AMENDMENT No. 1

Issue Date: November 26, 2024

Issued To: All Proposers

INSTRUCTIONS TO PROPOSERS:

All proposers shall acknowledge this Amendment No. 1 by submission of Form IQS-18 (Acknowledgement of Amendments) with Proposer's Initial Qualification Submittal.

REVISION(S) TO THE SOLICITATION DOCUMENT:

Section 10: Form of Contract – LTWIP Base Contract is amended to add the following documents (286 pages).

Brenda Prevost
Procurement Officer

[INSERT NAME OF PROJECT]

LONG-TERM WATER IMPORTATION PROJECT

BASE CONTRACT

BOARD DRAFT VERSION – November 12, 2024

Table of Contents

LONG-TERM WATER IMPORTATION PROJECT BASE CONTRACT

This Long-Term Water Importation Project Base Contract (as amended, "**Contract**") is made and entered into as of [INSERT DATE], 2025 ("**Effective Date**"), by and between the Water Infrastructure Finance Authority of Arizona ("**WIFA**"), and [INSERT DEVELOPER] ("**Developer**") with reference to the following facts.

A.   WIFA is an independent state authority authorized under A.R.S. §§ 49-1203(E), 49-1203.01, 49-1205 (subject to the limitations of 49-1210), 49-1212, 49-1213, 49-1301 *et seq.*, and A.A.C. § R18-15-801 *et seq.*, to contract for and facilitate the development of new, secure, long-term water sources using funds from the Long-Term Water Augmentation Fund ("**LTWAF**").

B.   Pursuant to A.R.S. § 49-1301 *et seq.*, the LTWAF provides financial support for water supply development projects, including Water Importation Project(s) ("**WIP(s)**") which will import water from outside the boundaries of Arizona.

C.   To help meet Arizona's future water demand, WIFA, through the LTWAF program, intends to work collaboratively with water users in Arizona and out-of-state to identify and develop WIPs.

D.   WIFA wishes to enter Contracts with private sector entities to advance the design, construction, financing, operations, and maintenance, as applicable, of one or more WIPs.

E.   On November ___, 2024, WIFA approved and authorized the issuance of a Solicitation for Procurement (as amended, "**Solicitation**") for WIPs under Arizona Revised Statutes, Title 49, Chapter 8, and its' implementing rules, Arizona Administrative Code, Title 18, Chapter 15, Article 8 ("**WIFA Procurement Rules**").

F.   As part of the Solicitation, WIFA prequalified [_____] proposers on [_____].

G.   The Evaluation Committee determined that Developer's Proposal was one of [____] Proposals that met the criteria contained in the Solicitation and recommended to the Long-Term Water Augmentation Committee that WIFA subsequently award this Contract to Developer. The Long-Term Water Augmentation Committee reviewed the Evaluation Committee's recommendation and recommended that the Board award this Contract. On [_____], the WIFA Board accepted the recommendation of the Long-Term Water Augmentation Committee and the Evaluation Committee to award this Contract to Developer.

H.   WIFA intends to authorize services under this Contract through the issuance of Task Orders to the Developer. Neither WIFA's determination that Developer's Proposal met the Solicitation criteria nor this Contract guarantee Developer any services or any specific scope of services under this Contract.

I.   Developer has experience providing environmental, design, construction, testing, and commissioning services and long-term O&M services of the type sought by WIFA on projects similar to the WIP. **[Note to Proposers: To be revised based on Proposals]**

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

CONTRACT

1. DEFINITIONS, INTERPRETATION AND MISCELLANEOUS

1.1 Definitions

Unless the context otherwise requires, definitions for certain capitalized acronyms, abbreviations and terms used in this Contract have the meanings given in this <u>Section 1.1</u>.

A.A.C.	Arizona Administrative Code
ACH	Automated Clearing House
ADOA	Arizona Department of Administration
A.R.S.	Arizona Revised Statutes
ASET	Arizona Strategic Enterprise Technology
AZDOHS	Arizona Department of Homeland Security
BABA	Build America, Buy America Act
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CIA	Confidentiality, Integrity, Availability
CJIS	Criminal Justice Information Services Security Policy
CMS	Centers for Medicare & Medicaid Services
CPM	Critical Path Method
CSF	CyberSecurity Frameworks
DBE	Disadvantaged Business Enterprise
DPPA	Driver's Privacy Protection Act
EEO	Equal Employment Opportunity
EPA	United States Environmental Protection Agency
ePHI	Electronic Protected Health Information
ERISA	Employee Retirement Income Security Act of 1974
FAR	Federal Acquisition Regulation
FEMA	Federal Emergency Management Administration
FERPA	Family Education Rights Privacy Act
FISMA	Federal Information Security Modernization Act of 2014
GSA	General Services Administration
HIPAA	Health Insurance Portability and Accountability Act
HITECH	Health Information Technology for Economic and Clinical Health Act
IaaS	Infrastructure as a Service
IDS	Intrusion Detection System
IP	Intellectual Property
IRS	Internal Revenue Service
ISO/IEC	International Organization for Standardization and the International Electrotechnical Commission

LTWAF	Long-Term Water Augmentation Fund
MARS-E	Minimum Acceptable Risk Standards for Exchanges
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NIST	National Institute of Standards and Technology
NTE	Not to Exceed
O&M	Operations and Maintenance
OMB	Office of Management and Budget
PaaS	Platform as a Service
PCI	Payment Card Industry
PDF	Portable Document Format
PHI	Protected Health Information
PII	Personally Identifiable Information
PSR	Project Status Report
QA	Quality Assurance
QC	Quality Control
RTO	Recovery Time Objective
RPO	Recovery Point Objective
SaaS	Software as a Service
SIEM	Security Information Event Monitor
SIPC	Securities Investor Protection Corporation
SISPO	Statewide Information Security and Privacy Office
SOC	System and Organization Controls
SSAE-18	Statement on Standards of Attestation Engagements
SSP	System Security Plan
UAV	Unmanned Aircraft Vehicles
WIFA	Water Infrastructure Finance Authority of Arizona
WIFIA	Water Infrastructure and Innovation Act
WIP	Water Importation Project

Acceptance means documentation prepared by the WIFA Representative attesting to the completion of all of the Services under the Contract or a specified Task.

Actual Knowledge means facts and information actually known to WIFA, Developer, the WIFA Representative or the Developer Representative (in each case, as applicable), after due consultation with other personnel of such Person (or in the case of Developer, each Developer-Related Entity).

Affiliate means (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any of its members, partners, or shareholders holding a 10% or greater interest in Developer; and (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by (i) Developer, (ii) any of Developer's members, partners or 10% or greater

shareholders, or (iii) any Affiliate of Developer under subsection (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. All Services performed by Affiliates shall be deemed performed by Developer.

Allowance Item means all services described as allowance items in the Task Specific Information.

Allowance Value means the sum of money referred to in the Task Specific Information which is included in the Payment Amount for the applicable Task, including the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with each applicable Allowance Item.

Applicable Law means any statute, law, code, regulation, ordinance, rule, judgment, common law, writ, injunction, order, decree, permit, concession, grant, franchise, license, Contract, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to the WIP or any temporary or permanent Relocation being performed by a Utility Owner, whether now or hereafter in effect. To the extent any provision contained in this Contract conflicts with any applicable provision of foreign law or regulation or with any federal contract provision, the laws of Arizona shall control. "Applicable Law" includes:

(a)   any Environmental Law and excludes any Governmental Approval;

(b)   any information technology policies, standards, and procedures available on the State's website and/or the website of WIFA, any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona; and

(c)   any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Developers that WIFA does not have the authority to modify Arizona state law by contract.

Approved Subcontract means a contract which is entered into by Developer with a Subcontractor on the terms which have been approved in writing by WIFA.

Authorized Auditors means WIFA employees, any firms appointed by WIFA, or other authorized agencies acting as agents of a Governmental Entity. For federally funded contracts, Authorized Auditors shall also include the EPA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives.

Bonds means each of the bonds required under Section 5, or all of them (as applicable).

Books and Records means all reasonably available documents, books, records, accounts, papers or other information of Developer or any Developer-Related Entity or Affiliate relating to this Contract, the WIP or the Services' cost or pricing, including:

(a) IP Materials;

(b) all design, construction, operations and maintenance documents (including drawings, specifications, Submittals, Subcontracts, invoices, schedules, cost models, meeting minutes, budgets, forecasts and Change Orders);

(c) all accounts, budgets, certificates, claims, correspondence, daily time sheet and supervisor's daily reports, Data (including test Data), cost accounting Data, documents, expert analyses, facts, files, information, investigations, materials, notices, payroll documents, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tax returns and information, tests, test results, vehicular traffic information, and operational information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by any Developer-Related Entity in connection with the WIP;

(d) union Contracts;

(e) insurance, welfare and benefits records;

(f) payroll registers;

(g) earnings records;

(h) payroll tax forms;

(i) material invoices and requisitions;

(j) material cost distribution work sheets;

(k) equipment records (list of company equipment, rates, etc.);

(l) Subcontractor (including supplier) invoices;

(m) Subcontractors' and agents' payment certificates;

(n) canceled checks;

(o) job cost reports;

(p) job payroll ledgers;

(q) general ledgers;

(r) cash disbursements journals;

(s) project schedules, including the Project Schedule;

(t) all documents that relate to each and every Claim and dispute, together with all documents that support the amount of damages as to each Claim or dispute;

(u)   work sheets used to prepare the Claim or dispute establishing the cost components for items of the Claim or dispute, including labor, benefits and insurance, materials, equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals;

(v)   emails;

(w)   network servers, Data storage devices, backup tapes/media;

(x)   letters and correspondences;

(y)   all original documents delivered to WIFA; and

(z)   with respect to all of the above, any information that is stored electronically or on computer-related media.

For purposes of the requirements of this Contract to maintain Books and Records, the term "Books and Records" includes documents or information that are subject to the attorney-client privilege, but for purposes of requirements of this Contract to provide access to Books and Records, the term specifically excludes documents or information that are subject to the attorney-client privilege.

Business Associate Agreements has the meaning provided in the Privacy Rule, as referred to in Exhibit 7A, Section 5(c).

Change means any changes to the Services including acceleration, addition, decrease, omission, deletion, removal or modification from or to the Services.

Change in Law means the enactment, adoption, modification, repeal or other change in any Applicable Law that occurs after the applicable Setting Date, including:

(a)   any change in the judicial or administrative interpretation of any Applicable Law,

(b)   adoption of any new Applicable Law; or

(c)   any change in Applicable Law related to sales tax on materials that are permanently incorporated in the Services,

provided such enactment, adoption, modification, repeal or other change is materially inconsistent with Applicable Laws in effect on the applicable Setting Date and (i) requires a material modification in the design of the WIP, or (ii) results in imposition of material additional mitigation requirements on the WIP due to impacts on archaeological, paleontological, biological or cultural resources or artifacts, but excluding:

(A)   any change in or new Applicable Law which was passed or adopted but not yet effective as of the applicable Setting Date;

(B)   a change in any Applicable Law relating to taxes, except as provided in subsection (c) of this definition;

(C) a change in Applicable Law which was not in force at the applicable Setting Date, but which is substantially the same as an Applicable Law in force before the applicable Setting Date;

(D) any change in or new social distancing requirements, stay-at-home or other Applicable Law associated with COVID-19, which shall not be treated as Change in Law, but shall be treated as described in the definition of Force Majeure Event; or

(E) a change in the way an Applicable Law is applied or interpreted as a result of:

(i) the failure of any Developer-Related Entity to comply with any Applicable Law or any Governmental Approval; or

(ii) any act or omission of any Developer-Related Entity or any Developer Default.

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of Developer may constitute a Change of Control of Developer if such shareholder, member, partner or joint venture member possesses the power to direct, control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) a change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Developer (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(b) an upstream reorganization or transfer of direct or indirect interests in Developer so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

(c) a transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Developer; or

(d) the exercise of minority veto or voting rights (whether provided by Applicable Laws, by Developer's organizational documents or by related member or shareholder Contracts or similar Contracts) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar Contracts, WIFA has previously received copies of such Contracts.

Change Order means a written order issued by the WIFA Representative in accordance with Section 17.2.1 which directs Developer to make Changes to the Services.

Change Order Request has the meaning given in Section 17.1.1.

Claim means any claim, proceeding, action, cause of action, demand (including any demand under Section 27), judgment, investigation or suit (including by way of contribution or indemnity) made:

      (a)   in connection with this Contract or the WIP; or

      (b)   under Applicable Laws or in equity,

whether for specific performance, restitution, payment of money (including damages), an extension of time, or any other form of relief. Developer's submission of a request for Change Order is not a Claim.

Compensable Event means any Relief Event other a Force Majeure Event.

Confidential Information means any technical or non-technical information that is proprietary, personal or sensitive, confidential by its nature and/or constitutes a trade secret pursuant to Applicable Law. For the avoidance of doubt, Confidential Information shall include, but not be limited to, (a) all "nonpublic information," as defined by the Gramm-Leach-Bliley Act (15 USC § 6801 *et seq.*), (b) personal information as defined by A.R.S. § 18-551(11), and (c) protected health information or individually identifiable health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HiTECH) Act or as defined by the Code of Federal Regulations (45 CFR § 160.103). Confidential Information does not include any information that can be shown by competent proof that such information was (i) at the time of disclosure, already known by, or is otherwise obvious to, anyone skilled in the general field (although not necessarily as an expert or specialist), as shown by verifiable written records in the possession of the receiving party; (ii) at the time of disclosure, or subsequently became, through no fault of the receiving party, known to the general public through publication or otherwise; (iii) subsequent to disclosure, lawfully and independently received by party from a third party who had the right to disclose it without restriction; or (iv) ordered to be publicly released by a court order or the requirement of a government agency.

Consequential Damages means special, indirect, or incidental damages that do not flow directly and immediately from an injurious act but that result indirectly from an action or failure to act, such as revenue losses (excluding Revenue), loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, loss of bonding capacity, lost opportunity, claims of taxpayers and other indirect damage.

Contract means the contractual relationship between the Parties:

      (a)   upon the Effective Date, constituted by:

           (i)   the body of this Contract;

           (ii)   all Exhibits of this Contract, other than:

(A)   Exhibits 3 through 6;

(iii)   all other documents, if any, specified in the Task Specific Information (Task 1) upon the Effective Date; and

(b)   upon the Task 2 Task Order Date, constituted by:

(i)   the documents referred to in subsection (a) of this definition, except to the extent the Task Specific Information (Task 2) supersedes the Task Specific Information (Task 2);

(ii)   the executed Task Order for Task 2; and

(iii)   all other documents, if any, specified in the Task Specific Information (Task 2) upon execution of the Task 2 Amendment;

(c)   upon the Task 3 Task Order Date, constituted by:

(i)   the documents referred to in subsection (b) of this definition, except to the extent the Task Specific Information (Task 3) supersedes the Task Specific Information (Tasks 1 and 2);

(ii)   the executed Task Order for Task 3; and

(iii)   all other documents, if any, specified in the Task Specific Information (Task 3) upon execution of the Task 3 Amendment;

(d)   upon the Task 4 Task Order Date, constituted by:

(i)   the documents referred to in subsection (c) of this definition, except to the extent the Task Specific Information (Task 4) supersedes the Task Specific Information (Tasks 1, 2 and 3);

(ii)   the executed Task Order for Task 4; and

(iii)   all other documents, if any, specified in the Task Specific Information (Task 4) upon execution of the Task 4 Amendment;

(e)   upon the Task 5 Task Order Date, constituted by:

(i)   the documents referred to in subsection (d) of this definition, except to the extent the Task Specific Information (Task 4) supersedes the Task Specific Information (Tasks 1, 2, 3 and 4);

(ii)   the executed Task Order for Task 5; and

(iii)   all other documents, if any, specified in the Task Specific Information (Task 5) upon execution of the Task 5 Amendment; and

(f)   upon the approval of any additional Task, constituted by:

> (i)   the documents referred to in <u>subsection (e)</u> of this definition, except to the extent the Task Specific Information supersedes the Task Specific Information (Tasks 1, 2, 3, 4 and 5);

> (ii)   the executed Task Order developed for that Task; and

> (iii)   all other documents, if any, specified in the Task Specific upon execution of the applicable Task Amendment.

Cost Submission has the meaning given in <u>Section 9.5(b)</u>.

Critical Path means each critical path on the Project Schedule, which ends on the Task Deadline for each applicable Task. The lower-case term "critical path" means the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of total float for all chains.

Data means documented information, regardless of form or characteristic, and includes WIFA Data.

Default Notice has the meaning given in <u>Section 24.4.2</u>.

Default Termination Event has the meaning given in <u>Section 24.5.1</u>.

Defect means:

(a)   any error, omission, inconsistency, inaccuracy, deficiency or other defect; and

(b)   any aspect of the Services that does not comply with the requirements of this Contract.

Delay Costs has the meaning given in <u>Exhibit 11</u> (Cost Schedule).

Denied Parties List means all individuals and entities listed on the U.S. Department of Commerce's Bureau of Industry and Security Denied Persons List having been denied export privileges.

Design Documents means all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and Submittals developed by Developer as necessary for design of the WIP in accordance with this Contract, in each case, irrespective as to whether such documents are required by this Contract or are prepared or used by Developer in the Design Services.

Design Services means all Services of design, engineering, architecture and other professional services for the WIP.

Developed IP means Intellectual Property that is authored, created, invented or reduced to practice under or for the purposes of the Contract, the Services or the WIP, whether or not such Intellectual Property is incorporated into the Project IP but excluding any adaptation, continuation or derivative work that constitutes Developer IP.

Developer means the Person identified as the Developer in the Task Specific Information (Task 1) to perform the Services, as replaced in accordance with this Contract.

Developer Cost Markup means the cost markup for the Services, as specified in the applicable Task Specific Information, which shall not exceed the Maximum Cost Markup.

Developer Default has the meaning given in Section 24.3.

Developer Fault means any breach of this Contract, negligence, gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional misconduct, breach of Applicable Law or any other affirmative or culpable act or omission by any Developer-Related Entity.

Developer Hazardous Materials Release means:

    (a)   any spill or release, threatened spill or release, or exacerbation of any existing release or condition of Hazardous Materials attributable to any act or omission of any Developer-Related Entity or any Developer Fault; or

    (b)   any Known or Suspected Hazardous Materials that Developer could have avoided by commercially reasonable design modifications or construction techniques.

Developer IP means Intellectual Property that is:

    (a)   owned by Developer before the Effective Date;

    (b)   developed by Developer wholly independently of this Contract; and

    (c)   any adaptation, continuation or derivative work which requires the incorporation, exercise or practice of Intellectual Property that is the subject of subsection (a).

Developer Representative means the individual specified in the Task Specific Information (Task 1) or their approved replacement made in accordance with Section 6.3.

Developer Team means, collectively the Developer and all parties listed in the Task Specific Information.

Developer-Related Entity means Developer, Subcontractors and any other Persons performing any of the Services, any other Persons for whom Developer may be legally or contractually responsible and the affiliates, employees, agents, representatives, shareholders, directors, members, managers, partners and officers of any of the foregoing.

Differing Site Condition means:

    (a)   subsurface or latent physical conditions (including Utilities) encountered at or near the Site that differ materially from those reasonably assumed by Developer based on information disclosed in, or reasonably inferred from, the Solicitation or Reference Documents provided by WIFA; and

    (b)   physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in this Contract including:

(i)   the discovery at, near or on the Site of any archaeological, paleontological, biological or cultural resource; and

(ii)   the discovery at, near or on the Site of any species listed as threatened or endangered under the federal or State Endangered Species Act, except to the extent that any WIFA-Provided Approval provides for mitigation measures to be undertaken with respect thereto (regardless of whether the species is listed as threatened or endangered as of the Effective Date or the Effective Date),

unless the existence of such differing site condition was:

(w)   in the case of Task 1 Services, known to Developer before the Effective Date or that would have become known to Developer by undertaking a Reasonable Investigation before the Offer due date;

(x)   in the case of Services performed as part of a subsequent Task, known to Developer before WIFA's issuance of a Task Order for that Task or that Developer could have discovered by performing a Site Investigation for the Task before a Task Order; or

(y)   in the case of a Utility, documented by or recorded with Arizona 811.

The definition of "Differing Site Condition" excludes Hazardous Materials.

Directive Letter means a letter issued in accordance with Section 17.2.2.

Early Termination Date has the meaning given in Section 3.1.

Effective Date means the date on which this Contract has been fully executed and delivered by WIFA and Developer.

Eligible Surety means a Surety licensed in the State, listed on the U.S. Department of the Treasury's "List of Certified Companies" (found at https://fiscal.treasury.gov/surety-bonds/list-certified-companies.html), rated "A" or higher by at least two nationally-recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's) or rated at least A-, X or higher according to A.M. Best's Financial Strength Rating and Financial Size.

Entity List means foreign parties identified by U.S. Department of Commerce's Bureau of Industry and Security's Entity List as being prohibited from receiving some or all items subject to the Export Administration Regulations unless the exporter secures a license.

Environmental Approval means all Governmental Approvals arising from or required by any Environmental Law in connection with construction, use or operation of the WIP, including Environmental Documents and approvals and permits required in connection with the Environmental Review Process.

Environmental Document means any draft or final decision document prepared as part of the Environmental Review Process.

Environmental Law means (1) all Applicable Laws now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or the generation, production, emissions, discharges, storage, use, handling, transportation, treatment, disposal, remediation, releases or threatened releases of Hazardous Materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances, or materials into the environment including into the air, surface water or ground water or onto land, and (2) any requirements and standards that pertain to the protection of the environment, or to the management of Hazardous Materials or generation, production, emissions, storage, use, handling, transportation, treatment, disposal, remediation, discharges, releases or threatened releases of Hazardous Materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances or materials into the environment, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, identified in any Governmental Approval, or (3) other criteria and guidelines promulgated, pursuant to Applicable Laws, as each of the foregoing have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof), including those relating to:

(a)   the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport or handling of Hazardous Materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances or materials;

(b)   the protection of public health, public welfare, public safety or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air);

(c)   air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(d)   releases of Hazardous Materials;

(e)   protection of wildlife, endangered, threatened, and sensitive species, wetlands, water courses and water bodies, parks and recreation lands, cultural, historical, archeological, and paleontological resources and natural resources;

(f)   the operation and closure of underground or aboveground storage tanks;

(g)   health and safety of employees and other persons with respect to Hazardous Materials; or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances or materials; and

(h)   notification, documentation and record keeping requirements relating to the foregoing.

Environmental Review Process means the WIP's environmental review and permitting processes to evaluate, avoid, minimize and mitigate the WIP effects, including as required under Governmental Approvals, NEPA, and all other Environmental Laws. These processes may be concurrent, sequential or overlapping.

Equity Member(s) means each Person that will hold a direct ownership interest (legal and beneficial) in any Person who enters the Contract with WIFA, including each Person identified by a Proposer as an "Equity Member" in its Offer.

Expiration Date means the applicable date of this Contract's expiration or earlier termination in accordance with Section 3.

Extra Services means any Services in the nature of additional work, altered work or deleted work which is directly attributable to a Change as a result of a Compensable Event and, absent the Compensable Event, would not be required by the Contract. The term "Extra Services" includes additional work necessary for Developer to obtain Governmental Approvals required under this Contract in connection with a Compensable Event. "Extra Services" does not include delay caused by a Compensable Event.

Extra Services Costs means the incremental increase in Developer's costs of labor, material, equipment and other direct and indirect costs directly attributable to Extra Services, calculated in accordance with Exhibit 11 (Cost Schedule). "Extra Services Costs" do not include Delay Costs caused by a Compensable Event.

Force Majeure Event means any event listed in subsections (a) through (f) below, subject to the exclusions listed in subsections (i) through (vi) below, which has a material, adverse and direct impact on Developer's obligations under this Contract:

(a)   any earthquake, tornado, hurricane, uncontrolled fire in an area of combustible vegetation, lightning, one in a 100-year flood or other natural disaster;

(b)   subject to subsection (viii) and Exhibit 7A (State Requirements), Section 3, any epidemic or pandemic, or stay at home or shelter in place order as declared by a local, state or federal authority authorized to make emergency declaration, in the [_] area **[Note: To be inserted based on Offers]** or outside of that area if it directly impacts the supply chain for necessary materials or equipment or labor obligations;

(c)   any war, civil war, invasion, blockade, embargo, violent act of foreign enemy armed conflict or act of terrorism;

(d)   any act of riot, insurrection, sabotage or civil commotion;

(e)   issuance of a temporary restraining order or other form of injunction by a court that prohibits the performance of a material portion of the Services;

(f)   any strike, lockout or other dispute generally affecting the construction industry in the State, but excluding any strike, lockout or similar dispute that is specific to the WIP or any Developer-Related Entity or that is caused in whole or in part by Developer; and

excluding:

(i)   any physical destruction or damage, or delays to the Services which occur by action of the elements or weather events, except as specified in subsection (a);

(ii)   except as provided in subsections (c) and (d), malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;

(iii) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of subsections (a) through (f);

(iv) the presence at, near or on the Site of any Hazardous Material, including any substance disclosed to Developer and any substance contained in any structure required to be demolished in whole or in part or relocated as part of the Services;

(v) late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

(vi) inability of either the Developer or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits;

(vii) any matters not caused by WIFA or beyond the control of WIFA or any other matter not listed in subsections (a) through (f); and

(viii) social distancing requirements and stay-at-home orders associated with COVID-19 or other comparable impacts on the Services related to the COVID-19 or other pandemic shall not be considered a Force Majeure Event except to the extent of requirements imposed by Applicable Law that are materially different from those in effect as of the applicable Setting Date. As an example, issuance by the Arizona Governor of a new or modified executive order that precludes performance of site investigations for the WIP would be considered a Force Majeure Event with respect to performance of such site investigations.

Funding Programs has the meaning given in Section 4.1.

Good Industry Practice means:

(a) in the case of all Services, other than Design Services, the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced constructor, supplier or other contractor seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals and engaged in the same type of undertaking under circumstances similar to the WIP and conditions similar to those within the same geographic area as the Site; and

(b) in the case of Design Services, the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a professional designer or engineer seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals and engaged in the same type of undertaking under circumstances similar to the WIP and conditions similar to those within the same geographic area as the Site.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other

approval, guidance, protocol, mitigation Contract, Contract or memorandum of Contract/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, required by or with any Governmental Entity in order to perform the Services, but excluding (a) any such approvals relating to the work to be performed by Other Contractors as specifically described in this Contract, and (b) any such approvals required by or with a Governmental Entity in its capacity as a Utility Owner. Governmental Approvals include Environmental Approvals and WIFA-Provided Approvals.

Governmental Entity means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than WIFA.

Government Purpose Rights has the meaning given in Exhibit 7A, Section 7(g)(ii).

Guarantor means each Person providing a guaranty as described in Section 5.4, which as at the Effective Date is the person specified in the Task Specific Information (Task 1).

Hazardous Material includes hazardous substances and hazardous waste and means:

(a)   any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the CERCLA, 42 U.S.C. § 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; A.R.S. § 28-5201 *et seq.* (Motor Carrier Safety); A.R.S. § 49-101, *et seq.* or any regulations promulgated by the Arizona Department of Environmental Quality thereunder; A.R.S. § 49-201 *et seq.* (Water Quality Control); A.R.S. § 49-401 *et seq.* (Air Quality); A.R.S. § 49-701 *et seq.* (Solid Waste Management); A.R.S. § 49-901 *et seq.* (Hazardous Waste Disposal); A.R.S. § 49-1001 *et seq.* (Underground Storage Tank Regulation); A.R.S. § 49-1101 *et seq.* (Light Pollution); A.R.S. § 49-1201 *et seq.* (Water Infrastructure Finance Program); A.R.S. § 49-1501 *et seq.* (Natural Gas Facilities), all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;

(b)   any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court;

(c)   any petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles;

(d)   any asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground); and

(e)   any other substances, product, waste or material defined, or to be treated or handled, as a Hazardous Materials pursuant to provisions of this Contract.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the WIP, including investigation, timely notice to WIFA, removal and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stockpiling, storage, backfilling in place, asphalt batching, recycling, treatment, clean up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and permitted under Applicable Laws.

Indemnified Parties means collectively: (a) the State, its departments, agencies, universities, commissions, and boards, (b) the WIFA Representative; and (c) any parties listed in the Task Specific Information or all of them (as applicable);Task Specific and (b) each of their respective officers, trustees, directors, board members, employees, representatives, authorized volunteers, representatives, agents, consultants or all of them (as applicable).

Insurance Policy (Insurance Policies) has the meaning given in Exhibit 14.

Intellectual Property (IP) means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade names, trade dress, trade secrets and trade secret rights, designs (registered and unregistered) and design rights, utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the WIP or its design data. Intellectual Property is distinguished from physical, digital or mechanical embodiments of such Intellectual Property, including Design Documents, Submittals, physical construction and equipment itself, and from data, sketches, charts, calculations, drawings, plans, depictions, specifications, layouts, depictions, manuals, electronic files, artwork, correspondence, and other documentation that disclose Intellectual Property.

Intellectual Property Escrow (IP Escrow) has the meaning given in Section 20.2.6.

IP Escrow Agent has the meaning given in Section 20.2.6.

IP Materials means all physical, electronic and/or mechanical embodiments of, and documents disclosing, Intellectual Property. Without limiting the generality of the foregoing, IP Materials include embodiments, documents, and/or Services or Tasks incorporating concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, Software, Source Code, decompilation instructions, programming, applets, scripts, designs, procedures, processes, and methods of doing business, and any other media, materials, plans, reports, project plans, work plans, documentation, training materials, and other tangible objects produced under the Contract or required by, incorporated into or combined with the WIP, the Services or pursuant to this Contract.

Key Personnel means the individuals: (a) listed in the Task Specific Information; and (b) approved by WIFA from time to time to fill one of those listed positions. A "**Key Person**" is any individual within this definition.

Known or Suspected Hazardous Materials means Hazardous Materials that are known or reasonably suspected to exist as of the applicable Setting Date from information or analysis contained or referenced in the Reference Documents, or Hazardous Materials that would have become known to Developer as follows:

(a)   in the case of Services performed before the Effective Date, by undertaking Reasonable Investigation before the Offer due date;

(b)   in the case of Services performed as part of a subsequent Task, known to Developer before WIFA's issuance of a Task Order for that Task or that Developer could have discovered by performing the applicable investigations required by subsections (a), (b) or (c) or such other investigations required in accordance with Good Industry Practice before that Task Order; or

(c)   in the case of all Services (whenever performed), documented by or recorded in any of the Arizona Department of Environmental Quality's public databases, including its Declaration of Environmental Use Restriction database, Hazardous Material Incident Logbook, and Leaking Underground Storage Tanks database.

Lead Construction Contractor means the entity primarily responsible for performing construction work on a proposed WIP.

Lead Engineering Firm means the entity primarily responsible for performing the design work on a proposed WIP.

Lien means any pledge, lien, hypothecation, security interest, mortgage, deed of trust or other charge, encumbrance or restriction on title or property interest of any kind, or any other type of preferential arrangement (including any Contract to give any of the foregoing, any conditional sale or other title retention Contract, any lease in the nature of a security instrument and the filing of or Contract to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Lifecycle Cost means the total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to WIFA arising in connection with the Services over the whole life of the Services, including the costs of designing and constructing the Services before Completion and occupying, using, operating and maintaining the Services after Completion.

Lifecycle Objectives means balancing:

(a)   Lifecycle Cost;

(b)   Asset Management Support;

(c)   the WIP's useful life;

(d)   the WIP's reliability and availability throughout their useful life; and

(e)   the value for money achieved by WIFA from the Facilities' design and construction, taking into account the information that WIFA provides regarding the Facilities' use, occupation, operation and maintenance.

Liquidated Damages means liquidated damages assessed under Section 6.5 or 9.6.

Losses includes any loss, damage, injury, compensation, debt, obligation, charge, liability, cost, expense (including court costs, attorneys' fees, accountants' fees, expert witness fees and expenses, including those incurred in connection with the enforcement of any provision of this Contract), deductibles or increased premiums, fee, charge, demand, investigation, proceeding, action, suit, judgment, penalty, fine or third party claims, whether actual, prospective or contingent and whether or not currently ascertainable. Losses include bodily injury or personal injury (including death) of persons, loss or damage to tangible or intangible property, harm or damage to natural resources, and loss of or damage to valuable papers and records.

Major Subcontract means a Subcontract with a Major Subcontractor.

Major Subcontractor means:

(a)   any Subcontractor with a Subcontract or Subcontracts in excess of 5% of the Payment Amount for the applicable Task; and

(b)   Subcontractor, regardless of the dollar amount of its Subcontract or Subcontracts who provides Services listed in the Task Specific Information.

Maximum Cost Markup means the applicable maximum percentage cost markup for the Services, as specified in the Task Specific Information (Task 1).

Milestone means each milestone specified in the Task Specific Information for the applicable Task.

Milestone Deadline means each date specified in the applicable Task Specific Information (for each Task for completion of a Milestone, as updated in accordance with this Contract, or all of them (as applicable).

Monthly Progress Schedule means the schedule, consistent with the Milestone Deadlines and Task Deadlines, submitted by Developer with each Application and Certificate for Payment, setting forth the approved schedule of Services on a monthly basis against which any subsequent schedule amendments are tracked, as more particularly described in Task Specific Information for each Task.

Monthly Project Status Reports means the monthly project status reports prepared by Developer in accordance with the Scope of Services.

NEPA means the National Environmental Policy Act, as amended (42 U.S.C. § 4321 *et seq.*).

NEPA Approval means the Environmental Approvals for NEPA, which are developed in connection with the Environmental Review Process, and which are adopted or certified by the WIFA Board and/or any Governmental Entity.

Notice means all notices, requests, demands, instructions, certificates, consents, explanations, agreements, approvals and other communications.

Offer means Developer's offer submitted in response to the Solicitation for Procurement for WIPs, as modified and supplemented with WIFA's approval before the Effective Date.

Open Book Basis means providing WIFA all Books and Records and underlying assumptions, price quotes and data associated with pricing or compensation (whether of Developer or WIFA) or their adjustments, including assumptions as to work costs, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, insurance rates, bonding rates, letter of credit fees, overhead, profit, and other items reasonably required by WIFA to satisfy itself as to the validity and reasonableness of the amount (including compliance with A.R.S. 35-214 and 35-215).

Operations and Maintenance Firm means the entity responsible for performing the operations and maintenance of a proposed WIP.

Other Contractor means any contractor, tradesperson or other Person engaged by WIFA to do work, other than a Developer-Related Entity, including those Persons set out in the Task Specific Information.

Parties means WIFA and Developer, and **Party** means each of them (as applicable) and includes its permitted successors and assigns.

Payment Bond means the Payment Bond for each Task, or all of them (as applicable).

Payment Amount means the price specified in the applicable Task Specific Information for a Task based on WIFA's payment election, as updated in accordance with this Contract.

Payment Statement has the meaning given in Section 14.20.2.

Performance Bond means the Performance Bond for each Task, or all of them (as applicable).

Person means any individual, corporation, joint venture, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Entity.

Privacy Rule has the meaning given in Exhibit 7A, Section 5(c).

Progress Payment has the meaning given in Section 14.4.1 and further described in Section 14.5.

Prohibited Product has the meaning given in Exhibit 7B, Section 6(b).

Project IP means Intellectual Property created, used, applied or reduced to practice in connection with the WIP.

Project Manager means the Key Person specified in the Task Specific Information as responsible for Developer's overall management of the Services and this Contract, or their approved replacement.

Project Plans means the projects plans specified in the Task Specific Information, as to be prepared by Developer in accordance with this Contract.

Project Schedule means the schedule prepared and maintained by Developer in accordance with the Scope of Services (Task 1) and updated for each Task, as updated in accordance with this Contract.

Project Standards means the standards, terms, conditions, methods, techniques and practices listed in the Task Specific Information, together with any additional standards and specifications applicable to the Services and established by express reference contained in one of the documents listed in this Contract.

Proposed Project means the proposed approach to the WIP, which is subject to evaluation during the Environmental Review Process.

Public Records Law has the meaning given in Section 21.2.

Quality Objectives means to:

(a)   encourage best practice quality management through the planning, development, implementation and continuous improvement of quality assurance procedures, systems or frameworks during the Services;

(b)   prevent and minimize adverse quality impacts during the Services; and

(c)   optimize the value for money achieved by WIFA relating to the WIP.

Reasonable Investigation means the following activities by appropriate, qualified professionals:

(a)   visit and visual, non-intrusive inspection of the Site and adjacent locations including inspection to identify the presence of other facilities, such as barriers, railing, structures, manholes or identifying markers;

(b)   review and analysis of all Reference Documents and online map tools;

(c)   review and analysis of the WIFA-Provided Approvals and all other Governmental Approvals;

(d)   reasonable inquiry with Utility Owners, including request for and review of plans provided by Utility Owners;

(e)   review and analysis of Applicable Laws with respect to the Services and WIP; and

(f)   other non-intrusive activities in accordance with Good Industry Practice that are sufficient to familiarize Developer with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, biological, paleontological and cultural resources, and threatened or endangered species, affecting the Site or surrounding locations,

provided that none of those activities requires conducting field studies, geotechnical investigations or original research of private records not contained or referenced in the Reference Documents.

Reference Documents means any and all drawings, reports, studies, data, documents, or other information (a) provided or made available by WIFA to any Developer-Related Entity or (b) obtained from or through any other sources, in each case, before the applicable Setting Date, including the Solicitation and all documents and information provided with the Solicitation.

Release Conditions has the meaning given in Section 20.2.6.

Relief Event means each of the following events:

(a)   a Change Order requested by Developer and approved by WIFA in accordance with Sections 17.6 and 17.7;

(b)   a WIFA-Caused Delay;

(c)   a Change in Law;

(d)   a Force Majeure Event;

(e)   a Differing Site Condition; and

(f)   performance of Hazardous Materials Management by Developer resulting from either:

   (i)   Unknown Hazardous Materials; or

   (ii)   any spill of Hazardous Material by a third party who is not acting in a capacity of, on behalf, or under the authority or permission of a Developer-Related Entity which (A) is required to be reported to a Governmental Entity and (B) renders use of a construction area unsafe or potentially unsafe absent assessment, containment and/or remediation.

Relief Event Notice has the meaning given in Section 16.1.1.

Retainage has the meaning given in Section 14.22.1(a).

Scope of Services means the portion of the Services for each Task as follows:

(a)   Task 1 Scope of Services in Exhibit 2C;

(b)   Task 2 Scope of Services in Exhibit 3C agreed upon by WIFA and Developer as part of the executed Task 2 Task Order;

(c)   Task 3 Scope of Services in Exhibit 4C agreed upon by WIFA and Developer as part of the executed Task 3 Task Order;

(d)   Task 4 Scope of Services in Exhibit 5C agreed upon by WIFA and Developer as part of the executed Task 3 Task Order;

(e)   Task 5 Scope of Services in Exhibit 6C agreed upon by WIFA and Developer as part of the executed Task 5 Task Order;

(f)   any other Scope of Services pursuant to additional Tasks as agreed upon by WIFA and Developer;

and cumulatively includes any other Scope of Services for all other Tasks.

Services means all of the work, things, tasks, services and obligations which Developer is, or may be, required to do to comply with its obligations under this Contract (including as set out in each Scope of Services), including any Change Order.

Setting Date means (as applicable) each of the following:

(a)   for the Task 1 Services, the date which is 15 days before the Offer Due Date; and

(b)   for Task 2 Services, Task 3 Services, Task 4 Services, Task 5 Services and any additional Task Services, the date which is 15 days before the applicable Task Offer due date.

Site means the site(s) and alignment(s) for the Services shown in Exhibit 12. **[Note to Proposers: To be revised subject to Offers received]**

Site Investigation means Developer's Reasonable Investigation before the Offer due date and its investigation of the Site in accordance with the Scope of Services and Good Industry Practice. **[Note to Proposers: To be revised subject to Offers received]**

Software means individually each, and collectively all, of the computer programs developed or provided by Developer, and any Developer Related Entity, under this Contract (including Developed IP, Developer IP and/or Third-Party IP), including as to each such program, the processes, and routines used in the processing of data, the object code, interfaces to be provided hereunder by Developer, updates, upgrades, and any and all programs or applications otherwise provided by Developer under this Contract.

Solicitation has the meaning given in Recital E to this Contract.

Source Code means the version of a Software computer program in which the programmer's original programming statements are expressed in any programming language.

Specially Designated Nationals and Blocked Persons List means a list maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control including individuals, entities, and organizations with whom U.S. persons are generally prohibited from doing business with.

State means the State of Arizona, WIFA and any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch of the State of Arizona that executes the Contract, as applicable.

Subcontract means a contract between Developer and one or more third parties providing for that third party to perform any part of the Services or provide any services, materials, equipment, labor or supplies for any part of the Services, or any such contract between a third party and its lower tier subcontractor at any tier, delegating, in whole or in part, the making or furnishing of any material or any service required for the performance of this Contract.

Subcontractor means any Person who contracts to perform work or render Services to the Developer or to another Subcontractor under a Subcontract.

Submittal means any document, work product, or other written or electronic end product or item that Developer must prepare and deliver, submit or resubmit to WIFA in accordance with this Contract.

Submittal Requirements means the submittal requirements described in Exhibit 13 (Submittal Requirements) which contain uniform terms and procedures applicable to Submittals.

Supplier means any Person not performing work at or on the Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the WIP to Developer or to any Subcontractor in connection with the performance of the Services. Persons that merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Services at the Site.

Surety means each properly licensed surety company, insurance company or other Person approved to operate in the State of Arizona.

Table of Rates and Prices means the table of rates and prices specified in the applicable Task Specific Information, as may be updated in accordance with this Contract.

Target Cost of the Services means the target cost of the services for any Task set out in the Task Specific Information.

Task 1 Submittals means:

> (a) the Submittals listed in the Task Specific Information (Task 1); and

> (b) other Submittals that are required by any Change Order.

Task 1 Period means the period (a) beginning on the Task 1 Task Order Date and (b) ending on the earlier of the date of Task 1 Acceptance or the date of termination of this Contract (as applicable), during which the Services for Task 1 are performed.

Task 1 Services means that part of the Services required to be performed during the Task 1 Period in accordance with this Contract, including any tasks required by any direction of the WIFA Representative given or purported to be given under a provision of this Contract, including any Change Order.

Task 2 Submittals means:

> (a) the Submittals listed in the Task Specific Information (Task 2); and

> (b) other Submittals that are required by any Change Order.

Task 2 Period means the period (a) beginning on the Task 2 Task Order Date and (b) ending on the earlier of the date of Task 2 Acceptance or the date of termination of this Contract (as applicable), during which the Services for Task 2 are performed.

Task 2 Services means that part of the Services required to be performed during the Task 2 Period in accordance with this Contract, including any tasks required by any direction of the WIFA Representative given or purported to be given under a provision of this Contract, including any Change Order.

Task 3 Submittals means:

> (a) the Submittals listed in the Task Specific Information (Task 3); and

> (b) other Submittals that are required by any Change Order.

Task 3 Period means the period (a) beginning on the Task 3 Task Order Date and (b) ending on the earlier of the date of Task 3 Acceptance or the date of termination of this Contract (as applicable), during which the Services for Task 3 are performed.

Task 3 Services means that part of the Services required to be performed during the Task 3 Period in accordance with this Contract, including any tasks required by any direction of the WIFA Representative given or purported to be given under a provision of this Contract, including any Change Order.

Task 4 Submittals means:

(a)   the Submittals listed in the Task Specific Information (Task 4); and

(b)   other Submittals that are required by any Change Order.

Task 4 Period means the period (a) beginning on the Task 4 Task Order Date and (b) ending on the earlier of the date of Task 4 Acceptance or the date of termination of this Contract (as applicable), during which the Services for Task 4 are performed.

Task 4 Services means that part of the Services required to be performed during the Task 4 Period in accordance with this Contract, including any tasks required by any direction of the WIFA Representative given or purported to be given under a provision of this Contract, including any Change Order.

Task 5 Submittals means:

(a)   the Submittals listed in the Task Specific Information (Task 5); and

(b)   other Submittals that are required by any Change Order.

Task 5 Period means the period (a) beginning on the Task 5 Task Order Date and (b) ending on the earlier of the date of Task 5 Acceptance or the date of termination of this Contract (as applicable), during which the Services for Task 5 are performed.

Task 5 Services means that part of the Services required to be performed during the Task 5 Period in accordance with this Contract, including any tasks required by any direction of the WIFA Representative given or purported to be given under a provision of this Contract, including any Change Order.

Task Approval means WIFA has issued Notice to Developer under Section 8.3 that all of the following conditions have been satisfied or any unsatisfied conditions have been waived for a Task:

(a)   Developer has finalized the applicable Task Submittals in accordance with this Contract required to be completed as a condition of Task Approval;

(b)   the Payment Amount proposal for the applicable Task has been approved by the WIFA Representative as required by Section 9.5;

(c)   the Project Schedule for the applicable Task has been approved by the WIFA Representative;

(d)   the Milestones for the applicable Task have been achieved;

(e)   the proposed Task Order for the applicable Task has been prepared and agreed in accordance with Section 8.1 and executed by Developer;

(f)   all Governmental Approvals required for the Services for the applicable Task have been obtained; and

(g)   Developer has otherwise complied with all of its obligations under this Contract, including the Task Specific Information for the Task, to the extent applicable before the applicable Task Order Date.

Task Deadline means the date specified for the applicable Task Acceptance in the Task Specific Information, as amended in accordance with this Contract.

Task Completion Payment means the payment from WIFA to Developer made upon final Acceptance of a Task. The amount of the Task Completion Payment is the Payment Amount less any amounts paid to Developer as Progress Payments.

Task Order means the document, including the form of Task Order, Task Specific Information (including WIFA-approved Payment Amount), Table of Rates and Price, Scope of Services, Project Schedule and all other necessary amendments to this Contract required for a Task, including as amended by any Change Order.

Task Order Date has the meaning given in Section 8.3.4(b).

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the WIP, the performance of the Services, revenues or act, business, status or transaction of the Developer, including any interest, penalty or addition to such amounts, and including utility rates or rents, in all cases whether disputed or undisputed.

Term has the meaning given in Section 3.1.

Third Party IP means Intellectual Property owned, or sufficiently licensed to, a Person that is unrelated to a Developer-Related Entity.

Time and Materials Change Order has the meaning given in Section 2.7 of Exhibit 11 (Costs Schedule).

Time and Materials Services means Services performed pursuant to a Time and Materials Change Order.

Trade Secret means information, including a formula, pattern, device, compilation, program, method, technique, or process that is the subject of reasonable efforts to maintain its secrecy and

that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

Unknown Hazardous Materials means Hazardous Materials in, on or under the Site as of the date WIFA provides access to the Site, excluding;

(a)   Known or Suspected Hazardous Materials;

(b)   Hazardous Materials resulting from a Developer Hazardous Materials Release;

(c)   asbestos or asbestos-containing materials (other than mineral asbestos naturally occurring in the ground) on or in the Site or any other materials not falling within the definition of Hazardous Materials that are encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the Site;

(d)   quantities of Hazardous Materials that do not trigger a reporting requirement under Applicable Law; or

(e)   any Hazardous Materials on or affecting property outside of the Site, except to the extent such work is legally required to be taken with Hazardous Materials Management required within the Site.

Unverified List means any party listed by the U.S. Department of Commerce's Bureau of Industry and Security whose bona fides the U.S. Department of Commerce's Bureau of Industry and Security has been unable to verify.

Utility or **utility** means a privately, publicly, or cooperatively owned line, facility or system (including municipal and government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any irrigation system and any fire or police signal system as well as streetlights. The necessary appurtenances to each utility facility shall be considered part of such utility.

Utility Owner means any private entity or public body (including city, county, state, public corporation, or public district) that owns and/or operates a Utility, including cooperative Utilities.

Water Supply Development has the meaning given in A.R.S. § 49-1201(22).

WIFA has the meaning given in the Recitals.

WIFA Board means WIFA's Board of Directors.

WIFA Data means any information, data, or document, whether or not protectable Intellectual Property, which is created, developed, or collected by, or on behalf of, WIFA related to water system and utility operations, water, wastewater, and stormwater infrastructure, national infrastructure planning and personal information of WIFA employees, vendors and consumers. For the avoidance of doubt, WIFA Data shall include, but not be limited to, (a) all "nonpublic information," as defined by the Gramm-Leach-Bliley Act (15 USC § 6801 *et seq.*), (b) personal information as defined by A.R.S. § 18-551(11), and (c) protected health information or individually identifiable health information as defined by the Health Insurance Portability and Accountability

Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HiTECH) Act or as defined by the Code of Federal Regulations (45 CFR § 160.103). For the further avoidance of doubt, WIFA Data is not limited to proprietary or Confidential Information and need not constitute trade secret information.

WIFA IP means all Intellectual Property owned by, or sufficiently licensed to, WIFA including, without limitation, all rights, grants and interests pursuant to this Contract.

WIFA Procurement Rules has the meaning given in Recital E.

WIFA Representative means the person specified in the Task Specific Information or their replacement made in accordance with Section 6.2.4.

WIFA's Conflict of Interest Policy means WIFA Policy No. I.13 (Conflicts of Interest).

WIFA-Caused Delay means any of the following events that have a material and direct impact on the schedule for performance of the Services**:**

> (a)   any Change Order issued by WIFA to Developer in accordance with Section 17.2.1;
>
> (b)   WIFA's failure to fulfill any express obligation in accordance with this Contract;
>
> (c)   WIFA's failure or inability to provide responses to Submittals and matters for which an affirmative response by WIFA is required, within the time periods indicated in this Contract; provided, however, that the foregoing shall not apply where any WIFA failure to act is deemed disapproval under the Submittal Requirements;
>
> (d)   any order of WIFA to suspend for convenience exceeding 24 hours in total for a single suspension or 96 cumulative hours in total across multiple suspensions under (or deemed under) Section 24.2, which limits shall apply separately to each Task Period;
>
> (e)   any fraud, criminal conduct, willful misconduct or grossly negligent act or omission of WIFA or breach of Applicable Laws by WIFA; and
>
> (f)   WIFA's failure to issue a Task Order within 30 days after the Effective Date (in the case of Task 1) or the Task Order Date (in the case of Tasks 2-5 and any subsequent Task) following the satisfaction of all conditions to such issuance.

WIFA-Observed Holiday means New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day and, in each case on the dates observed by WIFA.

WIFA-Provided Approvals means the approvals, if any, listed in the Task Specific Information.

Water Importation Project or WIP means the project described in the Task Specific Information Task 1.

WIP Goals means the goals for the WIP included in the Task Specific Information.

WIP Implementation Agreement means the agreement to be provided by WIFA under Section 10.1 and, if applicable, negotiated and executed between the Parties and subject to approval of the Board under which the WIP will be delivered.

WIP Implementation Proposal means the proposal to perform the WIP Implementation Services, which Developer prepares and submits to WIFA for approval in accordance with the WIP RFP and Section 10, as such proposal may be amended in accordance with this Contract.

Task Specific Information means the Task Specific Information for each Task as follows:

(a)   Task 1 Task Specific Information in Exhibit 2 agreed upon by WIFA and Developer as part of the Task 1 Task Order;

(b)   Task 2 Task Specific Information in Exhibit 3 agreed upon by WIFA and Developer as part of Task 1 Task Order;

(c)   Task 3 Task Specific Information in Exhibit 4 agreed upon by WIFA and Developer as part of the Task 3 Task Order;

(d)   Task 4 Task Specific Information in Exhibit 5 agreed upon by WIFA and Developer as part of the Task 4 Task Order;

(e)   Task 5 Task Specific Information in Exhibit 6 agreed upon by WIFA and Developer as part of the Task 5 Task Order; and

(f)   any additional Task Specific Information to be added as an Exhibit to this Contract and agreed upon by WIFA and Developer as part of approval of that Task,

or all of them (as applicable).

WIP RFP has the meaning given in Section 10.1(a).

WIP Technical Requirements means the mandatory technical requirements for the WIP developed as part of the WIP RFP, as may be updated in accordance with this Contract. Subject to Section 9.1, the WIP Technical Requirements will be attached to any Implementation Agreement.

1.2   Interpretation

In this Contract, unless the context otherwise requires, each of the following rules of interpretation shall apply:

(a)   this Contract shall be construed simply, as a whole, in accordance with the fair meaning of the language used and not strictly for or against any Party;

(b)   any word (including any defined term) in the singular includes the plural and vice versa, and any word denoting gender includes all genders;

(c)   the captions of the Sections, subsections, Tasks and subtasks in this Contract are for convenience only and are not to be treated or construed as part of this Contract;

(d)   a reference to a Section or subsection is a reference to the Section, subsection, Task or subtask in the body of this Contract, the Exhibit or the Appendix in which the reference appears, unless otherwise stated;

(e)   a reference to any Governmental Entity includes any public agency succeeding to the powers and authority of that Governmental Entity;

(f)   the terms "hereto," "hereby," "hereof," "herein," "hereunder," "under this Contract" and any similar terms refer to this Contract;

(g)   a reference to a Contract (including this Contract), document, standard, principle or other instrument includes a reference to that Contract, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned;

(h)   plans, working drawings and standard plans, calculated dimensions take precedence over scaled dimensions;

(i)   a reference to a right includes any benefit, remedy, discretion, authority or power associated with such right;

(j)   a reference to "$" is to U.S. dollars, and all monetary amounts and obligations in this Contract are expressed and payable in U.S. dollars;

(k)   unless otherwise provided in this Contract, the term "may," when used in the context of a power or right exercisable by WIFA or the WIFA Representative, means WIFA or the WIFA Representative is able to exercise that right or power in its sole and unfettered discretion and has no obligation to Developer to do so;

(l)   a reference to a "day" is a reference to a working day, which is a day other than (i) a Saturday or Sunday, or (ii) a WIFA-Observed Holiday; provided that requirements contained in this Contract relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-working day, shall be performed as specified, even though the date in question may fall on a non-working day;

(m)   a reference to a "calendar day" is a reference to every day on the calendar, not excluding Saturdays, Sundays, or WIFA-Observed Holidays;

(n)   a reference to time is a reference to Mountain Standard Time;

(o)   the words "include," "including," "includes" and any variants of those words will be read as if followed by the words "without limitation;"

(p)   the meaning of "or" will be that of the inclusive "or", that is meaning one, some, or all of a number of possibilities;

(q)   unless otherwise expressly stated in this Contract, words that have well-known technical or construction industry meanings are used in this Contract in accordance with such recognized meaning;

(r)   a reference to any legislation (including any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant legislation) or a provision within it includes any legislation or provision which amends, extends, consolidates or replaces such legislation or provision; and

(s)   if this Contract requires calculation of an amount payable to a Party, there must be no double counting in calculating that amount.

1.3   Resolution of Ambiguities and Order of Precedence

1.3.1 If there is any ambiguity, discrepancy or inconsistency in or between either:

(a)   the documents which make up this Contract; or

(b)   this Contract and the most-recently WIFA-approved version of any Design Documents, Project Plan or other the WIP Submittal,

the higher standard, quality or quantum will prevail, unless WIFA, in its sole discretion, directs that a lesser standard, quality or quantum applies. If that higher standard, quality or quantum does not resolve the ambiguity, discrepancy or inconsistency, the order of precedence specified in the Task Specific Information will apply.

1.3.2 References to the Project Standards governing the Services shall mean the most recent edition, revision, amendment or supplement in effect on the Setting Date.

1.3.3 If either Party discovers any ambiguity, discrepancy or inconsistency, the discovering Party shall promptly give notice in writing to both the WIFA Representative and the other Party. Within 14 days after receipt of that notice by both the WIFA Representative and such other Party, the WIFA Representative shall instruct Developer as to the course it must adopt, and Developer shall comply with that instruction. Developer shall not proceed with any Services affected by a reported ambiguity, discrepancy or inconsistency in the WIP Technical Requirements until the issue is resolved in accordance with this Contract.

1.4   Reference Documents

1.4.1 Subject to Section 1.4.2, Developer acknowledges and agrees that:

(a)   WIFA has provided or may provide during the Term, the Reference Documents to Developer for information only;

(b)   WIFA does not represent, warrant or guarantee the accuracy or completeness of the Reference Documents or that such information is in conformity with the requirements of this Contract, Governmental Approvals or Applicable Laws;

(c)   WIFA shall not be responsible or liable in any respect for any Losses or a Claim by a Developer-Related Entity by reason of any reliance or use of the Reference Documents; and

(d)   Developer shall conduct all studies, analyses and investigations it deems advisable to verify or supplement the Reference Documents.

1.4.2   Except as otherwise expressly provided in this Contract, where this Contract cites any Reference Document to define this Contract's requirements, the cited portion of the applicable Reference Document shall (a) be deemed incorporated by reference into this Contract to the extent it is so cited and (b) have the same order of priority as the part of this Contract where the citation is made.

2. OVERVIEW; NATURE OF CONTRACT

2.1 Overview

WIFA engages Developer to:

(a)   subject to execution of the Task 1 Task Order, perform the Task 1 Services;

(b)   subject to execution of the Task 2 Task Order, perform the Task 2 Services;

(c)   subject to execution of the Task 3 Task Order, perform the Task 3 Services;

(d)   subject to execution of the Task 4 Task Order, perform the Task 4 Services;

(e)   subject to execution of the Task 5 Task Order, perform the Task 5 Services; and

(f)   subject to executing any additional Task Order, perform Services associated with that Task.

2.2 Nature of Contract

The Parties wish to fully embrace the principles of collaborative contracting in the performance of the Services and agree to employ the following techniques to maximize this Contract's benefits to the extent applicable:

(a)   proceed on the basis of trust and good faith and create a culture of open, transparent, comprehensive and honest communication;

(b)   attempt to resolve disputes efficiently, in good faith and at the earliest possible stage of dispute resolution;

(c)   establish a cooperative and collaborative environment where all parties (including WIFA, Developer and Subcontractors) have the opportunity to contribute their best efforts for the benefit of the Services, the WIP and the State as a whole, rather than to the benefit of an individual Party;

(d)   integrate the design, construction and operations and maintenance teams (including WIFA, Developer, Major Subcontractors, key specialty contractors and trade partners) as early as possible into the design process; and

(e)   maximize the Scope of Services and Services for each applicable Task delivered for each Payment Amount and any WIP Implementation Proposal; and

(f)   result in delivery of the Tasks in a cost-effective manner which fulfills the WIP Goals.

3.   **TERM**

3.1   Except as expressly provided in Section 29.6:

(a)   this Contract shall take effect on the Effective Date and shall remain in effect until Acceptance of the Services under all issued Task Orders and Notice by WIFA that no further Task Orders will be issued under Section 8; and

(b)   if this Contract is terminated earlier in accordance with this Contract, this Contract will expire on the date of such earlier termination ("**Early Termination Date**"),

(together, the "**Term**").

4.   **FUNDING PROGRAMS**

4.1   Developer acknowledges that (a) the Services and WIP (if any) may be paid for with funds received through the funding programs identified in the Task Specific Information or other State or federal funding or grant programs (together "**Funding Programs**"), and (b) applications to receive those funds will be approved after, the Effective Date.

4.2   Developer shall provide or cause to be provided such information, documentation and administrative assistance as WIFA may request, and shall take such actions and execute such documents as are required to be in Developer's name (including any amendments required to this Contract), to enable WIFA to meet all requirements of the Funding Programs.

4.3   Developer shall comply with all terms provided in Exhibit 7 (State, Federal and Labor Requirements) applicable to the Services and agrees that such terms will be incorporated into any future Implementation Agreement, to the extent applicable.

4.4   The terms of this Section 4 may be revised and modified as part of any Task Order or WIP Implementation Agreement.

5. PERFORMANCE AND PAYMENT BONDS; GUARANTY

5.1   Task Bonds

5.1.1   On or before any Task Order for the applicable Task, and only if specified in the Task Specific Information to be required for the respective Task, Developer shall provide WIFA either or both of the following:

(a)   a performance bond in the amount specified as required in the Task Specific Information (for the applicable Task and in the form of Exhibit 8A (Form of Performance Bond) ("**Performance Bond**")); and

(b)   a payment bond in the amount specified as required in the Task Specific Information (for the applicable Task and in the form of Exhibit 8B (Form of Payment Bond) ("**Payment Bond**")),

(together "**Bonds**").

[Note to Proposers: WIFA intends to make this election with each Task Order, depending on the proposed nature of the work]

5.1.2   WIFA will release:

(a)   any Performance Bond for the prior Task as follows:

(i)   upon the issuance of WIFA's Notice to Developer under Section 8.7 stating that the applicable Task Approval has not occurred; or

(ii)   if WIFA provides Notice to Developer under Section 8.3 stating that the applicable Task Approval has occurred, upon either:

A.   the date that any Performance Bond required for the subsequent task is provided to WIFA in the updated amount and form provided in Exhibit 8A (Form of Performance Bond); or

B.   the Task Order Date, if any Performance Bond required by WIFA is provided in the updated amount is provided to WIFA in an alternate stand-alone form approved by WIFA, in its sole discretion,

provided, in each case, Developer is not in default under this Contract, and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under this Contract; and

(b)   any Payment Bond for the prior Task as follows:

(i)   upon the issuance of WIFA's Notice to Developer under Section 8.7 stating that the applicable Task Approval has not occurred; or

(ii)   if WIFA provides Notice to Developer under Section 8.3 stating that Task Approval has occurred, upon either:

A. the date that any Payment Bond required for the subsequent Task is provided to WIFA in the form provided in <u>Exhibit 8B</u> (Form of Payment Bond); or

B. the Task Order Date, if any Payment Bond required by WIFA in the updated amount is provided to WIFA in an alternate stand-alone form approved by the WIFA, in its sole discretion,

provided, in each case, Developer is not in default under this Contract, and no event has occurred which, with the passage of time or the giving of notice, would constitute a default under this Contract and either: (1) Developer has delivered to WIFA (a) evidence, satisfactory to WIFA, that all persons eligible to file a Claim against the Payment Bond to be released have been fully paid and (b) unconditional releases of Liens and stop payment notices from all Subcontractors who filed a preliminary notice of a claim against the Payment Bond to be released; or (2) the statutory period for Subcontractors to file a claim against the Payment Bond to be released has expired and no claims have been filed.

5.2 Eligible Surety; Replacement Bonds; Increase in Bonds

5.2.1 Each Bond required under this Contract shall be issued by an Eligible Surety, unless otherwise approved by WIFA, in its sole discretion.

5.2.2 If any Bond previously provided becomes ineffective, or if the Eligible Surety that provided the Bond no longer meets the requirements of this Contract, Developer shall provide a replacement Bond in the same form issued by an Eligible Surety. Developer shall provide immediate notice to WIFA both: (i) before such Bond is rendered ineffective or before such Bond's surety is no longer an Eligible Surety, if Developer has Actual Knowledge that either of the foregoing may occur; and (ii) immediately after such occurrence, but in no case later than two days thereafter.

5.2.3 If any Payment Amount is increased in connection with a Change Order and WIFA has required a Bond, WIFA may require a corresponding proportionate increase in the amount of any Bond, a new Bond, or alternative security to cover such Change Order.

5.2.4 If Developer has failed to procure any replacement Bond in the amount and by the date required under this Contract, WIFA shall be entitled to deduct the intended face value of the Bond from payments owing to Developer under this Contract and hold the cash as security for performance of Developer's obligations under this Contract. Such amounts will be released by WIFA to Developer upon receipt by WIFA of a replacement Bond which satisfies the requirements of this Contract.

5.2.5 Upon receipt by WIFA of a replacement Bond which satisfies the requirements of this provision, WIFA will promptly surrender the security for performance of Developer's obligations under this Contract that has been replaced to the issuing financial institution, less any amounts that

have been applied pursuant to the terms of this Contract. No interest shall accrue or be payable on such amount released.

5.3 No Relief of Liability

Notwithstanding any other provision of this Contract, performance by a Surety of any of the Developer's obligations shall not relieve Developer of any of its outstanding or unperformed obligations under this Contract. The release of any Bond does not relieve Developer of its obligations under this Contract.

5.4 Guaranty

[Note to Proposers: Subject to Guaranty requirements in the Solicitation]

5.4.1 Each Guarantor shall provide and maintain a guaranty, in the form of Exhibit 10 (Form of Guaranty), in full force and effect throughout the term of this Contract. As a condition to each Task Order, each Guarantor shall provide a reaffirmation of guaranty, in the form of Appendix 1 (Reaffirmation of Guaranty) to Exhibit 10.

5.4.2 Developer shall periodically report to WIFA regarding the financial capacity of each Guarantor, which reports shall be made no less frequently than quarterly or upon any adverse change to such financial capacity (including any downgrade in credit rating).

5.4.3 If, at any point during the course of this Contract, any Guarantor's financial capacity is materially negatively affected (including any downgrade in credit rating), as determined by WIFA in its good faith discretion, WIFA may require, and Developer shall provide, one or more additional guarantees so that the combined financial capacity of the Guarantor and the additional guarantors provides equivalent security to WIFA as the guaranty provided as of the Effective Date. Each such guaranty shall be substantially in the form provided in Exhibit 10 (Form of Guaranty), together with appropriate evidence of authorization, execution, delivery and validity of such guarantee.

5.4.4 The guaranty described above assure Developer's obligations under this Contract and shall be maintained in full force and effect throughout the term of the Contract and for so long as Developer has any obligations under the Contract, including those obligations expressly surviving termination of the Contract as provided in Section 29.6.

6. PERSONNEL

6.1 Designation of Representatives

6.1.1 WIFA and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to this Contract.

6.1.2 The initial designations for the WIFA Representative and Developer Representative are specified in the Task Specific Information (Task 1).

6.2 WIFA Representative

6.2.1 The WIFA Representative will give directions and carry out all other functions of the WIFA Representative under this Contract.

6.2.2 Developer shall comply with any direction by the WIFA Representative given or purported to be given under a provision of this Contract.

6.2.3 Except where this Contract provides otherwise, the WIFA Representative may give a direction orally but will as soon as practicable confirm that direction in writing.

6.2.4 WIFA may, by notice to Developer at any time, replace the WIFA Representative or appoint persons to exercise any of the WIFA Representative's functions under this Contract. The initial designations for exercise of the WIFA Representative's functions are specified in the Task Specific Information (Task 1).

6.3 Developer Representative

6.3.1 Developer Representative shall ensure that Developer is complying with its obligations under this Contract.

6.3.2 Developer will be deemed to have received any direction given to the Developer Representative.

6.4 Key Personnel for the Services

Developer shall:

(a) employ and utilize the Key Personnel in the jobs and for the time periods specified in the Scope of Services and Task Specific Information;

(b) subject to Section 6.4(c), not replace any Key Person without the WIFA Representative's prior written approval; and

(c) if any Key Person resigns from Developer's employment, is unavailable due to leave of absence, death, injury, illness, maternity leave, disability, promotion, retirement, termination or replacement for-cause or is otherwise unavailable, replace such person with a person of at least equivalent experience, ability and expertise, who is approved, in writing, by the WIFA Representative (in their sole discretion) before such replacement.

6.5 Key Personnel Liquidated Damages

6.5.1 If any person appointed to fill a Key Personnel role is not available for, or actively involved in, the performance of the Services as required in Section 6.4, as determined by WIFA or if Developer elects not to appoint such Key Personnel at any time, in its good faith discretion, then:

(a) Developer acknowledges that WIFA and the WIP will suffer significant and substantial damages and that it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to WIFA in such event; and

(b) WIFA may, in its sole discretion, impose upon Developer a Liquidated Damages amount as set out in the Task Specific Information, for each position held by such individual, as deemed compensation to WIFA for such damages:

6.5.2 For each position listed above, WIFA may, in its sole discretion, impose upon Developer an additional liquidated amount equal to the corresponding amount specified in Section 6.5.1(b) for each six-month period where such Key Person's position is vacant or not being fulfilled in accordance with this Contract (including failures for the individual to be at the Site, as required by this Contract), as determined by WIFA. Additionally, WIFA may impose upon Developer a liquidated amount of $20,000 for any other individual proposed to perform a key role under the Offer and as set forth in the Task Specific Information for each six-month period where such individual's position is vacant or not being fulfilled in accordance with this Contract, as determined by WIFA.

6.5.3 Developer shall pay to WIFA any amounts imposed under Sections 6.5.1 and 6.5.2; provided, however, that Developer shall not be liable for such amounts if Developer removes or replaces any individual filling a Key Person's role at the direction of WIFA or Section 6.4(c) applies.

6.5.4 Provided that, in either scenario above, Developer promptly proposes to WIFA a satisfactory replacement for such individual for review and approval within 30 days of unavailability, and WIFA, in its sole discretion, approves that replacement.

7. MEETINGS; SUBMITTALS; PLANS; RELIANCE ON REVIEW AND INSPECTION

7.1 Meetings

7.1.1 Developer acknowledges that the WIP's delivery may require coordination with the development of other WIPs, including coordination with Other Contractors, Governmental Entities, or Utility Owners.

7.1.2 WIFA will notify Developer's Authorized Representative when and where attendance for a meeting is required.

7.1.3 Developer shall:

(a) meet with the WIFA Representative and any other Person specified by the WIFA Representative at the intervals specified in the Scope of Services;

(b) at such meetings, discuss the following:

(i) topics specified in the Scope of Services;

(ii) topics covered or to be covered in any Monthly Project Status Report;

(iii) issues relevant to the progress or performance of any portion of the Services or development or submission of any Submittal; and

(iv) any other matters that the WIFA Representative may require.

7.1.4 Before each progress meeting, the Developer Representative shall prepare and issue an agenda for the meeting, and after each such meeting, the Developer Representative shall prepare and deliver minutes of that meeting to WIFA; provided that WIFA may (in its sole discretion) designate another Person to prepare and issue agendas and/or minutes.

7.1.5 Developer's attendance at meetings is considered a basic part of the Services, and thus Developer is not entitled to any additional compensation for attendance.

7.2 Submittals

Developer shall prepare, submit, update and maintain all Submittals in accordance with the requirements of this Contract, including the Submittal Requirements.

7.3 Project Plans

Without limiting any of the Submittal Requirements, Developer shall:

(a) prepare, submit, update and maintain Project Plans in accordance with this Contract, including the Scope of Services and the Submittal Requirements; and

(b) perform the Services in accordance with the then current approved versions of the Project Plans.

7.4 No Obligation to Review

7.4.1 Developer acknowledges and agrees that WIFA's rights under this Contract to review, comment on, approve, disapprove, monitor, inspect, test, accept, or carry out any other act of WIFA in connection with any Submittal or the WIP exist solely for the benefit and protection of WIFA.

7.4.2 Except as expressly set out in this Contract, WIFA does not assume or owe any duty of care to Developer to:

(a)   review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other act or omission of WIFA in connection with any Submittal or the WIP; or

(b)   review the Services for Defects.

7.4.3 No inspection, test, monitoring, acceptance or approval by WIFA and no failure of WIFA to review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other act or omission in connection with any Submittal or the WIP shall:

(a)   relieve Developer from, or alter or affect, its liabilities, obligations or responsibilities, whether under this Contract or under Applicable Laws, including its obligations to perform the Services in accordance with this Contract, or any of its warranty or indemnity obligations under this Contract;

(b)   prejudice WIFA's rights against Developer, whether under this Contract or under Applicable Laws;

(c)   be deemed or construed as any kind of representation or warranty, express or implied by WIFA, or be relied upon by Developer in determining whether Developer has satisfied the requirements of this Contract;

(d)   be asserted by Developer against WIFA as a defense, legal or equitable, to Developer's obligation to satisfy the requirements of this Contract; or

(e)   preclude or estop WIFA from asserting or showing that the Services or materials do not comply with this Contract or recovering from Developer and its Surety(ies) such damages as WIFA may sustain in connection with Developer's failure to comply or to have complied with this Contract.

7.4.4 Notwithstanding Sections 7.4.1 through 7.4.3, Developer may rely on Notices that WIFA gives under this Contract for purposes of confirming that WIFA has provided an approval or consent to an event or matter, but without prejudice to any of WIFA's other rights and remedies under this Contract.

7.4.5 WIFA shall reasonably endeavor to notify Developer if WIFA does not intend to review, comment on, approve, disapprove, monitor, inspect, test, accept or carry out any other WIFA act in connection with a Submittal or the WIP.

8.   TASK ORDERS; NOTICES TO PROCEED; LIMITED RIGHT OF FIRST NEGOTIATION

8.1   Task Overview

8.1.1 Developer shall perform the remaining Services as required by WIFA in one or more Tasks as described in the applicable Scope of Services.

8.1.2 The Tasks are anticipated to include the following:

(a) Task 1: Technical Evaluations;

(b) Task 2: Environmental and Cultural Evaluations;

(c) Task 3: Regulatory Evaluations;

(d) Task 4: Society and Community Evaluations;

(e) Task 5: Cost, Economics and Financing Evaluations; and

(f) Other Tasks as determined by WIFA and subject to a Task Order.

8.2 Commencement of Services

8.2.1 Except as specifically authorized in writing by the WIFA Authorized Representative, any Services pursuant to a Task Order performed by Developer prior to the commencement date stated in the Task Specific Information for that Task shall be entirely at Developer's risk.

8.2.2 Developer acknowledges and agrees that:

(a) WIFA has no obligation to issue any Task Order under this Contract; and

(b) unless and until each Task Order is executed, WIFA has no liability to Developer under this Contract for the applicable Task.

8.3 Request for Task Order

8.3.1 The WIFA Representative may, at any time, provide Developer with a request for a Task Order.

8.3.2 Within 60 days of WIFA's request for a Task under Section 8.3.1:

(a) the Parties shall negotiate in good faith to seek to reach agreement on all details to be included in each Task Order; and

(b) Developer shall complete the proposed Task Specific Information and other Exhibits to the Task Order setting out the details agreed in this Section 8.3 and submit the proposed Task Order to WIFA for review and approval in accordance with the Submittal Requirements.

8.3.3 Upon review of the Task Order and other Submittals, the WIFA Representative shall have sole discretion to determine if Task Approval has been achieved.

8.3.4 If WIFA Representative determines that Task Approval is achieved, then:

(a) WIFA shall seek the WIFA Board's approval of the Task Order;

and

(b)   subject to obtaining the WIFA Board's approval and Developer providing the conditions precedent to execution in the applicable Task Specific Information for the Task to the WIFA's satisfaction, the Parties shall execute the Task Order and from that point in time references to "Contract" will be references to this Contract as amended to incorporate such Task Order, under which Developer will complete the Services for the applicable Task and the date of execution such Task Order shall be the "Task Order Date".

8.3.5   If WIFA determines that Task Approval is not achieved, then WIFA will issue a written notice to Developer stating that Task Approval has not occurred and Section 24 shall apply with respect to that Task.

8.4   **Representations and Warranties Regarding Task Order**

8.4.1   By executing each Task Order:

(a)   Developer acknowledges its participation in the development of the applicable Scope of Services; and

(b)   Developer represents and warrants to WIFA, as follows:

(i)   the representations and warranties in Section 19.1 are remade and confirmed as of the date of the Task Order, and such representations and warranties continue to apply;

(ii)   the Scope of Services for the applicable Task adequately defines the Services for that Task and complies with all other requirements under this Contract, except to the extent that WIFA has consented to modify any such requirement through a Change Order;

(iii)   in accordance with Good Industry Practice and the applicable Scope of Services, Developer has: (A) reviewed and analyzed all information provided in the Reference Documents regarding the Services for that Task; (B) evaluated the constraints affecting such Services; (C) reviewed and analyzed all information developed during the prior Tasks;

(iv)   Developer has reasonable grounds for believing and does believe such Services performance in accordance with this Contract (including the applicable Scope of Services) will not exceed the Payment Amount applicable to that Task and can be completed within the Project Schedule;

(v)   Developer has familiarized itself with the requirements of Applicable Laws and the conditions of any Governmental Approvals required in connection with the applicable Task and has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and remain in effect so

as to enable the Services to proceed in accordance with this Contract and the Project Schedule;

(vi) subject to any Relief Event, Developer shall achieve: (A) Acceptance of the applicable Task so as not to exceed its Payment Amount; and (B) each Milestone by the applicable Milestone Deadline;

(vii) except as expressly provided in this Contract, if the Services for the applicable Task cannot be completed for its agreed Payment Amount, any additional costs shall be Developer's responsibility and Developer assumes liability for such costs without reimbursement by WIFA; and

(viii) no event has occurred that, with the passage of time or the giving of notice, would constitute a Relief Event or give rise to a Claim relating to the Services for the applicable Task.

8.5 Effect of WIFA Decision Not to Proceed

8.5.1 If WIFA elects not to issue any request for Task Order or execute any Task Order, under Sections 8.3 or 8.4:

(a) then, subject to Section 9.5 and upon WIFA's notice to that effect, WIFA may terminate this Contract for convenience under Section 25 and the terms applicable to a termination for convenience shall apply, including as provided in Section 26;

(b) WIFA may proceed with any other action as WIFA deems appropriate for delivery of the Tasks, including soliciting from, negotiating with, or awarding a contract to any other contractor for the design, construction, financing, operation and maintenance of the WIP; or

(c) WIFA may decide not to proceed with currently proposed WIP, potentially seeking other alternatives to meet WIFA's goals.

8.6 Task Order

8.6.1 Developer acknowledges and agrees that unless directed, otherwise by Change Order:

(a) Developer may not commence any Task, unless WIFA has issued a final executed Task Order for the applicable Task following Task Approval;

(b) neither WIFA nor the WIFA Representative is required to exercise its discretion to determine Acceptance or proceed with request for or execution of a Task Order for the Developer's benefit; and

(c)   the exercise or failure to exercise such sole discretion is not capable of being the subject of a dispute and is not otherwise subject to review or challenge.

8.6.2   Upon WIFA's issuance of any executed Task Order, Developer shall:

(a)   commence to plan and perform the Services for the applicable Task in consultation with WIFA and in accordance with this Contract;

(b)   provide WIFA with all assistance it may reasonably require in connection with the Services before the corresponding Task Deadline; and

8.6.3   take all necessary steps to achieve the Milestones for the applicable Task by the Milestone Deadlines.

8.7   Task Acceptance

8.7.1   When Developer determines that any Task has been fully completed, including delivery of all required Submittals, Developer shall, within five days, submit to WIFA a written request for interim Acceptance of the Task specifying that the Services are complete and the date on which the Services were completed. After receipt of the request for interim Acceptance, WIFA will commence a review of Developer's request for interim Acceptance.

8.7.2   WIFA, in its sole discretion, will grant interim Acceptance of the Task if WIFA determines that the Services are complete, and the following conditions have been met:

(a)   Developer has provided a certification stating that all Services for the applicable Task has been completed, accompanied by any additional required information, if applicable;

(b)   Developer has delivered and WIFA has, if applicable, approved in writing all Submittals required for the applicable Task;

(c)   Developer has certified and WIFA has verified that all IP Materials related to the Task have been deposited into the IP Escrow;

(d)   Developer has provided a signed statement under penalty of perjury in form acceptable to WIFA that includes a list of any pending unsettled debts and Claims of Suppliers and Subcontractors relating to the Task and prior Tasks, if any, and that states that all other debts and claims of Suppliers and Subcontractors relating to the Task and prior Tasks have been paid and/or settled;

(e)   Developer has provided a signed statement under penalty of perjury in a form acceptable to WIFA that includes a list of any pending unsettled debts and Claims relating to the Task and prior Tasks, and that states that all other debts and Claims relating to the Task

and prior Tasks have been resolved, and that no further Claims will be made for such Task; and

(f)   All of Developer's other obligations relating to the Task have been satisfied in full or waived in writing by WIFA.

8.7.3   Within 30 days of receipt of the request for interim Acceptance, if WIFA determines that the Services under the Task are not complete, or that additional information is required to determine whether interim Acceptance will be granted, WIFA will advise Developer in writing of any outstanding Services that must be completed at no additional cost to WIFA, or Submittals that must be corrected at Developer's cost, and any other outstanding issues.   Developer shall promptly cure the deficiencies identified by WIFA and shall submit a new request for interim Acceptance of the Task Order Services. The procedure in Section 8.7.2 shall then be repeated until such time as WIFA is satisfied that all Services required under the applicable Task have been completed in accordance with this Contract and no further requirements must be met. WIFA will issue a notice of interim Acceptance of the Task Services at that time.

8.8   Effect of Failure to Achieve Milestone

8.8.1   If, due to no breach of Developer's obligations under this Contract any Milestone is not achieved within 20 days after the applicable Milestone Deadline, then, subject to Section 9.5 and upon WIFA's notice to that effect, WIFA may terminate this Contract for convenience under Section 25 and the terms applicable to a termination for convenience shall apply, including as provided in Section 26; provided that, in the event of a termination for convenience, WIFA's maximum liability to Developer shall be the sum of the Payment Amounts for only the Task Orders already issued to Developer by WIFA.

8.8.2   If, due to a breach of Developer's obligations under this Contract,

(i)   any Milestone is not achieved by the applicable Deadline; or

(ii)   Approval of work under a Task Order is not achieved,

then, WIFA may terminate this Contract under Section 24.5 and the terms applicable to a Default Termination Event shall apply, including as provided in Section 23.

9.   GENERAL OBLIGATIONS

9.1   General Obligations and Warranty with respect to the Services

9.1.1   Developer warrants that it shall perform the Services required by each Task Order and warrants that the Services shall be:

(a)   in accordance with this Contract, all Applicable Laws, all Governmental Approvals and consistent with the WIP Goals;

(b)   so that all Design Services furnished under this Contract conforms to Good Industry Practice and are free from Defects;

(c)   in a manner so that the WIP is fit for use for the purposes and requirements set out in this Contract;

(d)   such that all work product furnished in connection with the Services is of good quality, unless otherwise specified in the Scope of Services; and

(e)   in a manner that ensures adequate materials, equipment, supplies and resources are available to provide for the Services uninterrupted progress and compliance with the requirements of this Contract under normal conditions and reasonably anticipated abnormal conditions.

Developer shall engage and work in a collaborative, efficient and coordinated manner with WIFA and the WIP stakeholders to:

(f)   develop the WIP's concept and design, carry out design review activities and prepare all relevant Submittals for the Task in accordance with this Contract and as otherwise specified by WIFA in writing; perform the Services to maximize the achievement of the Lifecycle Objectives and Quality Objectives, including consulting with WIFA as to any designs, materials or methods of construction which they might recommend;

(g)   update WIFA estimates and forecasts regarding the WIP, provide Data to WIFA to reflect real time information and provide all pricing, estimates and other Data on an Open Book Basis in a format otherwise acceptable to the WIFA;

(h)   implement a controls system approved by WIFA and capable of being broken down and reported in several different work breakdown structures, including organizing the financial data by cost element codes, subcontracts, vendors, construction packages, etc.;

(i)   obtain required inputs regarding the WIP's design and functionality, as well as other major the WIP elements and to develop the Scope of Services; and

(j)   undertake such risk reduction studies and actions as are required by the Scope of Services or as are necessary, in accordance with Good Industry Practice, for the comprehensive, safe and accurate planning, scoping, design, costing and programming of the Services.

9.1.2   Portions of Developer's work product under this Contract, including reports and documents, and engineering plans and specifications, may be included in the WIP Implementation Agreement. Developer

acknowledges that the Services to be performed under this Contract, in combination with the documentation provided to WIFA, will be sufficient to permit Developer to provide a fixed price for the WIP Implementation Agreement. Developer further acknowledges that the WIP Implementation Agreement will not permit Developer to make any Claim, either for additional compensation or a time extension, based upon any actual or alleged deficiency, error, omission, inconsistency or inaccuracy in any Developer work product included in the WIP Implementation Agreement.

9.1.3 Developer shall ensure that the engineering plans and specifications developed during Contractor's performance of the Services incorporate WIFA's standards as appropriate and conform to all other requirements set forth in the Contract, except to the extent that WIFA has approved Deviations therefrom in accordance with Section 16.4.

9.1.4 WIFA's use of Developer's work product for a subsequent procurement, or on another project, shall be at WIFA's sole risk, and Developer neither warrants nor represents that such work product is suitable for use without modification for a subsequent procurement, or on a different project.

9.1.5 The general obligations and warranty contained in this Section 9.1 are in addition to any express warranties provided for elsewhere in this Contract.

9.1.6 Developer acknowledges that WIFA is relying upon Developer's experience, skill and judgment in carrying out its obligations under this Contract and would not have entered into this Contract but for Developer's expertise in that regard.

9.1.7 Developer shall control, coordinate, administer and direct all activities necessary to plan, design, commence, construct, commission / start up, complete and hand over the Services.

9.2 Requirements for Submittals

Each Submittal shall take into account:

    (a)   WIFA's proposed budget for the WIP;

    (b)   the WIP Goals;

    (c)   WIFA's desire to reduce the cost and time to achieve completion of any WIP, while obtaining a high-quality project that meets the Lifecycle Objectives and Quality Objectives;

    (d)   all opportunities for cost savings in accordance with Good Industry Practice without derogating from the achievement of the other requirements of this Contract; and

(e)   any other relevant considerations which the WIFA Representative may from time to time specify to Developer in writing.

9.3   Project Schedule

9.3.1   Developer shall prepare and maintain the Project Schedule in accordance with the scheduling requirements in the applicable Scope of Services.

9.3.2   Developer shall:

(a)   submit, update and maintain each Project Schedule in accordance with this <u>Section 9.3</u>, the Scope of Services and the Submittal Requirements;

(b)   include all applicable Milestones and Milestone Deadlines in each Project Schedule, and include any other major the Services milestones or deadlines WIFA may require from time-to-time; provided these shall not constitute Milestones as defined;

(c)   include sufficient time to obtain each Governmental Approval, if applicable, and sufficient time to account for application, revision, resubmission, public review and final approval of each such Governmental Approval in each Project Schedule before Developer is required to commence the applicable Services;

(d)   obtain WIFA's prior written approval for each Project Schedule, and once so approved, only revise the Project Schedule with the prior written approval of WIFA; and

(e)   update the Project Schedule as required in <u>Section 9.3.5</u> and at least within 14 days of any of the following:

(i)   changes to the Project Schedule; or

(ii)   delays (including Relief Events and Change Orders) which may have occurred,

and submit that revised schedule to the WIFA Representative for review and approval in accordance with the Submittal Requirements.

9.3.3   Developer's failure to incorporate all elements of the Services required for the performance of this Contract or any other inaccuracy in the Project Schedule shall not excuse Developer from performing all Services (and all portions of the Services) within the applicable times specified under this Contract.

9.3.4   WIFA may rely on the Project Schedule in planning and conducting ongoing operations and other work, including work with other developers and contractors.

9.3.5 Submittal of the Monthly Progress Schedule update is a condition precedent to WIFA paying any Progress Payments to Developer. If Developer fails to timely provide WIFA with any updated or accurate Project Schedule when due, WIFA may withhold any Progress Payment otherwise due to Developer until WIFA receives that updated and accurate Project Schedule.

9.3.6 WIFA has no obligation to accept any Project Schedule that sets forth Milestone Deadlines that differ from any previously approved Project Schedule (as applicable).

9.3.7 WIFA's acceptance of a Project Schedule shall not:

(a) imply WIFA's acceptance of any particular methods, or relieve Developer from its responsibility to provide sufficient materials, equipment and labor to guarantee completion of the WIP (or any portion thereof) in accordance with this Contract;

(b) attest to the validity of assumptions, activities, relationships, sequences, resource allocations or any other aspect of the applicable Project Schedule;

(c) imply that Developer is entitled to any Change Order extending a Milestone Deadline or other deadline or portion thereof; or

(d) modify this Contract.

9.4 Availability

Developer shall keep available on the Site, and any area off-Site where the Services is being carried out, for the use of the WIFA Representative, WIFA or anyone else acting on behalf of WIFA, one complete set of each Scope of Services, all Task Submittals and all other Books and Records directed in writing by the WIFA Representative.

9.5 Cost Control

Developer shall:

(a) complete each Task so that the amounts payable to Developer under Section 14 do not exceed the applicable Payment Amount.

(b) without limiting Section 14, review each Payment Amount proposal and WIP Implementation Proposal and any other cost model submissions (each a "**Cost Submission**") with the WIFA Representative as the preparation of the Submittals and Scope of Services for the applicable Task, to:

(i) ensure that the performance of the Services for the applicable Task is in accordance with the applicable Cost Submission; and

(ii) advise the WIFA Representative how the activities or design should or can be modified to ensure the cost of performing the Services for each Task is in accordance with the applicable Cost Submission; and

(c) institute a system of cost control and, together with the WIFA Representative, review and, where approved by the WIFA Representative, amend the applicable Cost Submission to take account of any item affecting or likely to affect any component of the Cost Submission, and advise the WIFA Representative as to the alternative steps available where:

(i) the proposals for any subcontracted part of the Services exceed the amount included for that work in the applicable Cost Submission; or

(ii) the Cost of the Services exceeds (or appears likely to exceed) the amount allowed for that Services in the applicable Payment Amount proposal.

9.6   Liquidated Damages and Indemnity for Delay

If either:

(a) Acceptance of the Services has not occurred by the Task Deadline; or

(b) Completion or other Milestone of any Task, as agreed to by WIFA and Developer in the Task Specific Information, is not achieved by its applicable Milestone Deadline,

then, in each case Developer shall pay to WIFA Liquidated Damages, which shall accrue at the applicable rate specified in the Task Specific Information for every day after the applicable Milestone Deadline until the first to occur of the following: (i) the relevant Milestone is achieved; (ii) the Expiration Date; or (iii) 365 days after the Milestone Deadline has elapsed.

9.6.2 Liquidated Damages under Section 9.6.2 shall constitute WIFA's sole right to monetary damages for delay to Acceptance of the Services of any Task or delay described in Section 9.6.1(a) or 9.6.1(b).

9.6.3 The Parties agree that the Liquidated Damages under Section 9.6: (a) are reasonable and represent good faith estimates and evaluations by the Parties as to the actual, potential damages or harm WIFA would incur as a result of delay described in Section 9.6.1(a) or 9.6.1(b) including those damages set out in the Task Specific Information; and (b) do not constitute a penalty.

9.7 Final Acceptance

9.7.1 Developer shall, within 15 days thereafter, give WIFA a written request for final Acceptance. The request shall include copies of all previously issued notices of interim and final Acceptance of Tasks and the Invoice for the Separation Payment prepared in accordance with Section 14.19 (Invoices).

9.7.2 After the receipt of the request for final Acceptance, WIFA will commence a review of Developer's request and will provide a written response to Developer within 20 days of receipt of the request, including all accompanying materials required hereunder.

9.7.3 If WIFA determines that the Services is not complete or that additional information is required to determine whether final Acceptance will be granted, WIFA will advise Developer in writing of any outstanding issues or required information.

9.7.4 Developer shall promptly cure the deficiencies identified by WIFA and shall submit a new request for final Acceptance.

9.7.5 The procedure in this Section 9.7 shall then be repeated until such time as WIFA is satisfied that all Services required under this Contract have been completed in accordance with this Contract and no further requirements must be met. WIFA will issue a notice of final Acceptance at that time.

9.8 Limited Right of First Negotiation

9.8.1 Subject to the WIP RFP, Developer will have, in accordance with the process set forth in Section 10.5 (Evaluation of WIP Implementation Proposal; Negotiations), a limited right of first negotiation for the Implementation Agreement as if WIFA issues Notice to Developer following a Task Order for Task 5 or any later Task to Developer.

9.8.2 Provided that Developer is in compliance with the terms of this Contract and is diligently performing the Task 4 Services, from the Task 4 Task Order Date and until such time as WIFA may provide Notice to Developer that WIFA will not enter into the WIP Implementation Agreement with Developer, WIFA will not solicit from, negotiate with, or award a contract to any other contractor for the design, construction, financing, operation and maintenance of the WIP except by mutual agreement of the Parties, provided that WIFA may award to other contractors contracts that facilitate or otherwise support the WIP without detriment to the intent of the WIP Implementation Agreement.

10. PROJECT IMPLEMENTATION PROPOSAL PROCESS

10.1 General

Following execution of a Task Order for Task 5 or any later subsequent Task, WIFA may:

 (a) provide to Developer a draft request for a WIP Implementation Proposal (WIP RFP) including terms and conditions for the WIP Implementation Agreement and technical provisions; and

 (b) engage in discussions with Developer regarding the draft terms and conditions for the WIP Implementation Agreement and technical provisions.

10.2 Request for WIP Implementation Proposal

10.2.1 Following a draft WIP RFP under Section 10.1, WIFA may issue to Developer a WIP RFP.

10.2.2 WIFA is not obligated to issue a WIP RFP and may delay issuance or choose not to issue any WIP RFP, in its sole discretion. WIFA's rights to delay issuance of or to choose not to issue any WIP RFP are in addition to its rights to terminate this Contract in accordance with this Contract.

10.3 Submittal of WIP Implementation Proposal

Following receipt of WIFA's WIP RFP, Developer shall prepare and submit a WIP Implementation Proposal by the deadline set forth in the WIP RFP and meet all other requirements in the WIP RFP.

10.4 Communications During Pre-Proposal and Proposal Evaluation Periods

10.4.1 From the date on which WIFA issues the draft WIP RFP under Section 10.1 until the date that WIFA notifies Developer of its chosen course of action under Section 10.5 (Evaluation of WIP Implementation Proposal; Negotiations), communications relating to the WIP RFP must strictly follow the protocols established by WIFA in the WIP RFP.

10.4.2 The restrictions on communications relating to the WIP Implementation Proposal process will not preclude the Parties from ongoing communications regarding Developer's performance of the Services, including required Submittals.

10.5 Evaluation of WIP Implementation Proposal; Negotiations

10.5.1 WIFA will evaluate Developer's WIP Implementation Proposal in accordance with the criteria identified in the WIP RFP.

10.5.2 The process set forth in this <u>Article 10</u> will not exceed the period set forth for such process in the WIP RFP unless extended by mutual agreement of the Parties.

    10.5.2.1 The WIP Implementation Proposal will be subject to review on an Open Book Basis. When evaluating the WIP Implementation Proposal, WIFA and its representatives may examine, and Developer shall provide to WIFA and its representatives, the following:

(a) all supporting cost and pricing Data as described in <u>Section 14.8</u> (Cost and Pricing Data Audit Requirements);

(b) all Books and Records identified in the WIP Implementation Proposal including all information related to:

    (i) Services including quantity development, unit prices and pricing assumptions;

    (ii) financing the WIP;

    (iii) operating and maintaining the WIP, including staffing plans, quantity development, unit prices and pricing assumptions; and

    (iv) pricing methodologies, applicable risks, contingencies, mark-ups, profits, escalations and any other factor utilized to develop or support Developer's maximum annual availability payment; and

    (v) all other Books and Records of Developer related to the WIP Implementation Proposal and cost and pricing Data, including all documents that WIFA reasonably deems necessary to permit adequate evaluation of the information submitted, along with the computations and projections used in the WIP Implementation Proposal, for the purpose of evaluating the accuracy and completeness of the WIP Implementation Proposal and cost and pricing Data and determining that the price is fair and reasonable.

10.5.3 If WIFA accepts the WIP Implementation Proposal, WIFA will notify Developer of its intent to proceed with the WIP Implementation Agreement as otherwise provided in the WIP RFP.

10.5.4 Developer acknowledges that, if WIFA chooses to proceed with the WIP Implementation Agreement, Developer will not be eligible to enter into the WIP Implementation Agreement unless all conditions in the WIP RFP are met.

10.5.5 If WIFA does not accept the WIP Implementation Proposal, Developer and WIFA will enter into good faith negotiations for a period of no more

than 30 days, subject to extension by mutual agreement, to agree to an alternative WIP Implementation Proposal.

10.5.6   WIFA may terminate this Contract for convenience under Section 25 and the terms applicable to a termination for convenience shall apply, including as provided in Section 26 if:

    (a)   after evaluating the WIP Implementation Proposal, WIFA rejects the WIP Implementation Proposal; and

    (b)   after negotiating in good faith in accordance with Sections 2.2 and 8.4, WIFA rejects the WIP Implementation Proposal.

10.5.7   Upon termination of the Contract pursuant to Sections 23 or 24, WIFA will provide Notice to Developer that WIFA will not enter into a WIP Implementation Agreement with Developer, after which WIFA may proceed with any other action as WIFA deems appropriate for delivery of the WIP, including:

    (a)   soliciting from, negotiating with, or awarding a contract to any other developer or contractor for some or all of the design, construction, financing, operation and maintenance of the WIP, including any modification thereof; or

    (b)   deciding not to proceed with the WIP, potentially seeking other alternatives to meet WIFA's goals.

10.5.8   If the Contract is terminated in accordance with Sections 24.3 and 24.5, WIFA may, in its sole discretion, in accordance with WIFA's policies and procedures, provide Notice to Developer as to whether Developer and/or any Developer-Related Entities will be precluded from bidding or otherwise participating in any subsequent procurement for, or development of, the WIP. If the Contract is terminated in accordance with Section 25, WIFA may, in its reasonable discretion, in accordance with WIFA's policies and procedures, provide Notice to Developer as to whether Developer and/or any Developer-Related Entities will be precluded from bidding or otherwise participating in any subsequent procurement for, or development of, the WIP.

11.   ENVIRONMENTAL REVIEW PROCESS AND ENVIRONMENTAL COMPLIANCE

11.1   Respective Roles of Parties

11.1.1   To the extent applicable, WIFA will coordinate with each applicable Governmental Entity on the Environmental Review Process that may be applicable to Governmental Approvals required for the WIP.

11.1.2   As further described in the Scope of Services, Developer shall provide services with respect to the WIP for independent evaluation and consideration by WIFA and any applicable Governmental Entity in

connection with the Environmental Review Process and any Governmental Approval.

11.2   Rights and Responsibilities

11.2.1   Performance by either Party of its obligations under this Contract shall not limit:

(a)   The discretion of WIFA or any Governmental Entity to evaluate. approve, or deny the approval of, any WIP; or

(b)   WIFA's sole discretion to withhold any Task Approval under Section 8.3.

11.2.2   Developer acknowledges and agrees that WIFA and any Governmental Entity retain:

(a)   their discretion, control and decision-making authority over the description and/or environmental evaluation of the WIP; and

(b)   discretion over whether to accept any of the WIP and Submittals for purposes of the Environmental Review Process.

11.2.3   Nothing contained in this Contract commits, or shall be construed to commit, WIFA to approve any Proposed Project or any WIP alternative, modification, or mitigation measure regarding the WIP (including a no-build alternative) before the WIFA approves the WIP, alternative, modification or mitigation measure.

11.2.4   Developer shall have no right or obligation to perform, and shall not perform, any services that would violate conflict of interest rules under NEPA or other state or federal laws regarding the preparation, review, revision and decisions on scope and content of applicable Environmental Documents. All references in this Contract to Developer's involvement with the Environmental Review Process or development of Environmental Documents shall be subject to the limitation in the preceding sentence.

12.   ACCESS; SAFETY

12.1   Access to Site

12.1.1   Developer shall:

(a)   Obtain and maintain any Governmental Approvals and rights of entry required to perform the Services, including access to the Site;

(b)   Pay all permit fees and comply with all requirements of Governmental Approvals and Applicable Laws in connection with its operations, including obtaining necessary approvals of plans and specifications; and

(c)   Obtain access to any areas required to perform any portion of the Services.

12.2 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

12.2.1 Developer shall preserve and protect all structures, improvements, equipment, and vegetation (such as trees, shrubs, and grass), and improvements on or adjacent to areas where it conducts site investigations.

12.2.2 Developer shall replace or repair any damage to structures, improvements, equipment, or vegetation, including those that are the property of a third party, resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Services at no cost to WIFA. If Developer fails or refuses to repair the damage promptly, WIFA may have the necessary services performed and charge the cost to Developer.

12.3 Unauthorized Actions

12.3.1 Any action taken by Developer or any Developer-Related Entity not expressly authorized under the Contract and in conformance with the terms and conditions of the Contract will be considered as unauthorized and at the sole expense, risk and liability of Developer. Developer and Developer-Related Entities will not be compensated for any actions deemed by WIFA to be unauthorized. No extensions of time will be granted under the Contract due to unauthorized actions.

12.3.2 No WIFA employee or officer, except the WIFA Representative, may authorize any amendments or Change Orders to the Contract.

12.4 Safety

12.4.1 Developer shall perform the Services safely and in a manner that: (i) does not put the health and safety of persons at risk; (ii) protects property; and (iii) complies with the Health and Safety Plan and the Scope of Services.

12.4.2 If the WIFA Representative reasonably considers there is a risk to the health or safety of people or damage to property relating to the Services, the WIFA Representative may direct at Developer's sole cost and expense, Developer to change its manner of working or to cease working and Developer shall not be entitled to any compensation or schedule extension as a result thereof.

12.5 WIFA Right to Act

WIFA may, either itself or by a third party, carry out an obligation under this Contract that Developer is allocated or required to perform, but fails, to carry out within the time required under this Contract (subject to Developer's right to notice and cure periods, if any, as set forth in Section 24.4 unless the circumstances represent an Emergency). Any Losses suffered or incurred by WIFA in carrying out that obligation will be an amount due and payable from Developer to WIFA and Developer shall not be entitled to any compensation or schedule extension as a result thereof.

12.6 Access Hours

Unless otherwise agreed in writing by Developer and the WIFA Representative, the access hour limitations for performance of Services on the Site are as specified in the Task Specific Information.

13. CONTRACTING PRACTICES

13.1 Contracting Practices

13.1.1 Developer shall comply with the contracting practices described in Exhibit 7.

13.2 Subcontracts

13.2.1 The Developer shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of WIFA.

13.2.2 The Subcontractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities.

13.2.3 Each Subcontract shall include the terms and conditions in Exhibit 7C (Labor Requirements) of this Contract.

14. PAYMENTS TO DEVELOPER

[Note to Proposers: Applicable payment provisions to be dependent on WIFA election]

14.1 Overview of Compensation Under Contract

14.1.1 In consideration of Developer's performance of the Services under this Contract and in accordance with the terms of the Contract, WIFA will pay Developer the Payment Amount for each Task as indicated in the applicable Task Specific Information and more specifically described in Section 14.3 (Manner of Payments). In order to receive payment, the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.

14.2 Compensation Under Implementation Agreement

If the Parties enter into the WIP Implementation Agreement, payment for work performed thereunder will be made as specified in the WIP Implementation Agreement.

14.3 Manner of Payments

14.3.1 Developer shall:

(a) Obtain a State of Arizona Substitute W-9 (GAO-W-9) by visiting https://gao.az.gov/publications/forms; and

(b)   Email Developer's completed State of Arizona Substitute W-9 (GAO-W-9) to WIFA's Accounting Manager at dbosworth@azwifa.gov.

14.3.2   Following Developer's actions under <u>Section 14.3.1</u>, WIFA will verify and set up a vendor profile within its internal systems using Developer's State of Arizona Substitute W-9 (GAO-W-9).

14.3.3   Payment by Automated Clearing House

Developer shall sign up for Automated Clearing House ("**ACH**") payments as a condition to receiving payment under this Contract. Developer shall:

(a)   Obtain an ACH Vendor Authorization Form (GAO-618) by visiting https://gao.az.gov/publications/forms; and

(b)   Email Developer's completed ACH Vendor Authorization Form (GAO-618) to Vendor.PayAutomation@azdoa.gov.

14.3.4   WIFA will make all payments under this Contract via ACH. Developer may resolve any issues by emailing Vendors@azdoa.gov.

14.4   Payment Details: Progress Payments

14.4.1   This <u>Section 14.3.1</u> shall apply if WIFA elects to pay for a Task by way of Progress Payments.

14.4.2   During the Term, WIFA will make monthly progress payments ("**Progress Payment**") for Work completed to WIFA's satisfaction based on the [percentage of Services for each Task completed as indicated on the Project Schedule / completion of payment milestones set out in the Task Specific Information] (excluding premiums for bonds and insurance associated with the applicable Task which shall be paid in accordance with <u>Section 14.8</u>).

14.4.3   Following WIFA's interim Acceptance of each of the Tasks in accordance with <u>Section 8.7</u>, WIFA will make a Task Completion Payment. The Progress Payments plus the Task Completion Payments for each of Task shall not exceed the Payment Amount specified in the Task Specific Information for the applicable Task.

14.4.4   The Parties agree that the Payment Amount for each Task Period is fixed as of the Effective Date with respect to the Services described in this Contract and each applicable Task Amendment, including the Task Specific Information for each Task, and such amounts are not intended to increase or decrease with actual costs for the Services except as permitted hereunder. A modification may, but will not automatically, result in a change to the Payment Amount for a Task Period.

14.5 **Payment Details: Time and Materials**

14.5.1 This Section 14.5 shall apply if WIFA elects to pay for a Task by way of Time and Materials.

14.5.2 For each Task, WIFA will pay Developer in monthly progressive payments for Work completed as part of a Task 1 as follows:

(a) the direct cost of the Services calculated in accordance with Exhibit 11 (Cost Schedule), based on the value of the Services for the Task which has been carried out during that month, as shown in the Monthly Project Status Report; plus

(b) the monthly portion of the Fee Mark-Up, prorated based on the percentage of the total cost of the Services for the applicable Task which has been incurred during that month, as described in Section 14.5.2(a); plus

(c) premiums for bonds and insurance associated with the applicable Task in accordance with Section 14.8; plus

(d) upon WIFA's final acceptance of the Task 1 Services, any remaining portion of the Developer's Markup for the applicable Task, which has not yet been paid by WIFA,

provided the sum of the amounts invoiced under this Section 14.5.2 may not exceed the applicable NTE for the Task.

14.6 **Allowance Items and Allowance Values**

14.6.1 The Parties shall:

(a) collaborate in good faith to review the Allowance Items and Allowance Values based on the Task Specific Information then available to determine Allowance Values that constitute reasonable estimates for the associated Allowance Items; and

(b) collaborate in good faith during design preparation to develop a Scope of Services consistent with the Allowance Values.

14.6.2 For each Allowance Item, the WIFA Representative will give Developer a written instruction either deleting that Allowance Item from this Contract or requiring Developer to proceed with the relevant Allowance Item (before Developer may perform the Allowance Item).

14.6.3 If any Allowance Item is deleted from this Contract:

(a) the applicable Target Cost of the Services or Lump Sum will be reduced by the Allowance Value;

(b) the Developer's Cost Markup for the Task Period in which that Allowance Item would have been performed will be reduced proportionately, as shown below:

Reduction in Developer's Cost-Markup = (Allowance Value of Deleted Allowance Item ÷ Target Cost of the Services);

and

(c) WIFA may engage an Other Contractor to carry out the Allowance Item or perform that Allowance Item itself.

14.6.4 All other costs are deemed to be included in the original Task Order for the corresponding Task Period as provided in the Task Specific Information and are not subject to adjustment, regardless of the actual costs of the Allowance Item.

14.6.5 Subject to Section 14.6.6, if an Allowance Item's actual cost differs from the stated Allowance Value, then:

(a) in the case of Time and Materials, the applicable Target Cost of the Services and Developer's Cost Markup shall be adjusted accordingly by Change Order; and

(b) in the case of Progress Payments, the applicable Lump Sum shall be adjusted accordingly by Change Order,

provided Developer shall submit to WIFA written notice of the difference between the actual cost and the Allowance Value. The amount of the Change Order shall identify the difference between actual cost incurred by Developer for the particular Allowance Item and the Allowance Value and, in the case of Time and Materials reflect a proportional adjustment to the applicable Developer's Cost Markup.

14.6.6 If an Allowance Item's actual cost is less than the stated Allowance Value, WIFA may (in its sole discretion) authorize Developer to allocate any unused amount to another existing Allowance Item in the same Task Period.

14.7 Application and Certificate for Payment

14.7.1 On or about the 22nd calendar day but not later than the 25th calendar day of each month following the issuance of a Task Order, Developer shall deliver to WIFA an Application and Certificate for Payment for the prior monthly period, in the form required by Section 14.19, together with drafts of all materials, reports, schedules, certifications and other Task Submittals for that month listed in Task Specific Information for the corresponding Task.

14.7.2 At each monthly progress meeting held under Section 7.1, Developer's and WIFA's Representatives shall ascertain the progress of the Services. Each monthly progress meeting shall be attended by Developer and WIFA and its consultants in accordance with Section 7.1. Developer's and WIFA's Representatives shall review the Application and Certificate for Payment reflecting the value of the Services completed, as of the date of the progress meeting. They shall determine and calculate the value of Services completed, based on the elected payment method:

14.7.3 Developer's and WIFA's Representatives shall sign the Application and Certificate for Payment, indicating the portions of it that have been approved and setting forth the proposed total payment amount, which shall be the approved value of the Services then completed less Progress Payments previously made.

14.7.4 Concurrent with the delivery of the Certificate and Application for Payment, Developer shall submit a draft current Monthly Progress Schedule for approval by WIFA, in its good faith discretion, that it meets the requirements in the Task Specific Information for the corresponding Task(s).

14.8   Payment for Bonds and Insurance

14.8.1 WIFA shall reimburse Developer for bond and insurance premiums actually paid, without markup, and not to exceed the applicable amount in the Task Specific Information. WIFA may adjust the insurance requirements for each Task according to the scope of the Task and will specify any adjustments in the Task Specific Information for each Task.

14.8.2 Developer may invoice such pass-through amounts for each Task no earlier than the first invoice that Developer submits to WIFA for each respective Task pursuant to Section 14.19(a).

14.8.3 Developer shall not be entitled to be paid for any difference between the not-to-exceed amount in the Task Specific Information and the sum of the amounts payable under this Section 14.8.1.

14.9   Cost and Pricing Data Audit Requirements

14.10   Applicability

This Section 14.10 applies to Developer, its Subcontractors and Suppliers. Developer, its Subcontractors and Suppliers shall be subject to audit at any reasonable time by the Authorized Auditors for:

(a)   Any Extra Services Costs proposed for a Change Order, or

(b)   Errors, miscalculations and gaps in cost and pricing Data for the Contract, including any Change Order.

14.11 Access

Upon reasonable advance Notice to Developer, Subcontractors or Suppliers, with a copy sent to Developer's Representative, the Authorized Auditors shall have access during Developer's normal business hours to all Records related to Costs or performance of the proposed Modification for the purpose of auditing.

14.12 Records Retention

Developer, Subcontractors and Suppliers shall maintain all Books and Records required under this Contract for a period of not less than five years after the date of expiration or earlier termination of this Contract or otherwise required by Applicable Law (including all applicable Arizona public records laws, the Public Records Law, as defined in Section 21.2.1, and A.R.S. §§ 35-214 and 35-215). In the event of litigation or settlement of Claims arising from the performance of this Contract, Developer, Subcontractor and Suppliers shall maintain all Books and Records related to this Contract until WIFA or any Governmental Entity or their Representatives have disposed of all such litigation, appeals, Claims or exceptions related thereto.

14.13 Reproduction of Records

Authorized Auditors shall have the right to reproduce (copy, download, transcribe, print, or other method of reproduction, by any means whatsoever free of charge) any Developer, Subcontractor or Supplier Books and Records, including those related to Costs proposed for a Change Order, as required by Applicable Law (including the Public Records Law, as defined in Section 21.2.1, and A.R.S. §§ 35-214 and 35-215). Developer, Subcontractor or Supplier shall make said evidence (or to the extent accepted by the Authorized Auditors, photographs, micro-photographs or other authentic reproductions thereof) available to the Authorized Auditors at Developer's offices at all reasonable times and without charge.

14.14 Maintenance and Segregation of Records

Developer, Subcontractors or Suppliers shall maintain and segregate cost and pricing Data and Books and Records sufficient to properly reflect all direct and indirect Costs of whatever nature claimed to have been incurred or anticipated to be incurred in connection with a Change Order to the Contract.

14.15 Defective Cost and Pricing Data

FAR 52-215-10 Price Reduction for Defective Cost or Pricing Data and 52.215-11 Price Reduction for Defective Cost or Pricing Data-Modifications shall apply to this Contract. The term "Government" referred to in the FAR clauses shall include WIFA for purposes of this Contract.

14.16 Disposition of Audit Findings

The Contracting Officer may use all evidence in the Books and Records, including the audit findings to:

(a) Negotiate Change Orders, or

(b)   Demand payment from Developer or adjust any Developer's Payment Application to:

(i)   Reduce amounts found by the Contracting Officer to be unallowable costs; or

(ii)   Adjust for prior overpayments or underpayments.

14.17 Allowability, Allocability & Reasonableness Definitions

14.17.1 This clause is intended to clarify and further define the allowability, allocability and reasonableness of costs. It is not all-inclusive and is not intended to modify and/or interpret the FAR requirements or conflict with any other Contract terms and conditions. WIFA has the right to determine the allocability, allowability and reasonableness of all costs incurred by Developer under the Contract. If Developer disputes WIFA's findings, Developer may file a dispute under Section 27. The allowability, allocability and reasonableness of reimbursable costs claimed under the Contract will include the following considerations:

14.17.2 Allowability of costs is determined using FAR Subpart 31.204, this Article 10, Generally Accepted Accounting Principles ("**GAAP**") (promulgated by the AICPA) and any advance cost understanding incorporated into the Contract.

14.17.3 Reasonableness of costs is determined using FAR Subpart 31.201-3, GAAP, the Internal Revenue Code ("**IRC**") (where applicable), the advance cost understanding and WIFA's Developer Cost Guidelines. Reasonableness of costs must be carefully examined to ensure that costs incurred would be similar to those expected to be incurred in a competitive pricing environment. The burden of proof shall be upon Developer to establish that a cost is reasonable.

14.17.4 Costs are allocated to final cost objectives. The allocability of cost is determined using FAR Subpart 31.201.4. Specifically, indirect expenses shall be allocated on the basis of the beneficial or causal relationship between supporting (indirect expense) and receiving activities (final cost objective). Such expenses shall be distributed directly to business units/segments and/or final cost objectives to the maximum extent possible. Expenses not directly identifiable to a final cost objective, if significant in amount, shall be grouped in separate logical and homogeneous pools and allocated based on a causal or beneficial relationship to final cost objectives.

14.17.5 If the Contract represents more than 50% of Developer's or any Subcontractor's business (% defined as Direct Labor v. Total Developer/Subcontractor Direct Labor), outside professional expenses incurred in preparing and negotiating Developer's or Subcontractor's positions on Claims, disputes, or audits related to issues of reasonableness, allowability, or allocability shall not be allowable as a

direct or indirect cost to WIFA, unless prior written approval is obtained from WIFA.

14.18 Taxes

14.18.1 Developer shall pay, prior to delinquency, all applicable Taxes.

14.18.2 Developer may not make any Claim due to its misinterpretation of Applicable Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes and shall bear sole cost, liability and responsibility respecting such Taxes.

14.18.3 The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes. All applicable taxes shall be included in the pricing offered for any Task. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the Developer.

14.18.4 In the event that an exemption from applicable sales or use taxes becomes available for the WIP, WIFA shall have no obligation to reimburse Developer for any such taxes, and WIFA shall be entitled to an upfront payment from Developer or a reduction in payments made by WIFA, as agreed upon by the Parties, equal to the amount actually saved following the date such exemption becomes available.

14.18.5 The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.

14.18.6 Developer agrees to provide a tax identification number or social security number for the purposes of reporting to appropriate taxing authorities, monies paid under this Contract. If the federal identifier of the Developer is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

14.18.7 Developer shall require all Subcontractors to hold WIFA and the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

14.19 Invoices

Developer shall submit to the WIFA Representative an invoice on account of all amounts then payable by WIFA to Developer under this Contract:

(a)   monthly, at the times specified in the Task Specific Information (Task 1) (unless some other period is agreed to by the Parties in writing) but no later than 30 calendar days from WIFA's receipt of the Services in accordance with A.R.S. Titles 35 and 49, and A.A.C. Title 18, until the Expiration Date;

(b)   in the format set out in Exhibit 9 (Form of Application and Certificate for Payment) or in any other format which the WIFA Representative may reasonably require;

(c)   which is based on the applicable Table of Rates and Prices to the extent this is relevant;

(d)   which shows separately the amounts (if any) claimed on account of [____] **[Note to Proposers: To be updated based on elected payment structure]**:

(e)   which provides a current, up-to-date (i) WIP Schedule and (ii) Project Status Report;

(f)   which includes:

    (i)   in the case of amounts to be paid on a unit price basis, invoices, receipts or other evidence establishing the number of units delivered;

    (ii)   in the case of amounts invoiced for Time and Materials Services, all supporting documentation described in Exhibit 11 (Costs Schedule);

    (iii)   the amounts paid to Subcontractors from the payments made by WIFA to Developer with respect to the prior month's invoice;

    (iv)   affidavits of payment and unconditional waivers of Liens and claims, in the applicable forms required under Arizona Revised Statutes Title 33, Chapter 7, Article 6, Section 1008, executed by Developer and each Subcontractor with respect to all amounts paid in the prior month's invoice; and

    (v)   Subcontractor payment releases in the manner and form required by Arizona Revised Statutes Title 32, Chapter 10, Article 5; and

(g)   which sets out or attaches sufficient details, calculations, receipts, supporting documentation and other information on an Open Book Basis with respect to all amounts claimed by Developer:

    (i)   to enable the WIFA Representative to fully and accurately determine (without needing to refer to any other

documentation or information) the amounts then payable by WIFA to Developer under this Contract; and

(ii) including any such documentation or information which the WIFA Representative may by Notice from time to time require Developer to set out or attach, whether in relation to a specific invoice or all invoices generally.

14.20 Payment by WIFA

14.20.1 Within 30 days after WIFA's receipt of a complete invoice that satisfies all the requirements in Section 14.19, WIFA shall approve or dispute all or a portion of such invoice.

14.20.2 WIFA shall provide Developer the reason(s) for any disputed portions of such invoice ("**Payment Statement**") and withhold the disputed amount, and Section 14.24 shall apply.

14.20.3 WIFA shall pay Developer the undisputed amount of such invoice approved for payment less any applicable Retainage and less any amounts that WIFA is otherwise entitled to withhold or deduct under this Contract within 15 days of a Payment Statement.

14.20.4 Any Payment Statement may correct any error in or modify any previous Payment Statement.

14.20.5 No payment or deduction by WIFA is or shall be construed as: (a) evidence of the value of Services, (b) evidence that the Services has been satisfactorily carried out in accordance with this Contract, (c) an admission of liability by WIFA, (d) an approval by WIFA of Developer performance or compliance with this Contract, (e) an acknowledgement that WIFA has inspected or accepted the Services, or (f) a waiver of any Claim or right that WIFA may then or thereafter have, including among others, warranty and indemnity rights.

14.20.6 All payments made by WIFA shall be subject to correction or adjustment in subsequent progress reviews and payments.

14.21 Interest

14.21.1 Any amounts that Developer owes to WIFA under this Contract shall earn interest from the date such amounts are due to WIFA at the lesser rate of either (a) 10% per annum or (b) the maximum rate allowable under Applicable Laws. The foregoing interest charges are separate and in addition to any administrative charge payable by Developer to the WIFA under this Contract.

14.21.2 If payment of any undisputed amount from WIFA to Developer is made after the 45th day following the proper submission of an undisputed and properly completed invoice in accordance with Section 14.19 or Section 14.21 (as applicable), then the payment shall include interest on

the amount owing, at the rate based on State Treasurer earnings in pooled investments for State agencies for the prior month, converted to a daily rate from the 45th day after the payment was due until the date of payment.

14.21.3 [Interest shall not accrue on Retainage or monies withheld pursuant to stop notices or the final payment under this Contract].

14.22 Deductions, Exclusions and Limitations on Payment

14.22.1 Retainage

(a) Where specific in the Task Specific Information for each Task, WIFA shall withhold funds ("**Retainage**") from each payment to be made to Developer an amount equal to 5% of the payment amount for the Services for the applicable Task.

(b) Except as otherwise provided in Section 14.22.1(d), the earliest dates for release of Retainage are 30 days after achievement of the applicable Task Approval.

(c) Except as otherwise provided in Section 14.22.1(d), no portion of any Retainage shall be released until the following conditions have been met:

(i) all Liquidated Damages have been paid to WIFA in accordance with this Contract;

(ii) Developer has established to WIFA's satisfaction that Liquidated Damages are not anticipated to be owing to WIFA;

(iii) Developer has provided Notice to WIFA requesting release of Retainage;

(iv) no Developer Default has occurred or remains uncured, and no event has occurred that, with the passage of time or the giving of notice, would constitute a Developer Default; and

(v) release of the applicable Retainage has been approved in writing by each Surety.

(d) WIFA shall release Retainage withheld for any Services completed by any Subcontractor once per fiscal quarter upon receipt of a quarterly application from Developer (i) stating the Subcontractor has satisfactorily completed all Services required to be performed under its Subcontract, (ii) stating the amount withheld by Developer under the Subcontract, and (iii) providing all backup information and stop payment notice and Lien releases as may be required by WIFA.

(e) Within seven days after receipt of payment of Retainage from WIFA to Developer for completed subcontracted Services, Developer shall pay to the applicable Subcontractor (i.e., the Subcontractor that completed the subcontracted Services) all moneys withheld as retention from the Subcontractor, even if Services to be performed by Developer or other Subcontractors is not completed and has not been accepted. Developer shall show good cause and obtain WIFA's prior written consent for any delay or postponement in payment of retainage over 30 days.

(f) The amounts to be released under Section 14.22.1(a) shall be reduced by 150% of the sum of the following: (i) any amounts which WIFA is permitted to retain under AZ Prompt Pay Act. A.R.S. § 32-1181 *et seq.*; (ii) any amounts applied to the payment of Losses incurred by WIFA for which Developer is responsible; (iii) any amounts that WIFA deems advisable, in its good faith discretion, to retain to cover any existing or threatened Claims, Liens and stop payment notices from Subcontractors, Suppliers, laborers, Utility Owners, or other third parties relating to the WIP; (iv) the estimated cost, as determined by WIFA, in its good faith discretion, of remedying any Defects or otherwise remedying any breach of contract or Developer Default by Developer, plus an administrative charge equal to 10% of such costs; (v) any amounts WIFA is required to retain under applicable federal law, including 26 U.S.C. § 3402; and (vi) any Liquidated Damages.

(g) Final payment of Retainage not applied as a result of Section 14.22.1(f) shall be made upon Developer's showing, to WIFA's satisfaction, that all such matters have been resolved, and Developer shall deliver to WIFA a certificate representing that there are no outstanding Claims of Developer or any Claims, Liens or stop payment notices of any Subcontractor, supplier, laborer, Utility Owner or other third party with respect to the Services.

(h) Developer may substitute securities or a letter of credit for the Retainage pursuant to the procedures contained in A.R.S. § 41-2576. No such substitution shall be accepted until: (i) WIFA approves such securities or letter of credit as qualifying substitutes; (ii) the value of such securities has been established to WIFA's satisfaction; (iii) the Parties have entered into an escrow Contract (if the securities are to be held in escrow) in form and substance satisfactory to WIFA; and (iv) all documentation necessary for assignment of the securities to WIFA or to the escrow agent, as appropriate, has been delivered in form and substance satisfactory to WIFA. If Developer has substituted securities for any of the Retainage, then WIFA may request that such securities be revalued from time to time, but not more often than monthly. Such revaluation would be made by the Person designated by WIFA and approved by Developer. If such revaluation results in a determination that such securities have a market value less than the amount of Retainage for which they were substituted, then, notwithstanding

anything to the contrary contained in this Contract, the amount of the Retainage required under this Contract shall be increased by such difference in market value. Such increased Retainage shall be withheld from the next Progress Payment due to Developer under this Contract.

14.22.2 Withholding of Payment

(a) Notwithstanding any other provision of this Contract and in addition to any other authorized deductions, WIFA may deduct from any payment owing under this Contract:

(i) any amounts due and payable, charge, payment, reimbursement or other moneys due from Developer to WIFA, whether under this Contract or under Applicable Laws, including Liquidated Damages that have accrued as of the date of any invoice or that are anticipated to accrue based on the Milestone Deadlines shown in the WIP Schedule;

(ii) any Claim that WIFA or others as specified below may have against Developer, including:

    A. failure of Developer to make payments of undisputed amounts to a Subcontractor when such payments are due under the Subcontract, which failure is not cured by Developer; and

    B. Claims by any third party for which Developer is or may be responsible;

(iii) any amounts applied to the payment of Losses incurred by WIFA for which Developer is responsible;

(iv) any sums expended by WIFA in performing any of Developer's obligations under this Contract that Developer has failed to perform or that WIFA may elect to undertake itself plus an administrative charge equal to 10% of such costs;

(v) all legally required sums for, without limitation, stop notices, labor and tax Liens, including any fines or penalties WIFA incurs because of the failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals or Applicable Laws (including any Environmental Laws);

(vi) the estimated cost, as determined by WIFA, in its good faith discretion, of remedying any Defects or otherwise remedying any breach of contract or Developer Default by

Developer plus an administrative charge equal to 10% of such costs; and

(vii) any amounts WIFA is required to retain under applicable federal law, including 26 U.S.C. § 3402.

14.23 Payment to Subcontractors

14.23.1 Upon receipt of payment from WIFA, Developer shall pay each Subcontractor within seven days of receipt of payment from WIFA, out of the amount paid to Developer on account of such Subcontractor's portion of the Services, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract; provided any such retainage may not exceed the amount of Retainage withheld under this Contract.

14.23.2 Any breach of the prompt payment requirements in this Section 14.23 shall subject Developer to the penalties, sanctions and other remedies specified in ARS § 32-1183 and may result in the application of appropriate administrative sanctions, including WIFA's right to withhold 1.5 percent of the invoice amount due to Developer as a penalty for every month that full payment is not made to a Subcontractor. This requirement shall not be construed to limit or impair any contractual, administrative, judicial or equitable remedies otherwise available to Developer or any Subcontractor against each other in the event of a dispute involving late payment or nonpayment by Developer or deficient Subcontract performance or noncompliance by a Subcontractor.

14.23.3 WIFA has no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by Applicable Laws. Within five days after submission of any notice of claim that is based in whole or in part on a request by a Subcontractor for a price increase or time extension under its Subcontract, Developer shall review and analyze the claim, determine in good faith and certify that it is justified under the Subcontract and that Developer is justified in making its request for an increase in compensation and/or time extension. Each such notice involving Subcontractor work shall include a summary of Developer's analysis of the claim. Any such notice under this Section 14.23 shall be considered incomplete if it involves Subcontractor work and is not accompanied by such analysis and certification.

14.24 Disputes

14.24.1 Failure by WIFA to pay any amount in dispute shall not alleviate, diminish or modify in any respect Developer's obligation to perform the Services in accordance with this Contract, and Developer shall not cease or slow down its performance under this Contract on account of any such amount in dispute. Any dispute regarding payment shall be resolved in accordance with Section 27. Developer shall proceed as directed by WIFA pending resolution of the dispute. If Developer disagrees with directions provided by WIFA and such directions or determination are

subject to the dispute resolution process under this Contract, it may provide Notice to WIFA that it is performing such Services under protest, that it has not waived or renounced any rights and retains the right to submit a Claim in accordance with <u>Section 27</u>. Upon resolution of any such dispute, each Party shall promptly pay to the other any amount owing.

14.24.2 Pending resolution of a dispute, Developer shall continue performance of all obligations under this Contract, without diminution of effort, and WIFA shall continue to make all undisputed payments in accordance with this Contract.

15. GENERAL PROVISIONS APPLYING TO RELIEF EVENTS

15.1 Sole Entitlement

To the fullest extent permitted by Applicable Laws, Developer acknowledges and agrees that:

(a) the amounts payable under <u>Section 14</u> constitute full compensation for performance of the Services; and

(b) Developer's sole right to claim an extension of time, additional compensation or other relief under this Contract or to otherwise make any Claim in connection with any Relief Event are as set out in <u>Sections 15</u> through <u>17</u>.

15.2 Mitigation

Developer shall take all proper and reasonable steps necessary and within its control both to preclude, and to minimize the occurrence or and consequences of a Relief Event, including by resequencing, reallocating, or redeploying personnel, equipment and resources to other Services, as appropriate.

15.3 Deductions for Relief Events

15.3.1 The compensation payable or relief due to Developer with respect to any Relief Event will be reduced:

(a) by any amount which a Developer-Related Entity recovers under any insurance policy in connection with the Relief Event, or would have recovered if it had complied with the requirements of this Contract, and which such amount will not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy; and

(b) by the amount of any costs avoided or otherwise reduced as a result of the Relief Event.

15.3.2 No compensation will be allowed for any Relief Event to the extent that, the Relief Event arises out of, relates to or was caused or contributed to by:

    (a) any Developer Fault; or

    (b) to the extent of Developer's failure to take all proper and commercially reasonable steps necessary and within its control both to preclude and to minimize the occurrence and consequences of the Relief Event, including by resequencing, reallocating, or redeploying personnel, equipment and resources to other Services, as appropriate.

16. RELIEF EVENTS

16.1 Notice

16.1.1 WIFA and Developer agree that time is of the essence in the performance and completion of the Services for each Task.

16.1.2 Any notice or information Developer is required to provide to WIFA with respect to a Relief Event is a "Relief Event Notice."

16.1.3 Developer shall give notice to WIFA as soon as possible (but no later than 20 days after Developer has Actual Knowledge of or should have known of through performing its obligations with reasonable diligence and in accordance with Good Industry Practice) if a Relief Event that occurs after the Effective Date which may adversely impact performance of the Services.

16.1.4 Each Relief Event Notice shall include:

    (a) a summary of the provisions of this Contract that entitle Developer to relief;

    (b) sufficient details of the Relief Event to enable the WIFA Representative to make an informed decision on whether to grant relief, the circumstances from which the Relief Event arises including its nature, the date of its occurrence, its duration, and the portions of the WIP affected;

    (c) details of the contemporary records which Developer shall maintain to substantiate its claim for relief;

    (d) details and amounts of applicable deductions under Section 15.3 and measures which Developer has taken to date and proposes to adopt to mitigate and minimize the consequences of the Relief Event;

(e)   where the Relief Event involves a Subcontractor, all correspondence relating to, or arising out of, the Relief Event with the Subcontractor;

(f)   where the Relief Event is also a Compensable Event, an itemized estimate of all amounts claimed under Section 16.3.1(b); and

(g)   a detailed description (with dates) of all steps and actions that Developer has taken to minimize, avoid and mitigate the occurrence and consequences of the Relief Event.

16.1.5   Developer shall submit to WIFA supplemental information to substantiate or support Developer's claim within seven days of receipt of any such request from WIFA.

16.1.6   Upon receipt of all details and information described above, the WIFA Representative may request further supporting particulars or carry out an inspection to investigate and assess the validity of Developer's claim, including, on-site inspection. Developer shall promptly comply with any such request from the WIFA Representative.

16.1.7   If the direction or other fact, matter or thing upon which the Relief Event is based, or the consequences of the direction or other fact, matter or thing are continuing, Developer shall continue to give the information required by Section 16.1.4 every 28 days after the Relief Event Notice under Section 16.1.4 was submitted or given to the WIFA Representative, until after the direction or other fact, matter or thing upon which the Relief Event is based has, or the consequences thereof have, ceased.

16.2   Delay in Notification

16.2.1   If Developer fails to submit any Relief Event Notice within the 20-day timeframe required under this Contract, then Developer shall not be entitled to make any Claim for Losses in connection with that Relief Event, unless Developer proves to WIFA, based on clear and convincing evidence, that: (a) WIFA was not materially prejudiced by the lack of the Relief Event Notice; or (b) the WIFA Representative had Actual Knowledge of the Relief Event before the due date for the Relief Event Notice.

16.2.2   Notwithstanding anything to the contrary in Section 16.2.1, if Developer fails to submit any Relief Event Notice within 180 days after Developer has Actual Knowledge of or should have known of through performing its obligations with reasonable diligence and in accordance with Good Industry Practice, then Developer shall not be entitled to make any Claim for Losses in connection with the Relief Event and any such Claim and any compensation, time extension or other relief related thereto, shall be irrevocably and permanently forfeited, waived and released by Developer.

16.3 Relief Events

16.3.1 If a Relief Event occurs after the Effective Date and before the Task Deadline for the Services that will delay the achievement of any Milestone by the Milestone Deadline and Developer has complied with Sections 15 and 16, then, subject to Sections 19 and 20, WIFA, in its reasonable discretion, shall:

(a) provide Developer an adjustment to the Milestone Deadline, to the extent that the delay is directly caused by the Relief Event and materially adversely impacts the Critical Path; and

(b) subject to Section 15.3, if a Relief Event that qualifies under Section 16.3.1 is also a Compensable Event, then Developer shall be entitled to have the applicable Payment Amount increased or decreased as follows:

(i) the extra Cost of the Services as a direct result of the Compensable Event;

(ii) Delay Costs reasonably incurred by Developer as a direct result of the delay or disruption caused by a WIFA-Caused Delay or Change in Law only; and

(iii) a WFA-approved adjustment to the Developer's Mark-up that shall not exceed the Maximum Cost Markup of the extra Cost of the Services due to the Compensable Event.

16.4 Change in Project Standards during the Term

If, after the applicable Setting Date, there is any change or variance in a Project Standard that is inconsistent with requirements of this Contract:

(a) the Party discovering the change or variance must promptly give the WIFA Representative and the other Party Notice;

(b) the WIFA Representative shall, within 45 days of receipt of a Notice under Section 16.4(a), instruct Developer as to the course it must adopt insofar as the Services is affected by the change or variance; and

(c) if the WIFA directs the Developer to comply with the change or variance, Developer will be entitled to relief in accordance with Section 16.3, as if the change or variance in the Project Standards was a Relief Event, provided Developer has complied with Sections 15 and 16.

16.5 Extension of Time in Approved Subcontract

Developer is required to administer the provisions of each Approved Subcontract strictly in accordance with its terms and must not approve an extension of time or unilaterally grant an extension of time to any Subcontractor, unless:

(a) the Subcontractor is entitled to such extension of time under the terms of the Approved Subcontract;

(b) Developer has given notice of the proposed extension of time to the WIFA Representative, including details of the Subcontractor's entitlement to such an extension of time in accordance with the terms of the Approved Subcontract; and

(c) the WIFA Representative has given written approval of the extension of time.

No extension of time under a Subcontract shall constitute an extension of time under this Contract unless the circumstances independently entitle Developer an extension of time under this Contract.

17. CHANGE ORDERS

17.1 Change Order Request

17.1.1 At any time during the term of this Contract, the WIFA Representative may issue a "Change Order Request" to Developer, which will set out details of a proposed Change that WIFA is considering.

17.1.2 Developer shall immediately take all action required under any relevant Subcontract in relation to each Subcontractor that would be involved in carrying out the proposed Change.

17.1.3 Within 20 days of the receipt of a Change Order Request, Developer shall provide the WIFA Representative with a Notice that includes:

(a) the adjustment (if any) to the applicable Payment Amount to carry out the proposed Change; and

(b) the effect (if any) that the carrying out of the proposed Change will have on:

(i) the Payment Amount;

(ii) the Project Schedule, including the achievement of each Milestone by the applicable Milestone Deadline; and

(iii) performance of the Services.

17.2   WIFA Change Orders and Directive Letters

17.2.1   Whether or not the WIFA Representative has issued a Change Order Request under Section 17.1, the WIFA Representative may at any time during the term of this Contract direct Developer to carry out a Change by issuing a "Change Order" in which the WIFA Representative will state one of the following:

(a)   the proposed adjustments to the amounts payable under this Contract as set out in Developer's Notice under Section 19.1 are agreed and will be made; or

(b)   any adjustment to the amounts payable under this Contract will be determined under Section 24.3.

17.2.2   WIFA may, at any time and for any reason, issue a Directive Letter to Developer in the event of any desired change in the Services or in the event of any dispute regarding the scope of Services. The Directive Letter will state that it is issued under this Section 17.2 and will describe the Services in question and will state the basis for determining compensation and any time extension, if any.

17.2.3   Developer shall immediately implement the Services in accordance with any Directive Letter issued by WIFA; provided Developer may notify WIFA that it considers the directed Services to constitute a Change and request that WIFA issue a Change Order under Section 17.2.1 (in such event, Developer shall proceed with implementation of the Services while the issue of whether the directed Services is a Change is resolved between the Parties or pursuant to a dispute).

17.3   Valuation of Change Order

17.3.1   Subject to Section 24.8, the amounts payable under this Contract will be adjusted as follows:

(a)   where a Change Order requires a Change, the Payment Amount will be adjusted as follows:

(i)   as agreed under Section 17.2.1(a); and

(ii)   if Section 17.3.1(a)(i) does not apply, based on a negotiated lump sum price, unit prices or time and materials as further provided in Exhibit 11 (Cost Schedule), with the method determined by the WIFA, in its sole discretion.

17.3.2   No adjustment to any Developer's Cost Markup shall exceed an amount equal to the Maximum Cost Markup for the relevant Phase multiplied by the additional Cost of the Services incurred as a direct result of the Change.

17.4   Change Orders and Directive Letters Generally

17.4.1   The adjustments agreed to or determined under Section 17.3 with respect to any Change will be deemed to be in full satisfaction of all Claims, compensation, schedule relief and all other relief with respect to such further work and Services required for the Change, notwithstanding that the amounts actually payable by Developer to relevant Subcontractors with respect to such work may be more or less than the adjustment.

17.4.2   No Change Order will invalidate this Contract, irrespective of the nature, extent or value of the work or Services that is the subject of the Change.

17.4.3   Developer shall immediately comply with any Change Order or Directive Letter issued by WIFA.

17.4.4   If Developer undertakes any efforts outside the scope of the Services under the Contract, without a Directive Letter or Change Order signed by WIFA, Developer shall be deemed to have undertaken such efforts voluntarily, and shall not be entitled to a Change Order, any additional compensation, schedule relief or other relief. If, following receipt of a Directive Letter, Developer believes that the directed Services is a Change, it must provide Notice pursuant to Section 28.1 and any failure to do so shall carry the same implications as set forth in Section 28.3.

17.5   Omissions

If a Change Order or any direction by the WIFA Representative omits any part of the Services, WIFA may thereafter carry out the omitted Services itself or by engaging Other Contractors. Except in the event that WIFA has exercised any step-in rights and/or undertaken Services that Developer has failed to perform in accordance with this Contract, in the event WIFA performs Services itself or engages Other Contractors in accordance with this Section 17.5, Developer shall not have any liability or warranty obligations for the specific Services carried out by WIFA.

17.6   Developer Change Order Request

17.6.1   Developer may, for its convenience, request the WIFA Representative to issue a Change Order. Any such request must be in writing and must contain the following details:

(a)   a description of the Change Order;

(b)   the additional or reduced costs or time involved in the Change Order (including any Lum Sump, Cost of the Services and Developer's Cost Markup);

(c)   any benefits which will flow to WIFA from the Change Order;

(d)   the effect which the Change Order will have upon the Project Schedule, if any; and

(e)   the effect which the Change Order will have upon the future cost of operating and maintaining the Services.

17.6.2   Any cost savings realized by Developer from a Developer requested Change Order shall be shared equally between the Parties.

17.6.3   Any cost savings realized by WIFA from a Developer requested Change Order shall remain with WIFA.

17.7   **WIFA Representative's Determination**

17.7.1   After a request is made by Developer in accordance with <u>Section 17.6</u>, the WIFA Representative will, in the WIFA Representative's sole discretion, give a Notice to Developer:

(a)   rejecting the request;

(b)   requesting additional information or clarifications with respect to the request (and Developer shall have 10 days in which to respond with such requested information and clarifications, such process to continue until the WIFA acts pursuant to <u>clause (a)</u> or <u>clause (c)</u>; or

(c)   approving the request either conditionally or unconditionally.

17.7.2   The WIFA Representative will not be obliged to exercise its discretion for Developer's benefit.

17.8   **Developer Change Order Request Approved by the WIFA Representative**

If the WIFA Representative issues a Notice under <u>Section 17.7</u> approving Developer's request under <u>Section 17.6</u>:

(a)   amounts payable under this Contract (or the methods of determining them) will be reduced by or adjusted to reflect the Parties' sharing equally in savings under <u>Section 17.6.2</u>; and

(b)   Developer will be responsible for all parts of the Services which are in any way affected by the Change Order.

17.9   **Unauthorized Changes**

Changes to this Contract directed by a person who is not specifically authorized by WIFA in writing or made unilaterally by the Developer are violations of the Contract and of Applicable Law. Such changes, including unauthorized written Change Orders shall be void and without effect, and the Developer shall not be entitled to any Claim under this Contract based on those changes.

18.   **AVAILABILITY OF FUNDS**

WIFA will use existing funds raised pursuant to A.R.S. § 49-1302 for the development and administration of the WIP(s) to the extent the project(s) will be funded by the LTWAF. If funding

is not available for any fiscal year during which this Contract is in effect, WIFA will issue a suspension order in accordance with Section 24.2 (Suspension).

18.1   Availability of Funds for the Current State Fiscal Year

18.1.1   Should the State Legislature enter back into session and reduce the appropriations for any reason and these goods or services, including the Services under this Contract, are not funded, the State may take any of the following actions:

(i)   Accept a decrease in price proposed by Developer;

(ii)   Cancel this Contract; and

(iii)   Cancel this Contract and re-solicit the requirements.

18.2   Availability of Funds for the Next State Fiscal Year

18.2.1   Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

19.   REPRESENTATIONS AND WARRANTIES

19.1   Developer's Representations and Warranties

By executing this Contract, Developer represents and warrants to WIFA as follows:

(a)   all Services will be performed in a professional manner, by or under the supervision of Persons applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract, who hold and will maintain for the Term of the Contract all necessary and valid authority, licenses, registrations, certifications, professional ability and skills to perform the Services in the State and, as applicable:

(i)   are careful, skilled, experienced and competent in their respective trades or professions;

(ii)   are professionally qualified to perform the Services in accordance with this Contract;

(iii)   shall assume professional responsibility for the accuracy and completeness of the Services in accordance with this Contract; and

(iv)   Developer will provide individual evidence of such valid authority, licenses, registrations, or certifications to WIFA or the State's authorized representatives upon request.

(b)   all materials and Services will comply with the requirements of this Contract and all Applicable Law. In the event of breach of this warranty, Developer shall take the necessary actions to correct the breach and the consequences thereof, at Developer's sole expense, in the most expeditious manner as permitted by existing circumstances. If Developer does not promptly take steps to correct the breach upon notification thereof by WIFA, WIFA without waiving any other rights or remedies it may have at law or otherwise, may do so or cause others to do so, and Developer shall promptly reimburse WIFA for all expenses and costs incurred in connection therewith;

(c)   Developer has, in accordance with Good Industry Practice, performed Reasonable Investigation regarding the Services, reviewed and analyzed all information provided in the Reference Documents regarding the Services, and evaluated the constraints affecting the, and has reasonable grounds for believing and does believe that the Services can be completed within such constraints for the Payment Amount;

(d)   Developer is a [_____] [form of entity] duly authorized and validly existing under the laws of [_____] and authorized to do business in the State, and Developer will remain duly qualified and in good standing throughout the term of this Contract and for as long as any obligations remain outstanding under this Contract;

(e)   each Developer-Related Entity doing business in the State is duly qualified to do business and is in good standing in the State and will remain duly qualified and in good standing during the performance of its applicable portion of the Services and for as long as any its obligations remain outstanding under this Contract;

(f)   the execution and delivery of this Contract and Developer's performance of this Contract have each been duly authorized by all necessary action of Developer's governing body and each person executing this Contract has been duly authorized to execute and deliver this Contract on behalf of Developer;

(g)   there is no action, suit, proceeding, litigation, or investigation pending or to Developer's knowledge threatened against Developer that individually or in the aggregate either: (i) challenge Developer's authority to execute, deliver or perform or the validity or enforceability of any of this Contract or challenge the authority of the Developer Representative executing this Contract; or (ii) could reasonably be expected to result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Developer or in any impairment of its ability to perform the Services;

(h)   Developer has not received any notice or has knowledge of any violation of Applicable Law other than notices of violations that are immaterial to WIFA or this Contract, and if Developer receives notice or obtains knowledge of any violation of Applicable Law other than notices of violations that are immaterial to WIFA or this Contract, Developer shall provide Notice of such violation to WIFA within 2 days;

(i)   no organizational conflicts of interest exist with respect to Developer and any Subcontractor and there have been no organizational changes to Developer or any Subcontractor specified in Developer's Proposal, which have not been approved in writing by WIFA. For the purposes of this Section 19.1(h), "organizational conflicts of interest" means any organizational conflicts of interest as described in the WIFA's Conflict of Interest Policy or under Section 6.2 (Organizational Conflicts of Interest) of the Solicitation;

(j)   the Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other IP rights or laws, except only to the extent the requirements of this Contract do not permit use of any other product and Developer is not and cannot reasonably be expected to be aware of the infringement or violation;

(k)   that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Developer nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities;

(l)   Developer will comply with all State Requirements provided in Exhibit 7A and adopts the warranties described in Exhibit 7A; and

(m)   Developer owns or will own good and marketable title and sufficient rights to all Intellectual Property, materials, equipment, tools and supplies to be furnished under this Contract, free and clear of all Liens, royalties, fees or other charges of any kind or nature. Developer warrants that all such Intellectual Property, materials, equipment, tools and supplies will be delivered free of any claim by a third party for infringement of any Intellectual Property or ownership right.

19.2   WIFA Representations and Warranties

WIFA represents and warrants to Developer that:

(a)   WIFA has the requisite power, authority and capacity to perform this Contract, and to do all acts and things, and execute, deliver and perform all other Contracts, instruments, undertakings and

documents as are required by this Contract to be done, executed, delivered or performed by WIFA;

(b) this Contract has been duly authorized, executed, and delivered by WIFA and constitutes a legal, valid, and binding obligation of WIFA, enforceable against WIFA in accordance with its terms; and

(c) there is no action, suit, proceeding or litigation pending and served on WIFA which challenges WIFA's authority to execute, deliver or perform, or the validity or enforceability of, this Contract to which WIFA is a party, or which challenges the authority of the WIFA official executing this Contract.

20. BOOKS AND RECORDS; PUBLIC RECORDS; INTELLECTUAL PROPERTY

20.1 Books and Records Maintenance and Access

20.1.1 Developer shall maintain at its the Project administration office within the County of Maricopa, a complete, accurate and up to date set of all Books and Records. Developer shall notify WIFA where such records and documents are kept.

20.1.2 Conforming with A.R.S. §§ 35-214 and 35-215, Developer shall keep and maintain all Books and Records required under Section 20.1.1 in accordance with applicable provisions of this Contract and each Quality Management Plan (QMP), and shall be subject at all reasonable times to inspection and audit in accordance with Good Industry Practice until seven years after the Expiration Date; provided, however, that all Books and Records which relate to Claims being processed or disputes brought under the dispute resolution procedures of this Contract shall be retained and made available until such disputes and Claims have been finally resolved.

20.1.3 WIFA may:

(a) review and audit Developer, its Subcontractors and their respective Books and Records, and interview any employees of Developer and its Subcontractors who may reasonably have information related to such records as and when WIFA deems necessary from time to time:

(i) for the purposes of verifying compliance with this Contract, the Governmental Approvals and Applicable Laws; and

(ii) in connection with the issuance of Change Orders and Contract amendments or the resolution of disputes and Claims.

(b) audit Developer's QMPs and compliance therewith, including the right to inspect Services and/or activities and to verify the accuracy

and adequacy of the QMPs and its component parts, plans and other documentation.

20.1.4   Developer shall provide, or cause to be provided to WIFA, such information or certifications as determined necessary or desirable by WIFA in connection with any WIP financing, including any WIFIA loan or bonds issued by WIFA, any information for inclusion in WIFA's securities disclosure documents, any information in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. Developer shall provide customary representations and warranties to WIFA and the capital markets as to the correctness, completeness and accuracy of any information furnished.

20.1.5   Developer shall grant to WIFA and its representatives and legal counsel, and to any Governmental Entities that WIFA is required to provide such audit rights pursuant to any WIP Project funding Contract or any Applicable Law, the audit and inspection rights under Section 20.1.3 without charge, and agrees to allow such Persons such access to such Books and Records and the Services. Such Persons may conduct any such audit of Books and Records or inspection of the Services upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud or other criminal activity. The right of audit and inspection includes the right to make copies and extracts and take notes.

20.1.6   Where the payment method for any Services is on a time and materials basis, such examination and audit rights shall include all Books and Records and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Services. If an audit indicates Developer has been over credited under a previous progress report or Progress Payment such over-credit will, at WIFA's sole option, be credited against current progress reports or payments or reimbursed to WIFA by Developer upon demand therefor.

20.1.7   For cost and pricing Data submitted in connection with pricing Change Orders or Contract amendments, WIFA and its representatives and legal counsel shall have the right to examine all Books and Records related to the negotiation of or performance of Services under such Change Orders and Contract amendments for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing Data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing Data submitted, along with the computations and projections used therein.

20.1.8   All Claims or disputes filed against WIFA shall be subject to audit at any time following the filing of the Claim or dispute. The audit may be performed by employees, representatives or agents of WIFA or by an auditor under contract with WIFA. No notice is required to commence any

audit within 45 days after the Task 5 or additional task approval. Thereafter, WIFA shall provide 15 days' Notice to Developer, any Subcontractors or their respective agents before commencing an audit of any Claim or dispute. Developer, Subcontractors or their agents shall provide adequate facilities, acceptable to WIFA, for the audit during normal business hours. Developer, Subcontractors or their agents shall cooperate with the auditors. Failure of Developer, Subcontractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of the Claim or dispute or to permit the auditor access to the Books and Records of Developer, Subcontractors or their agents shall constitute a waiver, release and discharge of the Claim or dispute and shall bar any recovery thereunder.

20.1.9 Compliance by Developer with the provisions of this Section 20.1 is a contractual condition precedent to Developer's right to seek relief.

20.1.10 Developer represents and warrants the completeness and accuracy of all information (including Books and Records) it or its agents provide in connection with the audits specified in this Contract, and shall cause all Subcontractors to warrant the completeness and accuracy of all information (including Books and Records such Subcontractors or their agents provide in connection with this Section 20.1).

20.1.11 Developer's internal and third-party quality and compliance auditing responsibilities shall be specified in the QMPs.

20.1.12 Developer shall collect and preserve each of the following types of Data in written form contemporaneously during Developer's performance of the Services, which shall be in form approved by WIFA:

(a) monthly report of labor by classification of management, supervision, engineering and other technical personnel used on the job;

(b) daily labor and equipment reports from Developer and each Subcontractor for construction-related activities;

(c) a daily occurrence log (in the form of a bound book with entries in ink) for construction-related activities which shall be maintained by Developer Representative or his designee(s), in which shall be recorded daily in a narrative form all significant occurrences on the WIP, including permit problems, unusual weather, asserted Force Majeure Events, events and conditions causing or threatening to cause delay or disruption or interference with the progress of any of the Services, known injuries to person or property, a listing of each activity depicted on the Project Schedule which is being actively prosecuted, notifications given and received, and significant WIP-related meetings; and

(d) a daily record in a format reasonably acceptable to WIFA, recording all labor, materials and equipment expenses which are being

incurred by reason of any event, condition or circumstance which Developer believes is or may become the subject of a Claim against WIFA. Any initialed or signed concurrence by the WIFA Representative (or designees) will be for purposes of verifying physical labor, material and equipment count rather than validating Developer's Claims.

20.1.13 To the extent requested by WIFA, Developer shall provide WIFA with access to and a copy of each item described in this Section 20; provided, however, that the provision of such information shall not constitute notice to WIFA.

20.1.14 This Contract and Developer may be subject to the examination and audit of the Arizona Auditor General, at the request of WIFA or as part of any audit of WIFA, for a period of three years after the final payment under this Contract. In addition, WIFA shall have the right to examine and audit all Books and Records and other Data related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing Data at no additional cost to WIFA, for a period of six years after final payment under this Contract.

20.2   Intellectual Property, Ownership and Licenses

20.2.1   Developed IP

(a)   Subject to Section 20.2.3, Developer acknowledges and agrees that all Developed IP, in any medium, is either owned by WIFA or specially ordered or commissioned by WIFA, including works made for hire pursuant to 17 U.S.C. § 101 (the U.S. Copyright Act of 1976), and shall be owned by WIFA upon authorship, creation, development or invention. Developer hereby assigns to WIFA all rights, title and interest in and to the Developed IP including any and all Software, Submittals, and designs. If any Developed IP is not the proper subject matter or is determined not to be a work-made-for-hire pursuant to the U.S. Copyright Act, Developer hereby assigns, and shall cause all Developer Related Entities to assign, to WIFA all rights, title and interest in and to the Developed IP including any Submittal. Developer agrees to execute, and shall cause all Developer Related Entities to execute, such further documents and to do such further acts as may be necessary to perfect, register, or enforce WIFA's ownership of such rights, in whole or in part. If any Developer Related Entity fails or refuses to execute any such documents, Developer, for itself and on behalf of any Developer Related Entity, hereby appoints WIFA as the necessary Developer Related Entity's attorney-in-fact (this appointment is irrevocable and is coupled with an interest) to act on Developer Related Entity's behalf and to execute such documents. Developer hereby forever waives and agrees never to assert, and shall cause any Developer Related Entity to waive and never to assert, against WIFA, its successors or licensees any and all "moral rights" (including claims based on 17 U.S.C. §§ 101-810 (the

Copyright Act of 1976, as modified), specifically including 17 U.S.C. § 106A(a) (the Visual Artists Rights Act of 1990, "VARA")) that such Developer Related Entity may have in any Intellectual Property or Submittal even after expiration or termination of this Contract.

(b)   All Developed IP shall be owned by WIFA immediately upon creation or generation, physically or digitally, and whether or not any such IP Material, including Software, Submittals, and or other work product have been delivered to WIFA under the terms of the Contract.

(c)   Developer shall deliver to WIFA all IP Material, including Software, Submittals, and or other work product (i) at time(s)/dates(s) pursuant to the Contract, or (ii) as soon as reasonably practicable after such creation or generation, but in no event later than the effective date of termination of this Contract.

(d)   Subject to Section 23.2.1(g), Developer, its Affiliates and its Subcontractors shall have no liability or responsibility to WIFA for Claims made or Losses sustained in connection with the use or unauthorized use of Developed IP by WIFA, any WIFA-member entity or any regional Governmental Entity on any project, other than the WIP, or any other projects specified in the Task Specific Information.

20.2.2   Subject Patents and Inventions

(a)   The following terms are defined only for purposes of this Section 20.2.2 (all other capitalized terms are as defined in Section 1.1):

(i)   **Invention** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(ii)   **Practical Application** means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the Invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(iii)   **Statutory Period** means the one-year period before the effective filing date of a claimed Invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(iv)   **Subject Patent or Invention** means any Invention of Developer conceived or first actually reduced to practice in the performance of Services.

(b)   **Allocation of Rights**

Developer may retain the entire right, title, and interest throughout the world to each Subject Patent or Invention subject to the provisions of this clause and 35 U.S.C. § 203. With respect to any Subject Patent or Invention in which Developer retains title, the State of Arizona will receive a nonexclusive, nontransferable (subject to Section 20.2.2(e)), irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Patent or Invention throughout the world.

(c)   **Invention Disclosure, Election of Title and Filing of Patent Application by Developer**

(i)   Developer will disclose each Subject Patent or Invention to WIFA within two months after the inventor discloses it in writing to Developer. The disclosure to WIFA shall be in the form of a written report and shall identify the details and nature of the Invention and the inventor(s). The report shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the Invention.

(ii)   Developer will elect in writing whether or not to retain title to any such Invention by notifying WIFA the earliest date within (A) one year of disclosure to WIFA, (B) not later than the Expiration Date, or (C) in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the Statutory Period wherein valid patent protection can still be obtained in the United States, the period for election of title is 60 days before the end of the Statutory Period.

(iii)   Developer will file its initial patent application on a Subject Patent or Invention to which it elects to retain title within one year after election of title or, if earlier, before the end of any Statutory Period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use.

(d)   **Conveyance of Title**

Developer will convey to WIFA, upon written request, title to any Subject Patent or Invention:

(i)   if Developer fails to disclose or elect title to the Subject Patent or Invention within the times specified in Section 20.2.2(c), or elects not to retain title; and

(ii) in any country in which Developer decides not to continue the prosecution of any patent application (including provisional) for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a Subject Patent or Invention.

(e) **March-in Rights**

Developer agrees that with respect to any Subject Patent or Invention in which it has acquired title under this Section 20.2.2, WIFA has the right to require Developer to grant a nonexclusive, partially-exclusive or exclusive license in any field of use to any Person in WIFA's discretion, upon terms that are reasonable under the circumstances, and if Developer refuses such a request WIFA has the right to grant such a license itself if:

(i) such action is necessary because Developer has not taken, or is not expected to take within a reasonable time, effective steps to achieve Practical Application of the Subject Patent or Invention in such field of use;

(ii) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Developer; or

(iii) such action is necessary to meet requirements for public use to the continued use, expansion or maintenance of the WIP, including any phase thereof.

20.2.3 Developer IP

(a) Developer hereby grants to WIFA an irrevocable, perpetual, non-exclusive, transferable (solely to a permitted WIFA's assignee), fully paid-up right and license to use, execute, perform, sublicense, exploit, manufacture, distribute, reproduce, adapt, display, and prepare derivative works ("**Base License Rights**") of Developer IP in connection with the Services, Submittals and/or the WIP. The rights granted herein shall survive the termination, expiration or cancellation of this Contract or any rights related thereto.

(b) Developer shall identify and disclose to WIFA all Developer IP required by, incorporated in, or combined with the Services, Submittals and/or the WIP.

(c) Subject to Section 20.2.3(d), Developer shall deliver to WIFA all IP Materials incorporating Developer IP, including Software and Source Code, prior to incorporation of such Developer IP into the Project IP or WIP.

(d) WIFA Use

(1) Subject to Section 21.1, WIFA shall:

(i)   not disclose any Developer IP to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of WIFA relating thereto; and

(ii)   include in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Developer IP and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

(2)   Notwithstanding any contrary provision of this Contract, in no event shall WIFA or any of its directors, officers, representatives, agents, employees, consultants or agents be liable to Developer, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality in Section 20.2.3(d) if such breach is not the result of gross negligence or intentional misconduct; Developer irrevocably waives all claims to any such damages.

20.2.4   Third Party IP

(a)   Developer shall use commercially reasonable efforts to secure Base License Rights in the name of WIFA to license Third Party IP in connection with the Services, Submittals and the WIP, and shall pay any and all royalties and license fees required to be paid for any Intellectual Property required by, incorporated in, or combined with the Project IP.

(b)   If the owner of Third Party IP refuses to grant Base License Rights pursuant to Section 20.2.4(a), Developer shall:

(i)   obtain WIFA's prior written approval, which shall not to be unreasonably withheld, of the terms and conditions of Third Party IP licenses; and

(ii)   identify and disclose to WIFA all Third Party IP required by, incorporated in, or combined with the Project IP.

(c)   Developer shall not incorporate Third Party IP into the Project without first obtaining (a) the licenses described in Sections 20.2.4(a) and (b), and (b) consent from each owner of the Third Party IP or from WIFA in accordance with this Section 20.2.4. The rights granted in this Section 20.2.4 shall survive the termination, expiration or cancellation of this Contract or any rights related thereto.

20.2.5 WIFA IP and WIFA Data

20.2.5.1 WIFA hereby grants to Developer Related Entities a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt and display the Project IP, WIFA IP, and WIFA Data, and any Submittal and/or other work product incorporating such Intellectual Property, solely in connection with and limited to the Allowed Uses. All rights not specifically granted in this Section 20.2.5.1 are reserved to WIFA. For the avoidance of doubt, no rights to WIFA trademarks, whether or not the subject of a state or US application or registration, ("**WIFA Marks**") are granted to Developer and Developer may not incorporate, refer to, or otherwise use WIFA Marks for any marketing, promotional or advertising purposes.

20.2.5.2 In addition to Developer's obligations and restrictions related to WIFA Data in this Contract, Developer acknowledges and agrees that all WIFA Data, including the results or creation of any anonymization, de-identification, aggregation or other analysis of such WIFA Data, whether physical or digital, is owned by WIFA. Except as specifically provided in this Contract, no Developer Related Entity shall make use of WIFA Data, including any anonymized, de-identified, or aggregated versions thereof, even if such use is for such Developer Related Entity's internal use or analysis, whether or not commercial value is available or received, and/or such information or Data is available in other, separate or cumulative sources.

20.2.5.3 Notwithstanding any other term or condition of this Contract, the rights and permissions granted under this Section 20.2.5.3 shall terminate (i) upon the effective date of termination of this Contract or (ii) upon 24-hour written notice by WIFA to Developer, whichever is earlier.

20.2.5.4 Except as, and to the limited extent, required by Applicable Laws, Developer shall keep and maintain, and shall cause all Developer Related Entities to keep and maintain, all WIFA IP and WIFA Data strictly confidential. Before any release of any WIFA IP or WIFA Data pursuant to Applicable Laws, Developer must consult with WIFA regarding such release and obtain consent to such release. Any release shall be limited to the minimum required to satisfy the Applicable Law.

20.2.6 Intellectual Property Escrow

(a) WIFA and Developer acknowledge that Developer and/or third parties that supply IP may not wish to deliver IP or IP Materials directly to WIFA, as public disclosure could deprive Developer and/or such third parties of commercial value. Developer further acknowledges that WIFA nevertheless must be ensured access to

such IP and must be assured that the IP or IP Materials (and incorporated IP) are delivered to WIFA.

(b)   In lieu of delivering the IP or IP Materials (and incorporated IP) directly to WIFA, Developer may, from time to time, elect to deposit it with a neutral depository. In such event, WIFA and Developer shall: (i) mutually select one or more escrow companies or other neutral depositories (each an "IP Escrow Agent") engaged in the business of receiving and maintaining escrows of Intellectual Property; (ii) establish one or more escrows (each an "Intellectual Property Escrow") with the IP Escrow Agent on terms and conditions reasonably acceptable to WIFA and Developer for the deposit, retention, upkeep and release of IP or IP Materials (and incorporated IP) to WIFA pursuant to this Contract; (iii) determine a date for Developer's deposit of the IP or IP Materials into the IP Escrow; and (iv) determine a process for releasing from escrow the IP or IP Materials to be delivered to WIFA pursuant to this Contract. Developer shall be responsible for the fees and costs of the IP Escrow Agent and IP Escrow(s).

(c)   Any IP or IP Materials deposited in IP Escrow(s) shall be released and delivered to WIFA in any of the following circumstances ("**Release Conditions**"):

(i)   In the case of Developer IP: (i) this Contract is terminated for Developer default or breach; (ii) a voluntary or involuntary bankruptcy or insolvency of Developer occurs; (iii) Developer is dissolved or liquidated; or (iv) Developer fails or ceases to provide services as necessary to permit continued use of, or the exercise of rights granted under this Contract with respect to, any such Developer IP.

(d)   In the case of Third Party IP, this Contract is terminated for any reason and either: (i) voluntary or involuntary bankruptcy of the third party occurs; or (ii) the third party is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining, and servicing the software, product, part, or other item containing such IP. Regardless of whether one of the Release Conditions occurs, WIFA shall have the right, at WIFA's sole expense, to require the IP Escrow Agent to verify the relevance, completeness, currency, accuracy, and functionality of the materials held in an IP Escrow.

(e)   Developer shall incorporate the provisions of this Section 20.2.6 into each Subcontract involving provision of IP or IP Materials.

(f)   The IP Escrow(s) shall survive expiration or earlier termination of this Contract regardless of the reason.

21. CONFIDENTIALITY; PUBLIC RECORDS LAW

21.1 Confidentiality

21.1.1 Developer shall not use, disclose, store, process or distribute WIFA-provided Confidential Information or WIFA Data except as specifically provided in this Contract.

21.1.2 The Developer shall establish and maintain procedures and controls acceptable to the State for the purpose of assuring that information or Data in its possession is not mishandled, misused, released, disclosed, or used in an inappropriate manner by it, its agents, officers, or employees. This includes information contained in its records obtained from the State or others, necessary for contract performance. The Developer shall take all reasonable steps and precautions to safeguard this information and Data and shall not divulge the information or Data to parties other than those needed for the performance of duties under the contract.

21.1.3 Developer shall return all WIFA-provided Confidential Information immediately upon termination of this Contract or within 30 days following a request by WIFA. Notwithstanding the foregoing, the Developer may retain one (1) archival copy of Confidential Information for the sole purpose of determining its obligations under this Contract and one (1) electronic copy as part of its standard electronic back-up system only.

21.1.4 Information Security Requirements.

Developer shall implement and require its subcontractors to implement appropriate administrative, physical, and technical safeguards that reasonably and appropriately protects the confidentiality, integrity, and availability of WIFA Data and Confidential Information in accordance with Exhibit 7 of this Contract.

21.1.5 Notification of Security Incident.

Developer shall notify WIFA within 48 hours following discovery of a security incident, as defined by A.R.S. § 18-551. Further, Developer shall comply with all Data breach notification requirements, including consumer notices, pursuant to Applicable Laws, including A.R.S. § 18-552 and in accordance with Exhibit 7 of this Contract.

21.2 Arizona Public Records Law

21.2.1 Developer acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials prepared, owned, used or retained by WIFA, including materials submitted by Developer, are subject to the provisions of the Arizona Public Records Law, Arizona Revised Statutes, Title 39, Chapter 1 ("**Public Records Law**").

21.2.2 If Developer believes information or materials submitted to WIFA constitute trade secrets, proprietary information or other information that is not subject to or is excepted from disclosure under the Public Records Law, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this Section 21 shall modify or amend requirements and obligations imposed on WIFA by the Public Records Law or other Applicable Laws, and the provisions of the Public Records Law or other Applicable Laws shall control in the event of a conflict between the procedures described above and the Applicable Laws. Developer is advised to contact legal counsel concerning such Applicable Laws and their application to Developer.

21.2.3 If WIFA receives a request for public disclosure of materials marked "CONFIDENTIAL," WIFA will use reasonable efforts to provide notice to Developer of the request and give Developer an opportunity to identify, by notice, a claimed exception under the Public Records Law or other Applicable Laws within the time period specified in the notice issued by WIFA and allowed under the Public Records Law. As outlined in WIFA's response to the Developer's notice, WIFA will determine whether it agrees with the Developer's confidentiality assertion or whether disclosure is proper. The Developer will have an opportunity to seek a court order should WIFA determine disclosure to be proper under Arizona law. Under no circumstances, however, will WIFA be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Applicable Laws or court order, or occurs through inadvertence, mistake or negligence on the part of WIFA or its officers, representative, agents, employees, contractors or consultants.

21.2.4 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to WIFA (including a protective order or temporary restraining order to prevent a disclosure), WIFA's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect to the material, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials; provided, however, that WIFA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of WIFA's voluntary intervention or participation in litigation, Developer shall pay and reimburse WIFA within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs WIFA incurs in connection with any litigation, proceeding or request for disclosure.

22. INSURANCE

[Note to Proposers: Insurance Provisions of this Contract are under review by ADOA and subject to change.]

Developer shall comply with the insurance requirements in Exhibit 14.

23. LIMITATION OF LIABILITY; INDEMNITY; CONSEQUENTIAL DAMAGES

[Note to Proposers: Limitation of Liability, Indemnity and Consequential Damages provisions of this Contract are under review by ADOA and subject to change.]

23.1 Limitation of Liability

23.1.1 Without limiting any future limitation of liability under the Implementation Agreement, including pursuant to A.R.S. § 49-1213(D), and throughout development of the WIP, subject to Section 23.1.2, Developer's aggregate liability to WIFA with respect to the Services under this Contract shall not exceed an amount equal to the cumulative sum of all Payment Amounts for all Tasks authorized under this Contract.

23.1.2 The limitation on Developer's liability under Section 23.1.1 shall not apply to, and Developer shall remain liable for:

(a) all those costs incurred by WIFA or any party acting on its behalf to complete, repair or correct the Services, including the costs of a new procurement, or to have the Services completed, repaired or corrected by another Person;

(b) any Losses incurred where Developer abandons the WIP in whole or part;

(c) any Losses, to the extent they are covered by insurance required to be carried under this Contract or for which Developer was required to provide under this Contract if coverage is not in force;

(d) any fines or penalties levied or imposed by any Governmental Entity to the extent arising out of any Developer Fault;

(e) Developer's liability for its indemnity obligations as provided in this Contract, including Sections 13, 9.6 and 23.2;

(f) any Losses incurred by any Indemnified Party in connection with, relating to or arising out of any gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional misconduct, or breach of Applicable Law by any Developer-Related Entity;

(g) any amounts paid under the Payment Bond;

(h) any Liquidated Damages; and

(i)   any Losses arising out of any Developer Hazardous Materials Release.

23.1.3   In the event that 80% of the applicable limitation of Developer's liability described in Section 23.1.1 or is reached, and a default under Section 24.3(q) has occurred, Developer may cure such default if it agrees in writing to increase the amount in Section 23.1.1, as applicable, by an amount no less than 25% of the amount in Section 23.1.1. Developer's cure, if any, must be implemented within five days after it receives Notice of such default from WIFA. If Developer fails to respond during such five-day period or elects not to increase the amount in Section 23.1.1, WIFA has all rights under this Contract, including Section 24.

23.2   Indemnifications by Developer

23.2.1   To the fullest extent permitted by Applicable Law, Developer shall release, defend, indemnify and hold the Indemnified Parties free and harmless from any and all Claims and Losses of any kind to property or Persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, negligence, culpable acts, gross negligence, recklessness or willful misconduct of Developer, Developer-Related Entities, or any of their respective officials, officers, employees, subcontractors, suppliers, consultants or agents, in connection with the WIP or this Contract, including:

(a)   the breach or alleged breach of this Contract by any Developer-Related Entity;

(b)   any Claims by Subcontractors for nonpayment or otherwise;

(c)   the payment of all damages, expert witness fees, accountants' fees and attorneys' fees and other related Losses;

(d)   damage to public or private property owned by third parties (or any Developer-Related Entity), and for injuries to any person or entity, arising out of performance of the Services by any Developer-Related Entity;

(e)   any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of any Developer-Related Entity with respect to any payment for the Services made to or earned by any Developer-Related Entity;

(f)   any Developer Hazardous Materials Release;

(g)   any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, system of methods, processes, design, information or other items provided or communicated to an

Indemnified Party in connection with the WIP, this Contract, or the Services;

(h)   to the extent of any Developer-Related Entity's affirmative act or omission, negligence or failure to comply with Developer's obligations to coordinate and integrate the Services with any Other Contractor or any Utility Owner under this Contract, the claim or assertion by any Other Contractor or Utility Owner that a Developer-Related Entity interfered with or hindered the progress or completion of work being performed by such Person so as to cause disruption, delay or Losses;

(i)   any fines, penalties or other Losses resulting from a violation of or noncompliance with Applicable Laws (including Environmental Laws);

(j)   the actual or alleged culpable act, error, omission, negligence, gross negligence, fraud, recklessness, willful misconduct, breach or misconduct of any Developer-Related Entity in or associated with performance of the Services;

(k)   inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of this Contract or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Developer-Related Entity in connection with the performance of the Services, or (iii) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity in connection with the performance of the Services;

(l)   errors or other defects in the Services;

(m)   any Losses to the extent they are covered by insurance required to be carried under this Agreement or for which Developer was required to provide under this Agreement if coverage is not in force; and

(n)   any Principal Project Company failure to implement environmental mitigation measures to control environmental impacts, as required by the Governmental Approvals and the NEPA document.

23.2.2   To the extent of its liability, Developer shall pay and satisfy any judgment, award or decree that may be rendered against any of the Indemnified Parties in any suit, action or other legal proceeding under this Section 23.2. Developer shall reimburse the Indemnified Parties for any and all Losses and legal expenses incurred by each of the Indemnified Parties in connection with such suit, action or legal proceeding or in enforcing the indemnity provided in this Section 23.2.

23.2.3 Subject to the releases and disclaimers under this Contract, Developer's indemnity under this Section 23.2 shall not extend to any Claim or Loss to the extent that such Claim or Loss was solely caused by the negligence or willful acts or omissions of an Indemnified Party.

23.2.4 It is agreed that Developer will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Developer agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Developer for the State of Arizona.

23.2.5 The following restrictions shall apply to the indemnities in this Section 23.2:

(a)   such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on Developer for the active negligence of WIFA, or to relieve WIFA of liability for such active negligence; and

(b)   in Claims by an employee of Developer, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 23.2 is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

(c)   The requirement to provide an indemnity for any breach or alleged breach of this Contract as provided in Section 23.2.1(a) is intended to provide protection to WIFA with respect to third party claims associated with such breach or alleged breach. It is not intended to provide WIFA with an alternative cause of action for damages incurred by WIFA with respect to such breach or alleged breach.

23.3   No Effect on Other Rights

The obligations in Sections 23.1 through 23.3 shall not be construed to negate, abridge or reduce other rights or obligations which would otherwise exist in favor of an Indemnified Party under this Contract.

23.4   CERCLA Contract

The indemnities in Section 23.2 are intended to operate as Contracts under CERCLA, 42 U.S.C. section 9607(e), and _____, to defend, indemnify and hold harmless the Indemnified Parties.

23.5   Notification of Third Party Claim

WIFA and Developer shall each provide timely Notice to the other Party of the receipt of any third party claim relating to this Contract.

23.6   Defense and Indemnification Procedures

**23.6.1   **If an Indemnified Party receives notice of a Claim or other item covered under this Section 23 or otherwise has Actual Knowledge of a Claim that it believes is within the scope of the indemnities provided under this Contract, then, as soon as practicable after receipt of the Claim, WIFA shall by notice:

(a)   inform Developer of the Claim;

(b)   send to Developer a copy of all written materials WIFA has received asserting such Claim; and

(c)   notify Developer that if no insurer accepts defense of the Claim, the Indemnified Party will conduct its own defense at Developer's cost, unless Developer accepts the tender of the defense under Section 23.6.4.

**23.6.2   **As soon as practicable after Developer receives notice of a Claim or otherwise has Actual Knowledge of a Claim, it shall tender the Claim by notice to the insurers under all potentially applicable insurance policies. WIFA and other Indemnified Parties also may tender such Claims directly to such insurers.

**23.6.3   **If the insurer under any applicable insurance policy accepts the tender of defense, WIFA and Developer shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 23.6.4 shall apply.

**23.6.4   **If the defense is tendered to Developer, then within 30 days after receipt of the tender, Developer shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a notice stating that Developer:

(a)   accepts the tender of defense and confirms that the Claim is subject to full indemnification under this Contract without any "reservation of rights" to deny or disclaim full indemnification thereafter;

(b)   accepts the tender of defense but with a "reservation of rights" in whole or in part; or

(c)   rejects the tender of defense based on a determination that it is not required to indemnify against the Claim under the terms of this Contract.

**23.6.5   **If Developer accepts the tender of defense under Section 23.6.4(a), Developer may select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Developer shall otherwise control the defense of the Claim, including settlement, and bear the fees and costs of defending and settling such Claim; except that WIFA

has the right of prior approval of any settlement that waives any defenses or rights of WIFA, increases WIFA's risk (including risk to the WIP) or relates to or may impact the Services or the design, construction, operations, maintenance, financing, or revenues of the WIP. During such defense:

(a)   Developer shall fully and regularly inform the Indemnified Party in writing of the material developments in the case and settlement discussions; and

(b)   the Indemnified Party shall fully cooperate in said defense, provide to Developer all materials and access to personnel that Developer reasonably requests as necessary for defense, preparation and trial, and which or who are under the control of or reasonably available to the Indemnified Party, and use reasonable efforts to maintain the confidentiality of all communications between it and Developer concerning such defense.

23.6.6 If Developer responds to the tender of defense as specified in Sections 23.6.4(b) or 23.6.4(c), the Indemnified Party may select its own legal counsel and otherwise control the defense of such Claim, including settlement.

23.6.7 Notwithstanding Developer's acceptance of a tender of defense under Sections 23.6.4(a) or 23.6.4(b), the Indemnified Party may assume its own defense by delivering to Developer notice of such election and the reasons thereof, if the Indemnified Party, at the time it gives notice of the Claim or at any time thereafter, reasonably determines that:

(a)   a conflict exists between the Indemnified Party and Developer which prevents or potentially prevents Developer from presenting a full and effective defense; or

(b)   Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

23.6.8 If the Indemnified Party is entitled to and elects to conduct its own defense of a Claim for which it is entitled to indemnification under this Contract, Developer shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a)   in the case of a defense that otherwise would be conducted under Section 23.6.4(a) or 23.6.4(b), the Indemnified Party may settle or compromise the Claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to Developer and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Developer; and

(b)　　in the case of a defense conducted under Section 23.6.4(c), the Indemnified Party shall have the right to settle or compromise the Claim without Developer's prior written consent and without prejudice to its rights to be indemnified by Developer.

23.6.9　　A refusal of, or failure to accept, a tender of defense, as well as any dispute over whether an Indemnified Party that has assumed control of defense is entitled to do so under Section 23.6.6, shall be resolved in accordance with Section 27 (if the Indemnified Party is bound by Section 27), but the foregoing shall not preclude an Indemnified Party from preserving its rights or defending the Claim pending such resolution.

23.6.10　　The Parties acknowledge that this Section 23.6 does not supersede any Applicable Laws governing the required allocation or sharing of liability between the Parties.

23.7　　Consequential Damages

23.7.1　　Except as otherwise specified in this Contract, to the extent permitted by Applicable Laws, neither Party shall be liable to the other for punitive, indirect, or Consequential Damages, whether arising out of breach of this Contract, tort (including negligence) or any other theory of liability, and each Party releases the other Party from any such liability.

23.7.2　　The limitations on Developer's liability under this Section 23.7 shall not apply to or limit any right of recovery WIFA may have with respect to the following (and Developer agrees it shall not assert the application of this Section 23.7 against any such Losses):

(a)　　any amounts paid or payable by or on behalf of Developer which are covered by insurance proceeds required to be carried under this Contract, or for which Developer was required to provide under this Contract if coverage is not in force;

(b)　　any Losses in connection with any gross negligence, fraud, bad faith, recklessness, criminal conduct, intentional misconduct, or breach of Applicable Law by any Developer-Related Entity;

(c)　　Developer's liability for its indemnity obligations as provided under this Contract, subject to Section 23.2.5(c);

(d)　　Developer's obligation to pay Liquidated Damages; and

(e)　　any Losses arising out of any Developer Hazardous Materials Release.

24. SUSPENSION; DEVELOPER DEFAULT; TERMINATION

24.1 Preservation of Rights

To the fullest extent permitted by Applicable Law, nothing WIFA does or fails to do pursuant to this Section 24 will prejudice any right or remedy of WIFA under this Contract or Applicable Laws, including the recovery of damages and Losses, where Developer breaches this Contract. In accordance with Section 29.12, the rights and the remedies of WIFA and the State under this Contract are not exclusive.

24.2 Suspension

(a) The WIFA Representative may instruct Developer to suspend all or part of the Services and, after a suspension has been instructed, to re-commence the carrying out of all or a part of the Services. The WIFA Representative is not required to exercise such authority for the benefit of Developer.

(b) If a suspension under this Section 24 arises as a result of Developer's failure to properly carry out any of its obligations under this Contract, such suspension shall be considered for cause and Developer will not be entitled to:

   (i) include any costs incurred as a result of the suspension in the applicable Cost of the Services;

   (ii) any adjustment of the applicable Payment Amount; or

   (iii) any time extension or other schedule relief.

(c) If a suspension under this Section 24 arises due to a cause other than Developer's failure to carry out its obligations in accordance with this Contract, such suspension shall be deemed a suspension for convenience by WIFA and shall be subject to subsection (d) of the definition of "WIFA-Caused Delay."

(d) Developer may not suspend the Services, unless instructed to do so under this Section 24, as permitted under Section 24.7, or in the event of an emergency. For purposes of the foregoing, an "emergency" is an unplanned event within or immediately adjacent to the Site that:

   (i) causes or has the potential to have a material adverse impact on the WIP;

   (ii) presents an immediate or imminent threat to the long term integrity of any part of the WIP, the environment, to property immediately adjacent to the WIP or to the safety of the public or persons performing the Services; or

   (iii) is recognized or declared to be an emergency by the Governor of the State, the FEMA, the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

24.3 Developer Default

Developer shall be in default under this Contract upon the occurrence of any one or more of the following events or conditions (each, an "**Developer Default**"):

(a)   Developer fails to promptly (i) begin the Services following issuance of the Task Order for any Task or (ii) resume performance of Services that has been suspended or stopped within a reasonable time after receipt of notice from WIFA to do so or (if applicable) after cessation of the event preventing performance;

(b)   Developer fails to achieve Acceptance of any Task under this Contract by 60 days after the applicable Milestone Deadline or other timeline approved in writing by WIFA in advance of Acceptance;

(c)   Developer suspends, ceases, stops or abandons the Services or fails to continuously and diligently prosecute the Services, excluding Services stoppages due to: (i) termination by WIFA; (ii) the occurrence and continuance of a Force Majeure Event or suspension by WIFA; (iii) WIFA's failure to make undisputed payments to Developer under Section 24.7; or (iv) Developer's suspension of Services in the event of an emergency under Section 16.

(d)   Developer fails to obtain, provide, replace or maintain in full force and effect any insurance, Bonds, guarantees or other performance security as and when required under this Contract, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same;

(e)   Developer makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of this Contract or any right or interest in this Contract, except as expressly permitted under this Contract;

(f)   Developer fails, absent a valid dispute, to make payment when due for labor, equipment or materials under its Contracts with Subcontractors and Applicable Laws, or fails to comply with any Applicable Law or reasonably comply with any WIFA instruction consistent with this Contract;

(g)   Developer fails to make payment when due to WIFA of any amounts owing to WIFA under this Contract, including Liquidated Damages;

(h)   Developer fails to timely observe or perform, or fails to cause to be timely observed or performed, any other Contract or covenant that Developer is required to perform under this Contract;

(i)   any Guarantor revokes or attempts to revoke its obligations under its Guaranty, or otherwise takes the position that such instrument is no longer in full force or effect;

(j)   issuance of any final judgment holding Developer, Guarantor or any of their respective equity members liable based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act;

(k)   any representation or warranty made by Developer in this Contract (including any questionnaire responses included in Developer's Offer) or any Guarantor in the Guaranty or any certificate, schedule, instrument or other document delivered by Developer pursuant to this Contract or the Guarantor under the Guaranty was false or materially misleading when made;

(l)   Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Applicable Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any of Developer's partners, members or joint venturers, any material Subcontractors, or any surety, Guarantor or letter of credit bank;

(m)   an involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Applicable Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any of Developer's partners, members or joint venturers, any material Subcontractors, or any surety, Guarantor or letter of credit bank;

(n)   in any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Developer or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Applicable Law, this Contract is rejected, including a rejection under 11 U.S.C. section 365 or any successor statute;

(o)   any voluntary or involuntary case or other act or event described in Sections 24.3(l) through 24.3(n) occurs (and in the case of an involuntary case is not contested in good faith or remains undismissed and unstayed for a period of 60 days) with respect to

(i) any member, partner or joint venture member of Developer (unless said Person has fully met all financial obligations owing to Developer investment and payments or transfers of money or property previously made to or for the benefit of Developer are not subject to 11 U.S.C. sections 544, 547, 548 or 550 or any similar state or federal Applicable Law respecting the avoidance or recovery of preferences or fraudulent transfers) or (ii) any member, partner or joint venture member of Developer for whom transfer of ownership or management authority would constitute a prohibited assignment under this Contract or impermissible Change of Control;

(p) after any rights of appeal have been exhausted, Developer, any Affiliate or any Subcontractor (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency or (ii) has not dismissed any Subcontractor whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a State department or agency; and

(q) Developer incurs liability to WIFA for damages or Losses in an amount equal to or greater than (but for such limitation) 80% of the limitation on Developer's liability under (i) Section 23.1.1.

24.4 Notice and Opportunity to Cure

24.4.1 Developer shall promptly:

(a) provide notice to WIFA upon the occurrence of a Developer Default; and

(b) take steps to commence the cure of and mitigate the effects of any Developer Default.

24.4.2 If Developer so notifies WIFA of a Developer Default under Section 24.4.1(a) or WIFA considers a Developer Default has occurred, WIFA may give Developer a Notice ("**Default Notice**"), which contains:

(a) details of the Developer Default;

(b) the cure period (if any) by which Developer shall cure the Developer Default under Sections 24.4.1(b) and 24.4.3; and

(c) if the Developer Default is not capable of being cured or no cure period is applicable, a date by which Developer shall comply with any WIFA requirements in connection with that Developer Default.

24.4.3 Developer shall have the following cure periods under any Default Notice:

(a) for a Developer Default described in <u>Sections 24.3(c)</u>, <u>24.3(d)</u>, <u>24.3(f)</u>, <u>24.3(g)</u> and <u>24.3(h)</u> a period of 15 days after delivery of a Default Notice;

(b) for a Developer Default described in <u>Sections 24.3(c)</u>, <u>24.3(d)</u>, <u>24.3(f)</u>, <u>24.3(g)</u> and <u>24.3(h)</u> that is capable of cure, but by its nature cannot be cured within a period of 15 days after delivery of a Default Notice, as determined by WIFA, such additional period of time shall be allowed as may be reasonably necessary to cure the Developer Default, so long as Developer commences such cure within that 15-day period and thereafter diligently prosecutes such cure to completion; except that in no event shall such cure period exceed 60 days in total;

(c) for the Developer Default described in <u>Sections 24.3(a)</u>, a period of seven days after delivery of a Default Notice;

(d) for the Developer Default described in <u>Section 24.3(k)</u>, that is capable of cure, as determined by WIFA in its sole discretion, within such period of time provided in the Default Notice; provided that period of time shall be: (i) no less than 15 and no more than 60 days after delivery of the Default Notice; and (ii) determined by WIFA in its sole discretion; and

(e) for any other Developer Default, there is no cure period.

24.5 Right to Terminate Upon Default Termination Event

24.5.1 If any Developer Default is not subject to cure or is not cured within the applicable cure period (if any) specified in <u>Section 24.4.3</u> ("**Default Termination Event**"), WIFA may terminate this Contract by providing Notice to Developer, or exercise any of the rights under <u>Section 24.6.1(b)</u>.

24.5.2 Termination of this Contract for a Default Termination Event under this <u>Section 24.5</u> will take effect on the date stated in the notice given by WIFA to Developer under <u>Section 24.5.1(a)</u>.

24.6 Consequences upon Termination for Default Termination Event

24.6.1 Subject to <u>Section 24.1</u>, if WIFA terminates this Contract for a Default Termination Event:

(a) Developer shall comply with <u>Section 26</u>; and

(b) WIFA:

(i) may take over and use, or require Developer to remove from the Site, the plant, equipment and Services and all materials, equipment and other things intended for the Services; provided WIFA shall equitably reimburse Developer the actual cost for any such take-over and use

up to an amount not to exceed the amount stated in the applicable Task Order (as applicable);

(ii) may require Developer to assign to WIFA, or WIFA's nominee, any or all Subcontracts between Developer and its Subcontractors;

(iii) shall not be obliged to make any further payments to Developer, to the extent permitted by Applicable Laws;

(iv) where such Developer Default is not cured within the applicable cure period, if any, specified in Section 24.4, make demand upon and enforce any Performance Security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to WIFA under this Contract with respect to the Developer Default in any order, in WIFA's sole discretion, without Notice to Developer. WIFA will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Contract, including payment of amounts due WIFA;

(v) may suspend the Services in whole or part in accordance with Section 24.2;

(vi) may recover from Developer all Claims and Losses, in excess of any amount payable to Developer under this Contract, suffered or incurred by WIFA arising in connection with such termination; and

(vii) may exercise any other remedies available under this Contract or at law or in equity.

24.6.2 Developer and each Surety shall not be relieved of liability for continuing Liquidated Damages on account of a Developer Default, by WIFA's declaration of Developer Default or by actions taken by WIFA under this Section 24.6.

24.7 Right to Stop Services for Failure by WIFA to Make Undisputed Payment

24.7.1 Developer may stop Services if WIFA fails to make an undisputed payment due under this Contract within 60 days after receipt of a Notice of nonpayment from Developer.

24.7.2 Any Services stoppage under Section 24.7.1 shall be considered a suspension for convenience under Section 25.

24.8 Conversion to Termination for Convenience

If WIFA terminates Developer under this Section 24 and it is later determined that the grounds for that termination were not justified, the termination shall automatically be

converted to, and treated as, a termination for convenience under Section 25. In that event, Developer shall be entitled to receive only the amounts payable under Section 25, and Developer specifically waives any Claim, including for any lost profits or other amounts or damages, to the maximum extent permitted by Applicable Laws.

25. TERMINATION FOR CONVENIENCE

25.1.1 At WIFA's convenience, WIFA may, at any time, terminate this Contract, in whole or in part, by providing notice to Developer specifying the extent of the termination and its effective date.

25.1.2 This Contract's termination for convenience under this Section 25 will take effect on the date stated in WIFA's notice provided under Section 25.1.1.

25.1.3 If WIFA terminates this Contract for convenience, Developer will be entitled to payment of the following amounts, as documented by Developer, subject to reasonable review and approval by WIFA Representative:

(a) the reasonable cost of removing from the Site all labor, plant, equipment and other things used in performing the Services;

(b) for Services (including Cost of the Services) carried out under this Contract up to the date of termination, the amount which would have been payable if this Contract had not been terminated; provided Developer submits an invoice (under Section 14.19) for that Services; and

(c) the cost of goods or materials reasonably ordered by Developer for the Services, before the date of termination, for which Developer is legally bound to pay, including any required early termination fees (if applicable), provided that:

(i) the value of the goods or materials is not included in the amount payable under Section 25.1.3(a); and

(ii) title in the goods and materials will vest in WIFA upon payment.

25.1.4 Developer shall:

(a) submit an invoice under Section 14.19 for all amounts claimed under Section 25.1.3;

(b) take all steps possible to mitigate the costs referred to in Section 25.1.3; and

(c) comply with Section 26.

26.   TRANSITION UPON TERMINATION / EXPIRATION DATE

Upon termination under Section 24 or Section 25 or in connection with the expiration of this Contract:

(a)   subject to Section 26(b), Developer shall comply with all of its obligations under Sections 24 or 25, as applicable;

(b)   if and as directed by WIFA, Developer shall discontinue the Services, withdraw from the Site, and remove materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, any Developer-Related Entity in the performance of the Services and leave the Site in a safe condition;

(c)   Developer shall comply with its obligations under Section 18, including by delivering to WIFA, within 10 days after the Expiration Date, possession of any or all Submittals, Project Plans,, and all other completed or partially completed Books and Records that WIFA deems necessary to complete the Services or operate and maintain the WIP;

(d)   Developer shall cooperate with WIFA and any third parties required by the WIFA Representative, and take all other steps necessary, to ensure that WIFA is able to re-procure or procure the execution of the Services (whether with or without obtaining a proposal from Developer) or procure the execution of the Services in any other manner which WIFA may determine in its sole discretion;

(e)   Developer shall execute and confirm the assignment to WIFA of all Subcontracts requested by WIFA, terminate all other Subcontracts and not enter into any new Subcontracts;

(f)   WIFA may pay any amount or perform any act as may then be required by Developer under this Contract or any Subcontract; and

(g)   solely in the event of a Termination pursuant to Section 24, WIFA may direct the Surety to complete the Services, enter into a Contract to complete the Services with another contractor or the Surety or use any other method to complete the Services or the proposed WIP.

27.   DISPUTES

The Parties agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes and rules (A.R.S. Title 49, A.A.C. Title 18).

28. NOTICES

28.1 Notice of Change Order

If a direction by the WIFA Representative, not specifically identified as a Change Order, constitutes or involves a change to the Services that Developer believes warrants a Change Order, Developer shall, if it wishes to make a Claim against WIFA relating to the direction:

(a) within seven days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the WIFA Representative that it considers the direction to constitute or involve a Change Order;

(b) within 21 days after giving the notice under Section 28.1(a), submit a written claim to the WIFA Representative, which includes:

(i) details concerning the direction or other fact, matter or thing upon which the Claim is based;

(ii) the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;

(iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

(iv) details of the amount claimed and how it has been calculated in sufficient detail to permit verification; and

(c) continue to carry out the Services in accordance with this Contract and all directions of the WIFA Representative, including any direction with respect to which notice has been given under this Section 28.1.

28.2 Continuing Events

If the direction or other fact, matter or thing upon which the Claim under Section 28.1(b) is based, or the consequences of the direction or other fact, matter or thing are continuing, Developer shall continue to give the information required by Section 28.1(b) every 28 days after the written claim under Section 28.1(b) was submitted or given to the WIFA Representative, until after the direction or other fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

28.3 Delay in Notices

If Developer fails to comply with Sections 28.1 through 28.2:

(a) WIFA will not be liable (to the fullest extent permitted under Applicable Law) upon any Claim by Developer, and

(b)   Developer will be absolutely barred from making any Claim against WIFA,

arising in connection with the relevant direction or fact, matter or thing (as applicable) to which Section 28.1 applies.

28.4   Other Provisions Unaffected

Nothing in Sections 28.1 through 28.3 will limit the operation or effect of any other provision of this Contract which requires Developer to give notice to the WIFA Representative in order to preserve an entitlement to make a Claim against WIFA.

28.5   Notices and Communications

28.5.1   All notices under this Contract shall be in writing and provided by one of the following methods: (a) delivered personally; (b) sent by certified mail, with return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone.

28.5.2   Notices shall be sent to the following addresses (or to such other address as may from time to time be specified by notice):

(a)   all notices to Developer shall be delivered to the address specified in the Task Specific Information for the applicable Task or as otherwise directed by Developer Representative; and

(b)   all notices to WIFA shall be marked with the WIP's name and shall be delivered to the address specified in the Task Specific Information for the applicable task or as otherwise directed by the WIFA Representative.

28.5.3   Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery, except notices received after 5:00 p.m. (Pacific Time) shall be deemed received on the first day following delivery.

28.5.4   Any technical or other communications pertaining to the Services shall be conducted by the Developer Representative and the WIFA Representative.

29.   MISCELLANEOUS

29.1   Standard for Approvals by Parties

In all cases where approvals, acceptances or consents are required to be provided by WIFA or Developer under this Contract, such approvals, acceptances or consents shall not be withheld unreasonably, except in cases where a different standard (such as sole

discretion) is specified. In cases where sole discretion is specified, the decision shall not be subject to any dispute resolution procedures under this Contract, including <u>Section 27</u>.

29.2   Entire Contract; Amendments

This Contract, together with its incorporated documents and references, contains the entire, integrated Contract of the Parties, and supersedes any and all other prior to contemporaneous negotiations, understandings and oral or written Contracts between the Parties. This Contract may be amended or modified only by a written instrument duly executed by or on behalf of the Parties, except to the extent provided otherwise in this Contract.

29.3   Waiver

29.3.1   The failure of a Party to exercise or delay in exercising any right under this Contract shall not:

(a)   constitute a waiver of such right or any other right under this Contract; or

(b)   relieve the other Party from performance of its obligations under this Contract, except as otherwise provided in this Contract.

29.3.2   No waiver of any right under this Contract shall be effective unless made in a writing duly executed by a duly authorized representative of the Party charged with the waiver, and any such waiver shall be limited to the specific instance and shall not constitute a waiver of such right in the future or of any other right under this Contract.

29.3.3   If the Parties make and implement any interpretation of this Contract without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

29.3.4   No waiver of any right under this Contract shall be deemed to have occurred as the result of any acceptance by WIFA, any payment for or acceptance of the whole or any part of the Services, any extension of time, or any possession taken by WIFA.

29.4   Independent Contractor; No Joint Venture or Partnership

29.4.1   Developer is an independent contractor. Neither Developer nor any of its employees or agents is or shall be deemed to be an employee or agent of WIFA, and in no event shall the relationship between WIFA and Developer be construed as creating any relationship whatsoever between WIFA and Developer's employees or agents. Except as otherwise provided in this Contract, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Developer or any Subcontractor hires to perform or assist in performing the Services.

29.4.2 Nothing in this Contract is intended or shall be construed to create any partnership, joint venture or similar relationship between WIFA and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists.

29.4.3 Developer shall not have, or be deemed to have, power or authority to make any commitments on WIFA's behalf or to execute Contracts in the name of or on behalf of WIFA. Developer shall not enter into any Contract with any Governmental Entity, Utility Owner, property owner or other third party having regulatory jurisdiction over any aspect of the Services or the WIP or having any property interest affected by the Services or the WIP that in any way purports to obligate WIFA, or states or implies that WIFA has an obligation to the third party, to undertake any activity, unless WIFA otherwise provides its prior written approval.

29.5 Successors and Assigns

This Contract shall be binding upon and inure to the benefit of WIFA and Developer and each of their permitted successors, assigns and legal representatives.

29.6 Survival

29.6.1 The following provisions shall survive the Expiration Date and/or the completion of the Services:

(a) the Parties' respective representations and warranties;

(b) the dispute resolution procedures in this Contract;

(c) the indemnifications, limitations and releases in this Contract;

(d) the limitations on remedies in this Contract;

(e) each Party's express obligations following termination; and

(f) all other provisions which by their inherent character should survive expiration or earlier termination of this Contract or completion of the Services.

29.6.2 In addition, the Parties acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12- 529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

29.7 Limitation on Third Party Beneficiaries

29.7.1 Except to the extent that specific provisions (such as, without limitation, the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits:

(a) no provision of this Contract is intended to create any third party beneficiary to this Contract or authorize anyone, other than a Party, to maintain a suit for personal injury or property damage under this Contract; and

(b) the duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed by law.

29.7.2 This Contract shall not be construed to create a contractual relationship of any kind between WIFA and any Subcontractor or other Person, except Developer.

29.8 Governing Law; Venue

This Contract shall be governed by and construed in accordance with the laws of the State, any applicable federal law, the WIFA Procurement Rules, and the ordinances, regulations, codes, and executive orders enacted and/or promulgated pursuant thereto. The venue for any litigation arising from any dispute shall be in the County of Maricopa.

29.9 Severability

29.9.1 If any provision or part of this Contract is ruled invalid (including invalidity due to any Change in Law in or other change in law) by a court having proper jurisdiction, then the Parties shall:

(a) promptly meet and negotiate a substitute for such provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including (as applicable) an appropriate adjustment to Developer's compensation to account for any change in the Services resulting from such invalidated portion; and

(b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the Parties' negotiation.

29.9.2 The invalidity or unenforceability of any such provision or part shall not affect the validity or enforceability of the balance of this Contract, which shall be construed and enforced as if this Contract did not contain such invalid or unenforceable provision or part.

29.10 Further Assurances

Each Party shall promptly execute and deliver to the other Party all such instruments and other documents and assurances as are reasonably requested by the other Party to further evidence the first Party's obligations hereunder, including, specifically with respect to Developer, assurances regarding the validity of (a) the assignments of any contract required under this Contract and (b) any instruments securing performance of this Contract or the Services. If WIFA in good faith has reason to believe that the Developer does not intend to or is unable to perform or continue performing under this Contract, WIFA may demand in writing that the Developer give a written assurance of intent to

perform. Failure by the Developer to provide written assurance within the number of days specified in the demand may, at WIFA's option, be the basis for terminating the Contract under the rights and remedies available by Applicable Law or provided by the Contract.

29.11 Counterparts; Electronic Transmittal

This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties acknowledge that executed copies of this Contract may be exchanged by facsimile or other electronic transmittal and that the signatures on such copies shall be deemed to be effective as original signatures.

29.12 Cumulative Rights; Liability

Each right and remedy of WIFA under this Contract is cumulative and in addition to every other right or remedy provided under this Contract and Applicable Laws, and the exercise by WIFA of any part of such rights or remedies does not preclude the simultaneous or later exercise by WIFA of any or all other such rights or remedies.

29.13 Costs

Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, and execution and delivery of this Contract. Except as otherwise provided in this Contract, each Party shall perform its obligations in accordance with this Contract at its own cost and risk.

29.14 Assignment

29.14.1 Developer acknowledges that Developer's experience and expertise is a substantial consideration in WIFA's review of the Offer.

29.14.2 Developer may collaterally assign its rights to receive payment under this Contract in connection with a financing and may subcontract Services in compliance with the requirements of this Contract. Developer shall not otherwise sublet, transfer, assign or dispose of any portion of this Contract, or delegate any of its duties hereunder, except with WIFA's prior written approval. Developer's assignment or delegation of any of its Services under this Contract shall be ineffective to relieve Developer of its responsibility for the Services assigned or delegated, unless WIFA, in its sole discretion, has approved in writing such relief from responsibility. Any assignment of money shall be subject to all proper set-offs and withholdings in favor of WIFA and to all deductions provided for in this Contract.

29.14.3 For the purpose of, but without limiting Section 29.14.1, an assignment of this Contract will be deemed to have occurred where there has been a Change of Control.

29.15 Possessory Interest Tax

Rights granted to Developer by WIFA may create a possessory interest and Developer agrees that a real property tax may be levied on that possessory interest. If applicable, Developer shall pay the real property tax.

29.16 Publicity

Developer shall not furnish any information or issue any document or other written or printed material concerning the WIP for publication in the media without the prior written approval of the WIFA Representative; and shall refer any enquiries from the media concerning the WIP to the WIFA Representative.

29.17 Third Party Antitrust

The Developer assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services applied by third parties to the Developer, toward fulfillment of this Contract.

29.18 No Parole Evidence.

This Contract is intended by the Parties as a final and complete expression of their agreement. No course of prior dealings between the Parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

29.19 Operational Continuity.

Developer warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Developer's duties hereunder absent a consented delegation (under the Assignment and Delegation paragraph) that expressly recognizes the event.

[*Signatures Follow*]

IN WITNESS WHEREOF, this Contract has been executed as of _____.

DEVELOPER: [_____]

By: _____

Name:

Title:

Contractor's License No.:

WATER INFRASTRUCTURE FINANCE AUTHORITY

By: _____

Name:

Title:

APPROVED AS TO FORM:

By: _____

Name:

Title:

Date: _____

EXHIBIT 2

EXHIBIT 2A: FORM OF TASK ORDER

WATER INFRASTRUCTURE
FINANCE AUTHORITY OF ARIZONA

TASK ORDER

WIFA Address: **[_____]**	The following number must appear on all related correspondence, shipping papers, and invoices:
Developer Address: **[_____]**	**TASK ORDER NO.:** _____

TASK ORDER DATE	**TASK ORDER TERMS AND CONDITIONS**
[Date]	(See Contract.)

This Task Order (this "Order") is made by and between the Water Infrastructure Finance Authority of Arizona ("WIFA") and _____ ("Developer") of the respective addresses provided above.

Description:

Developer shall perform the services described in <u>Exhibit 2C</u> (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in <u>Exhibit 2D</u> (Table of Rates and Prices).

This Task Order consists of this Task Order, including the Contract made and entered into as of [INSERT DATE], 2025 ("Effective Date"), by and between WIFA and Developer, and the following Exhibits:

- Exhibit 2B - Task Specific Information (Task 1)
- Exhibit 2C - Scope of Services (Task 1)
- Exhibit 2D - Table of Rates and Prices (Task 1)
- Exhibit 2E - Project Schedule (Task 1)

1. Please notify us immediately if you are unable to perform the Services as specified.

2. Send all correspondence to:
   [Name, Title]
   [Address]

Accepted by Developer

_____
Print Developer Name

_____
Developer License Number/DIR Registration Number

By: _____
Developer Signature   Date

By: _____
Developer Signature   Date

Accepted by the WIFA

By: _____
WIFA Signature   Date

EXHIBIT 2B: TASK SPECIFIC INFORMATION (TASK 1)

GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS			
Developer	[Note: To be inserted based on Offer]		
Engineer Firm	[Note: To be inserted based on Offer]		
Guarantor	[Note: To be inserted based on Offer]		
Task Deadline	[Note: To be determined by WIFA and Developer]		
Major Subcontractor	[Note: To be determined by WIFA and Developer based on Offer]		
Lead Engineering Firm	[Note: To be determined by WIFA and Developer based on Offer]		
Lead Construction Contractor	[Note: To be determined by WIFA and Developer based on Offer]		
Operations and Maintenance Firm	[Note: To be determined by WIFA and Developer based on Offer]		
Equity Member(s)	[Note: To be inserted based on Offer]		
Monthly Progress Schedules	[Note: Requirements to be determined by WIFA and Developer]		
Payment Amount (Task 1)			
Cost of the Services (Task 1)	**Cost of the Services / Lump Sum**	$_____	
	Cost of the Services Contingency [Note: Delete if no Cost of the Work]	$_____	
	Allowance	**Allowance Item**	**Allowance Value**
			$_____

			$_____
			$_____
	Total Cost of the Services	$_____	
Developer's Cost Markup (Task 1)	$_____ **[Note to Proposers: To be calculated based on Total Cost of the Services (excluding bonds and insurance) * Maximum Cost Markup (all Tasks). Delete if not Time and Materials]**		
Premiums for Bonds and Insurance for Task 1	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
TOTAL Payment Amount (Task 1)	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
Maximum Cost Markup (all Tasks)	___% **[Note to Proposers: To be inserted based on Offer]**		
Maximum Cost Markup (WIP Implementation Agreement)	___% **[Note to Proposers: To be inserted based on Offer]**		
Developer Cost Markup (Task 1)	___% **[Note to Proposers: To be inserted based on amount negotiated for Task Order not to exceed Maximum Cost Markup (all Tasks)]**		
TASK 1 MILESTONES			
Task 1 Milestones and Deadlines (Section 9.3)	**Task 1 Milestone**	**Task 1 Milestone Deadline**	
	[Note: To be determined with each Task Order and aligned with Scope of Services]		
NATURE OF CONTRACT			

Water Importation Project	Means the project, as more particularly described in each Scope of Work, to be [designed, constructed, operated and maintained] in accordance with this Contract to allow for [_____], as described in each Scope of Services.
Conditions to Task Order for Task 1	Developer has delivered to WIFA: 1. Evidence, satisfactory to the WIFA, of Task 1 insurance required under this Contract; and 2. All Task 1 Bonds.
Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency (Section 1.3)	1. Amendments and Change Orders 2. Contract body, other than Exhibits and Appendices 3. Task Specific Information (Task 1) 4. Any other documents forming part of this Contract, (including Exhibits and Appendices), other than the Scope of Services 5. Scope of Services (Task 1) 6. Project Standards in the Task Specific Information (Task 1) 7. Task 1 Submittals 8. Project Plans
Project Standards and order of precedence of Project Standards in the case of any ambiguity, discrepancy or inconsistency among the Project Standards	**[Note to Proposers: To be negotiated as part of Task Order]**
Task 1 Project Plans (Section 7.3)	**[Note to Proposers: To be negotiated as part of Task Order and aligned with Scope of Services]**

PERSONNEL

WIFA Representative and its other designated representatives (if any) and their functions (Section 6.2)	Representative	Function(s)
	Chuck Podolak	All functions of WIFA Representative
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**

Developer Representative and its other designated representatives (if any) and their functions (Section 6.3)	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
Developer Key Personnel Liquidated Damages	**Representative**	**Liquidated Damages**
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
Developer Key Personnel (Section 6.4)	**Person**	**Position**
	[Note: To be inserted based on Offer]	Project Manager
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	Person	**Position**
Developer Team (other than Developer Key Personnel)	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]

	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
Indemnified Parties	[Note: Parties to be added in WIFA's sole discretion based on Funding Sources]	
PERFORMANCE AND PAYMENT BONDS / INSURANCE		
Performance Bond (Section 5.1.1(a), Exhibit 8A)	100% of the Payment Amount for the applicable Tasks authorized	
Payment Bond (Section 5.1.1(b), Exhibit 8B)	As provided in Exhibit 8B (Form of Payment Bond)	
Insurance required for Task 1	As provided in Exhibit 14 (Insurance Requirements) unless otherwise adjusted by WIFA	
SITE		
Site	1. Developer shall obtain all Governmental Approvals required for subsurface investigation work, including the disturbance of existing vegetation. 2. Developer shall comply with any other conditions required by WIFA as a condition precedent to Site access.	
Conditions precedent to Site access during Task [_] [_]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**	
Access hours for Services on Site during Task [_]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**	
PAYMENT		
Times for submission of invoices by Developer to WIFA Representative (Section 14.19)	Monthly, on the 10th day of each month.	
Payment to Subcontractors (Section 14.23)	Within seven days of Developer's receipt of payment from WIFA.	

	WIFA:
	Address:
	Email address:
	Attention:
	Copies of all notices to WIFA regarding Claims, disputes termination and default shall also be delivered to the following:
	Address:
	Email address:
	Attention:

NOTICES (Section 28.5)	**WIFA Representative:**
	Address:
	Email address:
	Attention:
	Developer:
	Address:
	Email address:
	[Note: To be inserted based on Offer]
	Developer Representative:
	Address:
	Email address:
	Attention:
	[Note: To be inserted based on Offer]

EXHIBIT 2C: SCOPE OF SERVICES (TASK 1)

EXHIBIT 2D: TABLE OF RATES AND PRICES (TASK 1)

Appendix 2D-1   Task 1: Table of Rates and Prices – Personnel Rates

Appendix 2D-2   Task 1: Table of Rates and Prices – Equipment Rates

APPENDIX 2D-1

TABLE OF RATES AND PRICES – PERSONNEL RATES

1.   For the duration of the Contract, the following rates and prices shall apply for all craft labor and other personnel classifications. All such personnel shall be assigned an hourly rate in accordance with the equivalent personnel classifications listed in this Appendix 2D-1. Developer shall not add any additional personnel classifications to perform Task 1 Services, except with the prior written approval of WIFA.

2.   Developer represents and warrants that the rates and prices provided in this Appendix 2D-1:

(a)   reflect all personnel classifications for the Services;

(b)   shall not be subject to escalation;

(c)   are consistent with Exhibit 11 (Cost Schedule); and

(d)   reflect actual rates and prices consistent with Exhibit 11 (Cost Schedule), including its Section 1.3(a), but without any Developer markup or fee.

[Note to Proposers: Rates on prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1. Provide hourly rates for all personnel who will perform Task 1 Services, including Key Personnel, Subcontractors, and others.

2. The Proposer shall commit to using the hourly rates listed above for all such personnel for the duration of the Contract.

3. Additional personnel proposed to be added during Task 1 must be approved by the WIFA. Any such personnel will be assigned an hourly rate consistent with the equivalent personnel listed above.

APPENDIX 2D-2

TASK 1: TABLE OF RATES AND PRICES – EQUIPMENT RATES

1.   For the duration of Task 1, the following rates and prices shall apply for all Developer owned equipment to be used on the Services. Developer shall not add any additional Developer owned equipment to perform any Task 1 Services, except with the prior written approval of WIFA. If any such equipment is added, it shall be assigned an hourly rate consistent with the equivalent equipment listed in this Appendix 2D-2 (Task 1: Table of Rates and Prices – Equipment Rates).

2.   Developer represents and warrants that the rates and prices in this Appendix 2D-2:

(a)   shall not be subject to escalation; and

(b)   do not include any markup and are otherwise consistent with Exhibit 11 (Cost Schedule).

[Note to Proposers: Rates and prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1.   Provide hourly rates for all Developer-owned equipment to be used during the term of the Contract.

2.   The Proposer shall commit to using the hourly rates listed above for all such equipment for the duration of the Contract.

3.   Additional Developer-owned equipment proposed to be added during Task 1 must be approved by the WIFA. Any such equipment will be assigned an hourly rate consistent with the equivalent equipment listed above.

EXHIBIT 2E: PROJECT SCHEDULE (TASK 1)

EXHIBIT 3

EXHIBIT 3A: FORM OF TASK ORDER

	TASK ORDER
WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA	

WIFA Address: **[_____]**	**The following number must appear on all related correspondence, shipping papers, and invoices:**
	TASK ORDER NO.: _____
Developer Address: **[_____]**	

TASK ORDER DATE	**TASK ORDER TERMS AND CONDITIONS**
[Date]	(See Contract.)

This Task Order (this "Order") is made by and between the Water Infrastructure Finance Authority of Arizona ("WIFA") and _____ ("Developer") of the respective addresses provided above.

Description:

Developer shall perform the services described in Exhibit 3C (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in Exhibit 3D (Table of Rates and Prices).

This Task Order consists of this Task Order, including the Contract made and entered into as of [INSERT DATE], 2025 ("Effective Date"), by and between WIFA and Developer, and the following Exhibits:
- Exhibit 3B - Task Specific Information (Task 2)
- Exhibit 3C - Scope of Services (Task 2)
- Exhibit 3D - Table of Rates and Prices (Task 2)
- Exhibit 3E - Project Schedule (Task 2)

1. Please notify us immediately if you are unable to perform the Services as specified.
 	
2. Send all correspondence to:
        [Name, Title]
        [Address]
	Accepted by Developer
	
	_____
	Print Developer Name
	
	_____
	Developer License Number/DIR Registration Number
	
	By:
	_____
	Developer Signature Date
	By:
	_____
	Developer Signature Date
	Accepted by the WIFA
	
	By:
	_____
	WIFA Signature Date

EXHIBIT 3B: TASK SPECIFIC INFORMATION (TASK 2)

GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS	
Developer	**[Note: To be inserted based on Offer]**
Engineer Firm	**[Note: To be inserted based on Offer]**
Guarantor	**[Note: To be inserted based on Offer]**
Task Deadline	**[Note: To be determined by WIFA and Developer]**
Major Subcontractor	**[Note: To be determined by WIFA and Developer based on Offer]**
Lead Engineering Firm	**[Note: To be determined by WIFA and Developer based on Offer]**
Lead Construction Contractor	**[Note: To be determined by WIFA and Developer based on Offer]**
Operations and Maintenance Firm	**[Note: To be determined by WIFA and Developer based on Offer]**
Equity Member(s)	**[Note: To be inserted based on Offer]**
Monthly Progress Schedules	**[Note: Requirements to be determined by WIFA and Developer]**

Payment Amount (Task 2)			
Cost of the Services (Task 2)	**Cost of the Services / Lump Sum**	$_____	
	Cost of the Services Contingency [Note: Delete if no Cost of the Work]	$_____	
	Allowance	**Allowance Item**	**Allowance Value**
			$____
			$_____

			$_____
	Total Cost of the Services	$_____	
Developer's Cost Markup (Task 2)	$_____ **[Note to Proposers: To be calculated based on Total Cost of the Services (excluding bonds and insurance) * Maximum Cost Markup (all Tasks). Delete if not Time and Materials]**		
Premiums for Bonds and Insurance for Task 2	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
TOTAL Payment Amount (Task 2)	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
Maximum Cost Markup (all Tasks)	___% **[Note to Proposers: To be inserted based on Offer]**		
Maximum Cost Markup (WIP Implementation Agreement)	___% **[Note to Proposers: To be inserted based on Offer]**		
Developer's Cost Markup (Task 2)	___% **[Note to Proposers: To be inserted based on amount negotiated for Task Order not to exceed Maximum Cost Markup (all Tasks)]**		
TASK 2 MILESTONES			
Task 2 Milestones and Deadlines (Section 9.3)	**Task 2 Milestone**	**Task 2 Milestone Deadline**	
	[Note: To be determined with each Task Order and aligned with Scope of Services]		
NATURE OF CONTRACT			
Water Importation Project	Means the project, as more particularly described in each Scope of Work, to be [designed, constructed, operated and maintained] in accordance with this		

	Contract to allow for [＿＿＿＿＿], as described in each Scope of Services.
Conditions to Task Order for Task 2	Developer has delivered to WIFA: 1. Evidence, satisfactory to the WIFA, of Task 2 insurance required under this Contract; and 2. All Task 2 Bonds.
Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency (Section 1.3)	1. Amendments and Change Orders 2. Contract body, other than Exhibits and Appendices 3. Task Specific Information (Task 2) 4. Any other documents forming part of this Contract, (including Exhibits and Appendices), other than the Scope of Services 5. Scope of Services (Task 2) 6. Project Standards in the Task Specific Information (Task 2) 7. Task 2 Submittals 8. Project Plans
Project Standards and order of precedence of Project Standards in the case of any ambiguity, discrepancy or inconsistency among the Project Standards	**[Note to Proposers: To be negotiated as part of Task Order]**
Task 2 Project Plans (Section 7.3)	**[Note to Proposers: To be negotiated as part of Task Order and aligned with Scope of Services]**
PERSONNEL	

	Representative	Function(s)
WIFA Representative and its other designated representatives (if any) and their functions (Section 6.2)	Chuck Podolak	All functions of WIFA Representative
Developer Representative and its other designated representatives (if any) and their functions (Section 6.3)	**[Note: To be inserted based on Offer]**	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**

Developer Key Personnel Liquidated Damages	Representative	Liquidated Damages
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
Developer Key Personnel (<u>Section 6.4</u>)	Person	Position
	[Note: To be inserted based on Offer]	Project Manager
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	Person	Position
Developer Team (other than Developer Key Personnel)	**[Note: To be inserted based on Offer]**	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
Indemnified Parties	**[Note: Parties to be added in WIFA's sole discretion based on Funding Sources]**	
PERFORMANCE AND PAYMENT BONDS / INSURANCE		

Performance Bond (Section 5.1.1(a), Exhibit 8A)	100% of the Payment Amount for the applicable Tasks authorized
Payment Bond (Section 5.1.1(b), Exhibit 8B)	As provided in Exhibit 8B (Form of Payment Bond)
Insurance required for Task 2	As provided in Exhibit 14 (Insurance Requirements) unless otherwise adjusted by WIFA
SITE	
Site	1. Developer shall obtain all Governmental Approvals required for subsurface investigation work, including the disturbance of existing vegetation. 2. Developer shall comply with any other conditions required by WIFA as a condition precedent to Site access.
Conditions precedent to Site access during Task [_] [_]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**
Access hours for Services on Site during Task [_]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**
PAYMENT	
Times for submission of invoices by Developer to WIFA Representative (Section 14.19)	Monthly, on the 10th day of each month.
Payment to Subcontractors (Section 14.23)	Within seven days of Developer's receipt of payment from WIFA. **WIFA:** Address: Email address: Attention:

	Copies of all notices to WIFA regarding Claims, disputes termination and default shall also be delivered to the following: Address: Email address: Attention:
NOTICES (Section 28.5)	**WIFA Representative:** Address: Email address: Attention:
	Developer: Address: Email address: **[Note: To be inserted based on Offer]**
	Developer Representative: Address: Email address: Attention: **[Note: To be inserted based on Offer]**

EXHIBIT 3C: SCOPE OF SERVICES (TASK 2)

EXHIBIT 3D: TABLE OF RATES AND PRICES (TASK 2)

Appendix 3D-1   Task 2: Table of Rates and Prices – Personnel Rates

Appendix 3D-2   Task 2: Table of Rates and Prices – Equipment Rates

APPENDIX 3D-1

TABLE OF RATES AND PRICES – PERSONNEL RATES

1.   For the duration of the Contract, the following rates and prices shall apply for all craft labor and other personnel classifications. All such personnel shall be assigned an hourly rate in accordance with the equivalent personnel classifications listed in this Appendix 3D-1. Developer shall not add any additional personnel classifications to perform Task 2 Services, except with the prior written approval of WIFA.

2.   Developer represents and warrants that the rates and prices provided in this Appendix 3D-1:

(a)   reflect all personnel classifications for the Services;

(b)   shall not be subject to escalation;

(c)   are consistent with Exhibit 11 (Cost Schedule); and

(d)   reflect actual rates and prices consistent with Exhibit 11 (Cost Schedule), including its Section 1.3(a), but without any Developer markup or fee.

[Note to Proposers: Rates on prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1. Provide hourly rates for all personnel who will perform Task 2 Services, including Key Personnel, Subcontractors, and others.

2. The Proposer shall commit to using the hourly rates listed above for all such personnel for the duration of the Contract.

3. Additional personnel proposed to be added during Task 2 must be approved by the WIFA. Any such personnel will be assigned an hourly rate consistent with the equivalent personnel listed above.

APPENDIX 3D-2

TASK 2: TABLE OF RATES AND PRICES – EQUIPMENT RATES

1.   For the duration of Task 2, the following rates and prices shall apply for all Developer owned equipment to be used on the Services. Developer shall not add any additional Developer owned equipment to perform any Task 2 Services, except with the prior written approval of WIFA. If any such equipment is added, it shall be assigned an hourly rate consistent with the equivalent equipment listed in this Appendix 3D-2 (Task 2: Table of Rates and Prices – Equipment Rates).

2.   Developer represents and warrants that the rates and prices in this Appendix 3D-2:

(a)   shall not be subject to escalation; and

(b)   do not include any markup and are otherwise consistent with Exhibit 11 (Cost Schedule).

[Note to Proposers: Rates and prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1.   Provide hourly rates for all Developer-owned equipment to be used during the term of the Contract.

2.   The Proposer shall commit to using the hourly rates listed above for all such equipment for the duration of the Contract.

3.   Additional Developer-owned equipment proposed to be added during Task 2 must be approved by the WIFA. Any such equipment will be assigned an hourly rate consistent with the equivalent equipment listed above.

EXHIBIT 3E: PROJECT SCHEDULE (TASK 2)

EXHIBIT 4

EXHIBIT 4A: FORM OF TASK ORDER

WATER INFRASTRUCTURE **FINANCE AUTHORITY OF ARIZONA**	**TASK ORDER**

WIFA Address: ***[_____]***	**The following number must appear on all related correspondence, shipping papers, and invoices:** **TASK ORDER NO.: _____**
Developer Address: ***[_____]***	

TASK ORDER DATE	**TASK ORDER TERMS AND CONDITIONS**
[Date]	(See Contract.)

This Task Order (this "Order") is made by and between the Water Infrastructure Finance Authority of Arizona ("WIFA") and _____ ("Developer") of the respective addresses provided above.

Description:

Developer shall perform the services described in <u>Exhibit 4C</u> (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in <u>Exhibit 4D</u> (Table of Rates and Prices).

This Task Order consists of this Task Order, including the Contract made and entered into as of [INSERT DATE], 2025 ("Effective Date"), by and between WIFA and Developer, and the following Exhibits:
- Exhibit 4B - Task Specific Information (Task 3)
- Exhibit 4C - Scope of Services (Task 3)
- Exhibit 4D - Table of Rates and Prices (Task 3)
- Exhibit 4E - Project Schedule (Task 3)

---

1. Please notify us immediately if you are unable to perform the Services as specified.

2. Send all correspondence to:
   [Name, Title]
   [Address]

Accepted by Developer

_____
Print Developer Name

_____
Developer License Number/DIR Registration Number

By: _____
Developer Signature   Date

By: _____
Developer Signature   Date

Accepted by the WIFA

By: _____
WIFA Signature   Date

EXHIBIT 4B: TASK SPECIFIC INFORMATION (TASK 3)

GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS	
Developer	**[Note: To be inserted based on Offer]**
Engineer Firm	**[Note: To be inserted based on Offer]**
Guarantor	**[Note: To be inserted based on Offer]**
Task Deadline	**[Note: To be determined by WIFA and Developer]**
Major Subcontractor	**[Note: To be determined by WIFA and Developer based on Offer]**
Lead Engineering Firm	**[Note: To be determined by WIFA and Developer based on Offer]**
Lead Construction Contractor	**[Note: To be determined by WIFA and Developer based on Offer]**
Operations and Maintenance Firm	**[Note: To be determined by WIFA and Developer based on Offer]**
Equity Member(s)	**[Note: To be inserted based on Offer]**
Monthly Progress Schedules	**[Note: Requirements to be determined by WIFA and Developer]**

Payment Amount (Task 3)			
Cost of the Services (Task 3)	**Cost of the Services / Lump Sum**	$_____	
	Cost of the Services Contingency [Note: Delete if no Cost of the Work]	$_____	
	Allowance	**Allowance Item**	**Allowance Value**
			$____
			$_____

			$_____
	Total Cost of the Services	$_____	
Developer's Markup (Task 3)	$_____ **[Note to Proposers: To be calculated based on Total Cost of the Services (excluding bonds and insurance) * Maximum Cost Markup (all Tasks). Delete if not Time and Materials]**		
Premiums for Bonds and Insurance for Task 3	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
TOTAL Payment Amount (Task 3)	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
Maximum Cost Markup (all Tasks)	___% **[Note to Proposers: To be inserted based on Offer]**		
Maximum Cost Markup (WIP Implementation Agreement)	___% **[Note to Proposers: To be inserted based on Offer]**		
Developer's Cost Markup (Task 3)	___% **[Note to Proposers: To be inserted based on amount negotiated for Task Order not to exceed Maximum Cost Markup (all Tasks)]**		

TASK 3 MILESTONES

Task 3 Milestones and Deadlines (Section 9.3)	**Task 3 Milestone**	**Task 3 Milestone Deadline**
	[Note: To be determined with each Task Order and aligned with Scope of Services]	

NATURE OF CONTRACT

Water Importation Project	Means the project, as more particularly described in each Scope of Work, to be [designed, constructed, operated and maintained] in accordance with this

	Contract to allow for [ ], as described in each Scope of Services.
Conditions to Task Order for Task 3	Developer has delivered to WIFA: 1. Evidence, satisfactory to the WIFA, of Task 3 insurance required under this Contract; and 2. All Task 3 Bonds.
Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency (Section 1.3)	1. Amendments and Change Orders 2. Contract body, other than Exhibits and Appendices 3. Task Specific Information (Task 3) 4. Any other documents forming part of this Contract, (including Exhibits and Appendices), other than the Scope of Services 5. Scope of Services (Task 3) 6. Project Standards in the Task Specific Information (Task 3) 7. Task 3 Submittals 8. Project Plans
Project Standards and order of precedence of Project Standards in the case of any ambiguity, discrepancy or inconsistency among the Project Standards	**[Note to Proposers: To be negotiated as part of Task Order]**
Task 3 Project Plans (Section 7.3)	**[Note to Proposers: To be negotiated as part of Task Order and aligned with Scope of Services]**
PERSONNEL	

WIFA Representative and its other designated representatives (if any) and their functions (Section 6.2)	**Representative**	**Function(s)**
	Chuck Podolak	All functions of WIFA Representative

Developer Representative and its other designated representatives (if any) and their functions (Section 6.3)	**[Note: To be inserted based on Offer]**	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**

Developer Key Personnel Liquidated Damages	Representative	Liquidated Damages
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
Developer Key Personnel (<u>Section 6.4</u>)	Person	Position
	[Note: To be inserted based on Offer]	Project Manager
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	Person	Position
Developer Team (other than Developer Key Personnel)	**[Note: To be inserted based on Offer]**	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
Indemnified Parties	**[Note: Parties to be added in WIFA's sole discretion based on Funding Sources]**	
PERFORMANCE AND PAYMENT BONDS / INSURANCE		

Performance Bond (Section 5.1.1(a), Exhibit 8A)	100% of the Payment Amount for the applicable Tasks authorized
Payment Bond (Section 5.1.1(b), Exhibit 8B)	As provided in Exhibit 8B (Form of Payment Bond)
Insurance required for Task 3	As provided in Exhibit 14 (Insurance Requirements) unless otherwise adjusted by WIFA
SITE	
Site	1. Developer shall obtain all Governmental Approvals required for subsurface investigation work, including the disturbance of existing vegetation. 2. Developer shall comply with any other conditions required by WIFA as a condition precedent to Site access.
Conditions precedent to Site access during Task [＿] [＿]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**
Access hours for Services on Site during Task [＿]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**
PAYMENT	
Times for submission of invoices by Developer to WIFA Representative (Section 14.19)	Monthly, on the 10th day of each month.
Payment to Subcontractors (Section 14.23)	Within seven days of Developer's receipt of payment from WIFA. **WIFA:** Address: Email address: Attention:

	Copies of all notices to WIFA regarding Claims, disputes termination and default shall also be delivered to the following:
	Address:
	Email address:
	Attention:
NOTICES (Section 28.5)	**WIFA Representative:** Address: Email address: Attention:
	Developer: Address: Email address: **[Note: To be inserted based on Offer]**
	Developer Representative: Address: Email address: Attention: **[Note: To be inserted based on Offer]**

EXHIBIT 4C: SCOPE OF SERVICES (TASK 3)

EXHIBIT 4D: TABLE OF RATES AND PRICES (TASK 3)

Appendix 4D-1   Task 3: Table of Rates and Prices – Personnel Rates

Appendix 4D-2   Task 3: Table of Rates and Prices – Equipment Rates

APPENDIX 4D-1

TABLE OF RATES AND PRICES – PERSONNEL RATES

1.   For the duration of the Contract, the following rates and prices shall apply for all craft labor and other personnel classifications. All such personnel shall be assigned an hourly rate in accordance with the equivalent personnel classifications listed in this Appendix 4D-1. Developer shall not add any additional personnel classifications to perform Task 3 Services, except with the prior written approval of WIFA.

2.   Developer represents and warrants that the rates and prices provided in this Appendix 4D-1:

    (a)   reflect all personnel classifications for the Services;

    (b)   shall not be subject to escalation;

    (c)   are consistent with <u>Exhibit 11</u> (Cost Schedule); and

    (d)   reflect actual rates and prices consistent with <u>Exhibit 11</u> (Cost Schedule), including its <u>Section 1.3(a)</u>, but without any Developer markup or fee.

[Note to Proposers: Rates on prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1. Provide hourly rates for all personnel who will perform Task 3 Services, including Key Personnel, Subcontractors, and others.

2. The Proposer shall commit to using the hourly rates listed above for all such personnel for the duration of the Contract.

3. Additional personnel proposed to be added during Task 3 must be approved by the WIFA. Any such personnel will be assigned an hourly rate consistent with the equivalent personnel listed above.

APPENDIX 4D-2

TASK 3: TABLE OF RATES AND PRICES – EQUIPMENT RATES

1.   For the duration of Task 3, the following rates and prices shall apply for all Developer owned equipment to be used on the Services. Developer shall not add any additional Developer owned equipment to perform any Task 3 Services, except with the prior written approval of WIFA. If any such equipment is added, it shall be assigned an hourly rate consistent with the equivalent equipment listed in this Appendix 4D-2 (Task 3: Table of Rates and Prices – Equipment Rates).

2.   Developer represents and warrants that the rates and prices in this Appendix 4D-2:

(a)   shall not be subject to escalation; and

(b)   do not include any markup and are otherwise consistent with Exhibit 11 (Cost Schedule).

[Note to Proposers: Rates and prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1.   Provide hourly rates for all Developer-owned equipment to be used during the term of the Contract.

2.   The Proposer shall commit to using the hourly rates listed above for all such equipment for the duration of the Contract.

3.   Additional Developer-owned equipment proposed to be added during Task 3 must be approved by the WIFA. Any such equipment will be assigned an hourly rate consistent with the equivalent equipment listed above.

EXHIBIT 4E: PROJECT SCHEDULE (TASK 3)

EXHIBIT 5

EXHIBIT 5A: FORM OF TASK ORDER

WATER INFRASTRUCTURE
FINANCE AUTHORITY OF ARIZONA

TASK ORDER

WIFA Address: *[_____]*	**The following number must appear on all related correspondence, shipping papers, and invoices:**
	TASK ORDER NO.: _____
Developer Address: *[_____]*	

TASK ORDER DATE	TASK ORDER TERMS AND CONDITIONS
[Date]	(See Contract.)

This Task Order (this "Order") is made by and between the Water Infrastructure Finance Authority of Arizona ("WIFA") and _____ ("Developer") of the respective addresses provided above.

Description:

Developer shall perform the services described in <u>Exhibit 5C</u> (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in <u>Exhibit 5D</u> (Table of Rates and Prices).

This Task Order consists of this Task Order, including the Contract made and entered into as of [INSERT DATE], 2025 ("Effective Date"), by and between WIFA and Developer, and the following Exhibits:
- Exhibit 5B - Task Specific Information (Task 4)
- Exhibit 5C - Scope of Services (Task 4)
- Exhibit 5D - Table of Rates and Prices (Task 4)
- Exhibit 5E - Project Schedule (Task 4)

1. Please notify us immediately if you are unable to perform the Services as specified.

2. Send all correspondence to:
   [Name, Title]
   [Address]

Accepted by Developer

_____
Print Developer Name

_____
Developer License Number/DIR Registration Number

By:

_____
Developer Signature   Date

By:

_____
Developer Signature   Date

Accepted by the WIFA

By:

_____
WIFA Signature   Date

EXHIBIT 5B: TASK SPECIFIC INFORMATION (TASK 4)

GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS	
Developer	[Note: To be inserted based on Offer]
Engineer Firm	[Note: To be inserted based on Offer]
Guarantor	[Note: To be inserted based on Offer]
Task Deadline	[Note: To be determined by WIFA and Developer]
Major Subcontractor	[Note: To be determined by WIFA and Developer based on Offer]
Lead Engineering Firm	[Note: To be determined by WIFA and Developer based on Offer]
Lead Construction Contractor	[Note: To be determined by WIFA and Developer based on Offer]
Operations and Maintenance Firm	[Note: To be determined by WIFA and Developer based on Offer]
Equity Member(s)	[Note: To be inserted based on Offer]
Monthly Progress Schedules	[Note: Requirements to be determined by WIFA and Developer]

Payment Amount (Task 4)			
Cost of the Services (Task 4)	**Cost of the Services / Lump Sum**	$_____	
	Cost of the Services Contingency [Note: Delete if no Cost of the Work]	$_____	
	Allowance	**Allowance Item**	**Allowance Value**
			$____
			$_____

		$_____
	Total Cost of the Services	$_____
Developer's Markup (Task 4)	$_____ **[Note to Proposers: To be calculated based on Total Cost of the Services (excluding bonds and insurance) * Maximum Cost Markup (all Tasks). Delete if not Time and Materials]**	
Premiums for Bonds and Insurance for Task 4	$_____ **[Note to Proposers: To be inserted based on Task Order]**	
TOTAL Payment Amount (Task 4)	$_____ **[Note to Proposers: To be inserted based on Task Order]**	
Maximum Cost Markup (all Tasks)	___% **[Note to Proposers: To be inserted based on Offer]**	
Maximum Cost Markup (WIP Implementation Agreement)	___% **[Note to Proposers: To be inserted based on Offer]**	
Developer's Cost Markup (Task 4)	___% **[Note to Proposers: To be inserted based on amount negotiated for Task Order not to exceed Maximum Cost Markup (all Tasks)]**	

TASK 4 MILESTONES

Task 4 Milestones and Deadlines (Section 9.3)	**Task 4 Milestone**	**Task 4 Milestone Deadline**
	[Note: To be determined with each Task Order and aligned with Scope of Services]	

NATURE OF CONTRACT

Water Importation Project	Means the project, as more particularly described in each Scope of Work, to be [designed, constructed, operated and maintained] in accordance with this

	Contract to allow for [＿＿＿＿＿＿], as described in each Scope of Services.
Conditions to Task Order for Task 4	Developer has delivered to WIFA: 1. Evidence, satisfactory to the WIFA, of Task 4 insurance required under this Contract; and 2. All Task 4 Bonds.
Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency (Section 1.3)	1. Amendments and Change Orders 2. Contract body, other than Exhibits and Appendices 3. Task Specific Information (Task 4) 4. Any other documents forming part of this Contract, (including Exhibits and Appendices), other than the Scope of Services 5. Scope of Services (Task 4) 6. Project Standards in the Task Specific Information (Task 4) 7. Task 4 Submittals 8. Project Plans
Project Standards and order of precedence of Project Standards in the case of any ambiguity, discrepancy or inconsistency among the Project Standards	**[Note to Proposers: To be negotiated as part of Task Order]**
Task 4 Project Plans (Section 7.3)	**[Note to Proposers: To be negotiated as part of Task Order and aligned with Scope of Services]**
PERSONNEL	

	Representative	Function(s)
WIFA Representative and its other designated representatives (if any) and their functions (Section 6.2)	Chuck Podolak	All functions of WIFA Representative
Developer Representative and its other designated representatives (if any) and their functions (Section 6.3)	**[Note: To be inserted based on Offer]**	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**

Developer Key Personnel Liquidated Damages	Representative	Liquidated Damages
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
Developer Key Personnel (Section 6.4)	**Person**	**Position**
	[Note: To be inserted based on Offer]	Project Manager
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	[Note: To be inserted based on Offer]	[Note to Proposers: To be negotiated as part of Task Order]
	Person	**Position**
Developer Team (other than Developer Key Personnel)	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
	[Note: To be inserted based on Offer]	[Note: To be inserted based on Offer]
Indemnified Parties	[Note: Parties to be added in WIFA's sole discretion based on Funding Sources]	
PERFORMANCE AND PAYMENT BONDS / INSURANCE		

Performance Bond (Section 5.1.1(a), Exhibit 8A)	100% of the Payment Amount for the applicable Tasks authorized
Payment Bond (Section 5.1.1(b), Exhibit 8B)	As provided in Exhibit 8B (Form of Payment Bond)
Insurance required for Task 4	As provided in Exhibit 14 (Insurance Requirements) unless otherwise adjusted by WIFA
SITE	
Site	1. Developer shall obtain all Governmental Approvals required for subsurface investigation work, including the disturbance of existing vegetation. 2. Developer shall comply with any other conditions required by WIFA as a condition precedent to Site access.
Conditions precedent to Site access during Task [_] [_]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**
Access hours for Services on Site during Task [_]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**
PAYMENT	
Times for submission of invoices by Developer to WIFA Representative (Section 14.19)	Monthly, on the 10th day of each month.
Payment to Subcontractors (Section 14.23)	Within seven days of Developer's receipt of payment from WIFA. **WIFA:** Address: Email address: Attention:

	Copies of all notices to WIFA regarding Claims, disputes termination and default shall also be delivered to the following: Address: Email address: Attention:
NOTICES (Section 28.5)	**WIFA Representative:** Address: Email address: Attention:
	Developer: Address: Email address: **[Note: To be inserted based on Offer]**
	Developer Representative: Address: Email address: Attention: **[Note: To be inserted based on Offer]**

EXHIBIT 5C: SCOPE OF SERVICES (TASK 4)

EXHIBIT 5D: TABLE OF RATES AND PRICES (TASK 4)

Appendix 5D-1   Task 4: Table of Rates and Prices – Personnel Rates

Appendix 5D-2   Task 4: Table of Rates and Prices – Equipment Rates

APPENDIX 5D-1

TABLE OF RATES AND PRICES – PERSONNEL RATES

1.   For the duration of the Contract, the following rates and prices shall apply for all craft labor and other personnel classifications. All such personnel shall be assigned an hourly rate in accordance with the equivalent personnel classifications listed in this Appendix 5D-1. Developer shall not add any additional personnel classifications to perform Task 4 Services, except with the prior written approval of WIFA.

2.   Developer represents and warrants that the rates and prices provided in this Appendix 5D-1:

(a)   reflect all personnel classifications for the Services;

(b)   shall not be subject to escalation;

(c)   are consistent with Exhibit 11 (Cost Schedule); and

(d)   reflect actual rates and prices consistent with Exhibit 11 (Cost Schedule), including its Section 1.3(a), but without any Developer markup or fee.

[Note to Proposers: Rates on prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1. Provide hourly rates for all personnel who will perform Task 4 Services, including Key Personnel, Subcontractors, and others.

2. The Proposer shall commit to using the hourly rates listed above for all such personnel for the duration of the Contract.

3. Additional personnel proposed to be added during Task 4 must be approved by the WIFA. Any such personnel will be assigned an hourly rate consistent with the equivalent personnel listed above.

APPENDIX 5D-2

TASK 4: TABLE OF RATES AND PRICES – EQUIPMENT RATES

1.   For the duration of Task 4, the following rates and prices shall apply for all Developer owned equipment to be used on the Services. Developer shall not add any additional Developer owned equipment to perform any Task 4 Services, except with the prior written approval of WIFA. If any such equipment is added, it shall be assigned an hourly rate consistent with the equivalent equipment listed in this Appendix 5D-2 (Task 4: Table of Rates and Prices – Equipment Rates).

2.   Developer represents and warrants that the rates and prices in this Appendix 5D-2:

   (a)   shall not be subject to escalation; and

   (b)   do not include any markup and are otherwise consistent with Exhibit 11 (Cost Schedule).

[Note to Proposers: Rates and prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1.   Provide hourly rates for all Developer-owned equipment to be used during the term of the Contract.

2.   The Proposer shall commit to using the hourly rates listed above for all such equipment for the duration of the Contract.

3.   Additional Developer-owned equipment proposed to be added during Task 4 must be approved by the WIFA. Any such equipment will be assigned an hourly rate consistent with the equivalent equipment listed above.

EXHIBIT 5E: PROJECT SCHEDULE (TASK 4)

EXHIBIT 6

EXHIBIT 6A: FORM OF TASK ORDER

WATER INFRASTRUCTURE **FINANCE AUTHORITY OF ARIZONA**	**TASK ORDER**

WIFA Address: [_____]	**The following number must appear on all related correspondence, shipping papers, and invoices:** **TASK ORDER NO.:** _____
Developer Address: [_____]	

TASK ORDER DATE	**TASK ORDER TERMS AND CONDITIONS**
[Date]	(See Contract.)

This Task Order (this "Order") is made by and between the Water Infrastructure Finance Authority of Arizona ("WIFA") and _____ ("Developer") of the respective addresses provided above.

Description:

Developer shall perform the services described in Exhibit 6C (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in Exhibit 6D (Table of Rates and Prices).

This Task Order consists of this Task Order, including the Contract made and entered into as of [INSERT DATE], 2025 ("Effective Date"), by and between WIFA and Developer, and the following Exhibits:
- Exhibit 6B - Task Specific Information (Task 5)
- Exhibit 6C - Scope of Services (Task 5)
- Exhibit 6D - Table of Rates and Prices (Task 5)
- Exhibit 6E - Project Schedule (Task 5)

1. Please notify us immediately if you are unable to perform the Services as specified.
 	
 2. Send all correspondence to:
       [Name, Title]
       [Address]
	Accepted by Developer
	
	 _____
	 Print Developer Name
	
	 _____
	 Developer License Number/DIR Registration Number
	
	 By:
	 _____
	 Developer Signature Date
	 By:
	 _____
	 Developer Signature Date
	 Accepted by the WIFA
	
	 By:
	 _____
	 WIFA Signature Date

EXHIBIT 6B: TASK SPECIFIC INFORMATION (TASK 5)

GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS	
Developer	**[Note: To be inserted based on Offer]**
D&C Subcontractor	**[Note: To be inserted based on Offer]**
Engineer Firm	**[Note: To be inserted based on Offer]**
Guarantor	**[Note: To be inserted based on Offer]**
Task Deadline	**[Note: To be determined by WIFA and Developer]**
Major Subcontractor	**[Note: To be determined by WIFA and Developer based on Offer]**
Lead Engineering Firm	**[Note: To be determined by WIFA and Developer based on Offer]**
Lead Construction Contractor	**[Note: To be determined by WIFA and Developer based on Offer]**
Operations and Maintenance Firm	**[Note: To be determined by WIFA and Developer based on Offer]**
Equity Member(s)	**[Note: To be inserted based on Offer]**
Monthly Progress Schedules	**[Note: Requirements to be determined by WIFA and Developer]**

Payment Amount (Task 5)			

Cost of the Services (Task 5)	**Cost of the Services / Lump Sum**	$_____	
	Cost of the Services Contingency [Note: Delete if no Cost of the Work]	$_____	
	Allowance	**Allowance Item**	**Allowance Value**
			$____

			$_____
			$_____
	Total Cost of the Services	$_____	
Developer's Markup (Task 5)	$_____ **[Note to Proposers: To be calculated based on Total Cost of the Services (excluding bonds and insurance) * Maximum Cost Markup (all Tasks). Delete if not Time and Materials]**		
Premiums for Bonds and Insurance for Task 5	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
TOTAL Payment Amount (Task 5)	$_____ **[Note to Proposers: To be inserted based on Task Order]**		
Maximum Cost Markup (all Tasks)	___% **[Note to Proposers: To be inserted based on Offer]**		
Maximum Cost Markup (WIP Implementation Agreement)	___% **[Note to Proposers: To be inserted based on Offer]**		
Developer Cost Markup (Task 5)	___% **[Note to Proposers: To be inserted based on amount negotiated for Task Order not to exceed Maximum Cost Markup (all Tasks)]**		

TASK 5 MILESTONES

Task 5 Milestones and Deadlines (Section 9.3)	**Task 5 Milestone**	**Task 5 Milestone Deadline**
	[Note: To be determined with each Task Order and aligned with Scope of Services]	

NATURE OF CONTRACT

Water Importation Project	Means the project, as more particularly described in each Scope of Work, to be [designed, constructed, operated and maintained] in accordance with this Contract to allow for [_____], as described in each Scope of Services.
Conditions to Task Order for Task 5	Developer has delivered to WIFA: 1. Evidence, satisfactory to the WIFA, of Task 5 insurance required under this Contract; and 2. All Task 5 Bonds.
Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency (Section 1.3)	1. Amendments and Change Orders 2. Contract body, other than Exhibits and Appendices 3. Task Specific Information (Task 5) 4. Any other documents forming part of this Contract, (including Exhibits and Appendices), other than the Scope of Services 5. Scope of Services (Task 5) 6. Project Standards in the Task Specific Information (Task 5) 7. Task 5 Submittals 8. Project Plans
Project Standards and order of precedence of Project Standards in the case of any ambiguity, discrepancy or inconsistency among the Project Standards	**[Note to Proposers: To be negotiated as part of Task Order]**
Task 5 Project Plans (Section 7.3)	**[Note to Proposers: To be negotiated as part of Task Order and aligned with Scope of Services]**
PERSONNEL	

WIFA Representative and its other designated representatives (if any) and their functions (Section 6.2)	**Representative**	**Function(s)**
	Chuck Podolak	All functions of WIFA Representative
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**

Developer Representative and its other designated representatives (if any) and their functions (Section 6.3)	**[Note: To be inserted based on Offer]**	**[Note: To be inserted on Offer]**
Developer Key Personnel Liquidated Damages	**Representative**	**Liquidated Damages**
	[Note: To be inserted based on Offer]	**[Note: To be inserted on Offer]**
Developer Key Personnel (Section 6.4)	**Person**	**Position**
	[Note: To be inserted based on Offer]	Project Manager
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	[Note: To be inserted based on Offer]	**[Note to Proposers: To be negotiated as part of Task Order]**
	Person	**Position**
Developer Team (other than Developer Key Personnel)	**[Note: To be inserted based on Offer]**	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**

	[Note: To be inserted based on Offer]	**[Note: To be inserted based on Offer]**
Indemnified Parties	**[Note: Parties to be added in WIFA's sole discretion based on Funding Sources]**	

PERFORMANCE AND PAYMENT BONDS / INSURANCE		
Performance Bond (Section 5.1.1(a), Exhibit 8A)	100% of the Payment Amount for the applicable Tasks authorized	
Payment Bond (Section 5.1.1(b), Exhibit 8B)	As provided in Exhibit 8B (Form of Payment Bond)	
Insurance required for Task 5	As provided in Exhibit 14 (Insurance Requirements) unless otherwise adjusted by WIFA	

SITE		
Site	1. Developer shall obtain all Governmental Approvals required for subsurface investigation work, including the disturbance of existing vegetation. 2. Developer shall comply with any other conditions required by WIFA as a condition precedent to Site access.	
Conditions precedent to Site access during Task 5 [ ]	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**	
Access hours for Services on Site during Task 5	A maximum of 8 hours per day Monday through Friday (excluding WIFA-Observed Holidays), between the hours of 7:00 a.m. and 5:00 p.m., unless otherwise approved by WIFA in writing. **[Note to Proposers: To be further negotiated as part of Task Order]**	

PAYMENT		
Times for submission of invoices by Developer to WIFA Representative (Section 14.19)	Monthly, on the 10th day of each month.	
Payment to Subcontractors (Section 14.23)	Within seven days of Developer's receipt of payment from WIFA.	

	WIFA: Address: Email address: Attention: Copies of all notices to WIFA regarding Claims, disputes termination and default shall also be delivered to the following: Address: Email address: Attention:
NOTICES (Section 28.5)	**WIFA Representative:** Address: Email address: Attention:
	Developer: Address: Email address: **[Note: To be inserted based on Offer]**
	Developer Representative: Address: Email address: Attention: **[Note: To be inserted based on Offer]**

EXHIBIT 6C: SCOPE OF SERVICES (TASK 5)

EXHIBIT 6D: TABLE OF RATES AND PRICES (TASK 5)

Appendix 6D-1   Task 5: Table of Rates and Prices – Personnel Rates

Appendix 6D-2   Task 5: Table of Rates and Prices – Equipment Rates

APPENDIX 6D-1

TABLE OF RATES AND PRICES – PERSONNEL RATES

1.   For the duration of the Contract, the following rates and prices shall apply for all craft labor and other personnel classifications. All such personnel shall be assigned an hourly rate in accordance with the equivalent personnel classifications listed in this Appendix 6D-1. Developer shall not add any additional personnel classifications to perform Task 5 Services, except with the prior written approval of WIFA.

2.   Developer represents and warrants that the rates and prices provided in this Appendix 6D-1:

(a)   reflect all personnel classifications for the Services;

(b)   shall not be subject to escalation;

(c)   are consistent with Exhibit 11 (Cost Schedule); and

(d)   reflect actual rates and prices consistent with Exhibit 11 (Cost Schedule), including its Section 1.3(a), but without any Developer markup or fee.

[Note to Proposers: Rates on prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1. Provide hourly rates for all personnel who will perform Task 5 Services, including Key Personnel, Subcontractors, and others.

2. The Proposer shall commit to using the hourly rates listed above for all such personnel for the duration of the Contract.

3. Additional personnel proposed to be added during Task 5 must be approved by the WIFA. Any such personnel will be assigned an hourly rate consistent with the equivalent personnel listed above.

APPENDIX 6D-2

TASK 5: TABLE OF RATES AND PRICES – EQUIPMENT RATES

1.   For the duration of Task 5, the following rates and prices shall apply for all Developer owned equipment to be used on the Services. Developer shall not add any additional Developer owned equipment to perform any Task 5 Services, except with the prior written approval of WIFA. If any such equipment is added, it shall be assigned an hourly rate consistent with the equivalent equipment listed in this Appendix 6D-2 (Task 5: Table of Rates and Prices – Equipment Rates).

2.   Developer represents and warrants that the rates and prices in this Appendix 6D-2:

    (a)   shall not be subject to escalation; and

    (b)   do not include any markup and are otherwise consistent with Exhibit 11 (Cost Schedule).

[Note to Proposers: Rates and prices to be inserted based on rates and prices submitted with the Offer and negotiated and agreed with WIFA.]

1.   Provide hourly rates for all Developer-owned equipment to be used during the term of the Contract.

2.   The Proposer shall commit to using the hourly rates listed above for all such equipment for the duration of the Contract.

3.   Additional Developer-owned equipment proposed to be added during Task 5 must be approved by the WIFA. Any such equipment will be assigned an hourly rate consistent with the equivalent equipment listed above.

EXHIBIT 6E: PROJECT SCHEDULE (TASK 5)

[INSERT NAME OF PROJECT]

LONG-TERM WATER IMPORTATION PROJECT

BASE CONTRACT

EXHIBITS

BOARD DRAFT VERSION – November 12, 2024

TABLE OF CONTENTS

Water Infrastructure Finance Authority   Exhibits to LTWIP Base Contract [INSERT NAME
OF WIP]   Board Draft Version – November 12, 2024
62945062.v11

EXHIBITS 1–6

[Note to Proposers: Refer to corresponding Exhibits that are provided with the body of the LTWIP Base Contract.]

EXHIBIT 7

STATE, FEDERAL AND LABOR REQUIREMENTS

EXHIBIT 7A

STATE REQUIREMENTS

1. **Disaster Recovery**

   a. Developer is required to and warrants that it will maintain a tested disaster recovery and business continuity plan throughout the Term of the Contract. This plan, along with any modifications or testing results will be available for review by WIFA with Notice.

   b. At a minimum, such disaster recovery plan must:

      i. Include information regarding the steps taken to avoid interruptions in service availability to WIFA and the State.

      ii. The plan must address:

         1. the recovery time objective ("RTO");

         2. the recovery point objective ("RPO");

         3. the establishment of a minimum level of critical support;

         4. a maximum tolerable downtime; and

         5. information regarding at least one alternative processing facility, its capacity and capability levels, along with specific methods to provide access to information if the primary system is out of service.

2. **Internal Control Audit (SSAE-18)**

   Developer must provide its most current report by its independent auditors of its internal controls. The statement regarding examination of Developer's internal control over financial reporting that is integrated with the audit included in the report in accordance with the American Institute of Certified Public Accountants' Statement on Standards of Attestation Engagements ("SSAE-18") must cover the services provided by Developer resulting from the Solicitation and Contract.

3. **Pandemic Contractual Performance**

   a. Developer must have in effect, promptly after commencement of the Services, a written plan that illustrates how Developer shall perform in accordance with contractual standards in the event of a pandemic or public health emergency. WIFA may require a copy of the plan at any time prior to or post award of the Contract. At a minimum, the pandemic performance plan shall include:

      i. identification of response personnel by name;

ii. key succession and performance planning if there is a sudden significant decrease in Developer's workforce;

iii. alternative methods to ensure there are products in the supply chain or on hand; and

iv. an up-to-date list of company contacts and organizational chart.

b. Developer will provide a copy of its written plan to WIFA within 2 days after WIFA's written request. If Developer claims relief under Section 16 of the Contract for an occurrence of a Force Majeure Event that is a declared public health emergency, then that relief will be conditioned on Developer having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence or mitigate those effects to the extent that overcoming entirely is not practicable.

c. A request from WIFA related to this Section does not necessarily indicate that there a Force Majeure Event has occurred, and Developer will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.

d. Failure to have or implement an appropriate plan will be a material breach of contract.

e. In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this Contract impossible or impracticable, WIFA shall have the following rights:

i. After the official declaration of a pandemic, WIFA may temporarily void the Contract(s) in whole or specific sections if Developer cannot perform to the standards agreed upon in the initial terms.

ii. WIFA shall not incur any liability if a pandemic is declared.

iii. Once the pandemic is officially declared over and/or Developer can demonstrate the ability to perform, WIFA, at its sole discretion may reinstate the temporarily voided Contract(s).

4. **Warranties and Requirements Related to Arizona Information Technology Statewide Policies, Standards, and Procedures**

a. Security Standards

i. Security of the State's systems and data are of **utmost** importance to WIFA. In order to assure security from a personnel and operations perspective, Developer shall comply with all requirements, in their entirety, as described in the statewide enterprise architecture; statewide information technology security policies, standards, and procedures; and any applicable agency-specific information technology security policies, standards, and procedures.

ii. Developer shall follow the correct, current version of these policies, standards, and procedures. The current website for some of these policies, standards, and procedures is: [Information Technology Policies, Standards and Procedures](#). Note that this link is provided for convenience only.

iii. For security reasons, some state facilities require non-state personnel to have escorts. If required by the state facility, Developer personnel shall only be allowed inside of a state facility if accompanied by an escort designated by the State or WIFA. This is applicable in correctional facilities, public safety facilities, state lottery, and other facilities as designated by the State.

b. Prerequisite Assessment of Arizona Baseline Infrastructure Security Controls

i. The Arizona Baseline Infrastructure Security Controls Prerequisite Assessment submitted as separate attachment to Developer's Offer is incorporated herein.

ii. Arizona Department of Homeland Security ("AZDOHS") Cyber Command has established a NIST 800-53 revision 4 based process to assess risk associated with storing, processing, and transmitting State Data with Software as a Service ("SaaS"), Platform as a Service ("PaaS"), and Infrastructure as a Service ("IaaS") vendors.

iii. The [State Data Classification Policy](#) (8110) and a Confidentiality, Integrity, Availability ("CIA") model are used to determine which level of assessment to administer for the vendor's Infrastructure / IaaS. A Microsoft Excel spreadsheet is currently used for each level of assessment.

iv. The Solicitation required Developer to complete the Arizona Baseline Infrastructure Security Controls prerequisite assessment spreadsheet and Developer must provide any requested documentation to include a System Security Plan ("SSP"), policies, and procedures supporting the review of the assessment, as needed by WIFA or the State.

v. AZDOHS Cyber Command will evaluate, and rank submitted Arizona Baseline Infrastructure Security Controls for completeness, attention to detail, and understanding of NIST security controls and framework. AZDOHS Cyber Command will forward assessment results and recommendations to the procurement officer. Results of these information technology security control reviews are for internal use only and will not be shared with Developer.

vi. If the Developer received data solely from a third party and NOT any State of Arizona agency or entity, Developer will not need to undergo an AZRamp assessment. The State will assume that an AZRamp assessment is required until Developer proves otherwise. In the State's sole discretion, the State may also accept current FedRamp and StateRamp certifications as evidence that Developer has met the State's risk assessment requirements. Other forms of CyberSecurity Frameworks ("CSF"), Trust Documents, Self-Attestations, including, but not limited to, ISO/IEC, SOC 2 & 3, PCI, or HIPAA reports of compliance, may be reviewed as part of the

State's risk assessment, but are not exclusive or conclusive evidence that Developer has met the State's risk assessment requirements.

c. Additional Security Requirements

    i. The State reserves the right to conduct risk assessments, vulnerability assessments, black-box penetration tests or hire a third party to conduct risk assessments, vulnerability assessments, and black-box penetration tests of Developer's environment. Developer will be alerted in advance and arrangements made for an agreeable time. Developer shall respond to all flaws deemed serious by the State when discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control(s).

    ii. Upon request, Developer shall submit copies of system logs from Developer's environment to the State of Arizona security team in the format requested to be added to the State SIEM ("Security Information Event Monitor") or IDS ("Intrusion Detection System").

    iii. Developer shall comply with all Applicable Law, including the following (please note that the links are provided for convenience only and may change):

        1. State of Arizona statewide policies, standards and procedures: https://azdohs.gov/information-technology-it-policies-standards-and-procedures;

        2. Federal Information Security Modernization Act of 2014 ("FISMA"): https://csrc.nist.gov/topics/laws-and-regulations/laws/fisma;

        3. OMB Circular A-130: https://www.federalregister.gov/documents/2016/07/28/2016-17872/revision-of-omb-circular-no-a-130-managing-information-as-a-strategic-resource;

        4. National Cyber Strategy of the United States of America: https://www.cisa.gov/executive-order-strengthening-cybersecurity-federal-networks-and-critical-infrastructure;

        5. HIPAA including Business Associate Agreement/ Health Information Technology for Economic and Clinical Health Act ("HITECH"): https://www.hhs.gov/hipaa/index.html;

        6. Tax Information Security Guidelines for federal, State and local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information (IRS Publication 1075): https://www.irs.gov/pub/irs-pdf/p1075.pdf;

        7. Criminal Justice Information Services Security Policy ("CJIS"): https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center;

8. Centers for Medicare & Medicaid Services ("CMS"), Minimum Acceptable Risk Standards for Exchanges ("MARS-E"): https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2-MARS-E-v2-0-Minimum-Acceptable-Risk-Standards-for-Exchanges-11102015.pdf;

9. A.R.S. Title 41, Chapter 41. Arizona Department of Homeland Security;

10. A.R.S. § 18-104 - Arizona Department of Administration, Arizona Strategic Enterprise Technology ("ADOA-ASET"), powers and duties of the agency: https://www.azleg.gov/arsDetail/?title=18;

11. A.R.S. § 18-105 - Statewide Information Security and Privacy Office ("SISPO"): https://www.azleg.gov/viewdocument/?docName=http%3A//www.azleg.gov/ars/18/00105.htm;

12. A.R.S. § 18-551 - Definitions Information Security Including PII: https://www.azleg.gov/ars/18/00551.htm;

13. A.R.S. § 18-552 - Notification of security system breaches; requirements; enforcement; civil penalty; preemption; exceptions: https://www.azleg.gov/ars/18/00552.htm;

14. Arizona Executive Order 2008-10 – Mitigating Cyber Security Threats: https://azdohs.gov/sites/default/files/executive_order_2008-10_mitigating_cyber_security_threats_-_8-16_0_0.pdf;

15. SIPC Memorandum of Understanding ("MOU"): https://www.sipc.org/about-sipc/;

16. State environmental policies: https://azdeq.gov/LawsAndRules;

17. Family Education Rights Privacy Act ("FERPA"): https://studentprivacy.ed.gov/faq/what-ferpa#:~:text=The%20Family%20Educational%20Rights%20and,identifiable%20information%20from%20the%20education;

18. Driver's Privacy Protection Act ("DPPA"): https://azdot.gov/motor-vehicles/driver-services/driver-license-information/motor-vehicle-records;

19. Incident response reporting program and system: https://aset.az.gov/sites/default/files/P8240%20Incident%20Response%20Planning_Sept2018_0.pdf;

20. Privacy incident reporting policy and standards: https://aset.az.gov/sites/default/files/STANDARD%208240%20INCIDENT%20RESPONSE%20PLANNING.pdf;

21. State of Arizona Library, Archives and Public Records, Records Management Division, General Retention Schedules: https://azlibrary.gov/arm/retention-schedules; and

22. Payment Card Industry Security Standards including but not limited to Supplemental Documents, Information Supplements and Validation Requirements: https://www.pcisecuritystandards.org.

5. Data and Information Handling

This section applies to the extent the Services include handling of any of the following: (1) the State's proprietary and sensitive data, or (2) confidential or access-restricted information obtained from State or from others at the State's behest.

a. <u>Data Protection and Confidentiality of Information</u>. Developer warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Developer in any way related to the Contract, provided to Developer by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To assure compliance with the foregoing warrant:

   i. Developer shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and

   ii. Developer shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information (instead, Developer shall route all such requests to State's designated representative).

b. <u>Personally Identifiable Information</u>. Without limiting the generality of this paragraph, Developer warrants that it will protect any personally identifiable information ("PII") belonging to State's employees or other contractors or members of the general public that Developer receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:

   i. PII has the meaning given in the federal OMB Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information, January 3, 2017; and

ii. For the purposes of this Section 5, "protect" means taking measures to safeguard PII and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the federal General Services Administration ("GSA") Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information.

iii. For convenience of reference only, the OMB memorandum is available at: https://dpcld.defense.gov/Privacy/Authorities-and-Guidance/.

iv. For convenience of reference only, the GSA directive is available at: www.gsa.gov.

c. Protected Health Information. Developer warrants that, to the extent performance under Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

i. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (a) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (c) State's current and published PHI/ePHI privacy and security policies and procedures;

ii. will cooperate with State in the course of performing under the Contract so that both State and Developer stay in compliance with this Section 5; and

iii. will sign any documents that are reasonably necessary to keep both State and Developer in compliance with the requirements of this Section 5, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

For convenience of reference only, the Privacy Rule is available at: http://www.hhs.gov/hipaa/for-professionals/privacy/index.html.

6. **Contract Interpretation**

a. Arizona Law. Arizona law applies to this Contract including, Arizona Revised Statutes Title 49, Chapter 8, and it's implementing rules, Arizona Administrative Code Title 18, Chapter 15, Article 8.

b. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

7. **Contract Administration and Operation**

a. Non-Discrimination. Developer shall comply with Executive Orders 2023-09, 2023-01, and 2009-9, and any and all other applicable federal and State laws, rules and

regulations, including the Americans with Disabilities Act. Developer shall include these provisions in Subcontracts when required by federal or State law.

b. <u>Audit</u>. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, Developer's or any Subcontractor's Books and Records shall be subject to audit by the State and, where applicable, the U.S. Government, to the extent that the Books and Records relate to the performance of the Contract or Subcontract.

c. <u>Facilities Inspection and Materials Testing</u>. Developer agrees to permit access to its facilities, Subcontractor facilities, and Developer's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of Developer's facilities nor materials testing shall constitute final acceptance of the materials or Services. If the State determines non-compliance of the materials, Developer shall be responsible for the payment of all costs incurred by the State for testing and inspection.

d. <u>Advertising, Publishing and Promotion of Contract</u>. Developer shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of WIFA.

e. <u>Continuous Improvement</u>. Developer shall recommend continuous improvements on an on-going basis in relation to any materials and Services under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of materials or Services. The State may require Developer to engage in continuous improvements throughout the term of the Contract.

f. <u>Other Contracts</u>. The State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, Developer shall cooperate fully with State employees and such other suppliers and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Developer's work to others, Developer shall cooperate as State instructs regarding the necessary transfer of its work product, materials, Services, or Books and Records to the State or the other suppliers. Developer shall not commit or permit any act that interferes with the State's or other suppliers' performance of their work, provided that the State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.

g. <u>Federal Immigration and Nationality Act</u>. Developer shall comply with the Federal Immigration and Nationality Act and all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the Term of the Contract. Further, Developer shall flow down this requirement to all Subcontractors utilized during the Term of the Contract. The State shall retain the right to perform random audits of Developer and Subcontractor records or to inspect the papers of any employee thereof to ensure compliance. Should the State determine that Developer and/or any Subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including suspension of work,

termination of the Contract for default and suspension and/or debarment of Developer.

h. <u>E-Verify Requirements</u>. In accordance with A.R.S. § 41-4401, Developer warrants compliance with all federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A.

i. <u>Offshore Performance of Work involving Data is Prohibited</u>. Any Services that are described in the specifications or scope of work that directly serve the State or its clients and involve access to Data shall be performed within the defined territories of the United States.

j. <u>Protection of State Cybersecurity Interests</u>. Developer shall comply with State Executive Order No. 2023-10, which includes a prohibition against (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.

k. <u>Certification Required by State Law</u>.

    i. If Developer is a "Company" as defined in A.R.S. § 35-393, by executing this Contract Developer certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. § 35-393 *et seq.* and will refrain from any such boycott for the duration of this Contract.

    ii. Developer further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable, by executing this Contract.

l. <u>Cancellation for Conflict of Interest</u>. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when Developer receives written Notice of the cancellation unless the Notice specifies a later time. If Developer is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

m. <u>Gratuities</u>. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by Developer or a representative of affiliate of Developer to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Developer.

8. Risk and Liability

    a. <u>Third Party Antitrust Violations</u>. Developer assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services provided by third parties to Developer toward fulfillment of this Contract.

9. Warranties

    a. <u>Lobbying</u>.

        i. <u>Prohibition</u>. Developer warrants that it will not engage in lobbying activities, as defined in 40 CFR Part 34 and A.R.S. § 41-1231 *et seq.*, using monies awarded under the Contract, provided that the foregoing does not intend to constrain Developer's use of its own monies or property, including any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Developer shall implement and maintain adequate controls to assure compliance with the above. Developer shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

        ii. <u>Exception</u>. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for the State's benefit or on the State's behalf.

    b. <u>False Statements</u>. Developer represents and warrants that all statements and information Developer prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the WIFA determines that Developer submitted an Offer with a false statement or makes material misrepresentations during the performance of the Contract, WIFA may determine that Developer has materially breached the Contract and may void this Contract.

Water Infrastructure Finance Authority   Exhibits to LTWIP Base Contract [INSERT NAME
OF WIP]   Board Draft Version – November 12, 2024
62945062.v11

EXHIBIT 7B

FEDERAL REQUIREMENTS

Developer shall perform its obligations under this Contract in accordance with the following requirements.

1. **American With Disabilities Act**

    Developer shall be responsible for familiarity and compliance with (as applicable) the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.* and its implementing regulations. Developer will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. Developer will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any contract entered into by Developer or any Subcontractor relating to the Contract, to the extent allowed under the Contract, shall be subject to the provisions of this paragraph.

2. **Verification of Employment Eligibility**

    By executing this Contract, Developer verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented persons, including the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all Subcontractors at all tiers, including sub-Subcontractors, subconsultants, sub-subconsultants, and consultants, to comply with the same. Developer agrees that any of the following shall constitute a Developer Default: (1) failure of Developer or its Subcontractors at any tier to meet any of the requirements provided for in this Section 2; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Services any Person found not to be in compliance with such requirements.

3. **Solid Waste Disposal Act**

    Developer shall comply with all requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of completion, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in EPA guidelines.

    Developer shall include language equivalent to that in this Section 3 in each of its Subcontracts and require each Subcontractor to include equivalent language in each of its Subcontracts, at all tiers.

4.   Trafficking in Persons

Developer and its employees may not engage in severe forms of trafficking in persons during the term of this Contract, procure a commercial sex act during the term of this Contract, or use forced labor in the performance of this Contract. Developer shall provide immediate notice to WIFA of any information regarding a violation of the foregoing. Developer recognizes that any failure to comply with this Section 4 may subject WIFA to loss of federal funds. Developer agrees to compensate WIFA for any such funds lost due to its failure to comply with this Section 4 or the failure of any Subcontractor to comply with this condition. Developer shall include language equivalent to that in this Section 4 in each of its Subcontracts and require each Subcontractor to include equivalent language in each of its Subcontracts.

5.   Developer Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

a.   This Contract and employees working on this Contract will be subject to the whistleblower rights and remedies established at 41 U.S.C. Section 4712 by Section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Federal Acquisition Regulation ("FAR") Subpart 3.9.

b.   Developer shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. Section 4712, as described in FAR Subpart 3.9.

c.   Developer shall insert the substance of this Section 5, including this subsection (c), in all Subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of Subcontract award.

6.   Use of Prohibited Products (National Defense Authorization Act of 2019)

a.   So long as section 889 of the National Defense Authorization Act of 2019 (H.R. 5515 at pp. 282-284; Pub. L. 115-232) or any comparable statute or regulation is effective, including FAR Section 52.204-25, Developer shall not commit any of the following actions:

  i.   deliver, install, or include any Prohibited Product (as defined below) under this Contract;

  ii.   propose to deliver, install, or include any Prohibited Product under this Contract; or

  iii.   enter into a new contract to procure or obtain any Prohibited Product.

b.   For the purpose of this Section 6, "Prohibited Product" has the same definition as "covered telecommunications equipment or services" as provided in FAR Section 52.204-25 and includes any telecommunication or video surveillance equipment, systems, or services produced by any of the following entities:

  i.   Huawei Technologies Company;

      ii.   ZTE Corporation;

     iii.   Hytera Communications Corporation;

     iv.   Hangzhou Hikvision Digital Technology Company;

      v.   Dahua Technology Company; or

     vi.   Any subsidiary or affiliate of the entities mentioned in this Section 6(b).

c. Developer shall identify the known subsidiaries and affiliates of the entities listed in Section 6(b) above from the following website: https://blink.ucsd.edu/technology/security/ndaa/index.html.

7. Environmental Compliance

Developer shall comply with all Environmental Laws, applicable standards, orders, and requirements, including those issued under the Clean Air Act (42 USC §§ 7401–7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251–1387). Any violations of this Section 7 shall be reported to WIFA.

8. Suspension and Debarment

Developer certifies that it is not and will not knowingly enter into a Subcontract with anyone that is ineligible under 2 CFR Part 1532. Suspension and debarment information can be accessed at http://www.sam.gov. Developer represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its Subcontracts under this Contract.

The State may, by written notice to Developer, immediately terminate this Contract if the State determines that Developer has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of this Contract shall attest that Developer is not currently suspended or debarred. If the contractor becomes suspended or debarred, Developer shall immediately notify WIFA.

9. Anti-Lobbying

Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for EPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, that are not subject to this prohibition. Upon award of this Contract, Developer shall complete and submit to WIFA the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Developer shall also require all Subcontractors and suppliers of any tier awarded a Subcontract over $100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Water Infrastructure Finance Authority   Exhibits to LTWIP Base Contract [INSERT NAME
OF WIP]   Board Draft Version – November 12, 2024
62945062.v11

10. **Build America, Buy America Act**

a. Developer shall comply with the Build America, Buy America Act ("BABA") (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58), which provides that federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in federally funded projects are produced in the United States, unless a waiver has been granted, as applicable, or the product is subject to a general waiver.

b. WIFA may investigate Developer and any Subcontractor's compliance with BABA. If an investigation is initiated, Developer shall, or Developer shall ensure the applicable Subcontractor shall, document its compliance, in accordance with _____ **[Note to Proposers: Will differ based on source of federal funding]**, and cooperate with the investigation. Developer shall incorporate the BABA conditions in every Subcontract or purchase order and shall enforce such conditions.

11. **Safe Operation of Motor Vehicles**

a. <u>Seat Belt Use</u>. Developer is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased by either the Developer or WIFA.

b. <u>Distracted Driving</u>. Developer agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messages while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Developer owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Services performed under this Contract.

12. **Drug-Free Workplace**

a. Developer shall, and shall ensure its Subcontractors shall, comply with the federal anti-drug and alcohol misuse regulations in CFR Title 2, Subtitle B for the applicable agency **[Note to Proposers: Will differ based on source of federal funding]** to the full extent that they are, by their terms, applicable to Developer and its Subcontractors and all other applicable requirements for prevention of alcohol misuse and prohibited drug use and/or an alcohol and drug free workplace program.

b. This <u>Section 12</u> applies to all contracts in which Developers are performing safety sensitive functions as defined in _____ **[Note to Proposers: May differ based on source of federal funding]**.

EXHIBIT 7C

LABOR REQUIREMENTS

[Note to Proposers: The requirements of this Exhibit may differ based on use of federal funding]

1. Nondiscrimination

Developer shall comply with the following federal non-discrimination requirements:

a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency.

b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.

c. The Age Discrimination Act of 1975, which prohibits age discrimination.

d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.

e. 40 CFR Part 7, as it relates to the foregoing.

f. Executive Order No. 11246.

2. Equal Employment Opportunity Obligations Under Executive Order No. 11246

Developer shall comply with Executive Order No. 11246, entitled "Equal Employment Opportunity," ("EEO") as amended by Executive Order No. 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). Developer's compliance with Executive Order No. 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4. During the performance of this contract, Developer agrees as follows:

a. Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Developer 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, sexual orientation, gender identity, 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. Developer 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.

b. Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Developer 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, sexual orientation, gender identity, 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. Developer 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.

c. Developer will, in all solicitations or advancements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

d. Developer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Developer's legal duty to furnish information.

e. Developer will send to each labor union or representative of workers with which it 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 Developer'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.

f. Developer will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

g. Developer will furnish all information and reports required by Executive Order No. 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 its 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.

h. In the event of Developer'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 Developer may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order

No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

i. Developer will include the provisions of paragraphs (a) through (h) 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 September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Developer 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 Developer becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, Developer may request the United States to enter into such litigation to protect the interests of the United States. [Section 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, Executive Order No. 13665 of April 8, 2014, 79 FR 20749, Executive Order No. 13672 of July 21, 2014, 79 FR 42971]

3. **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order No. 11246)**

    a. As used in this <u>Section 3</u>:

        1. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;

        2. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

        3. "Employer identification number" means the federal tax identification number that an employer uses to file tax returns with the U.S. Internal Revenue Service.

        4. "Minority" includes:

            i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

            ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

            iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

            iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable

tribal affiliations through membership and participation or community identification).

b. Whenever Developer, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each Subcontract in excess of $10,000 the provisions of these specifications and the applicable goals for minority and female participation and set forth in the Task Specific Information for each Task.

c. If Developer is participating (pursuant to 41 CFR Section 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Developer must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. Developer and each Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by Developer or Subcontractors toward a goal in an approved Plan does not excuse any Developer or covered Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables. Developer shall implement the specific affirmative action standards provided in these specifications. The goals set forth Task Specific Information are expressed as percentages of the total hours of employment and training of minority and female utilization Developer should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction developers performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. Developer is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

d. Neither the provisions of any collective bargaining agreement, nor the failure by a union with which Developer has a collective bargaining agreement, to refer either minorities or women shall excuse Developer's obligations under these specifications, Executive Order No. 11246, or the regulations promulgated pursuant thereto.

e. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by Developer during the training period, and Developer must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

f. Developer shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of Developer's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions.

Developer shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which Developer's employees are assigned to work. Developer, where possible, will assign two or more women to each construction project. Developer shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out Developer's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when Developer or its unions have employment opportunities available, and maintain a record of the organizations' responses.

3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to Developer by the union or, if referred, not employed by Developer, this shall be documented in the file with the reason therefor, along with whatever additional actions Developer may have taken.

4. Provide immediate written notification to the Director when the union or unions with which Developer has a collective bargaining agreement has not referred to Developer a minority person or woman sent by Developer, or when Developer has other information that the union referral process has impeded Developer's efforts to meet its obligations.

5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to Developer's employment needs, especially those programs funded or approved by the Department of Labor. Developer shall provide notice of these programs to the sources compiled under 7b above.

6. Disseminate Developer's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Developer in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

8. Disseminate Developer's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing Developer's EEO policy with other Developers and Subcontractors with whom Developer does or anticipates doing business.

9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Developer's recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, Developer shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Developer's work force.

11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and Developer's obligations under these specifications are being carried out.

14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

15. Document and maintain a record of all solicitations of offers for Subcontracts from minority and female construction Developers and

suppliers, including circulation of solicitations to minority and female Developer associations and other business associations.

16. Conduct a review, at least annually, of all supervisors' adherence to and performance under Developer's EEO policies and affirmative action obligations.

g. Developer is encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations. The efforts of a Developer association, joint Developer-union, Developer-community, or other similar group of which Developer is a member and participant, may be asserted as fulfilling any one or more of its obligations of these Specifications provided that Developer actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in Developer's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of Developer. The obligation to comply, however, is Developer's and failure of such a group to fulfill an obligation shall not be a defense for Developer's noncompliance.

h. A single goal for minorities and a separate single goal for women are established for each Task. Developer, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, Developer may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though Developer has achieved its goals for women generally, Developer may be in violation of the Executive Order if a specific minority group of women is underutilized).

i. Developer shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

j. Developer shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order No. 11246.

k. Developer shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing Subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Developer who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.

l. Developer, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed herein, so as to achieve maximum results from its efforts to ensure EEO. If Developer fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR Section 60-4.8.

m. Developer shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Developers shall not be required to maintain separate records.

n. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

4. Segregated Facilities, 41 CFR 60-1.8

Developer must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. Developer may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. Developer's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under Developer's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this Section 4, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; provided, that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

5. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order No. 11246) located at 41 CFR Section 60-4.2

a. The goals and timetables for minority and female participation, expressed in percentage terms for Developer's aggregate workforce in each trade on all construction work in the covered area, are specified in the Task Specific Information for each Task.

These goals are applicable to all Developer's construction work (whether or not it is federal or federally assisted) performed in the covered area. If Developer performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, Developer also is subject to the goals for both its federally involved and non-federally involved construction.

Developer's compliance with the Executive Order and the regulations in 41 CFR Section 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR Section 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and Developer shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Developer to Developer or from project to project for the sole purpose of meeting Developer's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Section 60-4. Compliance with the goals will be measured against the total work hours performed.

b. Developer shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction Subcontract in excess of $10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed.

c. As used in this Notice, and in the Contract, the "covered area" is **[Note to Proposers: description of the geographical areas where the Contract is to be performed giving the state, county and city, if any will be inserted based on the specific WIP information]**.

6. **Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements, 73 FR 15904**

a. The WIFIA Program requires borrowers of WIFIA loans to incorporate EPA's six good faith efforts during contract and subcontract procurement and maintain documentation of efforts. EPA's good faith efforts are explained in the DBE rule and website at: https://www.epa.gov/resources-small-businesses/disadvantaged-business-enterprise-program-resource. Although the website provides good examples on how to implement these efforts during Contract procurement, the WIFIA program does not have specific requirements for implementing each of the efforts as long as the effort is shown.

b. Developer agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. Developer shall comply with 40 CFR Section 33.301 and retain all records documenting compliance with the six good faith efforts. Developer shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Developer 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 Developer 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.

7. **Compliance with Davis-Bacon and Related Acts**

In accordance with 29 CFR 5.5(a), the following clauses from 29 CFR 5.5 are included in this Contract. Unless otherwise required by the context, all references in this Section 7 to "contractor" apply to Developer and all references to "subcontractor" apply to Subcontractors. The meanings of all defined terms in this Section 7 are in 29 CFR 5.2; for the avoidance of doubt, if any term in this Section 7 is defined in both the Contract and in 29 CFR 5.5 then the definition in 29 CFR 5.5 controls. All cross-references in this Section 7 are either internal to this Section 7 (which directly reflects 29 CFR 5.5) or to other regulations in the CFR, unless specified otherwise, and are not to the Contract, other exhibits to the Contract, or the Solicitation.

§ 5.5 Contract provisions and related matters.

(a) **Required contract clauses.** In accordance with 29 CFR 5.5(a), which requires that the Agency head will cause or require the contracting officer to require the contracting officer to insert in full, or (for contracts covered by the Federal Acquisition Regulation (48 CFR chapter 1)) by reference, 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 public building or public work, or building or work 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 laws referenced by § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor). The following clauses are included in full:

(1) **Minimum wages** —

(i) **Wage rates and fringe benefits.** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) 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 must be paid the appropriate wage rate and fringe

benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. 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 classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must 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.

(ii) **Frequently recurring classifications.**

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

(1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(2) The classification is used in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) **Conformance.**

(A) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must 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.

(iv) **Fringe benefits not expressed as an hourly rate.** 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) **Unfunded plans.** 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, in accordance with the criteria set forth in § 5.28, 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.

(vi) **Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) **Withholding** —

(i) **Withholding requirements.** The [write in name of Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, 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.

(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(3) **Records and certified payrolls** —

(i) **Basic record requirements** —

(A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.

(D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified payroll requirements** —

(A) **Frequency and method of submission.** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the [write in name of appropriate Federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency]. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime

contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(E) **Signature.** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) **Falsification.** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) **Length of certified payroll retention.** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) **Contracts, subcontracts, and related documents.** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) **Required disclosures and access** —

(A) **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the [write the name of the agency] or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) **Sanctions for non-compliance with records and worker access requirements.** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) **Required information disclosures.** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the [write in name of appropriate Federal agency] if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal

agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) **Apprentices and equal employment opportunity** —

(i) **Apprentices** —

(A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) **Fringe benefits.** Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(C) **Apprenticeship ratio.** The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) **Reciprocity of ratios and wage rates.** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is

being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) **Equal employment opportunity.** The use of apprentices and journeyworkers under this part must 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 must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal agency] may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(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 the contracting agency, 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 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 40 U.S.C. 3144(b) or § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

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

(11) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

(b) **Contract Work Hours and Safety Standards Act (CWHSSA).** The Agency Head must cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, 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 must be inserted in addition to the clauses required by paragraph (a) of this section or 29 CFR 4.6. As used in this paragraph (b), the terms "laborers and mechanics" include watchpersons 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 forty 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 forty 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 (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).

(3) **Withholding for unpaid wages and liquidated damages** —

(i) **Withholding process.** The [write in the name of the Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(4) **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) **CWHSSA required records clause.** In addition to the clauses contained in paragraph (b) of this section, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by § 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

(d) **Incorporation of contract clauses and wage determinations by reference.** Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) **Incorporation by operation of law.** The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by § 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

EXHIBIT 8

BONDS

Exhibit 8A	Form of Performance Bond
Exhibit 8B	Form of Multiple Obligee Rider for Performance Bond
Exhibit 8C	Form of Payment Bond
Exhibit 8D	Form of Multiple Obligee Rider for Payment Bond

<u>**EXHIBIT 8A**</u>

<u>**FORM OF PERFORMANCE BOND**</u>

Bond No._____

**ARIZONA STATUTORY PERFORMANCE BOND FOR CONSTRUCTION PURSUANT
TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES**

(Penalty of this bond must be 100% of the Payment Amount for the applicable Task)

    KNOW ALL MEN BY THESE PRESENTS THAT: _____ (hereinafter "Principal"), as Principal and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal offices in the city of _____ holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto the Water Infrastructure Finance Authority of Arizona, and independent state authority (hereinafter "Obligee"), in the amount of _____ _____ ($_____) , for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

    WHEREAS, the Principal has entered into a certain written contract dated the ____ day of _____, 202_ to construct and complete certain work described as,

_____

_____

_____

    NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise, it remains in full force and effect.

    PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

    The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

[*Signatures Follow*]

Witness our hands this _____ day of _____, 202_.

[COMPANY NAME] _____

PRINCIPAL   SEAL

By: _____

Title: _____

[COMPANY NAME] _____

SURETY   SEAL

By: _____

Title: _____

EXHIBIT 8B

FORM OF MULTIPLE OBLIGEE RIDER FOR PERFORMANCE BOND

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No._____ (the "Performance Bond").

WHEREAS, the Water Infrastructure Finance Authority of Arizona ("WIFA") awarded to _____ [name of Developer], a/an _____ [form and state of entity] ("Primary Obligee"), a Long-Term Water Importation Project Base Contract (the "Project"), duly executed and delivered as of _____, 202_ on the terms and conditions set forth therein; and

WHEREAS, [●] ("Principal") entered into a written agreement bearing the date of _____, 202_ (the "Agreement") with Primary Obligee for Principal's performance of the Services for the Project; and

WHEREAS, Primary Obligee requires that Principal provide the Task ___ Performance Bond and that WIFA be named as an additional obligee under the Task ___ Performance Bond; and

WHEREAS, Principal and Surety have agreed to execute and deliver this Rider concurrently with the execution of the Task ___ Performance Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: WIFA is hereby added to the Task ___ Performance Bond as a named obligee (the "Ultimate Obligee").

Surety shall not be liable under the Task ___ Performance Bond to Primary Obligee, Ultimate Obligee, or either of them, unless Primary Obligee, Ultimate Obligee, or either of them, shall make payments to Principal (or in the case Surety arranges for performance of the Services, to Surety) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by Primary Obligee shall have occurred and be continuing under the Agreement.

The aggregate liability of Surety under the Task ___ Performance Bond to Primary Obligee and Ultimate Obligee is limited to the penal sum of the Task ___ Performance Bond. Ultimate Obligee's rights hereunder are subject to the same defenses, except defenses available under bankruptcy law, that Principal and/or Surety have against Primary Obligee, provided that the defense of breach or default by Primary Obligee under the Agreement shall be available against Ultimate Obligee only if Ultimate Obligee has received notice and 60 days prior opportunity to cure such breach or default, or such longer period to cure as may be reasonable to diligently effect cure. The total liability of Surety shall in no event exceed the amount recoverable from Principal by Primary Obligee under the Agreement.

The rights of Primary Obligee under the Task ___ Performance Bond are subordinate in all respects to Ultimate Obligee's rights hereunder. Primary Obligee shall have no right to receive

any payments under the Task ___ Performance Bond and the Surety shall make any and all payments under the Task ___ Performance Bond to Ultimate Obligee.

In the event of a conflict between the Task ___ Performance Bond and this Rider, this Rider shall govern and control. All references to the Task ___ Performance Bond, either in the Task ___ Performance Bond or in this Rider, shall include and refer to the Task ___ Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Task ___ Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this____ day of _____, 20__.

Principal: [●]

By: _____
Its: _____
(Seal)

Surety: _____

By: _____
Its: _____
(Seal)

EXHIBIT 8C

FORM OF PAYMENT BOND

ARIZONA STATUTORY PAYMENT BOND FOR CONSTRUCTION PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES

(Penalty of this bond must be 100% of the Payment Amount for the applicable Task)
.
KNOW ALL MEN BY THESE PRESENTS THAT: _____ (hereinafter "Principal"), as Principal and _____ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____ with its principal offices in the city of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are firmly bound unto the Water Infrastructure Finance Authority of Arizona, and independent state authority (hereinafter "Obligee"), in the amount of _____ _____ ($____) for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract dated the ___ day of _____, 202_ to construct and complete certain work described as,

_____

_____

_____

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise, it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 202_.

[COMPANY NAME]		[COMPANY NAME]	
PRINCIPAL	SEAL	SURETY	SEAL
By: _____		By: _____	
Title: _____		Title: _____	

EXHIBIT 8D

FORM OF MULTIPLE OBLIGEE RIDER FOR PAYMENT BOND

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No._____ (the "Payment Bond").

WHEREAS, the Water Infrastructure Finance Authority of Arizona ("WIFA") awarded to _____ [name of Developer], a/an _____[form and state of entity] ("Primary Obligee"), a Long-Term Water Importation Project Base contract (the "Project"), duly executed and delivered as of _____, 202_ on the terms and conditions set forth therein; and

WHEREAS, [●] ("Principal") entered into a written agreement bearing the date of _____, 202_ (the "Agreement") with Primary Obligee for Principal's performance of the Services for the Project; and

WHEREAS, Primary Obligee requires that Principal provide the Payment Bond and that WIFA be named as an additional obligee under the Payment Bond; and

WHEREAS, Principal and Surety have agreed to execute and deliver this Rider concurrently with the execution of the Payment Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: WIFA is hereby added to the Payment Bond as a named obligee (the "Ultimate Obligee").

Surety shall not be liable under the Payment Bond to Primary Obligee, Ultimate Obligee, or either of them, unless Primary Obligee, Ultimate Obligee, or either of them, shall make payments to Principal (or in the case Surety arranges for performance of the Services, to Surety) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by Primary Obligee shall have occurred and be continuing under the Agreement.

The aggregate liability of Surety under this Payment Bond to Primary Obligee and Ultimate Obligee is limited to the penal sum of the Payment Bond. Ultimate Obligee's rights hereunder are subject to the same defenses, except defenses available under bankruptcy law, that Principal and/or Surety have against Primary Obligee, provided that the defense of breach or default by Primary Obligee under the Agreement shall be available against Ultimate Obligee only if Ultimate Obligee has received notice and 60 days prior opportunity to cure such breach or default, or such longer period to cure as may be reasonable to diligently effect cure. The total liability of Surety shall in no event exceed the amount recoverable from Principal by Primary Obligee under the Agreement.

The rights of Primary Obligee under the Payment Bond are subordinate to Ultimate Obligee's rights hereunder. Primary Obligee shall have no right to receive any payments under the Payment Bond and Surety shall make any and all payments under the Payment Bond to Ultimate Obligee.

In the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Signed, sealed and dated this_____ day of _____, 20__.

Principal: [●]

By: _____
Its: _____
(Seal)

Surety: _____

By: _____
Its: _____
(Seal)

EXHIBIT 9

FORM OF APPLICATION AND CERTIFICATE FOR PAYMENT

EXHIBIT 10

FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 202_ by _____ [name of Guarantor], a/an _____ [form and state of entity] ("Guarantor"), in favor of the Water Infrastructure Finance Authority of Arizona, an agency of the State of Arizona ("WIFA").

R E C I T A L S

A. _____ [name of developer], as developer ("Developer"), and WIFA are parties to that certain Long-Term Water Importation Project Base Contract (the "Contract") pursuant to which Developer has agreed to _____ the WIP. Capitalized terms used herein without definitions will have their respective meanings given to such terms in the Contract.

B. Developer is a _____ [Developer's form of entity] formed [by and between _____ and _____] [if joint venture, the names of entities] under the laws of the State of _____. The Guarantor is the parent company of _____. The execution of the Contract by WIFA and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, WIFA would not have entered into the Contract with Developer.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty**. Guarantor guarantees to WIFA and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to (a) the Services under the Contract and (b)_____. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. **Unconditional Obligations.** This Guaranty is a guarantee of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against WIFA, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in

this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guarantee irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. **Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. WIFA may maintain successive actions for other defaults of Guarantor. WIFA's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a.   Guarantor agrees that WIFA may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require WIFA to proceed against Developer, to exercise any right or remedy under the Contract or to pursue any other remedy or to enforce any other right.

b.   Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and WIFA or their respective successors and assigns, with respect to the Contract or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in the Contract or any modification thereof; (iii) any release of Developer from any liability with respect to any of the Contract; or (iv) any release or subordination of any collateral then held by WIFA as security for the performance by Developer of the Guaranteed Obligations.

c.   The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract or the pursuit by WIFA of any remedies which WIFA either now has or may hereafter have with respect thereto under any of the Contract.

d.   Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the Developer under the Contract. Accordingly, in the event that the Developer's obligations are changed by any modification, agreement or stipulation between Developer and WIFA or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. **Liability of Guarantor.**

a.   WIFA may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between WIFA and Developer with respect to the existence of such a breach.

b.   Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c.   WIFA, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Contract, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of WIFA in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that WIFA may have against any such security, as WIFA in its sole discretion may determine, and (vi) exercise any other rights available to it under the Contract.

d.   This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract or any agreement or instrument executed pursuant thereto; (iii) WIFA's consent to the change, reorganization or termination of the corporate structure or existence of Developer; or (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against WIFA in respect of the Guaranteed Obligations, except as provided in Section 21.

5.   Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require WIFA to proceed against Developer or any other Person or to proceed against or exhaust any security held by WIFA at any time or to pursue any right or remedy under the Contract or any other remedy in WIFA's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of WIFA to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by WIFA even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of

Developer under the Contract, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (f) any defense based upon any act or omission of WIFA which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by WIFA in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6.   **Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of WIFA against Developer, or any other security or collateral that WIFA now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venture members of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venture members of Developer to Guarantor without the prior written consent of WIFA. Any payment by Developer or any shareholders, partners, members, joint venture members of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for WIFA.

7.   **Waivers by Guarantor if Real Property Security.** If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor unconditionally and irrevocably waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a.   WIFA may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer; and

b.   If WIFA forecloses on any real property collateral pledged by Developer:

(1)   The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and

(2)   WIFA may collect from Guarantor even if WIFA, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

8.   **Cumulative Rights**. All rights, powers and remedies of WIFA hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to WIFA, whether at law, in equity or otherwise.

9.   **Representations and Warranties**. Guarantor represents and warrants that:

a.   it is a corporation duly organized, validly existing, and in good standing under the laws of the State of _____ and [is/is not] engaged in the conduct of

business in the State of Arizona and therefore [has/has not] qualified to do business in the State of Arizona;

            b.   it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

            c.   the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

            d.   this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

            e.   neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, deed of trust, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

            f.   it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

            g.   it has reviewed and approved copies of the Contract and is fully informed of the remedies WIFA may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

            h.   it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of WIFA to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by WIFA;

            i.   no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof;

            j.   there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any governmental authority which challenges the validity or enforceability of this Guaranty; and

Water Infrastructure Finance Authority   Exhibits to LTWIP Base Contract [INSERT NAME
OF WIP]   Board Draft Version – November 12, 2024
62945062.v11

k.   this Guaranty is not and will not be subordinated to any present and future unsecured obligations of the Guarantor.

10.   Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Arizona applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by federal law. Guarantor consents to the jurisdiction of the State of Arizona with regard to this Guaranty. The venue for any action regarding this Guaranty shall be _____ County, Arizona.

11.   Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by WIFA referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12.   Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13.   Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, addressed as follows:

If to WIFA:	Water Infrastructure Finance Authority of Arizona
	Address:
	Attention:
	Phone:
	Facsimile:
	E-mail:
With copies to:	Name:
	Address:
	Attention:
	Phone:
	Facsimile:
	E-mail:
If to Guarantor:	Name:
	Address:
	Attention:
	Phone:
	Facsimile:
	Email:

Either Guarantor or WIFA may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email communication shall be deemed received when actual receipt at the email address of the addressee is confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. local Arizona time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

14. **Captions**. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. **Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and WIFA but is not assignable by Guarantor without the prior written consent of WIFA, which consent may be granted or withheld in WIFA's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. **Construction of Agreement.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. **No Waiver.** Any forbearance or failure to exercise, and any delay by WIFA in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. **Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.**

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. WIFA is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of WIFA so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and WIFA that the Guaranteed Obligations should be determined without regard to any

rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay WIFA, or allow the claim of WIFA in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. **<u>Attorneys' Fees</u>**. Guarantor agrees to pay to WIFA without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by WIFA in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. **<u>Joint and Several Liability</u>**. If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guarantee is executed with respect to Developer and the WIP, each guarantor under such a guarantee shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. <u>Defenses</u>. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all rights and defenses available to Developer under the Contract except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to formation of the Contract, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors.

[*Signatures follow*]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

[GUARANTOR]

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT 11

COSTS SCHEDULE

1.0   Overview and General Principles

1.1   This Exhibit 11 (Costs Schedule) describes the methods for calculating:

(A)   Cost of the Services, Extra Services Costs and Delay Costs owing from WIFA to Developer pursuant to Section 16 (Relief Events) of the Contract; and

(B)   Any other amount expressly payable by WIFA or Developer under the Contract.

1.2   The following general principles apply to cost of the Services, Extra Services Costs and Delay Costs under this Exhibit 11 (Costs Schedule):

(A)   Developer shall provide all information referred to in this Exhibit 11 (Costs Schedule) or Section 17 (Change Orders) on an Open Book Basis;

(B)   All payments or deductions made by the WIFA to Developer in accordance with this Exhibit 11 (Costs Schedule) will be made as and when incurred or in arrears in accordance with Section 14 (Payments to Developer) or as otherwise expressly provided under the Contract; and

(C)   Appropriate regard shall be given to the time value of money and timing of cash flows. All cash flows shall be discounted or inflated to reflect when they occur (if applicable).

1.3   Developer's recovery for any cost of the Services, Extra Services Costs or Delay Costs, under this Exhibit 11 (Costs Schedule) is subject to Developer complying with the timeframes specified in Section 17 (Change Orders) and otherwise in accordance with the Contract.

2.0   Extra Services Costs

2.1   Methods of Determining Extra Services Costs

The method for determining Extra Services Costs payable in accordance with Section 16 (Relief Events) of the Contract shall be determined by the WIFA, in its good faith discretion using:

2.1.1   Lump sum costs of Extra Services, negotiated based on the costs for the performing the Extra Services as specified in Section 2.2 (Extra Services Costs);

2.1.2   Unit Prices of Extra Services, as specified in Section 2.2 (Extra Services Costs);

2.1.3   Time and Materials, as described in Section 2.7 (Time and Materials).

2.2   Extra Services Costs

2.2.1   For Extra Services, WIFA will pay Developer the sum of the direct costs for labor, materials, and equipment used in performing the Services as determined by the procedures in this Section 2.2 (Extra Services Costs).

2.3   Negotiated Prices

2.3.1   Lump sum compensation shall be negotiated by the Parties based on estimated Extra Services Costs of:

  (A)   Labor;

  (B)   Material;

  (C)   Equipment;

  (D)   Third party fees and charges (e.g. permit fees, plan check fees, review fees and charges);

  (E)   Extra insurance costs and extra costs of bonds and letters of credit or similar instrument;

  (F)   Other direct Extra Services Costs; and

  (G)   A reasonable contingency for risk associated with the lump sum pricing.

2.3.2   Lump sum compensation also may include a reasonable, negotiated markup for indirect costs, overhead and profit for Services performed by Developer and Subcontractors and for Developer's indirect costs and overhead for such Services as further described in Section 2.5.

2.3.3   Lump sum pricing shall be negotiated with reference to the original allocations of pricing to comparable activities, materials and equipment, as specified in the Payment Amount for prior Tasks.

2.3.4   Lump Sum pricing may include sales or use taxes only to the extent that no exemption is available under applicable Law and such amounts shall not be subject to any Developer Markup.

2.4   Labor, Materials and Equipment

  (A)   Labor. WIFA will pay Developer the cost of labor for the workers used in the actual and direct performance of the Extra Services. The costs for all supervision, including general superintendents and foremen, shall not be considered a direct cost and shall be included the markup defined in Section 2.5, below. The cost of labor, whether the employer is Developer, a Subcontractor, or other forces, will be the sum of the following:

    (1)   Actual Wages. The actual wages paid shall include any actual payments by the employer for its workers' health and welfare, pension, vacation, training, and similar purposes.

    (2)   Labor Surcharge. To the actual wages, as defined above, will be added a labor surcharge as set forth in the version of the [California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates] which is in effect on the date upon which the extra work is accomplished and which is incorporated by reference as though set forth

in full. That labor surcharge shall constitute full compensation to Developer for all of its costs for worker's' compensation insurance, Social Security, Medicare, federal unemployment insurance, state unemployment insurance, and state training taxes. WIFA shall not be obligated to pay any other fixed labor burdens unless approved in writing by the WIFA.

    (3)   Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workers.

(B)   Materials: WIFA will pay Developer on Change Orders only for those materials furnished by Developer and directly required for performing the Extra Services. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether Developer, Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Extra Services. If a trade discount by an actual Supplier is available to Developer, Developer shall credit to the WIFA such discount notwithstanding the fact that such discount may not have been taken. If the materials are obtained from a Supplier or source owned wholly or in part by Developer, WIFA's payment thereof shall not exceed the current wholesale price for the materials as determined by the WIFA. The term "trade discount" includes the concept of cash discounting.

(C)   Equipment: WIFA will pay for equipment costs on Change Orders at the rental rates listed for such equipment as specified in the current edition, at the time of the Change Order, of: the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) published by the California Department of Transportation and available for download at https://dot.ca.gov/programs/construction/equipment-rental-rates-and-labor-surcharge.

As deemed appropriate, WIFA will adjust such rental rates and will use them to compute payments for equipment, regardless of whether the equipment is under Developer's control through direct ownership, leasing, renting, or other method of acquisition; provided, however, for equipment rented or leased in arm's length transactions with outside vendors, WIFA will reimburse Developer at the actual rental or leased invoice rates when such rates are reasonably in line with the applicable rates specified in the publications identified above as determined by the WIFA. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Developer has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Developer shall submit copies of all rental or lease invoices, and other information as requested by the WIFA, if any, as supporting documentation with each Proposed Change Order cost proposal.

For equipment that is not listed in the publication identified above, WIFA will base payment for equipment costs or the WIFA' assessment of the reasonableness of rates in arm's length rental or lease transactions on the lowest quote obtained by the WIFA from Caltrans. Developer shall provide all necessary equipment

ownership and other information as requested by the WIFA so that the WIFA may obtain a quote. Caltrans will quote rental rates at no cost to the WIFA.

(D)   WIFA will pay for equipment based on daily, weekly, or monthly rates, whichever are lower. WIFA will not pay for equipment based on hourly rates including operator. Unless otherwise specified, Developer shall use manufacturer's ratings and manufacturer-approved modifications to classify equipment for determination of applicable rental rates. If, however, Developer or Subcontractor or lower-tier Subcontractor uses equipment of unwarranted size or type and cost, it shall calculate the cost at the rental rate for equipment of proper size and type.

(E)   WIFA will pay for equipment only for the time the equipment is in productive operation on the Extra Services. WIFA shall not be obligated to pay for equipment for time while equipment is inoperative due to breakdown or for non-work days. In addition, WIFA shall not be obligated to pay for any equipment rental time required to move the equipment to and from the Site. WIFA will pay for equipment loading and transportation costs, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Services of the Change Order. WIFA shall not be obligated to pay for mobilization or demobilization for equipment already on the Site. WIFA will reimburse Developer for equipment that is idle, non-operating, or in standby mode at the lesser of Caltrans' rates, as adjusted by Caltrans Delay Factor as adjusted by its standby calculation, unless such equipment is rented or leased as provided above. Individual pieces of equipment having a replacement value of $1,000 or less shall be considered to be small tools or small equipment; WIFA will not pay for such tools and equipment since the costs of these tools and equipment are included as part of Developer's markup for overhead and profit as defined in Section 2.5.

(F)   Payment to Developer for the use of equipment in this Exhibit 11 shall constitute full compensation to Developer for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Developer incidental to the use of the equipment.

2.5   Developer's Markup for Overhead and Profit:

2.5.1   To the total of the direct costs computed as provided in Sections 2.1 and 2.4, WIFA will add a markup for overhead and profit as specified in Section 2.5 and not to exceed the Maximum Developer Mark-Up. The markup shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically listed in Section 2.4 as direct costs. WIFA shall not be obligated to pay for any separate allowance or itemization for any overhead costs. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Time and Materials Services:

(A)   Field and home office personnel including, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.

(B)   All field and home office expenses including, field trailers; parking; storage sheds; office equipment and supplies; telephone service at the Site; long-distance telephone calls; fax machines; computers and software; internet and e-mail services; temporary utilities; sanitary facilities and services; janitorial services; small tools and equipment with a cost under $1,000 each; portable scaffolding; blocking; shores; appliances; job vehicles; security and fencing; conformance to all regulatory requirements including compliance with safety regulations, safety programs, and safety meetings; cartage; warranties; record documents; and all related maintenance costs.

(C)   Administrative functions including, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Services, and other incidental Services related to the Change Order.

(D)   All other costs and taxes required to be paid, but not included under direct costs as defined in Section 2.4.

2.5.2   The total mark-up for indirect costs, overhead and profit as a percentage of the extra cost of the Services for Extra Services (to be allocated among Developer and Subcontractors who design, undertake and/or perform Extra Services) shall not exceed the limits set forth below:

(A)   for Developer, [_%] of the cost of that portion of the Extra Services to be performed by Developer with its own forces;

(B)   for Developer, [_%] of the cost of that portion of the Extra Services to be performed by Subcontractors directly under contract to Developer;

(C)   for Subcontractors, [_%] of the cost of that portion of the Extra Services to be performed by Subcontractors with their own forces;

(D)   for Subcontractors, [_%] of the cost of that portion of the Extra Services to be performed by lower tier Subcontractors directly under contract to the Subcontractor; and

notwithstanding the foregoing Section 2.5.2(A) through (D), the aggregate markup may not exceed [_%].

2.5.3   When both additions and credits are involved in any one Change Order, Developer's markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Extra Services. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.

2.5.4   If the WIFA issues written notice of deletion of a portion of Extra Services after the commencement of such Extra Services or after Developer has ordered acceptable materials for such Services which cannot be cancelled, or if part or all of such Extra Services is not performed by Developer because it is unnecessary due to actual Project Site conditions, WIFA

will pay Developer for direct costs of such Services actually performed plus markup for overhead and profit as provided in Section 2.5.

2.5.5   WIFA shall not be obligated to compensate Developer for costs incurred after Developer receives the WIFA's written notice deleting the portion of Extra Services.

2.5.6   Materials ordered by Developer prior to the WIFA's issuance of a notice of deletion and paid for by the WIFA shall become the property of the WIFA, and the WIFA will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the WIFA so directs, Developer shall return the material and the WIFA will pay Developer only for the actual charges made by the vendor for returning the material including restocking charges.

2.5.7   Developer shall be solely responsible for determining which of its Subcontractors and Suppliers receive Change Orders. WIFA will not provide additional compensation to Developer for the cost of its Subcontractors and Suppliers to review, post, coordinate, and perform related tasks to administer Change Orders that do not result in direct cost charges from such Subcontractors or Suppliers. WIFA will consider such costs as normal business costs which are contractually determined between Developer and its Subcontractors and Suppliers prior to bid, and Developer shall include such costs in its Payment Amount for each Task.

2.5.8   Developer shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Services. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, CORs, and Claims initiated by Developer.

2.6   Extra Services Costs Determined Using Contract Unit Prices

2.6.1   Where the WIFA determines or the Contract provides that Extra Services is to be Unit Price Services, initially the WIFA will deem the Extra Services Costs for the Change to include for all Unit Price Services an amount equal to the product of the established unit price proposed for each Item of Unit Price Services times the estimated quantity of each Item as indicated in the Change Order for such Extra Services. Determination of the actual quantities and classifications of Unit Price Services will be made in accordance with [_____], and the Extra Services Costs payable will be determined based on the actual quantities of units provided and Extra Services performed.

2.6.2   Each unit price on a Schedule of Prices included in any Change Order shall include an amount considered by Developer to cover Developer's markup for overhead and profit as defined Exhibit 11 (Cost Schedule).

2.7   Time and Materials

2.7.1   General. When WIFA pays for additions, deletions, or revisions in the Extra Services on a Time and Materials basis ("Time and Materials Change Order"), all direct costs itemized in Section 2.4 shall be subject to the approval of the WIFA and compensation will be determined as set forth in this Exhibit.

> (A)   The WIFA will direct Developer to proceed with the Services on a Time and Materials basis, and the WIFA will establish a "not to exceed" budget.

(B)   All requirements regarding direct costs and markup for overhead and profit provided in Section 2.5 shall apply to Time and Materials Services. However, the WIFA will pay only the actual necessary costs verified in the field by the WIFA on a daily basis.

(C)   Developer shall be responsible for all costs related to the documentation, data preparation, and administration of Time and Materials Services. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in Section 2.5.

(D)   Developer shall notify the WIFA in writing at least 24 hours in advance of its schedule before proceeding with the Time and Materials Services. All Time and Materials Services shall be witnessed, documented, and approved in writing by the WIFA on the day that the Services is performed. WIFA shall not be obligated to compensate Developer for Time and Materials Services if Developer fails to provide timely notice to the WIFA before commencing the Time and Materials Services. In addition, Developer shall notify the WIFA when the cumulative costs incurred by Developer for the Time and Materials Services equal 80% of the budget pre-established by the WIFA. WIFA shall not be obligated to compensate Developer for Time and Materials Services exceeding the "not to exceed" budget amount if Developer fails to provide the required notice before exceeding 80% of the Time and Materials budget.

(E)   Developer shall diligently proceed with WIFA-directed Time and Materials Services and shall submit to the WIFA no later than 12:00 p.m. of the day following performance of Time and Materials Services a daily Time and Materials Services report on a form obtained from the WIFA. The report shall provide an itemized, detailed account of the daily Time and Materials labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Developer's authorized representative shall complete and sign the report. WIFA shall not be obligated to compensate Developer for Time and Materials Services for which Developer does not timely complete and submit the aforementioned report to the WIFA.

(F)   If Developer and the WIFA reach a negotiated, signed agreement on the cost of a Change Order while the Extra Services is proceeding on a Time and Materials basis, Developer's signed written reports shall be discontinued and all previously signed reports shall become invalid.

3.0   Delay Costs

(A)   In the event of a WIFA-Caused Event, WIFA will pay for the Delay Costs specified in this Section 3.0 (Delay Costs) to the extent (i) expressly allowed under Section 16.3 of the Contract, and (ii) such costs have not been previously paid as allowed under Section 2.7 (Time and Materials). Such payment constitutes full compensation for the Delay Costs.

(B)   WIFA will not pay for Delay Costs until Developer submits an itemized statement of those costs. Provide the content specified in Section 2.7 (Time and Materials), for the applicable items in this statement and as follows:

(1)   Proof of cost of superintendent, or other project staff salaries, wages, and payroll taxes and insurance;

(2)   Proof of cost of office rent, utilities, land rent, and office supplies;

(3)   Proof of escalated cost for labor, equipment, and material;

(4)   Proof of material storage costs; and

(5)   Proof of other increased project costs.

(C)   <u>Allowable Delay Costs</u>. Increases in cost for labor, equipment, and materials will be calculated as follows:

   (1)   <u>Idle Labor</u>. Labor costs during delays must be calculated as specified in <u>Section 3.0(B)</u> for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for WIFA-approved reasons.

   (2)   <u>Escalated Labor</u>. Payments authorized for increases in labor costs will be based on the difference between old and new labor rates established by a State or federal agency or an agreement between the employee's and Developer's bargaining agency which is accepted by WIFA. Payment will be based on certified payrolls. Payment will also include the increases in fringe benefit rates and increases in payroll taxes that Developer is required to pay.

   (3)   <u>Idle Equipment</u>. Payment may be allowed on a rental basis for the idled equipment if any of the following criteria is met:

      a.   The equipment is on the Project Site at the time of the delay, is required for the controlling operation, and cannot be used at other locations on the Project.

      b.   The equipment is specialized and directly related to the controlling operation, whether on or off the Project Site. This must be certified by Developer and verified by WIFA.

   The rental rate for idled leased or rented equipment will be the leased or rented rate. However, WIFA may direct Developer to return equipment and take it off rental.

   The rental rate for idled equipment owned by Developer-Related Entities will be one-half the rate established in <u>Section 2.4</u>. No payment will be allowed for operating costs.

   Payment will be limited to the difference between the hours used and 8 hours in any one day and to the difference between the hours used and 40 hours in any one week. No additional compensation for overhead will be allowed.

Equipment demobilization and remobilization, if directed by WIFA, will be paid in accordance with Section 2.6 (Extra Services Costs Determined Using Contract Unit Prices).

(4) Material Escalation or Material Storage. Payment for increased cost of materials will be based on differences in the invoice costs before and after the delay period. When requesting an increase in cost of materials, Developer shall document the increased costs due to the delay. The cost of materials storage during the delay will be the invoiced storage cost.

4.0 Unrecoverable Costs

Developer is not entitled to compensation for the following costs:

(A) loss of anticipated profit.

(B) Consequential damages, including loss of bonding capacity loss of bidding opportunities, insolvency, and the effects of Time and Materials work on other projects, or business interruption.

(C) Indirect costs.

(D) Attorneys' fees, claim preparation expenses, and the costs of litigation.

(E) Unabsorbed or extended field or home office overhead or any damages using an Eichleay or similar equation, except as otherwise provided in the mark ups specified in Sections 2.5.

(F) The cost of project management services provided by Developer.

The following do not constitute cause for a Claim for Extra Services Costs or Delay Costs:

(1) The inability to secure satisfactory materials, for reasons beyond Developer's control, from the source upon which the proposal was based, unless project specific single source Suppliers are specified by WIFA; or

(2) Changes in carrier rates or the alteration of transportation facilities for these materials during the Term.

5.0 Form and Timing of Compensation

5.1 Payments or Deductions of Extra Services Costs, Delay Costs and Financing Delay Costs

If a Relief Event or other event requiring payment of amounts under the Contract:

(A) results in an amount owing from Developer to WIFA in accordance with the Contract, WIFA will deduct such amount from any Developer Amounts payable to Developer, or if no subsequent Developer Amounts are payable to Developer,

such amount will be a debt due and payable by Developer to WIFA within 30 days (including as a deduction from the Developer Amounts);

(B)   results in an amount owing from WIFA to Developer, WIFA will compensate Developer as follows: in the form of:

> a.   as a lump sum payment, a series of progress or milestone payments in accordance with the payment arrangements set out in the Change Order or Directive Letter; and
>
> b.   in respect of Extra Services Costs or Delay Costs, within 45 days after the date of the receipt from Developer of the Change Order or Directive Letter except to the extent that any Extra Services Costs are subject to dispute; or
>
> c.   any combination of the above,

in accordance with the payment arrangements set out in the Change Order or Unilateral Change Order or otherwise as determined by the WIFA in its sole discretion.

EXHIBIT 12

SITE

[Note to Proposers: To be inserted based on Proposal]

EXHIBIT 13

SUBMITTAL REQUIREMENTS

1.0   OVERVIEW

1.1   This Exhibit 13 shall govern all Submittals WIFA under the Contract ("**Submittal Requirements**").

1.2   Developer shall prepare, submit, update and maintain all Submittals in accordance with the requirements of the Contract, including these Submittal Requirements. Except to the extent expressly provided otherwise, in the event of any conflict between these Submittal Requirements and any other provisions of the Contract or the Project Plans related to procedures with respect to submission, review, comment, approval, consent, determination, decision or other actions with respect to Submittals, these Submittal Requirements shall exclusively prevail.

1.3   Each Submittal provided by Developer to WIFA for information, comment, acceptance, or approval shall:

(a)   be accurate, complete, and in conformity with the Contract;

(b)   if prepared by any Person other than Developer (including any Subcontractor or vendor), be reviewed by Developer for accuracy, completeness and conformity with this Contract;

(c)   include all necessary information and documentation concerning the subject matter and any additional information reasonably requested by WIFA;

(d)   be provided electronically in both native file and Adobe PDF (word-searchable) format or as otherwise specified in the Contract or by WIFA, in writing;

(e)   include a completed transmittal form in a form to be mutually agreed, including a statement from the preparer and Developer reviewer confirming Sections 1.3(a) through 1.3(c); and

(f)   be transmitted using WIFA's document management software.

1.4   Submittals shall only be made by Developer, unless otherwise approved by WIFA.

1.5   If the information in any Submittal shows a deviation from any WIFA-reviewed Design Documents, Developer, by statement in writing accompanying the information shall identify the deviation(s) and state:

(a)   the reason(s) for the deviation(s);

(b)   all other changes required to correlate Services items; and

(c)   all variation in costs occasioned by the deviations and Developer's assumption of the cost of all related changes if deviation is approved.

All costs associated with any proposed deviation(s), including assembling required information requested by WIFA, shall be borne by Developer.

1.6 Without limiting any requirements under Section 1.3, each Submittal shall include descriptive information which will enable WIFA to determine whether Developer's proposed materials, equipment, or methods of work are in general conformance with the design concept and are in compliance with drawings and specifications. This information shall consist of drawings, specifications, descriptive data, certificates, samples, test results and any other information required by WIFA.

1.7 To assist WIFA in its review of any Submittal, WIFA may, in its sole discretion, engage a third party to perform an external audit of the Submittal and Developer shall cooperate with such third party in performing the audit.

1.8 Except as expressly provided otherwise under Sections 5.3 and 5.4, Developer shall not perform any portion of the Services to which any Submittal applies unless the WIFA Representative has previously approved the applicable Submittal.

2.0 TRANSMITTAL PROCEDURE

2.1 Without limiting any requirements under Section 1.3, Submittals regarding material and equipment shall include a transmittal form that is dated and sequence numbered identifying as to initial or resubmittal status, and fully describing the Submittal's contents. A separate transmittal form shall be used for each specific item, class of material and class of equipment specified in separate, discrete sections for which a Submittal is required. However, Submittals for various items shall be made with a single form only when the items taken together constitute a manufacturer's package or are so functionally related that expediency indicates checking or review of the group or package as a whole.

2.2 Each set of Submittals shall be identified by sequential submittal number that consists of two parts: XXX-Z. The XXX shall be sequential number 001 for the first item submitted, 002 for the second, etc. The Z shall be the consecutive letters of a specific submittal or resubmittal (A for the first submittal, B for the first resubmittal, etc.). All Submittals shall show the contract title, shall indicate the name of the vendor, and shall indicate when the equipment and/or material will be required by the construction schedule. Each Submittal must be adequate to permit a comprehensive review without further reference to Developer.

2.3 Each shop drawing shall be complete with respect to dimensions, design criteria, materials, connections, bases, foundations, anchors, and the like, and shall be accompanied by technical and performance data as necessary to fully illustrate the information in the shop drawings. Subject to Section 7.4 (No Obligation to Review) of the Contract, WIFA's review of shop drawings shall be limited to reviewing such shop drawing for compliance with the Contract. Such review shall be in accordance with Section 5.4.

2.4 Unless otherwise specified, any Submittal requiring a sample shall include two (2) sets of that sample. One set of the approved sample and all disapproved samples will be returned to Developer.

2.5   Any Submittal that does not have all the information required to be submitted, including with regard to any deviation(s), will be returned without review.

2.6   Submittals shall be composed of clean, legible copies of manufacturer's literature, calculations, diagrams, etc., which are pertinent to the subject of the Submittal. Where literature is provided that describes various styles or different components, the portion of the literature pertinent to the subject of the Submittal shall be highlighted or otherwise clearly noted.

(a)   Facsimiles of information shall not be acceptable as part of a Submittal package. A Submittal which incorporates facsimiles shall be subject to rejection.

(b)   Submittals which include illegible information due to poor reproduction quality or any other reason shall be subject to rejection.

3.0   REVIEW BY WIFA

3.1   Except as otherwise provided in this Section 3.0, where WIFA is entitled to review, comment on or approve a Submittal, WIFA will have the number of days specified below to respond with respect to that Submittal after the date WIFA receives an accurate and complete Submittal in accordance with the Contract:

(a)   the number of days specified in the Contract; or

(b)   where no time period is specified, 14 days, unless WIFA notifies Developer that additional time will be required within that 14-day period.

3.2   If WIFA determines that a Submittal is not accurate or complete, WIFA will notify Developer within 14 days after receipt of such Submittal. WIFA's review period for Developer's re-submission of a previously submitted, complete Submittal shall be equal to the number of days provided under Section 3.1.

3.3   The Parties shall agree in good faith upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals. No extension under this Section 3.3 will constitute a Relief Event or other basis for any Claim.

3.4   If, at any given time, WIFA is in receipt of more than 20 concurrent Submittals that are subject to WIFA's review, comment or approval where the review time periods available to WIFA entirely or partially overlap, then WIFA may extend the applicable period for review, comment or approval to that period of time in which WIFA can reasonably accommodate the Submittals under the circumstances or such other period of extension allowed under any other provision of the Contract.

3.5   Whenever WIFA is in receipt of more than 20 concurrent Submittals, Developer may establish by notice to WIFA an order of priority for processing such Submittals, and WIFA will attempt to comply with such order of priority.

3.6   All time periods for WIFA to act will be extended by the period of any delay caused by any Relief Event (for this purpose modified, where applicable, to refer to

Developer's acts or omissions rather than those of WIFA) or caused by any Developer Default.

3.7   During any time there exists a Developer Default, the applicable period for WIFA to act on any Submittals received during such time, and not related to curing Developer Default shall automatically be extended by 16 days.

3.8   Except during any time described in <u>Section 3.3</u>, WIFA will endeavor to reasonably accommodate a request from Developer for expedited action on a specific Submittal, within the practical limitations on availability of WIFA personnel appropriate for acting on the types of Submittal in question; provided Developer sets forth in its request specific, abnormal circumstances, not caused by an Developer-Related Entity, demonstrating the need for expedited action.

3.9   Subject to <u>Sections 4.0</u> and <u>5.0</u>, if a Submittal is one where the Contract indicates approval, consent, determination, acceptance, decision or other action is required from WIFA, then WIFA may (without limitation) respond to the Submittal as follows:

(a)   "NO EXCEPTIONS TAKEN," in which event Developer may begin to implement the Services method or incorporate the material or equipment covered by the Submittal.

(b)   "MAKE CORRECTIONS NOTED," in which case: (i) <u>Section 5.5</u> shall apply; and (ii) Developer may begin implementing the Services method or incorporating the material and equipment covered by the Submittal in accordance with the noted corrections, provided that where any Submittal information will be incorporated in any of the WIP's operations or maintenance data, a corrected copy shall be provided to WIFA.

(c)   "REVISE/RESUBMIT," in which case: (i) <u>Section 5.5</u> shall apply; and (ii) Developer shall not, except at its own risk, undertake any Services covered by the Submittal until it has been revised, resubmitted, and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED".

(d)   "REJECTED," in which case: (i) <u>Section 5.5</u> shall apply; and (ii) Developer shall not, except at its own risk, undertake any Services covered by the Submittal until a new Submittal is made and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."

4.0   WIFA DISCRETIONARY APPROVAL

4.1   If a Submittal is one where the Contract indicates approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) is required from WIFA in its discretion, then WIFA's lack of approval, consent, determination, acceptance, decision or other action within the applicable time period under <u>Section 3.1</u> will be deemed disapproval.

4.2   If the approval, consent, determination, acceptance, decision or other action is subject to the sole discretion of WIFA, then its approval, consent, determination, decision or other action (including a failure to act which constitutes a disapproval) shall be final, binding and not subject to <u>Section 29</u> (Disputes) of the Contract or

any other legal challenge, and such approval, consent, determination, acceptance, decision or other action will not constitute a WIFA default under the Contract or the basis for a Change Order, Relief Event, or any other Claim.

5.0 OTHER WIFA APPROVALS

5.1 Whenever the Contract indicates that a Submittal or other matter is subject to WIFA's approval, consent, determination, acceptance, decision or other action but the approval, consent, determination, acceptance, decision or other action is one not governed by Section 4.2, then the standard shall be reasonableness.

5.2 If the reasonableness standard applies and WIFA delivers no approval, consent, determination, decision or other action within the applicable time period, then WIFA's lack of approval, consent, determination, decision or other action within the applicable time period will be deemed disapproval. WIFA's exception, objection, rejection, disapproval or other action (including a failure to act which constitutes a disapproval) under this Section 5.2 shall be deemed reasonable, valid and binding if based on any of the following grounds or other grounds set forth elsewhere in the Contract:

(a) the Submittal or subject provision fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard, term or provision of the Contract, the WIP's design concept or any WIFA-reviewed Design Documents;

(b) the Submittal or subject provision is not to a standard equal to or better than Good Industry Practice;

(c) Developer has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, in which case Developer may resubmit the Submittal with the required content or information;

(d) adoption of the Submittal or subject provision, or of any proposed course of action under such Submittal, would result in a conflict with or violation of any Applicable Law or Governmental Approval; or

(e) in the case of a Submittal that is to be delivered to a Governmental Entity as a part of a proposed Governmental Approval or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, the Submittal proposes commitments, requirements, actions, terms or conditions that are inconsistent with the Contract, Applicable Law, the requirements of Good Industry Practice, or WIFA practices for public-private contracting.

5.3 WIFA Review and Comment

Whenever the Contract indicates that a Submittal or other matter is subject to WIFA's review, comment, disapproval or similar action not entailing a prior approval and WIFA delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.1, then Developer may proceed thereafter at its election and risk, without prejudice to WIFA's rights to later object or disapprove in accordance with Section 5.5(a). No such failure or delay by WIFA in delivering comments, exceptions, objections, rejections or

disapprovals within the applicable time period under Section 3.1 shall constitute a WIFA default under the Contract or the basis for a Change Order, Relief Event, or any other Claim.

5.4 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the Contract indicates that Developer is to deliver a Submittal to WIFA but expresses no requirement for WIFA review, comment, disapproval, prior approval or other action, then (a) Developer is under no obligation to provide WIFA any period of time to review the Submittal or obtain its approval before proceeding with further Services, and (b) WIFA may at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 5.5(a). No failure or delay by WIFA in delivering comments, exceptions, objections, rejections or disapprovals with respect to any such Submittal shall constitute a WIFA default under the Contract or the basis for a Change Order, Relief Event, or any other Claim.

5.5 Resolution of WIFA Comments and Objections

(a)   Developer acknowledges that WIFA may provide comments, exceptions, disapprovals and objections that reflect concerns regarding interpretation or preferences of the commenter, or which otherwise do not directly relate to grounds in Section 5.2. Developer shall undertake reasonable efforts to accommodate or otherwise resolve any such comments, exceptions, disapprovals or objections through the review processes described in Sections 3.9 and 5.5.

(b)   Developer shall respond in writing to each WIFA comment, exception, disapproval and objection to a Submittal in the form of a comment response log ("**Response Log**") and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments, exceptions, disapprovals and objections, in accordance with the review processes in Sections 3.9 and 5.5. However, if the Submittal is not governed by Section 4.0, the foregoing does not obligate Developer to incorporate any comments or resolve exceptions, disapprovals or objections that (a) are not on any of the grounds in Section 5.0 (and not on any other grounds set forth elsewhere in the Contract), (b) are otherwise not reasonable with respect to subject matter or length, and (c) would result in a delay to any critical path in the Project Schedule or in costs associated with additional work or delay, except pursuant to a Change Order. If, however, Developer does not accommodate or otherwise resolve any comment, exception, disapproval or objection, Developer shall deliver to WIFA within a reasonable time period, not to exceed 30 days after receipt of WIFA's comments, exceptions, disapprovals or objections, a written explanation why modifications based on such comment, exception, disapproval or objection are not required. The explanation shall be provided in the Response Log and include the facts, analyses and reasons that support the conclusion.

(c)   The foregoing does not obligate Developer to incorporate any comments or resolve exceptions, disapprovals and objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a Change Order.

(d)   If Developer fails to notify WIFA within the time period in Section 5.5(b), WIFA may deliver to Developer a notice stating the date by which Developer was to have addressed WIFA's comments and that if Developer does not address those

comments within five days after receipt of such notice, then that failure will constitute Developer's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to a Change Order, Relief Event, or any other Claim, including any Claim that WIFA assumes design or other liability.

(e)   After WIFA receives Developer's explanation as to why the modifications are not required as provided in Sections 5.5(b) through 5.5(d), if WIFA is not satisfied with Developer's explanation, the Parties shall attempt in good faith to resolve the dispute. If they are unable to resolve the dispute the dispute shall be resolved according to Section 27 (Disputes) of the Contract; provided that if WIFA elects to issue a Change Order pursuant to Section 17 (Change Orders) of the Contract with respect to the matter in dispute, Developer shall proceed in accordance with such Change Order while retaining any Claim as to the matter in dispute.

(f)   The Response Log shall be in a format acceptable to WIFA and include a description of any action (or lack thereof) taken by Developer in response to each WIFA comment, exception, disapproval and objection to a Submittal. Developer shall update and submit the Response Log to WIFA within 30 days after any WIFA comment, exception, disapproval and objection to a Submittal.

5.6   Limitations on Developer's Right to Rely

Section 7.4 (No Obligation to Review) of the Contract shall apply to WIFA's review of Submittals.

EXHIBIT 14

INSURANCE REQUIREMENTS

[Note to Proposers: Insurance Provisions of this Contract are under review by ADOA and subject to change.]

Developer shall procure and keep in effect the insurance policies listed in Section 6 of this Exhibit 14 ("**Insurance Policies**" and each an "**Insurance Policy**") or cause them to be procured and kept in effect, and in each case, satisfy the requirements for such Insurance Policies in this Exhibit 14 (Insurance Requirements) until all of Developer's obligations have been discharged, unless otherwise specified in this Exhibit 14, including any warranty periods under the Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the Services under this Contract by the Developer, his agents, representatives, employees or Subcontractors.

1. **General Insurance Requirements**

    1.1 **Qualified Insurers**

    Each of the Insurance Policies required under this Exhibit 14 shall be procured from an insurer that, at the time coverage under the applicable Insurance Policy commences:

    (a)   is licensed or authorized to do business in the State of Arizona pursuant to A.R.S. Title 20, Chapter 2, Article 1; is a surplus lines insurer approved and identified by the director of the Arizona Department of Insurance pursuant to A.R.S., Title 20, Chapter 2, Article 5; or hold approved non-admitted status on the Arizona Department of Insurance and Financial Institutions List of Qualified Unauthorized Insurers; and

    (b)   has a current policyholder's management and financial size category rating of not less than "A–, VII" according to A.M. Best and Company's Insurance Reports Key Rating Guide or, with respect only to worker's compensation insurance, is duly authorized to transact such insurance in the State of Arizona.

    1.2 **Premiums, Deductibles and Self-Insured Retentions**

    Developer shall timely pay, or cause to be paid, the premiums for all insurance required under this Contract. Developer shall be responsible for, and WIFA will have no liability for, any deductibles, self-insured retentions, and amounts or damages in excess of the coverage provided, except to the extent of WIFA's sole negligence or willful misconduct. If any required coverage is provided under a self-insured retention, Developer shall ensure that the entity responsible for the self-insured retention has an authorized representative issue a letter to WIFA, at the same time the insurance policy is to be procured, stating that it shall protect and defend WIFA to the same extent as if a commercial insurer provided coverage for WIFA.

1.3 Primary Coverage

Each Insurance Policy shall provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

1.4 Project-Specific Insurance

Except as expressly provided otherwise in this Exhibit 14 (Insurance Requirements), all Insurance Policies required under this Exhibit 14 shall be purchased specifically and exclusively for the Services provided under the Contract, with coverage limits devoted solely to the Services. Insurance coverages under corporate insurance programs with dedicated project-specific limits (except as otherwise provided in this Exhibit 14 (Insurance Requirements)) and identified allocation of funds to the Project are acceptable, provided that they otherwise meet all requirements described in this Exhibit 14.

1.5 Verification of Coverage; WIFA Right to Remedy Developer Failure to Insure

(a)   At each time Developer is required to initially obtain or cause to be obtained each Insurance Policy (including insurance coverage required of Subcontractors), and thereafter not later than ten days prior to the expiration date of each Insurance Policy, Developer shall deliver to WIFA an up-to-date certificate of insurance evidencing that Developer has the insurance coverage as required by this Contract. Each required certificate must:

  i.   be in standard form (valid ACORD form or equivalent approved by the State of Arizona);

  ii. state the identity of all carriers, named insureds and additional insureds;

  iii. state the type and limits of coverage, deductibles and cancellation provisions of the policy;

  iv. include as attachments all applicable additional insured endorsements; and

  v.   be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker.

(b)   Each such certificate of insurance shall be accompanied by:

  i.   proof that the signer is an authorized representative or agent of the insurance companies named on the certificate;

ii. proof that the signer is authorized to bind such insurance companies to the coverage, limits and termination provisions shown on the certificate; and

iii. a letter signed by Developer confirming that the insurances represented in the certificate of insurance fully comply with all provisions of this Exhibit 14 (Insurance Requirements).

(c)   All such certificates of insurance and policy endorsements must be received by the State of Arizona before Services commence. The State of Arizona's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of the Contract.

(d)   Each insurance policy required by the Contract in this Exhibit 14 must be in effect at, or prior to, commencement of the Services. Failure to maintain the insurance policies as required by the Contract, or to provide evidence of renewal, is a material breach of contract.

(e)   All such certificates required by this Contract shall be sent directly to WIFA. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

(f)   If Developer has not provided WIFA with the foregoing proof of coverage and payment within five days after WIFA delivers to Developer a written request therefor or Default Notice under Section 24.4 of the Contract and demand for the foregoing proof of coverage, WIFA may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force:

i. obtain such an Insurance Policy; and Developer shall reimburse WIFA for the cost thereof upon demand; and

ii. suspend all or any portion of the Services until WIFA receives from Developer such proofs of coverage in compliance with this Exhibit 14 (or until WIFA obtains an Insurance Policy, if it elects to do so).

(g)   Developer shall provide WIFA with certified copies of all Insurance Policies and all endorsements thereto, including renewal Insurance Policies, within 90 calendar days of their date of effectiveness, together with evidence of payment of any premium then due that is satisfactory to WIFA. WIFA reserves the right to request copies of Insurance Policies.

1.6   Subcontractor Insurance Requirements

(a)   Developer shall comply with the obligations regarding Subcontractor's insurance set forth in Exhibit 14 (Insurance Requirements). Developer shall cause each Subcontractor to provide to WIFA insurance coverage and proof of such coverage in the manner and in the form consistent with the requirements of this Contract.

(b)   If any Subcontractor fails to procure and keep in effect the insurance required of such Subcontractor specified in Exhibit 14 (Insurance Requirements), and WIFA asserts the same as a Developer Default under this Exhibit 14, then Developer may, within the applicable cure period, cure such Developer Default by:

    i.   causing such Subcontractor to obtain the requisite insurance and providing to WIFA proof of insurance;

    ii.   procuring the requisite insurance for such Subcontractor and providing to WIFA proof of insurance; or

    iii.   terminating the Subcontractor and removing its personnel from the Site.

(c)   WIFA may pursue the remedies available to it for a Developer Default if Developer fails to cure a Subcontractor's failure to procure and keep in effect the insurance required of such Subcontractor.

1.7   Policies with Insureds in Addition to Developer

All Insurance Policies that are required to insure multiple named insureds or to insure additional insureds in addition to Developer shall comply with or be endorsed to comply with the following provisions:

(a)   The Insurance Policy shall be written or endorsed so that no acts or omissions of an insured shall terminate or otherwise adversely impact the coverage of the other insureds. Without limiting the foregoing, the policy shall be written or endorsed so that any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents, and the Indemnified Parties); and

(b)   All endorsements adding WIFA and the other additional insureds as required by the Contract to the required Insurance Policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the Insurance Policy generally, and shall state that the interests and protections of each such additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy that would otherwise result in forfeiture or reduction of coverage. Additional insureds under the policy shall continue to be named as additional insureds for a period of five years after the Term of the Contract ends to ensure completed operations coverage.

1.8 Additional Terms and Conditions

(a)   Each Insurance Policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 calendar days' prior notice (or ten calendar days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to, at a minimum, State of Arizona, WIFA, and Developer; provided, however, that (i) no such notice from the insurer shall be required for reduction in limits due to claims payments, and (ii) if Developer establishes that an endorsement compliant with this clause (a) is not available as set forth in Section 1.13, Developer may obtain an endorsement that is as comparable as possible. The endorsement required by this clause (a) shall not include any limitation of liability of the insurer for failure to provide the required notice.

Within two days of receipt, Developer must provide notice to WIFA if Developer receives notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the WIFA and shall be emailed to: procurement@azwifa.gov.

(b)   The Insurance Policy for commercial general liability shall cover liability arising out of the acts or omissions of Developer's employees engaged in the Services as well as employees of Subcontractors if Subcontractors are covered by a Developer-controlled insurance program. If any Subcontractor is not covered by such Developer-controlled insurance program, then such Subcontractor shall provide commercial general liability insurance to cover liability arising out of the activities of Subcontractor's employees engaged in the Services.

(c)   Each Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability Insurance Policies).

1.9 Waivers of Subrogation

Developer waives all rights of recovery against WIFA, the State, and the Indemnified Parties, for any claims to the extent covered (i.e., not excluded) by insurance obtained pursuant to this Exhibit 14, except such rights as they may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss under Section 1.2.4, then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Subcontractors to provide similar waivers in writing each in favor of all other Persons enumerated above. Subject to Section 1.12, each policy, including workers' compensation, if permitted under the applicable worker's compensation insurance laws, shall include a waiver of any right of subrogation against WIFA, the State, and the Indemnified Parties or the insurer's consent to the insured's waiver of recovery in advance of loss.

1.10 No Recourse for Premium or Other Insurance Payments

Developer shall have no recourse against WIFA for payment of premiums or other amounts with respect to the insurance required to be provided by Developer under this

Exhibit 14, except to the extent of WIFA's obligation to pay the Payment Amount for any Task.

1.11   Support of Indemnifications

The insurance requirements in this Exhibit 14 are minimum requirements for the Contract and in no way, limit the indemnification and defense obligations under in the Contract. The State of Arizona in no way warrants that the minimum limits contained in this Exhibit 14 are sufficient to protect the Developer or its Subcontractors from liabilities that might arise out of the performance of the Services under this contract by the Developer, its agents, representatives, employees, Subcontractors, or Affiliates and each are free to purchase additional insurance.

1.12   Insurer Insolvency and Inadequacy of Required Coverages

(a)   WIFA and the State of Arizona make no representation that the minimum required insurer rating is sufficient to protect Developer from potential insurer insolvency.

(b)   WIFA and the State of Arizona make no representation that the coverage limits specified in the Contract or WIP Specific Information for any Task for any Insurance Policy or approved variances therefrom are adequate to protect Developer from or against its potential liabilities under the Contract to WIFA or to any other Person. No such coverage limits or approved variances therefrom shall, in any way, affect or change WIFA's rights and remedies provided in the Contract or otherwise at law. Developer shall have no Claim or other recourse against WIFA on the basis of coverage limits specified for any Insurance Policy or approved variances therefrom.

1.13   Unavailability of Required Coverages

(a)   If any Insurance Policy required to be maintained pursuant to this Exhibit 14 (including the limits, deductibles or any other terms under such Insurance Policy) ceases to be available on a commercially reasonable basis, Developer will provide Notice to WIFA accompanied by a letter from Developer's insurance advisor stating that such insurance is unavailable anywhere in the global market on a commercially reasonable basis. Developer shall deliver such Notice not later than 30 calendar days prior to the scheduled date for renewal of any such Insurance Policy. Upon WIFA's receipt of such Notice, Developer and WIFA shall immediately enter into good faith negotiations regarding the matters set forth in clause (b) below and regarding temporary adjustments to applicable insurance requirements in this Exhibit 14 in order for Developer to place alternative insurance coverage.

(b)   Developer will not be excused from satisfying the insurance requirements of this Exhibit 14 merely because premiums for an Insurance Policy are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including Insurance Policy limits) are not available on commercially reasonable terms, Developer will bear the burden of proving that the same is not available at all in the global insurance and reinsurance markets. No increase in insurance premiums attributable to particular conditions of the Project,

or to claims or loss experience of any Developer-Related Entity or Affiliate, whether under an Insurance Policy or in connection with any unrelated Services or activity of Developer-Related Entities or Affiliates, shall be considered.

(c)   Developer shall not be entitled to any increase in any Payment Amount, any extension of the Task Approval Deadlines or Milestone Deadlines, or any other Claim resulting from or arising out of the unavailability of any coverage or acceptable alternatives during the Task Periods.

(d)   Developer shall bear the full risk of any insurance premium increases for Insurance Policies required during the Task Periods, including increases:

  i.   due to deductibles less than the maximum deductibles set forth in this Exhibit 14 (Insurance Requirements);

  ii. due to additional or extended coverages beyond those required under this Exhibit 14 (Insurance Requirements);

  iii. that result from market-based factors; or

  iv. that result from other factors.

(e)   WIFA will be entitled to a reduction in the Payment Amount for a Task if it agrees to accept alternative Insurance Policies providing less than equivalent coverage during the Task Periods and Developer is not obligated to self-insure such risks. The amount of reduction of a Payment Amount shall equal 115% of the reduction in premium that Developer obtains, using as a baseline the evidence of insurance premiums as of the Proposal Due Date. The Parties acknowledge that a 115% reduction is appropriate in order for WIFA to recover an approximation of Developer's markup on insurance premiums for indirect expenses, overhead and profit.

1.14   Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that:

(a)   litigation and mediation defense costs may be included within the limits of coverage of professional liability policies;

(b)   investigation and expert defense costs may also be included within the limits of coverage of professional liability policies; and

(c)   other defense costs may be included within the limits of coverage of professional liability policies with WIFA's prior written approval.

1.15   Stacking of Policies

Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with the required form of underlying

policies and shall comply with all insurance requirements, terms and provisions set forth in this Contract and Exhibit 14 for the applicable type of coverage.

1.16 Additional Insurance Policies

If Developer carries insurance coverage in addition to that required under this Contract, then Developer shall include WIFA and its Indemnified Parties as additional insureds under such Insurance Policies, if and to the extent they have an insurable interest, unless WIFA grants an exception in writing. The additional insured endorsements shall be as described in Section 1.7(b); and Developer shall provide to WIFA the proofs of coverage and copy of the policy described in Section 1.5. The provisions of Sections 1.2, 1.5, 1.7, 1.9, and 1.10 shall apply to all such policies of insurance coverage.

1.17 Contractor-Controlled Insurance Program

Nothing in this Contract, including in Exhibit 14 (Insurance Requirements), is intended or shall be construed to preclude use of a contractor-controlled insurance program to fulfill the insurance requirements under this Contract.

2. Prosecution of Claims and Denial of Coverage

2.1 Unless otherwise directed by WIFA in writing, Developer shall report and process all potential claims by WIFA or Developer against the Insurance Policies. Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all matters that may give rise to an insurance claim by Developer or WIFA or another Indemnified Party, and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and Applicable Laws to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible after exhausting all lawful and diligent means.

2.2 Developer shall immediately notify WIFA, and thereafter keep WIFA fully informed, of any incident, potential claim, claim or other matter of which Developer becomes aware that involves or could conceivably involve an Indemnified Party.

2.3 WIFA agrees to promptly notify the Arizona Department of Administration to, on behalf of WIFA, tender to the insurer under applicable Insurance Policies defense of claims against WIFA that may be covered under such Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties under this Exhibit 14.

2.4 If in any instance Developer has not performed its obligations respecting insurance coverage set forth in this Contract or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from WIFA to Developer on account of available insurance, Developer shall be treated as if it elected to self-insure up to the full amount of insurance coverage that would have been available had Developer performed such obligations and not committed such failure. Nothing in the Contract shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer that at the time the Insurance Policy is written meets the rating qualifications set forth

in this Exhibit 14, provided that the loss of coverage due to such bankruptcy or insolvency could not have been avoided through Developer's compliance with Section 1.6.

2.5   If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by WIFA or another Indemnified Party, then WIFA or the other Indemnified Party may, but is not obligated to:

(a)   notify Developer of WIFA's or the other Indemnified Party's intent to report or tender the claim directly to the insurer; and

(b)   proceed with reporting and processing the claim if WIFA or the other Indemnified Party does not receive from Developer, within five days after so notifying Developer, written proof that Developer has reported the claim directly to the insurer.

WIFA or the other Indemnified Party may dispense with such notice to Developer if WIFA or the other Indemnified Party has a good faith belief that reporting the claim to the applicable insurer is necessary to preserve the claim or is in the best interest of WIFA or the Indemnified Party.

2.6   Developer shall deliver to WIFA a report, on a type of coverage basis, within 60 calendar days after cumulative payments made by the insurer(s) under any type of coverage with an aggregate limit exceed (a) 25% of the aggregate limit (inclusive of primary and excess policies), and (b) each additional 10% increment of the aggregate limit (inclusive of primary and excess policies) thereafter. The report shall identify the affected policy or policies and limit of coverage, state the amount and nature of each claim paid, and state the balance of the coverage limit remaining available.

2.7   If any insurance carrier for an Insurance Policy denies coverage with respect to any claims of WIFA or other Indemnified Parties reported to such carrier, upon Developer's request, WIFA and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage. Developer shall not be entitled to an increase in any Payment Amount, a Task Approval Deadline adjustment, a Milestone Deadline adjustment or any other Claim arising from such denial of coverage, nor shall Developer be relieved of any liability to WIFA or of its indemnity obligations to the Indemnified Parties.

2.8   WIFA may contest an insurance carrier's denial of coverage where WIFA believes it is entitled to:

(a)   coverage that could reduce or reimburse in whole or in part a Payment Amount;

(b)   defense or coverage against liability; or

(c)   coverage of harm or loss to WIFA's property.

3.   Claims Against Third Parties

All rights to pursue third parties for claims are reserved to WIFA. Developer shall provide reasonable assistance to WIFA regarding claims against third parties. Such assistance shall include providing to WIFA on a monthly basis detailed documentation of actual costs Developer incurs, if any.

4.   General Insurance Disclaimer

Developer and each Subcontractor have the sole responsibility to acquire and maintain insurance coverage suitable for the Services to be performed under the Contract, whether or not specified in this Exhibit 14.

5.   Bankrupt Insurer

If an insurer providing any of the Insurance Policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities relating to or affecting the Insurance Policies given by any Governmental Entity, including the Arizona Department of Insurance, of has its rating lowered by A.M. Best and Company below A-, VII as required in Section 1.1, then Developer shall use its best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Exhibit 14 so as to avoid any lapse in insurance coverage.

6.   Insurance Policies

6.1   Commercial General Liability Insurance

At all times during the Term of the Contract, Developer shall procure and keep in force, or cause to be procured and kept in force, in its own name, commercial general liability insurance as specified below, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14.

(a)   The policy shall be in form reasonably acceptable to WIFA and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for services such as the Services under this Contract and shall contain only those exclusions that are for services such as the Services under this Contract.

(b)   Developer and WIFA shall be the named insureds on the policy. If WIFA is not a named insured on the policy, WIFA shall be named as an additional insured on the policy, as its interests may appear. The policy shall be endorsed to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Developer. Developer also may, but is not obligated to, include other Subcontractors as named insured as their respective interests appear and subject to Sections 1.7 and 1.8 of this Exhibit 14.

(c)   The policy shall insure against the legal liability of the insureds named in Section 6.1(b) of this Exhibit 14, relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury, advertising injury,

and broad form contractual liability coverage and shall include the following specific coverages:

    i.   Contractual liability;

    ii.   Premises/operations;

    iii.   Independent contractors;

    iv.   Products coverage with an extended reporting period until expiration of the statute of repose set forth at Arizona Revised Statutes, Title 12, Section 552, provided that Developer may satisfy the products and completed operations coverage by annually renewing its corporate general liability policy until the expiration of the statute of repose;

    v.   Broad form property damage, providing the same or equivalent coverage as ISO form CG 00 01 10 93 provides;

    vi.   Hazards commonly referred to as "XCU", including losses from explosion, collapse or underground damage;

    vii.   Fellow employee coverage for supervisory personnel;

    viii.   Incidental medical malpractice;

    ix.   No exclusion for work performed within 50 feet of a railroad;

    x.   No exclusion for claims arising from professional services except for CG 22 80 04 13 or its equivalent;

    xi.   Broad named insured endorsement; and

    xii.   Hired/non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 6.2 of this Exhibit 14.

(d)   The policy shall have limits not less than:

    i.   General Aggregate – $2,000,000

    ii.   Products – Completed Operation Aggregate – $1,000,000

    iii.   Personal and Advertising Injury – $1,000,000

    iv.   Damage to Rented Premises – $50,000

    v.   Each Occurrence – $1,000,000

(e)   The aggregate must apply either specifically for the Services or on a per project basis except for the aggregate limit for completed operations, which shall be a single aggregate and need not be project-specific. Developer may satisfy the project specific or per project aggregate requirement via an ISO form CG 25 03

endorsement to a corporate commercial general liability policy. Such limits shall be shared by all insureds and additional insured parties.

(f)   WIFA and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 04 13 and ISO form CG 20 37 04 13 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insureds and the additional insureds.

(g)   The policy shall contain a waiver of subrogation in favor of WIFA; the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees; and the other Indemnified Parties, if any, for losses arising from work performed by or on behalf of Developer using ISO form CG 24 04 05 09 endorsement or its equivalent.

(h)   The policy shall provide that the insurance afforded the Developer shall be primary and that any insurance carried by WIFA, its agents, officials, employees or the State of Arizona shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621(E), via ISO form CG 20 01 04 13 or its equivalent.

(i)   The policy shall provide a deductible or self-insured retention not to exceed $1,000,000 per occurrence.

6.2   Business Automobile Liability Insurance

At all times during the performance of the Services and during the Term of the Contract, Developer shall procure and keep in force comprehensive, business or commercial automobile liability insurance as specified below, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14.

(a)   Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Services, including loading and unloading. The policy shall contain extensions of coverage that are typical for services of the nature of the Services and shall contain only those exclusions that are typical for services of the nature of the Services.

(b)   Developer shall be the named insured under its automobile liability policy. The Insurance Policy shall be endorsed to include WIFA, the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, Developer, involving automobiles owned, leased, hired and/or non-owned by the Developer using ISO form CA 04 44 03 10 or its equivalent.

(c)   The Policy shall contain a waiver of subrogation in favor of WIFA; the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees; and the Indemnified Parties for losses arising from the Services by or on behalf of the Developer using ISO form CA 04 43 11 20 endorsement or its equivalent.

(d)   Developer's policy shall have a limit per policy period of not less than $1,000,000 combined single limit during the Term of the Contract, with limits reinstating annually.

(e)   Each policy shall provide a deductible (but not self-insured retention) not exceeding $1,000,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis.

6.3   Aircraft Liability Insurance

Developer shall provide, or cause to be provided, aircraft liability insurance, with a limit of not less than $5,000,000 per occurrence or higher limits as may be required by WIFA, in all cases where any aircraft is used, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Services, the aircraft crew, flight path and altitude, including landing of any aircraft on any property owned by WIFA or the State of Arizona shall be subject to review and written acceptance by WIFA prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft. For use of unmanned aircraft vehicles (UAV), Developer or applicable Subcontractor, may provide insurance either through an aircraft liability insurance policy, or by endorsement to Developer's commercial general liability insurance policy and excess liability policies. Use of unmanned aircraft must comply with all state, federal, and local rules and regulations, including the U.S. Federal Aviation Administration requirements.

6.4   Professional Liability Insurance

(a)   Developer and Lead Engineering Firm

Commencing on the Effective Date with a retroactive date to the date that professional services are first rendered respecting the Services and until the end of the Term of the Contract, Developer shall procure and keep in force, or shall cause the Lead Engineering Firm to procure and keep in force, professional liability insurance as specified in subsections (i) through (v) below, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14.

   i.   The insurance policy shall provide coverage of liability of Developer and the Lead Engineering Firm arising out of any negligent act, error or omission in the performance of the Services, including for bodily injury or property damage.

   ii. The insurance policy shall have a limit of not less than $50,000,000 per claim and in the aggregate per annual policy period. The aggregate limit shall reinstate annually.

   iii. The insurance policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per claim.

iv. The insurance policy may be a corporate program policy and need not be project-specific.

v. The insurance policy shall specifically include an extended reporting period expiring no sooner than ten years after the end of the Term of the Contract.

(b) Other professional services Subcontractors

In addition, Developer shall cause each other Subcontractor that provides professional services for the Project and not insured pursuant to Section 6.4(a) of this Exhibit 14 to procure and keep in force professional liability insurance, covering its professional services practice, of not less than $2,000,000 per claim and in the aggregate per annual policy period, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14.

i. Each policy shall insure against liability, including for bodily injury or property damage, arising out of any negligent act, error or omission in the performance of the Services.

ii. The aggregate limit shall reinstate annually.

iii. The insurance policy shall include a commercially reasonable deductible.

iv. Each such professional liability policy shall be kept in force until ten years after the end of the Term of the Contract.

v. The date of inception of coverage in all cases must precede the effective date of the applicable Subcontract.

vi. Each Subcontractor subject to this Section 6.4(b) may satisfy the professional liability insurance requirements by annually renewing its corporate program professional liability policy, which need not provide project-specific limits.

6.5 Workers' Compensation Insurance

At all times when Services are being performed by any employee of Developer or any Subcontractor, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with Applicable Law. Developer and/or the Subcontractors, whichever is the applicable employer, shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(a) [An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act only if performing railroad related work];

(b) A voluntary compensation endorsement;

(c)   An alternative employer endorsement;

(d)   An endorsement extending coverage to all states operations on an "if any" basis; and

(e)   [Coverage for United States Longshore and Harbor Workers Act and Jones Act claims, as may be appropriate and required]; and

(f)   A waiver of subrogation in favor of WIFA; of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees; and the other Indemnified Parties, if any, for losses arising from work performed by or on behalf of Developer.

This requirement shall not apply to a Developer or Subcontractor that is exempt under A.R.S. § 23-901, and when such Developer or Subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

6.6   Employer's Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14.

(a)   The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Developer and all Subcontractors engaged in the Services.

(b)   Developer and/or the Subcontractor, whichever is the applicable employer, shall be the named insured.

(c)   The policy shall have limits of not less than the following, each reinstating annually:

    i.   Each Accident – $1,000,000

    ii. Disease-Each Employee – $1,000,000

    iii. Disease-Policy Limit – $1,000,000

(d)   The policy shall contain a waiver of subrogation endorsement in favor of WIFA; the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees; and the other Indemnified Parties, if any, for losses arising from work performed by or on behalf of Developer using ISO form WC 00 03 13 endorsement or its equivalent.

This requirement shall not apply to a Developer or Subcontractor that is exempt under A.R.S. § 23-901, and when such Developer or Subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

6.7   Commercial Crime Policy or Blanket Fidelity Bond

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, a commercial crime insurance policy, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14, or a blanket fidelity bond.

(a)   The commercial crime policy or blanket fidelity bond shall have a coverage amount no less than $50,000,000.

(b)   Coverage should include but is not limited to the following and shall be extended to third parties:

i.   Employee Dishonesty (to include coverage for theft and mysterious disappearance and inventory shortage);

ii.   Money and securities Inside/Outside;

iii.   Computer Fraud;

iv.   Funds Transferred (if applicable); and

v.   Forgery or Alteration.

(c)   The policy shall be endorsed to include the State of Arizona and WIFA as Loss Payee.

(d)   The policy shall not contain a condition requiring a conviction or arrest in order to file a claim.

6.8   Technology Errors and Omissions Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, a technology errors and omissions insurance policy covering the Services provided, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14.

(a)   The technology errors and omissions policy shall have a coverage amount no less than $2,000,000 for each claim and $2,000,000 in the aggregate, to be reinstated annually.

(b)   The technology errors and omission policy shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under the Contract, including for copyright infringement, infringement of trade dress, domain name, title or slogan.

(c)   In the event that the technology errors and omissions insurance required by this Contract must be written on a claims-made basis, Developer warrants that

any retroactive date under the policy shall precede the effective date of the Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years, beginning at the Services under this Contract are completed.

6.9 Network Security (Cyber) and Privacy Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, a network security (cyber) and privacy liability policy, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 1.15 of this Exhibit 14.

(a)   The network security (cyber) and privacy liability policy shall have a coverage amount no less than $2,000,000 for each claim and $2,000,000 in the aggregate, to be reinstated annually.

(b)   The network security (cyber) and privacy liability policy shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

(c)   In the event that the network security (cyber) and privacy liability policy required by this Exhibit 14 must be written on a claims-made basis, Developer warrants that any retroactive date under the policy shall precede the effective date of the Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time Services under the Contract are completed.

(d)   The network security (cyber) and privacy liability policy shall be endorsed to include WIFA; the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees; and the other Indemnified Parties, if any, as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Developer.

(e)   The network security (cyber) and privacy liability policy shall contain a waiver of subrogation endorsement WIFA; the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees; and the other Indemnified Parties, if any, for losses arising from work performed by or on behalf of the Developer.

6.10 Subcontractors' Insurance

(a)   At all times during the Term of the Contract, Developer shall cause each Subcontractor to provide commercial general liability insurance that complies with

this Exhibit 14, with limits of at least $1,000,000 per occurrence/$2,000,000 aggregate, unless the Subcontractor is specifically covered by Developer-provided liability insurance. For any Subcontractor undertaking work with an estimated contract value of $5,000,000 or more, the commercial general liability limits shall be supplemented with an umbrella/excess liability insurance policy with a minimum limit of $5,000,000, on a following-form basis, unless the Subcontractor is specifically covered by Developer-provided liability insurance. Developer shall cause each such Subcontractor that provides such insurance to include WIFA and each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such commercial general liability insurance need not be project-specific.

(b)   At all times during the Term of the Contract, Developer shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business or commercial automobile liability insurance meeting the requirements as specified below.

   i.   Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Services. The policy shall contain extensions of coverage that are typical for services of the nature of the Services and shall contain only those exclusions that are typical for services of the nature of the Services.

   ii. Each such Subcontractor shall be the named insured under its respective automobile liability policy.

   iii. Each policy shall have a combined single limit per policy period of not less than $1,000,000.

   iv. Each policy shall include WIFA and each of the Indemnified Parties as additional insureds using ISO form CA 20 48 03 10 or its equivalent.

(c)   At all times when Services are being performed by any employee of a Subcontractor, Developer shall cause Subcontractor to procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with Applicable Law. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

   i.   An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act only if performing railroad related work;

   ii. A voluntary compensation endorsement;

   iii. An alternative employer endorsement;

   iv. An endorsement extending coverage to all states operations on an "if any" basis; and

> v. Coverage for United States Longshore and Harbor Workers Act and Jones Act claims, as appropriate and required.

(d) At all times during the Term, Developer shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.

> i. The policy shall insure against liability for death, bodily injury, illness or disease for all employees of the Subcontractor working on or about any Site or otherwise engaged in the Services.
>
> ii. The Subcontractor shall be the named insured.
>
> iii. The policy shall have a limit of not less than $1,000,000 per accident and in the aggregate during the period of insurance and may be included in an umbrella insurance combined with such other insurance that this <u>Exhibit 14</u> stipulates may be similarly included.

(e) WIFA shall have the right to contact the Subcontractors directly to verify the above coverages, if Developer does not provide verification of such Subcontractor coverage as and when required under <u>Section 1.5</u> of the Contract.

7. Miscellaneous

7.1 Developer shall also comply with any additional requirements provided in the WIP Specific Information for any Task.

7.2 WIFA, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

7.3 In the event the Developer or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Developer or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

7.4 If the professional liability insurance required by this Contract is written on a claims-made basis, Developer warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this Contract is completed.

7.5 The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services.