# DELEGATION AGREEMENT # 06-0015

**Between**

**Arizona Department of Environmental Quality**

**And**

**THE CITY OF SIERRA VISTA**

Whereas, A.R.S. § 49-107, authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to a local environmental agency, health department or municipality or county board of health established under Title 36, Chapter 1, Article 3, any functions, powers, and duties, hereinafter, Functions and Duties, which the Director believes can be competently, efficiently, and properly performed by the local agency, and

Whereas, the City of Sierra Vista is a local agency, hereinafter, LA, as set forth in A.R.S. § 49-107, and

Whereas, the LA is required by A.R.S. § 49-106 to enforce and observe rules adopted by ADEQ and laws of the State of Arizona pertaining to the preservation of public health and protection of the environment, and

Whereas, A.R.S. § 9-240, and A.R.S. § 11-952 authorizes the City Council (and by delegation the LA, where LA is a municipality) to enter into contracts as necessary to assist LA in exercising its powers, and

Whereas, the LA deems that it is in its best interests to accept such delegation,

Therefore, the Director of ADEQ (Director) delegates to the LA, and the LA agrees to accept the delegation of authority to perform those Functions and Duties described in Appendix A for Wastewater and Drinking Water Delegations Appendices of this Agreement on behalf of ADEQ and in accordance with the terms and conditions contained herein.

## A. DELEGATED FUNCTIONS AND DUTIES

1. The Functions and Duties that are delegated to the LA by this Agreement are identified in Sections A through N, and in Appendix A. All Functions and Duties not specifically delegated in this Agreement are retained by ADEQ.

## B. STANDARDS OF PERFORMANCE

1. The standards of performance required to adequately perform the delegated Functions and Duties and fulfill the terms of the agreement are the same as those expected of ADEQ personnel. ADEQ policies and guidance shall be used in implementing the delegated Functions and Duties. Program-specific standards of performance are specified in the Appendix.

2. ADEQ shall provide LA with periodic training. ADEQ shall provide operating guidance for use in implementing the terms of this Agreement within 90 days after execution of this Agreement. New or updated guidance shall be provided to LA within 30 days after the effective date of the guidance. The guidance shall, at a minimum, include ADEQ Engineering Bulletins, ADEQ program guidance memoranda, substantive policy statements including rule clarifications, copies of all applicable forms, policies and procedures, and other material that may assist the LA to carry out the Functions and Duties contained in this Agreement. LA may contact ADEQ for clarification or guidance on procedural or technical issues. In the event of any dispute between LA and a third party regarding LA's interpretation or application of ADEQ statutes, rules, bulletins, or guidelines, ADEQ shall, upon request by LA, provide timely assistance and direction to LA.

## C. TYPES OF FEES

1. The Director's authority to assess and collect fees, pursuant to A.R.S. §§ 49-104 and 203(A)(8) for water quality control, A.R.S. § 49-361 & 362 for local water pretreatment and A.A.C. Title 18, Chapter 14, Article 1 for water quality protection fees is hereby delegated to the LA in consideration for the LA's acceptance and agreement to perform those Functions and Duties.

2. Monies appropriated or otherwise made available to the Department for distribution to the LA may be allocated or reallocated by the Director, pursuant to A.R.S. § 49-107(B), to assure that the LA can competently, efficiently, and properly accomplish the delegated Functions and Duties according to the applicable standards of performance.

## D. PERSONNEL QUALIFICATIONS

1. The required personnel qualifications for exercising the delegated Functions and Duties are identified in Appendix A for Wastewater and Drinking Water

Delegations.

## E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. LA agrees to maintain records relating to the performance of the Functions and Duties as specified in this Agreement, for a period of five (5) years, from the date of expiration, termination or cancellation of this Agreement or from the date of complete resolution of any dispute and any applicable appeals, whichever is longer, unless a longer period is required by statute or rule.

2. LA agrees to create and submit reports related to LA's performance of the Functions and Duties as specified in this Agreement. The reports shall be created by LA and submitted to ADEQ in accordance with the specifications in Appendix A for Wastewater and Drinking Water Delegations.

## F. OVERSIGHT ACTIVITIES

1. ADEQ may accompany LA personnel on inspections and may review all records relating to the performance of the Functions and Duties as set forth in this Agreement. Where practicable, ADEQ will provide prior notice to LA of its intent to accompany LA employees on inspections. LA representatives may accompany ADEQ inspectors on inspections for purposes of training, information sharing, or to coordinate LA and ADEQ activities. LA will provide prior notice to ADEQ of its request to accompany ADEQ inspectors on inspections.

2. At least once during the term of this Agreement, each ADEQ delegating program shall conduct an evaluation of the LA's performance of the Functions and Duties. More frequent evaluations may be undertaken at the request of either party to this Agreement. The initial results of all program evaluations shall be in writing and shall be communicated to the LA in a draft report. LA shall be entitled to comment on the draft report. After response to comments, ADEQ shall finalize the report and transmit a copy to LA. The final reports of all program evaluations are public documents pursuant to A.R.S. § 39-121 *et seq*.

3. ADEQ may transfer funds to LA to carry out the purposes of this Agreement. If such a transfer of funds from ADEQ to the LA occurs, ADEQ may conduct a financial audit of the LA's use of these funds at least once every two (2) years. Audits shall be conducted in accordance with generally accepted accounting principles.

## G. DELEGATION OF ENFORCEMENT AUTHORITIES; LOCAL AGENCY OBLIGATIONS

1. In carrying out its Functions and Duties under this Agreement, LA shall comply with the provisions of A.R.S. § 49-106 and observe and enforce the rules of ADEQ and laws of the State of Arizona as delegated in this Agreement.

2. LA is hereby delegated the enforcement authorities set forth in A.R.S. §§ 49-141 and 142, 49-261 & 62, 49-354 (A) & (B), as applicable to the Functions and Duties as delegated in this Agreement. The LA shall be responsible for initiating timely and appropriate enforcement actions against individuals and facilities to resolve violations of statutes and rules, the implementation of which are delegated in this Agreement. LA shall make compliance determinations and conduct enforcement actions in accordance with ADEQ's Compliance and Enforcement Handbook, which is accessible through the ADEQ Web site, and is continually updated. The LA shall use inspection checklists and boilerplate documents provided by ADEQ or that contain the same content as those provided by ADEQ.

3. ADEQ retains its authority to take enforcement action against any individual or facility which may be regulated by delegated authority in this Agreement. ADEQ may, at its discretion, refrain from exercising such authority if ADEQ determines the enforcement action taken by LA is timely, appropriate and effective. Except in a case involving imminent and substantial endangerment to the public health or environment, ADEQ agrees to give LA 30 days written notice of its intent to initiate an enforcement action if LA fails to do so. In cases involving imminent and substantial endangerment to the public health or environment, ADEQ shall notify LA prior to undertaking such an enforcement action.

4. In those cases where the Attorney General has exclusive authority to bring an action to collect civil penalties, ADEQ shall timely notify the Attorney General of LA's intent to initiate enforcement and such enforcement shall be coordinated among LA, ADEQ, the Attorney General and LA's City Attorney.

5. In all other cases of civil enforcement, the LA and ADEQ shall coordinate litigation and settlements. LA and ADEQ may act as co-plaintiffs when possible to maximize resources.

6. Civil penalties assessed and collected under the authority of this Agreement shall be in the name of the State of Arizona and shall be forwarded to ADEQ with copies of court documentation for deposit into the state general treasury in accordance with Arizona Revised Statutes, Title 35, Article 3.

7. ADEQ may periodically develop and implement compliance initiatives directed at certain classes of violations or facilities that are in violation of applicable rules. ADEQ will provide LA with at least 30 days written notice of a compliance initiative. LA agrees that, when such initiatives involve facilities, the regulation of which has been delegated in this Agreement, it will, to the best of its ability, assure the successful implementation of such strategies as they relate to such facilities. With 30 days notice to the LA, ADEQ may implement a compliance initiative under this paragraph.

## H. LICENSING AUTHORITY

1. Pursuant to the provisions of A.A.C. R18-1-502(A)(7), licensing time frames set forth in Arizona Administrative Code Title 18, Chapter 1, Article 5 do not apply to licenses issued by the LA when acting under the terms of this Agreement.

2. The LA shall base any licensing decision made pursuant to this Agreement only on those requirements and conditions included in the provisions of Title 49 of the Arizona Revised Statutes and Title 18 of the Arizona Administrative Code, the implementation of which is delegated in this Agreement.

3. The LA shall provide the Director within 30 days after the effective date of this Agreement, and annually thereafter on December 31, the complete boundaries of its political subdivision jurisdiction and, if different, any service area boundary of its water and wastewater utilities.

## I. APPEALS OF FINAL DECISIONS CONCERNING TYPE 4 GENERAL AQUIFER PROTECTION PERMIT LICENSES FOR ON-SITE WASTEWATER TREATMENT FACILITIES ISSUED BY THE DELEGATED AGENCY

1. The LA shall ensure that either an administrative appeal ordinance or an elected governing body appeal policy is adopted and implemented for all LA final decisions concerning licenses issued by the LA pursuant to this Agreement. At a minimum, the appeals process shall include notification to each applicant for a license or permit that an appeals process exists; that the applicant may file an appeal within 30 days of notification of an adverse decision; that within 10 business days after the LA receives the request for an appeal, the LA will appoint either an administrative law judge, or a designated body to hear the appeal; that once appointed, the person or designated body hearing the appeal shall schedule the appeal within 10 business days, and the appeal shall be heard not later than 30 days after the receipt of the request for an appeal. The appellant shall be given at least 10 business days notice of the time when the appeal will be heard, unless the appellant agrees to a shorter time period. If the person or body designated to hear the appeal grants or denies the relief requested, either the appellant or the LA may file, within 30 days after the decision, a complaint in superior court. The LA shall annually provide ADEQ a report, by January 15, of appeals filed and their final resolution during the previous calendar year. The LA shall adopt an appeals process within 30 days of the effective date of this agreement.

2. For appeals of enforcement actions taken by LA under the delegated Functions and Duties, LA shall conduct administrative hearings in accordance with the Arizona Administrative Procedures Act, A.R.S. § 41-1001 *et seq.*, and the Office of Administrative Hearings, Rules of Procedure, A.A.C. R2-19-101 *et seq.* LA shall use administrative law judges provided by the Office of Administrative

Hearings (OAH) or where such judges are not available, LA shall use hearing officers approved by the ADEQ Director. If an OAH administrative law judge conducts an administrative hearing under this Agreement, LA will pay for LA's OAH hearing related costs. LA's City Attorney shall represent LA at all administrative hearings.

## J. DELEGATION TO OTHER LOCAL AGENCIES AND SUBDELEGATION

1. ADEQ's delegation to another jurisdiction located within LA's boundaries shall in no way infringe upon, reduce or usurp a LA's right, authority and responsibility to implement non-delegated locally authorized activities and programs.

2. ADEQ shall provide LA a copy of any delegation agreement with another jurisdiction located within LA's boundaries.

3. LA may not subdelegate the Functions and Duties delegated pursuant to this Agreement to another local government agency or political subdivision without first obtaining the prior written approval of the Director of ADEQ.

## K. CONFLICT RESOLUTION PROCEDURES

1. The parties may resolve a conflict arising from this Agreement through arbitration. If the parties invoke this provision, the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

## L. AMENDMENT PROCEDURES; TERMINATION AND SUSPENSION PROCEDURES

1. Either party at any time may initiate an amendment to this Agreement. An amendment shall be in writing, shall be executed by the Director of ADEQ, the Director of the LA, the Mayor of the municipality, the City Clerk and shall be approved as to form by the Attorney General and the LA's City Attorney. Amendments shall be filed with the Secretary of State and LA's City Recorder's Office. Amendments shall be effective on the date of filing with the Secretary of State.

2. This Agreement may be terminated or suspended in whole or in part by either party, upon providing 30 days advance written notice by certified mail to the other party and in compliance with paragraph 3 of this section.

3. The LA shall, prior to the termination of all or part of this Agreement, forward to the ADEQ Director all files, public documents or pending applications received by the LA for those Functions and Duties being terminated, a summary status report of those Functions and Duties, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by such termination.

4. The cancellation provisions of A.R.S. § 38-511, the terms of which are hereby incorporated herein, shall apply to this Agreement.

## M. TERM OF AGREEMENT

1. The effective date of this Agreement is the date of filing of this Agreement with the Secretary of State. The expiration date of this Agreement is June 30, 2010. In the event a new Agreement is not executed by that date, this Agreement may be extended by mutual agreement of both parties by filing an amendment in accordance with the provisions of A.R.S. § 41-1081.

## N. NAME AND ADDRESS OF PRIMARY CONTACT PERSONS

1. Edward M. Ranger
   Administrative Counsel
   Arizona Department of Environmental Quality
   1110 W. Washington Street
   Phoenix, AZ 85007
   (602) 771-2212

2. Scott Dooley, P.E.
   City of Sierra Vista
   1011 N Coronado St
   Sierra Vista, AZ 85635
   (520) 458-5775

The name of a successor to either of the above individuals shall not require the execution of an amendment to this Agreement.

## DELEGATION AGREEMENT # 06-0015
## CITY OF SIERRA VISTA

### Appendix A

### Water Quality Management

### A. Delegated Responsibilities:

The LA agrees to perform those water quality management Functions and Duties which are designated by a "Yes" in the first column of the following table. Applicable rules include those that authorize the described activities and those that are to be implemented and enforced during the conduct of those activities.

| | Functions and Duties | | | |
|---|---|---|---|---|
| **Dele-gated?** | **Descritption** | **Applicable Rules Pursuant to A.R.S. Title 49** | **Personnel Qualifi-cations** | **Standards of Performance** |
| Yes | 1. General Functions and Duties pertaining to the administration of Type 1 and Type 4 General Aquifer Protection Permits delegated to the LA pursuant to this table. | A.A.C. R18-9-101, 105(C) and 110; R18-9-A301(A)(1), (A)(4), (B) and (D); R18-9-A302 through A306, A308, A309 except subsection (E), and A310 through A316. | C1, C2, C3, C4*, C5*, C6* | D1.1 - D1.5; D3.1 - D3.8 |
| No | 2. Complaint response, compliance assistance, and compliance and enforcement responsibilities for the following Type 1 General Aquifer Protection Permits:<br>1.07 Dockside facilities and watercraft<br>1.08 Earth pit privy<br>1.09 Sewage treatment facility with a flow less than 20,000 gallons per day operating under a general permit before January 1, 2001 | A.A.C. R18-9-B301(G), (H) and (I) | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5 |
| No | 3. Review and approval of the 4.02 General Aquifer Protection Permit for a Septic Tank System with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit with a design flow of less than 3000 gallons per day | A.A.C. R18-9-E302 | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D3.1 - D3.8 |

| | | | | |
|---|---|---|---|---|
| No | 4. Compliance and enforcement responsibilities for the 4.02 General Aquifer Protection Permit for a Septic Tank System with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit with a design flow of less than 3000 gallons per day | A.A.C. R18-9-A308; R18-9-E302; and related provisions indicated in **Item #1** | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D3.1 - D3.8 |
| No | 5. Review and approval of the following 4.03 through 4.22 General Aquifer Protection Permits for On-Site Wastewater Treatment Facilities with a design flow of less than 3000 gallons per day:<br>~~4.03 Composting toilet~~<br>~~4.04 Pressure distribution system~~<br>~~4.05 Gravelless trench~~<br>~~4.06 Natural seal evapotranspiration bed~~<br>~~4.07 Lined evapotranspiration bed~~<br>~~4.08 Wisconsin mound~~<br>~~4.09 Engineered pad system~~<br>~~4.10 Intermittent sand filter~~<br>~~4.11 Peat filter~~<br>~~4.12 Textile filter~~<br>~~4.13 RUCK® system~~<br>~~4.14 Sewage vault~~<br>~~4.15 Aerobic system with subsurface disposal~~<br>~~4.16 Aerobic system with surface disposal~~<br>~~4.17 Cap system~~<br>~~4.18 Constructed wetlands~~<br>~~4.19 Sand lined trench~~<br>~~4.20 Disinfection devices~~<br>~~4.21 Sequencing batch reactor~~<br>~~4.22 Subsurface drip irrigation~~<br>(Authorization is granted for those general permits that are not stricken) | A.A.C ~~R18-9-E303~~<br>~~R18-9-E304~~<br>~~R18-9-E305~~<br>~~R18-9-E306~~<br>~~R18-9-E307~~<br>~~R18-9-E308~~<br>~~R18-9-E309~~<br>~~R18-9-E310~~<br>~~R18-9-E311~~<br>~~R18-9-E312~~<br>~~R18-9-E313~~<br>~~R18-9-E314~~<br>~~R18-9-E315~~<br>~~R18-9-E316~~<br>~~R18-9-E317~~<br>~~R18-9-E318~~<br>~~R18-9-E319~~<br>~~R18-9-E320~~<br>~~R18-9-E321~~<br>~~R18-9-E322~~ | C1, C2, C3, C4*, C5*, C6* | D1.1 - D1.5; D3.1 - D3.8 |
| No | 6. Compliance and enforcement responsibilities for 4.03 through 4.22 General Aquifer Protection Permits for On-Site Wastewater Treatment Facilities with a design flow of less than 3000 gallons per day | A.A.C. R18-9-A308; regulatory citations for general permits authorized in **Item #5**; and related provisions indicated in **Item #1** | C1, C2 ,C3, C4, C5, C6 | D1.1 - D1.5; D3.1 - D3.8 |
| No | 7. Review and approval of the 4.23 General Aquifer Protection Permit for On-Site Wastewater Treatment Facilities with a design flow from 3000 to less than 24,000 gallons per day | A.A.C. R18-9-E323 | C1, C2, C3, C4*, C5* | D1.1 - D1.5; D3.1 - D3.8 |
| No | 8. Compliance and enforcement responsibilities for the 4.23 General Aquifer Protection Permit for On-Site Wastewater Treatment Facilities with a design flow from 3000 to less than 24,000 gallons per day | A.A.C. R18-9-A308; R18-9-E323; applicable regulatory citations for general permits authorized in **Item #3** and **Item #5**; and related provisions indicated in **Item #1** | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D3.1 - D3.8 |

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|---|---|---|---|---|
| Yes | 9. Review and approval of the 4.01 General Aquifer Protection Permit for Sewage Collection Systems **(Note A)** | A.A.C. R18-9-E301 | C1, C2, C3, C4*, C5* | D1.1 - D1.5; D3.1 - D3.8 |
| Yes | 10. Compliance and enforcement responsibilities for the 4.01 General Aquifer Protection Permit for Sewage Collection Systems **(Note A)** | A.A.C. R18-9-A308; R18-9-E301; and related provisions indicated in **Item #1** | C1, C2, C3, C4*, C5*, C6* | D1.1 - D1.5; D3.1 - D3.8 |
| No | 11. Complaint response and compliance assistance for private residential Gray Water Systems authorized by the Type 1 Reclaimed Water General Permit | A.A.C. R18-9-701, 708(A), 709(A)(1), and 711 | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D6.1 |
| Yes | 12. Review and approval of Sanitary Facilities for Sub-Divisions **(Note B)** | A.A.C. R18-5-401 through 410 | C1, C2 | D1.1 - D1.5; D4.1 - D4.3 |
| Yes | 13. Enforcement of rules governing Sanitary Facilities for Sub-Divisions **(Note B)** | A.A.C. R18-5-401 through 411 | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D4.1 - D4.3 |
| Yes | 14. Issuance of Approval to Construct and Final Approval of Construction for Public Drinking Water Facilities **(Note C)** | A.A.C. R18-4-101, 102, 115, 119, 220 through 223, 301 through 304, A.A.C. R18-5-501 through 509 | C1, C2, C3** | D1.1 - D1.5; D2.1 - D2.5 |
| No | 15. Operation & Maintenance Compliance Inspections of Public Drinking Water Systems with Drinking Water Treatment Plant(s) **(Note C)** | A.A.C. R18-4-101, 102, 103, 104, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125 | C1, C2 | D1.1 - D1.5; D2.4 - D2.5 |
| No | 16. Operation & Maintenance Compliance Inspections of Public Drinking Water Systems served only by wells | A.A.C. R18-4-101, 102, 103, 104, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125 | C1, C2, C3, C5, C6 | D1.1 - D1.5; D2.1 - D2.5 |
| No | 17. Monitoring & Reporting Compliance Determinations for Delegated Public Drinking Water Systems | A.A.C. R18-4-101 through 107, 109, 113, 117, 120, 125; R18-4-201 through 223; R18-4-301, 301.02, 302 through 317; R18-4-401 through 403; R18-4-701 through 710 | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D2.5 |
| Yes | 18. Enforcement of Delegated Drinking Water Rules Governing Construction Approvals and Operation & Maintenance Requirements Public Drinking Water Systems **(Note C)** | A.A.C. R18-4-121 | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D2.1 - D2.5 |
| No | 19. Enforcement of Delegated Drinking Water Rules Governing Monitoring and Reporting Requirements Public Drinking Water Systems | A.A.C. R18-4-121 | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D2.4 - D2.5 |
| No | 20. Issuance of Approval to Construct and Final Approval of Construction for Public and Semipublic Swimming Pools | A.A.C. R18-5-201 through 250 | ATC: C1,C2 AOC: C1, C2, C3 | D1.1 - D1.5; D5.1 - D5.3 |
| No | 21. Enforcement of Rules Governing the Design and Construction of Public and Semipublic Swimming Pools | A.A.C. R18-5-201 through 251 | C1, C2, C3, C4, C5, C6 | D1.1 - D1.5; D5.3 |

**Functions and Duties Notes**

**Note A**: Includes sewer line extensions, lift stations and forced mains only.

**Note B**: Limited to subdivisions with wastewater and water services by community facilities approved by LA pursuant to Items 9 and 14, Subpart A, Appendix A.

**Note C**: Includes water line extensions only.

**Personnel Qualification Notes**

* Excludes Public Works as defined in A.R.S. §32-142 and wastewater facilities which cost more than $12,500.

**Excludes Public Works as defined in A.R.S. §32-142 and drinking water projects which cost more than $12,500.

## B. Exceptions and Special Provisions

1. ADEQ will provide the LA a copy of the draft Individual Aquifer Protection Permit and draft federal NPDES or state AZPDES permit for review and comment for any sewage treatment facility proposed within the LA's jurisdictional boundaries.

2. Functions, powers and duties of ADEQ related to the following are NOT delegated:

   a. Those pertaining to drinking water and wastewater facilities owned by the federal government or the State of Arizona, those owned or operated by the LA, or those owned or operated by districts subject to the control of the LA, unless as otherwise mutually agreed upon. A private facility to be dedicated to the LA after completion of construction may be reviewed by the LA if all approvals and licenses are issued to the owner of the private facility prior to the date of the facility dedication to the LA.

   b. Those relating to facilities financed, either wholly or in part, with federal grant funds.

3. Final approval of any drinking water facility or sewage collection system designed by or for the LA, or for capital improvement projects, is NOT delegated to the LA. This exception does not prohibit or otherwise affect later assignment or transfer to the LA of a drinking water facility or sewage collection system having a construction completion approval issued by the LA.

4. ADEQ and LA agree to co-inspect wastewater facilities, where feasible, including those subject to federal discharge permit requirements, for training and coordination purposes.

## C. Personnel Qualifications:

Subject to Standard of Performance D1.3, the Functions and Duties listed in Subpart A of this Appendix shall be performed by individuals with the following minimum personnel qualifications. Where more than one category of personnel qualifications is listed in Appendix A, the personnel may qualify under any of the categories listed.

Duties shall be performed by:

1. A Professional Engineer registered in the State of Arizona with at least four (4) years experience in Sanitary Engineering or a closely related field (equivalent of ADEQ

Environmental Engineer position)

2. An individual who is capable of being an Engineer-in-Training Candidate (A.A.C. R4-30-222) under the State Board of Technical Registration (equivalent of ADEQ Engineering Aide position), and who is directly supervised by a Professional Engineer registered in the State of Arizona with at least four (4) years experience in Sanitary Engineering or a closely related field.

3. A Registered Sanitarian (A.A.C. Title 9, Chapter 16, Article 4 and A.R.S. §36-136.01) with at least 4 years applicable service, or the equivalent of an ADEQ Environmental Program Specialist with four (4) years applicable experience, either of whom is directly supervised by a Professional Engineer registered in the State of Arizona with at least four (4) years experience in Sanitary Engineering or a closely related field.

4. An individual who is capable of being an Engineer-in-Training candidate under the State Board of Technical Registration (A.A.C. R4-30-222) (equivalent of ADEQ Engineering Aide position) or a Registered Sanitarian with four (4) years applicable experience.

5. A Registered Sanitarian with four (4) years applicable experience.

6. A Sanitarian Aide or Sanitarian-In-Training (A.A.C. R9-16-402) with two (2) years education in Public Health, Sanitary Engineering or a closely related field or a Registered Sanitarian who is directly supervised by a Registered Sanitarian with four (4) years applicable experience.

**D. Standards of Performance:**

The LA shall comply with the following standards of performance for applicable licenses and associated Functions and Duties delegated to the LA as listed in Subpart A of this Appendix.

<u>General Provisions</u>

1.1. The LA shall perform the reviews for licenses delegated in the table in Subpart A of this Appendix according to applicable time frames specified in A.A.C. R18-1-525, Tables 5, 6, 7, and 10.

1.2. The LA shall not issue an Approval to Construct, Approval of Construction, Provisional Verification of General Permit Conformance, Verification of General Permit Conformance, or Certificate of Approval for Sanitary Facilities for Subdivisions for any project which is not in compliance with ADEQ statutes and rules and any conditions specified in this delegation agreement. The LA may make an exception if the project will bring the facility into compliance or if the facility is on a schedule to achieve compliance, consistent with an approved administrative order or consent decree.

1.3. Whenever a review of plans, specifications, design reports or construction documents by the LA constitutes the practice of engineering, as defined in A.R.S. § 32-101(B)(11), approvals, licenses or other documents that result from such review by the LA shall be prepared by or under the supervision of a professional engineer registered in Arizona whose registration or

work experience is consistent with the work approved. Any approval or license resulting from such review shall be signed by the registrant or registrant's designee.

1.4. Accurate file records shall be maintained by the LA for the approval decision including date, basis for decision, and stipulations, if any, for all approvals, including those prepared by or under the supervision of a professional engineer registered in Arizona.

1.5. If the project reviewed by the LA involves disposal or discharge of wastewater to a water of the United States, the LA shall direct the applicant to ADEQ (or the U.S. Environmental Protection Agency) for any necessary permits.

1.6. Within 6 months after the effective date of this Agreement, ADEQ and the LA shall jointly develop and approve performance measures for assessing the competence, efficiency and proper performance of the LA's administration and implementation of responsibilities delegated Functions and Duties specified in Appendix A, Subpart A.

The performance measures shall be finalized in the form of an annual "report card" indicating each performance measure and associated target performance value. Within 30 days after the end of each calendar year, the LA shall provide ADEQ with a completed report card that assesses the LA's performance during the preceding year relative to each target performance value and any needed explanation of performance.

The report card shall include at least one performance measure that relates to the results of customer satisfaction surveys that the LA shall distribute with each approval or denial issued, each inspection performed, and each notice of opportunity to correct or notice of violation issued. ADEQ and the LA shall consider other performance measures for inclusion on the report card including but not limited to number of complaints received, LA's response to complaints, and the number of inspections performed.

1.7. The Director may from time-to-time accept application packages for delegated Functions and Duties for processing pursuant to applicable statutes or rules when the Director has determined that there is a compelling reason to do so.

Drinking Water Systems

2.1. The LA shall review plans and specifications submitted for new drinking water facilities in conformance with the applicable rules and laws of the State. Plans that comply with applicable requirements may be approved for construction in accordance with A.A.C. R18-5-505. Issuance of Approvals to Construct (ATC) may be processed through the LA's central permit system. ATCs must be denied for proposed facilities for which plans and specifications do not demonstrate that the system can reasonably be expected to comply with the applicable rules.

2.2. The LA shall not issue an Approval of Construction (AOC) unless construction conforms with approved plans and specifications. As needed, the LA may inspect the construction to ensure conformance with approved plans and specifications. In accordance with A.A.C. R18-5-506, any deviation from the approved plans shall be reconciled either by submission

of approvable as-built plans to the LA or modification of construction to bring it into conformance with the approved plans.

2.3. The following requirements shall be satisfactorily met before an AOC will be issued by the LA on a newly constructed water supply system, an extension to an existing public water system, or any alteration of an existing public water system that affects its treatment, capacity, water quality, flow, distribution, or operational performance (A.A.C. R18-5-507(B)):

a. A professional engineer, registered in Arizona, or a person under the professional engineer's direct supervision, shall complete a final inspection and submit a Certificate of Completion on a form approved by ADEQ to which the seal and signature of the registrant have been affixed;

b. The construction conforms to approved plans and specifications, as indicated in the Certificate of Completion and all changes have been documented by the submission of record drawings, pursuant to A.A.C. R18-5-508;

c. An operations and maintenance manual has been submitted and approved by ADEQ (or LA) if construction includes a new water treatment facility; and

d. An operator, who is certified by ADEQ at a grade appropriate for each facility, is employed to operate each water treatment plant and the potable water distribution system.

2.4. Operation of a newly constructed water supply shall not begin until an Approval of Construction (AOC) is issued by the LA in accordance with A.A.C. R18-5-507.

2.5. Compliance inspections of public drinking water systems shall be performed at least once every three years, except that facilities using surface water supplies shall be inspected annually. Inspections shall cover facility operations and maintenance and compliance with applicable regulatory requirements including monitoring, reporting, public notification, operator certification, plan approval and conformance with any existing compliance schedules.

2.6. The LA shall not issue an ATC on new Community Water Systems and Nontransient, Noncommunity Water Systems that begin operation on or after October 1, 1999, until ADEQ has notified the LA in writing that the water system has met the requirements of A.A.C. R18-4-601 through 607.

2.7. The delegated authorities of the LA do not include A.A.C. R18-4-110, Variances; R18-4-111, Exemptions; R18-4-112, Exclusions; and R18-4-224 and 225, Monitoring Assistance Program.

2.8. The LA shall not implement drinking water rules promulgated after the effective date of this Agreement by the U.S. Environmental Protection Agency or ADEQ until receiving a letter of authorization from ADEQ.

On-Site Wastewater Treatment Facilities and Sewage Collection Systems

3.1. The LA shall incorporate any language provided by ADEQ into the Certification of Compliance section of the Notice of Intent to Discharge (NOI) that relates to licensing time frame requirements for review of the application by the LA. Signature of the Certification of Compliance section by the applicant binds the applicant and the LA to the specified time frames. The LA shall review all submittals within specified time frames for conformance with the procedural and technical requirements established in statute, rule and guidance materials provided by ADEQ, including any ADEQ clarifications of the rule.

3.2. Upon receipt of an NOI, as the initial step of the pre-construction review phase described in A.A.C. R18-9-A301(D)(1), the LA shall review the NOI to determine whether the applicant submitted all required components of the NOI as specified by A.A.C. R18-9-A301(B), R18-9-A309(B), and R18-9-E301 through E323, as applicable. If the LA, as a result of this review, determines that any components are missing, the LA shall notify the applicant in writing of such determination within the time frame for the Administrative Completeness Review established in A.A.C. R18-1-525 and request that the applicant submit the required components within 30 business days or other reasonable period of time. The Administrative Completeness Review time frame is suspended from the time the LA has notified the applicant of any deficiencies until the time the applicant has submitted additional documents to the LA in response to the notification request.(The LA is not required to notify the applicant if the LA determines that all required components of the NOI were submitted).

If the applicant fails to submit the required components of the NOI within the period of time specified by the LA, the LA shall notify the applicant of its decision not to issue a Verification of General Permit Conformance (VGPC) in accordance with A.A.C. R18-9-A301(D)(1)(d).

3.3. If the applicant has submitted all required components of the NOI in accordance with Standard of Performance D.3.2, the LA shall proceed with the pre-construction review phase described in A.A.C. R18-9-A301(D)(1) by beginning the Substantive Review. The LA shall review the substantive information provided by the applicant to determine if the project complies with General Aquifer Protection Permit requirements. If the LA determines that the project complies with General Aquifer Protection Permit requirements, the LA shall issue a Provisional Verification of General Permit Conformance (PVGPC) through the LA's central permit system in accordance with A.A.C. R18-9-A301(D). The applicant may begin construction of the project upon receipt of the PVGPC.

As needed, during the pre-construction phase, the LA may inspect the site to ensure that the proposed project will conform with applicable rules and laws of the State. If review of a submitted document or inspection of the site indicates a deficiency, the LA shall notify the applicant in writing of such determination before the end of the pre-construction phase Substantive Review. The LA shall provide the applicant 30 business days or other reasonable period of time to submit additional required information to resolve the deficiencies. The pre-construction phase Substantive Review is suspended from the time the LA has notified the applicant until the time the applicant has submitted additional

information to the LA in response to the request

If the applicant fails to submit the required information within the specified period of time or the information received by the LA indicates that the proposed facility cannot reasonably comply with the applicable requirements, the LA shall notify the applicant in writing of its decision not to issue a VGPC in accordance with A.A.C. R18-9-A301(D)(1)(d). (If the LA did not issue a written notice of administrative completeness or deficiencies, the NOI is deemed administratively complete; therefore, the time frame for the LA to complete all pre-construction processing of the application consists of the sum of the pre-construction phase Administrative Completeness Review and pre-construction phase Substantive Review.

3.4. Following issuance of the PVGPC by the LA, the applicant may take up to two years to complete construction. Upon completion of construction, the applicant shall submit required post-construction documentation, which serves notice to the LA to begin the post-construction phase review. The LA shall review the submittal to determine whether all required components were submitted as specified by A.A.C. R18-9-A301(D)(1)(f)(i), R18-9-A309(C), and R18-9-E301 through E323, as applicable. If the LA, as a result of this review, determines that any components are missing, the LA shall notify the applicant in writing of such determination within the time frame for the post-construction Administrative Completeness Review and request that the applicant submit the required components within 30 business days or other reasonable period of time. The Administrative Completeness Review time frame is suspended from the time the LA has notified the applicant of any deficiencies until the time the applicant has submitted the required documents to the LA in response to the notification request.

As needed, the LA may inspect the construction to ensure conformance with the design approved in the PVGPC. If, during construction, changes are made to the approved design that meet the criteria established in A.A.C. R18-9-A301(D)(1)(e)(iii), the LA shall issue the VGPC only if the applicant submits the documentation required by A.A.C. R18-9-A301(D)(1)(e)(iv).

The post-construction phase Substantive Review begins when the LA has determined that all required post-construction documents have been submitted. The LA shall, based on review of submitted documents and any inspections performed by the LA, make the determination to issue the VGPC within the time frame for the post-construction phase Substantive Review. The LA shall follow procedures in A.A.C. R18-9-A301(D)(2) for notifying the applicant of any deficiencies and issuing or denying the VGPC.

3.5. The LA shall review the application based on whether the requirements for Administrative Completeness Review and Substantive Review are met. An application shall not be denied based on the applicant's qualifications unless those qualifications are specifically established in statute or rule for that document (for example, some general permits require that an Arizona-registered Professional sign a Certificate of Completion). The LA shall review the document to determine conformance with procedural and technical requirements established in statute, rule and guidance materials provided by ADEQ. If the document does not meet these requirements, the LA shall use the mechanisms provided in the Administrative Completeness Review and Substantive Review processes to notify the applicant of

deficiencies in the document. The LA shall notify the applicant if the LA believes that the provisions of the Arizona Board of Technical Registration require submittal of any document by an Arizona-registered Professional Engineer or Registered Geologist.

3.6. The LA is authorized to issue a PVGPC and a VGPC for an on-site wastewater treatment facility with a design flow of less than 3000 gallons per day provided all components of the treatment and disposal works of the facility are covered by one or more than one General Aquifer Protection Permit listed in Section A of this appendix. If Section A of this appendix delegates General Permit 4.23 (A.A.C. R18-9-E323) to the LA, the LA is authorized to issue a PVGPC and a VGPC for an on-site wastewater treatment facility with a design flow from 3000 gallons per day to less than 24,000 gallons per day provided all components of the proposed facility are covered by General Aquifer Protection Permits delegated to the LA in Section A of this appendix. NOIs submitted to the LA for facilities that do not meet these criteria shall be forwarded to ADEQ for review and processing or notification to the applicant that an Individual Aquifer Protection Permit is required.

3.7. Operation of a newly constructed on-site wastewater treatment facility or sewage collection system shall not begin until a Verification of General Permit Conformance (VGPC) is issued by the LA in accordance with A.A.C. R18-9-A301.

3.8. The LA may review and approve requests for a feature of alternative design submitted under A.A.C. R18-9-A312(G), but shall not review or approve any request that:

a. Is beyond the scope of technologies permitted under the General Aquifer Protection Permits delegated to the LA in Section A of this appendix,

b. Proposes a change to the listed performance criteria for treatment technologies or the hydraulic loading rates for treatment media established in A.A.C. R18-9-E302 through R18-9-E323, specified in any design reference document approved by ADEQ, or listed for a proprietary or other product approved by ADEQ under A.A.C. R18-9-A309(E),

c. Proposes a change to the relationship between soil absorption rate and percolation rate established in A.A.C. R18-9-A312(D)(2)(a) or between soil absorption rate and soil type established in A.A.C. R18-9-A312(D)(2)(b),

d. Proposes a change to the relationship between the soil absorption rate and adjusted soil absorption rate established in A.A.C. R18-9-A312(D)(3), and

e. Proposes a change to the relationship between the total coliform concentration and minimum vertical separation from groundwater established in A.A.C. R18-9-A312(E).

The LA shall promptly forward any project to ADEQ for processing that is submitted with a alternative design request under A.A.C. R18-9-A312(G) as soon as the LA becomes aware that the project does not meet the criteria specified in Subpart D.3.8.a or b. The LA shall use a form provided by ADEQ to forward the project. The LA shall refund to the applicant any fees paid to the LA for processing the application. ADEQ shall accept the application and process it as a new application under ADEQ's fee and licensing time frame schedules. If the

request under A.A.C. R18-9-A312(G) is for a change in one of the relationships cited in Standard of Performance D.3.8.c, d, or e, the LA shall notify the applicant under the Administrative Completeness Review procedure that the application is deficient because ADEQ has not authorized and does not it itself review requests pertaining to those relationships. Except where other provisions apply as indicated above, the LA shall forward any project to ADEQ for processing submitted with a request under A.A.C. R18-9-A312(G) that the LA has determined would require excessive review time, research, or specialized expertise to act on the request. The LA shall refund to the applicant any fees paid to the LA for processing the application. ADEQ shall accept the application and process it as a new application under ADEQ's fee and licensing time frame schedules.

Subdivisions

4.1. Plans and specifications for approval of a subdivision or portion thereof will be reviewed for conformance with the applicable rules and laws of the State. Projects that comply with such requirements may be approved by issuing a Certificate of Approval for Sanitary Facilities for Subdivisions (CASFS) through the LA's central permit system in accordance with A.A.C. R18-5-401 through 411. If the documents submitted for review do not demonstrate that the subdivision reasonably complies with the applicable rules, the LA shall notify the applicant of its decision not to issue the CASFS.

4.2. For a new subdivision where wastewater disposal is by means of on-site wastewater treatment facilities, the LA shall not approve the subdivision unless the geological report required for submittal by the applicant under A.A.C. R18-5-408(E)(1) provides adequate information indicating that water quality will not be adversely affected by individual or cumulative discharges from the facilities to be constructed as a result of the approval. The information submitted in the geological report shall be sufficient to determine that the types of systems proposed for the subdivision are suitable for the soils and site conditions, including any constraints that might be posed by the minimum vertical separation criteria specified in A.A.C. R18-9-A312(E).

The information submitted in the geological report also shall be sufficient to determine that the cumulative discharge of total nitrogen from the on-site wastewater treatment facilities will not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate. Unless site-specific circumstances dictate otherwise, the LA may assume that the cumulative discharge will not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate if the loading of total nitrogen to groundwater calculated over the area of the subdivision, including streets, common areas, and other non-contributing areas, is not more than 0.075 pounds (34.0 grams) of total nitrogen per day per acre based on full buildout and occupancy of the subdivision. The LA shall maintain, in the file for the approval, the geological report provided by the applicant and other documentation and calculations that the LA relied on in making the determination that the applicant has satisfactorily demonstrated conformance with the nitrogen loading requirement.

4.3. The LA shall provide two originals of the CASFS to the applicant, one of which the applicant may submit to the Arizona Department of Real Estate for that agency's subdivision report requirements.

Public and Semipublic Swimming Pools and Spas

5.1. Plans and specifications for a new public or semipublic swimming pool or spa shall be reviewed by the LA for conformance with the applicable rules and statutes of the State. Plans that comply with such requirements or meet more stringent requirements of the LA enacted in accordance with A.R.S.§ 49-106 and 49-112 may be approved for construction by issuing an Approval to Construct (ATC). The LA may issue ATCs through the LA's central permit system. ATCs must be denied for proposed facilities for which plans and specifications do not demonstrate that the system can reasonably be expected to comply with the applicable rules. The LA shall confer with ADEQ on any variance request submitted by the applicant under A.A.C. R18-5-249. In making the determination on whether to approve or deny the variance, ADEQ and the LA may consider recommendations of an advisory committee convened under A.A.C. R18-5-249(E).

5.2. Operation of a newly constructed public or semipublic swimming pool or spa shall not begin until an Approval of Construction (AOC) is issued by the LA in accordance with A.A.C. R18-5-204.

5.3. Inspections of public and semi-public swimming pools shall be performed by the LA in accordance with A.A.C. R18-5-250. Enforcement actions shall be conducted by the LA in accordance with A.A.C. R18-5-251 unless the LA elects to conduct such actions under independent enforcement authority available to the LA.

Private Residential Gray Water

6.1. The LA shall respond to complaints regarding private residential gray water use and shall provide any needed compliance assistance regarding the best management practices established in the Type 1 Reclaimed Water General Permit for private residential direct reuse of gray water (A.A.C. R18-9-711).

**E. Reporting Requirements:**

1. General Provisions. The LA shall submit the reports indicated in this section each month after the effective date of this delegation agreement. Thereafter, except for the reporting specified in E5, the LA shall submit the reports quarterly providing the required tallies and information for each month of the quarter. Reports shall be submitted on forms provided or approved by ADEQ and shall be mailed to ADEQ within 15 calendar days after the end of the reporting period. The LA shall mail reports to:

Kami Budhu
Division Director's Office
Water Quality Division
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, Arizona 85007

2. Drinking Water Systems. The LA shall submit monthly tallies and information as follows:

   a. Approvals to Construct issued.
   b. Construction inspections performed.
   c. Approvals of Construction issued.
   d. Approvals to Construct and Approvals of Construction issued exceeding maximum licensing time frames.
   e. Exception reports for Approvals which exceeded the maximum licensing time frame.
   f. Appeals of LA decisions filed by applicants.
   g. Compliance inspections performed
   h. Complaints handled.
   i. Compliance and enforcement activities.

   For each operational compliance inspection performed, the LA shall submit a copy of the inspection report and inventory sheet. The inspection report for each facility shall indicate the operation and maintenance compliance status for the facility.

3. Type 4 General Aquifer Protection Permits (Onsite Wastewater Treatment Facilities and Sewage Collection Systems). The LA shall submit monthly tallies and information pertinent to the following subject areas on forms provided by ADEQ:

   a. Verifications of General Permit Conformance and verification denials issued.
   b. Verifications issued exceeding maximum licensing time frames.
   c. Number of alternative features approved and denied pursuant to A.A.C. R18-9-A312(G)
   d. Exception reports for Verifications which exceeded the maximum licensing time frame.
   e. Appeals of LA decisions filed by applicants.
   f. Compliance and enforcement activities.

3. Subdivisions. The LA shall submit information, as specified by ADEQ, pertinent to Certificates of Approval for Sanitary Facilities for Subdivisions issued by the LA.

4. Public and Semipublic Swimming Pools and Spas. The LA shall submit monthly tallies and information as follows:

   a. Approvals to Construct issued.
   b. Construction inspections performed.
   c. Approvals of Construction issued.
   d. Variances approved.
   e. Appeals of LA decisions filed by applicants.
   f. Compliance inspections performed
   g. Complaints handled.
   h. Compliance and enforcement activities.

5. Enforcement Actions. A copy of each administrative, civil, or criminal action initiated under this Appendix shall be sent to the address indicated in Item E.1 within 15 calendar days of the end of the month in which the action was taken.

**F. Agency Contact Persons:**

The following LA employee has been designated as responsible for administering the Functions and Duties pursuant to this Appendix. The LA shall provide ADEQ written notice of any successor.

Name: Scott Dooley, P.E.
Title: Manager
Address: 1011 North Coronado Drive
Sierra Vista, Arizona 85635

The following ADEQ employees have been designated as responsible for administering the Functions and Duties pursuant to this Appendix other than contact person for receiving reports designated above. The ADEQ shall provide the LA written notice of any successor.

Approvals of Drinking Water Systems, Subdivisions, and Swimming Pools

Name: John A. Calkins
Title: Manager, Drinking Water Section
Address: Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, Arizona 85007

Approvals of On-Site Wastewater Treatment Facilities and Sewage Collection Systems; Private Residential Gray Water

Name: Michele I. Robertson
Title: Manager, Water Permits Section
Address: Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, Arizona 85007

Compliance and Enforcement

Name: Mike J. Traubert
Title: Manager, Water Quality Compliance Section
Address: Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, Arizona 85007

The naming of a successor to any of the above individuals shall not require the re-execution of or an amendment to this Agreement.

**DELEGATION AGREEMENT # 06-0015**

**Local Agency**
**City of Sierra Vista**

4 Nov 05
**Mayor** **Date**

**Arizona Department of**
**Environmental Quality**

12/22/05
**Director** **Date**

**ATTEST:**

11/7/05
**City Clerk** **Date**

Pursuant to A.R.S. § 11-952(D), the foregoing Agreement has been reviewed by the undersigned attorneys for the City of Sierra Vista and the Arizona Department of Environmental Quality, who have determined that this Agreement is in proper form and is within the powers and authority granted under Arizona law to ADEQ and the City of Sierra Vista.

**APPROVED AS TO FORM:**

By_____
City Attorney

**APPROVED AS TO FORM:**

By_____
Assistant Attorney General