



**CITY OF GLENDALE, ARIZONA
ENGINEERING DEPARTMENT**

**PYRAMID PEAK WATER TREATMENT PLANT IMPROVEMENTS
PROJECT AND EXPANSION PROJECT**

**CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES**

PROJECT NO. 151619 and 151620

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CITY OF GLENDALE
PROJECT NAME
CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES
PROJECT NO. XXXXXX

THIS AGREEMENT made and entered into this day of June 2017 by and between City of Glendale, an Arizona municipal corporation, hereinafter designated the "CITY" and McCarthy Building Companies, Inc., hereinafter designated "CONSTRUCTION MANAGER AT RISK" or "CM@Risk".

RECITALS

- A. The City Manager of Glendale, Arizona, is authorized and empowered by provision of the City charter to execute contracts for professional services and construction services.
- B. The City intends to construct the Project Pyramid Peak Water Treatment Plant Improvements and Expansion Project, as described in Exhibit A attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project the City has entered into a contract with Black & Veatch Corporation to provide pre-construction management services during the design phase of the project
- D. The CM@Risk may serve as the general contractor during construction of the project, if it is determined to be in the City's best interest. Once the work or services required by this Agreement has been substantially completed, at the City's discretion, the City may enter into a separate construction contract with the CM@Risk for construction phase services.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM@Risk as follows:

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda – Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement ("Contract") – This written document signed by the City and CM@Risk covering the pre-construction management services performed by CMAR for the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order – A document signed by the CM@Risk and the City that authorizes an addition, deletion or revision in the scope of services or Deliverables, or an adjustment in the Contract Amount or the period of services, or use of Owner Contingency, and is Issued on or after the Effective Date of this Agreement.

City ("Owner" or "OWNER") – The City of Glendale, a public body or authority and municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract.

CM@Risk ("CONSTRUCTION MANAGER AT RISK" OR "CONTRACTOR") – The person, firm, corporation or other approved legal entity with whom the City has entered into this Agreement. For purposes of this Agreement, the CM@Risk is McCarthy Building Companies, Inc..

Contingency, Contractor's – An agreed upon amount, either lump sum or a percentage of the Cost of the Work, that is included in the GMP and to be used by the CM@Risk in accordance with the General Provisions in the construction contract.

Contingency, Owner's – The Owner may, at its discretion, order changes in the scope of the Project. The Owner's Contingency is an amount to cover changes initiated by the Owner, which may be incorporated into the GMP as an allowance at the Owner's discretion.

Construction Documents – The plans, specifications, and drawings prepared by the design professional after correcting for permit review requirements.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

Contract Documents – This Agreement, exhibits, attachments, the Notice to Proceed for design phase services, all Written Amendments and Change Orders to this Contract and any other documents of designated in this Agreement.

Contract Amount – The final approved not-to-exceed budget for this Contract as identified in paragraph 4.1.

Contract Time(s) – The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion and/or completion of the construction Work so that it is ready for final payment.

Day – Calendar day(s) unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM@Risk in performing the scope of work described in this Agreement, including Exhibit A. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. "Drawings" includes drawings that have reached a sufficient state of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability and biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%) but "not for construction". Shop drawings are not Drawings as so defined.

Effective Date of this Agreement – The date specified in this Agreement on which the Agreement becomes effective, but if no such date is so specified, the date on which the last of the two parties to sign this agreement delivers it to the other party.

Design Professional – The qualified, licensed person, firm or corporation who furnishes design services required under the Contract Documents.

General Condition Costs – Includes, but is not limited to the following types of costs for the CM@Risk during the construction phase: payroll costs for project manager or construction manager but not both for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for

management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in direct employ of the CM@Risk or Subcontractors, taxes on the work and for which the CM@Risk is liable, fees for permits and licenses. Certain limitation and exclusions are described in the General Conditions for the construction phase.

GMP Plans and Specification – The three sets of plans and specifications provided pursuant to paragraph 2.7.3 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Agreement.

Laws and Regulations: Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Notice to Proceed – A written notice given by the City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this agreement.

Pre-construction management services – The work to be performed by the CM@Risk under this Agreement. Such work shall include, but is not limited to, those tasks and activities detailed in Exhibit A to this Agreement.

Progress Payment Application – The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment on which will include such supporting documentation as is required by the Contract Documents and or the City.

Project – The scope of work as described in the Recital above and Exhibit "A" attached.

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, Glendale Engineering Department Project Manager, City's Client Department's representatives and other stakeholders who are responsible for making decisions regarding the Project.

Samples – Physical examples of materials, equipment, or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be evaluated.

Shop Drawings – All drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CM@Risk and submitted by the CM@Risk to illustrate some portion of the Work.

Specifications – The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor – An individual, firm or corporation having a direct contract with the CM@Risk or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.8 of this agreement.

Subconsultant – A person, firm or corporation having a contract with CM@Risk to furnish services required as its independent professional associated or consultant with respect to the Project.

Substantial Completion – When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof of its intended purposes. This may include,

but is not limited to: (a) approval by City Fire Marshall and local authorities (Certificate of Occupancy); (B) elevator permit; (c) all systems in place, functional, and displayed to the City or its representative; (d) all materials and equipment installed; (e) all systems reviewed and accepted by the City; (f) draft O&M manuals and record documents reviewed and accepted by the City; (g) City operation and maintenance training completed; (h) HVAC test and balance completed [provide minimum 30 days prior to projected substantial completion]; (i) landscaping and site work; and (j) final cleaning.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Total Float – Number of Days by which the design phase services on construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

Work – The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Written Amendment – A written modification to the Contract Documents, signed by the City and CM@Risk on or after the Effective Date of this Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the Satisfaction of the City Engineer, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Glendale, Arizona would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practices. The services provided under this Agreement will not alter any real property owned by the City.

2.1.2 Program Evaluation: Not required.

2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, Contract Documents rolling reviews and partnering sessions.

2.1.4 The CM@Risk will provide pre-construction management services during the design phase of the Project Pyramid Peak Water Treatment Plant Improvements and Expansion Project as described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the Scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposal and/or in the Contract Time for the Work, to the extent such are established.

2.1.5 The CM@Risk, when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which will detail, but not necessarily be limited to, the CM@Risk's determinations concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast tracking and/or phasing the construction, (d) the number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

2.2.2 The CM@Risk will add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account: (a) revisions in Drawings and Specifications; (b) the CM@Risk's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the CM@Risk; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way; (d) the fast-tracking of any of the construction, or other chosen construction delivery methods; (e) a requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment (if any) and/or materials; and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all Project Team members and to be utilized as a basis for managing and monitoring each Project Team member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of, and to be used by, the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most revised/updated CMP. The Project Schedule will use the Critical Path Method technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable by the City. The Project Schedule shall be presented in graphic and tabular reports, as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in paragraph 2.6.

2.3.2 The CM@Risk will include and integrate in the Project Schedule the services and activities required of the City, Design Professional and CM@Risk including all construction phase activities. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design and various design phase documents; (b) separate long-lead procurements, if any; (c) permitting issues; (d) land and right-of-way acquisition, if any; (e) bid packaging strategy and awards to Subcontractors and Suppliers; (f) major stages of construction; (g) start-up and commissioning; and (h) occupancy of the completed Work by the City. The Project Schedule will include, by way of example and not as a limitation, proposed activity sequences and durations for design, Project Team, preparation and procession of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

2.3.3 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase so that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but not less often than at the monthly Project Team meetings. The CM@Risk will include with such

submittals a narrative describing its analysis of the progress achieved to-date vs. the planned progress, any concerns regarding delays or potential delays, and any recommendations regarding mitigating such delays.

- 2.3.4 Project Phasing:** If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1** The CM@Risk will evaluate periodically assess the availability of labor, materials/equipment, building systems, and cost-sensitive aspects of the design and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2** The CM@Risk will identify, in conjunction with the Project Team, those additional surface and subsurface investigations that are required to provide the necessary information for the CM@Risk to construct the Project. After completion of design phase, the CM@Risk may provide additional investigation to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents. The CM@Risk may be responsible for the time and cost required to obtain such additional investigations, except if otherwise provided by specific Additional Services and agreed to in a written amendment to this contract.
- 2.4.3** The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will thoroughly familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods of construction, selected materials, equipment and building systems, and labor and material availability. The CM@Risk will also advise the Project Team of proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.
- 2.4.4** The CM@Risk will routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the proposed Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 Constructability Reviews:** The CM@Risk will evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design are prepared to facilitate fabrication, transport and installation; (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions; (f) sequences of Work required by or can be developed from the Drawings and Specifications are capable of being implemented; and (g) the design has taken into consideration, efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar implementation issues.
- 2.4.4.2 Bidability Reviews:** The CM@Risk will check cross-references and compatibility of Drawings and sections within the Specifications, to evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well or poorly; in similar installations; (c) the design provides as-built data; (d) Specifications included alternatives, in the event a requirement cannot be met in the field.

2.4.4.3 The results of the constructability and bidability reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss and review these reports.

2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and although these reviews will serve to reduce the numbers of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.

2.4.5 Notification of Variance or Deficiency: It is the CM@Risk responsibility to assist the Design Professional in ascertaining whether the Construction Documents were developed in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. CM@Risk shall only be liable if CM@Risk knew of a variance and failed to report it to the City or Design Professional.

2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles, any alternate systems, approaches, and design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk, in cooperation with the Design Professional, will perform a cost/benefit analysis of the alternative and submit such analysis and any recommended change in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. If any alternative system is incorporated into the Drawings and Specification, the CM@Risk will include the cost of that alternative into the cost estimate and any GMP proposals.

2.5 COST ESTIMATES

2.5.1 Within 40 days after receipt of the documents for the various phases of design, the CM@Risk will provide a detailed cost estimate and a written review of the documents. If the Design Professional and CM@Risk disagree on the cost to be charged to the City for a phase of design, the CM@Risk and the Design Professional will meet and confer to reconcile any disagreements on the estimate and agree on such cost. If no consensus is reached; the City will make the final determination.

2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM@Risk will make appropriate recommendations on methods and materials to the City and Design Professional that it believes are consistent with the requirements and specification of the design and are consistent with the City's Project budget.

2.5.3 The CM@Risk will periodically provide a cost estimate tracking report, which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.

2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical resources of similar type projects to assist the City in the financing process.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL(S)

2.6.1 As part of the pre-construction management services provided by the CM@Risk under this contract, the CM@Risk will develop a proposed GMP for the construction phase of the Project. The proposed GMP may be presented as a single GMP for the entire Project or may be broken into a number of GMPs for

portions of the Work. The single or multiple GMPs will be presented in a format acceptable to the City. The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposal submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate at the time of the proposal, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

- 2.6.2** A single GMP Proposal for the entire Project will be developed by providing the City the sum of the maximum Cost of the Work, including the CM@Risk's Construction Fee, General Conditions Fee, and Contractor's Contingency. Multiple GMP Proposals for portions of the Project will be developed by providing the City the sum of the maximum Cost of the Work for that portion of the Project, including the CM@Risk's Construction Fee, General Conditions Fee, and Contractor's Contingency. Once a GMP is submitted to the City, the CM@Risk guarantees it will complete the Project at or below the final GMP Proposal Amount (i.e. the Contract Amount for the construction phase contract) approved by the City. The CM@Risk will thereafter be solely responsible for any difference between the actual Cost of Work and the City-approved GMP Amount, unless the parties agree to an amendment of the GMP Amount in a writing signed by both parties.
- 2.6.3** In preparing any GMP Proposal, the CM@Risk will obtain three sets of signed, sealed, and dated plans and specifications (including all addenda) from the Design Professional. The CM@Risk will prepare its GMP Proposal in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk will mark the face of each document of each set upon which its proposed GMP is based. The CM@Risk will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Design Professional.
- 2.6.4** An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the scope of Work shown in the current set of design documents upon which the GMP Proposal(s) is based. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.5** In the event the CM@Risk elects, at its sole discretion, to maintain a Contractor's Contingency allowance within the GMP, the criteria for development of that allowance must be acceptable to the City. In addition, the terms and conditions regarding use of that allowance during the construction phase will be established by the City and reflected in the contract for that phase of the Project.
- 2.6.6** If the construction contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk, will revert to the City.
- 2.7 GMP PROPOSAL(S) REVIEW AND APPROVAL**
- 2.7.1** The CM@Risk will meet with the City and Design Professional to review any GMP Proposal(s) and the written statement of its basis. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information in the written statement of basis, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.7.2** The City, may submit any GMP and its supporting documentation to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will review the GMP for accuracy and suitability and may provide the City with a critique or an independent estimate of the Cost of Work and Project Schedule for the GMP Proposal.
- 2.7.3** If the CM@Risk GMP Amount proposed the CM@Risk is greater than the estimate generated by the independent third party, the City may require the CM@Risk to reconfirm its GMP Proposal or ask the CM@Risk to adopt the independent third party's estimate as the GMP. If the CM@Risk will not accept the independent third party's estimate as the GMP Amount, the CM@Risk will submit a report to the City within seven days of receiving the third party's estimate identifying, explaining and substantiating the differences in the GMP

amounts. The CM@Risk may be requested or at its own discretion submit a revised GMP Proposal for consideration to the City. At that time the City may do one of the following.

- (a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment.
- (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
- (c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, or the independent third party's estimate, in which event, the City may terminate this Contract and/or elect not to enter into a subsequent contract with the CM@Risk for the construction phase of the Project.

2.7.4 If during the review and negotiation of GMP Proposals, the City determines that design changes are required, the City may authorize and cause the Design Professional to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon changes approved in the final approved GMP Proposal. Such revised documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City if it believes any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications and the parties will meet and confer to produce a final Construction Management Plan and GMP Proposal in accordance with Sections 2.2 and 2.6 of this Agreement.

2.8 SUBCONTRACTOR, SUBCONSULTANTS AND MAJOR SUPPLIER SELECTIONS

2.8.1.1 The CM@Risk may use subcontractors, subconsultants and suppliers to perform the pre-construction tasks and activities required by this Agreement, including its Exhibit A.

2.8.2 There are two ways the CM@Risk may select subcontractors, subconsultants and major suppliers (hereinafter referred to collectively as Subcontractors) prior to submission of a GMP. They are qualifications-based selection and competitive bid.

2.8.3 Selection by qualifications only – The City may approve the selection of a Subcontractor based only on its qualifications when the City agrees that it is in the best interest of the Project.

2.8.3.1 Qualification based selection of a Subcontractor should only occur prior to the submittal of the GMP Proposal.

2.8.3.2 The CM@Risk will prepare a Subcontractor selection plan and submit the plan to the City for approval. The CM@Risk shall use the criteria approved by the City and contained in the plan to evaluate the qualification(s) of a Subcontractor and will provide the City with its review and recommendation for selecting a Subcontractor.

2.8.3.3 The CM@Risk must receive City approval of the selected Subcontractor.

2.8.3.4 The CM@Risk will negotiate costs for services/supplies from each Subcontractor selected under this method.

2.8.4 Selection by competitive bid and qualifications – All work shall be competitively bid unless a Subcontractor was selected pursuant to Section 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).

2.8.4.1 The CM@Risk will develop Subcontractor interest, the CM@Risk solicit bids from and submit the names of a minimum of three qualified Subcontractors for each trade required for performance of the Project for approval by the City. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances, the CM@Risk may request approval by the City to submit

less than three names. Without prior written approval by the City, no change in the City-approved Subcontractors will be allowed.

- 2.8.4.2** The City may object to performance of all or part of the work by a Subcontractor without cause. If the City objects to any nominated Subcontractor or to any self-performed Work, the CM@Risk will nominate a substitute Subcontractor.
- 2.8.4.3** The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.
- 2.8.4.4** If the CM@Risk desires to self-perform the certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific portions of work or tasks and submit a bid. The CM@Risk's bid will be evaluated in accordance with the process identified below. If the City concurs that in order to insure compliance with the Project Schedule and/or cost, the CM@Risk may self-perform Work without bidding or re-bidding such portion of work or task.
- 2.8.4.5** The CM@Risk shall receive, open, record and evaluate all bids submitted in response to a solicitation. The responsive low bidders will be interviewed to determine the quality of their proposals. In evaluating the responsiveness of bid proposals, the CM@Risk may consider price, past performance on similar projects, qualifications, and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the work. The final evaluation of Subcontractor bids will be conducted with the City Representative in attendance to observe and provide input on the process.
- 2.8.4.6** Within fifteen days after Subcontractor bid opening, the CM@Risk will prepare a list of recommended Subcontractors for each category of work, for the City's review and approval. The list will detail: (a) for each sub-agreement, the amount of the Subcontractor bid and the corresponding Subcontractor; (b) the sum of Subcontractor bids received for all intended sub-agreements, (c) trade work and its cost that the CM@Risk intends to self-perform, if any.
- 2.8.5** The CM@Risk may make a single or multiple awards to Subcontractors as provided in City Code, and as approved by the City for this Project. Upon City approval of all Subcontractors, the CM@Risk shall submit a summary report to the City of the selection process. The report will indicate the Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received/costs negotiated, and the recommended Subcontractors for each category of work.
- 2.8.6** The approved Subcontractors will provide a schedule of values with their bid proposals, which will be used to create the overall project schedule of values.
- 2.8.7** If after receipt of sub-bids or after award of Subcontractors, the City objects to any nominated Subcontractor or to any self-performed Work to be performed by the CM@Risk, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work to be performed. Once such substitute Subcontractors are approved by the City, the CM@Risk's proposed GMP for the work or portion thereof may be correspondingly adjusted, by the City in a signed writing, to reflect any higher or lower costs from any such substitution.
- 2.8.8** Promptly after the CM@Risk issues the Notic(e) of Intent to Award, the CM@Risk will conduct a pre-award conference with the City and other Project Team members. At the pre-award conference, the CM@Risk will: (a) review the nominated slate of Subcontractors and discuss any concerns with or objections that the City has to any nominated Subcontractor; (b) discuss any concerns the City may have relating any proposed self-performed Work; (c) review the CM@Risk's proposed GMP Amount that includes the work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to pay or include any portion of the remaining Contractor's Contingency for the construction phase Work; (e) resolve possible delays of the Date of Commencement for the construction phase of the Work; (f) schedule the pre-construction conference; and (g) discuss other matters related to payment for or performance of the work.

- 2.8.9 The CM@Risk will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work, and with no financial or legal assistance by the City.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The pre-construction management services for the design phase of the Project described in this Contract will be performed by the CM@Risk in accordance with the most current updated/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of the Contract by the City.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Arizona time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 The City will pay the CM@Risk a fixed fee not to exceed \$ 5,279,881 for the pre-construction management services being provided under this contract as follows:

<u>Contract Breakdown:</u>	<u>Project #151619</u>	<u>Project #151620</u>	<u>TOTAL</u>
Base Scope	\$ 228,190	\$ 586,691	\$ 814,881
<u>Additional Services and allowances:</u>	<u>Project #</u>	<u>Project #</u>	<u>TOTAL</u>
	<u>#151619</u>	<u>#151620</u>	
Printing Services as described in subsection 4.3	\$ 4,089	\$ 10,911	\$ 15,000
Laser scanning & site survey	\$ 5,452	\$ 14,548	\$ 20,000
Building Information Modeling	\$ 9,541	\$ 25,459	\$ 35,000
Subcontractor assistance / coordination	\$ 5,452	\$ 14,548	\$ 20,000
Potholing	\$ 5,000	\$ 20,000	\$ 25,000
Public Outreach	\$ 2,726	\$ 7,274	\$ 10,000
Owner's Contingency	\$ 27,000	\$ 73,000	\$ 100,000
Early Procurement	\$4,240,000		\$4,240,000
TOTALS	\$4,527,450	\$ 752,431	\$5,279,881

4.2 PAYMENTS

- 4.2.1 Requests for payments for services rendered may be made by the CM@Risk on a monthly basis and must be submitted on the City's "Progress Payment Request" form. Such requests for payment will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, at a minimum, a narrative description of tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subcontractors' requests for payment, plus similar narrative and listings of Deliverables associated with their Work.
- 4.2.2 The fees for the CM@Risk and any Subcontractors will be based upon the hourly rate schedule included as Exhibit B attached.

- 4.2.3 The CM@Risk will pay all sums due to Subcontractors for services rendered and for reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 90 percent of the Contract Amount until final acceptance of all the design phase services, and award of the final approved GMP for the entire Project by City Council.
- 4.2.4 The CM@Risk agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may be extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- 4.2.5 No compensation to the CM@Risk will be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes. Payments shall be made within 30 days from Owner's receipt of the invoice.
- 4.2.6 If any service(s) performed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 The following Additional Services may be required for the successful completion of the Project. Additional Services and the incurrence of additional costs are not authorized unless approved in advance by the City, with a written amendment executed by both of the parties to this contract. Only the Additional Services are reimbursable as specifically identified below and authorized herein:

Non-overhead printing expenses incurred, including the printing of Construction Documents for bidding, deliverables, courier services or other Project-related services that may be requested by the City. The cost of such service will not exceed \$15,000 without further approval by the City.

ARTICLE 5 – CITY'S RESPONSIBILITIES

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information:
- 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
- 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
- 5.1.3 The name of the City employee or City's representative who will serve as Project Manager during the term of this Agreement. The Project Manager has the authority to administer this Contract and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will:
- 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.

- 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk, except for those copies whose cost has been reimbursed by the City.
- 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.
- 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.
- 5.2.5 Notify the CM@Risk of changes affecting the budget allocations.
- 5.3 The City's Project Manager may have the authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the Project Manager deems appropriate to the CM@Risk.

ARTICLE 6 – ADDITIONAL CONTRACT PROVISIONS

6.1 PROJECTS DOCUMENTS AND COPYRIGHTS

- 6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Agreement (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Project Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to indemnify and hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of or resulting from the City's alteration, modification or adaptation of the Project Documents.
- 6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, technique's, inventions, processes or works of authorship developed or created by the CM@Risk, its Subcontractor or personnel, during the course of performing this Agreement or arising out of the Project will belong to the CM@Risk.
- 6.1.3 License to City for Reasonable Use: The CM@Risk hereby grants, and will require its Subcontractors to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, Construction Documents, Contract Documents, Specifications, Drawings or Deliverables or any other documents developed or created for the Project unless such documents are privileged, work product or proprietary. This license will also include the making of derivative works.
- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Subcontractors will endorse by an Arizona professional seal all plans, works and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

- 6.2.1 The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and Construction Documents, Contract Documents, Specifications, Drawings or Deliverables and other documents prepared or compiled pursuant to its obligations under this Contract and will, at its sole and separate expense, correct its work or such deliverable or document. The fact that the City has accepted or approved the CM@Risk's work or such deliverable or document will in no way relieve the CM@Risk of any of its responsibilities under the contract, nor does this requirement to correct the work, deliverable or document constitute a waiver of any claims or damages otherwise available under any applicable law by the City. In its review of the Drawings and Specifications and in making any

recommendations regarding the Project, the CM@Risk does not assume any responsibility for design errors, omissions or inconsistencies.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of work or any Deliverable or document prepared or compiled pursuant to the CM@Risk's obligations under this contract results in a substantial change in this Agreement, and thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Order or Amendment must be approved and executed by the City and the CM@Risk. Such Change Order or Amendment will not be effective until executed by the City Manager, and, if necessary, approved by the City Council. Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties. No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be undertaken by the CM@Risk's at its sole jeopardy, cost and expense. The CM@Risk further agrees that without prior written authorization, no claim for compensation for such work or materials furnished will be made against the City.

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in the Contract, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this contract. Information that is to be confidential will be marked as "proprietary" or "confidential".
- 6.4.2 The parties agree that all data, including original, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City.
- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the CM@Risk has first given the required notice to the City:
- 6.4.3.1 Data which was known to the CM@Risk prior to its performance under this contract unless such data was acquired in connection with work performed for the City;
- 6.4.3.2 Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or
- 6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court.
- 6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other with the City, the CM@Risk will first notify the City as set forth in this article of the request or demand for data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City an organization chart identifying the key personnel the CM@Risk and any Subcontractors have assigned to this Project and provide detailed resumes of such personnel. Unless the City notifies the CM@Risk of its objection to the use of any such personnel within 14 days of receiving the organizational chart and resumes, the City is deemed to have accepted and approved the use of such Team members to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel during its performance of this Contract, the CM@Risk will submit the qualification of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace him/her with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

6.6.1 The CM@Risk is and will be an independent contractor to the City, no matter what measure of control the City may exercise over the work or Deliverable or direction the City gives to CM@Risk during the performance of this Contract. No provision in this Contract will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinance.

6.7 TERMINATION

6.7.1 The City and the CM@Risk hereby agree to full performance of the covenants contained herein, except the City reserves the right, at its sole discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been or may be performed by the CM@Risk.

6.7.2 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice, discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

6.7.3 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially complete, together with all unused materials supplied by the City.

6.7.4 The CM@Risk may request payment for the work completed and submit an invoice to the City for evaluation and compensation. The City will have the right to inspect the CM@Risk's work or

Deliverable to determine if the work has been performed and properly completed in accordance with the terms and conditions of this contract.

- 6.7.5 The CM@Risk will receive compensation in full for services satisfactorily performed prior to the date of such termination. Such compensation will be paid in accordance with Article 4 of this Contract, an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.8, "Disputes". However, in no event will any amount requested cause the full amount of costs incurred and paid exceed the fixed Contract Amount as set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty days of the latter of the CM@Risk's delivery of any remaining completed work item or the date the parties agree on the amount due as the CM@Risk's final payment.

6.8 DISPUTES

- 6.8.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Engineer.

6.9 WITHHOLDING PAYMENT

- 6.9.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City has submitted against the CM@Risk, until such time that a settlement on those claims has been reached.

6.10 RECORDS/AUDIT

- 6.10.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audits of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading or inaccurate cost and pricing data.

The CM@Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors' and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultants, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

6.11 INDEMNIFICATION

- 6.11.1 The CM@Risk agrees to indemnify and save harmless the City of Glendale, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, herein after individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature (collectively, "Claim") arising out of the work or Deliverable done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workmen's Compensation Law, or arising out of the failure of the CM@Risk to conform to any statutes, ordinances, regulation, law or court decree, but only to the extent the Claim is caused by the CM@Risk's negligence, recklessness, or intentional wrongful conduct. It is agreed that the CM@Risk will be responsible for primary loss investigation, defense and judgment costs where this Contract of indemnity applies.

6.12 NOTICES

- 6.12.1 Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	David Beard, P.E. City Engineer Glendale City Hall 5850 W. Glendale Ave. 3 rd Floor – Engineering Department Glendale, Arizona 85301-2599
To CM@Risk	McCarthy Building Companies, Inc. Attn; Joe Brunzman, Sr. Vice President 6225 N. 24 th Street, Suite 200 Phoenix, AZ 85016
To Design Professional:	Black & Veatch Corporation Dan Meyer, P.E. 2231 E. Camelback Road, Suite 250 Phoenix, AZ 85016
Copy to:	Tom Kaczmarowski, PE, CFM, Sr. Civil Engineer Glendale City Hall 5850 W. Glendale Ave. 3 rd Floor – Engineering Department Glendale, Arizona 85301-2599

6.13 COMPLIANCE WITH FEDERAL LAWS

- 6.13.1 The CM@Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these Acts and all other applicable federal and state laws and City Charter and Code provisions in performing this Contract and to permit the City to verify such compliance. CM@Risk is not responsible for the design complying with the Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

6.14 CONFLICT OF INTEREST

- 6.14.1 To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Glendale
Tom Kaczmarowski
5850 W. Glendale Ave.
3rd Floor - Engineering Department
Glendale, Arizona 85301-2599

- 6.14.2 Actions considered to be adverse to the City under this Contract include but are not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist to third party in pursuing administrative or judicial action against the City;
- (b) Testifying or providing evidence on behalf of any person in connection with administrative or judicial action against the City;
- (c) Using data to produce income for the CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

6.14.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM@Risk under this Contract will not create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

6.14.4 The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

6.15 CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE

6.15.1 Prior to award of the Contract, the CM@Risk must provide to the City's Engineering Department, its Contractor's License Classification and number, its City of Glendale Privilege License number, and its Federal Tax I.D. number.

6.16 SUCCESSOR AND ASSIGNS

6.16.1 The City and the CM@Risk will each bind itself, and its partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.17 FORCE MAJEURE

6.17.1 If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

6.18 COVENANT AGAINST CONTINGENT FEES

6.18.1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Glendale has any interest, financially, or otherwise, in the firm. The City of Glendale will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.19 NON-WAIVER PROVISION

6.19.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

6.20 JURISDICTION

- 6.20.1 This Contract will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

6.21 SURVIVAL

- 6.21.1 All warranties, representations and indemnifications by the CM@Risk will survive the completion or termination of this Contract.

6.22 MODIFICATION

- 6.22.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provision of this Contract, except as expressly provided herein to the contrary.

6.23 SEVERABILITY

- 6.23.1 If any provision of this Contract or the application thereof to any person or circumstances will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.24 INTEGRATION

- 6.24.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.25 TIME IS OF THE ESSENCE

- 6.25.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

6.26 THIRD PARTY BENEFICIARY

- 6.26.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

6.27 COOPERATION AND FURTHER DOCUMENTATION

- 6.27.1 The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

6.28 CONFLICT IN LANGUAGE

- 6.28.1 All work or Deliverables performed will conform to all applicable City of Glendale codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

6.29 CITY'S RIGHT OF CANCELLATION

- 6.29.1 All parties hereto acknowledge that this Contract is subject to cancellation by the City of Glendale pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

ARTICLE 7 – INSURANCE

The CM@Risk will procure and maintain for the duration of the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work or Deliverables hereunder by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. Insurance requirements related to any construction Work done during the design phase or during the construction phase will be defined in a separate contract associated with the construction phase. The CM@Risk will cause all Subcontracts to contain identical terms and conditions to those included in this Article.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants that might arise out of the performance of the work or Deliverables under this Contract by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, or Suppliers and CM@Risk is free to purchase such additional insurance as it may determine necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

- 7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate/per project	\$1,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$100,000

7.1.1.2 Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles
(Form CA 0001, ed. 12/93 or any replacement thereof)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
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7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability:	
Each Accident	\$500,000
Disease-Policy Limit	\$500,000
Disease-Each Employee	\$500,000

- 7.1.2 Self-Insured Retentions Any self-insured retentions and deductibles greater than \$10,000 must be declared to and approved by the City.

7.2 OTHER INSURANCE REQUIREMENTS

- 7.2.1 The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
- 7.2.1.1 The City of Glendale is to be named an additional insured with respect to liability arising out of: activities performed by or on behalf of the CM@Risk, including the City's general supervision of the CM@Risk; products and completed operations of the CM@Risk; and automobiles owned, leased, hired or borrowed by the CM@Risk.

7.2.1.2 The Commercial General Liability Insurance will contain broad form contractual liability coverage and will not exclude liability arising out of the explosion, collapse or underground hazard ("EXU").

7.2.1.3 The City will be additional insured to the full limits of liability purchased by the CM@Risk, even if those limits of liability are in excess of those required by this Contract. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B CG 20 10 11 85.

7.2.2 The CM@Risk's insurance coverage will be primary insurance with respect to the City. Insurance or self-insurance maintained by the City will be in excess of the CM@Risk's insurance and will not contribute to it.

7.2.3 The CM@Risk's insurance will apply separately to each insured against whom claim is made or suit is brought that, except with respect to the limits of the insurer's liability. The coverage provided by the CM@Risk and its subcontractors will not be limited to the liability assumed under the indemnification provisions of this Agreement.

7.2.4 The policies will contain a waiver of subrogation against the City for losses arising from work performed for the City.

7.2.5 Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer will agree to waive all rights of subrogation against the City for losses arising from work performed for the City.

7.3 SUBCONSULTANT INSURANCE

7.3.1 CM@Risk's certificate(s) shall include all subcontractors as insureds under its policies or the CM@Risk shall furnish to the City separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

7.4 NOTICE OF CANCELLATION

7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to the City's named Project Manager at:

5850 W. Glendale Ave.
3rd Floor – Engineering Department
Glendale, Arizona 85301-2599

7.5 ACCEPTABILITY OF INSURERS

7.5.1 Insurance is to be placed with insurers duly licensed or City approved unlicensed companies in the State of Arizona, and with an A.M. Best's rating of no less than A-:VII. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.6 VERIFICATION OF COVERAGE

7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages will be clearly noted on the certificate of insurance.

7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract or signing of this Contract, and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

7.6.3 All Certificates of Insurance required by this Contract will be sent directly to the Services Department Contracts Administration Section contracts officer for this Project. The Project Number and Project description will be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.

7.7 APPROVAL

7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment, but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

[Remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ATTEST

CITY OF GLENDALE

Julie K. Bower
City Clerk

By: _____
Kevin R. Phelps
City Manager

REVIEWED BY:

CM @ RISK
McCarthy Building Companies, Inc.

Michael D. Bailey
City Attorney

By: _____
Justin Kelton
President, Southwest Region

EXHIBIT A – PROJECT DESCRIPTION
Project No. 151619
CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES
Pyramid Peak Water Treatment Plant Improvements Project

DESCRIPTION OF PROJECT:

A brief project description for design phase services as defined in the agreement is summarized below.

The purpose of this project is to provide additional evaluations, design and construction administration services for the Pyramid Peak Water Treatment Plant (PPWTP) Improvements Project (Project No. 151619). The overall project will include additional evaluations of and improvements to the water treatment plant, and a fifteen (15) million gallon per day (mgd) plant expansion. The expansion portions of the project will be funded by the City of Peoria and the scope of work for the water treatment plant expansion is described in Exhibit B (Project No. 151620). The PPWTP improvements evaluations and design work included in City Project No. 151619 will be jointly funded by the City of Glendale and the City of Peoria in accordance with their current treatment flow capacity ownership of the PPWTP or in the case where an improvement item is solely for facilities operated by Glendale, such as upgrades to the Compliance Laboratory HVAC, the costs for those services and improvements will be paid for by Glendale only. Black & Veatch Corporation (Consultant) will provide the design and construction administration services.

The project will be constructed under a Construction Manager at Risk (CMAR) construction delivery method. The City of Glendale and City of Peoria each have contracted with a third party Owners representative for purposes of facilitating project reviews and decisions by each City in support of the design and construction phases.

The project is further described in the 2015 Technical Memorandum 4 – Existing Equipment Systems Needs Assessment and Improvements and in the Table titled: PHASE 4 BUDGETARY COSTS FOR IMPROVEMENTS dated 9/26/2016.

Project No. 151620
CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES
Pyramid Peak Water Treatment Plant Expansion Project

DESCRIPTION OF PROJECT:

A brief project description for design phase services as defined in the agreement is summarized below.

The purpose of this project is to expand the Pyramid Peak Water Treatment Plant (PPWTP) water treatment capacity by fifteen (15) million gallon per day (mgd). The facilities included in the expansion are described in TM 3 - Expansion Planning completed in July 2015 and include flocculation, coagulation, sedimentation, filtration and recovered water basins, sludge lagoons, expanding chemical storage and feed systems, and other ancillary systems. The overall project includes additional evaluations of and improvements to the existing water treatment plant, in addition to the treatment plant expansion. The PPWTP is jointly owned by the City of Peoria and City of Glendale. The expansion is for the City of Peoria and will be funded by the City of Peoria through Water Infrastructure Finance Authority (WIFA) of Arizona. Work shall comply with Standard Federal Provisions as described in Exhibit C and WIFA Clean Water Revolving Fund Drinking Water Revolving Fund Exhibit D.

EXHIBIT B - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants are as follows. **LIST OF CLASSIFICATIONS:**

Description	Total Hourly Labor Rate
Project Executive	\$ 207
Preconstruction / Project Director	\$ 197
Sr. Project Manager	\$ 176
Project Manager	\$ 149
Chief Estimator	\$ 186
Civil / Structural Estimator	\$ 138
Architectural Estimator	\$ 94
Process Estimator	\$ 150
EI&C Manager	\$ 146
BIM Manager	\$ 113
BIM Specialist	\$ 90
Project Superintendent	\$ 149
Mechanical Superintendent	\$ 138
Area Superintendent	\$ 123
Scheduler	\$ 128
Procurement Manager	\$ 119
Project Engineer	\$ 88
Project Administrator	\$ 59

Pyramid Peak Water Treatment Plant Improvements Project and Expansion Project
Project Numbers 151619 and 151620
Proposal - Preconstruction Phase Services
Summary - Article 2 - Basic Design Phase Services
November 7, 2016, revised April 25, 2017

	Hours	151619 Process Improvements			151620 Expansion	GRAND TOTAL
		Total Glendale and Peoria Cost by Task Group	Glendale Cost	Peoria Cost	Total Peoria Cost by Task Group	Grand Total Project Cost
2.1 - General	594	\$26,841	\$20,668	\$6,173	\$72,183	\$99,024
<input type="checkbox"/> Program Evaluation	0	\$0	\$0	\$0	\$0	\$0
<input type="checkbox"/> Project Meetings	452	\$20,547	\$15,821	\$4,726	\$55,985	\$76,532
<input type="checkbox"/> Construction Document Rolling Reviews	86	\$4,261	\$3,281	\$980	\$10,451	\$14,712
<input type="checkbox"/> Public Agency & Community Meetings	56	\$2,033	\$1,565	\$468	\$5,747	\$7,780
2.2 - Construction Management Plan	208	\$8,018	\$6,174	\$1,844	\$21,422	\$29,440
<input type="checkbox"/> Construction Management Plan Report	128	\$4,863	\$3,745	\$1,118	\$13,533	\$18,396
<input type="checkbox"/> Construction Management Plan Report Updates	80	\$3,155	\$2,429	\$726	\$7,889	\$11,044
2.3 - Project Schedule	618	\$24,595	\$18,938	\$5,657	\$65,229	\$89,824
<input type="checkbox"/> Project Schedule, Construction Schedule, Phasing	422	\$16,033	\$12,345	\$3,688	\$42,763	\$58,796
<input type="checkbox"/> Project Schedule updates and maintenance	196	\$8,562	\$6,593	\$1,969	\$22,466	\$31,028
2.4 - Design Document Reviews	600	\$21,398	\$16,476	\$4,922	\$65,242	\$86,640
<input type="checkbox"/> Labor, material, resource assessments	60	\$2,293	\$1,766	\$527	\$6,527	\$8,820
<input type="checkbox"/> Subsurface Investigation Review & Recommendations	64	\$964	\$742	\$222	\$8,136	\$9,100
<input type="checkbox"/> Constructability Reviews	248	\$9,622	\$7,409	\$2,213	\$26,662	\$36,284
<input type="checkbox"/> Bidability Reviews, written reports	120	\$4,050	\$3,119	\$932	\$12,150	\$16,200
<input type="checkbox"/> Alternate System Evaluations	108	\$4,469	\$3,441	\$1,028	\$11,767	\$16,236
2.5 - Cost Estimates	2222	\$91,832	\$70,711	\$21,121	\$245,856	\$337,688
<input type="checkbox"/> Budgeting & scope definition work	248	\$10,735	\$8,266	\$2,469	\$28,469	\$39,204
<input type="checkbox"/> Updated budget based on updated scope definition*	360	\$15,247	\$11,740	\$3,507	\$41,873	\$57,120
<input type="checkbox"/> Update cost model, 30% detailed estimate	448	\$18,073	\$13,916	\$4,157	\$48,093	\$66,166
<input type="checkbox"/> Update cost model, 60% detailed estimate	536	\$20,792	\$16,010	\$4,782	\$55,924	\$76,716
<input type="checkbox"/> Continuous cost model/estimate updates	254	\$10,529	\$8,107	\$2,422	\$27,625	\$38,154
<input type="checkbox"/> Value Analysis / Efficiency Analysis	336	\$14,561	\$11,212	\$3,349	\$38,187	\$52,748
<input type="checkbox"/> Cash Flow Projection	40	\$1,895	\$1,459	\$436	\$5,685	\$7,580
2.6, 2.7 - Guaranteed Maximum Price (GMP) Proposals, Review, and Approval	934	\$46,112	\$35,506	\$10,606	\$91,532	\$137,644
<input type="checkbox"/> GMP's - Prepare documents & advertise	78	\$3,280	\$2,526	\$754	\$9,652	\$12,932
<input type="checkbox"/> GMP #1a Development - Prepare GMP	118	\$18,634	\$14,348	\$4,286	\$0	\$18,634
<input type="checkbox"/> GMP #1b Development - Prepare GMP	154	\$24,198	\$18,632	\$5,566	\$0	\$24,198
<input type="checkbox"/> GMP #2 Development - Prepare GMP	584	\$0	\$0	\$0	\$81,880	\$81,880
2.8 - Subcontractor & Major Supplier Selection	232	\$9,394	\$7,233	\$2,161	\$25,227	\$34,621
<input type="checkbox"/> Sub / Supplier Selection Plan	68	\$2,357	\$1,815	\$542	\$6,719	\$9,076
<input type="checkbox"/> Recommended Sub / Supplier List; Develop interest	40	\$1,738	\$1,338	\$400	\$4,621	\$6,359
<input type="checkbox"/> Sub / Supplier Proposal Opening & Recording; Evaluation & Interviews	86	\$3,916	\$3,015	\$901	\$10,030	\$13,946
<input type="checkbox"/> Pre-Award Conference	38	\$1,383	\$1,065	\$318	\$3,857	\$5,240
Subtotal		\$228,190	\$175,706	\$52,484	\$586,691	\$814,881
Allowances / Reimbursable						





Exhibit C
For Project Number 151620

Standard Federal Provisions for Federally Funded Projects
through
Water infrastructure Finance Authority

STANDARD FEDERAL PROVISIONS

All recipients and subrecipients of federal funding are required to comply with all federal and state laws, rules, and regulations and therefore must ensure that their contractors also comply with all federal and state laws, rules, and regulations conditions. It is possible not all provisions will apply to all contractors. It is the contractors' responsibility to determine if the provisions apply to them. Note: For clarification purposes the word 'contractor' is the agency, consultant, vendor, individual, etc.; that the City of Peoria is contracting with for the desired scope of service outlined herein.

A. Compliance with Civil Rights Act of 1964

During the performance of this contract, the contractor agrees to comply with the following:

(i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. Sec. 2000d), (ii) the Rehabilitation Act of 1973 (Pub. L. 93-1123, 87 Stat. 355, 29 U.S.C. Sec. 794), (iii) the Age Discrimination Act of 1975 (Pub. L. 94-135 Sec. 303, 89 Stat. 713, 728, 42 U.S.C. Sec. 6102), (iv) Section 13 of the Federal Water Pollution Control Act (Pub. L. 92-500, 33 U.S.C. Sec. 1251), and subsequent regulations, ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap.

B. Termination for convenience (43 CFR § 12.84)

Except as provided in §12.83 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §12.83 or paragraph (a) of this section.

C. Equal Employment Opportunity (41 CFR § 60-1.4)

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

D. Compliance with Copeland Act Requirements

The Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

E. Contract Work Hours and Safety Standards Act

Contractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. Patent Rights (43 CFR Part 12)

Contractor shall comply with federal requirements (CFR 43, Part 12, Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

G. Copyrights (43 CFR § 12.74)

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

H. Audit Practices (43 CFR Part 12)

The contractor agrees access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

I. Retention of Records (43 CFR Part 12)

The contractor agrees to retain all required records for three years after grantees or sub-grantees make final payments and all other pending matters are closed.

J. Clean Air Act, Clean Water Act, and EPA Regulations

Consultant shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

K. Energy Policy and Conservation Act

Consultant shall 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 (Pub. L. 94-163, 89 Stat. 871).

L. System For Award Management Maintenance (Jul 2013) (48 CFR 52.204-13)

The Contractor is required to properly register and maintain an updated registration with the System for Award Management (SAM) database, which is the primary Government repository for prospective Federal awardee information and the centralized system for certain contracting, grants, and other assistance-related processes.

(a) Definition. As used in this clause—

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

"Data Universal Numbering System+4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart 32.11) for the same concern.

"Registered in the System for Award Management (SAM) database" means that—

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and government Entity (CAGE) code, as well as data required by the Federal Funding

Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

(b) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(c)(1)(i) If a Contractor has legally changed its business name, doing business as name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in the SAM database;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support he legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (c)(1)(i) of this clause, or fails to perform the agreement at paragraph (c)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted—

(i) Via the internet at <http://fedgov.dnb.com/webform> or if the Contractor does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(d) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.acquisition.gov>.

M. Use of American Iron and Steel (AIS)

The contractor acknowledges to and for the benefit of the City of Peoria (City) and the Water Infrastructure Finance Authority of Arizona, Clean Water Revolving Fund/Drinking Water Revolving Fund (WIFA) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the City or WIFA. See *Contract Packet for Governmental Borrowers* for a complete description of the requirements of the American Iron and Steel provision on this project.

N. Davis-Bacon Act (40 U.S.C. §276a-276a-5) Prevailing Wage Requirements:

Contractor shall comply with the Davis Bacon Act (40 U.S.C. §276a-276a-7) as Supplemented by Department of Labor regulations (29 CFR Part 5):

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and the through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code. In addition, all covered contracts shall include the standard contract clauses regarding prevailing wages and benefits included in the United States Department of Labor regulations found at 29 Code of Federal Regulations ("CFR") § 5.5, which are incorporated by reference in this contract. The contractor shall comply with the requirements of 29 CFR Part 3, which are also incorporated by reference in this Contract.

The contractor or subcontractors shall insert in any subcontracts the clauses contained in 29 CFR § 5.5(a) (1) through (10) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the United States Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the City, the State of Arizona ("State"), the United States Department of Labor, or their employees or their representatives.

By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

See *Contract Packet for Governmental Borrowers* for a complete description of the requirements of the Davis-Bacon Act on this project.

Exhibit D
For Project Number 151620

Water infrastructure Finance Authority Requirements
Clean Water Revolving Fund Drinking Water Revolving Fund

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

CONTRACT PACKET for Governmental Borrowers

This packet lists required contract conditions that apply to all Clean Water and Drinking Water Revolving Fund projects and contains forms that must be used in the procurement process. Please review this packet prior to bidding.

PLEASE NOTE

- **This packet, in its entirety, must be physically included in all bidding, solicitation and contract documents.**
- **Use of American Iron and Steel (AIS) applies to this project.:**
 - AIS includes the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- **Federal Davis-Bacon prevailing wages apply to this project.**
 - Payment of the wages, fringe benefits and overtime rates is required.
 - The appropriate Federal (Davis-Bacon) Prevailing Wage Decision must be physically incorporated into the bidding and contract documents.
 - The construction category of Heavy (excluding dam construction) should typically be applied to all projects funded by WIFA. If you believe that a different category of wages, such as Building, should be applied to your project or portions of your project, please contact WIFA in advance.
 - Weekly certified payroll submittal is required under the Federal Davis-Bacon laws.
- **Compliance with the Civil Rights Act and Equal Employment Opportunity is required.**
- **Promotion of Small, Minority and Women-owned Businesses and participation in EPA's Disadvantaged Business Enterprise (DBE) Program is required.**

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Required Contract Conditions

This project is being financed in whole or in part by the Water Infrastructure Finance Authority of Arizona through the Clean Water or Drinking Water Revolving Fund. The loan recipient is required to comply with the following federal and state laws, rules and regulations and must ensure that their contractor(s) also comply(ies) with these regulations, laws and rules.

1. (i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. Sec. 2000d), (ii) the Rehabilitation Act of 1973 (Pub. L. 93-1123, 87 Stat. 355, 29 U.S.C. Sec. 794), (iii) the Age Discrimination Act of 1975 (Pub. L. 94-135 Sec. 303, 89 Stat. 713, 728, 42 U.S.C. Sec. 6102), (iv) Section 13 of the Federal Water Pollution Control Act (Pub. L. 92-500, 33 U.S.C. Sec. 1251), and subsequent regulations, ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap.
2. Equal Employment Opportunity (Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations). Prohibits employment discrimination on the basis of race, color, religion, sex or national origin. Inclusion of the seven clauses in Section 202 of Executive Order 11246 as amended by Executive Orders 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.
3. (i) Promoting the use of Small, Minority, and Women-owned Businesses (Executive Orders 11625, 12138 and 12432), (ii) Small Businesses Reauthorization & Amendment Act of 1988 (Section 129 of Pub. L. 100-590), (iii) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102-389, 42 U.S.C. Sec. 437d), and (iv) Title X of the Clean Air Acts Amendments of 1990 (Pub. L. 101-549, 42 U.S.C. Sec. 7601 note) ("EPA's 10% statute"). Encourages recipients to award construction, supply and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement.
4. Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements (40 C.F.R. Part 33).
5. Debarment and Suspension (Executive Order 12549). Prohibits entering into contracts or sub-contracts with individuals or businesses who are debarred or suspended. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over \$25,000 via this Internet address: www.sam.gov/portal/public/SAM.

6. E-Verify (A.R.S. § 41-4401). A governmental entity shall not award a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A). Every government entity shall (i) ensure that every government entity contractor and subcontractor complies with the federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A); (ii) require that every government entity contract include the required provisions listed under A.R.S. § 41-4401(A); and (iii) establish procedures to conduct random verification of the employment records of government entity contractors and subcontractors.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Use of American Iron and Steel

Public Law 113-76, enacted January 17, 2014

SEC. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that—

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds (CWSRF and DWSRF) for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

What is considered American Iron and Steel?

What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

What is NOT considered American Iron and Steel?

What is NOT considered a 'construction material' for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are NOT considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Use of American Iron and Steel - De Minimis Waiver

Every water infrastructure project involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental.

Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc.

Example of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

EPA has established a public interest waiver for de minimis incidental components. This action permits the use of products when they occur in de minimis incidental components of such projects.

- Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5% of the total cost of the materials used in and incorporated into a project.
- The cost of an individual item may not exceed 1% of the total cost of the materials used in and incorporated into a project.

Assistance recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver and must retain relevant documentation (i.e., invoices) as to those items in their project files.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Davis-Bacon Contract Conditions (Federal Prevailing Wages)

PLEASE NOTE: Federal Davis-Bacon prevailing wages apply to this project. Payment of the wages, fringe benefits and overtime rates is required.

The “subrecipient” referred to throughout the Davis-Bacon contract conditions is the WIFA Borrower.

“WIFA” is the Water Infrastructure Finance Authority of Arizona, State Capitalization Grant recipient, recipient, or the Authority.

Wage Rate Requirements (Also referred to as Attachment 6)

Preamble

With respect to the Clean Water and Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(3)(ii)(A) below and for compliance as described in Section 5.

Requirements for Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient will contact EPA. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/recovery/index.htm>.

1. Applicability of the Davis-Bacon prevailing wage requirements.

Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a Clean Water Revolving Fund and to any construction project carried out in whole or in part by assistance made available by a Drinking Water Revolving Fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination 10 days or less prior to the closing date, the subrecipient may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage

determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument. Typically, the appropriate wage determination would be the one in effect on the date the task order, work assignment or similar instrument is awarded.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

The recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of

all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the

contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the subgrant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the Apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency

recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipient(s), the State recipient, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3 above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such

laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3 above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the recipient and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use WIFA's interview form, Department of Labor's Standard Form 1445, or equivalent documentation to memorialize the interviews. WIFA's interview form and instructions are included with this packet.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed below and to the appropriate DOL Wage and Hour District Office listed at www.dol.gov/whd.

Joe Ochab, EPA Region 9, 75 Hawthorne St. (P-22), San Francisco, CA 94105

**Clean Water Revolving Fund
Drinking Water Revolving Fund**

Equal Employment

Inclusion of these seven clauses (excerpt from Executive Order No. 11246, Section 202 as amended by Executive Order 11375 and 12086) is required in all CWRF and DWRF project related contracts and subcontracts over \$10,000:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in

Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Disadvantaged Business Enterprises (DBE)

Good Faith Efforts

Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Certified Disadvantaged Business Enterprises* (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach.

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

Required Contract Conditions

These conditions must be included in all procurement contracts entered into by the Borrower for all DWRF and CWRP projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.
2. The prime contractor must notify the owner in writing prior to the termination of any Disadvantaged Business Enterprise subcontractor for convenience by the prime contractor.
3. If a Disadvantaged Business Enterprise contractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts if soliciting a replacement contractor.
4. The prime contractor must continue to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

5. The prime contractor must provide EPA Form 6100-2 DBE Program Subcontractor Participation Form** to all of its Disadvantaged Business Enterprise subcontractors. Disadvantaged Business Enterprise subcontractors may send completed Form 6100-2 directly to the Region 9 DBE Coordinator listed below:

Joe Ochab, EPA Region 9, 75 Hawthorne St. (P-22), San Francisco, CA 94105

6. The prime contractor must have its Disadvantaged Business Enterprise subcontractors complete EPA Form 6100-3 - DBE Program Subcontractor Performance Form**. The prime contractor must include all completed forms as part of the prime contractor's bid or proposal package to the Borrower.
7. The prime contractor must complete and submit EPA Form 6100-4 DBE Program Subcontractor Utilization Form** as part of the prime contractor's bid or proposal package to the Borrower.
8. A Borrower must ensure that each procurement contract it awards contains the following terms and conditions:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

** A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.*

*** DBE forms can be downloaded from
http://www.epa.gov/osbp/dbe_contract_admin.htm*

ATTACHMENTS

DBE Forms

http://www.epa.gov/osbp/dbe_contract_admin.htm

6100-2 - DBE Program Subcontractor Participation Form

6100-3 - DBE Program Subcontractor Performance Form

6100-4 - DBE Program Subcontractor Utilization Form

Davis-Bacon Forms

WH-1321 - Davis-Bacon poster

WH-347 - Payroll and certification form

SF1444 - Wage Determination Request form

Employee Interview form

American Iron and Steel

Sample Step Certification Letter (Processed/Manufactured)

Sample Step Certification Letter (Shipped/Provided)

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

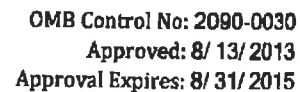
An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Please use the space below to report any concerns regarding the above EPA-funded project:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor

DBE Certified By: <input checked="" type="radio"/> DOT <input checked="" type="radio"/> SBA <input checked="" type="radio"/> Other: _____	Meets/ exceeds EPA certification standards? <input checked="" type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown
--	--

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
Approved: 8/ 13/2013
Approval Expires: 8/ 31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input checked="" type="radio"/> YES	<input type="radio"/> NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
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**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

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Prime Contractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

Water Infrastructure Finance Authority of Arizona
1110 West Washington Street, Suite 290
Phoenix, AZ 85007
Tel: (602) 364-1310
Fax: (602) 364-1331

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

DERECHOS DEL EMPLEADO

BAJO LA LEY DAVIS-BACON

PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

SOBRETIEPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:

Water Infrastructure Finance Authority of Arizona
1110 West Washington Street, Suite 290
Phoenix, AZ 85007
Tel: (602) 364-1310
Fax: (602) 364-1331

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener información adicional:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

PATROLL
(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		Rev. Dec. 2008
PAYROLL NO.		FOR WEEK ENDING	PROJECT AND LOCATION	OMB No.: 1235-0008 Expires: 01/31/2015
			PROJECT OR CONTRACT NO.	U.S. Navy and Four Children's

[illegible]

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(c). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payroll to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the prevailing wage rate for the work performed. DOL and Federal agencies are required to ensure that the proper Davis-Bacon prevailing wage rate for the work performed. DOL and Federal agencies are required to ensure that the proper Davis-Bacon prevailing wage rate for the work performed.

Public Burden Statement

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

(over)

Date _____

I, _____ (Name of Signatory Party) _____ (Title)
do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____, (Contractor or Subcontractor) _____ or the
_____, (Building or Work) _____; that during the payroll period commencing on the

_____ day of _____, _____, and ending the _____ day of _____
all persons employed on said project have been paid the full weekly wages earned, that no rebates have
been or will be made either directly or indirectly to or on behalf of said

_____, (Contractor or Subcontractor) _____ from the full
weekly wages earned by any person and that no deductions have been made either directly or indirectly
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part
3 (29 C.F.R. Subpart A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,
63 Stat. 108, 72 Stat. 957; 76 Stat. 357; 40 U.S.C. § 3145), and described below.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the
applicable wage rates contained in any wage determination incorporated into the contract; that the
classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentice employed in the above period are duly registered in a bona fide
apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of
Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a
State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ - in addition to the basic hourly wage rates paid to each laborer or mechanic listed in
the above referenced payroll, payments of fringe benefits as listed in the contract
have been or will be made to appropriate programs for the benefit of such
employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ - Each laborer or mechanic listed in the above referenced payroll has been paid,
as indicated on the payroll, an amount not less than the sum of the applicable
basic hourly wage rate plus the amount of the required fringe benefits as listed
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE
31 OF THE UNITED STATES CODE.

**REQUEST FOR AUTHORIZATION OF
ADDITIONAL CLASSIFICATION AND RATE**

CHECK APPROPRIATE BOX

☐ SERVICE CONTRACT☐ CONSTRUCTION CONTRACT

OMB No.: 9000-0089

Expires: 04/30/2005

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.

1. TO:

ADMINISTRATOR, Employment Standards Administration
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C. 20210

2. FROM: (REPORTING OFFICE)

3. CONTRACTOR

4. DATE OF REQUEST

5. CONTRACT NUMBER

6. DATE BID OPENED (SEALED
BIDDING)

7. DATE OF AWARD

8. DATE CONTRACT WORK
STARTED9. DATE OPTION EXERCISED (IF
APPLICABLE) (SCA ONLY)

10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER:

DATED:

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES;
AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)

(Use reverse or attach additional sheets, if necessary)

b. WAGE RATE(S)

c. FRINGE BENEFITS
PAYMENTS14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE
(IF ANY)

15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE

16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE

TITLE

CHECK APPROPRIATE BOX-REFERENCING BLOCK 13.

☐ AGREE☐ DISAGREE

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

☐ THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

☐ THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR
REPRESENTATIVE

TITLE AND COMMERCIAL TELEPHONE NO.

DATE SUBMITTED

SF 1444 Instructions

Request for Additional Classification and Wage Rate Form

Attached is a copy of the federal standard form 1444, Request for Authorization of Additional Classification and Wage Rate. This form must be submitted when a wage classification is not listed on the applicable wage decision. The classification and wage rate submitted on the form should bear a reasonable likeness to similar skill classifications listed in the federal wage determination.

The prime contractor is responsible for the completion and submission of this form. The following are the procedures for the completion and submission of the form:

1. Check "Construction Contract" in the upper right-hand corner.
- Box 2. Insert the following information:
Water Infrastructure Finance Authority of Arizona (WIFA)
1110 W. Washington St., Suite 290
Phoenix, AZ 85007
- Box 3. Prime contractor's name.
- Box 4. Date the prime contractor submitted the form to WIFA.
- Box 5. Contract number.
- Box 6. Date the bid was opened, if applicable.
- Box 7. Date the contract was awarded.
- Box 8. Actual date the contractor will be starting or started work.
- Box 9. (This box is not applicable.)
- Box 10. List all subcontractors that will utilize the labor classification listed in box 13a. If none, enter "N/A."
- Box 11. Project title and a brief description of the project.
- Box 12. Include both the city and county, as well as Arizona.
- Box 13. Federal "General Decision Number" (e.g. AZ00009) and the date.
- Box 13a. List all classifications not covered by the federal wage determination, which are utilized by either the prime or the subcontractor(s).
- Box 13b. The wage rate should bear a reasonable likeness to the category classification wage rates (equipment operators, laborers, truck drivers, etc.) listed in the federal wage determination.
- Box 13c. The fringe rate should bear a reasonable likeness to the category classification fringe rates (equipment operators, laborers, truck drivers, etc.) listed in the federal wage determination.
- Box 14. If there is a subcontractor listed on line 10, its representative signs on this line.
- Box 15. The prime contractor's representative must sign on this line.
- Box 16. If the contractor has a specific employee who will be performing the labor classification(s) listed in box 13a, or if the employees' have legal representation (union, etc.), they should sign this line and include their title. If no specific employee is identified to perform work under the listed classification(s), then write "unknown" in the box. The "Agree" or "Disagree" boxes are checked by anyone signing in boxes 14, 15, and 16.

The contractor will make a copy of the completed signed form and submit the original to WIFA (not required to be in quadruplicate).

WIFA will complete the section below the heavy line **TO BE COMPLETED BY CONTRACTING OFFICER** and submit it to DOL and EPA. Typically DOL responds in 30 days. WIFA will send the borrower a copy of the approved wage classification.



EMPLOYEE INTERVIEW FOR DAVIS-BACON LABOR STANDARDS

1a. Project Name		2a. Employee Name	
1b. Contract Number	Wage Decision and Date	2b. Employee Phone Number	
1c. Name of Prime Contractor		2c. Employee Home Address and Zip Code	
1d. Name of Employer and Supervisor			
3a. Hourly rate of pay <u>on this project</u> :	4. Do you know that you are working on a federally-funded project and that you are to be paid wages set by DOL (Davis-Bacon wages)?	5. Do you know where the Davis-Bacon Wage Rate Decision for this project is posted?	6. Do you know where the "Employee Rights under the Davis-Bacon Act" poster is posted?
3b. Do you have your most recent paystub? Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
7a. Do you ever work over 8 hours per day? Y <input type="checkbox"/> N <input type="checkbox"/>	7b. Do you ever work over 40 hours per week? Y <input type="checkbox"/> N <input type="checkbox"/>	7c. Are you paid at least time and a half for overtime hours? Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>	8. Do you receive Fringe Benefits? Vacation Y <input type="checkbox"/> N <input type="checkbox"/> Medical Y <input type="checkbox"/> N <input type="checkbox"/> Pension Y <input type="checkbox"/> N <input type="checkbox"/> Cash/pay Y <input type="checkbox"/> N <input type="checkbox"/> Other:
9a. Date you began work <u>on this project</u> :	9b. Date of last work day <u>on this project</u> before interview:	9c. How many hours did you work on your last work day before this interview <u>on this job</u> ?	
10. What deductions other than taxes and social security are made from your pay?		11. Work Classification (list all <u>on this project</u>):	
12. Your duties <u>on this project</u> :		13. Tools and equipment you use <u>on this project</u> :	
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE			
14. Employee Signature		Date	
15. Interviewer Signature		Interviewer Name	Date
INTERVIEWER'S COMMENTS			
16. Work employee was doing/tools employee was using when interviewed:		17. Is employee properly classified and paid? Y <input type="checkbox"/> N <input type="checkbox"/>	18. Are wage rate and poster displayed? Y <input type="checkbox"/> N <input type="checkbox"/>
		19. Wage Rate Decision Number:	20. Wage Rate Decision Date:
FOR USE BY PAYROLL CHECKER			
21. Is above information in agreement with payroll data? Y <input type="checkbox"/> N <input type="checkbox"/>	22. If no, provide explanation and resolution:		
23. Payroll Checker Signature	Payroll Checker Name	Date	

SAMPLE Step Certification Letter (Processed/Manufactured)
Use of American Iron and Steel
Water Infrastructure Finance Authority of Arizona
CWSRF and DWSRF Funded Projects

The following information is provided as a sample letter of certification for AIS compliance (From March 20, 2014 EPA Memorandum American Iron and Steel Requirement Guidance).

Documentation must be provided on company letterhead.

Documentation should include the following four items:

- *Project name*
- *Product identification*
- *City and state where process took place*
- *Signature*

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____ (city and state) _____

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

**SAMPLE Step Certification Letter (Shipped/Provided)
Use of American Iron and Steel
Water Infrastructure Finance Authority of Arizona
CWSRF and DWSRF Funded Projects**

*The following information is provided as a sample letter of certification for AIS compliance
(From March 20, 2014 EPA Memorandum American Iron and Steel Requirement Guidance).*

Documentation must be provided on company letterhead.

Documentation should include the following four items:

- *Project name*
- *Product identification*
- *City and state where process took place*
- *Signature*

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____ (city and state)

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative