

7161

**THE MINUTES OF THE SPECIAL MEETING OF THE MAYOR AND  
CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, AZ  
HELD ON THIS 3<sup>rd</sup> DAY OF SEPTEMBER, 2013**

**CALL TO ORDER-** Mayor Bob Irvin called the Special Meeting meeting to order on Tuesday, September 3, 2013 at 7:00 p.m. and welcomed everyone in attendance.

**ROLL CALL-**City Clerk Virginia A. Mefford, called the roll:

**PRESENT**

Mayor Robert A. Irvin  
Vice Mayor Bill Holloway  
Councilman Gerald W. Lindsey  
Councilman Elwood A. Johnson  
Councilwoman Monika Cronberg  
Councilman Earl Goolsby  
Councilman William "Bill" Nigh

**STAFF**

City Manager Ted Soltis  
City Clerk Virginia A. Mefford  
City Attorney Ann P. Roberts  
Finance Director Ruth Graham  
Interim Police Chief Glenn Childers  
Public Services & Works Director John Bowen  
Library Director Tom Miner  
Development Services Jeff Stoddard

**PLEDGE OF ALLEGIANCE TO THE FLAG** -led by Mayor Irvin

**CALL TO THE PUBLIC-**

Alan Baker stated the city performance has been great and thanked the City for working with the Chamber.

Cory Alexander from Simflo Pumps commented on the recent pump class a few weeks ago. Simflo is a local based pump service and he would have liked to been asked to give a pump class as he has given them in the past. He was invited to attend and he did come, He noted there were non-locals there peddling their wares. He was upset with this. He did have the opportunity to hand out his information at the class. He thanked the Council for their time.

**DECLARATION ON CONFLICT OF INTEREST:** None declared

**ADOPTION OF THE AGENDA**

**MOTION:** Councilmember Johnson moved to approve the adoption of the agenda as presented.

**SECONDED:** Councilmember Cronberg      **CARRIED**

**APPROVAL OF MINUTES OF THE REGULAR MEETING OF AUGUST 19, 2013**

**MOTION:** Councilmember Johnson moved to approve Minutes of the Regular Meeting of August 19, 2013.

**SECONDED:** Councilmember Lindsey      **CARRIED**

**PROCLAMATION PRESENTATION TO CAUSE FOR PAWS COORDINATORS**

The Mayor presented the CAUSES for PAWS coordinators with a proclamation expressing gratitude for their fund raising efforts benefiting the City Animal Shelter

**PUBLIC HEARINGS**

The Mayor and Council will receive comments from the public on those items scheduled for public hearing. For those persons unable to attend, written comments will be accepted until 4 p.m. on the day of the hearing in the Office of the City Clerk, 101 S. Railroad Avenue, Suite B, Willcox, Az. and will be duplicated and distributed to the Mayor and Council members prior to said hearing.

- a. First reading, Liquor License Series #13 for Aridus Wine Company **OPEN: 7:10 pm    CLOSED: 7:11 pm**
- b. First reading, BECC Waste Water Treatment Plant Public Participation – Wilson Engineers.

**OPEN: 7:11 pm DISCUSSION:** Mr. Bowen stated this is the first of two public meetings we will have.  
The second will be held in October or early November. All the information has been displayed in the

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City Clerk's office and also at his office at Public Works. We received notice of violation in 2010 and it has evolved into a Consent Order. We have had preliminary reports that have been paid through grants. We have gone through the request of qualifications and Wilson Engineering was the one chosen. They did the Town of Sahuarita and did an excellent job. He introduced Steve Pacheco and Renata Manning from BECC, Tom Konner and Rodger Kohn from EPA Region 9, Steve Todd and David Highfield from Wilson Engineering and Dean Moulis from ADEQ/WIFA. Mr. Bowen stated we will have a short presentation from David Highfield of the Waste Water Treatment Plant from Sahuarita and Green Valley and after the presentation we will open it up for any questions.

Councilmember Lindsey stated he was under the impression from USDA and BECC that we were going to have one oxidation ditch. Mr. Bowen showed the original plan and stated it does show two. Councilmember Johnson asked about the capacity. Mr. Bowen stated it would be easy to expand for growth. Councilmember Johnson asked about the capacity for the dumping station. Mr. Highfield stated it would be sent to a holding plant and it would be reused. Councilmember Johnson asked how many people will be used to run the plant. Mr. Highfield stated it will run 24/7. Mr. Moulis stated it will take about three operators to run it seven days a week. Councilmember Lindsey asked if the new sealed manhole covers helped. Mr. Bowen stated yes they have helped. Councilmember Lindsey asked if Lake Cochise is being lined. Mr. Highfield stated it is not part of the grant project. Dean Mulletts stated due to the quality of water going into the lake it will not have to be lined. Councilmember Nigh asked about the pond Ph level. Councilmember Nigh stated it is still highly alkaline. He asked what will happen to the pond. Councilmember Lindsey stated the water out there has been that way for years. You cannot drill a well out there and find good water. Councilmember Goolsby asked about the life span expectation of the plant. Mr. Highfield stated it is part of the application process; the facility is designed for 50 years. Councilmember Johnson asked about the smell. Mr. Highfield stated that most odors is covered in the oxidation area; it doesn't smell. **CLOSED: 7:53 pm**

**APPOINTMENT OF MICHAEL J HONICKMAN TO THE LIBRARY ADVISORY COMMITTEE TO FILL THE  
VACANT TERM EXPIRING JUNE 30, 2014**

**MOTION:** Councilmember Johnson moved to approve the appointment of Michael J. Honickman to the Library Advisory Committee to fill the vacant term expiring June 30, 2014. **SECONDED:** Vice Mayor Holloway  
**DISSCUSSION:** Mr. Honickman spoke of his experience. **CARRIED**

**THE PURCHASE OF TWO (2) IN CAR VIDEO CAMERAS FOR PATROL WITH GRANT FUNDS FROM THE  
ARIZONA DEPARTMENT OF HOMELAND SECURITY (AZDHS) TOTALING \$10,000**

**MOTION:** Councilmember Johnson moved to approve the purchase of the two in car video cameras with grant funds from AZDHS for \$10,000. **SECONDED:** Councilmember Lindsey **DISCUSSION:** Interim Chief Childers stated all the cars are equipped with cameras and we applied for different equipment and all that was approved were the in-car cameras. One will replace the K-9 car's camera and the second one will be installed if another one goes down. Jessie Teeters and Mr. Lauve will install them. **CARRIED**

**RESOLUTION NO. 2013-64 REGARDING THE WRITE- OFF OF TERMINATED UTILITY ACCOUNTS THAT  
HAVE BECOME NON-COLLECTABLE.**

**MOTION:** Vice Mayor Holloway moved to approve Resolution No. 2013-64 as stated.

**SECONDED:** Councilmember Cronberg **DISCUSSION:** Councilmember Johnson asked if all avenues have been exhausted in collections. Ms. Graham stated we are in the process of developing a collection policy and we do work with a collection agency and about six to seven thousand dollars of this are from two businesses that went out of business. Councilmember Johnson stated it seems like it has risen every year. Councilmember Lindsey asked if some of these people come back for service do we charge them the past collection and if the City could charge those more for a deposit. Councilmember Johnson stated I don't know if you could attach a higher deposit. It could be considered discrimination. **AYES:** Mayor Irvin, Vice Mayor Holloway, Councilmember Lindsey, Councilmember Cronberg, Councilmember Goolsby, and Councilmember Nigh **NAYS:** Councilmember Johnson **CARRIED 6 to 1**

**THE MINUTES OF THE SPECAIL MEETING OF THE MAYOR AND  
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**RESOLUTION NO. 2013-65 REGARDING A NEW CREDIT CARD PROCESSING SERVICE**

**MOTION:** Vice Mayor Holloway moved to approve Resolution No. 2013-65 as stated.

**SECONDED:** Councilmember Goolsby **DISCUSSION:** Ms. Graham stated our biggest complaint has been about paying by credit card. With the new system it will be updated daily and customers will be able to see it the next day. When our current system was upgraded Intel pay did not update their system and the billing was not being updated correctly and customers could not see it electronically. Express Pay is the only provider we have that is capable to doing this for the City. Councilmember Johnson asked what the cost of payments is and how many pay on line. Ms. Graham stated the cost was 30 cents and about 400 pay online. Councilmember Johnson asked how many bills are sent out. Ms. Graham stated about 1700. Ms. Graham stated we are trying to increase our online participation; we are offering the ease of paying online verses coming in to pay or writing a check. Councilmember Lindsey stated it at least gives them an option. Ms. Cronberg stated going with the new access may increase activity, and I think it is a good idea. Let's call for a vote. **CARRIED**

**CITY MANAGER REPORTS**

1. Fall clean-up day is September 27, 2013 for employees and September 28, 2013 for the Community.
2. Update on Desert Inn - We have hired a contractor to do sampling for asbestos.
3. Friends of the library donated a \$15,000 to the library to purchase new computers.
4. The Federal Government gave back our check for the sale of property at the Industrial Park.
5. Update on the Code Book - Today we received a draft copy from 2006. Sterling did provide us a quote to finish up the code book that was started with them and we decided to stay with them.

**COMMENTS NOT FOR DISCUSSION FROM MAYOR AND COUNCIL MEMBERS**

Vice Mayor Holloway stated that at the League of Cities and Towns he went to a couple of sessions and one of the things he got out of it was to focus on events and people will come. Another thing was exporting to other countries.

Councilmember Lindsey stated we have lost a good man. Jimmy Norris was not only a fellow councilmember but a good friend. He also said the Fireworks were nice. He apologized for not being able to attend the AZ League of Cities and Towns because he had a dizzy spell.

Councilmember Johnson also remembered our former Councilmember.


Councilmember Nigh stated he was very proud to carry the flag for Willcox. Mayor Irvin thanked Councilmember Nigh for carrying the flag. The bike race was a success. Welcome to Ted's family to Willcox.

**ADJOURN-** with no further discussion the meeting was adjourned at 8:24 pm

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the special meeting of the City Council of the City of Willcox held on the 3<sup>rd</sup> day of September, 2013. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 3<sup>rd</sup> day of September 2013

  
City Clerk Virginia A. Mefford

**PASSED, APPROVED AND ADOPTED** this 16<sup>th</sup> day of September, 2013.

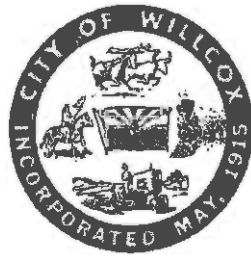
\_\_\_\_\_  
MAYOR ROBERT A IRVIN

ATTEST:

Date signed: \_\_\_\_\_

\_\_\_\_\_  
City Clerk Virginia A. Mefford





## PUBLIC HEARING NOTICE

### CITY COUNCIL

In accordance with Resolution No. 370 of the City of Willcox, and Section '38-431.01 of the Arizona Revised Statutes **NOTICE IS HEREBY GIVEN** the MAYOR AND COUNCIL of the City of Willcox, County of Cochise, Arizona, will hold a PUBLIC HEARING NOTICE during the **SPECIAL MEETING ON TUESDAY** the 16<sup>th</sup> day of SEPTEMBER 2013, at 7:00 P.M., at the CITY COUNCIL CHAMBERS, 300 W. REX ALLEN DRIVE, WILLCOX, AZ.

Items for consideration, discussion and/or decision relating to Special Meeting:

- Please see the posted Special Meeting Agenda for all items or visit [www.cityofwillcox.org](http://www.cityofwillcox.org) website.
- Public Hearings: (1) Application for liquor License Series #13 Aridus Wine Company, LLC, New License

\* Public Hearings: For those persons unable to attend, written comments will be accepted until 4 p.m. the day of the public hearing in the Office of the City Clerk, 101 S. Railroad Avenue, Suite B, Willcox, AZ 85643.

All members of the public are invited to attend such meeting.

**DATED AND POSTED this 12<sup>TH</sup> day of September 2013, at 3:00 P.M.**

**CITY OF WILLCOX, ARIZONA**

/s/Virginia A. Mefford  
City Clerk Virginia A. Mefford

Agenda\2013\09162013smtgnotice





CITY OF WILLCOX

Virginia A. Mefford

City Clerk

101 S. Railroad Avenue Suite B

Willcox, AZ 85643

M

TO: Mayor and Council

E

DATE: September 11, 2013

M

SUBJECT: Application for Liquor License

\*\*\*\*\*

O

Mayor and Council,

R

The City has been trying to economize and keep the paper cost to a minimum; I have Liquor packet available at the City Clerks office, if you would like to review it.

A

I appreciate your understanding.

N

Thank you,

Virgie Mefford  
City Clerk

D

U

M

## Arizona Department of Liquor Licenses and Control

800 West Washington, 20th Floor

(602) 542-5121

APPLY ONLINE - NO FEE  
TYPE OR PRINT WITH BLANK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers, whether involved in the day to day operations of the business, must attend a Liquor Licensing required course within the last five years. See page 6 of

**SECTION 1** This application is for a:

- ☐ MORE THAN ONE LICENSE  
☐ INTERIM PERMIT Complete Section 5  
☒ NEW LICENSE Complete Sections 2, 3, 4, 13, 14, 15, 16  
☐ PERSON TRANSFER (Bars & Liquor Stores ONLY) Complete Sections 2, 3, 4, 13, 15, 16  
☐ LOCATION TRANSFER (Bars and Liquor Stores ONLY) Complete Sections 2, 3, 4, 13, 15, 16  
☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE Complete Sections 2, 3, 4, 9, 13, 16 (fee not required)  
☐ GOVERNMENT Complete Sections 2, 3, 4, 10, 13, 15, 16

**SECTION 2** Type of ownership:

- ☒ J.T.V.R.O.S. Complete Section 6  
☐ INDIVIDUAL Complete Section 6  
☐ PARTNERSHIP Complete Section 6  
☒ CORPORATION Complete Section 7  
☒ LIMITED LIABILITY CO. Complete Section 7  
☐ CLUB Complete Section 8  
☐ GOVERNMENT Complete Section 10  
☒ TRUST Complete Section 6  
☐ OTHER (Explain)

**SECTION 3** Type of license and fees LICENSE #(s)

1. Type of License(s): SERIES 13

2. Total fees attached:

Department Use Only

**APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.**

The fees allowed under A.R.S. 44-6852 will be charged for all dishonored checks.

**SECTION 4** Applicant

1. Owner/Agent's Name: ☒ Mr. DAHMER SCOTT JEFFREY  
 (Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: ARIDUS WINE COMPANY, LLC  
 (Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: ARIDUS WINE COMPANY  
 (Exactly as it appears on the exterior of premises)
4. Principal Street Location 145 N RAILVIEW AVENUE WILLCOX COCHISE 85643  
 (Do not use PO Box Number) City County Zip
5. Business Phone: 520-766-9463 Daytime Phone: 480-488-8176 Email: scott@ariduswineco.com
6. Is the business located within the incorporated limits of the above city or town? ☒ YES ☐ NO
7. Mailing Address: 145 N RAILVIEW AVENUE, WILLCOX, AZ 85693  
 City State Zip
8. Price paid for license only bar, beer and wine, or liquor store: Type \$ Type \$

**DEPARTMENT USE ONLY**Fees: 100.00  
Application

Interim Permit

Site Inspection

Finger Prints

\$ 100.00

**TOTAL OF ALL FEES**Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? ☐ YES ☐ NOAccepted by: 

Date: 8/14/13

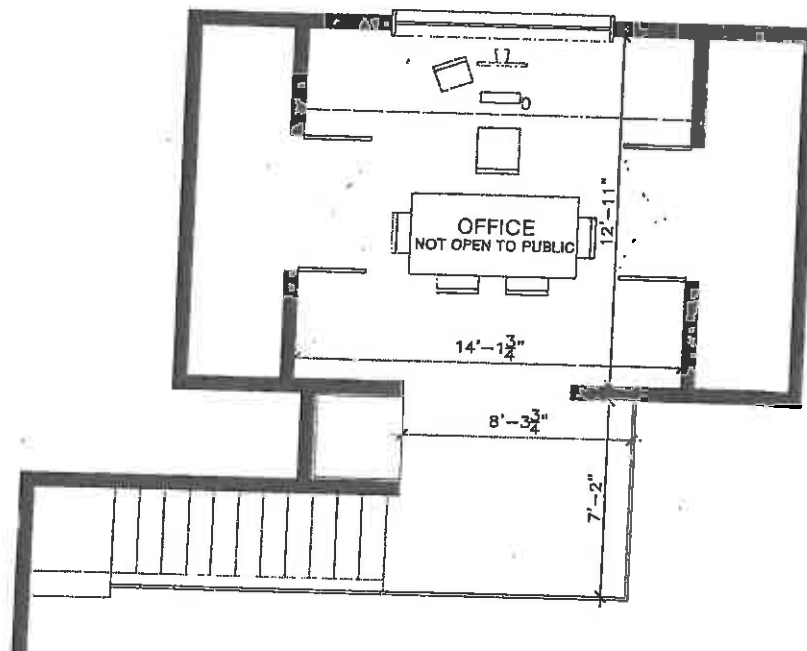
Lic. # 13023035



**SECTION 15 Diagram of Premises**

4. In this diagram please show only the area where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, bar stools, hi-top tables, dining tables, dining chairs, the kitchen, dance floor, stage, and game room. Do not include parking lots, living quarters, etc. When completing diagram, North is up ↑.

If a legible copy of a rendering or drawing of your diagram of premises is attached to this application, please write the words "diagram attached" in box provided below.



MAIN HOUSE SECOND FLOOR PLAN

**SECTION 16 Signature Block**

I, SCOTT JEFFREY DAHMER, hereby declare that I am the OWNER/AGENT filing this application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X *Scott Jeffrey Dahmer*  
(signature of applicant listed in Section 4, Question 1)

State of Arizona County of Cochise

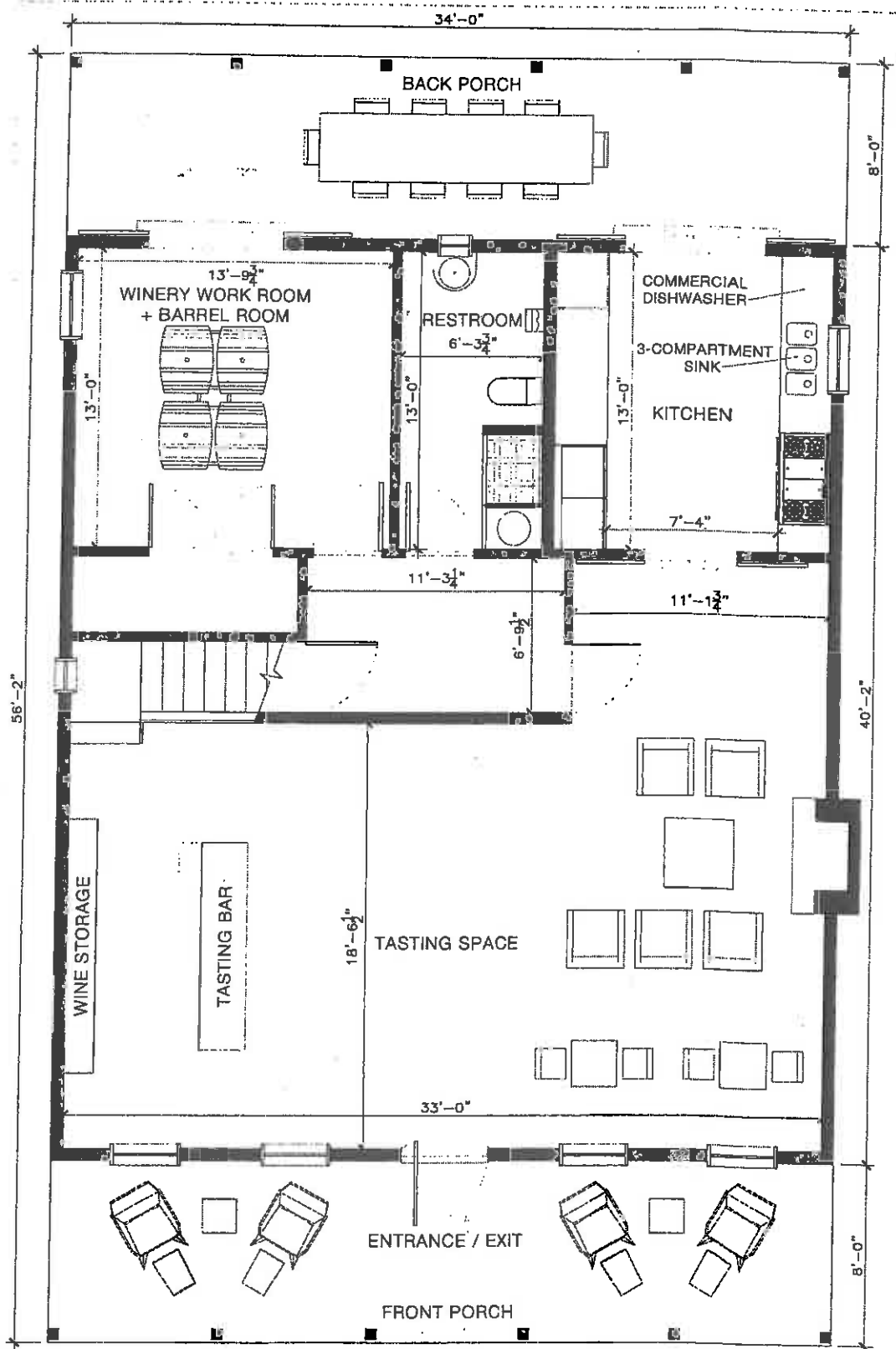
The foregoing instrument was acknowledged before me this 09 of July, 2013  
Day Month Year

*Kathryn R. Lindau*  
signature of NOTARY PUBLIC

My commission expires on: 29 May 2017  
Day Month Year



Note: BRUCE DESIGN + BUILD (BDB) expressly disclaims any responsibility from any unauthorized use of these drawings. These drawings may not be used for any purpose outside the project for which they were originally provided without written authorization from BDB. The drawings on this sheet may have been reproduced at a size different than originally drawn. Drawings are not to be scaled, and BDB assumes no responsibility for the use of incorrect scale.



13 JUL 30 11:47 AM 1005

MAIN HOUSE FIRST FLOOR PLAN  
NOT TO SCALE

**CITY OF WILLCOX  
REQUEST FOR COUNCIL ACTION**

Agenda Item: 10  
Tab Number: 4  
Date: 09-16-2013

**Date Submitted:**  
9-09-2013  
  
**Date Requested:**  
09-16-2013

**Action:**  
☐ Resolution  
☐ Ordinance  
☒ Formal  
☐ Other

**Subject:**  
Willcox Wine Country  
Special Events  
Liquor License

**TO: MAYOR AND COUNCIL**  
**FROM: Virginia Mefford**

**DISCUSSION:**

The Willcox Wine Country Committee (WWCC) will be holding their annual Wine Festival in Railroad Park October 19-20, 2013. The semi-annual festival started in the fall of 2009, and have been held each May and October since then. The festival attendance has grown with each event.

WWCC is requesting the Mayor and Council to approve applications from each of the wine vendors for a Special Events Liquor License that will be submitted to the Arizona Department of Liquor Licenses and Control for the State's approval. The applications are on file with the City Clerk and available for public inspection at City Hall. A list of the vendors that will be participating is attached for your information.

The permits will allow for wine to be served from 10:00 a.m. to 5:00 p.m. on Saturday and Sunday, October 19 and 20, 2013.

**RECOMMENDATION:**

To approve the wine vendor's applications for a Special Events License for the Willcox Country Wine Festival October 19 and 20, 2013.

**FISCAL IMPACT:** Undetermined; the event brings visitors to Willcox.

Prepared by:   
Virginia Mefford, City Clerk

Approved by:   
Ted Soltis, City Manager

# WINE FESTIVAL LIST

APPLICATION	NAME	BUSINESS NAME	CHECK	MAP	Bus. Lic.
X	Todd Bostock	Bostock Winery, Inc.	\$ 15.00	X	
X	Peggy Ann Fiandaca	Lawrence Dunham Vineyards	\$ 15.00	X	
X	Mark Bradford Cave	Arizona Stronghold Vineyards	\$ 15.00	X	
X	Charlene Rae Manning	Kief-Joshua Vineyards	\$ 15.00	X	
X	Gavin Richard Gallifant	Gallifant Cellars	\$ 15.00	X	
X	Mark Anders Jorve	Zarpara Vineyards	\$ 15.00	X	
X	Dennis M. Minchella	Kokopelli Winery	\$ 15.00	X	
X	James Hill Graham	Golden Rule Vineyards	\$ 15.00	X	
X	Samuel Wallace Pillsbury	Pillsbury Wine Co. LLC	\$ 15.00	X	
X	Jacquelyn Taylor Cook	Coronado Vineyards, Inc.	\$ 15.00	X	
X	Rodney Edward Keeling	Keeling Schaefer Vineyards, LLC	\$ 15.00	X	
X	Robert Carl Carlson	Carlson Creek Vineyard	\$ 15.00	X	
X	Barbara Jean Pierce	Pierce Wines Arizona, LLC	\$ 15.00	X	
X	John M. McLoughlin	Cellar 433	\$ 15.00	X	
X	Mark Walter Beers	Flying Leap Vineyards, Inc	\$ 15.00	X	
X	Michell David Levy	Burning Tree Cellars LLC	\$ 15.00	X	
X	Robert M. Hammelman	Sand-Reckoner Vineyards	\$ 15.00	X	

\*Each vendor will provide certificate of insurance coverage for event

\*Each vendor will provide a Business License permit

**CITY OF WILLCOX**  
**Request for Council Action**

**Agenda Item:** 11  
**Tab Number:** 5  
**Date:** 9-16-2013

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**Date Submitted:**  
September 10, 2013  
**Date Requested:**  
September 16, 2013

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**Action:**  
☐ Resolution  
☐ Ordinance  
☒ Formal  
☐ Other

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**Subject:**  
Request a waiver of  
glass containers at  
Railroad Park.

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**To:** Honorable Mayor and City Council

**From:** John Bowen, Director Public Services & Works

**Discussion:** The Willcox Chamber of Commerce is holding a Fall Wine Festival on October 19 and October 20, 2013 at Railroad Park from 10:00 am until 5:00 pm. The Chamber of Commerce is requesting permission for the use of wine glasses and glass bottles at Railroad Park.

**Recommendation:** Grant permission for the use of wine glasses and bottles for this event.

**Fiscal Impact:** \$ 0.00

Prepared By: Kate Schwartz  
Kate Schwartz, Public Services and Works

Approved By: John Bowen  
John Bowen, Public Services and Works Director

Approved By: Ted Soltis  
Ted Soltis, City Manager

**CITY OF WILLCOX, COCHISE COUNTY, ARIZONA**  
**Facilities Use Agreement**

This Agreement made this 27<sup>th</sup> day of AUGUST, 2013, between USER NAME ("PARTICIPANT") and the City of Willcox through the City Public Works Department ("CITY") for the use of the City owned facilities by a private organization.

**ARTICLE I --- TERM OF AGREEMENT:**

The term of this agreement shall be 19 October, 2013 through 20 October 2013, unless earlier terminated by either party. Notice of termination shall be provided at least ninety (90) days prior to the effective termination date.

**ARTICLE II --- CITY OWNED FACILITIES:**

This agreement shall be for the use of Railroad Park  
to be used for Fall Wine Festival  
to be used by Public

PARTICIPANT wishes to use certain City owned facilities and the CITY is willing to permit the PARTICIPANT the primary use of the facilities under the conditions indicated in this Agreement and any Exhibit attached hereto during the term of this Agreement.

CITY agrees that it will perform the duties as outlined in Attachment "A".

PARTICIPANT agrees it will perform the duties as outlined in Attachment(s) "B".

PARTICIPANT agrees to pay the fees as are listed on Attachment "C".

**ARTICLE III --- INDEMNIFICATION AND INSURANCE**

PARTICIPANT agrees to secure liability Insurance to cover the term of this agreement in not less than the amount of one million dollars (\$1,000,000) which names the City as additionally insured.

Each party agrees to be responsible for the conduct of its operations and performance of contract obligations and for any accidents or injuries to persons or property arising out of acts or omissions by its officers, agents or employees acting in the course or scope of their participation while performing duties undertaken pursuant to this Agreement.

The PARTICIPANT agrees to hold harmless the City, its officers, employees and agents from all losses, suits, damages or costs of any kind, including reasonable attorney's fees, defense costs and expenses arising from PARTICIPANT performance pursuant to this Agreement. The PARTICIPANT shall provide the CITY with current insurance certificates or the evidence of coverage as appropriate.

The CITY agrees to hold harmless the PARTICIPANT, its officers, employees and agents from all losses, suits, damages or costs of any kind, including reasonable attorney's fees, defense costs and expense arising from the CITY performance pursuant to this Agreement.

#### **ARTICLE IV -- MISC. PROVISIONS:**

##### **CANCELLATION FOR CONFLICT OF INTEREST**

This Agreement may be canceled pursuant to A.R.S. § 38-511, the pertinent provisions of which are fully incorporated herein by reference.

##### **NONASSIGNABILITY**

Neither party may assign a duty or responsibility under this Agreement without the prior written consent of the other party.

##### **RIGHTS/OBLIGATIONS OF PARTIES ONLY**

The terms of this Agreement are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall create any rights or duties in favor of any potential third party beneficiary or other person, agency or organization.

##### **NOTICE REQUIREMENTS**

All notices, requests for payment, or other correspondence between the parties regarding this Agreement shall be mailed or delivered to the respective party as follows:

If to the CITY:

City Clerk, City of Willcox  
101 S. Railroad Ave., Suite B  
Willcox Arizona 85643

If to the PARTICIPANT:

Alan Bukce, Willcox Chamber of Commerce  
1500 N Circle F Rd  
Willcox, AZ 85643

##### **SEVERABILITY**

Each provision of this Agreement stands alone and, if any provision of this Agreement is held, in whole or in part, to be unenforceable for any reason, the remainder of the provision and of the entire Agreement will be severable and remains in effect.

### ENTIRE AGREEMENT


This document constitutes the entire Agreement between the parties pertaining to the subject matter hercof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement may be modified, amended or extended only by a written amendment approved by the parties.

### GOVERNING LAW

This Agreement shall be construed under the laws of the State of Arizona and shall incorporate, by reference, all laws governing mandatory contract provisions required by statute or executive order.

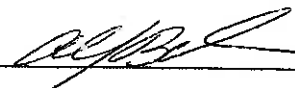
IN WITNESS WHEREOF, the Parties hereby enter into this Agreement as of the day and year written above.

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

  
\_\_\_\_\_  
8-26-13

By: Oscar Hudson Facilities & Parks Supervisor  
(Name and Title)

### PARTICIPANT

  
\_\_\_\_\_

By: Alan Becker, Executive Director  
(Name and Title)



**WILCOX CHAMBER OF COMMERCE**

& AGRICULTURE  
1500 N. CIRCLE I RD.  
WILCOX, AZ 85643  
PH. (520) 384-2272

WESTERN BANK  
330 HWY 180 WEST  
SILVER CITY, NM 88051  
95-82-1122

9/15/2013

9/3/2013

PAY TO THE  
ORDER OF

City of Willcox (2)

\$ \*\*50.00

Fifty and 00/100

DOLLARS

City of Willcox  
101 S Railroad Ave  
Willcox, AZ 85643



*[Signature]*

AUTHORIZED SIGNATURE

MEMO

Refundable Deposit for Oct Wine Festival at Railroad

**CITY OF WILLCOX**

101 S. RAILROAD AVE., SUITE B  
WILCOX AZ 85643-2136  
(520) 384-4271

87078

**RECEIPT**

RECEIVED FROM

DATE 9/3/13

*Chamber of Commerce*

\$ 50.00

DESCRIPTION

DOLLARS

*V# 11068 Wine Fest*

BY

*[Signature]*

BOOKKEEPING COPY



**CITY OF WILLCOX  
REQUEST FOR COUNCIL ACTION**

Agenda Item 12  
Tab Number 60  
Date: 9/16/2013

<u><b>Date Submitted:</b></u>	<u><b>Action:</b></u>	<u><b>Subject:</b></u>
September 12, 2013	<input type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Formal	Financial Statements and Investment Report Fiscal Year 2012-2013 (Unaudited)

TO: MAYOR AND COUNCIL  
FROM: Finance Director Ruth Graham

**Discussion:**

The following financial reports reflect the revenues and expenses of the funds managed by the City, including the General Fund, HURF (the Streets Fund), Grants, Special Revenue Grants, Debt Service, Capital Improvements, Gas, Water, Sewer and Refuse (Solid Waste), as well as the Fiduciary (or trust) funds managed by the City for the Magistrate Court and the Firemen's Pension Fund.

Hinton Burdick, the accounting firm that prepares the City's annual audit reports, performed field work for the Fiscal Year 2012-2013 audit on September 9<sup>th</sup> and 10<sup>th</sup>. The financial statements present information as prepared for the auditors. Adjustments, if any, will be presented to the Council with the audited financial reports.

The reports include:

A) The Revenues, Expenses and Fund Balances report is on a modified-accrual basis that includes adjustments for accrued year-end revenues and expenses.

The report is arranged in columns showing:

- 1) Fund Number,
- 2) Fund Name,
- 3) 7/1/12 Opening Balance,
- 4) Revenues (YTD net of transfers),
- 5) Interfund Transfers in and out,
- 6) Expenses (YTD net of transfers),
- 7) 6/30/13 fund balance, and
- 8) Change in Fund Balance (YTD) with reductions shown in parentheses.

The General Fund is showing improvement. As of June 30, 2013, the General Fund showed a fund balance increase (positive operating balance for the year) in the amount of \$95,910 for Fiscal Year 2012-2013. One year prior to that, at June 30, 2012, the use of fund balance for the Fiscal Year 2011-2012 totaled \$152,623. For FY 2010-2011, use of fund balance totaled \$207,931.

- B) An Investment Report as of June 30, 2013 is presented for the Council's information. This report is prepared on a cash basis; it reflects the actual cash transactions and cash balances, and does not include adjustments for accrued revenues and expenses.

The City has accumulated Fund Balances, or cash on hand, that is invested. The City follows the terms of the Investment Policy adopted January 20, 2009 which recites the following primary investment objectives of the City in order of priority:

- Safety
- Liquidity
- Optimal yield
- Collateralization

The City continues to participate in the Local Government Investment Pool (LGIP) Pool 700, a conservative long-term pool in which Willcox has participated since the fund's inception, and the Certificate of Deposit Registry (CDARS) program.

- C) City Sales Tax (FY13 Adjusted). This chart shows gross sales tax revenues by month for the years 2005-2013. The reference in the title to (FY12 Adjusted) reflects a smoothing of revenues received in August 2011 when the City received a one-time payment of \$150,000 from a single taxpayer. The Total column on the right includes the year to date revenues as well as the budgeted revenues for the year. The % Budget line for FY12 represents actual revenues divided by budgeted revenues. The Average % Received line analyzes where we would expect to be at this time of year based on past years' receipts. The Budgeted Distribution block shows the distribution of the City Sales Tax Revenues. Bed tax revenues are included in the gross transaction privilege tax receipts; after allocation of the bed tax, 2% of the revenues are allocated to General Fund, and 1% to Streets.

The chart reflects that City sales tax receipts for FY12 total \$2,360,018. That is an increase of about 3% from FY12.

Submitted by:

  
Ruth Graham, Finance Director

Approved:

  
Ted Soltis, City Manager

**City of Willcox Fiscal Year 2012-2013**  
**Revenues, Expenses and Fund Balances at June 30, 2013 (100% of fiscal year has elapsed)**  
**Modified Accrual Basis**

Fund No.	Fund Name	7/1/12 Opening Bal.	Revenues	Inter-fund Transfers In	Inter-fund Transfers Out	Expenses	6/30/13 Ending Balance	FY13 YTD Fund Bal. Change
10-53	Operating Funds:							
10	General Fund	\$ 1,753,527	\$ 3,079,156	\$ 569,189	C \$ 15,000	\$ 3,706,646	\$ 1,849,437	\$ 95,910
		\$	\$ 173,075	\$ *	F \$ 9,802			
		\$	\$ 16,500	\$ **	H \$ 7,062			
15	HURF	\$ 327,256	\$ 1,103,529		K \$ 3,500			
16	Grants	\$ -	\$ 286,377	\$ 1,956	B \$ 1,956	\$ 957,592	\$ 471,237	\$ 143,981
17	Special Rev Grants	\$ 70,422	\$ 50,070	\$ 15,000	C \$ 15,000	\$ 273,612	\$ 14,721	\$ 14,721
20	Debt Service	\$ 164,611	\$ 151,907	\$ 3,500	C \$ 3,500	\$ 65,839	\$ 73,153	\$ 2,731
21	Capital Improv	\$ 38,160	\$ 42	\$ 5,500	E \$ 5,500	\$ 154,579	\$ 161,939	\$ (2,672)
22	Repair & Demolition	\$ -	\$ -	\$ 9,802	F \$ 9,802	\$ 10,021	\$ 37,983	\$ (177)
		\$	\$	\$ 18,998	G \$ 18,998	\$ 7,062	\$ -	\$ -
50	Gas - Operating	\$ 1,018,190	\$ 837,997		H \$ 7,062	\$ 571,747	\$ 1,093,709	\$ 75,519
51	Water (see Note L)	\$ 1,533,528	\$ 619,755		A \$ 190,731	\$ 617,200	\$ 1,402,319	\$ (131,209)
52	Sewer Capital Capital	\$ 962,624	\$ 713,327		A \$ 127,361	\$ 514,518	\$ 990,119	\$ 27,495
53	Refuse Due to GF \$59,280	\$ 10,855	\$ 666,970		I \$ 43,953	\$ 108,830		
					J \$ 108,830	\$ 495,773	\$ 59,219	\$ 48,364
	<b>Total Operating</b>	<b>\$ 5,879,172</b>	<b>\$ 7,807,535</b>	<b>\$ 631,007</b>	<b>\$ 631,007</b>	<b>\$ 7,532,872</b>	<b>\$ 6,153,835</b>	<b>\$ 274,663</b>
61-72	Fiduciary Funds:							
61	Magistrate Court Trust Fund	\$ 1,407	\$ 11,867			\$ 11,867	\$ 1,407	\$ -
72	Firemen's Pension Trust Fund	\$ 228,041	\$ 7,896			\$ 1,600	\$ 234,337	\$ 6,296
	<b>Total All Funds</b>	<b>\$ 6,108,621</b>	<b>\$ 7,827,298</b>	<b>\$ 631,007</b>	<b>\$ 631,007</b>	<b>\$ 7,546,339</b>	<b>\$ 6,389,580</b>	<b>\$ 280,959</b>

See attached Exhibit A for explanations.

City of Willcox Fiscal Year 2012-2013  
Revenues, Expenses and Fund Balances at March 31, 2013 (75% of fiscal year has elapsed)  
Modified Accrual Basis

Exhibit A  
Explanation of Inter-fund Transfers

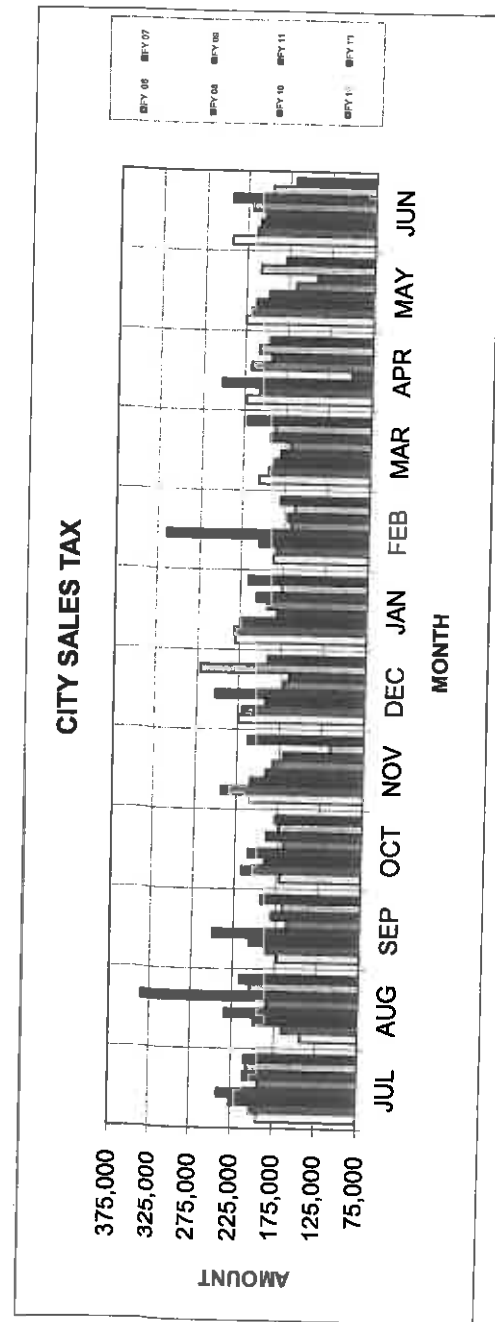
	From	To/About
* General Fund revenues include one-time revenue of \$173,075.35 as proceeds from the sale of the 1510 N Circle I Rd property.	\$ 173,075	
** General Fund revenues include one-time downpayment revenue of \$16,500 as a downpayment on the sale of the Industrial Park property.	\$ 16,500	
A The Utilities transfer funds to the General Fund to pay the costs of administration, billing, customer service and support. The transfers are budgeted and payments are made monthly.	Utilities	General Fund
	Gas \$ 143,048	
	Water \$ 96,198	
	Sewer \$ 95,521	
	Refuse (Trash) \$ 92,125	
	General Fund	\$ 426,892
B Work on the Fort Grant Beautification project is nearly complete. This transfer represents a portion of costs incurred not covered by grant revenues.	Streets \$ 1,671	Grants \$ 1,671
C On 11/5/12, the City Council authorized funding in the form of a grant match for funds raised by the Willcox Historic Theater of up to \$15,000. The WHT group has raised \$15,000 and the funds have been matched.	General Fund \$ 15,000	Fund 17 Sp. Rev. \$ 15,000
D Debt Service Fund expense reflects that principal payments are due on the Greater Arizona Development Authority (GADA) 2004 and 2007 voter-approved bonds used to build the Public Safety Complex and to fund Library improvements are due on July 1st of each year, together with a bi-annual interest payment. The debt service is funded by Secondary Property Taxes that are received throughout the year.	Debt Serv	Fund 20 Informational Note.
E The Water Fund carries a 1974 Bond that is a General Obligation Debt of the City under Fund 20. The Water Fund reimburses the Debt Service fund.	Water \$ 5,500	Debt Serv \$ 4,088
F Funds transferred to Capital Projects for the Food Pantry building renovation.	General Fund \$ 9,802	Capital Imprvmnts \$ 9,802
G The Capital Improvements Fund has incurred expenses for the Library Facility Reimbursement of \$14,967 from the USDA Library Grant has been received.	\$18,998	Informational Note.
H The Repair & Demolition Fund has incurred expenses for fencing at the South Haskell fire site. The General Fund has been charged for the expense.	General Fund \$ 5,398	Repair & Demo \$ 5,398
I Capital expenses have been incurred for Railroad Avenue Sewer lift station improvements.	Capital Imprvmnts \$ -	Fund 21 Informational Note.
J FY13 Sewer engineering fees paid from WIFA loan proceeds. To date since loan inception \$339,185 has been borrowed from the \$1 million WIFA line of credit.	Sewer \$ 108,830	Fund 52 Informational Note.
K Fireworks contribution from General Fund	\$ 3,500	
L The FY13 Water Utility Rates included a a planned use of Fund Balance.		

# **FY 2012-2013 REVENUE ANALYSIS, 9 YEAR COMPARISON** **CITY SALES TAX**

	JUL 1	AUG 2	SEP 3	OCT 4	NOV 5	DEC 6	JAN 7	FEB 8	MAR 9	APR 10	MAY 11	JUN 12	TOTAL
FY 05	168,013	183,504	154,754	154,469	160,110	141,338	154,907	152,582	110,850	178,844	150,068	161,654	\$ 1,871,093
% ACTUAL	9%	19%	27%	35%	44%	51%	60%	68%	74%	83%	91%	100%	
FY 06	193,896	143,339	173,142	171,901	208,794	224,179	230,275	186,889	205,698	222,916	225,015	243,549	\$ 2,429,593
% ACTUAL	8%	14%	21%	28%	37%	46%	55%	63%	72%	81%	90%	100%	
FY 07	202,743	165,765	186,262	216,547	242,925	219,633	231,558	183,483	194,169	206,918	218,263	213,479	\$ 2,481,745
% ACTUAL	8%	15%	22%	31%	41%	50%	59%	66%	74%	83%	91%	100%	
FY 08	226,135	199,426	206,086	190,555	209,137	193,394	224,737	203,483	188,181	252,298	213,351	209,987	\$ 2,516,769
% ACTUAL	9%	17%	25%	33%	41%	49%	58%	66%	73%	83%	92%	100%	
FY 09	241,222	233,929	249,889	209,366	191,160	252,520	181,257	313,856	180,737	98,680	198,186	203,912	\$ 2,554,713
% ACTUAL	9%	19%	28%	37%	44%	54%	61%	73%	80%	84%	92%	100%	
FY 10	193,688	184,506	162,446	168,042	182,805	171,565	193,292	166,484	169,312	217,453	166,070	219,163	\$ 2,194,826
% ACTUAL	9%	17%	25%	32%	41%	48%	57%	65%	73%	82%	90%	100%	
FY 11	210,485	336,293	180,741	188,681	170,387	165,299	205,760	170,540	192,588	193,598	140,665	243,983	\$ 2,399,019
% ACTUAL	9%	23%	30%	38%	45%	52%	61%	68%	76%	84%	90%	100%	See note below
FY 12	206,815	204,379	167,071	173,708	114,454	271,942	175,746	161,979	187,513	208,225	209,202	195,304	\$ 2,276,339
% BUDGET	9%	18%	33%	33%	38%	50%	58%	65%	73%	82%	91%	100%	
FY 13	209,169	216,378	192,991	178,413	212,379	191,505	215,912	179,662	221,333	196,177	178,096	168,004	\$ 2,360,018
% BUDGET	9%	18%	26%	33%	42%	50%	58%	66%	75%	83%	91%	97%	\$ 2,422,104
AVG % RECVD	9%	18%	26%	33%	41%	50%	59%	67%	75%	83%	91%	100%	

	Budgeted	YTD Rec'd:
Fund 10: General		
City Sales 2%		
10-31-10000	\$ 1,516,845	\$ 1,476,522
Bed Tax		
10-31-50000	\$ 160,000	\$ 145,235
Fund 15: Streets		
15-39-71100	\$ 745,259	\$ 738,261
Over(Under)	\$ 2,422,104	\$ 2,360,018
Budget	\$ 62,086	

**NOTE: August 2010 includes collection of prior year taxes in the amount of \$146,093**







CITY OF WILLCOX  
REVENUES & EXPENDITURES COMPARED TO BUDGET  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEARNED/ UNEXPENDED	PCNT
<b><u>TAXES</u></b>					
10-31-10000 CITY SALES TAX-2%	1,476,522.17	1,476,522.17	1,516,845.00	40,322.83	97.3
10-31-30000 PRIMARY TAX LEVY	69,983.08	69,983.08	72,444.00	2,460.92	96.6
10-31-40000 LAW AGENCY TAX	1,631.78	1,631.78	300.00	( 1,331.78)	543.9
10-31-50000 ROOM OCCUPANCY TAX	145,234.89	145,234.89	160,000.00	14,765.11	90.8
<b>TOTAL TAXES</b>	<b>1,693,371.92</b>	<b>1,693,371.92</b>	<b>1,749,589.00</b>	<b>56,217.08</b>	<b>96.8</b>
<b><u>LICENSES &amp; PERMITS</u></b>					
10-32-10000 ELECTRICAL SERVICE FRANCHISE	134,851.74	134,851.74	110,000.00	( 24,851.74)	122.6
10-32-20000 CABLE TV FRANCHISE	23,555.89	23,555.89	6,000.00	( 17,555.89)	392.6
10-32-30000 LIQUOR LICENSE	1,950.00	1,950.00	3,000.00	1,050.00	65.0
10-32-35000 CITY UTILITY LICENSE	106,860.92	106,860.92	131,137.00	24,276.08	81.5
10-32-40000 REFUSE HAULER LICENSE	15,152.01	15,152.01	16,000.00	847.99	94.7
10-32-50000 DOG LICENSE	420.00	420.00	100.00	( 320.00)	420.0
10-32-60000 BUILDING PERMIT	80,795.92	80,795.92	40,000.00	( 40,795.92)	202.0
10-32-80000 BUSINESS LICENSE	6,816.00	6,816.00	5,000.00	( 1,816.00)	136.3
<b>TOTAL LICENSES &amp; PERMITS</b>	<b>370,402.48</b>	<b>370,402.48</b>	<b>311,237.00</b>	<b>( 59,165.48)</b>	<b>119.0</b>
<b><u>INTERGOVERNMENTAL</u></b>					
10-33-10000 STATE SALES TAX	307,517.42	307,517.42	298,453.00	( 9,064.42)	103.0
10-33-20000 AUTO LIEU TAX	163,730.09	163,730.09	150,000.00	( 13,730.09)	109.2
10-33-30000 STATE REVENUE SHARING	383,769.48	383,769.48	383,735.00	( 34.48)	100.0
<b>TOTAL INTERGOVERNMENTAL</b>	<b>855,016.99</b>	<b>855,016.99</b>	<b>832,188.00</b>	<b>( 22,828.99)</b>	<b>102.7</b>
<b><u>APPROPRIATIONS</u></b>					
10-37-50000 FUND BALANCE APPROPRIATIONS	.00	.00	937,520.00	937,520.00	.0
<b>TOTAL APPROPRIATIONS</b>	<b>.00</b>	<b>.00</b>	<b>937,520.00</b>	<b>937,520.00</b>	<b>.0</b>
<b><u>NON-OPERATING</u></b>					
10-38-75200 CHARGES FROM GAS	190,731.00	190,731.00	190,731.00	.00	100.0
10-38-75300 CHARGES FROM WATER	128,264.00	128,264.00	128,264.00	.00	100.0
10-38-75400 CHARGES FROM SEWER	127,361.00	127,361.00	127,361.00	.00	100.0
10-38-75500 CHARGES FROM SOLID WASTE	122,833.00	122,833.00	122,833.00	.00	100.0
<b>TOTAL NON-OPERATING</b>	<b>569,189.00</b>	<b>569,189.00</b>	<b>569,189.00</b>	<b>.00</b>	<b>100.0</b>

CITY OF WILLCOX  
REVENUES & EXPENDITURES COMPARED TO BUDGET  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

		GENERAL FUND			UNEARNED/ UNEXPENDED	PCNT
		PERIOD ACTUAL	YTD ACTUAL	BUDGET		
<u>OTHER</u>						
10-39-20100	COURT FINES	3,096.02	3,096.02	1,000.00	( 2,096.02)	309.6
10-39-20200	LIBRARY FINES, FORFEITS	6,217.07	6,217.07	5,000.00	( 1,217.07)	124.3
10-39-30000	CEMETERY	23,579.51	23,579.51	18,000.00	( 5,579.51)	131.0
10-39-40000	REIMBURSEMENT FOR SERVICES	50,066.04	50,066.04	37,018.00	( 13,048.04)	135.3
10-39-40500	QUAIL PARK REVENUE	1,125.00	1,125.00	.00	( 1,125.00)	.0
10-39-60200	RENT - COMMUNITY CENTER	3,748.88	3,748.88	.00	( 3,748.88)	.0
10-39-60300	UTILITY REIMB-CITY FACILITIES	4,152.04	4,152.04	23,600.00	19,447.96	17.6
10-39-90100	INTEREST INCOME	7,709.09	7,709.09	20,000.00	12,290.91	38.6
10-39-90200	SWIMMING POOL	9,753.45	9,753.45	13,000.00	3,246.55	75.0
10-39-90300	HUMANE IMPOUND FEES	2,205.00	2,205.00	1,200.00	( 1,005.00)	183.8
10-39-90500	ALARM FEE	10.00	10.00	.00	( 10.00)	.0
10-39-90600	RAILROAD VIDEO REVENUE	53.82	53.82	.00	( 53.82)	.0
10-39-90800	PUBLIC RECORDS REQUEST REVENUE	576.87	576.87	.00	( 576.87)	.0
10-39-91100	SALE OF CITY OWNED ASSETS	189,575.50	189,575.50	.00	( 189,575.50)	.0
10-39-91700	COUNTY HUMANE CONTRIBUTION	28,668.94	28,668.94	28,669.00	.06	100.0
10-39-96000	SOLID WASTE LOAN REPAYMENT	.00	.00	35,799.00	35,799.00	.0
10-39-99900	MISCELLANEOUS RECEIPTS	19,402.19	19,402.19	40,200.00	20,797.81	48.3
TOTAL OTHER		349,939.42	349,939.42	223,486.00	( 126,453.42)	156.6
TOTAL FUND REVENUE		3,837,919.81	3,837,919.81	4,623,209.00	785,289.19	83.0

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

GENERAL FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
TAXES	1,749,589	1,693,372	1,693,372	96.8
LICENSES & PERMITS	311,237	370,402	370,402	119.0
INTERGOVERNMENTAL	832,188	855,017	855,017	102.7
APPROPRIATIONS	937,520	0	0	.0
NON-OPERATING	569,189	569,189	569,189	100.0
OTHER	223,486	349,939	349,939	156.6
	<u>4,623,209</u>	<u>3,837,920</u>	<u>3,837,920</u>	<u>83.0</u>
<u>EXPENDITURES</u>				
ADMINISTRATION	361,533	310,072	310,072	85.8
MAYOR & COUNCIL	32,085	31,236	31,236	97.4
COMMUNITY PROGRAM	202,000	117,711	117,711	58.3
PUBLIC SAFETY ADMIN	355,119	324,545	324,545	91.4
COMMUNICATIONS	300,157	270,095	270,095	90.0
HUMANE	97,356	78,028	78,028	80.2
PATROL	692,048	665,165	665,165	96.1
INVESTIGATIONS	168,928	86,938	86,938	51.5
FIRE DEPARTMENT	82,921	62,344	62,344	75.2
K-9 PATROL	25,261	25,248	25,248	100.0
FINANCE	334,229	304,068	304,068	91.0
LEGAL & COURTS	198,436	185,908	185,908	93.7
LIBRARY	292,498	221,168	221,168	75.6
SWIMMING POOL	146,005	122,543	122,543	83.9
PUBLIC WORKS ADMIN	195,123	166,816	166,816	85.5
CEMETERY	47,620	41,221	41,221	86.6
VEHICLE MAINTENANCE	111,809	103,129	103,129	92.2
BUILDINGS AND GROUN	150,502	117,490	117,490	78.1
DEVELOPMENT SERVIC	164,445	120,371	120,371	73.2
PARKS AND RECREATIO	421,734	348,961	348,961	82.7
GOLF COURSE	0	3,589	3,589	.0
TRANSFERS	243,400	35,364	35,364	14.5
	<u>4,623,209</u>	<u>3,742,010</u>	<u>3,742,010</u>	<u>80.9</u>
	<u>0</u>	<u>95,910</u>	<u>95,910</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

HIGHWAY USERS FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
INTERGOVERNMENTAL	239,091	238,916	238,916	99.9
TRANSFERS/FINANCING	63,328	0	0	.0
OTHER REVENUES	746,259	864,613	864,613	115.9
	<u>1,048,678</u>	<u>1,103,529</u>	<u>1,103,529</u>	<u>105.2</u>
<u>EXPENDITURES</u>				
PERSONNEL	338,455	230,295	230,295	68.0
OPERATING EXPENSES	347,469	288,973	288,973	83.2
TRANSFERS/FINANCING	322,754	315,388	315,388	97.7
CAPITAL OUTLAY	40,000	124,891	124,891	312.2
	<u>1,048,678</u>	<u>959,548</u>	<u>959,548</u>	<u>91.5</u>
	<u>0</u>	<u>143,981</u>	<u>143,981</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

SPECIAL REVENUE GRANTS

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
GRANT REVENUE	1,147,023	286,378	286,378	25.0
NON-OPERATING	10,321	1,956	1,956	19.0
	<u>1,157,344</u>	<u>288,333</u>	<u>288,333</u>	<u>24.9</u>
<u>EXPENDITURES</u>				
RESERVE FUND	1,157,344	273,612	273,612	23.6
	<u>1,157,344</u>	<u>273,612</u>	<u>273,612</u>	<u>23.6</u>
	<u>0</u>	<u>14,721</u>	<u>14,721</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

SPECIAL REVENUE FUNDS

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<hr/>				
REVENUE				
<hr/>				
CONTRIBUTIONS	58,970	49,442	49,442	83.8
TRANSFERS/FINANCING	126,160	18,500	18,500	14.7
OTHER REVENUES	600	628	628	104.7
	<hr/>			
	185,730	68,570	68,570	36.9
	<hr/>			
EXPENDITURES				
<hr/>				
EXPENDITURES	185,730	65,840	65,840	35.5
	<hr/>			
	185,730	65,840	65,840	35.5
	<hr/>			
	0	2,731	2,731	.0
	<hr/>			

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

DEBT SERVICE FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
TAXES	157,300	151,907	151,907	96.6
NON-OPERATING	5,700	5,500	5,500	96.5
	<u>163,000</u>	<u>157,407</u>	<u>157,407</u>	<u>96.6</u>
<u>EXPENDITURES</u>				
DEBT SERVICE	163,000	160,079	160,079	98.2
	<u>163,000</u>	<u>160,079</u>	<u>160,079</u>	<u>98.2</u>
	<u>0</u>	<u>2,673-</u>	<u>2,673-</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

CAPITAL IMPROVEMENTS

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
RESERVE PROJECTS	0	18,998	18,998	.0
TRANSFERS IN	121,900	9,802	9,802	8.0
REVENUE	43,000	42	42	.1
	<u>164,900</u>	<u>28,842</u>	<u>28,842</u>	<u>17.5</u>
<u>EXPENDITURES</u>				
EXPENSES	164,900	29,019	29,019	17.6
	<u>164,900</u>	<u>29,019</u>	<u>29,019</u>	<u>17.6</u>
	<u>0</u>	<u>177-</u>	<u>177-</u>	<u>.0</u>



CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

REPAIR AND DEMOLITION FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
TRANSFERS IN	100,000	7,062	7,062	7.1
	100,000	7,062	7,062	7.1
<u>EXPENDITURES</u>				
EXPENSES	100,000	7,062	7,062	7.1
	100,000	7,062	7,062	7.1
	0	0	0	.0

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

GAS FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
OPERATING	1,262,938	808,204	808,204	64.0
OTHER	31,235	29,794	29,794	95.4
APPROPRIATIONS	90,511	0	0	.0
	<u>1,384,684</u>	<u>837,997</u>	<u>837,997</u>	<u>60.5</u>
<u>EXPENDITURES</u>				
COST OF GOODS SOLD	700,000	309,190	309,190	44.2
PERSONNEL	154,975	92,535	92,535	59.7
OPERATING EXPENSES	148,641	129,220	129,220	86.9
TRANSFERS	190,731	190,731	190,731	100.0
LICENSE FEES	61,637	39,964	39,964	64.8
CAPITAL OUTLAY	128,700	839	839	.7
	<u>1,384,684</u>	<u>762,478</u>	<u>762,478</u>	<u>55.1</u>
	<u>0</u>	<u>75,519</u>	<u>75,519</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

WATER FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
OPERATING	761,774	628,013	628,013	82.4
OTHER	16,315	8,257-	8,257-	( 50.6)
APPROPRIATIONS	16,085	0	0	.0
	<u>794,174</u>	<u>619,755</u>	<u>619,755</u>	<u>78.0</u>
<u>EXPENDITURES</u>				
PERSONNEL	202,680	217,496	217,496	107.3
OPERATING EXPENSES	185,939	301,349	301,349	162.1
TRANSFERS/FINANCING	192,522	169,741	169,741	88.2
LICENSE FEES	33,025	30,940	30,940	93.7
CAPITAL OUTLAY	180,008	31,439	31,439	17.5
	<u>794,174</u>	<u>750,965</u>	<u>750,965</u>	<u>94.6</u>
	<u>0</u>	<u>131,209-</u>	<u>131,209-</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

SEWER FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
OPERATING	747,368	719,876	719,876	96.3
OTHER	8,123	6,548-	6,548-	( 80.6)
FINANCING	12,000,000	0	0	.0
APPROPRIATIONS	77,607	0	0	.0
	<u>12,833,098</u>	<u>713,327</u>	<u>713,327</u>	<u>5.6</u>
<u>EXPENDITURES</u>				
PERSONNEL	162,509	159,330	159,330	98.0
OPERATING EXPENSES	282,781	330,353	330,353	116.8
TRANSFERS/FINANCING	199,433	158,799	158,799	79.6
LICENSE FEES	36,475	35,957	35,957	98.6
CAPITAL OUTLAY	12,151,900	1,394	1,394	.0
	<u>12,833,098</u>	<u>685,832</u>	<u>685,832</u>	<u>5.3</u>
	<u>0</u>	<u>27,495</u>	<u>27,495</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

REFUSE FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
OPERATING	668,654	666,970	666,970	99.8
OTHER	827	0	0	.0
	<u>669,481</u>	<u>666,970</u>	<u>666,970</u>	<u>99.6</u>
<u>EXPENDITURES</u>				
OPERATING EXPENSES	669,481	618,606	618,606	92.4
	<u>669,481</u>	<u>618,606</u>	<u>618,606</u>	<u>92.4</u>
	<u>0</u>	<u>48,364</u>	<u>48,364</u>	<u>.0</u>

CITY OF WILLCOX  
FINANCIAL SUMMARY BY FUND  
FOR THE 12 MONTHS ENDING JUNE 30, 2013

MAGISTRATE COURT

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
REVENUES	9,370	11,867	11,867	126.7
	9,370	11,867	11,867	126.7
<u>EXPENDITURES</u>				
EXPENSES	9,370	11,867	11,867	126.7
	9,370	11,867	11,867	126.7
	0	0	0	.0

FIREMEN PENSION FUND

	BUDGET	PERIOD ACTUA	YTD ACTUAL	PCNT
<u>REVENUE</u>				
INTERGOVERNMENTAL	5,000	5,388	5,388	107.8
OTHER	2,050	2,508	2,508	122.4
	7,050	7,896	7,896	112.0
<u>EXPENDITURES</u>				
PENSION TRUST FUND	7,050	1,600	1,600	22.7
	7,050	1,600	1,600	22.7
	0	6,296	6,296	.0

**City of Willcox**

**Fiscal Year 2012-2013**

**Investment Report as of June 30, 2013**

**Cash Basis**

Investment Account	Opening Cash Balance 7/1/2012	Cash In @ 6/30/2013	Accrued	Cash Out @ 6/30/2013	Ending Balance 6/30/2013	Change in Ending Balance
<b>Governmental &amp; Enterprise Funds</b>						
Combined Savings	\$ 441,840	\$ 5,861,333	\$ -	\$ 5,971,200	\$ 331,972	\$ (109,867)
Local Govt Investment Pool (LGIP)	\$ 4,873,270	\$ 859,235	\$ -	\$ 354,677	\$ 5,377,828	\$ 504,558
CDARS	\$ 509,851	\$ 27,207	\$ -	\$ 25,531	\$ 511,528	\$ 1,676
Petty cash & other	\$ 1,370	\$ 323	\$ -	\$ 322	\$ 1,371	\$ 0
Savings-Golf Course	\$ 10,391	\$ 10	\$ -	\$ 10,401	\$ -	\$ (10,391)
Police Bond Fund Checking	\$ 42,450	\$ 42	\$ -	\$ -	\$ 42,492	\$ 42
<b>Total Governmental &amp; Enterprise</b>	<b>\$ 5,879,172</b>	<b>\$ 6,748,150</b>	<b>\$ -</b>	<b>\$ 6,362,131</b>	<b>\$ 6,265,191</b>	<b>\$ 386,019</b>
<b>Agency Fund - Magistrate Court</b>						
Combined Savings	\$ (1,866)	\$ 3,889	\$ -	\$ 3,788	\$ (1,764)	\$ 101
Checking-Magistrate	\$ 3,273	\$ 11,867	\$ -	\$ 12,076	\$ 3,063	\$ (209)
<b>Total Agency-Magistrate Court</b>	<b>\$ 1,407</b>	<b>\$ 15,756</b>	<b>\$ -</b>	<b>\$ 15,864</b>	<b>\$ 1,299</b>	<b>\$ (108)</b>
<b>Agency Fund - Fireman's Fund</b>						
Combined Savings	\$ (230)	\$ 8,354	\$ -	\$ 1,200	\$ 6,924	\$ 7,154
Local Govt Investment Pool (LGIP)	\$ 218,896	\$ 4,669	\$ -	\$ 4,003	\$ 219,562	\$ 666
Firemen's Fund Savings	\$ 5,343	\$ 2,508	\$ -	\$ -	\$ 7,851	\$ 2,508
<b>Total Agency-Fireman's Fund</b>	<b>\$ 224,009</b>	<b>\$ 15,531</b>	<b>\$ -</b>	<b>\$ 5,203</b>	<b>\$ 234,337</b>	<b>\$ 10,328</b>
<b>Total Cash</b>	<b>\$ 6,104,589</b>	<b>\$ 6,779,437</b>	<b>\$ -</b>	<b>\$ 6,383,199</b>	<b>\$ 6,500,827</b>	<b>\$ 396,238</b>
A	Allocations (shown to right) for FY13	Allocations=====>	FY2012 %	FY2013 %	Change	
	changes in relative fund balances.	GF	36%	32%	-4%	
B	Firefighters contributions	HURF	5%	6%	1%	
	and City match	Gas	19%	18%	-1%	
		Water	26%	27%	1%	
		Sewer	14%	17%	3%	
			100%	100%	0%	





**City of Willcox**

**Fiscal Year 2012-2013**

**Investment Report as of June 30, 2013**

**Cash Basis**

Fund Number	Fund Investment Account	Opening		Cash In		Cash Out	Ending		Change in
		Cash Balance	7/1/2012	6/30/2013	Accrued	6/30/2013	Balance	6/30/2013	Ending Balance
51	Water-Utility								
	Combined Savings	\$	134,300	\$	534,416	772,444	\$	(103,728)	\$ (238,028)
	Local Govt Investment Pool (LGIP)	\$	1,266,671	\$	213,775	31,164	\$	1,449,282	\$ 182,611
	CDARS	\$	132,556	\$	5,556	-	\$	138,112	\$ 5,556
	Sub-Total: Water Utility	\$	1,533,528	\$	753,747	-	\$	1,483,667	\$ (49,861)
52	Sewer-Utility								
	Combined Savings	\$	209,493	\$	780,897	982,564	\$	7,826	\$ (201,667)
	Local Govt Investment Pool (LGIP)	\$	681,754	\$	245,175	16,482	\$	910,447	\$ 228,693
	CDARS	\$	71,377	\$	15,583	-	\$	86,960	\$ 15,583
	Sub-Total: Sewer Utility	\$	962,624	\$	1,041,655	-	\$	1,005,233	\$ 42,609
53	Refuse/Solid Waste								
	Combined Savings	\$	1,000	\$	559,328	536,468	\$	23,860	\$ 22,860
	Local Govt Investment Pool (LGIP)	\$	9,855	\$	4,743	-	\$	14,598	\$ 4,743
	Sub-Total: Refuse/Solid Waste	\$	10,855	\$	564,072	-	\$	38,458	\$ 27,603
	Total Investments	\$	5,879,172	\$	6,748,150	-	\$	6,265,191	\$ 386,019
61	Magistrate Court								
	Combined Savings	\$	(1,866)	\$	3,889	3,788	\$	(1,764)	\$ 101
	Checking-Magistrate	\$	3,273	\$	11,867	12,076	\$	3,063	\$ (209)
	Total Agency Fund - Magistrate Court	\$	1,407	\$	15,756	-	\$	1,299	\$ (108)
	Agency Fund - Fireman's Fund								
72	Combined Savings	\$	(230)	\$	8,354	1,200	\$	6,924	\$ 7,154
	Local Govt Investment Pool (LGIP)	\$	218,896	\$	4,669	4,003	\$	219,562	\$ 666
	Firemen's Fund Savings	\$	5,343	\$	2,508	-	\$	7,851	\$ 2,508
	Total Agency - Fireman's Fund	\$	224,009	\$	15,531	-	\$	234,337	\$ 10,328

**City of Willcox**

**Fiscal Year 2012-2013**

**Investment Report as of June 30, 2013**

**Cash Basis**

<b>Fund Number</b>	<b>Fund Investment Account</b>	<b>Opening Cash Balance 7/1/2012</b>	<b>Cash In 6/30/2013</b>	<b>Accrued</b>	<b>Cash Out 6/30/2013</b>	<b>Ending Balance 6/30/2013</b>	<b>Change in Ending Balance</b>
10	<b>General Fund</b>						
	Combined Savings	\$ (176,581)	\$ 1,926,823		1,682,937	\$ 67,305	\$ 243,886
	Local Govt Investment Pool (LGIP)	\$ 1,745,179	\$ 199,485		233,417	\$ 1,711,248	\$ (33,932)
	CDARS	\$ 183,558	\$ 561		20,430	\$ 163,689	\$ (19,870)
	Petty cash & other	\$ 1,370	\$ 323		322	\$ 1,371	\$ 0
	Sub-Total: General Fund	\$ 1,753,527	\$ 2,127,191	\$ -	1,937,106	\$ 1,943,612	\$ 190,085
15	<b>HURF</b>						
	Combined Savings	\$ 57,714	\$ 658,933		602,618	\$ 114,030	\$ 56,316
	Local Govt Investment Pool (LGIP)	\$ 244,051	\$ 86,984		5,759	\$ 325,276	\$ 81,225
	CDARS	\$ 25,492	\$ 5,200		-	\$ 30,692	\$ 5,200
	Sub-Total: HURF	\$ 327,256	\$ 751,117	\$ -	608,376	\$ 469,997	\$ 142,741
16 & 17	<b>Grants Special Revenue</b>						
	Combined Savings	\$ 60,031	\$ 363,922		333,119	\$ 90,835	\$ 30,803
	Savings-Golf Course	\$ 10,391	\$ 10		10,401	\$ -	\$ (10,391)
	Sub-Total: Grants Special Revenue	\$ 70,422	\$ 363,932	\$ -	343,520	\$ 90,835	\$ 20,413
20 & 21	<b>Debt Service &amp; Capital Improvements</b>						
	Combined Savings	\$ 160,320	\$ 329,854		327,162	\$ 163,012	\$ 2,692
	Police Bond Fund Checking	\$ 42,450	\$ 42		-	\$ 42,492	\$ 42
	Sub-Total: Debt Svc & Capital Impr	\$ 202,770	\$ 329,896	\$ -	327,162	\$ 205,505	\$ 2,734
50	<b>Gas-Utility</b>						
	Combined Savings	\$ (4,439)	\$ 707,160		733,889	\$ (31,168)	\$ (26,729)
	Local Govt Investment Pool (LGIP)	\$ 925,760	\$ 109,072		67,856	\$ 966,977	\$ 41,217
	CDARS	\$ 96,868	\$ 308		5,101	\$ 92,075	\$ (4,793)
	Sub-Total: Gas Utility	\$ 1,018,190	\$ 816,540	\$ -	806,845	\$ 1,027,884	\$ 9,694

**CITY OF WILLCOX**  
**Request for Council Action**

Agenda Item: 13  
Tab Number: 1  
Date: 9-16-2013

**Date Submitted:**  
September 9, 2013  
**Date Requested:**  
September 16, 2013

**Action:**  
☐ Resolution  
☐ Ordinance  
☐ Formal  
☒ Other

**Subject:**  
Approval for bid  
from Ideal Solutions  
for alley way and  
gutter work.

**To:** Honorable Mayor and City Council

**From:** John Bowen, Director, of Public Services and Works

**Discussion:** Previously The Public Works Streets Department posted an invitation to bid for alley way and gutter work. We received one bid from DeAnda Construction in the amount of \$12,288.00 and the bid was approved by council. We notified DeAnda Construction that we awarded the bid to them. After 2 months of attempting to contact DeAnda Construction it was determined that they were no longer in business.

We have since rebid the project and received a bid that was opened and read on September 5, 2013. The bid was from Ideal Building Solutions in the amount of \$27,720.00. This was the only bid received. The amount of the bid was a lot higher then was budgeted for the project. We contacted Ideal Building Solutions to ask if the bid amount could be lowered to meet our budget. Ideal Building Solutions lowered the amount to \$23,980 which meets our budget amount.

**Recommendation:** Approve the bid from Ideal Building Solutions for the alley way aprons and gutter work as they the only bid.

**Fiscal Impact:** \$\$23,980.00

Prepared By: Gary A. Adams  
Gary Adams, Public Services and Works Street Supervisor

Approved By: John Bowen  
John Bowen, Director, Public Services and Works

Approved By: Ted Soltis  
Ted Soltis, City Manager



September 4, 2013

To: The City of Willcox

Attn: Gary Adams

Re: City of Willcox, Alley Way Aprons and Gutter Work

Ideal Building Solutions, LLC proposes to provide labor and materials to complete the following:

- Aprons to be approximately 22 feet on the curb and taper to 20 feet on the back of apron. Aprons will have a 1.5" slope from curb to alley.
- Approximately 26 feet of curb and gutter to be replaced at each site (total of 12 alleys).
- Apron shall be 6" thick and the base compacted with A.B.
- Approximately 71 yards of concrete will be used.
- All measurements have been verified.
- Location of aprons and gutter are (6) on Pearce Street and (6) on Stewart Street, located at the alleys in the 600 block, 700 block and 800 block of West Pearce Street and Stewart Street.
- All construction to be performed under MAG specifications.

Total estimated cost, including Blue Stake, tax and insurance is **\$27,720.00.**

Thank you for the opportunity to provide you with our cost proposal for this project.  
Should you have any questions, please call me at (520) 730-7266.

Sincerely,

Perry Pisciotta  
Ideal Building Solutions, LLC  
Owner/Estimator



September 6, 2013

To: The City of Willcox

Attn: John Bowen

Re: **Revised Proposal - City of Willcox, Alley Way Aprons and Gutter Work**

Ideal Building Solutions, LLC proposes to provide labor and materials to complete the following:

- Aprons to be approximately 22 feet on the curb and taper to 20 feet on the back of apron. Aprons will have a 1.5" slope from curb to alley.
- Approximately 26 feet of curb and gutter to be replaced at each site (total of 12 alleys).
- Apron shall be 6" thick and the base compacted with A.B.
- Approximately 71 yards of concrete will be used.
- All measurements have been verified.
- Location of aprons and gutter are (6) on Pearce Street and (6) on Stewart Street, located at the alleys in the 600 block, 700 block and 800 block of West Pearce Street and Stewart Street.
- All construction to be performed under MAG specifications.

Total estimated cost, including Blue Stake, tax and insurance is **\$23,980.00**.

Thank you for the opportunity to provide you with our cost proposal for this project.  
Should you have any questions, please call me at (520) 730-7266.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry Pisciotta".

Perry Pisciotta  
Ideal Building Solutions, LLC  
Owner/Estimator



**CITY OF WILLCOX**  
**Request for Council Action**

**Agenda Item:** 12  
**Tab Number:** 5  
**Date:** 9-16-2013

**Date Submitted:**  
September 06, 2013  
**Requested:**  
September 16, 2013

**Action:**  
☒ **Resolution**  
☐ **Ordinance**  
☐ **Formal**  
☐ **Other**

**Subject: Phase IV-  
Community Center  
Improvements  
CDBG-#112-13**

**To:** Honorable Mayor and City Council

**From:** John Bowen, Public Services and Works Director

**Discussion:** The City of Willcox has been involved in an ongoing renovation of the Community Center. Bids were received on August 15, 2013 from qualified contractors with Hickam Construction selected as the lowest bidder.

**Recommendation:** Approve Hickam Construction Company as the winning bidder.  
(Please see attached recommendation and contract.)

**Fiscal Impact:** Base bid plus additional alternative number's 2, 3, 4, 5, 6, and 7 totaling \$94,061.00. Funding is from a CDBG grant.

**The City of Willcox fiscal impact:** 0

Prepared By: Kate Schwartz  
Kate Schwartz, Public Services and Works

Approved By: John Bowen  
John Bowen, Public Works Director

Approved By: Ted Soltis  
Ted Soltis, City Manager



August 30, 2013

City of Willcox  
250 N. Railroad Avenue  
Willcox, AZ 85643  
Att: John Bowen, Director of Public Services and Works

Re: Willcox Community Center Phase 4 Bid Results and Recommendations

Dear Mr. Bowen,


As you requested I have reviewed the outcome of the bid opening that was conducted in the City of Willcox offices at 250 N. Railroad Avenue on August 15, 2013.

My review has confirmed that Hickam Construction, 2015 W. Ruthrauff Road, Suite 115, Tucson, Arizona 85705 was indeed the lowest qualified bidder for the Willcox Community Center Renovation Phase 4 project. A review of Hickam's experience and references indicate that this company is qualified, capable, as well as motivated to complete this contract in a professional and satisfactory manner.

Per our phone conference on August 27, 2013, I recommend that the City of Willcox accept Hickam Construction's base bid along with add alternates 2,3,4,5,6, and 7. Per the attached bid computation sheet, the initial construction contract with Hickam should be for the amount of **\$94,061.00**

Once again, I am looking forward to working with the City of Willcox, SEAGO as well as Hickam construction in completing phase 4 of this very important renovation project.

Sincerely,

  
David E. Shambach, AIA, LEED AP  
Principal Architect

Attachments: e-mail, experience; e-mail references; bid tabulation form



**CITY OF WILLCOX, COCHISE COUNTY, ARIZONA**

**RESOLUTION 2013-66**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, APPROVING AND ADOPTING A CONTRACT BETWEEN THE CITY OF WILLCOX AND HICKAM ARNOLD ASSOCIATES, L.L.C., DBA HICKAM CONSTRUCTION COMPANY FOR THE PURPOSE OF PERFORMING CONSTRUCTION SERVICES DURING PHASE IV OF THE HISTORIC PRESERVATION OF THE WILLCOX COMMUNITY CENTER IN CONJUNCTION WITH COMMUNITY DEVELOPMENT BLOCK GRANT CDBG #112-13.**

**WHEREAS**, the CITY is authorized pursuant to A.R.S. §§ 9-240 and 9-276, to receive and distribute state and local monies which can be used for local planning, technical assistance and community development activities; and,

**WHEREAS**, the CITY was awarded Community Development Block Grant funds under Contract No. 112-13, which is to be utilized for improvements during phase IV of the renovations on the City of Willcox Community Center; and,

**WHEREAS**, the CITY is requesting direction and authorization for the expenditure of Ninety Four Thousand Sixty One Dollars (\$94,061.00), funded by City's Community Development Block Grant, to provide for construction services during the fourth and final phase of the Community Center renovations, said services to be provided by Hickman Construction Company as successful bidder; and,

**WHEREAS**, the City Staff desires to propose project components for Phase IV of the Community Center renovations as set forth in the "City of Willcox Community Center Improvements CDBG#112-13 Construction Agreement Contract and General Conditions Between Owner and Contractor", dated September 16, 2013, presented herewith as Exhibit "A" and incorporated herein; and,

**WHEREAS**, the Mayor and Council desire to have this Resolution presented at their September 16, 2013, Regular City Council Meeting for consideration; and,

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

**SECTION 1:** The Mayor and City Council formally approve and authorize using Ninety Four Thousand Sixty One Dollars (\$94,061.00), funded by CITY'S Community Development Block Grant, to provide construction services as set forth in the "City of Willcox Community Center Improvements CDBG#112-13

Construction Agreement Contract and General Conditions Between Owner and Contractor", dated September 16, 2013, presented herewith as Exhibit "A", said services to be provided by Hickman Construction Company;

**SECTION 2:** That the Mayor and City Council formally direct and authorize City staff to proceed with the Community Center renovation project as presented; and,

**SECTION 3:** The Mayor is authorized and empowered to execute the "City of Willcox Community Center Improvements CDBG#112-13 Construction Agreement Contract and General Conditions Between Owner and Contractor", dated September 16, 2013, presented herewith as Exhibit "A", as well as any other documentation necessary to fulfill the terms and obligations of the Contract; and,

**SECTION 4:** The Mayor is authorized and empowered to execute this Resolution and City staff are authorized and directed to take appropriate action to carry out the intent of this Resolution as presented.

**PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, this 16<sup>th</sup> day of September, 2013.**

**APPROVED/EXECUTED:**

**ROBERT A. IRVIN, MAYOR**

**Dated:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**VIRGINIA A. MEFFORD, City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**ANN P. ROBERTS, City Attorney**

**RESOLUTION 2012-66**

**CITY OF WILLCOX  
COMMUNITY CENTER IMPROVEMENTS  
CDBG #112-13**

**CONSTRUCTION AGREEMENT  
CONTRACT AND GENERAL CONDITIONS  
BETWEEN OWNER AND CONTRACTOR**

**THIS AGREEMENT**, made this 16th day of September, 2013, by and between Hickam Arnold Associates, LLC, dba Hickam Construction Company, hereinafter called the "Contractor", and the **City of Willcox**, Arizona, hereinafter called the "Owner";

**WITNESSETH:**

That the Contractor and the Owner agree as follows:

**ARTICLE 1  
SCOPE OF WORK**

As required by the Contract Documents, the Contractor shall completely furnish and install all of the materials and labor and perform all of the work in a good, workmanlike and substantial manner and to the satisfaction of the Owner for the Owner's Project known as the **City of Willcox, Community Center Improvements Project, CDBG #112-13**.

The Contractor shall be under the direction and supervision of the Architect, or his properly authorized agents, and strictly pursuant to and in conformity with the Drawings and Specifications prepared by the Architect (**David E. Shambach, Architect, Inc.**), for the Owner, and with such modifications of the same and other documents that may be made by the Owner, through the Architect or his properly authorized agents, as provided herein.

This project is wholly or in part Federally Funded and this agreement is subject to the Federal Labor Standards Provisions, Davis-Bacon Act of 1931, Contract Work Hours and Safety Standards Act of 1962, Copeland Act of 1934 and the Fair Labor Standards Act of 1939.

The Contractor agrees to comply with the Federal Labor Standards Provisions (HUD Form 4010), which is incorporated by reference herein. The Contractor shall supply information to the Owner as necessary for monitoring of compliance to include, but not limited to, submission of Labor Standard Forms included in the bid package, on-site inspections, investigations and/or enforcement by the Owner. The Contractor agrees to comply with the current **Wage Rate Determination General Decision Number: Building AZ 130024 8/02/2013 MOD#3**, which is included in the bid package and incorporated by reference.

## **ARTICLE 2 THE CONTRACT DOCUMENTS**

The following listed documents constitute the Contract Documents, and they are all as full a part of the Contract and General Conditions as if herein repeated:

This Contract and General Conditions between Owner and Contractor

Special Provisions

Project Technical Specifications

Standard Details

Sheet Index of Drawings

Drawings to this Contract

Addenda

Invitation to Bid

Information for Bidders

Bid Proposal

Bid Bond

Performance Bond

Labor & Material Payment Bond

List of Subcontractors

Non-Collusion Affidavit

Compliance Bid Document

LS-2 Contractor Certification

LS-3 Subcontractor Certification

Certification/Provisions

1. Certification Regarding Lobbying
2. Certification Regarding Conflict of Interest
3. Cement (Fly Ash) Certification
4. Civil Rights Provisions
5. Section 503 Clause & (Affirmative Action for Handicapped Workers) Certification
6. Section 3 Clause
7. Equal Employment Opportunity
8. Federal Labor Standards Provisions (HUD 4010)

Wage Rate Determinations: **Building AZ 130024 8/02/2013 MOD#3**

SLS Form B, Point of Contact Information Sheet

SLS Form C, Professional Firm's Sub-Firm's Certification

SLS Form E, Project Wage Rate Classifications and Additional Classifications

LS-4, Weekly Payroll Reports

LS-5, Statement of Compliance

LS-7, Notice to All Employees

Standard Form 1444, Request to Conform an Additional Classification

LS-14, Fringe Benefits Documentation

LS-15, Authorization for Deductions

LS-17, Certification of Applicable Fringe Benefit Payments

Non-Discrimination Poster

EEO - Certification Poster

EEO - It's the Law Poster

LS-9, Record of Employee Interviews  
LS-10, On-Site Inspection Report  
LS-11, Labor Standards Investigative Reports  
LS-12, Labor Standards Enforcement Report  
S3B-1, Section 3 Assurance  
S3B-2, Estimated Project Work Force Breakdown  
S3B-3, Section 3 Business Self-Certification  
S3P-1, JOBS! JOBS! JOBS! Section 3 Notice  
S3P-2, Preliminary Resident Eligibility Determination  
S3P-3, Employment Survey  
S3R-1, Notice Documentation  
S3R-2, Business Utilization Report  
S3R-3, Applicant and New Hire Employment Report  
Environmental Conditions

In the event of any conflict in the provision of these Contract Documents, these respective documents shall prevail in the order listed.

### **ARTICLE 3 CONTRACT AMOUNT**

**3.1 CONTRACT AMOUNT.** The Owner shall pay the Contractor the sum of **Ninety Four Thousand, and Sixty One Dollars (\$94,061.00)**, the **Contract Amount**. This sum includes the **Base Bid, plus Alternate Numbers 2, 3, 4, 5, 6, and 7**. The contract sum is subject to additions or deductions made in accordance with the provisions of the Contract Documents.

**3.2 SOURCE OF FUNDS.** NOT USED

**3.3 CONTRACT TIME.** The Contract Time as used and defined in Article 11 herein shall be **Ninety (90) calendar days**. If completion date occurs after the **90 calendar-day period**, Liquidated Damages will be assessed as stated in the Construction Agreement.

**3.4 LIQUIDATED DAMAGES.** Liquidated damages as used and defined in Article 11 herein shall be **Two Hundred Dollars (\$200.00) per calendar day**.

**3.5 OVERHEAD AND PROFIT.** The limits on the amount of overhead and profit as used in Articles 2, 15 and 17 herein shall be fifteen percent (15%) overhead and twelve percent (12%) profit for the Contractor and Subcontractors.

**3.6 CASH ALLOWANCES.** The Contractor agrees that he has included in the contract price all cash allowances, if any, specified in the Contract Documents, and shall cause the work so covered to be done by such contractors as the Owner may direct, the Contract Amount being adjusted in conformity therewith. The Contractor agrees that the Contract Amount includes all his expenses and such profit as he deems proper in connection with the Cash Allowance. No demand for any sum other than those included in the Contract Amount shall be allowed in connection with the Cash

Allowance and only direct costs may be charged against the Cash Allowance. If the cost, when determined, is more than or less than the allowance, the Contract Amount shall be adjusted accordingly by change order.

**3.7 EXPENDITURE OF CASH ALLOWANCES.** The Architect and a person designated in writing by Owner, acting jointly, are authorized to act for and on behalf of the Owner and as Special Agents of the Owner in the expenditure of the Cash Allowances, including any allowance later added to the Contract Documents pursuant to the provisions for modifying the Contract Documents. No act of such Special Agents purporting to authorize any charge against any Cash Allowance shall be valid unless in the form of a written Change Order, specifying the particular work to be done and the whole cost thereof to the Owner, and signed by both Special Agents. The cost of extra work or changes shall be determined under the provisions of Article 15 of this Contract and General Conditions.

Said Special Agents are not authorized to exceed the amount of the Cash Allowance hereinbefore listed.

The Contractor is warned of, and agrees to, these express limitations on the authority of the Owner's Special Agents.

#### **ARTICLE 4 DEFINITIONS AND GENERAL PROVISIONS**

**4.1 OWNER, CONTRACTOR, AND ARCHITECT.** The Owner, the Contractor, and the Architect are those herein defined in this Contract and General Conditions. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

**4.2 SUBCONTRACTOR.** See Article 8.

**4.3 NOTICE.** See Article 10.

**4.4 TIME.** See Article 11.

**4.5 COST.** The term "Cost" shall include all charges, costs, losses, and expenditures of every kind whatsoever for the Work, or portion thereof to which reference is made with respect to this term.

**4.6 FINISH AND COMPLETION DATES.** See Article 11.

**4.7 CONTRACT DOCUMENTS.** See also Article 1. A modification is:

- .1 A written amendment to the Contract and General Conditions signed by all parties;
- .2 A Change Order properly signed by all parties pursuant to Paragraph 15.1; or
- .3 A Field Order for a minor change in the Work issued by the Architect pursuant to Paragraph 15.4.

A modification may be made only after execution of the Contract and General Conditions.

**4.8 CONTRACT AND GENERAL CONDITIONS.** The Contract and General Conditions consist of all the Contract Documents enumerated in Article 2. The Contract and General Conditions represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The Contract and General Conditions may be amended or modified only by a Modification as defined in Subparagraph 4.7.

**4.9 WORK.** The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated, or to be incorporated in such construction to complete the Project.

**4.10 PROJECT.** The Project is the total construction designed by the Architect and depicted and described by the Contract Documents.

**4.11 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS OF THE CONTRACT DOCUMENTS.**

**4.11.1** The Contract and General Conditions shall be signed by the Owner and the Contractor. By executing the Contract and General Conditions, each party accepts and agrees to be bound by each of the Contract Documents listed in Article 2.

**4.11.2** By executing the Contract and General Conditions, the Contractor represents and warrants that he has examined closely the site and the existing structures, if any, including the materials and methods of construction utilized in and the condition of the existing structures, has familiarized himself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and correlated all of his observations with the provisions and requirements of the Contract Documents including, but not limited to, the details of demolition and construction indicated by the Plans and Specifications. Where discrepancies in quantities, materials, sizes or other conditions exist between the existing structure and the Plans and Specifications, the Contractor shall accomplish the Work required to carry out the intent of the Contract Documents and the actual requirements of the existing structure shall take precedence over the Plans and Specifications for purposes of determining the quantity and nature of the Work required herein.

**4.11.3** The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

4.11.4 The organization of the Specifications into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constituting part of the contract or having any legal or contractual significance.

4.11.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Architect in accordance with any schedule agreed upon or with reasonable promptness in any case. Such interpretations shall be consistent with and reasonable inferable from the Contract Documents, and may be effected or memorialized later by Field Order.

#### 4.12 COPIES FURNISHED AND OWNERSHIP

4.12.1 The Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work, as determined by the Architect.

4.12.2 All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of the Owner. They are not to be used on any other project and, with the exception of one set for each party of the Contract and General Conditions, are to be returned to the Owner upon request at the completion of the Work.

4.12.3 It shall be the responsibility of the Contractor to insure that each subcontractor and material supplier has a current set of Drawings, Specifications and Addenda, as required for proper execution of their respective portions of the Work.

### ARTICLE 5 ARCHITECT

#### 5.1 DEFINITION

5.1.1 The Architect is the person or organization identified as such in this Contract and General Conditions and the term "Architect" means **David E. Shambach, Architect, Inc.**, or its authorized representative.

5.1.2 Nothing contained in the contract Documents shall create any contractual relationship between the Architect and the Contractor.

#### 5.2 ADMINISTRATION OF THE CONTRACT

5.2.1 The Architect will provide construction services pursuant to its separate contract with the Owner, including performance of the functions hereinafter described.

5.2.2 The Architect will be the Owner's representative during construction to the extent described herein, until final payment and including the guarantee period. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise



modified by written instrument that will be shown to the Contractor. The Architect will advise and consult with the Owner, and the Owner may issue instructions to the Contractor either directly or through the Architect.

5.2.3 The Architect and Owner shall at all times have access to the Work wherever it is in preparation and progress.

5.2.4 The Architect shall make periodic visits to the site to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. These visits shall be of the frequency necessary to apprise the Architect of the progress and quality of the Work. On the basis of his on-site observations as an Architect, he shall endeavor to guard the Owner against defect and deficiencies in the Work of the Contractor.

5.2.5 Based on such observations and the Contractor's Applications for Payment, the Architect and Owner will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Subparagraph 12.4.1.

5.2.6 The Architect will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance there under by both the Owner and the Contractor, except where otherwise provided herein. The Architect will render interpretations necessary for the proper execution or progress of the Work within a reasonable time so as not to delay the prosecution of the Work.

5.2.7 Claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred to the Owner and the Architect in the manner provided by Subparagraph 12.4.4, within the time limits prescribed in Subparagraph 15.2.1, for decision by the Architect or Owner, as the subject of the matter may require, which decision will be rendered in writing within a reasonable time.

5.2.8 The interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to insure faithful performance by both the Owner and the Contractor.

5.2.9 The Architect's decisions in matters relating to artistic effect will be final.

5.2.10 If a decision of the Architect or the Owner is made pursuant to the terms of Subparagraph 5.2.7 which goes directly to the Contractor in writing, and it states that it is final but subject to appeal, no claim, dispute, or other matter covered by such decision may be made later than thirty (30) days after the date on which the party making the demand received the decision. Appeal shall be to the Owner, whose decision is final, subject to any rights that the Contractor may have at law.

5.2.11 The Architect and the Owner will each have authority to reject Work that does not conform to the Contract Documents. Whenever, in their reasonable opinion, either the Architect or Owner considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, they will have authority to require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work as provided in Subparagraph

10.8.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty of responsibility of the Architect to the Contractor, any subcontractor or material supplier, any of their agents or employees, or any other performing any of the Work.

5.2.12 Within a reasonable time the Architect will review Shop Drawings, Product Data and Samples promptly as provided in Subparagraphs 7.12.1 through 7.12.8, inclusive.

5.2.13 The Architect will prepare Change Orders in accordance with Article 15. The Architect will have authority to order minor changes in the Work not involving extra cost or an extension of the Contract time and not inconsistent with the Contract Documents as provided in Subparagraph 15.3.1.

5.2.14 The Architect will conduct site visits to determine the date of Final Completion, shall notify the Owner of a date for inspections, and shall issue a Certificate of Final Completion. The Architect will receive written warranties, record drawings, maintenance manuals and related documents required by the Contract and assembled by the Contractor, and will transmit a final Certificate for Payment to the Owner.

5.2.15 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction are set forth in Articles 1 through 18, inclusive, of this Contract and General Conditions. The Owner may, by agreement with the Architect, increase or diminish the responsibilities and duties of the Architect as he may see fit in his sole discretion.

## **ARTICLE 6 OWNER**

### **6.1 DEFINITION**

6.1.1 The Owner is the person or organization identified as such in the Contract and General Conditions.

### **6.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

6.2.1 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

6.2.2 The Owner may issue instructions directly to the Contractor or through the Architect.

6.2.3 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the Owner and this provision of the Contract shall take precedence over any other term hereof.

6.2.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Payment and Insurance in Articles 12 and 14, respectively.

## **ARTICLE 7 CONTRACTOR**

### **7.1 DEFINITION**

7.1.1 The Contractor is the person or organization identified as such in this Contract and General Conditions and the term "Contractor" means the Contractor or his authorized representative.

7.1.2 Whenever the words "as may be directed," "suitable," "or equal," "as approved," or other words of similar intent and meaning are used implying that judgment or discretion is to be exercised or a decision is to be made, it is understood that it is the judgment, discretion, or decision of the Architect to which reference is made.

7.1.3 All materials and articles of any kind necessary for this Work are subject to the approval of the Architect and his judgment and decision shall be final and conclusive.

7.1.4 Except as the Specifications may be modified (prior to the opening of Bids) by addenda and/or written approvals of equal items of equipment or materials as provided for in the bid documents, the successful contractor will be held to furnish all Work as specified in the bid documents.

7.1.5 After execution of the Contract, changes of brand named, trade named, trademarked, patented articles, or any other substitutions will be allowed only by written order signed by the Architect, in which case the Owner shall receive all benefit of the difference in cost involved, except where choice of material or method is designated "or equal" in the specifications.

### **7.2 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS**

7.2.1 By executing this Contract the Contractor warrants that he has carefully studied and compared the Contract and General Conditions, Drawings, Specifications, Addenda, all other Contract Documents and the existing structure and has determined that the Contract Documents describe a completely buildable and functional Project. The Contractor does not warrant the suitability or feasibility of the Owner's proposed operation of the Project. The Contractor shall at once report to the Architect and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or omissions so long as the Architect and the Owner are notified promptly thereof unless discovery of such error, inconsistency or omission should have been made by careful examination of the Contract Documents prior to submitting a Proposal. The Contractor shall do no Work without Drawings, Specifications or interpretations from the Architect.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale. In the absence of figured dimensions, the Architect shall be notified and the scale dimension verified.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present improvements, driveways, or other existing conditions, before executing any work.

7.2.4 The Contractor agrees to comply fully with all applicable state, federal and local laws. Contractor agrees to indemnify and hold harmless the Owner and Architect from all claims or whatever nature involving failure of the Contractor or any of its Subcontractors to comply with any federal, state or local law or ordinance in connection with this Project.

7.2.5 It is the Contractor's responsibility to inspect the site of the work to identify any surface or subsurface conditions or underground facilities that can be reasonably identified and that are materially different than what may be indicated in the Contract Documents prior to beginning the Work.

7.2.6 If the Contractor believes that any surface, subsurface or physical condition at the work site that is uncovered or revealed is of such a nature as to require a Change Order, because it either differs materially from that which is specifically designated on the Contract Documents or is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character required by the Contract at this location, then the Contractor shall promptly notify the Owner and Architect in writing prior to further disturbing the site and performing the Work. The Architect shall promptly review such notice and the conditions and advise the Owner and the Contractor whether additional tests may be required or a revision of the plans may be appropriate. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time if the Contractor knew or should have known of the existence of such conditions at the time of the Bid was submitted; the existence of the condition could reasonably have been discovered or revealed as a result of the investigation or study of the site as required of the Contractor, or the Contractor failed to provide written notice of condition, as required in this section.

7.2.7 The information and data shown or indicated on the Contract Documents with respect to underground facilities at or around the location of the work is based upon information and data provided by the owners of these facilities. The Owner and Architect are not responsible for the accuracy or completeness of this information. The Contractor is required to verify the location any such utilities and to comply with all applicable laws and regulation regarding the location and protection of utilities. No additional compensation shall be provided for complying with these obligations.

### 7.3 SUPERVISION AND CONSTRUCTION PROCEDURES

7.3.1 The Contractor shall supervise the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

7.3.2 Contractor shall hold periodic meetings as often as reasonably required, but at least one a week, with subcontractors to monitor the progress of the Work. A report of the results of each such meeting shall be included in the Daily Report required by Subparagraph 7.10.2 herein. Contractor shall inform the Architect at least twenty-four (24) hours in advance of the time for each meeting.

## 7.4 LABOR AND MATERIALS

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, material, equipment, tools, construction equipment, machinery, water, heat, utilities, waste and refuse disposal, transportation and any other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

7.4.2 Any work necessary to be performed after regular working hours, on Sundays, or legal holidays, shall be performed without additional expense to the Owner.

7.4.3 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. When requested in writing by the Architect or Owner, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Architect or Owner, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. If the Architect requests such a removal, he shall notify the Owner in writing of his action. The Contractor shall keep the Owner harmless from damages or claims for compensation that may occur in the enforcement of this requirement.

## 7.5 WARRANTY

7.5.1 The Contractor warrants to the Owner that all material and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. Faults or defects are considered to be any aspect of the Work that is found not to be in conformance with the Contract Documents or any aspect of the Work that deteriorates becomes non-functional or otherwise fails, in some functional or aesthetic manner, to meet the requirements of the Contract Documents, normal wear and tear excepted. All Work not so conforming to these standards may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.5.2 The warranty provided in this Paragraph 7.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

## 7.6 TAXES

7.6.1 The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law arising out of construction or other business activities of the Contractor in connection with the Project and in connection with the performance of this Contract, whether in force as of the date of this Contract or later imposed.

## 7.7 PERMITS, FEES AND NOTICES

7.7.1 Unless otherwise provided in the Plans, Specifications or by Addendum, Contractor will secure all permits, fees and licenses necessary for the proper execution and completion of the Work, including, but not limited to, building, plumbing, mechanical, electrical, and fire protection permits, but excluding plan check fees, which shall be paid for by the Owner. The Contractor shall pay for water meters, fire protection, water service, sewer connection, sewer fees or assessments, gas service, and electric service to procure all necessary utilities for the Project and for temporary utility hook-ups required during the course of construction. The Contractor shall pay for electric power and water necessary for the construction of the Project.

7.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect and Owner in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect and Owner, he shall assume full responsibility therefore and shall bear all costs attributable thereto, including any reasonable attorney's fees incurred by Owner in connection therewith.

## 7.8 SUPERINTENDENT

7.8.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall be satisfactory to the Architect and Owner and shall not be changed except with the consent of the Architect and Owner. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

## 7.9 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

7.9.1 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any nature with the Contractor.

## 7.10 PROGRESS SCHEDULE AND REPORTS

7.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Architect's and Owner's approval an estimated Progress Schedule for the Work. The progress schedule shall be related to the entire Project and shall indicate the dates for the starting and completion of the various components and phases of construction and shall be revised as required by the conditions of the Work, upon request of and subject to the approval of the Architect and Owner. The Contractor agrees to promptly respond to all inquiries by the Architect or Owner concerning substantial deviation of the progress of construction from the Progress Schedule. Failure to timely respond to such request or substantial delay from the schedule may result in progress payments being withheld.

The Progress Schedule shall include projected dates of submittal of all items of material for which submittals are required and shall include delivery dates of all items of material and equipment that are considered critical or long lead time. The Contractor shall submit a biweekly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project.

7.10.2 The Contractor shall prepare and submit for the Owner's information, review and approval for the duration of the Work a Daily Report in a form acceptable to Owner. The Daily Report shall be completed daily and submitted to the Owner and Architect on a weekly basis as a statement and review of the progress of the Work.

7.10.3 The Contractor shall furnish sufficient labor force, materials, plant, and equipment to ensure the prosecution of the Work in accordance with the approved Progress Schedule. If the Contractor's prosecution of the Work falls behind the Progress Schedule, Contractor shall take such steps as may be necessary to regain compliance with the Progress Schedule including additional labor or services or work such overtime as may be necessary to bring his operations up to schedule. Failure to maintain schedule or to take the above steps to regain the agreed Progress Schedule shall constitute default under this Contract.

#### 7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE

7.11.1 The Contractor shall maintain at the site for the Owner one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully and accurately to record all changes made during construction and shall be available to the Architect and Owner at all times. Upon completion of the Project, a clean set of Drawings shall be accurately marked to depict the as-built condition of the Project, and these Drawings along with all record drawing, shall be delivered to the Owner upon completion of the Work.

7.11.2 The Contractor shall also submit to the Architect for his record two copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Architect's specifications are a part thereof.

#### 7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared or supplied by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work.

7.12.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

7.12.3 The Contractor shall review, stamp with his approval and submit, with promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently by the Architect as covered by Modifications. The Contractor shall, within ten (10) days after the

notice to proceed, submit to the Architect for his approval a schedule indicating the date that each required Shop Drawing and Product Data submittal will be delivered to Architect. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Architect may require. At the time of submission the Contractor shall inform the Architect in writing of any deviation of the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

7.12.4 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing, Product Data and Sample with the requirements of the Work and of the Contract Documents.

7.12.5 The Architect will review and return Shop drawings, Product Data and Samples with reasonable promptness so as to cause no delay, but such review is only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions.

7.12.6 The Contractor shall make any corrections required by the Architect to comply with the Contract Documents and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings or Product Data to revisions other than the corrections requested by the Architect on previous submissions.

7.12.7 The Architect's approval of Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect and Owner in writing of such deviation at the time of submission and the Architect and Owner have given written approval to the specific deviation, nor shall the Architect's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

7.12.8 No portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been approved by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings, Product Data and Samples.

## 7.13 CLEANING UP

7.13.1 The Contractor at all times during the progress of the Work shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials specified to be left at the site, and shall clean all glass surfaces.

7.13.2 If the Contractor fails to satisfactorily clean up, the Owner will do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 10.6.



## **7.14 COMMUNICATIONS**

7.14.1 The Contractor shall forward all communications to the Architect except where otherwise required herein or otherwise directed by the Owner.

## **7.15 INDEMNIFICATION CLAUSE**

7.15.1 Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its agents, employees, or any tier of Contractor's Subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, officers, officials and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by the Contractors' acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor, any tier of Contractor's Subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be in legally liable.

7.15.2 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

## **ARTICLE 8 SUBCONTRACTORS**

### **8.1 DEFINITION**

8.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or to perform any of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.

8.1.3 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

## 8.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

8.2.1 Prior to the award of the contract, the Contractor shall supply to the Owner a complete list of subcontractors and material vendors. The Architect shall notify the apparent successful bidder in writing if the Owner has reasonable objection to any person or organization on the list of subcontractors and material vendors. Failure of the Owner to make an objection to any person or organization on the list prior to the award shall constitute acceptance of such person or organization.

8.2.2 If, prior to the award of the Contract, the Owner has a reasonable and substantial objection to any person or organization of such list, and refuses in writing to accept such person or organization, the apparent successful bidder may prior to the award, withdraw his bid without forfeiture of bid security. If the bidder submits an acceptable substitute with an increase in his bid price to cover the difference in cost occasioned by such substitution before the award, the Owner may, at his discretion accept the increased bid price or he may disqualify the bid. If, after the award, the Owner refuses to accept any person or organization on such list, the Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Amount shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting a name with respect thereto.

8.2.3 The Contractor shall not contract with any Subcontractor proposed for portions of the Work designated in the bidding requirements or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor against whom he has a reasonable objection.

8.2.4 If the Owner, without cause, requires a change of any proposed Subcontractor previously accepted by it, the Contract Amount shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

8.2.5 The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner unless the substitution is approved in writing by the Owner.

## 8.3 SUBCONTRACTUAL RELATIONS

8.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provision that:

- .1 preserve and protect the rights of the Owner and the Architect under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.
- .2 require that such work be performed in accordance with the requirements of the Contract Documents, including, but not limited to:

- a. require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;
  - b. require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner pursuant to Paragraph 15.2;
  - c. obligate such Subcontractor specifically to consent to the provisions of this Paragraph 8.3;
  - d. require such Subcontractor to submit a lien waiver and release of claim in a form prescribed by the Owner along with each application for payment, which release and waiver shall in turn be given to the Owner and which shall cover all Work done prior to the date of the application for payment;
  - e. require such Subcontractor to comply with all laws, indemnify Owner and agree to the provision of Paragraphs 7.2.4 and 7.15;
  - f. require such Subcontractor to comply with all Labor Standards and other Federal regulations required by the Arizona Department of Housing, CDBG Program in accordance with Paragraph 7.2.4.
- .3 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Article 14.

#### **8.4 PAYMENTS TO SUBCONTRACTORS**

8.4.1 The Architect may, on request and at this discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

8.4.2 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be provided in this Contract.

### **ARTICLE 9 SEPARATE CONTRACTS**

#### **9.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS**

9.1.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract.

#### **9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS**

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.

9.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Architect any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

9.2.3 Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly settle such other contractor's claim, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises there from, the Contractor shall promptly pay or satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorney's fees and court costs which the Owner has incurred.

### 9.3 OWNER'S RIGHT TO CLEAN UP

9.3.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 7.13, the Owner may clean up and charge the cost thereof to the several contractors as the Owner shall determine to be just.

## **ARTICLE 10 MISCELLANEOUS PROVISION**

### 10.1 LAW OF THE PLACE

10.1.1 The contract shall be governed by the law of Arizona and any action relating to this Contract shall be brought in an Arizona court of competent jurisdiction located in the County of jurisdiction for the Owner.

### 10.2 SUCCESSORS AND ASSIGNS

10.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants' agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or any part hereof or sublet it as a whole or in part without the previous written consent of the Owner, nor shall the Contractor assign or pledge any monies due or to become due to him hereunder, without the previous written consent of the Owner.

### 10.3 WRITTEN NOTICE

10.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice as appropriate. Notice to the Architect is

notice to the Owner except for notice of inconsistencies, error or omission in the Contract Documents, request for extension of time, request for changes in the Contract Amount, appeal of decisions by Architect or Owner and notice of claim or legal process. All such notices shall be given to both Architect and Owner.

#### 10.4 CLAIMS FOR DAMAGES

10.4.1 Should either party of the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. All claims made by the Contractor under this Contract are subject to the limitations set forth in Paragraph 15.2 herein.

#### 10.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

10.5.1 The Contractor shall furnish performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising there under in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner.

#### 10.6 OWNER'S RIGHT TO COMPLETE THE WORK

10.6.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the Contractor and his surety, and without prejudice to any other remedy he may have, proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including the attorneys' fees and other costs incurred by Owner.

#### 10.7 ROYALTIES AND PATENTS

10.7.1 The Contractor shall pay all royalties and license fees and shall defend all suits or claims from infringement of any patent right and shall save the Owner harmless from loss of account thereof, including Owner's attorneys' fees and court costs, except that Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process or products specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives information to the Architect prior to starting the Work.

#### 10.8 TESTS

10.8.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness and of the date arranged so the Architect may observe such inspection, testing or approval.

10.8.2 The Contractor shall be responsible that all equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended.

10.8.3 If after the commencement of the Work the Architect determines that any of the Work requires special inspection, testing, or approval, which subparagraph 10.8.1 does not include, he will, upon written authorization from the Owner, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 10.8.1.

10.8.4 If such special inspection or testing reveals a failure of the Work to comply:

- .1 with the requirements of the Contract Documents, or
- .2 with respect to the performance of the Work, with laws, ordinances, rules regulations or orders of any public authority having jurisdiction over the Work, the Contractor shall bear all costs thereof, including the Architect 's additional services made necessary by such failure, and the costs of such inspection or testing; otherwise the Owner shall bear such costs of special inspection.

10.8.5 Required certificates of re-inspections or testing to secure compliance with 10.8.4.1 or 10.8.4.2 above shall be paid for by the Contractor.

10.8.6 If the Architect wishes to observe the inspections, tests or approvals required by this Paragraph 10.8, he will do so promptly and, where appropriate, at the source of supply.

10.8.7 Neither the observations of the Architect in his administration of the Contract, nor inspections, tests or approvals by person other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

## 10.9 LEGAL FEES AND COSTS

10.9.1 The party substantially prevailing shall be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred in connection with any effort undertaken to enforce any of the terms of this Contract.

## 10.10 SEVERABILITY

10.10.1 In the event any provision in this contract is held invalid by any court of competent jurisdiction, the remaining provision in this Contract shall be deemed severable and shall remain in full force and effect.

## **ARTICLE 11 TIME**

### **11.1 TIME AND LIQUIDATED DAMAGES.**

11.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the Architect and shall be completed by the Contractor within the number of calendar days specified in Paragraph 3.3. hereof (the "Finish Date"). The Contract Time is the period of time specified in Paragraph 3.3. hereof running from (1) the date specified in the Notice to Proceed as the date upon which the Contractor is to commence the Work (the "Start Date"), through (2) the Finish Date. The date of beginning, rate of progress, and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly as such rate of progress as will insure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

11.1.2 If the Final Completion Date as defined in Subparagraph 11.1.4, occurs after the expiration of the Contract Time, the Contractor shall pay the Owner the sum specified in Paragraph 3.4 hereof as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain. It is expressly agreed that the amount of liquidated damages set forth herein is reasonable. Said amounts may be retained from time to time by the Owner from payments due the Contractor.

11.1.3 The date of Completion of the Work, or designated portion thereof, is the date certified in writing by the Architect when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that the Owner may occupy the project, or a designated portion thereof, if he so elects, for the use for which it is intended. Certification of a designated portion of the Work by the Architect as being "Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse, the Contractor from his duty to complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not completing the remainder of Work within the Contract Time including liability for liquidated damages.

11.1.4 The Final Completion Date is the calendar date when all items of the Work are one hundred percent (100%) finished, with no items of any scope, large or small, outstanding and remaining to be constructed, and all known defective work has been corrected. When the Architect certifies in writing, pursuant to the terms of paragraph 12.6.2, that the Final Completion Date is reached and it is approved by the Owner, the Contractor may make application for final payment pursuant to Subparagraph 12.6.2.

11.1.5 In any case where the terms of any other provision of the Contract may be construed to be in conflict with any term regarding time for completion of the Project, interpretation of the conflicting terms which gives precedence to the term regarding time for completion shall govern.

### **11.2 PROGRESS AND COMPLETION**

11.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

11.2.2 The Contractor shall begin the Work on the Start Date as defined in Subparagraph 11.1.1 and shall carry the Work forward expeditiously, uninterruptedly and with adequate forces and shall complete it within the Contract Time.

### 11.3 DELAYS AND EXTENSION OF TIME

11.3.1 If the Contractor is delayed at any time in the progress of the Work by any cause which the Owner determines may justify the delay, including, but not limited to, acts of God, acts of the public enemy, acts of the Owner, acts of another contract in performance of a contract with the Owner, fires, floods, epidemics, quarantine restriction, freight embargoes and adverse weather detrimental to completion of the Work and, in the aggregate, materially different than weather normally experienced during the entire Contract Time, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. No extension of the Contract Time pursuant to this paragraph shall be limited to granting a time extension to the Contractor, and there is no other obligation, express or implied, on the part of the Owner to the Contractor for delay from any cause.

11.3.2 All claims for extension of time shall be made in writing to the Architect and Owner no more than fourteen (14) days after the occurrence of the delay; otherwise, they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. The Contractor shall promptly notify the Architect in writing of the date of the termination of the continuing cause of delay.

11.3.3 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 4.11.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for them, and not then unless such claim is reasonable.

## ARTICLE 12 PAYMENTS AND COMPLETION

### 12.1 CONTRACT AMOUNT

12.1.1 The Contract Amount is as stated in this Contract and General Conditions and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, subject to credits or increases resulting from Change Orders. In no event shall Owner be responsible for more than the Contract Amount.

### 12.2 SCHEDULE OF VALUES

12.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a detailed schedule of values reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the total Contract Amount, prepared in such detail and such form as the Architect may require, and supported by such data to substantiate its correctness as the Architect may require. Each item in the schedule of values may include its proper share of overhead and profit or such overhead and profit may be shown as separate line items and shall be billed in proportion the percent of the Project completed.



## 12.3 PROGRESS PAYMENTS

12.3.1 On or about the twenty-fifth day of each calendar month during the course of construction, the Contractor shall submit to the Architect and Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require. Contractor shall also submit a release of claim and lien waiver covering all work performed to date, including the work of each Subcontractor and material supplier.

12.3.2 Payments shall be based on the Work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location under such conditions agreed upon in writing by the Architect and Owner to be transported to the site and installed at a later date.

12.3.3 Material delivered and suitably stored at the site, or at some other agreed upon location by the Contractor, subcontractors, sub-subcontractors, or material suppliers shall remain the responsibility of the Contractor until incorporated into the Work, shall be insured for the benefit of the Owner to the full value of the material and shall be suitably stored and protected. Only such material that is in accordance with the Contract Documents shall be installed into the Work. Until the final completion and acceptance of the Work by the Owner, it shall be the Contractor's responsibility to protect all materials to be installed in or delivered to the Project.

12.3.4 The Contractor warrants and guarantees that title for all work, materials and equipment covered by an Application for Payment shall pass to the Owner either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 12 as "claims."

## 12.4 APPROVALS FOR PAYMENT

12.4.1 If the Contractor has made application for payment as above, then not later than seven (7) days after the date of submission, the Architect shall issue his approval of the Application for Payment and forward his approval of the Application to the Owner for such amount as he determines to be properly due, or state in writing his reasons for withholding, in whole or in part the amount applied for as provided in Subparagraph 12.5.1.

12.4.2 Approval of the Application for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 5.2.4, and the data comprising the Application for Payment, the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole upon Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to final completion and to any specific qualifications stated in his approval of the Application of Payment); and that the Contractor is entitled to payment in the amount approved. In addition, the Architect final approval for payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment, as set forth in Subparagraph 12.6.2, have been fulfilled.

12.4.3 After the Architect has approved an Application for Payment and has promptly forwarded this approval to the Owner, the Owner shall make a payment to the Contractor as soon as grant funds become available from the State CDBG Program to the Owner, or sooner, at the OWNER's discretion, and subject to compliance with labor standard requirements. Payment will be based on ninety percent (90%) of the value of the Work actually performed during the preceding calendar month in accordance with Subparagraph 12.3.3 and approved by Architect until the contract is fifty percent (50%) completed. If the Contractor is making satisfactory progress when the contract is fifty (50%) completed, the Contractor shall be entitled to a reduction in the retention amount, as required by ARS §34-221.C. Any amounts retained by Owner shall be paid to the Contractor, as previously specified, after the Final Completion Date as specified in Paragraph 12.6.1 hereof, provided the Contractor has by that time duly furnished the Owner consent of surety, lien waivers, any and all operating manuals, wiring diagrams, control diagrams, maintenance manuals, equipment and appliance warranties, record drawings, warranties and other documents of any nature called for in the Contract Documents or required for the proper functioning of the Work as a whole and has otherwise performed all of Contractors' obligations under the Contract Documents. In lieu of this retention, the Contractor may provide alternative security in the manner authorized by law.

12.4.4 In this Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Architect or Owner shall require, all claims for additional compensation against the Owner arising under the Contract Documents or any covenant thereof, express or implied, or from any cause whatsoever, within the time limits prescribed in Subparagraph 15.2.1. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims, to permit the Owner to investigate claims as the same may arise. It is expressly covenanted that the Owner shall have no liability on any claim unless such claim was approved by Architect and was submitted in writing at the time and in the manner required hereby.

12.4.5 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## 12.5 PAYMENT WITHHELD

12.5.1 The Architect or Owner may decline to approve an Application for Payment and the Architect may withhold his Certificate in whole or in part if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 12.4.2. The Architect may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective work not remedied,
- .2 claims filed or reasonable evidence indicating probable filing of claims,
- .3 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount,
- .4 damage to another contractor,

- .5 reasonable indication that the Work will not be completed within the Contract Time, or
- .6 unsatisfactory prosecution of the Work by the Contractor or other material breach of this Contract.
- .7 failure to complete all Labor Standards requirements

12.5.2 When the above grounds in Subparagraph 12.5.1 are removed or in the case of 12.5.1.3 above, when the Owner is satisfied that the Contractor will complete the Project at the agreed upon price, payment shall be made for amounts withheld because of them.

## 12.6 COMPLETION AND FINAL PAYMENT

12.6.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection and, when the Architect finds (1) the Work in accordance with and acceptable under the Contract Documents, (2) the Work completed under the Contract fully performed and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 11.1.4, then, and only then, the Architect shall promptly state in writing that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due the Contractor is payable. The Architect's written notice required by this paragraph shall state the Date of Final Completion.

12.6.2 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled claims,
- .2 faulty or defective Work,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any guarantees required by the Contract Documents.

12.6.3 The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

12.6.4 No earlier than three weeks before the expiration of the warranty period for the Work specified in Subparagraph 18.1 herein, or at such other additional earlier time or times as the Owner may agree, the Owner and/or the Architect, in company with the Contractor, shall make an inspection of the Project and certify that all defects in material and workmanship occurring during this period have been satisfactorily corrected.

## **ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY**

### 13.1 SAFETY PRECAUTIONS AND PROGRAMS

13.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

13.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss, to:

- .1 all employees engaged in the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities and property.

13.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

13.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or the acts or omissions of the Owner or Architect or anyone employed by either of them or for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

13.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated in writing by the Contractor or the Architect.

13.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

### 13.3 EMERGENCIES

13.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided by the applicable provision of the Contract Documents.

## **ARTICLE 14 INSURANCE**

### **14.1 CONTRACTOR'S INSURANCE**

14.2 The Contractor at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rate of A10, or approved by Owner in its sole discretion and licensed to do business in the State of Arizona with policies and forms satisfactory to the Owner.

14.3 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Owner, constitute a material breach of this Contract.

14.4 The Contractor's insurance shall be primary insurance as respects the Owner, and any insurance or self-insurance maintained by the Owner shall not contribute to it.

14.5 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Owner.

14.6 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Owner, its agents, officers, officials and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

14.7 The insurance policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Owner under such policies. The Contractor shall be solely responsible for the deductible and/or insured retention and the Owner, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

14.8 The Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The Owner shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the Owner's rights to insist on strict fulfillment of Contractor's obligations under this Contract.

14.9 The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the Owner, its agents, officers, officials and employees as Additional Insured.

## 14.10 REQUIRED COVERAGE

### 14.10.1 COMMERCIAL GENERAL LIABILITY

14.10.2 Contractor shall maintain Commercial General Liability insurance with a unimpaired limit of not **less than \$1,000,000.00 for each occurrence with a \$2,000,000.00 Products/Completed Operations Aggregate** and a **\$2,000,000.00 General Aggregate Limit**. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 0001 or any replacements thereof. The coverage shall not exclude X,C,U.

14.10.3 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

14.10.4 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc., Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

14.10.5 If required by this Contract, the Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of this Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a **limit not less than \$2,000,000.00 per occurrence**, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

### 14.11 AUTOMOBILE LIABILITY

14.11.1 Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of **not less than \$1,000,000,000 each occurrence** with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and **\$5,000,000.00 per accident limits for bodily injury and property damage** shall apply.

#### 14.12 WORKER'S COMPENSATION

14.12.1 The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of **not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease for each employee, and \$1,000,000.00 disease policy limit.**

14.12.2 In case any work is sub-contracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

#### 14.13 CERTIFICATES OF INSURANCE

14.13.1 Prior to commencing work or services under this Contract, Contractor shall furnish the Owner with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by the Contract are in full force and effect.

14.13.2 In the event any insurance policy(ies) required by this Contract, is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

14.13.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to the Owner fifteen (15) days prior to the expiration date.

#### 14.14 CANCELLATION AND EXPIRATION NOTICE

14.14.1 Insurance required herein shall not expire, be cancelled, or materially changed without thirty (30) days prior written notice to the Owner.

### **ARTICLE 15 CHANGES IN THE WORK AND CLAIMS**

#### 15.1 CHANGE ORDERS

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Contract Amount and/or the Contract Time shall be adjusted pursuant to the terms of the Contract Documents.

15.1.2 A Change Order is a written amendment to the Contract Documents signed by the Owner, Architect, and the Contractor, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract amount and the Contract Time may be changed only by Change Order.

15.1.3 The cost or credit, as the case may be, to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways as mutually agreed:

- .1 by a lump sum properly itemized in a form acceptable to Architect and Owner including sufficient supporting substantiating data to permit evaluation.
- .2 by actual cost and the specified percentage fees covering overhead and profit, less applicable trade discounts, rebates, credits or other such reductions in cost made available to Contractor.
- .3 Unit price as stated in the Contract, subject to the provisions of 15.1.5 herein. Unit prices proposed on the bid form and included in the Contract are not subject to further overhead and profit adjustments. The Contract sum will be adjusted by the direct extension of the number of units and unit price.

The amount of Contractor's overhead and profit allowed for any change order, whether increase or decrease shall not exceed the percentages of overhead and profit specified in Paragraph 3.5 hereof on work performed by Contractor; and the percentage for profit specified in Paragraph 3.5 hereof of Subcontractor's quotation on all work performed by Subcontractors for profit, with no markup for overhead. Subcontractor's markup on Change Orders shall be limited by their subcontracts with Contractor to the percentages of direct cost for overhead and for profit as specified in Paragraph 3.5. hereof.

15.1.4 If none of the methods set forth in Subparagraph 15.1.3 is agreed upon to calculate a charge or credit to Owner, the Contractor, provided he otherwise receives a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be estimated in good faith by the Architect on the basis of the Contractor's reasonable expenditures and savings, including, an allowance for overhead and profit as provided in 15.1.3. The Architect shall use the unit price basis if available and, if not, then the actual cost basis for this determination. The Architect shall then submit that estimate, with all supporting information, to Owner for approval. In such case, and also under Subparagraph 15.1.3.1 above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease, including an allowance for overhead and profit, as confirmed by the Architect. When both additional costs and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

15.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in proposed Change Order that application of the agreed unit prices to the quantities or Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

15.1.6 If the Contractor claims that additional cost or time is involved because of:

- .1 any written interpretation issued pursuant to Paragraph 4.11.5,
- .2 any order by the Architect or Owner to stop the Work pursuant to Paragraph 5.2.11 where the Contractor was not at fault, or
- .3 any written order for a minor change in the Work issued pursuant to Paragraph 15.3, the Contractor shall make such claim as provided in Paragraph 15.2.



15.1.7 Impact costs. No claim for impact costs resulting from performance of a Change Order will be permitted against the Owner, Architect or any other party in privacy of Contract with the Owner with respect to the project subsequent to the time that the Change Order is signed by the Contractor.

15.1.8 Final Settlement. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum or the Contract Time. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Application for Payment as if such Work were originally part of the Contract or in separate notice as provided in 12.4.4.. Agreement on any Change Order releases the Owner, and any other party in privacy of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in the connection with, or in any way associated with, such change.

## 15.2 CLAIMS FOR ADDITIONAL COST OR TIME

15.2.1 If the Contractor is entitled, under the terms of the Contract, to make a claim for an increase in the Contract Amount or any other claim, he shall give the Architect and Owner written notice thereof within fourteen (14) days after the occurrence of the event giving rise to such claim or include such notice in the Application for Payment for the month in which the event giving rise to the claim occurred, whichever is earlier. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 12.4.4 within the time limits prescribed herein and no such claim shall be valid unless so made. Any change in the Contract Amount or Contract Time resulting from such claim to be effective shall be approved by the Owner and authorized by Change Order.

## 15.3 MINOR CHANGES IN THE WORK

15.3.1 The Architect or Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

## 15.4 FIELD ORDERS

15.4.1 The Architect or Owner may issue written Field Orders which interpret the Contract Documents or which order minor changes in the Work in accordance with Paragraph 15.3 without change in Contract Amount or Contract Time. The Contractor shall carry out such Field Orders promptly.

## **ARTICLE 16**

### **UNCOVERING AND CORRECTION OF WORK**

#### **16.1 UNCOVERING OF WORK**

16.1.1 If any Work should be covered contrary to the request of the Architect, it must, if required by the Architect, be uncovered for his observation and replaced all at the Contractor's expense.

16.1.2 If any other Work has been covered which the Architect has not requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement after approval by the Owner shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 9, and in that event the Owner shall be responsible for the payment of such costs.

#### **16.2 CORRECTION OF WORK**

16.2.1 The Contractor shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including the cost of the Architect's additional services thereby made necessary.

16.2.2 If, within the time provided in Paragraph 18.1 herein or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, including the original conformance with the Contractor Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall, at his sole expense, correct it promptly after receipt of a written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

16.2.3 All such defective or non-conforming Work under Paragraphs 16.2.1 and 16.2.2 shall be removed from the site where necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

16.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

16.2.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days after receipt of a statement of charges therefore, the Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof after deducting all the costs that should have been borne by the Contractor, including compensation for additional Architectural services and any attorneys, fees incurred by Owner in connection therewith. If such proceeds of

sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner, and all attorneys, fees and other costs that the Owner may incur in collecting same.

16.2.6 If the Contractor fails to correct such defective or non-conforming work, the Owner may correct it in accordance with Paragraph 10.6.

16.2.7 The obligations of the Contractor under this Paragraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

### **16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

## **ARTICLE 17 TERMINATION OF THE CONTRACT**

### **17.1 TERMINATION BY THE CONTRACTOR**

17.1.1 If the work is stopped for a period of One Hundred and Sixty (160) days, and the Architect and the Owner are immediately notified of such stopping, under an order of any court or other public authority having jurisdiction through no act or fault of the Contractor or any Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, and by reason of some act or omission of Owner, then the Contractor may, upon seven day's written notice to the Owner and the Architect as its sole remedy hereunder, terminate the Contract and recover from the Owner payment for all Work approved by Owner and for any proven loss sustained upon any materials, including reasonable profit for Work accomplished through the date the notice of termination is given and approved and accepted by Owner.

### **17.2 TERMINATION BY THE OWNER**

17.2.1 If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the Contractor's obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the Contract, the Owner shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the Owner, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

17.2.2 Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

17.2.3 The Owner may terminate this Contract at any time by giving at least (10) days notice in writing to the Contractor. If the Contract is terminated by the Owner, the Contractor will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Contractor, the aforementioned clause relative to termination shall apply.

17.2.4 If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accord with the Progress Schedule and Contract Time, or he fails to make prompt payments to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to uninterruptedly complete the Work once he has the Notice to Proceed, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety seven (7) days written notice, terminate the employment of the Contractor and take possession of the site and all materials, and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. Termination of the Contract under this Paragraph shall not relieve the Contractor of any warranty obligations on Work performed hereunder, and such obligations shall survive termination of this Contract.

17.2.5 If the unpaid balance of the Contract Amount is exceeded by the costs of finishing the Work, including compensation for the Architect's additional services, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, the Contractor shall pay the difference to the Owner. The costs incurred by the Owner as herein provided shall be certified by the Architect.

17.2.6 Pursuant to A.R.S. § 38-511, OWNER reserves the right to cancel this Agreement, within three years after the effective date of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of OWNER is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of CONTRACTOR in any capacity or a subcontractor to CONTRACTOR with respect to the subject matter of this Agreement. Cancellation under this section by OWNER shall be effective when written notice from the City Manager is received by CONTRACTOR. The OWNER may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the OWNER from CONTRACTOR arising as the result of the Agreement.

## **ARTICLE 18 WARRANTY AND SITE CONDITIONS**

### **18.1 TWO-YEAR WARRANTY**

18.1.1 The Contractor shall warrant all Work under this Contract to be in accordance with the Contract Documents against defects of material and workmanship for a period of two years from the date of Final Completion; provided, however, that those items of the Work specified as having longer warranties shall be warranted for the period specified.

18.1.1.1 The Contractor shall be responsible for the total cost of repairing and restoring any Work found not in compliance with the Contract Documents or any defective Work to a new condition, at no cost to Owner.

18.1.1.2 In any case where the subject matter of the non-compliance or defect relates to Work done under a subcontract between the Contractor and any subcontractor, it is the responsibility of the Contractor, not the Owner, to secure the Subcontractor's performance in compliance with this paragraph and, in the event of the Subcontractor's failure or refusal within a reasonable time to perform after notice, it shall be the Contractor's responsibility to repair and restore such non-complying or defective Work to a new condition, at no cost to Owner.

18.1.1.3 In any case where the failure in complying or defective Work has been brought to the attention of the Contractor by the Owner and the Contractor fails or refuses to correct it within five (5) days of such notice, the Owner may elect, without precluding any other remedy it may have available to it, to have the defective Work repaired and restored to a new condition in whatever reasonable manner it deems appropriate, regardless of the cost, and the Contractor shall be liable to the Owner for the total cost thereof, including, by way of example only, any Architectural and legal fees related to effecting the repair, plus 10% of the total costs incurred.

18.1.2 Material and workmanship made good through compliance with such warranty shall be subject to the same warranty period as the original materials and workmanship. Such warranty period shall begin on the date the replaced material and work is certified as acceptable in writing by the Architect.

### **18.2 SANITATION**

18.2.1 The Contractor shall provide temporary sanitation facilities for the use of employees on this construction. Following the period of necessity for such facilities, they shall be removed and all evidence thereof effaced.

### **18.3 JOB OFFICE**

18.3.1 A job office as approved by the Architect shall be provided on the project site. The Contractor shall install at his own expense a job telephone for use of all trades in connection with the work and shall pay for all local calls. All long-distance calls and toll calls shall be paid for by the person making the call.

#### 18.4 USE OF PREMISES

18.4.1 The Contractor shall confine his equipment and plant, the storage of materials, and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Architect and shall not unreasonably encumber the premises with materials or equipment.

18.4.2 The Contractor shall enforce the Architect's instructions regarding signs, advertisement, fires, and smoking.

#### 18.5 SEVERABILITY

18.5.1 In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

### **ARTICLE 19 RECORDS ACCESS AND RETENTION REQUIREMENTS**

19.1 Records Retention: The Contractor shall maintain and shall contractually require each subcontractor to maintain accounts and records including personnel, property and financial records adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner to assure proper accounting for all project funds both Federal and non-Federal shares. These records will be retained for five (5) years after the expiration of this Contract unless permission to destroy them is granted in writing by the Owner.

19.2 Access to Records: Legible copies of all records maintained by the Contractor shall be made available, upon request, to the Owner, the Arizona Department of Housing, the Office of the Inspector General (HUD), and any other body authorized by the Owner.

### **ARTICLE 20 COMPLIANCE WITH IMMIGRATION LAWS and E-VERIFY REQUIREMENT**

20.1 As mandated by Arizona Revised Statutes ("A.R.S.") Section 41-4401, the Owner is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. Section 23-214(A). (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.") The Owner must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. Section 23-214(A). Therefore, in signing or performing any Contract (including this Agreement) for the Owner, the Contractor fully understands that:

a. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A);

b. A breach of the warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and

c. The Owner or its designee retains the legal right to inspect the papers or any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph (a).

## **ARTICLE 21 SCRUTINIZED BUSINESS OPERATIONS**

21.1 Pursuant to A.R.S. Section 35-391.06 and 35-393.06, the contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393 as applicable. If the Owner determines that the contractor submitted a false certification, the Owner may impose remedies as provided by law including termination of this Contract.

**IN WITNESS WHEREOF**, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed original thereof, have been duly executed by the Parties herein above named, on the day and year first above written.

**OWNER – City of Willcox:**

**By:** \_\_\_\_\_  
Robert Irvin, Mayor

**Date:** \_\_\_\_\_

**Attest:** \_\_\_\_\_  
Virginia Mefford, Clerk, City of Willcox

**APPROVED AS TO FORM:**

**By:** \_\_\_\_\_  
Ann Roberts, Attorney

**Date:** \_\_\_\_\_

**CONTRACTOR:**

**By:** \_\_\_\_\_  
Steven A. Hickam  
Hickam Construction Company

**Date:** \_\_\_\_\_