, ~~wages, benefits,~~ and hours. Meetings shall be at least three hours in duration, unless mutually agreed otherwise. Meetings shall take place weekly until an agreement is reached, or impasse is declared.

(4) The City Manager, or his or her designated representative, and the representative of the employee organization, shall initial all areas of agreement. Those areas which were not agreed to shall be outlined as areas in dispute. If agreement has not been reached by March 10, a federal mediator will be requested by the moving party. The City Manager, the employee representatives, and the federal mediator, will meet as often as necessary to reach an agreement.

(5) If an agreement still has not been reached by April 1, an arbitrator will be requested by the moving party from the American Arbitration Association. Standard rules of the American Arbitration Association will be utilized in the selection and use of the arbitrator. However, selection of the arbitrator shall be limited to residents of Yavapai, Coconino, or Maricopa County.

(6) All issues not previously agreed to will be submitted to the arbitrator for resolution. On or before May 1, or as soon thereafter as is practicable, all areas of agreement, as well as those areas in dispute and still under consideration, and the recommendations of the arbitrator, shall be submitted to Mayor and Council for their consideration. The Mayor and Council may also take whatever actions they feel appropriate with regard to those areas in dispute. Final action by the Mayor and Council shall constitute the memorandum of understanding ~~for the following fiscal year~~.

APPENDIX 1
WAGES AND BENEFITS
EL MIRAGE POLICE EMPLOYEES ASSOCIATION (EMPEA)

1. Initial Minimum and Maximum Pay Rates: Police Officer minimum and maximum hourly rate is: \$23.82 – \$35.73. Police Sergeant minimum and maximum hourly rate is: \$31.17 – \$46.75. Police Recruit has one hourly rate which is \$18.50. These minimum and maximum pay rates may be adjusted by the City Council from time to time.
2. Promotions: All promotions shall require an increase of the promoted member’s pay rate to either the bottom of the pay range of the new position or five percent (5%) increase to the unit member’s existing pay rate, whichever is greater **(FY 2011- 2012 MOU Article 3, Paragraph 5.)**.
3. FTO: All Unit members assigned as Field Training Officers/Employees (FTO) shall receive their regular rate plus 5% base hourly rate for FTO Assignment Pay upon successful completion of the Certification requirements and while actively involved in training a trainee employee (sworn) **(FY 2011- 2012 MOU Article 3, Paragraph 6.)**.
4. Bilingual: Unit members who have demonstrated a proficiency in a second language, and routinely provide translation shall receive \$0.75 per hour as language adjustment pay. Unit members must pass an initial proficiency test to receive/continue receiving bi-lingual pay. At no time will a unit member be able to obtain more than an adjustment of \$0.75 per hour regardless of the number of languages or sign language that the unit member becomes proficient in **(FY 2011- 2012 MOU Article 3, Paragraph 7.)**.
5. Deferred Compensation: It is mandatory for each Unit member to contribute a minimum of \$35 per pay period to the City designated deferred compensation provider. The City of El Mirage will match each Unit member’s minimum contribution, indicated above, for 26 pay periods **(FY 2011- 2012 MOU Article 3, Paragraph 8.)**.
6. Holidays/Personal Leave: The City agrees to compensate unit employees for the following ten (10) holidays and two (2) personal leave days: **(FY 2011- 2012 MOU Article 5, Paragraph A.)**.

New Year's Day	January 1
Martin Luther King Jr. Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Holiday	Fourth Thursday in November
Thanksgiving Holiday	Day after Thanksgiving
Christmas Day	December 25
Two Personal Leave Days	Floating

Unit employees who work on a holiday listed in paragraph A above will be paid, in addition to pay for actual hours worked on the holiday, ten (10) hours of holiday pay for that day at the employee's regular rate of pay. Unit employees who do not work on holidays listed in paragraph A above will be paid ten (10) hours holiday pay for that day at the employee's regular rate of pay **(FY 2011- 2012 MOU Article 5, Paragraph B.)**.

Personal Leave: Each Member shall, in addition to any vacation leave provided herein below, be entitled to twenty (20) hours of personal leave off with pay during the fiscal year ~~2011-2012~~. The personal leave time must be used prior to the end of the day on June 30, ~~2012~~ of that fiscal year **(FY 2011- 2012 MOU Article 5, Paragraph C.)**.

7. Uniform Allowance: Sworn, full time Unit personnel will be entitled to receive reimbursement for authorized original issue and/or maintenance of uniforms up to \$1,100 per fiscal year, with no carryover to the next fiscal year. All reimbursement requests shall include paid receipts and will require approval of the Police Chief prior to submission to the Finance Department **(FY 2011-2012 MOU as amended April 2014 MOU Addendum Section 2. Article 6, Paragraph a.)**. If a unit member leaves employment with the City prior to September 30 in any given year, he/she shall reimburse the City for all reimbursements received since July 1 of that year **(FY 2011-2012 MOU as amended April 2014 MOU Addendum Section 2. Article 6, Paragraph d.)**. The Police Chief shall be the final authority with regard to eligible reimbursement items **(FY 2011-2012 MOU as amended April 2014 MOU Addendum Section 2. Article 6, Paragraph e.)**.

Items approved for reimbursement include uniform apparel listed in the City of El Mirage Police Department Operations Orders such as pants, shirts, shoes, jackets, outer vest carriers, utility belt and accessories, flashlights, ball caps, etc. Firearms and ammunition are not reimbursable. Unit personnel may be reimbursed up to \$500 from the \$1,100, for the purchase of court attire **(FY 2011-2012 MOU as amended April 2014 MOU Addendum Section 2. Article 6, Paragraph b.)**.

Newly hired Unit personnel will be eligible for the allowance, on a prorated basis, based on their hire date with a minimum allowance of \$525, as outlined below: **(FY 2011-2012 MOU as amended April 2014 MOU Addendum Section 2. Article 6, Paragraph c.)**

Month Hired	Reimbursement Amount
July	\$1100
August	\$990
September	\$890
October	\$800
November	\$720
December	\$650
January	\$585
February to June	\$525

8. Compensatory Time: Comp Time may be accumulated up to a maximum of one hundred and fifty (150) hours. Any time over one hundred fifty (150) hours will be paid. Compensatory time may be carried beyond the end of the calendar year in which it is

earned (**FY 2011- 2012 MOU Article 9.**)

9. Vacation Leave: All full-time Unit personnel working for the police department shall earn vacation leave as outlined in City of El Mirage Policies and Procedures, but not less than the following schedule: (**FY 2011- 2012 MOU Article 12, Paragraph A.1.**)

0 to 2 years	6.67 hours per month	160 hour max
2 to 5 years	8 hours per month	252 hour max
5 to 10 years	10 hours per month	300 hour max
10 to 15 years	13.33 hours per month	380 hour max
15+	15 hours per month	420

When a Unit employee is temporarily recalled to duty while on an authorized vacation out of the City, and out of Maricopa County, by order of the Chief of Police, or his designee, he shall be reimbursed for necessary and provable transportation expenses as determined by the Police Chief (**FY 2011- 2012 MOU Article 12, Paragraph A.2.**)

10. Sick Leave Accrual: Accrual for full time Unit personnel shall be at a rate of (3.70) hours per pay period and shall have no maximum limit (**FY 2011- 2012 MOU Article 12, Paragraph B.1.**)

11. Sick Leave Emergency Clause:

- A. It shall further be the policy of the city of El Mirage to allow emergency donations of sick leave by Unit members to another Unit member to cover illness or injury.
- B. This donation of sick leave shall not be used to bolster any Unit member's sick leave if that Unit member has any other leave credited to his/her accounts.
- C. Donations must be transferred and credited in full hour increments.
- D. Donations must be submitted on the City-approved form (**FY 2011- 2012 MOU Article 12, Paragraph B.2.**)

12. Sick Leave Conversion: A unit member who has accumulated a minimum of one thousand (1,000) hours or more of accrued and unused sick leave at the time of a duty-related retirement shall be eligible for pay of an amount of compensation equal to forty percent (40%) of this base hourly wage for all hours in excess of five hundred (500) hours.

A unit member who has accumulated a minimum of one thousand four hundred (1,400) qualifying hours or more of accrued and unused sick leave at the time of a duty-related retirement shall be eligible for payment of an amount of compensation equal to sixty percent (60%) of his base hourly rate for all hours in excess of four hundred and fifty (450) hours (**FY 2011- 2012 MOU Article 12, Paragraph C.**)

13. Industrial Leave: All Unit members are covered by Worker's Compensation Insurance beginning with the first day of employment. Worker's Compensation provides State proscribed medical and hospitalization expense benefits, as well as partial compensation in lieu of salary for lost time for workers injured on the job. Industrial leave is not accrued, but is available through the State Industrial Commission in conjunction with State law and City policy.

If an employee is injured while on duty, the City of El Mirage shall supplement the

injured employee's Worker's Compensation wages. Supplemental pay will be paid only if the employee cannot return to duty (regular or modified). When the employee receives the check from the City's Worker's Compensation Insurance, the employee will endorse the check back to the City.

This supplemental pay duration is 3 months, except under extraordinary circumstances As reviewed by a Review Committee at the request of the employee and approved by the City Manager. Upon review the committee may extend the supplemental pay in 30 day increments not to exceed six months. The Review Committee will be comprised of a Police Department Management Representative, an Association Representative, and the City Manager or designee. Lost time while on Industrial Leave will run concurrent with Family Medical Leave. After three months, the employee can use available sick or vacation leave to supplement the Worker's Compensation payments so that the employee will continue to receive the same net pay prior to the injury or illness **(FY 2011- 2012 MOU Article 12, Paragraph E.)**.

14. Health and Dental coverage: The City will pay up to 100% of the member's monthly health and dental premiums but not more than the actual cost of the lowest health and dental premium. The member agrees to pay any additional amount above the lowest health and dental premium plan **(FY 2011-2012 MOU as amended May 2012 MOU Addendum Section 4. Article 13, Paragraph C. 1.)**. The City will continue to pay the approved amount for dependent coverage per month, but not less than 70% of the dependent premium for the lowest health and dental premium plan. The member agrees to pay any additional premium above that amount for dependent coverage **(FY 2011-2012 MOU as amended May 2012 MOU Addendum Section 4. Article 13, Paragraph C. 2.)**.
15. Continuation of coverage upon death while on-duty: In the event a member is killed while on-duty or while performing a police function as determined by the city, the city will continue to pay the full monthly health insurance premium (both employer and employee amounts) for the spouse and all eligible dependents. Should the surviving spouse remarry, the benefits of this provision shall be discontinued for the surviving spouse **(FY 2011- 2012 MOU Article 13, Paragraph E.)**.
16. Jury Duty: If a unit member is called upon to serve as a juror in any court action, he will be allowed leave from his duties without loss of pay for the time required for his service. The unit member shall turn over all court fees to the City in order to receive this benefit **(FY 2011- 2012 MOU Article 14)**.
17. Life Insurance: The City will provide life and dismemberment insurance in the amount of one thousand dollars (\$1,000) for each one thousand (\$1,000) of an employee's current annual salary, rounded up to the nearest thousand dollars with a maximum of \$100,000 **(FY 2011- 2012 MOU Article 15)**.
18. Tuition Assistance: Subject to funding availability, the City agrees to assist employees in their pursuit of additional training and higher education in courses related to their employment responsibilities and promotion opportunities, including core courses in a degree program, but excluding non-job related electives not approved as a core course in the degree program.

- A. Courses must be from a fully accredited college, university or approved technical/trade/business school. Online courses will be eligible for reimbursement using the same criteria of a maximum of six credit hours based on a fifteen (15) week college semester.
- B. Each employee who wishes to be reimbursed must receive written commitment from the Police Chief, City Manager and Human Resources prior to enrolling in the course.
- C. Reimbursement will be at 80% of the tuition charged per credit hour up to a maximum of \$4,000 per fiscal year. For undergraduate classes, reimbursement shall be paid at the end of each semester upon presentation of proof of each course passed with a "C" grade or higher, or its equivalent where letter grades are not used. For graduate classes, reimbursement shall be paid at the end of each semester upon presentation of proof of each course passed with a "B" grade or higher, and presentation of receipt for tuition costs.
- D. Employees shall not be reimbursed for non-tuition expenses such as administration fees, lab fees, books, recreation fees, etc.
- E. The amount of reimbursement shall be reduced by any financial assistance the employee receives from any outside source. When applying for tuition reimbursement, the employee shall notify the Human Resource Department of any financial assistance received from an outside source.
- F. The courses must be taken on an employee's personal time and they will have personally paid the fee for which they are requesting reimbursement.
- G. Any employee who resigns prior to completion of a course, or is discharged will automatically terminate their eligibility for reimbursement **(FY 2011- 2012 MOU Article 16).**

19. Call Back/Call Out: When an employee has completed his/her regularly scheduled shift and is called back to perform work of any nature within two (2) hours after the regular shift, he/she shall receive pay at the appropriate regular rate subject to overtime. An employee called back because of his own negligence, whether in the proper care and use of City equipment, or for his failure to complete official reports prior to securing for the day, shall be paid for such call back at appropriate regular rate subject to overtime which commences at the time they arrive at their work station. For the purpose of calculating total work hours, only the time actually worked will be used. Time will commence at the time the unit member receives the call to return to work unless the employee is being called back for their own negligence as listed above. A maximum of thirty (30) minutes travel time will be allowed **(FY 2011- 2012 MOU Article 18, Paragraph A.)**

20. Court Appearances (General): When an employee is on Court duty outside his regular scheduled shift, he shall receive court duty compensation at the appropriate overtime rate and shall be guaranteed a minimum of two (2) hours or actual time if longer than two (2) hours overtime pay for in-city court time and for out-of-city court time. This shall apply to all subpoenaed court appearances and hearings (i.e. MVD, deposition in which the employee actually appears. There will be no compensation for stand-by time).

Any court time within two (2) hours of an employee's duty time shall be paid at the appropriate regular rate subject to overtime for the time worked. Periods of more than two (2) hours will be paid in accordance with Paragraph 16 above. For the purpose of calculating total work hours, only the time actually worked will be used **(FY 2011- 2012**

MOU Article 18, Paragraph B.).

21. Off-Duty Arrests: Any employee who makes an off-duty arrest shall receive a minimum of three (3) hours pay at the overtime rate, or the actual amount of hours required, whichever is the greater. The term "off-duty arrest" shall not include an arrest made while privately employed in a law enforcement capacity and will meet approved guidelines as set in police policies and procedures **(FY 2011- 2012 MOU Article 18, Paragraph C.)**.
22. On-Call Court Time: If actually called to court, the employee will be entitled to the two (2) hour minimum at the overtime rate for court appearances in addition to the on-call court time payment **(FY 2011- 2012 MOU Article 18, Paragraph D.)**.
23. Payment of Sick Leave as Life Insurance: The designated beneficiary of a Unit member will be paid for all accumulated sick leave hours that remain on the City's official file at the time of death of the Unit member and payment will be based upon the Unit member's base hourly rate of pay at the time of death. The beneficiary shall be that person designated on the Employee Declaration of Beneficiary form provided by the City's life insurance carrier **(FY 2011- 2012 MOU Article 19)**.
24. Any dispute arising from wages and benefits as set forth in this Appendix after June 30, 2017 is not subject to the City of El Mirage Meet and Confer Ordinance. For disputes arising after June 30, 2017 the City of El Mirage Personnel Policy Manual sets forth appeal provisions in Section 5.6 for individual employees.

APPENDIX 2
WAGES AND BENEFITS
EL MIRAGE FIRE FIGHTERS ASSOCIATION (EMFFA)

(Note: This document uses the term “employee” instead of “Member”)
Notations in this document provide a comparison to the 2017- 2019 EMFFA Memorandum of Understanding

1. Regular Rate of Pay Definition: The regular rate of pay is determined by adding paramedic assignment pay, bilingual pay, and the regular rate. **(Definitions).**
2. Initial Minimum and Maximum Pay Rates: Firefighter minimum and maximum hourly rate is: \$15.49 – \$21.69. Fire Engineer minimum and maximum hourly rate is: \$18.58 - \$26.01. Fire Captain minimum and maximum hourly rate is: \$22.19 – 31.07. Annual Salary is based on hourly rate times 3003 hours. These minimum and maximum pay rates may be adjusted by the City Council from time to time.
3. Paramedics: Employees assigned as paramedics, whose positions are classified as non-exempt, shall receive their regular rate of pay plus \$2.50 per hour for paramedic assignment **(Article 3, Paragraph E.)**.
4. Bilingual: Employees who have demonstrated a proficiency in a second language, and routinely provide translation from another language to English, including American Sign Language, shall be eligible to receive \$0.75 per hour as language adjustment pay. Employees must pass an initial proficiency test to receive/continue receiving bilingual pay. At no time will an Employee be able to obtain more that an adjustment of \$0.75 per hour regardless of the number of language or sign language in which the Employee becomes proficient **(Article 3, Paragraph F.)**.
5. Deferred Compensation: It is mandatory for each Employee to contribute \$25 per pay period, for 26 pay periods per year to the City designated deferred compensation provider. The City of El Mirage will match each Employee's contribution, up to \$10 per pay period **(Article 3, Paragraph G.)**.
6. Post-Employment Health Plan (PEHP): The City of El Mirage agrees to participate in the Post Employment Health Plan (PEHP) for Employees in accordance with the terms and conditions of the Plan's Participation Agreement. The parties hereto designate Nationwide Retirement Solutions to act as Plan Administrator for the Plan, or its successors appointed in accordance with the Plan and Trust documents **(Article 3, Paragraph H.)**. The City shall contribute for each eligible employee the amount of \$25 per pay period **(Article 3, Paragraph J.)**.
7. Longevity Pay: All unit Employees shall be entitled to longevity pay in addition to their regular monthly pay as follows, which is payable on the first pay period following the

employee's hire date.

- A. Upon completion of five (5) years of continuous full-time service with the City of El Mirage, Employees will receive one hundred and fifty dollars (\$150) each year in addition to their regular rate of pay.
 - B. Upon completion of ten (10) years of continuous full-time service with the City of El Mirage, Employees will receive two hundred dollars (\$200) each year in addition to their regular rate of pay.
 - C. Upon completion of fifteen (15) years of continuous full-time service with the City of El Mirage, Employees will receive two hundred and fifty dollars (\$250) each year in addition to their regular rate of pay.
 - D. Upon completion of twenty (20) years of continuous full-time service with the City of El Mirage, Employees will receive three hundred dollars (\$300) each year in addition to their regular rate of pay (**Article 3, Paragraph I.**)
8. Call-back: Employees called back to work after leaving City facilities upon completion of their regular shift shall receive a minimum of two (2) hours pay at the appropriate regular rate, subject to overtime as ~~described in Article 11~~ provisions. City personnel rules and administrative regulations will govern the application of this provision (**Article 3, Paragraph K.**).
9. Holiday Leave/Pay: Employees regularly assigned to a forty-hour(40) work schedule will be entitled to the following holidays off with eight (8) hours of pay for each holiday:

New Year's Day	January 1
Martin Luther King, Jr. Birthday	Third Monday in January
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	Day after Thanksgiving
Christmas Day	December 25
Personal Day	Floating (first week of April)

Whenever a holiday falls on a Saturday, it shall be observed on the preceding Friday. Whenever a holiday falls on a Sunday, it shall be observed on the following Monday (**Article 6, Paragraph A.**).

Employees regularly assigned to a 48/96 Schedule will, in lieu of time off with pay, be paid in addition to the Employee's regular pay and regardless of whether or not the Employee works the holiday, Holiday Pay for the eleven holidays listed in Paragraph A above. Holiday Pay hours will not be counted as hours worked for purpose of calculating overtime.

- o Holiday pay will be paid in the paycheck for the work period it occurs in. Holiday pay will be determined by calculating the number of holiday hours in a work period (by multiplying the number of holidays in the pay period by eight (8) hours) and then multiplying the number of holiday hours by a factor of 1.5. The holiday hours

determined by this calculation will then be paid at the Employee's current regular rate of pay for the work period.

- EXAMPLE: The Holiday Pay for the work period containing both Thanksgiving and the day after Thanksgiving will be calculated as follows: Two holiday days times eight hour equals 16 holiday hours; 16 holiday hours times 1.5 equals 24 holiday hours for that pay period. The 24 holiday hours will then be paid at the Employee's regular rate of pay for the pay period (**Article 6, Paragraph B.**).

10. Life Insurance: The City will provide life and dismemberment insurance coverage in the amount of one thousand dollars (\$1,000) for each one thousand (\$1,000) of an Employee's "current equivalent annual pay," up to a maximum coverage of \$100,000. An Employee's "current equivalent annual pay," for purposes of this benefit only, shall be calculated by multiplying the employee's regular rate of pay at the time by two thousand nine hundred ninety (2,990) hours, rounded to the nearest thousand dollars. The City will continue to meet State statutes concerning life insurance benefits (**Article 7**).

11. Health and Dental Coverage: The City will pay up to 100% of the employee's monthly health and dental premiums but not more than the actual cost of the lowest health and dental premium. The employees agree to pay any additional amount above the lowest health and dental premium plan.

The City will continue to pay the approved amount for dependent coverage per month, but not less than 70% of the dependent premium for the lowest health and dental premium plan. The employee agrees to pay any additional premium above that amount for dependent coverage (**Article 8, Paragraph A.**).

12. In the event that an Employee is killed while on duty, or while performing Fire Department function as determined by the City, the City will continue to pay the full monthly COBRA health insurance monthly premium for the Employee's spouse and all eligible dependents of the Employee in accordance with City policy. The cost to the City will be reduced by any amount the spouse is eligible to receive through other sources such as other employer coverage, etc. Benefits under this provision shall terminate for a spouse when the first of the following occurs: (a) The spouse remarries; or (b) the spouse becomes eligible for Medicare/Medicaid. Benefits under this provision shall terminate for an Employee's child when the child reaches the age of 18, age 25 if the child is enrolled as a full-time student at an accredited college or university, or any greater age as required by the state or federal law (**Article 8, Paragraph B.**).

13. Tuition Reimbursement Assistance: Employees shall be allowed to attend College Fire Related Courses and other courses approved by the Fire Chief. Each Employee who wishes to be reimbursed must receive written approval from the Fire Chief and the City Manager prior to enrolling in the course. An Employee must obtain a grade equivalent of "C" or better in order to be reimbursed.

Subject to funding availability, the City agrees to assist Employees in their pursuit of additional training and higher education in courses related to their employment responsibilities and promotion opportunities, including core courses in a degree program, but

excluding non-job related electives not approved as core courses in the degree program.

- Courses must be from a fully accredited college, university or approved technical/ trade/ business school. Online courses will be eligible for a reimbursement using the same criteria of a maximum of six credit hours based on a fifteen (15) week college semester.
 - Each Employee who wishes to be reimbursed must receive written approval from the Fire Chief and the City Manager prior to enrolling in the course.
 - Reimbursement will be at 80% of the tuition, and required lab fees, charged per credit hour up to a maximum of \$4,000 per fiscal year. For undergraduate classes, reimbursement shall be paid at the end of each semester upon presentation of proof of each course passed with a "C" grade or higher, or its equivalent where letter grades are not used. For graduate classes, reimbursement shall be paid at the end of each semester upon presentation of proof of each course passed with a "B" grade or higher, and presentation of receipt for tuition costs.
 - Employees shall not be reimbursed for non-tuition expenses such as administration fees, books, recreation fees, etc.
 - The amount of reimbursement shall be reduced by any financial assistance the Employee receives from any outside source. When applying for tuition reimbursement, the Employee shall notify the Human Resources Department of any financial assistance received from an outside source. Financial assistance does not include loans or other debt instruments.
 - The courses must be taken on an Employee's personal time and the Employee will have personally paid the fee for which the Employee is requesting reimbursement.
 - Any Employee who resigns or is discharged for any reason prior to completion of a course will not be eligible for reimbursement (**Article 9**).
14. Uniform Allowance: Sworn full time Unit personnel will be entitled to receive reimbursement for authorized original issue and/or maintenance of uniforms up to seven hundred twenty-nine (\$729) dollars per fiscal year, with no carryover to the next fiscal year. Orders for uniforms may be placed through approved vendors as determined by the City. All reimbursement requests shall include paid receipts and will require approval of the Fire Chief prior to submission to the Finance Department. The Fire Chief shall be the final authority with regard to eligible reimbursement items (**Article 10**).
15. All overtime will be paid in accordance with the regulations of the Fair Labor Standards Act (FLSA). Personnel classified as exempt under the FLSA are not eligible for overtime. Overtime shall be worked and shall be allowed if assigned by the Fire Chief or his designee. Overtime will be calculated and paid at one and one-half (1-1/2) times the Employee's regular rate of pay for all hours worked in excess of one hundred thirty-six (136) hours in an eighteen (18) day work period. Overtime will be calculated and paid at one and one-half (1-1/2) times the Employee's regular rate of pay for all hours worked in excess of forty (40) hours in a seven (7) day work period for Employees assigned to that schedule (**Article 11, Paragraph A.**).
16. Employees who are temporarily upgraded for a full 24 hours by management to perform substantially the full range of duties and responsibilities of a higher level of classification ("working out of class") or to conduct arson investigation will receive:
- If the Employee is assigned to conduct arson investigation during any twenty-four (24) hour work period, or not required to "work out of class" beyond one full work period,

the Employee shall be paid an additional seventy-five dollars (\$75) for each twenty-four (24) hour work period the Employee is required to "work out of class." Paragraph B does not apply to arson investigation.

- If an Employee is continually assigned to "work out of class" for a period of time that extends beyond the established work period as identified in Article 11A, the Employee shall be paid during the second and subsequent continuous work periods a rate of pay that is the greater of the minimum of the pay range in that classification or a five percent (5%) increase during the remainder of the time the Employee is on the assignment. If the Employee continues to act in the higher classification for the period of one (1) year, the Employee will be permanently assigned to that step in the pay scale (**Article 12**).

17. Vacation Leave:

- Employees who are regularly assigned to a 40-hour work week shall accrue vacation leave at the rate set forth in the City's Personnel Manual. For the purpose of vacation leave accrual only, an Employee whose average work week is 56 hours shall not be considered as regularly assigned to a 40-hour work week while temporarily assigned to light duty or on industrial leave or educational leave. They shall continue to accrue vacation leave based on a 56-hour work week.
- Employees hired on or after January 1, 2004, who regularly are assigned to an average 56-hour work week shall accrue vacation leave at the rates set forth in the following schedule:

Level	Shifts per Year (Hours)	Accrual Rate Per Pay Period (Hours)
0-5 Years	8 (192)	7.3846
6- 10 Years	10 (240)	9.2308
11- 15 Years	12 (288)	11.0769
16+ Years	15 (360)	13.8462

- The maximum accrual of vacation hours for any Employee is five hundred seventy-six (576) hours. Vacation leave shall be deducted from an Employee's accrued vacation leave on an hour-for-hour (1 for 1) basis.
- Employees may begin to utilize vacation leave after one (1) year of employment.
- Upon termination of an Employee's employment, whether with or without cause, the Employee shall be paid the Employee's vacation accrual balance at the Employee's regular rate of pay at the time of termination.
- Employees hired on or before December 31, 2003 who regularly are assigned to an average 56-hour work week shall accrue vacation leave at the rates set forth in the following schedule:

Level	Accrual Rate Per Pay Period	Maximum Carryover Hours
0-2 Years	3.0769	160.0
2-5 Years	3.6923	192.0
5- 10 Years	4.6153	240.0
10 +Years	6.1538	320.0

- There are four different levels and each level has its maximum amount of vacation hours. Each employee is allowed to carry over to the next year up to the applicable maximum carryover amount. Vacation leave shall be deducted from an Employee's accrual bank on a 3 for 1 basis. By way of example, an Employee who takes six hours off for vacation time will only have two hours deducted from the Employee's vacation accrual bank.
- At the time of termination, whether with or without cause, Employees shall be paid their vacation leave balance at the Employee's regular rate of pay at the time of termination. An Employee's vacation leave balance at the time of termination will not be paid at a 3 to 1 rate (**Article 13, Paragraph A.**).

18. Vacation Pay: An employee who has completed a minimum of two (2) years of service with the City and who has used a minimum of one hundred twelve (112) hours of vacation leave in the previous twenty-four months may request to be paid any portion of the employee's accrued vacation hours in excess of fifty-six (56) hours (a minimum of 56 hours must remain in the accrual) at the employee's current regular rate of pay at the time of the request. The City Manager may deny a request for payment of accrued vacation leave if the City Manager determines, in his/her sole discretion, granting such request will create a financial hardship to the City (**Article 13, Paragraph B.**).

19. Sick Leave:

- Employees hired on or after January 1, 2004 who regularly are assigned to an average 56-hour work week shall be entitled to sick leave with pay. Employees will accrue sick leave at the rate of 7.3846 hours per pay period (equivalent of 8 shifts per year) with no maximum accrual limit. Sick leave shall be deducted from an Employee's accrued sick leave on an hour-for-hour basis (**Article 13, Paragraph C. 1.**).
- Employees hired on or before December 31, 2003, who regularly are assigned to an average 56-hour work week, shall be entitled to sick leave with pay. Employees will accrue sick leave at the rate of 3.69 hours per pay period with not maximum limit. Sick leave shall be deducted from an Employee's sick leave accrual bank on a 3 for 1 basis. By way of example, an Employee who takes six hours off for sick time will only have two hours deducted from the employee's sick leave accrual bank (**Article 13, Paragraph C. 2.**).
- Employees who are regularly assigned to a 40-hour work week shall accrue sick leave with pay at the rate set forth in the City's Personnel Manual. For purposes of sick leave accrual only, an Employee whose average work week is 56 hours shall not be considered as regularly assigned to a 40-hour work week while temporarily assigned to light duty or on industrial leave or educational leave. They shall continue to accrue sick leave based on a 56-hour work week (**Article 13, Paragraph C. 3.**).
- Employees hired on or after January 1, 2004 - Employees who have accumulated a minimum of three hundred and sixty (360) hours of unused sick leave and have worked for the City at least ten (10) years will be eligible at the time of termination from the City, in good standing, to payment of an amount of compensation equal to twenty percent (20%) of the total accumulated unused sick leave hours at the Employee's regular hourly rate at the time of termination (**Article 13, Paragraph D. 1.**).
- Employees hired on or before December 31, 2003 - Employees who have accumulated a minimum of one hundred and twenty (120) hours of unused sick leave and have

worked for the City as least ten (10) years will be eligible at the time of termination from the City, in good standing, to payment of an amount of compensation equal to forty (40%) percent of the total accumulated unused sick leave hours at the Employee's regular hourly rate at the time of termination (**Article 13, Paragraph D. 2.**).

- Death of an Employee while employed by the City - In the event of an Employee's death while employed by the City of El Mirage, the City shall pay to the Employee's designated beneficiary, regardless of the number of years the Employee has worked for the City prior to the time of death, an amount of compensation equal to the following:
 - For Employees hired on or after January 1, 2004, twenty percent (20%) of the Employee's total accumulated unused sick leave hours at the Employee's regular hourly rate at the time of death.
 - For employees hired on or before December 31, 2003, forty percent (40%) of the Employee's total accumulated unused sick leave hours at the Employee's regular hourly rate at the time of death (**Article 13, Paragraph D. 3.**).

20. Regular Hourly Rate: For vacation or sick leave ~~purposes of this section~~, regular hourly rate includes any additional compensation that has been added to the base hourly rate (**Article 13, Paragraph D. 4.**).

21. Industrial Leave: All Employees are covered by Worker's Compensation Insurance beginning with the first day of employment. Worker's Compensation provides State prescribed medical and hospitalization expense benefits, as well as partial compensation in lieu of salary for lost time for workers injured on the job. Industrial leave is not accrued, but is available through the State Industrial Commission in conjunction with State law and City policy.

- i. If an Employee is injured while on duty, the City of El Mirage shall supplement the injured Employee's Worker's Compensation pay for up to three (3) months. Supplemental pay will be paid only if the Employee cannot return to duty (regular or modified). When the check from the City's Worker's Compensation Insurance carrier is received, the Employee must endorse the check back to the City. Lost time while on Industrial leave will run concurrent with Family Medical Leave.
- ii. This supplemental pay duration is three (3) months, except under extraordinary circumstances approved by the Fire Chief and City Manager. An Employee requesting extraordinary circumstances shall request a review by the Glendale Fire Department Health Center physician. Upon review, the physician may recommend the extension of the supplemental pay in 30-day increments not to exceed six (6) months. After Worker's Compensation payment so that the Employee will continue to receive the same rate of pay prior to the injury or illness.
- iii. Employees who agree to participate in the Fire Department's health centers consultation and rehabilitation program shall continue to receive 100% of their current rate of pay while off duty due to an industrial injury based on current practices, which is a maximum of one (1) year per injury. Thereafter, the rate

becomes 66-2/3% based on current State law and the current maximum payment under Worker's Compensation.

- iv. If there is a disagreement in treatment between the Fire Department physician and the employee's physician, the two physicians, along with the City of El Mirage, shall agree on a third physician whose decision shall be the final authority. Employees who refuse to adhere to the above conditions shall only receive 66-2/3% based on current State laws and the current maximum monthly rate allowed. If an Employee receives 66-2/3%, he/she may use sick leave, vacation leave, or compensatory time to make up the difference between 66-2/3% and 100%.
- v. The rate of pay for purposes of this Article 13, paragraph F, shall mean the Employee's regular rate as outlined on the attached wage schedule shown as Attachment "A" prior to the injury. For purposes of this Article 13, paragraph F, the rate of pay shall not include bilingual pay or paramedic pay.
- vi. If an Employee who has sustained an on-duty or work-related injury is assigned to work a "light duty" assignment, the Employee's rate of pay while on the "light duty" assignment will include any paramedic and bilingual pay the Employee earned prior to the injury (**Article 13, Paragraph F.**).

22. Limited Alternate Assignment (Off duty injuries): Actual hours worked on light duty related to an off-duty injury will count as 1.4 hours worked for purposes of achieving the Fair Labor Standards Act (FLSA) 18 day cycle overtime. Actual hours worked in excess of 144 hours in an 18 day cycle will be paid at overtime rates (**Article 13, Paragraph G.**).

23. Bereavement Leave: Bereavement leave is available to any Employee for the purpose of attending to family needs that arise in connection with the death of an Employee's immediate family.

Immediate family shall be defined as: (1) the Employee's spouse, parent, child, brother, sister, grandparent, or grandchild; (2) the Employee's spouse's parent, child, brother, or sister; (3) the Employee's child's spouse. The City Manager may give special consideration for the death of a person other than an Employee's immediate family if the deceased's association with the Employee was similar to any of the above relationships, including any person who has been a parent substitute to the Employee. Emergency vacation or compensatory time may be requested for family employees not considered as immediate family.

Bereavement leave will be permitted in the following amounts:

- i. Forty-hour employees - Forty (40) hours of bereavement leave shall be provided for the death of an immediate family employee.
- ii. Employees regularly assigned to a 48/96 schedule- Sixty (60) hours of bereavement leave shall be provided for the death of an immediate family employee.

Bereavement leave shall be counted as hours worked for purposes of calculating FLSA overtime, but only in an amount needed to bring an Employee's total hours worked for a work period to one hundred forty-four (144) hours (**Article 13, Paragraph H.**).

24. Limited Use of Accrued Leave as Hours Worked: Accrued vacation leave shall be counted as hours worked for purposes of calculating FLSA overtime when an Employee missed a regularly scheduled shift(s) due to vacation, illness or injury, but only in an amount needed to bring an Employee's total hours worked for a work period to one hundred forty-four (144) hours. Sick leave shall never be counted as hours worked. Vacation hours that increase an Employee's hours for a work period above one hundred forty-four (144) hours shall not be counted as hours worked and shall be paid at straight time. An Employee who has taken time off that would be covered under sick leave may, at the Employee's option, request the use of vacation time instead of sick leave in order to bring the Employee's total hours worked for the work period to one hundred forty-four (144) hours.

Example A - An Employee takes 24 hours of vacation during a work period and does not work any additional time other than the Employee's regularly scheduled time. The Employee's hours worked without the vacation time would be 120 hours. The entire 24 hours of vacation shall be considered hours worked so the Employee's total hours worked for purposes of calculating overtime for the work period will be 144 hours. This Employee would be paid 136 hours at straight time and 8 hours at time and one half.

Example B - A Employee takes 12 hours off for vacation, but also works 30 extra hours beyond the Employee's regularly scheduled time. Since this Employee will have 162 actual hours worked in the work period, none of the vacation leave time is needed to bring the total hours worked up to 144 hours. Therefore, none of the 12 hours of vacation leave will be counted as hours worked for purposes of calculating overtime. This Employee would be paid 132 hours worked at straight time, 12 hours vacation at straight time, and 26 hours as overtime at time and one half (132 hours worked plus the additional 30 hours worked equals 162 actual hours worked. Subtracting the FLSA hours (136) for an 18-day work period leaves 26 hours to be paid at time and one half and the 12 hours of vacation to be paid at straight time).

Example C - An Employee takes 48 hours of vacation, but also works 24 hours outside the Employee's regularly schedule time. This Employee will only have 120 hours of actual hours worked in the work period. Therefore, 24 hours of the vacation hours will be counted as hours worked in order to bring the total hours worked for this work period to 144 hours. The remaining 24 hours of vacation time will not be considered hours worked for purposes of calculating overtime. This Employee will have a total of 168 hours reported (120) actual worked and 48 vacation), 8 hours of which will be paid at time and one half and 160 hours paid at straight time. [The overtime is the difference between the 144 hours worked (120) actual hours worked plus 24 hours vacation time to bring hours worked to 144 hours), less the FLSA hours (136) for an 18-day work period. The remaining 160 hours are paid at straight time].

Example D - An Employee becomes ill during a shift and leaves after working only 18 hours. This Employee has 30 hours (48-hour shift less 18 hours worked) that qualify for use of sick leave. If the Employee uses sick leave, and does not work any other time outside the Employee's regularly scheduled time, the Employee will be paid 144 hours at straight time (114 hours worked plus 30 hours sick leave). However, if the Employee requests to charge vacation leave rather than sick leave for the 30 hours, the Employee

would be paid 130 hours at straight time and 8 hours at time and one half (**Article 13, Paragraph I.**)

25. Any dispute arising from wages and benefits as set forth in this Appendix after June 30, 2019 is not subject to the City of El Mirage Meet and Confer Ordinance. For disputes arising after June 30, 2019 the City of El Mirage Personnel Policy Manual sets forth appeal provisions in Section 5.6 for individual employees.

ORDINANCE O16-09-08

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, MARICOPA COUNTY, ARIZONA, AMENDING CHAPTER 30: ADMINISTRATION GENERALLY, *MEET AND CONFER*, SECTION §30.07, OF THE CITY OF EL MIRAGE CITY CODE

WHEREAS, Arizona Revised Statutes §9-802 provides a procedure whereby a municipality may enact the provisions of a code or public record by reference, without setting forth such provisions, provided that the adopting ordinance is published in full,

NOW, THEREFORE, BE IT ORDAINED, BY THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA, as follows:

Section 1. Chapter 30, Section §30.07 of the El Mirage City Code “*Meet and Confer*” is hereby amended.

Section 2. That certain document titled “CHAPTER 30: ADMINISTRATION GENERALLY, *Meet and Confer*,” which document was made public record by Resolution R16-09-20, “Exhibit A” amending Section §30.07 of the City Code is hereby referred to, adopted and made part of the El Mirage City Code as if fully set out in this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance in any part of this addition adopted here by reference is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4. The City Clerk is hereby directed to publish this adopting ordinance in full.

PASSED AND ADOPTED by the Mayor and Council of the City of El Mirage, Arizona, this 6th day of September, 2016.

Lana Mook, Mayor

ATTEST:

APPROVED AS TO FORM:

Sharon Antes, City Clerk

Robert Hall, City Attorney