

PURSUANT TO A.R.S. §38-431.01, THE GILA COUNTY BOARD OF SUPERVISORS WILL HOLD AN OPEN MEETING IN THE SUPERVISORS' HEARING ROOM, 1400 EAST ASH STREET, GLOBE, ARIZONA. ONE OR MORE BOARD MEMBERS MAY PARTICIPATE IN THE MEETING BY TELEPHONE CONFERENCE CALL OR BY INTERACTIVE TELEVISION VIDEO (ITV). **ANY MEMBER OF THE PUBLIC IS WELCOME TO ATTEND THE MEETING VIA ITV WHICH IS HELD AT 610 E. HIGHWAY 260, BOARD OF SUPERVISORS' CONFERENCE ROOM, PAYSON, ARIZONA.** THE AGENDA IS AS FOLLOWS:

---

**WORK SESSION - TUESDAY, JULY 25, 2017 - 10:00 A.M.**

1. **CALL TO ORDER - PLEDGE OF ALLEGIANCE**
2. **REGULAR AGENDA ITEMS:**
  - A. Presentation by representatives of ASARCO regarding the proposed land exchange between ASARCO and the Bureau of Land Management.
  - B. Information/Discussion to update the Board of Supervisors on the status of the hearing officer project and review of hearing procedures by Environmental Health, Animal Control, Onsite Wastewater, Flood Plain, and Planning and Zoning. **(Michael O'Driscoll)**
  - C. Information/Discussion/Action to authorize the advertisement of Request for Qualifications No. 070317 - On-Call Design and Architectural Services. **(James Menlove/Steve Sanders)**
  - D. Information/Discussion/Action to adopt revised Policy No. BOS-FIN-002 - Procurement-Contracts to allow the Board of Supervisors the authority to waive the requirement that a contract must not obligate Gila County for more than 4 years in order to execute any contract that is between Gila County and a state or federal agency and that has been developed by that agency. **(James Menlove)**

3. **CALL TO THE PUBLIC:** Call to the Public is held for public benefit to allow individuals to address the Board of Supervisors on any issue within the jurisdiction of the Board of Supervisors. Board members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to Arizona Revised Statute §38-431.01(H), at the conclusion of an open call to the public, individual members of the Board of Supervisors may respond to criticism made by those who have addressed the Board, may ask staff to review a matter or may ask that a matter be put on a future agenda for further discussion and decision at a future date.
4. At any time during this meeting pursuant to A.R.S. §38-431.02(K), members of the Board of Supervisors and the County Manager may present a brief summary of current events. No action may be taken on information presented.

IF SPECIAL ACCOMMODATIONS ARE NEEDED, PLEASE CONTACT THE RECEPTIONIST AT (928) 425-3231 AS EARLY AS POSSIBLE TO ARRANGE THE ACCOMMODATIONS. FOR TTY, PLEASE DIAL 7-1-1 TO REACH THE ARIZONA RELAY SERVICE AND ASK THE OPERATOR TO CONNECT YOU TO (928) 425-3231.

THE BOARD MAY VOTE TO HOLD AN EXECUTIVE SESSION FOR THE PURPOSE OF OBTAINING LEGAL ADVICE FROM THE BOARD'S ATTORNEY ON ANY MATTER LISTED ON THE AGENDA PURSUANT TO A.R.S. §38-431.03(A)((3).

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING.

**ARF-4417**

**2. A.**

**Work Session**

Meeting Date: 07/25/2017

Submitted For: James Menlove, Finance Director

Submitted By: Janice Cook, Executive Administrative Assistant

Department: County Manager

---

Information

Request/Subject

Ray Land Exchange; ASARCO Ray-Hayden Operations and Bureau of Land Management (BLM).

Background Information

The Ray Land Exchange is a proposed administrative land exchange between Asarco LLC and the Bureau of Land Management that has been ongoing since the 1990's. This land exchange does not require an act of Congress. Asarco LLC is seeking to acquire 10,976 acres of BLM land around the existing Ray – Hayden Operations, which is located near Kearny, AZ in Gila and Pinal Counties. The BLM will acquire 7,304 acres of environmentally sensitive land in Mohave & Pinal Counties.

Evaluation

ASARCO's representatives hope to demonstrate, through this type of public outreach, that this land exchange will be mutually beneficially to the parties by adding to the life of the Ray Mine and allowing the BLM to consolidate areas of critical environmental concern for future preservation and public access.

Conclusion

ASARCO's representative met with the previous members of the Board of Supervisors and County Manager regarding the project, believing then that the land exchange was close to the public comment period. That proved not to be the case and ASARCO officials now believe it will go to public comment soon and it is prudent to provide an update to the new Supervisors and County Manager and answer any questions they might have about the land exchange.

Recommendation

Staff recommends that ASARCO's representatives appear in a Work Session to update the Board of Supervisors, County Manager, and the public regarding the proposed land exchange between ASARCO and the Bureau of Land Management.

Suggested Motion

Presentation by representatives of ASARCO regarding the proposed land exchange between ASARCO and the Bureau of Land Management.

---

Attachments

ASARCO-Ray Land Exchange Presentation

---



# **RAY LAND EXCHANGE**

## **Supplemental Environmental Impact Statement**

**and**

## **Amended Resource Management Plan**

**June 2017**

# Ray Land Exchange

---

## BRIEF LEGAL HISTORY

- ASARCO filed an Application to exchange lands with BLM in 1993 at the urging of the Secretary of the Interior.
- BLM issued a Record of Decision (ROD) approving the Ray Land Exchange in May 2000.
- Environmental groups (collectively, the Center for Biological Diversity) challenged the sufficiency of BLM's EIS and appealed the ROD.
  - The BLM Arizona State Director denied the appeal in May 2001.
  - IBLA denied the CBD's appeal in August 2004.
  - CBD filed suit in Federal District Court, which affirmed the IBLA's decision in June 2007.

# Ray Land Exchange

## LEGAL HISTORY (cont'd)

- CBD appealed to the Ninth Circuit Court of Appeals and a judgment in favor of CBD was entered on November 19, 2010, for 1 narrow issue.  
*BLM failed to compare the environmental consequences of ASARCO's potential future mining operations on Selected Lands “with” and “without” BLM oversight under BLM's surface management regulations 43 CFR 3809.*
- **FEIS Remanded to the BLM** - EIS, ROD and Resource Management Plans (RMP) were not set aside.
- BLM determined that it would prepare a Supplemental EIS (SEIS) to address the deficiency identified by the court.
  - ❖ “With and without” analysis; and
  - ❖ Analysis of any significant changes in environmental setting or regulation since the ROD was issued (e.g. foreseeable uses, ESA listing, etc.).
- BLM began preparation of a draft SEIS in 2011, which was completed in 2015.

# Ray Land Exchange

## PROPERTY INCLUDED IN THE LAND EXCHANGE

- ASARCO wants to obtain “Selected Lands” (10,976 acres) within the Copper Corridor near Hayden, Winkelman, and Kearny, AZ.
- BLM wants to acquire the “Offered Lands” (7,304 acres). These parcels include land within or adjacent to Wilderness Areas, Areas of Critical Environmental Concern, and/or contain riparian areas and habitat for endangered and other special status species.

### Selected Lands:

- Pinal and Gila Counties
- 28 parcels of surface and/or mineral estate near Ray and Hayden Operations
- 3 parcels of mineral estate near Casa Grande

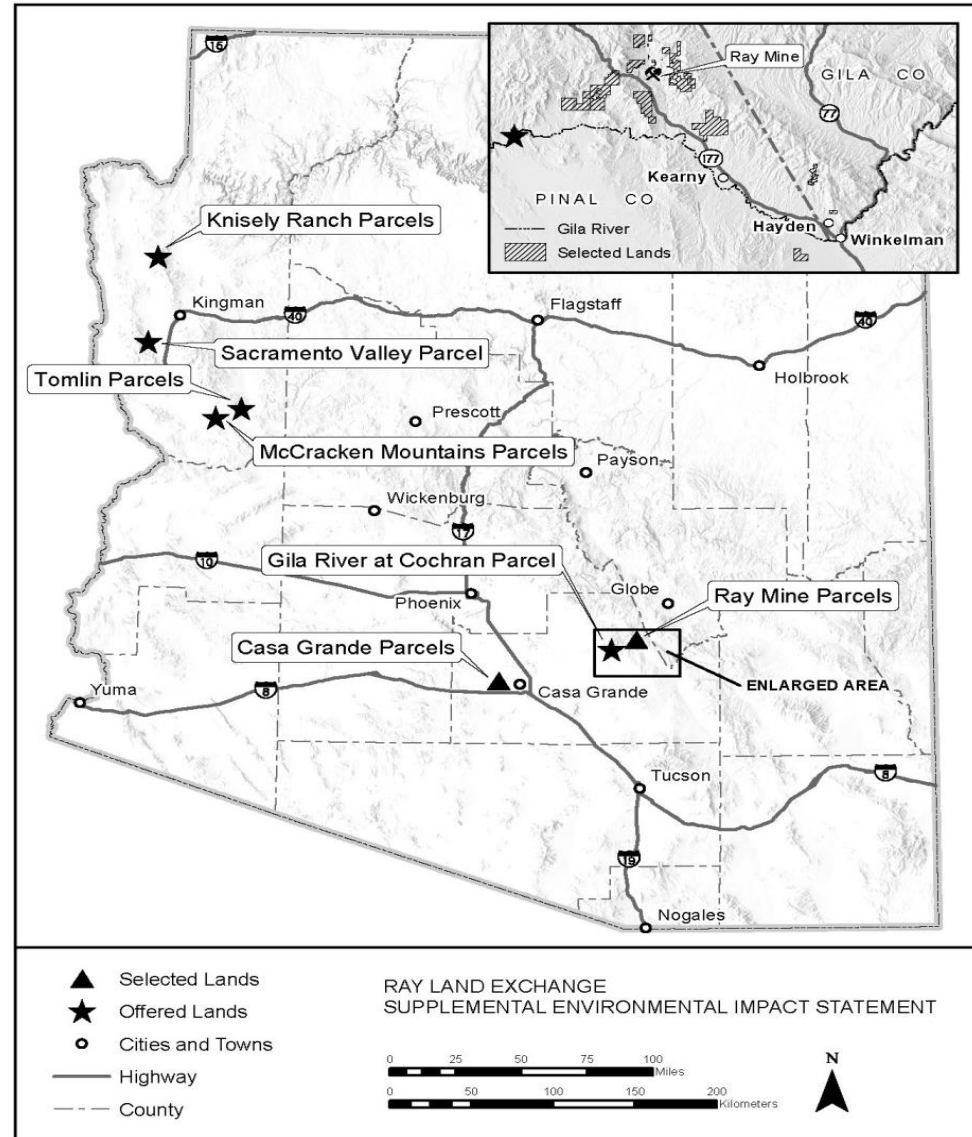
### Offered Lands:

- Mohave and Pinal Counties
- 18 parcels of environmentally sensitive land



# Ray Land Exchange

- PROPOSED  
LAND  
EXCHANGE  
LOCATIONS**



# Ray Land Exchange

## Offered Lands BLM will receive in the Land Exchange

### Gila River – Cochran Parcel

2.5 miles southwest of the White Canyon  
Wilderness on the Gila River

146 acres of riparian habitat suitable for  
southwestern willow flycatcher and western  
yellow-billed cuckoo

BLM special status species known or likely to  
occur

Important wintering and breeding bird habitat



### Knisely Ranch Parcels

Inholdings within the Mount Tipton Wilderness

Great Basin conifer woodland, interior chaparral,  
and Mohave desertscrub

Pine Canyon provides mesquite- and cat claw-  
dominated xeroriparian habitat

# Ray Land Exchange

## Offered Lands (cont'd)

### McCracken Mountain Parcels

Within BLM ACEC

High quality xeroriparian habitat for a variety of wildlife species

BLM special status species known or likely to occur

Consolidates checkerboard lands, limiting future development in desert tortoise habitat



### Sacramento Valley Parcel

Adjacent to Warm Springs Wilderness and near Mount Nutt Wilderness

Mohave desertscrub biotic community

Adjacent to high-value bighorn sheep habitat in Black Mountains

Xeroriparian vegetation includes ironwood, cat claw, foothill paloverde and jojoba



# Ray Land Exchange

## Offered Lands (cont'd)



### Tomlin Parcels

Two of three parcels are located on the Big Sandy River

Big Sandy parcels provide high-quality riparian habitat for a wide variety of wildlife species, including potentially suitable habitat for southwestern willow flycatcher

BLM special status species known or likely to occur (desert tortoise, chuckwalla, lowland leopard frog, and bat species)

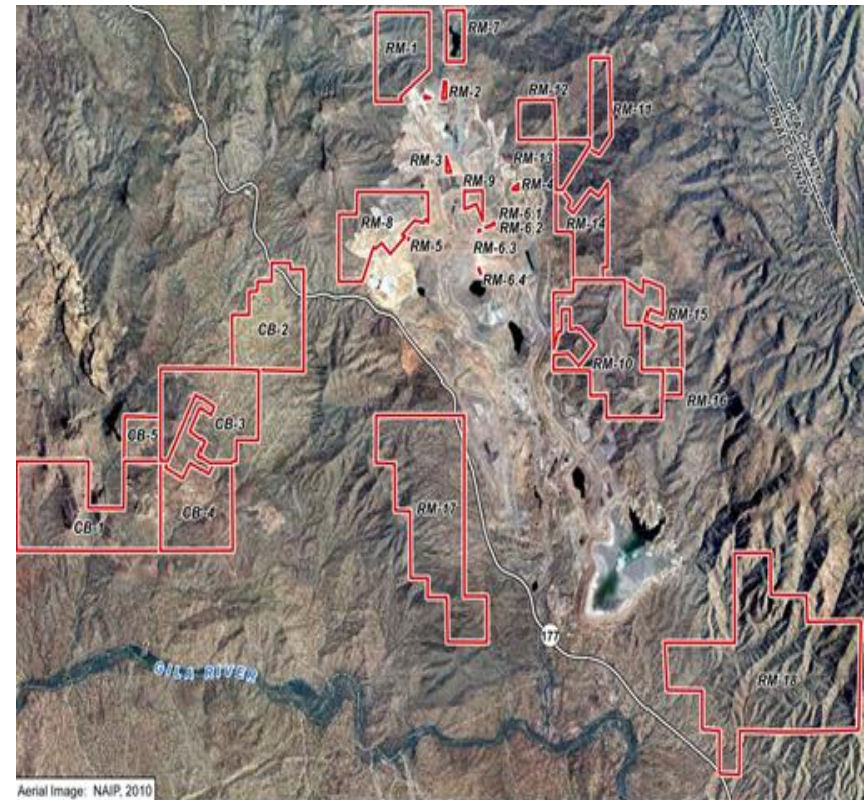




# Ray Land Exchange

## Selected Lands

Ray and Hayden Operations, Chilito and Copper Butte Parcels



# Ray Land Exchange

## Overview of Ray and Hayden Operations

### Ray Operations

**Process Operations:** Large open-pit mine with one concentrator; and a leach-solvent extraction-electrowinning plant

- **Copper in SX-EW Cathode:**
  - 45.7 million pounds (2016)
- **Copper Contained in Concentrate:**
  - 65.6 million pounds (2016)

### Hayden Smelter

One of three remaining copper smelters in the United States

**Process Operations:** One concentrator; an INCO Oxygen Flash Smelter, oxygen plant and a metallurgical acid plant

- **Copper in Anodes:**
  - 276.1 million pounds (2016)
- **Sulfuric Acid:**
  - 513.6K short tons (2016)
- **Copper Contained in Concentrate:**
  - 36.9 million pounds (2016)

# Ray Land Exchange

## Economic Benefits of Ray and Hayden Operations (2016)

### Ray Operations

- Wages, salaries and fringe benefits:
  - **\$47.5 Million**
- Property, severance and sales taxes:
  - **\$5.6 Million**
- Total materials and other spending (energy, fuel supplies): **\$131.7 Million**

#### December 31, 2016 Employment:

Total: **575** employees; **436** hourly/  
**139** salaried

### Hayden Smelter

- Wages, salaries and fringe benefits:
  - **\$41.0 Million**
- Property, severance and sales taxes:
  - **\$5.1 Million**
- Total materials and other spending (energy, fuel supplies): **\$76.1 Million**

#### December 31, 2016 Employment:

Total: **539** employees; **434** hourly/  
**105** salaried

# Ray Land Exchange

---

## **SEIS Resource Areas that will be reviewed for significant changes in the SEIS**

- Air Quality
- Biological Resources
- Land Use
- Recreation
- Socioeconomics
- Water Resources
- Cultural Resources/Section 106 Consultation
- Mineral Evaluations



# Ray Land Exchange

---

## SEIS and TECHNICAL MEMORANDUMS

- Reviewed the analysis in the 1999 FEIS for **EACH** resource (above).
- Developed Technical Memo describing necessity of any additional studies, data, or information relevant to the SEIS analysis.
- Completed technical review for **significant new circumstances or information** relevant to environmental concerns that have a bearing on the proposed action or its impacts.
- Assessed new circumstances or information that would result in significant effects outside the range of effects already analyzed in the FEIS.

# Ray Land Exchange

---

## SEIS and CULTURAL RESOURCES

Cultural Resources work to date includes:

- Brief review of past work to evaluate currently needed resource work.
- Development of a Cultural Resources Work Plan to meet regulatory compliance requirements.
- Resumed Tribal Consultation with Tribes previously consulted during the 1999 FEIS process.

# Ray Land Exchange

---

## SEIS and PUBLIC INVOLVEMENT

### Goals of public involvement:

- 1. Education:** Educating the public on the proposed land exchange history and the SEIS process as necessary for adequate involvement.
- 2. Federal Law Compliance:** Conducting the public involvement process in compliance with the requirements contained in the National Environmental Policy Act. NEPA process requires a public comment period after publication of the draft SEIS.
- 3. Communication of Key Benefits:** Communicating to the public how we believe the land exchange benefits BLM, Arizona economic interests, and the general public.

# Ray Land Exchange

---

## SEIS and where we are today

- A NOA package was submitted to BLM's Washington D.C. office for approval to allow for a notice to be published in the federal register to begin the public comment period.
- The NOA package is still in Washington D.C. awaiting final approval for publication in the federal register.
- ASARCO continues to work with the BLM to move the NOA package through its Washington D.C. office so the public can comment on the SEIS.
- Once the 90 day public comment period has ended BLM will review and respond to the comments, make the appropriate revisions to the SEIS and prepare a Final SEIS and a Supplemental ROD.

# Ray Land Exchange

---

QUESTIONS



**ARF-4339**

**2. B.**

**Work Session**

Meeting Date: 07/25/2017

Submitted For: Michael O'Driscoll, Director

Submitted By: Michael O'Driscoll, Director

Department: Health & Emergency Management Division: Health Services

---

Information

Request/Subject

To update the Board of Supervisors on the hearing officer project and present written hearing procedures for Environmental Health, Animal Control, Onsite Wastewater, Flood Plain, and Planning and Zoning.

Background Information

During the Board of Supervisors' work session on March 28, 2017, James Menlove, Gila County Finance Director, discussed the idea of converting Gila County Hearing Officers from part-time employee status to independent contractors. After the discussion, the Board of Supervisors directed staff to move forward and create a plan to convert the hearing officers to independent contractors. Further, the Board of Supervisors requested staff present the finalized plan at a future work session.

Evaluation

A project workgroup for this hearing officer project and staff identified several steps that were needed in order to be successful in completing the task given to us by the Board of Supervisor and fully convert the hearing officers to independent contractors: 1) Gila County Hearing Ordinance 05-01 would require amending, 2) Gila County Finance Department would need to create a request for qualifications (RFQ) to send out to bid for independent contractors, and 3) each of the five programs that will utilize a hearing officer would need to update or create internal hearing procedures for Board of Supervisor review and approval.

Conclusion

Moving forward with this project would allow the Gila County Board of Supervisors to appoint hearing officers to hear and determine violations to the County Flood Plain District, Onsite Waste Water program, Building and Zoning issues, Public Health Nuisances, and Animal Control violations.

Recommendation

Discussion to update the Board of Supervisors on the status of the hearing officer project and review of hearing procedures by Environmental Health, Animal Control, Onsite Wastewater, Flood Plain, and Planning and Zoning.

Suggested Motion

Information/Discussion to update the Board of Supervisors on the status of the hearing officer project and review of hearing procedures by Environmental Health, Animal Control, Onsite Wastewater, Flood Plain, and Planning and Zoning. **(Michael O'Driscoll)**

---

Attachments

Gila County Hearing Officer Ordinance 05-01

Draft Hearing Officer Ordinance 05-01 Amendment

Hearing Officer Procedure for Public Health Nuisances Draft

Hearing Officer Procedures Animal Care and Control Draft

Hearing Officer Procedures for Floodplain.Bld & Zoning.Env Nuisances Draft

---

**ORDINANCE NO. 05-01**  
**GILA COUNTY HEARING OFFICER**



**RULES OF PROCEDURE**

Originally adopted: December 6, 2005

Amendment approved: October 9, 2007

Amendment approved: November 17, 2008



## **GILA COUNTY HEARING OFFICER RULES OF PROCEDURE**

The Rules of Procedure for the Gila County Hearing Officer are adopted pursuant to the authority granted to Gila County in A.R.S. 48-3601 through 3628 (Unauthorized Development within the Floodplain); A.R.S. 49-141 (Unhealthy Conditions Causing Environmental Nuisance); A.R.S. §11-268 (Requiring an owner, lessee or occupant of buildings, grounds or lots located in the unincorporated areas of the county to remove rubbish, trash, weeds, filth, debris and dilapidated buildings which constitute a hazard to Public Health and Safety from buildings grounds, lots, contiguous sidewalks, streets and alleys); A.R.S. 11-808 (Establish Civil Penalties for Zoning Violations) and A.R.S. 11-866 which allows A.R.S. 11-808 (to be utilized in enforcing Building Codes).

### **RULE 1 SCOPE**

- 1.1 These rules shall apply in all cases involving the adjudication of civil violations which may be brought before the Gila County Hearing Officer. The Rules of Procedure for the Gila County Hearing Officer are adopted pursuant to the authority granted to Gila County in A.R.S. 48-3601 through 3628 (Unauthorized Development within the Floodplain); A.R.S. 49-141 (Unhealthy Conditions Causing Environmental Nuisance); A.R.S. §11-268 (Requiring an owner, lessee or occupant of buildings, grounds or lots located in the unincorporated areas of the county to remove rubbish, trash, weeds, filth, debris and dilapidated buildings which constitute a hazard to Public Health and Safety from buildings grounds, lots, contiguous sidewalks, streets and alleys); A.R.S. 11-808 (Establish Civil Penalties for Zoning Violations) and A.R.S. 11-866 which allows A.R.S. 11-808 (to be utilized in enforcing Building Codes).
- 1.2 An alleged violator charged under the above Development Codes with a civil violation shall not be subject to a criminal charge arising out of the same facts.
- 1.3 An action before the Hearing Officer does not preclude the Board of Supervisors, County Attorney, County Officer, private individual or other entity that is specially damaged by a civil violation from pursuing other remedies provided by law, including but not limited to injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate the violation.
- 1.4 Notices of violation and civil violations under any referenced ordinance shall follow the non-ticket complaint format.
- 1.5 Any code or ordinance later added to the Hearing Officer's jurisdiction will follow procedural rules under the non-ticket complaint format according to the specific authority in that particular code, ordinance or statute.
- 1.6 The Hearing Officer has the authority to impose penalties for violations and to order compliance with the Gila County Development Codes.

## TABLE OF CONTENTS

RULE 1	SCOPE.....	1
RULE 2	DEFINITIONS.....	2
RULE 3	SERVICE.....	3
RULE 4	COMMENCEMENT OF ACTION.....	4
RULE 5	NOTICE OF HEARING .....	4
	Complaints.....	4
RULE 6	APPEARANCE AND ENTRY OF PLEA.....	5
	Complaints.....	5
RULE 7	AMENDING THE COMPLAINT.....	5
RULE 8	VOLUNTARY DISMISSAL.....	6
RULE 9	NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVES.....	6
RULE 10	REPRESENTATION OF THE COUNTY.....	6
RULE 11	DEFAULT.....	6
RULE 12	SETTING ASIDE DEFAULT.....	6
RULE 13	DEFAULT BY COUNTY.....	7
RULE 14	CONTINUANCE.....	7
RULE 15	DISCOVERY.....	7
RULE 16	SUBPOENAS.....	7
RULE 17	QUESTIONING OF WITNESSES.....	7
RULE 18	ORDER OF PROCEEDINGS.....	8
RULE 19	RULES OF EVIDENCE.....	8
RULE 20	RECORD.....	9

RULE 21	RULING OF THE HEARING OFFICER.....	9
RULE 22	NOTICE OF RIGHT TO APPEAL.....	10
RULE 23	APPELLATE REVIEW.....	10
	Record on Appeal.....	10
	Transmission of Record.....	11
	Appellate Memoranda.....	11
	Oral Argument.....	11
	Appeal to the Superior Court.....	12
RULE 24	ORDER TO SHOW CAUSE.....	12

## **RULE 2        DEFINITIONS**

- 2.1 ALLEGED VIOLATOR** means the property owner(s), tenant or any other entities that are responsible for adhering to the Gila County Development Codes.
- 2.2 BOARD OF DIRECTORS** means the Board of the Gila County Flood Control District.
- 2.3 COMPLAINT** means a formal notification of a civil violation of any referenced ordinance filed with the Hearing Officer.
- 2.4 COUNSEL** means an attorney licensed to practice law in the State of Arizona.
- 2.5 COUNTY** means Gila County or any of its agencies or departments.
- 2.6 COUNTY BOARD** means the Gila County Board of Supervisors.
- 2.7 DEFENDANT** means the alleged violator of the Gila County Development Codes.
- 2.8 DESIGNATED REPRESENTATIVE** means a person over eighteen (18) years of age, other than an attorney, authorized in writing by the defendant to represent the defendant in proceedings before the Hearing Officer. The written authorization shall state the name of the person authorized to act on the defendant's behalf; that the defendant understands and agrees to be bound by actions taken by the designated representative in proceedings before the Hearing Officer; and shall be signed by the defendant before a notary public.
- 2.9 DEVELOPMENT CODES** means the Codes and Ordinances necessary to and utilized in Land Use Development in Gila County. The Development Codes includes the following statutes, codes, and ordinances as enumerated.
  - (1) The Gila County Floodplain Management Ordinance**, and subsequent revisions; A.R.S. 48-3601 through 3628, and subsequent revisions; 44 CFR Parts 59 and 60 and subsequent revisions.
  - (2) Wastewater Codes:**
    - a.) Aquifer Protection Permit Program**, Title 18 Environmental Quality, Arizona Administrative Codes Chapter 9, Articles 1 & 3 (Parts A and E), Article 7 (701), (708.A) and ( 711) as specified in Appendix A of the Gila County Delegation Agreement #06-0020 with ADEQ.
    - b.) A.R.S. 49-141(A)(3), (4), and (5) Unhealthy Conditions Causing Environmental Nuisance** as specified in Appendix B of the Gila County Delegation Agreement #06-0020 with ADEQ.
    - c.) Gila County Wastewater Ordinance # 01-2.**

- (3) Gila County, Arizona Planning & Zoning Code Ordinance
- (4) The Gila County Outdoor Light Control Ordinance
- (5) Minor Land Division Ordinance of the County of Gila
- (6) Subdivision Regulations Gila County, Arizona
- (7) The Building Code Ordinance of the County of Gila, including all adopted amendments and revisions
- (8) The Gila County Clean and Lien Ordinance

- 2.10 **HEARING OFFICER** means an individual appointed by the Board of Supervisors to hear and adjudicate alleged violations of the referenced Gila County Development Codes.
- 2.11 **COUNTY OFFICER** means a County Zoning Inspector, Code Enforcement Officer, Gila County Community Development Director or the Building Official.
- 2.12 **PARTY** means the defendant or the County.
- 2.13 **SUMMONS** is a legal notice requiring an individual to appear at a designated place, time and date.
- 2.14 **CODE COMPLIANCE SUPERVISOR** means the Code Compliance Supervisor or his/her designee.

### **RULE 3 SERVICE**

- 3.1 **Personal Service, Personally Serve, Personally Served**  
This shall be accomplished by the County Officer, Inspector or other authorized law enforcement officers delivering documents to the alleged violator personally or by leaving such pleadings or papers at his/her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or delivery to a personal representative or agent authorized by appointment or by law to receive service of process. Any document served upon the alleged violator(s) by personal service shall be served at least fifteen (15) days prior to the hearing date.
- 3.2 **Service by Certified Mail as an Alternate Means of Service.** Where personal service cannot be accomplished or is impractical, the County Officer has the administrative authority to accomplish service by mailing the complaint by Certified Mail to the mailing address associated with the parcel as currently on file with the Gila County Assessor's Office. Any notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days

prior to the hearing date. Service is completed when an acknowledgement of receipt by the County Officer and placed in the file. At hearing, the County Officer attempting service by Certified Mail shall provide the reasons why personal service cannot be accomplished or is impractical. If the Hearing Officer disagrees, the Hearing Officer may require personal service of the complaint.

- 3.3 Service by Publication. When service by publication of a legal notice is the best means practical under the circumstances for providing notice of the institution of the action against the property, then service may be made by publication upon approval of the Code Compliance Supervisor.
- 3.4 Additional Alternative Methods. If service by one of the methods above proves impractical, then service may be done by any method as the Hearing Officer upon motion and without prior notice, may direct. Whenever the Hearing Officer allows any other method of service pursuant to this section, the party requesting a different method of service shall make reasonable efforts to ensure that the other party actually does receive notice of legal action against them or the property. Additionally, the complaint, and any documents to be served, as well as any order of the Hearing Officer authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served.

#### **RULE 4 COMMENCEMENT OF ACTION**

- 4.1 Every action or proceeding brought before the Hearing Officer for a civil violation of any referenced ordinance shall be commenced by the filing of a complaint with the Code Compliance Supervisor by an officer authorized to file such complaints.
- 4.2 Complaints shall contain the name and address of the alleged violator, a legal description and/or the address of site of violation, a statement of facts constituting the specific violation, and the ordinance or regulation designation of the violation.

#### **RULE 5 NOTICE OF HEARING**

- 5.1 Notice of Hearing. The complaint shall be accompanied by a Notice of Hearing which shall set forth a date for appearance. The Complaint and Notice of Hearing shall be personally served on the alleged violator at least fifteen (15) days prior to this appearance date. If the County Officer is unable to personally serve the notice, then the complaint and notice may be served by Certified Mail in accordance with Rule 3.2 of the Hearing Officer Rules of Procedure. Any notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days prior to the date for appearance.

## **RULE 6 APPEARANCE AND ENTRY OF PLEA**

**6.1 Complaints.** The defendant may admit or deny responsibility by appearing in person at the time and date set to appear and entering a plea, or by mailing to the Code Compliance Supervisor a completed, signed and dated Notice to Appear and Entry of Plea form provided with the complaint. In lieu of such form, a short statement signed by the defendant or his/her attorney admitting or denying the allegations of the complaint, which must be received in the office of the Code Compliance Supervisor by 5:00 p.m. on the business day prior to the date set for appearance and plea.

**6.1.1** Upon admission of responsibility, and if there is no agreement in writing between the parties to waive the hearing for determination of penalty and date for re-mediation of the violation, the hearing shall be held at the same time and place set for appearance in the Complaint and Notice of Hearing. At this hearing, the defendant and the Code Compliance Supervisor or Officer shall be given an opportunity to state their position on the amount of the penalty and date of remediation to be imposed by the Hearing Officer.

**6.1.2** The hearing for determination of penalty and remediation date may be waived if agreed to by the parties involved. Upon agreement to waive said hearing, the Hearing Officer shall impose action to correct the Development Codes violation. The Defendant and County Officer shall be notified by first class mail of the penalty and remediation date.

**6.1.3** Upon denial of responsibility, the hearing of testimony and evidence shall be held at the time and place set for appearance in the Complaint and Notice of Hearing.

**6.1.4** If the defendant does not enter a plea, defendant shall appear at the place, date and time set in the Complaint and Notice of Hearing. Failure of defendant to appear shall be considered a Default Judgment as set forth in Rule 11 of these rules.

## **RULE 7 AMENDING THE COMPLAINT**

**7.1** The Hearing Officer may permit a complaint to be amended at any time before the final decision if no additional or different violation is charged and if substantial rights of the defendant are not thereby prejudiced.

**7.2** The complaint may be amended to conform to the evidence alleged at the hearing if no additional or different violation is charged thereby and if substantial rights of the defendant are not thereby prejudiced.



- 7.3 All amendments to a complaint relate back to the date that the complaint was issued.

**RULE 8 VOLUNTARY DISMISSAL**

- 8.1 The Code Compliance Supervisor may request in writing that the Hearing Officer dismiss a complaint. All such requests shall be filed prior to the hearing for testimony and presentation of evidence.

**RULE 9 NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE**

- 9.1 The complaint shall contain written notice that the defendant has the right to be represented by counsel or by another designated representative. The defendant must notify the Code Compliance Supervisor in writing at least fifteen (15) days prior to the hearing date for testimony and presentation of evidence of the defendant's election to be represented by counsel or by another designated representative. Otherwise, the Hearing Officer shall cause a postponement of these proceedings upon the request of the County Officer.

**RULE 10 REPRESENTATION OF THE COUNTY**

- 10.1 If the defendant is represented by legal counsel, then the County may then be represented by legal counsel.

**RULE 11 DEFAULT**

- 11.1 If the defendant fails to appear at the hearing for testimony and presentation of evidence, the allegations of the complaint shall be deemed admitted, and the Hearing Officer shall enter a default judgment against the defendant and impose a civil penalty as provided by the applicable ordinance or resolution setting forth penalties. The County Officer or the Code Compliance Supervisor may present evidence for determination of the penalty amount, prior to the imposition of penalty. The parties shall be notified of said default judgment by first class mail.
- 11.2 If it appears from the face of the complaint that the defendant is in the active military service, no default judgment may be entered against the defendant. In such case, the Code Compliance Supervisor may notify the defendant's commanding officer, if known, of the defendant's failure to appear.

**RULE 12 SETTING ASIDE DEFAULT**

- 12.1 A request by the defendant to set aside the default judgment entered under Rule 11 shall be made in writing no later than thirty (30) days after entry of default judgment.



- 12.2 The Hearing Officer's decision on a request to set aside default judgment is final and is not appealable to the Gila County Board of Supervisors.

**RULE 13 DEFAULT BY COUNTY**

- 13.1 If no witnesses for the County, excluding the defendant, appear at the time set for hearing, the Hearing Officer may dismiss the complaint unless good cause is shown for continuing the hearing to another date.

**RULE 14 CONTINUANCE**

- 14.1 The Hearing Officer may, upon motion of any party or on his own motion, continue the hearing to the next hearing date if it appears that the interests of justice require continuation.
- 14.2 If the defendant and the County Officer agree in writing to continue a hearing, that hearing shall be continued to the next hearing date.

**RULE 15 DISCOVERY (full disclosure of relevant facts between disputing parties)**

- 15.1 No pre-hearing discovery shall be permitted absent extraordinary circumstances.
- 15.2 Immediately prior to the hearing, both parties shall present to the Code Compliance Supervisor any evidence that party intends to use during the hearing. The Code Compliance Supervisor will allow the opposing parties to review all evidence. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the granting of a recess to permit the parties to review all evidence.

**RULE 16 SUBPOENAS**

- 16.1 Either party may request the Code Compliance Supervisor to issue subpoenas for the attendance of witnesses and/or production of documents pursuant to A.R.S. 12-2212. The subpoena shall state the title of the action and command each person to whom it is directed to give testimony at the place and time listed on the subpoena.
- 16.2 A subpoena may be served by the Sheriff, his/her deputies or by any other person who is not a party and is not less than eighteen (18) years of age. At the time of service, witness fees for one day plus mileage shall be paid to the witness pursuant to A.R.S. 12-303 which shall be paid by the requesting party.

**RULE 17 QUESTIONING OF WITNESSES**

- 17.1 All testimony shall be given under oath or affirmation.

**17.2** The Hearing Officer may on his/her own motion call and examine witnesses, including the defendant.

**17.3** No person may be examined at a hearing except by the following:

**17.3.1** Hearing Officer.

**17.3.2** Either the defendant or defendant's attorney or designated representative.

**17.3.3** Either the plaintiff's or complainant's counsel.

## **RULE 18 ORDER OF PROCEEDINGS**

**18.1** All witnesses called to testify on behalf of the County, other than the defendant or rebuttal witnesses, shall be required to testify prior to the defendant being required to testify. A witness that has already testified may be called in rebuttal to testify to an issue raised by the defense.

**18.2** The order of proceedings shall be as follows:

**18.2.1** Testimony of the Code Enforcement Officer or Code Compliance Supervisor and any other County witnesses.

**18.2.2** Testimony of defendant and any other defense witnesses.

**18.2.3** Testimony of County's rebuttal witnesses, if any.

**18.2.4** Testimony of defendant's rebuttal witnesses, if any.

**18.2.5** Argument of the parties or their counsel or designated representative, as permitted by the Hearing Officer.

**18.2.6** Ruling by the Hearing Officer.

## **RULE 19 RULES OF EVIDENCE**

**19.1** The Arizona Rules of Evidence shall not apply before the Hearing Officer. Any evidence offered may be admitted subject to a determination by the Hearing Officer that the offered evidence is relevant and material and has some probative value to a fact at issue.

**19.2** Nothing in this Rule is to be construed as abrogating any statutory provision relating to privileged communication.

**19.3** Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded.

19.4 Documentary evidence may be received in the form of copies or by incorporation by reference.

19.5 The Hearing Officer may take note of judicially cognizable facts and may take note of general, technical or scientific facts.

#### **RULE 20 RECORD**

20.1 The County will record the proceedings by audio tape. The defendant may have the proceedings recorded by a court reporter provided by the defendant at the defendant's expense.

#### **RULE 21 RULING OF THE HEARING OFFICER**

21.1 If the defendant at the conclusion of the hearing is found responsible for the civil violation, the Hearing Officer shall enter a decision for the County and impose a civil penalty as set forth in the applicable Gila County Development Codes.

21.2 The ruling shall include the findings and conclusion of the Hearing Officer. The conclusions may include, at the discretion of the Hearing Officer, Orders imposing civil penalties, including but not limited to:

21.2.1 A certain date for remediation of violation(s) of the applicable Gila County Development Codes.

21.2.2 A fine as set forth as follows:

##### **First Violation:**

For an individual person-Not more than \$700.00 per day of continuing violation.

For an enterprise-Not more than \$10,000.00 per day of continuing violation.

##### **Subsequent Violations of the Same Provision:**

For an individual person-Not less than \$100.00 nor more than \$700.00 per day of continuing violation.

For an enterprise-Not less than \$200.00 nor more than \$10,000.00 per day of continuing violation.

21.2.3 A date for review of the Orders of the Hearing Officer. The purpose of this review is to allow the Hearing Officer to determine if the property has been

brought into compliance and to allow him/her to reduce or eliminate the fine previously imposed.

- 21.3 The Hearing Officer or Code Compliance Supervisor shall deliver or mail, to all parties, a copy of the decision together with written notice of right to appeal within ten (10) calendar days from the date the decision is signed by the Hearing Officer.
- 21.4 The Final Decision shall be filed with the Gila County Recorder's Office upon the expiration of the time for filing an appeal and upon determination that the defendant did not file an appeal. If the Defendant appeals the Final Decision and the Final Decision is upheld in whole or in part by the appellate process, the Final Decision as modified by the appellate process shall be filed with the Gila County Recorder's Office upon the exhaustion of all appellate remedies.

## **RULE 22 NOTICE OF RIGHT TO APPEAL**

- 22.1 Following the decision and imposition of a civil penalty and at the conclusion of the hearing, the Hearing Officer shall advise the defendant of defendant's right to a review of the Hearing Officer's final decision by the Board of Supervisor. The Defendant also shall be informed of the applicable time limit and referred to the rules governing the review process.

## **RULE 23 APPELLATE REVIEW**

The procedure for review of a civil violation of any referenced ordinance is as follows:

- 23.1 The party requesting review shall file a written Notice of Request for Appellate Review with the Code Compliance Supervisor within fifteen (15) days after the signing of the final decision, notice or order by the Hearing Officer.
- 23.2 The request for appellate review shall identify the decision on appeal. The request shall be signed by the appellant, his/her attorney, or his/her designated representative and shall contain the names, addresses and telephone numbers of all parties and their attorney or designated representative. The request for appellate review shall state whether appellant will represent himself or the name of appellant's attorney or designated representative. Failure to designate representation by counsel or designated representative at the time of request for appeal may cause a recess or postponement of these proceedings by the Board of Supervisors.
- 23.3 The original, plus one copy of the notice of request for appellate review, shall be filed with the Code Compliance Supervisor, who shall serve a copy of the request for appellate review on the other party or the other party's attorney or designated representative.



- 23.4 Record on Appeal.** The Board's review of the Hearing Officer's decision shall be limited to the record of the previous proceedings before the Hearing Officer, and there shall be no introduction of new evidence. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, all evidence admitted at the hearing, and the audiotape required by Rule 20. If the Board determines that a transcript of the audio tape is necessary, a transcript shall be prepared by the Code Compliance Supervisor at the requesting party's expense. A trial de novo (new trial) is not permitted.
- 23.5 Transmission of Record**
- 23.5.1.1** Upon receipt of the request for appellate review, the Code Compliance Supervisor shall, within twenty (20) working days, prepare and transmit the record to the Clerk of the Board of Supervisors.
- 23.5.1.2** The parties may stipulate that the review may be on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed with the Code Compliance Supervisor within ten (10) days after filing of the Notice of Request for Appellate Review.
- 23.5.1.3** Upon transmission of the record, the Clerk of the Board shall send notice by mail to all parties that the record has been transmitted and stating that written memoranda are due within fifteen (15) working days from the date of transmission of the record by the Code Compliance Supervisor.
- 23.6 Appellate Memoranda.** Each party may file a written memorandum no later than fifteen (15) working days following the date of transmission of the record to the Board as to why the Board should affirm, modify or reverse the final decision being reviewed by the Board. The memorandum shall not raise new facts or issues not previously presented before the Hearing Officer.
- 23.6.1** Each party shall file the original, plus three copies, with the Clerk of the Board.
- 23.6.2** No memorandum filed shall exceed five typewritten, double-spaced pages in length.
- 23.7 Notice of Appellate Review by the Board.** Upon receipt of the record by the Board from the Hearing Officer, the Clerk of the Board shall set a date for the review and mail the parties a written notice of the time and place of the appellate review. Appellate review by the Board shall be set within no less than twenty (20) days from Board's receipt of transmission of record. The Notice of the Appellate Review date shall be mailed by first class mail not less than five (5) days prior to the appellate review hearing. Appeal hearing may be continued by the Board for good cause.

- 23.8 **Oral Argument.** Oral argument shall be limited to five (5) minutes for each party, unless extended by the Board. One person shall speak for each side unless this requirement is waived by the Board. Oral argument shall be based on the record and there shall be no presentation of new evidence in oral argument. Either party may waive its oral argument.
- 23.9 **Disposition by the Board.** After consideration of the record transmitted by the Hearing Officer and memoranda, the Board may increase, decrease or modify any penalty/assessment imposed by the Hearing Officer as long as it follows the penalty amounts set by the applicable ordinance or resolution and may:
- 23.9.1 Affirm the decision of the Hearing Officer;
- 23.9.2 Affirm in part and reverse in part and, if necessary remand for further proceedings; or
- 23.9.3 Reverse the action of the Hearing Officer and, if necessary remand for further proceedings.
- 23.9.4 Written notice of the final decision of the Board shall be hand-delivered or mailed by first class mail to all parties by the Clerk of the Board within Fifteen (15) calendar days of the Board's decision.
- 23.10 **Appeal to the Superior Court.** Judicial review of the final decision of the Board shall be pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (12-901 et seq.)

#### **RULE 24 ORDER TO SHOW CAUSE**

If the defendant fails to comply with the decision entered by the Hearing Officer, the County may file an affidavit setting forth the facts relating to the defendant's noncompliance and request the Hearing Officer to enter an Order to Show Cause requiring the defendant to appear and show cause why additional penalties should not be imposed for noncompliance.

- 24.1 All Orders to Show Cause issued by the Hearing Officer shall set forth the time and place for hearing and be personally served upon the defendant. Where personal service cannot be accomplished, service may be made in the manner prescribed for alternative methods.
- 24.2 At any hearing on an Order to Show Cause, the only issue before the Hearing Officer is compliance with the decision entered previously by the Hearing Officer. The Hearing Officer shall find either the defendant has complied or not complied with the previously entered decision. If good cause cannot be shown for noncompliance, the Hearing Officer may order the imposition of additional penalties upon the defendant.

- 24.3 Failure by defendant to appear shall not constitute grounds for continuance. Hearing shall proceed in the absence of the defendant. Plaintiff shall present evidence and the Hearing Officer shall make a determination.

Passed and Adopted this 17th day of November, 2008.

Gila County Board of Supervisors

By: Jose M. Sanchez  
Jose M. Sanchez, Chairman

Approved as to form:

ATTEST:

Raymond L. Chandler  
County Attorney

Steven L. Besich  
Steven L. Besich, Clerk of the Board

**RESOLUTION OF THE GILA COUNTY BOARD OF SUPERVISORS AMENDING GILA COUNTY HEARING OFFICER ORDINANCE GILA COUNTY 05-01**

**WHEREAS, the Board of Supervisors is vested with the authority by, A.R.S. 11-251.05 (County Board of Supervisors may adopt ordinances), A.R.S. §48-3603 (23) (County Flood Control Districts); A.R.S. §49-110 (Department of Environmental Quality); A.R.S. §11-268 (Powers of Board of Supervisors; A.R.S. 11-866 and A.R.S. 11-815 (Establish Civil Penalties for Zoning Violations), A.R.S. 11-866 (Penalties for Building Code Violations), A.R.S. 36-601 through 606 (to abate nuisances, sources of filth, and causes of sickness; A.R.S. §36-183.04 (Appoint Hearing Officer for public health nuisance complaints), A.R.S. 11-1001 (establish a civil penalty for violating an animal statute or ordinance), and also Gila County Ordinances 01-03 (Animal Control) and 01-04 (Barking Dog), to appoint hearing officers to hear and determine violations and such authority also includes authority to establish procedures for day-to-day operations and policies assisting in the administration of the Hearing Officer duties; and**

**WHEREAS, the Board of Supervisors finds it necessary to appoint hearing officers to enforce violations of A.R.S. §48-3603 (23), A.R.S. §49-110, A.R.S. §11-268, A.R.S. 11-866 and A.R.S. 11-815, A.R.S. 11-866, A.R.S. 36-601 through 606; A.R.S. 11-1001; and Gila County Ordinances 01-03 and 01-04;**

**WHEREAS, the hearing officer shall have the authority to conduct a hearing, receive evidence, administer oaths, and rule on the admissibility of evidence and upon questions of law; and**

**WHEREAS, the hearing officer's authority on a particular matter, however, may be limited by the applicable Arizona Revised Statute, County Ordinance provisions, or department policy; and**

**WHEREAS, the hearing officer shall render a written decision, including any findings or conclusions required for the decision and submit the decision to the Clerk of the Board of Supervisors; and**

**WHEREAS, an action before the hearing officer does not preclude the Board of Supervisors, County Attorney, County Officer, private individual or other entity that is specially damaged by a civil violation from pursuing other remedies provided by the law, including but not limited to injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate the violation; and**

**WHEREAS, notices of violation and civil violations under any referenced ordinance shall follow the procedural rules and format according to the specific authority in that particular code, ordinance, or statute; and**

**WHEREAS, any code or ordinance later added to the Hearing Officer's jurisdiction shall follow the procedural rules and format according to the specific authority in that particular code, ordinance, or statute; and**



**WHEREAS, a hearing officer shall receive compensation as provided in the County procurement policy for independent contractors in effect on the date the contract was approved by the Board of Supervisors.**

**WHEREAS, on September \_\_\_\_\_, 2017, the Board of Supervisors adopted this amendment to Gila County Hearing Officer Ordinance 05-01; and**

**WHEREAS, the Board of Supervisors finds a need to adopt written amendments to Hearing Officer Ordinance 05-01.**

**THEREFORE, BE IT RESOLVED: That the Gila County Board of Supervisors hereby adopts the written amendments to Gila County Hearing Officer Ordinance 05-01.**

**PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, by the GILA COUNTY BOARD OF SUPERVISORS.**

**The Hearing Officer has the authority to impose penalties for violations and to order compliance with the Gila County Floodplain Development, onsite wastewater,**

**The Gila County Board of Supervisors shall appoint a hearing officer**

**Gila County Division of Health and Emergency Management  
Environmental Health Section**

**AN ORDINANCE  
PROVIDING FOR ADMINISTRATIVE HEARINGS OF PUBLIC HEALTH  
NUISANCES IN GILA COUNTY**

**A. AUTHORITY**

County authority to abate nuisances, sources of filth, and causes of sickness is derived from A.R.S. §36-601 through 606, as amended. Authority delegated to the Counties by Arizona Department of Health Services

**B. PROHIBITED CONDITIONS**

It shall be unlawful, and considered a public nuisance to maintain any parcel of property in such a way as to create conditions which are specifically declared public nuisances dangerous to public health in accordance with A.R.S. §36-601A Arizona Revised Statutes.

**C. ENFORCEMENT**

1. The Board of Supervisors and Gila County Director of Health and Emergency Management, hereinafter known as the Health Officer, shall enforce the provisions of this ordinance.
2. The Health Officer or his/her designees shall investigate, and report on all public nuisance violations.

**D. HEARING OFFICER**

The Board of Supervisors shall appoint a Hearing Officer to hear and determine public nuisance violations. Individuals determined by the Hearing Officer to be violating any provision of this chapter shall be responsible for a public nuisance violation, which is punishable by a civil penalty of not more than five hundred dollars and an order to remove the nuisance, source of filth or cause of sickness at the expense of the owner, occupant or other person who caused the nuisance, source of filth or cause of sickness.

## E. HEALTH OFFICER

1. Inspection of premises. The Health Officer or his/her designated health inspector shall review all reported violations of this Ordinance. Upon receiving a report of a public nuisance violation, the Health Officer shall inspect the site of the alleged violation. During an inspection the Health Officer shall take careful and comprehensive notes as to the condition and existing uses of the subject property, location, property owner and address, and specific sections of 36-601A corresponding to the alleged violation(s).
2. Right to enter premises for inspection or abatement. When the Health Officer deems it necessary to enter a building or structure within its jurisdiction for the purpose of examining, destroying, removing or preventing a nuisance, source of filth, or cause of sickness, and is refused entrance, the Health Officer may make a complaint under oath to the Justice of the Peace for a warrant directing the sheriff or other peace officer to accompany the Health Officer and his or her designees to destroy, remove, or prevent such nuisance, source of filth, or cause of sickness, between the hours of sunrise and sunset, pursuant to A.R.S. 36-603.
3. Notice of violation. If the Health Officer determines that a violation is occurring on the subject property, he/she shall serve notice to the property owner/occupant of the violation(s). The Notice of Violation and Demand for Compliance shall cite the nature of the violation, the section of A.R.S. §36-601.A. violated, information of possible penalties if violation is not ceased and steps necessary to bring the subject property into compliance. The notice shall order the owner or occupant to remove the nuisance within 24 hours at his/her expense if an imminent health hazard exists, or within a specified time, not to exceed 15 days, for all other violations.
4. Nuisance Citation. If the violation(s) still exists after the time specified in the Notice of Violation and Demand for Compliance, then the health inspector will notify the Health Officer, who shall issue a nuisance citation unless the Health Officer is convinced an attempt is being made to correct the violation. In that event, the Health Officer may extend in writing the time for compliance up to thirty (30) thirty days. A nuisance citation shall be issued if the owner/alleged violator fails to resolve the violation within the time specified in the second notice.
5. Set for Hearing. If a nuisance citation is issued the matter shall be set for a hearing before the Gila County Hearing Officer.
6. Notice of Hearing. The notice of hearing and nuisance citation shall be served upon the owner/alleged violator at least fifteen (15) days prior to the hearing if by personal service, or at least thirty (30) days prior to the hearing if by certified mail with return receipt. A notification of the specific time and date by which the alleged violator must appear at the hearing office to submit a plea shall be enclosed with the citation.

## F. HEARING OFFICER PROCEDURE

1. Commencement. Every action or proceeding brought before the Hearing Officer for a violation of this chapter shall be commenced by the filing of a nuisance citation by the Health Officer or designee. No notice shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation, if the notice contains either a written description or reference to the applicable section of A.R.S. §36-601A pertaining to the violation.
2. Appearance. The alleged violator or his/her attorney shall appear in person at the hearing office on the date and time specified in the notice accompanying the nuisance citation to admit or deny responsibility. Appearance may also be made by mailing to the Hearing Officer an appearance form provided by the Hearing Officer or in lieu of such form, a short statement signed by the alleged violator or his/her attorney admitting the allegations of the notice.
3. Admission of responsibility. The alleged violator may admit responsibility by appearing in person or by mailing to the hearing office an appearance form. Once a formal admission of responsibility is received by the hearing office, the hearing officer shall set a time and place for the determination of the penalty for the violation, at which time both the alleged violator and Health Officer shall be given an opportunity to state their position on the amount of penalty to be imposed by the Hearing Officer. Without an extension, which may be granted by the Hearing Officer in extraordinary circumstances, the alleged violator shall correct the violation within thirty (30) days from the date of the Hearing Officer proceeding or sooner if, in the opinion of the Hearing Officer, an imminent hazard exists.
4. Denial of responsibility. The alleged violator may deny responsibility by appearing in person or by mailing to the Hearing Officer an appearance form provided by the Hearing Officer or in lieu of such form, a denial signed by the alleged violator or his/her attorney. Once a formal denial is received by the Hearing Officer, the hearing officer shall schedule the matter for hearing and notify the alleged violator or his/her attorney of the date, time and place for the hearing. Upon appearance, it shall be the responsibility of the alleged violator or his/her attorney to notify the hearing officer of an incorrect address or any different address than what is set forth on the nuisance citation.
5. Representation by Counsel. After submittal of formal denial, the Hearing Officer shall promptly notify the alleged violator of his/her right to be represented by counsel at his/her expense. The alleged violator must notify the Hearing Officer in writing at least ten (10) days prior to the hearing date of his/her choice to be represented by counsel. The Hearing Officer may continue a hearing if the alleged violator does not make notification of his/her decision to secure counsel within the aforementioned time frame.

Should the County elect to secure counsel, the County must, in writing, notify the Hearing Officer and the alleged violator at least ten (10) days prior to the hearing.

6. Failure to Appear. If the alleged violator fails to appear by the date and time specified in the notice accompanying the nuisance citation, the allegations filed against the alleged violator shall be deemed admitted, and the Hearing Officer shall enter judgement for the County and impose a penalty subject to Section G of this Ordinance.
7. Production of witnesses and exhibits. Within ten (10) days prior to the hearing, both parties shall produce for inspection by the opposing party a list of witnesses and prepared exhibits to be on file at the hearing office. Failure to comply with this provision may result, at the Hearing Officer's discretion, in the granting of a continuance to permit such inspection or denial of the admission of the evidence.
8. Order of Hearing.
  - a. The order of the Hearing Officer proceeding shall be as follows:
    1. The Hearing Officer shall call the case and briefly describe the procedures to be followed.
    2. County's statement.
    3. Testimony of the County's witnesses.
    4. Respondent's statement.
    5. Testimony of the respondent's witnesses.
    6. Testimony of other attendees at the discretion of the Hearing Officer.
    7. Respondent's rebuttal.
    8. County rebuttal.
    9. Cross-examination of witnesses shall be strictly limited to subjects or evidence elicited during direct testimony.
    10. Closing statement of the parties or their counsel.
    11. Ruling by the Hearing Officer. At the conclusion of the hearing, the Hearing Officer shall determine whether a nuisance violation exists and, if a violation is found to exist may impose civil penalties in accordance with Section F of this Ordinance. A ruling shall include findings, conclusion and opinion of the Hearing Officer.
  - b. At the discretion of the Hearing Officer, a hearing may be continued for a period not exceeding sixty (60) days if it appears that the interests of justice so require. The Hearing Officer shall not continue a hearing without first giving notice to both parties. The Hearing Officer shall notify both parties in writing of the new hearing date.
  - c. The Hearing Officer may question witnesses or representatives of either party.
  - d. The Arizona Rules of Evidence shall not apply before a Hearing Officer. Any evidence offered may be admitted subject to a determination by the Hearing Officer that the offered evidence is relevant.
  - e. Audio tape recordings of the hearing shall be made and kept on record at the hearing office

for a period of one (1) year. In addition, a record of the proceedings may be made by a court reporter if requested by the alleged violator at the alleged violator's expense.

- f. If the alleged violator fails to appear at the time set for the hearing, the alleged violator shall be found to be in default, the statement of responsibility shall be deemed admitted, and the Hearing Officer shall enter finding for the County and impose civil sanction, and report such judgement to the Health Officer.
- g. If no witness for the County, excluding the alleged violator, appears at the set time for the hearing, the hearing officer shall dismiss the citation unless the Hearing Officer, for good cause shown, continues the hearing to another date.
- h. At any time, the Hearing Officer may set aside a finding entered upon a failure to appear if it is deemed by the Hearing Officer that the alleged violator was not served a nuisance citation, or for any other reason where necessary to prevent an injustice. In the event a finding is set aside for failure to appear the Hearing Officer shall reset the matter for hearing.

#### G. FINDING OF RESPONSIBILITY/CIVIL SANCTIONS

- 1. If the alleged violator, after the hearing, is found responsible for the public nuisance violation, the Hearing Officer shall enter finding for the County and impose a civil penalty of not more than five hundred dollars (\$500), shall cause the nuisance, source of filth or cause of sickness to be removed, and expenses of removal shall be paid by the responsible party.
- 2. The Hearing Officer has the option of dismissing the initial fine should extenuating circumstances exist.
- 3. Actual costs for removal or abatement, including the actual costs of any additional inspection and other incidental costs in connection with removal or abatement may be levied against the subject property in the form of an assessment.
  - a. The assessment shall be recorded with the Gila County Recorder.
  - b. The assessment, from the date of its recording, is a lien on the lot or tract of land until paid.
  - c. Pursuant to A.R.S. §36-602, any assessment recorded is prior and superior to all other liens, obligations or encumbrances except liens for general taxes and prior recorded mortgages.
  - d. The County may enforce the lien pursuant to A.R.S. §36-602, as amended. Notice of a lien enforcement action shall be provided to all lienholders.
- 4. The alleged violator, if found responsible for the nuisance violation and penalized with a civil penalty, shall not be relieved from the responsibility of correcting any prohibited condition. Unless appealed to the Board of Supervisors within seven (7) days from the



date of the hearing, the defendant shall correct the nuisance violation within thirty (30) days from the date of the hearing, or sooner if, in the opinion of the Hearing Officer, the nuisance poses an imminent health hazard.

#### H. APPEAL TO THE BOARD OF SUPERVISORS

1. Any party may appeal to the Board of Supervisors the final finding and/or sanction of the Hearing Officer. A written notice of appeal shall be filed with the Hearing Officer within seven (7) days after the Hearing Officer's finding.
2. The notice of appeal shall identify the finding and/or sanction appealed. It shall be signed by the appellant or appellant's counsel, and shall contain the names, addresses, and telephone numbers of all parties and their attorneys. When a party appeals, the Hearing Officer shall send a copy of the notice of appeal to the other party or attorney.
3. Appeals shall be limited to the record of the proceeding before the Hearing Officer, and no new evidence may be introduced. The record of the proceedings shall include all materials in the Hearing Officer's file, all evidence admitted at the hearing, and the official record as per Section F.8.e of this Ordinance.
4. Upon receiving the notice of appeal the Hearing Officer shall within thirty (30) days prepare and transmit the record and schedule the appeal before the Board of Supervisors.
5. The parties may stipulate that the appeal may be heard on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed with the Hearing Officer within fifteen (15) days after the notice of appeal.
6. Upon sending the record to the Board of Health, the Hearing Officer shall notify both parties that they have five (5) days from the date of the letter to submit a memorandum stating the parties' position to be submitted at the Board of Health hearing.
7. The memoranda shall be submitted to the Clerk of the Board and shall not exceed five (5) pages in length.
8. A notice of appeal before the Board of Supervisors shall be posted at least twenty-four (24) hours prior to the hearing. The Hearing Officer shall mail a notice of the hearing to both parties not less than five (5) days prior to the meeting.
9. The Chairman of the Board of Supervisors shall preside at the appeal and shall decide on all questions pertaining to the procedure. Final decisions on the merits of the case shall be made upon motion and majority vote of the quorum.
10. At the Board of Supervisors hearing, arguments on appeal shall be limited to five (5) minutes for each party unless extended by the Chairman of the Board of Supervisors.

11. After consideration of the merits of an appeal, the Board of Supervisors may increase, decrease, or modify any sanction imposed by the Hearing Officer and may:
- a. Affirm the action of the Hearing Officer;
  - b. Affirm in part and reverse in part and, if necessary, remand for further proceedings; or,
  - c. Reverse the action of the Hearing Officer and, if necessary, remand for further proceedings.
  - d. A decision to reverse the action of the Hearing Officer in whole or in part must be based upon a finding of an abuse of discretion by the Hearing Officer.

#### I. RECALL

1. Recall of a case may occur when the conditions and/or compliance time frame have not been met by the Violator. The Hearing Officer case is considered to be an open case until complete compliance has been reached as outlined in the Hearing Officer's judgement.
2. Service of the recall notice shall be completed in person, by Certified Mail, or alternate methods of service as prescribed in the Arizona Rules of Civil Procedure not less than fourteen (14) days prior to the hearing date.
3. A Hearing shall be held to review the effectiveness of the civil sanctions imposed at the prior hearing and to consider whether additional sanctions shall be imposed.

#### J. APPEAL OF A DECISION OF THE BOARD OF SUPERVISORS

An appeal of the decision of the Board of Supervisors may be made by filing a complaint in the Gila County Superior Court within thirty (30) days of the Board's decision, pursuant to A.R.S. Title 12, ch.7, art. 6 (A.R.S. §12-901 et seq.).

GILA COUNTY BOARD OF SUPERVISORS

**GILA COUNTY ANIMAL CARE and CONTROL HEARING  
OFFICER RULES OF PROCEDURE**

Table of Contents

RULE 1 SCOPE .....	3
RULE 2 DEFINITIONS .....	4
RULE 3 SERVICE.....	5
RULE 4 COMMENCEMENT OF ACTION .....	7
RULE 5 NOTICE OF HEARING .....	7
RULE 6 APPEARANCE AND ENTRY OF PLEA.....	7
RULE 7 AMENDING THE COMPLAINT.....	8
RULE 8 VOLUNTARY DISMISSAL.....	8
RULE 9 NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE .....	9
RULE 10 REPRESENTATION OF THE COUNTY .....	9
RULE 11 DEFAULT.....	9
RULE 12 SETTING ASIDE DEFAULT.....	10
RULE 13 DEFAULT BY COUNTY .....	10
RULE 14 CONTINUANCE.....	10
RULE 15 DISCOVERY.....	10
RULE 16 QUESTIONING OF WITNESSES.....	11
RULE 17 ORDER OF PROCEEDINGS.....	11

RULE 18 RULES OF EVIDENCE.....12

RULE 19 RECORD.....12

RULE 20 RULING OF THE HEARING OFFICER.....13

RULE 21 NOTICE OF RIGHT TO APPEAL.....14

RULE 22 APPELLATE REVIEW.....14

RULE 23 ORDER TO SHOW CAUSE.....17

RULE 24 CONFLICT OF INTEREST.....18

DRAFT

## **GILA COUNTY ANIMAL CARE and CONTROL HEARING OFFICER RULES OF PROCEDURE**

The Rules of Procedure for the Gila County Animal Care and Control Hearing Officer are adopted pursuant to the authority granted to Gila County in ordinance 01-3 (Animal Control Ordinance) and 01-4 (Barking Dog Ordinance).

### **RULE 1 SCOPE**

- (A) These rules shall apply in all cases involving the adjudication of civil violations which may be brought before the Gila County Animal Care and Control Hearing Officer. The Rules of Procedure for the Gila County Animal Care and Control Hearing Officer are adopted pursuant to the authority granted to Gila County in A.R.S 11-251.05 and 11-1001 *et seq* and also Gila County in ordinance 01-3 (Animal Control Ordinance) and 01-4 (Barking Dog Ordinance).
- (B) An alleged violator charged under the above Gila County Ordinances with a civil violation shall not be subject to a criminal charge arising out of the same facts.
- (C) An action before the Hearing Officer does not preclude the Board of Supervisors, County Attorney, Officer, private individual or other entity that is specially damaged by a civil violation from pursuing other remedies provided by law, including but not limited to injunction, mandamus, abatement or any other appropriate action or proceeding to prevent the violation.
- (D) Notices of violation and civil violations under any referenced ordinance shall follow the uniform traffic ticket format.
- (E) Any ordinance later added to the Hearing Officer's jurisdiction will follow procedural rules under the uniform

traffic ticket format according to the specific authority in that particular ordinance and/or statute.

- (F) The Hearing Officer has the authority to impose penalties for violations and to order compliance with the Gila County ordinance 01-3 (Animal Control Ordinance) and 01-4 (Barking Dog Ordinance).

## **RULE 2 DEFINITIONS**

- (A) ALLEGED VIOLATOR means the Owner(s) of the offending animal/s.
- (B) OWNER any person keeping an animal other than livestock for more than six consecutive days.
- (C) COMPLAINT means a formal notification of a civil violation of any ordinance filed subject to these rules with the Hearing Officer.
- (D) COUNSEL means an attorney licensed to practice law in the State of Arizona.
- (E) COUNTY means Gila County or any of its agencies or departments.
- (F) COUNTY BOARD means the Gila County Board of Supervisors.
- (G) DEFENDANT means the alleged violator of the Gila County Ordinances 01-3 (Animal Control Ordinance) and 01-4 (Barking Dog Ordinance).
- (H) DESIGNATED REPRESENTATIVE means a person over eighteen (18) years of age, other than an attorney, authorized in writing by the defendant to represent the defendant in proceedings before the Hearing Officer. The written authorization shall state the name of the person authorized to act on defendant's behalf; that the



defendant understands and agrees to be bound by actions taken by the designated representative in proceedings before the Hearing Officer; and shall be signed by the defendant before a notary public.

- (I) GILA COUNTY ANIMAL CARE and CONTROL ORDINANCES refers to Ordinances 01-3 (Animal Control Ordinance) and 01-4 (Barking Dog Ordinance).
- (J) HEARING OFFICER means an individual appointed by the Board of Supervisors to hear and adjudicate alleged violations of the referenced Gila County Ordinances 01-3 (Animal Control Ordinance) and 01-4 (Barking Dog Ordinance).
- (K) COUNTY OFFICER or COUNTY ENFORCEMENT AGENT means a county Animal Control Supervisor, Animal Control Officer, and Animal Control Worker or any one else who is an employee of The Gila County Animal Control Department.
- (L) PARTY means the defendant or the County.
- (M) SUMMONS is a legal notice requiring an individual to appear at a designated place, time and date. As stated on the uniform traffic ticket format.
- (N) ANIMAL CONTROL SUPERVISOR means the Animal Control Supervisor or his/her designee.
- (O) CIVIL PENALTY means any order to remediate a violation or a fine imposed by the Hearing Officer in an amount not to exceed \$500.00 or both. All monies collected for civil penalties shall be deposited in to the county general fund.

### **RULE 3 SERVICE**

- (A) Personal Service, Personally Serve, Personally Served shall be accomplished by the County Officer or other

authorized law enforcement officers delivering documents to the alleged violator personally or by leaving such pleadings or papers at his/her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or delivery to a personal representative or agent authorized by appointment or by law to receive service of process. Any document served upon the alleged violator(s) by personal service shall be served at least ten calendar (10) days prior to the hearing date.

- (B) Service by Certified Mail as an Alternate Means of Service. Where personal service cannot be accomplished or is impractical, the officer has the administrative authority to accomplish service by mailing the complaint by Certified Mail. Any notice served upon the alleged violator other than by personal service shall be served at least thirty calendar (30) days prior to the hearing date. Service is completed when an acknowledgement of receipt by the officer and placed in the file. At hearing, the County Officer attempting service by certified mail shall provide the reasons why personal service cannot be accomplished or is impractical. If the Hearing Officer disagrees, the Hearing Officer may require personal service of the complaint.
- (C) Additional Alternative Methods. If service by one of the methods above proves impractical, then service may be done by any method as the Hearing Officer upon motion and without prior notice, may direct. Whenever the Hearing Officer allows any other method of service pursuant to this section, the party requesting a different method of service shall make reasonable efforts to ensure that the other party actually does receive notice of legal action against them as the animal/s owner. Additionally, the complaint, and any documents to be served, as well as any order of the Hearing Officer authorizing an alternative method of service, shall be mailed to the last

known business or residence address of the person to be served.

#### **RULE 4 COMMENCEMENT OF ACTION**

- (A) Every action or proceeding brought before the Hearing Officer for a civil violation of any referenced ordinance shall be commenced by the filing of a complaint by a County Officer authorized to file such complaints.
- (B) Complaints shall contain the name and address of the alleged violator, date and time the violation occurred, a name and/or description of the dogs, location of violation, and a statement of facts constituting the specific violation, and the ordinance designation of the violation.

#### **RULE 5 NOTICE OF HEARING**

- (A) Notice of Hearing. The complaint shall be accompanied by a Notice of Hearing which shall set forth a date for appearance. The Complaint and Notice of Hearing shall be personally served on the alleged violator at least ten (10) days prior to this appearance date. If the Officer is unable to personally serve the notice, then the complaint and notice may be served by Certified mail in accordance with Rule 3B of the Hearing Officer Rules of Procedure. Any notice served upon the alleged violator other than by personal service shall be served at least thirty calendar (30) days prior to the date for appearance.

#### **RULE 6 APPEARANCE AND ENTRY OF PLEA**

- (A) Complaints. The defendant may admit or deny Responsibility by appearing in person at the time and date set to appear and enter a plea. The plea is a short statement signed by the defendant or his/her attorney admitting or denying the allegations of the complaint.

- (B) If the defendant admits responsibility, the Hearing Officer shall then commence a hearing to determine the appropriate penalty.
- (C) If the defendant denies responsibility or if the defendant appears for the hearing and fails to admit responsibility the Hearing Officer shall commence a hearing to determine if a violation has occurred. If the Hearing Officer determines that a violation has occurred, he shall then determine the appropriate penalty.
- (D) Failure of defendant to appear shall be considered a Default Judgment as set forth in Rule 11 of these rules.

#### **RULE 7 AMENDING THE COMPLAINT**

- (A) The Hearing Officer may permit a complaint to be amended at any time before the final decision if no additional or different violation is charged and if substantial rights of the defendant are not thereby prejudiced.
- (B) The complaint may be amended to conform to the evidence adduced at the hearing if no additional or different violation is charged thereby and if substantial rights of the defendant are not thereby prejudiced.
- (C) All amendments to a complaint relate back to the date that the complaint was issued.

#### **RULE 8 VOLUNTARY DISMISSAL**

- (A) The Animal Control Supervisor may request in writing that the Hearing Officer dismiss a complaint. All such requests shall be filed prior to the hearing for testimony and presentation of evidence.

**RULE 9 NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE**

- (A) The complaint shall contain written notice that the defendant has the right to be represented by counsel or by other designated representative. The defendant must notify the Animal Care and Control Supervisor in writing at least ten (10) days prior to the hearing date for testimony and presentation of evidence of defendant's election to be represented by counsel or by other designated representative. Otherwise, the Hearing Officer shall cause a postponement of these proceedings upon the request of the County Officer.

**RULE 10 REPRESENTATION OF THE COUNTY**

- (A) If the defendant is represented by legal counsel then the County may be represented by legal counsel.

**RULE 11 DEFAULT**

- (A) If the defendant fails to appear at the hearing for testimony and presentation of evidence, the allegations of the complaint shall be deemed admitted, and the Hearing Officer shall enter a default judgment against the defendant and impose a civil penalty as provided by the applicable ordinance setting forth penalties. The County Officer or the Animal Control Supervisor may present evidence for determination of the penalty amount, prior to the imposition of penalty. The parties shall be notified of said default judgment by first class mail.
- (B) If it appears from the face of the complaint that the defendant is in the active military service, no default judgment may be entered against the defendant. In such case, the Animal Care and Control Supervisor may notify the defendant's commanding officer, if known, of the defendant's failure to appear.

## **RULE 12 SETTING ASIDE DEFAULT**

- (A) A request by the defendant to set aside the default judgment entered under Rule 11 shall be made in writing no later than thirty (30) days after entry of default judgment.
- (B) The Hearing Officer's decision on a request to set aside default judgment is final and is not appealable to the Gila County Board of Supervisors.

## **RULE 13 DEFAULT BY COUNTY**

- (A) If no witnesses for the County excluding the defendant appear at the time set for hearing, the Hearing Officer may dismiss the complaint unless good cause is shown for continuing the hearing to another date.

## **RULE 14 CONTINUANCE**

- (A) The Hearing Officer may, upon motion of any party or on his own motion, continue the hearing to the next hearing date if it appears that the interests of justice require continuation.
- (B) If the defendant and the County Officer agree in writing to continue a hearing, that hearing shall be continued to the next hearing date.

## **RULE 15 DISCOVERY**

- (A) No pre-hearing discovery shall be permitted absent extraordinary circumstances.
- (B) Immediately prior to the hearing, both parties shall present any evidence that the party intends to use during the hearing, thus allowing the opposing parties to review all evidence. Failure to comply with this rule may result, at



the Hearing Officer's discretion, in the granting of a recess to permit the parties to review all evidence.

### **RULE 16 QUESTIONING OF WITNESSES**

- (A) All testimony shall be given under oath or affirmation.
- (B) The Hearing Officer may on his own motion call and examine witnesses, including the defendant.
- (C) No person may be examined at a hearing except by the following:
  - Hearing Officer.
  - Either the defendant or defendant's attorney or designated representative.
  - Either the Plaintiff or Complainants counsel.

### **RULE 17 ORDER OF PROCEEDINGS**

- (A) All witnesses called to testify on behalf of the County, other than the defendant or rebuttal witnesses, shall be required to testify prior to the defendant being required to testify. A witness that has already testified may be called in rebuttal to testify to an issue raised by the defense.
- (B) The order of proceedings shall be as follows:
  1. Testimony of the County Officer or Animal Care and Control Supervisor and any other County witnesses.
  2. Testimony of defendant and any other defense witnesses.
  3. Testimony of County's rebuttal witnesses, if any.
  4. Testimony of defendant's rebuttal witnesses, if any.

5. Argument of the parties or their counsel or designated representative as permitted by the Hearing Officer.
6. Ruling by the Hearing Officer.

### **RULE 18 RULES OF EVIDENCE**

- (A) The Arizona Rules of Evidence shall not apply before the Hearing Officer. Any evidence offered may be admitted subject to a determination by the Hearing Officer that the offered evidence is relevant and material and has some probative value to a fact at issue.
- (B) Nothing in this Rule is to be construed as abrogating any statutory provision relating to privileged communication.
- (C) Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded.
- (D) Documentary evidence may be received in the form of copies or by incorporation by reference.
- (E) The Hearing Officer may take note of judicially cognizable facts and may take note of general, technical or scientific facts.

### **RULE 19 RECORD**

- (A) The County will record the proceedings by audiotape. The defendant may have the proceedings recorded by a court reporter provided by the defendant at the defendant's expense.

**RULE 20 RULING OF THE HEARING OFFICER**

- (A) If the defendant at the conclusion of the hearing is found responsible for the civil violation, the Hearing Officer shall enter a decision for the County and impose a civil penalty as set forth in the applicable Gila County Animal Care and Control and Barking Dog Ordinances.
- (B) The ruling shall include the findings and conclusion of the Hearing Officer. The conclusions may include, at the discretion of the Hearing Officer, Orders imposing civil penalties, including but not limited to:
  - 1. A certain date for remediation of violation(s) of the applicable Gila County Animal Care and Control Ordinances.
  - 2. A fine not to exceed \$500.00.
- (C) A date for review of the decision by the Hearing Officer. The purpose of this review is to allow the Hearing Officer to determine if the defendant has been brought into compliance and to allow him/her to reduce or eliminate the fine previously imposed.
- (D) The Hearing Officer shall deliver or mail to all parties a copy of the decision together with written notice of right to appeal within ten (10) calendar days from the date the decision is signed by the Hearing Officer.
- (E) The Final Decision shall be filed with the Gila County Recorder's Office upon the expiration of the time for filing an appeal and upon determination that defendant did not file an appeal.

## **RULE 21 NOTICE OF RIGHT TO APPEAL**

- (A) Following the decision and imposition of a civil penalty and at the conclusion of the hearing, the Hearing Officer shall advise the defendant of defendant's right to a review of the Hearing Officer's final decision. Defendant also shall be informed of the applicable time limit and referred to the rules governing the review process.

## **RULE 22 APPELLATE REVIEW**

The procedure for review of a civil violation of any referenced ordinance is as follows:

- (A) The party requesting review shall file a written notice of request for appellate review with the Animal Care and Control Supervisor within fifteen (15) calendar days after the signing of the final decision by the Hearing Officer.
- (B) The request for appellate review shall identify the decision on appeal. The request shall be signed by the appellant, his attorney, or his designated representative and shall contain the names, addresses and telephone numbers of all parties and their attorney or designated representative. The request for appellate review shall state whether appellant will represent himself or the name of appellant's attorney or designated representative. Failure to designate representation by counsel or designated representative at the time of request for appeal may cause a recess or postponement of these proceedings by the Board of Supervisors.
- (C) The original, plus one copy of the notice of request for appellate review shall be filed with the Animal Care and Control Supervisor who shall serve a copy of the request for appellate review on the other party or the other party's attorney or designated representative.
- (D) Record on Appeal. The Board's review of the Hearing Officer's decision shall be limited to the record of the

previous proceedings before the Hearing Officer, and there shall be no introduction of new evidence. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, all evidence admitted at the hearing, and the audiotape required by Rule 19. If the Board determines that a transcript of the audio tape is necessary, a transcript shall be prepared by the Animal Control Supervisor at the requesting party's expense. A trial de novo (new trial) is not permitted.

(E) Transmission of Record

1. Upon receipt of the request for appellate review, the Animal Care and Control Supervisor shall within twenty (20) working days, prepare and transmit the record to the Clerk of the Board of Supervisors.
2. The parties may stipulate that the review may be on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed with the Animal Care and Control Supervisor within ten (10) days after filing of the Notice of Request for Appellate Review.
3. Upon transmission of the record, the Clerk of the Board shall send notice by mail to all parties that the record has been transmitted and stating that written memoranda are due within ten (10) working days from the date of transmission of the record by the Animal Control Supervisor.

- (F) Appellate Memoranda. Each party may file a written memorandum no later than ten (10) working days following the date of transmission of the record to the Board as to why the Board should affirm, modify or reverse the final decision being reviewed by the Board. The memorandum shall not raise new facts or issues not previously presented before the Hearing Officer.

1. Each party shall file the original plus three copies with the Clerk of the Board.
  2. No memorandum filed shall exceed five typewritten double spaced pages in length.
- (G) Notice of Appellate Review by the Board. Upon receipt of the record by the Board from the Hearing Officer, the Clerk of the Board shall set a date for the review and mail the parties a written notice of the time and place of the appellate review. Appellate review by the Board shall be set within no less than twenty (20) days from Board's receipt of transmission of record. The notice of the appellate review date shall be mailed by first class mail not less than five (5) days prior to the appellate review hearing. Appeal hearing may be continued by the Board for good cause.
- (H) Oral Argument. Oral argument shall be limited to five (5) minutes to each party, unless extended by the Board. One person shall speak for each side unless this requirement is waived by the Board. Oral argument shall be based on the record and there shall be no presentation of new evidence in oral argument. Either party may waive its oral argument.
- (I) Disposition by the Board. After consideration of the record transmitted by the Hearing Officer and memoranda, the Board may increase, decrease or modify any penalty imposed by the Hearing Officer as long as it follows the penalty amounts set by the applicable ordinance or resolution and may:
1. Affirm the decision of the Hearing Officer;
  2. Affirm in part and reverse in part and, if necessary remand for further proceedings; or

3. Reverse the action of the Hearing Officer and, if necessary remand for further proceedings.
  4. Written notice of the final decision of the Board shall be hand delivered or mailed by first class mail to all parties by the Clerk of the Board within ten (10) calendar days of the Board's decision.
- (J) Appeal to the Superior Court. Judicial review of the final decision of the Board shall be pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (A.R.S. §12- 901 *et seq.*)

### **RULE 23 ORDER TO SHOW CAUSE**

- (A) If the defendant fails to comply with the decision entered by the Hearing Officer, the County may file an affidavit setting forth the facts relating to the defendant's noncompliance and request the Hearing Officer to enter an Order to Show Cause requiring the defendant to appear and show cause why additional penalties should not be imposed for noncompliance.
- (B) All Orders to Show Cause issued by the Hearing Officer shall set forth the time and place for hearing and be personally served upon the defendant. Where personal service cannot be accomplished, service may be made in the manner prescribed for alternative methods.
- (C) At any hearing on an Order to Show Cause, the only issue before the Hearing Officer is compliance with the decision entered previously by the Hearing Officer. The Hearing Officer shall find either the defendant has complied or not complied with the previously entered decision. If good cause cannot be shown for noncompliance, the Hearing Officer may order the imposition of additional penalties upon the defendant.



- (D) Failure by defendant to appear shall not constitute grounds for continuance. Hearing shall proceed in the absence of the defendant. Plaintiff shall present evidence and the Hearing Officer shall make a determination.

**RULE 24 CONFLICT OF INTEREST**

- (A) The hearing officer shall recuse himself for any conflict set forth in A.R.S. § 38-503. Conflicts set forth in A.R.S. § 38-503 cannot be waived by agreement of the parties.
- (B) The hearing officer shall recuse himself for any other conflict when he determines that it is in the interests of justice to do so unless both parties agree to waive the conflict.
- (C) If the conflict is not waived by both parties or the conflict is one set forth in A.R.S. § 38-503. The case will then be reassigned to the Gila County Board of Supervisors.

**Passed and Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.**  
**Gila County Board of Supervisors**

**By:** \_\_\_\_\_

**Approved as to form:**

**ATTEST:**

\_\_\_\_\_  
**County Attorney**

**Gila County Hearing Officer Rules of  
Procedures for Floodplains, Building &  
Zoning, Environmental Nuisances**

DRAFT

July 10, 2017

DRAFT

## TABLE OF CONTENTS

RULE 1	SCOPE .....	1
RULE 2	DEFINITIONS .....	2
RULE 3	SERVICE .....	3
RULE 4	COMMENCEMENT OF ACTION .....	4
RULE 5	NOTICE OF HEARING .....	4
	Complaints.... ..	4
RULE 6	APPEARANCE AND ENTRY OF PLEA .....	5
	Complaints .....	5
RULE 7	AMENDING THE COMPLAINT .....	5
RULE 8	VOLUNTARY DISMISSAL .....	6
RULE 9	NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVES .....	6
RULE 10	REPRESENTATION OF THE COUNTY .....	6
RULE 11	DEFAULT .....	6
RULE 12	SETTING ASIDE DEFAULT .....	6
RULE 13	DEFAULT BY COUNTY .....	7
RULE 14	CONTINUANCE .....	7
RULE 15	DISCOVERY .....	7
RULE 16	SUBPOENAS .....	7
RULE 17	QUESTIONING OF WITNESSES .....	7
RULE 18	ORDER OF PROCEEDINGS .....	8
RULE 19	RULES OF EVIDENCE. ....	8
RULE 20	RECORD .....	9

RULE 21	RULING OF THE HEARING OFFICER. ....	9
RULE 22	NOTICE OF RIGHT TO APPEAL. ....	10
RULE 23	APPELLATE REVIEW.....	10
	Record on Appeal.....	10
	Transmission of Record .....	11
	Appellate Memoranda.....	11
	Oral Argument.....	11
	Appeal to the Superior Court.....	12
RULE 24	ORDER TO SHOW CAUSE.....	12

## GILA COUNTY HEARING OFFICER RULES OF PROCEDURE

### RULE 1 SCOPE

- 1.1 These rules shall apply in all cases involving the adjudication of civil violations which may be brought before the Gila County Hearing Officer. The Rules of Procedure for the Gila County Hearing Officer are adopted pursuant to the authority granted to Gila County in A.R.S. 48-3601 through 3628 (Unauthorized Development within the Floodplain); A.R.S. 49-141 (Unhealthy Conditions Causing Environmental Nuisance); A.R.S. §11-268 (Requiring an owner, lessee or occupant of buildings, grounds or lots located in the unincorporated areas of the county to remove rubbish, trash, weeds, filth, debris and dilapidated buildings which constitute a hazard to Public Health and Safety from buildings grounds, lots, contiguous sidewalks, streets and alleys); A.R.S. 11-808 (Establish Civil Penalties for Zoning Violations) and A.R.S. 11-866 which allows A.R.S. 11-808 (to be utilized in enforcing Building Codes).
- 1.2 An alleged violator charged under the above Development Codes with a civil violation shall not be subject to a criminal charge arising out of the same facts.
- 1.3 An action before the Hearing Officer does not preclude the Board of Supervisors, County Attorney, County Officer, private individual or other entity that is specially damaged by a civil violation from pursuing other remedies provided by law, including but not limited to injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate the violation.
- 1.4 Notices of violation and civil violations under any referenced ordinance shall follow the non-ticket complaint format.
- 1.5 Any code or ordinance later added to the Hearing Officer's jurisdiction will follow procedural rules under the non-ticket complaint format according to the specific authority in that particular code, ordinance or statute.
- 1.6 The Hearing Officer has the authority to impose penalties for violations and to order compliance with the Gila County Development Codes.

## RULE 2 DEFINITIONS

- 2.1 ALLEGED VIOLATOR means the property owner(s), tenant or any other entities that are responsible for adhering to the Gila County Development Codes.
- 2.2 BOARD OF DIRECTORS means the Board of the Gila County Flood Control District.
- 2.3 COMPLAINT means a formal notification of a civil violation of any referenced ordinance filed with the Hearing Officer.
- 2.4 COUNSEL means an attorney licensed to practice law in the State of Arizona.
- 2.5 COUNTY means Gila County or any of its agencies or departments.
- 2.6 COUNTY BOARD means the Gila County Board of Supervisors.
- 2.7 DEFENDANT means the alleged violator of the Gila County Development Codes.
- 2.8 DESIGNATED REPRESENTATIVE means a person over eighteen (18) years of age, other than an attorney, authorized in writing by the defendant to represent the defendant in proceedings before the Hearing Officer. The written authorization shall state the name of the person authorized to act on the defendant's behalf; that the defendant understands and agrees to be bound by actions taken by the designated representative in proceedings before the Hearing Officer; and shall be signed by the defendant before a notary public.
- 2.9 DEVELOPMENT CODES means the Codes and Ordinances necessary to and utilized in Land Use Development in Gila County. The Development Codes includes the following statutes, codes, and ordinances as enumerated.
  - (1) The Gila County Floodplain Management Ordinance, and subsequent revisions; A.R.S. 48-3601 through 3628, and subsequent revisions; 44 CFR Parts 59 and 60 and subsequent revisions.
  - (2) Wastewater Codes:
    - a.) Aquifer Protection Permit Program, Title 18 Environmental Quality, Arizona Administrative Codes Chapter 9, Articles 1 & 3 (Parts A and E), Article 7 (701), (708.A) and ( 711) as specified in Appendix A of the Gila County Delegation Agreement #06-0020 with ADEQ.
    - b.) A.R.S. 49-141(A)(3), (4), and (5) Unhealthy Conditions Causing Environmental Nuisance as specified in Appendix B of the Gila County Delegation Agreement #06-0020 with ADEQ.
    - c.) Gila County Wastewater Ordinance # 01-2.



(3) Gila County, Arizona Planning & Zoning Code Ordinance

(4) The Gila County Outdoor Light Control Ordinance

(5) Minor Land Division Ordinance of the County of Gila

(6) Subdivision Regulations Gila County, Arizona

(7) The Building Code Ordinance of the County of Gila, including all adopted amendments and revisions

(8) The Gila County Clean and Lien Ordinance

2.10 HEARING OFFICER means an individual appointed by the Board of Supervisors to hear and adjudicate alleged violations of the referenced Gila County Development Codes.

2.11 COUNTY OFFICER means a County Zoning Inspector, Code Enforcement Officer, Gila County Community Development Director or the Building Official.

2.12 PARTY means the defendant or the County.

2.13 SUMMONS is a legal notice requiring an individual to appear at a designated place, time and date.

2.14 CODE COMPLIANCE SUPERVISOR means the Code Compliance Supervisor or his/her designee.

### RULE 3 SERVICE

#### 3.1 Personal Service, Personally Serve, Personally Served

This shall be accomplished by the County Officer, Inspector or other authorized law enforcement officers delivering documents to the alleged violator personally or by leaving such pleadings or papers at his/her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or delivery to a personal representative or agent authorized by appointment or by law to receive service of process. Any document served upon the alleged violator(s) by personal service shall be served at least fifteen (15) days prior to the hearing date.

3.2 Service by Certified Mail as an Alternate Means of Service. Where personal service cannot be accomplished or is impractical, the County Officer has the administrative authority to accomplish service by mailing the complaint by Certified Mail to the mailing address associated with the parcel as currently on file with the Gila County Assessor's Office. Any notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days

prior to the hearing date. Service is completed when an acknowledgement of receipt by the County Officer and placed in the file. At hearing, the County Officer attempting service by Certified Mail shall provide the reasons why personal service cannot be accomplished or is impractical. If the Hearing Officer disagrees, the Hearing Officer may require personal service of the complaint.

- 3.3 Service by Publication. When service by publication of a legal notice is the best means practical under the circumstances for providing notice of the institution of the action against the property, then service may be made by publication upon approval of the Code Compliance Supervisor.
- 3.4 Additional Alternative Methods. If service by one of the methods above proves impractical, then service may be done by any method as the Hearing Officer upon motion and without prior notice, may direct. Whenever the Hearing Officer allows any other method of service pursuant to this section, the party requesting a different method of service shall make reasonable efforts to ensure that the other party actually does receive notice of legal action against them or the property. Additionally, the complaint, and any documents to be served, as well as any order of the Hearing Officer authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served.

#### RULE 4 COMMENCEMENT OF ACTION

- 4.1 Every action or proceeding brought before the Hearing Officer for a civil violation of any referenced ordinance shall be commenced by the filing of a complaint with the Code Compliance Supervisor by an officer authorized to file such complaints.
- 4.2 Complaints shall contain the name and address of the alleged violator, a legal description and/or the address of site of violation, a statement of facts constituting the specific violation, and the ordinance or regulation designation of the violation.

#### RULE 5 NOTICE OF HEARING

- 5.1 Notice of Hearing. The complaint shall be accompanied by a Notice of Hearing which shall set forth a date for appearance. The Complaint and Notice of Hearing shall be personally served on the alleged violator at least fifteen (15) days prior to this appearance date. If the County Officer is unable to personally serve the notice, then the complaint and notice may be served by Certified Mail in accordance with Rule 3.2 of the Hearing Officer Rules of Procedure. Any notice served upon the alleged violator other than by personal service shall be served at least thirty (30) days prior to the date for appearance.

## RULE 6 APPEARANCE AND ENTRY OF PLEA

- 6.1 Complaints: The defendant may admit or deny responsibility by appearing in person at the time and date set to appear and entering a plea, or by mailing to the Code Compliance Supervisor a completed, signed and dated Notice to Appear and Entry of Plea form provided with the complaint. In lieu of such form, a short statement signed by the defendant or his/her attorney admitting or denying the allegations of the complaint, which must be received in the office of the Code Compliance Supervisor by 5:00 p.m. on the business day prior to the date set for appearance and plea.
- 6.1.1 Upon admission of responsibility, and if there is no agreement in writing between the parties to waive the hearing for determination of penalty and date for re-mediation of the violation, the hearing shall be held at the same time and place set for appearance in the Complaint and Notice of Hearing. At this hearing, the defendant and the Code Compliance Supervisor or Officer shall be given an opportunity to state their position on the amount of the penalty and date of remediation to be imposed by the Hearing Officer.
- 6.1.2 The hearing for determination of penalty and remediation date may be waived if agreed to by the parties involved. Upon agreement to waive said hearing, the Hearing Officer shall impose action to correct the Development Codes violation. The Defendant and County Officer shall be notified by first class mail of the penalty and remediation date.
- 6.1.3 Upon denial of responsibility, the hearing of testimony and evidence shall be held at the time and place set for appearance in the Complaint and Notice of Hearing.
- 6.1.4 If the defendant does not enter a plea, defendant shall appear at the place, date and time set in the Complaint and Notice of Hearing. Failure of defendant to appear shall be considered a Default Judgment as set forth in Rule 11 of these rules.

## RULE 7 AMENDING THE COMPLAINT

- 7.1 The Hearing Officer may permit a complaint to be amended at any time before the final decision if no additional or different violation is charged and if substantial rights of the defendant are not thereby prejudiced.
- 7.2 The complaint may be amended to conform to the evidence alleged at the hearing if no additional or different violation is charged thereby and if substantial rights of the defendant are not thereby prejudiced.

- 7.3 All amendments to a complaint relate back to the date that the complaint was issued.

#### RULE 8 VOLUNTARY DISMISSAL

- 8.1 The Code Compliance Supervisor may request in writing that the Hearing Officer dismiss a complaint. All such requests shall be filed prior to the hearing for testimony and presentation of evidence.

#### RULE 9 NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE

- 9.1 The complaint shall contain written notice that the defendant has the right to be represented by counsel or by another designated representative. The defendant must notify the Code Compliance Supervisor in writing at least fifteen (15) days prior to the hearing date for testimony and presentation of evidence of the defendant's election to be represented by counsel or by another designated representative. Otherwise, the Hearing Officer shall cause a postponement of these proceedings upon the request of the County Officer.

#### RULE 10 REPRESENTATION OF THE COUNTY

- 10.1 If the defendant is represented by legal counsel, then the County may then be represented by legal counsel.

#### RULE 11 DEFAULT

- 11.1 If the defendant fails to appear at the hearing for testimony and presentation of evidence, the allegations of the complaint shall be deemed admitted, and the Hearing Officer shall enter a default judgment against the defendant and impose a civil penalty as provided by the applicable ordinance or resolution setting forth penalties. The County Officer or the Code Compliance Supervisor may present evidence for determination of the penalty amount, prior to the imposition of penalty. The parties shall be notified of said default judgment by first class mail.
- 11.2 If it appears from the face of the complaint that the defendant is in the active military service, no default judgment may be entered against the defendant. In such case, the Code Compliance Supervisor may notify the defendant's commanding officer, if known, of the defendant's failure to appear.

#### RULE 12 SETTING ASIDE DEFAULT

- 12.1 A request by the defendant to set aside the default judgment entered under Rule 11 shall be made in writing no later than thirty (30) days after entry of default judgment.

- 12.2 The Hearing Officer's decision on a request to set aside default judgment is final and is not appealable to the Gila County Board of Supervisors.

RULE 13 DEFAULT BY COUNTY

- 13.1 If no witnesses for the County, excluding the defendant, appear at the time set for hearing, the Hearing Officer may dismiss the complaint unless good cause is shown for continuing the hearing to another date.

RULE 14 CONTINUANCE

- 14.1 The Hearing Officer may, upon motion of any party or on his own motion, continue the hearing to the next hearing date if it appears that the interests of justice require continuation.
- 14.2 If the defendant and the County Officer agree in writing to continue a hearing, that hearing shall be continued to the next hearing date.

RULE 15 DISCOVERY (full disclosure of relevant facts between disputing parties)

- 15.1 No pre-hearing discovery shall be permitted absent extraordinary circumstances.
- 15.2 Immediately prior to the hearing, both parties shall present to the Code Compliance Supervisor any evidence that party intends to use during the hearing. The Code Compliance Supervisor will allow the opposing parties to review all evidence. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the granting of a recess to permit the parties to review all evidence.

RULE 16 SUBPOENAS

- 16.1 Either party may request the Code Compliance Supervisor to issue subpoenas for the attendance of witnesses and/or production of documents pursuant to A.R.S. 12-2212. The subpoena shall state the title of the action and command each person to whom it is directed to give testimony at the place and time listed on the subpoena.
- 16.2 A subpoena may be served by the Sheriff, his/her deputies or by any other person who is not a party and is not less than eighteen (18) years of age. At the time of service, witness fees for one day plus mileage shall be paid to the witness pursuant to A.R.S. 12-303 which shall be paid by the requesting party.

RULE 17 QUESTIONING OF WITNESSES

- 17.1 All testimony shall be given under oath or affirmation.

17.2 The Hearing Officer may on his/her own motion call and examine witnesses, including the defendant.

17.3 No person may be examined at a hearing except by the following:

17.3.1 Hearing Officer.

17.3.2 Either the defendant or defendant's attorney or designated representative.

17.3.3 Either the plaintiff's or complainant's counsel.

## RULE 18 ORDER OF PROCEEDINGS

18.1 All witnesses called to testify on behalf of the County, other than the defendant or rebuttal witnesses, shall be required to testify prior to the defendant being required to testify. A witness that has already testified may be called in rebuttal to testify to an issue raised by the defense.

18.2 The order of proceedings shall be as follows:

18.2.1 Testimony of the Code Enforcement Officer or Code Compliance Supervisor and any other County witnesses.

18.2.2 Testimony of defendant and any other defense witnesses.

18.2.3 Testimony of County's rebuttal witnesses, if any.

18.2.4 Testimony of defendant's rebuttal witnesses, if any.

18.2.5 Argument of the parties or their counsel or designated representative, as permitted by the Hearing Officer.

18.2.6 Ruling by the Hearing Officer.

## RULE 19 RULES OF EVIDENCE

19.1 The Arizona Rules of Evidence shall not apply before the Hearing Officer. Any evidence offered may be admitted subject to a determination by the Hearing Officer that the offered evidence is relevant and material and has some probative value to a fact at issue.

19.2 Nothing in this Rule is to be construed as abrogating any statutory provision relating to privileged communication.

19.3 Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded.

19.4 Documentary evidence may be received in the form of copies or by incorporation by reference.

19.5 The Hearing Officer may take note of judicially cognizable facts and may take note of general, technical or scientific facts.

## RULE 20 RECORD

20.1 The County will record the proceedings by audio tape. The defendant may have the proceedings recorded by a court reporter provided by the defendant at the defendant's expense.

## RULE 21 RULING OF THE HEARING OFFICER

21.1 If the defendant at the conclusion of the hearing is found responsible for the civil violation, the Hearing Officer shall enter a decision for the County and impose a civil penalty as set forth in the applicable Gila County Development Codes.

21.2 The ruling shall include the findings and conclusion of the Hearing Officer. The conclusions may include, at the discretion of the Hearing Officer, Orders imposing civil penalties, including but not limited to:

21.2.1 1 A certain date for remediation of violation(s) of the applicable Gila County Development Codes.

21.2.2 A fine as set forth as follows:

### First Violation:

For an individual person-Not more than \$700.00 per day of continuing violation.

For an enterprise-Not more than \$10,000.00 per day of continuing violation.

### Subsequent Violations of the Same Provision:

For an individual person-Not less than \$100.00 nor more than \$700.00 per day of continuing violation.

For an enterprise-Not less than \$200.00 nor more than \$10,000.00 per day of continuing violation.

21.2.3 A date for review of the Orders of the Hearing Officer. The purpose of this review is to allow the Hearing Officer to determine if the property has been

brought into compliance and to allow him/her to reduce or eliminate the fine previously imposed.

- 21.3 The Hearing Officer or Code Compliance Supervisor shall deliver or mail, to all parties, a copy of the decision together with written notice of right to appeal within ten (10) calendar days from the date the decision is signed by the Hearing Officer.
- 21.4 The Final Decision shall be filed with the Gila County Recorder's Office upon the expiration of the time for filing an appeal and upon determination that the defendant did not file an appeal. If the Defendant appeals the Final Decision and the Final Decision is upheld in whole or in part by the appellate process, the Final Decision as modified by the appellate process shall be filed with the Gila County Recorder's Office upon the exhaustion of all appellate remedies.

## RULE 22 NOTICE OF RIGHT TO APPEAL

- 22.1 Following the decision and imposition of a civil penalty and at the conclusion of the hearing, the Hearing Officer shall advise the defendant of defendant's right to a review of the Hearing Officer's final decision by the Board of Supervisor. The Defendant also shall be informed of the applicable time limit and referred to the rules governing the review process.

## RULE 23 APPELLATE REVIEW

The procedure for review of a civil violation of any referenced ordinance is as follows:

- 23.1 The party requesting review shall file a written Notice of Request for Appellate Review with the Code Compliance Supervisor within fifteen (15) days after the signing of the final decision, notice or order by the Hearing Officer.
- 23.2 The request for appellate review shall identify the decision on appeal. The request shall be signed by the appellant, his/her attorney, or his/her designated representative and shall contain the names, addresses and telephone numbers of all parties and their attorney or designated representative. The request for appellate review shall state whether appellant will represent himself or the name of appellant's attorney or designated representative. Failure to designate representation by counsel or designated representative at the time of request for appeal may cause a recess or postponement of these proceedings by the Board of Supervisors.
- 23.3 The original, plus one copy of the notice of request for appellate review, shall be filed with the Code Compliance Supervisor, who shall serve a copy of the request for appellate review on the other party or the other party's attorney or designated representative.



- 23.4 Record on Appeal. The Board's review of the Hearing Officer's decision shall be limited to the record of the previous proceedings before the Hearing Officer, and there shall be no introduction of new evidence. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, all evidence admitted at the hearing, and the audiotape required by Rule 20. If the Board determines that a transcript of the audio tape is necessary, a transcript shall be prepared by the Code Compliance Supervisor at the requesting party's expense. A trial de novo (new trial) is not permitted.
- 23.5 Transmission of Record
- 23.5.1.1 Upon receipt of the request for appellate review, the Code Compliance Supervisor shall, within twenty (20) working days, prepare and transmit the record to the Clerk of the Board of Supervisors.
- 23.5.1.2 The parties may stipulate that the review may be on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing and filed with the Code Compliance Supervisor within ten (10) days after filing of the Notice of Request for Appellate Review.
- 23.5.1.3 Upon transmission of the record, the clerk of the Board shall send notice by mail to all parties that the record has been transmitted and stating that written memoranda are due within fifteen (15) working days from the date of transmission of the record by the Code Compliance Supervisor.
- 23.6 Appellate Memoranda. Each party may file a written memorandum no later than fifteen (15) working days following the date of transmission of the record to the Board as to why the Board should affirm, modify or reverse the final decision being reviewed by the Board. The memorandum shall not raise new facts or issues not previously presented before the Hearing Officer.
- 23.6.1 Each party shall file the original, plus three copies, with the Clerk of the Board.
- 23.6.2 No memorandum filed shall exceed five typewritten, double-spaced pages in length.
- 23.7 Notice of Appellate Review by the Board. Upon receipt of the record by the Board from the Hearing Officer, the Clerk of the Board shall set a date for the review and mail the parties a written notice of the time and place of the appellate review. Appellate review by the Board shall be set within no less than twenty (20) days from Board's receipt of transmission of record. The Notice of the Appellate Review date shall be mailed by first class mail not less than five (5) days prior to the appellate review hearing. Appeal hearing may be continued by the Board for good cause.

- 23.8 Oral Argument. Oral argument shall be limited to five (5) minutes for each party, unless extended by the Board. One person shall speak for each side unless this requirement is waived by the Board. Oral argument shall be based on the record and there shall be no presentation of new evidence in oral argument. Either party may waive its oral argument.
- 23.9 Disposition by the Board. After consideration of the record transmitted by the Hearing Officer and memoranda, the Board may increase, decrease or modify any penalty /assessment imposed by the Hearing Officer as long as it follows the penalty amounts set by the applicable ordinance or resolution and may:
- 23.9.1 Affirm the decision of the Hearing Officer;
  - 23.9.2 Affirm in part and reverse in part and, if necessary remand for further proceedings; or
  - 23.9.3 Reverse the action of the Hearing Officer and, if necessary remand for further proceedings.
  - 23.9.4 Written notice of the final decision of the Board shall be hand-delivered or mailed by first class mail to all parties by the Clerk of the Board within Fifteen (15) calendar days of the Board's decision.
- 23.10 Appeal to the Superior Court. Judicial review of the final decision of the Board shall be pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6 (12- 901 et seq.)

#### RULE 24 ORDER TO SHOW CAUSE

If the defendant fails to comply with the decision entered by the Hearing Officer, the County may file an affidavit setting forth the facts relating to the defendant's noncompliance and request the Hearing Officer to enter an Order to Show Cause requiring the defendant to appear and show cause why additional penalties should not be imposed for noncompliance.

- 24.1 All Orders to Show Cause issued by the Hearing Officer shall set forth the time and place for hearing and be personally served upon the defendant. Where personal service cannot be accomplished, service may be made in the manner prescribed for alternative methods.
- 24.2 At any hearing on an Order to Show Cause, the only issue before the Hearing Officer is compliance with the decision entered previously by the Hearing Officer. The Hearing Officer shall find either the defendant has complied or not complied with the previously entered decision. If good cause cannot be shown for noncompliance, the Hearing Officer may order the imposition of additional penalties upon the defendant.

- 24.3 Failure by defendant to appear shall not constitute grounds for continuance. Hearing shall proceed in the absence of the defendant. Plaintiff shall present evidence and the Hearing Officer shall make a determination.

**ARF-4462**

**2. C.**

**Work Session**

Meeting Date: 07/25/2017

Submitted For: Steve Sanders, Director

Submitted By: Marian Sheppard, Clerk of the Board

Department: Public Works

---

Information

Request/Subject

Request to Advertise Statement of Qualifications No. 070317 - On-Call Design and Architectural Services

Background Information

Many remodels and additions in Gila County buildings require design and plans to move forward with construction. Rather than going out for bid to utilize the services of a design/architectural firm for each small project, it would be more efficient to enter into a contract with an on-call design/architectural firm(s) as projects arise which are less than \$100,000. The firm(s) will work directly with all affected offices and come up with the best solution for efficiency of space. Many factors must be considered such as electrical, data, HVAC, fixtures, plumbing, finishes and security among others. The more experienced people involved, the better the project delivery. The Statement of Qualifications "SOQ" process is a two-phase process. The first phase is solely to review qualifications. A bid amount (pricing) is not solicited at this time. Once the responses are received by the designated date, an evaluation committee will be assembled to evaluate the responses based on scoring criteria identified in the SOQ.

The second phase of the SOQ process is to negotiate a price with the selected contractor. Upon completion of the negotiations, County staff is confident that an appropriate price has been reached with the successful respondent, for the scope of work to be performed.

On July 18, 2017, this item was presented to the Board of Supervisors; however, the Board took an action to table any action on this item to a future Board meeting because the updated SOQ that contained the added required statutory language was not attached to the agenda item by mistake.

### Evaluation

When County Management directs staff to remodel or add to an existing building, it will save time to have an on-call designer or architect assist in the project. A firm that knows building structure and can help us get the best utilization of space is paramount to obtaining the best product. Having experienced firms under contract to choose from will improve the schedule of delivery and performance of the project. On-call contracts will not exceed \$100,000 per year.

### Conclusion

Gila County is seeking qualified architects to assist us in expediting remodeling building projects when directed by Management.

### Recommendation

The Finance Division Director and the Public Works Division Director recommend and request that the Board of Supervisors authorize the advertisement of Request for Qualifications No. 070317 - On-Call Design and Architectural Services to be published for two consecutive weeks in the Arizona Silver Belt newspaper.

### Suggested Motion

Information/Discussion/Action to authorize the advertisement of Request for Qualifications No. 070317 - On-Call Design and Architectural Services. **(James Menlove/Steve Sanders)**

---

### Attachments

Request to Advertise

Statement of Qualifications

---

## EXHIBIT "H"

**GILA COUNTY DEPARTMENTAL REQUEST TO ADVERTISE FOR BIDS**

All departments procuring purchases in excess of \$50,000 that requires advertising for bids must follow the Procurement Procedures and must complete Item "I" of this form prior to such purchase. The requesting department is responsible for writing necessary specifications and routing them, including this form and completed Bid Request Form to the Purchasing Department. This Form must be completed and have a copy of the specifications attached before routing begins. All Requests and Specifications will be in accordance with the Arizona Revised Statutes and the latest version of the Gila County Purchasing Policy and Procedures.

<b>IS THIS A REQUEST FOR</b> <i>Check one</i> Bids _____ Proposals _____ Qualifications <u>  X  </u>	<b>REQUEST NUMBER</b> <u>  70317  </u> <i>(For Procurement Use Only)</i>
--	--

**I. DESCRIPTION:** *List item(s) to be purchased, purpose, specific summary, estimated cost and funding source.*  
  

FUNDING	PROJECTS: <u>various capital improvements</u>
Fund <u>1007</u> Dept No. <u>341</u> Program <u>various</u> Location _____ Account <u>4500.19</u>	

  
**INTENT**  
 This request is to engage design and architectural firms for on-call remodel projects. Individual contracts will not exceed \$100,000.00 per year.
 

Signed:   
*Elected Official or Department Head*

Date 7/19/2017

**II. DEPARTMENTAL INFORMATION ONLY:** *Action Dates*

DATE	Department Receipt <u>7/19/2017</u>	Placed on Agenda <u>7/19/2017</u>
	Presented to Board <u>7/25/2017</u>	Approved to Call _____
	Delivered to Paper <u>7/26/2017</u>	Paper Name <u>Arizona Silver Belt</u>
	Advertised From <u>8/2/2017</u>	To <u>8/9/2017</u>
	Closing Date <u>8/17/2017</u>	Bid Award Date _____
	Awarded To _____	Pre-Bid Meeting Date _____

**III. OTHER APPROVAL:** *Only as necessary*  
 Department Name: \_\_\_\_\_  

Department Head Signature \_\_\_\_\_

Date \_\_\_\_\_

 Department Name: \_\_\_\_\_  

Department Head Signature \_\_\_\_\_

Date \_\_\_\_\_

**IV. APPROVED**  

Finance Director Signature \_\_\_\_\_

Date \_\_\_\_\_

**STATEMENT OF QUALIFICATIONS NO. 070317**  
**On-Call Design and Architectural Services**

**GLOBE, ARIZONA**



**BOARD OF SUPERVISORS**

**Tommie C. Martin, Chairman**

**Timothy Humphrey, Vice Chairman**

**Woody Cline, Member**

**County Manager**

**James Menlove**



**GILA COUNTY  
NOTICE OF REQUEST FOR SEALED QUALIFICATIONS NO. 070317  
ON-CALL DESIGN/ARCHITECTURAL SERVICES**

---

Notice is hereby given that Gila County is requesting Statement of Qualifications from qualified Small Business firms or individuals for On-Call Design/Architectural Services.

**SUBMITTAL DUE DATE:** 4:00 PM, MST, Tuesday August 29, 2017

**RETURN PROPOSAL TO:** GILA COUNTY FINANCE DEPARTMENT  
COPPER BUILDING  
1400 EAST ASH STREET  
GLOBE, ARIZONA 85501

**NOTICE IS HEREBY GIVEN**, that sealed competitive Proposals for the material or services as specified will be received by the Gila County Finance Department, until the time and date cited.

Proposals received by the correct time and date will be publicly opened and recorded thereafter in the Finance Department Copper Building Conference Room or other site, which may be designated. Any proposals received later than the date and time specified above will be returned unopened. **Late proposals shall not be considered.** The prevailing clock shall be the atomic clock in the reception area of the Copper Building.

All proposals shall be made on the Request for Sealed Proposals forms included in this RFQ No. 070317 package, and shall include all applicable taxes.

Interested Bidders may obtain a copy of this solicitation by calling the Gila County Finance Department at 928-402-4355 or by clicking on the link: [http://www.gilacountyaz.gov/government/finance/procurement/current\\_bids.php](http://www.gilacountyaz.gov/government/finance/procurement/current_bids.php) and downloading the file. Bidders are strongly encouraged to carefully read the entire Request for Proposal.

Any questions regarding this Request for Proposals shall be submitted in writing and directed to: Betty Hurst, Contracts Administrator, at [bhurst@gilacountyaz.gov](mailto:bhurst@gilacountyaz.gov), 928-402-4355.

The Gila County Board of Supervisors reserves the right to reject all bids, or to waive any informality in any bid. All procurement activities conducted by Gila County are in conformance with the rules and regulations of the Gila County Clerk of the Board's office. A copy of the Code is available for review in the Clerk of the Board's office, Globe, AZ.

Dates advertised in the Arizona Silver Belt: **August 16, 2017 and August 23, 2017**

Signed: \_\_\_\_\_  
**Tommie C. Martin, Chairman of the Board of Supervisors**

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signed: \_\_\_\_\_  
**Jefferson R. Dalton, Deputy Gila County Attorney, Civil Bureau Chief  
for Bradley D. Beauchamp, County Attorney**

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



Gila County is requesting Statement of Qualifications from qualified Small Business firms or individuals for:

**On-call Consultant / Architectural Services**

Statement of Qualifications and Performance Data are to be received in the Office of:

Gila County Finance  
Betty Hurst, Contracts  
Copper Building  
1400 E. Ash Street  
Globe, AZ 85501

Until: 4:00 p.m. on August 29, 2017, at which time a representative of the Purchasing Services Department shall announce publicly the names of those firms or individuals submitting Responses. No other public disclosure shall be made until after award of the contract.

All inquiries regarding this Request shall be directed to:

Name: Betty Hurst, Contracts  
Address: 1400 E. Ash Street  
Globe, AZ 85501  
  
Phone: (928) 402-4355  
Fax: (928) 402-4386  
Email: [bhurst@gilacountyaz.gov](mailto:bhurst@gilacountyaz.gov)

# STATEMENT OF QUALIFICATIONS

## INDEX

### Contents

Section A: Introduction .....	5
Section B: On-Call Consulting Service Categories .....	6
Section C: Project Estimates .....	7
Section D: Management and Administration .....	8
Section E. Submittal Requirements.....	10
Section F. Selection Process .....	11
Section G. Special Instructions to Offerors .....	12
Section H. Cancellation of County Contracts .....	15
Section I. Israel Boycott Certification.....	15
Section J. Immigration Law Compliance Warranty .....	15
Section K. Insurance .....	16
Section L. Response Certification.....	19

### Gila County General Provisions

**\*NOTE:** *The General Provisions are being provided solely for the purpose of the potential Qualifier to be aware of Gila County's liability requirements and contract format.*

## Section A: Introduction

Gila County is seeking qualified Architectural and Design Firms to provide general consultant/architectural design services for Gila County buildings. The on-call list will be in effect for one (1) year, with an option of renewal for four (4) additional one-year periods, if determined to be in the County's best interest.

All qualified Consultants interested in providing these building remodel or new construction design services to Gila County are invited to submit their Statement of Qualifications (SOQ). All SOQ's must comply with the requirements specified in this Statement of Qualifications (SOQ).

Gila County intends to select firms for services without obligation and can call upon the firms at any time during the term of the agreement. **There is no guarantee of a number of projects, minimum contracting amount, either annually or over the entire term of the agreement.** The individual projects will not exceed \$100,000 each and Gila County reserves the right to select such services from firms other than those who submit proposals, as circumstances warrant or may be in the best interest of Gila County.

Any Contract resulting from this solicitation shall be for the use of Gila County.

## Section B: On-Call Consulting Service Categories

### Consulting and Architectural Services

The consultant shall be capable of providing architectural and building related engineering services. In addition to the design, the consultant shall be capable of providing reports, studies, master planning, conceptual designs, specifications, permitting, and budget estimates on an as needed basis. The consultant may supply all services ancillary to the projects. The consultant must be an Arizona registrant and properly licensed and certified to perform services in Arizona.

The following is a list of the types of projects that the County anticipates over the life of an On-Call contract. This list of project categories is not comprehensive and the County reserves the right to add related engineering/architectural services as necessary.

Successful Offeror(s) may be assigned work on an “as-needed” basis for Gila County. Gila County anticipates the necessity to assign several tasks to the successful Offeror(s) under purchase orders pursuant to this SOQ, however, Gila County cannot and does not predict or guarantee the number or frequency of tasks that any particular successful Offeror(s) may be asked to complete.

The Contract will require that the consultants provide to Gila County paper copies and editable digital files for all work related to the project. The editable project digital files shall be submitted in Microsoft Office Suite or AutoCAD file formats. In addition to supplying editable digital files, the consultant shall also supply Adobe PDF files and paper copies of all work.

### May include the following services:

- ***Measure existing structures:*** interior and exterior and create as-built floor plan drawings for base plan as required.
- ***Feasibility Studies:*** Review and discuss with owners regarding possible options for remodeling, based on information collected and identified on the as-built floor plans and meetings with user groups.
- ***Schematic Design***
- ***Design Development***
- ***Construction Drawings*** in auto-Cad or PDF
- ***Meeting*** with owners, departments, elected officials, etc. as required or requested by Gila County.
- ***Other Architectural Services as required.***

## Section C: Project Estimates

The total cost of work issued to consultants by Gila County in any one-year contract term will not be limited. No single project cost will exceed \$100,000 per A.R.S. § 41-2581, at final payment for the project including all change orders and other contract costs. Gila County is required to request at least one initial project cost estimate when the total estimated cost of a project is **\$100,000 or below**. Gila County will request a final project cost proposals (official quote) from the one selected consultant based on the project cost estimates provided. Award of a project to a consultant established from this solicitation will be determined based on the quote provided on a per-project basis.

Gila County intends to select firms for services without obligation and can call upon the firms at any time during the term of the agreement. **There is no guarantee of a number of projects, minimum contracting amount, either annually or over the entire term of the agreement.** Gila County reserves the right to procure such services from firms other than those who submit proposals, as circumstances warrant or may be in the best interest of the County. For example, a project under \$25,000 may be offered in an open competitive environment and awarded outside of the agreements resulting in this solicitation. Gila County reserves the right and will issue purchase orders based on ability of the prequalified consultant to meet Gila County's work schedule, geographical location requirements, cost and budget requirements and the availability of trades and expertise in relation to each project.

Successful Offeror(s) agree that any confidential information provided to or developed by the consultant while employed under the established contract with Gila County, shall be kept confidential and shall not be made available to any individual or organization by the consultant without prior written consent by Gila County.

## **Section D: Management and Administration**

The developed scope of work will be specific to the requirements of the project. However, the following information is presented as a general description for design administration services that the Consultant may be required to perform. The services listed may include, but are not limited to, the following:

### **1. General Project Administration:**

**A.** Coordinating with Gila County during all phases of the project.

**B.** Conducting project meetings as necessary to maintain the project budget and schedule, as well as any additional meetings as requested by the County. Meetings under basic services may include:

- Meetings with the Gila County, client departments, County management and Board of Supervisors.
- Meetings required for obtaining review approvals and permits.
- Meetings with Utility companies.
- Meetings with property and business owners, etc.

**C.** Coordinating with private, public and County utilities (i.e., APS, Southwest Gas, Telephone and Cable Communications, Water and Sewer Services Department, etc.) regarding standard technology and utility issues and incorporating pertinent information in the plans.

**D.** Submitting and retrieving all required contract documents to the various required reviewing agencies.

**E.** Preparing and maintaining a project schedule after meeting with the Gila County designee. Determine appropriate submittal deadlines and to coordinate project submissions. The Consultant will be responsible for the master scheduling through the design phase. Once the construction phase begins the master scheduling, responsibilities will transfer to the contractor with the assistance of the Consultant.

**F.** Obtaining all federal, state, county, local and utility approvals required for permitting purposes necessary for the completion of the Project. The contractor will be required to obtain the necessary permits associated with construction of the Project, including City Building Safety, NPDES, Dust Control, and others. As the Project progresses, the Consultant will furnish to the County copies of all communications between the Consultant and the respective agency or department and all approvals and permits for the Project.

### **2. Design Services may include, but are not limited to, the following:**

**A.** Preparing design documents. The design documents shall include, but may not be limited too, design concept reports, project assessment studies, schematic design studies, construction cost estimating, and final permit ready design drawings, specifications and bid documents (construction documents). These documents will fix and illustrate the size and character of the entire Project including the kinds of materials; type of structures; and such other work as may be appropriate.

**B.** Designing the Project so that construction conforms to all applicable building codes and standards, County design guidelines, County Building Standards Manual, and other applicable statutes and regulations.

**C.** Preparing drawings using computer programs and formats that will be shared with Gila County. Final bid specifications may be prepared for Gila County.

**D.** Design drawings shall comply with all applicable federal, state, and local laws and codes in effect at the time the drawings, plans and specifications are approved by the County.

**E.** Upon completion of the design drawings, specifications and contract documents, the Consultant shall provide a specified number of sets of all construction documents and applicable design calculations for review and approval by the appropriate County agencies and/or other applicable authorities. These documents must be sealed and signed by the appropriate responsible party. With the submission of the construction plans, specifications and contract documents, the Consultant shall submit a detailed Project cost estimate.

**F.** Coordinating the applicable permit process and assist in filing the required documents to secure approval of all governmental authorities having jurisdiction over the design of the Project. All original filing and approval fees shall be paid by the County or reimbursed to the Consultant if paid by the Consultant. The Consultant shall ensure that the plans prepared by the utility companies have been incorporated into the final plan set, if applicable. The Consultant shall submit to the County a copy of all correspondence between the Consultant and utility companies, including utility review submittals and conflict notices.

**G.** If required, the Consultant shall resubmit the revised plans for final approval. Additionally, if required by the Project Manager, the Consultant shall review and revise the cost estimate, reflecting the modifications made for the final submittal.

**H.** Upon approval of the final construction documents the Consultant shall deliver to the County the final reproducible drawings and the original copy of the final specifications. These documents shall be sealed and signed by the appropriate responsible party.

## **Section E. Submittal Requirements**

The Statement of Qualifications shall include a one-page cover letter, plus a maximum of 15 pages to address the SOQ evaluation criteria (excluding resumes but including any organization charts with key personnel and their affiliation). Resumes for each team member shall be limited to a maximum length of two (2) pages and should be attached as an appendix to the SOQ. The cover letter and the resumes are not counted toward the 15 page maximum.

Please be advised that failure to comply with the following criteria may be grounds for disqualification:

- Receipt of submittal by the specified cut-off date and time
- Adherence to maximum page requirement
- Correct delivery of submittal

Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2" x 11") with criteria information will be counted. Pages that have project photos, charts, and graphs will be counted towards the maximum number of pages. Table of Contents pages and divider pages will not be counted if they do not contain submittal information.



## **Section F. Selection Process**

The successful consultant/firm/team will be selected through a qualifications-based selection process of the SOQs submitted in response to this SOQ. Gila County's selection committee will evaluate each SOQ according to the criteria set forth. The consultants will be ranked from lowest to highest. The consultants receiving the highest evaluation from the selection panel may be selected to interview for the contract.

Consultants being interviewed will be notified in writing. The weighted selection criteria to be utilized to determine their final award standing/priority will be included in the notification. Gila County will select the persons or firms and the order for the final list through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the SOQ. The Gila County selection panel will then recommended the rank-ordered shortlist of the best-qualified consultants.

There will be a single final list of at least four (4) firms. In accordance with A.R.S. §41-2581, Gila County will enter into negotiations with the top ranked firms and execute contracts upon completion of negotiation of fees and contract terms. If Gila County is unsuccessful in negotiating a contract with a top ranked team in the final list, Gila County may then negotiate with the next firm(s) in successive order.

## **Section G. Special Instructions to Offerors**

### **1. Offeror's Contacts:**

- 1.1. All questions regarding this SOQ, including technical specifications, Scope of Work, proposal process, etc., must be directed to Gila County Procurement.

### **2. Proposal Preparation:**

- 2.1. An authorized representative of the Offeror will sign proposals. All information requested must be submitted. Failure to submit all information requested may result in a lower evaluation or rejection of the proposal.
- 2.2. Proposals should be prepared simply and economically, providing a straightforward, concise description of the capabilities to satisfy the requirements of the SOQ. Emphasis should be on the completeness and clarity of content. Gila County will not provide any reimbursement for the cost of developing, demonstrating or presenting proposals in response to this SOQ.

### **3. Proposal Delivery and Opening:**

- 3.1. The name of each Offeror will be publicly available. All information contained in the proposals will be confidential so as to avoid disclosure of contents prejudicial to competing Offerors during the process of evaluation and negotiation. Proposals will not be subject to public inspection until after contract award.
- 3.2. Proposal Acceptance Period: The proposal will be binding upon the Offeror for a period of seventy five (75) calendar days following the proposal due date.
- 3.3. All material submitted in accordance with this solicitation becomes the property of Gila County and will become a matter of public record subsequent to award of a contract.

### **4. Proposal Format:**

The material should be in sequence and related to the SOQ. Gila County will not provide any reimbursement for the cost of developing or presenting proposals in response to this SOQ. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal. The proposal should include at least the following information: Please keep in mind that the following points are assigned based on your organization's response for section 4.1-4.3:

- Project Manager's Qualifications (Maximum 40 Points)
- Design Philosophy, Process, QA/QC (Maximum 25 Points)
- Project Experience (Maximum 25 Points)
- Overall Quality of Proposal (Maximum 10 Points)

### **4.1. Experience/Expertise/Reliability:**

The proposal should contain the following:

Experience and reliability of the offeror's organization is considered in the evaluation process. Therefore, the Offeror is advised to submit any information, which documents successful and reliable experience in past performances, especially those performances related to the requirements of this SOQ. Specifically, the offeror should provide the following information:

The Offeror will use the following topics to describe in detail, their education levels, skill levels and knowledge levels acquired as it relates to the purpose of this SOQ. Whenever possible, the offeror's responses should include specific information such as dates, locations, any certifications and whether any training or education was formal or informal.

Provide a listing of projects completed in the past 3 years that supports the consistent quality of your trade and demonstrates the type of projects completed.

#### 4.2. Firm's Demonstrated Expertise:

The Offeror will use the following topics to describe in detail, their education levels, skill levels and knowledge levels acquired as it relates to the purpose of this SOQ. Whenever possible, the offeror's responses should include specific information such as dates, locations, any certifications and whether any training or education was formal or informal.

- 4.2.1. The Offeror should provide an organizational chart showing the staffing and lines of authority for the key personnel to be used in a Gila County project. Identify who will be the primary contact for Gila County for providing project cost estimates and project management.
- 4.2.2. The Offeror should provide a resume and any additional data demonstrating construction and public works contracting expertise related to previous work assignments which are relevant to this SOQ for each of the key personnel to be assigned to a project. Include project managers, superintendents and tradesmen and other critical staff members. Identify if any of these key personnel have worked for Gila County under another contract with your firm or under another contract with other companies. Also identify the result of such a contract.
- 4.2.3. The proposal may include any additional information that reflects on the offeror's expertise level in the field of general contracting.

#### 4.3. Method of Approach:

- 4.3.1. The Offeror should present a proposed method of satisfying the requirements of the Scope of Work as specified herein.
- 4.3.2. The Offeror may utilize a written narrative or any other printed technique to demonstrate his ability to satisfy the Scope of Work. The narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only to describe a technical process.

#### 5. Cost Proposal:

Price is not to be included in this statement of qualifications process. Gila County will enter into negotiations with the top ranked firms and execute contracts upon completion of negotiation of fees and contract terms. If Gila County is unsuccessful in negotiating a contract with the top ranked firms in the final list, Gila County may then negotiate with the next firm(s) in successive order until the contracts are executed, or Gila County may decide to terminate the selection process.

#### 6. Interviews:

The offers selected by the evaluation committee based on the Statement of Qualifications provided may be requested to participate in an interview by the evaluation committee. Those offers invited to participate in interviews, which will be no more than four (4), will receive a written notification. Interviews will center on the offer's ability to provide the required services, answer questions in a relevant and informative manner and the committee's overall impression of the interview. Interviews will be scored in accordance with these expectations and the resulting scores will be added to the Statement of Qualification scores for a total ranking of offers.

#### 7. Selection Process:

The highest ranking four (4) qualified offers based on the combined Statement of Qualification and Interview scores will comprise the final list of qualified offers.

#### 8. Discussion:

In accordance with A.R.S. §41-2581, after the initial receipt of proposals, discussions and interviews may be conducted with Offerors who submit proposals determined to be reasonably susceptible of being selected for award.

#### 9. Negotiations:

In accordance with A.R.S. §41-2581, negotiations may occur with offerors on the final list.

## **Section H. Cancellation of County Contracts**

This contract is subject to the cancellation for conflict of interest of provisions of **A.R.S. §38-511**.

**Further**, the Contractor must certify there is no officer or employee of Gila County who has, or whose relative has, a substantial interest in any Contract award subsequent to this Response.

The Contractor must furnish names of any and all public officers or employees of Gila County who have, or whose relative has, a substantial interest in any Contract award subsequent to this Response are identified by name as part of the submittal

The Contractor must certify that their firm is not currently debarred, suspended, or proposed for debarment by any federal or state entity. The Contractor agrees to notify the County of any change in this status, should one occur, until such time as an award has been made under this procurement action.

## **Section I. Israel Boycott Certification**

Contractor must certify that they are not currently engaged in and will not, for the duration of agreement, engage in a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by County up to and including termination of agreement.

## **Section J. Immigration Law Compliance Warranty**

As required by A.R.S. § 41-4401, each party hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Each party further warrants that after hiring an employee, it verifies the employment eligibility of the employee through the e-verify program. If either party uses any subcontractors in performance of the Agreement, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the e-verify program. A breach of this warranty shall be deemed a material breach of the Agreement subject to penalties up to and including termination of this Agreement. A party shall not be deemed in material breach if it and its subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the e-verify requirements contained in A.R.S. § 23-214(A). Each party retains the legal right to inspect the papers of the other party and its subcontractors engaged in performance of this Agreement to ensure that the other party and its subcontractors are complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

## **Section K. Insurance**

### **INDEMNIFICATION CLAUSE:**

The Consultant hereby agrees to defend, indemnify and hold harmless the County, any of its departments, agencies, officers, or employees (hereinafter referred to as "Indemnatee") from and against any and all damages, actions, losses, claims or liabilities and expenses (including reasonable attorney's fees, court costs, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Architect/Designer or any of its owners, officers, directors, agents, employees or sub-consultants. This indemnity includes any claim or amount arising out of or recovered under the Worker's Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Consultant from and against any all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Consultant agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Consultant for the County.

### **INSURANCE REQUIREMENTS:**

Consultant and sub-consultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or sub-consultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, his agents, representatives, employees, or sub-consultants. Consultant is free to purchase such additional insurance as may be determined necessary.

The insurance requirements have been modified due to the status of Small Business as being a sole proprietorship with small scopes of work on Gila County projects. The County Attorney's office has agreed to waive the insurance requirements for Commercial General Liability, Automobile Liability and Worker's Compensation and Employer's Liability under the following conditions:

- The Consultant works from his or her home and has no one going to his or her home on County business.
- The Consultant sets his or her own schedule.
- The Consultant uses his or her own tools and controls her own work products.
- The size of a single project does not exceed \$100,000 with an annual aggregate amount not to exceed \$100,000.

Should a project exceed \$100,000, additional insurance requirements shall be required and a new contract shall be signed.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE** - Consultant shall provide coverage with limits of liability not less than those stated below:

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

- General Aggregate \$1,000,000
  - Products – Completed Operations Aggregate \$1,000,000
  - Personal and Advertising Injury \$1,000,000
  - Each Occurrence \$1,000,000
- a. The policy shall be endorsed to include the following additional insured language:  
**"The County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant".**
- b. **Consultant's sub-consultants** shall be subject to the same minimum requirements identified above.

2. **Professional Liability (Errors and Omissions Liability)**

Each Claim \$1,000,000

Annual Aggregate \$1,000,000

- a. In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. Policy shall contain a **waiver of subrogation** against the County of Gila.

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Consultant even if those limits of liability are in excess of those required by this Contract.
2. The Consultant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.

- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to **Betty Hurst** [bhurst@gilacountyaz.us](mailto:bhurst@gilacountyaz.us) and shall be sent by certified mail, return receipt requested to Gila County Procurement 1400 E. Ash Street, Globe, AZ 85501.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Consultant shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- All certificates and endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- All certificates required by this Contract shall be sent directly to **Betty Hurst** [bhurst@gilacountyaz.us](mailto:bhurst@gilacountyaz.us) or **1400 E. Ash St., Globe, AZ 85501**. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.
- F. **SUB-CONSULTANTS:** All required sub-consultants' certificates and endorsements are to be received and approved by the County before work commences. All insurance coverages for sub-consultants shall be subject to the minimum requirements identified above, unless otherwise specified in this Contract.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.



## Section L. Response Certification

\_\_\_\_\_  
(DATE)

The undersigned certifies that to the best of his or her knowledge: (check one)

- ☐ There is no officer or employee of Gila County who has, or whose relative has, a substantial interest in any Contract award subsequent to this Response.
- ☐ The names of any and all public officers or employees of Gila County who have, or whose relative has, a substantial interest in any Contract award subsequent to this Response are identified by name as part of the submittal

The undersigned further certifies that their firm (check one) ☐ **IS** or ☐ **IS NOT** currently debarred, suspended, or proposed for debarment by any federal or state entity. The undersigned agrees to notify the County of any change in this status, shall one occur, until such time as an award has been made under this procurement action.

In compliance with Statement of Qualifications No. Space Needs Assessment and Conceptual Plan Engineering Analysis, and after carefully reviewing all the terms and conditions imposed therein, the undersigned agrees to furnish such services in accordance with the specifications/scope of work according to the Proposal submitted or as mutually agreed upon by subsequent negotiation.

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Print

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Phone Number

Signatures Required of Gila County

Board of Supervisors

\_\_\_\_\_  
Tommie C. Martin, Chairman  
Chairman of the Board

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Marian Sheppard  
Clerk

Approved as to Form:

\_\_\_\_\_  
Jefferson R. Dalton  
Deputy Gila County Attorney  
Civil Bureau Chief

**ARF-4463**

**2. D.**

**Work Session**

Meeting Date: 07/25/2017

Submitted For: James Menlove, County Manager

Submitted By: Marian Sheppard, Clerk of the Board

Department: County Manager

---

Information

Request/Subject

Proposed adoption of revised Board of Supervisors' Policy No. BOS-FIN-002 - PROCUREMENT-CONTRACTS.

Background Information

Several years ago, Gila County management staff began developing an entire collection of written policies that will eventually cover most important topics in all of the administrative functions within Gila County. The reason for developing internal policies and departmental procedures is to improve the overall efficiency of many of the County's departments and elected offices, as well as improving the overall effectiveness of Gila County employees. After a policy has been adopted by the Board of Supervisors, a copy is placed on the County website for review by all internal personnel as well as all concerned citizens.

Policy number BOS-FIN-002 was initially adopted by the Board of Supervisors on September 20, 2011.

On March 7, 2017, the policy was revised to allow the Assistant County Manager the authority to sign payroll authorization forms and contracts of \$50,000 or less per year.

Evaluation

**Section II - Policy - Contract Term** states: *"Contracts for materials and services shall have a specific term (date of commencement and expiration date). Contracts that do not exceed one year may be approved by the County Manager. Contracts with terms that exceed 12 months in duration must be approved by the Board of Supervisors and should not obligate Gila County for more than 4 years. Contracts with annual renewals are acceptable as long as the Board of Supervisors has the option not to renew if so desired."*

In recent times, there have been contracts submitted to the Board of Supervisors that are between Gila County and a state or federal agency for a term longer than 4 years. Requests have been submitted to those agencies to amend their contract so that the term of the contract is no longer than 4 years; however, that request has been continually denied. As a result, Jeff Dalton, Deputy County Attorney and Civil Bureau Chief, has not approved these contracts as to form because they do not follow County policy. At times, the Board has approved the contracts without Mr. Dalton's approval, but recently the state or federal agency is not wanting to accept the contract without Mr. Dalton's signature. Most of these contracts are executed in order for Gila County to receive grant funds, which are imperative to the continued operation of many County programs and services that are provided to the public.

### Conclusion

Policy number BOS-FIN-002 needs to be amended to add language that will allow the Board of Supervisors to waive the requirement that a contract may not obligate Gila County for more than 4 years for any contract that is between Gila County and a state or federal agency and that has been developed by that agency.

### Recommendation

It is recommended that the Board of Supervisors approve revised Policy No. BOS-FIN-002. The revisions outlined in red type are being made to Section II - Policy - Contract Term, as follows:

*"Contracts for materials and services ~~shall~~ **must** have a specific term (date of commencement and expiration date). Contracts that do not exceed ~~one~~ **1** year may be approved by the County Manager. Contracts with terms that exceed 12 months in duration must be approved by the Board of Supervisors and ~~should~~ **must** not obligate Gila County for more than 4 years, **except the Board of Supervisors may waive the 4-year requirement for any contract that is between Gila County and a state or federal agency and that has been developed by that agency.** Contracts with annual renewals are acceptable as long as the Board of Supervisors has the option not to renew if so desired."*

### Suggested Motion

Information/Discussion/Action to adopt revised Policy No. BOS-FIN-002 - Procurement-Contracts to allow the Board of Supervisors the authority to waive the requirement that a contract must not obligate Gila County for more than 4 years in order to execute any contract that is between Gila County and a state or federal agency and that has been developed by that agency. **(James Menlove)**

---

Attachments

Policy No. BOS-FIN-002 - Final

Policy No. BOS-FIN-002 - Marked up copy

---

## GILA COUNTY, ARIZONA

### BOARD OF SUPERVISORS POLICY

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>1 of 6</b>
	<b>Revised: 7-25-17</b>	

#### **I. Purpose:**

To ensure contracting for Gila County is done in a consistent and uniform manner to maximize the taxpayers' investment in Gila County government. This policy covers all departments and elected offices of Gila County and all contractual agreements made on behalf of Gila County, including those made by bid awards, those authorized by a resolution of the Board of Supervisors, Arizona Revised Statutes, federal regulations, or any other authority or prior written agreement.

#### **II. Policy:**

##### **Overview**

The responsibility for processing and finalizing a contract lies with the Procurement Group. After that, the responsibility for monitoring, administering and evaluating the direct performance of services rendered, pursuant to any contract, remains with the department and elected offices engaging or acquiring the service or commodity.

##### **Centralized Contracts Administration**

The Procurement Group consists of employees within Gila County that research and request bid proposals and maintain vendor relationships to facilitate the preparation of all contractual agreements on behalf of Gila County. The Procurement Group works with and supports all departments and elected offices within Gila County and reports directly to the Finance Director. The Procurement Group is the point through which all contracts will be processed to assure proper administrative review prior to being submitted to the Finance Director, County Attorney's Office, County Manager or Board of Supervisors for approval. The Procurement Group will maintain a central file for all County contracts under an indexing system that will provide positive identification of all documents and facilitate document retrieval.

##### **Contract Development**

1. Whenever possible, all non-federal and state contracts will be initiated and developed by Gila County.
2. All contract documents will be reviewed, modified, executed and administered in accordance with Procurement Group procedures.

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>2 of 6</b>
	<b>Revised: 7-25-17</b>	

3. All contracts for general and professional services, intergovernmental agreements, and memorandums of understandings, will be approved as to form by the County Attorney before being submitted to the contractor for review and signature, prior to approval by the County Manager or the Board of Supervisors except as set forth below.

- A. Notwithstanding the above requirements, contracts for general and professional services that utilize a form of contract authorized by the County Attorney and valued at less than \$25,000 need not be subsequently approved as to form by the County Attorney. Solicitations that will result in contracts with a value over \$25,000 shall be approved as to form by the County Attorney regardless of whether the County Attorney has approved the form of the contract.

### **Contract Term**

Contracts for materials and services must have a specific term (date of commencement and expiration date). Contracts that do not exceed 1 year may be approved by the County Manager. Contracts with terms that exceed 12 months in duration must be approved by the Board of Supervisors and must not obligate Gila County for more than 4 years, except the Board of Supervisors may waive the 4-year requirement for any contract that is between Gila County and a state or federal agency and that has been developed by that agency. Contracts with annual renewals are acceptable as long as the Board of Supervisors has the option not to renew if so desired.

### **Contract Scope**

Each proposed contract shall have a specific scope of work that identifies the exact service or items to be provided. It shall be the responsibility of the department or elected office engaging or acquiring the service or commodity to assure the contractor's strict compliance with ALL terms and scope of the contract.

### **Monetary Commitments**

The financial terms of all contracts should have a fixed / predetermined value or not to exceed amount. Contracts with variable financial terms such as hourly rates or reimbursable expenses shall have a specific contractual ceiling amount or a not to exceed value.

<b>Gila County Policy PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>3 of 6</b>
	<b>Revised: 7-25-17</b>	

## **Contract Approval**

### **1. General Contracts (Rentals, Leases, Service or Maintenance)**

All contracts and amendments, regardless of value shall be approved by the appropriate authority in Gila County prior to authorization to proceed. Contracts valued at \$50,000 or less per year may be approved by the County Manager or the Assistant County Manager. Any contract exceeding \$50,000 must be presented to the Board of Supervisors for review and approval. The County Manager or the Assistant County Manager may execute an amendment to any contract initially approved by the Board as long as the amendment does not alter the scope of the contract or the monetary commitment of the original Board award.

### **2. Grant Contracts (including original applications)**

Grant contracts, due to various complexities and time requirements, often necessitate immediate approval in order to take advantage of available funds. Based upon the requirements/restrictions imposed by the grantor it is not always possible to follow approval policy. As such, grant contracts may be expedited by requesting that, with the approval of the Finance Director and County Manager, the Chair of the Board of Supervisors may execute the contract to be subsequently ratified by the Board, regardless of value. Grant applications submitted and approved by the County Manager which automatically become contracts must be submitted to the Board of Supervisors for ratification.

This section is used to expand the approval authority of the current Policy for Accepting and Administering Grants (Number BOS-3-2005).

### **3. Construction Contracts**

Construction contracts for \$50,000 or less may be awarded and executed by the County Manager or the Assistant County Manager. Construction contracts for more than \$50,000 shall be awarded by the Board based upon bid responses presented to the Board of Supervisors at a regularly scheduled Board meeting. The Board award of this bid will authorize the execution of the contract by the Chair of the Board of Supervisors.



<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>4 of 6</b>
	<b>Revised: 7-25-17</b>	

#### 4. Emergency Contracts

An emergency constitutes the need to address any existing or potential threat to the public health, welfare, property or safety. Departments or elected offices shall prepare supporting justification of need and provide this with contract scope to the Procurement Group. The County Manager shall review the documentation and if he/she concurs may execute the contract on behalf of Gila County if equal to or less than \$50,000.

#### 5. Other Non-Procurement Contracts

Gila County enters other types of contractual arrangements which do not involve the acquisition of materials, services, equipment or construction. Examples of these contractual arrangements include, but are not limited to, acquisition and leasing of interests in real property, subordination agreements, lien releases, franchises, licenses, and software license agreements, use permits, revenue agreements, excise tax certification. The County Manager or the Assistant County Manager may approve these contracts if they do not obligate the County for more than 2 years or involve expenditures to the other party of not more than \$50,000.

#### 6. Professional Services

Professional Services are those services rendered by a person/firm engaging in a recognized discipline that necessarily requires advanced training and specialized knowledge to perform. Such services also typically result from the predominant use of intellectual skills rather than physical skills.

Professional services for purposes of this policy are defined as including, but not limited to the following:

- Attorneys
- Management of loan proceeds
- Contractual services used by counties when issuing bonds, including consultants, underwriters, and bond servicing companies
- Architects
- Court reporters
- Physicians, nurse practitioners, physical therapists

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>5 of 6</b>
	<b>Revised: 7-25-17</b>	

- Mental health therapists and psychiatrists
- Engineers
- Land surveyors
- Geologists
- Hydrologists
- Landscape architects
- Real estate appraisers
- Financial advising services
- Ambulance services
- Auditors, with the exception of the State Auditor General
- Mappers

Professional service contracts for \$50,000 or less may be awarded and executed by the County Manager or the Assistant County Manager. Professional service contracts for more than \$50,000 shall be awarded by the Board of Supervisors.

#### 7. Contract Termination

Prior to the completion of their normal contractual terms, County contracts may only be terminated by the same authority that originally approved those contracts. If a contract required County Manager approval, then the termination of the contract would at least require the approval of the County Manager. If a contract required approval by the Board of Supervisors, then the termination of that contract would also require approval of the Board of Supervisors.

Any department or elected office proposing to terminate a contract for convenience or cause must notify the Procurement Group. If the Procurement Group in conjunction with the County Attorney's Office determines that cause exists to terminate the contract or if contract may be terminated for convenience, the Procurement Group shall seek approval to terminate the contract from the approving authority. Upon approval of appointing authority, the Procurement Group shall prepare and deliver all necessary documents to terminate the contract.

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>6 of 6</b>
	<b>Revised: 7-25-17</b>	

### **Administrative Follow-Up**

The Procurement Group shall in cooperation with involved departments or elected offices, follow up on matters such as certificates of insurance, performance bonds, retentions, expirations, cancellations, renewals, and other matters not directly related to delivery of the service or commodity to be supplied under the contract.

For all official correspondence, contractors and internal county departments or elected offices must reference the contract number or associated purchase order number, on all bonds, insurance certificates, invoices, credits, amendments, and other documents related to the contract.

### **Reporting**

The Finance Department will prepare a report on a weekly basis highlighting all contracts that were entered into or terminated over the past calendar month. This report will be submitted to the first regular Board of Supervisors meeting of each month.

**SIGNATURE:**

\_\_\_\_\_  
TOMMIE C. MARTIN  
CHAIRMAN, BOARD OF SUPERVISORS

\_\_\_\_\_  
DATE

## GILA COUNTY, ARIZONA

### BOARD OF SUPERVISORS POLICY

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>1 of 6</b>
	<b>Revised: 7-25-17</b>	

#### **I. Purpose:**

To ensure contracting for Gila County is done in a consistent and uniform manner to maximize the taxpayers' investment in Gila County government. This policy covers all departments and elected offices of Gila County and all contractual agreements made on behalf of Gila County, including those made by bid awards, those authorized by a resolution of the Board of Supervisors, Arizona Revised Statutes, federal regulations, or any other authority or prior written agreement.

#### **II. Policy:**

##### **Overview**

The responsibility for processing and finalizing a contract lies with the Procurement Group. After that, the responsibility for monitoring, administering and evaluating the direct performance of services rendered, pursuant to any contract, remains with the department and elected offices engaging or acquiring the service or commodity.

##### **Centralized Contracts Administration**

The Procurement Group consists of employees within Gila County that research and request bid proposals and maintain vendor relationships to facilitate the preparation of all contractual agreements on behalf of Gila County. The Procurement Group works with and supports all departments and elected offices within Gila County and reports directly to the Finance Director. The Procurement Group is the point through which all contracts will be processed to assure proper administrative review prior to being submitted to the Finance Director, County Attorney's Office, County Manager or Board of Supervisors for approval. The Procurement Group will maintain a central file for all County contracts under an indexing system that will provide positive identification of all documents and facilitate document retrieval.

##### **Contract Development**

1. Whenever possible, all non-federal and state contracts will be initiated and developed by Gila County.
2. All contract documents will be reviewed, modified, executed and administered in accordance with Procurement Group procedures.

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>2 of 6</b>
	<b>Revised: 7-25-17</b>	

3. All contracts for general and professional services, intergovernmental agreements, and memorandums of understandings, will be approved as to form by the County Attorney before being submitted to the contractor for review and signature, prior to approval by the County Manager or the Board of Supervisors except as set forth below.

- A. Notwithstanding the above requirements, contracts for general and professional services that utilize a form of contract authorized by the County Attorney and valued at less than \$25,000 need not be subsequently approved as to form by the County Attorney. Solicitations that will result in contracts with a value over \$25,000 shall be approved as to form by the County Attorney regardless of whether the County Attorney has approved the form of the contract.

### **Contract Term**

Contracts for materials and services ~~shall~~ **must** have a specific term (date of commencement and expiration date). Contracts that do not exceed ~~one~~ **1** year may be approved by the County Manager. Contracts with terms that exceed 12 months in duration must be approved by the Board of Supervisors and ~~should~~ **must** not obligate Gila County for more than 4 years-, **except the Board of Supervisors may waive the 4-year requirement for any contract that is between Gila County and a state or federal agency and that has been developed by that agency.** Contracts with annual renewals are acceptable as long as the Board of Supervisors has the option not to renew if so desired.

### **Contract Scope**

Each proposed contract shall have a specific scope of work that identifies the exact service or items to be provided. It shall be the responsibility of the department or elected office engaging or acquiring the service or commodity to assure the contractor's strict compliance with ALL terms and scope of the contract.

### **Monetary Commitments**

The financial terms of all contracts should have a fixed / predetermined value or not to exceed amount. Contracts with variable financial terms such as hourly rates or reimbursable expenses shall have a specific contractual ceiling amount or a not to exceed value.

<b>Gila County Policy PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>3 of 6</b>
	<b>Revised: 7-25-17</b>	

## **Contract Approval**

### **1. General Contracts (Rentals, Leases, Service or Maintenance)**

All contracts and amendments, regardless of value shall be approved by the appropriate authority in Gila County prior to authorization to proceed. Contracts valued at \$50,000 or less per year may be approved by the County Manager or the Assistant County Manager. Any contract exceeding \$50,000 must be presented to the Board of Supervisors for review and approval. The County Manager or the Assistant County Manager may execute an amendment to any contract initially approved by the Board as long as the amendment does not alter the scope of the contract or the monetary commitment of the original Board award.

### **2. Grant Contracts (including original applications)**

Grant contracts, due to various complexities and time requirements, often necessitate immediate approval in order to take advantage of available funds. Based upon the requirements/restrictions imposed by the grantor it is not always possible to follow approval policy. As such, grant contracts may be expedited by requesting that, with the approval of the Finance Director and County Manager, the Chair of the Board of Supervisors may execute the contract to be subsequently ratified by the Board, regardless of value. Grant applications submitted and approved by the County Manager which automatically become contracts must be submitted to the Board of Supervisors for ratification.

This section is used to expand the approval authority of the current Policy for Accepting and Administering Grants (Number BOS-3-2005).

### **3. Construction Contracts**

Construction contracts for \$50,000 or less may be awarded and executed by the County Manager or the Assistant County Manager. Construction contracts for more than \$50,000 shall be awarded by the Board based upon bid responses presented to the Board of Supervisors at a regularly scheduled Board meeting. The Board award of this bid will authorize the execution of the contract by the Chair of the Board of Supervisors.

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>4 of 6</b>
	<b>Revised: 7-25-17</b>	

#### 4. Emergency Contracts

An emergency constitutes the need to address any existing or potential threat to the public health, welfare, property or safety. Departments or elected offices shall prepare supporting justification of need and provide this with contract scope to the Procurement Group. The County Manager shall review the documentation and if he/she concurs may execute the contract on behalf of Gila County if equal to or less than \$50,000.

#### 5. Other Non-Procurement Contracts

Gila County enters other types of contractual arrangements which do not involve the acquisition of materials, services, equipment or construction. Examples of these contractual arrangements include, but are not limited to, acquisition and leasing of interests in real property, subordination agreements, lien releases, franchises, licenses, and software license agreements, use permits, revenue agreements, excise tax certification. The County Manager or the Assistant County Manager may approve these contracts if they do not obligate the County for more than 2 years or involve expenditures to the other party of not more than \$50,000.

#### 6. Professional Services

Professional Services are those services rendered by a person/firm engaging in a recognized discipline that necessarily requires advanced training and specialized knowledge to perform. Such services also typically result from the predominant use of intellectual skills rather than physical skills.

Professional services for purposes of this policy are defined as including, but not limited to the following:

- Attorneys
- Management of loan proceeds
- Contractual services used by counties when issuing bonds, including consultants, underwriters, and bond servicing companies
- Architects
- Court reporters
- Physicians, nurse practitioners, physical therapists

<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>5 of 6</b>
	<b>Revised: 7-25-17</b>	

- Mental health therapists and psychiatrists
- Engineers
- Land surveyors
- Geologists
- Hydrologists
- Landscape architects
- Real estate appraisers
- Financial advising services
- Ambulance services
- Auditors, with the exception of the State Auditor General
- Mappers

Professional service contracts for \$50,000 or less may be awarded and executed by the County Manager or the Assistant County Manager. Professional service contracts for more than \$50,000 shall be awarded by the Board of Supervisors.

#### 7. Contract Termination

Prior to the completion of their normal contractual terms, County contracts may only be terminated by the same authority that originally approved those contracts. If a contract required County Manager approval, then the termination of the contract would at least require the approval of the County Manager. If a contract required approval by the Board of Supervisors, then the termination of that contract would also require approval of the Board of Supervisors.

Any department or elected office proposing to terminate a contract for convenience or cause must notify the Procurement Group. If the Procurement Group in conjunction with the County Attorney's Office determines that cause exists to terminate the contract or if contract may be terminated for convenience, the Procurement Group shall seek approval to terminate the contract from the approving authority. Upon approval of appointing authority, the Procurement Group shall prepare and deliver all necessary documents to terminate the contract.



<b>Gila County Policy</b> <b>PROCUREMENT-CONTRACTS</b>	<b>Policy Number: BOS-FIN-002</b>	<b>Page</b>
	<b>Adopted by BOS: 9-20-11</b>	<b>6 of 6</b>
	<b>Revised: 7-25-17</b>	

### **Administrative Follow-Up**

The Procurement Group shall in cooperation with involved departments or elected offices, follow up on matters such as certificates of insurance, performance bonds, retentions, expirations, cancellations, renewals, and other matters not directly related to delivery of the service or commodity to be supplied under the contract.

For all official correspondence, contractors and internal county departments or elected offices must reference the contract number or associated purchase order number, on all bonds, insurance certificates, invoices, credits, amendments, and other documents related to the contract.

### **Reporting**

The Finance Department will prepare a report on a weekly basis highlighting all contracts that were entered into or terminated over the past calendar month. This report will be submitted to the first regular Board of Supervisors meeting of each month.

**SIGNATURE:**

\_\_\_\_\_  
TOMMIE C. MARTIN  
CHAIRMAN, BOARD OF SUPERVISORS

\_\_\_\_\_  
DATE