AMENDMENT No. 8

Issue Date: May 27, 2025

Issued To: All Qualified Proposers

INSTRUCTIONS TO QUALIFIED PROPOSERS:

All Qualified Proposers shall acknowledge this Amendment No.8 by submission of acknowledgements contained in Form O-1 (Offer Submittal Letter) with Qualified Proposer's Offer.

REVISION(S) TO THE SOLICITATION DOCUMENT:

Solicitation revised to include multiple modifications to the Solicitation, Offer Forms and Long Term Water Importation Base Contract. A "clean" copy of the Amended Solicitation is available on the Procurement Portal. By acknowledgement of this Amendment No. 8, Qualified Proposer acknowledges they have downloaded the Amended Solicitation and Offer Forms.

Brenda Prevost
Procurement Officer

WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

LONG-TERM WATER AUGMENTATION FUND

SOLICITATION FOR PROCUREMENT Solicitation #2024-001

Offer Due Date: August 13, 2025, 5:00 pm

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SECTION 1. SUMMARY OF REQUIREMENTS

PROPOSERS SHOULD READ THE ENTIRE SOLICITATION CAREFULLY

1.1. Project Background and Purpose

The Water Infrastructure Finance Authority of Arizona (**"WIFA"**) is authorized under, A.R.S. §§ 49-1203(E), 49-1203.01, 49-1205 (subject to the limitations of 49-1210), 49-1212, 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"**). To accomplish this purpose, WIFA has developed a multi-phase competitive process for identifying development opportunities for imported water supplies. The first phase of this competitive process is this Solicitation for Procurement (the **"Solicitation"**)

1.1.1. Background

WIFA is pursuing the potential development and subsequent construction of one or more water supply development project(s) as defined in A.R.S. § 49-1303. Water supply development projects may include both in-state and importation projects. Through this Solicitation, WIFA seeks to establish one or more Long Term Water Importation Project ("**LTWIP**") base contracts ("**Base Contract**") between selected Proposers and WIFA and the State of Arizona (**"State"**) pursuant to A.R.S. § 49-1212, potentially leading to implementation agreement(s) pursuant to A.R.S. § 49-1213 ("**Implementation Agreement**") to import new water supplies using the LTWAF to help meet current and long-term water demands. The LTWIP Base Contract(s) that may be established through this Solicitation and any future Implementation Agreement(s) are intended to facilitate the development of Water Importation Project(s) (**"WIP(s)"**) which will import water from outside the boundaries of the State.

WIFA is responsible for administering the LTWAF, which was created by the Arizona Legislature in 2022 to provide financial support for WIPs that would increase water supplies for the State. A wide variety of contracting strategies are available for WIFA to develop water supply projects through the LTWAF.

The most recent assessments of future statewide water use prepared by the Arizona Department of Water Resources project the State's water demand in 2060 will be at least 1.5 MAF/year greater than the State's current usage. General input from State municipal water suppliers indicates a near-term (10-15 years) water demand that exceeds their planned future projects and programs by 100,000 to 500,000 AF/year depending on many factors, notably the State's future allocations of Colorado River supplies.

WIFA, using the LTWAF, and working collaboratively with water utilities and districts, governments, government and non-government agencies, and other stakeholders in the State and out-of-state, will identify and pursue a project, or combination of projects, that can reliably

and sustainably import up to 500,000 AF/year of additional supply in the near-term (10-15 years) to complement other on-going in-state water supply development projects and to enhance the resiliency and security of the State's water supplies.

1.1.2. Purpose

Through this Solicitation, WIFA will review the qualifications of Proposers, review Offers submitted by Qualified Proposers, and may award one or more Proposers a LTWIP Base Contract**.** WIFA may select any number of Proposers to enter into LTWIP Base Contracts, which will conclude this Solicitation process. A Base Contract is not a contract to build or develop any project; rather it is a contract to further evaluate the proposer's idea for a WIP. Proposers selected through this Solicitation, and that also enter a subsequent LTWIP Base Contract with WIFA, will be eligible to provide additional services to WIFA and potentially enter into an Implementation Agreement pursuant to the terms of the LTWIP Base Contract.

WIFA's statutory authority permits delivery of WIPs through a public-private partnership (P3) model, however, the actual method of delivery for a WIP will be determined through the SECONDARY WIP SELECTION PROCESS (Solicitation Section 1.6.2).

Consistent with the concept described above, this Solicitation requests submission of initial qualifications, as described in the INITIAL QUALIFICATIONS SUBMITTAL REQUIREMENTS (Solicitation SECTION 3), at which point this Solicitation requests Offers from Qualified Proposers for a WIP that meets the objectives defined in this Solicitation. After evaluating a Proposer's initial qualifications and Offer, WIFA anticipates entering into one or more LTWIP Base Contracts involving performance of certain services concurrently with the development of technical, financial, and environmental analysis for the proposed WIP.

A Proposer that is awarded a LTWIP Base Contract is anticipated to complete Task Orders consisting of technical and non-technical work products supporting the ongoing development of the Proposer's WIP as it progresses through the project review and approval processes during the Secondary WIP Selection Process. The LTWIP Base Contract shall use a collaborative approach and may result in the execution of a subsequent separate Implementation Agreement pursuant to A.R.S. § 49-1213, which is an approach to public development that includes private project developer participation in early project definition and design, partnering with WIFA, and potential later development, design, construction, financing, operation and/or maintenance of the project. Refer to FORM OF CONTRACT – LTWIP BASE CONTRACT (Solicitation SECTION 10), which describes the process to define and agree upon the specific scope of services for any each Task under any LTWIP Base Contract awarded under this Solicitation.

Each LTWIP Base Contract(s) awarded under this Solicitation will proceed as described in the DELIVERY OF ~~PROJECT~~ WIP – POST-PROCUREMENT APPROACH (Solicitation Section 1.6). WIFA will use the work product developed to evaluate potential WIPs for further development activities. Pursuant to the LTWIP Base Contract(s), WIFA may elect to proceed with one or more Developer(s) and WIPs by requesting a WIP Implementation Proposal as set out in the FORM OF CONTRACT – LTWIP BSE CONTRSCT (Solicitation SECTION 10) ~~of the LTWIP Base Contract~~ and, if approved by WIFA, entering into an Implementation Agreement for WIP implementation.

1.1.3. WIFA's Goals

Through the response to this Solicitation, and the subsequent LTWIP Base Contract(s), WIFA seeks to accomplish the following goals:

A. Identify Qualified Project Teams that can provide all necessary services for WIP analysis, development and delivery of a WIP
B. Identify potential WIPs that WIFA may consider for analysis, development and delivery of a WIP.

WIFA will evaluate Offers using the criteria described in this Solicitation to select potential Proposer(s) to enter into an LTWIP Base Contract to potentially develop WIP(s).

1.2. Solicitation Response Actions and Award Responsibilities

WIFA designates the following entities within its organization as responsible for participation in the Solicitation and designates the following responsibilities:

A. WIFA Board of Directors: Responsible to take action to award LTWIP Base Contracts
B. WIFA Long Term Water Augmentation Committee: Responsible for reviewing Evaluation Committee's recommendations for award(s) and making recommendations to the WIFA Board of Directors regarding the award of LTWIP Base Contracts
C. Evaluation Committee: Committee designated by the WIFA Long Term Water Augmentation Committee to perform scoring evaluations of Offers solely against the Solicitation criteria and making subsequent recommendations for award(s) for further consideration to the WIFA Long Term Water Augmentation Committee

Responses to this Solicitation will be considered by WIFA under the following general process:

1. WIFA will review Proposers' Initial Qualifications Submittal and determine the Proposers that are Qualified Proposers.
2. WIFA will invite Qualified Proposers for One-on-One discussions with WIFA staff and consultant advisors.
3. Qualified Proposers may submit an Offer, which include Technical Requirements, WIP Concepts, and Approach to Detailed Plan for Completing Secondary WIP Selection Evaluation and a Price Proposal. The Evaluation Committee will evaluate and score Qualified Proposers' Offers.
4. Subsequent to the Offer submission, the Evaluation Committee will define the Competitive Range and may invite those Qualified Proposers in the Competitive Range (if any) for each project category to provide Oral Presentations to the Evaluation Committee. Qualified Proposers not in the Competitive Range will not proceed as a Qualified Proposer in the evaluation or be eligible for award.
5. Qualified Proposers in the Competitive Range may be invited to submit Best and Final Offers.
6. The Evaluation Committee will evaluate and Score the Qualified Proposers' Best and Final Offers, if applicable.

7. The Evaluation Committee will provide Award recommendation(s) to the Long-Term Water Augmentation Committee.
8. Any Qualified Proposers recommended for Award may be invited to provide a brief presentation to the Long-Term Water Augmentation Committee.
9. The Long-Term Water Augmentation Committee will consider the Evaluation Committee's recommendations and make Award recommendations to the WIFA Board. Qualified Proposers not recommended by the Evaluation Committee for award will not proceed as a Qualified Proposer in the evaluation or be eligible for Award.
10. The WIFA Board will make the final determination as to any Award determination during a meeting of the Board.

1.3. Water Quality and Project Categories

WIFA will consider a diverse portfolio of water importation opportunities. This portfolio may include diverse geographies, sources, technologies, and delivery strategies as well as diverse ownership, delivery and financial agreement structures. Water importation projects developed from different water sources will inherently include wide variation in source water quality characteristics. WIPs shall deliver water quality that is consistent with end uses to be defined during WIP implementation, including municipal and industrial uses as well as any requirements of conveyances needed to effectuate the importation.

Delivery of untreated ocean water does not fulfill the water augmentation goals of the LTWAF and should not be proposed by a Proposer.

For the purposes of this Solicitation, Proposers are instructed to respond to project specific information by identifying one (or more) project categories. The project categories are listed below, in no order of preference:

- Ocean Water
- Surface Water
- Wastewater Reclamation
- Other Water Source(s)

Proposers shall self-select the project category for which the proposal will be considered. Qualified Proposers will be evaluated against the competitive range set for that project category. The onus is on the Proposer to self-select the appropriate category. WIFA will not reassign proposals to a different category upon receipt and evaluation. For example, if a Proposer is offering a wastewater reclamation solution but self-selects as a surface water project, the proposal would be evaluated by WIFA under the surface water competitive range. Although Proposers are not competing against each other, Proposers are competing against the RFP for contract opportunity and will be evaluated under the same evaluation criteria with different project category specific competitive ranges.

1.3.1. Long-Term Supply

WIPs developed using the LTWAF are intended to provide secure, long-term water supplies to the State. WIFA anticipates that some water supplies developed through this program may be

used to satisfy requirements of the State's Assured Water Supply Program and therefore must meet the Program requirements to demonstrate uninterruptable physical and legal availability of the supply for a 100-year period (ref. Arizona Administrative Code R12-15-716 to R12-15-722).

The goal of the LTWAF program is to develop water supplies that satisfy utility-scale water augmentation demands. WIPs considered under this program shall have a minimum build-out capacity of 10,000 acre-feet per year.

1.4. Project Evaluations

In evaluating an Offer and potential WIP, WIFA shall consider the criteria prescribed pursuant to A.R.S. § 49-1304. *See* A.R.S. § 49-1212(C). These statutory criteria include, as applicable:

1. The benefits of the project to current and future residents of this state, including the ability of the project to improve access to water supplies for use within this state and promote economic growth, in relation to the projected cost of the project.
2. The ability of the project to provide multiple water supply development benefits.
3. The projected costs of the project.
4. The ability of the project to address or mitigate water supply reductions to existing water users, considering the existence, feasibility and long-term reliability of mitigation measures available to the applicant or proposed beneficiaries, including the availability of water supplies from the Arizona water banking authority.
5. The cost-effectiveness of the project.
6. The reliability and long-term security of the water supply to be developed through the project.
7. Existing and planned conservation, best management practices and water management programs of the applicant or potential applicant.
8. The degree to which the project will maximize or leverage multiple available funding sources, including federal funding.
9. The applicant's ability to meet any applicable environmental requirements imposed by any federal or state agency.
10. The qualifications, industry experience, including experience with similar projects, general reputation and financial capacity of the applicant or any private partner, based on appropriate due diligence.
11. The feasibility of the project, including the feasibility of the proposed design and operation of the project.
12. Comments from water users, local citizens and affected jurisdictions.
13. For projects involving the construction or operation of water-related facilities, the safety record of any private partner.
14. Existing, near-term and long-term water demands compared to the volume and reliability of existing water supplies of the beneficiaries of the funding or project. In evaluating this criterion, WIFA shall consider information contained in any applicable water supply and demand assessment that has been issued by the director of water resources pursuant to A.R.S. § 45-105, subsection B, paragraph 14, in addition to any other information submitted to evaluate this criterion.
15. Potential impacts to ratepayers.

16. The ability of the applicant and any public or private partner to fully repay all financial obligations to the authority.
17. For agreements entered into pursuant to A.R.S. § 49-1203.01, subsection C, paragraph 5, the impact of any such agreement on the ability of WIFA to comply with the requirements of A.R.S. § 49-1303, subsection E.
18. Other criteria that WIFA may deem appropriate.

1.5. Summary of Process for Selecting Developer(s)

The scope of this Solicitation is intended to select any number of Qualified Proposers for LTWIP Base Contract(s), or as few as zero. WIFA may select from as many or few project categories. Proposers may respond to the Solicitation by submitting: (1) an Initial Qualifications Submittal that is also determined to be responsible by WIFA and, for Proposers determined to be Qualified Proposers, (2) an Offer that complies with the requirements of this Solicitation.

1.5.1. Initial Qualifications Submittal

To participate in this Solicitation, including participation in demonstrations and negotiations, Proposers must meet certain responsibility requirements. A.A.C. R18-15-814 (Authorizing WIFA to consider factors in determining whether a Proposer is responsible or nonresponsible). Accordingly, a Proposer that wishes to participate in the Solicitation must provide an Initial Qualifications Submittal which meets the specified minimum requirements as described in the INITIAL QUALIFICATIONS SUBMITTAL REQUIREMENTS (Solicitation SECTION 3). WIFA's Director will oversee a responsiveness and pass/fail evaluation of the Initial Qualification Submittal, assessing compliance with the administrative requirements in RESPONSIVENESS AND RESPONSIBILITY (Solicitation SECTION 5). The Initial Qualifications Submittals will be evaluated on a pass/fail basis by the Procurement Officer to determine responsiveness and responsibility. Proposers will be notified whether they are determined to be responsive and responsible and therefore eligible to submit an Offer as a Qualified Proposer.

1.5.2. Offer Submittal, Evaluation, and Developer Selection

Refer to the Special Instructions for Proposers (Solicitation SECTION 2) for information regarding the required Offer content. Offers will be evaluated by an Evaluation Committee assigned by WIFA's Long-Term Water Augmentation Committee (the **"Committee"**) established by A.R.S. § 49-1208(B) and supported by subject matter experts (which may include outside consultants and personnel from other agencies) in the areas to be evaluated. The Director will provide the Committee with a report detailing the Evaluation Committee's recommendations. The Evaluation Committee will evaluate Offers in accordance with the criteria established in this Solicitation and will provide recommendations to the Committee, who will provide recommendations to the WIFA Board of Directors established by A.R.S. § 49-1206(A). The Board will select any number of proposed Developer(s) for award of a LTWIP Base Contract, regardless of project category. The Board also reserves the right to issue no awards.

1.5.3. Offer Acceptance

An Offer shall be accepted by WIFA by execution of a LTWIP Base Contract.

1.6. Delivery of WIP – Post-Procurement Approach

At the conclusion of this Solicitation, WIFA may select any number of Qualified Proposers to enter into LTWIP Base Contracts, which will conclude the Solicitation process. WIFA reserves the right to not enter into any LTWIP Base Contract and/or cancel the Solicitation.

1.6.1. LTWIP Base Contracts

WIFA will use any executed LTWIP Base Contracts on an as-needed basis. WIFA may award Task Orders to a Developer pursuant to a LTWIP Base Contract. However, award of a LTWIP Base Contract does not guarantee award of Task Orders or other actions for future WIP development under the Base Contract.

Note: WIFA does not guarantee a specific amount of work either for the term of the LTWIP Base Contract or on an annual basis. The LTWIP Base Contract does not guarantee work under any specific WIP, the actual extent of services required under any LTWIP Base Contract as a result of this Solicitation is not known, and no individual Proposer is assured of obtaining any work as a result of selection.

WIFA reserves the right to negotiate substantive amendments or changes to individual Developer's LTWIP Base Contracts for future WIP development.

1.6.2. Secondary WIP Selection Process

Proposers selected through this Solicitation, and that also enter a LTWIP Base Contract with WIFA (each a "**Developer**"), will be eligible to provide services to WIFA pursuant to the LTWIP Base Contract, including Task Orders. In addition, in WIFA's sole discretion, WIFA and a Developer may enter into one or more subsequent Contracts and/or additional future WIP development agreements. The following is a narrative description of the Secondary WIP Selection Process that WIFA anticipates using under a LTWIP Base Contract after the conclusion of this Solicitation.

WIFA will conduct a Secondary Selection Process of potential WIPs under a LTWIP Base Contract by potentially authorizing Task Orders to Developers to perform more detailed analysis and evaluate the feasibility of their proposed WIP so that WIFA may make determinations as to which, if any, potential WIPs will be considered for further potential development. WIFA will compensate Developers for the services provided under any LTWIP Base Contract pursuant to a Task Order.

Following award of the LTWIP Base Contracts, the initial WIP development period may include some or all of the following potential Task Orders:

- Technical Evaluations
- Environmental and Cultural Evaluations
- Regulatory Evaluations
- Society and Community Evaluations
- Cost, Economics and Financing Evaluations
- Other Task Orders as determined by WIFA
- WIP Implementation Proposal

WIFA may, in its sole discretion, issue a subsequent Task Order if WIFA determines that it is in the interest of WIFA and the State for WIFA to continue to advance the WIP and/or work with the Developer. Following receipt of a WIP Implementation Proposal, WIFA may elect to negotiate a Contract with the Developer based on such WIP Implementation Proposal.

Refer to the FORM OF CONTRACT – LTWIP BASE CONTRACT (Solicitation SECTION 10) for detailed information regarding the LTWIP Base Contract terms and conditions, Task Orders and the process for finalizing a Contract, as well as WIFA's rights in the event that WIFA chooses not to (1) issue an NTP for a Task Order or any subsequent Task Order(s), or (2) negotiate and/or enter into a Contract with the Developer.

1.6.3. Task Orders

The anticipated scope of each Task Order is summarized below. WIFA reserves the right to modify any of the Task Orders listed above or issue additional Task Orders to a Developer. Task Orders need not be uniformly assigned to all LTWIP Base Contract Developers.

1.6.3.1. Technical Evaluations

This Task Order is anticipated to include technical evaluations of the proposed WIP. The scope of this work may include engineering analysis, routing/siting studies, process evaluation, energy analyses, waste and/or byproduct disposal, and other technical analysis required to evaluate the technical feasibility of the WIP.

Developer will be expected to clearly define expectations of WIFA's role in developing the WIP, and the work under this Task Order is expected to be developed to a sufficient level of detail to allow for adequate determination of the viability of the WIP and comparative analysis of WIP alternatives.

1.6.3.2. Environmental and Cultural Evaluations

This Task Order is anticipated to include environmental and cultural impact assessments required for successful implementation of the WIP. Environmental and cultural impact assessments shall consider potential impacts to threatened and endangered species, wetlands and/or other protected lands, archeological sites, indigenous peoples and other relevant impacts not listed.

Developer will be expected to clearly define expectations of WIFA's role in developing the WIP, and the work under this Task Order is expected to be developed to a sufficient level of detail to allow for adequate determination of the viability of the WIP and comparative analysis of WIP alternatives.

1.6.3.3. Regulatory Evaluations

This Task Order is anticipated to include an evaluation of regulatory compliance activities required for successful implementation of the WIP. Regulatory analysis plan shall include an identification of the anticipated permitting agencies and permits required for development, construction and operation of the WIP, including the potential for an Environmental Impact Statement or other actions covered under the National Environmental Policy Act (NEPA). This Task Order shall include anticipated permitting strategy and anticipated schedule/timeline for

permitting activities. This Task Order will be expected to identify what, if any, role WIFA is anticipated to complete related to permitting and regulatory compliance.

Developer will be expected to clearly define expectations of WIFA's role in developing the WIP, and the work under this Task Order is expected to be developed to a sufficient level of detail to allow for adequate determination of the viability of the WIP and comparative analysis of WIP alternatives.

1.6.3.4. Society and Community Evaluations

This Task Order is anticipated to include an evaluation of the potential society, and community considerations associated with implementation of the WIP. This evaluation shall consider the appropriate community outreach and engagement activities, interested stakeholders, stakeholder groups and governmental entities that will be part of development, construction and operation of the WIP.

Developer will be expected to clearly define expectations of WIFA's role in developing the WIP, and the work under this Task Order is expected to be developed to a sufficient level of detail to allow for adequate determination of the viability of the WIP and comparative analysis of WIP alternatives.

1.6.3.5. Cost, Economics and Financing Evaluations

This Task Order is anticipated to include evaluation of proposed WIP costs, economics and financing. The scope of this work may include cost modeling for capex and opex costs, as well as other relevant costs that may be required for project development (land acquisition, permits, etc.).

This Task Order will also include an analysis of available and proposed financial models that may be used for developing the WIP. This should include development financing, structured and project financing models for capital costs and/or other project costs, and operating cost models. This should consider capital sources, including equity investments (and from whom), debt (bank, bond (including private activity bonds), private placements, etc.) and an analysis of then current market and financial conditions. This Task Order shall also include development and delivery of a financial model for the WIP.

This task order will include development of cost and revenue models used to estimate the cost of water to purchasers and approaches to enhancing affordability.

Developer will be expected to clearly define expectations of WIFA's role in developing the WIP, and the work under this Task Order is expected to be developed to a sufficient level of detail to allow for adequate determination of the viability of the WIP and comparative analysis of WIP alternatives.

1.6.3.6. Other Task Orders as determined by WIFA

Other Task Orders may be defined by WIFA as needed for specific WIPs.

1.6.3.7. WIP Implementation Proposal

After completion of authorized Task Orders to WIFA's satisfaction, WIFA may request a Developer prepare a WIP Implementation Proposal. The request will include a form of Contract developed by WIFA and other relevant documents, including technical requirements for final design, construction, operation, and maintenance of the WIP (as applicable).

Upon receipt of the WIP Implementation Proposal, WIFA will evaluate the proposal pursuant to ARS § 49-1213 and as specified in the LTWIP Base Contract. WIFA may, in its sole discretion, elect to proceed with negotiations of an Implementation Agreement with the Developer pursuant to ARS § 49-1213 and as specified in the LTWIP Base Contract and the request for a WIP Implementation Proposal. Any Implementation Agreement may be executed and delivered only following approval by WIFA's Board of Directors.

Note: WIFA will not pay any compensation to the Developer to submit a WIP Implementation Proposal.

1.6.4. WIFA's Rights Concerning Alternative Project Delivery Plan

WIFA reserves the right to proceed with final development and delivery of a WIP through a means other than the LTWIP Base Contract and a Contract.

WIFA may, at any time, determine it is not in the interest of WIFA and the State to proceed or continue with the LTWIP Base Contract or the WIP development process with Developer as described herein. In such event, WIFA and Developer shall retain negotiation and development rights as described in the LTWIP Base Contract.~~may, without limitation, discontinue its relationship with the Developer(s) and pursue the development of a WIP using any alternative approach as deemed advisable by WIFA.~~

WIFA shall retain ownership rights to the WIP proposals and any work product developed under the LTWIP Base Contracts, including all design documents. Specific ownership rights and the parties' obligations in the event of LTWIP Base Contract termination are described in the LTW~~P~~IP Base Contract.

1.6.5. Developer's Compensation and Other Financial Considerations

WIFA will pay compensation amounts to each Developer for compliant work satisfactorily performed pursuant to a Task Order according to the terms of the LTWIP Base Contract and the associated Task Order.

1.7. Solicitation Schedule

WIFA currently anticipates the following solicitation schedule. WIFA will provide Proposers written notice via email and posting on WIFA's website of any further deadlines and other activities related to this solicitation. This schedule is subject to modification by WIFA.

Table 1. Solicitation Schedule

Event	Date
Issue Solicitation	November 20, 2024
Pre-Offer conference	December 10, 2024
Deadline for submitting Questions and Comments regarding the Initial Qualifications Submittal	January 28th, 2025
Initial Qualifications Submittal due date	February 6, 2025
Notification of Qualified Proposers	March 5, 2025
Deadline for Submission of Agenda, Attendees, Questions and Comments for One-on-One meetings (including any proposed exceptions to the form of LTWIP Base Contract)	April 2, 2025
One-on-One Meetings with Qualified Proposers	April 15-17, 2025
Target Date for Issuance of Potential Amendment(s) to Solicitation	May 20, 2025
If Applicable, Deadline for submission of Questions and Comments regarding Amendment to Solicitation (and final clarification requests or exceptions to the form of LTWIP Base Contract)	June 6, 2025
One-on-One Meetings with Qualified Proposers	June 16-18, 2025
Offer Due Date	August 13, 2025
Notification of Proposers within the Competitive Range	September 16, 2025
Interviews/Demonstrations with Proposers within the Competitive Range	October 8, 2025
Negotiations with Proposers within the Competitive Range (if needed)	October 14, 2025
Best and Final Offer (if needed)	October 21, 2025
Notice of Recommendation to Award	October 24, 2025
LTWAC Meeting, including presentations by Recommended Proposers	TBD
WIFA Board Action and Base Contract Award	TBD

1.7.1. Extension of Proposal Acceptance Period:

WIFA reserves the right to extend the Offer acceptance period. A.A.C. R18-15-811. If WIFA extends the Offer acceptance period, the Qualified Proposer shall submit written concurrence to the extension. WIFA shall not consider the Offer from a Qualified Proposer who fails to respond to the notice of extension. A.A.C. R18-15-811(B).

1.7.2. Cancellation of Solicitation After Opening and Before Award:

Based on the best interest of WIFA, WIFA may cancel this Solicitation after the Offer Due Date and time pursuant to A.A.C. § R18-15-812.

1.8. Project Funding and Finance

WIFA intends to utilize existing funds to minimize project risks resulting in an affordable water supply for the State. As of July 1, 2024, WIFA has an appropriation of $445.5 million to the LTWAF that can be used for activities associated with a WIP. The funds can be used in the form of providing financial assistance to eligible entities, issuing debt, credit enhancements and other forms of indebtedness according to Arizona Revised Statutes, (A.R.S.) § 49-1213. WIFA seeks financial innovations to enhance affordability and consider public and private financing approaches, as well as combinations thereof, including the use of federal and state sponsored credit instruments (such as the Water Infrastructure Finance and Innovation Act (WIFIA)). To the extent that public financing approaches are used (e.g. debt issued directly by WIFA), WIFA will retain sole discretion regarding whether to issue debt, amount of the debt to be issued, and the structure of public debt obligations.

1.8.1. Federal Funding

Because WIFA anticipates utilizing state funds and potentially using federal or private funds for the WIPs, this Solicitation and the LTWIP Base Contract and any Implementation Agreement are subject to funding requirements which may change as WIFA's funding plan and environmental review process advance. State law controls this Solicitation, and WIFA views State laws, specifications, regulations and policies that are relevant to this Solicitation and each WIP as not contrary to applicable federal laws and regulations. By submitting an Initial Qualifications Submittal and/or Offer, as applicable, each Proposer acknowledges that certain changes to the LTWIP Base Contract may be required to reflect the conditions of and applications for federal funding programs, the environmental review process, or any design documents approved by WIFA.

In any circumstance, Proposer must provide or cause to be provided such information, documentation and administrative assistance as WIFA may request, and take such actions and execute such documents as are required to be in Proposer's name that will enable WIFA to meet all requirements of state, federal, or other funding programs.

This Solicitation and LTWIP Base Contract are drafted based on the assumption that a WIP and its plan of finance will remain eligible for aid in the form of federal and state funds. Accordingly, the procurement documents and LTWIP Base Contract conform to requirements of applicable and/or anticipated federal and state law. Refer to Exhibit 7B of the Agreement for specific federal requirements that may be applicable to the Agreement.

It is WIFA's intent that this Solicitation affords all Proposers nondiscriminatory bidding procedures regardless of national, state, or local boundaries and without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual

orientation, or military and veteran status. WIFA may modify the procurement process described in this Solicitation to address any concerns, conditions or requirements of any governmental entity. Proposers shall be notified of any such modifications by way of a Solicitation Amendment.

1.9. Disadvantaged Business Enterprise Requirements

By submission of an Offer, Proposer acknowledges that WIFA may implement specific requirements associated with Disadvantaged Business Enterprise (DBE) program requirements associated with the performance of Task Orders under the LTWIP Base Contract or any subsequent agreements (including the Implementation Agreement). DBE program requirements will be identified prior to submission of Task Order Requests in accordance with the provisions of the LTWIP Base Contract.

1.10. Letter of Guarantee

A Guaranty of Developer's obligations under the LTWIP Base Contract shall be required where:

(i) a Qualified Proposer was advised by WIFA that a Guaranty would be required as a condition to qualification of Qualified Proposer;
(ii) a Qualified Proposer's organization is a newly formed corporation or a limited liability entity;
(iii) a Qualified Proposer (or an Equity Member, if the Qualified Proposer is a partnership, joint venture or limited liability company) is not the ultimate parent entity in its organizational/corporate structure;
(iv) the form of organization of a Qualified Proposer changes after submittal of the Initial Qualifications Submittal and WIFA determines, in its sole discretion, to require a Guarantor as a condition to approving such change;
(v) a Qualified Proposer's financial capability adversely changes between Initial Qualifications Submittal submission and the Offer Due Date, as determined by WIFA, in its sole discretion; or
(vi) if financial statements of a Financially Responsible Party are provided to demonstrate financial capability of Proposer or an Equity Member. In the event a Guaranty is required, it must come from the ultimate parent or another entity acceptable to WIFA, in its sole discretion.

- END OF SECTION 1. SUMMARY OF REQUIREMENTS -

SECTION 2. SPECIAL INSTRUCTIONS TO PROPOSERS

2.1. Qualifications

2.1.1. Responsibility and Responsiveness

To be eligible for participation in the Solicitation, a Proposer must meet this Solicitation's responsibility and responsiveness criteria defined in responsiveness and responsibility (Solicitation SECTION 5). A.A.C. R18-15-814.

2.1.2. Initial Qualifications Submittal

Each Proposer wishing to submit an Offer in response to this Solicitation must first complete and submit an Initial Qualifications Submittal in accordance with initial qualifications submittal requirements (Solicitation SECTION 3) and be determined by WIFA to be a Qualified Proposer. Any questions regarding the Initial Qualifications Submittal should be directed to the Procurement Officer via email.

Initial Qualifications Submittals are due to the Procurement Officer no later than the date specified on the solicitation schedule (Solicitation Section1.7).

For contact information, please refer to this SECTION 2. For detailed instructions, refer to the initial qualifications submittal requirements (Solicitation SECTION 3).

2.2. Offer Submittal

Each Qualified Proposer that is determined by WIFA to meet the minimum INITIAL QUALIFICATIONS SUBMITTAL REQUIREMENTS shall be notified by WIFA that they are a Qualified Proposer and eligible to submit an Offer.

Offers are due to the Procurement Officer no later than the date specified on the solicitation schedule (Solicitation Section 1.7).

~~For contact information, please refer to Section 2.6.~~ For detailed instructions, refer to the Offer Submittal requirements (Solicitation SECTION 4).

2.3. Examination of Solicitation Documents

The complete Solicitation package, Amendments, WIFA responses to written questions, and WIFA responses to any requests for interpretation and clarification will be made available on the Procurement Website.

It is the responsibility of each Proposer to examine the entire Solicitation, seek clarification in writing (inquiries), and examine the Initial Qualifications Submittal and, if applicable, Offer for accuracy before submitting an Initial Qualifications Submittal or Offer, as applicable. Each Proposer will, by submission of an Initial Qualifications Submittal and, if applicable, Offer, be deemed to have made such examination. Lack of care in preparing an Initial Qualifications Submittal and, if applicable, Offer shall not be grounds for modifying or withdrawing the Initial Qualifications Submittal and, if applicable, Offer after the Initial Qualifications Submittal due date and time or Offer Due Date and time, if applicable.

2.4. Procurement Portal

Solicitation documents will be managed through the use of a secure web-based platform ("**Procurement Portal**").

All Proposer submissions, questions and answers, and official correspondence related to this solicitation will be issued through the Procurement Portal. Documents that may be posted in other public locations shall be considered "for reference" only.

Each Proposer shall request secure access to the Procurement Portal through the following link:

<< SP Access Form (office.com)>>

Each Proposer will be granted a maximum of two users access links to the Procurement Portal. Qualified Proposers may request a maximum of six additional user access links to the Procurement Portal. After being granted access to the Procurement Portal, each Proposer will receive a unique link to upload the Initial Qualification Submittal to the Procurement Portal as described in SECTION 3. Qualified Proposers will receive instructions for Offer uploads to the Procurement Portal in accordance with SECTION 4.

The Procurement Portal will include PDF copies of this Solicitation and Reference Documents. In addition, writable copies of certain forms will be available for download from the Procurement Portal.

2.5. Interpretation of Solicitation Documents

Each Proposer is responsible for reviewing the Solicitation and any Amendments, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which the Proposer fails to understand.

Each Proposer must submit any question or clarification request relating to this Solicitation in accordance with the procedures listed in questions and clarifications Section 2.7.2, except for questions submitted as part of the one-on-one discussions conducted in accordance with Section 2.8 or questions submitted as confidential or proprietary pursuant to Section 2.5 and 2.8.7 below (to the extent that WIFA agrees with such confidentiality or proprietary designation). All Proposer clarification requests must be submitted using the form set forth in proposal forms and required certifications (Solicitation SECTION 9). WIFA will respond in writing to all questions submitted. However, WIFA reserves the right to state, and has sole discretion to determine, that WIFA will not be answering or commenting on a specific question without further explanation. WIFA will not accept or respond to oral inquiries. Clarification requests regarding the Solicitation and Amendments to the Solicitation will only be reviewed by WIFA if provided on or before 5:00 p.m. (Mountain Standard Time) on the dates identified in the solicitation schedule (Solicitation Section 1.7) or such other date as may be specified in writing by WIFA.

Each Proposer shall draft its clarification request in a manner that does not explicitly identify or otherwise indicate its identity in the body of the question.

WIFA may, in its sole discretion, respond to timely and pertinent written clarification requests it received from Proposers, but does not commit to respond to such requests. To the extent that WIFA does respond, it will notify all registered Proposers by email that responses are available for download from the Procurement Portal. If necessary, WIFA will issue an Amendment to the Solicitation in accordance with solicitation amendment (Solicitation Section 2.22). WIFA may re-phrase or consolidate clarification requests as it deems appropriate. Each Proposer is responsible for reviewing and being familiar with all requests and responses and any other information posted by WIFA in the data room through the Proposal Due Date. WIFA will not be responsible for any failure of a Proposer to receive information.

If a Proposer believes a clarification request contains confidential or proprietary information (including that the request itself is confidential) it may mark such request as "confidential". WIFA may, in its sole discretion, respond individually to such requests. However, WIFA reserves the right to disagree with Proposer's characterization of the confidentiality of any information it may provide and may treat its request as all other clarification requests.

Failure of the Proposer to examine the Solicitation and inform itself regarding its contents shall be at its sole risk, and no relief for any discrepancy, deficiency, ambiguity, error, or omission will be provided by WIFA.

WIFA shall not be bound by, and a Proposer shall not rely on for any purpose, any oral interpretation or oral clarification of the Solicitation documents.

Reference Documents are for information only and are not mandatory or binding on Proposer, except to the extent that the LTWIP Base Contract documents incorporate specific provisions of the Reference Documents by refence. WIFA does not represent, warrant, or guarantee the accuracy or completeness of the Reference Documents or the information contained therein, or that such information is in conformity with the requirements of the LTWIP Base Contract documents. WIFA shall not be responsible or liable in any respect for any causes of action, claims, or losses by any Person by reason of any use of information, opinions, or recommendations contained in, any conclusions Proposer may draw from, or any action or forbearance in reliance on, the Reference Documents.

2.6. Communication with WIFA

2.6.1. Procurement Officer

WIFA will designate a Procurement Officer for this Solicitation. Contact between Proposer and WIFA shall be exclusively conducted with the Procurement Officer.

2.6.2. Written Communication

All communications concerning the solicitation from the Proposer to WIFA must be in writing via electronic mail and addressed to the Procurement Officer, except as to the one-on-one discussions, oral presentations, or negotiations. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. WIFA shall consider the relevancy of the inquiry but is not required to respond in writing.

2.6.3. Prohibited Communications

During the Solicitation process, commencing with issuance of this Solicitation and continuing until award(s) of LTWIP Base Contract(s), except as otherwise provided by WIFA, no Proposer-Related Entity shall have any ex parte communications regarding this solicitation with any WIFA Board member, Committee member, WIFA staff member, or WIFA's consultants involved with this Solicitation, except for communications expressly permitted by this Solicitation. The foregoing does not prohibit Proposer-Related Entities from participating in public meetings as a member of the public. Any Proposer involved in such prohibited communications may be disqualified at the sole discretion of WIFA.

Proposers shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.

2.6.4. Timeliness

Any inquiry or exception to the Solicitation shall be submitted as soon as possible and on or before the date listed in Solicitation Schedule (Section 1.7). Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.

2.6.5. No Right to Rely on Verbal Responses

A Proposer shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the Solicitation.

2.6.6. WIFA Consultants and Technical Support

WIFA has retained the following firms to provide support services for this Solicitation:

- HDR Engineering, Inc.
- Snell & Wilmer LLP
- Nossaman LLP
- Spencer Fane LLP
- KPMG LLP
- Piper Sandler

These firms are subject to the restrictions on Proposer communications in this Section 2.6 and the Conflict of Interest provisions in Section 2.15 of this Solicitation.

2.6.7. Exemptions

The following communications are exempt from the requirements of Section 2.6.3:

- Communications during any pre-offer conference meeting described in pre-offer conference (Solicitation Section 2.7), which will be conducted in accordance with the protocol announced at such meeting;
- Communication during One-on-One meetings conducted between Proposers and WIFA (Solicitation Section 2.8.1); and

- Communications during Proposer demonstrations, oral presentations and negotiations, which will be conducted as set forth in pre-award negotiation (Solicitation Section 2.16.3).

2.7. Pre-Offer Conference

2.7.1. Pre-Offer Conference

A Pre-Offer Conference will be held, both in person and virtually on December 10, 2024 at 12:00PM (Arizona Time).

In-Person Location: 100 N 7th Ave, Phoenix, AZ 85007.

Zoom link: https://azwifa.zoom.us/j/82360714650

Dial in: (253) 205-0468

For both virtual options, the Meeting ID is 823 6071 4650

Proposers are highly encouraged to attend. The purpose of this pre-offer conference is to provide information and instruction for the Solicitation. Proposers should raise any questions about the Solicitation at that time. A Proposer may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.

Persons with Disabilities. Persons with a disability may request reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

2.7.2. Questions and Clarifications

Proposers may submit questions and/or requests for clarification to WIFA by completing a Questions and Responses Template (Form IQS-17 and Exhibit O-2) and submitting it to the Procurement Officer for consideration in accordance with the solicitation schedule (Section 1.7). All questions and answers will be posted publicly, excluding those discussed in one-on-one discussions conducted in accordance with Section 2.8 or questions submitted as confidential or proprietary pursuant to Section 2.5 and 2.8.7 above (to the extent that WIFA agrees with such confidentiality or proprietary designation). WIFA will respond in writing to all questions submitted. However, WIFA reserves the right to state, and has sole discretion to determine, that WIFA will not be answering or commenting on a specific question without further explanation. Amendments may be issued.

2.8. One-on-One Meetings

WIFA intends to conduct one-on-one meetings with each Qualified Proposer on the dates set forth in Section 1.7, or on other such dates designated by WIFA in writing to the Qualified Proposers to discuss issues and clarifications regarding the Solicitation (including these instructions and the form of LTWIP Base Contract), and related documents or communications provided by WIFA or the Qualified Proposers. At WIFA's discretion, Stakeholders may also participate in the WIFA-Proposer one-on-one meetings. WIFA reserves the right to disclose to all Qualified Proposers any issues raised during the one-on-one meetings; provided, however, that

WIFA will not disclose such issues if WIFA, in its sole discretion, determines that disclosure: (i) would impair the confidentiality of information that WIFA determines is confidential and which is submitted as part of this procurement, or would reveal a Qualified Proposer's confidential business strategies; (ii) is not necessary in order to address an error, mistake, omission, conflict or ambiguity in the Procurement related documents; (iii) is not necessary for purposes of fairness and transparency; and (iv) is not required by the Arizona Public Records Law. Participation at such meetings by the Qualified Proposers shall be mandatory. Representatives of WIFA and WIFA advisors, may attend and participate in one-on-one meetings.

Proposers are required to submit Form IQS-~~11~~ 10 Letter Agreement for Industry Review One-on-One Meetings with Proposer's INITIAL QUALIFICATIONS SUBMITTAL. Form IQS-~~11~~ 10 Letter Agreement for Industry Review One-on-One Meetings describes specific requirements and procedures for one-on-one meetings.

The referenced letter agreement includes the following terms:

- Prior to commencing participation in industry review and the one-on-one meetings, WIFA requires that each Qualified Proposer execute Attachment A (Countersignature to Letter Agreement), pursuant to which the Qualified Proposer agrees to abide by this Letter Agreement and confirms that it will not base any protest regarding the Procurement on the basis that the industry review process described in this Letter Agreement, including one-on-one meetings, occurred. Respondents to the Initial Qualifications Submittal shall return an executed copy of Attachment A (which should be transmitted attached to a copy of this Letter Agreement) to WIFA as part of the Initial Qualifications Submittal.
- Failure by a Qualified Proposer to return an executed copy of Attachment A by the above deadlines may, in WIFA's sole discretion, result in a delay in the delivery of documents to that Proposer and/or that Proposer being precluded from participation in the industry review process and, ultimately, disqualification from the Procurement.

2.8.1. One-on-One Meetings

The one-on-one meetings are mandatory for all Qualified Proposers, and a representative of each Qualified Proposer must be present at each of the meetings (up to 12 representatives will be allowed). All one-on-one meetings during the Procurement process must adhere to the procedures set forth in Exhibit 1 to this Letter Agreement.

The initial one-on-one meetings to be held during this industry review phase will be held in person, in or near Phoenix, Arizona as set forth below. The specific location of the one-on-one meetings shall be sent to Qualified Proposers before the meetings.

The discussion topics for the one-on-one meetings shall include: (1) commercial and financial issues in the Solicitation and draft Agreement; and (2) technical issues.

A minimum of ten business days in advance of the one-on-one meeting, each Qualified Proposer shall submit to WIFA's Procurement Officer the following documents in Microsoft Word:

A. A set of the Qualified Proposer's written comments and questions relating to the Solicitation. The comments should be submitted in the format described in Section C of

Exhibit 1 (Procedures for One-on-One Meetings) and using the format shown in Exhibit 2 (Industry Review Question/Comment Form); and

B. A written agenda and list of Qualified Proposer's one-on-one meeting attendees (including name, title, firm, and role on the Qualified Proposer's team).

Qualified Proposers will be required at each of the one-on-one meetings to execute an Acknowledgment Regarding One-on-One Meetings in the form of Attachment B to this Letter Agreement.

2.8.2. Subsequent One-on-One Meetings

~~At this time, WIFA intends only to hold one set of one-on-one meetings prior to award.~~WIFA will conduct a second set of mandatory One-on-One meetings with Qualified Proposers on the dates indicated in Section 1.7. All provisions of this Section shall apply to the second set of One-on-One meetings.

WIFA reserves the right to hold additional one-on-one meetings if deemed necessary. Additional information concerning the dates, locations and topics of these meetings, if applicable, would be made available to the Qualified Proposers.

2.8.3. Rules of Contact

Qualified Proposers are required to abide by the following rules of contact:

A. No Qualified Proposer or any of its team members may communicate with another Qualified Proposer or its team members with regard to the Solicitation documents, one-on-one meetings, or any team's Proposal, except that (1) subcontractors that are shared between two or more Qualified Proposers may communicate with their respective team members so long as those Qualified Proposers establish a reasonable protocol to ensure the subcontractor will not act as a conduit of information between the teams, and (2) this prohibition does not apply to public discussions regarding the Solicitation documents at any informational meetings sponsored by WIFA.

B. Only the authorized representative identified by each Qualified Proposer in its Statement of Qualifications may correspond with WIFA regarding the Solicitation and one-on-one meetings. Such authorized representatives shall only communicate in writing with WIFA and addressed to the Procurement Officer in accordance with SECTION 2.

C. No Qualified Proposer or representative thereof shall have any ex parte communications in relation to this solicitation in accordance with Section 2.6, including the following:

- HDR Engineering, Inc.;
- Nossaman LLP;
- Snell & Wilmer LLP
- Spencer Fane LLP
- KPMG LLP
- Piper Sandler
- "Affiliates" of the foregoing (meaning parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and

partnerships involving such entities, and other financially liable or responsible parties for the entity). Common ownership does not include the holding of stock in a publicly traded company unless such stock ownership is a majority position or results in control of the affected entity.

The foregoing restriction shall not, however, preclude or restrict communications: (a) expressly permitted by the Solicitation and ~~this~~the Letter Agreement in Form IQS-10; (b) approved in writing in advance by WIFA; (c) with regard to matters unrelated to the Solicitation documents, (d) any public or Qualified Proposer workshop related to the Procurement; or (e) any communications with WIFA personnel necessary to comply with pre-qualification or licensing requirements required by the Agreement.

Communication, defined in this Section as any substantive correspondence, contact or communication regarding a Qualified Proposer's WIP, between Qualified Proposers, Offtakers, Regulators and Transfer Partners are subject to the requirements listed in this Form, and as follows:

A. Communication with Regulators, Transfer Partners and other non-Proposer parties should be limited to those parties necessary to adequately prepare Qualified Proposer's Offer and relevant to Qualified Proposer's WIP.
B. Qualified Proposers shall not communicate with potential Offtakers.
C. Qualified Proposer contact with Regulators and Transfer Partners with respect to Proposer's WIP shall be subject to the following requirements:
    1. Qualified Proposer shall comply with the requirements of Form O-5.
    2. Exhibit 1 to Form O-5, signed by Qualified Proposer, shall be submitted to the WIFA Procurement Officer via email or other written communication, a minimum of 72 hours prior to substantive communication with Regulator or Transfer Partner. WIFA reserves the right to PROHIBIT communication with specific Regulator or Transfer Partner and will notify Qualified Proposer in writing of prohibited communication following submission of Exhibit 1.
    3. Exhibit 2 to Form O-5, documenting Stakeholder communication that includes specific information related to Qualified Proposer's WIP or Offer shall be submitted to the WIFA Procurement Officer via email within 48 hours of any meeting, correspondence or other communication with Regulator or Transfer Partner.

~~Communications, Offtakers, and Stakeholders~~

~~For the purposes of this Section:~~

- ~~"Offtakers" means an entity or person interested in securing water supplies through the implementation of a project or projects funded by the Long Term Water Augmentation Fund, but excluding Transfer Partners as described in the definition of Stakeholder below.~~
- ~~"Stakeholder" means an entity or person that falls into one of the following categories~~

~~Regulators: Federal, state, provincial, local, tribal or other governmental or quasi-governmental entities that may have regulatory jurisdiction over a Qualified Proposer's WIP; or~~

~~Transfer Partners: Persons or entities that may be party to water or water rights transfers, exchanges, storage, or conveyance ("wheeling") agreements as part of Qualified Proposer's WIP but do not have a direct interest in securing water supplies through the implementation of a WIP as a potential Offtaker.~~

~~Communication means any correspondence, contact or communication regarding a Qualified Proposer's WIP.~~

~~Communication Stakeholders and othercommunicate with comply withQualified to the WIFA Procurement Officer via email~~

Communication concerning ~~these Stakeholders~~Regulators or Transfer Partners must be sent to WIFA's Procurement Officer in accordance with SECTION 2.

a) Any communications determined by WIFA, in its sole discretion, to be prohibited or improper may result in disqualification. "Improper" as used in ~~this Letter Agreement~~Form IQS-10 means detrimental or prejudicial to the integrity of the Procurement.
b) Any official information regarding the Solicitation will be in writing, on WIFA's letterhead, and signed by WIFA's Procurement Officer or their designee.
c) WIFA will not be responsible for, and the Qualified Proposers may not rely on, any oral or written exchange or any other information or exchange that occurs outside the official process specified in this Solicitation.

2.8.4. Qualified Proposer Questions

Qualified Proposer questions during one-on-one meetings and in connection with documents issued during the industry review process are addressed in Exhibit 1.

Qualified Proposers may commence asking questions about the Solicitation at this time. Qualified Proposers may submit written questions to WIFA's Procurement Officer in accordance with SECTION 2. WIFA will only consider questions regarding the Solicitation documents if submitted by a Qualified Proposer to WIFA's Procurement Officer in accordance with SECTION 2.

2.8.5. Confidentiality Agreement

As a condition to participation in the industry review process, each Qualified Proposer (on behalf of itself and all of its corresponding team members) agrees to maintain the confidentiality of all Solicitation documents, reference documents, documents posted on the Website, and any other information related to the Solicitation that WIFA designates to Qualified Proposers as confidential (collectively, "Confidential Information"). Each Qualified Proposer agrees to maintain security and control over all documents and e-mails containing such Confidential Information in the Qualified Proposer's custody or control. Qualified Proposers agree it will not divulge any Confidential Information to the media, any member of the public, or any other party for a purpose other than to a team member for development of a proposal in response to the Solicitation.

2.8.6. Protests

Any protest that a Qualified Proposer may have arising out of or relating to this Letter Agreement, the terms, conditions, and procedures contained in this Letter Agreement, the Acknowledgment Regarding One-on-One Meetings contained in Attachment B to this Letter Agreement, or the Solicitation must be addressed in accordance with Section 2.21 of the Solicitation.

The one-on-one meetings will adhere to the following:

- The meetings are intended to provide Qualified Proposers with a better understanding of the Procurement and related documents or communications provided by WIFA.
- WIFA, except as noted in this Letter Agreement, will not discuss with any Qualified Proposer any information submitted as part of this procurement other than its own.
- The Qualified Proposers shall not seek to obtain commitments or coaching from WIFA or their advisors in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Qualified Proposer.
- No aspect of these meetings is intended to provide any Qualified Proposer with access to information that is not similarly available to other Qualified Proposers. Accordingly, material information about the Solicitation that WIFA reveals or discusses in response to questions raised in a one-on-on meeting will, except as noted in this Letter Agreement, be revealed to the other Qualified Proposers.
- The discussions or any statements made by either party shall not be binding on such party.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules.

2.8.7. Questions and Responses During One-on-One Meetings

During one-on-one meetings, Qualified Proposers may provide information and comments and ask questions, and WIFA may provide oral responses. If, during any individual one-on-one meeting, WIFA provides responses to material questions asked by any Qualified Proposer, the questions and answers may, in WIFA's sole discretion, be recorded and provided in writing to all Qualified Proposers, except to the extent provided in this Letter Agreement. The extent of permitted reliance on WIFA responses, if any, shall be limited and shall be set forth in the Solicitation documents.

2.8.8. Questions and Responses Regarding the Project

Qualified Proposers shall be responsible for reviewing Solicitation related documents or communications provided by WIFA, and for requesting clarification or interpretation of any perceived discrepancy, inconsistency, deficiency, ambiguity, error or omission contained therein, or of any provision which the Qualified Proposer fails to understand. Qualified Proposers will be limited to 75 comments, questions, or requests for clarification during the one-on-one process. If a comment or question has more than one subpart, each subpart will be considered a separate

comment or question. Corrections of typographical errors, incorrect cross references or internal inconsistencies within the Solicitation will be excluded from the 75-question limitation.

Qualified Proposers shall submit, and WIFA will respond to, such requests in accordance with this Section C of Exhibit 1. The oral responses and any written responses will not be considered part of the LTWIP Base Contract(s).

Qualified Proposers shall submit questions regarding the Solicitation provided by WIFA, including requests for additional information, clarification, or interpretation or to correct any discrepancy, inconsistency, deficiency, ambiguity, error or omission, to WIFA's Procurement Officer in accordance with SECTION 3 in the format prescribed in this Letter Agreement. Telephone or oral requests will not be considered.

Qualified Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to this Solicitation. Questions may be submitted only by the Qualified Proposer's identified authorized representative and must include the representative's name, address, telephone, e-mail address, and the Qualified Proposer he/she represents. Such comments/questions shall: (i) be submitted in Microsoft Word using the format set forth in Exhibit 2; (ii) be sequentially numbered; (iii) identify the relevant section number and page number (e.g., Technical Requirements, Section 3.2.2); or, if it is a general question, so indicate; (iv) not identify the Qualified Proposer's identity in the body of the question or contain confidential information; and (v) indicate whether the question is a Category 1, 2, 3, or 4 question.

As used above, "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Qualified Proposer from submitting an Offer. "Category 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Qualified Proposer from submitting a Proposal. "Category 3" means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 and Category 2 issue. "Category 4" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

WIFA reserves the right to reject questions or requests not meeting the foregoing requirements. Questions or comments addressed to any person other than WIFA's Procurement Officer will not be considered.

2.8.9. Responses to Questions; Confidentiality

Responses to questions will be provided either through revised drafts of documents or, in limited circumstances, specifically in writing and will be delivered to all Qualified Proposers.

2.9. Initial Qualifications Submittal and Offer Preparation

The Initial Qualifications Submittal and Offer shall be formatted in accordance with the requirements specified herein. Initial Qualifications Submittals and Offers shall include the forms provided with the Solicitation documents, or on legible photocopies of the forms. Proposers shall complete the forms in accordance with the directions specified therein. All required explanatory

narratives and the supplementary data are to be included with the Initial Qualifications Submittal and Offer forms, as applicable and as indicated.

2.9.1. Forms: No Facsimile, Telegraphic or Electronic Mail Initial Qualifications Submittals and Offers

An Initial Qualifications Submittal and Offer shall be submitted on the forms provided in this Solicitation. A facsimile, telegraphic, mailgram or electronic mail Initial Qualifications Submittal and Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.

2.9.2. Typed or Ink, Corrections

The Initial Qualifications Submittal and Offer shall be typed or in ink. Pencil or erasable ink shall not be accepted. Erasures, interlineations or other modifications in an Initial Qualifications Submittal and Offer, as applicable, shall be initialed in ink by the person signing the Initial Qualifications Submittal and Offer, as applicable. Modifications shall not be permitted after Initial Qualifications Submittals and Offers, as applicable, have been opened except as otherwise provided under this Solicitation.

2.10. Initial Qualifications Submittal and Offer Modifications or Withdrawal

A Proposer may modify its Initial Qualifications Submittal or Offer at any time, in writing, before the Initial Qualifications Submittal due date and time or the Offer Due Date and time, as applicable. A.A.C. R-18-806.

A Proposer may withdraw its Initial Qualifications Submittal or Offer, as applicable, by delivering a written request, signed by the Proposer's representative, to the Procurement Officer prior to the award of the Contract. A.A.C. R8-15-806.

An Initial Qualifications Submittal or Offer, as applicable, may not be modified or withdrawn after the Initial Qualifications Submittal due date and time or Offer Due Date and time, as applicable, except as otherwise provided under A.A.C. Title 18, Chapter 15, Article 8.

Initial Qualifications Submittals and Offers shall be submitted without reservations, qualifications, deviations, assumptions, limitations, conditions, assumptions, or other exceptions to or deviations from the requirements of the Solicitation documents. Any Initial Qualifications Submittal or Offer that assumes or would require material changes to the LTWIP Base Contract documents, as determined by WIFA in its sole discretion, may result in the Initial Qualifications Submittal or Offer, as applicable, being deemed non-responsive.

2.11. Multiple Offers

A Qualified Proposer may submit multiple Offers only if each such Offer is for a different WIP.

2.12. Initial Qualifications and Offer Submission

Proposers must submit one electronic copy of its Initial Qualifications Submittal and Offer, as applicable. The electronic copy must meet the requirements listed in this section.

Initial Qualifications Submittals and Offers as applicable, under this Solicitation must be submitted electronically and received by WIFA no later than 5:00 p.m. Mountain Standard Time on the ~~Initial Qualifications Submittal~~ due dates identified in the solicitation schedule (Solicitation Section 1.7) ~~(February 6, 2025) or the Offer Due Date (May 28, 2025),~~ as applicable.

Each Proposer shall register for access to the electronic Procurement Portal as directed in Section 2.4. Each Proposer shall be provided with a unique link to a secure folder that will be used to upload the Initial Qualifications. Qualified Proposers will be provided with a separate link to a secure folder used to upload the Offer.

Electronic copies of the Offer contents shall be: (a) provided in an unalterable searchable Adobe PDF format; (b) bookmarked for ease of navigation, and (c) delivered via the Procurement Portal.

2.12.1. Late Initial Qualifications Submittals and Offers

Initial Qualifications Submittals and Offers must be in the WIFA Procurement Office's possession no later than WIFA's provided deadline. Initial Qualifications Submittals and Offers received after the date and time specified herein will not be considered unless an exception applies under A.A.C. § R18-15-809.

It is the Proposer's sole responsibility to see that its Initial Qualifications Submittal and Offer is received as required under this Solicitation. WIFA may leave unopened any Initial Qualifications Submittal or Offer received after the required date and time for receipt thereof. Any such unopened Initial Qualifications Submittal or Offer, as applicable, may be returned to the Proposer.

2.12.2. Cost of Initial Qualifications Submittal and Offer Preparation

WIFA will not reimburse any Proposer the cost of responding to this Solicitation, including for the cost of preparation of any Initial Qualifications Submittal or Offer.

2.12.3. Non-Collusion, Employment, and Services

By signing the Initial Qualifications Submittal and Offer Certification Form or another official contract or Solicitation form, the Proposer certifies that:

- The Proposer did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Initial Qualifications Submittal and Offer; and
- The Initial Qualifications Submittal and Offer does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state and local laws and executive orders regarding employment.

2.12.4. Identification of Taxes in Offer

The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the pricing proposed in the Solicitation. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the Proposer.

2.13. Solicitation Order of Precedence

In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:

- Solicitation Instructions to Proposers; and
- Other documents referenced or included in the Solicitation.

2.14. Exceptions to Terms and Conditions

Any requested exceptions shall be submitted on or before the date listed in the Solicitation Schedule (Section 1.7). WIFA will evaluate requested exceptions and may provide a written response and/or Amendment at its discretion. Only approved exceptions set forth in a written response from WIFA and/or Amendment may be incorporated into an Initial Qualifications Submittal or Offer, as applicable.

Exceptions that are not submitted in accordance with this Section 2.14 will not be considered and, as set forth in this Section 2.14, Proposers may not submit an Initial Qualifications Submittal or Offer with any exceptions, exclusions, reservations, deviations, limitations or qualifications except for those expressly set forth in this Solicitation.

2.15. Organizational Conflicts of Interest

Proposers are required to comply with the Water Infrastructure Finance Authority of Arizona's (WIFA) Organizational Conflict of Interest Policy for the Solicitation, which can be found below and is also included in SECTION 8 For purposes of WIFA's Organizational Conflict of Interest Policy for the Solicitation, an "organizational conflict of interest" means a circumstance arising out of a Consultant's existing or past activities, including past activities as a Consultant to or employee of WIFA, business interests, familial relationships, contractual relationships, and/or organizational structure (i.e., Affiliates, etc.) wherein (i) the Consultant is or may be unable to render impartial assistance or advice to WIFA, (ii) the Consultant's objectivity in performing the scope of work sought by WIFA is or might be otherwise impaired, (iii) the Consultant has, or is perceived to have, an unfair competitive advantage; (iv) the Consultant's performance of Services on behalf of WIFA does or may provide an unfair competitive advantage to a third party; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Consultant or a third party as a result of the Consultant's participation in the Solicitation.

It is WIFA's policy that an organizational conflict of interest exists for any person or firm under contract, or previously under contract with WIFA, to prepare procurement documents, preliminary plans, planning reports or other project development products for the Solicitation. A person or firm with an organizational conflict will not be allowed to participate in any capacity on a Proposer's team. Exceptions to this policy may be granted by WIFA, upon written request from such person or firm, if it is determined that the person's or firm's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit a written request as soon as possible (optimally within twenty (20)) days after the issuance date of the Solicitation, because WIFA shall not extend the Initial Qualifications Submittal Deadline or be responsible for any inability or failure to respond prior to the Initial Qualifications Submittal Deadline to any such request.

The purpose of the Organizational Conflict of Interest Policy are as follows:

- Promote full and open competition, integrity, and transparency in procurement or LWTIP Base Contract administration;
- Promote an environment conducive to contracting parties providing goods or services to WIFA in an impartial and objective manner;
- Provide guidance to enable contracting parties to make informed decisions while conducting business with WIFA; and
- Protect the validity of WIFA's procurement or LWTIP Contract administration, protect WIFA's interests, and protect WIFA's confidential and sensitive information.

Proposer shall provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Proposer shall state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or Key Personnel, may result in, or could be viewed as, an organizational conflict of interest.

Proposer is prohibited from teaming with, receiving any advice or discussing any aspect relating to the Services or the Solicitation or the procurement of the Services or the Solicitation with any person or entity with an organizational conflict of interest identified as WIFA Consultants and Technical Support in Section 2.6.6 of the Solicitation.

"Affiliates" of the foregoing are also subject to this organizational conflict policy and include any parent companies, subsidiary companies, entities under common ownership, joint ventures and partnerships involving such entities, and other financially liable or responsible parties for the entity. Common ownership does not include the holding of stock in a publicly traded company unless such stock ownership is a majority position or results in control of the affected entity.

Such persons and entities are also prohibited from participating on a Proposer team as an equity member, contractor, subcontractor, consultant or subconsultant.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is discovered after Offer submission, the Proposer shall make an immediate and full written disclosure to WIFA that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, WIFA may disqualify the Proposer. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose exists and the Proposer has entered into a resulting LTWIP Base Contract with WIFA, WIFA may terminate the LWTIP Base Contract. In either case, WIFA reserves all legal rights and remedies. Proposers should not view the foregoing list as an exhaustive list of those firm(s) that have or may have conflicts of interest.

Proposers are also advised that WIFA's guidelines and the provisions of this Solicitation are intended to augment applicable federal and state law, including federal organizational conflict of interest laws and rules and the laws and rules relating to the National Environmental Policy Act

(NEPA). Such applicable Governmental Rules will also apply to Proposer teams and teaming and may preclude certain firms and their entities from participating on a Proposer team.

2.16. General Information Regarding Evaluation Criteria and Process

WIFA will review and evaluate the Initial Qualifications Submittal in accordance with the evaluation criteria and process set forth in these Special Instructions to Proposer and the initial qualifications submittal SECTION 3 of the Solicitation.

WIFA will review and evaluate the Offers in accordance with the evaluation criteria and process set forth in these Special Instructions to Proposers and the evaluation criteria (Solicitation SECTION 6).

WIFA will determine if Initial Qualifications Submittals are complete and Proposers are responsible in Section 3.1. Responsibility includes, but is not limited to, the Proposer's:

- Financial, business, personnel, or other resources, including subcontractors;
- Record of performance and integrity;
- Record of debarment, default, exclusion or suspension;
- Legal qualifications to contract with WIFA;
- Prompt supply of all requested information concerning responsibility; and
- Any other responsibility criteria identified in the Solicitation.

2.16.1. Clarifications

WIFA may engage in communications with the Proposers after receipt of Initial Qualifications Submittals and Offers, as applicable, allowing Proposers to provide clarifications to their Initial Qualifications Submittals and Offers, as applicable. A.A.C. R18-15-813. This process will be initiated by delivery of a written request from WIFA to the Proposer identifying the information needed and a date and time by which the information must be provided.

A Proposer shall provide the requested information in writing by the date and time indicated. If the requested information is not timely received, the Proposer's evaluation may be adversely affected and/or the Initial Qualifications Submittals and Offer, as applicable, may be deemed non-responsive.

2.16.2. Errors or Irregularities

WIFA reserves the right to waive errors, omissions or irregularities to the maximum extent permitted by law.

2.16.3. Pre-Award Negotiation

Pursuant to A.A.C. § R18-15-815, WIFA may conduct negotiations with responsible Qualified Proposers who submit Offers determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of the Solicitation requirements. Negotiation shall be conducted in accordance with Section 6.5 of the Solicitation.

2.16.4. Best and Final Offer ("BAFO")

Pursuant to A.A.C. § R18-15-817 through R18-15-818, WIFA may request one or more written revisions to an Offer constituting a BAFO. The BAFO must contain all of the documents and attachments indicated in the request for a submitted Offer. Qualified Proposers may make revisions in response to the negotiations/discussions and the Procurement Officer's request for BAFO in all applicable documents. Qualified Proposers shall follow any additional instructions from the Procurement Officer regarding requirements for BAFO responses. Qualified Proposers may be required to sign and date another "Offer and Acceptance" form.

If requested, WIFA shall evaluate BAFOs based on the evaluation criteria contained in this Solicitation. WIFA will not modify evaluation criteria or their relative order of importance after Offer Due Date and time.

2.17. WIFA Rights

WIFA may investigate the qualifications and responsibility of any Proposer under consideration inclusive of, but not limited to, the information provided in its Initial Qualifications Submittal and Proposal. WIFA may require confirmation of information furnished by a Proposer, and require additional evidence of qualifications and responsibility to perform the services described in the Offer. WIFA reserves the right to:

- Reject any or all of the Initial Qualification Submittals and/or Offers, at its discretion, to the fullest extent allowed under the law;
- Remedy errors in this Solicitation;
- Cancel the entire Solicitation;
- Issue subsequent solicitations;
- Appoint selection and evaluation subcommittees to review the Initial Qualifications Submittals and Offers;
- Seek the assistance of outside technical experts to review the Initial Qualifications Submittals and Offers;
- Approve or disapprove the use of particular subcontractors and suppliers;
- Establish a Competitive Range of Qualified Proposers eligible for discussions, demonstrations, and negotiations after review of Offers, and solicit Best and Final Offers from all or some of the Qualified Proposers;
- Negotiate with any, all, or none of the Qualified Proposers;
- Proceed with negotiations with other Qualified Proposer(s) within the Competitive Range if negotiations fail with the initially selected Qualified Proposer;
- Award multiple LWTIP Base Contracts without interviews, discussions, or negotiations;
- Accept other than the lowest priced Offer;
- Disqualify Proposer(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer(s);
- Waive any informalities, errors, omissions or irregularities in any Initial Qualifications Submittals and Offer, to the extent permitted by law;
- Consider alternate procurement and/or public private partnership venture approaches for future WIP development; and
- Deliver WIPs with other developers and contractors.

2.18. Award

2.18.1. Most Advantageous to WIFA

Under A.A.C. § R18-15-819, LTWIP Base Contracts will be awarded to the responsible Qualified Proposers whose Offer(s) is/are determined to be most advantageous to WIFA based on the stated evaluation factors set forth in the Solicitation.

2.18.2. Determination

The Evaluation Committee will evaluate Offers in accordance with the criteria established in this Solicitation and will provide recommendations to the WIFA Long Term Water Augmentation Committee, who may then make further recommendations to the WIFA Board of Directors established by A.R.S. § 49-1206(A). The Board will select any number of proposed Developers for award of a LTWIP Base Contract.

The Director or Director's designee shall document the Committee and Board's decisions via a written determination explaining the basis for the award and place the determination, including any final evaluation report or other supporting documentation, in the respective Offeror's Procurement File. At each evaluation stage, WIFA shall notify all Qualified Proposers of an award. Once an Offer is not recommended for award at any stage of the evaluation process, it will be deemed as not susceptible for Award and any later evaluation or Solicitation stage.

2.18.3. Number of Awards

WIFA reserves the right to make multiple awards, one award, or no contract awards in as many or project categories as is determined by WIFA to be the most advantageous to WIFA.

2.18.4. Contract Formation

An Initial Qualifications Submittal or Offer does not constitute an LTWIP Base Contract, nor does it confer any rights on the Proposer to the award of an LTWIP Base Contract. A contract is not created until WIFA and the Qualified Proposer signs a LTWIP Base Contract. A notice of award or of the intent to award shall not constitute acceptance of an Offer.

2.18.5. Contract Document Consolidation

WIFA may, at its option, consolidate the resulting LTWIP Base Contract documents after award. Examples of such consolidation are reorganizing Solicitation Documents and those components of the Offer not pertaining to the LTWIP Base Contract's operation and excluding any components of the Offer that were not awarded. Contract document consolidation will not, however, include or be construed to include any material change to the Solicitation or the LWTIP Base Contract.

2.18.6. Cancelled Solicitations

This Section 2.18 shall not apply to any Solicitation cancelled by WIFA prior to an award.

2.19. Public Records Laws

All Initial Qualifications Submittals and Offers submitted and opened are public records and must be retained by WIFA in accordance with the applicable Arizona Public Records statutes. Initial

Qualifications Submittals and Offers shall be open to public inspection after Contract award, except for such Initial Qualifications Submittals and Offers deemed to be confidential by WIFA. If a Proposer believes that information in its Initial Qualifications Submittal or Offer, as applicable, should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Initial Qualifications Submittal or Offer, as applicable, detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. WIFA shall determine whether the identified information is confidential pursuant to A.A.C. § R18-15-807.

2.20. Disqualification of Proposer

Any person, firm, corporation, joint venture, partnership, or other interested party that has been compensated by WIFA or a contractor engaged by WFIA for assistance in preparing this Solicitation shall be considered to have gained an unfair competitive advantage in proposing and shall be precluded from submitting an Initial Qualifications Submittal and Offer in response to this Solicitation.

After this Solicitation is issued, any person, firm, corporation, joint venture, partnership, or other interested party that has discussions regarding this Solicitation with anyone within WIFA other than the Procurement Officer (other than those communications explicitly permitted by this Solicitation), may be considered to have gained an unfair competitive advantage. Non-compliance with this section could lead to disqualification.

2.21. Protests

Any protest of the award will be handled pursuant to A.R.S. Title 49, Chapter 8 and Arizona Administrative Code §§ R18-15-821 through R18-15-825 by the Director or Director's designee.

All protests shall be in writing and filed with the Director or Director's designee at [procurement@azwifa.gov].

A protest shall be received by the Director or Director's designee **before the Offer Due Date** if the alleged improprieties are apparent before the Offer Due Date and time. *See* A.A.C. § R18-15-821(C). Examples include protests related to:

- Terms and conditions or elements of the Solicitation;
- IQS Determinations;
- Responsiveness and Responsibility Determinations;
- Determination of Qualified Proposers;
- The Competitive Range;
- Determination of not susceptible for award.

A protest of a proposed award or of an award shall be filed **no later than ten (10) days** after WIFA makes the Procurement File for the specific Proposer/Offeror or Protester available for public inspection. *See* A.A.C. R18-15-821(D). ~~All~~ Offers~~proposals~~ are evaluated solely against the scoring criteria and the Solicitation requirements. Offer~~sor proposals~~ are not compared against other proposals. As such, and because more than one award is possible, Offerors are solely limited to

protest grounds related to the evaluation of the proposal as to the Solicitation and evaluation process as to the specific proposal. All protests shall include:

- The name, address and telephone number of the Interested Party;
- The signature of the Interested Party or the Interested Party's representative;
- Identification of the Solicitation or Contract number;
- A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- The form of relief requested.

The Director or Director's Designee will issue a recommended decision pursuant to A.A.C. Title 18, Chapter 15, Article 8. The Board shall then review the recommended decision and accept, reject, or modify it. The decision of the Board will be a final administrative decision. *See* A.A.C. § R18-15-824(C).

2.22. Solicitation Amendment

WIFA reserves the right to revise the Solicitation documents prior to the Offer Due Date. A.A.C. R18-15-803. Such revisions, if any, shall only be made by an Amendment to this Solicitation.

Proposers shall acknowledge receipt of all Amendments to the Solicitation. A.A.C. R18-15-803(C). Each Solicitation Amendment shall be signed with an original signature by the person signing the Initial Qualifications Submittal or Offer, as applicable and shall be submitted no later than the Initial Qualifications Submittal due date and time or Offer Due Date and time, as applicable. Failure to return a signed copy of a Solicitation Amendment may result in rejection of the Initial Qualifications Submittal or Offer, as applicable.

Prior to submitting an Initial Qualifications Submittal or Offer, as applicable, to WIFA for consideration, each Proposer is responsible for checking the data room to ensure that it has received all Amendments to this Solicitation. A.A.C. R18-15-803(C).

2.23. Signing of Offer and Authorization to Negotiate

2.23.1. Evidence of Intent to be Bound

The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Qualified Proposer's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of intent to be bound, such as an original signature, shall result in rejection of the Offer.

2.23.2. Responsibility Determination

For the Offer(s) awarded an LTWIP Base Contract, WIFA's signature on the LTWIP Base Contract constitutes a determination that the Proposer is responsible. A.A.C. R-18-15-814(F).

2.24. Definition of Terms

As used in this Solicitation, the following terms shall have the following meanings:

"Attachment" means any item the Solicitation requires a Qualified Proposer to submit as part of the Offer.

"Award" means a determination by WIFA that it is entering into an LTWIP Base Contract with one or more Qualified Proposers.

"Board" has the same meaning as prescribed in A.R.S. § 49-1201(2).

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

"Alternative Delivery Project Method" means the following project delivery methods: Construction Management at-Risk (CMAR), Construction Manager / General Contractor (CM/GC), Progressive Design-Build (PDB), Fixed-Price Design-Build (FPDB), Design-Build-Operate (DBO), and Public-Private Partnerships (P3).

"Competitive Range" is a range of scores used by WIFA to determine whether an Offer will be considered for negotiations or a BAFO. WIFA may conduct multiple reviews and narrow or expand the Competitive Range throughout the procurement process. Those Offers that have no reasonable chance for award when compared on a relative basis with more highly ranked Proposals will not be in the Competitive Range. Offers to be considered within the Competitive Range must, at a minimum, demonstrate the following: (1) Affirmative compliance with mandatory requirements designated in the Solicitation; (2) An ability to deliver goods or services on terms advantageous to WIFA sufficient to be entitled to continue in the competition; or (3) That the Offer as submitted is technically acceptable under the criteria set forth in the Solicitation.

"Construction" has the same meaning as prescribed in A.R.S. § 41-2503(4).

"Contractor" means any Person who enters into an LTWIP Base Contract with WIFA. Contractor has the same meaning as Developer.

"Data" means documented information, regardless of form or characteristic.

"Day" means a calendar day and time is compute under A.R.S. § 1-243, unless otherwise specified in the Solicitation or LTWIP Base Contract.

"**Developer**" means an entity that has executed a LTWIP Base Contract. Developer has the same meaning as Contractor.

"**Director"** means the Director of WIFA or the Director's designee.

"Equity Member" means each Person that will hold a direct ownership interest (legal and beneficial) in the proposed Developer, including each Person identified by a Proposer as an "Equity Member" in its Proposal.

"Evaluation Committee" is a committee of individuals assigned by the Long Term Water Augmentation Committee to review and develop scoring for Offers.

"Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

"Financially Responsible Entity" A parent company, affiliate, or other entity (if any) providing financial support to an Equity Member or Lead Construction Contractor and whose financial statements are submitted to show that an Equity Member or Lead Construction Contractor has sufficient financial capacity for its role under the Contract and potential pre-development agreement.

"Form of Contract" means the Form of Contract – LTWIP Base Contract in SECTION 10 of this Solicitation.

"Implementation Agreement" has the meaning set forth in Section 1.1.

"Interested Party" means a Proposer whose economic interest is affected substantially and directly by issuance of a Solicitation, an award or loss of an award. Whether a Proposer has an economic interest depends upon the circumstances of each case.

"Key Personnel" means the following individuals and such other individuals so identified in a Proposer's Initial Qualifications Submittal or Offer, as applicable:

- Project Manager;
- Design Manager;
- Construction Manager;
- Operations Manager;
- Quality Manager and
- Financial Manager.

"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.

"Long-Term Water Importation Project Base Contract" or **"LTWIP"** means a contract awarded through the result of this Solicitation. The LWTIP Base Contract shall provide for as-needed for services related to the development of WIPs through the Long-Term Water Augmentation Fund.

"May" means something is permissive.

"Negotiation" means an exchange or series of exchanges between WIFA and a Proposer or Developer that allows WIFA or the Proposer or Developer to revise an Offer or the LTWIP Base Contract.

"Offer" means a response to a Solicitation from a Qualified Proposer.

"Offeror" means a Qualified Proposer that submits an Offer.

"Offtaker" means an entity or person that may seek to secure water supplies developed with funding from the Long Term Water Augmentation Fund, but excluding Transfer Partners as described in the definition of Stakeholder below.

"Person" means any corporation, business, individual, union, committee, club, other organization, or group of individuals.

"Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, property, services, or construction, in connection with a Water-Related Facilities project or a WIP. Includes all functions that pertain to obtaining any materials, services, or construction, including description of requirements, selection and Solicitation of sources, preparation and award of Contract, and all phases of contract administration as part of this Solicitation. Does not include providing financial assistance in the form of loans or grants.

"Procurement Officer" means the person who has been duly authorized by WIFA to enter into and administer this Solicitation and the LTWIP Base Contract and to make written determinations with respect to this Solicitation and/or the LTWIP Base Contract.

"Proposer" means a Person who responds to a Solicitation.

"Proposer-Related Entity" means any of the following: (a) Proposer; (b) Proposer's proposed Equity Members; (c) identified subcontractors; (d) any other Persons identified as performing any work related to the Proposal; (e) any other Persons for whom Proposer may be legally or contractually responsible; and (f) the employees, agents, officers, directors, representatives, consultants, successors, and assigns of any of the foregoing.

"Procurement File" means the official records file of WIFA as to the Proposer's proposal evaluation. The Procurement File shall include (electronic or paper) the following: list of notified vendors; final Solicitation; Solicitation amendments; Initial Qualification Submittals, bids and Offers; Offer revisions; BAFOs; negotiations; clarifications; final evaluation reports; and additional information, if requested by WIFA. Each Proposer will have its own Procurement File that will be released upon disqualification or award.

"Qualified Proposer" means a Proposer that has been determined by WIFA, as a result of the Initial Qualifications Submittal, to be responsible and eligible to submit an Offer.

"Reference Documents" means documents provided with and so designated in the Solicitation. Reference Documents are not a part of the LTWIP Base Contract and are used for reference only.

"Regulator" means any federal, state, provincial, local, tribal or other governmental or quasi-governmental entities that may have regulatory jurisdiction over a Proposer's WIP.

"Secondary WIP Selection Process" means selection of a Developer following work performed under a LTWIP Base Contract through Task Orders to provide additional services, typically through execution of a Contract.

"Shall" means something is mandatory.

"Solicitation" means this Long-Term Water Augmentation Solicitation for Procurement.

"Solicitation Amendment" or **"Amendment"** means a written document that is signed by WIFA and issued for the purpose of making changes to the Solicitation.

"Subcontractor" means a Person who contracts to perform work or render service to a Developer or to another Subcontractor as a part of an LTWIP Base Contract with WIFA, express or implied, between the Developer and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the LTWIP Base Contract.

"State" means WIFA, the State of Arizona and any Department or Agency of the State that executes the Contract.

"Task Order" means a specific scope of work for services issued to a Developer under an LTWIP Base Contract.

"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.

"Transfer Partner" means any person or entity that may be party to water or water rights transfers, exchanges, storage, or conveyance ("wheeling") agreements as part of Proposer's WIP but do not have a direct interest in securing water supplies through the implementation of a WIP as a potential Offtaker.

"Water-Related Facilities" has the same meaning as prescribed in A.R.S. § 49-1201(21).

"Water Importation Project" or **"WIP"** is a project developed as a Water Supply Development project.

"Water Supply Development" or **"WSD"** has the same meaning as prescribed in A.R.S. § 49-1201(22).

"WIFA" means the Water Infrastructure Authority of Arizona.

- END OF SECTION 2. SPECIAL INSTRUCTIONS TO PROPOSERS -

SECTION 3. INITIAL QUALIFICATIONS SUBMITTAL REQUIREMENTS

3.1. Initial Qualifications Submittal

Proposers must submit an Initial Qualifications Submittal that complies with the requirements set forth in this SECTION 3. Forms for the Initial Qualifications Submittal are found in initial qualifications submittal forms (Solicitation SECTION 7).

3.2. General Requirements

Proposer must submit to the Procurement Officer one electronic copy of the Initial Qualifications Submittal as provided herein for each WIP that Proposer intends to Propose. The electronic copy must comply with the requirements set forth in Electronic Copies (Solicitation Section 4.2.2).

3.2.1. Initial Qualifications Submittal Preparation

Initial Qualifications Submittals shall be prepared as 8-1/2 x 11" pages with 1" left, top, bottom, and right margins. Each side shall be considered one page. Typing shall be single-spaced and with a minimum font size of 10 points. Proposer shall number each page consecutively (i.e. 1-1, 1-2 and 2-1, 2-2, and so on) and shall center page numbers at the bottom of each page.

Use of 11"x17" sheets for large tables, charts, diagrams, or drawings is permissible, but should be limited. Elaborate format is not necessary.

Required forms shall use the templates provided, unless otherwise directed.

3.3. Administrative Submittal Requirements

The Initial Qualifications Submittal must include the following, in the form provided in INITIAL QUALIFICATIONS SUBMITTAL AND OFFER FORMS AND REQUIRED CERTIFICATIONS (Solicitation SECTION 7) (as applicable) and properly executed (as applicable).

3.3.1. Initial Qualifications Submittal Letter (Form IQS-1)

The Initial Qualifications Submittal Letter, executed by Proposer, together with the other information and documents identified in Form IQS-1.

3.3.2. Initial Qualifications Submittal Checklist (Form IQS-2)

A copy of the Initial Qualifications Submittal Checklist, indicating Proposer's use of such checklist to ensure all contents of the Initial Qualifications Submittal are provided. Proposer may not amend the order or change the contents of the checklist.

3.3.3. General Certifications (Form IQS-3)

Completed General Certifications form executed by Proposer.

3.3.4. Confidential Contents Index (Form IQS-4)

Completed Confidential Contents Index form executed by Proposer.

3.3.5. Letter of Insurability (Form IQS-5)

Completed Letter of Insurability executed by Proposer.

3.3.6. Conformance Statements (Form IQS-6)

Completed Conformance Statements form executed by Proposer.

3.3.7. Boycott of Israel Disclosure (Form IQS-7)

Completed Boycott of Israel Disclosure executed by Proposer.

3.3.8. Forced Labor of Ethnic Uyghurs Ban (Form IQS-8)

Completed Forced Labor of Ethnic Uyghurs Ban form executed by Proposer.

3.3.9. AZ Baseline Infrastructure Security Controls (Form IQS-9)

Completed AZ Baseline Infrastructure Security Controls form executed by Proposer

3.3.10. Letter Agreement for One-on-One Meetings (Form IQS-10)

Executed Letter Agreement for One-on-One Meetings, executed by Proposer's Representative.

3.3.11. Organizational Conflict of Interest Disclosure Statement (Form IQS-16)

Completed Organizational Conflict of Interest Disclosure Statement form executed by Proposer

3.3.12. Acknowledgement of Amendments (Form IQS-18)

Completed Acknowledgement of Amendments form executed by Proposer

3.4. Proposer Information (Form IQS-11)

Proposer's Initial Qualifications Submittal must include information about the Proposer and its proposed Equity Members on Forms IQS-11 (the Initial Qualifications Proposer Information Form).

3.5. Previous Experience of Team

Proposers shall demonstrate their eligibility to participate in the Solicitation by providing baseline technical qualifications as outlined below.

3.5.1. Minimum Qualifications of Proposed Lead Engineering Firm (Form IQS-12)

If a proposed WIP requires engineering services, using Form IQS-12, each Proposer shall demonstrate that its proposed Lead Engineering Firm has acted as the lead (or co-lead) designer for water supply project(s) that fulfill ALL of the following:

A. 10,000 acre feet per year of water supply capacity completed within the past ten (10) years
B. Design-build or public-private partnership (design-build-finance, design-build-operate-maintain, design-build-finance-maintain, or design-build-finance-operate-maintain) project with construction cost of at least $250 million (USD) completed within the past ten (10) years

More than one project may be referenced to demonstrate the minimum capability requirement(s) are fulfilled.

If a proposed WIP does not require engineering services, expressly so state.

3.5.2. Minimum Qualifications of Proposed Lead Construction Contractor (Form IQS-13)

If a proposed WIP requires construction services, using Form IQS-13, each Proposer shall demonstrate that its proposed Lead Construction Contractor has acted as the lead (or co-lead) contractor for water supply project(s) that fulfill ALL of the following:

A. 10,000 acre feet per year of water supply capacity completed within the past ten (10) years
B. Design-build or public-private partnership (design-build-finance, design-build-operate-maintain, design-build-finance-maintain, or design-build-finance-operate-maintain) project with construction cost of at least $250 million (USD) completed within the past ten (10) years

More than one project may be referenced to demonstrate the minimum capability requirement(s) are fulfilled.

If a proposed WIP does not require construction services, expressly so state.

3.5.3. Minimum Qualifications of Proposed Lead Operations and Maintenance Firm (Form IQS-14)

If a proposed WIP requires operations and/or maintenance services, using Form IQS-14, each Proposer shall demonstrate that its proposed Lead Operations and Maintenance Firm has acted as the lead operations and/or maintenance manager for water supply project(s) that fulfill ALL of the following:

A. 10,000 acre feet per year of water supply capacity in operation for a minimum of five (5) years without interruption.

If a proposed WIP does not require operations and/or maintenance services, expressly so state.

3.5.4. Minimum Qualifications of Proposed Equity Member(s) (Form IQS-15)

If a proposed WIP includes financing by the Proposer, using Form IQS-15, Proposer shall demonstrate their eligibility to participate in this Solicitation by providing a description of their experience in structuring project financing, utilizing debt, equity, or a combination thereof with respect to projects with total aggregate value of at least $1 billion and at least one project with capital investment of at least $500 million (USD) in the last 10 years where the proposed Equity Member contributed at least 10% of the equity investment.

WIFA's expectation is Proposers will finalize Equity Members during the Secondary WIP Selection Process as the Task Order for a Project Implementation Proposal is completed. However, Proposers shall identify potential Equity Members as part of its Offer but only identified Equity Members shall be considered as part of the evaluation (and potential Equity Members shall not be given any consideration).

Each team that is proposing financing shall have a minimum of one Equity Member that meets the minimum qualifications. Form IQS-15 permits Proposers to include up to five projects to demonstrate qualifications, allowing teams with multiple Equity Members to demonstrate that more than one Equity Member meets the minimum qualifications.

3.6. Financial Statements

Proposer must submit financial statements for the following

- Proposer (if legally formed),
- Equity Member(s),
- Financially Responsible Parties/Guarantor(s) (if any) and
- Lead Construction Contractor

The following financial statements are required:

A. Financial statements for each entity's three most recently completed fiscal years, audited by a generally recognized certified public accountant firm. Unaudited statements may be provided if audited statements have not been produced, and
B. Any interim financial statements prepared since the latest annual financial statement (e.g. quarterly and half yearly).

Financial statements must be submitted with a cover sheet identifying the name of the entity and its role in the Proposer's organization and shall include:

i. Opinion Letter (Auditor's Report) for annual financial statements
ii. Balance Sheet
iii. Income Statement
iv. Statement of Cash Flows; and
v. Footnotes, as applicable

Requirements to be met:

i. All financial statements must be presented in English.
ii. All amounts in the financial statements must be presented in their reported currency. If financial statements are reported in a currency other than USD, a supplemental statement shall be provided that converts the native currency to USD. Proposer shall report any assumed exchange rates used in converting the native currency to USD< including the source of the exchange rate used and applicable date of the assumed exchange rate
iii. Applicable portions of each entity's financial statements must be provided electronically in PDF format
iv. If an entity provides financial statements that are not prepared in accordance with GAAP or IFRS, an explanation of the accounting differences between GAPP or IFRS and the accounting standards used to produce the audited financial statements must be prepared and submitted by the auditing firm.

3.7. Documentation of Minimum Responsibility Criteria

Proposer shall submit provide the following responsibility demonstrations:

3.7.1. The Proposer's organizational resources (Form IQS-19);

The Proposer shall submit organizational documents, or proposed organizational governance documents for proposed entities, specified in the Solicitation demonstrating the organization's legal capacity to undertake the work and is not subject to restrictions that would preclude it from entering into future agreements relating to the project development activities. The organizational documents shall, at a minimum, include appropriate provisions for management and decision-making within the organization, provide for continuation of the entity in the event of bankruptcy or withdrawal of any of its members or member entities, and otherwise be consistent with the project requirements.

3.7.2. Proposer's record of performance and integrity (Form IQS-20);

Proposer shall provide information demonstrating that the Proposer is not currently, nor was at any time in the past ten (10) years, debarred or suspended from the conduct of business in Arizona, the United States of America, or any other state or country in which business activities are proposed to occur in connection with the WIP. This requirement shall extend to Proposer member firms identified in the Initial Qualifications Submittal.

Proposer shall provide a list of any notices of default received or terminations for cause, claims exceeding 5% of contract value, or liquidated damages exceeding 1% of contract value on any government contract or grant at any time in the past the past (10) years. For each reported instance, provide owner contact information.

3.7.3. Whether Proposer is legally qualified, or able to be legally qualified, to contract with WIFA (Form IQS-21);

Proposer shall provide information demonstrating that the Proposer is currently licensed, or able to be licensed, to perform business in Arizona, the United States of America, or any other state or Country in which business activities are proposed to occur and shall remain licensed at all times during the performance of services. This requirement shall extend to Proposer member firms and Key Personnel identified in the Offer.

3.7.4. Whether the Proposer promptly supplied all requested information concerning its responsibility

WIFA will evaluate this responsibility criteria of the Initial Qualifications Submittal based on a Proposer's:

- Provision of all specified forms and documents, properly completed and signed

3.7.5. Whether the Proposal meets any additional responsibility criteria specified in the Solicitation.

WIFA shall promptly notify the Proposer in writing of the final determination that the Proposer is nonresponsible or a Qualified Proposer, unless WIFA determines notification to the Proposer would compromise WIFA's ability to negotiate with other Proposers.

3.8. Evaluation of Initial Qualifications Submittal

WIFA will evaluate Initial Qualifications Submittals to determine if the required qualifications have been met using a pass/fail scoring methodology pursuant to Table 3 in SECTION 6. Proposers with Initial Qualifications Submittals that meet the required qualifications will be determined to be a Qualified Proposer and eligible to participate in pre-Offer one-on-one meetings as described in SECTION 2 and to submit an Offer as described in SECTION 5. WIFA will notify each Proposer whether the Initial Qualifications Submittal has been determined to meet the required qualifications and if not, which section(s) the Proposer received a failing score and whether that Proposer is a Qualified Proposer. Proposers are solely evaluated according to the evaluation criteria and not in comparison as to other Proposers.

3.8.1. Initial Qualifications General Responsiveness and Responsibility Review

The Initial Qualification Submittal will be reviewed for conformance with Solicitation instructions regarding submission, organization and format, responsibility, and responsiveness to the requirements set forth in this Solicitation. An Initial Qualifications Submittal that does not comply with submittal requirements may be deemed non-responsive.

3.8.1.1. Pass/Fail Reviews

- Proposers will be deemed Qualified Proposers if they achieve a rating of “pass” on each “pass/fail” evaluation factor listed below. Failure to achieve a “pass” rating on any listed “pass/fail” factor may result in Proposer being deemed non-responsive and not a Qualified Proposer.

3.8.1.2. Pass/Fail Requirements for Initial Qualifications Submittal

- Provision of all specified forms and documents, properly completed and signed (if required) (see INIITAL QUALIFICATIONS SUBMITTAL FORMS (Solicitation SECTION 7)) that do not identify any materially adverse information.
- Compliance with any other requirements set forth in the administrative submittal requirements (Solicitation Section 3.3).
- Demonstration of Proposers eligibility to participate in the Solicitation by providing baseline technical qualifications and ability to meet or exceed minimum qualifications as outlined in previous experience of team (Solicitation Section 3.5)
- Provision of all specified financial documentation and statements as required by financial statements (Solicitation Section 3.6).
- Demonstration of responsibility by provision of documentation contained in documentation of minimum responsibility criteria (Solicitation Section 3.7)
- Demonstration of the Proposer organization’s legal capacity to undertake the work under an LTWIP Base Contract and is not subject to restrictions that would preclude it from entering into future agreements relating to the project development activities, including Task Orders and a Contract.
- Information available to WIFA shows that Proposer-Related Entity(ies) have not engaged in prohibited communications and have not taken action to influence the environment review process for the proposed WIP or other significant decisions related to the proposed WIP.

3.9. Process for Approving Changes

Qualified Proposers are advised that, unless otherwise approved in writing by WIFA in its sole discretion, in order for a Qualified Proposer to remain eligible for award pursuant to this Solicitation, Equity Member(s), Lead Construction Contractor, Lead Engineering Firm, and Lead Operation and Maintenance firm identified in its Initial Qualifications Submittal (if applicable), must remain on the Qualified Proposer's team for the duration of the Solicitation process.

During the period between delivery of the Initial Qualifications Submittal and the Offer due date and time, if a Proposer wishes to remove or replace an Equity Member, the Lead Construction Contractor, the Lead Engineering Firm, the Lead Operations and Maintenance Firm or any Key Personnel identified in its Initial Qualifications Submittal, the Proposer shall submit to the Procurement Officer a written request for approval of the change as soon as practicable. The Proposer shall also submit a similar written request in connection with any reorganization merger, acquisition, and/or bankruptcy of any Equity Member, Lead Construction Contractor, and/or Lead Engineering Firm during the same period.

Except as provided in this Solicitation and in the LTWIP Base Contract or as otherwise approved by WIFA, in its sole discretion, a Qualified Proposer may not make any changes in the ownership of the Qualified Proposer or in an Equity Member, the Lead Construction Contractor, the Lead Engineering Firm or the Lead Operations and Maintenance Firm identified in its Initial Qualifications Submittal after the deadline in Section 1.7 for submission of the Offer. Between the deadline in Section 1.7 for submission of the Offer and execution of the LTWIP Base Contract, WIFA, in its sole discretion, will consider requests by a Qualified Proposer to make changes in a Qualified Proposer's organization or Key Personnel based only on unusual circumstances beyond the Qualified Proposer's control, as determined by WIFA, in its sole discretion, or for other reasons otherwise acceptable to WIFA, in its sole discretion.

Each request under this Section 3.9 shall be accompanied by resubmittal of the relevant portions of the Qualified Proposer's original Initial Qualifications Submittal as though the new entity or personnel had been originally proposed in place of the entity being removed or replaced. The Qualified Proposer shall submit one electronic copy to the Procurement Officer at the location set forth in Solicitation Section 2.12.

- END OF SECTION 3. INITIAL QUALIFICATION SUBMITTAL REQUIREMENTS -

SECTION 4. OFFER SUBMITTAL REQUIREMENTS

4.1. General

WIFA expects Offers submitted in response to this Solicitation to provide enough information about the request items to allow WIFA to evaluate Offers based on the criteria set forth in this Solicitation.

Offers must be prepared as set forth in this SECTION 4. Qualified Proposers are liable for all errors and omissions made by Qualified Proposers in preparing Offers. Qualified Proposers will not be allowed to alter Offers after the Offers due date and time as specified in the solicitation schedule (Solicitation Section 1.7).

4.2. Requirements

4.2.1. Offer Preparation

Offers shall be prepared as 8-1/2 x 11" paper with 1" left, top, bottom, and right margins. Each side shall be considered one page. Typing shall be single-spaced and with a minimum font size of 10 points. Qualified Proposer shall number each page consecutively according to the referenced Offer section (i.e. 1-1, 1-2 and 2-1, 2-2, and so on) and shall center page numbers at the bottom of each page.

Use of 11"x17" sheets for large tables, charts, diagrams, or drawings is permissible, but should be limited. Elaborate format is not necessary.

Required forms shall use the templates provided, unless otherwise directed.

This Solicitation includes page limits for certain components of the Offer. If these page limits are exceeded, WIFA will not evaluate the excess pages. The following page limitations are established for each portion of the proposal submitted in response to this Solicitation:

Table 2. Page Limits

Offer Section	Page Limit	Offer Subsection
4.3.17	See Exhibit O-1	Proposer Team and Experience Submittal
4.3.18	50	WIP Concept Submittal
4.3.19	75	Detailed Plan for Completing Secondary WIP Selection Evaluation
4.3.20	2	Pricing Structure for Secondary WIP Selection Process Task Orders

Qualified Proposers shall ensure that contact information provided is up-to-date and complete.

4.2.2. Electronic Copies

Electronic copies of the Offer contents shall be: (a) provided in an unalterable searchable Adobe PDF format; (b) bookmarked for ease of navigation, and (c) delivered via the Procurement Portal.

4.2.3. Multiple Offers

A Qualified Proposer that wishes to submit Offers for more than one WIP must submit a separate, complete Offer for each WIP.

4.3. Offer Contents

4.3.1. General Instructions

This section describes the required information and submission format for the Offer.

4.3.2. Administrative Requirements for Submittal

The Offer must include the following, in the form provided in PROPOSAL FORMS AND REQUIRED CERTIFICATIONS (Solicitation SECTION 9) (as applicable) and properly executed (as applicable).

4.3.3. Offer Letter (Form O-1)

The Offer Letter, executed by Proposer's Representative, together with the other information and documents identified in Form O-1.

4.3.4. Signatory Authorizations (Form O-2)

Signatory Authority form completed by Proposer with attachments. Evidence of signature authority shall be provided for all individuals signing forms. Section C to the instructions to Form O-1 identifies requirements regarding evidence of signature authorization for the Offer Letter. Similar authorization shall be provided for all other signatories to Offer forms. Place all authorizations in a single, tabbed section in an appendix.

4.3.5. Prospective Key Personnel (Form O-3)

Statement executed by Proposer identifying Key Personnel.

4.3.6. Key Personnel Statement of Availability (Form O-4)

Statement executed by Proposer and each Key Personnel employer confirming Key Personnel availability.

4.3.7. Stakeholder Communication ~~Not Used~~ (Form O-5)

~~Not Used.~~Submit Form O-5 certifying a complete record of Stakeholder communication is being provided. Submit copies of Exhibits 1 and 2 as necessary to document Stakeholder communication record.

Exhibits 1 and 2 to Form O-5 will NOT be provided to Evaluation Committee members.

4.3.8. Not Used (Form O-6)

Not Used.

4.3.9. Noncollusion Declaration (Qualified Proposer/Equity Members) (Form O-7)

Statements executed by Proposer and each Equity Member certifying compliance with non-collusion requirements.

4.3.10. Not Used (Form O-8)

Not Used.

4.3.11. Certificate of Compliance with Federal Lobbying Requirements (Form O-9)

Statement executed by Proposer, Equity Member(s), Lead Construction Contract, Lead Engineer, Lead Operation and Maintenance Contractor and any other team member(s) identified in the Offer certifying compliance with the federal lobbying requirements.

4.3.12. Confidential Contents Index (Form O-10)

Completed Confidential Content Index form executed by Proposer.

If a Qualified Proposer wants to assert that an Offer contains confidential information protected under A.A.C. R18-15-807, the Qualified Proposer shall complete Form O-14 and submit a redacted copy of its Offer with its confidential, proprietary, and trade secret information redacted. The redacted version of the Offer shall also be provided in an unalterable and searchable Adobe PDF format.

4.3.13. Qualified Proposer/Equity Member's Project Equity / Finance Related Experience (Form O-11)

Statement executed by Proposer documenting Equity Member's relevant experience. The information provided on Form IQS-15 may be updated, but all relevant information, including that on Form IQS-15, should be included on Form O-11.

4.3.14. Updated Financial Statements and Financial Officer's Certificate (Form O-12)

Statements executed by Proposer documenting Financial Officer's certifications.

For Proposer, Equity Member(s), Financially Responsible Parties/Guarantor(s) (if any), and Lead Construction Contractor, the Offer shall include:

A. Audited financial statements for all periods subsequent to those included in the IQS, audited by a certified public accountant in accordance with generally accepted accounting principles (U.S. GAAP) or, if applicable, International Financial Reporting Standards (IFRS); and

B. Unaudited financial statements for the period since the most recent completed fiscal year, with a statement that audited financial statements are not available.

Updated Financial Statements shall comply with the requirements of SECTION 3.6.

Proposer shall also include certifications (Form O-12), executed by the Financial Officer of any entity that submitted Financial Statements with the IQS and those submitting updated Financial Statements.

4.3.15. Organizational Conflict of Interest Disclosure Statement (Form O-13)

Statement executed by Proposer documenting Proposer's conflict of interest statements. This is an update to Form IQS-16.

4.3.16. Changes in Proposer Team or Key Personnel (Form O-15)

If WIFA approved any changes in the Proposer's Team or Key Personnel prior to the Proposal Due Date in accordance with SECTION 3.9, submit copies of all written communications from WIFA approving such changes.

4.3.17. Proposer Team and Experience Submittal

The Qualified Proposer shall provide information regarding its experience and past performance on similar projects and fitness and capacity to satisfactorily perform obligations contained in the LTWIP Base Contract, including future phases as described in the following sections. This may include Task Orders pursuant to the LTWIP Base Contract to evaluate WIPs and may include project implementation activities included in one or more Contracts.

4.3.17.1. Project Team

Qualified Proposer shall provide a minimum of two organization charts: one depicting the members of the Qualified Proposer's team and their relationships and the other depicting Key Personnel with identification of roles, names and reporting lines. Firm information provided in SECTION 4 may be used to demonstrate experience and capabilities, or more detailed firm experience may be provided.

Key Personnel shall be identified on the Qualified Proposer's organization chart. Qualified Proposer shall provide a narrative description of each proposed Key Personnel included on the Qualified Proposer's team with an explanation of why each individual was selected for the team, including the technical qualifications and experience that formed the basis for such selection.

Experience and qualifications of Key Personnel shall be provided using Form O-3. At a minimum, Qualified Proposer shall submit information for the following Key Personnel:

- Project Manager: Individual with overall responsibility for management of project activities including contract, schedule, budget.
- Design Manager: Individual with responsibility for design activities, including engineering, architectural and other applicable design related disciplines
- Construction Manager: Individual with responsibility for construction activities, including procurement of labor and materials, scheduling and sequencing and construction oversight
- Operations Manager: Individual with responsibility for implementing operational activities and maintaining operational compliance during contract operations, as applicable
- Financial Manager: Individual with responsibility for managing financial planning, budgeting, modeling and financial plan implementation activities

- Quality Manager: Individual with responsibility for developing, implementing and overseeing quality control activities in all aspects of project development.

In identifying Key Personnel, Qualified Proposer should note the following, at a minimum:

- Name
- Relevant licenses, registrations and/or certifications
- Education
- Relevant Experience

Include all personnel identified in the Offer in the Key Personnel Form O-3, and include required attachments, whether such individuals are in a Key Personnel role or not.

4.3.17.2. Relevant Experience

Qualified Proposer shall demonstrate the relevant experience and past performance of the team and Key Personnel as follows:

4.3.17.2.1. Engineering Design Experience

If applicable to the Qualified Proposer's WIP, provide relevant experience and past performance for engineering design experience on one or more projects of similar size and complexity. Relevant experience should consider:

- Water supply, including relevant supporting systems such as treatment technologies, energy supplies, waste/byproduct treatment and/or disposal
- Innovation and efficiency
- Schedule management
- Quality management
- Budget management
- Staffing and resource allocation and management
- Alternative funding strategy requirements
- Other unique and differentiating attributes that are relevant to the Qualified Proposer's WIP

If engineering services are not applicable to the Qualified Proposer's WIP, please so state.

4.3.17.2.2. Construction Experience

If applicable to the Qualified Proposer's WIP, provide relevant experience and past performance demonstrating construction experience on one or more projects of similar size and complexity. Relevant experience should consider:

- Water supply, including relevant supporting systems such as treatment technologies, energy supplies, waste/byproduct treatment and/or disposal
- Material and supply chain controls
- Innovation and efficiency

- Safety
- Schedule management
- Quality management
- Budget management
- Staffing and resource allocation and management
- Alternative funding strategy requirements
- Other unique and differentiating attributes that are relevant to the Qualified Proposer's WIP

If construction services are not applicable to the Qualified Proposer's WIP, please so state.

4.3.17.2.3. Operation and Maintenance Experience

If applicable to the Qualified Proposer's WIP, provide relevant experience and past performance demonstrating operation and maintenance experience on one or more projects of similar size and complexity. Relevant experience should consider:

- Water supply, including relevant supporting systems such as treatment technologies, energy supplies, waste/byproduct treatment and/or disposal
- Compliance with relevant regulatory agencies and permits
- Operational reliability
- Innovation and efficiency
- Maintenance activities and asset management
- Capital improvements
- Working Capital availability
- Safety
- Staffing and resource allocation and management
- Alternative funding strategy requirements
- Other unique and differentiating attributes that are relevant to the Qualified Proposer's WIP

If operations and maintenance services are not applicable to the Qualified Proposer's WIP, please so state.

4.3.17.2.4. Project Financing Experience

If applicable to the Qualified Proposer's WIP, provide relevant experience and past performance demonstrating project financing experience on one or more projects of similar size and complexity. Relevant experience should consider:

- Evaluation and application of relevant financial instruments such as public and/or private debt, grants, and loans
- Commitment, contribution and management of equity
- Short term and long term financing approaches
- Successfully achieving financial close

- Use and integration of relevant federal and state loan and funding programs, such as WIFIA, WIIN and SRF
- Other unique and differentiating attributes that are relevant to the Qualified Proposer's WIP

If project financing is not applicable to the Qualified Proposer's WIP, please so state.

4.3.18. WIP Concept Submittal

Refer to Section 1.1 for information regarding the background and purpose for implementation of WIPs.

Qualified Proposer shall provide information on a proposed WIP that imports water from the project category identified in Qualified Proposer's IQS submission with respect to which Qualified Proposer is submitting an Offer. Qualified Proposer may determine not to submit an Offer for a proposed WIP in a project category that it included in its IQS, but Qualified Proposer shall not be permitted to submit a proposed WIP for a project category that it did not include in its Qualified IQS.

Each Qualified Proposer shall submit a WIP Concept Submittal, including the elements listed below. WIFA acknowledges that WIP Concept Submittals are conceptual in nature and may contain gaps in understanding and detail that will be developed under the LTWIP Base Contract through Task Orders. However, the WIP Concept Submittals should be developed to a sufficient degree of detail to allow WIFA to consider the merits of the WIP and the Qualified Proposer's ability to meet WIFA's identified goals and the Solicitation evaluation criteria.

A. An executive summary of the proposed WIP describing the key merits of the Offer. **(Up to 2 pages).**
B. A narrative description of the proposed WIP demonstrating how the proposed WIP meets WIFA's stated purpose and need. **(Up to 2 pages).**
C. A detailed description of the proposed WIP with sufficient and appropriate detail allowing WIFA to evaluate the Offer's merits and consistency with this Solicitation and the statutory project evaluation criteria listed in Section 1.34 **(Up to 46 pages)**. In addition, the description shall highlight key elements that differentiate the proposed WIP in terms of system performance, reliability, sustainability, life cycle efficiencies, cost responsibility, risk and avoidance and/or mitigation of environmental impacts. At a minimum, the description shall include:
    1. Proposed water supply, including the duration of supply and the ability to meet WIFA's long-term reliability goals
    2. Anticipated infrastructure needed to develop the WIP
    3. Preliminary development schedule
    4. Anticipated regulatory impacts and required permits
    5. Anticipated environmental impacts
    6. Anticipated legal constraints

7. Conceptual financial model, including capital expenditure, operating expenditure, financing sources and considerations, and anticipated contracting model for delivery of water
8. Description of Qualified Proposer's expectations for WIFA's role in the development, implementation, ownership and long term administration of the WIP
9. Key risks to the WIP and potential and realistic risk avoidance and mitigation strategies; and
10. Other information that WIFA should consider when evaluating a proposed WIP.

4.3.19. Detailed Plan for Completing Secondary WIP Selection Process

The Qualified Proposer shall submit a detailed plan regarding its approach to completing the Task Orders under the LTWIP Base Contract related to the Secondary WIP Selection Process. Such plan should provide detailed information regarding how Qualified Proposer will complete Task Orders and anticipated deliverables associated with each Task Order during the Secondary WIP Selection Process. The plan should detail anticipated challenges and how Qualified Proposer will address such challenges, and how Qualified Proposer will address unanticipated issues that arise during performance of the Task Orders.

4.3.19.1. Secondary WIP Selection Project Management Plan and Schedule

The Qualified Proposer shall submit a project management plan and Gantt style schedule for completion of the Secondary WIP Selection Process. The project management plan shall include approach to managing multiple Task Orders simultaneously, responsible party assignment, resource management, change management, risk management, quality control programs and other information relevant to effective management of Task Orders. Schedule shall include critical path relationships between work tasks and Task Orders and shall identify key stakeholder engagement activities.

4.3.19.2. Technical Evaluations

The Qualified Proposer shall submit a plan for completing technical evaluations required to demonstrate the technical basis for successful implementation of the WIP. Technical evaluations may include water source characterization, engineering analysis, routing/siting studies, process evaluation, energy analyses, waste and/or byproduct disposal, and other analyses. Analysis shall be developed to a level of detail sufficient to develop relevant cost models, schedules and implementation plans and support other studies as may be required for WIFA to make a determination as to the viability of the WIP.

4.3.19.3. Environmental and Cultural Evaluations

The Qualified Proposer shall submit a plan for completing environmental and cultural impact assessments required for successful implementation of the WIP. Environmental and cultural impact assessments shall consider potential impacts to threatened and endangered species, wetlands and/or other protected lands, archeological sites, indigenous peoples and other relevant impacts not listed. Plan should identify what, if any, role WIFA is anticipated to complete related to environmental and cultural evaluation activities. Analysis shall be developed to a level

of detail sufficient to develop relevant cost models, schedules and implementation plans and support other studies as may be required for WIFA to make a determination as to the viability of the WIP.

4.3.19.4. Regulatory Evaluations

The Qualified Proposer shall submit a plan for completing regulatory compliance activities required for successful implementation of the WIP. Regulatory analysis plan shall include an identification of the anticipated permitting agencies and permits required for development, construction and operation of the WIP. Plan shall include anticipated permitting strategy and anticipated schedule/timeline for permitting activities. Plan should identify what, if any, role WIFA is anticipated to complete related to permitting. Analysis shall be developed to a level of detail sufficient to develop relevant cost models, schedules and implementation plans and support other studies as may be required for WIFA to make a determination as to the viability of the WIP.

4.3.19.5. Society and Community Evaluations

The Qualified Proposer shall submit a plan for completing evaluations of the potential society and community considerations associated with implementation of the WIP. The evaluations shall consider the approach to community outreach and engagement activities, interested stakeholders and stakeholder groups and governmental entities that will be part of development, construction and operation of the WIP. The plan should identify what, if any, role WIFA is anticipated to complete related to society, community and political activities. Analysis shall be developed to a level of detail sufficient to develop relevant cost models, schedules and implementation plans and support other studies as may be required for WIFA to make a determination as to the viability of the WIP.

4.3.19.6. Cost, Economics, and Financing Evaluations

The Qualified Proposer shall submit a plan for developing WIP cost, economic and financing. This plan shall include the approach to capital cost modeling and management, operation and maintenance cost modeling and management, and the Qualified Proposer's strategy for project financing. The plan shall consider water purchase affordability and approaches to enhancing affordability for potential water offtakers. Project financing plan shall consider structured financing options, including equity contribution strategies, debt options and grant funding opportunities. Plan should identify what, if any, role WIFA is anticipated to complete related to project financing and cost activities. Analysis shall be developed to a level of detail sufficient to develop relevant cost models, schedules and implementation plans and support other studies as may be required for WIFA to make a determination as to the viability of the WIP.

4.3.20. Pricing Structure for Secondary WIP Selection Process Task Orders (Form O-14)

The Qualified Proposer shall submit a cost approach for preparing the Secondary WIP Selection Process Task Orders. This approach shall consist of the following:

A. Maximum Direct Cost markup for Overhead (Direct Cost + XX%), where Direct Cost is defined as the unburdened labor cost associated with professional, para-professional,

non-professional services and expenses required to complete the Task Order. Markup shall include any overhead that Qualified Proposer is proposing.

B. Maximum Fee (Profit) applied to burdened labor, expenses and other costs incurred during performance of a Task Order.
C. Maximum Rate Schedule for staff classifications that are anticipated to be utilized during the Secondary WIP Selection Task Orders. Rate schedule shall include staff classification/title and rate used to develop cost or invoiced for services (Direct Cost + Cost Markup).

Cost information shall be submitted using Form (O-14)

- END OF SECTION 4. OFFER SUBMITTAL REQUIREMENTS -

SECTION 5. RESPONSIVENESS AND RESPONSIBILITY OF OFFERS

5.1. General Responsiveness and Responsibility Review

The Offers will be reviewed for conformance with Solicitation instructions regarding submission, organization and format, and responsiveness to the requirements set forth in this Solicitation. Responsiveness will be assessed based on completeness of the Offer contents with reference to the OFFER SUBMITTAL REQUIREMENTS (Solicitation SECTION 4). Please note, WIFA reserves the right to determine any Qualified Proposer is not susceptible for award upon a determination, at any stage of the process, that the Qualified Proposer is not responsible or non-responsive.

An Offer that does not comply with submittal requirements may be deemed non-responsive and ineligible for further evaluation or award. WIFA may elect not to consider or evaluate pages exceeding page number restrictions.

5.1.1. Pass/Fail Reviews

In addition to responsiveness, in order for an Offer to be eligible for award, it must achieve a rating of "pass" on each "pass/fail" evaluation factor listed below. Failure to achieve a "pass" rating on any listed "pass/fail" factor shall result in ineligibility for further evaluation or award.

5.1.2. Pass/Fail Requirements for Administrative Submittal

- Provision of all specified forms and documents, properly completed and signed (if required) (see OFFER SUBMITTAL CHECKLIST (Exhibit O-1)) that do not identify any materially adverse information.
- Confirmation that the Qualified Proposer's team members identified in the Initial Qualifications Submittal have either not changed since the submission of the Initial Qualifications Submittal, or that the Qualified Proposer has previously obtained approval in writing by WIFA regarding any such changes.
- Organizational documents for the proposed Developer showing that it has the legal capacity to undertake the LTWIP Base Contract work and is not subject to restrictions that would preclude it from entering into a LTWIP Base Contract and performing services thereunder. The organizational documents must, among other things, include appropriate provisions for management and decision-making within the organization, provide for the continuation of the entity in the event of bankruptcy or withdrawal of any of its members, and otherwise be consistent with the proposed WIP Project requirements.
- Information available to WIFA shows that Proposer-Related Entity(ies) have not engaged in prohibited communications and have not taken action to influence the environment review process for the proposed WIP Project or other significant decisions related to the proposed WIP Project.
- Qualified Proposer has delivered written evidence, satisfactory to WIFA, in its sole discretion, from an insurance company(ies), broker(s), agent(s), or advisor(s) expressly indicating that Qualified Proposer (and its Lead Construction Contractor) will be able to obtain and maintain the insurance types and amounts required by the LTWIP Base Contract and can do so under the terms, and subject to the conditions, specified in Section [ ] of the LTWIP Base Contract. WIFA shall be satisfied if such insurance company(ies)', broker(s)',

agent(s)' or advisor(s)' signatories to such written evidence explicitly state that it/they have read the LTWIP Base Contract (including the insurance requirements) and that the entities required to obtain insurance under the LTWIP Base Contract have the capability of obtaining such insurance in the coverages and under the conditions listed in the LTWIP Base Contract;

- Based on the information provided pursuant to Sections 3.6 and 4.3.14, the Qualified Proposer (including by and through each of its Equity Member(s)') financial condition and capability) shall demonstrate that it has the financial capacity to undertake a project of the nature and scope of the WIP.
- If WIFA determines that a Qualified Proposer does not appear to have the financial capability to fulfill its obligations under the LTWIP Base Contract, WIFA may, in its sole discretion, offer the Qualified Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to WIFA;
- If a Guaranty is required by WIFA pursuant to Section 1.10, the financial condition and capabilities of Qualified Proposer's Guarantor(s) demonstrate Guarantor(s)'s financial capacity and ability to guarantee the obligations of the Qualified Proposer pursuant to the form of Guaranty attached as Exhibit 10 to the LTWIP Base Contract.
- Compliance with any other requirements set forth in the administrative submittal instructions (Solicitation Section 4.3.2).

5.1.3. Pass/Fail Requirements for Qualified Proposer Team and Experience Submittal

- Provision of all required forms, properly completed and signed (if required), and compliance with other submittal requirements set forth in the Qualified Proposer Team and Experience Submittal INSTRUCTIONS (Solicitation Section 4.3.4**).**
- Provision of a WIP Concept Submittal that is consistent with the project background and purpose (Solicitation Section 1.1).

5.1.4. Pass/Fail Requirements for Detailed Plan for Completing Task Orders Under Contract for Secondary WIP Selection Process

Section is complete and in accordance with the Solicitation.

5.1.5. Pass/Fail Requirements for Price Proposal

Section is complete and in accordance with the Solicitation.

- END OF SECTION 5. RESPONSIVENESS AND RESPONSIBILITY -

SECTION 6. EVALUATION CRITERIA

6.1. Summary of Evaluation and Selection Process

The evaluation process will be performed by the Evaluation Committee. Offers submitted in response to this Solicitation will be solely evaluated and scored in accordance with the evaluation procedures contained herein. Offers will not be compared against other offers for any reason, including scoring. Following completion of the evaluations, including any interviews, Competitive Ranger determination, BAFOs and negotiations, the Evaluation Committee will determine the highest ranked Offers and will make award recommendations to the Board. The Board may make one or more awards in any Project Category, or may issue no award and cancel the Solicitation.

Qualified Proposers are advised that the evaluation criteria in this Solicitation have been set with reference to WIFA's priorities and the broader value proposition it seeks. The maximum score for a Proposal will be 1,000 points, allocated to the criteria and sub-criteria as specified in the evaluation criteria identified Table 3 The Evaluation Committee will only use the evaluation criteria and sub-criteria set forth in this Solicitation to evaluate Offers.

Table 3. Evaluation Scoring

Solicitation Reference	Category	Solicitation Scoring
4	Initial Qualification Submittal	Qualified / Not Qualified Proposer Determination
4.3.17	Qualified Proposer Team and Experience Submittal	300
4.3.18	WIP Concept Submittal	300
4.3.19	Detailed Plan for Completing Secondary WIP Selection Evaluation	300
4.3.20	Pricing Structure for Secondary WIP Selection Process Task Orders	100

6.2. Totaling Scores and Potential Establishment of the Competitive Range

Following completion of the evaluation of each Offer in accordance with Solicitation Section 6.1, the Evaluation Committee will total the scores of all Offers and sort them by project type based on the Proposer's self-selected project category. The Evaluation Committee will establish the Competitive Range for each project category. The Evaluation Committee may proceed with oral presentations and negotiations as described in Solicitation Sections 6.5 and 6.6, or make a recommendation to the Long Term Water Augmentation Committee to award the LTWIP Base Contract(s) without oral presentations or negotiations or without establishing a Competitive Range. The Evaluation Committee may also elect to not make a recommendation for oral presentations and negotiations or award.

The Evaluation Committee may establish or redefine the Competitive Range at any time during the Solicitation process, including after oral presentations and negotiations.

6.3. Determination of Not Susceptible for Award or Within Competitive Range

WIFA may determine at any time during the evaluation period and before award that an Offer is not susceptible for award or not within the Competitive Range, in accordance with Arizona Administrative Code R18-15-816. WIFA shall place a written determination, based on one or more of the following, in each Proposer's Procurement File:

- The Offer is not responsive or fails one or more of the pass/fail criteria;
- The Offer fails to substantially meet one or more of the mandatory requirements of the Solicitation;
- The Offer fails to comply with any susceptibility criteria identified in the Solicitation; or
- The Offer is not susceptible for award or is not within the Competitive Range in comparison to other Offers based on the criteria set forth in the Solicitation.

WIFA shall promptly notify the Qualified Proposer in writing of the final determination that the Offer is not susceptible for award or not within the Competitive Range, unless WIFA determines notification to the Qualified Proposer would compromise WIFA's ability to negotiate with other Qualified Proposers.

6.4. Oral Presentations

WIFA, in its sole discretion, may request oral presentations with Qualified Proposers. If oral presentations are requested, WIFA shall request oral presentations from all Qualified Proposers who submit Offers (i) determined to be responsible; (ii) which pass all of the pass-fail criteria and (iii) which are reasonably susceptible for award. WIFA, in its sole discretion, may also further limit oral presentations to only those Qualified Proposers within the Competitive Range, if one is established. During oral presentations, Qualified Proposers who are invited to participate will have an opportunity to highlight certain aspects of their Offers, enhance WIFA's understanding of the Offers, and facilitate the evaluation process. Oral presentations will not be used to cure Offer deficiencies or material omissions, materially alter or augment the technical or cost elements of the Offer, and/or otherwise revise the Offer.

WIFA may require Qualified Proposers to provide written clarification or confirmation of statements made or information provided in the oral presentations. The oral presentation process will not include discussions, negotiations, or other exchanges with WIFA except as specifically described above.

Oral presentations will not be scored separately from the Offer. The evaluators may adjust their evaluation scores after a Qualified Proposer's oral presentation and after any written clarification or confirmations submitted as a result of an oral presentation.

6.5. Negotiations

WIFA may elect to enter into negotiations with one or more Qualified Proposers. Negotiations may be performed following evaluation of Offers by the Evaluation Committee and prior to

recommendation to award LTWIP Base Contracts by the Long Term Water Augmentation Committee. Negotiations shall be performed solely at the discretion of WIFA and shall be performed in good faith. Negotiations will be used to address any matters determined by WIFA to be necessary to finalize the recommendation to the Board and award of a LTWIP Base Contract(s).

If WIFA elects to negotiate various aspects of the LTWIP Base Contract with a Qualified Proposer and an LTWIP Base Contract satisfactory to WIFA, in its sole discretion, cannot be negotiated with the Qualified Proposer, WIFA may formally suspend or end negotiations with that Qualified Proposer and take action consistent with the direction provided by the Committee. Such action may include (a) requiring the Qualified Proposer to enter into the form of LTWIP Base Contract included in this Solicitation, without further negotiation or variation except to fill in blanks and include information that the form of LTWIP Base Contract indicates is required from the Offer; (b) rejection of all Offers; or (c) proceeding to the next most highly ranked Qualified Proposer(s) to finalize or attempt to negotiate an LTWIP Base Contract with that/those Qualified Proposers in accordance with this Section 6.5.

6.6. Selection

At the conclusion of negotiations (if any), the Committee will decide whether to recommend an award of one or more LTWIP Base Contracts from one or more project categories, or not to recommend award. If a recommendation for award of LTWIP Base Contract(s) is made, the recommendation(s) for each project category will be made to those Qualified Proposers with respect to which WIFA has successfully concluded any negotiations.

Proposers are advised that WIFA may award more than one LTWIP Base Contract per category. Proposers are further advised that WIFA may elect to not award a LTWIP Base Contract to any Offers in a given category or in any project category. Proposers are further advised that Offers are not compared against other Offers for purposes of evaluation or selection. Instead, Offers are only evaluated based on the Solicitation criteria, for which a score will be assessed. The determination of which Offers are recommended is in the sole discretionary recommendation of the Committee.

6.6.1. Award Process and Contract Execution

The award recommendation(s) will be made in the form of an official report to the Board. The report will include a summary of the Solicitation process.

If any protests have been filed relating to the Solicitation process, WIFA will undertake to resolve them on a case by case basis as each proposal is solely evaluated according to the Solicitation criteria and not in comparison with other submitted proposals. Accordingly, WIFA is not required to resolve individual protests before proceeding with award(s) if WIFA determines as such pursuant to A.A.C. R18-15-822. If a protest is successful, the Offeror will be accorded the individual relief as authorized by applicable law. Any changes to the Solicitation, including any changes to any of the dates in the solicitation schedule (Solicitation Section 1.7), will be provided to all Proposers or Qualified Proposers, as applicable, through the issuance of an Amendment.

Upon receipt of the report, the Board will review the recommendation(s) and Solicitation information therein and make a determination regarding whether to approve award of one or more LTWIP Base Contracts in accordance with the recommendation(s) in the report, or to proceed with an alternative approach.

6.6.2. Notice to Proceed and Task Order

Following execution of a LTWIP Base Contract by both parties thereto, and satisfaction of conditions specified therein, WIFA may initiate a Task Order under such LTWIP Base Contract allowing the Developer to proceed with work as detailed in the Task Order.

- END OF SECTION 6. EVALUATION -

SECTION 7. INITIAL QUALIFICATIONS SUBMITTAL FORMS

[A separate set of Initial Qualifications Submittal forms must be submitted for each WIP the Proposer intends to propose.]

Pursuant to A.C.C. R18-15-814, WIFA may determine whether a Proposer is a responsible Developer at any time prior to award of an LTWIP Base Contract. The failure of a Proposer to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of non-responsibility.

WIFA shall determine, at any time during the evaluation period and before award, whether a Proposal is responsible or nonresponsible. A finding of nonresponsibility shall not be construed as a violation of the rights of any Person. The unreasonable failure of a Proposer to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the Initial Qualifications Submittal and/or Offer.

Form IQS-1: Initial Qualifications Submittal Letter

Name of Proposer:	Enter text.
Date Submitted:	Enter text.
Project Category:	Enter text.
Preparer's Name:	Enter text.

The undersigned submits this Initial Qualifications Submittal (**"IQS"**) on behalf of the Proposer identified above, in response to the Solicitation #2024-001 dated November 20, 2024 (as amended, the **"Solicitation"**), issued by the Water Infrastructure Finance Authority of Arizona (**"WIFA"**).

This IQS consists of this transmittal and the follow forms:

Form IQS-2: Initial Qualifications Submittal Checklist
Form IQS-3: General Certifications
Form IQS-4: Confidential Contents Index
Form IQS-5: Letter of Insurability
Form IQS-6: Conformance Statements
Form IQS-7: Boycott of Israel Disclosure
Form IQS-8: Forced Labor of Ethnic Uyghurs Ban
Form IQS-9: AZ Baseline Infrastructure Security Controls
Form IQS-10: Letter Agreement for Industry Review One-on-One Meetings
Form IQS-11: Proposer Information Form
Form IQS-12: Comparable Professional Engineering Services Contract
Form IQS-13: Comparable Construction-Related Services Contract
Form IQS-14: Comparable Operation and Maintenance-Related Services Contract
Form IQS-15: Qualified Proposer/Equity Member's Project Equity / Finance Related Experience
Form IQS-16: Organizational Conflict of Interest Disclosure Statement
Form IQS-17: Question or Comment Instructions
Form IQS-18: Acknowledgement of Amendments
Form IQS-19: Organizational Documents
Form IQS-20: Record of Performance and Integrity
Form IQS-21: Legal Qualification to Contract with WIFA

The information is provided for purposes of determining whether a Proposer meets the Solicitation's responsibility criteria as authorized under A.A.C. R18-15-814. The information provided may be subject to public disclosure under State law. To the extent that the Proposer considers any of this information to be exempt from disclosure, the Proposer is responsible for marking relevant sections as confidential in accordance with A.A.C. R8-15-807.

I hereby certify under penalty of perjury that the information in this Initial Qualifications Submittal is true and accurate to the best of my knowledge and belief. I understand false statements may result in a non-responsibility determination for the Proposer and Key Participants, and possibly debarment.

Enter text.	Enter text.
Signature on behalf of Proposer	Date Signed

Form IQS-2: Initial Qualifications Submittal Checklist

A copy of this completed Initial Qualifications Submittal Checklist, indicating Proposer's use of such checklist to ensure all contents of the Initial Qualifications Submittal are provided. Proposer may not amend the order or change the contents of this checklist.

☐ Form IQS-1: Initial Qualifications Submittal Letter

☐ Form IQS-2: Initial Qualifications Submittal Checklist

☐ Form IQS-3: General Certifications

☐ Form IQS-4: Confidential Contents Index

☐ Form IQS-5: Letter of Insurability

☐ Form IQS-6: Conformance Statements

☐ Form IQS-7: Boycott of Israel Disclosure

☐ Form IQS-8: Forced Labor of Ethnic Uyghurs Ban

☐ Form IQS-9: AZ Baseline Infrastructure Security Controls

☐ Form IQS-10: Letter Agreement for Industry Review One-on-One Meetings

☐ Form IQS-11: Proposer Information Form

☐ Form IQS-12: Comparable Professional Engineering Services Contract

☐ Form IQS-13: Comparable Construction-Related Services Contract

☐ Form IQS-14: Comparable Lead Operation and Maintenance-Related Services Contract

☐ Form IQS-15: Comparable Proposer/Equity Member's Project Equity / Finance Related Experience

☐ Form IQS-16: Organizational Conflict of Interest Disclosure Statement

☐ Form IQS-17: Question or Comment Instructions

☐ Form IQS-18: Acknowledgement of Amendments

☐ Form IQS-19: Organizational Documents

☐ Form IQS-20: Record of Performance and Integrity

☐ Form IQS-21: Legal Qualification to Contract with WIFA

☐ Financial Statements (as required in Section 3.6)

☐ Documentation of Minimum Responsibility Criteria (as required in Section 3.7)

Form IQS-3: General Certifications

The Proposer shall respond either "Yes" or "No" to each of the following where indicated. If the Proposer's response is "No", a full explanation shall be provided in the space following the last item.

1.0 **CERTIFICATE OF NONDISCRIMINATION** Yes ☐ No ☐

1. The Proposer hereby certifies: that it does not unlawfully discriminate against any employee or applicant for employment with regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition); that it is in compliance with all applicable Federal, state, and local directives and executive orders regarding nondiscrimination in employment; and that it agrees to pursue positively and aggressively the principle of equal opportunity in employment. The Proposer and its Subcontractors shall comply with the provisions of Federal Executive Order 11246, [Arizona] State Executive Orders 2023-01 and 2009-9, and A.R.S. §§ 41-1461 through 1465.

   The Proposer agrees specifically to adhere to the following:

   (a) Establish and observe employment policies that actively promote opportunities for minority persons and women at all job levels.

   (b) Communicate this policy to all company employees, outside recruiting services, especially those serving minority communities and women, and minority communities and women at large.

   (c) State in all solicitations or advertisements for employees that the Proposer will consider all qualified applicants for employment without regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition).

2.0 **AFFIRMATIVE ACTION** Yes ☐ No ☐

The Proposer certifies that it and those Subcontractors with subcontracts in excess of ten thousand dollars ($10,000) are maintaining Affirmative Action Programs consistent with those required under Federal Executive Order 11246.

3.0 **WHISTLEBLOWER REQUIREMENTS** Yes ☐ No ☐

The Proposer certifies that it will take no action, or adopt any rule, regulation or policy which is contrary to the provisions set forth in Arizona Revised Statutes Title 23. A full explanation of all "No" answers shall be provided below. Proposer hereby declares under the penalty of perjury under the laws of the State of Arizona that the certifications made above in No. 1-4 are true and correct.

Executed on Enter text. (Date) 20 Enter year., Enter text. (City) Enter text. (Title)

Enter text. Typewritten or Printed Name

Enter text. Signature of Authorized Official

Enter text. Title

Enter text.

[1] Any indication of fraud, waste, abuse, or mismanagement of these funds should be immediately reported to the WIFA Compliance Office.

Form IQS-4: Confidential Contents Index

Content Designation (*)	Solicitation Section Reference	Offer Volume and Tab or Form No.	Page Numbers	Description of Content
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.

(*) For each item included on this Form IQS-5 include a designation of either “Confidential,” “Trade Secret,” or “Proprietary.” For additional information please refer to Section 2.18 of the Solicitation.

Enter text.
Proposer’s Representative (Type or Print Name)

Enter text.
Date

Enter text.
Signature of Qualified Proposer’s Representative

Enter text.
Title

Form IQS-5: Letter of Insurability

The Proposer shall provide a Letter of Insurability from the Insurance Company as a proof that the Proposer currently possesses the required insurance as stated in the FORM OF CONTRACT – LTWIP BASE CONTRACT or the Proposer is able to obtain the required Minimum Scope and Limits of Insurance should a LWTIP Base Contract be awarded to Proposer.

The Letter of Insurability (and any additional letters) should be clearly marked as

Attachment - Supplement Insurance

NOTE: If awarded a LTWIP Base Contract, the Proposer shall provide a Certificate of Insurance and associated policy endorsement(s) prior to beginning service(s) under the LTWIP Base Contract.

Form IQS-6: Conformance Statements

If taking exceptions to the Special Instructions or Evaluation Criteria (which only apply to the Offer), the relevant subsequent pages titled "Attachment Supplements" must be completed. Attach additional pages as needed.

WIFA will not consider any exception to provisions related to the IQS. WIFA will also not consider an exception to the Special Instructions or Evaluation Criteria unless clearly and specifically designated on this form.

Read all instructions to Proposers before taking any exceptions. Note that IQS Submissions with exceptions taken to the provisions related to the IQS may be found nonresponsive/noncompliant and IQS Submissions and/or Offers with exceptions to the Special Instructions or Evaluation Criteria may be found not susceptible for award.

If neither box is checked under any section below, the Proposer's response to that section will be considered "YES" and WIFA will interpret the IQS Submission and/or Offer as if there were no exceptions taken.

CONFORMANCE TO THE SPECIAL INSTRUCTIONS TO PROPOSERS	
Check one of the following:	
☐	YES – Proposer acknowledges that it has read and understands the Special Instructions to Proposers of the Solicitation Documents and attests that its Offer complies with both.
☐	NO – Proposer acknowledges that it has read and understands the Special Instructions to Proposers in the Solicitation Documents, and attests that its IQS Submission and/or Offer complies with both EXCEPT FOR the exceptions listed in **Attachment Supplement – Conformance Statements - Exceptions to Special Instructions**.

CONFORMANCE TO THE EVALUATION CRITERIA
Check one of the following:

☐	YES – Proposer acknowledges that it has read and understands the Evaluation Criteria of the Solicitation Documents and attests that its IQS Submission and/or Offer complies with both.
☐	NO – Proposer acknowledges that it has read and understands Evaluation Criteria of the Solicitation Documents and attests that its IQS Submission and/or Offer complies with both EXCEPT FOR the exceptions listed in **Attachment Supplement – Conformance Statements - Exceptions to Evaluation Criteria**.

Proposers may provide comments on the LTWIP Base Contract as part of their IQS. WIFA may consider comments before submission of final Offers. WIFA may choose to modify the draft Base Contract terms based upon the Proposers comments or otherwise as part of the procurement process in its sole discretion. WIFA expressly reserves the right to change any provisions of the Base Contract at any time, whether before or after the issuance of any Offer.

Enter text.

Proposer

Enter text.

Signature of person authorized to sign

Conformance Statements - Exceptions to Special Instructions or Evaluation Criteria

Article / paragraph or exhibit reference	Solicitation language (Copy and paste from Solicitation)	Alternate language and Rationale
Enter text.	Enter text.	Alternate language: Enter text. Rationale: Enter text.
Enter text.	Enter text.	Alternate language: Enter text. Rationale: Enter text.
Enter text.	Enter text.	Alternate language: Enter text. Rationale: Enter text.

Enter text.

Proposer

Enter text.

Signature of person authorized to sign

Comments to LTWIP Base Contract Terms and Conditions

Article / paragraph or exhibit reference	LTWIP Base Contract language (Copy and paste from Solicitation)	Alternate language and Rationale
Enter text.	Enter text.	Alternate language: Enter text. Rationale: Enter text.
Enter text.	Enter text.	Alternate language: Enter text. Rationale: Enter text.
Enter text.	Enter text.	Alternate language: Enter text. Rationale: Enter text.

Enter text.

Proposer

Enter text.

Signature of person authorized to sign

Form IQS-7: Boycott of Israel Disclosure

Please note that if any of the following apply to this Solicitation, the LWTIP Base Contract, or Developer, then the Proposer shall select the "Exempt Solicitation, Contract, or Developer" option below:

- The Solicitation or Contract has an estimated value of less than $100,000;
- Developer is a sole proprietorship;
- Developer has fewer than ten (10) employees; OR
- Developer is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts "unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
   a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
   b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, Limited Liability Company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.

   …..
5. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State. The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

In compliance with A.R.S. §§35-393 et seq., all offerors must select one of the following:

☐The Company submitting this Offer does not participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. §§35-393 et seq. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

☐The Company submitting this Offer **does** participate in a boycott of Israel as described in A.R.S. §§35-393 et seq.

☐**Exempt Solicitation, Contract, or Developer**

Indicate which of the following statements applies to this Contract:

☐Solicitation or Contract has an estimated value of less than $100,000;
☐Developer is a sole proprietorship;
☐Developer has fewer than ten (10) employees; and/or
☐Developer is a non-profit organization.

Enter text.
Printed Name

Enter text.
Signature of Person Authorized to Sign

Enter text.
Proposer

Enter text.
Proposer Address

Form IQS-8: Forced Labor of Ethnic Uyghurs Ban

Please note that if <u>any</u> of the following apply to the Developer, then the <u>Proposer shall</u> select the "Exempt Developer" option below:

- Developer is a sole proprietorship;
- Developer has fewer than ten (10) employees; OR
- Developer is a non-profit organization.

Pursuant to A.R.S. § 35-394, the State of Arizona prohibits a public entity from entering into or renewing a contract with a company unless the contract includes written certification that the company does not use the forced labor, or any goods or services produced by the forced labor, of ethnic Uyghurs in the People's Republic of China.

Under A.R.S. § 35-394:

1. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
2. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

In compliance with A.R.S. §§ 35-394 et seq., all offerors must select one of the following:

☐The Company submitting this Offer does not use, and agrees not to use during the term of the contract, any of the following:

- Forced labor of ethnic Uyghurs in the People's Republic of China;
- Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or
- Any Developers, Subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

☐The Company submitting this Offer **<u>does</u>** participate in use of Forced Uyghurs Labor as described in A.R.S. § 35-394.

☐ **Exempt Developer**; Indicate which of the following statements applies to the Developer (may be more than one):

☐ Developer is a sole proprietorship;

☐ Developer has fewer than ten (10) employees; and/or

☐ Developer is a non-profit organization.

Enter text.

Printed Name

Enter text.

Signature of Person Authorized to Sign

Enter text.

Proposer

Enter text.

Proposer Address

Form IQS-9: AZ Baseline Infrastructure Security Controls

Proposer/Developer shall follow the State of Arizona's Data security policy standard (currently State of AZ Data Security Std S8120) and the following Addendum to the Special Terms and Conditions, titled Warranties and Requirements Related to Arizona Information Technology Statewide Policies, Standards, and Procedures when storing, processing, or transmitting State Data.

Proposer/Developer acknowledges and agrees that only NIST Cybersecurity Framework (CSF) NIST SP800-53 Security and Privacy Controls will be accepted for evaluation. No other forms of CSF will be accepted including ISO/IEC, SOC 2/3 reports, or other forms of self-attestations.

The State Data classification:

NIST Low Impact: If a Developer may process, transmit, or store **non-sensitive** State Data, metadata, and/or Data that may be released to the public that requires no additional levels of protection during its Work under the Contract, then the Developer **shall** follow the NIST Low Impact security controls as directed by the State Chief Privacy Officer (Enterprise Security, Privacy & Risk Compliance team).

NIST Moderate Impact: If a Developer may process, transmit, or store one or more of the following types of Data during its work under the Contract, then the Developer **shall** complete NIST Moderate Impact security controls (authorized or provisional) status:

1. Personal identifiable information (PII) as defined by U.S Dept. of Labor (DOL);
2. Protective health information (PHI) as defined by HIPAA;
3. Payment card industry (PCI) Data as defined by PCI Security Std. Council (PCI SSC);
4. Criminal justice information (CJI) Data;
5. Federal tax information (FTI) Data defined by IRS 1075;
6. Data that if lost or unavailable would either be disruptive to government operations or cause a loss of confidence of trust in the government; or
7. Directed by the State Chief Privacy Officer (Enterprise Security, Privacy & Risk Compliance team).

Pursuant to State Data Classification Policy P8110 and the above Data classification, **Developer will have access to the following type of Data as part of its work under the Contract:**

☐ Low Impact Data (AZRAMP 125 / NIST Low Impact)

☐ Moderate Impact Data (AZRAMP 325 / NIST Moderate Impact)

For this Offer to be considered, the Proposer shall follow the Infrastructure Security Controls and acknowledge its agreement below.

A) If the Proposer has achieved FedRAMP Authorized or StateRAMP NIST Moderate Control Baseline (authorized or provisional) certification, check the box below, submit certification information, and sign the signature section.

☐ FedRamp Authorized

☐ StateRAMP NIST Moderate Impact Control Baseline (authorized or provisional)

B) If the Proposer has **not** achieved FedRAMP Authorized or StateRAMP NIST Moderate Control Baseline (authorized or provisional) certification, complete the steps below, and sign the signature section.

Step B1: Solicitation Offer Stage

Submit a completed Arizona Baseline Infrastructure Security Controls Prerequisite (35 questions) assessment spreadsheet Pre-Requisite (35 questions) (***Attachment XX - Prerequisite Assessment of Arizona Baseline Infrastructure Security Controls***)

Step B2: Contract Award Stage: If awarded a contract, work under awarded state contract is contingent on:

B2.1 Within forty-five days of award, the Developer shall complete the AZRamp 325 Moderate Impact Control spreadsheet titled "Arizona Infrastructure Security Controls 2017 (Excel)," and fill out column's from **I to N** and submit to State Chief Privacy Officer (Enterprise Security, Privacy & Risk Compliance team) AZRamp 325 Moderate. Supporting documentation required for the AZRamp assessment are Developer IT System Security Plan (SSP) or Written Information Security Program (WISP) to obtain AZRamp Moderate (respond to Column F controls and control enhancements), or contact the State Chief Privacy Officer (Enterprise Security, Privacy & Risk Compliance team) with questions via GRC@AZDOHS.gov.

B2.2 Within thirty days of award, the Developer shall register with StateRAMP (membership link: https://stateramp.org). Supply StateRAMP membership number to State Chief Privacy Officer (Enterprise Security, Privacy & Risk Compliance team) via GRC@AZDOHS.gov.

Step B3: Contract Management Stage:

Within the first (1st) year of the LTWIP Base Contract, awarded Developer **shall** obtain StateRAMP NIST Moderate Impact Authorization (authorized or provisional) security status, or contact the State Chief Privacy Officer (Enterprise Security, Privacy & Risk Compliance team) via GRC@AZDOHS.gov for an extension to the one-year deadline.

Enter text.	Enter text.
Signature of person authorized to sign	Proposer
Enter text.	Enter text.
Printed name and title	Date
Enter text.	Enter text.
Contact email address	Contact phone number
Enter text.	Enter text.
StateRAMP Number	FedRAMP Number

Form IQS-10 Letter Agreement for One-on-One Meetings

Instructions:

- Complete and submit Attachment A in their Initial Qualifications Submittal reflecting acknowledgement of the requirements for One-on-One Meetings.

To All Qualified Proposers:

As set forth in this letter agreement ("Letter Agreement"), the Water Infrastructure Finance Authority of Arizona ("WIFA") will give each of the Qualified Proposers for the Long Term Water Augmentation Fund Solicitation for Procurement ("Solicitation") the opportunity to participate in industry review and one-on-one meetings with WIFA and its advisors to discuss the procurement and related documents or communications provided by WIFA.

Prior to commencing participation in industry review and the one-on-one meetings, WIFA requires that each Proposer execute Attachment A (Countersignature to Letter Agreement), pursuant to which the Qualified Proposer agrees to abide by this Letter Agreement and confirms that it will not base any protest regarding the Procurement on the basis that the industry review process described in this Letter Agreement, including one-on-one meetings, occurred. Respondents to the Initial Qualifications Submittal shall return an executed copy of Attachment A (which should be transmitted attached to a copy of this Letter Agreement) to WIFA as part of the Initial Qualifications Submittal.

Failure by a Qualified Proposer to return an executed copy of Attachment A by the above deadlines may, in WIFA's sole discretion, result in a delay in the delivery of documents to that Proposer and/or that Proposer being precluded from participation in the industry review process and, ultimately, disqualification from the Procurement.

1. Procurement Website

After the execution of this Letter Agreement and notification by WIFA that the proposer is a qualified as a Qualified Proposer, Qualified Proposers shall have access to a procurement website (the "Website") on a date to be provided by WIFA via separate written correspondence.

WIFA shall post on the Website documents relevant to the Solicitation.

2. One-on-One Meetings

The one-on-one meetings are mandatory for all Qualified Proposers, and a representative of each Qualified Proposer must be present at each of the meetings (up to 12 representatives will be allowed). All one-on-one meetings during the Procurement process must adhere to the procedures set forth in Exhibit 1 to this Letter Agreement.

The initial one-on-one meetings to be held during this Solicitation phase will be held in person, in or near Phoenix, Arizona as set forth below. The specific location of the one-on-one meetings shall be sent to Qualified Proposers before the meetings.

The discussion topics for the one-on-one meetings shall include: (1) commercial and financial issues in the Solicitation and draft Agreement; and (2) technical issues.

A minimum of ten business days in advance of the one-on-one meeting, each Qualified Proposer shall submit to WIFA's Procurement Officer the following documents in Microsoft Word:

a. A set of the Qualified Proposer's written comments and questions relating to the Solicitation. The comments should be submitted in the format described in Section C of Exhibit 1 (Procedures for One-on-One Meetings) and using the format shown in Exhibit 2 (Industry Review Question/Comment Form); and
b. A written agenda and list of Qualified Proposer's one-on-one meeting attendees (including name, title, firm, and role on the Qualified Proposer's team).
Qualified Proposers will be required at each of the one-on-one meetings to execute an Acknowledgment Regarding One-on-One Meetings in the form of Attachment B to this Letter Agreement.

3. Subsequent One-on-One Meetings

~~At this time, WIFA intends only to hold one set of one-on-one meetings prior to award.~~ WIFA will conduct a second set of mandatory One-on-One meetings with Qualified Proposers on the dates indicated in Section 1.7. All provisions of this Letter Agreement shall apply to the second set of One-on-One meetings.

WIFA reserves the right to hold additional one-on-one meetings if deemed necessary. Additional information concerning the dates, locations and topics of these meetings, if applicable, would be made available to the Qualified Proposers.

4. Rules of Contact

Qualified Proposers are required to abide by the following rules of contact:

a. No Qualified Proposer or any of its team members may communicate with another Qualified Proposer or its team members with regard to the Solicitation documents, one-on-one meetings, or any team's Offer, except that (1) subcontractors that are shared between two or more Qualified Proposers may communicate with their respective team members so long as those Qualified Proposers establish a reasonable protocol to ensure the subcontractor will not act as a conduit of information between the teams, and (2) this prohibition does not apply to public discussions regarding the Solicitation documents at any informational meetings sponsored by WIFA.
b. Only the authorized representative identified by each Qualified Proposer in its Statement of Qualifications may correspond with WIFA regarding the Solicitation and one-on-one meetings. Such authorized representatives shall only communicate in writing with WIFA and addressed to the Procurement Officer in accordance with Section 3.
c. No Qualified Proposer or representative thereof shall have any ex parte communications in relation to this solicitation in accordance with Section 3.6, including the following:
    - HDR Engineering, Inc.;
    - Nossaman LLP;
    - Snell & Wilmer LLP;

- Spencer Fane LLP;
- KPMG LLP;
- Piper Sandler; and
- "Affiliates" of the foregoing (meaning parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities, and other financially liable or responsible parties for the entity). Common ownership does not include the holding of stock in a publicly traded company unless such stock ownership is a majority position or results in control of the affected entity.

The foregoing restriction shall not, however, preclude or restrict communications: (a) expressly permitted by the Solicitation and this Letter Agreement; (b) approved in writing in advance by WIFA; (c) with regard to matters unrelated to the Solicitation documents, (d) any public or Qualified Proposer workshop related to the Procurement; or (e) any communications with WIFA personnel necessary to comply with pre-qualification or licensing requirements required by the Agreement.

Communication, defined in this Form as any substantive correspondence, contact or communication regarding a Qualified Proposer's WIP, between Qualified Proposers, Offtakers, Regulators and Transfer Partners are subject to the requirements listed in this Form, and as follows:

a. Communication with Regulators, Transfer Partners and other non-Proposer parties should be limited to those parties necessary to adequately prepare Qualified Proposer's Offer and relevant to Qualified Proposer's WIP.
b. Qualified Proposers shall not communicate with potential Offtakers.
c. Qualified Proposer contact with Regulators and Transfer Partners with respect to Proposer's WIP shall be subject to the following requirements:
    - Qualified Proposer shall comply with the requirements of Form O-5.
    - Exhibit 1 to Form O-5, signed by Qualified Proposer, shall be submitted to the WIFA Procurement Officer via email or other written communication, a minimum of 72 hours prior to substantive communication with Regulator or Transfer Partner. WIFA reserves the right to PROHIBIT communication with specific Regulator or Transfer Partner and will notify Qualified Proposer in writing of prohibited communication following submission of Exhibit 1.
    - Exhibit 2 to Form O-5, documenting Stakeholder communication that includes specific information related to Qualified Proposer's WIP or Offer shall be submitted to the WIFA Procurement Officer via email within 48 hours of any meeting, correspondence or other communication with Regulator or Transfer Partner.

~~d. Qualified Proposers shall not directly contact the below-listed "Stakeholders," or any of their employees, representatives, consultants, or members, regarding the Solicitation, it being WIFA's intent that WIFA provide any necessary coordination with such Stakeholders during this stage in order that, among other things, this Solicitation be implemented in a fair, competitive, and transparent manner and with uniform dissemination of information:~~

- ~~Any federal, state, or local government agent or agency of the United States of America, other government or country, or political subdivision thereof.~~

~~Information requests~~Communication concerning these ~~Stakeholders~~ Regulators and Transfer Partners must be sent to WIFA's Procurement Officer in accordance with SECTION 2~~Section 3~~.

a. Any communications determined by WIFA, in its sole discretion, to be prohibited or improper may result in disqualification. "Improper" as used in this Letter Agreement means detrimental or prejudicial to the integrity of the Procurement.
b. Any official information regarding the Solicitation will be in writing, on WIFA's letterhead, and signed by WIFA's Procurement Officer or their designee.
c. WIFA will not be responsible for, and the Qualified Proposers may not rely on, any oral or written exchange or any other information or exchange that occurs outside the official process specified in this Solicitation.

5. Qualified Proposer Questions

Qualified Proposer questions during one-on-one meetings and in connection with documents issued during the Solicitation process are addressed in Exhibit 1.

Qualified Proposers may commence asking questions about the Solicitation at this time. Qualified Proposers may submit written questions to WIFA's Procurement Officer in accordance with Section 3. WIFA will only consider questions regarding the Solicitation documents if submitted by a Qualified Proposer to WIFA's Procurement Officer in accordance with Section 3.

6. Confidentiality Agreement

As a condition to participation in the one-on-one meetings and the post-IQS phase of the Solicitation process, each Qualified Proposer (on behalf of itself and all of its corresponding team members) agrees to maintain the confidentiality of all Solicitation documents, reference documents, documents posted on the Website, and any other information related to the Solicitation that WIFA designates to Qualified Proposers as confidential (collectively, "Confidential Information"). Each Qualified Proposer agrees to maintain security and control over all documents and e-mails containing such Confidential Information in the Qualified Proposer's custody or control. Qualified Proposers agree it will not divulge any Confidential Information to the media, any member of the public, or any other party for a purpose other than to a team member for development of an Offer in response to the Solicitation.

7. Protests

Any reservations or protest that a Qualified Proposer may have arising out of or relating to this Letter Agreement, the terms, conditions, and procedures contained in this Letter Agreement, the Acknowledgment Regarding One-on-One Meetings contained in Attachment B to this Letter Agreement, or the Solicitation must be addressed in accordance with Section 3.20 of the Solicitation.

8. Generally

Capitalized terms used but not defined in this Letter Agreement have the meanings given in the Solicitation, if not defined by means of reference to another document.

WIFA looks forward to working with the Qualified Proposers as we collectively move forward to the next phase of the Solicitation.

Sincerely,

Brenda Prevost

Procurement Officer

EXHIBIT 1

LONG-TERM WATER AUGMENTATION FUND

LETTER AGREEMENT REGARDING ONE-ON-ONE MEETINGS

PROCEDURES FOR ONE-ON-ONE MEETINGS

A. One-on-One Meetings

WIFA intends to conduct one-on-one meetings with each Qualified Proposer to discuss issues and clarifications regarding the Solicitation and related documents or communications provided by WIFA or the Qualified Proposers. WIFA reserves the right to disclose to all Qualified Proposers any issues raised during the one-on-one meetings; provided, however, that WIFA will not disclose such issues if WIFA, in its sole discretion, determines that disclosure: (i) would impair the confidentiality of information that WIFA determines is confidential and which is submitted as part of this procurement, or would reveal a Qualified Proposer's confidential business strategies; (ii) is not necessary in order to address an error, mistake, omission, conflict or ambiguity in the Procurement related documents; (iii) is not necessary for purposes of fairness and transparency; and (iv) is not required by the Arizona Public Records Law. Participation at such meetings by the Qualified Proposers shall be mandatory. Representatives of WIFA and WIFA advisors, may attend and participate in one-on-one meetings.

The one-on-one meetings will adhere to the following:

- The meetings are intended to provide Qualified Proposers with a better understanding of the Procurement and related documents or communications provided by WIFA.
- WIFA, except as noted in this Letter Agreement, will not discuss with any Qualified Proposer any information submitted as part of this procurement other than its own.
- The Qualified Proposers shall not seek to obtain commitments or coaching from WIFA or their advisors in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Qualified Proposer.
- No aspect of these meetings is intended to provide any Qualified Proposer with access to information that is not similarly available to other Qualified Proposers. Accordingly, material information about the Solicitation that WIFA reveals or discusses in response to questions raised in a one-on-on meeting will, except as noted in this Letter Agreement, be revealed to the other Qualified Proposers.
- The discussions or any statements made by either party shall not be binding on such party.
- No part of the evaluation of Offers will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules.

B. Questions and Responses During One-on-One Meetings

During one-on-one meetings, Qualified Proposers may provide information and comments and ask questions, and WIFA may provide oral responses. If, during any individual one-on-one meeting, WIFA provides responses to material questions asked by any Qualified Proposer, the questions and answers may, in WIFA's sole discretion, be recorded and provided in writing to all Qualified Proposers, except to

the extent provided in this Letter Agreement. The extent of permitted reliance on WIFA responses, if any, shall be limited and shall be set forth in the Solicitation documents.

C. Questions and Responses Regarding the Project

Qualified Proposers shall be responsible for reviewing Solicitation related documents or communications provided by WIFA, and for requesting clarification or interpretation of any perceived discrepancy, inconsistency, deficiency, ambiguity, error or omission contained therein, or of any provision which the Qualified Proposer fails to understand. Qualified Proposers will be limited to 75 comments, questions, or requests for clarification during the one-on-one process. If a comment or question has more than one subpart, each subpart will be considered a separate comment or question. Corrections of typographical errors, incorrect cross references or internal inconsistencies within the Solicitation will be excluded from the 75-question limitation.

Qualified Proposers shall submit, and WIFA will respond to, such requests in accordance with this Section C of Exhibit 1. The oral responses and any written responses will not be considered part of the LTWIP Base Contract(s).

Qualified Proposers shall submit questions regarding the Solicitation provided by WIFA, including requests for additional information, clarification, or interpretation or to correct any discrepancy, inconsistency, deficiency, ambiguity, error or omission, to WIFA's Procurement Officer in accordance with Section 3 in the format prescribed in this Letter Agreement. Telephone or oral requests will not be considered.

Qualified Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to this Solicitation. Questions may be submitted only by the Qualified Proposer's identified authorized representative and must include the representative's name, address, telephone, e-mail address, and the Qualified Proposer he/she represents. Such comments/questions shall: (i) be submitted in Microsoft Word using the format set forth in Exhibit 2; (ii) be sequentially numbered; (iii) identify the relevant section number and page number (e.g., Technical Requirements, Section 3.2.2, page 3-9); or, if it is a general question, so indicate; (iv) not identify the Qualified Proposer's identity in the body of the question or contain confidential information; and (v) indicate whether the question is a Category 1, 2, 3, or 4 question.

As used above, "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Qualified Proposer from submitting an Offer. "Category 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Qualified Proposer from submitting an Offer. "Category 3" means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 and Category 2 issue. "Category 4" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

WIFA reserves the right to reject questions or requests not meeting the foregoing requirements. Questions or comments addressed to any person other than WIFA's Procurement Officer will not be considered.

D. Responses to Questions; Confidentiality

Responses to questions will be provided either through revised drafts of documents or, in limited circumstances, specifically in writing and will be delivered to all Qualified Proposers.

Exhibit 2

LONG-TERM WATER AUGMENTATION FUND SOLICITATION

QUESTION/COMMENT FORM FOR ONE-ON-ONE MEETINGS

Comment Sheet No. Enter text. of Enter text. Sheets

No.	Document and Section Number	Category	Question(s)/Comment(s)	Reserved for WIFA's Response
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.

ATTACHMENT A

LONG-TERM WATER AUGMENTATION FUND

LETTER AGREEMENT REGARDING ONE-ON-ONE MEETINGS

COUNTERSIGNATURE TO LETTER AGREEMENT

The undersigned Proposer, on its own behalf and on behalf of Enter text., hereby (1) confirms its intent to participate in the one-on-one meetings for the Long-Term Water Augmentation Fund Solicitation, and (2) agrees to the one-on-one meeting procedures set forth in the Letter Agreement.

[Proposer's Name]

By: Enter text. _____

Name: Enter text. _____

Title: Enter text. _____

Date: Enter text. _____

Name: Enter text. _____

Title: Enter text. _____

Date: Enter text. _____

~~Name: _____~~

~~Title: _____~~

~~Date: _____~~

ATTACHMENT B

LONG-TERM WATER AUGMENTATION FUND

LETTER AGREEMENT REGARDING ONE-ON ONE MEETING

ACKNOWLEDGMENT REGARDING ONE-ON-ONE MEETINGS

The undersigned hereby acknowledge the following:

1) On November 20, 2024 the Water Infrastructure Finance Authority of Arizona ("WIFA") issued that certain Solicitation to design, supply, build (including installation), finance, operate, and maintain the Long-Term Water Importation Project.
2) On or before XXXXXXX XX, 2024, WIFA received initial Qualification Submittals from XX Proposers, including Enter text. (the "Qualified Proposer").
3) WIFA qualified XXXX of the Proposers, including the Qualified Proposer, and intends to hold a series of one-on-one meetings to discuss various issues relating to the Long-Term Water Augmentation Fund Solicitation (the "Solicitation").
4) Each person attending the one-on-one meetings has been given notice of certain terms, conditions, and procedures that govern participation in the one-on-one meetings, as described in this Attachment B or in the corresponding letter agreement dated of XXXXX Enter text. , 2024 and sent by WIFA to the Qualified Proposer (the "Letter Agreement"). The terms, conditions, and procedures set forth in the Letter Agreement are expressly incorporated in this Attachment B and apply with full force and effect to all one-on-one meetings.
5) The undersigned individuals representing the undersigned Qualified Proposer acknowledge and agree to comply with the following rules and restrictions applicable to these meetings:
    a. The meetings are intended to offer the Qualified Proposers an opportunity to obtain a better understanding of the Solicitation and related documents or communications provided by WIFA, and to enable the undersigned Qualified Proposer to advise WIFA of comments, issues and requested changes to the Solicitation related documents provided by WIFA.
    b. The undersigned Qualified Proposer cannot rely on statements made by WIFA and/or its representatives at these meetings, including statements regarding any changes or modifications to the Solicitation related documents provided by WIFA or statements relating to concepts discussed at the meeting. Any changes or modifications made to the Solicitation related documents provided by WIFA or to any other aspect of the Solicitation process shall be made solely in writing by WIFA.
    c. If WIFA deems it advisable, it may issue written responses to any or all of the Qualified Proposers addressing questions or issues raised at the meetings and/or it may issue one or more addenda revising and/or supplementing the Solicitation related documents provided by WIFA. If WIFA elects to issue such written responses, WIFA will not identify the Qualified Proposer(s) that raised the question or issue.
    d. The undersigned Qualified Proposer may seek input from WIFA regarding potential technical concepts, but shall not seek to obtain coaching or commitments from WIFA in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Qualified Proposer.
    e. No aspect of these one-on-one meetings is intended to provide any Qualified Proposer with access to information that is not similarly available to other Qualified Proposers,

and no part of the evaluation of information submitted by Qualified Proposers as part of this Solicitation will be based on the conduct or discussions that occur(s) during these meetings.

6) This Acknowledgment is executed on Enter text., Enter text., Enter text..

Enter text.
Qualified Proposer's Name

7) <u>Representatives</u>:

Enter text.
Name: Enter text. Organization: Enter text.

Enter text.
Name: Enter text. Organization: Enter text.

Enter text.
Name: Enter text. Organization: Enter text.

Enter text.
Name: Enter text. Organization: Enter text.

Enter text.
Name: Enter text. Organization: Enter text.

Enter text.
Name: Enter text. Organization: Enter text.

Form IQS-11 Proposer Information Form

Instructions:

- If the potential Developer has been formed, complete this form in full and also complete Form IQS-11 for each identified Equity Member
- If the potential Developer has not yet been formed, complete only the relevant portions of the form and complete form IQS-11 in full for each identified Equity Member

Provide the name of Proposer and state whether it is also the potential Developer or whether a separate entity will be formed to enter into the Contract:

Identify the Proposer's authorized representative(s) (**"Proposer's Representative"**):

Name: Enter text.	Telephone No: Enter text.
Title: Enter text.	Email: Enter text.

Name: Enter text.	Telephone No: Enter text.
Title: Enter text.	Email: Enter text.

List all of the Equity Members in Proposer and the potential Developer in the space below:

Enter text.

If the potential Developer has been formed (that is, the Proposer is also the potential Developer), complete the remainder of this form.

Information Regarding Potential Developer:

Year Established: Enter text.

Firm's CEO/Equivalent Position: Enter text.

Federal Tax ID No: Enter text.

Type of Business Organization (check one):

□ Corporation (If yes, then indicate the State/Country/Province and Year of Incorporation): Enter text.

□ Partnership (If yes, then complete Section A below)

□ Joint Venture (If yes, then complete Section A below)

□ Limited Liability Company (If yes, then complete Section A below)

□ Other (If yes, describe and complete Section A below) Enter text.

Section A. If the submitting firm is a form of organization other than a corporation, indicate the name and role of each member entity in the list below:

Name of Firm: Enter text. Role: Enter text.

Name of Firm: Enter text. Role: Enter text.

Name of Firm: Enter text. Role: Enter text.

Name of Firm: Enter text. Role: Enter text.

Name of Firm: Enter text. Role: Enter text.

Name of Firm: Enter text. Role: Enter text.

Name of Firm: Enter text. Role: Enter text.

Name of Firm: Enter text. Role: Enter text.

Form IQS-12 Comparable Professional Engineering Services Contract

Instructions:

- Complete one Form IQS-12 reflecting **one** contract involving professional engineering services comparable to the WIP and anticipated Task Orders under the Contract. This form IQS-12 shall not exceed two pages.
- The project included on this Form IQ-12 shall be a project that the Proposer deems to be relevant to the Project and reflective of the ability of the project team to successfully perform the work under the Contract. Only a project that is completed or substantially complete as of the date of the Proposer's Initial Qualifications Submittal may be included in this Form IQS-12. The project must demonstrate that its proposed Lead Engineering Firm has acted as the lead (or co-lead) designer for at least one water supply project with an installed capacity of at least 10,000 acre feet per year and at least one design-build, P3, or alternative project delivery method water project with design and construction cost of at least $250 million (USD) completed within the past 10 years, demonstrating the capability of the proposed Lead Engineering Firm to design the WIP.

Name of prospective Proposer: Enter text.

Name and role of prospective Key Participant: Enter text.

Project Name: Enter text. Project Location: Enter text.

Sponsoring Agency: Enter text.

Enter Name. / Enter Phone No. / Enter Email.
Sponsoring Agency Contact (Name / Phone No. / Email)

Key Participant's Role on Project: Enter text.

Nominal D&C Value of Project (USD): Enter text.

Total Design Fee (USD): Enter text.

Key Participant's Percentage of Total Design Fee: Enter text.

Project Status (start date and completion date): Enter text.

Relevance of referenced project to WIFA's Long-Term Water Importation Solicitation:

Enter text.

Form IQS-13 Comparable Construction-Related Services Contract

Instructions:

- Complete one Form IQS-13 reflecting **one** contract for a project involving construction and related services comparable to the WIP and anticipated Task Orders under the Contract. This form IQS-13 shall not exceed two pages.
- The project included on this Form IQ-13 shall be a project that the Proposer deems to be relevant to the WIP and reflective of the ability of the prospective project team to successfully perform the work under the Contract. Only a project that is completed or substantially complete as of the date of the Proposer's Initial Qualifications Submittal may be included in this Form IQS-13. The project must demonstrate that its proposed Lead Construction Contractor has acted as the lead (or co-lead) contractor for at least one design-build or P3 water supply project with an installed capacity of at least 10,000 acre feet per year and at least one design-build,P3, or alternative project delivery method water project with design and construction cost of at least $250 million (USD) completed within the past 10 years demonstrating the capability of the proposed Lead Construction Contractor to complete the WIP..

Name of Proposer: Enter text.

Name and role of Key Participant: Enter text.

Project Name: Enter text. Project Location: Enter text.

Sponsoring Agency: Enter text.

Enter Name./ Enter Phone No./ Enter Email.
Sponsoring Agency Contact (Name / Phone No. / Email)

Key Participant's Role on Project: Enter text.

Nominal D&C Value of Project (USD): Enter text.

Total Design Fee (USD): Enter text.

Key Participant's Percentage of Total Design Fee: Enter text.

Project Status (start date and completion date): Enter text.

Relevance of referenced project to WIFA's Long-Term Water Importation Solicitation:

Enter text.

Form IQS-14 Comparable Operation and Maintenance-Related Services Contract

Instructions:

- Complete one Form IQS-14 reflecting **one** contract for a project involving operation and maintenance related services comparable to the WIP and anticipated Task Orders under the Contract. This form IQS-14 shall not exceed two pages.
- The project included on this Form IQ-14 shall be a project that the Proposer deems to be relevant to the WIP and reflective of the ability of the prospective project team to successfully perform the work under the Contract. Only a project that is completed as of the date of the Proposer's Initial Qualifications Submittal may be included in this Form IQS-14. The project must demonstrate that its proposed Operations and Maintenance Firm has acted as the lead operations and/or maintenance manager for at least one water supply project with an installed capacity of at least 10,000 acre feet per year for at least five (5) uninterrupted years, demonstrating the capability of the proposed Operations and Maintenance Firm to operate and maintain the WIP.

Name of Proposer: Enter text.

Name and role of Key Participant: Enter text.

Project Name: Enter text. Project Location: Enter text.

Sponsoring Agency: Enter text.

Enter Name. / Enter Phone No. / Enter Email.
Sponsoring Agency Contact (Name / Phone No. / Email)

Key Participant's Role on Project: Enter text.

Nominal D&C Value of Project (USD): Enter text.

Total Design Fee (USD): Enter text.

Key Participant's Percentage of Total Design Fee: Enter text.

Project Status (start date and completion date): Enter text.

Relevance of referenced project to WIFA's Long-Term Water Importation Solicitation:

Enter text.

Form IQS-15: Comparable Proposer/Equity Member's Project Equity / Finance Related Experience

***Instructions for Form IQS-15*:**

- Complete one Form IQS-15 identifying up to 10 projects involving investment and/or significant role in project financing by one or more of the proposed Equity Members that the Qualified Proposer deems to be relevant to the Project and reflective of the experience of its Equity Member(s) relevant to investment in and successfully financing the Project. At least one project included on Form IQS-15 must have a transaction size of at least **$500M USD** in the last 10 years where the proposed Equity Member contributed at least 10% of the equity investment. Refer to Solicitation Section 3.5.4 for additional information regarding requirements for Form IQS-15. Project experience from Affiliates of an Equity Member may be included in Form IQS-15, if the Affiliate is a subsidiary of the Equity Member or if a Financially Responsible Entity is a direct or indirect common parent entity of both the Equity Member and Affiliate.
- Of the projects listed below, provide one-page narrative descriptions for a minimum of three and a maximum of five projects listed on the form that the Qualified Proposer deems to be the most relevant to the Project, including, at a minimum, the following details: (a) the project's financial plan and the Equity Member's role in developing and negotiating the financial plan, (b) the name and participation percentages of each original equity investors and a descriptive evolution of the Equity Member's (or Affiliate's) percentage equity interest from financial close to date, (c) elements of those projects that are similar to the Project, and (d) the Equity Member's role in supporting project development and commercial management. (PAGE LIMIT – 5 pages).
- For each project for which a one-page narrative description has been provided, the Qualified Proposer must provide references and contact information of the project owners. If a reference cannot be reached or does not respond to WIFA's request for information, WIFA reserves the right to not consider the project during its evaluation.
- All amounts reflected in the table below must be in US Dollars. Identify exchange rates of amounts in other currencies using the exchange rate as of November 1, 2024 and the benchmark on which the exchange rate is based.

NAME OF EQUITY MEMBER	PROJECT NAME, LOCATION, DESCRIPTION	PROJECT MILESTONES AND CURRENT STATUS	PROJECT TERM; STRUCTURE; PAYMENT MECHANISM[1]	D&C VALUE (NOMINAL VALUE)	TOTAL PROJECT FINANCING AMOUNT[2]	DEBT AMOUNT AND TYPE[3]	TOTAL EQUITY INVESTMENT AND ENTITY's % / DESCRIPTION OF FINANCE- RELATED ROLE[4]
Sample entry: *Infra Fund II*	*Water Supply Project, [State], USA – construction of water supply project consisting of water supply/intake, pre-treatment, and conveyance*	*Financial Close: [Date] Construction Completion Date/Status: 80% complete Operations Commencement: [Date] (expected) – 4 months earlier than baseline date*	*Construction plus 30 years; DBFOM; Availability Payment*	*$1.2 billion*	*$950 million*	*$855 million (private placement)*	*$95 million total* *Infra Fund II had a leading role on the financing (e.g. led one of the consortium coordinating committees (financial, commercial, technical, etc.).* *Infra Fund II contributed 60% of the total equity investment*
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.

[1] **PROJECT TERM; STRUCTURE; PAYMENT MECHANISM** - Provide the project term, project delivery structure (e.g., DBFOM, DBF, DBF+OM), and the payment mechanism used to compensate the developer (e.g., availability payments, revenue collections/sharing, or a combination of these).

[2] **TOTAL PROJECT FINANCING AMOUNT** - Provide the total amount of private financing used for the project, i.e., debt and equity (TIFIA loans, bonds, bank loans, subordinated shareholder loans, and any other debt instrument or facility), provided by the project's developer and equity members. Do not include any public debt, grants or other amounts provided by the project owner.

[3] **DEBT AMOUNT AND TYPE** - Provide the amount of each type of debt used and indicate the type of facility or instrument.

[4] **TOTAL EQUITY INVESTMENT AND EQUITY MEMBER'S %** - Provide the total amount of equity contributions made for the entire project and the Equity Member's contribution percentage. The equity investment may have been made in the form of either (i) shareholders' equity capital or (ii) shareholder subordinated debt. Please indicate separately the percentage of ownership interest in the project or developer, as applicable, if different than the Equity Member's contribution percentage. Also specify the role of the Equity Member in the project financing (e.g. active/leading role or passive investor, etc.).

Form IQS-16: Organizational Conflict of Interest Disclosure Statement

[TO BE COMPLETED BY PROPOSER ON ITS BEHALF AND ON BEHALF OF ALL ENTITIES ON THE PROPOSER TEAM]

For purposes of this Form IQS-16, "organizational conflict of interest" is defined as follows:

Organizational conflict of interest means a circumstance arising out of a Consultant's existing or past activities, including past activities as a Consultant to or employee of WIFA, business interests, familial relationships, contractual relationships, and/or organizational structure (i.e., Affiliates, etc.) wherein (i) the Consultant is or may be unable to render impartial assistance or advice to WIFA, (ii) the Consultant's objectivity in performing the scope of work sought by WIFA is or might be otherwise impaired, (iii) the Consultant has, or is perceived to have, an unfair competitive advantage; (iv) the Consultant's performance of Services on behalf of WIFA does or may provide an unfair competitive advantage to a third party; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Consultant or a third party as a result of the Consultant's participation on the Solicitation.

Proposers are advised that in accordance with the Water Infrastructure Finance Authority of Arizona's (WIFA) Organizational Conflict of Interest Policy, certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with WIFA in connection with the procurement and document preparation for the Project.

1. **Disclosure**

   In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Equity Members, identified Subcontractors and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this Solicitation. If no disclosure is necessary, indicate "None".

   By way of example only, and in no way limiting the Proposer's disclosure obligations, Proposer should disclose (a) any current contractual relationships with WIFA, (b) any past, present, or planned contractual or employment relationships with any WIFA member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any WIFA member, officer, or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the Solicitation preparers. Proposer should also disclose contractual relationships with a Solicitation preparer in the nature of a joint venture, as well as relationships wherein the Solicitation preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team.

2. **Explanation**

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described in this Organizational Conflict of Interest Disclosure Statement.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Organizational Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer's Name: Enter text.

Signature: Enter text.

Title: Enter text.

Name: Enter text.

Company Name: Enter text.

Dated as of: [Date.], 20 Year.

Form IQS-17: Question or Comment Instructions

Instructions: Submit form in accordance with Section 2.7.2 and due dates as specified in Section 1.7. Submit form using Procurement Portal.

No.	Reference Section	Question/Comment

Form IQS-18: Acknowledgement of Amendments

Instructions: Submit form in accordance with Section 3.3.12 and due dates as specified in Section 1.7.

The undersigned acknowledges receipt, understanding and full consideration of the following Solicitation Amendment(s) to the Solicitation. Failure to return a signed copy of this form with the IQS submittal may result in the Proposer being found non-responsive.

Solicitation Amendment No(s):

Enter text. _____

Enter text. _____

Enter text. _____

Enter text. _____

Enter text. _____

Signed: Enter text. _____

Printed Name: Enter text. _____

Title: Enter text. _____

Date: Enter text. _____

Form IQS-19: Organizational Documents

Instructions: Submit form in accordance with Section 3.7.1 and due dates as specified in Section 1.7.

Submit this form with submission of organizational documents, or proposed organizational governance documents for proposed entities, as required in this Solicitation.

Submitted Documents:

No.	Document:
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.

Signed: Enter text. _____

Printed Name: Enter text. _____

Title: Enter text. _____

Date: Enter text. _____

Form IQS-20: Record of Performance and Integrity

Instructions: Submit form in accordance with Section 3.7.2 and due dates as specified in Section 1.7. Submit this form with submission of information demonstrating that the Proposer is not currently, nor was at any time in the past ten (10) years, debarred or suspended from the conduct of business in Arizona, the United States of America, or any other state or country in which business activities are proposed to occur in connection with the WIP. With this form, Proposer to provide a list of any notices of default received or terminations for cause, claims exceeding 5% of contract value, or liquidated damages exceeding 1% of contract value on any government contract or grant at any time in the past the past (10) years. For each reported instance, provide owner contact information.

Submitted Documents:

No.	Document:
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.

Signed: Enter text.

Printed Name: Enter text.

Title: Enter text.

Date: Enter text.

Form IQS-21: Legal Qualification to Contract with WIFA

Instructions: Submit form in accordance with Section 3.7.3 and due dates as specified in Section 1.7. Submit this form with submission of information demonstrating that the Proposer is currently licensed, or able to be licensed, to perform business in Arizona, the United States of America, or any other state or Country in which business activities are proposed to occur and shall remain licensed at all times during the performance of services. This requirement shall extend to Proposer member firms and Key Personnel identified in the Offer.

Submitted Documents:

No.	Document:
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.

Signed: Enter text. _____

Printed Name: Enter text. _____

Title: Enter text. _____

Date: Enter text. _____

SECTION 8. ORGANIZATIONAL CONFLICT OF INTEREST POLICY

The Water Infrastructure Finance Authority of Arizona's (WIFA)

Organizational Conflict of Interest Policy

for the Long-Term Water Augmentation Fund Procurement Solicitation

Section 1. Purpose. It is WIFA's policy that an Organizational Conflict of Interest exists for any person or firm under contract, or previously under contract with WIFA, to prepare procurement documents, preliminary plans, planning reports or other project development products for the Solicitation. A person or firm with an organizational conflict will not be allowed to participate in any capacity on a Proposer's team.

The purposes of the Organizational Conflict of Interest Policy are as follows:

- Promote full and open competition, integrity, and transparency in Procurement or Contract Administration;
- Promote an environment conducive to Contracting Parties providing goods or services to WIFA in an impartial and objective manner;
- Provide guidance to enable Contracting Parties to make informed decisions while conducting business with WIFA; and
- Protect the validity of WIFA's Procurement or Contract Administration, protect WIFA's interests, and protect WIFA's confidential and sensitive information.

Section 2. Definitions.

Section 2.1. "Affiliate" means parent companies, subsidiary companies, entities under common ownership, joint ventures and partnerships involving such entities, and other financially liable or responsible parties for the entity). Common ownership does not include the holding of stock in a publicly traded company unless such stock ownership is a majority position or results in control of the affected entity—all of which are subject to this Organizational Conflict of Interest Policy.

Section 2.2. "Consultant" means any person or business entity (including any individual employee of such entity or any division and/or Affiliate of such entity) previously or currently retained, or in the process of being retained, by WIFA to provide Services in connection with the Solicitation, including subconsultants and individual employees of subconsultants.

Section 2.3 "Organizational Conflict of Interest" means a circumstance arising out of a Consultant's existing or past activities, including past activities as a Consultant to or employee of WIFA, business interests, familial relationships, contractual relationships, and/or organizational structure (i.e., Affiliates, etc.) wherein (i) the Consultant is or may be unable to

render impartial assistance or advice to WIFA, (ii) the Consultant's objectivity in performing the scope of work sought by WIFA is or might be otherwise impaired, (iii) the Consultant has, or is perceived to have, an unfair competitive advantage; (iv) the Consultant's performance of Services on behalf of WIFA does or may provide an unfair competitive advantage to a third party; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Consultant or a third party as a result of the Consultant's participation on the Solicitation.

Section 2.4. "Organizational Conflict of Interest Policy" means this WIFA Organizational Conflict of Interest Policy for the Solicitation.

Section 2.5. "Proposer" means any person or business entity, including joint ventures, partnerships, limited liability companies, corporations, consortia, teams or other groups or organizations of individuals or entities, or the individuals and entities that make up such groups that have submitted an Initial Qualifications Submittal or proposal on the Solicitation, or are interested in submitting a Initial Qualifications Submittal or proposal on the Solicitation.

Section 2.6. "Services" means, in the context of this Policy, consulting services related to the Solicitation's development, which may include, but are not limited to, some or all of the following: planning services; procurement services' federal and state environmental services; financial advisory services; insurance services, and legal services.

Section 2.7. "Solicitation" means the Long-Term Water Augmentation Fund Solicitation for Procurement.

Section 2.8. "WIFA" means the Water Infrastructure Finance Authority of Arizona.

Section 3. Conflicts of Interest.

Section 3.1. Applicability. This Policy applies to Consultants who desire to participate in, have participated in or are participating in the performance of Services for WIFA related to the Solicitation. This Policy may prohibit or restrict the ability of a Proposer to have a Consultant participate on a Proposer team as an equity owner or team member, act as a consultant or subconsultant to a Proposer, or have a financial interest in a Proposer or an equity owner or team member of a Proposer. This Policy relates solely to the Solicitation and does not address WIFA's approach to conflicts of interest on other WIFA projects.

It Is WIFA's policy that an Organizational Conflict of Interest exists for any person or firm under contract, or previously under contract, with WIFA to prepare procurement documents, preliminary plans, planning reports or other project development products for the Solicitation. A person or firm with an organizational conflict will not be allowed to participate in any capacity on a Proposer's team. Exceptions to this policy may be granted by WIFA, upon written request from such person or firm, if it is determined that the person's or firm's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit a written request as soon as possible (optimally within thirty (30) days after the issuance date of the Solicitation, because WIFA shall not extend the

Proposal Initial Qualifications Submittal Deadline or be responsible for any inability or failure to respond prior to the Proposal Initial Qualifications Submittal Deadline to any such request.

Section 3.2. Conflicts of Interest Disclosure.

Section 3.2.1. Obligation to Disclose. Consultants participating in the Solicitation shall arrange their affairs so as to prevent Conflicts of Interest from arising. Any Consultant having an actual, potential or perceived Organizational Conflict of Interest shall disclose the matter to WIFA in writing with supporting facts and information to the Procurement Officer.

The Consultant's Organizational Conflict of Interest disclosure obligation is ongoing. Consultants should undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential or perceived Conflicts of Interest arise. Due diligence should extend to investigation of past relationships and, if the Consultant is an entity, to employees, officers or directors of the Consultant. If a Consultant becomes aware of an actual, potential or perceived Organizational Conflict of Interest at any time during its participation in the Solicitation, the Consultant shall promptly disclose the matter to WIFA as described herein. A Consultant shall use its best efforts to respond to any requests for additional information and documentation which WIFA deems necessary to fully evaluate WIFA's Organizational Conflict of Interest issues and to consider WIFA's determination. The Consultant's failure to provide such information or documentation when requested may impact WIFA's final determination hereunder.

Section 3.2.2. Failure to Comply. If a Consultant fails to comply with this Policy, including failure to comply with any mitigative measures imposed under this Policy, or otherwise fails to disclose an actual, potential or perceived Organizational Conflict of Interest, WIFA may, in its sole discretion:

(A) Preclude and/or disqualify the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had affiliated, from participation in the planning, procurement, design, construction and/or development of the Solicitation, including any competitive process associated therewith;

(B) Require the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had affiliated, to implement mitigative measures;

(C) Segregate or terminate the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had affiliated, from planning, procurement, design, construction and/or development of the Solicitation; and/or

(D) Pursue any and all other rights and remedies available at law, in equity, or set forth in the Solicitation, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the Consultant's failure to comply with this Policy, including, but not limited to, costs resulting from third-party challenges to the procurement or WIFA's re-procurement of the Solicitation.

Section 3.3. Period in Which an Organizational Conflict of Interest Applies. If WIFA determines that the performance of Services by a Consultant creates an actual, potential or perceived

Organizational Conflict of Interest, the provisions in this Policy and any decisions made by WIFA related to such Organizational Conflict of Interest (including prohibitions, mitigative measures, etc.) shall continue and apply for the duration of the planning, procurement, design, construction and development of the Solicitation, provided that WIFA may, on a case-by-case basis and in its sole discretion, modify the length of this time period in writing if it determines that the modification is in the best interests of WIFA and the procurement of the Solicitation.

Section 3.4. Application to New Firm. If an Organizational Conflict of Interest applies to an individual, the Organizational Conflict of Interest and prohibition with respect to the individual will not apply to the individual's new place of employment, unless the new employer is an Affiliate of the employee's previous employer or unless mitigative measures will not, in WIFA's sole discretion, mitigate or eliminate the Organizational Conflict of Interest issue. If the new employer is not an Affiliate of the previous employer and is otherwise eligible to perform Services for WIFA pursuant to this Policy and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigative measures may be required of the new employer with respect to the employee.

Section 3.4.1. Federal and State Requirements. WIFA's Policy and the provisions of this Solicitation are intended to augment applicable federal and state law, including federal organizational conflict of interest laws and rules and the laws and rules relating to the National Environmental Policy Act (NEPA). Such applicable Governmental Rules will also apply to Proposer teams and teaming and may preclude certain firms and their entities from participating on a Proposer team.

Section 3.4.2. Limitations on Commission Consents and Approvals. To the extent that application of the federal and state laws and regulations would preclude or limit participation by a Consultant or an individual with respect to the Solicitation, then notwithstanding any other aspect of this Policy or any contrary decision by WIFA in response to an actual, potential or perceived Organizational Conflict of Interest under this Policy, such federal and state laws and regulations shall control and be determinative. Under no circumstances shall a decision, approval or consent by WIFA in response to a disclosure, request or actual, potential or perceived Organizational Conflict of Interest under this Policy be considered an opinion with respect to the applicability or effect of such federal and state laws or regulations, and Consultant shall bear all responsibility and liability for determining if a conflict under federal and/or state laws or regulations exist in relation to the Consultant's work or proposed work on the Solicitation.

Section 3.5. Binding Effect of WIFA Decisions. WIFA shall not withdraw or amend a prior consent or approval granted to a Consultant under this Policy unless:

(A) Applicable federal and state laws and regulations require the consent or approval to be withdrawn or amended; or

(B) WIFA decides, in its sole discretion, to withdraw or amend the consent or approval based on factual circumstances that WIFA has been made aware of that were not disclosed

when WIFA made its original decision, or factual circumstances that are new or have changed since WIFA made its original decision; or

(C) The Consultant or Proposer team fails to comply with any mitigative measures imposed under this Policy.

Section 3.6. General Organizational Conflict of Interest Standards. Except as provided in Section 3.7 of this Policy, no Consultant that has previously provided Services or that is currently providing Services to WIFA with respect to the Solicitation may be a Proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a Proposer for the Solicitation, or have a financial interest in any of the foregoing entities with respect to the Solicitation.

Section 3.7. Determination Regarding Provision of Services for the Solicitation.

Section 3.7.1. Discretion of WIFA. Unless otherwise indicated in this Policy, all approvals, actions or discretion under this Policy and with respect to an actual, potential or perceived Organizational Conflict of Interest shall be within the sole discretion of WIFA.

Section 3.7.2. Determination Process. In response to a disclosure under Section 3.2.1 of this Policy or information WIFA obtains independent of a Consultant, WIFA shall determine whether a Consultant has an actual, potential or perceived Organizational Conflict of Interest that WIFA determines should prevent the Consultant from (i) being a Proposer, (ii) participating as an equity owner, team member, consultant, or subconsultant of or to a Proposer for the Solicitation, (iii) having a financial interest in any of the foregoing entities with respect to the Solicitation or (iv) otherwise participating in the design, construction or development of the Solicitation. Once WIFA makes this determination, it shall send the Consultant a written notice regarding the decision and, if participation is approved, whether the approval and participation is limited or subject to the Consultant meeting certain conditions. WIFA shall consider some or all of the following factors when making the determination:

(A) Whether the Consultant will not, or in the case of the previous performance of Services did not, have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide, or could be perceived to provide, an unfair competitive advantage with respect to the procurement, design, construction or development of the Solicitation;

(B) Whether the data and information provided to the Consultant in the performance of the Services is either substantially irrelevant to the procurement for the Solicitation or is generally available on substantially an equal and timely basis to all Proposers;

(C) The type of Services at issue;

(D) The particular circumstances at issue, including the Consultant's ability to effectively implement the safeguards described in Section 3.10 of this Policy, including an ethical wall, or to otherwise mitigate the Organizational Conflict of Interest in a manner satisfactory to WIFA;

(E) The specialized expertise, if any, needed by WIFA and Proposers to implement the Project;

(F) The period of time between the previous work for WIFA and the potential Organizational Conflict of Interest situation;

(G) Whether the Consultant's work for WIFA has been completed or is ongoing;

(H) The potential impact on the procurement and implementation of the Solicitation, including impacts on competition;

(I) Whether WIFA believes that the Consultant's participation is in the best interests of WIFA; and

(J) Any other factors or circumstances deemed relevant by WIFA.

Section 3.8. Procurement and Financial Services. Independent of the process described in Section 3.7 of this Policy, a Consultant actively engaged and performing procurement services or financial services with respect to the Solicitation may not be a Proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a Proposer for the Solicitation, or have a financial interest in any of the foregoing entities with respect to the Solicitation.

Section 3.9. Multiple Services. If a Consultant is providing more than one category or type of Services to WIFA for the Solicitation (e.g., environmental services as well as procurement services) and there are differences in this Policy's considerations, standards, restrictions, limitations and outcomes applicable to those categories or types of Services, the standards, restrictions, limitations and outcomes applicable to a category that are more stringent will be applied (e.g., if a Consultant were only providing preliminary engineering services that have been completed, they may be approved to participate on a Proposer team, whereas, if they were also providing ongoing procurement services for the Solicitation, they may not be approved to participate on a Proposer team).

Section 3.10. Restriction of Services and Conditions to Approvals and Exceptions. In order to address actual, potential or perceived Conflicts of Interest, WIFA as part of providing its consent to the participation of a Consultant may, in its discretion:

(A) Restrict the scope of Services the Consultant may be eligible to perform for WIFA or the Proposer team in order to further the intent and goals of this Policy;

(B) Condition an approval, determination, or exception as WIFA determines appropriate to further the intent and goals of this Policy, including by requiring the Consultant or Proposer to implement certain safeguards, including, but not limited to:

(i) The execution of confidentiality agreements satisfactory to WIFA, which may, among other things, include the segregation and protection of information obtained as a result of the Consultant's prior or ongoing work for WIFA or from former or current WIFA employees; and/or

(ii) The execution of ethical wall agreements satisfactory to WIFA, which segregate certain personnel from participation in the Solicitation; and/or

(iii) The execution of agreements satisfactory to WIFA regarding the dissemination of work product and materials created as a result of Consultant's prior or ongoing work for WIFA, including dissemination to WIFA and restrictions on dissemination by the Consultant to any Proposer team, including a team on which they intend to participate.

Section 3.11. Provisions are Nonexclusive. The provisions in this Policy do not address every situation that may arise in the context of WIFA's planning, procurement, design, construction or development of the Solicitation nor require a particular decision or determination by WIFA when faced with facts similar to those described in this Policy. In addition, additional policies, procedures and limits related to conflicts of interest or similar issues may be imposed by WIFA at any time with respect to the Solicitation or any other WIFA projects.

SECTION 9. OFFER FORMS, REQUIRED CERTIFICATIONS, AND EXHIBITS

9.1. Offer Forms and Required Certifications

Form O-1: Offer Submittal Letter

Procurement Officer
Water Infrastructure Finance Authority of Arizona
3300 N. Central Avenue, Suite 1050
Phoenix, AZ 85012

SUBJECT: SOLICITATION #2024-001
LONG-TERM WATER AUGMENTATION FUND SOLICITATION FOR PROCUREMENT

The undersigned (**"Qualified Proposer"**) submits this offer ("**Offer**") in response to Solicitation #2024-001 dated November 21, 2024 (as amended, the **"Solicitation"**), issued by the Water Infrastructure Finance Authority of Arizona (**"WIFA"**) for a Long-Term Water Importation Project ("**LTWIP**"), as more specifically described in the solicitation and the documents provided with the Solicitation. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Solicitation.

Subject to the terms below, in consideration for WIFA supplying the Qualified Proposer, at our request, with the Solicitation Documents and agreeing to examine and consider this Offer, the undersigned undertake[s] [jointly and severally]**:**

a) to keep this Offer open for acceptance for 180 days after the Offer Due Date, without unilaterally varying or amending its terms and without any member of Offeror or partner (if Qualified Proposer is a partnership or a joint venture) withdrawing, or any other change being made in the composition of the proposed Developer on whose behalf this Offer is submitted, without first obtaining WIFA's prior written consent;

b) if the Qualified Proposer is selected for negotiations, to negotiate in good faith in accordance with the Solicitation; and

c) if the Qualified Proposer is recommended for LTWIP Base Contract award, to do the following or to cause the proposed Developer to do the following: (i) execute and deliver the LTWIP Base Contract without varying or amending its terms (except for modifications agreed to by WIFA), (ii) provide WIFA all required Certificates of Insurance and meet other requirements as stipulated in the Solicitation, and (iii) perform its obligations as set forth in the Solicitation and the LTWIP Base Contract, including compliance with all commitments contained in this Offer.

The following individual(s) is/are authorized to enter into negotiations with WIFA for, or on behalf of, Qualified Proposer and the proposed Developer in connection with the Solicitation, the Offer, the Services, the WIP and the LTWIP Base Contract:

Enter text.	Enter text.	Enter text.
Printed Name	Title	Phone
Enter text.	Enter text.	Enter text.
Printed Name	Title	Phone
Enter text.	Enter text.	Enter text.
Printed Name	Title	Phone

In addition to the formal certifications provided, the Offeror certifies that it has:

A. Examined and is fully familiar with all the provisions of the Solicitation and any Solicitation Amendment thereto;

B. Satisfied itself as to the requirements specified in the form of LTWIP Base Contract;

C. Carefully reviewed the accuracy of all statements shown in this Offer;

D. Satisfied itself with respect to other matters pertaining to the Solicitation which in any way affect the performance of the Services and the WIP; and

E. Submitted the Offer without qualifications, reservations, assumptions, limitations, conditions and exceptions and agrees that all terms and conditions specified in the form of LTWIP Base Contract are acceptable to the Qualified Proposer.

Therefore, the undersigned hereby agrees that WIFA will not be responsible for any errors and/or omissions in the Offer.

The undersigned acknowledges receipt, understanding and full consideration of the following Solicitation Amendment(s) to the Solicitation.

Solicitation Amendment No(s):

Amendment No. 1 (11/24/24)
Amendment No. 2 (12/23/24)
Amendment No. 3 (1/10/25)
Amendment No. 4 (1/17/25)
Amendment No. 5 (3/5/25)
Amendment No. 6 (3/26/25)
Amendment No. 7 (4/22/25)

Enter text.

Enter text.

Enter text.

The Qualified Proposer further confirms and certifies that:

A. The only persons, firms, companies, corporations, joint ventures/partnerships, and/or other parties interested in the Offer as principals are those listed as such in the Offer;

B. The persons, firms, companies, corporations, joint ventures/partnerships, and/for other parties interested in the Offer have registered with WIFA pursuant to the Solicitation qualifications requirements; and

C. During the period between issuance of the Solicitation and the Offer Due Date, no Proposer-Related Entity has met or otherwise interacted with Board members, Board staff, or representatives of WIFA with respect to Project-related issues, other than participating in public meetings as a member of the public.

Check one of the following boxes and provide additional information as required:

☐Qualified Proposer confirms that, during the period between issuance of the Solicitation and the Offer Due Date, no Proposer-Related Entity has met or otherwise interacted with any federal, state, or municipal elected officials, or any community or citizen organizations with respect to the Solicitation and LTWIP Base Contract-related issues.

OR

☐Please refer to the attached disclosure for information (including dates, names of participants, and substance of communications) regarding meetings or other interactions with respect to the Solicitation and LTWIP Base Contract- related issues, occurring during the period between issuance of the Solicitation and the Offer Due Date, between Proposer-Related Entity(ies) and any federal, state, or municipal elected officials, or any community or citizen organizations.

Qualified Proposer certifies that its Offer is submitted without reservations, qualifications, limitations, exceptions, assumptions or conditions. Qualified Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the Solicitation Documents, has reviewed all materials posted or made available by WIFA in connection with the Solicitation, the Solicitation Amendments and responses to questions, and is satisfied that the Solicitation Documents provide sufficient detail regarding the obligations to be performed by the Developer and do not contain internal inconsistencies, errors or omissions; that it has carefully checked all the words, figures and statements in this Offer; that it has conducted a reasonable investigation in preparing this Offer; and that it has notified WIFA in writing of any deficiencies or errors in, or omissions from, any Solicitation Documents or other documents provided by WIFA.

Qualified Proposer represents that all statements made in the Initial Qualifications Submittal previously delivered to WIFA, including any clarifications submitted in response to WIFA requests, are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Offer. Qualified Proposer agrees that such Initial Qualifications Submittal, except as modified by the enclosed Offer, is incorporated as if fully set forth herein.

Qualified Proposer understands that WIFA is not bound to award an LTWIP Base Contract to the Qualified Proposer offering the lowest price or to any Qualified Proposer.

Qualified Proposer further understands that all costs and expenses incurred by it in preparing this Offer and participating in the Solicitation process will be borne solely by the Qualified Proposer.

Qualified Proposer's Name:	Enter text.
Business Address:	Enter text. Enter text.
Phone:	Enter text. Fax: Enter text.
Email Address:	Enter text.
Developer's License No. (if any):	Enter text.
License Expiration Date:	Enter text.
Classification Type:	Enter text.

[Insert appropriate signature block for Qualified Proposer. See sample signature blocks on the following pages.]

1. Sample signature block for corporation or limited liability company

[Insert the Qualified Proposer's name]

By: Enter text. _____

Print Name: Enter text. _____

Title: Enter text. _____

[List equity members of corporation or limited liability company]

2. Sample signature block for consortium, partnership or any other form of joint venture:

[Insert the Qualified Proposer's name]

By: [Insert general partner's or member's name]

By: Enter text. _____

Print Name: Enter text. _____

Title: Enter text. _____

[Add signatures of additional general partners or members as appropriate]

[List limited partners, if any]

3. Sample signature block for attorney in fact (whether acting on behalf of Qualified Proposer or another entity):

[Insert the entity's name]

By: Enter text. _____

Print Name: Enter text. _____

Attorney in Fact

[Attach a duly notarized executed irrevocable power of attorney executed by the relevant entity or entities, along with evidence of authorization]

ADDITIONAL INFORMATION TO BE PROVIDED WITH OFFER LETTER:

A. Provide a chart showing the organization of the proposed Developer, including all entities that have an upstream relationship to the Developer, including Equity Member(s), subsidiaries or affiliates of Equity Member(s), holding companies, and any other such entity. The proposed Developer need not be formed at the time of submission of the Offer. This table shall describe the role of each proposed Equity Member and other Key Participant.
B. Provide the following information regarding the legal structure of the Qualified Proposer/proposed Developer and Equity Members.

1. If Qualified Proposer/proposed Developer/Equity Member is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for the Qualified Proposer/proposed Developer/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to Contract execution as required by the Solicitation.
2. If Proposer/proposed Developer/Equity Member is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Qualified Proposer/proposed Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to Contract execution as required by the Solicitation.
3. If Qualified Proposer/proposed Developer/Equity Member is a consortium, joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Qualified Proposer/proposed Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to Contract execution as required by the Solicitation.
4. If Qualified Proposer/proposed Developer/Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Qualified Proposer/proposed Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual.
5. If an Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation and organizational documents of the fund manager shall satisfy the requirements for organizational documents under this Section C.

For purposes of this Section B, the term "organizational documentation" with respect to an Equity Member shall mean such entity's certificate of formation/articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; provided, further, that such entity shall provide its partnership agreement/operating agreement/bylaws/equivalent joint venture or investment fund internal governing organizational documentation prior to LTWIP Base Contract execution as required by the Solicitation.

C. Attach evidence to this Offer Letter that the person signing has authority to do so. With respect to authorization of execution and delivery of the Offer and validity thereof, if Qualified Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Qualified Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Qualified Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If Qualified Proposer is a consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If Qualified Proposer is a consortium, joint venture or a partnership, the Offer must be executed by all consortium or joint venture members or all general partners, as applicable.
D. Attach to this Offer Letter a disclosure of information (including dates, names of participants, and substance of communications) regarding meeting or other interactions with respect to Solicitation and LTWIP Base Contract-related issues, occurring during the period between issuance of the Solicitation and the Offer Due Date, between Proposer-Related Entity(ies) and any federal, state, or municipal elected officials, or any community or citizen organizations.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies

only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _Enter text._____

County of _Enter text._____

On _Enter text._____ before me, _Enter text._____
(insert name and title of the officer)

personally appeared Enter text., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _Enter text._____ (Seal)

Form O-2: Signatory Authorizations

Signatory Authority form completed by Proposer with attachments. Evidence of signature authority shall be provided for all individuals signing forms. Section C to the instructions to Form O-1 identifies requirements regarding evidence of signature authorization for the Offer Letter. Similar authorization shall be provided for all other signatories to Offer forms. Place all authorizations in a single, tabbed section in an appendix to this Form.

Signatory Authorizations	
Signatory	**Title and Firm**
Enter text.	Enter text.
Enter text.	Enter text.
Enter text.	Enter text.

Form O-3: Prospective Key Personnel Information Form

Instructions:

- Complete the following form and attachments.

Key Personnel shall be identified on the Qualified Proposer's organization chart.

PROPOSER NAME:		
Key Personnel Position	**Name of Key Personnel**	**Employer**
Project Manager	Enter text.	Enter text.
Design Manager	Enter text.	Enter text.
Construction Manager	Enter text.	Enter text.
Operations Manager	Enter text.	Enter text.
Quality Manager	Enter text.	Enter text.
Financial Manager	Enter text.	Enter text.
[Other personnel identified in Organizational Chart]	Enter text.	Enter text.
[Other personnel identified in Organizational Chart]	Enter text.	Enter text.

Attachments:

1. Qualified Proposer attach a narrative description of each proposed Key Personnel included on the Qualified Proposer's team with an explanation of why each individual was selected for the team and the Key Personnel's anticipated responsibilities.

2. Qualified Proposer shall attach to this form a resume (2 pages maximum) for each Prospective Key Personnel. Resumes shall include, at a minimum: Key personnel role, anticipated responsibilities, employer, certifications or licenses, project experience, and two references.

Form O-4: Key Personnel Statement of Availability

Submit a separate Form O-4 signed by the Qualified Proposer and by each employer of an identified Key Personnel.

Qualified Proposer's Name: Enter text.

("Qualified Proposer")

Provide a complete list of the individuals filling the following positions:

Key Personnel	Name	Employer
Project Manager	Enter text.	Enter text.
Design Manager	Enter text.	Enter text.
Construction Manager	Enter text.	Enter text.
Operations Manager	Enter text.	Enter text.
Financial Manager	Enter text.	Enter text.
Quality Manager	Enter text.	Enter text.
[Other personnel identified in Organizational Chart]	Enter text.	Enter text.
[Other personnel identified in Organizational Chart]	Enter text.	Enter text.

Understanding WIFA's concern that the personnel resources specifically represented and listed in this Offer actually be assigned to the Services and WIP and not also be committed to other projects, Qualified Proposer commits that, if awarded the LTWIP Base Contract, to the extent within Qualified Proposer's control, the named individuals above will be available on a full-time basis for the periods necessary to fulfill their responsibilities.

Signed: Enter text.

Print Name: Enter text.

Qualified Proposer or Employer Name: Enter text.

Title: Enter text.

Date: Enter text.

Form O-5: ~~Not Used~~Stakeholder Communication

Instructions:

Complete Form O-5 to document all Stakeholder communication completed in accordance with Solicitation Section 2.8.3.

Offeror shall submit a separate Exhibit 1 and Exhibit 2 for each Stakeholder communication activity.

By submission of Form O-5 and each Exhibit 1, Proposer certifies that Stakeholders have been advised in writing of the Acknowledgement provisions provided in Exhibit 1.

Form O-5 and copies accompanying Exhibits 1 and 2 shall be submitted with Proposer's Offer. Exhibits 1 and 2 will NOT be provided to the Evaluation Committee but will be part of Proposer's procurement file.

Signed:	Enter text.
Print Name:	Enter text.
Qualified Proposer or Employer Name:	Enter text.
Title:	Enter text.
Date:	Enter text.

EXHIBIT 1

~~AGREEMENT FOR~~ACKNOWLEDGMENT OF STAKEHOLDER COMMUNICATION

Exhibit 1 shall be completed and signed by Proposer and submitted to WIFA's Procurement Officer via email or other written communication at least 72 hours prior to substantive communication with Stakeholder related to Proposer's WIP or Offer. WIFA reserves the right to PROHIBIT communication with specific Stakeholders and will notify Qualified Proposer in writing following submission of Exhibit 1.

By submission of Exhibit 1, Proposer certifies that Stakeholder has been provided the Acknowledgement listed in this Exhibit.

ACKNOWLEDGEMENT

By execution of this Agreement, Proposer and Stakeholder acknowledge that communication between Proposer and Stakeholder is solely for the benefit of Proposer in preparation of an Offer in response to Water Infrastructure Finance Authority of Arizona (WIFA) Solicitation No. 2024-001. Proposer is NOT authorized to negotiate, communicate, make agreements or make any representations whatsoever on behalf of WIFA, potential O~~o~~fftakers, or the State of Arizona.

REGULATOR OR TRANSFER PARTNER ORGANIZATION: Enter text.	
Regulator or Transfer Partner Representative: (Name and Title)	Enter text.
Proposer Representative: (Name and Title)	Enter text.
Proposer Representative(s): (Signature)	Enter text.
Date:	Enter text.

EXHIBIT 2

DOCUMENTATION OF STAKEHOLDER COMMUNICATION

Exhibit 2 shall be completed and submitted to WIFA's Procurement Officer no later than 48 hours after substantive communication with Regulator or Transfer Partner related to Proposer's WIP or Offer.

Submission of this Exhibit is for the purpose of documenting substantive communication to maintain the integrity of the Solicitation. This Exhibit will NOT be provided to Evaluation Committee members.

REGULATOR OR TRANSFER PARTNER NAME: Enter text.	
Regulator or Transfer Partner Organization:	Enter text.
Regulator or Transfer Partner ~~C~~Representative(s): List Name and Title	Enter text.
Date(s) of Communication:	Enter text.
Date of WIFA Notification:	Enter text.
Communication Purpose	Enter text.
Documentation of Communication Activities (Meeting Minutes, etc.)	Enter text.

Form O-6: Not Used

Form O-7: Noncollusion Declaration (Qualified Proposer and Equity Members)

[To be signed by authorized representatives of the Qualified Proposer and each Equity Member. The form may be signed in counterparts.]

Qualified Proposer Name: Enter text.

The undersigned declare:

A. Enter text. is the Enter text. of Enter text. and Enter text. is the Enter text. of Enter text., which entity(ies) are the Enter text. of Enter text.,

B. The Offer is not made in the interest of, or on behalf of, any undisclosed person, partnership company, association, organization, or corporation. The Offer is genuine and not collusive or sham. The Qualified Proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham Offer, and has not directly or indirectly colluded, conspired, connived or agreed with any proposer or anyone else to put in a sham Offer or to shall refrain from proposing. The Qualified Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the Offer prices of the Qualified Proposer or any other proposer, or to fix any overhead, profit or cost element included in the Offer, or of that of any other proposer. All statements contained in the Offer are true. The Qualified Proposer has not, directly or indirectly, submitted its Offer prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, joint venture, limited liability company, organization, bid depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Offer, and has not paid, and will not pay, any person for such purpose.

C. The Qualified Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Offer to any other proposer, or seek to obtain information or data regarding the price or other terms of any other Offer, until after award of the LTWIP Base Contract or rejection of all offers and cancellation of the Solicitation.

D. Any person executing this declaration on behalf of a firm that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of such firm.

I declare under penalty of perjury under the laws of the State of Arizona hat the foregoing is true and correct and that this declaration is executed on Enter text. [date], at Enter text. [City], Enter text. [State]."

Enter text.	Enter text.
(Signature)	(Signature)
Enter text.	Enter text.
(Name Printed)	(Name Printed)
Enter text.	Enter text.
(Title)	(Title)

Form O-8: Not Used

Form O-9: Certification of Compliance with Federal Lobbying Requirements

To be submitted with each Bid/Offer or offer of Bidder/Qualified Proposer exceeding $100,000

This form O-9 is to be completed by Qualified Proposer~~, Equity Members, Lead Contractor, Lead Engineer, Lead Operations and Maintenance Contractor and any other team members identified in the Offer~~.

~~-~~Enter text. (Qualified Proposer ~~or other entity executing this form~~) certifies ~~to the best of its knowledge and belief~~ that Qualified Proposer, Equity Member(s), Lead Contractor, Lead Engineer, Lead Operations and Maintenance Contractor and any other team members identified in the Offer have:

1. Completed Exhibit 1 to this Form (EXHIBIT 1: CERTIFICATION OF RESTRICTIONS ON LOBBYING), or,

2. Completed Exhibit 2 to this Form (EXHIBIT 2: DISCLOSURE OF LOBBYING ACTIVITIES INSTRUCTIONS FOR COMPLETION OF SF-LLL)

~~1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency; a member of Congress, an officer or employee of Congress, an employee of a member of Congress; or any Board member or employee of WIFA in connection with the awarding of any federal contract; any federally funded contract; or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, federally funded contract grant, loan or cooperative agreement.~~

~~2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts, or influencing or attempting to influence; an officer or employee of any agency; a member of Congress; an officer or employee of Congress; an employee of a member or Congress or a Board member or employee of WIFA in connection with this federally funded contract, grant, loan, or cooperative agreement, the undersigned shall register and comply with all federal disclosure requirements~~

~~3. The undersigned shall require that the language of this certification be included in the solicitation and award documents for all subawards at all tiers including but not limited to subcontracts, subgrants and contracts under grants, loans and cooperative agreements and that all subrecipients shall certify and disclose accordingly.~~

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC§ 1352 (as amended by the Lobbying Disclosure Act of 1995). Any ~~offerer~~Offeror who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed on Enter text. 20 Year. , at City, Enter text. , Enter text.

(Date)		(City)	(State)
Enter text.		Enter text.	Enter text.
Typewritten or Printed Name		Signature of Authorized Official	Title

[Copy ~~this form~~Exhibits to this Form and modify as needed for execution by Qualified Proposer, Equity Members, Lead Contractor, Lead Engineer, Lead Operations and Maintenance Contractor and any other team members identified in the Offer]

RESTRICTIONS ON LOBBYING

(a) Definitions, as used in this clause:

Agency as defined in Title 5 USC § 552(f), includes federal executive departments and agencies as well as independent regulatory commissions and government corporations, as defined in Title 31 USC§ 9101(1).

WIFA means the Water Infrastructure Finance Authority of Arizona. Covered Federal action means any of the following federal actions:

1. The awarding of any federal contract;

2. The making of any federal grant;

3. The making of any federal loan;

4. The entering into of any cooperative agreement, and

5. The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

Covered federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act Title 25 USC§ 450(b). Alaskan Natives are included under the definitions of Indian tribes in that Act.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any covered federal action.

Local Government means a unit of government in a state and, if chartered, established, or otherwise recognized by a state for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the government under Title 5, USC, including a position under a temporary appointment;
2. A member of the uniformed services as defined in Title 37 USC § 101 (3);
3. A special government employee as defined in, Title 18 USC § 202; and,
4. An individual who is a member of a federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5 USC Appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the federal government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the federal government.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 days.

State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a state, and a multi-state, regional, or interstate entity having governmental duties and powers.

(b) Prohibition

(1) Developer warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (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 without limitation 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 WIFA to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. The Developer shall implement and maintain adequate controls to assure compliance with the above. The Developer shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts .

i. Exception. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State’s benefit or on State’s behalf.

(2) Title 31 USC§ 1352 provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(3) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal contract if the payment is for agency and legislative liaison activities not directly related to a covered federal action.

(B) For purposes of paragraph (b) (2) (i) (A) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(C) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable at anytime only where they are not related to a specific solicitation for any covered federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the persons products or services, conditions or terms of sale, and service capabilities, and

(2) Technical discussions and other activities regarding the application or adaptation of the persons products or services for an agency's use.

(D) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable only when they are prior to formal solicitation of any covered federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered federal action;

(2) Technical discussions regarding the preparation of an unsolicited Offer prior to official submission, and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(E) Only those activities expressly authorized by paragraph (b) (2) (i) of

this section are allowable under paragraph (b) (2) (i).

(ii) Professional and technical services by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal contract or an extension, continuation, renewal, amendment, or modification of a federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, Offer or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.

(B) For purposes of paragraph (b) (2) (ii) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or Offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients Offer, but generally advocate one Offer over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or Offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(D) Only those services expressly authorized by paragraph (b)(2)(ii) of this section are allowable under paragraph (b)(2)(ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, Offer, or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.

(B) For purposes of paragraph (b) (2) (iv) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or Offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's Offer, but generally advocate one Offer over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or Offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(D) Persons other than officers or employees of a person requesting or

receiving a covered federal action include consultants and trade associations.

(E) Only those services expressly authorized by paragraph (b) (2) (iv) of this section are allowable under paragraph (b) (2) (iv).

(c) Disclosure.

(1) Each person who requests or receives from WIFA a contract with federal assistance shall file with WIFA a certification, set forth in Bid/Submittal Form (Form 10, Exhibit 1) entitled FEDERAL LOBBYING CERTIFICATION, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

(2) Each person who requests or receives from WIFA a contract with federal assistance shall file with WIFA a disclosure form, Standard Form-LLL, Disclosure of Lobbying Activities (Form 10, Exhibit 2), if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.

(3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c) (2) of this section. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or,

(iii) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered federal action.

(4) Any person who requests or receives from a person referred to in paragraph (c) (1) of this section a subcontract with a contract value exceeding $100,000 at any tier under a contract with federal assistance shall file a certification, and a disclosure form, if required, to the next tier above. All disclosure forms shall be forwarded from tier to tier until received by the Prime Contractor who will forward it to WIFA.

EXHIBIT 1

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, Enter text., hereby certify on behalf of (Name and title of contracting or sub-contracting official) Enter text. that:

(Name of contractor or subcontractor)

(1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying (Form 10, Exhibit 2), in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Executed this Enter text. day of Enter text. ,20 Enter text.

By: Enter text.
(Signature of Authorized Official)

Enter text.
(Typewritten or Printed Name)

Enter text.
(Title of Authorized Official)

EXHIBIT 2

DISCLOSURE OF LOBBYING ACTIVITIES INSTRUCTIONS FOR COMPLETION OF SF-LLL

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation of receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31 USC § 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime if the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks Subawardee, then enter the full name, address, city, state and zip code of the prime federal recipient. Include the Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program, name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g. Solicitation number, Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/Offer control number assigned by the federal agency). Include prefixes, e.g., Solicitation -DE-90-001.
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (Ml).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the dates of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-46-00046). Washington, D.C. 20503.

FORM SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to Title 31 USC§ 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Type of Federal Action: ☐ a. bid/offer/application b. initial award c. post award	3. Status of Federal Action: ☐ a. initial change b. material change c. post award For Material Chane Only year Enter text. quarter Enter text. date of late report

4. Name and Address of Reporting Entity ☐ Prime ☐ Subawardee Tier Enter text., if known: Congressional District Enter text., if known:	5. If Reporting Entity in No. 4 is subawardee. Enter name and Address of Prime: Enter text. Congressional District Enter text., if known:
6. Federal Department/Agency: **Department of Transportation** **Federal Transit** **Administration**	7. Federal Program Name/Description: Enter text. CFDA Number, if applicable: Enter text.
8. Federal Action Number, if known: Enter text.	9. Award Amount, if known: $Enter text.
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): Enter text. attach continuation sheet(s) SF-LLL-A if necessary	b. Individuals Performing Services (including address if different from No. 10.a) (last name, first name, MI): Enter text. attach continuation sheet(s) SF-LLL-A if necessary
11. Amount of Payment (check all that apply): $ Enter text. ☐ actual ☐ planned	
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature Enter text. value Enter text.	13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify Enter text.
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employer(s), or member(s) contacted, for Payment indicated in Item 11:	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by Title 31 USC § 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the lier above when this transaction was made or entered into. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.	Signature: Enter text. Print Name: Enter text. Title: Enter text. Telephone No.: Enter text. Date: Enter text.
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL

STANDARD FORM LLL-A DISCLOSURE OF LOBBYING ACTIVITIES

CONTINUATION SHEET

Reporting Entity: Enter text. Page Enter text. of Enter text.

Authorized for Local Reproduction Standard Form LLL-A

Form O-10: Confidential Contents Index

Content Designation (*)	Solicitation Section Reference	Offer Volume and Tab or Form No.	Page Numbers	Description of Content
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
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Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.

(*) For each item included on this Form O-10 include a designation of either “Confidential,” “Trade Secret,” or “Proprietary.” For additional information please refer to Section 2.19 of the Solicitation.

Enter text.
Qualified Proposer’s Representative (Type or Print Name)

Enter text.
Date

Enter text.
Signature of Qualified Proposer’s Representative

Enter text.
Title

Form O-11: Qualified Proposer/Equity Member's Project Equity / Finance Related Experience

***Instructions for Form O-11*:**

- Complete one Form O-11 identifying up to 10 projects involving investment and/or significant role in project financing by one or more of the proposed Equity Members that the Qualified Proposer deems to be relevant to the Project and reflective of the experience of its Equity Member(s) relevant to investment in and successfully financing the Project. At least one project included on Form O-11 must have a transaction size of at least **$500M USD**. Refer to Solicitation Section 4.3.17.2.4 for additional information regarding requirements for Form O-12. Project experience from Affiliates of an Equity Member may be included in Form O-11, if the Affiliate is a subsidiary of the Equity Member or if a Financially Responsible Entity is a direct or indirect common parent entity of both the Equity Member and Affiliate.
- Of the projects listed below, provide one-page narrative descriptions for a minimum of three and a maximum of five projects listed on the form that the Qualified Proposer deems to be the most relevant to the Project, including, at a minimum, the following details: (a) the project's financial plan and the Equity Member's role in developing and negotiating the financial plan, (b) the name and participation percentages of each original equity investors and a descriptive evolution of the Equity Member's (or Affiliate's) percentage equity interest from financial close to date, (c) elements of those projects that are similar to the Project, and (d) the Equity Member's role in supporting project development and commercial management. (PAGE LIMIT – 5 pages).
- For each project for which a one-page narrative description has been provided, the Qualified Proposer must provide references and contact information of the project owners. If a reference cannot be reached or does not respond to WIFA's request for information, WIFA reserves the right to not consider or discount consideration of the project during its evaluation.
- All amounts reflected in the table below must be in US Dollars. Identify exchange rates of amounts in other currencies using the exchange rate as of November 1, 2024 and the benchmark on which the exchange rate is based.
- Include these instructions as a cover sheet to the submission of this Form.

NAME OF EQUITY MEMBER	PROJECT NAME, LOCATION, DESCRIPTION	PROJECT MILESTONES AND CURRENT STATUS	PROJECT TERM; STRUCTURE; PAYMENT MECHANISM[1]	D&C VALUE (NOMINAL VALUE)	TOTAL PROJECT FINANCING AMOUNT[2]	DEBT AMOUNT AND TYPE[3]	TOTAL EQUITY INVESTMENT AND ENTITY's % / DESCRIPTION OF FINANCE- RELATED ROLE[4]
Sample entry: *Infra Fund II*	*Water Supply Project, [State], USA – construction of water supply project consisting of water supply/intake, pre-treatment, and conveyance*	*Financial Close: [Date] Construction Completion Date/Status: 80% complete Operations Commencement: [Date] (expected) – 4 months earlier than baseline date*	*Construction plus 30 years; DBFOM; Availability Payment*	*$1.2 billion*	*$950 million*	*$855 million (private placement)*	*$95 million total* *Infra Fund II had a leading role on the financing (e.g. led one of the consortium coordinating committees (financial, commercial, technical, etc.). Infra Fund II contributed 60% of the total equity investment*
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.

1 **PROJECT TERM; STRUCTURE; PAYMENT MECHANISM** - Provide the project term, project delivery structure (e.g., DBFOM, DBF,
DBF+OM), and the payment mechanism used to compensate the developer (e.g., availability payments, revenue collections/sharing, or a combination of these).

2 **TOTAL PROJECT FINANCING AMOUNT** - Provide the total amount of private financing used for the project, i.e., debt and equity (TIFIA loans, bonds, bank loans, subordinated shareholder loans, and any other debt instrument or facility), provided by the project's developer and equity members. Do not include any public debt, grants or other amounts provided by the project owner.

3 **DEBT AMOUNT AND TYPE** - Provide the amount of each type of debt used and indicate the type of facility or instrument.

4 **TOTAL EQUITY INVESTMENT AND EQUITY MEMBER'S %** - Provide the total amount of equity contributions made for the entire project and the Equity Member's contribution percentage. The equity investment may have been made in the form of either (i) shareholders' equity capital or (ii) shareholder subordinated debt. Please indicate separately the percentage of ownership interest in the project or developer, as applicable, if different than the Equity Member's contribution percentage. Also specify the role of the Equity Member in the project financing (e.g. active/leading role or passive investor, etc.).

Form O-12: Financial Officer's Certificate

[Complete a separate Form O-12 for the following entities (each a "submitter"):

- Qualified Proposer;
- each Equity Member (or its Financially Responsible Entity) and
- the Lead Construction Contractor[1] (or its Financially Responsible Entity].[2]]

I, Enter text. [Name], the Enter text. [Title] of Enter text. [Name of Equity Member or Lead Construction Contractor] (the "Company") [and the Enter text. [Title] of Enter text. [Name of Financially Responsible Entity] (the "Financially Responsible Entity")], do hereby certify as of Enter text. [Date][3] That:

(a) This certificate is being executed and delivered in connection with the Offer submitted by Enter text. [Qualified Proposer's Name] in response to the Solicitation dated November 20, 2024 issued by WIFA during for a Long-Term Water Importation Project. Capitalized terms used but not defined herein shall have the meanings set forth for such terms in the Instructions to Qualified Proposers in the Solicitation .

(b) As to the matters herein set forth below, I either have personal knowledge or have obtained information from officers or employees of WIFA in whom I have confidence and whose duties require them to have personal knowledge thereof. I make the certifications herein to WIFA pursuant to the requirements of the Solicitation with the intent and understanding that they will be relied upon by WIFA as a basis for the evaluation of the Offer contemplated by the Solicitation .

(c) **[Financially Responsible Entity Support**: It is the intention of the Financially Responsible Entity to support the Company with the financial support needed by the Company to successfully satisfy its obligations under the Contract/Implementation Agreement if the Contract is awarded to the Qualified Proposer.][4]

(d) **Audited Financial Statements:** The audited financial statements for the [Company] [Financially Responsible Entity] for the fiscal years ending [Enter text.], [Enter text.] and [Enter text.] as included in the Offer are complete and correct copies thereof. Where the [Company] [Financially Responsible Entity] has provided unaudited financial results, such financial results present fairly, in all material respects, the financial position and results of operations and cash flows of the [Company] [Financially Responsible Entity and it consolidated subsidiaries] as of such dates and for such periods. The [Company] [Financially Responsible Entity] has no material contingent liabilities or unusual forward or long-term commitments not disclosed therein.[5]

(e) **Off-Balance Sheet Liabilities:** The [Company] [Financially Responsible Entity] does not have any material off-balance sheet liabilities [other than as described in the financial statements referred to above] [other than the following: [Enter text.]

~~[1] If the lead Construction Contractor is a joint venture or otherwise is comprised of more than one entity, this form must be provided for each such entity and references to "Lead Construction Contractor" modified accordingly.~~

~~[2] If this form identifies a Financially Responsible Entity, it is not necessary to also provide a separate form for the related Equity Member or Lead Construction Contractor. If an Equity Member or Lead Construction Contractor has no Financially Responsible Entity, all references to "Financially Responsible Entity" should be deleted from this certificate for that submitter.~~

~~[3] Date must not be earlier than seven calendar days prior to the Offer Due Date.~~

~~[4] Delete if there is no Financially Responsible Entity and not applicable.~~

(f) **Bankruptcy/insolvency proceedings:** [There has been no Insolvency Event relating to the Company [or Financially Responsible Entity] or any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Company [or Financially Responsible Entity] which has occurred within the most recent three fiscal years (whether or not such proceeding was ultimately dismissed).] [Attached hereto as Annex A is a detailed description of an Insolvency Event relating to the Company [or Financially Responsible Entity].][~~6~~5]
For the purposes of this certification, "Insolvency Event" means any voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any applicable law, in any jurisdiction.

(g) Material Changes in Financial Condition: [No material change in the financial condition of the Company [or Financially Responsible Entity] has occurred or is projected to occur, as applicable (i) within the most recently completed three fiscal years that is not reflected in the its audited financial statements; (ii) since the date of its audited financial statements for its most recently completed fiscal year].[Attached hereto as Annex B is a detailed description of material changes in the financial condition of the [Company] [Financially Responsible Entity].[~~7~~6]

IN WITNESS WHEREOF, the undersigned [Chief Financial Officer, Treasurer or equivalent officer] of the entity to which this form relates has duly executed this certificate as of the date first written above.[7]

Enter text.
Name (Signature)

Enter text.
Name (Printed)

Enter text.

Title

Enter text.

Entity

---

[1] If the lead Construction Contractor is a joint venture or otherwise is comprised of more than one entity, this form must be provided for each such entity and references to "Lead Construction Contractor" modified accordingly.

[2] If this form identifies a Financially Responsible Entity, it is not necessary to also provide a separate form for the related Equity Member or Lead Construction Contractor. If an Equity Member or Lead Construction Contractor has no Financially Responsible Entity, all references to "Financially Responsible Entity" should be deleted from this certificate for that submitter.

[3] Date must not be earlier than seven calendar days prior to the Offer Due Date.

[4] Delete if there is no Financially Responsible Entity and not applicable.

~~[6]~~[5] Complete the appropriate certification. Delete the sentence that is not applicable. Do not provide an Annex A if there is no Insolvency Event to disclose.

~~[7]~~[6] Complete the appropriate certification. Delete the sentence that is not applicable. Do not provide an Annex B if there is no material change in financial condition to disclose. Further instructions regarding material change are provided in Annex B.

~~[8]~~[7] If the submitter does not have this type of corporate officer internally and will rely on the financial officer of an affiliated or unaffiliated entity, such as an investment advisor or financial manager, both the financial officer delivering this certificate and a duly authorized signatory of the submitter must sign this certificate.

ANNEX A TO FINANCIAL OFFICER'S CERTIFICATE
INSOLVENCY EVENT

[Qualified Proposer to provide if needed]

ANNEX B TO FINANCIAL OFFICER'S CERTIFICATE
MATERIAL CHANGE IN FINANCIAL CONDITION

If applicable, this Annex B must include the following details regarding material changes in [Enter text. 's] financial condition:

(i) A description of each material change, actual and projected, and any related changes or disruptions in executive management;
(ii) Actual and projected impacts on the affected entity's organizational and financial capacity and its ability to remain engaged in this solicitation and submit a responsive Offer; and
(iii) A detailed description of any other projected impacts, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead, including the likelihood that the circumstances of the change or impacts thereof will continue during the Project term.

Estimates of the impact on revenues, expenses and the change in equity must be provided separately for each material change. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. Where a material change will have a negative financial impact, the affected entity must describe measures that would be undertaken to insulate the Project from any recent material changes and those currently in progress or reasonably anticipated in the future. If its financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a material change), the affected entity must describe measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Set forth below is a list of examples of what WIFA considers to be a material change in financial condition. At the discretion of WIFA , any failure to disclose a prior or pending material change may result in disqualification from the solicitation process:

(i) A change in the tangible net worth of 10% or more of net assets;
(ii) A sale, merger or acquisition exceeding 10% of the value of net assets prior to the sale, merger or acquisition which in any way involves the affected entity or its parent company or a Financially Responsible Entity;
(iii) A change in credit rating for the affected entity or its parent company or Financially Responsible Entity;
(iv) Inability to meet material conditions of loan or debt covenants by the affected entity or its parent company or a Financially Responsible Entity that has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations or additional credit support from shareholders or other third parties;

(v) In the current and three most recent completed fiscal years, the affected entity or its parent company or its Financially Responsible Entity either: (i) incurred a net operating loss; or (ii) sustained charges exceeding 5% of the then net assets due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in labor force exceeding 5% of employees or involved the disposition of assets exceeding 10% of the then-net assets); and

(vi) Other events known to the affected entity which represent a material change in financial condition over the past three years, or which may be pending for the next reporting period.

Form O-13: Organizational Conflict of Interest Disclosure Statement

[TO BE COMPLETED BY PROPOSER ON ITS BEHALF AND ON BEHALF OF ALL ENTITIES ON THE PROPOSER TEAM]

For purposes of this Form O-13, "organizational conflict of interest" is defined as follows:
Organizational conflict of interest means a circumstance arising out of a Consultant's existing or past activities, including past activities as a Consultant to or employee of WIFA, business interests, familial relationships, contractual relationships, and/or organizational structure (i.e., Affiliates, etc.) wherein (i) the Consultant is or may be unable to render impartial assistance or advice to WIFA, (ii) the Consultant's objectivity in performing the scope of work sought by WIFA is or might be otherwise impaired, (iii) the Consultant has, or is perceived to have, an unfair competitive advantage; (iv) the Consultant's performance of Services on behalf of WIFA does or may provide an unfair competitive advantage to a third party; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Consultant or a third party as a result of the Consultant's participation on the Solicitation.

Proposers are advised that in accordance with the Water Infrastructure Finance Authority of Arizona's (WIFA) Organizational Conflict of Interest Policy, certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with WIFA in connection with the procurement and document preparation for the Project.

1. **Disclosure**

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Equity Members, identified Subcontractors and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this Solicitation. If no disclosure is necessary, state "None".

By way of example only, and in no way limiting the Proposer's disclosure obligations, Proposer should disclose (a) any current contractual relationships with WIFA, (b) any past, present, or planned contractual or employment relationships with any WIFA member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any WIFA member, officer, or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the Solicitation preparers. Proposer should also disclose contractual relationships with a Solicitation preparer in the nature of a joint venture, as well as relationships wherein the Solicitation preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team.

Disclosure:
Enter text.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described in this Organizational Conflict of Interest Disclosure Statement.

Explanation:
Enter text.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Organizational Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer's Name: Enter text.

Signature: Enter text.

Title: Enter text.

Name: Enter text.

Company Name: Enter text.

Dated as of: [Date.], 2025

Form O-14: Pricing Structure for Secondary WIP Selection Process Task Orders

The Qualified Proposer shall submit a cost approach for preparing the Secondary WIP Selection Process Task Orders. This approach shall consist of the following:

A. Maximum Direct Cost markup for Overhead (Direct Cost + XX%), where Direct Cost is defined as the unburdened labor cost associated with professional, para-professional, non-professional services and expenses required to complete the Task Order. Markup shall include any overhead that Qualified Proposer is proposing.
B. Maximum Fee (Profit) applied to burdened labor, expenses and other costs incurred during performance of a Task Order.

A. Maximum Rate Schedule for staff classifications that are anticipated to be utilized during the Secondary WIP Selection Task Orders. Rate schedule shall include staff classification/title and rate used to develop cost or invoiced for services (Direct Cost + Cost Markup).

Name of Offeror/Developer Enter text.	Services to be Furnished Enter text.		
Home office address Enter text.			
	Maximum Direct Rate	Maximum Overhead Rate	Billing Rate
Developer	Enter text.	Enter text.	Enter text.
Consultants/Subcontractors	Enter text.	Enter text.	Enter text.
		Fee (Rate %)	Enter text.

Form O-15: Changes in Proposer Team or Key Personnel

Instructions:

Submit form in accordance with Section 4.3.16 and due dates as specified in Section 1.7.

Document any WIFA approved changes in the Proposer's Team or Key Personnel prior to the Offer Due Date in the space below. If no changes, state "NONE". Submit copies of all written communications from WIFA approving such changes.

WIFA Approved Changes to Proposer Team or Key Personnel:
Enter text.

Signed: Enter text. _____

Printed Name: Enter text. _____

Title: Enter text. _____

Date: Enter text. _____

9.2. Offer Exhibits

Exhibit O-1: Offer Submittal Checklist

This Exhibit is provided for the Offeror's convenience as a checklist for Offer submittal requirements. WIFA makes no representations as to the accuracy of the Checklist and Proposers are responsible for ensuring Offers comply with all the requirements of the Solicitation

Offer Submittal		
Submittal	**Solicitation Cross-Reference**	**Page Limit (if any)**
Offer Letter, including additional information per attachment: A. Organization table B. Information regarding legal structure of the Qualified Proposer, proposed Contractor and Equity Members, including copies of organizational documents. C. Evidence of authorization of Offer signatory.	Form O-1	N/A
Signatory Authorization	Form O-2	N/A
Prospective Key Personnel Information Form	Form O-3	Up to 2 pages per Key Person
Key Personnel Statement of Availability	Form O-4	N/A

Administrative Submittal		
Submittal	**Solicitation Cross-Reference**	**Page Limit (if any)**
~~NOT USED~~Stakeholder Communication	Form O-5	N/A
NOT USED	Form O-6	N/A
Noncollusion Declaration (Qualified Proposer/Equity Members)	Form O-7	N/A
NOT USED	Form O-8	N/A
Certificate of Compliance with Federal Lobbying Requirements	Form O-9	N/A
Confidential Contents Index	Form O-10	N/A
Qualified Proposer/Equity Member's Project Equity / Finance Related Experience	Form O-11	5 Pages
Financial Officer's Certificate	Form O-12	N/A

Administrative Submittal		
Submittal	**Solicitation Cross-Reference**	**Page Limit (if any)**
Organizational Conflict of Interest Disclosure Statement	Form O-13	N/A
Pricing Structure for Secondary WIP Selection Process Task Orders	Form O-14	Form O-14: N/A Rate Schedule: 1 page
Changes in Proposed Team or Key Personnel	Form O-15	N/A

Technical Submittal		
Submittal	**Solicitation Cross-Reference**	**Page Limit (if any)**
Project Team	Section 4.3.17.1	Two pages per Team Member
List and descriptions of relevant experience and past performance for engineering design experience on one or more projects of similar size and complexity.	Section 4.3.17.2.1	Three to six projects (up to 2 pages/project)
List and descriptions of relevant experience and past performance demonstrating construction experience on one or more projects of similar size and complexity.	Section 4.3.17.2.2	Three to six projects (up to 2 pages/project)

Technical Submittal		
Submittal	**Solicitation Cross-Reference**	**Page Limit (if any)**
List and descriptions of relevant experience and past performance demonstrating operation and maintenance experience on one or more projects of similar size and complexity	Section 4.3.17.2.3	Three to six projects (up to 2 pages/project)
List and descriptions of relevant experience and past performance demonstrating project financing experience on one or more projects of similar size and complexity.	Section 4.3.17.2.4	Three to six projects (up to 2 pages/project)
WIP Concept Submittal	Section 4.3.18	50 pages
Detailed Plan for Completing Secondary WIP Selection Process	Section 4.3.19	Secondary WIP Selection Project Management Plan and Schedule - 10 Pages Technical Evaluations Plan - 20 Pages ~~Society and Community Evaluations - 10 Pages~~ Environmental and Cultural Evaluations Plan - 15 Pages Regulatory Evaluations - 10 Pages Society and Community Evaluations - 10 Pages Cost, Economics, and Financing Evaluations - 10 Pages

Exhibit O-2: Comment and Responses Template

Instructions: Use this Exhibit to submit comments and/or questions in accordance with Section 2.7.2 and due dates as specified in Section 1.7. Duplicate form as needed.

Qualified Proposer Enter text.

Qualified Proposer's Contact Information: Enter text.

No.	Date	Relevant Solicitation Section / Page	Comment / Question	Response	Actions Taken (if any)
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.
Enter text.	Enter text.	Enter text.	Enter text.	Enter text.	Enter text.

SECTION 10. FORM OF CONTRACT – LTWIP BASE CONTRACT

WATER INFRASTRUCTURE
FINANCE AUTHORITY OF ARIZONA

[INSERT NAME OF PROJECT]

LONG-TERM WATER IMPORTATION PROJECT

BASE CONTRACT

~~BOARD~~SOLICITATION DRAFT VERSION – ~~OCTOBER 23~~May 27, ~~2024~~2025

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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 Section 1.1.

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
BLS	Bureau of Labor Statistics
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
CPI	Consumer Price Index
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 than 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.

Consumer Price Index (CPI) means the Consumer Price Index for the City of Phoenix, as published by US Bureau of Labor Statistics from time to time, or failing such publication, such other index as the Parties (acting reasonably) may agree, or as may be determined in accordance with Section 27 (Disputes), which most closely resembles such index.

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 subsection (e) 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 Section 9.5(b).

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 Section 24.4.2.

Default Termination Event has the meaning given in Section 24.5.1.

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 Exhibit 11 (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)~~(f)(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).

Indexed means, with respect to an amount at any time, that the amount is adjusted as of each [INSERT MONTH AND DATE], 2025 commencing on [INSERT MONTH AND DATE], 2026 **[Note to Proposers: To be inserted based on Effective Date]** by:

(a) multiplying it by the specified index in effect as of the end of the immediately preceding [INSERT MONTH AND DATE], ; and

(b) dividing it by the specified index in effect as of [INSERT MONTH AND DATE], **[Note to Proposers: To be inserted based on Effective Date].**

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~~or

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

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~~14.13.2.

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)~~14.15.1(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 towards the best outcome of the WIP as contemplated in this Agreement 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 Exhibit 8B (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 a timely manner, in writing, by the WIFA Representative (in their ~~sole~~reasonable discretion) before such replacement.

6.5 Key Personnel Liquidated Damages

6.5.1 If any person appointed to fill a Key Personnel role set out in the Project Specific Information is not available for, or actively involved in, the performance of the Services as required in Section 6.4, as determined by WIFA except in instances where the Key Person is unavailable for the reasons set forth in 6.4(c), 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~~Key Personnel listed ~~above~~in the Project Specific Information, 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 based upon the criteria outlined in the Task Order.

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 or proceed with 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~~conform to Good Industry Practice ~~and are free from Defects~~;

(c) in the case of any construction work, 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.

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

(a) ~~(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;

(b) ~~(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;

(c) ~~(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.;

(d) ~~(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

(e) ~~(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.

9.1.3 ~~**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.

9.1.4 ~~**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.

9.1.5 ~~**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.

9.1.6 ~~**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.

9.1.7 ~~**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.

9.1.8 ~~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 commercially reasonable 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 Section 9.3, 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~~may revise the Project Schedule ~~with the~~without approval from WIFA unless the revision changes a Milestone Deadline, then the Developer must obtain prior written approval of WIFA; and

(e) update the Project Schedule as required in Section 9.3.5 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

9.6.2 If either:

(a) Acceptance of the Services has not occurred by the Task Deadline **[Note to Offerors: It is not WIFA's intent to impose liquidated damages for professional services Task Orders, unless there**

is a specific financial consequence or critical path impact related to the delay]; 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.~~timeframe specified in the Task Specific Information. **[Note to Offerors: Amounts and caps on liquidated damages will be negotiated and agreed with each Task Order.]**

9.6.3 ~~**9.6.2**~~ Liquidated Damages under Section ~~9.6.2~~9.6.3 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)~~9.6.2(a) or ~~9.6.1(b)~~9.6.2(b).

9.6.4 ~~**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)~~9.6.2(a) or 9.6.2(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~~14.12 (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 the key terms and conditions for the WIP Implementation Agreement and technical provisions; and

(b) engage in good faith discussions with Developer ~~regarding the~~to discuss and negotiate the WIP RFP, 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 Article 10 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 Section 14.8 (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 Subcontractors listed on Form O-5 submitted with the Developer's Offer are deemed approved by WIFA as of the Effective Date.

13.2.2 ~~**13.2.1**~~ The Developer shall not enter into any Major Subcontract under this Contract for the performance of this contract without the advance written approval of WIFA.

13.2.3 ~~**13.2.2** The Subcontractor~~Developer shall clearly list any proposed ~~subcontractors and the subcontractor's~~Subcontractors and the Subcontractor's proposed responsibilities in each Task Order.

13.2.4 ~~**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 Section 14.3.1, 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 Section 14.3.1 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 Section 14.8)~~.~~, which may include costs incurred prior to issuance of a Task Order but that are directly related to the performance of the Services; provided, however that WIFA will not reimburse the Developer for such costs unless the corresponding Task Order is agreed to and issued.

14.4.3 Following WIFA's interim Acceptance of each of the Tasks in accordance with Section 8.7, 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~~14.12, 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)~~14.12(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

14.9.1 ~~14.10~~ Applicability

This Section ~~14.10~~14.9.1 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.

14.9.2 ~~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.

14.9.3 ~~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.

14.9.4 ~~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.

14.9.5 ~~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.

14.9.6 ~~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.

14.9.7 ~~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.

14.10 ~~14.17~~ Allowability, Allocability & Reasonableness Definitions

14.10.1 ~~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:

14.10.2 ~~**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.

14.10.3 ~~**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.

14.10.4 ~~**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.

14.10.5 ~~**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.

14.11 ~~14.18~~ Taxes

14.11.1 ~~**14.18.1**~~ Developer shall pay, prior to delinquency, all applicable Taxes.

14.11.2 ~~**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.

14.11.3 ~~**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.

14.11.4 ~~**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.

14.11.5 ~~**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.

14.11.6 ~~**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.

14.11.7 ~~**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.

14.12 ~~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.

14.13 ~~14.20~~ Payment by WIFA

14.13.1 ~~14.20.1~~ Within 30 days after WIFA's receipt of a complete invoice that satisfies all the requirements in Section ~~14.19~~14.12, WIFA shall approve or dispute all or a portion of such invoice.

14.13.2 ~~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~~14.17 shall apply.

14.13.3 ~~**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**.**

14.13.4 ~~**14.20.4**~~ Any Payment Statement may correct any error in or modify any previous Payment Statement.

14.13.5 ~~**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.

14.13.6 ~~**14.20.6**~~ All payments made by WIFA shall be subject to correction or adjustment in subsequent progress reviews and payments.

14.14 ~~14.21~~ Interest

14.14.1 ~~**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.

14.14.2 ~~**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~~14.12 or Section ~~14.21~~14.14 (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.

14.14.3 ~~**14.21.3**~~ [Interest shall not accrue on Retainage or monies withheld pursuant to stop notices or the final payment under this Contract].

14.15 ~~14.22~~ Deductions, Exclusions and Limitations on Payment

14.15.1 ~~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 portion of the Services that are for construction work for the applicable Task (“**Retainage**”).

(b) Except as otherwise provided in Section ~~14.22.1(d)~~14.15.1(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)~~14.15.1(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)~~14.15.1(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)~~14.15.1(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.

14.15.2 ~~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.

14.16 ~~14.23~~ Payment to Subcontractors

14.16.1 ~~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.

14.16.2 ~~**14.23.2**~~ Any breach of the prompt payment requirements in this Section ~~14.23~~14.16 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.

14.16.3 ~~**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~~14.16 shall be considered incomplete if it involves Subcontractor work and is not accompanied by such analysis and certification.

14.17 ~~14.24~~ Disputes

14.17.1 ~~**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 Section 27. Upon resolution of any such dispute, each Party shall promptly pay to the other any amount owing.

14.17.2 ~~**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 Section 14 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 Sections 15 through 17.

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 after the issuance of a Change Order or a Directive Letter.

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 Section 17.6, 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 clause (a) or clause (c); 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 Section 17.7 approving Developer's request under Section 17.6:

(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~~any savings ~~under Section 17.6.2~~; 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~~Books and 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 must be compliant with the provisions of this Section 20.1 ~~is a contractual condition precedent to Developer's right~~in order to seek relief under this Contract.

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 minimum insurance requirements in Exhibit 14 as may be adjusted in the Task Specific Information for each Task.

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;~~

(b) ~~(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;

(c) ~~(d)~~ any fines or penalties levied or imposed by any Governmental Entity to the extent arising out of any Developer Fault;

(d) ~~(e)~~ Developer's liability for its indemnity obligations as provided in this Contract, including Sections 13, 9.6 and 23.2;

(e) ~~(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;

(f) ~~(g)~~ any amounts paid under the Payment Bond; and

~~(h) any Liquidated Damages; and~~

(g) ~~(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(g) 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, including A.R.S. § 34-226(B), Developer shall ~~release, defend,~~ indemnify and hold harmless 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~~from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, to the extent caused by the negligence, recklessness or ~~willful misconduct~~intentional wrongful conduct of Developer, ~~Developer-Related Entities, or any of their respective officials, officers, employees, subcontractors, suppliers, consultants or agents,~~a Subcontractor or

design professional or other Persons employed or used by Developer, Subcontractor or design professional in connection with the WIP or ~~this~~the performance of the Contract (including Developer Related Entities), 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); and

~~(d) Developer's obligation to pay Liquidated Damages; and~~

(d) ~~(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~~the time period specified in the Task Order 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 provision 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; and

(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 Sections 24.3(c), 24.3(d), 24.3(f), 24.3(g) ~~and~~, 24.3(h), 24.3(i) and 24.3(p) a period of 15 days after delivery of a Default Notice;

(b) for a Developer Default described in Sections 24.3(c), 24.3(d), 24.3(f), 24.3(g) ~~and~~, 24.3(h), 24.3(i) and 24.3(p) 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 Sections 24.3(a), a period of seven days after delivery of a Default Notice;

(d) for the Developer Default described in Section 24.3(k), 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 Section 24.4.3 ("**Default Termination Event**"), WIFA may terminate this Contract by providing Notice to Developer, or exercise any of the rights under Section 24.6.1(b).

24.5.2 Termination of this Contract for a Default Termination Event under this Section 24.5 will take effect on the date stated in the notice given by WIFA to Developer under Section 24.5.1(a).

24.6 Consequences upon Termination for Default Termination Event

24.6.1 Subject to Section 24.1, if WIFA terminates this Contract for a Default Termination Event:

(a) Developer shall comply with Section 26; 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~~14.12) 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~~14.12 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 Section 27.

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.~~

29.17 ~~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.

29.18 ~~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~~under this Agreement 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:** **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 2C (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in Exhibit 2D (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]**		
Default Deadline (Section 24.3(b))	**[Note: To be determined by WIFA]**		
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)]**		
Liquidated Damages	**Rate**	**Timeframe**	
	[Note: To be determined with each Task Order and aligned with Scope of Services]	**[Note: To be determined with each Task Order and aligned with Scope of Services]**	
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~~Chelsea McGuire	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]	Project Manager
	[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~~14.12)	Monthly, on the 10th day of each month.
Payment to Subcontractors (Section ~~14.23~~14.16)	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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract;

(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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract; 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

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 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]**
Default Deadline (Section 24.3(b))	**[Note: To be determined by WIFA]**
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)]**		
Liquidated Damages	**Rate**	**Timeframe**	
	[Note: To be determined with each Task Order and aligned with Scope of Services]	**[Note: To be determined with each Task Order and aligned with Scope of Services]**	

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~~Chelsea McGuire	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 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	Monthly, on the 10th day of each month.	

(Section ~~14.19~~14.12)	
Payment to Subcontractors (Section ~~14.23~~14.16)	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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract;

(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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract; 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 Exhibit 4C (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in Exhibit 4D (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]**		
Default Deadline (Section 24.3(b))	**[Note: To be determined by WIFA]**		
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)]**		
Liquidated Damages	**Rate**	**Timeframe**	
	[Note: To be determined with each Task Order and aligned with Scope of Services]	**[Note: To be determined with each Task Order and aligned with Scope of Services]**	

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		
	Representative	**Function(s)**

WIFA Representative and its other designated representatives (if any) and their functions (Section 6.2)	~~Chuck Podolak~~Chelsea McGuire	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 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	Monthly, on the 10th day of each month.	

(Section ~~14.19~~14.12)	
Payment to Subcontractors (Section ~~14.23~~14.16)	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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract;

(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 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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract; 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 Exhibit 5C (Scope of Services) (the "Services"). WIFA shall make payments to Developer for performance of the Services, as specified in Exhibit 5D (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]**		
Default Deadline (Section 24.3(b))	**[Note: To be determined by WIFA]**		
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)]**		
Liquidated Damages	**Rate**	**Timeframe**	
	[Note: To be determined with each Task Order and aligned with Scope of Services]	**[Note: To be determined with each Task Order and aligned with Scope of Services]**	

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~~Chelsea McGuire	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	Monthly, on the 10th day of each month.	

(Section ~~14.19~~14.12)	
Payment to Subcontractors (Section ~~14.23~~14.16)	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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract;

(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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract; 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]**		
Default Deadline (Section 24.3(b))	**[Note: To be determined by WIFA]**		
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)]**		
Liquidated Damages	**Rate**	**Timeframe**	
	[Note: To be determined with each Task Order and aligned with Scope of Services]	**[Note: To be determined with each Task Order and aligned with Scope of Services]**	

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~~Chelsea McGuire	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 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	Monthly, on the 10th day of each month.	

(Section ~~14.19~~14.12)	
Payment to Subcontractors (Section ~~14.23~~14.16)	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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract;

(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~~first 12 months following the Effective Date, 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 for the first 12 months following the Effective Date and shall be Indexed using the Consumer Price Index in accordance with this Contract; 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)

Summary report: **Litera Compare for Word 11.9.1.1 Document comparison done on 5/27/2025 4:06:15 PM**	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: WIFA - Long Term Water Importation Project Base Contract - 10.23.2024.docx	
Modified filename: WIFA - Long Term Water Importation Project Base Contract - 5.27.2025.docx	
Changes:	
Add	372
~~Delete~~	368
~~Move From~~	0
Move To	0
Table Insert	18
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	758

WATER INFRASTRUCTURE
FINANCE AUTHORITY OF ARIZONA

[INSERT NAME OF PROJECT]

LONG-TERM WATER IMPORTATION PROJECT

BASE CONTRACT

EXHIBITS

~~BOARD~~SOLICITATION DRAFT VERSION – ~~November 12~~May 27, ~~2024~~2025

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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. Data Protection and Confidentiality of Information. 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. Personally Identifiable Information. 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. Audit. 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. Facilities Inspection and Materials Testing. 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. Advertising, Publishing and Promotion of Contract. Developer shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of WIFA.

e. Continuous Improvement. 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. Other Contracts. 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. Federal Immigration and Nationality Act. 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. E-Verify Requirements. 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. Offshore Performance of Work involving Data is Prohibited. 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. Protection of State Cybersecurity Interests. 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. Certification Required by State Law.

   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. Cancellation for Conflict of Interest. 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. Gratuities. 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. Third Party Antitrust Violations. 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. Lobbying.

i. Prohibition. 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. Exception. 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. False Statements. 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.

EXHIBIT 7B

FEDERAL REQUIREMENTS

[NOTE TO PROPOSERS: CHANGES MAY BE REQUIRED TO FEDERAL RQUIREMENTS TO ALIGN WITH SOURCES OF FUNDING, IF ANY, SOUGHT BY WIFA FOR EACH WIP]

Developer shall perform its obligations under this Contract in accordance with Applicable Law, including the following federal 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.

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. Seat Belt Use. 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. Distracted Driving. 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. Other Required Pass-through Provisions and Obligations

Developer as a potential subrecipient must comply with the following pass-through provisions and obligations:

a. Follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(b). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

b. Ensure Developer and its Subcontractors, as applicable, have a "Unique Entity Identifier" (UEI). The UEI is required by 2 CFR Part 25 and 2 CFR 200.332(b). Subrecipients are not required to complete full System for Award Management (SAM.gov) registration to obtain a UEI. Information regarding obtaining a UEI is available at the System for Award Management (SAM.gov) Internet site: http://www.sam.gov/SAM/and in the General Condition of the pass-through entity's agreement with EPA entitled "System for Award Management and Universal Identifier Requirements" T&C of the pass-through entity's agreement with the EPA.

c. Comply with requirements that apply to the subaward, including those that flow down from the recipient, including:

(i) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable, including provisions protecting free speech, religious liberty, public welfare, and the environment per 2 CFR 200.300(a), as well as regulations, including 2 CFR 200.300(b) prohibiting discrimination based on sex.

(ii) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled "Reporting Subawards and Executive Compensation."

(iii) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled "Consultant Fee Cap."

(iv) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "Management Fees."

(v) The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at 2 CFR 200.322.

(vi) Other statutes, regulations and Executive Orders that may apply to subawards are described at Information on Requirements that Pass-Through Entities must "Flow Down" to Subrecipients. Many Federal requirements are agreement- or program-specific, and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

d. Follow a system for evaluating subrecipient fraud risk and risk of noncompliance with a subaward to determine the appropriate monitoring described at 2 CFR 200.332(c)

and any additional monitoring tools that may be useful as described in 2 CFR 200.332(f), considering:

(i) The subrecipient's prior experience with same or similar subawards;

(ii) Results of previous audits, including considering whether the subrecipient receives a Single Audit, in accordance with 2 CFR Part 200, Subpart F and the extent to which the same or similar subawards have been audited as a major program;

(iii) Whether the subrecipient has new personnel or new or substantially change systems, and

(iv) The extent and results of any Federal agency monitoring (for example, if the subrecipient also receives Federal awards directly from the Federal agency).

e. Follow a process deciding whether to implement specific conditions in subawards based on risk factors, as described in 2 CFR 200.208, and notify EPA of the specific conditions as required by 2 CFR 200.332(d). Examples of specific conditions, per 2 CFR 200.208, may include:

(i) Requiring payments as reimbursements rather than advance payments;

(ii) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;

(iii) Requiring additional or more detailed financial reports;

(iv) Requiring additional or project monitoring;

(v) Requiring the recipient or subrecipient to obtain technical or management assistance; or

(vi) Establishing additional prior approvals.

f. Follow a system for monitoring subrecipient performance that includes the elements required at 2 CFR 200.332(e), such as reviewing financial and performance reports, and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this Contract.

g. Plan for and take corrective action on all significant developments that negatively affect the subaward. Per 2 CFR 200.332(e)(2), significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions that will impact their ability to meet the milestones or objectives of the subaward.

h. Comply with an accounting system which ensures compliance with the $50,000 limitation at 2 CFR 200.1, Modified Total Direct Costs, if applicable, on including subaward costs in Modified Total Direct Costs for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis

for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.

i. Assist in WIFA's efforts, as needed, to work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA) prior to awarding a subaward to a foreign or international organization or a subaward to be performed in a foreign country, even if that subaward is described in a proposed scope of work.

j. Assist in WIFA's efforts, as needed, to obtain prior written approval from the EPA's Award Official for any subawards or subaward activities that are not described in the approved work plan in accordance with 2 CFR 200.308. As provided in 2 CFR 200.308(f)(6), recipients must obtain prior approval to change a named subrecipient from the EPA Award Official if the pass-through entity described the original subrecipient's qualifications and/or performance history in the competitive application.

k. Assist in WIFA's efforts, as needed, to obtain prior written approval from the EPA's Award Official to provide a description of subawards to individuals.

l. Follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of the award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

m. Comply with audits, as applicable, per 2 CFR part 200, Subpart F, and a system under 2 CFR 200.332(g) and 2 CFR 200.521 for issuing management decisions for audits of subrecipients that relate to the Federal award from the recipient. The recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are either reimbursed or offset with allowable costs, regardless of whether the recipient recovers those costs from the subrecipient.

n. Assist in WIFA's efforts, as needed, to obtain EPA approval to make fixed amount subawards, as provided in 2 CFR 200.333.

13. ~~**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 Section 12 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.

2. ~~f. Executive Order No. 11246.~~Federal Anti-Discrimination Laws

Developer shall agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and the certify that it does not operate any programs promoting Diversity, Equity and Inclusion that violate any applicable Federal anti-discrimination laws.

3. ~~2. Equal Employment Opportunity~~Civil Rights Obligations ~~Under Executive Order No. 11246~~

The Developer must comply fully with applicable civil rights statutes and implementing federal and EPA regulations, including:

~~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 Section 3:Statutory Requirements

1. ~~"Covered area" means the geographical area described in the solicitation from which~~In carrying out this Contract~~ resulted;~~, the Developer must comply with:

~~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.~~

i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, by entities receiving Federal financial assistance;
ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
iii. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

2. If the Developer is an education program or activity (e.g., school, college, or university) or if the Developer is conducting an education program or activity under this Contract, it must also comply with:
   i. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about compliance obligations regarding Title IX, see https://www.justice.gov/crt/title-ix.
3. If this Contract is funded with financial assistance under the Clean Water Act, the Developer must also comply with:
   i. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in Clean Water Act-funded programs or activities.

b. Regulatory Requirements
   1. The Developer agrees to comply with all applicable EPA civil rights regulations, including:
      i. For Title IX obligations, 40 C.F.R. Part 5; and
      ii. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
      iii. The statutory and national policy requirements at 2 CFR 200.300(a).
      iv. For Federal awards that are subject to a Federal statute prohibiting discrimination based on sex, the Federal agency or pass-through entity must ensure that the award is administered in accordance with 2 CFR 200.300.
      v. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements as applicable, including, but not limited to collecting, maintaining, and providing upon request compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

c. Title VI – Limited English Proficiency (LEP), Public Participation and Affirmative Compliance Obligation

1. The Developer must comply with Title VI of the Civil Rights Act to take reasonable steps to provide meaningful access to LEP individuals. In implementing that requirement, the recipient may refer to the EPA document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The Guidance can be found at: https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi.
2. If the Developer is administering permitting programs under this agreement, the recipient may refer to EPA's "Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs." The Guidance can be found at: https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf.
3. The Developer acknowledges it has an affirmative obligation to implement effective federal civil rights compliance programs, as required by EPA's nondiscrimination regulations at 40 C.F.R. Parts 5 and 7, and ensure that it does not discriminate in its programs and activities in violation of federal civil rights laws and regulations. The Developer must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented, or to otherwise demonstrate how it is meeting its federal civil rights obligations. For further assistance on civil rights compliance, the recipient may refer to the EPA document entitled, "Civil Rights Guidance on Procedural Safeguards: Requirements and Best Practices." The Guidance can be found at: https://www.epa.gov/external-civil-rights/civil-rights-guidance-procedural-safeguardshttp://www.epa.gov/system/files/documents/2024-08/civil-rights-guidance-on-procedural-safeguards-august-2024.pdf.

4. ~~"Minority" includes:~~ **[Not Used]**

~~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).

5. 4. Segregated Facilities, 41 CFR 60-1.8[Not Used]

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.

The Developer agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33, with the following adjustments:

a. EPA MBE/WBE Certification, 40 CFR, Part 33, Subpart B

The EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.4(b).

b. Six Good Faith Efforts, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR Section 33.301, the Developer agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that any Subcontractors also comply. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: 40 CFR Section 33.301 (a)-(f). However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts (40 CFR Section 33.304). If recruiting efforts are unsuccessful, the Developer must follow the six good faith efforts.

c. Contract Administration Provisions, 40 CFR, Section 33.302

The Developer agrees to comply with the contract administration provisions of 40 CFR Section 33.302 (a)-(d) and (i).

d. Bidder's List, 40 CFR Section 33.501(b) and (c)

If applicable and the Developer receives funding through a Continuing Environmental Program Grant or other annual reporting grant, the Developer must agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

e. Fair Share Objectives, 40 CFR, Part 33, Subpart D

The EPA is suspending negotiations of fair share objectives with recipients under 40 CFR Part 33, Subpart D pursuant to a class exception issued on March 17, 2025. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.4(b).

f. MBE/WBE Reporting, 40 CFR, Part 33, Subpart E

The EPA is suspending recipient reporting requirements under 40 CFR 33.502 pursuant to a class exception issued on March 17, 2025. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.4(b).

g. MBE/WBE Recordkeeping, 40 CFR, Part 33, Subpart E

The EPA is suspending recipient recordkeeping requirements under 40 CFR Part 33, Subpart E pursuant to a class exception issued on March 17, 2025. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.4(b).

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

EXHIBIT 8A

FORM OF PERFORMANCE BOND

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]	[COMPANY NAME]
PRINCIPAL SEAL	SURETY SEAL
By: _____	By: _____
Title: _____	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

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. Attorneys' Fees. 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. Joint and Several Liability. 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. Defenses. 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) Allowable Delay Costs. Increases in cost for labor, equipment, and materials will be calculated as follows:

(1) Idle Labor. Labor costs during delays must be calculated as specified in Section 3.0(B) for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for WIFA-approved reasons.

(2) Escalated Labor. 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) Idle Equipment. 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 Section 2.4. 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 Section 3.3, 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 Sections 4.0 and 5.0, 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) Section 5.5 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) Section 5.5 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) Section 5.5 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 Section 3.1 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 Section 29 (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 Exhibit 14 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 Section 1.5 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.

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