

# Town of *Wellton*

## **Town Council Meeting Council Packet March 7, 2023**

**Mayor Scott Blitz**

**Mayor Pro Tem Cecilia McCollough**

**Councilmember Barbara Biggs  
Councilmember Sylvia Davidson  
Councilmember Michelle Jones**

**Town Manager Richard Marsh**





**TOWN OF WELLTON**  
**TOWN COUNCIL MEETING AMENDED AGENDA**  
**COUNCIL CHAMBERS**  
**28634 OAKLAND AVENUE, WELLTON, ARIZONA**  
**TUESDAY, MARCH 7, 2023**  
**6:00PM**

**6:00 PM Convene Regular Session of the Common Council of the Town of Wellton**

- **Call to Order**
- **A reminder to please turn your cell phones off or place on vibrate. If you must answer your cell phone or text, please step outside. Thank you.**
- **Pledge of Allegiance**
- **Invocation**
- **Roll Call**
- **Introduction of Guests**
- **Final Call** for submission of Speaker Request Forms
- **Call to the Public**  
This is a business meeting of the Wellton Town Council. The Town values and welcomes public input. Please address the Council and not individual Council Members. Do not address staff or members of the audience. The Open Meeting Law limits Council action on items brought up in Call to the Public. The Council may direct staff to study the matter and reschedule for further consideration later. Items on the agenda will not be heard or discussed in Call to the Public. Individuals are limited to three (3) minutes.
- **Presentation**  
Greater Yuma Economic Development (GYEDC) Mid-Year Presentation by Julie Engle, Executive Director.
- **Presentation**  
Small Business Development Center (SBDC) Presentation.
- **Presentation**  
Recognition of volunteers at Coyote Wash Golf Course, presented by Councilmember Barbara Biggs.
- **Presentation**  
Presentation by Town Manager Richard Marsh with an update on the Neighborhood Revitalization Initiative.
- **Presentation**  
Presentation by Town Manager Richard Marsh on 2022 Accomplishments.

**Discussion and Action Items**

1. Approval of Minutes:
  - a. For the Meeting of February 7, 2023 (Work Session).
  - b. For the Meeting of February 7, 2023 (Regular Meeting).
2. Discussion and possible action to adopt Ordinance No. 149 amending the Code of the Town of Wellton, Arizona, by amending certain provisions of Chapter 2, Mayor, and

Council, related to the title of the Mayor Pro Tem; and providing for repeal of conflicting ordinances.

- **Recess Regular Session of the Common Council and open Public Hearing as Board of Adjustment**
- 3. Public Hearing for Rezoning Case:
  - a. Rezoning Case #RZ-23-003: Dahl, Robins & Associates, Inc., agents for G-12, LLC request a rezoning of a 878,733 square foot parcel located at PID 201-07-016 in Wellton, Arizona, from Residential District to Commercial District.
- **Close Public Hearing.**
- 4. Discussion and possible action to authorize the Mayor to sign Professional Services Agreement between Logan-Simpson Design, Inc. & the Town of Wellton for the Comprehensive Plan Update, in the amount of \$50,000. CDBG Contract #121-23.
- 5. Discussion and possible action to authorize the Mayor to sign the following documents: 1) Contract #145-23 between the Town of Wellton and the Arizona Department of Housing for the use of CDBG Regional Account funds in the amount of \$481,912 and 2) All required forms that are necessary for contract execution.
- 6. Discussion and possible action to approve Resolution No. 703 designating the Chief Fiscal Officer for officially submitting the Town's Fiscal Year 2023 Annual Expenditure Limitation Report.
- 7. Discussion and possible action to authorize Staff to negotiate the sale of town property located at 29249 San Jose Avenue (PID 709-13-030), Wellton Annex, Block 42, Lot 3.
- **Future Agenda Items**
- **Town Manager Report**

The Town Manager's report is an informational item to inform the Town Council about current developments with respect to Town business. No action will be taken on any information presented.
- **Council's Report**

The next scheduled Council Meeting will be Tuesday, April 4, 2023, at 6:00PM.
- **Executive Session**

An Executive Session may be called during the public meeting on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of receiving legal advice.
- **Adjournment**

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 the Town of Wellton does not discriminate based on disability in the admission of or access to, or treatment or employment in, its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in Town programs, activities, or services contact: ADA/Section 504 Coordinator, Town of Wellton, 28634 Oakland Avenue, Wellton, Arizona 85356; (928) 785-3348 or TTY (928) 785-3349.

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## **TOWN OF WELLTON**

### **Minutes of the February 7, 2023 Work Session**

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**Mayor Scott Blitz** called the work session to order at 5:00PM on Tuesday, February 7, 2023.

**Councilmembers Present:** Mayor Scott Blitz, Mayor Pro Tem Cecilia McCollough, Councilmembers Barbara Biggs, Sylvia Davidson, and Michelle Jones.

**Councilmembers Absent:** None

**Staff Present:** Town Manager Richard Marsh, Deputy Town Clerk Sandra Jones, Code Enforcement David Williams, and Attorney John Austin Gaylord (via Zoom).

**Guests Present:** Allen Lockwood, Julie Stevens, Kerri Motovidlok, Rob Murdock, Jim Sampson, Tammy L Monfey, and Bob Ludwig.

#### **Discussion and Action Items**

**1. Work Session for the 2018 International Property Code Maintenance (IPMC) with:**

**a. Presentation by Randall Crist, Director of Building Safety for the City of Yuma.**

Presentation (with PowerPoint) by Randall Crist, Director of Building Safety for the City of Yuma, regarding the City of Yuma's experience with the 2018 International Property Code Maintenance (IPMC).

The City of Yuma if not proactive in enforcement of the IPMC, they are reactive. They rely on complaints from the public. The assumption is the Town of Wellton would be similar.

"Due process" is probably the most important step. This will ensure the Town is protected.

The Town would move forward with "responsible enforcement" as the City of Yuma does. A thoughtful approach that will not put undue pressure on the residents.

If the Town moves forward with the adoption of the IPMC (with amendments) it would take a few years before you can really start seeing results. Noticeable results.

The IPMC is a stand-alone code that also works in conjunction with the other International Codes (IRC, IBC, etc.). It is about property maintenance, not property use.

The City of Yuma will share their fee schedule and timeline for compliance.

The properties inspected must meet the code that was in effect when the property was initially built.

Liens can be issued on properties that are abated by the Town, per ARS § 9-499.

The City of Yuma is now utilizing Click Fix (a software program/app) for residents to report issues and/or code violations.

Regarding RV/Mobile Home Parks, the common areas are the park owner's responsibilities.

Animals are not in the scope of the IPMC, that falls to Animal Control.

Certification of personnel would take an estimated 6 months.

**b. Presentation by Attorney John Austin Gaylord and Code Enforcement Officer David Williams of the recommended amendments.**

Presentation by Attorney John Austin Gaylord and Code Enforcement Officer David Williams regarding the recommended amendments to the IPMC for the Town of Wellton.

Concern expressed from multiple sources that the IPMC includes regulations requiring the ability to maintain a certain temperature on the interior of the residence. It was reiterated by Staff that the ability is the only requirement. The IPMC does not dictate that it must be "set" at those temperatures.

**Adjournment**

Motion made by Councilmember Jones, seconded by Mayor Pro Tem McCollough to adjourn.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

Meeting adjourned at 6:50PM.

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Scott Blitz, Mayor

ATTEST:

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Richard Marsh, Town Manager

**CERTIFICATION:**

I hereby certify that the forgoing minutes are a true and correct copy of the work session held February 7, 2023, and the meeting was duly called and posted and that a quorum was present.

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Richard Marsh, Town Manager

## **TOWN OF WELLTON**

### **Minutes of the February 7, 2023 Regular Meeting**

**Mayor Scott Blitz** called the regular meeting to order at 7:00PM on Tuesday, February 7, 2023. **Mayor Blitz** led the Pledge of Allegiance and Councilmember **Barbara Biggs** gave the invocation. Roll call was taken.

**Councilmembers Present:** Mayor Scott Blitz, Mayor Pro Tem Cecilia McCollough, Councilmembers Barbara Biggs, Sylvia Davidson, and Michelle Jones.

**Councilmembers Absent:** None

**Staff Present:** Town Manager Richard Marsh, Deputy Town Clerk Sandra Jones, Finance Director Marisol Hernandez, Police Chief David Rodriguez, Code Enforcement Officer David Williams, and Attorney Andrew McGuire (via Zoom).

**Guests Present:** Jim Sampson, Dick Delehant, Jane Delehant, Tammy L Monfey, Scott Monfey, Dolores Ward, Catherine Blitz, Miguel Gamez, Stan Lucier, Regina Langford, Camilla Baycroft, Dit Blackwell, Robert Hall, Howard Holloway, and Darren Simmons.

#### **Presentation**

The Presentation by Charles Gutierrez of Yuma Metropolitan Planning Organization (YMPO) regarding the grant funding for potential railroad crossings has been postponed.

#### **Call to the Public**

Jim Sampson (30313 Mountain View Avenue) – Thank you to the Town for starting the process to clean-up the Town. Lot 146 on Quail Trail in Butterfield Field Bluff Estates has had numerous inoperable vehicles dropped onto the property.

#### **Presentation**

Presentation of Certificate of Appreciation to the Foothills Rotary Club representatives Camilla Baycroft and Dit Blackburn for their grant to Butterfield Park.

#### **Discussion and Action Items**

##### **1. Approval of Financial Statement:**

###### **a. As of December 31, 2022.**

Motion made by Councilmember Davidson, seconded by Councilmember Jones, to approve the Financial Statement as of December 31, 2022.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**2. Approval of Cash Disbursements:****a. For the Period: October 1, 2022 – December 31, 2022.**

Motion made by Mayor Pro Tem McCollough, seconded by Councilmember Jones, to approve the Cash Disbursements for the Period: October 1, 2022 – December 31, 2022.

Davidson: Yay (noted abstention regarding Cash Disbursement for Wellton Hardware due to possible Conflict of Interest)

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**3. Approval of Minutes:****a. For the Meeting of January 17, 2023 (Work Session).****b. For the Meeting of January 17, 2023 (Regular Meeting).**

Motion made by Councilmember Biggs, seconded by Mayor Pro Tem McCollough, to approve the Minutes for the Meetings of January 17, 2023 (Work Session) and January 17, 2023 (Regular Meeting).

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**4. Discussion and possible action to adopt Ordinance No. 147 declaring as a public record that certain document on file with the Town Clerk entitled the "Town of Wellton Amendments to the 2018 International Property Maintenance Code" by reference; and amending the Wellton Town Code by amending Chapter 8, Building, Planning, Zoning Code, by adding Article 8-8, Property Maintenance Code; providing for repeal of conflicting ordinances; providing for severability; and providing penalties for violations.**

Motion made by Mayor Pro Tem McCollough, seconded by Councilmember Jones, to adopt Ordinance No. 147 declaring as a public record that certain document on file with the Town Clerk entitled the "Town of Wellton Amendments to the 2018 International Property Maintenance Code" by reference; and amending the Wellton Town Code by amending Chapter 8, Building, Planning, Zoning Code, by adding Article 8-8, Property Maintenance Code; providing for repeal of conflicting ordinances; providing for severability; and providing penalties for violations.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**5. Discussion and possible action to:**

- a. Approve the Request for Proposal for Digital Billboard on Water Plant Property submitted by Champion Outdoor.**

Motion made by Mayor Pro Tem McCollough, seconded by Councilmember Davidson, to approve the Request for Proposal for Digital Billboard on Water Plant Property submitted by Champion Outdoor.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**6. Discussion and possible action to approve the endorsement of Application for Bingo License for Pioneer RV Park at 28595 E County 11<sup>th</sup> Street.**

Motion made by Councilmember Davidson, seconded by Mayor Pro Tem McCollough, to approve the endorsement of Application for Bingo License for Pioneer RV Park at 28595 E County 11th Street.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**• Recess Regular Session of the Common Council and open Public Hearing.**

Motion made by Mayor Pro Tem McCollough, seconded by Councilmember Jones, to recess Regular Session of the Common Council and open Public Hearing at 8:13PM.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**7. Public Hearing for Rezoning Case:**

- a. Rezoning Case #RZ-23-002: Miguel A & Norma A Gamez request a rezoning of a 6,750 square foot parcel located at 29242 Los Angeles Avenue (709-13-013) in Wellton, Arizona, from Commercial District to Residential District.**

Discussion regarding the Rezoning Request.

**• Close Public Hearing.**

Motion made by Councilmember Jones, seconded by Councilmember Davidson, to close the Public Hearing at 8:23PM.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

**8. Discussion and possible action to approve Resolution No. 702 to adopt a minor amendment to the General Plan to allow a residential use on property located at 29242 Los Angeles Avenue, Wellton, Arizona.**

Motion made by Mayor Pro Tem McCollough, seconded by Councilmember Davidson, to approve Resolution No. 702 to adopt a minor amendment to the General Plan to allow a residential use on property located at 29242 Los Angeles Avenue, Wellton, Arizona.

Davidson: Nay

Jones: Nay

Blitz: Nay

McCollough: Nay

Biggs: Nay

Motion carried.

**9. Discussion and possible action to adopt Ordinance No. 148, to amend the zoning map of the Town of Wellton for the property located at 29242 Los Angeles Avenue, Wellton, Arizona.**

Motion made by Mayor Pro Tem McCollough, seconded by Councilmember Davidson, to adopt Ordinance No. 148, to amend the zoning map of the Town of Wellton for the property located at 29242 Los Angeles Avenue, Wellton, Arizona.

Davidson: Nay

Jones: Nay

Blitz: Nay

McCollough: Nay

Biggs: Nay

Motion carried.

**Future Agenda Items**

- The Comprehensive Plan agreement for approval on March 7, 2023.
- Digital Billboard Lease for Council approval on March 7, 2023.

**Town Manager Report**

- **Reminder:** Effective February 17, 2023, the Wellton Town Council will hold one meeting per month. It will be the first Tuesday of each month at 6:00PM at the Council Chambers. Additional Special Meetings and Work Sessions will be scheduled as needed.
  - Complete agenda packets for each council meeting will now be available on the Town's website.
- Mayor Mc McCollough and I met with Veronica Shorr Director of the AZ Community Foundation of Yuma as a follow-up to the September Community Meeting. We will have another Community Meeting on March 21, 2023, at the Community Center from 5:00 p.m-7:00 p.m. Dinner will be provided compliments of the Arizona Community Foundation of Yuma.
- USDA Executive Director for the State of Arizona Charlene Fernandez and Veronica Shorr of the AZ Community Foundation of Yuma have also expressed interest in facilitating the acquisition of a street sweeper and garbage truck with a loan/grant combo. This would be a collaboration between USDA and the AZ Community Foundation.
- Sgt Salcido and I met with the resident on San Jose Avenue and William Street regarding the extreme debris, etc. on the property. Sgt Salcido translated. The resident was extremely compliant and in agreement to clean the property.
- The Yuma Jazz Company will be at the "Day on the Green" Jazz Music Concert on Saturday, February 11, 2023, from 2:30PM – 4:30PM at Coyote Wash Golf Course Hole No. 5. Tickets and information are available at Coyote Wash Golf Course Pro Shop (11902 William Street). Please call 928-785-4653.
- The Comprehensive Plan proposals were submitted. The proposals have been reviewed by the committee. Their recommendation will come to Council for approval on March 7, 2023.
- The Town of Wellton's Census Challenge is still in process. The Census is currently running behind.
- Staff (Public Works Director Joe Grant, Deputy Town Clerk Sandra Jones, and I) held a meeting with community members Phyllis McKay and Patricia Wheeler regarding the feasibility of instituting a Town of Wellton Dog Licensing Program. The subject was met with positive reactions. A follow up meeting will be held within the next few weeks.
- Engineers for Tropic Car Wash have submitted the lot split and rezoning applications for review. Propose new business is to be near the Microtel Hotel area.
- The Wellton Police Department has received a \$140,000 Stone Garden Grant. \$80,000 will be for OT and mileage. The \$60,000 allotment will be used to purchase equipment (UTV and trailer, LPR units, and a lidar).
- The City of San Luis is in the process of donating rifles to Wellton PD. When the MOU is approved by their City Council, it will then come before the Wellton Town Council for approval.
- The Wellton Police Department has received a Department of Justice Grant for \$47,000. This will also be used for much needed equipment upgrades.

- I attended the ACMA Annual Conference in Sedona. The useful information and networking were in abundance. Highlights of the conference follows:
  - Opposition of SB1184/HB2067 – Residential Lease Municipal Tax Exemption
  - Potential estimated loss of \$14,098 (1.2%) based on 2022 fiscal year estimates.
  - Opposition of SB10636/SB1089/HB2061 – Food Municipal Tax Exemption
  - Potential estimated loss of \$134,336 (11.5%) based on 2022 fiscal year estimates.
  - Leadership similarities between Military and Municipal leaders. Focus on Culture Change, Excellence, Leading by example and the Public Servant mindset.
  - Colorado River – the largest river in the nation is at historically low levels. Lake Mead is at 28% capacity and Lake Powell is at 24%. Waiting on federal mandate.
- Additional Proposed Tax Cuts to effect local governments:
  - HB2003 - Corporate Income Tax Rates will affect the State Shared URS Revenue. The FY 2023 URS (Income Tax) for the Town of Wellton is \$464,200. The URS Loss Projections are:

|           |            |
|-----------|------------|
| ▪ FY 2026 | (\$16,858) |
| ▪ FY 2027 | (\$27,635) |
| ▪ FY 2028 | (\$39,545) |
| ▪ FY 2029 | (\$50,490) |
- Thank you to Dolores Ward. She has been doing a fantastic job as Wellton's new PIO. Based on the hours she has been putting in for her stipend (attending meetings, updating postings, communicating with the public, etc.) it averages roughly \$5.00 per hour.

### Council's Report

- Mayor Blitz reported:
  - Reminder of Pioneer Day Parade and Fiesta on Saturday, February 25, 2023.
  - Arizona Colorado Rivers Mayor's Association met regarding protecting the Colorado River Water for local use.
  - Following legislative updates for bills re: food tax and rental tax.
  - The Golf Course Improvement Committee met with Coyote Wash Golf Course. They will be meeting with Butterfield Golf Course.
- Mayor Pro Tem McCollough reported:
  - Attended the Governor's Office meeting. Focus was Faith Family Friends.
  - Flynn Brown Webinar. Focus was Fentanyl.
  - YMPO Executive Board meeting.
  - The Rail Study has been completed.
  - She is gearing up for Flynn Brown Civic Leader training,
  - Grant opportunities are available through: Google and Microsoft. She will be updating on progress.
  - Met with Arizona Western College East Campus Executive Director Jim Larsen regarding the opportunities for local students at the Wellton AWC Campus. These included dual certificates, etc.
  - The Positive Instigators Volunteer Group continues to meet.

**Executive Session**

- None requested.

**Adjournment**

Motion made by Mayor Pro Tem McCollough, seconded by Councilmember Jones to adjourn.

Davidson: Yay

Jones: Yay

Blitz: Yay

McCollough: Yay

Biggs: Yay

Motion carried.

Meeting adjourned at 8:41PM.

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Scott Blitz, Mayor

ATTEST:

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Richard Marsh, Town Manager

**CERTIFICATION:**

I hereby certify that the forgoing minutes are a true and correct copy of the regular meeting held February 7, 2023, and the meeting was duly called and posted and that a quorum was present.

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Richard Marsh, Town Manager

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**TOWN OF WELLTON**

**ORDINANCE NO. 149**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WELLTON, ARIZONA, AMENDING THE CODE OF THE TOWN OF WELLTON, ARIZONA, BY AMENDING CERTAIN PROVISIONS OF CHAPTER 2, MAYOR AND COUNCIL, RELATED TO THE TITLE OF THE MAYOR PRO TEM; AND PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES.**

**WHEREAS**, the Code of the Town of Wellton, Arizona (the "Code"), sets forth the titles and responsibilities of the elected officers of the Town; and

**WHEREAS**, the Code provides for a mayor pro tem to perform the duties of the mayor during his absence or disability; and

**WHEREAS**, since the Town adopted the Code in 1970, the title "mayor pro tem" has fallen out of common use by Arizona municipalities, and the position is now more commonly styled "vice mayor"

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Town Council of the Town of Wellton, Arizona, as follows:

**Section 1.** The Code of Wellton, Arizona, Chapter 2, Mayor and Council, Article 2-2, Mayor, Section 2-2.2, Mayor Pro Tem, is hereby amended as follows (deletions shown as ~~strikethroughs~~ and additions shown in ALL CAPS):

Section 2-2.2 ~~Mayor Pro Tem~~ **VICE MAYOR**

At the same meeting at which the mayor is selected, the council shall designate one of its members as VICE mayor ~~pro tem~~, who shall serve at the pleasure of the council. The VICE mayor ~~pro tem~~ shall perform the duties of the mayor during his absence or disability.

**Section 2.** The Code of Wellton, Arizona, Chapter 2, Mayor and Council, Article 2-2, Mayor, Section 2-2.3, Acting Mayor, is hereby amended as follows (deletions shown as ~~strikethroughs~~ and additions shown in ALL CAPS):

In the absence or disability of both the mayor and VICE mayor ~~pro tem~~, the council may designate another of its members to serve as acting mayor who shall have all the powers, duties, and responsibilities of the mayor during such absence or disability.

**Section 3.** The Code of Wellton, Arizona, Chapter 2, Mayor and Council, Article 2-2, Mayor, Section 2-2.6, Failure to Sign Documents, is hereby amended as follows (deletions shown as ~~strikethroughs~~ and additions shown in ALL CAPS):

If the mayor refuses or fails to sign any ordinance, resolution, contract, warrant, demand, or other document or instrument requiring his signature for five days consecutively, then a majority of the members of the council may, at any regular or special meeting, authorize the VICE mayor ~~pro-tem~~, or in his absence, an acting mayor to sign such ordinance, resolution, contract, warrant, demand, or other document or instrument which when so signed shall have the same force and effect as if signed by the mayor.

Section 4. The Code of Wellton, Arizona, Chapter 2, Mayor and Council, Article 2-4, Council Procedure, Section 2-4.6, Order of Business, subsection A, Call to Order, is hereby amended as follows, with all other provisions of Section 2-4.6 remaining unchanged (deletions shown as ~~striketroughs~~ and additions shown in ALL CAPS):

The mayor shall take the chair precisely at the hour appointed for the meeting and shall immediately call the council to order. In the absence of ~~both~~ the mayor, the VICE mayor ~~pro-tem~~ shall call the council to order. In the absence of both the mayor and VICE mayor ~~pro-tem~~, the clerk shall call the council to order, and an acting mayor shall be selected to chair the meeting. Upon the arrival of the mayor or the VICE mayor ~~pro-tem~~, the VICE mayor ~~pro-tem~~ or the acting mayor shall relinquish the chair upon the conclusion of the business immediately before the council. The mayor shall preserve order and decorum, decide all questions of order, and conduct the proceedings of the meetings in accordance with the parliamentary rules contained in Robert's Rules of Order.

Section 5. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Wellton, Arizona, this 7<sup>th</sup> day of March 2023.

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Scott Blitz, Mayor

ATTEST:

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Richard Marsh, Town Manager/Town Clerk

APPROVED AS TO FORM:

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Gust Rosenfeld PLC, Town Attorney  
By: Andrew J. McGuire

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# Town of Wellton

28634 Oakland Avenue • P.O. Box 67 • Wellton, Arizona 85356 • (928) 785-3348 • Fax (928) 785-4374 • wellton@town.wellton.az.us

## Staff Report

To: Board of Adjustment  
From: Sandra Jones  
Deputy Town Clerk  
Date: March 7, 2023  
Re: Rezoning Case RZ-23-003

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### 1. Requested Action

Dahl, Robins & Associates, Inc., agents for G-12, LLC request a rezoning of an 878,733 square foot parcel located at PID 201-07-016 in Wellton, Arizona, from Residential District to Commercial District.

### 2. Summary

The location is within PID 201-07-016.

### 3. Fiscal Impact

N/A

### 4. Recommended Motion

The request will return for a vote at the April 4, 2023 Regular meeting.

Prepared by:

  
Sandra Jones, Deputy Town Clerk

Approved for  
Agenda by:

  
Richard Marsh, Town Manager



**Town of Wellton**  
**Department of Planning and Zoning**

PO Box 67 • 28634 Oakland Avenue  
Wellton, Arizona 85356  
(928) 785-3348 • (928) 785-4374 Fax


**APPLICATION**

- ☒ REZONING                      ☐ VARIANCE                      ☐ CONDITIONAL USE PERMIT  
☐ MAJOR AMENDMENT            ☐ MINOR AMENDMENT            ☐ LOT SPLIT/LOT TIE  
☐ OTHER: \_\_\_\_\_

Case Number: R2-23-003                      Public Hearing Date: 3/7/2023

| Property Information  |   |
|---|---|
| Address/Parcel No.:<br>201-07-016   | Current Zoning:<br>Residential                              |
| Area (acres/sq ft) to be affected:<br>20.1729 acres / 878,733 sq ft                     | Proposed Zoning or Number of Lot Splits/Ties:<br>Commercial |
| Current Use:<br>Undeveloped/Vacant Land   | Proposed Use:<br>Car Wash                                   |
| Request:<br>Rezoning  | Valuation of Work:<br>N/A                                   |
| Purpose of the above requested actions?<br>Rezoning for the development of the property |   |

| Property Owner(s) / Agent(s) Information |   |
|--|---|
| Property Owner's Name(s):<br>G-12, LLC   | Agent's Name(s):<br>Dahl, Robins & Associates, Inc. |
| Mailing Address:<br>P.O. Box 6407        | Mailing Address:<br>1560 S. 5th Avenue              |
| City, State, & Zip:<br>Yuma, AZ 85366    | City, State, & Zip:<br>Yuma, AZ 85364               |
| Phone:<br>(928) 920-4315                 | Phone:<br>(928) 819-0825                            |
| E-mail:<br>gcurtis51@gmail.com           | E-mail:<br>crobins@dahlrobins.com                   |
| Fax:                                     | Fax:<br>(928) 819-0826                              |

|   |         |   |      |
|---|---------|---|------|
| <i>I affirm that I am the owner of record of the subject property. If an agent is named, I hereby authorize that person to act on my behalf in matters relating to this application. Property Owner's signature is mandatory on all applications.</i> |         | <i>I hereby declare that all of the above information contained in this application is true and correct to the best of my knowledge and belief. I acknowledge that errors in this application may delay review.</i> |      |
|    | 1.23.23 |   |      |
| Property Owner's Signature  | Date    | Agent's Signature   | Date |
| Property Owner's Signature  | Date    | Agent's Signature   | Date |

2018-04687 QUIT CLAIM DEED

02/23/2018 11:33:16 AM Pages: 3 Fees: \$15.00

Requested By: LSS INC

Recorded By: Savila

Robyn Stallworth-Pouquette County Recorder YUMA County, AZ

at the request of

When recorded mail to

G-12, L.L.C.

P.O. Box 6407

Yuma, AZ 85366

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Tax Parcel No.:

QUIT CLAIM DEED

For consideration of Ten Dollars, and other valuable considerations, I or we,

L.S.S., INC., an Arizona corporation

hereby quit-claim to

G-12, L.L.C., an Arizona limited liability company

all right, title or interest in the following real property situated in Yuma County, Arizona:

SEE EXHIBIT "A" ATTACHED HERETO

ARS 11-1134 EXEMPT - NO CONSIDERATION PAID

Dated: February 6, 2018

L.S.S., INC., an Arizona corporation

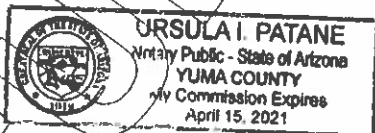
By: L. Scott Spencer, President

State of Arizona

ss.

County of Yuma

The foregoing instrument was acknowledged before me this 13 day of February, 2018, by L. Scott Spencer, President of L.S.S., Inc., an Arizona corporation.



NOTARY PUBLIC

My commission expires:

## Exhibit "A"

That portion of the Northeast quarter of Section 7, Township 9 South, Range 18 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

BEGINNING at the East quarter corner of said Section 7;

THENCE North  $00^{\circ}50'23''$  West along the East line of said Section 7, a distance of 928.37 feet to the South right of way line of Interstate 8;

THENCE South  $58^{\circ}16'07''$  West along said South right of way line of Interstate 8, a distance of 116.53 feet to an angle point of said Interstate 8 right of way;

THENCE North  $00^{\circ}50'23''$  West along said Interstate 8 right of way line, a distance of 155.76 feet to a point on the North right of way line of the Wellton Canal, said point being the TRUE POINT OF BEGINNING;

THENCE South  $58^{\circ}16'07''$  West along said North right of way line of the Wellton Canal, a distance of 1788.96 feet;

THENCE North  $00^{\circ}13'11''$  West, a distance of 1313.67 feet to a point on said South right of way line of Interstate 8;

THENCE North  $80^{\circ}35'05''$  East along said South right of way line of Interstate 8 a distance of 254.65 feet to an angle point of said South right of way line of Interstate 8;

THENCE South  $85^{\circ}57'16''$  East continuing along said South right of way line of Interstate 8 a distance of 425.43 feet to another angle point of said South right of way line of Interstate 8;

THENCE South  $69^{\circ}54'30''$  East continuing along said South right of way line of Interstate 8 a distance of 46.81 feet;

THENCE leaving said South right of way line of Interstate 8, South  $20^{\circ}05'30''$  West a distance of 376.00 feet;

THENCE South  $69^{\circ}54'30''$  East a distance of 379.22 feet to the beginning of a curve to the right;

THENCE Southeasterly along said curve of radius 314.50 feet an arc distance of 6.29 feet and a central angle of  $01^{\circ}08'42''$  to a point;

THENCE North  $20^{\circ}05'30''$  East a distance of 376.08 feet to a point on said South right of way line of Interstate 8;

THENCE South  $69^{\circ}54'30''$  East along said South right of way line a distance of 386.90 feet to another angle point in said South right of way line;

THENCE North  $89^{\circ}15'04''$  East continuing along said South right of way line a distance of 80.01 feet to another angle point of said Interstate 8 right of way;

THENCE South  $00^{\circ}50'23''$  East continuing along said South right of way line a distance of 104.07 feet to the TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the East quarter corner of said Section 7;

THENCE North  $00^{\circ}50'23''$  West along the East line of said Section 7, a distance of 928.37 feet to the South right of way line of Interstate 8;

THENCE South  $58^{\circ}16'07''$  West along said South right of way line of Interstate 8 a distance of 116.53 feet to an angle point of said Interstate 8 right of way;

THENCE North  $00^{\circ}50'23''$  West along said Interstate 8 right of way line a distance of 155.76 feet to a point on the North right of way line of the Welton Canal, said point being the TRUE POINT OF BEGINNING;

THENCE South  $58^{\circ}16'07''$  West along said North right of way line of the Welton canal a distance of 486.59 feet;

THENCE North  $31^{\circ}43'53''$  West distance of 12.84 feet to the beginning of a tangent curve to the left;

THENCE along said curve to the left, a radius 314.50 feet, an arc length of 203.27 feet and a central angle of  $37^{\circ}01'55''$ ;

THENCE North  $20^{\circ}05'30''$  East a distance of 376.06 feet to a point on the South right of way line of Interstate 8;

THENCE South  $69^{\circ}54'30''$  East along said South right of way line a distance of 386.90 feet to another angle point of said Interstate 8 right of way;

THENCE North  $89^{\circ}15'04''$  East along said South right of way line a distance of 80.01 feet to another angle point of said Interstate 8 right of way;

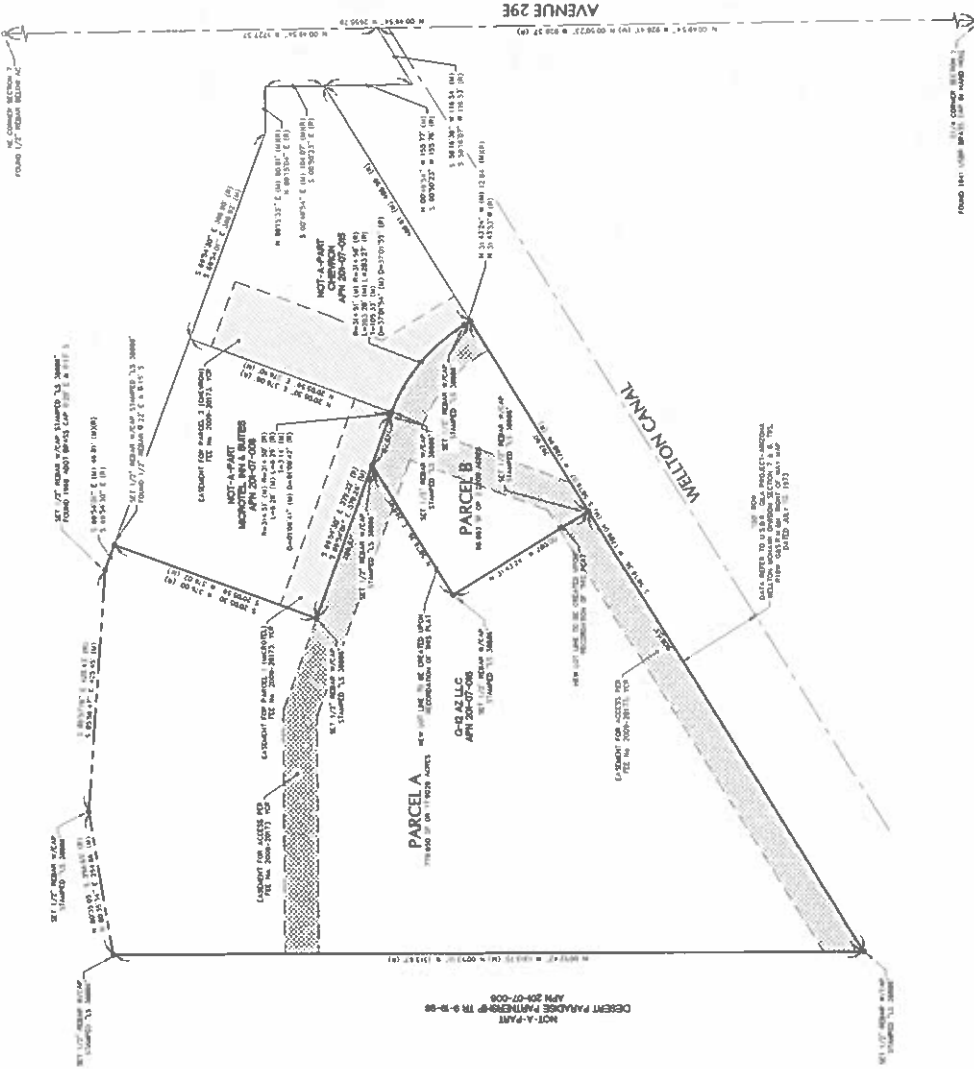
THENCE South  $00^{\circ}50'23''$  East along said South right of way line a distance of 104.07 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH those certain easements and rights set forth in Reciprocal Easement Agreement recorded July 21, 2009 in Document No. 2009-20173.

# TROPIC CAR WASH LOT SPLIT (LS23-XXX)

A LOT SPLIT OF APN 201-07-016, FEE NO. 2018-04687 QUIT CLAIM DEED IN YUMA COUNTY RECORDS  
LOCATED IN A PORTION OF THE NE1/4 OF SECTION 7, TOWNSHIP 9 SOUTH, RANGE 18 WEST,  
OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA

"LOT SPLIT FOR QUIT CLAIM DEED TO G-12, LLC AN ARIZONA LIMITED LIABILITY COMPANY"



## LEGEND

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## DATE PREPARED

FEBRUARY 2023

## BASIS OF BEARINGS

BEARINGS ARE BASED ON THE 1983 NAD 83 DATUM, WITH THE EXCEPTED CONTROL POINTS.

## ZONING

CURRENT ZONING: RESIDENTIAL

## OWNER OF RECORD

G-12, LLC AN ARIZONA LIMITED LIABILITY COMPANY

YUMA, AZ 85304

## ACKNOWLEDGEMENT

THIS INSTRUMENT WAS RECORDED ON JULY 1, 2023, AT 1:00 PM, BY CHRISTOPHER S. ROBINS, L.L.C., LAND SURVEYOR.

2023 BY G-12, LLC, MANAGER

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LAND SURVEYOR  
CHRISTOPHER S. ROBINS, L.L.C.  
YUMA, AZ 85304  
PHONE: (928) 338-1234  
FAX: (928) 338-1234  
WWW.CSROBINS.COM

DAHL, ROBINS & ASSOCIATES, INC.

## **PUBLIC NOTICE**

The Town of Wellton Council will hold a Public Hearing, on Tuesday, March 7, 2023, at 6:00PM in the Town Council Chambers, Wellton Town Hall, 28634 Oakland Avenue, Wellton Arizona, to consider the proposed requests as described below.

1. **Rezoning Case #RZ-23-003:** Dahl, Robins & Associates, Inc., agents for G-12, LLC request a rezoning of an 878,733 square foot parcel located at PID 201-07-016 in Wellton, Arizona, from Residential District to Commercial District.

Copies of the proposed request is available at the Town of Wellton Town Hall, 28634 Oakland Avenue, Wellton, Arizona during normal office hours: Monday through Thursday, 6:30AM to 5:00PM. Any comments or questions regarding these requests are invited and may be submitted to: Town Manager, Town of Wellton at the above address. Telephone: (928) 785-3348.

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# Town of Wellton

28634 Oakland Avenue • P.O. Box 67 • Wellton, AZ 85356 • (928) 785-3348 • Fax: (928) 785-4374

## MEMORANDUM

To: Mayor & Town Council  
From: Richard Marsh  
Town Manager  
Date: March 7, 2023  
Re: **PROFESSIONAL SERVICES AGREEMENT  
COMPREHENSIVE PLAN UPDATE, CONTRACT #121-23**

Background: On November 1, 2022, Council approved the CDBG funding agreement #121-23 between the Arizona Department of Housing (ADOH) & the Town of Wellton in the amount of \$50,000 for the Comprehensive Plan Update.

Summary: A Request for Qualifications (RFQ) was published in the Yuma Sun on January 8<sup>th</sup> & 15<sup>th</sup>, 2023 to procure a qualified consultant to complete a Comprehensive Plan Update. Two (2) proposals were received, Logan-Simpson Design, Inc., and Upfront Planning. The selection committee which consists of the Town Manager, Public Works Director, and Grants Director reviewed and scored proposals. The highest scoring proposal was Logan-Simpson Design, Inc. The proposed fees from Logan-Simpson Design, Inc. was submitted separately in the amount of \$50,000.

Fiscal Impact: \$50,000 CDBG Funds

Recommendation: Authorize the Mayor to sign Professional Services Agreement between Logan-Simpson Design, Inc. & the Town of Wellton for the Comprehensive Plan Update, in the amount of \$50,000. CDBG Contract #121-23.

Prepared by:

*Yolanda Galindo*

Yolanda Galindo, Grants Administrator

Approved for  
Agenda by:

*Richard Marsh*

Richard Marsh, Town Manager

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF WELLTON  
AND  
LOGAN SIMPSON DESIGN, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2023, between the Town of Wellton, an Arizona municipal corporation (the "Town"), and Logan Simpson Design, Inc., an Arizona corporation (the "Consultant").

**RECITALS**

A. The Arizona Department of Housing ("ADOH") awarded the Town a Community Development Block Grant ("CDBG"), Funding Agreement No. 121-23 (the "Funding Agreement"), funded by the U.S. Department of Housing and Urban Development pursuant to Title I of the Housing and Community Development Act of 1974, as amended ("HUD"), to update the Town's Comprehensive Plan. The Funding Agreement is attached hereto as Exhibit A and incorporated herein by reference.

B. The Town issued a Request for Qualifications, titled "Town of Wellton Comprehensive Plan Update" (the "RFQ"), on January 9, 2023, seeking proposals from consultants to update the Town's Comprehensive Plan (the "Services"); a copy of the RFQ is attached hereto as Exhibit B and incorporated herein by reference.

C. The Consultant responded to the RFQ by submitting a proposal (the "Proposal"), attached hereto as Exhibit C and incorporated herein by reference.

D. The Mayor and Town Council have determined it is in the Town's best interest to enter into this Agreement with the Consultant to provide the Services.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until December 1, 2023, unless terminated as otherwise provided in this Agreement.

2. Scope of Work. The Consultant shall provide the Services set forth in the Scope of Work attached hereto as Exhibit D and incorporated herein by reference. The Consultant shall (i) provide the Services required by this Agreement; (ii) be responsible for all means, methods, techniques, sequences, and proceedings associated with the Services; and (iii) be responsible for the acts and omissions of its employees, agents, and other persons performing any of the Services

under a contract with the Consultant. Before commencing the Services, the Consultant shall tour the site where Services are to be provided and become familiar with existing conditions, including utilities, and notify the Town of any constraints associated with the Services site.

3. Federal Fund Usage. Payments under this Agreement will be made in whole or in part from federal funds pursuant to the terms and conditions of the Funding Agreement. The Consultant is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Consultant's failure to comply with federal requirements. The Consultant hereby acknowledges the use of federal funds to fund the Services and further agrees that the Consultant, its employees, agents, subcontractors, and other persons performing any of the Services under this Agreement shall comply with all applicable State and Federal laws, Federal regulations, this Agreement, and other requirements including, but not limited to, the provisions of the Funding Agreement attached hereto as Exhibit A.

4. Compensation. The Town shall pay the Consultant an amount not to exceed \$50,000 for the Services at the rates set forth in the Proposed Fees, attached hereto as Exhibit E and incorporated herein by reference.

5. Payments. The Town shall pay the Consultant monthly based on work performed and completed to date and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify its payment.

6. Safety Plan. The Consultant shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration ("OSHA"), American National Standards Institute, and National Institute for Occupational Safety and Health standards. If, in the Consultant's sole determination, the Services to be provided do not require a safety plan, the Consultant shall notify the Town, in writing, describing the reasons a safety plan is unnecessary. The Town reserves the right to request a safety plan following such notification.

7. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the Town pursuant to this Agreement shall be the Town's property. The Town may use such documents for other purposes without further compensation to the Consultant; however, any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the Town's sole risk and without liability or legal exposure to the Consultant.

8. Consultant Personnel. The Consultant shall provide experienced personnel capable of and devoted to the successful performance of the Services under this Agreement. The Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire Town residents to fill vacant positions at all levels. The Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel will not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days or are expected to devote substantially less effort to the Services than initially anticipated, the Consultant

shall immediately notify the Town of same and shall, subject to the Town's concurrence, replace such personnel with personnel possessing substantially equal ability and qualifications.

9. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during the Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the Town.

10. Licenses. The Consultant shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the Consultant. The Town has no obligation to provide the Consultant, its employees, or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment, or material to the Consultant.

11. Materials; Equipment. The Consultant shall provide, pay for, and insure under the requisite laws and regulations all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution and completion of the Services.

12. Performance Warranty. In addition to any specific obligations set forth in Exhibit A, the Consultant warrants that the Services rendered will conform to the requirements of this Agreement and shall be carried out with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

13. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Town and each council member, officer, employee, or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from, and against any and all losses, claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees, court costs, and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness, or intentional misconduct of the Consultant, its officers, employees, agents, or any tier of subcontractor in connection with the Consultant's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

14. Insurance.

14.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of the Consultant, the Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona under ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect the Consultant. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials, and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed, and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. The Consultant's insurance shall be primary insurance with respect to this Agreement's performance and in the protection of the Town as an Additional Insured.

F. Claims Made. If any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual certificates of insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers, and employees for any claims arising out of the work or services of the Consultant. The Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. The Consultant shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the Consultant shall execute written agreements with its

subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and the Consultant. The Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Before commencing any work or services under this Agreement, the Consultant will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by the Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way this Agreement's insurance requirements or obligations. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be the Consultant's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials, and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 04 13 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) The Consultant's insurance shall be primary insurance with respect to the performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against the Town, its agents, representatives, officers, officials, and employees for any claims arising out of work or services performed by the Consultant under this Agreement.

ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to do so shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

K. Endorsements. The Consultant shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Section 13.

#### 14.2 Required Insurance Coverage.

A. Commercial General Liability. The Consultant shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials, and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 04 13, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of ‘your work’ for that insured by or for you.” If any Excess insurance is utilized to fulfill this subsection’s requirements, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. The Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Consultant’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials, and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill this subsection’s requirements, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work in any way related to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant,

or anyone for whose negligent acts, mistakes, errors, and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Workers' Compensation Insurance. If the Consultant employs anyone who is required by law to be covered by workers' compensation insurance, the Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over the Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

14.3 Cancellation and Expiration Notice. The Consultant shall provide at least 30 days prior written notice to the Town before insurance required herein expires, is canceled, or is materially changed.

15. Termination; Cancellation. By written notice to the Consultant as set forth in this Section, the Town may terminate this Agreement in whole or in part.

15.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by the Consultant of written notice by the Town. Upon termination for convenience, the Consultant shall be paid for all undisputed services performed to the termination date.

15.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity, including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the Town to the Consultant for the undisputed portion of its fee due as of the termination date.

15.3 Due to Work Stoppage. The Town may terminate this Agreement upon 30 days' written notice to the Consultant if the Services are permanently abandoned. If the Consultant abandons the Services without the Town's consent, the Consultant shall be liable for all actual, incidental, and consequential damages arising from or related to said abandonment, including, but not limited to (A) the difference between the cost of a replacement the Consultant to complete the Services and the contract price for the Consultant under this Agreement; and (B) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by the Town as a result of delays caused by the Consultant's abandonment of the Services. The Town shall use its best efforts to replace the Consultant within a reasonable time.

15.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

15.5 Gratuities. The Town may, by written notice to the Consultant, cancel this Agreement if the Town finds that gratuities, in the form of economic opportunity, future employment, entertainment, gifts, or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent, or employee of the Town to secure this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.

15.6 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then-current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the Town's unfettered legislative discretion concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose, and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep the Consultant informed as to the availability of funds for this Agreement. The Town's obligation to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. The Consultant hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

15.7 Obligations Upon Receipt of Termination Notice. Upon receipt of a notice of termination as set forth above, the Consultant shall (A) immediately discontinue all Services affected (unless the notice directs otherwise), and (B) deliver to the Town copies of all data, reports, calculations, drawings, specifications, and estimates entirely or partially completed, together with all unused materials supplied by the Town, related to the Services, including any completed divisible part of the Services which can be deemed to stand alone (both parties will determine the completed divisible parts of the Services at the time of termination). Such termination shall not relieve the Consultant of liability for errors and omissions. Any use of incomplete documents for the Services or any other project without the Consultant's specific written authorization will be without liability or legal exposure to the Consultant. The Consultant shall appraise the work it has completed and submit the appraisal to the Town for evaluation.

16. Suspension of Work.

16.1 Order to Suspend. The Town may, for its convenience, order the Consultant, in writing, to suspend all or any part of the Services for such time as it may determine to be appropriate.

16.2 Adjustment to Contract Sum. If the performance of all or any part of the Services is, for any unreasonable period, suspended or delayed by an act of the Town in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay (A) to the extent that performance was suspended or delayed for any other cause, including the fault or negligence of the Consultant, or (B) for which a change order is executed.

17. Miscellaneous.

17.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. The Consultant, its employees, and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of the Consultant, its employees, or subcontractors. The Consultant, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as the Consultant meets the requirements of its agreed Scope of Work as set forth in Section 2 above and in Exhibit A. The Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and the Consultant do not intend to nor will they combine business operations under this Agreement.

17.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona, and suit pertaining to this Agreement may be brought only in courts in Yuma, Arizona.

17.3 Laws and Regulations. The Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes, or laws affecting the Services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws, and (C) existing and future OSHA standards.

17.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Consultant.

17.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

17.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

17.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the parties' entire agreement with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein or in any other contemporaneous written agreement executed to carry out this Agreement's provisions. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

17.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by the Consultant without prior, written permission of the Town, signed by the Town Manager. Any attempted assignment or delegation by the Consultant in violation of this provision shall be a breach of this Agreement by the Consultant.

17.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the Town's prior written approval. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by the Consultant.

17.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

17.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall

be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

17.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

17.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Consultant any amounts the Consultant owes to the Town for damages that have been reduced to a judgment resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Consultant any amounts the Consultant owes to the Town for delinquent fees, transaction privilege use taxes, and property taxes, including any interest or penalties.

17.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

|                   |   |
|-------------------|---|
| If to the Town:   | Town of Wellton<br>PO Box 67<br>Wellton, Arizona 85356<br>Attn: Town Manager  |
| With copy to:     | GUST ROSENFELD P.L.C.<br>One East Washington Street, Suite 1600<br>Phoenix, Arizona 85004-2553<br>Attn: Andrew J. McGuire |
| If to Consultant: | Logan Simpson Design, Inc.<br>51 W. Third Street, Suite 450<br>Tempe, AZ 85281<br>Attn: Terri S. Hogan, Project Manager   |

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the

date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17.15 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the Town to ensure that information contained in its records or obtained from the Town or others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Consultant's duties under this Agreement. Persons requesting such information should be referred to the Town. The Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Consultant as needed for the performance of duties under this Agreement.

17.16 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 17.17 below, the Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any of the Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on the Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 17.17 below. To the extent necessary for the Town to audit Records as set forth in this subsection, the Consultant and its subcontractors hereby waive any rights to keep such Records confidential. To evaluate or verify such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to the Consultant pursuant to this Agreement. The Consultant and its subcontractors shall provide the Town with adequate and appropriate workspace to conduct audits in compliance with this subsection's provisions. The Town shall give the Consultant or its subcontractors reasonable advance notice of intended audits. The Consultant shall require its subcontractors to comply with this subsection's provisions by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

17.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

17.18 Israel. To the extent ARIZ. REV. STAT. § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

17.19 Conflicting Terms. In the event of any inconsistency, conflict, or ambiguity among the terms of the Funding Agreement, this Agreement, any amendments, the Scope of Work, any Town-approved Purchase Order, the Proposed Fees, or the Proposal, the documents shall govern in the order listed herein.

17.20 Time is of the Essence. The timely completion of the Services is of critical importance to the economic circumstances of the Town.

17.21 Meaning of Terms. References made in the singular shall include the plural, and the masculine shall include the feminine or the neuter.

17.22 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the Town's sole convenience. The Town reserves the right to obtain like goods and services from another source when necessary.

17.23 Energy Policy and Conservation Act. The Consultant must comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

17.24 Forced Labor of Ethnic Uyghurs. To the extent applicable under A.R.S. § 35-394, the Consultant certifies that it does not, and will not for the duration of this Agreement, use the forced labor, any goods or services produced by the forced labor, or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**“Town”**

TOWN OF WELLTON,  
an Arizona municipal corporation

\_\_\_\_\_  
Scott Blitz, Mayor

ATTEST:

\_\_\_\_\_  
Richard Marsh, Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew J. McGuire, Town Attorney  
Gust Rosenfeld, PLC

**“Consultant”**

LOGAN SIMPSON DESIGN, INC.,  
an Arizona corporation

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

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

Title: \_\_\_\_\_

EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF WELLTON  
AND  
LOGAN SIMPSON DESIGN, INC.

[Funding Agreement]

See following pages.

EXHIBIT B  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF WELLTON  
AND  
LOGAN SIMPSON DESIGN, INC.

[RFQ]

See following pages.

EXHIBIT C  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF WELLTON  
AND  
LOGAN SIMPSON DESIGN, INC.

[Proposal]

See following pages.

EXHIBIT D  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF WELLTON  
AND  
LOGAN SIMPSON DESIGN, INC.

[Scope of Work]

See following pages.

EXHIBIT E  
TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE TOWN OF WELLTON  
AND  
LOGAN SIMPSON DESIGN, INC.

[Proposed Fees]

See following pages.



# PROPOSED FEES

| TASKS  | TOTALS     |                 |                |                 |
|--|------------|-----------------|----------------|-----------------|
|  | HOURS      | LABOR           | EXPENSES       | TOTAL           |
| <b>TASK 1 - PROJECT ORGANIZATION AND KICKOFF MEETING</b> |            |                 |                |                 |
| 1.1 Kickoff Meeting with Town Staff                      | 16         | \$2,520         | \$670          | \$3,190         |
| 1.2 Monthly Meetings and Progress Reports                | 23         | \$3,231         | \$0            | \$3,231         |
| Subtotal   | 39         | \$5,751         | \$670          | \$6,421         |
| <b>TASK 2 - CURRENT CONDITIONS</b>                       |            |                 |                |                 |
| 2.1 Data Collection                                      | 3          | \$400           | \$0            | \$400           |
| 2.2 Review and Assessment of Data                        | 46         | \$6,600         | \$0            | \$6,600         |
| 2.3 Existing Conditions Report                           | 25         | \$3,900         | \$0            | \$3,900         |
| Subtotal   | 74         | \$10,900        | \$0            | \$10,900        |
| <b>TASK 3 - DOCUMENTATION</b>                            |            |                 |                |                 |
| 3.1 Working Draft Chapters                               | 68         | \$9,900         | \$0            | \$9,900         |
| 3.2 Draft Plan   | 48         | \$7,300         | \$0            | \$7,300         |
| 3.3 60-Day Draft Plan                                    | 14         | \$1,900         | \$0            | \$1,900         |
| Subtotal   | 130        | \$19,100        | \$0            | \$19,100        |
| <b>TASK 4 - PUBLIC INVOLVEMENT</b>                       |            |                 |                |                 |
| 4.1 Public Participation Plan (PPP)                      | 18         | \$2,300         | \$0            | \$2,300         |
| 4.2 Outreach Interviews                                  | 16         | \$2,500         | \$670          | \$3,170         |
| 4.3 First Public Hearing                                 | 16         | \$2,500         | \$670          | \$3,170         |
| 4.4 Second Public Hearing                                | 16         | \$2,500         | \$670          | \$3,170         |
| Subtotal   | 66         | \$9,800         | \$2,010        | \$11,810        |
| <b>TASK 5 - FINAL DELIVERABLES</b>                       |            |                 |                |                 |
| 5.1 Final Adoption Draft Plan                            | 6          | \$900           | \$0            | \$900           |
| 5.2 Final Documents                                      | 2          | \$300           | \$520          | \$820           |
| Subtotal   | 8          | \$1,200         | \$520          | \$1,720         |
| <b>TOTAL</b>   | <b>317</b> | <b>\$46,800</b> | <b>\$3,200</b> | <b>\$50,000</b> |

## RATES

|                           |                           |
|---------------------------|---------------------------|
| Logan Simpson             | Kimley-Horn               |
| Terri Hogan..... \$185    | Michael Grandy..... \$250 |
| McKayla Dunfey..... \$130 | Geoff Brownell..... \$250 |
| Bruce Meighen..... \$250  | Support..... \$70-110     |
| Megan Moore..... \$170    |                           |
| Sandra Hoffman..... \$137 |                           |
| Support..... \$70-110     |                           |

5



# Town of Wellton

28634 Oakland Avenue • P.O. Box 67 • Wellton, Arizona 85356 • (928) 785-3348 • Fax (928) 785-4374 • [wellton@town.wellton.az.us](mailto:wellton@town.wellton.az.us)

## Memorandum

To: Mayor & Town Council  
From: Richard Marsh  
Town Manager  
Date: March 7, 2023  
Re: FY2022 REGIONAL ACCOUNT FUNDING  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CONTRACT  
#145-23

Background: The Town of Wellton's FY 2022 Regional Account CDBG allocation is \$481,912. A public hearing was conducted on November 10, 2021 to gather community/citizen's input for potential projects for Regional Account CDBG funds. Staff successfully conducted two (2) public hearings to receive citizen's input. During a Regular Meeting held on May 3, 2022, the Council approved the submission of two (2) applications to the Arizona Department of Housing (ADOH) for FY 2022 Regional Account CDBG funds. Projects are as follows: 1) Planning – Comprehensive Plan Development in the amount of \$50,000; & 2) Bakersfield Avenue Improvements in the amount of \$386,168.

Fiscal Impact: \$481,912 in CDBG Regional Account Funds(\$95,744 Admin & \$386,912).

Recommendation: Authorize the Mayor to sign the following documents: 1) Contract #145-23 between the Town of Wellton and the Arizona Department of Housing for the use of CDBG Regional Account funds in the amount of \$481,912 and 2) All required forms that are necessary for contract execution.

Prepared by:

*Yolanda Galindo*

Yolanda Galindo, Grants Director

Approved for  
Agenda by:

*Richard Marsh*

Richard Marsh, Town Manager

**FUNDING AGREEMENT  
with  
ARIZONA DEPARTMENT OF HOUSING**

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with  
ARIZONA DEPARTMENT OF HOUSING**

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ARIZONA DEPARTMENT OF HOUSING**

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**ATTACHMENTS**

- |                                     |   |   |
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| <input checked="" type="checkbox"/> | A | Scope of Work   |
| <input checked="" type="checkbox"/> | B | Performance Report/Schedule of Completion                                       |
| <input checked="" type="checkbox"/> | C | Budget  |
| <input checked="" type="checkbox"/> | D | Request for Payment Form  |
| <input checked="" type="checkbox"/> | E | Special Conditions of the Agreement   |
| <input checked="" type="checkbox"/> | F | Certification and Other Requirements Relating to Title I or Title II Assistance |
| <input checked="" type="checkbox"/> | G | Authorizing Resolution(s)   |
| <input type="checkbox"/>            | H | Additional Provisions of the 2013 HOME Final Rule (Effective August 23, 2013)   |

AGREEMENT NO. 145-23  
TERMINATION DATE May 1, 2024

**FUNDING AGREEMENT  
BETWEEN THE ARIZONA DEPARTMENT OF HOUSING  
AND  
TOWN OF WELLTON  
FOR  
WATER/STREET IMPROVEMENTS**

This Funding Agreement is made by and between:

The **Arizona Department of Housing ("ADOH")**, located at, 1110 West Washington Street, Suite 280, Phoenix, Arizona 85007, acting pursuant to A.R.S. § 41-3953 and (please select applicable funding source):

- ☒ Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant) ("**CDBG**").
- ☐ Title II of the National Affordable Housing Act of 1990, as amended (HOME Investments Partnerships Program) ("**HOME**").
- ☐ A.R.S. § 41-3955 (State Housing Trust Fund) ("**HTF**").
- ☐ A.R.S. § 41-3957 (State Housing Program Fund) ("**HPF**").
- ☐ The AIDS Housing Opportunity Act of 1992, as amended, 42 U.S.C. Section 12902 (Housing Opportunities for Persons with HIV/AIDS) ("**HOPWA**").
- ☐ Title IV Part 578 of the McKinney-Vento Homeless Assistance Act of 1987, as amended, 42 USC. 11301 et seq. and the Continuum of Care Program regulations as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 (Continuum of Care) ("**COC**").
- ☐ Title I of the Housing and Economic Recovery Act of 2008, Section 1338 (Public Law 110-289). (National Housing Trust Fund) ("**NHTF**").
- ☐ Part A of the Energy and Conservation in Existing Buildings Act of 1976, as amended and 42 U.S.C. Section 6861 (Department of Energy Weatherization Assistance Program for Low Income Persons) ("**DOE WAP**").
- ☐ Low Income Energy Assistance Act of 1981, as amended, 42 U.S.C. Section 8621-8630, (Low Income Home Energy Assistance Program) ("**LIHEAP WAP**").

☐ Southwest Gas Corporation, Weatherization Assistance Program ("SWG WAP").  
and

WELLTON

(Entity)

An Arizona Town ("Recipient") DUNS #072442627, located at

28634 Oakland Avenue

Street

Wellton, Arizona 85356-0067

City State Zip

In consideration of the mutual representations and obligations hereunder,  
ADOH and Recipient agree as follows:

**Section 1. FUNDS PROVIDED**

ADOH agrees to provide \$481,912.00 in the following type of funds to Recipient in accordance with this Agreement. ADOH is entitled to change the funding sources as described in this section, in its sole discretion, so long as the total amount of funds to be disbursed is not affected thereby.

☒ **CDBG, CFDA # 14.228**  
Federal Fiscal Year 2022  
\$481,912.00

☐ **HOME, CFDA # 14.239**  
Federal Fiscal Year \_\_\_\_  
\$ \_\_\_\_

☐ **HTF**  
State Fiscal Year \_\_\_\_  
\$ \_\_\_\_

☐ **HPF**  
State Fiscal Year \_\_\_\_  
\$ \_\_\_\_

☐ **HOPWA, CFDA # 14.241**  
Federal Fiscal Year \_\_\_\_  
\$ \_\_\_\_

☐ **COC, CFDA # 14.267**  
Federal Fiscal Year \_\_\_\_  
\$ \_\_\_\_

- ☐ **NHTF, CFDA # 14.275**  
Federal Fiscal Year \_\_\_\_\_  
\$ \_\_\_\_\_
- ☐ **DOE WAP, CFDA # 81.042**  
Federal Fiscal Year \_\_\_\_\_  
\$ \_\_\_\_\_
- ☐ **LIHEAP WAP, CFDA # 93.568**  
Federal Fiscal Year \_\_\_\_\_  
\$ \_\_\_\_\_
- ☐ **SWG WAP**  
State Fiscal Year \_\_\_\_\_  
\$ \_\_\_\_\_

## **Section 2. OTHER FUNDS**

If applicable, Recipient agrees to secure funding other than that listed in **Section 1** for the completion of this Agreement as indicated in the **Budget** attached hereto as **Attachment C**. ADOH reserves the right to rescind some or all of the funding committed through this Agreement if other funding sources become unavailable.

## **Section 3. ACCEPTANCE OF FUNDS**

Recipient hereby accepts the award of funds under the terms of this Agreement and agrees to execute and return this Agreement to ADOH within thirty (30) days of receipt unless Recipient receives a written waiver of this requirement by ADOH.

## **Section 4. DURATION**

This Agreement shall be effective beginning on the date of execution by ADOH and shall remain in effect until MAY 1, 2024 unless sooner terminated, extended or otherwise amended in accordance with the terms of this Agreement.

## **Section 5. INCORPORATION OF TERMS FOR COMPLIANCE WITH PROGRAM REQUIREMENTS AND APPLICABLE STATE AND FEDERAL LAW**

Recipient shall carry out each activity in compliance with all applicable State and Federal laws, Federal regulations and other requirements including, but not limited to, the provisions indicated as marked below and hereby incorporated into this Agreement, as if fully set forth herein. Also incorporated into this Agreement as applicable, are the terms of any resolution authorizing Recipient's application for funds, which is attached hereto as

**Attachment G, Authorizing Resolution(s)** and any *Special Conditions of the Agreement* attached hereto as **Attachment E**.

- ☒ **CDBG** funds require adherence to the following provisions as revised: (1) 24 CFR Part 570; (2) *Certification and Other Requirements Relating to Title I Assistance* attached hereto as Attachment F; (3) the provisions contained in the *State of Arizona Consolidated Plan*; (4) *ADOH ERR Handbook*; (5) *ADOH Labor Standards Handbook*; (6) *CDBG Application Handbook*; (7) *CDBG Grant Administration Handbook*; and (8) *CDBG Procurement, Contracts and Acquisition Handbook* (collectively "the Incorporated Documents") as each may be amended from time to time. In the event of a conflict between the terms of this Agreement and the terms of the Incorporated Documents, the terms of this Agreement shall govern.
- ☐ **HOME** funds require adherence to the following provisions as revised: (1) 24 CFR Part 92; (2) *Certification and Other Requirements Relating to Title II Assistance* attached hereto as Attachment F; (3) the provisions contained in the *State of Arizona Consolidated Plan*; (4) *ADOH ERR Handbook*; (5) *ADOH Labor Standards Handbook*; and (6) the *State Housing Fund Program Summary and Application Guide*.
- ☐ **HTF** funds require adherence to the *State Housing Fund Program Summary and Application Guide* as revised.
- ☐ **HPF** funds require adherence to the *Special Needs Housing Manual* as revised.
- ☐ **COC** funds require adherence to the following provisions as revised: (1) 24 CFR Part 578; and (2) the *Special Needs Housing Manual*.
- ☐ **HOPWA** funds require adherence to the following provisions as revised: (1) 24 CFR Part 574; and (2) the *Special Needs Housing Manual*.
- ☐ **NHTF** requires adherence to the following provisions as revised: (1) 24 CFR Parts 91 and 93, *Housing Trust Fund Interim Rule*; (2) the provisions contained in the *State of Arizona Consolidated Plan*; (3) *State Housing Fund Program Summary and Application Guide*; (4) *State of Arizona Qualified Allocation Plan*; and (5) *National Housing Trust Fund Allocation Plan*.
- ☐ **DOE WAP** funds require adherence to the following provisions as revised: (1) 10 CFR Part 440 as revised; (2) the *Arizona Weatherization Assistance Program State Plan (State Plan)*; (3) *Health and Safety Plan (HSD Plan)*; (4) the *Arizona Weatherization Policies and Procedures Handbook*; (5) *Arizona Weatherization Assistance Program Field Guide*; (6) *Standard Work Specifications*; and (7) *DOE WPN 22-4 Quality Work Plan*.
- ☐ **LIHEAP WAP** funds require adherence to the following provisions: (1) 45 CFR Part 96 as revised; (2) the *Arizona Weatherization Assistance Program State Plan (State Plan)*; (3) *Health and Safety Plan (HSD Plan)*; (4) the *Arizona Weatherization Policies and*

*Procedures Handbook; (5) Arizona Weatherization Assistance Program Field Guide; (6) Standard Work Specifications; and (7) WAP Memorandum 15-10 Quality Management Plan.*

- ☐ **SWG WAP funds** require adherence to the following provisions: (1) *the Arizona Weatherization Assistance Program State Plan (State Plan); (2) Health and Safety Plan (HSD Plan); (3) the Arizona Weatherization Policies and Procedures Handbook; (4) Arizona Weatherization Assistance Program Field Guide; (5) Standard Work Specifications; and (6) WAP Memorandum 15-10 Quality Management Plan.*

## **Section 6. SCOPE OF WORK**

Recipient agrees to utilize all funds made available under this Agreement only for the purpose of implementing the *Scope of Work* hereby incorporated into this Agreement and described in Attachment A.

Revisions to Scope of Work. Recipient agrees to follow the procedures indicated as marked below regarding changes to the *Scope of Work*.

Revisions to the *Scope of Work* that change the manner in which an activity is to be executed or that change final outcome such as number of units, feet of utility line, number of households served, square footage of building, etc. require written approval from ADOH. The following substantial revisions to the *Scope of Work* require written amendment to this Agreement:

- (a) The purpose of the project changes;
- (b) The location of the project changes;
- (c) A project activity is added, deleted or altered such that it becomes a different activity;
- (d) The beneficiary of any activity changes;
- (e) Recipient is requesting a change to the loan or grant terms. Recipient must submit a written request for an Agreement amendment to ADOH, with a revised *Scope of Work* attached;
- (f) The ownership entity changes; and
- (g) Any other changes that involve program requirements.

ADOH will respond to the written request within fourteen (14) business days. Amendments may not be implemented until ADOH consents in writing and an amendment to the Agreement has been executed.

## **Section 7. REPORTS**

Recipient shall be responsible for providing various reports of all activities related to this Agreement as identified below and as requested by ADOH or HUD. Recipient shall also provide to ADOH any additional written information requested by ADOH in a timely manner and within reasonable deadlines as shall be set by ADOH.

**7.1 Performance Report.** Recipient agrees to submit the ADOH *Performance Report* respective of the types of projects indicated below and attached as Attachment B.

- ☐ **HOME, NHTF, HTF funded rental development projects ("Rental Projects") or HPF funded rapid rehousing projects:** Recipient must submit a *Bimonthly Performance Report* attached hereto as Attachment B. The Bimonthly Progress Report must be submitted to ADOH on the 20<sup>th</sup> of January, March, May, July, September and November and address activities of the preceding two (2) months (i.e. the January report covers the months of November and December).
- ☒ **HOME, HTF and CDBG non-rental projects ("HOME, HTF and CDBG Non-Rental Projects").** Recipient must submit a *Monthly Progress Report* attached hereto as Attachment B. The Monthly Progress Report must be submitted to ADOH on the 15<sup>th</sup> of each month and address activities of the preceding one (1) month (i.e. the July report covers the month of June). Failure to submit timely Monthly Progress Reports will result in suspension of payment reimbursement requests until such reports are brought current.
- ☐ **COC funded assistance for persons who are homeless ("Homeless Projects").** ADOH is required to administer the program during the contract term, which is synonymous with the HUD grant term and as set forth in Section 4. Recipient must submit a *Bimonthly Performance Report* attached hereto as Attachment B. The Bimonthly Progress Report must be submitted to ADOH on the 20<sup>th</sup> of January, March, May, July, September and November and address activities of the preceding two (2) months (i.e. the January report covers the months of November and December). Recipient shall submit *Annual Progress Report (APR)* data from HMIS to ADOH, no later than thirty (30) days following the contract termination date listed on Page 1 of the Agreement.
- ☐ **HOPWA funded rental assistance and services ("HOPWA Projects").** A Recipient of HOPWA awarded funding shall administer said program in the contract term as set forth in Section 4 and submit one (1) *HUD Consolidated Annual Performance Evaluation Report (CAPER)* in accordance with the schedule set forth in Attachment B no later than sixty (60) days following the end of Fiscal Year date which is June 30<sup>th</sup> annually.
- ☐ **DOE WAP, LIHEAP WAP and SWG WAP funded projects ("Weatherization Projects").** Recipient must submit a *Monthly Performance Report* attached hereto as Attachment B. The Monthly Performance Report must be submitted to ADOH on the 30<sup>th</sup> (for the month of February, the last calendar day of the month) of each month and address activities of the preceding month (i.e. the January 30<sup>th</sup> report covers the month of December).

**7.2 Contract Closeout—Completion Reports and Post-Funding Audits.** Recipient's obligation to ADOH under this Agreement shall not end until all closeout

requirements described in this paragraph are completed. ADOH will notify Recipient in writing that a Completion Report is due to ADOH within sixty (60) days of one (1) of the following occurrences:

- (a) The funds have been expended;
- (b) The Scope of Work has been completed;
- (c) The contract period set forth in this Agreement has expired; or
- (d) The Agreement has been otherwise terminated.

The Completion Report shall contain the information identified in the notice.

Following the receipt and approval of the Completion Report, ADOH will notify Recipient in writing that the Agreement is administratively closed.

After the project is administratively closed, Recipient must submit all required audits to ADOH. All audits for fiscal years in which Recipient received funds from ADOH must be received, reviewed and found to be satisfactory by ADOH. In the event that ADOH determines that any project costs described in a post-funding audit are unjustified or describe ineligible activities, Recipient will be required to refund such monies back to ADOH.

## Section 8. SCHEDULE OF COMPLETION

Recipient agrees to make progress with the *Scope of Work* in accordance with the *Schedule of Completion* hereby incorporated into this Agreement and described in Attachment B.

**Revisions to the Schedule of Completion.** Recipient agrees to follow the procedures indicated as marked below regarding changes to the Schedule of Completion.

- ☐ **Rental Projects funded with HOME or HTF.** Recipient must notify ADOH of revisions to the *Schedule of Completion* using the *Bimonthly Performance Report*, attached hereto as Attachment B. To the extent that the changes cause the schedule timeline to be extended, Recipient must submit a written request for a contract amendment to ADOH with a revised *Schedule of Completion* attached. Contract amendment requests must be received by ADOH a minimum of thirty (30) days prior to the contract expiration date. ADOH will respond to the written request within fourteen (14) business days. Amendments may not be implemented until ADOH consents in writing and an amendment to the Agreement has been executed.
- ☒ **Non-Rental Projects funded with HOME, HTF and CDBG.** Recipient must notify ADOH of revisions to the *Schedule of Completion* using the *Monthly Performance Report*, attached hereto as Attachment B. To the extent that the changes cause the schedule timeline to be extended, Recipient must submit a written request for a contract amendment to ADOH with a revised *Schedule of Completion* attached. Contract amendment requests must be received by ADOH a minimum of thirty (30) days prior to the contract expiration date. ADOH will respond to the written request within

fourteen (14) business days. Amendments may not be implemented until ADOH consents in writing and an amendment to the Agreement has been executed.

☐ **Homeless Projects funded with HTF, HPF or COC.** To the extent that the changes cause the schedule timeline to be extended, Recipient must submit a written request for a contract amendment to ADOH with a revised *Schedule of Completion and Performance Report* attached. Contract amendment requests must be received by ADOH a minimum of thirty (30) days prior to the contract expiration date. ADOH will respond to the written request within fourteen (14) business days. Amendments may not be implemented until ADOH consents in writing and an amendment to the Agreement has been executed.

☐ **Weatherization.** Projects funded with DOE WAP, LIHEAP and/or SWG WAP. Recipients will have twelve (12) months to complete the Scope of Work with no extensions. ADOH may, based on a review of the progress of Recipient completed units and expenditures, move funds from a non or under-performing Recipient to a Recipient meeting or exceeding their performance goals. ADOH will review the performance of the Recipient on a monthly basis. The first re-allocation of funds if applicable would occur at six (6) months with additional re-allocations, if needed, at the eight (8) month and ten (10) month time periods.

## Section 9. BUDGET

Recipient agrees to use the funds provided pursuant to this Agreement in accordance with the Budget that is attached as Attachment C. Recipient further agrees that any project costs, unless otherwise specified, exceeding the Budget shall be the sole responsibility of Recipient.

Availability of funding under this Agreement is contingent on final review and approval of the Budget. Budgetary considerations for specific programs are described below:

☒ **CDBG Revisions to the Budget.** Recipient must obtain written approval from ADOH to move funds from one Budget Activity Line Item to another. The following substantial revisions to the *Budget* require a contract amendment:

- (a) Funds are moved from one Budget Activity Line Item to another and the change in the Budget Activity Line from which it is moved or to which it is being moved exceeds fifty percent (50%), unless the move is from administration to a non-administration activity, in which case only written notice without a contract amendment is required;
- (b) Additional funding sources are added to the Project;
- (c) Recipient is requesting a change to the grant terms.

☐ **HOME, HOPWA, HPF, NHTF and HTF Revisions to the Budget.** Recipient must obtain prior written approval from ADOH to move funds from one Budget Activity Line Item to another. ADOH will only approve changes to the Budget for eligible costs as outlined in the State Housing Fund program. The following substantial revisions to the *Budget* require a contract amendment:

- (a) Additional funding sources are added to the project which require a project to be re-underwritten to determine gap;
- (b) Recipient is requesting a change to the loan terms.

☐ **WEATHERIZATION Revisions to the Budget.** Recipient must obtain written approval from ADOH to move funds from one Budget Activity Line Item to another.

See Section 10 for changes that affect the Budget.

Recipient shall not retain any funds that are drawn down in excess of immediate cash needs (to be utilized within fifteen (15) days of draw down) to cover subsequent requests for reimbursement and must return them to ADOH within thirty (30) days of receipt. Recipient must also return to ADOH any interest that is earned on these funds that are drawn down and not expended for eligible costs within fifteen (15) days of draw down.

## **Section 10. AMENDMENTS AND MODIFICATIONS**

ADOH may consent to amendment or modification of this Agreement upon written request of Recipient. All amendments or modifications to this Agreement shall be by mutual consent of the parties in writing.

Requests for amendments or modifications that result in changes to the Budget must be supported by a revised Budget that is otherwise consistent with Section 9.

ADOH will respond to the request for amendment or modification to this Agreement within fourteen (14) business days.

## **Section 11. ENVIRONMENTAL REVIEW CONDITIONS**

In accordance with 24 CFR 50 and 24 CFR 58 ("Environmental Review"), the environmental effects of each activity carried out with federal funds must be assessed. Local government entities are responsible for conducting environmental reviews and requesting a release of funds from ADOH. Non-profits and other non-governmental entities are responsible for conducting Environmental Reviews before ADOH requests a release of funds from HUD. Completion of the Environmental Review Record ("ERR") is mandatory before taking any physical action on a site or entering into contracts. Only exempt activities such as architecture, engineering and administration may be undertaken and reimbursed by ADOH prior to receiving a written release of funds. Exempt activities described in 24 CFR 58.34(a)(1)-

(11) are activities that generally have no physical impact on the environment. If federal funds are involved in a project, neither federal nor non-federal funds may be expended or committed by contract (conditional or not) for property acquisition, rehabilitation, conversion, lease, repair or construction activities, until HUD or ADOH has provided written authorization based on approval of an ERR.

An option agreement (to purchase land) on a proposed site or property is allowable prior to the completion of the Environmental Review if the option agreement is contingent upon an ADOH or HUD authorization to use funds based on a completed ERR. The cost of the option must be a nominal portion of the purchase price.

Projects funded solely with Housing Trust Funds do not require an ERR but are required to meet the requirements of the State Historic Preservation Act by consulting with the State Historic Preservation Office (SHPO). For State Housing Funded projects, Phase I Environmental Assessments are required to be completed on properties for which new construction/change in use is proposed, regardless of whether federal or state funds are the source of funding. Expenditures incurred or obligated by construction contract prior to ADOH's release of funds or consultation with SHPO will not be reimbursed by ADOH.

Recipients who had committed or expended non-federal funds to begin a project before receiving the authorization from ADOH or HUD may still be eligible to use federal funds on the project under the following circumstances:

- (a) Recipients started the project without the intention of using federal assistance (i.e. as evidenced by other anticipated funding, the original project budget, etc.);
- (b) All work on the project ceases once an application for federal funds is made and an ERR is begun on all activities (i.e. acquisition, construction, etc.). ADOH or HUD provides authorization to proceed based on the completed ERR.

☐ **WEATHERIZATION (DOE WAP, LIHEAP WAP).** DOE has made a final NEPA determination for all activities under this Funding Agreement that are listed in the State Plan formally approved by DOE and incorporated into this Funding Agreement. Recipients are responsible for compliance with Section 106 pursuant to 36 CFR Part 800.2 (c)(4).

## **Section 12. APPLICATION AND OTHER PRE-AWARD COSTS**

Recipient may use a portion of the funds provided hereunder to reimburse itself for exempt activities pursuant to 24 CFR 58.34(a)(1)-(11) such as architecture, engineering, testing and sampling of asbestos and capital needs assessments and environmental reviews.

☒ **CDBG.** If Recipient is receiving funding under this Agreement from the CDBG program, in accordance with federal procedures, Recipient may use funds provided

hereunder to reimburse it or to pay for costs incurred in preparing the application. In no event shall such compensation exceed eighteen percent (18%) of the total funding provided to Recipient by ADOH.

### **Section 13. COMPENSATION AND METHOD OF PAYMENT**

Subject to availability of and receipt of funds from the State's Unclaimed Property Fund (for state HTF funds) and/or the United States Treasury (for HOME, CDBG, COC, NHTF HOPWA, DOE WAP and LIHEAP WAP funds) and the commitment of other required funding as indicated in Recipient's application, ADOH agrees to reimburse or advance Recipient for authorized expenditures according to the *Budget* in Attachment C. Recipient must maintain invoices and other similar documentation to support payment expenses under those generally accepted accounting principles and procedures approved by ADOH and outlined in 2 CFR 200 as applicable; 24 CFR Parts 44, 92 and 570 as applicable; and 10 CFR 440 and 600 as applicable.

Recipient may request funds only after the date of the executed Agreement and other legal documents as applicable, provided Recipient has satisfied ADOH funding contingencies and federal Environmental Review conditions. Requests for reimbursement must be made using the ADOH *Request for Payment* form hereby incorporated into this Agreement and attached as Attachment D. For construction projects, Release of Lien documents must be attached to the Request for Payment in amounts proportionate to contractor reimbursement requests.

Recipient must maintain proof of said expenditures including checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges as may be required by applicable federal rules and regulations, including requirements by the Federal Office of Management and Budget, and as may be otherwise reasonably required to permit ADOH to determine or confirm that any such expenditures are prudent and within the Scope of Work.

Recipient's right to incur expenses under this Agreement shall cease upon expiration of this Agreement. All requests for reimbursement on expenditures made prior to expiration of this Agreement must be requested within sixty (60) days after expiration. Unless expressly authorized by ADOH in writing, expenditures not requested within the sixty (60) day period after expiration of this Agreement shall be disallowed and all funds shall be reclaimed by ADOH.

### **Section 14. FUNDS RECOUPED BY RECIPIENT, INTEREST AND PROGRAM INCOME**

**14.1 Definitions.** For purposes of this section, the following definitions shall apply:

**"Funds Recouped by Recipient"** means funds initially provided by ADOH to Recipient under this Agreement and any matching contributions that are recouped by Recipient when: (1) the funds provided by ADOH under this Agreement or matching contributions or the proceeds of funds provided by ADOH (including, but not limited to, equipment or housing) do not continue to be used for an approved purpose or eligible activity, as described in applicable law or regulations, for the full period of affordability required by this Agreement; or (2) when a State-assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by this Agreement. Funds Recouped by Recipient are subject to all the requirements of Program Income described below with the exception that Recipient shall not use Funds Recouped by Recipient for administrative purposes. For this reason, Recipient must separately account for all Funds Recouped by Recipient.

**"Interest"** means any compensation paid or to be paid for the use or deposit of the funds provided by ADOH to Recipient under this Agreement.

**"Program Income"** means gross income received by Recipient directly generated from the use of funds provided by ADOH under this Agreement. When Program Income is generated by housing that is only partially assisted with funds provided by ADOH under this Agreement or matching contributions, the income shall be prorated to reflect the percentage of funds provided by ADOH under this Agreement. Program Income includes, but is not limited to, the following: (1) proceeds from the disposition by sale or long-term lease of real property purchased or improved with funds provided by ADOH under this Agreement; (2) gross income from the use or rental of real or personal property acquired by Recipient with funds provided by ADOH under this Agreement, less costs incidental to generation of the income; (3) payments of principal and interest on loans made using funds provided by ADOH under this Agreement or matching contributions; (4) proceeds from the sale of loans made with funds provided by ADOH under this Agreement or matching contributions; (5) proceeds from sale of obligations secured by loans made with funds provided by ADOH under this Agreement or matching contributions; (6) Interest earned on Program Income pending its disposition; (7) proceeds from the disposition of equipment purchased with CDBG funds; (8) gross income from the use or rental of real property, owned by Recipient, that was constructed or improved with funds provided by ADOH under this Agreement, less costs incidental to generation of the income; (9) if the funds provided by ADOH under this Agreement are from the CDBG Program, funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement; and (10) if the funds provided by ADOH under this Agreement are from the HOME Program, any other interest or return on the investment permitted under 24 C.F.R. Part 92.205(b) of HOME funds or matching contributions.

#### **14.2 Use of Program Income and Funds Recouped by Recipient.**

Recipient is not authorized by ADOH to retain and reuse Program Income, Funds Recouped by Recipient or accrued Interest as described in the following paragraph(s) except as authorized by ADOH through a written agreement.

Recipient must return all Program Income, Funds Recouped by Recipient and Interest to ADOH within thirty (30) days of receipt.

Recipient must remit to ADOH any Program Income, Funds Recouped by Recipient or Interest on hand at the time of expiration, cancellation, or termination of this Agreement or subsequently received by Recipient within **thirty (30) days** of receipt by Recipient.

### **Section 15. DE-OBLIGATION, RECAPTURE AND REPAYMENT OF FUNDS**

**15.1 De-obligation.** ADOH may reduce funds from the funding award evidenced by this Agreement without regard to the source of funding, under the following circumstances: (1) Recipient has completed performance under the *Scope of Work* (Attachment A) without using all of the funds provided by ADOH under this Agreement; (2) this Agreement expires and not all funds have been expended; (3) ADOH's original allocation was a loan and Recipient or Sub-recipient paid the loan; (4) Recipient, with the consent of ADOH, cancelled or changed an activity required under the *Scope of Work* for reasons other than non-performance; or (5) Recipient receives Program Income that has not been included in the budget or set forth in the *Scope of Work*; and (6) this Agreement has otherwise been terminated. ADOH may de-obligate funds under this Agreement under the foregoing circumstances upon written notice to Recipient.

**15.2 Reallocation of De-obligated HOME or State HTF Funds.** If the funds provided by ADOH under this Agreement are from the State HTF or the HOME Program, ADOH may reallocate funds that it has de-obligated under this Agreement as it determines in its sole discretion.

**15.3 Reallocation of De-obligated CDBG Funds.** If the funds provided by ADOH under this Agreement are from the CDBG Program, ADOH may reallocate funds that it has de-obligated under this Agreement to Recipient from which the funds were de-obligated for use under an existing or new funding contract of the same funding year if Recipient can immediately commit the reallocated funds to a project and execute a new or amended funding contract within sixty (60) calendar days of the reallocation. If ADOH is not able to reallocate funds that it has de-obligated under this Agreement in accordance with the foregoing sentence of this subsection, ADOH may reallocate those funds as it determines in its sole discretion.

**15.4 Recapture.** ADOH may reduce funds from the amount of the funding award evidenced by this Agreement, without regard to the source of funding, under the following

circumstances: (1) ADOH determines that Recipient has failed to use the funds provided by ADOH under this Agreement in compliance with the terms of this Agreement or the requirements of applicable laws and regulations (non-compliance); or (2) Recipient fails to perform in accordance with the performance obligations set forth in the *Scope of Work* (Attachment A ) and the *Schedule of Completion* (Attachment B) or the terms of this Agreement. ADOH may recapture funds under this Agreement under the foregoing circumstances upon written notice to Recipient.

**15.5 Reallocation of Recaptured Funds.** ADOH may reallocate funds that it has recaptured under this Agreement, without regard to the source of funding, as it determines in its sole discretion.

**15.6 Repayment of Funds.** Recipient agrees to repay funds provided under this contract if ADOH determines that Recipient has failed to use the funds provided by ADOH under this Agreement in compliance with the terms of this Agreement or the requirements of applicable laws and regulations. ADOH may specify in writing the terms of the repayment or alternative terms in lieu of repayment; however, in no case shall repayment or alternative terms be accomplished later than 180 days following the written determination of non-compliance by ADOH.

## **Section 16. REVERSION OF ASSETS**

**16.1 Funds Remaining at Expiration.** Upon expiration of this Agreement, Recipient shall transfer to ADOH any unexpended funds advanced to Recipient by ADOH under this Agreement.

**16.2 Real Property Acquired or Improved with CDBG Funds.** Upon expiration of this Agreement, any real property under Recipient's control that was acquired or improved in whole or in part with CDBG funds, for non-owner occupied use, provided to Recipient by ADOH under this Agreement (including CDBG funds provided to Recipient in the form of a loan) in excess of \$25,000, shall either: (1) be used to meet one of the national objectives in 24 CFR Part 570.208 until five (5) years after expiration of this Agreement, or for such longer period of time as determined to be appropriate by Recipient; or (2) not be used in accordance with 24 CFR Part 570.503(b)(8)(i), in which event Recipient shall pay to ADOH an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. No payment is required after the period of time specified in 24 CFR Part 570.503 (b)(8)(i).

**16.3 Real Property Acquired or Improved with HOME Funds.** Upon expiration of this Agreement, any real property under Recipient's control that was acquired or improved in whole or in part with HOME funds, for non-owner occupied uses, provided to Recipient by ADOH under this Agreement (including funds provided to Recipient in the form of a loan), must be occupied only by households that are eligible as low-income families and must meet the requirements to qualify as affordable housing and is subject to encumbrances and

obligations described in any applicable Declaration of Conditions, Covenants and Restrictions ("CC&Rs") for the period of affordability set forth in 24 CFR Part 92.252.

**16.4 Real Property Acquired or Improved with State Housing Trust Funds.** Upon expiration of this Agreement, any real property under Recipient's control that was acquired or improved in whole or in part with state HTF funds, for non-owner occupied uses, provided to Recipient by ADOH under this Agreement (including funds provided to Recipient in the form of a loan), must be occupied only by households that are eligible as low-income families and must meet the requirements to qualify as affordable housing and is subject to encumbrances and obligations described in any applicable Declaration of CC&Rs for the period of affordability set forth in the CC&Rs.

## **Section 17. DEPARTMENT OF HOUSING RESPONSIBILITIES**

ADOH shall monitor and evaluate Recipient to determine compliance with and performance under this Agreement. A summary of discrepancies noted by ADOH during monitoring visits will be specified in writing. Appropriate time for correction of discrepancies will be specified in the written report to Recipient. ADOH shall follow up on discrepancies to ensure that they have been corrected in a timely manner. The failure of ADOH to require timely performance of any provision of this Agreement shall in no way affect the right of ADOH thereafter to enforce such provision nor shall the waiver of any succeeding breach of such provision act as waiver of the provision itself.

ADOH shall provide reasonable technical assistance to assist Recipient to comply with program requirements for the provision of services under this Agreement. However, this in no way relieves Recipient of full responsibility for its acts or omissions in the performance of activities required by this Agreement.

## **Section 18. SUBCONTRACTING**

Recipient shall not disburse any funds received under this Agreement without fully completed written agreements with subcontractors requiring they follow all provisions of this Agreement and a completed Environmental Review pursuant to Section 11 of this Agreement.

The use of subcontractors does not relieve Recipient of responsibility for ensuring the administration of the provided funds in accordance with all applicable program requirements. Recipient is responsible for determining the adequacy of performance under subcontractor agreements and procurement contracts and for taking appropriate action when performance issues arise.

## **Section 19. FAILURE TO MAKE PROGRESS**

Failure of Recipient to make progress according to the Schedule of Completion, attached hereto as Attachment B may result in contract termination, de-obligation of funds or

recapture of funds. Recipient agrees to meet with ADOH at the site in which the funded activity is taking place to discuss progress and allow ADOH to provide technical assistance if:

- (a) Recipient fails to begin work on its Environmental Review pursuant to Section 11 within the sixty (60) calendar days from the date ADOH executes this Agreement;
- (b) Recipient fails to expend any funds in performance of and in accordance with the terms of this Agreement within ninety (90) calendar days from the inception date of this Agreement.

ADOH will terminate any Agreement and recapture funds from the same Agreement in which Recipient does not commence any of the activities described in the *Scope of Work* (Attachment A) or fails to expend any funds in accordance with the *Budget* (Attachment C) within 180 calendar days from the full execution date of this Agreement. ADOH may in its sole discretion, forgo providing technical assistance and recapture funds as outlined in this Agreement under Section 15.4 hereof and/or terminate this Agreement for cause pursuant to Section 20 of this Agreement.

## **Section 20. TERMINATION FOR CAUSE**

ADOH may terminate this Agreement in whole or in part at any time whenever it determines that Recipient has failed to comply with the conditions hereof including, but not limited to the Scope of Work set forth in Attachment A, Schedule of Completion set forth in Attachment B and Budget set forth in Attachment C to this Agreement. If ADOH so determines, it shall notify Recipient in writing by certified mail, return receipt requested, of such termination for cause with such notification to include the reason(s) for the termination and the effective date of termination. If ADOH terminates this Agreement pursuant to this Section, ADOH shall recapture all funds allocated to Recipient under this Agreement pursuant to Section 15.4 hereof and obtain repayment of funds expended pursuant to Section 15.6, hereof.

## **Section 21. TERMINATION FOR CONVENIENCE**

ADOH or Recipient may terminate this Agreement in whole or part (one (1) or more activities) if either party believes that continuation will not produce beneficial results. If ADOH so determines, it shall notify Recipient in writing by certified mail, return receipt requested, of such termination for convenience and the effective date of termination. If Recipient so determines, it shall notify ADOH in writing by certified mail, return receipt requested, of such termination for convenience and the effective date of termination. If ADOH terminates this Agreement pursuant to this Section, ADOH shall de-obligate, recapture or receive repayment, as applicable, all funds allocated to Recipient under this Agreement pursuant to Section 15 hereof.

## **Section 22. ENFORCEMENT**

**22.1 Remedies for Noncompliance.** If Recipient materially fails to comply with any term of this Agreement or applicable law, ADOH may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by Recipient or more severe enforcement action by the awarding agency;
- (b) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
- (c) Wholly or partly suspend or terminate the award evidenced by this Agreement;
- (d) Withhold further awards to Recipient's project funded by the award evidenced by this Agreement;
- (e) Recapture funds and terminate contract;
- (f) Withhold future ADOH grant awards from all sources; or
- (g) Take other remedies that may be legally available.

**22.2 Appealable Agency Action.** Enforcement action taken under this section is an appealable agency action pursuant to A.R.S., Title 41, Chapter 6, Article 10.

**22.3 Effects of suspension and termination.** Costs incurred by Recipient resulting from obligations incurred by Recipient during a suspension or after termination of an award are not allowable unless ADOH expressly authorizes them in the notice of suspension or termination or subsequently.

**22.4 Relationship to debarment and suspension.** The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to "Debarment and Suspension" under the United States President's Executive Order 12549.

## **Section 23. CANCELLATION**

Pursuant to A.R.S. § 38-511, ADOH may, within three (3) years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of ADOH, at any time while this Agreement or any extension of this Agreement is in effect, is or becomes an employee or agent of any other party to this Agreement in any capacity or a consultant to any party of this Agreement with respect to the subject matter of the contract. A cancellation notice made pursuant to this provision shall be effective when Recipient receives written notice of the cancellation unless the notice specifies a later time.

## Section 24. RECORDS RETENTION

Pursuant to A.R.S. § 35-214, Recipient shall retain and require that its subcontractors retain for inspection and audit by ADOH, all books, accounts, reports, files including information regarding actual beneficiaries of the fund, and other records relating to the bidding and performance of this Agreement for a period of five (5) years following the date of the letter informing Recipient of the Administrative Closeout or termination.

- ☒ **CDBG funded projects only:** All CDBG records must be retained for at least three (3) years after the grant agreement close out between HUD and ADOH has been approved by HUD. ADOH will notify recipients of the records retention date of expiration for CDBG funded projects.
- ☐ **WEATHERIZATION projects only:** All records must be retained for at least three (3) years after the grant agreement close out between DOE or SWG and ADOH has been approved. ADOH will notify recipients of the records retention date of expiration for Weatherization projects.

Upon request by ADOH, Recipient shall produce a legible copy of all such records at the Administrative Office of ADOH or at the Office of the Auditor General. The original records shall be available and produced for inspection and audit when required by ADOH or the Auditor General.

Recipient shall maintain records that adequately identify the source and application of the funds provided under this Agreement (including Program Income and Recaptured Funds) as part of the financial transactions of their funding program, consistent with generally accepted accounting principles and the requirements of 2 CFR 200. Recipient will provide reports regarding the capture and reuse of Program Income and Recaptured Funds as requested by ADOH from time to time.

In addition, in the event that the project resulted in Recipient holding any liens or notes as a result of this funding, Recipient must retain all pertinent records for five (5) years beyond the expiration or release of such liens or notes.

## Section 25. NO OBLIGATION OF STATE GENERAL APPROPRIATIONS FUNDS

Nothing herein shall be construed as obligating state general appropriation funds, excepting HTF funds, for payment of any debt or liability of any nature arising hereunder. The parties expressly recognize that all payments to be made by ADOH are from federal funds and HTF funds made available to ADOH for this purpose.

## **Section 26. AVAILABILITY OF FUNDS**

Payments under this Agreement are subject to the availability of the federal funds provided to the ADOH for the HOME and CDBG programs and the availability of state funds provided for the state HTF Program. Every payment obligation of ADOH under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by ADOH at the end of the period for which funds are available. No liability shall accrue to ADOH in the event this provision is exercised, and ADOH shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

## **Section 27. APPLICABLE LAW AND ARBITRATION**

This Agreement shall be governed and interpreted by the laws of the State of Arizona. The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.

## **Section 28. INDEMNIFICATION**

Recipient shall indemnify, defend, and save harmless ADOH, the State of Arizona and its agents, officials and employees from any and all claims, demands, suits, actions, proceedings, loss, costs and damages of every kind and description, including any attorney's fees and litigation expenses, which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of or contributed to, in whole or in part, by reason of any alleged act, omission, professional error, fault, mistake or negligence of Recipient, its employees, agents, representatives or subcontractors, their employees, agents or representatives in connection with or incidental to the performance of this Agreement, or arising out of Workmen's Compensation claims, Unemployment Compensation claims or Unemployment Disability Compensation claims of employees of Recipient or its subcontractors or claims under similar such laws or obligations. Recipient's obligation under this section shall not extend to any liability caused by the sole negligence of ADOH, the State of Arizona or its employees.

## **Section 29. FEDERAL GOVERNMENT LIABILITY**

It is agreed by all parties that the Federal Government and particularly the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Energy (DOE) is not a party to this Agreement and that no legal liability on the part of the Federal Government is inferred or implied under the terms of this Agreement.

### **Section 30. AUDIT**

If federal funds are paid to Recipient through this Agreement, Recipient shall comply with the audit requirements set forth in 2 CFR 200. Recipient shall comply with A.R.S. § 35-181.03 if any state funds are paid through this Agreement. Recipient agrees to rectify issues identified in audits within ADOH prescribed time periods. Failure to comply shall result in withholding of all present and future ADOH provided funds.

### **Section 31. AUDIT EXCEPTIONS**

If federal or state audit exceptions are made relating to this Agreement, Recipient shall reimburse all costs incurred by the State of Arizona and ADOH associated with defending against the audit exception or performing an audit or follow-up audit including but not limited to: audit fees, court costs, attorney's fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature.

Immediately upon notification from ADOH, Recipient shall reimburse the amount of the audit exception and any other related costs directly to ADOH as specified by ADOH in the notification.

### **Section 32. UNALLOWABLE USE OF FUNDS**

Recipient, its officers, employees and agents, shall not utilize any of the federal funds or HTF provided under this Agreement to solicit or influence, or attempt to solicit or influence, directly or indirectly, any member of Congress regarding pending or prospective legislation.

### **Section 33. INTEREST OF MEMBERS OF DEPARTMENT OF HOUSING AND OTHERS**

No officer or employee of ADOH and no public official, employee or member of the governing body of Recipient who exercises any functions or responsibilities in review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership or association in which they are directly or indirectly interested, or have any interest, direct or indirect, in this Agreement or its proceeds.

### **Section 34. ACCESS TO RECORDS, PARTICIPANTS AND STAFF**

Recipient agrees to provide ADOH and its representatives access at any reasonable time to all participants and staff involved in this Agreement and to all records and reports involving this Agreement.

## **Section 35. IDENTIFICATION OF DOCUMENTS**

All materials used for public outreach and for informational purposes as a part of this Agreement, other than documents exclusively for internal use by ADOH, shall identify the source of federal (CDBG, HOME, NHTF, COC, HOPWA, DOE WAP, LIHEAP WAP) or state (HTF) funds used as part of this Agreement as well as acknowledgement of support from ADOH.

## **Section 36. COPYRIGHT**

Reports, maps or other documents produced in whole or in part under this Agreement are works for hire and shall not be the subject of any application for copyright by or on behalf of Recipient, by any employee or subcontractor of Recipient. Recipient shall advise ADOH or its designee at the time of delivery of any copyrighted or copyrightable work furnished under this Agreement, or any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

## **Section 37. RIGHTS IN DATA**

ADOH may duplicate, use and disclose in any manner and for any purpose whatsoever, within the limits established by federal and state laws and regulations, all information relating to this Agreement.

## **Section 38. FUNDING CONDITIONS**

ADOH will make the funding assistance available to Recipient upon execution of this Agreement by the parties. The obligation and utilization of the funding assistance provided through this Agreement are subject to the proper observation of the requirements incorporated by reference. Recipient shall require any subcontracting entities to observe and follow all provisions of this Agreement.

## **Section 39. NON-DISCRIMINATION**

- (a) Recipient shall comply with A.R.S. § 41-1463 and Executive Orders 99-4 and 2009-09, which prohibit Recipient from discriminating against persons, or depriving or tending to deprive any individual of employment opportunities or otherwise adversely affecting the individual's status as an employee on the basis of race, color, religion, sex, age, national origin, disability or political affiliation and require Recipient to take action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, age, national origin, disability, or political affiliation. Recipient shall comply with all of the other requirements of Executive Order 2009-09.

- (b) Recipient agrees to comply with Title VII of the Civil Rights Act of 1964, as amended. Recipient shall also comply with applicable federal regulations that prohibit discrimination in the employment or advancement in employment of qualified persons with disabilities. Recipient shall comply with all applicable federal regulations regarding equal employment opportunity and relevant orders issued by the U.S. Secretary of Labor. Recipient agrees to comply, and will require any subcontractor(s) to comply with applicable federal nondiscrimination requirements, which may include: Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §3789(d)); the Victims of Crime Act (42 U.S.C. §10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. §5672(b)); the Civil Rights Act of 1964 (42 U.S.C. §2000(d)); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§12132); Title IX of the Education Amendments of 1972 (20 U.S.C. §1681); the Age Discrimination Act of 1975 (42 U.S.C. §6102); 28 C.F.R. pt. 35 (DOJ Regulations- Nondiscrimination on the Basis of Disability in State and Local Government Services); 28 C.F.R. pt. 42 (DOJ Regulations- Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (DOJ Regulations- Equal Treatment for Faith-Based Organizations).

#### **Section 40. THIRD PARTY ANTITRUST VIOLATIONS**

Recipient assigns to the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Recipient toward fulfillment of this Agreement.

#### **Section 41. COMPLIANCE REQUIREMENTS FOR A.R.S. § 41-4401—IMMIGRATION LAWS AND E-VERIFY REQUIREMENT**

- (a) Recipient warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection 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.")
- (b) A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and Recipient may be subject to penalties up to and including termination of this Agreement.
- (c) The ADOH retains the legal right to inspect the papers of any employee who works on this Agreement to ensure that Recipient or Recipient's subcontractor is complying with the warranty under paragraph (a).

## Section 42. INSURANCE

During the contract period, Recipient shall purchase and maintain in full force the following insurance. All certifications of insurance must provide for a thirty (30) day notice to ADOH of cancellation, non-renewal or material change. Proof of insurance from Recipient shall be provided to ADOH prior to execution of this contract and periodic certifications must be furnished at the request of the Program Specialist.

Recipient and its subcontractors, at Recipient's and subcontractors' own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, 7, local government insurance pools formed pursuant to ARS 11-952.01 or other as approved by ADOH and licensed in the State of Arizona with policies and forms satisfactory to ADOH.

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 this Agreement is completed satisfactorily and formally accepted; failure to do so may, at the sole discretion of ADOH, constitute a material breach of this Agreement.

Recipient's insurance shall be primary insurance as respects ADOH and any insurance or self-insurance maintained by ADOH shall not contribute to it.

Recipient shall not fail to comply with the claim reporting provisions of the insurance policies or cause any breach of an insurance policy warranty, which would affect coverage afforded under insurance policies to protect ADOH.

The insurance policies, except Worker's Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against ADOH, its agents, representatives, directors, officers and employees for any claims arising out of Recipient's acts, errors, mistakes, omissions, work or service.

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

ADOH 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. ADOH shall not be obligated, however, to review same or to advise Recipient of any deficiencies in such policies and endorsements, and such receipt shall not relieve Recipient

from, or be deemed a waiver of ADOH's right to insist on, strict fulfillment of Recipient's obligations under this Agreement.

The insurance policies, except Worker's Compensation and Professional Liability, required by this Agreement, shall name ADOH, its agents, representatives, officers, directors, officials and employees as additionally insured.

#### **42.1 Required Coverage**

**Commercial General Liability.** Recipient shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 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. Coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof.

Such policy shall contain a severability of interest provision and shall not contain a sunset provision or commutation clause, nor any provision that would serve to limit third party action over claims. 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 Recipient's operations and products and completed operations.

**Automobile Liability.** Recipient 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 each occurrence with respect to Recipient's any auto, all owned autos, scheduled autos, hired autos, non-owned autos assigned to or used in performance of Recipient's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

**Worker's Compensation.** Recipient shall carry Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Recipient's employees engaged in the performance of the work or services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case any work is subcontracted, Recipient will require the subcontractor to provide Worker's Compensation and Employer's Liability to at least the same extent as required of Recipient.

#### **42.2 Certificates of Insurance**

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

In the event any insurance policy(s) required by this contract is (are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Recipient's work or services and as evidenced by annual Certificates of Insurance.

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

#### **42.3 Cancellation and Expiration Notice**

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days written notice to ADOH.

### **Section 43. PRIVACY CONSIDERATIONS**

Recipients of federal funds (for the purpose of this section "federal funds" means funding from the CDBG, HOME, HOPWA and COC programs; *see* Section 1, above) from ADOH warrant and represent that commencing from the effective date of this Agreement and until the latest expiration or termination date of any promissory note, deed of trust, declaration or other agreement that secures the federal funds that are the subject of this Agreement, Recipient and Recipient's contractors shall comply with the requirements of the federal Privacy Act, 5 U.S.C. § 552a. Recipient warrants and represents that it has read and understands the requirements of the Federal Privacy Act and requires the same of its contractors and subcontractors.

### **Section 44. NOTICES**

When routine reports or correspondence is required to be sent to ADOH, it shall be addressed to Arizona Department of Housing, to the attention of the assigned Program Specialist at 1110 West Washington Street, Suite 280, Phoenix, Arizona 85007. Notices or correspondence regarding material changes to the contract or requests for amendment shall be addressed to the same. All correspondence regarding this Agreement must be identified by its ADOH Agreement number (which is located on the top left hand corner of the first page of this Agreement).

When notice or correspondence is required to be sent to Recipient, it shall be addressed to:

TOWN OF WELLTON  
*Entity*  
YOLANDA GALINDO  
*Attention (if applicable)*  
28634 OAKLAND AVENUE, P.O. BOX 67  
*Mailing Address*  
WELLTON, ARIZONA 85356-0067  
*City State Zip*

#### **Section 45. REGISTRATION WITH SOCIAL SERVE**

For new construction or rehabilitation of rental projects, Recipient agrees to register the project with [socialserve.com](https://socialserve.com) and keep the project listed with [socialserve.com](https://socialserve.com) for the duration of the period of affordability as indicated in the Conditions, Covenants and Restrictions.

#### **Section 46. ADOH SIGNAGE**

For new construction and rehabilitation projects, Recipient must erect a sign at the project site indicating that the project is funded through the Arizona Department of Housing and indicate the sources of funds. The sign must be a minimum size of twenty-four (24) inches high by thirty-six (36) inches wide, include a minimum five (5) inch high ADOH logo and text printed at a minimum seventy-two (72) point font. An individual ADOH sign does not have to be provided if Recipient incorporates ADOH information into a larger group sign.

#### **Section 47. PHOTOGRAPHS**

For new construction and rehabilitation projects, Recipient is required to provide to ADOH before and after photographs of the project in digital or film format.

#### **Section 48. STATE OF ARIZONA**

This Agreement shall be construed in accordance with the laws of the State of Arizona.

#### **Section 49. WRITTEN CERTIFICATION UNDER A.R.S. § 35-393.01.**

If the [Recipient] engages in for-profit activity and has ten (10) or more employees, and if this Agreement has a value of \$100,000 or more, then the [Recipient] certifies it is not currently engaged in, and agrees for the durations of this Agreement, not to engage in a boycott of goods and services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

**Section 50. A.R.S. § 1-501 Relating to Federal Programs**

Notwithstanding any other state law and to the extent permitted by federal law, any person who applies for a federal public benefit that is administered by this state or a political subdivision of this state and that requires participants to be citizens of the United States, legal residents of the United States or otherwise lawfully present in the United States shall submit required documentation to the entity that administers the federal public benefit demonstrating lawful presence in the United States.

AGREED, effective as of the later date of the signatures of the duly authorized representatives subscribed below:

THE STATE OF ARIZONA,  
ARIZONA DEPARTMENT OF HOUSING

TOWN OF WELLTON  
RECIPIENT

BY: \_\_\_\_\_  
Joan Serviss

BY: \_\_\_\_\_  
Scott Blitz

TITLE: Director

TITLE: Mayor

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## Attachment A SCOPE OF WORK

### Town of Wellton 145-23 – Water & Street Improvements

#### Activity #1 - Administration

\$95,744 CDBG

To carry out all required actions to administer activities funded from the FY 2022 WACOG Regional Account for the Town of Wellton. Actions are to include requisite record keeping, reporting, monitoring and all other actions necessary to ensure compliance with CDBG Program requirements as identified in the 24 CFR 570.500 –570.614 and current Arizona Department of Housing Handbooks.

#### Activity #2 – Water & Street Improvements

\$386,168 CDBG

CDBG funds will be used to construct water & street improvements along Bakersfield Ave in Wellton Arizona.

- Replacement of approximately 2,653 linear feet of asbestos-concrete lined waterlines with new PVC material.
- Replace valves and fire hydrants.
- Removal and replacement of approximately 10,500 sq. yards of full roadway width, construction of new sidewalks, curb gutters, ADA compliant sidewalk ramps and concrete driveway entrances.

This activity will meet the Low to Moderate Income National Objective (LMA) and will benefit approximately 1,884 people of whom 1,321 (or 70%) are low-to-moderate income.

#### HUD Performance Measures

Objective: Suitable Living Environment

Outcome: Improved Sustainability

Indicator(s): Number of people (LMI included) with improved access

Data Collection Methodology: Document the number of residents living in the service area who have improved access to water and street improvements.



Arizona  
Department  
of Housing

CDBG

ATTACHMENT B

| ADOH PERFORMANCE REPORT/SCHEDULE OF COMPLETION  |                                   |   |  |                 |  |                   |          |            |  | Page 1 of 1 |
|---|-----------------------------------|---|--|-----------------|--|-------------------|----------|------------|--|-------------|
| Recipient   | Town of Wellton                   |   |  |                 |  |                   | Date     |            |  |             |
| Contract No   | 145-23                            | Contract Period: from March 1, 2023 to May 15, 2024 |  |                 |  | Revision          |          |            |  |             |
| Activity  | Water & Street Improvements       |   |  |                 |  |                   | Month    |            |  |             |
| Recipient Address   | 28634 Oakland Avenue, P.O. Box 67 |   |  |                 |  |                   | City     | Wellton    |  |             |
| Contact Person  | Yolanda Galindo                   |   |  |                 |  |                   | Zip Code | 85356-0067 |  |             |
| Phone   | (928) 785-3348                    |   |  |                 |  |                   | County   | Yuma       |  |             |
| Program Specialist  | Hilary Cuenin                     |   |  |                 | Email <a href="mailto:ygalindo@town.wellton.az.us">ygalindo@town.wellton.az.us</a> |                   |          |            |  |             |
| Email <a href="mailto:hilary.cuenin@azhousing.gov">hilary.cuenin@azhousing.gov</a>  |                                   |   |  |                 |  |                   |          |            |  |             |
| Indicate adherence to contract or schedule changes. Due by the 15th of each month.  |                                   |   |  |                 |  |                   |          |            |  |             |
| Contract Schedule   |                                   | Contract Date                                       |  | Complete Yes/No |  | Modification Date |          |            |  |             |
| Environmental Review Completed  |                                   | 2/15/2023   |  |                 |  |                   |          |            |  |             |
| Execute ADOH Contract   |                                   | 3/1/2023  |  |                 |  |                   |          |            |  |             |
| Engineering and Design  |                                   | 7/1/2023  |  |                 |  |                   |          |            |  |             |
| Finalize Documents & Prepare Bid Package  |                                   | 8/1/2023  |  |                 |  |                   |          |            |  |             |
| Bid Opening   |                                   | 9/1/2023  |  |                 |  |                   |          |            |  |             |
| Award Contract  |                                   | 9/15/2023   |  |                 |  |                   |          |            |  |             |
| Construction begins   |                                   | 10/1/2023   |  |                 |  |                   |          |            |  |             |
| Construction Complete   |                                   | 4/1/2024  |  |                 |  |                   |          |            |  |             |
| Final Inspections   |                                   | 4/15/2024   |  |                 |  |                   |          |            |  |             |
| Project Complete - Contract Expires   |                                   | 5/15/2024   |  |                 |  |                   |          |            |  |             |
| Please provide: 1. a brief description of activities performed this period. Include occurrences that caused variation from schedule changes to plans, unforeseen circumstances, etc. Please be specific. 2. The date of submission of your last Request for Payment (RFP) |                                   |   |  |                 |  |                   |          |            |  |             |
| RFP's should be submitted at a minimum every 6 months to remain compliant with HUD activity expenditure guidelines.   |                                   |   |  |                 |  |                   |          |            |  |             |
| Last RFP submitted on:  |                                   |   |  |                 |  |                   |          |            |  |             |
| Recipient Authorized Signature  |                                   |   |  |                 |  |                   |          |            |  |             |
| Date  |                                   |   |  |                 |  |                   |          |            |  |             |
| Title   |                                   |   |  |                 |  |                   |          |            |  |             |



Attachment C

CDBG

| Budget                           |   |                     |                     |  |                     |                     |
|----------------------------------|---|---------------------|---------------------|--|---------------------|---------------------|
| Contract No./File No.            | Recipient   | Town of Wellton     |                     |  |                     | Date                |
| 145-23                           | Contract Period: from March 1, 2023 to May 15, 2024 |                     |                     |  |                     | Revision No.        |
| Activity                         | Water & Street Improvements                         |                     |                     |  |                     |                     |
| Recipient Address                | 28634 Oakland Avenue, P.O. Box 67                   |                     |                     |  | City                | Wellton             |
| Contact Person                   | Yolanda Galindo                                     |                     |                     |  | Zip Code            | 85356-0067          |
| Phone                            | (928) 785-3348                                      |                     | Email               | <a href="mailto:ygalindo@town.wellton.az.us">ygalindo@town.wellton.az.us</a> |                     | County              |
| Program Specialist               | Hilary Cuenin                                       |                     | Email               | <a href="mailto:hilary.cuenin@azhousing.gov">hilary.cuenin@azhousing.gov</a> |                     | Yuma                |
|                                  |   |                     |                     |  |                     |                     |
| a                                | b   | c                   | d                   | e  | f                   | g                   |
| Budget Line Item or Activity No. | CDBG FY2022   | Source Program Year | Source Program Year | Source Program Year  | Source Program Year | Source Program Year |
| Activity 1 -- Admin              | \$95,744.00   |                     |                     |  |                     |                     |
| Activity 2 -- Water & Street Imp | \$386,168.00  |                     |                     |  |                     |                     |
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## Attachment D

|                    |                                   |   |  |                 |            |
|--------------------|-----------------------------------|---|--|-----------------|------------|
| Recipient          | Town of Wellton                   |   |  |                 |            |
| Contract No        | 145-23                            | Contract Period: from March 1, 2023 to May 15, 2024 |  | Pay Req. No     |            |
| Activity           | Water & Street Improvements       |   |  | Direct Wire Dep | Yes No     |
| Recipient Address  | 28634 Oakland Avenue, P.O. Box 67 |   |  | City            | Wellton    |
| Contact Person     | Yolanda Galindo                   |   |  | ZIP             | 85356-0067 |
| Phone              | (928) 785-3348                    |   | Email <a href="mailto:ygalindo@town.wellton.az.us">ygalindo@town.wellton.az.us</a> | County          | Yuma       |
| Program Specialist | Hilary Cuenin                     |   | Email <a href="mailto:hilary.cuenin@azhousing.gov">hilary.cuenin@azhousing.gov</a> |                 |            |

| Itemized Payment Statement (Sheet 2 of 2) must accompany this form. Include copies of invoices, cashed checks, and other backup documentation. ORIGINAL SIGNATURES are required for processing. |              |                |                |                           |                    |                        |               |
|---|--------------|----------------|----------------|---------------------------|--------------------|------------------------|---------------|
| a   | b            | c              | d              | e                         | f                  | g                      | h             |
| Budget Line Item or Activity No.  | IDIS Act No. | CDBG RA FY2022 | CDBG RA FY2022 | Total Amount Req. to Date | Balance in Account | Amount of this Request | New Balance   |
| Act. 1 Administration   |              | \$95,744.00    |                |                           | \$ 95,744.00       |                        | \$ 95,744.00  |
| Act. 2 Project Specific   |              |                | \$386,168.00   |                           | \$ 386,168.00      |                        | \$ 386,168.00 |
|   |              |                |                |                           | -                  |                        | -             |
|   |              |                |                |                           | -                  |                        | -             |
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|   |              |                |                |                           | -                  |                        | -             |
|   |              |                |                |                           | -                  |                        | -             |
| <b>Total</b>  |              | \$ 95,744.00   | \$ 386,168.00  | \$ -                      | \$ 481,912.00      | \$ -                   | \$ 481,912.00 |

|  |  |                                  |                                      |                                     |                   |
|--|--|----------------------------------|--------------------------------------|-------------------------------------|-------------------|
| Recipient Authorized Signature   |  | Date                             |                                      | Title                               |                   |
| Recipient Authorized Signatory certifies that all activities undertaken by the contractor with funds provided under this contract have been carried out in accordance with the contract. Attach wiring information if not previously submitted. Attach alternate mailing address if necessary. |  |                                  |                                      |                                     |                   |
| Performance Reports  |  | Current <input type="checkbox"/> | Not Current <input type="checkbox"/> |                                     | For ADOH Use Only |
| ADOH Program Specialist Approval   |  | Date                             |                                      | ADOH Program Administrator Approval |                   |
|  |  |                                  |                                      | Date                                |                   |

## ATTACHMENT E

### SPECIAL CONDITIONS

1. The Town of Wellton agrees to include AZ Game and Fish Department (AZGFD) general recommendations in the construction contract as outlined in the AZGFD letter dated July 5, 2022. These recommendations include:
  - a. Because trenching will occur, trenching and backfilling crews should be close together to minimize the amount of open trenches at any given time. Where trenches cannot be back-filled immediately, escape ramps, which can be short lateral trenches or wooden planks sloping to the surface, should be constructed at least every 90 meters. The slope should be less than 45 degrees (1:1). Trenches that cannot be backfilled immediately should be inspected and animals removed prior to backfilling.
  - b. Given the proximity to agricultural fields, there is potential for western burrowing owls, a special status species that is regulated under the Migratory Bird Treaty Act (MBTA), to occur in the project vicinity. If burrowing owls or their burrows are detected in the project area, the Department recommends contacting the U.S. Fish and Wildlife Service (<https://www.fws.gov/office/arizona-ecological-services/contact-us>) for direction, in accordance with the Burrowing Owl Project Clearance Guidance for Landowners. (<https://www.azgfd.com/wildlife/speciesofgreatestconservneed/raptor-management/burrowing-owl-mangement/>)

## ATTACHMENT F

### CERTIFICATION AND OTHER REQUIREMENTS RELATING TO TITLE I ASSISTANCE

The applicant hereby assures and certifies that:

1. It possesses legal authority to apply for Community Development Block Grant funds, and to execute the proposed program.
2. Prior to the submission of the application, the applicant's governing body has duly adopted or passed as an official act a resolution authorizing the submission of the application, including all understandings, assurances, statutes, regulations and orders contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
3. Its chief executive officer or other officer of the applicant approved by the State:
  - a. Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and other provisions of Federal law, as specified at 24 CFR 58.1(a) (3) and (a)(4), which further the purposes of NEPA insofar as the provisions of such Federal law apply to this program.
  - b. Is authorized and consents on behalf of the applicant and him (her)self to accept the jurisdiction of the federal and State courts for the purpose of enforcement of his/her responsibilities as such an official.
4. It will comply with the provisions of Executive Order 11990, relating to evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution.
5. It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11593, and the Preservation of Archeological and Historical Data Act of 1966, P.L. 93-291 (16 U.S.C. 469a-1, et seq.).
6. It will administer and enforce the labor standard requirements of the Davis Bacon Act, as amended at 40 U.S.C. 276a-276a-5, and the Contract Work Hours and Safety Standards Act at 40 U.S.C. 327-333.
7. It will comply with the provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or placement in ineligibility status.
8. It shall comply with the requirements of the 1992 Lead Based Paint Poisoning Prevention Act of 42 U.S.C. 4821-4846 (also Title X of the Housing and Community Development Act of 1992) and implementing regulations at 24 CFR Part 35.
9. It will comply with the provisions of 2 CFR part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards".
10. It will comply with the American Disabilities Act and Section 504 of the Rehabilitation Act, as amended.
11. It will comply with
  - a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88- 352), and the regulations issued pursuant thereto (24 CFR Part 1).
  - b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90- 284), as amended.

- c. Section 109 of the Housing and Community Development Act of 1974.
  - d. Executive Order 11063 pertaining to equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.
  - e. Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60).
  - f. Section 3 of the Housing and Urban Development Act of 1968, as amended.
  - g. Federal Fair Housing Act of 1988, P.L. 100-430.
  - h. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1973, 42 U.S.C. 6101-07, and the prohibitions against discrimination against persons with handicaps under Section 504 of the Rehabilitation Act of 1973, (P.L. 93-112), as amended, and the regulations at 24 CFR Part 8.
  - i. The requirements of the Architectural Barriers Act of 1966 at 42 U.S.C. 4151-415.
- 12. It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations.
  - 13. It will comply with applicable conflict of interest provisions, incorporate such in all contracts and establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
  - 14. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
  - 15. It will give representatives of the State, the Secretary of HUD, the Inspector General, and the General Accounting Office access to all books, accounts, records, reports, files and other papers, things, or property belonging to it or in use by it pertaining to the administration of State CDBG assistance.
  - 16. It will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify the State of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
  - 17. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat., 975, approved December 31, 1973. Section 103 (a) required, on and after March 2, 1974.
  - 18. It has AND WILL COMPLY WITH THE PROVISIONS OF THE STATE OF ARIZONA CITIZEN AND PUBLIC PARTICIPATION PLAN FOR THE STATE OF ARIZONA CDBG PROGRAM.
  - 19. It has developed plans to minimize displacement of persons as a result of activities assisted in whole or in part with CDBG funds and to assist persons actually displaced as a result of such activities, and has provided information about such plans to the public.
  - 20. It will not recover any capital costs of public improvements assisted in whole or in part with CDBG funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements **unless**:
    - a. the CDBG funds are used to pay the proportion of the fee or assessment that is financed from other revenue sources, or;
    - b. it will certify to the State in writing that it lacks sufficient CDBG funds to comply with (a) but that it will not assess properties owned by very low income persons.

21. It will provide all other funds/resources identified in the application, or any additional funds/resources necessary to complete the project as described in the application as submitted, or as may be later amended.
22. It will comply with 2 CFR 200, Subpart F – Audit Requirements; and if the grant is closed out prior to all funds having been audited, it shall refund to ADOH any costs disallowed as a result of any audit conducted after the date of grant closeout.
23. It hereby adopts and will enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and will enforce applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.
24. It will ensure that, to the best of the knowledge and belief of the undersigned:
  - a. no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in the connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - b. if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - c. the undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

"This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

25. It shall comply with the provisions of Section 102 of the HUD Reform Act of 1989.
26. It shall ensure that efforts are made to recruit minority, disabled and woman owned businesses for its vendor/supplier lists.

## **TOWN OF WELLTON**

### **AUTHORIZATION TO SUBMIT APPLICATIONS AND IMPLEMENT CDBG PROJECTS RESOLUTION NO: 688**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF WELLTON AUTHORIZING THE SUBMISSION OF AN APPLICATION(S) FOR FY 2022 STATE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS, CERTIFYING THAT SAID APPLICATION(S) MEETS THE COMMUNITY'S PREVIOUSLY IDENTIFIED HOUSING AND COMMUNITY DEVELOPMENT NEEDS AND THE REQUIREMENTS OF THE STATE CDBG PROGRAM, AND AUTHORIZING ALL ACTIONS NECESSARY TO IMPLEMENT AND COMPLETE THE ACTIVITIES OUTLINED IN SAID APPLICATION.**

WHEREAS, the Town of Wellton is desirous of undertaking community development activities; and

WHEREAS, the State of Arizona is administering the Community Development Block Grant Program; and

WHEREAS, the State CDBG Program requires that CDBG funds requested address one of the three Congressional Mandated National Objectives; and

WHEREAS, the activities within this application(s) address the community's identified housing and community development needs, including the needs of low and moderate-income persons; and

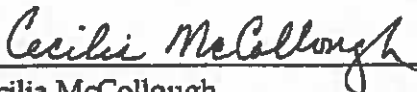
WHEREAS, an Applicant of State CDBG funds is required to comply with the program guidelines and Federal Statutes and regulations:

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor and Council of the Town of Wellton authorize applications to be made to the State of Arizona, Department of Housing for FY2022 CDBG Regional Account funds, and authorize the Town Manager to sign applications and contracts or grant documents for receipt and use of these funds for 1) Bakersfield Avenue Road Improvements; 2) Comprehensive Plan Implementation, and authorize the Town Manager to take all actions necessary to implement and complete the activities submitted in said application(s); and


THAT this application for State CDBG funds meets the requirements of low- and moderate-income benefit for activities justified as benefiting low- and moderate-income persons, aids in the prevention or elimination of slum and blight or addresses an urgent need which poses a threat to health; and

THAT, the Town of Wellton will comply with all State CDBG Program guidelines, Federal Statutes and regulations applicable to the State CDBG Program and the certifications contained in the(these) application(s).


Passed and adopted by the Mayor and Council of the Town of Wellton this 3<sup>rd</sup> day of May 2022.

  
Cecilia McCollough  
Mayor

ATTEST:

  
Richard Marsh  
Town Manager

APPROVED AS TO FORM:

  
Andrew McGuire  
Town Attorney



Community Development Block Grant (CDBG) Program  
AUTHORIZED SIGNATURE CARD FOR ALL ADMINISTRATIVE  
ACTIONS PERTAINING TO CDBG FUNDING AGREEMENTS

UGLG: TOWN OF WELLTON

FUNDING AGREEMENT NUMBER(S): 145-23

**ONLY ONE SIGNATURE REQUIRED (additional recommended to ensure signatory availability)**

**SIGNATURE(S) OF AUTHORIZED INDIVIDUAL(S)**

Typed Name Richard Marsh Title Town Manager

Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

I certify that the signatures above are those of the individuals who may authorize administrative actions for the cited contract and that I, as the Chief Elected Official, have the authority to designate these individuals to take such action.

Chief Elected Official Scott Blitz Title Mayor  
(Typed Name)

Signature \_\_\_\_\_ Date March 7, 2023



Community Development Block Grant (CDBG) Program  
DESIGNATION OF DEPOSIT OF GRANT FUNDS (F-1)

Funding Agreement Number(s): 145-23

(Complete the name and address of Recipient Unit of Local Government [UGLG])

UGLG: Town of Wellton

Address: P.O. Box 67

City: Wellton

State: Arizona

Zip: 85356

has been designated as the recipient for all funds to be received from ADOH resulting from CDBG Funding Agreement Number(s) shown above.

Funds shall be deposited by the recipient UGLG to:

Name of Financial Institution: NATIONAL BANK OF AZ Account Name/ #: 0817445166

A. ☐ Check this box if payment to be mailed to grantee

B. ☒ Check this box if payment to be sent electronically (direct deposit).

Note: If Box B is checked, GA0-618 Automated Clearinghouse (ACH) Vendor Authorization must be sent to ADOH.

Account number by which CDBG funds will be recorded in grantee financial records: 0817445166

Leverage account number, if applicable: N/A

**I certify that CDBG funds shall be deposited as specified above; shall not be deposited in an interest bearing account (unless all requests for payment shall be on a reimbursement basis); and shall be deposited in an FDIC-insured financial institution.**

Scott Blitz

Typed Name of Chief Elected Official

Signature of Chief Elected Official

Mayor

March 7, 2023

Title

Date



Community Development Block Grant (CDBG) Program  
**AUTHORIZED SIGNATURE CARD**  
**FOR REQUESTS FOR PAYMENT ON CDBG ACCOUNT (F-2)**

UGLG: TOWN OF WELLTON

Funding Agreement Number(s): 145-23

SIGNATURES OF INDIVIDUALS AUTHORIZED TO REQUEST FUNDS ON THE CITED CDBG FUNDING AGREEMENTS(s):

①

Signature

Richard Marsh

Typed Name

Date

Town Manager

Title

②

Signature

Typed Name

Date

Title

③

Signature

Typed Name

Date

Title

④

Signature

Typed Name

Date

Title

I certify that the signatures above are of the individuals authorized to request payments for the cited contract and that I, as the Chief Elected Official (Mayor/County Board Chairperson), have the authority to designate these individuals to take such action.

Signature of Chief Elected Official

Scott Blitz

Typed Name

March 7, 2023

Date

Mayor

Title

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## **RESOLUTION NO. 703**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF WELLTON, ARIZONA, DESIGNATING THE CHIEF FISCAL OFFICER FOR OFFICIALLY SUBMITTING THE TOWN'S FISCAL YEAR 2023 ANNUAL EXPENDITURE LIMITATION REPORT.**

**WHEREAS**, A.R.S. § 41-1279.07(E) requires each county, city, town, and community college district to annually provide to the Arizona Auditor General by July 31 the name of the Chief Fiscal Officer the governing body designated to officially submit the current year's Annual Expenditure Limitation Report (AELR) on the governing body's behalf; and

**WHEREAS**, the Mayor and Common Council of the Town of Wellton, Arizona have chosen to designate Richard Marsh as the Town's Chief Fiscal Officer; and

**WHEREAS**, the Town must submit an updated form and documentation for any changes in the individual designated to file the AELR;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF WELLTON, ARIZONA**, as follows:

**SECTION 1.** The recitals above are hereby incorporated as if fully set forth herein.

**SECTION 2.** Richard Marsh is hereby designated as the Town's Chief Fiscal Officer for the purpose of submitting the Town's Fiscal Year 2023 Annual Expenditure Limitation Report to the Arizona Auditor General on the governing body's behalf.

**SECTION 3.** The Mayor, the Town Manager, the Town Clerk, and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Wellton, Arizona on the 5<sup>th</sup> day of July, 2023.

(Signatures on Following Page)

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Cecilia C. McCollough, Mayor

ATTEST:

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Sandra Jones, Deputy Town Clerk

APPROVED AS TO FORM:

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Andrew J. McGuire, Town Attorney  
Gust Rosenfeld, PLC

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