

## **CONSTRUCTION CONTRACT AND GENERAL CONDITIONS FOR SWIMMING POOL REMODELING PROJECT**

THIS CONTRACT made and entered into by and between Aquavida Pool Solutions LLC dba Aquavida Pools, hereinafter designated as "CONTRACTOR", and the Town of Wickenburg, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated as "WICKENBURG."

WICKENBURG and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **1.0 PROJECT DESCRIPTION**

CONTRACTOR shall do and perform, or cause to be done and performed in accordance with this Contract, the Project entitled Swimming Pool Remodeling Project, hereinafter referred to as "The Project" or "The Work," in accordance with and as more fully described in the Notice of Call for Bids, Specifications, Drawings, Bid Form, Bid Security, Performance Bond, Labor and Material Bond, and Addenda thereto, if any, hereinafter referred to as "Contract Documents," all of which are incorporated herein by reference and made a part hereof as though set forth in full.

### **2.0 PERFORMANCE STANDARD**

The Work must be performed and completed in accordance with all requirements of law and no Work shall be undertaken until CONTRACTOR has been issued all required permits. "Completion" includes obtaining all certificates of occupancy or amendments of existing certificates, as the case may be. The Work must be performed in accordance with the best modern practice and with materials and workmanship of the highest quality. CONTRACTOR shall check and verify all dimensions, grades and levels before commencement of performance and whenever necessary during the progress thereof.

### **3.0 CONTRACT TIME**

CONTRACTOR hereby fixes the time for completion of all Work required to no later than 14th of February, 2025. Upon failure to complete the Work within the time specified, CONTRACTOR shall pay the amount of \$430.00 per day for each day the Work remains unfinished as and for liquidated damages incurred by WICKENBURG for failure to complete the Work within the specified time.

### **4.0 SUBCONTRACTORS**

The names of subcontractors submitted at the time of the submission of the bid to WICKENBURG shall be assumed to be the subcontractors which the CONTRACTOR shall use for Work required to be done under the Contract Documents. The CONTRACTOR shall make no substitution for any subcontractor, person, or entity previously selected if WICKENBURG makes a reasonable objection to such substitution. CONTRACTOR shall not contract with any subcontractor to whom WICKENBURG has made a reasonable objection. CONTRACTOR shall not be required to contract with anyone to whom he has made a reasonable objection.

## **5.0 INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent contractor and not an agent or employee of WICKENBURG. CONTRACTOR shall supervise and direct the Work to be done, using CONTRACTOR's best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures, and for coordinating all portions of the Work required by the Contract Documents. CONTRACTOR shall be responsible to the subcontractors and their agents and employees, and other persons performing any of the Work under the Contract Documents.

## **6.0 LABOR AND MATERIALS**

CONTRACTOR shall provide and pay and shall insure under the requisite laws and regulations all labor, materials, equipment, tools, construction equipment, machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether incorporated or to be incorporated in the Work.

## **7.0 TAXES**

CONTRACTOR shall pay all licenses, sales, consumer, use and other similar taxes for the Work or portions thereof provided by the CONTRACTOR which are legally enacted at the time bids are received, whether effective or subsequently applicable due to acts of jurisdictions or bodies other than WICKENBURG.

## **8.0 PERMITS AND FEES**

CONTRACTOR shall secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the Contract and which are legally required. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

## **9.0 BONDS**

Concurrently with the execution of the Contract, the CONTRACTOR shall furnish WICKENBURG the following Bonds, which shall become binding upon the award of the Contract to the CONTRACTOR:

- 9.1 **A Performance Bond:** In an amount equal to the full Contract amount conditioned upon the faithful performance of the Contract in accordance with Plans, Specifications and conditions thereof. Such Bond shall be solely for the protection of WICKENBURG.
- 9.2 **A Payment Bond:** In an amount equal to the full Contract amount solely for the protection of the claimants supplying labor or materials to the CONTRACTOR or his subcontractors in the prosecution of the Work provided for in such Contract.
- 9.3 Each such Bond shall include a provision allowing the prevailing party in a suit on such Bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

- 9.4 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The Bonds shall be made payable and acceptable to WICKENBURG. The Bonds shall be written or countersigned by an authorized representative of the surety, who is either a resident of the State of Arizona or whose principal office is maintained in this State and the Bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official.
- 9.5 Submittal of the required bonds as set forth in this paragraph is a condition precedent to this contract becoming effective.

#### **10.0 SUPERINTENDENT**

CONTRACTOR shall employ a competent Project Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent and be the agent of the CONTRACTOR and communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

#### **11.0 PROGRESS SCHEDULE**

CONTRACTOR, immediately after entering into the Contract, shall provide WICKENBURG with any requested scheduling information and a proposed Progress Schedule for performance of the Work in a form acceptable to WICKENBURG providing for commencement and completion of the Work within the Contract Time. CONTRACTOR shall prosecute the Work in a prompt and diligent manner and without hindering or delaying the Work of other Contractors or Subcontractors on the Project. Said Progress Schedule shall be supplemented thereafter upon request. Work shall not commence upon this Project until a written Notice to Proceed has been issued to the CONTRACTOR by WICKENBURG. The Notice to Proceed will be considered issued on the date it is sent to the CONTRACTOR by certified mail, telefacsimile or delivered to him in person.

#### **12.0 DRAWINGS AND SAMPLES**

CONTRACTOR shall furnish within three (3) working days following request therefore by WICKENBURG detailed drawings of the Work and samples of materials required for the performance or coordination of the Work. Drawings and samples shall comply with the requirements of the Contract Documents or shall be rejected.

#### **13.0 ERRORS IN THE PLANS**

CONTRACTOR shall be required to check carefully all dimensions and verify all vertical and horizontal controls using the nearest benchmark before beginning the Work. If any errors or omissions are discovered, WICKENBURG's Representative shall be notified in writing. WICKENBURG's Representative shall immediately notify the Project's Engineer, who will then make such corrections, and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications and shall issue appropriate corrections. Any adjustments

made by CONTRACTOR without prior review and acceptance shall be at his own risk. The settlement of any complication or disputed expenses arising from an adjustment made by contractor shall be paid by CONTRACTOR at his own expense.

#### **14.0 WICKENBURG'S RIGHT TO STOP, CARRY OUT OR CORRECT THE WORK**

If at any time during the performance of the Work it appears to WICKENBURG, in its sole discretion, that CONTRACTOR will not complete the Work within the Contract Time and pursuant to the Progress Schedule, or if the manner in which the CONTRACTOR carries out its obligations interferes with the ability of other contractors or workers to perform work on the same site, WICKENBURG shall have the sole and absolute right on seventy-two (72) hours written notice delivered to CONTRACTOR to replace CONTRACTOR by taking over the Work or procuring another to complete the Work. Such taking over shall not constitute or be construed as a waiver by WICKENBURG of any action, claim or demand WICKENBURG may have against CONTRACTOR by reason of injury or damage resulting to WICKENBURG because of CONTRACTOR's failure of performance hereunder. CONTRACTOR shall pay to WICKENBURG a sum equal to WICKENBURG's total cost of completing such Work, and a sum for reasonable attorneys' fees and litigation expenses in taking over and completing such Work. In no event shall any delay in performance hereunder by CONTRACTOR be excused unless, and ten to the extent only, such delay is excused by WICKENBURG in writing.

#### **15.0 WARRANTY**

CONTRACTOR warrants to WICKENBURG that all materials and equipment furnished under this Contract will be new, and that all Work will be of good quality, free from faults and defects. CONTRACTOR further guarantees all Work and materials for a period of one year from the date of acceptance of the Project. Should any portion of the Work need replacement or repair within one year from the date of completion due to construction methods or material failure, the CONTRACTOR shall replace such Work at no cost to WICKENBURG. If CONTRACTOR fails within reasonable time to replace or repair any portion of the Work deemed to be needed, WICKENBURG may cause said Work to be done and CONTRACTOR agrees to pay all costs incurred therein. All Work not conforming to the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by WICKENBURG, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### **16.0 INDEMNIFICATION**

- 16.1 To the fullest extent permitted by law, CONTRACTOR, its successors and assigns shall indemnify and hold harmless WICKENBURG, its officers and employees from and against all liabilities, damages, losses and costs (including reasonable attorney fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of CONTRACTOR or other persons employed or used by the CONTRACTOR in the performance of this Agreement. CONTRACTOR's duty to indemnify and hold harmless WICKENBURG, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused by CONTRACTOR's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence,

recklessness or intentional wrongful conduct of any person employed by CONTRACTOR or used by CONTRACTOR in the performance of this Agreement.

- 16.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

## 17.0 INSURANCE

- 17.1 The CONTRACTOR shall secure and maintain throughout the term of this Contract, the following insurance in the name of CONTRACTOR, naming WICKENBURG as additional insured with respect to claims which may arise out of or result from CONTRACTOR's acts, operations or negligence or those of its subcontractors, or anyone directly or indirectly employed by any of them including officers, employees, agents or representatives for matters related to this CONTRACT. The coverage shall be provided on an "occurrence" basis rather than a "claims made" basis, shall be provided without offset against WICKENBURG's existing insurance and provide for a minimum of thirty (30) calendar days' notice to WICKENBURG prior to cancellation, reduction in coverage or other substantial modification. CONTRACTOR shall provide a Certificate of Insurance which sets forth the following minimum amounts and types of coverage:

### TYPE OF COVERAGE

### AMOUNT NOT LESS THAN

Workers' Compensation

Statutory

Employers Liability

\$100,000 each accident  
\$100,000 disease each employee  
\$500,000 disease aggregate

### TYPE OF COVERAGE

### AMOUNT NOT LESS THAN

Commercial General Liability  
(including contractual liability for this Contract; broad form property damage; completed operations; and explosion, collapse and underground coverage)

\$1,000,000 per occurrence  
\$2,000,000 aggregate combined single limit

Automobile Liability (including owned, hired and non-owned coverages)

\$1,000,000 combined single limit

Builders "All-risk"

Completed Value (at least 100% of the Contract)

- 17.2 CONTRACTOR shall submit to WICKENBURG proof of the required insurance upon executing this CONTRACT. Such proof of insurance shall include the Project Name, Project Number and Contract Number. CONTRACTOR shall obtain the above-described insurance from insurance companies which are duly authorized to issue such policies in the State of Arizona and "Best Rated A" or better by the A.M. Best Company, or which are otherwise acceptable to WICKENBURG. CONTRACTOR shall maintain such insurance coverage until all the Work has been completed and the Project has been accepted by WICKENBURG.
- 17.3 WICKENBURG shall not be obligated to review any of the CONTRACTOR's Certificates of Insurance, insurance policies or endorsements or to advise CONTRACTOR of any deficiencies in such documents and any receipt of copies or review by WICKENBURG of such documents shall not relieve CONTRACTOR from or be deemed a waiver of WICKENBURG's right to insist on strict fulfillment of CONTRACTOR's obligations under this paragraph.
- 17.4 The insurance coverage referenced above shall apply to all operations of CONTRACTOR related to the Project which are undertaken by the insured, subcontractors or their employees and agents during the life of this CONTRACT. These policies shall not expire until all Work has been completed and the Project has been accepted by WICKENBURG. If a policy does expire during the life of the CONTRACT, a renewal Certificate of the required coverage must be sent to WICKENBURG not less than thirty (30) calendar days prior to expiration date.

## **18.0 CHANGE ORDERS**

A change order is a written order to the CONTRACTOR signed by WICKENBURG's Representative or other person designated in the Contract Documents, issued after execution of this CONTRACT, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. A change order signed by the CONTRACTOR indicates his agreement therewith. WICKENBURG, without invalidating the CONTRACT, may order changes in the Work, in the general scope of the CONTRACT consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by change order, and shall be performed under the applicable conditions of the Contract Documents. WICKENBURG's Representative shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order, and shall be binding on WICKENBURG and the CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly. Verbal information obtained from any officer, agent or employee of WICKENBURG or any other person shall not affect the obligations assumed by the CONTRACTOR or relieve the CONTRACTOR from complying with any of the terms of the Contract Documents. No additional changes will be made to the CONTRACT without prior written authorization from WICKENBURG pursuant to approved change order. Any change in the terms of the Contract Documents shall only occur as a result of an approved change order or written modification or amendment approved by mutual consent of WICKENBURG and the CONTRACTOR. If CONTRACTOR claims that any changes ordered by WICKENBURG involve extra cost under the Contract Documents, he shall within forty-eight (48) hours after

the receipt of such instructions, provide notice to WICKENBURG's Representative of such claim, and before proceeding to execute the Work.

#### **19.0 DISPUTED WORK**

If, pursuant to Paragraph 18, CONTRACTOR claims changes ordered by WICKENBURG involve extra cost, CONTRACTOR shall nevertheless perform the same if directed to do so by WICKENBURG. However, to preserve CONTRACTOR's right to claim extra compensation for the disputed Work, CONTRACTOR shall, prior to proceeding with the Work, notify WICKENBURG in writing that CONTRACTOR is performing the same under protest. The same procedure shall prevail as to any dispute as to a deduction for omitted Work (or as the case may be, to sustain CONTRACTOR's contention as to the appropriate compensation for extra Work that is not disputed to be an "extra") -- the notice in that circumstance to be given not later than ten (10) working days after the tender of payment by WICKENBURG to CONTRACTOR of the reduced amount (or amount for the non-disputed "extra") as computed by WICKENBURG. Failing such written protest, it shall be deemed that CONTRACTOR has acquiesced to WICKENBURG's contention that the Work is not extra but Contract Work or that the reduction (or amount of compensation for a non-disputed "extra") is correct, as the case may be. The giving of the protest provided for above, and giving it timely, are express conditions precedent to maintaining any remedial procedure, whether arbitration or otherwise, pertaining to CONTRACTOR's claim.

#### **20.0 PAYMENTS AND COMPLETION**

In consideration of the complete and timely performance of the Work, subject to changes as provided by an approved Change Order, WICKENBURG shall pay CONTRACTOR the Contract Sum of three hundred and thirty seven thousand, four hundred and seventy dollars (\$337,470.00). No adjustment will be made to the Contract Sum except by approved Change Order. The terms of this paragraph shall be governed by A.R.S. § 34-221 and any amendments thereto which is hereby incorporated by reference. Upon receipt of written notice that the Work is ready for final inspection and acceptance, WICKENBURG's Representative shall promptly make a final inspection and, when WICKENBURG's Representative finds the Work acceptable under the Contract Documents, he shall promptly approve a certificate for payment stating that upon his knowledge, information and belief and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the CONTRACTOR is due and payable. Neither the final payment nor the retained percentage determined under A.R.S. § 34-221 shall become due until the CONTRACTOR submits to WICKENBURG all required data establishing payment or satisfaction of all CONTRACTOR's obligations.

#### **21.0 PROTECTION OF PERSONS AND PROPERTY**

CONTRACTOR at all times must take all reasonable precautions to protect the persons and property of others on or adjacent to the Project from damage, loss, or injury resulting from operations under this CONTRACT by CONTRACTOR or any other party with whom CONTRACTOR has subcontracted. CONTRACTOR's obligation to protect shall include the duty to provide, place, and adequately maintain at or about the Project suitable and sufficient guards, lights, barricades, and enclosures. CONTRACTOR shall not disturb nor displace any protection installed by others.

CONTRACTOR's operations shall be in accordance with the Manual on Uniform Traffic Control Devices, Latest Edition. These operations shall cause no unnecessary inconvenience to the public and public access rights shall be considered at all times. Unless otherwise authorized in the Specifications or on a temporary basis by WICKENBURG, traffic shall be permitted to pass through the Work area. CONTRACTOR shall coordinate with the various agencies to include governmental, commercial and public, so that adequate services are maintained.

CONTRACTOR will coordinate and schedule off-duty police officers with the Town of Wickenburg as a part of the CONTRACTOR's traffic control work, if necessary. WICKENBURG will pay for the officers directly with no payment to the CONTRACTOR for this item. CONTRACTOR will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the CONTRACTOR fails to prosecute the work in a timely and orderly fashion, WICKENBURG shall notify the CONTRACTOR and reserves the right to negotiate a corresponding deductive change order with the CONTRACTOR based upon the cost of \$65/hour/officer that WICKENBURG will incur for the off duty officers.

Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and establishments of a similar nature.

Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of WICKENBURG, are required.

## **22.0 GOVERNING LAW**

This CONTRACT shall be governed by the laws of the State of Arizona.

## **23.0 SUCCESSORS AND ASSIGNS**

WICKENBURG and the CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the CONTRACT shall assign the CONTRACT or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any monies due or to become due to him hereunder without the previous written consent of WICKENBURG.

## **24.0 SERVICE OF NOTICE**

All notices and demands required or permitted by this CONTRACT shall be in writing and shall be deemed to have been given properly when (1) sent by Certified Mail (postage fully



prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this paragraph; (2) delivered personally to the parties to this CONTRACT; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this paragraph, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this paragraph.

**WICKENBURG:**

Office of the Town Clerk  
Town of Wickenburg  
155 N. Tegner St.  
Wickenburg, AZ 85390

**CONTRACTOR:**

Aquavida Pool Solutions LLC  
dba Aquavida Pools  
11430 N. Cave Creek Road  
Phoenix, AZ 85020

With a copy to:  
Wickenburg Town Attorney  
17851 N. 85<sup>th</sup> Street, Suite 175  
Scottsdale Arizona 85255

**25.0 CLAIMS FOR DAMAGES**

Should either party to the CONTRACT suffer injury or damage to personal property because of any act or omission of the other party or of his employees, agents for whose acts he is legally liable, claims shall be made in writing to such other parties within a reasonable time after the first observance of such injury or damages.

**26.0 RIGHTS AND REMEDIES**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by WICKENBURG or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the CONTRACT, nor shall any action or failure to act constitute an approval of or acquiescence in any breach except as may be specifically agreed in writing.

**27.0 TIME IS OF THE ESSENCE**

All time limits stated in the Contract Documents are of the essence. CONTRACTOR shall begin Work on the date specified in the Notice to Proceed and shall carry the Work forward expeditiously. If CONTRACTOR is delayed at any time in the progress of the Work by any act or neglect of WICKENBURG or by any employee of WICKENBURG or by change orders in the Work or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the CONTRACTOR's control, or by delay caused by WICKENBURG, or by any other cause which WICKENBURG determines may justify the delay, then the Contract Time shall be extended by change order for such reasonable time as WICKENBURG may determine. Any

claim for extension of time shall be made in writing to WICKENBURG's Representative not more than five (5) working days after the commencement of the delay; otherwise said claim shall be waived by CONTRACTOR. In the case of a continuing delay, only one claim is necessary. CONTRACTOR shall provide an estimate of the probable effect of such delay on the progress of the Work. This paragraph does not exclude the recovery of damages for delay by either party under the provisions of the Contract Documents.

## **28.0 TERMINATION BY WICKENBURG**

If the CONTRACTOR is:

adjudged as bankrupt, or

makes a general assignment for the benefit of its creditors or has a receiver is appointed on account of insolvency, or

persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or

fails to make prompt payment to subcontractors for materials or labor, or

persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or

otherwise, is guilty of a violation of the Contract Documents, then

WICKENBURG, upon certification by WICKENBURG's Representative that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the CONTRACTOR and its Surety, if any, ten (10) working days written notice, terminate this CONTRACT and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and may finish the Work by whatever method he may deem expedient.

In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, such excess shall be paid to the CONTRACTOR; if such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to WICKENBURG.

The amount to be paid to the CONTRACTOR or to WICKENBURG, as the case may be, shall be certified by WICKENBURG's Representative and this obligation for payment shall survive the termination of the CONTRACT.

## **29.0 CONFLICT OF INTEREST**

This CONTRACT shall be subject to the cancellation provisions of A.R.S. § 38-511 and any amendments thereto. The statutory requirements are incorporated into this Agreement by reference.

### **30.0 LITIGATION**

Should litigation be necessary to enforce any term or provision of this CONTRACT, or to collect any damage claimed or portion of the amount payable under this CONTRACT, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the party not at fault. Nothing herein shall preclude non-binding arbitration if the parties so elect in the event of a dispute hereunder.

### **31.0 PROTECTION OF PERSONS AND PROPERTY**

The CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded. If an unsafe condition arises or exists during the progress of the Work, or if WICKENBURG has reason to believe an unsafe condition exists, the CONTRACTOR shall suspend the Work wholly or in part for such period as may be necessary to correct the unsafe condition. Neither the CONTRACTOR nor any subcontractor shall trespass upon private property. The CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of the CONTRACTOR or subcontractors completing this Work. The CONTRACTOR shall ensure that both the CONTRACTOR and subcontractors comply with the laws and regulations of WICKENBURG, County and State relating to the safety of persons and property. The CONTRACTOR will be held responsible for any injury or damage to persons or property caused by the CONTRACTOR or subcontractors or any agent or employee of either during the progress of the Work and until its final acceptance. The CONTRACTOR shall protect against injury or damage to pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or private, encountered in this Work except as stipulated elsewhere herein. The CONTRACTOR shall be responsible and liable for any injury or damage to such pipes, structures and property.

### **32. IMMIGRATION LAW COMPLIANCE WARRANTY**

- 32.1 As required by A.R.S. § 41-4401, CONTRACTOR hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). CONTRACTOR further warrants that after hiring an employee, CONTRACTOR verifies the employment eligibility of the employee through the E-Verify program.
- 32.2 If CONTRACTOR uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.
- 32.3 A breach of this warranty shall be deemed a material breach of the CONTRACT that is subject to penalties up to and including termination of the CONTRACT. CONTRACTOR is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. WICKENBURG at its option may terminate the CONTRACT after the third violation. CONTRACTOR shall not be deemed in material breach of this CONTRACT if the CONTRACTOR and/or subcontractors establish compliance with

the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).

- 32.4 WICKENBURG retains the legal right to inspect the papers of any CONTRACTOR or subcontractor employee who works on the CONTRACT to ensure that the CONTRACTOR or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.
- 32.5 If state law is amended, the parties may modify this paragraph consistent with state law.

**33. EQUAL TREATMENT OF WORKERS**

CONTRACTOR shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the WORK. CONTRACTOR shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). CONTRACTOR shall protect and indemnify WICKENBURG and its representatives against any claim or liability arising from or based on the violation of such, whether by CONTRACTOR or its employees.

**34. CHINA**

Pursuant to and in compliance with A.R.S. § 35-394, CONTRACTOR hereby agrees and certifies that it does not currently, and agrees for the duration of this Agreement that CONTRACTOR will not, use: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) 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.

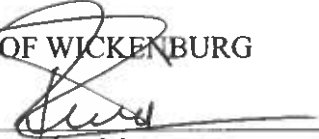
**35. ISRAEL**

To the extent A.R.S. § 35-393 through § 35-393.03 are applicable, CONTRACTOR hereby certifies that it is 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 A.R.S. § 35-393.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this CONTRACT to be executed upon the date this CONTRACT is signed by both Parties.

TOWN OF WICKENBURG

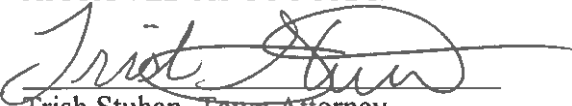
By:   
Rui Pereira, Mayor

Date: 11-18-24

ATTEST:

  
Amy Brown, Town Clerk

APPROVED AS TO FORM:

  
Trish Stuhan, Town Attorney  
Pierce Coleman PLLC

CONTRACTOR: Aquavida Pool Solutions LLC,  
dba Aquavida Pools

Signature: 

Name: Thomas Lopez

Title: Owner

Date: 11-20-24