

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

RESOLUTION 2014-03

A RESOLUTION OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, APPROVING AND ADOPTING THE "ARIZONA DEPARTMENT OF ADMINISTRATION APPROVED FULL SERVICE LEASE WITH THE ARIZONA DEPARTMENT OF PUBLIC SAFETY" BETWEEN THE CITY OF WILLCOX, "LESSOR", AND THE ARIZONA DEPARTMENT OF PUBLIC SAFETY, LESSEE".

WHEREAS, Lessor is empowered pursuant to Arizona Revised Statutes §9-240 to have control of the finances and property of the corporation; and,

WHEREAS, Lessor is authorized pursuant to A.R.S. § 9-241, et seq. to exercise control of the property of the corporation and to erect, purchase or lease property for the purposes of the corporation; and,

WHEREAS, Lessor and Lessee, desire to execute the "Arizona Department of Administration Approved Full Service Lease with the Arizona Department of Public Safety", attached hereto as Exhibit "A" and incorporated herein; and,

WHEREAS, the Mayor and City Council have determined that leasing City property to the Arizona Department of Public Safety is in the best interest of the CITY and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1: The Mayor and City Council of the City of Willcox, Arizona, hereby approve and adopt the "Arizona Department of Administration Approved Full Service Lease with the Arizona Department of Public Safety", attached hereto as Exhibit "A" and incorporated herein, as presented to Mayor and Council; and,

SECTION 2: The Mayor is authorized and empowered to execute the "Arizona Department of Administration Approved Full Service Lease with the Arizona Department of Public Safety", attached hereto as Exhibit "A" and incorporated herein, as presented to Mayor and Council; and,

SECTION 3: The Mayor is authorized and empowered to execute this Resolution as presented.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA on this 6th day of January, 2014.

APPROVED/EXECUTED:

/s/ Robert A. Irvin
ROBERT A. IRVIN, Mayor

ATTEST:

/s/ Virginia A. Mefford
VIRGINIA A. MEFFORD, City Clerk

APPROVED AS TO FORM:

/s/ Ann P. Roberts
ANN P. ROBERTS, City Attorney

RESOLUTION 2014-03

1 **ARIZONA DEPARTMENT OF ADMINISTRATION APPROVED LEASE**
2 **BOILERPLATE TEMPLATE – FULL SERVICE LEASE**

3
4 **LESSOR: CITY OF WILLCOX**

5 **LESSEE: ARIZONA DEPARTMENT OF PUBLIC SAFETY**

6
7 **THIS LEASE** made the ____ of _____, 2014, by and between the CITY OF
8 WILLCOX, an Arizona municipal corporation, hereinafter called "Lessor," and the ARIZONA
9 DEPARTMENT OF PUBLIC SAFETY, an Agency of the State of Arizona, hereinafter called
10 "Lessee."

11 **1. PREMISES**

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13 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, those premises,
14 hereinafter called "premises," consisting of approximately one (1) acre of land located in the City
15 of Willcox at the west end of the Cochise Visitor's Center located at 1101 N. Circle I Road,
16 Willcox, Arizona 85643. Lessee owns, operates and maintains the modular building on the
17 premises and Lessee has operated a facility in this area as an office for the Arizona Department of
18 Public Safety since 1983; Lessee has proposed locating a new modular facility upon the leased
19 premisis.

20 **2. TERM**

21
22 The initial term of this lease is for ten (10) years (or until sooner terminated as herein
23 provided), commencing July 1, 2013 and expiring on June 30, 2023. By agreement of the parties,
24 this Lease may be extended for two (2) additional lease terms of five (5) years each. Lessee has
25 been in possession of the premises since 1983 under ongoing Lease Agreement, DPS Contract
26 No. 98-206.

27 **3. RENT**

28
29 Lessee agrees to pay as base rent, at such a place as may be designated from time to time by
30 Lessor, the sums as shown below. Such sums will be inclusive of any and all applicable local
31 government rental taxes.

32 Year One \$1,800.00 per year.

33 Year Two \$1,800.00 per year.

34 Year Three \$1,800.00 per year.

35 Year Four \$1,800.00 per year.

36 Year Five \$1,800.00 per year.
37 Year Six \$1,800.00 per year.
38 Year Seven \$1,800.00 per year.
39 Year Eight \$1,800.00 per year.
40 Year Nine \$1,800.00 per year.
41 Year Ten \$1,800.00 per year.

42 Payment shall be initiated each year in the following manner:

43 At the start of each fiscal year, commencing July 1, 2013, Lessor shall bill Lessee for the
44 year's rent. Lessee shall prepare and issue a warrant annually in the July, the first month of the
45 upcoming fiscal year. The warrant shall be mailed to the address stated in paragraph 27 of this
46 lease.

47 Any partial year shall be prorated for that portion of the year Lessee occupies the premises.

48 The parties agree that after the first five (5) years of initial ten (10) year lease term, and upon
49 each of the successive five (5) year renewal terms, the parties shall renegotiate the annual rental
50 payment amount provided that Lessor provides to Lessee Lessor's intent to renegotiate such
51 amount no less than sixty (60) days prior to July 1 due date for the annual rental amount.

52 **4. TERMINATION**

53
54 In the event the Lessee is directed by the Arizona Department of Administration to move into
55 an existing State owned or leased facility, including, but not limited to, any newly purchased,
56 constructed or wholly leased facility, during the term or renewal of this lease, Lessee may
57 terminate this Lease upon sixty (60) days prior written notice to Lessor. In this event Lessee will
58 be responsible for all obligations to Lessor incurred prior to the termination date specified in the
59 notice.

60 In the event no funds or insufficient funds are available or allocated to Lessee for any
61 payment that may be due under this Lease, including no funds or insufficient funds resulting
62 from an act of the Legislature, for any portion of the term or renewal of this Lease, Lessee will be
63 without further obligation under this Lease and will remove its personnel and property from the
64 premises by the end of the period for which funds are available. Lessee will advise Lessor at any
65 time it appears that there may be insufficient funds to fully pay its Lease payments. No liability
66 shall accrue to the Lessee or any other agency of the State of Arizona in the event the provision
67 of this paragraph is exercised, and neither the Lessee or any other agency of the State of Arizona

68 shall be obligated or liable for any future payments or for any damages as a result of termination
69 under this paragraph.

70 **5. REPAIRS**

71
72 It is expressly agreed by the parties that Lessee shall be responsible for all repairs and
73 maintenance to any facilities located upon the premises and any improvements to the premises
74 that are associated with such facilities, including waterlines, septic system, common areas and
75 parking areas.

76 At the expiration or termination of the lease, Lessee shall return the premises and any
77 improvements located thereon to Lessor in the same condition as they were at the initiation of this
78 lease, subject to ordinary wear and tear and damage by casualty excepted.

79 **6. UTILITY CHARGES**

80
81 Lessor agrees to furnish and Lessee agrees to pay for water and/or natural gas, and solid
82 waste disposal to the premises occupied by the Lessee and bill Lessee monthly for such utility
83 services. Lessor shall not be liable to Lessee for any stoppage or interruption of such services and
84 utilities as a result of causes outside control of the Lessor.

85 **7. JANITORIAL**

86
87 Lessee will operate and maintain the building it places on the lot. Lessor will not provide
88 janitorial services.

89 **8. PARKING**

90
91 The leased premises consists of approximately one (1) acre of land, Lessor agrees that Lessee
92 may designate parking in those areas that Lessee designates in Lessee's sole discretion.

93
94 **9. IMPROVEMENTS AND ALTERATIONS**

95
96 Lessee will provide the modular building to be placed on the leased lot. Such building shall
97 be the sole and separate property of Lessee.

98 **10. USE OF PREMISES**

99
100 The premises described above are leased to Lessee for the sole purpose of providing Lessee's
101 governmental services. Lessee agrees to comply with applicable laws, ordinances, regulations
102 and building codes, now or hereafter in force in connection with its use of the leased premises.

103 Lessee shall not commit or suffer the commission of any waste, or knowingly permit any
104 explosives or hazardous substance in the premises.

105 **11. SCRUTINIZED BUSINESS OPERATIONS**

106 Pursuant to Arizona Revised Statutes, Sections 35-391.06 and 35-393.06, the Lessor
107 warrants that it does not have a scrutinized business operation in Sudan or Iran. For the purpose
108 of this paragraph, the term "scrutinized business operations" shall have the meaning set forth in
109 the preceding referenced statutes, as applicable.

110 **12. ASSIGNMENT AND SUBLEASE**

111

112 Lessee shall not assign, transfer, or encumber this lease nor sublet the leased premises or any
113 portion thereof without the prior written consent of Lessor, and any such act shall constitute a
114 breach of this lease. Consent to an assignment, subletting, occupation or use by other persons
115 shall not be unreasonably withheld and shall not release Lessee from any of Lessee's obligations
116 hereunder or be deemed to be a consent to any subsequent assignment, subletting, occupation or
117 use.

118 **13. NONDISTURBANCE**

119

120 Subject to the terms of this Lease, so long as Lessee is not in material breach of the terms of
121 this lease, it shall have a right to the quiet possession of the premises without disturbance from
122 the Lessor or any person claiming rights through Lessor, for the term of the Lease. Any sale of
123 the premises by Lessor or other transfer of ownership, whether voluntary or by operation of law,
124 shall not by itself operate to terminate this Lease or Lessee's right of possession.

125 **14. ENVIRONMENTAL CONTROL**

126 The Lessee shall maintain all environmental control over any structure upon the premises.

127 **15. ASSURANCE OF PERFORMANCE**

128

129 At any time during the term of this Lease or any renewal period of this Lease the Lessee may
130 request reasonable assurances of continued performance from the current Lessor, successor in
131 interest, or lien-holder. If such assurances to the request are not given, in writing, within ten (10)
132 days, Lessee may in its sole discretion, vacate the premises with no further obligation under this
133 Lease.

134

135

136 **16. SELF-INSURANCE BY LESSEE**
137

138 Lessor and Lessee acknowledge that Lessee is self-insured and shall provide Lessor with a
139 certificate of self-insurance providing five hundred thousand dollars (\$500,000) of general
140 liability coverage. This self-insurance protects the Lessee only. The Lessee is not authorized to
141 indemnify the Lessor.

142 **17. TIME**
143

144 Time is of the essence of this lease and each and all of its provisions.

145 **18. DEFINED TERMS AND MARGINAL HEADINGS**
146

147 The word "Lessor" and "Lessee" as used herein shall include the plural as well as the singular.
148 If more than one person is named as Lessee, the obligations of such persons are joint and several.
149 The marginal headings and titles to the articles of this lease are not a part of this lease and shall
150 have no effect upon the construction or interpretation of any part hereof.

151 **19. HOLDOVER**
152

153 Should Lessee hold possession after expiration of the lease term or any renewal thereof,
154 Lessee shall become a Lessee on a month-to-month basis upon the same terms and conditions of
155 this lease.

156 Either Lessor or Lessee shall have the right to terminate any holdover tenancy with thirty (30)
157 days written notice to the Lessee or Lessor's last known address without incurring any penalty or
158 damages.

159 **20. ATTORNEY'S FEES**
160

161 In the event of any legal action or proceeding brought by either party against the other arising
162 out of this lease, the prevailing party shall be entitled to recover costs and reasonable attorney's
163 fees, as determined by the court, not the jury, based on the prevailing hourly wage for attorneys in
164 Phoenix, Arizona, and such other matters deemed relevant by the court, and such amount shall be
165 included in any judgment rendered in such proceedings.

169 **21. WAIVER**
170

171 No waiver by Lessor of any provision of this lease or of any breach by Lessee hereunder shall
172 be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Lessee of
173 the same or any other provision. Lessor's consent to or approval of any act by Lessee requiring
174 Lessor's consent to or approval shall not be deemed to render unnecessary the obtaining of
175 Lessor's consent to or approval of any subsequent act of Lessee.

176 **22. NOTICES**
177

178 All notices to be given by one party to the other shall be in writing, mailed or hand delivered
179 to each as follows:

180 **LESSOR: City Manager**
181 **City of Willcox,**
182 **101 S. Railroad Ave., Ste. B,**
183 **Willcox, AZ 85643**
184

185 **LESSEE: to be provided**

186 **23. ESTOPPEL CERTIFICATE**
187

188 Lessee shall, upon not less than ten (10) days prior written request by Lessor, deliver to
189 Lessor a statement in writing, attached as Exhibit B, certifying: (1) that this lease is unmodified
190 and in full force and effect or if there have been modifications, that this lease as modified is in
191 full force and effect; (2) the dates to which rent and other charges have been paid, and (3) that
192 Lessor is not in default under any provisions of this lease, or if in default, a detailed description of
193 such default.

194 **24. AGREEMENTS IN WRITING**

195 All negotiations, considerations, representations, and understandings between the parties are
196 incorporated and expressly stated herein and may be modified and altered only by agreement in
197 writing between the parties delivered by certified mail.

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201 **25. PROHIBITION OF DISCRIMINATION**

202 The Lessor agrees to comply with State of Arizona Executive Order No. 09-09,
203 "PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS, NONDISCRIMINATION
204 IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS."

205 **26. LIENS**

206 The Lessee shall keep the premises free from any liens arising out of any work performed,
207 materials furnished or obligations incurred by Lessee. In the event that Lessee shall not, within
208 ten (10) days following the imposition of any such lien, cause the same to be released of record
209 by payment or posting of a proper bond, Lessor shall have, in addition to all other remedies
210 provided herein by law, the right to cause the same to be released by such means as he shall
211 deem proper, including the payment of the claim giving rise to such lien. All such sums paid by
212 Lessor and all expenses incurred by him in connection therewith shall be considered additional
213 rent and shall be payable by Lessee on demand with interest at ten percent (10%) per annum.

214 Lessor shall have no rights to or any interest in the personal property of the Lessee located on
215 or about the premises and will not place any lien on such property for any reason. Lessor will not
216 take any action to deprive Lessee of possession of its personal property including but not limited
217 to taking possession of the Lessee's personal property. Should the Lessor come into possession
218 of any personal property of Lessee as an incident of the exercise of any of the rights of Lessor
219 under this Lease, Lessor agrees to promptly deliver such property to Lessee upon Lessee's
220 request.

221 **27. RIGHT OF RECOVERY**

222 Neither party shall recover from each other for Acts of God.

223 **28. INSPECTION AND AUDIT**

224 In accordance with Arizona Revised Statutes, Sections 35-214 and 35-215, all books,
225 accounts, reports, files and other records, hereinafter referred to as "records," relating to this lease
226 shall be subject at all reasonable times to inspection and audit by the Lessee, the State Auditor, or
227 their agents, or employees at the Lessor's office or at the Lessee's offices designated in paragraph
228 27 at any time during the terms of the lease and for five (5) years after termination thereof. Upon
229 request, the Lessor shall produce originals of any or all such records.

233 **29. ARBITRATION**

234 The parties agree to use arbitration, after exhausting applicable administrative review, to the
235 extent required by Arizona Revised Statutes, Section 12-1518, except as may be required by other
236 applicable statute. In the event such a dispute is arbitrated, the parties hereby agree that the
237 prevailing party is entitled to recover its attorneys' fees and costs. Attorney's fees shall be based
238 on the prevailing hourly rate for attorneys in Phoenix, Arizona.

239 **30. CONFLICT OF INTEREST**

240 All parties hereby are put on notice that this agreement is subject to cancellation by the
241 Governor pursuant to Arizona Revised Statutes, Section 38-511, the provisions of which are
242 incorporated herein.

243 **31. ARIZONA LAW**

244 This lease shall be governed and interpreted by the laws of the State of Arizona.

245 **IN WITNESS WHEREOF**, the parties hereto have executed this instrument by proper
246 persons thereunto duly authorized so to do the day and year first above written.

247 **LESSOR:** City of Willcox

248 By: _____ Date: _____

249 Position: Robert A. Irvin, Mayor

250 APPROVED AS TO FORM:

251 _____

252 CITY ATTORNEY
253 FOR AND ON BEHALF OF THE CITY

254 **LESSEE**, an Agency of the State of Arizona:

255
256 By: _____ Date: _____

257 Position: _____

258 **Approved Pursuant to ARS Section 41-792**

259 FOR AND ON BEHALF OF THE ARIZONA DEPARTMENT OF ADMINISTRATION

260
261 By: _____ Date: _____

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263 Position: _____

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EXHIBIT A
SUBORDINATION AND ATTORNMENT AGREEMENT

The undersigned hereby certifies to you and agrees as follows:

1. The undersigned is the Lessee under a lease dated January 6, 2014, for premises located at Circle I Road, Willcox, Arizona 85643 (Premises), as amended by the following amendments (the Lease):

None.

If no amendments are listed, the undersigned certifies that the Lease has not been amended.

2. Lessor reserves the right to place liens or encumbrances on said premises or any part thereof or interest therein superior in lien and effect to this lease. This lease, at the option of Lessor, shall be subject and subordinate to any and all such liens or encumbrances now or hereafter imposed by Lessor without the necessity of the execution and delivery of any further instruments on the part of the Lessee to effectuate such subordination.

3. In the event of a transfer of ownership of the premises, Lessee agrees to attorn to the new owner acquiring the premises and to recognize such owner as Lessor under this Lease. Lessee hereby waives any right to terminate this Lease because of such transfer, provided neither the former owner nor the current Lessor is in breach of any provision of this Lease. Lessee shall have the ability to request and receive adequate assurances of performance by any new owner as a condition of attornment.

LESSEE: FOR AND ON BEHALF OF THE
LESSEE, an Agency of the State of Arizona

By: _____ Date: _____

Position: _____

EXHIBIT B

ESTOPPEL CERTIFICATE

The undersigned hereby certifies to you and agrees as follows:

1. The undersigned is the tenant under a lease dated January 6, 2014, for premises located at Circle I Road, Willcox, Arizona 85643 (Premises), as amended by the following amendments (the Lease):
None.
If no amendments are listed, the undersigned certifies that the Lease has not been amended.
2. The lease has not been amended, modified, supplemented or superseded (except as specifically stated above), and is in full force and effect, and together herewith constitutes the entire agreement between the undersigned Lessee and the Lessor with respect to the premises.
3. Neither the undersigned nor the Lessor is in default under the Lease, unless so noted herein.
4. Rent and other charges due under the term of the lease have been paid through _____.

LESSEE: FOR AND ON BEHALF OF THE
LESSEE, an Agency of the State of Arizona

By: _____ Date: _____

Position: _____