

AGENDA
ORO VALLEY TOWN COUNCIL
REGULAR SESSION
June 15, 2016
ORO VALLEY COUNCIL CHAMBERS
11000 N. LA CAÑADA DRIVE

REGULAR SESSION AT OR AFTER 6:00 PM

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

UPCOMING MEETING ANNOUNCEMENTS

COUNCIL REPORTS

- **Spotlight on Youth**

DEPARTMENT REPORTS

The Mayor and Council may consider and/or take action on the items listed below:

ORDER OF BUSINESS: MAYOR WILL REVIEW THE ORDER OF THE MEETING

INFORMATIONAL ITEMS

CALL TO AUDIENCE – At this time, any member of the public is allowed to address the Mayor and Town Council on any issue *not listed on today's agenda*. Pursuant to the Arizona Open Meeting Law, individual Council Members may ask Town Staff to review the matter, ask that the matter be placed on a future agenda, or respond to criticism made by speakers. However, the Mayor and Council may not discuss or take legal action on matters raised during "Call to Audience." In order to speak during "Call to Audience" please specify what you wish to discuss when completing the blue speaker card.

PRESENTATIONS

1. Proclamation - Park and Recreation Month

2. Presentation - Update on Regional Economic Development by David Welsh, Executive Vice President of Sun Corridor, Inc.

CONSENT AGENDA

(Consideration and/or possible action)

- A. Minutes - June 1, 2016
- B. Resolution No. (R)16-26, authorizing and approving an agreement between the Town of Oro Valley and EnerNOC, Inc. to enroll in the Tucson Electric Power Demand Response Program
- C. Resolution No. (R)16-27, authorizing and approving an Intergovernmental Agreement among the Town of Oro Valley, the Town of Marana, the Town of Sahuarita, the City of Tucson, the Pima County Sheriff's Department, the Arizona Department of Public Safety, the City of Sierra Vista, the City of Nogales, the City of Florence, the City of South Tucson, the City of Apache Junction, the City of Chandler, the Federal Bureau of Investigation, the Town of Gilbert, the Town of Maricopa, the City of Mesa, the Town of Paradise Valley, the City of Phoenix, the City of Scottsdale, the County of Maricopa, the City of Glendale, the County of Navajo, the City of Page, the City of Peoria, the County of Pinal, the City of Show Low, and the City of Tempe to create an Arizona Child Abduction Response Team (AZCART)
- D. Resolution No. (R)16-28, authorizing and approving an agreement between the Pusch Ridge Christian Academy and the Town of Oro Valley Police Department to provide the school with a School Resource Officer (SRO) in the school starting August 7, 2016
- E. Resolution No. (R)16-29, approving an intergovernmental agreement for the provision of animal control services between the Town of Oro Valley and Pima County
- F. Resolution No. (R)16-30, approving changes to Personnel Policy 19 - Training Employees and Reimbursement for Educational Expenses, allowing for reimbursement of certain professional certifications
- G. Resolution No. (R)16-31, approving a change to Personnel Policy 10 - Leaves, allowing for payment of 100% of sick leave accruals above 480 hours for an employee that dies as a direct result of performing their duties
- H. Resolution No. (R)16-32, authorizing and approving the agreement between the Town of Oro Valley and the Office of Administrative Hearings (OAH) for administrative hearing services on a case-by-case basis relating to election and campaign finance matters

REGULAR AGENDA

FUTURE AGENDA ITEMS (The Council may bring forth general topics for future meeting agendas. Council may not discuss, deliberate or take any action on the topics presented pursuant to ARS 38-431.02H)

CALL TO AUDIENCE – At this time, any member of the public is allowed to address the Mayor and Town Council on any issue ***not listed on today's agenda***. Pursuant to the Arizona Open Meeting Law, individual Council Members may ask Town Staff to review the matter, ask that the matter be placed on a future agenda, or respond to criticism made by speakers. However, the Mayor and Council may not discuss or take legal action on matters raised during "Call to Audience." In order to speak during "Call to Audience" please specify what you wish to discuss when completing the blue speaker card.

ADJOURNMENT

POSTED: 6/8/16 at 5:00 p.m. by mrs

When possible, a packet of agenda materials as listed above is available for public inspection at least 24 hours prior to the Council meeting in the office of the Town Clerk between the hours of 8:00 a.m. – 5:00p.m.

The Town of Oro Valley complies with the Americans with Disabilities Act (ADA). If any person with a disability needs any type of accommodation, please notify the Town Clerk's Office at least five days prior to the Council meeting at 229-4700.

INSTRUCTIONS TO SPEAKERS

Members of the public have the right to speak during any posted public hearing. However, those items not listed as a public hearing are for consideration and action by the Town Council during the course of their business meeting. Members of the public may be allowed to speak on these topics at the discretion of the Chair.

If you wish to address the Town Council on any item(s) on this agenda, please complete a speaker card located on the Agenda table at the back of the room and give it to the Town Clerk. **Please indicate on the speaker card which item number and topic you wish to speak on, or if you wish to speak during "Call to Audience", please specify what you wish to discuss when completing the blue speaker card.**

Please step forward to the podium when the Mayor announces the item(s) on the agenda which you are interested in addressing.

1. For the record, please state your name and whether or not you are a Town resident.
2. Speak only on the issue currently being discussed by Council. Please organize your speech, you will only be allowed to address the Council once regarding the topic being discussed.
3. Please limit your comments to 3 minutes.
4. During "Call to Audience" you may address the Council on any issue you wish.
5. Any member of the public speaking must speak in a courteous and respectful manner to those present.

Thank you for your cooperation.



Town Council Regular Session

Meeting Date: 06/15/2016

Proclamation - Park & Rec Month

Item # 1.

Information

Subject

Proclamation - Park and Recreation Month

Summary

Attachments

Proclamation

Office of the Mayor
Oro Valley, Arizona
Proclamation
PARK AND RECREATION MONTH
JULY 2016

WHEREAS, parks and recreation programs are an integral part of communities throughout this country, including the Town of Oro Valley; and

WHEREAS, our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and

WHEREAS, parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all citizens; and

WHEREAS, parks and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

WHEREAS, parks and recreation areas are fundamental to the environmental well-being of our community; and

WHEREAS, parks and natural recreation areas improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetative buffers to development, and produce habitat for wildlife; and

WHEREAS, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; and

WHEREAS, the Town of Oro Valley recognizes the benefits derived from parks and recreation resources.

NOW, THEREFORE, I, Dr. Satish Hiremath, Mayor of the Town of Oro Valley, Arizona do hereby proclaim July as **PARK AND RECREATION MONTH** in the Town of Oro Valley.

Dated this 15th day of June, 2016


Dr. Satish I. Hiremath, Mayor



ATTEST:


Julie K. Bower, Town Clerk



Town Council Regular Session

Item # 2.

Meeting Date: 06/15/2016

Presentation - David Welsh, Executive Vice President of Sun Corridor, Inc.

Information

Subject

Presentation - Update on Regional Economic Development by David Welsh, Executive Vice President of Sun Corridor, Inc.

Summary

Attachments

No file(s) attached.



Town Council Regular Session

Item # A.

Meeting Date: 06/15/2016

Requested by: Julie Bower

Submitted By: Mike Standish, Town
Clerk's Office

Department: Town Clerk's Office

Information

SUBJECT:

Minutes - June 1, 2016

RECOMMENDATION:

Staff recommends approval.

EXECUTIVE SUMMARY:

N/A

BACKGROUND OR DETAILED INFORMATION:

N/A

FISCAL IMPACT:

N/A

SUGGESTED MOTION:

I MOVE to approve, (approve with the following changes) the June 1, 2016 minutes.

Attachments

6/1/16 Draft Minutes

**MINUTES
ORO VALLEY TOWN COUNCIL
REGULAR SESSION
June 1, 2016
ORO VALLEY COUNCIL CHAMBERS
11000 N. LA CANADA DRIVE**

REGULAR SESSION AT OR AFTER 6:00 PM

CALL TO ORDER

Mayor Hiremath called the meeting to order at 6:00 p.m.

ROLL CALL

PRESENT:

Satish Hiremath, Mayor
Lou Waters, Vice Mayor
Brendan Burns, Councilmember
Bill Garner, Councilmember
Joe Hornat, Councilmember
Mary Snider, Councilmember
Mike Zinkin, Councilmember

PLEDGE OF ALLEGIANCE

Mayor Hiremath led the audience in the Pledge of Allegiance.

UPCOMING MEETING ANNOUNCEMENTS

Communications Administrator Misti Nowak announced the upcoming Town meetings and events.

COUNCIL REPORTS

Vice Mayor Waters reported that American Airlines would be establishing a non-stop flight from the Tucson International Airport to JFK Airport in New York starting on October 7, 2016.

Mayor Hiremath thanked Town Manager Greg Caton for his service to the Town of Oro Valley and wished him well on his future endeavors.

DEPARTMENT REPORTS

Town Clerk Julie Bower announced that new artwork was on display in the Council Chambers by artist Mary Wifall.

ORDER OF BUSINESS

Mayor Hiremath said the agenda would stand as posted.

CALL TO AUDIENCE

Oro Valley resident Stan Winetrobe thanked Mr. Caton for his service to the community.

Golder Ranch Fire Chief Randy Karrer thanked Mr. Caton for his leadership and service to the Town of Oro Valley.

Oro Valley resident Don Barnett was upset with receiving robo-calls and offered a possible solution. Mr. Barnett said that Mr. Dick Johnson's daughter should have been jailed immediately. Mr. Barnett was concerned with the high Pima County tax rate and the cost of greens fees at the Town owned golf courses and urged Council to reduce the rate to make it more affordable.

CONSENT AGENDA

Councilmember Zinkin requested to remove items (B) and (C) from the Consent Agenda for discussion.

- A. Minutes - May 19, 2016
- D. Resolution No. (R)16-21, authorizing and approving an Intergovernmental Agreement (IGA) between the Town of Oro Valley and the Pima County Recorder to provide election services for the August 30, 2016 Primary Election and the November 8, 2016 General Election
- E. Resolution No. (R)16-22, authorizing and approving an intergovernmental agreement (IGA) between the Town of Oro Valley and the City of Tucson for the use of the City's Alternative to Jail (ATJ) Program
- F. Resolution No. (R)16-23, authorizing and approving a license agreement between the Town of Oro Valley and Maracay 91, LLC for installation and maintenance of improvements within the La Canada Drive and Pebble Creek Drive right-of-ways?91, LLC for installation and maintenance of improvements within the La Canada Drive and Pebble Creek Drive right-of-ways
- G. Resolution No. (R)16-24, authorizing and approving easements granted by Maracay 91, LLC to the Town of Oro Valley for the purposes of construction and maintenance of drainage facilities located within the La Cañada Drive and Pebble Creek Drive right-of-ways

MOTION: A motion was made by Vice Mayor Waters and seconded by Councilmember Snider to approve Consent Agenda items (A) and (D-G).

MOTION carried, 7-0.

B. Fiscal Year 2015/16 Financial Update through March 2016

Councilmember Zinkin asked if the Town owned restaurant lost \$10,948 in March. Finance Director Stacey Lemos said that was correct.

MOTION: A motion was made by Councilmember Zinkin and seconded by Councilmember Burns to approve item (B).

MOTION carried, 7-0.

C. Fiscal Year 2015/16 Financial Update through April 2016

Councilmember Zinkin inquired about sales tax collections and the Community & Recreation Fund balances.

Discussion ensued amongst Council and staff regarding sales tax collections and the Community & Recreation Fund balances.

MOTION: A motion was made by Councilmember Zinkin and seconded by Councilmember Garner to approve item (C).

MOTION carried, 7-0.

REGULAR AGENDA

1. PUBLIC HEARING: DISCUSSION AND POSSIBLE ACTION REGARDING AN APPLICATION FOR A SERIES 12 (RESTAURANT) LIQUOR LICENSE FOR MOD PIZZA, LOCATED AT 10580 N. ORACLE RD. #150

Town Clerk Julie Bower presented item #1.

Mayor Hiremath opened the public hearing.

No comments were received.

Mayor Hiremath closed the public hearing.

MOTION: A motion was made by Vice Mayor Waters and seconded by Councilmember Snider to recommend approval of the issuance of a Series 12 Liquor License to the Arizona Department of Liquor Licenses and Control for Andrea Lewkowitz for MOD Pizza, located at 10580 N. Oracle Rd. #150.

MOTION carried, 7-0.

2. PUBLIC HEARING: ORDINANCE NO. (O)16-08, AMENDING SECTION 25.1.V OF THE ORO VALLEY ZONING CODE REVISED REGARDING THE HOURS OF OPERATION FOR MEDICAL MARIJUANA DISPENSARIES

Planner Rosevelt Arellano presented item #2 and outlined the following:

- Request
- Public Safety
- Compatibility of Business Hours
- Summary & Recommendation

Discussion ensued amongst Council and staff regarding item #2.

Mayor Hiremath opened the public hearing.

The following individuals supported item #2.

William Meeks
Oro Valley resident Paula Dabbert
Oro Valley resident Monica Ismay
Oro Valley resident Debra Arrett

The following individual opposed item #2.

Oro Valley resident Shirl Lamonna

Jenifer Corey, representative for Catalina Care, gave an overview of the Catalina Care dispensary and discussed the following:

- About Catalina Care
- What Do We Propose?
- Site Location
- MMJ History
- Locations in Metro Tucson
- Hours of Operation
- Is This a Public Safety Problem?
- Community Benefit
- Neighborhood Outreach

Discussion ensued amongst Council and the Applicant regarding the proposed ordinance to increase the hours of operation for medical marijuana dispensaries.

MOTION: A motion was made by Councilmember Zinkin and seconded by Vice Mayor Waters to approve Ordinance No. (O)16-08, amending Section 25.1.V of the Oro Valley Zoning Code regarding the hours of operations for medical marijuana dispensaries, finding that the amendment is consistent with other retail operations.

An amendment was made by Councilmember Hornat and seconded by Mayor Hiremath to set the hours of operations for medical marijuana from 7:00 a.m. to 8:00 p.m.

AMENDMENT: Fails 2-5, with Vice Mayor Waters, Councilmember Burns, Councilmember Garner, Councilmember Snider and Councilmember Zinkin opposed.

MAIN MOTION carried, 6-1 with Councilmember Hornat opposed.

Mayor Hiremath recessed the meeting at 7:16 p.m.

Mayor Hiremath reconvened the meeting at 7:25 p.m.

3. MOTION FOR RECONSIDERATION OF THE MAY 19, 2016 APPROVAL TO AMEND THE FY 2015/16 ADOPTED BUDGET BY POSTPONING TO FY 2016/17 THE FIRST ANNUAL \$120,000 REPAYMENT OF THE \$1.2 MILLION IN GENERAL FUND CONTINGENCY RESERVES LOANED TO THE COMMUNITY CENTER FUND IN FY 2014/15

Councilmember Burns presented item #3.

Discussion ensued amongst Council regarding the proposed motion for reconsideration.

MOTION: A motion was made by Councilmember Burns and seconded by Councilmember Zinkin to approve the motion for reconsideration of the May 19, 2016 approval to amend the FY 2015/16 adopted budget by postponing to FY 2016/17 the first annual \$120,000 repayment of the \$1.2 million in General Fund Contingency Reserves loaned to the Community Center Fund in FY 2014/15.

MOTION failed, 3-4 with Mayor Hiremath, Vice Mayor Waters, Councilmember Hornat, and Councilmember Snider opposed.

4. PRESENTATION OF FIVE-YEAR FINANCIAL FORECAST THROUGH FY 2020/21

Finance Director Stacey Lemos presented item #4 and outlined the following:

- Forecast Overview
- General Fund Revenues & Expenditures
- General Fund Forecast - Current
- General Fund Forecast - March 2011
- Highway Fund Revenues & Expenditures
- Highway Fund Forecast
- Bed Tax Fund Revenues & Expenditures
- Bed Tax Fund Forecast
- Community Center Fund Revenues & Expenditures
- Community Center Fund Forecast

Discussion ensued amongst Council and staff regarding the five-year financial forecast through FY 2020/2021.

5. PUBLIC HEARING: RESOLUTION NO. (R)16-25, APPROVING THE ADOPTION OF THE FINAL BUDGET OF THE TOWN OF ORO VALLEY FOR THE FISCAL YEAR 2016/17, INCLUDING APPROVAL OF THE 15-YEAR CAPITAL IMPROVEMENT PROGRAM (CIP) FROM FY 2016/17 THROUGH FY 2030/31

Mr. Caton presented item #5 and outlined the following:

-FY 16/17 Budget Timeline

Ms. Lemos presented the following:

-FY 16/17 Final Budget
-Budget vs. Actual Comparison - All Funds
-Capital Improvement Program (CIP)

Mayor Hiremath opened the public hearing.

The following individual spoke on item #5

Oro Valley resident Neill Freeman

Mayor Hiremath closed the public hearing.

MOTION: A motion was made by Vice Mayor Waters and seconded by Mayor Hiremath to approve Resolution No. (R)16-25, approving the adoption of the final budget of the Town of Oro Valley for the Fiscal Year 2016/17 and further MOVE to approve the Town of Oro Valley 15-Year Capital Improvement Program for FY 2016/17 through FY 2030/31.

Discussion ensued amongst Council and staff regarding the proposed final budget for FY 2016/17.

Councilmember Burns presented his PowerPoint presentation regarding the Community Center and Golf Course operations and financials.

Councilmember Snider made an amendment to the main motion to keep funding for the swings, in the amount of \$21,480, in the FY 2016/17 final budget but wait for a recommendation from the Parks & Recreation Advisory Board as to where the swings should be placed. The amendment was agreed to by Mayor Hiremath and Vice Mayor Waters.

Mr. Caton explained Council could leave capacity for the swings in the budget and decide the location at a future time.

Councilmember Snider withdrew her amendment based on Mr. Caton's comment.

Mayor Hiremath clarified that the motion on the table was to approve the FY 2016/17 final budget as presented, including funding for swings in the amount of \$21,480, with the placement of the swings to be determined at a later date.

MOTION carried 4-3 with Councilmember Burns, Councilmember Garner and Councilmember Zinkin opposed.

FUTURE AGENDA ITEMS

Councilmember Garner requested a future study session to discuss resident issues regarding Calle Concordia 680, seconded by Councilmember Zinkin.

CALL TO AUDIENCE

No comments were received.

ADJOURNMENT

MOTION: A motion was made by Vice Mayor Waters and seconded by Councilmember Zinkin to adjourn the meeting at 9:20 p.m.

MOTION carried, 7-0.

Prepared by:

Michael Standish, CMC
Deputy Town Clerk

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular session of the Town of Oro Valley Council of Oro Valley, Arizona held on the 1st day of June, 2016. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this _____ day of _____, 2016.

Julie K. Bower, MMC
Town Clerk



Town Council Regular Session

Item # B.

Meeting Date: 06/15/2016

Requested by: Philip Saletta

Submitted By: Philip Saletta, Water

Department: Water

Information

SUBJECT:

Resolution No. (R)16-26, authorizing and approving an agreement between the Town of Oro Valley and EnerNOC, Inc. to enroll in the Tucson Electric Power Demand Response Program

RECOMMENDATION:

Staff recommends approval.

EXECUTIVE SUMMARY:

The Water Utility is requesting approval of a resolution authorizing the Water Utility director to execute the agreement with EnerNOC to enroll in the Tucson Electric Power Demand Response Program.

The Water Utility has been discussing electric costs with Tucson Electric Power (TEP) and options to reduce electric costs. TEP has a Demand Response Program that can help reduce electric costs and manage energy use. This Demand Response Program is managed by EnerNOC, Inc. for TEP.

The Water Utility is requesting approval to enroll in this program through an agreement with EnerNOC. The agreement will enroll the Water Utility in the program for the reclaimed water pumping facility. When electric load is high in the TEP service area, EnerNOC can request that we reduce electric demand and shed the electric load at the reclaimed water facility. The Water Utility will get paid for reducing demands and shedding load in accordance with the agreement. The maximum number of hours requested for reducing electric load is four (4) hours per day and it is estimated requests will be made 8 to 12 times per year. This is low risk to the Water Utility since we can choose not to reduce load when a request to do so is made. In addition, this program is good energy management from an environmental perspective.

BACKGROUND OR DETAILED INFORMATION:

Oro Valley Water Utility has been exploring ways to reduce electric power costs such as the recently completed Energy Efficiency Project. In addition to these types of capital projects, there are opportunities to better manage energy use. Tucson Electric Power has developed a Demand Response Program that is managed under a contract with EnerNOC, Inc., an energy management company.

The Water Utility requests approval to enroll in this program through the attached agreement with EnerNOC. The concept of the program is to manage and reduce demands during peak load times, particularly those demands that have flexibility in terms of time-of-day. The reclaimed water booster pump station has that capability and flexibility. The agreement states that when EnerNOC requests Oro Valley Water Utility reduce load and the Water Utility decides to participate, then EnerNOC will pay the Water Utility in accordance with the agreement for the reduced electric demand on a kilowatt-hour basis. The Water Utility can choose not to participate for a particular request (event), but then it would not receive any payment for that particular event. That is the only consequence for not participating. EnerNOC could request participation in a future events, and if we chose to participate, then we would receive payment for that event.

There is no cost to enroll or participate, and there is little to no risk since we can choose not to participate. Typical requests can occur 8 to 12 times per year and for no more than 4 hours per day, and no more than 2 requests in a 5 day period. In addition, the reclaimed water booster pump station has flexibility for reclaimed water deliveries since the curtailed deliveries can be made up over the next 24-hour period. This reduction of electric demand and curtailing reclaimed water deliveries would not impact golf course irrigation operations since there is adequate storage in the golf course lakes.

In addition, this program benefits the environment since additional electric generation would not be needed during those peak times. This type of program to respond and manage demands is an opportunity for the Town to save money and TEP to better manage its electric generation. It is expected that payments to the Water Utility under this program will be approximately \$2,000 per year. This is approximately 4% of the electric costs for the reclaimed water booster pump station.

FISCAL IMPACT:

There is no cost to the Water Utility to enroll in this program. Based upon typical requests to reduce electric demand and curtail reclaimed water pumping, the Water Utility would receive approximately \$2,000 per year which is approximately 4% of the annual electric costs for the reclaimed booster pump station. In the event the Water Utility chooses not to participate in a given request due to operational reasons, the Water Utility would not receive any payment for that event.

SUGGESTED MOTION:

I MOVE to (approve/deny) Resolution No. (R)16-26, authorizing and approving an agreement between the Town of Oro Valley and EnerNOC, Inc. to enroll in the Tucson Electric Power Demand Response Program.

Attachments

(R)16-26 EnerNOC Agreement
EnerNOC Master Agreement

RESOLUTION NO. (R)16-26

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING AN AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND ENERNOC, INC., TO ENROLL IN THE TUCSON ELECTRIC POWER DEMAND RESPONSE PROGRAM

WHEREAS, pursuant to A.R.S. § 9-511, *et seq.*, the Town has the requisite statutory authority to acquire, own and maintain a water utility for the benefit of the landowners within and without the Town's corporate boundaries; and

WHEREAS, the Town desires to enroll in the Tucson Electric Power (TEP) Demand Response Program through the Master Agreement with EnerNOC, Inc., in order to reduce energy costs with TEP; and

WHEREAS, the Water Utility would like to enroll in the program for the reclaimed water pumping facility to reduce the electrical load at the facility when requested by EnerNOC; and

WHEREAS, by enrolling in the program, the Water Utility will receive payments for reducing its electric demand at the reclaimed booster pump station; and

WHEREAS, it is in the best interest of the Town to authorize and approve the Master Agreement with EnerNOC, Inc., attached hereto as Exhibit "A" and incorporated herein by this reference, to enroll in the Tucson Electric Power Demand Response Program.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the Town of Oro Valley that:

1. The Master Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference, between the Town of Oro Valley and EnerNOC, Inc., is hereby authorized and approved.
2. The Mayor, Water Utility Director and other administrative officials are hereby authorized to take such steps as necessary to execute and implement the terms of the Agreement.

PASSED AND ADOPTED by the Mayor and Council of the Town of Oro Valley, Arizona this 15th day of June, 2016.

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie K. Bower, Town Clerk

Tobin Sidles, Legal Services Director

Date: _____

Date: _____

EXHIBIT “A”

Master Agreement

Provider:
EnerNOC, Inc.
One Marina Park Drive, Suite 400
Boston, MA 02210

Master Agreement #: 00121493.0
Effective Date: 6/1/2016

Customer:

Name: Town Of Oro Valley
Address: 11000 N La Canada Dr
City, State, Zip: Tucson, AZ 85737-7015
Phone: (520) 229-5010
Email: psaletta@orovalleyaz.gov

This Master Agreement (this "Master Agreement"), made by and between the provider identified above ("Provider") and the customer identified above ("Customer"), is subject to and governed by Provider's terms and conditions attached hereto ("Terms and Conditions"). Provider and Customer are referred to herein collectively as the "Parties" and each individually as a "Party" to this Master Agreement. The term of this Master Agreement shall commence on the effective date set forth above ("Effective Date") and continue until terminated in accordance with the Terms and Conditions ("Term").

Provider will issue order form(s) (each an "Order Form") setting forth the solutions to be provided to Customer (the "Solutions"), the fees for the Solutions, and any other terms applicable to the Solutions. The initial Order Form Q-00003166 is attached hereto. Each subsequent Order Form entered into between the Parties will reference this Master Agreement and will be attached hereto.

Special Terms Applicable to the Initial Order Form:

1. **Term.** The term of the Order Form shall commence on the Order Effective Date and continue until the Order Expiration Date ("Initial Order Term"); provided that the Order Form shall automatically renew for successive two (2) year terms (each a "Renewal Order Term" and collectively with the Initial Order Term, the "Order Term") unless either Party gives the other Party written notice of non-renewal at least thirty (30) days prior to the expiration of the Initial Order Term or any Renewal Order Term, as applicable. Notwithstanding the foregoing, if Customer is enrolled in a demand response program with a Program Period (as defined in the applicable Program Rule Attachment attached to the Order Form) that would otherwise extend beyond the Order Term, then the Order Term with respect to such demand response program shall be extended until the end of such Program Period.
2. **Payments.**
 - a. **Demand Response Solutions Payments.** In connection with the demand response Solutions at the site addresses agreed to by the Parties in signed Site Agreements(s) attached to the Order Form, Provider shall pay Customer as set forth in the applicable Program Rule Attachment attached to the Order Form. Unless otherwise indicated on the applicable Program Rule Attachment attached to the Order Form, any reference to "%" shall mean (i) for the capacity payment rate identified on the Order Form ("Capacity Payment Rate"), percent of the price obtained by Provider for the applicable demand response program and/or product, and (ii) for the energy payment rate identified on the Order Form ("Energy Payment Rate"), percent of the energy payments available to Provider.
3. **Demand Response Solutions.** The Parties understand that the "Anticipated Capacity" value identified on the Order Form and on the Site Agreement attached thereto is solely the Parties' best estimate of performance and does not represent Customer's Accepted Capacity (as defined in the applicable Program rule Attachment attached to the Order Form).



By signing below, each Party accepts and agrees to be bound by this Master Agreement as of the Effective Date.

Provider

Signature: _____

Name: _____

Title: _____

Customer

Signature: _____

Name: _____

Title: _____

Terms and Conditions

1. **Master Agreement.** These Terms and Conditions govern and are incorporated into the Master Agreement made by and between the Provider and Customer identified on the Master Agreement. Unless otherwise defined herein, capitalized terms in these Terms and Conditions shall have the meanings given to them in the Master Agreement. Provider will provide Customer with the Solutions in accordance with the Master Agreement.
2. **Use and Access License.** For the duration of the Term, Provider grants to Customer a limited, revocable, non-transferrable (except as set forth herein) and non-exclusive right to use and access (including through remote means) the Solutions solely for Customer's internal business operations and subject to the terms of the Master Agreement. Without limiting the terms of the Master Agreement, Customer agrees not to decompile, disassemble, reverse engineer or otherwise attempt to perceive the source code relating to the Solutions or any web-based portal relating thereto or assign, sublicense, sell, resell, lease or otherwise transfer, convey, or pledge as security or encumber, any right in the Solutions. Except as expressly permitted herein, Customer agrees that it shall not receive any right, title or interest in, or any license or right to use or access, the Solutions or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise.
3. **Confidentiality.**
 - a. **Nondisclosure to Third Parties.** In performing its obligations under the Master Agreement, each Party may receive non-public information of the other Party ("Confidential Information"). Each Party, on behalf of itself and its employees, contractors and agents (collectively, "Representatives"), agrees not to, except as set forth in Section 3(b) or as required by applicable law or regulation, use or disclose Confidential Information during or after the Term without the prior written consent of the other Party. To protect Confidential Information, each Party agrees to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to know"; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate agreements, policies and/or procedures in place with such Representatives sufficient to enable compliance with the confidentiality obligations contained herein.
 - b. **Use of Confidential Information.** Customer acknowledges that Provider may receive Confidential Information of Customer from the applicable independent system/grid operator, utility and/or supplier, through data collected through the Solutions or otherwise, which may be used or disclosed by Provider to Tucson Electric Power for the performance of the Master Agreement.
4. **Aggregate Data Collection and Usage.** Customer acknowledges and agrees that Provider may: (i) collect, process and aggregate any data used with, stored in, or related to the Solutions, including, without limitation, end-user energy usage and demand data, and create aggregate data records ("Aggregate Data") by removing any personally identifiable information ("PII") from the underlying data; (ii) use such Aggregate Data to improve the Solutions, develop new solutions, understand actual energy usage and demand trends and general industry trends, develop white papers, reports, or databases summarizing the foregoing, and generally for any legitimate purpose related to Provider's business; and (iii) share Aggregate Data with third parties or publish any reports, white papers, or other summaries based on Aggregate Data.
5. **Indemnification.** Provider agrees to defend and indemnify (subject to the terms of this Section), at its own expense, any third party claim against Customer, its parent corporation, affiliates, directors, employees and agents that arise due to any (i) bodily injury, death or damage to tangible personal property to the extent caused by the negligent acts or omissions of Provider or its employees in the performance of the Master Agreement; and (ii) a claim that the Solutions (or any software, hardware, or other component thereof) or any other goods, software or Solutions provided by Provider hereunder (so long as the foregoing have not been altered or modified by a party other than Provider) or the use thereof by Customer infringes upon any copyright, trademark, trade secret or proprietary right of any third party. Provider will pay reasonable legal fees as incurred and such damages or costs as are finally awarded against Customer or agreed to in settlement for such claim provided that Customer gives Provider (i) prompt written notice of any such claim or threatened claim; (ii) sole control of the defense, negotiations and settlement of such claim; and (iii) full cooperation in any defense or settlement of the claim. The foregoing indemnification obligations shall not apply to the extent that any such claims or damages result from goods, software or Solutions provided by a party other than Provider, or are the fault of or caused by the sole acts or omissions of Customer.
6. **Limitation on Liability.** Except for breaches of confidentiality and claims involving the indemnification obligations contained herein, Provider's liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages under the Master Agreement shall not exceed 100,000.00. In no event shall either Party, its officers, directors, partners, shareholders, employees or affiliates, or any contractor or subcontractor or its employees or affiliates, be liable to the other Party for special, indirect, exemplary, punitive, incidental or consequential damages of any nature whatsoever connected with or resulting from the Solutions or from performance or non-performance of obligations under the Master Agreement, including without limitation, damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability contract, operation of law or otherwise.
7. **Warranty Limitations.** IF THE SOLUTIONS BECOME OR ARE LIKELY TO BECOME THE SUBJECT OF ANY THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM OR ACTION, PROVIDER MAY, AT PROVIDER'S SOLE OPTION, EITHER: (I) REPLACE SUCH SOLUTIONS WITH AN EQUALLY SUITABLE SOLUTION FREE OF INFRINGEMENT; (II) MODIFY OR OBTAIN A LICENSE FOR THE SOLUTIONS SO THAT THEY NO LONGER INFRINGE ON ANY RIGHTS; OR (III) AFTER PROVIDER HAS DEMONSTRATED ITS GOOD FAITH EFFORTS TO ACHIEVE THE FOREGOING WITHOUT SUCCESS, TERMINATE THE MASTER AGREEMENT. EXCEPT AS PROVIDED HEREIN, THE SOLUTIONS (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) ARE PROVIDED AS IS WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.
8. **Choice of Law.** The Master Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Arizona, without giving effect to choice of law rules.
9. **Implementation.** If required by Provider for Customer's use and access to the Solutions, Customer shall, within twelve (12) days following execution by the Parties of the Master Agreement or an Order Form, as applicable, provide Provider with reasonable access to perform an implementation of the Solutions, including the installation of an EnerNOC site server that allows for Internet-based power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. Customer agrees to collaborate with Provider in a timely manner in implementing the Solutions and in testing, enabling and maintaining the installed EnerNOC site server, the Solutions, and any other components of the EnerNOC system.
10. **Customer's Support Requirements.**
 - a. **Customer Data.** Customer agrees to provide or cause to be provided to Provider such contact, billing and energy usage data, and facility information as is required by Provider to support the Solutions ("Customer Data"). Customer (i) represents that it has the right to provide Customer Data to Provider and will provide Customer Data to Provider in compliance with applicable legal requirements; (ii) authorizes Provider to use, copy, store, modify and display Customer Data for Customer's benefit and as expressly set forth in Section 4 of these Terms and Conditions; and (iii) authorizes Provider to access Customer Data to provide quality assurance, perform software maintenance, and deliver customer service and technical support. During the Term and for thirty (30) days following expiration or termination of the Master Agreement, Provider will preserve and maintain Customer Data. Thereafter, Provider will have no obligation to preserve or return any Customer Data.
 - b. **Demand Response.** If Customer is enrolled in a demand response program, Customer represents and warrants that (i) it holds all applicable licenses and/or permits not otherwise facilitated by Provider, as described in the product specification sheet applicable to the Solutions, that are required for the proper participation in such demand response program, including any local licenses and/or permits necessary to utilize on-site electric generation; and (ii) it has the intent and ability to generate and/or reduce electrical demand to achieve Accepted Capacity (as defined in the applicable Program Rule Attachment attached to the applicable Order Form) when notified by Provider during demand response events.
11. **Provider Limitation.** Customer agrees not to contract with any other provider of the Solutions during the Term.
12. **Payments to Utilities or Other Suppliers.** In no event shall Provider or its affiliates, directors, employees and agents (collectively, the "Indemnified Parties") be responsible or liable for payment of any utility bill of Customer or any amount Customer may owe to any utility or other supplier. To the fullest extent permitted by law, Customer shall defend and indemnify, at its own expense, any third party claim against the Indemnified Parties, that arise due to any allegation that the Indemnified Parties are responsible for payment of any utility bill of Customer or a portion thereof, or any other amounts due by Customer to any utility or other supplier. In connection with the foregoing indemnification obligations, Customer shall pay reasonable legal fees as incurred and such damages or costs as are finally awarded against Provider or agreed to in settlement for such claim.
13. **Miscellaneous.** Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of Provider; except that Customer may assign the Master Agreement to its successor or any entity acquiring all or substantially all of the assets of Customer by providing Provider with written notice promptly following the acquisition date. The Master Agreement, including any addenda, exhibits and attachments, constitutes the entire agreement between Provider and Customer with respect to Provider's provision of the Solutions identified on an Order Form, and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, the Master Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. The Master Agreement shall be binding upon the Parties together with their successors and permitted assigns. Each Party shall be responsible for its Representatives' compliance with the Master Agreement.
14. **Termination.** Either Party may terminate (i) the Master Agreement or the applicable Order Form in the event of the other Party's material breach, provided that the breaching Party fails to cure the specific breach within thirty (30) days following date of written notice from the non-breaching Party specifying the purported breach; (ii) the Master Agreement or any Order Form immediately upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other Party's debts; or (iii) the Master Agreement for convenience by giving the other Party sixty (60) days prior written notice, provided, however, that neither Party may terminate the Master Agreement so long as any Order Form thereunder remains in effect. In addition, if Customer is enrolled in a demand response program, either Party may terminate the Order Form applicable to such program (iv) if such Program is materially altered, suspended or ended; or (v) in accordance with the terms set forth in the applicable Program Rule Attachment attached to the Order Form.
15. **Notices.** Any notices required or permitted to be given hereunder by either Party to the other Party shall be given in writing by: (i) personal delivery; (ii) bonded courier or nationally recognized overnight delivery company; or (iii) electronic mail. If notice is given by personal delivery, bonded courier or nationally recognized overnight delivery company, such notice shall be addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this Section): to Provider at EnerNOC, Inc.,



Attn: Legal Department, One Marina Park Drive, Suite 400, Boston, MA 02210; and to Customer at the Customer address indicated on the Master Agreement. If notice is sent by electronic mail, such notice shall be sent to Provider at contractmanagement@enernoc.com; and/or to Customer at the email address, if any, indicated on the Master Agreement.

16. **Insurance.** Provider shall maintain the following insurance: (i) Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate; (ii) Automobile Liability Insurance with limits of \$1,000,000 per occurrence combined single limit; and (iii) Workers' Compensation and Employers' Liability Insurance with limits of not less than \$500,000. All insurance carriers must have an AM Best rating of A-VIII or better. Customer shall be listed as a certificate holder and additional insured on the Commercial General Liability policy. Customer shall be notified in writing at least thirty (30) days prior to cancellation of any insurance policy.

Exhibit A: Site Agreement

Provider:
EnerNOC, Inc.
One Marina Park Drive, Suite 400
Boston, MA 02210

Order Form #: Q-00003166
Site Agreement Effective Date: 6/1/2016

Name: Customer:
Town Of Oro Valley
Address: 11000 N La Canada Dr
City, State, Zip: Tucson, AZ 85737

This Site Agreement (this "Site Agreement"), made by and between Provider and Customer, is incorporated by reference into the order form referenced above.

Site Address	Solutions	Demand Response Programs	Anticipated Capacity (kW)
13358 N. Rancho Vistoso Boulevard Oro Valley, AZ 85755	Demand Response	TEP Standard Summer Program;TEP Standard Winter Program	75

By signing below, each party accepts and agrees to be bound by this Site Agreement as of the date first set forth above.

Provider

Signature

Name

Title

Customer

Signature

Name

Title

Order Form

Provider:
 EnerNOC, Inc.
 One Marina Park Drive, Suite 400
 Boston, MA 02210

Customer:

Name: Town Of Oro Valley
DR Payment Contact: Philip Saletta
 (520) 229-5010
 psaletta@orovalleyaz.gov
DR Payment Address: 11000 N La Canada Dr, Tucson, AZ
 85737-7015

Master Agreement #: 00121493.0
Order Form #: Q-00003166
Order Effective Date: 6/1/2016
Order Expiration Date: 5/31/2021
Prepared By: Eric Bakken
 eric.bakken@enernoc.com

Generated On*: 5/11/2016
 *After thirty (30) days, Provider may change the pricing below unless this Order Form has been fully executed.

Demand Response Solutions

Demand Response Program*	Estimated No. of Site Addresses	Aggregate Anticipated Capacity (kW)	Capacity Payment Rate	Energy Payment Rate
Tucson Electric Power Standard Summer Program	1	75	\$2.50/kW Month	\$.25/kWh
Tucson Electric Power Standard Winter Program	1	75	\$.75/kW Month	\$.25/kWh

***The program rule attachment(s) applicable to the demand response program(s) identified above is attached hereto.**

The product specifications sheet applicable to the Solutions is available at <http://www.enernoc.com/product-documents>. Any values identified above as "estimated" will be agreed to by the parties in a signed Statement of Work for any professional service Solutions and/or a signed Site Agreement for any other Solutions, which shall reference this Order Form and be attached hereto as sequential exhibits.

Program Rule Attachment

Tucson Electric Power Standard Summer Program

1. **Program Description.** The Tucson Electric Power (“TEP”) Standard Summer Program (the “Program”) compensates electricity users for reducing consumption when demand for electricity is high. The Program is designed to help maintain reliable and affordable electricity across the TEP territory.
2. **Program Rules.** The terms herein will reflect Program terms and conditions which may be amended from time to time by TEP or the Arizona Corporation Commission, the current terms of which are summarized in the table below:

<i>Program Enrollment</i>	The Program runs monthly from the first day of a month until the last day of such month (“Program Period”).
<i>Peak Event Window</i>	Peak Events may be called during non-holiday weekdays (“Peak Events”) from 11:00 a.m. to 6:00 p.m. Arizona Time during May through October.
<i>Voluntary Events</i>	TEP reserves the right to call events in addition to the Peak Events defined above (such events referred to herein as “Voluntary Events” and together with Peak Events, collectively “Demand Response Events”). Customer shall use commercially reasonable efforts to respond during a Voluntary Event. Customer’s performance during Voluntary Events will have no impact on their Capacity Payment as defined in Subsection 4(a)(i) hereof; provided, however, that Customer’s performance during any such Voluntary Event will be included in its Energy Payments as defined in Section 4(a)(ii) hereof.
<i>Event Trigger</i>	Peak Events are initiated at TEP’s discretion, usually during times of high electricity prices or high system demand.
<i>Advanced Notification</i>	Customer is expected to reduce demand by the start of the Demand Response Event and will be provided a minimum of thirty (30) minutes advance notice. In addition to providing Demand Response Event notification, Provider agrees to use commercially reasonable efforts to inform Customer that Demand Response Events are likely several hours or the day before based upon weather conditions, spot market prices, day-ahead Program activations and other relevant information.
<i>Event Frequency & Duration</i>	Peak Events may last a minimum of one (1) hour and up to four (4) hours, and a Peak Event may be initiated no fewer than two (2) hours after the end of a previous Peak Event. No more than two (2) Peak Events may be dispatched in any consecutive five (5) business day period. No more than eighty (80) Peak Event hours may be called in each twelve (12) month Program year (January 1 to December 31).

Customer shall be considered enrolled in the Program and eligible to earn demand response payments upon the later of (i) the first day of the month following execution of Master Agreement or the Order Form, as applicable, by the Parties; or (ii) the date indicated in the Program enrollment notification email sent by Provider to Customer.

3. Customer Capacity.

- a. **Accepted Capacity.** “Accepted Capacity” shall represent the best estimate of Customer’s performance based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by Provider in the future to reflect actual performance, changes in facility operations, Program rules, regulations and/or other relevant information.
- b. **Delivered Capacity.** “Delivered Capacity” for a particular month will be calculated as the average difference between the measured energy demand (in kW) and baseline energy usage over each five-minute interval of each Demand Response Event in such month.

4. Payments.

a. Payments to Customer.

- i. **Capacity Payments.** Provider will pay Customer capacity payments (“Capacity Payments”) equal to a Capacity Payment Rate multiplied by either (a) Customer’s Accepted Capacity if no Peak Events have been called, or (b) Customer’s Delivered Capacity for that month if one or more Peak Events have been called in such month. For example, if Customer’s Delivered Capacity during the Demand Response Events called in July is 92% of Accepted Capacity for the month of July, payment for July would equal the product of 92% of the Accepted Capacity and the Capacity Payment Rate. During months in which the Customer is only partially enrolled, Capacity Payments will be prorated according to Customer’s enrollment during said month.
- ii. **Energy Payments.** In months when one or more Demand Response Events are called, Provider will pay Customer energy payments equal to (a) an Energy Payment Rate in connection with Customer responding to a Peak Event when notified by Provider, and (b) an Energy Payment Rate less \$0.10 per kWh in connection with Customer responding to a Voluntary Event when notified by Provider.
- iii. **Underperformance.** In no event shall Customer be penalized for underperformance or non-performance, other than to

have future or event-month payments reduced to reflect actual performance as described in Section 3(b) above.

- b. *Payment Timing.*** Provider shall make quarterly payments to Customer of Customer's share of all payments received by Provider from TEP during the preceding quarter in connection with Customer's participation in the Program. All Payments will be made within forty-five (45) days of Provider's receipt of total payment from TEP.
- c. *Timing of First Payment.*** Initial payments will begin to accrue on the first of the month following enablement, Provider testing, and registration of the Accepted Capacity with TEP.

Program Rule Attachment
Tucson Electric Power Standard Winter Program

5. **Program Description.** The Tucson Electric Power (“TEP”) Standard Winter Program (the “Program”) compensates electricity users for reducing consumption when demand for electricity is high. The Program is designed to help maintain reliable and affordable electricity across the TEP territory.
6. **Program Rules.** The terms herein will reflect Program terms and conditions which may be amended from time to time by TEP or the Arizona Corporation Commission, the current terms of which are summarized in the table below:

<i>Program Enrollment</i>	The Program runs monthly from the first day of a month until the last day of such month (“Program Period”).
<i>Peak Event Window</i>	Peak Events may be called during non-holiday weekdays (“Peak Events”) from 7:00 a.m. to 7:00 p.m. Arizona Time during November through April.
<i>Voluntary Events</i>	TEP reserves the right to call events in addition to the Peak Events defined above (such events referred to herein as “Voluntary Events” and together with Peak Events, collectively “Demand Response Events”). Customer shall use commercially reasonable efforts to respond during a Voluntary Event. Customer's performance during Voluntary Events will have no impact on their Capacity Payment as defined in Subsection 4(a)(i) hereof; provided, however, that Customer’s performance during any such Voluntary Event will be included in its Energy Payments as defined in Section 4(a)(ii) hereof.
<i>Event Trigger</i>	Peak Events are initiated at TEP’s discretion, usually during times of high electricity prices or high system demand.
<i>Advanced Notification</i>	Customer is expected to reduce demand by the start of the Demand Response Event and will be provided a minimum of thirty (30) minutes advance notice. In addition to providing Demand Response Event notification, Provider agrees to use commercially reasonable efforts to inform Customer that Demand Response Events are likely several hours or the day before based upon weather conditions, spot market prices, day-ahead Program activations and other relevant information.
<i>Event Frequency & Duration</i>	Peak Events may last a minimum of one (1) hour and up to four (4) hours, and a Peak Event may be initiated no fewer than two (2) hours after the end of a previous Peak Event. No more than two (2) Peak Events may be dispatched in any consecutive five (5) business day period. No more than eighty (80) Peak Event hours may be called in each twelve (12) month Program year (January 1 to December 31).

Customer shall be considered enrolled in the Program and eligible to earn demand response payments upon the later of (i) the first day of the month following execution of Master Agreement or the Order Form, as applicable, by the Parties; or (ii) the date indicated in the Program enrollment notification email sent by Provider to Customer.

7. Customer Capacity.

- a. **Accepted Capacity.** “Accepted Capacity” shall represent the best estimate of Customer’s performance based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by Provider in the future to reflect actual performance, changes in facility operations, Program rules, regulations and/or other relevant information.
- b. **Delivered Capacity.** “Delivered Capacity” for a particular month will be calculated as the average difference between the measured energy demand (in kW) and baseline energy usage over each five-minute interval of each Demand Response Event in such month.

8. Payments.

a. *Payments to Customer.*

- i. *Capacity Payments.*** Provider will pay Customer capacity payments (“Capacity Payments”) equal to a Capacity Payment Rate multiplied by either (a) Customer’s Accepted Capacity if no Peak Events have been called, or (b) Customer’s Delivered Capacity for that month if one or more Peak Events have been called in such month. For example, if Customer’s Delivered Capacity during the Demand Response Events called in July is 92% of Accepted Capacity for the month of July, payment for July would equal the product of 92% of the Accepted Capacity and the Capacity Payment Rate. During months in which the Customer is only partially enrolled, Capacity Payments will be prorated according to Customer’s enrollment during said month.
 - ii. *Energy Payments.*** In months when one or more Demand Response Events are called, Provider will pay Customer energy payments equal to (a) an Energy Payment Rate in connection with Customer responding to a Peak Event when notified by Provider, and (b) an Energy Payment Rate less \$0.10 per kWh in connection with Customer responding to a Voluntary Event when notified by Provider.
 - iii. *Underperformance.*** In no event shall Customer be penalized for underperformance or non-performance, other than to have future or event-month payments reduced to reflect actual performance as described in Section 3(b) above.
- b. *Payment Timing.*** Provider shall make quarterly payments to Customer of Customer’s share of all payments received by Provider from TEP during the preceding quarter in connection with Customer’s participation in the Program. All Payments will be made within forty-five (45) days of Provider’s receipt of total payment from TEP.
- c. *Timing of First Payment.*** Initial payments will begin to accrue on the first of the month following enablement, Provider testing, and registration of the Accepted Capacity with TEP.



Town Council Regular Session

Item # C.

Meeting Date: 06/15/2016

Requested by: Daniel G. Sharp

Submitted By: Colleen Muhr, Police
Department

Department: Police Department

Information

SUBJECT:

Resolution No. (R)16-27, authorizing and approving an Intergovernmental Agreement among the Town of Oro Valley, the Town of Marana, the Town of Sahuarita, the City of Tucson, the Pima County Sheriff's Department, the Arizona Department of Public Safety, the City of Sierra Vista, the City of Nogales, the City of Florence, the City of South Tucson, the City of Apache Junction, the City of Chandler, the Federal Bureau of Investigation, the Town of Gilbert, the Town of Maricopa, the City of Mesa, the Town of Paradise Valley, the City of Phoenix, the City of Scottsdale, the County of Maricopa, the City of Glendale, the County of Navajo, the City of Page, the City of Peoria, the County of Pinal, the City of Show Low, and the City of Tempe to create an Arizona Child Abduction Response Team (AZCART)

RECOMMENDATION:

Staff recommends approval.

EXECUTIVE SUMMARY:

The purpose of this Agreement is to create an Arizona Child Abduction Response Team (AZCART), with the primary goal of AZCART being to provide a pool of specialized investigators which are available to focus dedicated and intensive investigative, preventative, and general law enforcement efforts primarily with regard to cases involving abducted children.

BACKGROUND OR DETAILED INFORMATION:

AZCART agencies may request and render law enforcement assistance from other AZCART agencies in dealing with serious violations of law, including, but not limited to, the investigation, arrest and prosecution of those involved in criminal child kidnapping, abduction, false imprisonment and similar or related violations (utilizing state and federal law and prosecutions, as appropriate), the rescue of the abducted child or children and the seizure and forfeiture of assets of those engaged in child abduction or otherwise supporting such activity (utilizing state and federal forfeiture options, as appropriate).

Additionally, the location of each party's jurisdiction in relation to each other makes it advantageous to enter this particular agreement in order to receive and extend mutual aid in the form of law enforcement services and resources to adequately respond to continuing, multi-jurisdictional criminal activity such as that described above.

FISCAL IMPACT:

Fiscal impact associated with AZCART would be related to staffing a particular incident, pertaining to scheduling adjustments, compensatory time or overtime. If a missing child event occurs in Oro Valley, our participation would provide an extraordinary amount of resources to include over one hundred investigators conducting neighborhood canvasses, roadside canvasses, sex offender canvasses, and the like. AZCART agencies and the FBI will also send profilers, forensic teams, rehab trailers, generators, canopies, radio trailers, tables, chairs, computer Wi-Fi hot-spots, and other needed equipment.

The obvious benefit is having personnel who are trained and experienced in missing child investigations.

SUGGESTED MOTION:

I MOVE to (adopt or deny) Resolution No. (R)16-27, authorizing and approving an Intergovernmental Agreement (IGA) among the Town of Oro Valley, the Town of Marana, the Town of Sahuarita, the City of Tucson, the Pima County Sheriff's Department, the Arizona Department of Public Safety, the City of Sierra Vista, the City of Nogales, the City of Florence, the City of South Tucson, the City of Apache Junction , the City of Chandler, the Federal Bureau of Investigation, the Town of Gilbert, the Town of Maricopa, the City of Mesa, the Town of Paradise Valley, the City of Phoenix, the City of Scottsdale, the County of Maricopa, the City of Glendale, the County of Navajo, the City of Page, the City of Peoria, the County of Pinal, the City of Show Low, and the City of Tempe to create an Arizona Child Abduction Response Team (AZCART).

Attachments

(R)16-27 AZCART IGA
AZCART IGA

RESOLUTION NO. (R)16-27

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING AN INTERGOVERNMENTAL AGREEMENT AMONG THE TOWN OF ORO VALLEY, THE TOWN OF MARANA, THE TOWN OR SAHUARITA, THE CITY OF TUCSON, THE CITY OF SOUTH TUCSON, THE CITY OF SIERRA VISTA, , THE CITY OF NOGALES, THE CITY OF FLORENCE, THE CITY OF APACHE JUNCTION, THE CITY OF CHANDLER, THE TOWN OF GILBERT, THE TOWN OF MARICOPA, THE CITY OF MESA, THE TOWN OF PARADISE VALLEY, THE CITY OF PHOENIX, THE CITY OF SCOTTSDALE, THE COURT OF MARICOPA, THE CITY OF GLENDALE, THE COUNTY OF NAVAJO, THE CITY OF PAGE, THE CITY OF PEORIA, THE COUNTY OF PINAL, THE CITY OF SHOW LOW, THE CITY OF TEMPE, THE PIMA COUNTY SHERIFF'S DEPARTMENT, THE ARIZONA DEPARTMENT OF PUBLIC SAFETY AND THE FEDERAL BUREAU OF INVESTIGATION FOR PARTICIPATION IN THE ARIZONA CHILD ABDUCTION RESPONSE TEAM (CART)

WHEREAS, the Town of Oro Valley pursuant to Arizona Revised Statutes A.R.S. § 11-952 is authorized to enter into or renew agreements for joint and cooperative action with other public agencies; and

WHEREAS, the Town of Oro Valley is authorized to establish and maintain the Oro Valley Police Department, pursuant to A.R.S. § 9-240 (B)(12); and

WHEREAS, the Town of Oro Valley desires to enter into an intergovernmental agreement with the Town of Marana, the Town of Sahuarita, the City of Tucson, the City of Sierra Vista, the City of Nogales, the City of Florence, the City of South Tucson, the City of Apache Junction, the City of Chandler, the Town of Gilbert, the Town of Maricopa, the City of Mesa, the Town of Paradise Valley, the City of Phoenix, the City of Scottsdale, the County of Maricopa, the City of Glendale, the County of Navajo, the City of Page, the City of Peoria, the County of Pinal, the City of Show Low, the City of Tempe, the Pima County Sheriff's Department, the Arizona Department of Public Safety and, the Federal Bureau of Investigation, for participation in the Arizona Child Abduction Response Team (CART); and

WHEREAS, the purpose of CART is to provide a pool of specialized investigators which will be made available to focus dedicated and intensive investigative, preventative, and general law enforcement efforts in cases involving abducted children; and

WHEREAS, it is in the best interest of the Town to enter into the IGA, attached hereto as Exhibit "A" and incorporated herein by this reference for participation in the Arizona Child Abduction Response Team.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Oro Valley, Arizona, that:

1. That the Intergovernmental Agreement among the Town of Oro Valley, the Town of Marana, the Town of Sahuarita, the City of Tucson, the City of Sierra Vista, the City of Nogales, the City of Florence, the City of South Tucson, the City of Apache Junction, the City of Chandler, the Town of Gilbert, the Town of Maricopa, the City of Mesa, the Town of Paradise Valley, the City of Phoenix, the City of Scottsdale, the County of Maricopa, the City of Glendale, the County of Navajo, the City of Page, the City of Peoria, the County of Pinal, the City of Show Low, the City of Tempe, the Pima County Sheriff's Department, the Arizona Department of Public Safety and, the Federal Bureau of Investigation, for participation in the Arizona Child Abduction Response Team (CART); attached hereto as Exhibit "A" is hereby approved.
2. The Police Chief and any other administrative officials of the Town of Oro Valley are hereby authorized to take steps as necessary to execute and implement the terms of the Agreement.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona, this 15th day of June, 2016.

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie K. Bower, Town Clerk

Tobin Sidles, Legal Services Director

Date: _____

Date: _____

EXHIBIT “A”

**INTERGOVERNMENTAL AGREEMENT
FOR THE CREATION AND PARTICIPATION IN THE ARIZONA CHILD
ABDUCTION RESPONSE TEAM**

This Agreement is entered into pursuant to A.R.S. §§11-951 *et seq.*, and A.R.S. §13-3872 among the Town of Oro Valley, the Town of Marana, the Town of Sahuarita, the City of Tucson, the Pima County Sheriff's Department, the Arizona Department of Public Safety, the City of Sierra Vista, the City of Nogales, the City of Florence, the City of South Tucson, the City of Apache Junction, the City of Chandler, the Federal Bureau of Investigation, the Town of Gilbert, the Town of Maricopa, the City of Mesa, the Town of Paradise Valley, the City of Phoenix, the City of Scottsdale, the County of Maricopa, the City of Glendale, the County of Navajo, the City of Page, the City of Peoria, the County of Pinal, the city of Show Low, and the City of Tempe. The aforementioned agencies shall herein after be known collectively as the Arizona Child Abduction Response team agencies (CART) and any other public agencies, as that term is defined in A.R.S. § 11-951, which after invitation by the CART chiefs, comply with the provisions of A.R.S. §§11-951 *et seq.* and files an authorizing document with the County Recorder in the County in which the agency is located in that references this Agreement. A public agency shall become a Party to this Agreement as of the date that agency files with the appropriate County Recorder, notwithstanding that A.R.S. §§11-951 *et seq.*, no longer requires such recording. Each CART agency shall provide a copy of its fully executed agreement to every other member agency. In addition to the above, all members to this Agreement may also be collectively known as or referred to as the Parties.

I. PURPOSE

The purpose of this Agreement is to create an Arizona Child Abduction Response Team (CART). The primary goal of the Arizona Child Abduction Response Team is to provide a pool of specialized investigators which are available to focus dedicated and intensive investigative, preventative, and general law enforcement efforts primarily with regard to cases involving abducted children. CART agencies may request and render law enforcement assistance from other CART agencies in dealing with serious violations of law including, but not limited to, the investigation, arrest and prosecution of those involved in criminal child kidnapping, abduction, false imprisonment and similar or related violations (utilizing state and federal law and prosecutions, as appropriate), the rescue of the abducted child or children and the seizure and forfeiture of assets of those engaged in child abduction or otherwise supporting such activity (utilizing state and federal forfeiture options, as appropriate).

Additionally, the location of each Party's jurisdiction in relation to each other makes it advantageous to enter this particular Agreement in order to receive and extend mutual aid in the form of law enforcement services and resources to adequately respond to continuing, multi-jurisdictional criminal activity such as that described above.

II. AUTHORITY

A. The Parties are authorized and empowered to enter into this Agreement pursuant to A.R.S. §§11-951 *et seq.*, A.R.S. §13-3872 and the respective provisions of their City Charters, Tribal Constitution or other governing statute or authority.

If any Native American tribe that is a party to this Agreement request CART assistance, all assisting CART team members shall be granted tribal peace officer authority for the duration of the CART activation within the applicable tribal jurisdiction.

III. ACTIVATION, PROCEDURES AND RESOURCES

A. Any Party to the Agreement may request activation of CART. It shall be the responsibility of the Party requesting activation to contact assigned team leaders via the law enforcement communications center of each Party.

B. The Party that has jurisdiction over the incident or investigation will remain as the lead agency during the duration of a particular CART activation with support from CART agencies.

C. Two CART Team Leaders will be selected by the CART Team members subject to final approval of chief law enforcement officers (chiefs) of the CART agencies on a rotating basis for a term of at least one year, which shall correspond with the effective date of the Agreement. In the event that a Team Leader is unable to complete his or her term due to resignation from his or her agency or for any other reason, the CART members shall name a replacement shall appoint a replacement subject to final approval of the chiefs.

D. The CART Team Leaders or designees will be responsible for coordinating on-going training, meetings or other necessary supporting functions in support of the operational effectiveness of CART. Team Leaders shall be responsible for mediating any jurisdictional disputes between the Parties during a CART activation. In the event such mediation fails, the issue shall be brought to the attention of the CART Chiefs for appropriate resolution.

E. Each Party shall to the best of its ability make at least one sworn law enforcement officer available along with supporting equipment such as vehicles in support of any CART activation. Each Party shall designate a primary CART member to participate in activations, meetings, trainings, etc. Each Party shall immediately inform other CART agencies when such designations change. In the event a primary CART member is not available or as the situation dictates, a CART agency may provide officers not normally designated as CART members in support of a CART activation.

F. Each Party shall have the sole discretion to determine how many or how long any of its personnel or resources shall be assigned in support of a CART activation.

IV. COSTS AND ANY REIMBURSEMENT

The Parties will be responsible for any and all associated costs accrued in implementing this Agreement that are incurred by their respective agencies to include but are not limited to employee salary, shift differential pay, overtime compensation, benefits, vehicles, equipment, etc. If any Party receives grant funds designated for the Arizona Child Abduction Response Team, some or all of these expenses may be reimbursed to the Parties. In no event shall any Party charge other Parties for any administrative fees for any work performed pursuant to this Agreement.

V. NONDISCRIMINATION

The Parties to this Agreement shall comply with all applicable provisions of state and federal non-discrimination laws and regulations including, but not limited to Executive Order 75-5, as modified by Executive Order 99-4, which mandates that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities and all other federal and state employment and educational opportunity laws, rules and regulations, including the Americans with Disabilities Act; provided however, an Indian Community is subject to 25 U.S.C. § 450e(c). No Party shall engage in any form of illegal discrimination.

VI. INDEMNIFICATION

To the extent permitted by law, each Party does hereby covenant and agree to indemnify, defend, and hold harmless the other Party, their elected officials, appointees, officers, employees, contractees, and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement which, are the result of any act or omission of the Party, its officers, employees, contractees, agents, and anyone acting under its direction or control, whether intentional or negligent, in connection with or incident to this Agreement. Failure of a Party to comply with the terms of this Agreement shall not provide the basis of any third party action against any of the Parties.

VII. GOVERNING LAW

The laws of the State of Arizona shall govern this Agreement. Venue will be in the Maricopa County Superior Court unless the subject matter of the dispute involves an Indian Community, then venue shall be in the Federal District Court for the State of Arizona. In the event of any litigation or arbitration arising out of this Agreement, the substantially prevailing Party in such litigation or arbitration shall be entitled to recover its reasonable attorney fees, expert witness fees and other costs of litigation.

VIII. DURATION AND CANCELLATION OF AGREEMENT

A. This Agreement shall become effective upon execution by the Parties hereto and filing with the appropriate County Recorder and shall remain in effect until July 1, 2020, unless otherwise terminated by the terms of this Agreement or operation of law. Failure by one or more Parties to

execute the Agreement shall not invalidate the Agreement as to those Parties who did so. Any Party may withdraw from this Agreement with or without cause by giving thirty calendar days written notice to the other Parties to the Agreement.

B. This Agreement may be administratively extended by each Party at the direction of the chief law enforcement officer for each Party on or before the Termination date for a period of an additional five years by notifying the other Parties in writing. Any Party which fails to do so by the termination date listed above shall no longer be a Party to the Agreement.

IX. CANCELLATION PROVISIONS PURSUANT TO A.R.S §38-511

The Parties reserve all rights that each may have to cancel this Agreement for possible conflicts of interest under A.R.S. § 38-511, as amended.

X. MULTIPLE COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Neither a signature for every Party nor a signature line shall be required in each counterpart except that on a counterpart being brought forward by a Party to its legislative body or equivalent for approval, that particular counterpart shall have to be signed and executed in accordance with that Party's practice. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

XI. WORKER'S COMPENSATION

Pursuant to A.R.S. §23-1022(D), for the purposes of worker's compensation coverage, all employees of each Party covered by this Agreement shall be deemed to be an employee of all Parties. The parent agency shall be solely liable for payment of worker's compensation benefits.

XII. OTHER PROVISIONS

A. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity or enforceability of any other provision hereof.

B. This Agreement contains the entire understanding between the Parties with respect to the subjects hereof and supersedes all prior negotiations and agreements. This Agreement may be amended only by an instrument in writing and signed by all the participating Parties. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute waiver of any other subsequent breach. Headings are for convenience and shall not affect interpretation.

C. This Agreement shall be recorded with the appropriate County Recorder as described above upon its execution and a copy shall be forwarded to each Party.

D. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

E. Nothing within this Agreement shall be construed to limit the ability of participating Arizona Child Abduction Response Team members to provide or as otherwise allowed for by law, such assistance in any enforcement action as may be lawfully requested by a law enforcement officer having jurisdiction over an incident, crime or matter under consideration.

XIII. COMPLIANCE WITH E-VERIFY PROGRAM

A. To the extent provisions of A.R.S. §41-4401 are applicable, all Parties warrant to each Party that they will comply with all Federal Immigration laws and regulations that relate to their employees and that each now complies with the E-Verify Program under A.R.S. §23-214(A).

B. A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement.

C. All of the Parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related subcontract to ensure compliance with the warranty given above.

D. Any Party may conduct a random verification of the employment records of any other Party to ensure compliance with this warranty.

E. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

F. The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

XIV. NOTICES

Any notice required to be given under this Agreement will be provided to all Parties to this Agreement. The CART leaders shall compile a list of each Party's address, phone number and contact person and distribute said list to each member to this Agreement.

IN WITNESS WHEREOF, the Party named below has executed this Agreement on _____.

“Partnering Agency”

TOWN OF ORO VALLEY, an Arizona municipal corporation

By: _____
Dr. Satish I. Hiremath
Mayor

ATTEST:

Julie K. Bower
Town Clerk

APPROVED AS TO FORM:

Tobin Sidles
Legal Services Director

Reviewed By: _____
Chief of Police

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who determined that this Agreement is in appropriate form and is within the powers and authority of the respective parties.

Town of Oro Valley

By: _____
Tobin Sidles
Legal Services Director

Date: _____



Town Council Regular Session

Item # D.

Meeting Date: 06/15/2016

Requested by: Larry Stevens

Submitted By: Colleen Muhr, Police
Department

Department: Police Department

Information

SUBJECT:

Resolution No. (R)16-28, authorizing and approving an agreement between the Pusch Ridge Christian Academy and the Town of Oro Valley Police Department to provide the school with a School Resource Officer (SRO) in the school starting August 7, 2016

RECOMMENDATION:

Staff recommends approval.

EXECUTIVE SUMMARY:

Officials from Pusch Ridge Christian Academy contacted the Town of Oro Valley Police Department several months ago, expressing the desire to collaborate in order to have a School Resource Officer (SRO) assigned to their location.

BACKGROUND OR DETAILED INFORMATION:

As a result of this collaboration, the attached agreement is presented for Council's approval, and the officer assigned will commence duties on August 7, 2016, if the proposed agreement is authorized.

FISCAL IMPACT:

Appropriate budget capacity for salary and employee-related benefits are included in the FY 2016/17 Final Adopted Budget. The Oro Valley Finance Department will provide monthly invoices to Pusch Ridge Christian Academy for all actual personnel costs of the Oro Valley Police Department providing a SRO, resulting in a cost neutral situation.

SUGGESTED MOTION:

I MOVE to (adopt or deny) Resolution No. (R)16-28, authorizing and approving an agreement between the Pusch Ridge Christian Academy and the Town of Oro Valley Police Department to provide the school with a School Resource Officer (SRO) in the school starting August 7, 2016.

Attachments

(R)16-28 Pusch Ridge Christian Academy SRO
PRCA Agreement

RESOLUTION NO. (R)16-28

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, APPROVING THE EXECUTION OF A SCHOOL RESOURCE OFFICER AGREEMENT BETWEEN PUSCH RIDGE CHRISTIAN ACADEMY AND THE TOWN OF ORO VALLEY POLICE DEPARTMENT FOR ONE (1) SCHOOL RESOURCE OFFICER (SRO) AT PUSCH RIDGE CHRISTIAN ACADEMY

WHEREAS, pursuant to A.R.S. § 9-240 (B)(12), the Town of Oro Valley is authorized to establish and maintain the Oro Valley Police Department; and

WHEREAS, the Town of Oro Valley Police Department desires to enter into a School Resource Officer Agreement with Pusch Ridge Christian Academy for one (1) SRO at Pusch Ridge Christian Academy; and

WHEREAS, it is in the best interest of the Town to enter into a School Resource Officer Agreement with Pusch Ridge Christian Academy, attached hereto as Exhibit 'A' and incorporated herein by the reference, in order to set forth the terms and conditions to provide for the health, safety and welfare of the residents in the Town of Oro Valley.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA AS FOLLOWS:

SECTION 1. That the School Resource Officer Agreement, attached hereto as Exhibit 'A', between the Town of Oro Valley and Pusch Ridge Christian Academy is hereby approved.

SECTION 2. That the Mayor, Chief of Police and other administrative officials are hereby authorized to take such steps as necessary to execute and implement the terms of the Intergovernmental Agreement.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona, this 15th day of June, 2016.

TOWN OF ORO VALLEY, ARIZONA

Dr. Satish I. Hiremath, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie K. Bower, Town Clerk

Tobin Sidles, Legal Services Director

Date

Date

EXHIBIT “A”

SCHOOL RESOURCE OFFICER AGREEMENT

This Agreement is made, this _____ day of _____, 2016, by and between the PUSCH RIDGE CHRISTIAN ACADEMY (hereinafter "School"), and the TOWN OF ORO VALLEY POLICE DEPARTMENT (hereinafter "Police Department:") as follows:

WITNESSETH:

WHEREAS, the Police Department agrees to provide the School a School Resource Officer (SRO) Program in the School; and

WHEREAS, the School and the Police Department desire to set forth in this SRO Agreement the specific terms and conditions of the services to be performed and provided by the SRO in the School;

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1) **Cost of the SRO Program:** The cost of the SRO Program shall be paid by the parties as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference, including the cost of the SRO during periods when the School is on break.
- 2) **Employment of School Resource Officers:**
 - A) The SRO shall be a Police Department employee and shall be subject to the administration, supervision and control of the Police Department.
 - B) The SRO shall be subject to all personnel policies and practices of the Police Department except as such policies or practices may be modified by the terms and conditions of this Agreement.
 - C) The Police Department, in its sole discretion, shall have the power and authority to hire, discharge, and discipline the SRO.
 - D) A joint committee composed of representatives of the Police Department and the School shall make recommendations for the SRO position to the Chief of Police who shall assign such officer. If the principal is dissatisfied with the SRO assigned to the School the principal may request that the Chief of Police assign a different officer as the SRO for the School.
 - E) One SRO shall be assigned to the School as a primary duty location.

- F) The School shall provide an office and suitable space for the SRO to store appropriate SRO equipment at the School at no cost to the Police Department.

3) Duty Hours:

- A) SRO duty hours shall be determined by the SRO's chain of command at the Oro valley Police Department. Whenever possible, it is the intent of the parties that the SRO's duty hours shall conform to the school day.
- B) It is understood and agreed that time spent by SRO attending municipal court, juvenile court, and/or criminal cases arising from and/or out of their employment as an SRO shall be considered as hours worked under this Agreement.
- C) In the event an SRO is absent from work, the SRO shall notify his or her supervisor in the Police Department. The Police Department will assign another officer, if available as a primary duty location.

- 4) **Amendment:** This agreement may be amended from time to time as reasonably deemed necessary by the parties in writing. Amendments to this Agreement may be made by the Oro Valley Chief of Police or designee representing the Police Department and PRCA Headmaster or designee representing the School.

- 5) **Term of Agreement:** The initial term of this Agreement is three years commencing on the 1st. day of August, 2016, and ending on the 31st. day of July, 2019, however, should either party encounter budgetary constraints that make the continuation of this agreement impractical, then either party may cancel this agreement upon ninety (90) days' notice to the other. Following the initial three (3) year term, this agreement shall be automatically renewed for successive one year periods unless either party requests termination or modification of this agreement. This request will be made in writing.

- 6) **Duties of School Resource Officers:** The duties and responsibilities of the School Resource Officer are provided in Exhibit B attached hereto.

7) Chain of Command:

- A) As employees of the Police Department, SRO will be subject to the chain of command of the Police Department as provided in Section 2.B. of this Agreement.
- B) In the performance of their duties, SRO shall coordinate and communicate with the principal or the principals' designee of the School to which they are assigned.

8) Access to Education Records:

- A) If some information in a student's record is needed in an emergency to protect the health or safety of the student or other individuals, school officials shall disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety; the need of the information to meet the emergency situation and the extent to which time is of the essence.
- B) If confidential student record information is needed by an SRO, but no emergency situation exists, the information may be released only as allowed by law.

9) **Conflict of Interest:** This Contract is subject to the provisions of A.R.S. § 38-511 which provides in pertinent part that the State, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a Contractor to any other party to the Contract with respect to the subject matter of the Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

TOWN OF ORO VALLEY
POLICE DEPARTMENT

PUSCH RIDGE CHRISTIAN ACADEMY

By: _____
Larry Stevens, Acting Chief of Police

By: _____
Allen Cooney, PRCA Headmaster

ATTEST:

Julie K. Bower, Town Clerk

APPROVED AS TO FORM

Tobin Sidles, Legal Services Director

EXHIBIT A
TERMS OF PAYMENT

SRO Cost Provisions:

Pusch Ridge Christian Academy will be invoiced monthly by Oro Valley Finance Department for all actual costs of the Oro Valley Police Department providing a School Resource Officer. In the event of a conflict regarding any monthly invoice, Pusch Ridge Christian Academy will have 10 days to bring this conflict to the Oro Valley Finance Department to resolve any payment conflict.

The term "all costs" in the preceding paragraph includes but is not limited to the following:

1. Salary of the officer plus any approved overtime and Employee Related Expenses ("ERE");
 - a. Assignment pay;
 - b. Holiday pay;
 - c. Shift Differential Pay;
 - d. On Call Pay;
 - e. Overtime pay related to Pusch Ridge Christian Academy
 - f. Uniform allowance;
 - g. Workers compensation;
 - h. Social Security and Medicare contributions;
 - i. Pension;
 - j. Insurance (including dependents if applicable);
 - i. Medical
 - ii. Dental
 - iii. Life
 - iv. Employee Assistance Program (EAP)

Exhibit B
SRO Job Expectations



SRO Job Duties

The Oro Valley Police Department School Resource Officer (SRO) program is designed upon the “Basic Triad Concept” of being a **Law Enforcement Officer, Teacher, and Counselor** to the School Community that the SRO is assigned to. This “School Community” that an SRO is responsible to includes; the school administration, faculty, staff, parents, students, *and* the schools surrounding community.

An SRO provides this service in many ways while always taking a personal interest in student’s lives, activities, and problems. Below are listed many of the duties an SRO is expected to perform on a routine basis, but does not include every task an SRO may perform in the course of a year.

SRO’s Assigned to Educational Institution

Be a visible, active *LAW ENFORCEMENT OFFICER* on campus dealing with all law related issues

- ⊕ Conduct investigations into crime occurring on campus and complete reports as needed
- ⊕ Bridge the gap between police officer and student and increase positive attitudes towards law enforcement
- ⊕ Assist and address safety issues/concerns at school and adjoining streets/neighborhoods
- ⊕ Assist school staff with security issues that may exist or has potential to occur
- ⊕ Investigate crimes in surrounding community when school related
- ⊕ Attend hearings related to students and offer input/insight
- ⊕ Monitor school grounds and parking areas for existing or potential problems and safety concerns
- ⊕ Be present (monitor) and assist as needed during lunch periods, assemblies, and special events
- ⊕ Be present (monitor) and assist as needed in school break areas
- ⊕ Be present (monitor) in school buildings and hallways during class time
- ⊕ Investigate child custody situations
- ⊕ Enforcement of Orders of protection/harassment on and off campus

- ⊖ Investigate and intervene in potential volatile situations
- ⊖ Investigate suspicious incidents at and/or near school grounds
- ⊖ Investigate CPS issues
- ⊖ Act as first responder to incidents at school
- ⊖ Investigate truancy issues through home visits and working with Pima County Juvenile Court
- ⊖ Case Liaison on sensitive or ongoing cases
- ⊖ Organize police functions at after hour school events
- ⊖ Be a daily police presence to deter outside threats to the school

Be a classroom *TEACHER* of instruction

- ⊖ Instruct Law Related Education classes
- ⊖ Teach the value of our legal system to students
- ⊖ Promote respect for people and property
- ⊖ Reduce juvenile crime by helping students form an awareness of rules, authority, and justice
- ⊖ Instruct classes on special needs and concerns when requested
- ⊖ Instruct classes on safety in and out of the home (strangers, home alone, guns)
- ⊖ Instruct classes on bullying, teasing, and tattling
- ⊖ Instruct classes on theft and criminal damage (in and out of school)
- ⊖ Instruct classes on drug awareness/prevention
- ⊖ Instruct classes on self-control and building character
- ⊖ Teach students how to avoid becoming a victim through self-awareness and crime prevention
- ⊖ Conduct parent and teacher seminars on Law Related topics
- ⊖ Give students a realistic picture of our laws and legal system so they will have an investment in supporting and improving it

Be a *COUNSELOR* in areas which may affect the educational or home environment and may be of law related nature

- ⊖ Counsel Students with special needs and/or disabilities
- ⊖ Counsel Students teachers, parents, faculty and staff with problems

Be a *RESOURCE* to the school administration, faculty, and staff

- ⊖ Assist school staff with planning for emergencies, evacuation, lock-down, and drills
- ⊖ Conduct regular safety evaluations of the campus
- ⊖ Attend long term suspension/expulsion hearings
- ⊖ Assist school staff in addressing safety issues and concerns

- ⊖ Research and institute grants to enhance curriculum for student education
- ⊖ Act as a crime prevention officer concerning school/campus issues
- ⊖ Act as a role model and positive influence for students/parents/teachers/staff
- ⊖ Provide protection for those at school and/or school functions
- ⊖ Provide a law enforcement perspective/opinion concerning school related issues
- ⊖ Assist teachers with incidents/issues as they arise (escorts or assistance)
- ⊖ Act as liaison between law enforcement, emergency responders, service providers, school staff, surrounding community, students, and parents
- ⊖ Assist school staff in addressing disciplinary issues

Be a RESOURCE to students and teachers

- ⊖ Assist teachers with special needs students, providing input and assistance
- ⊖ Be available to assist when needed for special needs and events
- ⊖ Allow students access to the legal system
- ⊖ Give student interviews
- ⊖ Be a resource for student projects
- ⊖ Be a resource for teachers presentations

Be a RESOURCE to teachers, parents, and students for conferences on an individual basis

- ⊖ Be an active listener for those who need it
- ⊖ Be available for answering parent's, teacher's, staff's, and student's questions
- ⊖ Be approachable



Town Council Regular Session

Item # E.

Meeting Date: 06/15/2016

Requested by: Stacey Lemos

Submitted By: Stacey Lemos, Finance

Department: Finance

Information

SUBJECT:

Resolution No. (R)16-29, approving an intergovernmental agreement for the provision of animal control services between the Town of Oro Valley and Pima County

RECOMMENDATION:

Staff recommends approval.

EXECUTIVE SUMMARY:

The current intergovernmental agreement (IGA) for the provision of animal control services between the Town of Oro Valley and Pima County ends June 30, 2016. The proposed animal control services IGA (please see attached) shall become effective July 1, 2016, and shall continue until June 30, 2017. This IGA includes optional extensions for up to four (4) additional one (1) year periods.

BACKGROUND OR DETAILED INFORMATION:

Approval of this IGA will authorize the continued provision of animal control services in Oro Valley by Pima County relating to licensing, enforcement of leash law ordinances, biting dog ordinances, animal cruelty ordinances and the provision of impoundment and sheltering of stray animals. The term of the agreement shall become effective July 1, 2016, and shall continue until June 30, 2017, with the option to extend the agreement for up to four (4) additional one (1) year periods.

FISCAL IMPACT:

The terms of the IGA state in Section 4.0, Payment, that the Town will reimburse the County a maximum of \$143,635 for animal control services during FY 2016/17.

Under the provisions of the IGA, all animal licensing and kennel fee revenue related to animal care services within our jurisdiction is collected by Pima County and paid to the Town. The FY 2016/17 Adopted Budget includes an amount of \$90,000 in animal control services revenues to be received from the County. The Town's expenses for licensing, kennels, enforcement and education are allocated based on the ratio of licenses processed, animals handled and enforcement calls completed for Oro Valley to those

total services processed by the County. The FY 2016/17 Adopted Budget includes an amount of \$150,000 to cover animal control services expenditures to be billed by the County to the Town, resulting in an estimated net cost to the Town of approximately \$60,000. This is comparable to the estimated net cost incurred by the Town for animal control services during the current FY 2015/16.

SUGGESTED MOTION:

I MOVE to approve Resolution No. (R)16-29, approving an intergovernmental agreement for the provision of animal control services between the Town of Oro Valley and Pima County.

or

I MOVE...

Attachments

(R)16-29 Animal Control Services
FY 16/17 Animal Care IGA

RESOLUTION NO. (R)16-29

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND PIMA COUNTY FOR ANIMAL CONTROL SERVICES

WHEREAS, pursuant to A.R.S. § 11-952, the Town of Oro Valley is authorized to enter into or renew agreements for joint and cooperative action with other public agencies; and

WHEREAS, the Town of Oro Valley is authorized to establish and maintain the Oro Valley Police Department, pursuant to A.R.S. § 9-240(B)(12); and

WHEREAS, on July 2, 2016, the Mayor and Council approved Resolution No. (R) 14-42, authorizing an Intergovernmental Agreement (“IGA”) between the Town and Pima County Animal Control Services for a two year period which terminates on June 30, 2016; and

WHEREAS, the Town and Pima County desire to enter the new IGA to renew the IGA for an additional one year, beginning July 1, 2016 and ending on June 30, 2017; and

WHEREAS, it is in the best interest of the Town of Oro Valley approve the IGA between the Town and Pima County in order to continue providing enforcement of leash law ordinances, biting dog ordinances, animal cruelty ordinances and to provide for the impoundment and sheltering of stray animals within the Town’s boundaries.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Oro Valley, Arizona that:

1. The Intergovernmental Agreement between the Town of Oro Valley and Pima County, attached hereto as Exhibit “A”, for animal control services is hereby authorized and approved.
2. The Mayor, Chief of Police and other administrative officials are hereby authorized to take such steps as necessary to execute and implement the terms of the Amendment.

PASSED AND ADOPTED by the Mayor and Council of the Town of Oro Valley, Arizona, this 15th day of June, 2016.

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

Julie K. Bower, Town Clerk

Date

APPROVED AS TO FORM:

Tobin Sidles, Legal Services Director

Date

Exhibit “A”

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PIMA COUNTY AND THE TOWN OF ORO VALLEY
FOR ANIMAL CARE AND ENFORCEMENT SERVICES**

This Intergovernmental Agreement (hereinafter "Agreement") is entered into pursuant to A.R.S. § 11-952 by and between the Town of Oro Valley (hereinafter "the Town"), a body politic and corporate of the State of Arizona and Pima County, (hereinafter "the County") a political subdivision of the State of Arizona.

RECITALS

WHEREAS, the Town desires to enter into an agreement with the County for the provision of animal control services within the geographical jurisdiction of the Town relating to enforcement of the Oro Valley Town Code Chapter 18 Animal Control Code (hereinafter Town Animal Control Ordinances), as amended from time to time, and having to do with rabies vaccination and dog licensing requirements, dog license fees, leash laws, sheltering and humane care of surrendered and stray animals, animal cruelty and neglect, dangerous animals, diseased animals, biting animals, animal waste, and excessive noise; and

WHEREAS, pursuant to A.R.S. § 11-1013, the County operates the Pima Animal Care Center for the intake and sheltering of stray and surrendered animals; and

WHEREAS, the County has the experience and expertise to enforce Town Animal Control Ordinances, and is engaged in certain activities relating to vaccination and licensing activities, rabies control, stray and surrendered animal intake; and

WHEREAS, the Town and the County may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, et seq.

NOW, THEREFORE, the Town of Oro Valley and the County, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

AGREEMENT

- 1.0 Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties for the provision of animal control services within the geographical jurisdiction of the Town relating to enforcement of the Town Animal Control Ordinances, as amended from time to time, and having to do with rabies vaccination and dog licensing requirements, dog license fees, leash laws, sheltering and humane care of surrendered and stray animals, animal cruelty and neglect, dangerous animals, diseased animals, biting animals, animal waste, and excessive noise.
- 2.0 Term/Effective Date.** This Agreement is effective for one (1) year from July 1, 2016 through June 30, 2017. The Parties shall have the option to extend this Agreement for up to four (4) additional one (1) year periods or any portion thereof. Any modification,

termination, or extension shall be made by formal written amendment executed by the Parties.

3.0 Scope of Services.

3.1 The County Enforcement Agent, herein before designated by the Pima County Board of Supervisors to be Pima Animal Care Center (PACC), and all employees thereunder, shall be referred to as "Town Enforcement Agents" for the purpose of this Agreement. The Town Enforcement Agents shall, but are not limited to:

3.1.1 Administer and enforce the provisions of the Town Animal Control Ordinances and state and County law, and all services related thereunder, including amendments to said laws as may be passed from time to time.

3.1.2 Pursuant to this Agreement, be granted limited police powers necessary from time to time to carry out duties imposed by this Agreement, together with any and all such further powers as may be necessary for such agents to engage in vaccination, licensing, seizure of stray, dangerous, neglected, diseased or abused animals, and other activities arising from their duties as Town Enforcement Agents.

3.1.3 Collect such fees as may be rendered applicable by the Town Animal Control Ordinances. All fees collected by the Town Enforcement Agents as a result of this Agreement shall be retained by Town.

3.2 The Town Attorney shall prosecute and the Town Court shall handle criminal and civil matters arising out of the enforcement of the Town Animal Control Ordinances, as amended, pursuant to this Agreement. All fines collected by the Town Court as a result of enforcement of the Town Animal Control Ordinances, as amended, shall be retained by Town.

3.3 Field Enforcement Within Jurisdiction

3.3.1 Complete field services shall be provided from 6:00 a.m. to 9:00 p.m. by two full shifts of Animal Care Officers operating seven days per week, holidays included. Emergency enforcement response services will be provided by a minimum of one Animal Care Officer from 9:00 p.m. to 6:00 a.m. daily, holidays included.

3.3.2 The County shall provide staffing levels, administrative support, materials, supplies, and equipment sufficient to ensure the provision of animal control services in the Town.

3.3.3 Dead animal pickup services shall be provided during one shift operating seven days per week, holidays included.

3.4 Licensing of Animals

3.4.1 The County shall provide staffing levels, administrative support, materials, supplies, and equipment sufficient to ensure the provision of licensing services in the Town.

- 3.4.2 The Pima Animal Care Center shall maximize the number of dogs vaccinated and licensed within the geographical jurisdiction of the Town. Dog vaccination requirements and spay/neutering information shall be distributed to all owners of licensed dogs and other interested parties upon request.
 - 3.4.3 License applications shall be processed and returned, electronically or via mail, to the applicant within ten (10) working days. A licensing reminder program shall be conducted to improve compliance with license regulations.
 - 3.4.4 Should Pima Animal Care Center consider outsourcing the licensing functions to take advantage of online registration via the Internet, Pima Animal Care Center shall ensure that day-to-day licensing and registration operations, including telephone services, remain equivalent to those currently provided by the Center.
- 3.5 Pima Animal Care Center Shelter
- 3.5.1 The County shall staff, equip, furnish, support and maintain the Pima Animal Care Center, and provide all facilities and vehicles, including replacements, maintenance, repair, gasoline, and oil as necessary for the operation of the Pima Animal Care Center.
 - 3.5.2 Humane treatment of all animals housed at the Pima Animal Care Center shall be provided, including provision of adequate food, water, shelter, and timely and appropriate veterinary care in accordance with nationally accepted shelter care standards. The Pima Animal Care Center shall develop a strategy and procedures to further reduce euthanasia of saveable animals through effective adoption and rescue programs. If necessary, animals shall be euthanized in such a manner that provides for humane treatment of the animal and in accordance with the standards set forth by the American Veterinary Medical Association Guidelines for the Euthanasia of Animals: 2013 Edition. Effort shall be made to decrease shelter intake through but not limited to owner education and community wide spay/neuter programs.
 - 3.5.3 Animal Welfare Community Outreach. The Pima Animal Care Center shall refine and increase outreach and educational efforts at schools, neighborhood association meetings, etc. in order to increase public awareness of health and safety issues related to animals, to promote responsible ownership/companion animal guardianship, including compliance with licensing and other Town Animal Control Codes, and to disseminate information regarding vaccination clinics, spaying and neutering, and care of animals.

4.0 Payment. The Town will reimburse the County a maximum of \$143,635¹ for Fiscal Year 2016-2017, with further negotiations necessary between the parties should it exceed that

¹ The annual estimated allocation is based on the average of the previous two full fiscal years' ratio of expenses incurred in the provision of animal services to the Town as compared to the total expenses for services provided for all jurisdictions. For example, Fiscal Year 2016/17 allocation to the Town is 1.60% of the total PACC budget and represents an average of the Town's percent allocation of total animal services expenditures incurred by the County for Services in the Town for Fiscal Years 2013/14 and 2014/15. The County will provide the Town the annual

amount. The County will bill the Town monthly for services. The total cost delineated in 4.1 below is the estimated cost of service for the Town of Oro Valley. Actual cost may vary and will be based on documented services provided to the Town or Town residents. Monthly bills may be adjusted on a quarterly basis as set forth in Section 5.2.1.

- 4.1 Town will reimburse the County for expenses associated with providing the scope of services outlined in Section 3. Annual costs of service units are projected below. The Town may elect to reduce its overall costs by declining or reducing the scope of Enforcement services provided to Town by County.

<u>Expenses</u>	<u>Amount</u>	<u>Allocation Basis</u>
Administrative Service Charges	\$ 18,150	Ratio of all Services Provided
Operations and Management	\$ 19,750	Ratio of all Services Provided
Education	\$ 2,345	Ratio of all Services Provided
Enforcement	\$ 24,635	Ratio of Enforcement Call Responses
Licensing	\$ 26,880	Ratio of Licenses Issued
Shelter	\$ 31,075	Ratio of Animals Handled
Veterinary Services	\$ 9,680	Ratio of Animals Handled
Spay/Neuter Services	\$ 7,415	Per Capita
Community Cat Project	\$ 3,705	Per Capita
TOTAL	\$ 143,635	

- 4.2 Town will reimburse County for County indirect service expenses associated with providing PACC administrative systems support such as Finance, Human Resources, Procurement, Legal and other indirect County support services based on the federally approved internal cost allocation plan. Such services are listed as Administrative Service Charges.
- 4.3 Donations to and solicited by PACC are the sole property of PACC and will be allocated against Town expenses in accordance with PACC fund development policies. Should budget restrictions prevent the Town from paying for the full Fiscal Year 2016-2017 intergovernmental agreement amount set out in Section 4.0, the Town may adjust enforcement service levels and or types to mitigate funding shortfalls.
- 4.4 All payments received from constituents on behalf of the Town will be deposited regularly with the Pima County Treasurer’s Office into a Fiduciary Agency Account. The County will submit a statement to the Town monthly for actual costs incurred on behalf of the Town, and will instruct the Pima County Treasurer’s Office to remit to Town all revenues collected on behalf of the Town on a monthly basis. Any interest earned on the Account shall be credited to the Town.

estimated expenses for PACC and the Town’s estimated share of expenditures for Fiscal Year 2017/18 no later than January 30, 2017.

5.0 Reporting. The County will provide the Town the following information:

5.1 Monthly

- 5.1.1 By jurisdiction, a statement of period-end and year-to-date receipts, disbursements, and the balance of the County Rabies Control Fund.
- 5.1.2 By jurisdiction, the percentage of administrative services allocated, the number and types of dog licenses issued, the number of calls that resulted in a response from the Pima Animal Care Center, the number of animals processed at the shelter, the number of animals adopted, the number of animals euthanized, the number of animals spayed and neutered, the number of dead animals picked up, the number of animals that died in the kennels and the number of educational event units performed.
- 5.1.3 The total Pima County Animal Care adopted budget, including operating revenues by revenue source and operating expense by type of expense.

5.2 Quarterly:

- 5.2.1 The County will perform an audit to assure correct cost allocation and to verify jurisdictional information on a quarterly basis. If, pursuant to paragraph 4.1, the outcome of the audit indicates an overpayment by the Town or results in additional funds being due to Town, County shall transfer the additional funds to the Account within ninety (90) days following the end of the quarter. If, pursuant to paragraph 4.1 the outcome of the audit indicates an underpayment by the Town or in additional funds being due to the County, the amount of the underpayment will be billed to the Town by the County in the next monthly statement.
- 5.2.2 County will provide to Town on a quarterly basis a data extract or extracts containing detailed information regarding records of requests for services and records of revenue attributed to Town. This report shall include the following:
 - 5.2.2.1 Dates of dispatched enforcement calls
 - 5.2.2.2 Activity types of dispatched enforcement calls (e.g., leash law, stray)
 - 5.2.2.3 Physical address of response site
 - 5.2.2.4 Dates of issuance of licenses
 - 5.2.2.5 Types of licenses issued
 - 5.2.2.6 Payment received for each license issued
- 5.2.3 The Town will designate a representative to attend quarterly meetings with representatives from Pima County Administration, Pima County Health Department, Pima Animal Care Center and each jurisdiction with which the County has an Intergovernmental Agreement to provide PACC services.

5.3 Fiscal Year End: The County shall prepare a final financial report for each Fiscal Year that includes the following information:

5.3.1 By jurisdiction, a statement of period-end and year-to-date receipts, disbursements, and the balance of the County Rabies Control Fund.

5.3.2 By jurisdiction, the percentage of administrative services allocated, the number and types of dog licenses issued, the number of calls that resulted in a response from the Pima Animal Care Center, the number of animals processed at the shelter, the number of animals adopted, the number of animals euthanized, the number of animals spayed and neutered, the number of dead animals picked up, the number of animals that died in the kennels and the number of educational event units performed.

5.3.3 The total Pima County Animal Care adopted budget including operating revenues by revenue source and operating expenses by type of expense.

6.0 Legal Jurisdiction. Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Town or the County. This Agreement and all obligations upon the Town or County arising therefrom shall be subject to any limitations of budget law or other applicable local law or regulations.

7.0 Audit. The Town shall have the right to audit the books of the County relating to the Pima Animal Care Center and to the collection of licensing fees and other fines and fees.

8.0 Termination. Either party may terminate this Agreement by giving written notice to the other party not less than six (6) months prior to the termination date. In the event of termination, each party shall be liable for its proportionate share of the costs and expenses incurred or arising out of performance of activities required by this Agreement occurring prior to the termination date. Termination of this Agreement shall not relieve either party from liabilities or costs already incurred under this Agreement.

9.0 Assignment of Rights. Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.

10.0 Construction of Agreement.

10.1 Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.

10.2 Captions and headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

11.0 Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

12.0 Severability. In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable.

In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

13.0 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the Town and any County employees or between the County and any Town employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

14.0 No Third Party Beneficiaries. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or effect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

15.0 Compliance with Laws. The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and executive orders, without limitation to those designated within this Agreement.

15.1 Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order Number 2009-09 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.

15.2 Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

16.0 Workers' Compensation. An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

16.1 All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency, pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

17.0 Non-Waiver. The failure of either Party to insist upon the complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not constitute a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant

or condition, either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time shall not constitute an accord and satisfaction.

18.0 Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to, failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state, or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

19.0 Notification. All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Pima County:

Francisco Garcia, MD, MPH, Director
Pima County Health Department
3950 S. Country Club Road #100
Tucson, Arizona 85714

Kim Janes
Chief of External Affairs
Pima Animal Care Center
3950 S. Country Club #100
Tucson, Arizona 85714

Town of Oro Valley:

Daniel Sharp
Interim Town Manager
11000 North La Canada Drive
Oro Valley, Arizona 85737

Chris Cornelison
Assistant to the Town Manager
11000 North La Canada Drive
Oro Valley, Arizona 85737

20.0 Remedies. Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

21.0 Indemnification. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless, the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the bodily injury of any person (including death) or property damage, but only to the extent that such claims, which result in vicarious/derivative liability to the indemnitee, and are caused by the act, omission,

negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

22.0 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterpart and attached to a single instrument.

23.0 Legal Arizona Workers Act.

23.1 Town hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Town's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Town shall further ensure that each subcontractor who performs any work for Town under this Contract likewise complies with the State and Federal Immigration Laws.

23.2 County shall have the right at any time to inspect the books and records of Town and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

23.3 Any breach of Town's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Town to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Town shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

23.4 Town shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this Contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

24.0 Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.

IN WITNESS WHEREOF, the County has caused this Agreement to be executed by the Pima County Board of Supervisors, as attested to by the Clerk of the Board, and the Town of Oro Valley has caused this Agreement to be executed by the Mayor of the Town of Oro Valley, upon resolution of the Mayor and Council, attested to by the Town Clerk.

PIMA COUNTY:

TOWN OF ORO VALLEY:

Chair, Board of Supervisors

Date

Town Mayor

Date

ATTEST

ATTEST

Clerk of the Board

Date

Town Clerk

Date

APPROVED AS TO CONTENT



Department Director or designee

Date

27 May 14

ATTORNEY CERTIFICATION

The foregoing Agreement between Pima County and the Town of Oro Valley has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.



Deputy County Attorney

5-26-16

Date

Town Attorney

Date



Town Council Regular Session

Item # F.

Meeting Date: 06/15/2016

Requested by: Gary Bridget

Submitted By: Gary Bridget, Human Resources

Department: Human Resources

Information

SUBJECT:

Resolution No. (R)16-30, approving changes to Personnel Policy 19 - Training Employees and Reimbursement for Educational Expenses, allowing for reimbursement of certain professional certifications

RECOMMENDATION:

Staff recommends approval.

EXECUTIVE SUMMARY:

In response to recent inquiries and requests from Town personnel, a minor change is being proposed to Personnel Policy 19 - Training Employees and Reimbursement for Educational Expenses, to allow for the reimbursement of professional certifications. Professional certifications benefit the Town by providing a mechanism for staff to demonstrate that they possess the knowledge and skills necessary to expand responsibilities in both current and future positions. Allowing for reimbursement of certain professional certifications helps to prepare staff for roles of increased responsibility.

BACKGROUND OR DETAILED INFORMATION:

Personnel Policy 19 currently allows for reimbursement only for classes from an accredited institution that provide for a letter grade or pass/fail rating upon completion. The proposed change would also allow for reimbursement for professional certification programs which are not required by the employee's current position, but may serve to prepare the employee for increased responsibility in their current job or other jobs that present logical career paths within the classification system used by the Town of Oro Valley. Pursuit of professional certifications that are not directly related to an employee's current position or logical career path within the Town's classification system would be approved on a case-by-case basis by the employee's department director and the town manager. For professional certification reimbursement, Human Resources would require evidence from the certifying organization that the employee has been granted a professional certification.

FISCAL IMPACT:

The FY 2016/17 Adopted Budget provides \$10,000 dollars for reimbursement of professional certifications.

SUGGESTED MOTION:

I MOVE to (approve/deny) Resolution No. (R)16-30, approving changes to Personnel Policy 19, which would allow for the reimbursement of registration and testing fees upon completion of an approved professional certification program and the award of certification.

Attachments

(R)16-30 Amending Personnel Policy 19
Personnel Policy 19

RESOLUTION NO. (R)16-30

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AMENDING THE TOWN OF ORO VALLEY PERSONNEL POLICIES AND PROCEDURES MANUAL TO UPDATE POLICY 19, TRAINING EMPLOYEEES AND REIMBURSEMENT FOR EDUCATIONAL EXPENSES

WHEREAS, pursuant to Section 3-3-1 of the Oro Valley Town Code, the Town Council is empowered to create a personnel system which applies to all Town employees except elected officials; and

WHEREAS, Section 3-3-2 of the Oro Valley Town Code provides that the Town Council may adopt, by resolution, rules and regulations pertaining to employment with the Town; and

WHEREAS, on May 16, 2007, the Town Council adopted Resolution (R) 07-60, "The Town of Oro Valley Personnel Policies and Procedures Manual"; and

WHEREAS, it has become necessary to update Policy 19, Training Employees and Reimbursement for Educational Expenses

WHEREAS, the updated Policy 19, Training Employees and Reimbursement for Educational Expenses, includes clarification to the policy in regards to professional certification programs.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Oro Valley, Arizona, that:

SECTION 1. The update to Policy 19, Training Employees and Reimbursement for Educational Expenses, of the Town of Oro Valley Personnel Policies and Procedures Manual, attached hereto as Exhibit "A" and incorporated herein by this reference, with additions in **bold** and deletions shown in ~~strikethrough~~ text, is hereby approved.

SECTION 2. If any portion of the Personnel Polices and Procedure Manual is found to not be enforceable by a court of competent jurisdiction, that portion shall be declared severable, and the remainder of the manual will remain in full force and effect.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona this 15th day of June, 2016.

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie K. Bower, Town Clerk

Tobin Sidles, Legal Services Director

Date: _____

Date: _____

EXHIBIT “A”



PERSONNEL POLICY 19

Page 1 of 3

TRAINING EMPLOYEES AND REIMBURSEMENT FOR EDUCATIONAL EXPENSES

Effective Date: ~~June 3, 2015~~
July 1, 2016

The Town of Oro Valley is committed to the development of a well-educated and highly skilled work force. To help accomplish this aim, the Town will provide training opportunities and educational assistance to employees, as defined in this policy.

SECTION 1 – TRAINING

- A. RESPONSIBILITY FOR TRAINING: The Town Council encourages the training of employees. Training programs for employees may be initiated by the Town Manager or Department ~~Heads~~ **Directors**. Such training programs may include seminars, demonstrations, assignment of reading matter, or such other devices as may be available for the purpose of improving the effectiveness of their respective duties.
- B. CREDIT FOR TRAINING: Participation in and successful completion of approved training courses may be considered in making advancements and promotions. Evidence of such activity shall be filed by the employee with the Human Resources Department.
- C. BUDGETING OF EXPENSES: Training courses are to be budgeted directly by the individual departments, and are not to be confused with educational courses covered under the terms of Section II – “Reimbursement for Educational Expenses,” which follows.

SECTION II – REIMBURSEMENT FOR EDUCATIONAL EXPENSES

The objective of the Educational Reimbursement program is to encourage and assist employees in advancing their skills through outside schooling at recognized and accredited institutions of learning by providing reimbursement for a portion of the associated costs.

- A. POLICY: The Town of Oro Valley will provide tuition assistance benefits to help employees pay for the cost of accredited courses which are either related to their current job, or to other jobs which present logical career paths within the classification system used by the Town of Oro Valley. Pursuit of courses or degrees which are not directly related to an employee’s current position, or logical career path within the Town’s classification system, will be approved on a case-by-case basis by the employee’s Department ~~Head~~ **Director** and the Town Manager. Tuition reimbursement is subject to the availability of funds approved each fiscal year.
- B. ELIGIBILITY – Fulltime employees who have completed their introductory period with the Town are eligible to participate in this program. (Only courses which commence after the completion of the introductory period are eligible for reimbursement.)
- C. COURSE CRITERIA: The following types of courses are reimbursable under the terms of this program:
 - 1. Undergraduate and graduate courses offered through colleges, universities, and technical schools which are accredited by nationally recognized accreditation organizations are reimbursable if approved in advance of the class start date by the employee’s Department ~~Head~~ **Director** and the Human Resources Department. The Town’s decisions on the accredited status of the institution will be final in all cases. All courses must be “for credit”



**TRAINING EMPLOYEES AND
REIMBURSEMENT FOR
EDUCATIONAL EXPENSES**

**Effective Date: ~~June 3, 2015~~
July 1, 2016**

and must yield letter grades (or “pass-fail” grades) within the curriculum guidelines for the school attended.

2. **Professional certification programs which are not required by the employee’s current position but may serve to prepare the employee for increased responsibility in their current job, or to other jobs which present logical career paths within the classification system used by the Town of Oro Valley. Pursuit of professional certifications which are not directly related to an employee’s current position, or logical career path within the Town’s classification system, will be approved on a case-by-case basis by the employee’s Department Director and the Town Manager. The availability of funds for the reimbursement of professional certification registration and testing is subject to the availability of funds approved each fiscal year.**
3. Employees who are interested in participating in programs not covered by this policy, including employer-directed programs, accelerated degree programs, or programs held during regular working hours, should speak to their Department ~~Head Director~~ or Human Resources Director to determine if additional consideration of the course or program is possible.

D. REIMBURSEMENT BASIS:

1. The cost of registration fees, tuition and required lab fees are eligible for reimbursement. (Other special fees are the responsibility of the student, and are not reimbursable under this policy.) Appropriate documentation of the “required” nature of covered fees must be provided. Books and other material required to attend class are the responsibility of the employee and therefore not reimbursable under this policy.
2. Regardless of the school attended, reimbursement will be limited to the lesser of: (1) the actual costs, or (2) \$3,000 annually per employee, based on fiscal year.
3. A grade of “C” (or its numerical equivalent), or better must be attained in order to receive reimbursement. No reimbursement will be received for grades of “incomplete” or for withdrawals (unless requested by the Town of Oro Valley for bona fide work-related situations). Generally, “Pass/Fail” grades are only acceptable if the course is part of an approved degree program for the student, and the “Pass/Fail” will apply to the graduation requirement.
4. **For professional certifications, evidence from the certifying organization that the employee has been granted a professional certification.**

E. OTHER REQUIREMENTS:

1. All courses must be pre-approved by the Department ~~Head Director~~ and Human Resources Director prior to commencement of the course. Employees are advised that they should not register for the course until the appropriate approvals are obtained. (Contact the Human Resources Department for the necessary forms and current procedures).



PERSONNEL POLICY 19

TRAINING EMPLOYEES AND REIMBURSEMENT FOR EDUCATIONAL EXPENSES

Page 3 of 3

Effective Date: ~~June 3, 2015~~
July 1, 2016

2. The student must be an eligible employee of the Town of Oro Valley at the time of completion of the course, in order to receive the reimbursement.
3. Employees are expected to attend courses on their own time, unless directed by the Town of Oro Valley to do otherwise. (All such situations require the advance approval of the Town Manager prior to registration.)
4. Reimbursement under this policy may result in taxable income to the employee pursuant to Federal and/or State regulations. The Town of Oro Valley will comply with all Federal, State and local tax laws.
5. The amount of the reimbursement for courses taken will be offset by amounts received from other forms of financial aid, such as scholarships, etc.



Town Council Regular Session

Item # G.

Meeting Date: 06/15/2016

Requested by: Gary Bridget

Submitted By: Gary Bridget, Human Resources

Department: Human Resources

Information

SUBJECT:

Resolution No. (R)16-31, approving a change to Personnel Policy 10 - Leaves, allowing for payment of 100% of sick leave accruals above 480 hours for an employee that dies as a direct result of performing their duties

RECOMMENDATION:

Staff recommends approval.

EXECUTIVE SUMMARY:

On April 6, 2016, Town Council approved an amendment to the Memorandum of Understanding (MOU) with the Public Safety Employee Group for the period of July 1, 2016, through June 30, 2018, modifying Section 7.01 of the MOU by changing 50% to 100% so as to read, "the Town agrees to pay 100% of the officer's sick leave hours that have accrued above 480 hours to the surviving spouse and all dependents of an officer who dies as a direct result of performing police duties." Staff recommends the same provision be adopted in Personnel Policy 10 - Leaves, for employees who die as a direct result of performing their duties. If approved, these changes would become effective July 1, 2016.

BACKGROUND OR DETAILED INFORMATION:

Currently, Personnel Policy 10 allows that in the event of an employee's death, one-half of the sick leave balance in excess of the 480 hours shall be paid to the estate of the former employee. Adding a sentence to Section 10.2, Paragraph H, Sub-paragraph 3, that reads, "if an employee dies as a direct result of performing their duties, 100% of the employee's sick leave hours that have accrued above 480 hours shall be paid to the estate of the former employee," would standardize policy for all employees.

FISCAL IMPACT:

While the actual occurrence of an employee death as a direct result of performing their duties has been extremely rare in the Town's history, this change would essentially double the Town's obligation to pay sick leave above 480 hours if this were to occur.

SUGGESTED MOTION:

I MOVE to (approve/deny) Resolution No. (R)16-31, approving a change to Personnel Policy 10 that would provide for the payment of 100% of sick leave accrued above 480 hours to the estate of a former employee who dies as a direct result of performing their duties.

Attachments

(R)16-31 Personnel Policy 10
Personnel Policy 10

RESOLUTION NO. (R)16-31

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA AMENDING THE TOWN OF ORO VALLEY PERSONNEL POLICIES AND PROCEDURES MANUAL TO UPDATE POLICY 10, LEAVES

WHEREAS, pursuant to Section 3-3-1 of the Oro Valley Town Code, the Town Council is empowered to create a personnel system which applies to all Town employees except elected officials; and

WHEREAS, Section 3-3-2 of the Oro Valley Town Code provides that the Town Council may adopt rules and regulations pertaining to employment with the Town; and

WHEREAS, on May 16, 2007, the Town Council adopted Resolution (R) 07-60. "The Town of Oro Valley Personnel Policies and Procedures Manual"; and

WHEREAS, it has become necessary to update Policy 10, Leaves, of the Policies and Procedures Manual which governs employment with the Town; and

WHEREAS, the updated Policy 10, Leaves, includes clarification of sick time disbursement to an employee's family estate in the event of an employee's death while performing their regular duties.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Oro Valley, Arizona, that:

SECTION 1. The update to Policy 10, Attendance and Leaves, of the Town of Oro Valley Personnel Policies and Procedures Manual, attached hereto as Exhibit "A" and incorporated herein by this reference, with additions in **bold** and deletions shown in ~~strike through text~~, is hereby approved.

SECTION 2. If any portion of the Personnel Policies and Procedure Manual is found to not be enforceable by a court of competent jurisdiction, that portion shall be declared severable, and the remainder of the manual will remain in full force and effect.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona this 15th day of June, 2016.

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

Julie K. Bower, Town Clerk

Date: _____

APPROVED AS TO FORM:

Tobin Sidles, Legal Services Director

Date: _____

ATTACHMENT “A”



10.1 ANNUAL LEAVE

A. Eligibility

1. All Town employees, except for temporary and part-time, non-benefited employees (see definition in Policy 2) are eligible to accrue annual leave.
2. All Town employees eligible to accrue annual leave are eligible to use their accrued annual leave after 90 calendar days of employment.

B. Accrual of Annual Leave

1. Eligible employees start accruing annual leave from their date of hire.
2. Part-time benefit eligible employees accrue annual leave at half the rate of full-time employees.
3. Employees who are on any unpaid leave of absence (except for FMLA or Military leave) for an entire pay period (80 hours) will not accrue annual leave.
4. Annual leave accrual is cumulative, up to the maximum number of hours permitted by this policy.

C. Annual Leave Accrual Rates

1. Accrual rates shall be at the rate specified below and are based on years of service and Federal Labor Standards Act (Exempt or Non-Exempt) status:

a. Full-time / Non-Exempt Rate:

Years of Service	Hours Per Pay Period	Approximate Hours Per Year	Maximum hours to be Accrued
1 – 5	3.6923	96	144
6 – 10	5.2308	136	204
11 - 20	6.7692	176	264
20 & over	6.7692	176	300

b. Full-time / Exempt Rate:

Years of Service	Hours Per Pay Period	Approximate Hours Per Year	Maximum hours to be Accrued
1 – 5	5.2308	136	204
6 – 20	6.7692	176	264
20 & over	6.7692	176	300



PERSONNEL POLICY 10

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LEAVES

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c. Full-time / Department Directors

Years of Service	Hours Per Pay Period	Approximate Hours Per Year	Maximum hours to be Accrued
Upon hire	6.7692	176	264
20 & over	6.7692	176	300

2. For the purpose of determining length of service, the year noted begins on the day after the preceding anniversary. Changes in accrual rates are effective in the following pay period.

D. Maximum Number of Accrued Annual Leave Hours

1. An employee's annual leave balance shall not exceed the number of hours they would accrue in 18 months of service (see charts above).
2. Employees with more than 20 years of credited service may accrue up to 300 hours.
3. Hours accrued in excess of the maximum allowed become void at the end of each pay period.
 - a. Exceptions may be granted at the request of the Department Director, concurrence of the Human Resources Director, and approval of the Town Manager.

E. Use of Annual Leave

1. Employees shall submit an annual leave request to their immediate supervisor in accordance with department policy. Requests will be reviewed by their supervisor and/or Department ~~Head~~ **Director**. Approval is based on a number of factors, including department need and staffing requirements.
2. Department Directors may require an employee to postpone or change their scheduled annual leave for good cause relating to Town services.
3. Accruals earned at the end of the current pay period are not available for use until the following pay period.
4. Annual leave should not normally be charged against Exempt employees for partial day absences.
5. Annual leave shall not be charged for Town holidays.

F. Annual Leave at Employment Termination

1. Employees will be paid in a lump sum for all unused accrued annual leave as of the effective date of termination.



2. Deceased employees will have their lump sum paid to their estate.

10.2 SICK LEAVE

A. Eligibility

1. All Town employees, except for temporary and part-time non-benefit eligible employees are eligible to accrue sick leave at the following rates:

Full-time	3.6923 per pay period
Part-time / Benefit Eligible	1.8462 per pay period

B. Accrual of Sick Leave

1. Eligible employees start accruing sick leave from their date of hire.
2. Part-time benefit eligible employees accrue sick leave at half the rate of full-time employees.
3. Employees who are on any unpaid leave of absence (except for FMLA or Military leave) for an entire pay period (80 hours) will not accrue sick leave.
4. Sick leave will accrue without limit.

C. Use of Sick Leave

1. Sick Leave is offered as a benefit to help minimize employee financial hardship as the result of illnesses or medical needs. Sick leave is not to be used as additional paid annual leave or for discretionary purposes.
2. Accruals earned at the end of the current pay period are not available for use until the following pay period.
3. Eligible employees may be permitted to use sick leave for the following reasons:
 - a. Personal illness or injury, appointments for surgical, medical, dental, or optical appointments (including regular and preventative care appointments), and the travel time to and from the physician's office,
 - b. Medical conditions that prevent the employee from performing assigned tasks, and/or
 - c. Immediate family member's (see Policy 2 for definition) illness or injury, and their surgical, medical, dental or optical appointments (including regular and preventative care appointments) and related travel time to and from the physician's office.



4. Sick leave will not be charged against an employee's accrued balance for a Town holiday.
5. An employee using annual leave who becomes ill may, upon verification of illness and supervisor approval, charge the illness-related time-off to accumulated sick leave.

D. Sick Leave Requests

1. Sick leave may be taken with approval from the supervisor and/or Department ~~Head~~ **Director**.
 - a. Upon return to work, the employee will submit a leave request to their supervisor for the missed time.
 - b. All sick leave requested in conjunction with certified Family and Medical Leave Act leave will be approved.
2. For unplanned absences, employees will notify their supervisor prior to the start of their shift or as soon as possible that they will be absent from work and the reason for their absence.
 - a. If the absence is going to be for multiple days or for an unknown duration, the employee is required to keep their supervisor informed of their anticipated return to work date.
 - b. The employee or supervisor will notify Human Resources of the extended absence to determine FMLA and/or ADA eligibility.
3. For planned absences, employees will submit a leave request form as soon as the employee becomes aware of the need for the planned absence.
 - a. For prolonged planned absences, employees should contact Human Resources to determine if the leave qualifies for FMLA.
4. Requests for sick leave immediately prior to an employee's separation from employment, even if for retirement, may not be granted without medical verification.

E. Medical Verification

1. If an employee uses sick leave for three or more consecutive working days, the Department ~~Head~~ **Director** or designee may require the employee to submit a medical verification statement from a health care provider verifying the need for the sick leave absence. A medical diagnosis is not required and should not be requested by the supervisor.
2. If an employee exhibits an unusual pattern of sick leave absences, the Department ~~Head~~ **Director** may require the employee to submit a medical verification statement.
3. If the employee fails to provide the medical verification statement or if the statement is inadequate (as determined by both the Department ~~Head~~ **Director** and Human Resources Director) the absence may be charged to another category of leave or considered leave without pay.



4. All medical verification statements will be forwarded to Human Resources and will be placed in the employee's Human Resources medical file.

F. Return to Work

1. Employees absent from work for more than five consecutive working days or whose absence was the result of an on the job injury will submit a statement from a health care provider releasing them back to work. A medical diagnosis is not required and should not be requested by the supervisor.
2. If the Department ~~Head~~ **Director** or Town Manager, in consultation with the Human Resources Director, believes that an employee's return to work is a health or safety issue to the employee and/or their co-workers, the employee will submit a medical release from a health care provider.
3. All physician statements will be forwarded to Human Resources and will only be placed in the employee's medical file.
4. If the employee is released to return to work with restrictions, the department must follow the Administrative Directive on Transitional/Light Duty.

G. Transfer of Unused Sick Leave

1. On the first day of the pay period following July 1 sick leave may be transferred to annual leave as follows:
 - a. Any unused portion of the first 56 hours of sick leave accrued in the previous fiscal year in excess of 480 hours will be transferred automatically.
 - b. The transfer may not cause the employee to have an annual leave balance greater than their maximum accrual.
 - c. Any employee may request prior to July 1, that their sick leave not be transferred.
 - d. Any sick leave not transferred will remain as sick leave.

H. Payment of Sick Leave Upon Termination from Town Employment:

1. One-half of an employee's accrued sick leave beyond 480 hours will be paid to the employee upon separation from employment.
2. Employees terminated for cause will not receive any payout for unused sick leave.
3. In the event of an employee's death, one-half of the sick leave balance in excess of the 480 hours shall be paid to the estate of the former employee. **If an employee dies as a direct result of performing their duties, 100% of the employee's sick leave hours that have accrued above 480 hours shall be paid to the estate of the former employee.**

10.3 ADMINISTRATIVE LEAVE



- A. Up to ten days of leave with pay may be granted to Town employees by the Town Manager. More extended periods with pay require the approval of the Town Council. Examples of situations where leave with pay might be granted include, but are not necessarily limited to the following:
1. Administrative leave for exempt employees due to extenuating conditions of employment.
 2. Investigatory leave which is non-punitive in nature.
- B. In considering whether leave with pay will be granted, the Town Manager shall use the following criteria:
1. The amount of paid and unpaid leave already taken by the employee in the year preceding the request for paid leave.
 2. The employee's overall attendance.
 3. The employee's previous performance ratings.
 4. The length of the employee's tenure with the Town.
 5. The amount of other paid leave time which is available to the employee, including consideration of any accrued compensatory time, annual leave or sick leave which may be available.
 6. The employee's previous administrative leave requests.

10.4 LEAVE OF ABSENCE WITHOUT PAY

- A. The Town Manager may grant an employee a leave of absence without pay in accordance with the following conditions.
1. In no event will a leave of absence without pay be granted for a period of more than one year.
 2. Employees who have not returned from any leave of absence after one year will be deemed to have voluntarily resigned from the Town of Oro Valley.
 3. Prior to the completion of 12 calendar months of continuous service with the Town such leave will only be granted for significant and extenuating circumstances. Total unpaid leave at this level will generally not exceed two weeks.
 4. Subsequent to the completion of one year of continuous service, and prior to the completion of five calendar years of service, an employee may be granted up to 60 calendar days of leave of absence without pay.



- a. Approval from the Human Resources Director, Department ~~Head Director~~ and the Town Manager must be obtained.
5. After the completion of five calendar years of continuous service, an employee may be granted up to one year of leave of absence without pay with the approval from the Human Resources Director, Department ~~Head Director~~ and the Town Manager.
6. Employees may combine paid leave with unpaid leave of absence. However, the use of unpaid leave, accrued annual leave and accrued compensatory time off, or any combination thereof, shall be subject to approval from the Human Resources Director, Department ~~Head Director~~ and Town Manager.
7. Time on leave of absence without pay shall not be credited as continuous service, and shall not be counted toward eligibility for additional leave of absence time or for seniority or other benefits.
8. During an approved unpaid leave of absence, the employee may continue their coverage for health, dental, or disability plans by continuing to pay full costs of the program including any portions normally paid by the Town.
9. No leave of absence without pay shall be granted without the written request of the employee, setting forth the reason and expected duration of the leave. Upon the expiration of an approved leave the employee shall be reinstated to a like or similar position as that held at the time leave was granted, if available and if the employee returns to work.
10. Failure on the part of an employee on leave to report upon the expiration of the leave shall be voluntary resignation from employment.

10.5 UNAUTHORIZED LEAVE

- A. An employee who is absent without authorization shall:
 1. Be designated as “Absent Without Leave”.
 2. For payroll purposes, be recorded as leave without pay for the period of such absence.
 3. Be subject to appropriate disciplinary action, up to and including termination.
- B. An employee who is absent without authorization for three consecutive working days will be considered as having abandoned his/her job and will be terminated without grievance rights.

10.6 OBSERVED HOLIDAYS

- A. The holidays observed by the Town are:



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New Year's Eve day	Memorial day	Thanksgiving day	Floating Holiday
New Year's day	Independence day	Day after Thanksgiving	(Birthday)
Civil Rights/MLK day	Labor day	Christmas Eve day	
President's day	Veteran's day	Christmas day	

B. Holiday Pay

1. Full time employees receive holiday pay at their normal rate of pay for their regular scheduled shift (whether eight or ten hours) in lieu of hours worked.
2. Part-time benefit eligible employees shall receive holiday pay based upon a proration of their budgeted working hours.
 - a. For example, a part-time benefit eligible employee budgeted to work 20 hours per week would be eligible for four hours of holiday pay on observed holidays.
3. Employees whose regularly scheduled day-off falls on an observed Town holiday will receive a different day off during that same week as their holiday.

C. Floating Holiday (Birthday)

1. The employee's floating holiday must be taken during the month in which the employee's actual birthday occurs.
2. Employees who fail to take the floating holiday during their birth month, forfeit their floating holiday for that year.
3. An employee may not work on the floating holiday for additional compensation.

D. Holidays Worked

If an eligible employee is required to work on an observed holiday, the employee will receive the employee's normal rate of pay for their usual shift, plus holiday pay, plus regular overtime pay if required for any hours actually worked over 40 in that workweek.

E. Holidays that fall on Saturday or Sunday

1. When an observed holiday falls on a Saturday, the preceding Friday shall be observed.
2. When an observed holiday falls on a Sunday, the following Monday will be observed.
3. When Christmas and New Year's Day are observed on a Friday, Christmas Eve day and New Year's Eve day will be observed on the preceding Thursday. When Christmas Eve day and New Year's Eve day fall on a Sunday, Christmas Eve day and New Year's Eve day will be observed on Monday and Christmas Day and New Year's day will be observed on the following Tuesday.



10.7 WORKER'S COMPENSATION

A. Purpose

1. Under Arizona law, it is mandatory for employers to secure workers' compensation insurance for their employees. Workers' compensation is a "no fault" system in which an injured or ill employee is entitled to receive benefits for a job-related injury or illness, no matter who caused the injury or illness. If an illness or injury is job-related, then the injured employee is eligible to receive medical benefits and may receive temporary compensation, if eligibility requirements are met. In some cases, a claimant may also receive permanent compensation benefits, job retraining, and supportive medical care.
2. The provisions of this policy are not intended to conflict with or supersede state law, nor should they be interpreted or construed to do so. If any provision of this policy conflicts with state law, state law shall control.

B. Reporting Requirement

1. Employees will immediately report any job related accident, illness, or injury to his or her immediate supervisor.
2. If the employee's direct supervisor is not available, the employee shall report the accident, injury or occupational illness to the employee's Department ~~Head~~ **Director**.
3. The employee's Department ~~Head~~ **Director**, supervisor, or designee will ensure that the accident, injury or illness is reported to Human Resources no later than the next work day.
4. Failure to report the accident, injury or illness within 24 hours may result in the denial of a Worker's Compensation claim.
5. Employees will follow the reporting procedures established by Human Resources/Risk Management, to include completing and submitting any required forms.

C. Determination of Compensability

1. The Town's workers' compensation carrier will determine compensability for job related injuries and illnesses.

D. Medical Claims

1. Pursuant to state law, if an employee is off work due to a job-related injury or illness determined to be compensable, the workers' compensation carrier will pay all of the employee's medical expenses associated with the job related injury or illness.



2. If an employee's on the job injury or illness falls within the Family and Medical Leave definition for serious medical condition, the employee shall also be placed on Family and Medical Leave status. During such time, the employee will be afforded the same protections and benefits as described in section 10.12 of this policy.

E. Benefits

1. All benefits under this plan will be provided while the employee meets all eligibility criteria, for a period of six months from the date the employee receives first payment of workers' compensation pursuant to A.R.S. 23-1021, 38-961 and related statutes.
2. Payment of the employee's regular net salary.
3. Accrued leave balances will be maintained at pre-injury level, including sick, vacation, and comp time.
4. Continued payment of the employer's portion of premium for health care benefits, including medical, dental, and vision benefits. Employees remain responsible for paying their portion of any premium.
5. Retirement
 - a. Public Safety Employees (members of PSPRS and CORP)
 - i. The Town will pay both the Employers and Employee's contribution to the public safety retirement system.
 - ii. The employee will continue to accrue credit for service in the public safety retirement plan.
 - b. Members of ASRS
 - i. Compensation received under the workman's compensation program is not eligible for credited service.
 - ii. Neither the employee nor the Town will contribute retirement contributions while the employee is on workman's compensation.
6. To the extent the employee is eligible for and receives salary or benefit changes while eligible and receiving benefits under this section, the benefits under this section will be adjusted accordingly.
 - a. For example, if all employees are provided automatic salary adjustment as part of an annual process, the employee will receive benefits under this plan based on his/her new adjusted salary as he/she would if not injured.
 - b. Such adjustments may or may not benefit the employee.
7. Employees receiving benefits under this section will not accrue additional sick or annual leave.

F. Return to Work



1. It is the philosophy of the Town to return injured or ill employees to employment for the Town as soon as they are physically and/or mentally capable of performing functions for the Town and are released to return to work by the designated physician.
2. When an employee with a job-related injury or illness returns to work, either in his or her normal assignment or in an alternative work assignment (Transitional/Light Duty), the employee will not be charged sick leave or any other type of leave for absences due to medical appointments, including physical therapy, for the job-related injury or illness.
3. Any employee who has been absent due to a work-related illness or injury may be required to undergo a Return to Work examination or a Fitness for Duty examination through the Town designated physician.
4. Employees released to work with restrictions will be placed on light duty when light duty is available. (See the Town Transitional/Light Duty administrative directive for further details.)
5. If the employee is released to work with restrictions, the Town will comply with the Federal Americans with Disabilities Act.
6. In the event that an employee is approved for and offered light duty assignment and chooses not to accept the assignment, they shall be denied continuation of Worker's Compensation benefits, and may be subject to disciplinary action, up to and including termination.

10.8 MILITARY LEAVE

- A. Leaves of absence for military service shall be granted in accordance with the provisions of applicable State and Federal laws. Pursuant to State law, the Town of Oro Valley will provide employees in the military reserves with 30 days of paid military leave every two years.
- B. Pursuant to applicable federal and state laws, employees requesting a leave of absence for military service must submit copies of valid orders to Human Resources.
- C. At their option, employees of the Town of Oro Valley who have been called to active duty by Presidential Order will be eligible to receive supplemental pay for a period of up to one year while under active Military Orders.
- D. The employee under active Military Order will not be required to use accrued annual pay or compensatory time off prior to receiving supplemental pay.
- E. The employee on active Military Order is eligible to receive their normal pay minus all applicable deductions for benefits, taxes, etc.
 1. In order to eliminate tax consequences for the employee on active Military Order, the Town will calculate the difference between their regular pay and their military pay, and pay the difference to the employee.



- F. During periods of military leave, employees of the Town of Oro Valley who are serving on active duty as members of the Military Reserves will be allowed to continue to maintain their employee benefits with the Town by continuing to make the required employee contributions for each of the plans for which the employee has enrolled prior to the start of their military service leave.
- G. Retirement contributions for employees called to active military service. .
1. Employees who are members of the Arizona State Retirement System
 - a. In accordance with Arizona Revised Statute 38-745, members of the Arizona State Retirement System (ASRS) who are on paid leave will continue to pay the employee's portion of their retirement contribution while the Town continues to pay the employer's portion.
 - b. If the employee is on unpaid leave, the Town will pay both the employee's and employer's portion of the required contribution to ASRS once the employee return's to Town employment and meets eligibility requirements
 2. Employees who are members of the PSPRS or CORP
 - a. In accordance with Arizona Revised Statute 38-858, the Town will make both member and employer contributions for you (up to 48 months) in a lump sum upon your return if:
 - i. You are a member of the Arizona National Guard or a reserve in any branch of the military, or
 - ii. You volunteer into active duty or are called into active duty as a result of a Presidential call-up, and
 - iii. You are honorably separated from active duty and return to Town employment within 90 days after separation.
- H. The Town will follow the Uniformed Services Employment and Reemployment Rights Act when determining return and reemployment rights upon release from active Military Order.

10.9 BEREAVEMENT LEAVE

- A. Upon the death of an immediate family member, benefit eligible employees who are on active status (i.e., not on another form of leave of absence) are eligible to receive five working days of paid leave (not charged to sick leave or annual leave).
1. For bereavement involving other family members or friends, the employee may request paid annual leave or unpaid leave.
 2. Bereavement leave must be approved by the Department ~~Head~~ **Director**, or designee.

10.10 JURY DUTY LEAVE



- A. All employees of the Town who are called or required to serve as a juror shall be excused for their absence from work and receive their normal pay for such absence. In return for receiving regular pay, the employee shall remit any monies received for the jury duty (except for travel pay) directly to the Town.

10.11 SUBPOENA LEAVE / WITNESS LEAVE

- A. All employees of the Town required to appear in court as a witness in their official capacity shall be excused from their duties with the Town and shall receive pay and all other benefits during the period of such service.
 - 1. Under such circumstances, the employee shall refund the witness fee, if any, to the Town.
- B. Employees subpoenaed for matters not related to Town business shall not be paid for their absence unless accrued, approved annual leave or accrued compensatory time is used.
 - 1. Employees may use unpaid leave for such absences with appropriate approvals.

10.12 FAMILY AND MEDICAL LEAVE

- A. The Federal Family and Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage.
- B. Eligibility
 - 1. Must be a Town of Oro Valley employee.
 - 2. Must have worked for Oro Valley for at least twelve months, whether or not such time is continuous, and not had a continuous break in service of more than seven years.
 - 3. Must have worked a minimum of 1,250 hours during the 12-month period immediately preceding the commencement of leave. *Qualifying hours do not include annual, sick, bereavement, holiday, unpaid leave, etc. but overtime and holidays worked and military leave do qualify.*
- C. Qualifying Events
 - 1. The employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.
 - 2. The birth of a child and to care for the newborn child within one year of birth.



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3. The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement.
4. To care for the employee's spouse, child, parent or en loco parentis who has a serious health condition.
5. A military qualifying exigency while the employee's spouse, son, daughter, or parent (the "military member") is on covered active duty or has been notified of an impending call or order to covered active duty status.
6. To care for a covered service member or qualifying veteran with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

D. Amount of Leave

1. Qualifying full-time employees may be eligible for up to a total of 12 weeks of unpaid family leave during the applicable 12 month period.
2. For part-time eligible employees and those who work variable hours, the Family Medical Leave entitlement is calculated on a pro-rata basis. A weekly average of hours worked over the 12 weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek.
3. A husband and wife who are both employed by the Town are permitted to take only a combined total of 12 weeks of leave during the 12 rolling calendar month period if they are taking leave for the birth or adoption of a child.
4. Except for leave to care for a covered service member with a serious injury or illness, the Town uses a rolling 12 month period to calculate FMLA eligibility. Each time an employee uses FMLA leave, the remaining leave entitlement is the balance of the 12 weeks that has not been used during the immediately preceding 12 months.
5. For leave to care for a covered service member with a serious injury or illness, the benefit provides for up to 26 weeks of leave and the "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for the covered service member and ends 12 months after that date.

E. Serious Health Condition is an illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care or continuing treatment by a health care provider.
2. Continuing treatment involves a period of incapacity:
 - a. Of more than three consecutive calendar days and any subsequent treatment that also involves treatment at least two or more times by a health care provider;
 - b. Due to pregnancy, or prenatal care;



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- c. Due to a chronic serious health condition requiring periodic treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy);
- d. Permanent or long-term incapacity due to a condition for which treatment may not be effective; or
- e. Any period of absence to receive multiple treatments by a health care provider either for restorative surgery after an accident or injury or for a condition such as cancer that would likely result in a period of incapacity of more than three consecutive calendar days without medical treatment. Treatment would not include routine physical examinations.

F. Application of Accrued Paid Leave

- 1. Accrued paid annual and sick leave will be applied when FMLA leave is taken for any reason or any length of time.
- 2. When an employee has used all their sick or annual paid leave, the employee will be placed on unpaid leave for any part of the 12 week period remaining.

G. Intermittent Leave

- 1. When placed on official FMLA status, an employee may take leave intermittently (a few days or a few hours at a time), or on a reduced leave schedule. An employee should make reasonable efforts to schedule their absences so as not to unduly disrupt work operations.
- 2. When it is necessary for the employee to take FMLA intermittently or on a reduced leave schedule, the employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.
 - a. An employee may take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child at the discretion of the Department ~~Head~~ **Director**.

H. Notice Requirement

- 1. An employee is required to give 30 calendar days' notice in the event of a foreseeable leave.
- 2. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable. Verbal or written notice within one or two working days of when the need for family medical leave becomes known is usually sufficient.
- 3. If the employee does not notify the department within five working days of returning to work that the absence was for an FMLA reason, the employee cannot later claim that the absence was for an FMLA reason.



4. A request for FMLA leave should be made to Human Resources, either by the employee, or their supervisor.
5. Eligible employees on Worker's Compensation should also be evaluated for FMLA leave. However, employees who are released to work on Transitional/Light Duty will not have the modified duty hours counted toward FMLA hours.

I. Medical Certification

1. Medical certification must be provided by the employee within 15 calendar days after requested. The certification shall include the condition being treated, the date the serious health condition commenced, and the health care provider's best medical judgment concerning the probable duration of the condition.
2. For incremental use of leave the certification must indicate medical necessity for a reduced work schedule.
3. The Town reserves the right to request additional medical opinions in accordance with the FMLA.

J. Effect on Benefits

1. Subject to the terms, conditions and limitations of the applicable group health insurance plans, the Town shall maintain group health insurance coverage, including family coverage, for an employee on FMLA leave on the same terms as if the employee continued to work.
2. An employee, who is on paid FMLA leave via the use of accrued leave, shall continue to pay his or her share of the insurance premium, if any, through payroll deductions.
3. An employee who is on unpaid FMLA leave shall make arrangements with Human Resources and Finance Department to make payments for their share of the insurance premium, if any. If payment is more than 30 calendar days overdue, coverage will be dropped, after 15 calendar days written notice is provided to the employee. In this situation, COBRA will be offered.
4. The Town's obligation to maintain health benefits under this section stops if and when the employee informs the Town of intent not to return to work at the end of the leave period or if the employee fails to return to work when the FMLA leave entitlement is exhausted. In some circumstances, the Town may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.
5. The Town will not maintain other supplemental benefits while an employee is on FMLA leave. To maintain supplemental benefits, the employee must make payment arrangements with Human Resources and Finance Department.



6. Benefit accumulation, such as annual, sick leave or holiday benefits, will be suspended during any full pay period (80 hours) of unpaid leave portion of the FMLA leave period and will resume upon return to active employment. Use of FMLA leave is not considered a break in service when determining eligibility for vesting or for participation in a benefit.

K. Return to Work

1. An employee on FMLA leave shall provide Human Resources with at least two working days' advance notice of the date the employee intends to return to work.
2. An employee on FMLA leave for the employee's own serious health condition shall provide a written release from a health care provider indicating that the employee may resume the full essential functions of his or her position prior to or immediately upon returning to work.
3. Upon return from FMLA leave, the employee shall be restored to the employee's original position, or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.
4. If the FMLA leave period is insufficient and the employee is unable to fully perform the essential functions of his or her position at the conclusion of the FMLA leave period, the employee may request additional time off in accordance with the other leave of absence provisions herein.
5. If an employee is released to work with restrictions, the employee may become eligible for light duty. In some circumstances, it will become necessary to begin an interactive accommodation process in accordance with the Americans for Disabilities Act.
6. The Town may require updated medical certifications to support the need for the additional leave.
7. If the employee is unable to return after this time, the Town may initiate separation of employment.

L. Retaliation

1. The Town prohibits retaliation toward employees who utilize FMLA leave.

10-13 LEAVE DONATIONS

- A. Employees are encouraged to manage their paid time off to allow for major life events. In the event that, even with good leave management, an employee exhausts all of their paid time off, the Town allows all employees to donate up to 40 hours of annual leave every 12 months, while maintaining a minimum of 80 annual leave hours. Employees with sick leave balances in excess of 480 hours may donate up to 80 hours of sick leave every 12 months.



- B. Eligibility to receive donated leave hours
1. Must be on an approved Family Medical Leave Act, and
 2. Must have exhausted all forms of paid time off, including sick leave, compensatory time and annual leave time; and
 3. Must be eligible to earn and use donated hours in order to accept contributions.
- C. Requesting Donated Leave Time
1. To request donated leave time the requesting employee must complete a Request for Donation form and submit it to Human Resources. In the event the employee is unable to complete the form, the employee's supervisor may complete and submit the form. Upon receipt of the approved Request for Donation form, Human Resources will send an email to all Town employees informing them of the employee's need, and requesting donated hours.
 - a. An employee may receive the lesser of 480 donated hours or the amount of leave time needed to bring the employee to the end of the employee's Family Medical Leave Act time. The paid leave hours the employee had accrued at the time they went on leave, and the donated leave hours cannot continue past the total of 480 hours allowed by the Family and Medical Leave Act.
 - b. Employees using donated time do not accrue annual and/or sick leave hours.
 - c. An employee may not donate leave if that employee has less than a total of 80 hours of annual leave accrued after the donated time is deducted from their annual leave balance.
 - d. An employee may not donate sick leave hours if that employee has less than 480 sick leave hours. An employee with over 480 sick leave hours may donate up to 80 hours of sick leave.
 - e. Hours in an employee's administrative leave or compensatory time balance may not be transferred to another employee for any reason.
 - f. Employees who return to work on full-time status and have remaining donated leave hours will not be able to keep the hours in their own sick leave or annual leave account. The remaining donated hours will be returned on a pro-rated basis to the employee who donated the time.
 - g. All donations of leave time are treated as confidential and are not shared with the receiving employee.



Town Council Regular Session

Item # H.

Meeting Date: 06/15/2016

Requested by: Julie Bower

Submitted By: Julie Bower, Town
Clerk's Office

Department: Town Clerk's Office

Information

SUBJECT:

Resolution No. (R)16-32, authorizing and approving the agreement between the Town of Oro Valley and the Office of Administrative Hearings (OAH) for administrative hearing services on a case-by-case basis relating to election and campaign finance matters

RECOMMENDATION:

Staff recommends adoption of the resolution.

EXECUTIVE SUMMARY:

Arizona Revised Statutes, section 16-408(D), permits the governing body to enter into an agreement for services with the OAH, which is statutorily authorized to contract with the Town, pursuant to A.R.S. § 41-1092.01(J). The agreement would enable the Town's use of OAH and its hearing officers and administrative law judges for administrative reviews and hearings, on a case-by-case basis. The attached resolution authorizes and approves an agreement between the Town and the OAH.

BACKGROUND OR DETAILED INFORMATION:

During last year's recall election, the Clerk's Office received several complaints alleging possible violations of election statutes regarding independent expenditures (see A.R.S. § 16-917). The Pima County Attorney's Office would not take the complaints, citing a conflict of interest due to the fact that the County Recorder conducted the Town's elections. The Town Attorney referred the complaints to the Arizona Attorney General's Office and to date, over seven months later, there has been no final determination regarding the complaints.

Because of the experience with the State Attorney General's Office and the likelihood of receiving complaints in future election matters, the Clerk's Office would like to make use of the services of the OAH to provide reviews and hearings for violations relating to election and campaign finance matters.

Once the Town makes a request for OAH services, the OAH will appoint a competent

and experienced Administrative Law Judge (ALJ) based on the subject matter of the request. The appointed ALJ will conduct a fair and impartial review or hearing for all parties concerned under the specific guidance of the applicable provisions and create a digital record of the proceedings. Hearings can be held telephonically, at the OAH Tucson office or any other agreed upon location. The OAH will transmit its decision to the Town within at least 20 days of the conclusion of the hearing, or from receipt of the request if no hearing is held.

FISCAL IMPACT:

OAH services are billed at either a percentage amount or a billed hourly amount; currently the rate averages about \$71 per hour. OAH calculates the costs of providing services on a monthly basis in accordance with actual, allowable costs incurred consistent with its established Billing Allocation Plan. The Town pays only for the cases it refers to the OAH and is under no obligation to transmit any case to the OAH.

SUGGESTED MOTION:

I MOVE to (approve/deny) Resolution No. (R)16-32, authorizing and approving the agreement between the Town of Oro Valley and the Office of Administrative Hearings for administrative hearing services on a case-by-case basis relating to election and campaign finance matters.

Attachments

(R)16-32 OAH Agreement
OAH Agreement

RESOLUTION NO. (R)16-32

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING AND APPROVING THE AGREEMENT BETWEEN THE TOWN OF ORO VALLEY AND THE OFFICE OF ADMINISTRATIVE HEARINGS FOR ADMINISTRATIVE HEARING SERVICES ON A CASE-BY-CASE BASIS

WHEREAS, the Office of Administrative Hearings is statutorily authorized to contract with the Town of Oro Valley pursuant to A.R.S. § 41-1092.01(J); and

WHEREAS, the Town desires to enter into an agreement with the Office of Administrative Hearings to enable the Town's use of the Office of Administrative Hearings and its hearing officers and administrative law judges for administrative reviews and hearings on a case-by-case basis, oftentimes for election questions; and

WHEREAS, it is in the best interest of the Town to enter into the agreement between the Town of Oro Valley and the Office of Administrative Hearings, attached hereto as Exhibit "A" and incorporated by reference, to provide administrative hearing services to the Town of Oro Valley on a case-by-case basis.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Town of Oro Valley, that:

1. The Agreement with the Office of Administrative Services, attached hereto as Exhibit "A" and incorporated herein by this reference, between the Town of Oro Valley and the Office of Administrative Services is hereby authorized and approved.
2. That the Mayor and other administrative staff and officials are hereby authorized to take such steps as necessary to execute and implement the terms of the Agreement.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Oro Valley, Arizona, this 15th day of June, 2016.

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie K. Bower, Town Clerk

Tobin Sidles, Legal Services Director

Date

Date

EXHIBIT “A”

AGREEMENT
BETWEEN
THE OFFICE OF ADMINISTRATIVE HEARINGS, STATE OF ARIZONA
AND
TOWN OF ORO VALLEY, STATE OF ARIZONA

Background

The mission of the Office of Administrative Hearings (OAH) is to improve the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens. These contested matters may arise out of State regulation or as the result of any action of a governmental subdivision.

The OAH is statutorily authorized to contract with the Town of Oro Valley, pursuant to A.R.S. § 41-1092.01(J). In addition, the OAH is specifically authorized to require payment for actual expenses in furtherance of any such contract pursuant to A.R.S. § 41-1092.01(K).

The Town of Oro Valley wishes to make use of the personnel and services of the OAH in providing hearings to those entitled under statute, regulations and rules governing the Town of Oro Valley. The OAH wishes to provide the personnel and services to the Town of Oro Valley, as needed.

Agreement

The OAH and the Town of Oro Valley agree to the following:

1. If the services of the OAH are desired, the Town of Oro Valley will electronically notify the OAH utilizing an approved transmittal form attached as Exhibit 1.
2. The Town of Oro Valley will make a request for OAH services according to the subject matter. Each subject matter will be governed by the appropriate policies and procedures for that area of law as determined by the Town of Oro Valley.
3. The OAH will appoint a competent and experienced Administrative Law Judge (ALJ) according to the expertise of the ALJ.

4. All hearings will be held in the OAH Tucson Office, unless the Town of Oro Valley otherwise makes arrangements for another location.
5. The appointed ALJ of the OAH will make all interim procedural orders to ensure a valid and complete hearing, and the OAH will transmit all such orders to the respective parties.
6. The appointed ALJ of the OAH will conduct a fair and impartial review or hearing for all parties concerned under the specific guidance of the applicable provisions of the Codes of the Town of Oro Valley, State Statutes, any internal Town of Oro Valley Policies, and Town of Oro Valley administrative regulations and the general guidance of the Uniform Administrative Hearing Procedures of Title 41, Chapter 6, Article 10 (A.R.S §41-1092 *et seq.*) and the rules of the OAH (A.A.C. 2-19-101 *et seq.*), to the extent that the provisions of the Uniform Administrative Hearing Procedures of Title 41 Chapter 6, Article 10 and the rules of OAH do not conflict with the applicable Town of Oro Valley Code, State statutes, internal policies and administrative regulations.
7. The OAH will create a digital record of the hearing proceedings suitable for transcription.
8. The OAH will transmit its decision to the Town of Oro Valley within at least 20 days of the conclusion of the hearing, or from receipt of the request, if no hearing is held.
9. Unless otherwise agreed upon, the work product of the OAH shall be the "Administrative Law Judge Decision," or "Administrative Law Judge Recommendation" which shall consist of concise findings of fact, conclusions of law, and an order, when and if appropriate.
10. The OAH will transmit the complete record to the Town of Oro Valley including the digital file of any hearing, exhibits admitted, pleadings and orders.
11. OAH will calculate the costs of providing services on a monthly basis in accordance with actual, allowable costs incurred consistent with the Billing Allocation Plan attached as Appendix A.
12. The Town of Oro Valley will pay for costs billed within 30 days of receipt of the itemized bill incorporating all calculated monthly costs. Receipt is established within 5 days of mailing to the Town of Oro Valley address below.
13. The Town of Oro Valley incurs no obligation to transmit any case to the OAH, except as desired by the Town of Oro Valley.

14. Once a case has been transmitted, the OAH will be responsible for all further adjudicative matters until the case is vacated or the decision or order of the OAH has been transmitted to the Town of Oro Valley.
15. The OAH will arrange for transcription of any hearing record upon request of the Town of Oro Valley, but the Town of Oro Valley, or a third party, will be responsible for payment directly to the transcriber, unless otherwise agreed.
16. The Town of Oro Valley will be responsible for transmission of the record on appeal, unless otherwise agreed.
17. This Agreement is operative upon the signature of an authorized representative of each party.
18. The terms, conditions and provisions of this Agreement shall remain in full force and effect for five years, with one five year renewable term to be agreed upon by both parties in writing. This Agreement may be cancelled at any time upon thirty (30) days written notice to the other party. It is further understood and agreed that, in the event the Town cancels this Agreement, OAH will finalize and close out any remaining referrals and the Town of Oro Valley will compensate OAH for such work according to the terms of this agreement.
19. Every payment and performance obligation of the parties under this Agreement is conditioned upon the availability of funds appropriated and allocated for such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the legislature or other appropriating body resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by either party at the end of the period for which funds are available. No liability shall accrue to any Party in the event this provision is exercised, and neither Party shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
20. Any amendments to this Agreement shall be in writing and signed by both parties.
21. The OAH and the Town of Oro Valley shall address all correspondence relative to this Agreement through individuals that shall be designated in writing from time to time by each party.

Miscellaneous Provisions

22. Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission,

negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

- 23. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
- 24. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances as may be amended.
- 25. This agreement shall be governed by the laws of the State of Arizona.
- 26. Notwithstanding any legal rights regarding confidentiality, secrets or protected rights, the parties acknowledge that most documents covered under this agreement are subject to disclosure by laws related to open public records or subpoenas. Consequently, disclosure of some or all of the items subject to this agreement may be required to be disclosed by State law.
- 27. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

The Office of Administrative Hearings
1400 W. Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9830
(602) 542-9827 (Fax)

Town of Oro Valley
Attn: Town Clerk
11000 N. La Canada
Oro Valley, AZ 85737
(520) 229-4740

ON BEHALF OF THE TOWN OF ORO VALLEY

TOWN OF ORO VALLEY, ARIZONA, a Municipal Corporation

By: _____
Daniel G. Sharp, Interim Town Manager

Date

ATTEST:

By: _____
Julie K. Bower, Town Clerk

Date

FOR AND ON BEHALF OF THE OFFICE OF ADMINISTRATIVE HEARINGS

By: _____
Greg Hanchett, Director, OAH

Date

APPENDIX A: BILLING ALLOCATION PLAN

The Town of Oro Valley will be billed on a quarterly basis for its use of the personnel and services of the Office of Administrative Hearings (OAH) in the following manner:

1. Percentage pool:

The total (1) operating expenses, and (2) personal services and employee related expenses of the management and case management support teams will be determined on a monthly basis. One time sweeps for state-owned building rent, risk management charges, health, dental, life insurance premiums, etc. will be amortized over the twelve month fiscal year. Forty hours of continuing education and two hundred hours of vacation use by each Administrative Law Judge will be allocated per year as a business expense and amortized over the twelve month fiscal year. This amount will be multiplied by a fraction whose numerator is the number of cases for the Town of Oro Valley filed for the same monthly period, and whose denominator is the total number of OAH cases filed in the same monthly period. This amount will be billed to the Town of Oro Valley.

2. Billed hour pool:

The total personal services and employee related expenses of each administrative law judge will be determined and converted to an hourly rate. This hourly rate will be multiplied by the hours in pay status. This product will be multiplied by a fraction whose numerator is the number of hours billed to the Town of Oro Valley for the same monthly period, and whose denominator is the total hours billed by the administrative law judge to all other agencies participating in the Billing Allocation Plan in the same monthly period. This amount will be billed to the Town of Oro Valley.

3. Actual expense pool:

The actual expense for travel, outside consultants and other specific case expenditures will be determined on a monthly basis and billed to the Town of Oro Valley.

Exhibit 1
REQUEST FOR HEARING

OAH Received (OAH USE ONLY)

DATE: _____

TO: _____

Casemanagement@azoah.com

FROM: _____ Return e-mail (required)

1) Docket No. (IT MUST CONFORM WITH OAH PROCEDURES: **15-0001-ORO**)

2) Check one:

contested issue (agency action not taken pending hearing).

appealable agency action (appeal from Town action). Any required deadlines by Code or Charter: _____

3) Type of case and applicable procedures: _____

4) Caption (Required):

5) Requested date and time of hearing* _____

6) Approximate predicted length of hearing: _____

Complainant/Petitioner/Appellant (or counsel/rep)

Respondent/Appellee (or counsel/rep)

(REQUIRED) Name Address

(REQUIRED) Name Address

(If known) Phone _____

(If known) Phone _____

(If known) Email _____

(If known) Email _____

FOR USE BY OAH ONLY:

Assigned ALJ: _____

Assigned **HEARING**

DATE: _____ TIME: _____ LOCATION: _____

Assigned **PREHEARING (if applicable)**

DATE: _____ TIME: _____ LOCATION: _____

Special Advisement FROM OAH

Special Advisement FROM Agency (need for interpreter/special accommodation, etc.)