CITY OF GLENDALE

CONSTRUCTION MANAGER AT RISK AGREEMENT

Project:
PYRAMID PEAK WATER TREATMENT PLANT
PROCESS IMPROVEMENTS and EXPANSION PROJECT

Project No.:

151619 / 151620
GMP 3

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CONSTRUCTION MANAGER AT RISK AGREEMENT

This Construction Manager at Risk Agreement (this "Agreement") is made by and between the City of Glendale, an Arizona municipal corporation ("City"), and McCarthy Building Companies, Inc., a Missouri corporation, authorized to do business in the State of Arizona ("CMAR").

RECITALS

A. City is undertaking the design and construction of a public works project, as described in detail in **Exhibit A**, to benefit its citizens and visitors and the region generally (the "Project").

B. City has engaged Black & Veatch Corporation to prepare design, programs, budgets, and other criteria for the project (the "Design Documents").

C. CMAR's Statement of Qualifications ("SOQ") was submitted in response to the City's Request for Qualifications dated February 11, 2016. CMAR was selected by a qualification-based process in accordance with Title 34 of the Arizona Revised Statutes.

D. City will engage CMAR under the terms of this Agreement to manage and be responsible for the timely and proper construction and commissioning of the fully completed and functional Project (the "Work").

E. CMAR was retained to provide "value engineering" and "constructability" reviews of the design documents pursuant to a separate contract. CMAR will therefore not be paid for suggesting additional design changes for this Project, as the City has already paid for such professional services. Any further design changes shall be performed by CMAR at its own risk and own cost.

AGREEMENT

City, subject to the terms and conditions of this Agreement, hereby engages CMAR to construct the Project. CMAR accepts this engagement as provided herein. Therefore, City and CMAR agree as follows:

1. **Definitions.** For the purposes of this Contract, the following words and terms shall have the respective meanings set forth below. All other words shall be given their ordinary and common usage, unless otherwise noted.

a. **"Change Order"** means a written amendment to this Agreement, executed on behalf of City and CMAR that specifies the Change, and the adjustment to the Contract Sum and/or Contract Times.

b. **"Construction Documents"** means those stamped and sealed documents containing all of the elements required in this Agreement and prepared by a registered design professional in connection with the Work that have been accepted by both CMAR and City and approved and released for construction by the applicable governmental permitting authorities.

c. **"Construction Materials"** means all fixtures, materials, and supplies provided for incorporation in the Project.

d. **"Consultant"** means a person, frim or corporation duly authorized by the City to perform design on behalf of the City, act for the City in inspecting materials and construction, and interpreting plans and specifications.

e. **"Engineer"** means a person, firm or corporation duly authorized by the City, to act for the City in staking out the work, inspecting materials and construction and interpreting plans and specifications.

f. **"Project Documents"** include:

(A) this Agreement and any amendments,
(B) Design Documents,
(C) Construction Documents,
(D) any Change Orders, Change Directives, or Field Orders,
(E) Notice to Proceed,
(F) Project related specifications and drawings,
(G) permits,
(H) FFE Procurement Schedules,
(I) provisions of the required bonds and insurance policies, and
(J) other documents identified in **Exhibit A**.

g. **"Construction Services"** means all procurement and construction services of every kind and description, including all construction services, expertise, labor, materials, equipment, tools, utilities, supervision, coordination, scheduling, permitting, shop drawings, transportation, insurance, testing, inspection, procurement, installation and other facilities and services of every kind and description, and calculations incidental and required in connection therewith and as further described in **Exhibit A**.

h. **"Excusable Delay"** means a delay that the City determines has or will cause the Project Schedule not to be met as a result of an event that is not attributable in any manner to CMAR's actions or inactions, or attributable in any manner to the actions or inactions of any entity under CMAR's control or direction, and cannot be avoided or mitigated by CMAR's best efforts. A Force Majeure, as defined in Section 6.7 herein, would constitute an Excusable Delay.

i. **"FFE"** means the furniture, fixtures, and moveable equipment and other items of Work that are required for the completed Project. City may distinguish between furniture, fixtures, and moveable equipment that will be provided by City outside CMAR's scope and that which CMAR will provide as a part of this Agreement.

j. **"Final Completion"** means the date when all of the following have occurred:

(A) All punch list items have been completed to the satisfaction of the governmental permitting authority;

(B) A permanent certificate of occupancy has been secured;

(C) The Engineer of Record has accepted the Project and submitted the property Certificate of Final Completion to City; and

(D) City has accepted the Project.

k. **"Hazardous Substance"** means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and welfare of life or the physical environment if not used, stored or disposed of in accordance with applicable law, such as, but not limited to, explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances, pollutants or contaminants, including without limitation: (1) any substance or material included within the definitions of "hazardous substances," "hazardous wastes," "special wastes," "regulated substances," "Hazardous Substances," "toxic substances," "hazardous pollutants" or "toxic pollutants" in any of the Resource Conservation and Recovery Act, 42 U.S.C. § 9601, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 6901, the Toxic Substances Control Act, the Clean Air Act and/or the Clean Water Act, as the foregoing may be amended from time to time, or any regulations promulgated thereunder, and any analogous state,

local or other governmental laws, rules or regulations; (2) any "PCBs" or "PCB items," as defined in 40 CFR § 761.3; and (3) any "asbestos," as defined in 40 CFR § 763.63.

l. **"Subcontractor"** means any person or entity, including materialmen, that has a direct contract with CMAR to furnish any element of the Work. The prime contractor of CMAR is not a subcontractor.

m. **"Substantial Completion"** of the Work means the date when all of the following have occurred:

(A) The Work is approved by City and deemed by the City to be substantially complete;

(B) The applicable permitting authorities have each issued its respective written approval(s) of the Work as being sufficiently complete so that it may lawfully be occupied by City for City's intended use;

(C) The Engineer of Record has accepted the Project and submitted the property Certificate of Substantial Completion to City certifying that the work is substantially complete; and

(D) Subject only to specified punch list items.

n. **"Supplier"** means any entity, except the CMAR and a direct Subcontractor of the CMAR, that is contracted to furnish any labor, equipment, professional services, Construction Materials or other goods or services to accomplish or complete the Work required in this Agreement.

o. **"Vendor"** means a Subcontractor or Supplier who sells, but does not attach or install Construction Materials that are not specially manufactured or fabricated for the Project.

p. **"Withholding"** means the amount of each Progress Payment, Final Payment, or other amount otherwise payable to CMAR will be reduced for the reasons provided in this Agreement.

q. **"Work"** means that activity required for the timely, cost-effective, and proper design, engineering, construction, implementation and commission of the Project. Work includes, and is the result of, CMAR performing, furnishing, and incorporating as necessary all labor, materials, and equipment into the construction of the Project, and CMAR performing, furnishing, or making provision for the services and documents required by this Agreement, including and Project documents, which are incorporated hereto by reference.

r. **"Work Product"** means the documents generated by CMAR and its Supplier(s), including, but not limited to, all preliminary and completed evaluations, programs, reports, drawings, plans, operational documents or other work product in any media or form that CMAR and its Supplier(s) generate, or arrange for, in connection with the Project, together with the design of the buildings and structures embodied within them, and all items and matters included within the definition of "architectural work" as provided in 17 U.S.C. § 101.

2. Construction Services.

2.1 CMAR Obligation.

(A) CMAR will furnish all Construction Services, including those further described in **Exhibit A**, that are necessary for the Project's timely and proper construction, completion, and use by City.

(B) Construction Services includes the completion of every improvement depicted, required by or reasonably inferable from any portion of the Project Documents.

3. Representatives and Key Personnel.

3.1 CMAR Representative.

(A) Responsibilities. CMAR's Representative is authorized to act on CMAR's behalf and may not be discharged, replaced or have diminished responsibilities on the Project without City's prior consent, which may not be unreasonably withheld.

(B) Address. CMAR's Representative address for Notice, as required in this Agreement, is:

McCarthy Building Companies, Inc.
Attn: Joe Brunsman, Sr. Vice President 6225 N. 24th Street, Suite 200

Phoenix, AZ 85016

3.2 City's Representative.

(A) Designation of City Representative. City's Representative is authorized to act on City's behalf, whose address for Notice, as required in this Agreement, is:

Tom Kaczmarowski, P.E., CFM Principal Engineer
City of Glendale
5850 W. Glendale Avenue, Suite 315
Glendale, Arizona 85301

With required copies to:

City Attorney
City of Glendale
City Attorney's Office
5850 W. Glendale Avenue, Suite 450
Glendale, Arizona 85301

(B) Concurrent Notices.

(1) Except to the extent otherwise directed to CMAR in writing, all Notices to City's Representative must be given concurrently to the Project Coordinator and City Attorney.

(2) Notices are not considered received by City's Representative until the time that it has also been received by the Project Coordinator and City Attorney.

(C) Construction Administration Project Manager. The Construction Administration representative (the "Project Manager") with authority to act for the Construction Administration Firm for the Project whose information for Notices is:

Lisa Jackson, PE - Associate Vice President
Black and Veatch Corporation
2231 E. Camelback Road – Suite 250
Phoenix, AZ 85016
Email: JacksonLA@BV.com

3.3 Key Personnel.

(A) Employment of Key Personnel. CMAR and its Subcontractors will employ key personnel in connection with the Work, in categories of persons identified in **Exhibit B** (collectively, "Key Personnel") and each of whom will be acceptable to and approved by City.

(B) Approval of Key Personnel.

(1) All personnel listed in CMAR's SOQ will be assigned to the Project and will be dedicated to performing work on the Project at not less than the frequency or amount of time identified in the SOQ.

(2) Prior to the commencement of the Work, CMAR must deliver to City a written proposal identifying the names, duties and titles, and attaching the resumes of each person who CMAR proposes as the Key Personnel.

(3) Except for those Key Personnel identified in the SOQ, City will have the right to disapprove CMAR's choice of any Key Personnel, provided City does so by giving written notice to CMAR.

(4) If City disapproves any of CMAR's proposed Key Personnel, CMAR must provide City with the name and qualifications of proposed alternates and the procedure will continue until a complement of Key Personnel who meet with City's approval is selected.

(5) Each Key Personnel will remain assigned to the Project throughout the Project's duration; and

(6) As long as each Key Personnel remains employed by CMAR or its Subcontractors, he or she must not be discharged, reassigned, replaced, or have his or her responsibility diminished without City's prior written consent.

4. Documents.

4.1 CMAR Documents. CMAR represents that it has carefully examined, has had the opportunity to object to, and had the opportunity to obtain limitations to the Solicitation during the RFQ process, and fully understands this Agreement, including CMAR Documents and all other items, conditions, and things that may affect the performance of its obligations. Such items or conditions may include, but are not limited to, the nature or local field conditions of the Project Site that are observable to CMAR without intrusive inspection, or are documented in any environmental reports, surveys and other information regarding the Site that City has furnished to CMAR.

4.2 Design Documents. CMAR has already reviewed Design Documents under a separate professional services contract with the City. Accordingly:

(A) CMAR must consider the Design Documents in agreeing to the Guaranteed Maximum Price (as required by Section 5 of this Agreement).

(B) CMAR hereby waives all claims, demands or requirements for extras or changes to the Work or the Guaranteed Maximum Price based on facts related to the Site that were discoverable by CMAR prior to the Effective Date of this Agreement.

(C) CMAR will not receive any additional compensation for a change to the design documents unless such changes are necessitated by new information or changed conditions discovered during the course of performing the work, as provided in Section 20.3 herein.

4.3 Work Product Formatting. Any drawings created by CMAR, its Subcontractors, or its Supplier(s) will be generated and furnished to City in hardcopy and in freely modifiable AutoCAD format, as City may reasonably request.

4.4 Intellectual Property Rights Assignment. CMAR hereby irrevocably conveys and assigns to City the exclusive Ownership of, and copyright in, any Work Product that is generated by CMAR, its Subcontractors, and its Supplier(s) in connection with the Project, together with all copyright renewals and extensions and the right to reproduce, publish, modify, and create and publish derivative works from the Work Product.

(A) Use of Intellectual Property. CMAR warrants that it, its Subcontractors, and its Supplier(s) will not utilize any of the Work Product in connection with any other project without City's prior written consent, which may not be unreasonably withheld but which may be denied to the extent the requested use is for the other project and involves any unique or signature elements of the Project.

(B) Non-Infringement. CMAR further warrants to City that all Work Product generated or arranged for by CMAR, its Subcontractors, and its Supplier(s) in connection with the Project, and CMAR's conveyance and assignment to City of the ownership of, and copyrights in, the Work Product and/or copyrights in them, as provided in this section, will not infringe on the copyrights or another party's contractual or proprietary interests.

(C) CMAR will include provisions equivalent to the provision(s) contained in this Section 4 of this Agreement in each of CMAR's subcontracts and third party agreements with its Suppliers.

5. Guaranteed Maximum Price. The maximum amount for completion of the Work as required by the Design Documents, as reviewed, modified and approved by CMAR, will be the Guaranteed Maximum Price ("GMP").

5.1 GMP Elements. The GMP will incorporate into one amount:

(A) All CMAR's direct and indirect costs and expenses incurred in connection with the Work, whether at the home office, Site, or elsewhere;

(B) The cost of all construction, construction materials, engineering services, architectural services, geotechnical services, transportation costs, labor, supplies, services, equipment and other elements necessary for the Project's proper and timely completion;

(C) All profit, home office overhead, job site overhead, wages, salaries and fringe benefits paid to supervisory and other employees and representatives;

(D) Job trailer rental, utilities, telephone, and other related expenses;

(E) Printing;

(F) Long distance charges;

(G) Deliveries;

(H) Transportation;

(I) Insurance, as allowed in Section 31 of this Agreement;

(J) Bonds, as allowed in Section 31 of this Agreement;

(K) All building permit costs and fees required by any federal, state or local governmental entity;

(L) All federal, state and local taxes imposed on labor, construction materials, equipment and services furnished, including transaction privilege, excise, sales, use, personal property and similar taxes, as allowed in Section 7.4 of this Agreement; and

(M) All other general and administrative expenses incurred in connection with the Work.

5.2 Insurance and Bond Premiums. CMAR's Reimbursable Construction Insurance and Bond Premiums are the amounts equal to the premiums CMAR is required to pay to secure:

(A) The Builder's Risk Policy that CMAR is required to furnish with City's approval as provided in this Agreement;

(B) The liability insurance CMAR and its Supplier(s) are required to furnish under the provisions of **Exhibit E** in connection with the Construction Services; and

(C) CMAR's statutory payment and performance bonds as provided in Section 31.3 of this Agreement, if the premium has been included in the GMP Schedule approved in writing by City.

5.3 Contingencies. Any line item identified in the GMP Schedule as a contingency ("Contingency") belongs solely to City, and may not be drawn upon or reallocated by CMAR without City and Project Coordinator's prior written approval.

(A) Draws Including a Contingency. CMAR must include with each monthly Application for Progress Payment an itemization of each draw from the Contingency (by date, payee, purpose and amount of each transfer or payment) made during the Billing Month, together with a copy of City's written approval for the draw.

(B) Required Designation of Contingency. Unless the GMP Schedule conspicuously designates a line item as a "contingency," the GMP does not include any contingency amount of any kind or nature.

5.4 Allowance. There can be line item costs identified as allowances in the GMP Schedule ("Allowance Item"). Other than line item allowances, the GMP may only be increased or decreased by a written amendment to this Agreement, signed by both of the Parties.

5.5 Unit Priced Items. There are no line item costs identified as a unit price item ("Unit Price Item") or extended price ("Unit Price Extension Amount") in the GMP Schedule. Accordingly, the GMP may only modified to include a Unit Price Item or

a Unit Price Extension Amount by a written amendment to this Agreement, signed by both of the Parties.

5.6 FFE. FFE not specified in the Construction Documents will be procured in accordance with the FFE Procurement Schedules to be developed by CMAR subject to CMAR and City's mutual agreement.

(A) FFE Warranty. CMAR warrants to City that:

(1) Construction materials and equipment and FFE furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Construction Documents and the FFE Procurement Schedules;

(2) The construction will be free from faults and defects; and

(3) The construction and FFE will conform to this Agreement's requirements, the Construction Documents, and the FFE Procurement Schedules.

(B) Correction of Nonconforming FFE. Construction and FFE not conforming to these requirements, including substitutions not properly approved by City, must be corrected in accordance with Section 22 and 23 of this Agreement.

(C) "FFE Procurement Schedules" means the interior design drawings and listings of specific FFE to be purchased for the Project.

5.7 CMAR Risk. CMAR bears the sole risk that any element of cost, overhead, or profit might cause the Guaranteed Maximum Price to be exceeded. If the GMP is exceeded, the City is not liable for such additional cost or expense unless the City agrees to such a change in an amendment to this Agreement signed by both of the Parties.

5.8 GMP Savings. If, upon the Work's Final Completion, the Contract Sum is less than an amount equal to the GMP, the resulting amount will belong solely to City.

5.9 GMP Schedule. The GMP is apportioned among the Work's various elements as provided in **Exhibit C** (the "GMP Schedule"). **Exhibit C** may be used by City as a basis for evaluating CMAR's Applications for Progress Payment. To the extent there is any inconsistency between any of the provisions in **Exhibit C**, and any of this Agreement's provisions, this Agreement's provisions govern.

6. Schedules.

6.1 Commencement Date. The date of City's written notice to proceed ("Notice to Proceed") will be the Construction Services commencement date.

(A) City will not issue a Notice to Proceed until City has approved the applicable Construction Documents, and all necessary Permits have been issued.

(B) CMAR must not commence any Construction Services at the Site until City has issued a written Notice to Proceed.

6.2 Time of the Essence. Time is of the essence in completing the Project.

6.3 Project Schedule. CMAR must perform the Work in a logical and efficient manner in accordance with City's project schedule ("Project Schedule"), attached as **Exhibit D**.

(A) Initial Project Schedule. Within 15 days of the execution of this Agreement, CMAR must submit an initial Project Schedule, which will include the following:

(1) Times (number of days or dates) for starting and completing the various stages of the Work, including milestones as specified in CMAR Documents;

(2) A Schedule of Values; and

(3) Construction Management Plan ("CMP").

(a) CMAR's CMP will include:

(i) Project milestone dates and the Project Schedule, including the broad sequencing of the construction of the Project;

(ii) Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities, including underground utilities;

(iii) Alternate strategies for fast tracking and/or phasing the construction;

(iv) Number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction;

(v) Permitting strategy;

(vi) Safety and training programs;

(vii) Construction quality control;

(viii) Commissioning program;

(ix) Cost estimate and basis of the model; and

(x) A matrix summarizing each Project Team member's responsibilities and roles.

(b) During the course of performance of the Work on this Project, CMAR will add detail to its previous version of the CMP to keep it current throughout the construction phase and to take into account:

(i) Revisions in Drawings and Specifications;

(ii) CMAR's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by City, Design Professional or CMAR;

(iii) Unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way;

(iv) Fast-tracking, if any, of the construction, or other chosen construction delivery methods;

(v) Requisite number of separate bidding documents to be advertised;

(vi) Status of the procurement of long-lead time equipment (if any) and/or materials; and

(vii) Funding issues identified by City.

(B) Adherence to Project Schedule. CMAR must adhere to the major milestone dates of the Project Schedule at all times during the Work, unless it has received City's prior written approval for a deviation from or modification to the major milestone dates of the Project Schedule. CMAR must not depart from the major milestone dates of the Project Schedule without prior consultation with and approval from City.

(C) Project Schedule Revision. The Project Schedule must be revised at least monthly, or at more frequent intervals as required by the conditions of the Work and Project, but each Project Schedule revision must allow for expeditious and practicable execution of the Work consistent with the Contract Times.

(1) The monthly revision will be a condition precedent to any payment otherwise due to CMAR.

(2) Each revised Project Schedule must be prepared in sufficient detail to demonstrate for each element of the work its timing, duration, and sequence, all integrated to show a logical order and reasonable critical path consistent with the Substantial Completion and Final Completion Dates.

(a) The revised Project Schedule may take into account an appropriate number of weather delays reasonably anticipatable based on experience in the area, but not less than one day per month.

(b) Each revised Project Schedule must include activities and logic for mitigating the cost and time impact of any anticipated or potential delays to any critical path elements that CMAR wishes City to consider an Excusable Delay.

(D) Weekly Progress Meeting. From the Effective Date until Final Completion, CMAR will meet with City every week (or more or less frequently, as requested by City or CMAR) to review the Work's progress.

(1) In advance of each such meeting, CMAR must provide City a written progress report in the format and detail as provided in **Exhibit D** (each a "Progress Report").

(a) The Progress report will identify:

(i) Whether the Work is on schedule in accordance with the Project Schedule; or

(ii) Whether there are anticipated or potential delays to any critical path elements in the Work's construction, then CMAR must include an analysis identifying CMAR's plan for making up or mitigating the delay.

(b) Unless a delay is identified in the Progress Report, CMAR's Progress Report will be its certification that it has not incurred any delays to the critical path elements at least to the extent that a cause for the delay can then be reasonably identified.

(2) Unless the delay is an Excusable Delay, CMAR must take all actions, at its expense, including working overtime and hiring additional personnel, to comply with such Project Schedule.

(3) If the delay is an Excusable Delay, the Project Schedule may be modified to the extent mutually agreed upon by City and CMAR.

(4) Notwithstanding any provision to the contrary in this Agreement, CMAR is solely responsible for the timing, sequencing, coordination, and supervision of the Work consistent with the Substantial Completion and Final Completion Dates.

(5) City's review, acceptance or approval of a Project Schedule or Progress Report provided by CMAR is not:

(a) A waiver or bar to any rights or claims City may have against CMAR in the event City subsequently discovers a deficiency in such Project Schedule or Progress Report; and

(b) An acceptance of any delay as an Excused Delay, which may only be granted, along with any extension of time, by a Change Directive or amendment to this Agreement.

6.4 Substantial Completion Notification. CMAR will notify City and Project Coordinator in writing when CMAR, Architect of Record, and Engineer of Record believe that CMAR has accomplished Substantial Completion of the Project.

(A) Incomplete Items. If City concurs the Substantial Completion has been accomplished, City, Project Coordinator, CMAR, Architect of Record, and Engineer of Record will determine whether any items remain incomplete.

(B) Certificate of Substantial Completion. If City concurs the Substantial Completion has been accomplished, Architect of Record, and Engineer of Record will then each issue a "Certificate of Substantial Completion" to City, which will:

(1) Record the Substantial Completion date as determined by City;

(2) State each party's responsibility for security, maintenance, air conditioning, heat, utilities, damage to the Work and insurance;

(3) Include a list of items identified by City, CMAR, Architect of Record and Engineer of Record to be completed or corrected; and

(4) Fix a reasonable period of time for their inspection.

(C) Disagreement as to Substantial Completion. Disagreements between City and CMAR regarding the Certificate of Substantial Completion will be resolved in accordance with provisions of Section 11 of this Agreement.

6.5 Substantial Completion. CMAR must accomplish substantial completion by 210 **calendar days after issuance of the Notice to Proceed** (the "Substantial Completion Date").

(A) Extensions. The Substantial Completion and Final Completion Dates ("Contract Time") may be extended for cause, or by Change Order, as provided in Section 6.7 of this Agreement.

(B) Failure to Meet Substantial Completion Date. City will be substantially damaged if CMAR fails to accomplish Substantial Completion of the Work by the Substantial Completion Date, and it will be extremely difficult and impractical to ascertain the actual damages resulting from such delay; therefore:

(1) CMAR will pay City liquidated damages ("Liquidated Damages") in the event of a delay.

(2) Accordingly, if CMAR fails to accomplish Substantial Completion by the Substantial Completion Date, as it is extended in a signed writing by both parties, in accordance with this Agreement, City may assess, and CMAR must pay to City as Liquidated Damages, **$1,0700** for each day of delay until CMAR accomplishes Substantial Completion.

(3) CMAR acknowledges that these sums:

(a) Will be paid as Liquidated Damages and not as a penalty;

(b) Are reasonable under the circumstances existing as of the Effective Date; and

(c) Are based on the parties' best estimate of damages City would likely suffer in the event of a delay.

(4) CMAR must pay City any Liquidated Damages within ten (10) days after demand, or City may deduct these sums from any monies due or that may become due to CMAR under this Agreement.

(5) City's collection of Liquidated Damages will not affect its rights to seek other remedies in law or at equity, including but not limited to exercising its rights under the Payment and Performance Bonds.

6.6 Final Completion. Final Completion must be accomplished by 45 days after notification of substantial completion (the "Final Completion Date").

(A) Extensions. The Final Completion and Final Completion Dates may be extended for cause, by Change Order or other amendment of this Agreement, as provided in Section 6.7 below.

(B) Failure to Meet Final Completion Date. If CMAR does not accomplish Final Completion by the Final Completion Date, as it is extended in accordance with this Agreement, City may thereafter take control of the Site, effective upon delivery of written Notice to CMAR, and City may exercise its rights under the terms of any Payment or Performance Bond, and seek any remedy in law or at equity, including engaging other contractors to complete the remaining Work, at CMAR's expense.

(1) City may deduct its resulting expenses plus 20% from amounts otherwise payable to CMAR.

(2) CMAR must pay any amounts not so deducted within ten (10) days after demand.

6.7 Completion Dates Extension. The Substantial Completion and Final Completion Dates may be equitably extended by a written, signed amendment to this Agreement. Causes for extending the completion dates may include:

(A) City Delay. Any of the following (each a "City Delay") to the extent they necessarily result in unreasonable delays that are not caused or contributed to by CMAR:

(1) City's failure to make a decision regarding a major milestone item within a reasonable time (not exceed 10 days) after written request from CMAR accompanied by all documents and other information necessary for making the decision; or

(2) Any material breach of this Agreement by City.

(B) Force Majeure. The following items shall constitute a force majeure ("Force Majeure") event, provided they are not caused or contributed to by CMAR, or by any Subcontractor, Supplier or other person or entity for whom CMAR is responsible:

(1) Fire;

(2) War;

(3) Damage or disruption committed on behalf of any foreign interests to further international political objectives;

(4) Injunction in connection with litigation, governmental action;

(5) Severe and adverse weather conditions beyond those that can be reasonably anticipated as of the Effective Date of this Agreement.

(C) Excusable Delay. The Substantial and Final Completion Dates may be extended by the number of days the City, in its sole discretion, determines is an Excusable Delay, as such term is defined in Section 1(g.) of this Agreement.

(D) Mitigation of Delays. CMAR must use its best efforts to minimize any such time and cost impact of delays and must cooperate with City to mitigate the impact of any delays encountered by CMAR that would entitle it to an extension of time, even if its performance is unreasonably delayed by City.

(E) Remedies for Delays.

(1) Pursuant to A.R.S. § 34-607, the parties agree to negotiate in good faith any increased costs incurred by CMAR for any unreasonable delay that is attributable solely to a delay caused by City; .

(2) CMAR's sole and exclusive remedy for a Force Majeure event is an extension of time.

7. Compensation.

7.1 Contract Sum. The City shall pay CMAR a contract sum not to exceed the GMP for its performance of the Work under this Contract.

Cost Contract Sum is calculated by adding the Construction Services plus the CMAR's Fee (as defined in Section 7.2) and the amount paid for FFE

Services (as defined in Section 1(h.) herein). In no event shall the Contract Sum exceed the GMP $3,901,439.07.

7.2 CMAR's Fee. CMAR's Fee is the sole and exclusive compensation for CMAR's direct and/or indirect profit, home office overhead expense including, without limitation, home office administration, accounting, support, clerical services, insurance not specifically reimbursable under this Agreement, rent, all other direct and indirect home office expenses (including the costs specifically identified by CMAR to recruit and relocate employees and bonuses (at a not-to-exceed amount) that are previously approved by City as reimbursable); taxes other than reimbursable payroll related taxes and any other cost or expense not specifically included within the Cost of Construction Services.

Cost Fee may not exceed 9% of the Construction Services minus Privilege Taxes and CMAR's Reimbursable Construction Insurance and Bond Premiums, as specified by Section 5.2 of this Agreement.

7.3 Construction Services Cost.

(A) Costs included in Construction Services. Construction Services Cost consists of the expenses incurred and paid by CMAR in the Project's proper and timely construction for:

(1) Payments to City-approved Subcontractors or Supplier for the performance of the Construction Services and/or the furnishing of Construction Materials, fixtures, equipment and supplies in accordance with the provisions of their respective Subcontracts or Sub-subcontracts;

(2) Wages, salaries and normal fringe benefits (as approved by City), and normal employer taxes paid by CMAR thereon, of CMAR's supervisory staff and general field labor assigned to the Work, but only for the portion of time actually devoted to the Work, all subject to and as approved in writing by City, provided such costs are not included in the costs to be paid from CMAR's Fee per Section 7.2 of this Agreement;

(3) Elements of the Construction Services to be self-performed by CMAR with City's approval, in amounts approved by City (which will not include any mark-up for CMAR's Fee);

(4) Permit, licenses, connection fees, and other such fees to the extent required by any governmental entity;

(5) Construction Materials suitably stored on the Site with City's approval as provided in Section 12.5 of this Agreement;

(6) Construction equipment used on the Site by CMAR with City's approval, at rates not to exceed the lesser of:

(a) The prevailing rates charged by others for rental of similar equipment; or

(b) The purchase price of the Construction equipment less the reasonable depreciation in value of that equipment as a result of its use on the Site;

(7) Construction utilities, job site telephone, job trailer rental, portable toilets, dumpsters, cleanup and other job site general conditions as approved by City;

(8) Premiums paid by CMAR for Reimbursable Construction Insurance and Bond Premiums as provided in Section 5.2 of this Agreement, without any markup for CMAR's Fee;

(9) Any other reasonable construction expense necessarily required for proper performance of the Work at the Site required by this Agreement as approved in writing by City; and

(10) Reimbursable Privilege Taxes, without any mark up for CMAR's Fee. Expenses that do not meet the criteria set forth above are not reimbursable as Costs. All discounts received by CMAR from Supplier accrue to City's benefit.

(B) Cost Excluded from Construction Services. The Cost of the Construction Services ***may not*** include reimbursement for:

(1) Any amounts for FFE Services;

(2) The performance of any Construction Services by CMAR's own forces or use of any equipment owned by CMAR without City's prior written approval;

(3) Any Construction Materials not yet incorporated in the Project or stored at the Site with City's approval, as defined in Section 12.5(A) of this Agreement;

(4) Payment to CMAR or a subcontractor or supplier of amounts in excess of the amounts approved by the City for CMAR's self-performed Construction Services or for such performance by a subcontractor or supplier;

(5) Repair or replacement of defective or nonconforming Work;

(6) Repair or replacement of Work damaged by the negligence or failure to perform a responsibility hereunder by CMAR or by any Supplier;

(7) Any interest or penalties;

(8) Premiums for business automobile insurance, workers compensation and employers liability insurance, and any general liability and other insurance normally carried by CMAR that are not for use as part of the Project;

(9) Any legal expense incurred by CMAR;

(10) Any other home office expense;

(11) Any expense that causes the GMP, as amended, to be exceeded; or

(12) CMAR's Fee or any Privilege Tax(es);

(13) Any other expense that does not meet the criteria set forth in Section 7.3(A) of this Agreement, and

(14) Any costs associated with changes to the Design or Design Documents that were not required by the discovery of new

information or changed conditions during the construction of the Project, as provided in Section 20.3 herein.

(C) Schedule of Rates. City will consider approving written schedules of rates upon which CMAR may base its monthly estimated costs for purposes of Applications for Progress Payment of certain Construction Services costs, such as supervisory salaries and equipment; but only on condition that adoption of any schedule for these purposes is subject to audit and adjustment necessary to reflect the actual costs of these items to CMAR.

7.4 Taxes.

(A) Reimbursement.

(1) Provided such payments do not cause the CMAR to exceed the GMP, City will reimburse CMAR for Privilege Taxes paid by CMAR on gross receipts received by CMAR. Such payments may be made by the City if Privilege Taxes were timely paid by CMAR and are not otherwise exempt from such taxation.

(2) Provided such payments do not cause the CMAR to exceed the GMP, City will reimburse CMAR for Privilege Taxes paid by CMAR on amounts received from City for the direct costs paid by its Subcontractors for FFE. City will not reimburse CMAR for any amounts paid as and for Privilege Taxes by CMAR to its Supplier(s) or by a Supplier to another Supplier, or for any markup for profit and overhead for costs paid to Subcontractors.

(B) Application.

(1) Each Application for Progress Payment and Application for Final Payment will separately identify that part which represents FFE.

(2) CMAR and its Supplier(s) will not report transaction privilege or use taxes paid for FFE.

(3) CMAR will not seek reimbursement for Privilege Taxes computed on receipts for these expenses.

(C) Tax Licenses. CMAR must take all steps necessary to obtain state and local retail tax licenses, issue exemption certificates to vendors, and otherwise perfect its right to be exempt from the payment of Privilege Tax for FFE purchases, and CMAR must require its Supplier(s) to also obtain state and retail tax licenses, issue exemption certificates to vendors, and otherwise perfect their rights to be exempt from the payment of Privilege Tax for FFE purchases.

7.5 FFE Services.

(A) The amount to be paid to CMAR for the FFE Services will be an amount equal to the direct expenses (exclusive of any Privilege Taxes) paid by CMAR (or by a Subcontractor or Supplier) for the FFE, without markup for profit or overhead of CMAR (or of the Subcontractor or Supplier).

(B) "FFE Services" means interior design of the Project and the procurement of the FFE.

8. Payments.

8.1 Cash Flow Report.

(A) CMAR will prepare a Cash Flow Report for projected monthly project cash flow on the form provided by City.

(B) The Cash Flow Report will be submitted for approval prior to issuance of the Notice to Proceed, as issued in accordance with Section 6 of this Agreement.

(C) The Cash Flow Report will be updated and submitted with each Application for Progress Payment and at any time City requests if the projected monthly project cash flow varies by more than 10% of the GMP.

(D) The Cash Flow Report will reflect the following:

(1) Initially, the accumulation of month pay estimates costs will be plotted versus time in accordance with the proposed construction schedule; and

(2) For each update, CMAR's actual month payment versus the actual elapsed time on the Project.

8.2 **Draft Application for Progress Payment.** Based on draft applications (each a "Draft Application") followed by formal applications for progress payment (each an "Application for Progress Payment"), City will make monthly progress payments on Contract Sum account as provided in this Section. The Draft Application is for informational purposes only and its submission is not an Application for Progress Payment.

(A) Period. The period covered by each Application for Progress Payment will be one calendar month (the "Billing Month") ending on the last day of each month.

(B) Date for Submission. On or before the 25th day of each Billing Month, CMAR will submit to City its Draft Application, which must identify all amounts CMAR expects to invoice for the entire Billing Month.

(C) Review Meeting. The parties will thereafter meet and make good faith efforts to reach agreement on the Draft Application by the end of the Billing Month, whereupon CMAR will formalize its Application for Progress Payment for the Billing Month, incorporating all of the agreements reached during the parties' review of the Draft Application.

8.3 **Application for Progress Payment.** Provided that CMAR has submitted its Draft Application for review as provided above, CMAR may submit its Application for Progress Payment for the Billing Month to City, no earlier than the 1st day of the month following the Billing Month.

(A) Date for Submission. City will make a Progress Payment, subject to applicable Withholdings, to CMAR not later than 21 days after the date on which the Application for Progress Payment has been received by City, subject to this Agreement.

(B) One Progress Payment Per Month. Unless City agrees otherwise, CMAR may submit only one Application for Progress Payment in a month and City will make only one Progress Payment in a month to CMAR.

(C) Progress Payment Application Form. The Application for Progress Payment will be in such form as City may reasonably require, and will be accompanied by the following to City's reasonable satisfaction:

(1) A sworn statement of the Cost of the Work furnished during the Billing Month, together with the required form of application as City requires, properly completed so as to allocate all Construction Services and FFE Services according to the most recent City-approved GMP Schedule;

(2) An itemized report of the Work performed during the Billing Month;

(3) Proof of CMAR's compliance with testing, submittals, permits, and other requirements applicable to the Work requested by City;

(4) Conditional and unconditional waivers and releases from CMAR and from Subcontractors, Supplier, vendors, and others relating to Work for which the Application for Progress payment is requested, or receipt of amounts for which payment has previously been made, as requested by City;

(5) Payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, payrolls, requisitions from Subcontractors and material suppliers, vendors receipted invoices, purchase orders, and delivery tickets;

(6) CMAR's monthly updated Project Schedule as provided in Section 6 of this Agreement; and

(7) Such other evidence substantiating the particulars of CMAR's Application for Progress Payment as may be required by City.

(D) Complete Application Required. A complete Application for Progress Payment, including all required documentation, will be a condition precedent to CMAR's right to have the Application for Progress Payment reviewed or to receive any Progress Payments.

(E) Incomplete or Untimely Applications. If CMAR submits an Application for Progress Payment that is incomplete or untimely, in City's reasonable judgment, CMAR must resubmit the Application for Progress Payment, with any applicable corrections.

(F) Correspondence to Other Documents. CMAR's Application for Progress Payment must be organized so that all back-up for each line item of the Application for Payment corresponds to the most recently City-approved GMP Schedule and that the back-up for the amount requested for each item of the Construction Services, and FFE Services, and each Change Directive or Change Order is separately provided for and is available for review by City.

(G) Certification. The Application for Progress Payment must be signed by CMAR, the Architect of Record or the Engineer of Record certifying that:

(1) The Work has progressed to the point indicated in the Application for Progress Payment;

(2) That the Work is in accordance with the Project Documents;

(3) CMAR is entitled to payment in the amount requested; and

(4) Applications for Progress Payment to City will not be deemed delivered until actually received by City.

(H) Review of Work by City. City will have the right to review the Work after receipt of CMAR's application.

(1) Within three business days after receipt of the Application for Progress Payment, City will prepare and issue a written statement ("Deficiency Notice") specifying those items covered by the Application for Progress Payment that are not approved and certified for payment if:

(a) City reasonably determines that the Work actually completed is less than that represented on the Application for Progress Payment;

(b) The Work is defective;

(c) The Work does not comply with this Agreement's requirements; or

(d) The other grounds for withholding as provided in Section 12.3(B) below apply.

(2) The Deficiency Notice may be given in any reasonable manner, including handwritten annotations on a copy of the Application for Progress Payment returned to CMAR.

(3) City may withhold such sums as are permitted pursuant to A.R.S. § 34-607 to pay the expenses City reasonably expects to incur in correcting the deficiencies so identified.

(4) If sums were withheld in connection with a prior Application for Progress Payment, and the associated deficiencies have been corrected, the amount so withheld may be included as part of the current Application for Progress Payment.

(5) City will have the right to amend any previously-given Deficiency Notice, or approval for payment, in whole or in part, based on mistake, newly-discovered information, or other grounds permitted by Law, and such amendments will apply to any Application for Progress Payment.

(6) However, the failure by City to specify any defect in the Work in a Deficiency Notice will not act as a waiver or otherwise prevent City from raising defect issues at any time.

(I) Progress Payment to CMAR. Within 21 days after receipt of the properly completed Application for Progress Payment, City will pay to CMAR the entire amount set forth in the Application for Progress Payment, less any applicable Withholding and less retainage as provided in A.R.S. § 34-607(B).

(J) Progress Payment to Suppliers. Within 7 days after receipt of payment by City, CMAR will make payment available to its Subcontractors or Supplier entitled to payment in accordance with A.R.S. § 34-607(F).

(1) CMAR bears all costs and damages, without reimbursement, that arise from CMAR's failure to pay Subcontractors entitled to payment in a timely manner as provided by law, to the extent such payment has been received by CMAR from City.

(2) City has no obligation under this Agreement to pay or to be responsible in any way for payment to a Subcontractor or Supplier performing portions of the Work.

8.4 Proof of Payment.

(A) Duty to Discharge Debts and Obligations. All CMAR's debts and obligations for labor, materials, equipment or fixtures incorporated into the Project or any other element of Work, including that shown in any estimate, Application for Progress Payment, requisition or claim and upon which CMAR has received a payment must be paid or discharged by CMAR.

(B) Proof. Receipts or vouchers showing payment or discharge must, if City so requires, be provided to City before CMAR will be entitled to receive any other or further payment under this Agreement.

(C) Joint Check Alternative. At CMAR's election, CMAR may satisfy this requirement by requesting City issue joint checks in accordance with Section 12.4 of this Agreement.

9. Final Payment.

9.1 Application for Final Payment. Provided that CMAR has accomplished Final Completion in a timely fashion and to the City's satisfaction, CMAR may submit an application for final payment ("Application for Final Payment"); however, neither final payment nor amounts retained, if any, will be due until:

(A) CMAR submits to City an application for final payment with all required documentations in accordance with Section 9.2 below; and

(B) City has thereafter conducted a review or audit of CMAR's Final Accounting, as defined in Section 9.2 below.

9.2 Application for Final Payment Form. The Application for Final Payment must be in such form as City may reasonably require.

(A) Required Information. Application for Final Payment must be accompanied by the following to City's satisfaction:

(1) Waivers and Releases on Final Payment as provided in Section 12.11 of this Agreement;

(2) CMAR's accounting ("Final Accounting"), bearing the certificates of CMAR's chief executive and chief financial officers attesting to the completeness and accuracy of the Cost of the Work for which CMAR has received or seeks reimbursement from City;

(3) Architect of Record or the Engineer of Record certification to City that the Project is complete;

(4) Proof that CMAR has furnished to City the redlines, warranties, manuals and other close-out documents required by any of the Project Documents or applicable laws of City, county and state governments, or other authorities with jurisdiction over the Project;

(5) Certificates that demonstrate all insurance required by the Project Documents will remain in force after Final Payment is made and will be in effect as required;

(6) Such other documents substantiating the particulars of CMAR's Application for Final Payment (including additional backup for CMAR's accounting) as required by City, the Financing Parties and CMAR's Surety;

(7) Consent of CMAR's surety to the Final Payment; and

(8) City may require CMAR to submit and meet to discuss a Draft Application for Final Payment, following the procedure provided in Section 9 of this Agreement.

(B) Other Required Documents. CMAR must prepare or obtain and furnish to City upon completion, prior to and as a condition of the Application for Final Payment, in addition to any other documents as provided elsewhere in this Agreement, the following Project Documents:

(1) A list of capital assets as described in Governmental Accounting Standards Board Statement No. 34, as it has been supplemented by subsequent pronouncements of the Governmental Accounting Standards Board;

(2) Warranties from Subcontractors and Suppliers;

(3) Manufacturer's warranties and manuals for all furniture, fixtures and/or equipment installed or furnished by CMAR (whether as Construction Services or as FFE);

(4) Air balance reports, equipment operation and maintenance manuals;

(5) Building certificates required prior to occupancy, mechanical, electrical and plumbing certificates, all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction; and

(6) Two sets (bond copies), plus one electronic set of PDF and of redline record drawings in size to match the Construction Documents showing complete information including descriptions, drawings, sketches, marked prints and similar data indicating the final "as built" conditions of the Work, and CMAR must keep redline record drawings up to date concurrently as the Work progresses.

(C) Application for Final Payment Review. City will have thirty (30) days after its receipt of the fully completed Application for Final Payment within which to audit and/or review CMAR's Final Accounting.

(1) City review will result in a Notice to CMAR:

(a) Identifying and disallowing any expenses that City has determined were not incurred and paid consistent with this Agreement;

(b) Approving the Contract Sum that the City will agree to pay; and

(c) The amount of the Final Payment to be transmitted to CMAR, after deduction for all payments previously made and applicable Withholding.

(2) CMAR must cooperate with City's review and/or audit by making all of its records available for inspection and copying, answering questions, and otherwise facilitating City's review promptly upon its request.

(3) City's review and/or audit of the Final Accounting will be conducted in accordance with City's established auditing policies and practices and shall not be subject to review or challenge by CMAR or any third party.

(D) Final Payment. Subject to the exchange of conditional waivers and releases on Final Payment as provided in Section 12.1 of this Agreement, City will make the Final Payment to CMAR, within ten (10) days after City has issued its Notice of Final Payment in accordance with Section 9.2(C)(1)(c) above.

(E) Payment for Withholding. If applicable Withholding exceeds amounts otherwise payable, CMAR must pay the difference to City within ten (10) days after demand from City.

(F) Acceptance and Waiver. CMAR's acceptance of Final Payment will constitute a waiver of all Claims or Disputes that have not been timely submitted to City as CMAR Claims prior to CMAR's submission of the Application for Final Payment.

8. Changes. Changes in the scope of the Work or in the Project Schedule may be accomplished only by Change Order as defined in this Agreement.

10.1 Change Orders.

(A) Request for Proposal. If City requests CMAR to submit a proposal for a Change Order, CMAR will do so promptly, within ten (10) days after written request from City, on a form and following a procedure established by Project Manager. Any Change Order proposals shall specify CMAR's technical proposal for implementation of the proposed Change, together with CMAR's proposal for the resulting adjustment to the Contract Sum and/or Contract Times.

(B) Acceptance. City may, in its sole discretion, accept or reject the Change Order proposal and negotiate an amendment to the Scope of Work which will be memorialized in an agreed upon Change Order. The Change Order may be subject to City Council approval. If the parties cannot reach agreement within ten (10) days after City has received the proposal, the Change Order proposed will be deemed denied and no change will be implemented.

10.2 Field Orders. City or Project Coordinator, when reasonable under the circumstances, may issue a written order that makes or authorizes minor deviations in the Work or provides necessary interpretation of the Construction Documents.

(A) City may issue a Field Order unilaterally or at the request of CMAR.

(B) The total value of the work performed under any and all Field Order(s) may not exceed $50,000 without City Council approval.

(C) If CMAR disagrees that the deviation or interpretation is appropriate for a Field Order, it will provide Notice to City of its disagreement and City and CMAR may agree upon a Change Order.

(D) Change Orders shall not be subdivided to avoid the requirements of the Procurement provisions of the City Code, as provided in Section 2-145.

10.3 Authorization Required. CMAR may not perform any Change, or be entitled to any compensation or extension of time, unless CMAR has first received a Change Order or Field Order as provided in this Section 10.

11. CMAR's Claims. CMAR may request an increase in the GMP or extension of the Contract Times, or both, that is otherwise permissible under this Agreement ("CMAR Claim") using the following procedure:

11.1 CMAR's Duty to Mitigation Claims. CMAR must at all times, and in an all circumstances, use its best efforts to avoid or mitigate any potential impact of a CMAR Claim.

11.2 Notice of CMAR Claim. The request for a CMAR Claim must be preceded in each case by a written notice from the CMAR, submitted to both the City and its Project Coordinator, within five days of when CMAR first knew or should have known of the matter, occurrence or event that is the basis for the request for additional compensation or time ("Notice of Claim").

(A) Information. The Notice of Claim must furnish sufficient detail to inform City and its Project Coordinator of the basis and cause of the CMAR Claim and must include:

(1) A reasonable estimate of the amount of compensation or time CMAR anticipates it will require to avoid or mitigate any potential impact of the matter occurrence or event; and

(2) A list of action CMAR intends to take in order to mitigate the time and cost impact of the situation that gave rise to or is related to CMAR Claim.

(B) Supplementation. CMAR must supplement the Notice of Claim during the course of the Work as additional information becomes available.

(C) Continuing Delays. Only one notice is necessary in the case of a continuing delay that is attributable to the same cause described in the Notice of Claim.

(D) Waiver. If CMAR fails to submit a Notice of Claim within five days after CMAR first knew or should have known of the basis of the CMAR Claim, CMAR will be deemed to have waived the right to request or pursue a Notice of Claim arising from such matter, occurrence or event.

11.3 Procedures for Resolving a CMAR Claim. The procedures of this Section apply to requests for a CMAR Claim only. However, as provided in Section 36.2 of this Agreement, CMAR must continue to perform the Work during the pendency of any request for additional compensation or time under this Section.

12. Additional Terms and Condition of Payment.

12.1 Lien Waivers and Releases. Except as otherwise expressly set forth elsewhere herein, with each Application for Progress Payment, application for release of retention or other withholding, and Application for Final Payment, CMAR must submit lien waivers and sworn statements for the application from CMAR, and lien waivers and sworn statements from all Suppliers and third parties who have furnished labor, Construction Materials, equipment, tools, fixtures, services or other work directly or indirectly to or for CMAR, in form and substance as required by City to

assure that the Site and Project will be free of liens arising from the Work for which the payment is requested.

12.2 Reservations upon Payment.

(A) No Determination of Standard. No approval given or payment made by City is intended to be evidence of satisfactory performance of any Work, or of the sufficiency of any applicable application for payment.

(B) Non-Acceptance. No payment to CMAR will constitute an acceptance of any Work not in accordance with this Agreement's requirements.

(C) No Waiver of Defective Work. Any application for payment approval pursuant to A.R.S. § 34-607 will constitute approval solely for purposes of making payments and will not constitute a waiver of City's right to have all defective or incomplete Work corrected and performed in accordance with this Agreement, or to later modify or amend a Deficiency Notice or any approval or deemed approval previously given by City.

12.3 Retainer. An amount will be held by City as additional security for performance of CMAR's obligations, and may be applied by City towards payment of any back-charge, setoff, or other amount payable by CMAR to City.

(A) Discretionary Reduction of Retainer. After the Work is 50% complete, CMAR may submit a request for reduction of the amount withheld from subsequent Progress Payments.

(1) If CMAR has performed its obligations on schedule and is otherwise in compliance with the Project Documents, City may, but will not be required to, reduce the retained amount from future Progress Payments to not less than 5%, subject to City's right to later reinstate an appropriate retainer if CMAR thereafter fails to perform any responsibility under the Project Documents.

(2) With the regular Progress Payment after CMAR has accomplished Substantial Completion, City may release unapplied retainer to CMAR, less an amount equal to 200% times City's estimate of the costs it would incur to engage a third party to complete any remaining Work.

(3) With the Final Payment, any retainer will be released to CMAR.

(B) Withholding.

(1) The amount of each Progress Payment, or Final Payment, otherwise payable to CMAR will be reduced by the following amounts ("Withholding"), as applicable and such amounts shall be applied to any outstanding debts or charges owed to the City:

(a) Sums as permitted under applicable law on account of:

(i) The items identified in all applicable Certificates for Payment and/or Deficiency Notices and amendments thereto; or

(ii) Any additional amounts City in good faith believes are necessary to withhold, back-charge, or setoff in order to satisfy or cover any actual or reasonably anticipated loss, liability, damage or judgment that City has incurred or may

incur in connection with CMAR's performance or non-performance of this Agreement;

(b) Any Liquidated Damages then due.

(2) City will make appropriate adjustments to Withholding after final disposition of the Application for Payment, Deficiency Notice, CMAR Claim or other cause that resulted in such Withholding.

(3) If the expense incurred by City is less than the amount withheld, City may release the difference to CMAR within fourteen (14) days after such final disposition.

(4) If, however, such expense exceeds the unpaid amounts otherwise due, CMAR must pay the difference within fourteen (14) days after demand from City.

12.4 Payments to Supplier.

(A) Remittance to Supplier. Although not required by Section 8 or elsewhere in this Agreement, the City, at its sole discretion, may:

(1) Pay any Subcontractor or Supplier directly for performance of the Work, or

(2) Issue joint checks For payment to Subcontractor or Supplier if:

(a) CMAR agrees to accept joint checks and to execute, when requested by City, joint check agreements in a form acceptable to City.

(b) Joint checks and direct payments made pursuant to this section will be credited against the Contract Sum.

(B) Communications with Supplier. Although not required before the City makes such direct payment, CMAR consents to the City's direct payment and to City communicating directly with CMAR's Subcontractors, Suppliers and other Vendors.

12.5 Non-Incorporated Construction Materials. CMAR must not charge City for any Construction Materials that are not used for the Work or to complete the Project, unless City has given its written agreement to pay such charges.

(A) Storage of Materials. City may condition its approval on its determination that the Construction Materials are suitably stored and properly secured from casualty, properly insured, and that title has passed to City free and clear of any liens or encumbrances.

(B) Receipt of Documentation. City may further condition the making of payments for Construction Materials not used for the work or to complete the Project upon receipt of contracts, bills of sale, or other agreements satisfactory to City to establish City's title to the Construction Materials, or otherwise protect City's interest.

13. Project Coordinator. The City's Project Coordinator will assist City in this Agreement's administration and overall Project administration.

13.1 Project Coordinator's Authority. The City's Project Coordinator and his/her staff, if any, have no authority, express or implied, to act on behalf of City in any capacity

whatsoever as an agent and has no authority, express or implied, to bind City to any obligations.

13.2 Project Coordinator's Duties.

(A) The City's Project Coordinator shall provide direction and communicate with CMAR, and will review and make recommendations to City regarding:

(1) The Work and Work Product;

(2) The Services furnished by CMAR in connection with the Project; and

(3) CMAR's invoices.

(B) The City's Project Coordinator may have other duties and responsibilities as the City may delegate or designate in writing from time to time.

13.3 Cooperation. CMAR agrees to cooperate with the City's Project Coordinator so as not to result in any delay in the progress of the Work or completion of the Project.

14. Subcontractors and Supplier.

14.1 Subcontractors Unless otherwise agreed upon in writing by City and CMAR, the Construction Services will be performed by qualified Subcontractors and Suppliers, who will be selected and engaged by the CMAR, with approval of the City, as provided in Section 14.2 and 14.3 below.

CMAR will be responsible and liable to City for the Work's proper and timely performance by any and all of its Subcontractors, Suppliers and any other person or entity who furnishes any Work for this Project on CMAR's behalf.

14.2 Subcontractor Selection. Subcontractors will be selected on the basis of qualifications alone, or a combination of qualifications and price, but not price alone, as provided in the Subcontractor's Selection Plan developed by CMAR and submitted during the selection process. The process for Subcontractor selection will include:

(A) Selection may be a single step process, based on a combination of qualifications and price, or a two-step process, where the first step is a screening of applicants based on qualifications and the second step is based on a combination of qualifications and price or on price alone;

(B) CMAR will then determine, with City's advice, which bids or proposals will be accepted;

(C) CMAR may obtain bids or proposals from Subcontractors from the list previously reviewed and, after analyzing such bids or proposals, will deliver copies of such bids or proposals to City;

(D) CMAR will not be required to contract with anyone to whom CMAR has a reasonable objection;

(E) Requests for submittal of qualifications must be in writing, and kept by CMAR in its Project records; and

(F) Each Subcontract must meet other requirements set forth in all applicable sections of this Agreement, including, but not limited to, this Section and Sections 17, 18 and 30.

(G) Solicitation and selection of subcontractors shall be conducted in accordance with ARS Title 34, the City's Procurement policies, and the City Code.

14.3 Subcontracts. Except as provided in Section 14.5 of this Agreement, each subcontract must:

(A) Be in writing, and signed by both the CMAR and Subcontractor;

(B) Provide for a fixed, or not-to-exceed amount as the Subcontractor's entire compensation;

(C) State that the Subcontract is subject to this Agreement's terms and conditions and specifically incorporate this Agreement's provisions (except its compensation terms);

(D) Bind and obligate the Subcontractor to CMAR as CMAR is bound to City under this Agreement;

(E) State that City is the intended third-party beneficiary of the subcontract, with the right (but not the obligation) to pursue claims for damages and/or equitable or other relief or remedies directly against Subcontractor for any breach of Subcontractor's obligations under the Subcontract, or any breach of any warranty given by Subcontractor;

(F) State that City may exercise its rights as a third-party beneficiary if a breach of contract or warranty continues without cure for seven days after written notice has been given to CMAR;

(G) Contingently assign the subcontract to City in the event this Agreement is terminated, subject to City's election to accept the assignment by delivery to Subcontractor of written notice—which City is not obligated to give;

(H) Obligate Subcontractor to be joined as a party to any arbitration or other dispute resolution proceeding in which City or CMAR are parties and which arises out of or relates to Subcontractor's performance or nonperformance of the subcontract;

(I) Include a termination for convenience clause equivalent to Section 35.5 of this Agreement;

(J) Contain an indemnity that is, at a minimum, equivalent to the provisions of Section 30 herein and identifying, as Indemnities, all Indemnified parties identified in Section 30 of this Agreement;

(K) Include any other provision required by the Project Documents; and

(L) Agree to contract with Supplier as provide in Section 14.4 below.

(M) Confirm that the City is not liable to Subcontractor for compensation for any work performed for the Project, unless the City so agrees;

(N) Contain the City's non-discrimination clause prohibiting the Subcontractor from discriminating against any employee based on his/her race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

14.4 Supplier. Except as provided in Section 14.5 below, each agreement between CMAR and Supplier, between any Subcontractor and Supplier or any other parties contracted to provide Work or perform tasks, activities or actions on the Project must:

(A) Be in writing, and signed by both the CMAR and Supplier;

(B) Provide for a fixed, or not-to-exceed amount as the Supplier's entire compensation;

(C) State that the Supplier's contract is subject to this Agreement's terms and conditions and specifically incorporate this Agreement's provisions (except its compensation terms);

(D) Bind and obligate the Supplier to CMAR as CMAR is bound to City under this Agreement;

(E) State that City is the intended third-party beneficiary of the Supplier's contract, with the right (but not the obligation) to pursue claims for damages and/or equitable or other relief or remedies directly against Supplier for any breach of Supplier's obligations under its contract with CMAR, or any breach of any warranty given by Supplier;

(F) State that City may exercise its rights as a third-party beneficiary if a breach of contract or warranty continues without cure for seven days after written notice has been given to CMAR;

(G) Contingently assign the Supplier's contract to City in the event this Agreement is terminated, subject to City's election to accept the assignment by delivery to Supplier of written notice—which City is not obligated to give;

(H) Obligate Supplier to be joined as a party to any arbitration or other dispute resolution proceeding in which City or CMAR are parties and which arises out of or relates to Supplier's performance or nonperformance of the subcontract;

(I) Include a termination for convenience clause equivalent to Section 35 of this Agreement;

(J) Contain an indemnity that is, at a minimum, equivalent to the provisions of Section 30 herein and identifying, as Indemnitees, all Indemnified parties identified in Section 30 of this Agreement; and

(K) Include any other provision required by the Project Documents.

(L) Confirm that the City is not liable to Subcontractor for compensation for any work performed for the Project, unless the City so agrees;

(M) Contain the City's non-discrimination clause prohibiting the Subcontractor from discriminating against any employee based on his/her race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

14.5 Immigration Law Compliance.

(A) Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

(B) Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

(C) City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 8.1 above.

(D) City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 8.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

(E) Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

(F) Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.14.5.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

14.5 Condition Precedent to Work of Supplier. Satisfaction of all requirements of this Section 14 is a condition precedent of Subcontractor or Supplier's right to commence any Work element and to receive the payment of any amount otherwise payable to CMAR for any Work performed by the Subcontractor or Supplier.

(A) Compliance Warranty. By permitting a Subcontractor or Supplier to commence any Work element, CMAR conclusively warrants to City that all of this Agreement's requirements have been fulfilled and must continue to be fulfilled as to the Subcontractor or Supplier.

(B) CMAR Responsibility for Supplier. CMAR is solely responsible and liable to City for the Work's proper and timely performance by each Subcontractor and Supplier.

(C) Copies of Subcontracts. CMAR shall furnish a copy of any subcontract or third party contract, including those with any Supplier, to City within two (2) days after it is requested by City. City shall have no obligation to make such a request, or to review any Subcontract or Supplier when received, and no review, non-review, objection or failure to object by City shall relieve CMAR and its Subcontractors and Suppliers from their responsibilities for fulfilling this Agreement's requirements.

(D) Change of Subcontractor Approval. CMAR will not change a Subcontractor after the Subcontractor has been approved by City, without City's written consent to the change.

15. Self-Performed Work.

15.1 Selection of CMAR. CMAR, its subsidiary, affiliate or entity under control of CMAR, may seek to self-perform portions of the Construction Services only if selected by City following this Agreement's full subcontractor procurement process, and if and only:

(A) CMAR has been selected by City in accordance with City Code 2-145 and as provided in Section 14.2 of this Agreement, or

(B) City has given prior written approval to CMAR's self-performance of *de minimus* Construction Services, such as minor clean-up work (but only to the extent of the type of *de minimus* work and the not-to-exceed amount authorized in City's written approval).

15.2 Contract for Self-Performed Work. If CMAR is selected to self-perform portions of the Construction Services, a written subcontract will not be required, as this Agreement's provisions will apply. Prior to initiation of the self-performance of Work, the City and CMAR will agree to a written scope of work to be self- performed and a lump sum to be paid for such self-performed work. This lump sum will not exceed the amount budgeted for performance of the same work by a Subcontractor or other third party and will include CMAR's direct and indirect compensation, labor, labor burden, supervision, overhead, and all other costs. CMAR's self-performance of any Work allowed under this Section will not change, in any way, the amount CMAR is entitled to as compensation under this Agreement or the Contract Sum, CMAR's Fee or the GMP, as those terms are defined and calculated in Section 7 of this Agreement.

16. Performance Standards. CMAR warrants to City that:

16.1 Standard of Care. CMAR, its Subcontractors and Suppliers, will perform their respective obligations under this Agreement with the professional diligence and care prevailing among highly skilled and experienced members of the industry with demonstrated ability to timely and properly complete construction projects equivalent to the Project (the "Standard of Care"), on schedule, within budget, and without obvious or latent defects.

16.2 Standard of Work. The Work must be:

(A) In accordance with the requirements of the Project Documents;

(B) Free from defects; and

(C) Fit for City's intended use.

16.3 Standard of Construction Materials. All Construction Materials will be new and in excellent condition, except to the extent specifically provided otherwise in the Project Documents.

16.4 Quality Control. CMAR must establish, maintain, and implement a quality control program that is consistent with that described in the CMP and which is:

(A) Sufficient to insure proper supervision, examination, inspection, and testing of all item of Work at appropriate intervals, including the work of Subcontractors, Supplier, suppliers; and

(B) Sufficient to assure conformance to the Project Documents with respect to Specifically Described Items, as defined in Section 22.2 of this Agreement, and general workmanship, construction, and equipment (including maintenance, while-idle, and functional performance) requirements.

17. Regulatory Compliance.

17.1 Duty to Comply. CMAR must comply with all federal, state, county, and local laws, including, statutes, rules, regulations, codes, ordinances, executive orders, and other legislative, executive, or judicial requirements and/or decisions (collectively, "Laws") applicable to the Work whether or not specifically referenced elsewhere in this Agreement. Compliance with such Laws shall include, but not be limited to:

(A) Compliance with Laws pertaining to contractor licensing, occupational health, safety, disabilities, building codes, construction standards, licensure, social security, employment, workers compensation, immigration, wages, payrolls, health, discrimination, equal employment opportunity, civil rights, storm water, solid wastes, Hazardous Substances, grading, air pollution, water pollution, waste disposal, human remains, land use, historic preservation, endangered or threatened species, navigable waters, waters of the United States and tributaries thereof, and any other Laws applicable to the performance of the Work; and

(B) Compliance with any applicable standards, specifications, manuals, or codes of any technical society, organization, or association, adopted by City (and as may be modified from time to time), or those commonly used as the industry standard in the design and construction of projects comparable to the Project being performed and completed in accordance with this Agreement by the CMAR.

17.2 Notification of Investigations. To the fullest extent permitted by applicable Law, CMAR will notify City, and, in each case, require its Subcontractors and Suppliers to notify City, within three (3) calendar days of a demand for records or notice of audit being received and/or any inspection or other investigation is commenced by any federal, state or local governmental agency that relates to the Work, including, without limitation:

(A) Any Site inspection or investigation conducted to a determine compliance with any Laws or permits pertaining to Hazardous Substances, waste, dust control, air quality, water pollution, storm water runoff, endangered species, navigable waters, occupational health or safety; and

(B) Any inspection, audit or other investigation, whether on- or off-Site, conducted to verify the immigration and/or worker authorization status of any person employed or contracted by CMAR, its Subcontractors, or any Supplier.

17.3 City's Rules. City has the right, but not the obligation, to adopt and prescribe from time to time one or more rules and regulations ("City's Rule(s)") governing parking, access, times of work, noise, behavior towards City's employees, customers, guests or invitees, and such other matters not involving the means, method, techniques or manner of the Work's performance that City deems pertinent to preventing disruption to City's ongoing operations.

(A) CMAR will enforce, and will be responsible to City for, the failure of its employees, or employees of its Subcontractors or Supplier to comply with City's Rules.

(B) Compliance with City's Rules will be a condition to the right of any person to enter upon any of City's property. City has the right to revoke such right of access to any person who has breached or failed to comply with any of City's Rules.

(C) The issuance or non-issuance, enforcement or non-enforcement of City's Rules by City will not relieve CMAR from its sole and exclusive responsibility to City for taking all appropriate precautions, in accordance with applicable Laws, to ensure the health and safety of persons and property with respect to the Work.

17.4 Compliance Assurances. CMAR warrants to City that CMAR and its Subcontractors and Suppliers are in compliance with all of the following:

(A) Subcontractors and Supplier now hold—and, at all times relevant to this Project, will hold—all licenses, registrations and other approvals necessary for the lawful performance of the work; and

(B) Subcontractors and Suppliers are not—and, at all times relevant to this Project, will not—be debarred or otherwise legally excluded ("Debarred") from contracting with any federal, state or local governmental entity; and

(C) Except with City's knowledge and consent, Subcontractors and Suppliers will not:

(1) Accept trade discounts;

(2) Have a significant direct or indirect financial interest in CMAR or any of its Subcontractors or Supplier; or

(3) Undertake any activity or employment or accept any contribution that conflicts, directly or indirectly, with the City's interests.

18. Health and Safety.

18.1 General Safety Duty.

(A) CMAR is solely responsible for the safety and health effects of the Work as it may impact all persons and property whether or not under CMAR's control.

(B) CMAR shall at all times:

(1) Provide proper traffic control, warnings, and all other measures necessary to protect City and City's residents, employees, invitees, licensees, and agents, and all other third persons from illness, sickness, death, personal injury or property damage arising from or relating to the Work; and

(2) Maintain a safe working environment, in full compliance with all applicable Laws, especially such laws relating to occupational health and safety and drugs in the workplace.

18.2 Hazardous Substances. CMAR is responsible for the proper handling, management, storage, transportation and disposal of every substance, material and equipment it brings to the Site, and in the conduct of its operations, so as to prevent the release of any Hazardous Substance:

(A) Remediation. CMAR is responsible for the cost of investigation, characterization, management, response and/or remediation of a release or threatened release of a hazardous substance. CMAR is also responsible for all other losses and damages to City or any third party resulting from any release or threatened release of a hazardous substance by CMAR or any of its subcontractors or suppliers.

(B) Actions upon Discovery. If CMAR discovers material on the Site that may be a Hazardous Substance, then CMAR must immediately:

(1) Notify the City and the National Response Center if the Hazardous Substance presents or may present an imminent threat or endangerment to public health or welfare or the environment;

(2) Notify City in writing of the discovery of the Hazardous Substance and provide all relevant information if the Hazardous Substance does not present an imminent threat or endangerment to public health or welfare or the environment;

(3) Discontinue Work and take whatever precautions are necessary to protect persons and property from exposure to the Hazardous Substance, including, but not limited to, taking actions to prevent the release or threatened release of such material or any action that may accelerate the release of or threatened release of such Hazardous substance in accordance with applicable Laws or the direction provided by any regulatory agency such as the EPA, ADEQ or the Maricopa County Environmental Services Department;

(4) CMAR may resume operations in the affected area only after City has determined that the material is either not a Hazardous Substance or that it is a Hazardous Substance but the response has remedied, eliminated, mitigated or managed the risk in accordance with applicable Law; and

(5) If the remedy directed by City results in a delay to the Work's critical path, and if CMAR did not cause, allow, or contribute to the release or threat of release of the Hazardous Substance, CMAR may seek an equitable adjustment of the Contract Times and Contract Sum, in accordance with Section 11 or Section 20.3(E) of this Agreement.

(6) Provided CMAR notifies the City in writing within 5 days of discovery, to the fullest extent permitted by law, the City shall indemnify and hold harmless the CMAR, Subcontractors, and employees of either of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

18.3 Waste.

(A) Waste Defined. "Waste" includes any dust, solids, liquids or other form of inert or discardable material that is not a Hazardous Substance, pollutant or contaminant.

(B) Waste Management. CMAR must maintain proper precautions so that the amount of Waste resulting from CMAR's Work is at all times:

(1) Kept at minimum;

(2) Confined within the Site; and

(3) Not permitted to interfere with or disturb City's ongoing operations or the activities of City's employees, customers, residents, guests, invitees, or licensees.

(C) Waste Removal. All Waste must be removed from the Site each day, pursuant to a plan approved by City, and the Waste must be properly transported and disposed of at an appropriate disposal facility in accordance with applicable Law.

(D) Contract. CMAR must contract with City for any Waste removal. CMAR may be charged for the City's provision of waste management collection and disposal services at the then market rate. Such charges shall be considered part of the Construction Services Cost and will not effect the CMAR's Fee, the Contract Sum or the GMP.

19. Permits.

19.1 Duty to Secure. CMAR will timely and proactively apply for, and undertake all actions necessary to secure and comply with all federal, state and local permits, licenses and approvals required for the Work. CMAR must also provide adequate time in the construction schedule to secure all required permits and approvals.

19.2 Costs of Permits. The cost of permits, licenses, connection fees, and other such fees must be included in the Construction Services Costs. If CMAR's actions cause the cost of the Work to increase because permit application review and issuance may cause it to fail to meet the Construction Schedule, the cost for obtaining expedited review and approval of such permit applications must be borne solely by CMAR. Such cost will also not be reimbursed by City or be used as a justification to seek an adjustment or increase of the GMP.

19.3 Public Hearings. CMAR will attend and participate in all public hearings held by local governmental jurisdictions and utilities in connection with the issuance and compliance with such permits, licenses and approvals.

19.4 Compliance. CMAR and each of its Subcontractors and Suppliers must comply with, give all notices and take all actions required by all permits issued for the Work. Any failure to comply with the terms and conditions of such permits will be the responsibility of the CMAR and any penalties imposed for such failure(s) shall be borne by the CMAR alone.

20. Site.

20.1 Title to Project Site. City warrants that it owns title to the Project site and that all known easements, licenses, and restrictions that may affect the Project have or will be timely disclosed.

20.2 On-Site Locations.

(A) Reference Points. City will provide engineering surveys to establish reference points for construction which in City's judgment are necessary to enable CMAR to begin the Work.

(B) Site Layout. CMAR will be responsible for laying out the Work, protecting and preserving the established reference points and must not make change relocations without the proper written approval of City.

(C) CMAR's Responsibilities. CMAR must report to City whenever any reference point is lost or destroyed or whenever relocation of a reference point is required due to necessary changes in grades or locations. CMAR will be responsible for the accurate replacement or relocation of the reference points by professionally qualified personnel.

20.3 Newly Discovered or Changed Conditions. As the CMAR for the Design Phase Services, CMAR has knowledge of the site and the conditions pre-existing for construction of the Project. Based on this knowledge, CMAR warrants and represents that CMAR:

(A) Inspection. Has conducted a visual inspection of the Site, reviewed the soils report, and performed all other due diligence activities as agreed and approved during the Design Phase Services ;

(B) No Defects. Has observed no defects, discrepancies, deficiencies or faults with the Site making it unsuitable for the Project or found any defects, discrepancies, deficiencies or faults in any Project Documents that would require further investigation (except those that have already been reported to City in writing as the Design Phase oversight contractor); and

(C) Acceptance. Accepts the condition of the soils and the Site as being fit and proper to allow for the full performance of the Work Discovery of Conditions. If, at any time CMAR during the performance of the Work, CMAR encounters previously unknown conditions at the Site, which could not reasonably have been detected by CMAR's investigation or during CMAR's performance prior of Design Phase services at the site, and that make it unsuitable for the Work's proper and accurate performance, CMAR must promptly:

(1) Discontinue Work in the affected area;

(2) Leave the Newly Discovered or Changed Conditions as they are found (taking reasonable precautions for the protection of persons and property);

(3) Notify City and its Project Coordinator (immediately by phone or email, followed by written notice within three (3) calendar days identifying the Newly Discovered or Changed Conditions with specificity); and

(4) Await clarification and direction before CMAR proceeds with any Work that may be affected.

For purposes of this Section, "Newly Discovered" or "Changed" conditions shall include, without limitation: conditions in or beneath the Site that differ materially from indications in the Design Documents or information that were known or could have been reasonably discovered by CMAR during its performance of Design Phase Services, or other newly discovered or changed conditions that may adversely impact the Work that occurred after Design Documents were approved as final.

(D) Equitable Adjustment. If the Newly Discovered or Changed Conditions should not be reasonably discovered or foreseeableby CMAR during its performance of Design Phase services, CMAR may seek an equitable adjustment of the Contract Times and GMP for any resulting critical path delays or additional expenses incurred by CMAR, subject to Sections 10 and 11 of this Agreement

(E) Liability and Responsibility. If CMAR proceeds with Work after discovery of a Newly Discovered or Changed Condition without notifying City, suspending applicable Work as provided in this Section and getting the City's approval to proceed, CMAR will be liable and responsible to City for all resulting losses, liabilities, damages, and expenses. CMAR proceeds without so notifying the City and obtaining its approval, CMAR will have waived any right to seek a CMAR Claim or Equitable Adjustment as provided herein based on any Newly Discovered or Changed Condition.

20.4 Underground Facilities. CMAR will comply with the provisions of A.R.S. § 40-360.21 *et. seq.*, relating to underground facilities, and further:

(A) Other Owners. CMAR acknowledges that City is not the owner of some underground facilities on, or contiguous to, the Project Site. "Underground facilities" includes, but is not limited to, electrical conduit, water irrigation canals and ditches, gas lines, telecommunications lines, or other communications fibers, and such facilities may be owned and/or operated by governmental or private entities;

(B) Information and Data. The information and data shown or indicated on the Design Documents and other site specific documents concerning existing underground facilities at, or contiguous to, the Project Site will be based on the information and data furnished to City by the owners or operators of the underground facilities;

(C) CMAR's Responsibilities. City will not be responsible for the accuracy or completeness of the information or data provided by others. CMAR will have the responsibility for the following activities, the cost of which are included in the GMP:

(1) Reviewing and verifying the information and data provided by others;

(2) Locating all underground facilities on, or contiguous to, the Project Site, to the extent knowledge of adjacent underground facilities is necessary and reasonable to secure;

(3) Coordinating the Work with the owners of the underground facilities during construction;

(4) Providing for the safety and protection of all underground facilities affected by the Work; and

(5) Integrating any underground facility into the Work as necessary.

(D) Repair and Replacement. City will not be responsible for any repair or consequential damages resulting from CMAR's mistake in locating or failing to locate underground facilities and taking such locations into account when performing the Work.

(E) City-Owned Underground Facilities. City will provide CMAR with information and data about the location and characteristics of any underground facility that it owns, such as water and sewer lines. The CMAR may rely on that information and data.

20.5 Archaeological Deposits. In accordance with A.R.S. § 41-844, if CMAR discovers any archaeological sites or objects, CMAR must promptly report them to City and Director of the Arizona State Museum:

(A) CMAR will further ensure compliance with the provisions of State law with respect to archaeological sites or objects; and

(B) CMAR may be allowed an adjustment for time depending on the extent of the tasks required to catalogue and preserve the find and to mitigate any impact such find may have on the Work.

21. On-Site City Activity.

21.1 Partial Utilization. Before Final Completion of the Project, as defined in Section 6.6 of this Agreement, City may divide the Project and place a portion of the Project into use, if such that portion has been completed. The City may exercise the option to divide and use a portion of the Project if:

(A) The Design Documents identify a distinct phase of the Project, and the part of the Project being sought to be placed into use has been completed; or

(B) City and CMAR agree that the portion sought to be placed into use is a separately functioning and usable part of the Work that can be used by City for its intended purpose without significantly interfering with CMAR's timely and proper performance of the remainder of the Work.

(C) If the Project is not phased and City decides to place a part of the Project into use such that CMAR incurs additional costs or requires additional time, CMAR may present a CMAR Claim for additional time or compensation in accordance with Section 11 of this Agreement.

21.2 City's Performance of On-site Work. City may perform other work on-site that is related to the Project using the City's own work force, or contractors, vendors or suppliers. Such work may include, but not limited to, utility relocation or co-location, (*e.g.*, electric, gas, telecommunications)("City's On-site Work").

(A) Access. CMAR will assure that the entities handling the City's On-site Work have safe and proper access to all portions of the Project Site necessary for the performance of the City's On-site Work.

(B) Materials and Equipment. CMAR will assure that persons performing the City's On-site Work have adequate space to transport, handle, stage and store materials and equipment and adequate space and opportunity to conduct the City's On-site Work.

(C) Coordination. CMAR will coordinate its Work with the City's On-site Work so that both parties may perform their Work in a timely and efficient manner.

(1) Unless otherwise provided in the Project Documents, CMAR will perform all cutting, fitting, and patching of material or elements of the Work that may be required to make the CMAR's Work and the City's On-site Work consistent and functional.

(2) CMAR will not endanger the City's On-site Work while integrating the parties' performance.

(3) If the CMAR's completion of any portion of the Work depends on the completion of City's On-site Work, CMAR will inspect the City's On-site Work and timely report to City any delays, defects, or deficiencies that may delay or hinder CMAR's completion of the Work. A failure by CMAR to inspect and report the City's On-Site Work will constitute acceptance of that Work and any objection or request for a CMAR Claim or Equitable Adjustment CMAR may have is deemed to be waived.

21.3 Transfer of Control. In the event control of the Project Site is transferred from CMAR to a third party, CMAR and City will work to assure that safety of the Project Site is not compromised, that access to and control of the Project Site is maintained, that proper insurance is in place and that the Work will continue without undue delay.

22. Inspection of Work.

22.1 City Inspections. City has the right to inspect the Work at any time for any purpose.

(A) Required Inspections. Certain aspects of the Work will require inspections in accordance with existing City Ordinances and City Code provisions or in accordance with the scope of Work as set forth in this Agreement.

(1) CMAR must timely schedule and perform or participate in any required inspections and testing.

(2) CMAR will pay all costs associated with any required inspections, and these costs shall be included in the GMP. The costs of any testing or collection of data that is required for the inspection of City shall not be the basis for any Change Order, CMAR Claim, Equitable Adjustment, or an amendment to the GMP.

(3) CMAR must obtain and provide to City Certifications or warranties required or any test results or analyses which were generated from the required inspection or testing.

(B) Cooperation. CMAR will cooperate fully with any inspections conducted by the City. The City will attempt to coordinate its inspections with the CMAR so as not to disrupt the Work; however, inspections for life or safety issues will be handled by both parties on a priority basis.

(C) Independent Inspections. City may employ the services of an independent party to conduct any tests or inspections at City's cost and expense.

22.2 Specifically Described Items. If any material, component, or equipment (collectively, an "Item") is specified or described in the Project Document, Construction Document, or other document submitted to City by CMAR or required by industry standard, trade, proprietary, or supplier name, that Item shall be used in performing or completing the Work.

(A) "Or-equal". If the specification or description contains or is followed by the words "or-equal", other Items of a similar kind or nature may be accepted by City, in its sole discretion, if the City determines, prior to the substitution, that the Item proposed by CMAR is qualitatively and functionally equal to of the Specifically Designed Item.

(B) Substitutions. If CMAR proposes to use an Item different than that which is specifically described or named, CMAR must obtain the City's approval of such substitution prior to use or prior to any modification or deviation intended to accommodate the use.

(1) CMAR must submit a request for substitution in writing to City.

(2) CMAR must submit with the request for substitution the following:

(a) Information about the Item sufficient for City to make a determination whether the Item is essentially equivalent to that named and is an acceptable substitute.

(b) Any effect the substitution may have on timely achievement of the Substantial Completion date;

(c) Any cost or credits that will result from the substitution; and

(d) Any other relevant information requested by City.

(3) City approval of any substitute Item will be within its sole discretion.

(4) CMAR is responsible for the costs associated with making the request for substitution, including the cost of obtaining the data.

(5) Approval of such substitution does not constitute an agreement to increase the GMP or constitute issuance of a Field Order or Change Order. CMAR must still obtain separate approval for the increased cost in accordance with the procedures continued elsewhere in this Agreement.

22.3 Uncovering Work. City or its Project Coordinator may require CMAR to uncover Work for inspection and testing.

(A) Builder's Responsibility. If the Work had been covered without CMAR's compliance with all applicable inspection and approval requirements of the Project Documents, CMAR must properly remedy or replace all nonconforming or deficient Work, and adjacent property damaged thereby, to City's satisfaction. CMAR must also pay the costs City incurred in connection with uncovering, testing, inspecting, remedying and recovering the Work.

(B) City Responsibility. If the Work had been covered in accordance with all applicable inspection and approval requirements of CMAR Documents, City will pay the costs CMAR reasonably incurred to uncover, test, inspect, and remedy the Work, subject to § 11.

22.4 Rejected Work. CMAR must promptly, and so as not to interfere with the Project Schedule, remove and replace, at CMAR's sole expense, any Work that is rejected by City or its Project Coordinator as defective, contrary to CMAR's warranties, or otherwise not in accordance with the Project Documents.

22.5 City's Remedy. If CMAR does not begin to correct such deficient or nonconforming Work within seven (7) days, or initiate any Work that would reasonably take longer than seven (7) days, after receipt of written notice from City to do so, City may, without prejudice to any other remedies it may have, take whatever steps are necessary to correct the deficient or nonconforming Work, and CMAR will pay City the costs City incurs in connection with any corrective action.

23. Warranties.

23.1 CMAR Warranty. CMAR warrants that the Work performed pursuant to this Agreement is free from defects. Upon 20 days written notice from the City, and within two year from the Final Completion of the Work, CMAR must, at CMAR's sole expense, uncover, correct, and remedy any and all defects in CMAR's Work or any defects in work of CMAR's Subcontractors or Suppliers.

23.2 Third Party Warranties. If any other Contract Document or third party warranty provides for a period longer than two years, the longer period applies.

23.3 Call-Back Remedial Work. CMAR, at CMAR's sole expense, will properly restore any of the Work or property that is damaged by reason of any remedial Work, to City's satisfaction.

(A) Warranty on Remedial Work. All remedial Work will have an extended warranty equal to the later of Final Completion or six (6) months after completion of the remedial Work.

(B) Self-Help. If CMAR fails to correct any defects in accordance with this call-back warranty, then City may correct the defects and CMAR must reimburse City for all expenses incurred by City.

(C) Non-exclusivity. This express call-back warranty is given in addition to, and without any limitation on, any other claim, right or remedy City may have under this Agreement or applicable Law including, without limitation, any claim, right or remedy arising from tort, contract breach, license bond, recovery fund, latent defect, breach of the implied warranty of habitability, CMAR's violation of any Law, or any other claim, right or remedy, whether discovered before or after the above described call-back period (as may be extended above).

(D) No Fault of CMAR. This express call-back warranty excludes remedy for damage or defect caused by abuse, modifications not executed by CMAR, improper or insufficient maintenance, improper operation, or ordinary wear and tear usage.

24. Liens and Stop Notices.

24.1 Title to Work. CMAR warrants that title to all Work covered by an Application for Progress Payment or Application for Final Payment will pass to City no later than the time of payment.

24.2 Work Free of Liens. CMAR further warrants that, upon Application for Progress Payment or Application for Final Payment submittal, all Work for which payment is requested and received from City must, to the best of CMAR's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances.

24.3 Duty to Remove Liens. In the event any document intending to give rise to a lien, or any other claim is asserted, filed, or maintained against the Project or City contrary to the foregoing warranty by CMAR, Subcontractor, or any Supplier, then CMAR agrees to cause such lien or claim to be satisfied, removed, or otherwise discharged at its own expense, by payment, bond or otherwise, within ten (10) days from the lien's filing date.

24.4 City's Remedy for Liens.

(A) City Right to Action. If CMAR fails to take such action promptly after notice from City, then City has the right, in addition to all other rights and remedies available under this Agreement or at Law, to cause each such lien or claim to be removed, satisfied or discharged by whatever means City chooses.

(B) Costs and Expenses. CMAR will be responsible for the entire cost and expense of this lien removal action, including reasonable attorneys' fees and expenses incurred by City, and will remit payment for these costs and expenses immediately upon demand by City.

25. No Waiver. Any review or approval given, or payment made, by City or any of its representatives does not:

25.1 Constitute acceptance of CMAR's Work or of the sufficiency of any request for payment;

25.2 Operate as an acquiescence to, or waiver of, any departure from, or CMAR's failure to perform in accordance with, any of this Agreement's requirements;

25.3 Constitute approval of:

(A) The adequacy, form or content of any subcontract; or

(B) Any actions taken by CMAR or by any Subcontractor.

25.4 Relieve CMAR, any Subcontractor or Supplier of any obligations or responsibilities under this Agreement;

25.5 Be accepted as evidence of satisfactory performance of any Work; or

25.6 Diminish in any manner City's rights and remedies under this Agreement or applicable Law.

26. CMAR's Warranties and Representations.

26.1 Warranty. As an inducement to City to enter into this Agreement, CMAR represents and warrants the following to City (in addition to the other representations and warranties contained in the Agreement) that:

(A) Financial Condition. CMAR, its subsidiaries and its affiliated entities are financially solvent and able to pay their debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations under this Agreement, provided that City satisfies its payment and other obligations under this Agreement;

(B) Performance Ability. CMAR is able to furnish the Construction Services and FFE Services required to complete the Project and perform its obligations hereunder, provided that City satisfies its payment and other obligations, and that CMAR has sufficient experience and competence to do so;

(C) Litigation Status. There are no pending or threatened legal actions or proceedings which might materially impair CMAR or its subsidiaries or affiliated entities' ability to satisfy their obligations hereunder;

(D) Legal Status. CMAR, its subsidiaries and affiliated entities are licensed by the Arizona Registrar of Contractors to perform construction and that all construction Subcontractors and Suppliers used on this Project by CMAR also will be so licensed; and

(E) Proper Authorization. That execution of this Agreement and its performance are within its authorized powers.

26.2 Survival. These representations and warranties survive this Agreement's termination and the Project's Final Completion, whichever is later.

27. CMAR Relationship to City.

27.1 CMAR's relationship to City is in all respects that of an independent contractor.

27.2 CMAR is solely responsible for the means, manner, method, supervision, performance, coordination, safety programs, or control of the Work to be performed by CMAR.

27.3 CMAR is not and will not be found to be an employee, instrumentality, department or agent of City for any purpose.

27.4 This Agreement will in no respect be construed to create a partnership, joint venture, or agency between the parties.

27.5 Neither party has right or power to bind or obligate the other party for any liabilities or obligations without the other party's prior written consent.

28. Assignments.

28.1 City Assignment. City may assign or transfer this Agreement without CMAR's consent.

28.2 City Financing. CMAR agrees that if City assigns this Agreement to any lender or other third party source of funding for the Project (each, a "Financing Party");

(A) CMAR will cooperate with any such assignments, and will execute any consents, assignments and other instruments reasonably required to facilitate the assignments;

(B) CMAR will cooperate with any inspectors engaged by a Financing Party to observe or inspect the work; and

(C) CMAR will execute any documents that the Financing Party reasonably requests it to execute in connection with its review of any of CMAR's Work or any of City's requests to Financing Party for disbursements on account of the Work.

28.3 CMAR Assignment. CMAR will not, without City's prior written consent, which may not be unreasonably withheld, do the following:

(A) Sell, transfer, assign or delegate any interest in this Agreement or any rights or CMAR's obligations; or

(B) Until Final Payment is made, cause, suffer or permit:

(1) Any sale, transfer or assignment of any stock, membership or other equity ownership interest in CMAR, or

(2) The issuance of any new stock or other equity ownership in CMAR.

28.4 Void Assignments. Any transfer, sale, assignment, delegation, or issuance of any stock, membership, or other interest in CMAR without City's written consent is void.

29. Taxation of Revenue Bonds. City may issue revenue bonds to fund the Project's design, construction and implementation. If City issues these bonds:

29.1 CMAR, to the extent within its control, and so long as it does not increase CMAR's time or cost of performance of the Work, covenants that it will not knowingly take any action, or fail to take any action, that adversely affects the inclusion from gross income of the interest on any of revenue bonds under § 103(a) of the *Internal Revenue Code of 1986, as amended* (the "Code");

29.2 CMAR will not cause the interest on any revenue bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code; and

29.3 In the event of such action or omission, CMAR will, promptly upon having any action or inaction brought to its attention, take any reasonable actions based upon an opinion of bond counsel to City, as may rescind or otherwise negate such action or omission.

29.4 CMAR, to the extent within its control, and so long as it does not increase CMAR's time or cost of performance of the Work, will not knowingly directly or indirectly use or permit the use of any proceeds of any revenue bonds or any other funds of City to take or omit to take any action that would cause any revenue bonds issued to be or become "arbitrage bonds" within the meaning of § 148(a) of the Code or to fail to meet any other applicable requirement of §§ 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Revenue Bonds.

30. Indemnity.

30.1 Duty to Indemnify, Defend, and Hold Harmless. To the fullest extent permitted by Law, CMAR will indemnify, defend, save and hold harmless City and its elected officials, officers, employees, agents, consultants, sub-consultants, representatives, and agents (individually, an "Indemnified Party"; collectively, the "Indemnified Parties") for, from and against any and all third-party claims, demands, causes of action, damages (including compensatory, consequential, liquidated, and punitive), judgments, penalties, settlements and all other losses arising (collectively "Claim") but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of CMAR or of a Subcontractor, Supplier, or any other person or entity for whom CMAR is responsible and all attorneys' fees, consultants' fees, court costs (whether or not taxable by statute), and expenses incurred by each Indemnified Party.

30.2 Extent of Indemnification.

(A) This indemnification is comprehensive and encompassing to the maximum extent permitted by Law and includes, but is not limited to, a Claim, just or unjust, of any kind, nature or description whatsoever, whether sounding in a tort, warranty, contract (including breach of this Agreement), equity, a statute, or any other theory of liability, and whether Claim is based on an alleged death, personal injury, sickness, conversion, breach of contract, breach of warranty (express or implied), breach of representation, defective work not remedied, lien, stop notice, property damage (including property damage to the Work), patent infringement, copyright infringement, loss of use and all other economic loss, release of a petroleum byproduct or other substance regulated by applicable Law, legal violations or other claimed damage.

(B) This indemnity is in addition to and will not be deemed to limit any other indemnity given by CMAR.

30.3 Defense of Indemnified Party. CMAR will defend each Indemnified Party under this indemnity at CMAR's expense with counsel reasonably acceptable to the Indemnified Party, subject to the following:

(A) The Indemnified Party has the opportunity to participate in the defense against the Claim;

(B) If there are potential conflicting interests that would make it inappropriate for the same counsel to represent both CMAR and the Indemnified Party, or the Indemnified Party has defenses available to it that are not available to CMAR, then the Indemnified Party may select separate counsel approved by CMAR, which approval shall not be unreasonably withheld, to represent it at CMAR's expense;

(C) No settlement or compromise can be effected by CMAR without the prior consent of the Indemnified Party; and

(D) If CMAR does not, within fifteen (15) days after receipt of Notice from the Indemnified Party (or such shorter period of time as may be necessary to avoid a default on a Claim), give Notice to the Indemnified Party of CMAR's election to assume the defense of the Claim, the Indemnified Party has right to undertake, at the expense and risk of CMAR, the defense, compromise or settlement of the Claim.

30.4 Negligence of Indemnified Party. The foregoing obligations to indemnify, defend, save and hold harmless apply even if a Claim results in part from the negligence of an Indemnified Party, but, in such event, the ultimate liability of CMAR is only to the extent the Claim is found to have resulted from the negligence of CMAR or of any Subcontractor or Supplier.

(A) In no event, however, will an Indemnified Party be indemnified for a Claim to the extent it results from the gross negligence or intentional conduct of the Indemnified Party or the Indemnified Party's agents, employees or indemnity as provided in A.R.S.§ 34-226.

(B) An Indemnified Party's acting or failing to act in reliance on promises, representations or agreements made by CMAR in the performance of the Work may not be considered gross negligence or an intentional act or failure to act by the Indemnified Party.

31. Insurance Requirements.

31.1 Insurance Obligation. CMAR must, as a material obligation to City and a condition precedent to any payment otherwise due to CMAR, furnish and maintain, and cause its Subcontractors and Suppliers to furnish and maintain, insurance in accordance with the Insurance Requirements attached as **Exhibit E**.

(A) Force Placement. In the event CMAR fails, or any Subcontractor or Supplier fails, to maintain all insurance as provided in **Exhibit E**, City may, in addition to, and without prejudice to any other remedies available to it under this Agreement or applicable Law, on two (2) days' notice, purchase equivalent insurance.

(B) Reimbursement for Force Placement. CMAR will reimburse City upon demand, or, at City's option, by way of withholding or off-setting amounts otherwise due to CMAR, for all expenses City incurs in connection with obtaining such insurance.

31.2 Risk of Loss.

(A) CMAR bears the risk of loss to all materials, equipment, fixtures, supplies, or other Work element, whether in transit, stored off-site, or stored or housed on site, until such elements(s) have been incorporated into the Project, at which time CMAR risk of loss will be addressed in accordance with the other portions of this Agreement.

(B) CMAR is solely responsible for insuring all such materials, equipment fixtures or other Work element from loss until such materials, equipment, fixtures or other elements have been physically incorporated in the Project, at which time CMAR risk of loss will be addressed in accordance with the other portions of this Agreement.

31.3 Bonds. Upon this Agreement's execution, CMAR must furnish Payment and Performance Bonds required under the provisions of A.R.S. § 34-608. The forms of the bonds will comply with the statute and be provided by a surety approved by City.

31.4 Builder's Risk Insurance. CMAR will furnish an all risk property insurance ("Builder's Risk") for the replacement value of the Work performed.

(A) Form. The form of policy for this Builder's Risk coverage must be non-reporting, in completed value with no co-insurance, and valued at replacement cost with non-standard (broad) form all risk policy.

(B) Coverage Value. The value utilized must be 100% of the completed value (including Contract Amendments) of the renovation, repairs or construction.

31.5 Other Property Lost Coverage. Insurance against loss of tools, equipment, or other items not incorporated into the Work, but required for the Work's performance, is CMAR's responsibility.

31.6 Professional Liability. Contractor, its sub-contractor and consultants performing design and other engineering work for the project, such as sheeting and shoring design, shall obtain and maintain Professional Liability Insurance covering errors and omissions arising out of the work or services performed by Contractor's consultant, or anyone employed by Contractor's consultant necessitating an engineer's seal of documents by a registrant of any state..

32. Records. CMAR must keep full and detailed accounts and exercise controls as may be reasonably necessary for the Work's proper financial management using generally accepted accounting methods and control systems reasonably satisfactory to City.

32.1 City and its properly authorized representatives—who may be City employees or independent contractors as determined by City—will be afforded access at all times on reasonable advance notice to all CMAR's tangible and electronic records received or generated in connection with the Project, including, without limitation, records, books, ledgers, correspondence, instructions, drawings, receipts, contracts, subcontracts, vouchers, memoranda, electronic data bases and other electronically stored data and printouts thereof, and similar data relating to this Agreement ("Project Data").

(A) Project Data availability will allow for audit, review, inspection and copying, at the Site or at CMAR's offices, if these offices are located in Maricopa County, Arizona.

(B) Access will be available during regular business hours.

(C) Project Data will be available for this inspection for at least one year after Final Completion of the Project or one year after the City has issued its Final Payment and resolved all disputes regarding payments under this Agreement, whichever is later.

32.2 CMAR will be entitled to a reasonable charge for furnishing more than one hard copy of any document that is requested by City. CMAR will provide electronic copies to the City upon request.

32.3 CMAR must preserve all such Project Data for a period of five (5) years after Final Payment, or longer where required by Law, and prior to destruction, Project Data will be delivered to City if City requests.

32.4 CMAR must include these record keeping and record retention provisions in its subcontracts and contracts with Suppliers and require these parties to afford the City similar access for audit, inspection and copying, to all of the hard copy and electronically stored Project Data.

33. Equal Employment Opportunity.

33.1 Non-Discrimination Policies. CMAR must develop, consistently implement, and effectively maintain non-discrimination policies.

(A) Duty to Not Discrimination. CMAR and CMAR's Subcontractors and Suppliers must not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

(B) Affirmative Action. CMAR must take affirmative action to attract diverse applicants, and ensure that the employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability. This affirmative action includes, but not be limited to, the following:

(1) employment;

(2) upgrading;

(3) demotion or transfer;

(4) recruitment or recruitment advertising;

(5) layoff or termination;

(6) rates of pay or other compensation; and

(7) selection for training, including apprenticeship.

33.2 Notices of Non-Discrimination Policies. CMAR will post in conspicuous places, available to employees and applicants for employment, notices that set forth the non-discrimination policies and CMAR, its Subcontractors and Suppliers will, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, national origin, age, marital status, gender identity or expression, genetic characteristics, familial status, US military veteran status or disability.

34. **Immigration Law Compliance:** CMAR, and on behalf any Subcontractor and Supplier, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

34.1 Any breach of warranty under this Section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

34.2 City retains the legal right to inspect the papers of any CMAR, Subcontractor or Supplier employee who performs work under this Agreement to ensure that CMAR, its Subcontractors and Suppliers are fully in compliance with any warranty under this Section.

34.3 City may conduct random inspections, and upon request of City, CMAR shall provide copies of papers and records of CMAR demonstrating continued compliance with the warranty under this Section. CMAR agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section.

34.4 CMAR agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon CMAR and expressly accrue those obligations directly to the benefit of the City. CMAR also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

34.5 CMAR's warranty and obligations under this Section to the City continue throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified so that compliance with this Section is no longer a requirement.

34.6 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

35. **Termination.**

35.1 **For Cause.** City has the right to terminate this Agreement without notice if CMAR:

(A) Fails to maintain insurance required by this Agreement;

(B) Violates any applicable Law regulating Hazardous Substances, occupational health, job safety, or environmental matters;

(C) Jeopardizes the health, safety or welfare of persons or property;

(D) Is Debarred by any governmental entity (in which event the termination will be effective as of the date of the sanction or debarment); or

(E) Abandons the Work.

35.2 **For Breach.** If this Agreement is breached by CMAR, City may terminate this Agreement if CMAR fails to cure the breach within seven (7) calendar days after delivery of written notice specifying the breach or within such longer period of time as City may agree to in writing.

35.3 **Remedy after Termination.** If this Agreement is terminated, CMAR will immediately stop Work and remove its employees from the Project Site. City may, without prejudice to any other right or remedy available at Law or in equity, complete

the Project through alternate means and in whatever manner City deems appropriate. City may also, at its election, take possession of and use the materials, equipment, tools and machinery of CMAR, a Subcontractor, or any Supplier to complete the Work otherwise required of the CMAR under this Agreement.

35.4 Payment after Termination. CMAR will have no right to any further payment until after City has completed the Project and determined the amount of its costs, and expenses and damages resulting from the termination.

(A) If the unpaid balance of the Contract Sum exceeds the costs City incurs to complete the Project, plus other expenses and damages incurred by City resulting from CMAR's breach of this Agreement, City will pay CMAR the difference.

(B) If the expense of completing the Project, plus City's damages and other expenses, exceeds such unpaid balance, CMAR will pay the difference to City upon demand.

35.5 For Convenience. City may terminate this Agreement as to all or any part of the Work for convenience at any time without cause upon five (5) days written notice.

(A) Notice of Termination for Convenience. Notice of termination for convenience:

(1) Will be provided no less than five (5) days before cessation of Work;

(2) Will specify the date of termination for that part of the Work; and

(3) Will direct the sequence and manner in which the termination will be implemented.

(B) Payment after Termination for Convenience. Upon termination for convenience, City will pay CMAR the reasonable value of all Work performed prior to the date of termination, including costs necessarily incurred, reasonable costs of demobilization and shut down, and reasonable overhead and profit on Work performed, but excluding any profit or overhead on unexecuted Work.

35.6 Abandonment.

(A) City's Right to Terminate. In the event CMAR, any Subcontractor or Supplier suspends or terminates its performance under this Agreement for any reason, City has the right to suspend or terminate all or any part of this Agreement and finish the suspended or terminated Work by whatever means City determines is appropriate.

(B) Replacement. To prevent termination, CMAR must replace Subcontractor or Supplier within five (5) days by procurement of a Subcontractor or Supplier in a manner that is acceptable to City.

(C) Withholding of Payments. If the abandoning Subcontractor or Supplier is not timely replaced, City may complete the Work at CMAR's expense, in which case:

(1) CMAR will not be entitled to receive any further payment hereunder until:

(a) The entire Project is complete; and

(b) All direct and indirect costs incurred by City to complete CMAR's Work, plus a reasonable allowance for City's overhead and profit, has been paid or offset against the GMP.

(2) Direct and indirect costs and the allowance for overhead and profit will apply against the Contract Price and, if the cost to complete the Project is greater than the amount due CMAR, CMAR will pay that difference immediately to City.

36. Dispute Resolution.

36.1 Each claim, controversy and dispute (each a "Dispute," collectively, "Disputes") will be initiated and resolved as provided in **Exhibit G**.

36.2 CMAR will continue performance of the Work pending resolution of any CMAR Claim, request for Equitable Adjustment or any Dispute, unless otherwise directed by City in writing.

37. Notices.

37.1 Any communication or notice required to be issued or given under this Agreement (each, a "Notice") will be effective only if:

(A) Notice is in writing; and

(B) Delivered to the physical or electronic address given in Section 3 of this Agreement on a business day observed by City ("Business Day"):

(1) in person;

(2) by private express overnight delivery service (delivery service charges prepaid);

(3) certified or registered mail (return receipt requested); or

(4) electronic mail, if confirmation of receipt is given and received.

37.2 A notice will be deemed delivered to the party:

(A) As of the date of receipt if received before 5:00 PM on a Business Day at the address for Notices identified in Section 3 of this Agreement; or

(B) As of the next Business Day if received after 5:00 PM on a Business Day at the address for Notices identified in Section 3 of this Agreement.

37.3 The party giving Notice will have the burden of proof as to the time and place of delivery.

37.4 A party may only change its representative or the information for giving Notice by giving Notice of the change to the other party in writing at least ten (10) days prior to the date such change becomes effective.

38. Miscellaneous.

38.1 **Contract Amendment.** The parties may, at any time, modify this Agreement by written agreement ("Contract Amendment") signed by both City and CMAR. The Contract Amendment shall become effective and an enforceable pat of this Agreement upon its execution.

38.2 **Integration.** This is the entire agreement of City and CMAR, and it supersedes all negotiations and any prior agreements between them relating to the Work and the Project. No other documents are included unless incorporated herein by reference.

38.3 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

38.4 **Successor and Assigns.** This Agreement will inure to the benefit of and be binding on the parties' successors and assigns.

38.5 **Rights and Remedies.**

(A) All rights and remedies provided in this Agreement are cumulative and the exercise or assertion of one or more rights or remedies will not affect any other rights or remedies allowed by Law or equity or this Agreement.

(B) Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement's provisions, or with respect to any occurrence, shall operate as a waiver with respect to such provision or occurrence thereof.

(C) No single or partial exercise of any right, remedy, power or privilege precludes any other or further exercise of the same or of any right, remedy, power or privilege.

38.6 **No Waiver.** No waiver is effective unless it is in writing and is signed by the party asserted to have granted such waiver.

38.7 **Severability.** If any provision of this Agreement is held by any court to be void or unenforceable, that provision will not affect the validity of the remaining provisions of this Agreement.

38.8 **Survival.** Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification provision, insurance requirement, and every other right, remedy and responsibility of City or CMAR under this Agreement will survive the Project's completion, or this Agreement's earlier termination.

39. Conditions Precedent. This Agreement's effectiveness, and City's obligations hereunder, are contingent upon City's written confirmation to CMAR that each of the following contingencies have been fulfilled:

39.1 **Funding.** City has allocated funds specifically for the purpose of the Project or has secured financing it deems satisfactory for the Project.

39.2 **Approval.** This Agreement has been approved by the Glendale City Council.

40. **Exhibits**. The following exhibits are incorporated by this reference:

Exhibit	Title
A	The Project
B	The Work; Key Personnel
C	GMP Schedule
D	Project Schedule
E	CMAR's Insurance Requirements
F	Forms of Payment and Performance Bonds
G	Dispute Resolution Procedures

IN WITNESS WHEREOF, City and CMAR enter into this agreement and it shall become effective as of the ___ day of _____, 2022 (the "Effective Date").

CITY OF GLENDALE

_____
Kevin R. Phelps, City Manager

Date:_____

Approved as to Form:

_____
Michael D. Bailey, City Attorney

Attestation:

_____
Julie K. Bower, City Clerk (SEAL)

CMAR - McCarthy Building Companies, Inc
a Missouri Corporation

By: _____
Joseph Brunsman
Its: Sr. Vice President
Registrar of Contactors License: 080910,080911

Date: Oct. 8, 2021

Exhibit A

THE PROJECT

Pyramid Peak Water Treatment Plant Expansion Project

Exhibit A – The Project

9/17/2021

This agreement will provide construction services for GMP 3 at the PPWTP Improvements Project to include rehabilitation of filter underdrains and media in trains 1 – 3, replace train 1 gates, and replace the valves and actuators at filters 1 – 4.

EXHIBIT B

THE WORK

KEY PERSONNEL

(See Attached)

Pyramid Peak Water Treatment Plant Expansion Project GMP 3

Exhibit B – The Work

9/17/2021

Section A – Project Documents

1. The project specifications include the following from the GMP 2/1B project:
    - 13220 – FILTER UNDERDRAINS AND MEDIA
    - 15101 – AWWA BUTTERFLY VALVES
    - 15113 – FABRICATED STAINLESS STEEL SLIDE GATES AND WEIR GATES
2. There are no contract drawings and existing conditions will determine equipment installation

Section B – Project Milestone Dates

1. Contract duration for the overall project shall be 183 days from Notice to Proceed to substantial completion

Section C – City of Glendale Project Costs

1. Temporary/construction use and permanent utility hookup and usage costs including power, sewer, water (trailer power usage cost by CMAR)
2. Building and environmental permits
3. Plan review fees and impact costs
4. MCDES and ADEQ review and permitting fees
5. Plant or existing hazardous waste removal
6. Chemical costs for startup and operations
7. Commissioning and Operation of Filters after Installation

City of Glendale Project Costs have not been included as part of the GMP

Section D – Project Contingencies and Allowances

1. A Contractor Contingency has been included in the Contract
2. Owner Contingency has been included in this estimate in the amount of $90,000
3. Contingency usage pricing shall include indirect costs including: Fee, Bonds and Insurance, and Sales Tax

SECTION E – Clarifications and Qualifications

GENERAL

1. General Liability (G/L) Insurance has been included that meets the requirements of the contract utilizing McCarthy's master insurance program. The rate for the G/L insurance is 0.89%.
2. The cost of water, sewer, and power has not been included. Existing on-site utilities or storage basins will be used for all non-hazardous liquids and solids removed from structures and pipe lines.
3. Costs for quality control testing and inspection costs have not been included as they are part of the Engineer's scope.
4. This GMP assumes that liquidated damages will be per MAG table 108-1.
5. Transaction Privilege Tax has been included at 8.6% based on the project being in the City of Phoenix.
6. CMAR has not included any money in the GMP for the Engineer of record's design errors, omissions, or inconsistencies.
7. CMAR has included insurance through the Project Substantial Completion of this GMP at which time the Owner will accept responsibility for risk of loss and insurance.
8. CMAR assumes that compliance with the Contract Documents satisfies Owner's intended use.
9. Drainage and isolation of the filters and Train 1 has been assumed to be by the Owner.
10. Warranty for materials (filter underdrain, valves & gates) has been included for 2 years from 12/17/2021.
11. P6 Schedule will not be submitted or used for this project, the attached excel file is an estimation of the anticipated schedule contingent on city availability to provide access to each area.
12. It is assumed that the City will be able to provide continued access to filters and Trian 1 upon completion of each phase.
13. The following wage determinations have been utilized for this scope of work.
    a. Heavy - General decision AZ190017 dated 2/8/19
    b. Building – General decision AZ190031 dated 4/19/19
    c. The heavy determination has been utilized as the main determination; the building determination has been utilized if there isn't a classification in the heavy determination.

WORK CATEGORY 1B – MOPO'S

1. It has been assumed that the Owner will isolate and drain each basin and provide a work area that is free from water intrusion. McCarthy has included the management of small amount of nuisance water.

WORK CATEGORY 1D – STARTUP & COMMISSIONING

1. McCarthy will provide support during commissioning. It has been assumed the Owner will operate the plant.

WORK CATEGORY 1E – SITE SECURITY & TEMPORARY PROTECTION

1. Security has not been provided at the front gate and it is assumed that access badges will be provided to all members of the small crew.

WORK CATEGORY 1F – ENGINEER'S OFFICE & FURNISHINGS

WORK CATEGORY 11Z – PROCESS EQUIPMENT PROCUREMENT & INSTALLATION (SELF-PERFORM SCOPE)

1. This estimate includes the demolition and replacement of filters 1 – 14.
2. A full-time installation supervisor from the manufacturers have not been included for the process equipment.
3. Cost for Engineer expenses to witness test equipment have not been included.
4. Work category 11Z has been included to be self-performed on a cost reimbursable basis at the billable rates contained herein, with an overhead of 10% and a fee of 5%.
5. A gravel layer has not been included as the underdrain systems do not require it.
6. Filter Underdrains have been included as manufactured by Leopold.
7. Equipment will be provided per the approved submittals.
8. Manufacturers services of 10 trips with 29 days onsite have been included in lieu of the requirements in the specifications.

WORK CATEGORY 15A – PROCESS MECHANICAL (SELF-PERFORM SCOPE)

1. This estimate includes the demolition and replacement of Gates in Train 1.
2. This does not include the Train 1 Settled Water gates or the unused gates in the Rapid Mix basins.
3. This estimate includes the demolition and replacement of 4ea 24" filter inlet valves and actuators.
4. This estimate includes new actuators for the 4ea 30" filter drain valves.
5. Equipment will be provided per the approved submittals.
6. This work category has been included to be self-performed on a cost reimbursable basis at the billable rates contained herein, with an overhead of 10% and a fee of 5%.

SECTION F – BILLABLE RATES

Supervision

Project Director	$ 134.00
Sr. Project Manager	$ 131.65
Project Manager	$ 118.92
General Superintendent	$ 121.38
Project Superintendent	$ 116.35
Asst. Project Manager	$ 104.54
Asst. Project Superintendent	$ 96.87
Project Engineer	$ 85.13
Project Administrator	$ 46.48

Supervision Billable rates include all costs for burden, cellular phone, vehicles, vehicle fuel and maintenance, computers, and McCarthy standard software. Except for the Project Administrator, the above personal are salaried and the project will be charged a maximum of 40 hours per week. Holidays will be billed as standard time.

Craft

General Foreman	$ 63.81
Foreman	$ 52.30
Carpenter Journeyman	$ 49.53
Carpenter Apprentice	$ 43.31
Finisher	$ 41.84
Grade Checker	$ 48.84
Truck Driver	$ 47.54
Pipe Layer	$ 42.96
Laborer	$ 36.02
Operator	$ 54.42
Pipe Fitter	$ 42.96
Sheetmetal Foreman	$ 54.49
Sheetmetal Journeyman	$ 52.79
Plumber Foreman	$ 60.76
Plumber Journeyman	$ 58.98

Craft rates include base rate and burden. Overtime will be billed at 1.43 times the above rate. Double time will be billed at 1.81 times the base rate. Overtime is defined as over 40 hours per week, but less than 60 hours per week; less than 12 hours per day. Double Time is defined as over 60 hours per week or over 12 hours per day, Sundays, and Holidays.

EXHIBIT C

GMP PROPOSAL SCHEDULE

(See Attached)

Pyramid Peak Water Treatment Plant Expansion Project

Exhibit C – GMP Proposal Summary and Backup

9/17/2021

(See Attached)

GMP 3

Filter 1 - 14 Replacement & Train 1 Gate/Valve Replacement

9/17/2021

Project: **Pyramid Peak Water Treatment Plant Improvements GMP 3**
Client: **City of Glendale, AZ**
Location: **28101 N. 63rd Avenue, Phoenix, AZ**
Contract #
City Job #

A. DIRECT COSTS		
a. Self-Performed Work		3,069,288.00
b. Subcontracts and Suppliers		0.00
c. General Conditions & Requirements		379,253.23
Subtotal (Construction Service Work)		3,448,541.23
B. CONTRACTOR'S FEE		
a. CMAR fee	8.00%	275,883.30
b. Subtract fee on Self-Performed Work	8.00%	-245,543.04
Subtotal (Contractor's Fee)		*30,340.26*
SUBTOTAL 1 (A+B)		3,478,881.49
C. CONTINGENCY AND PRECONSTRUCTION SERVICES		
a. Construction Contingency		60,000.00
Subtotal (Contingencies)		*60,000.00*
SUBTOTAL 1 (A+B+C)		3,538,881.49
D. BONDS AND INSURANCE		
a. Bonds	0.70%	24,772.17
b. Insurance	0.89%	31,496.05
c. Builders Risk Insurance	0.41%	14,509.41
Subtotal (Bonds and Insurance)		*70,777.63*
SUBTOTAL 2 (A+B+C+D)		3,609,659.12
E. SALES TAX		
a. Sales Tax (8.6% * 65%)	5.59%	201,779.94
b. Less Tax Exempt Items		0.00
Subtotal (Sales Tax)		201,779.94
TOTAL GMP 3 AMOUNT		**3,811,439.07**
G. GLENDALE BELOW THE LINE COSTS		
a. Owner Contingency		90,000.00
Subtotal Glendale Below the Line Costs		*90,000.00*
TOTAL CONTRACT AMOUNT		**3,901,439.07**

GMP 3 Direct Cost Detail

9/17/2021

Project: **Pyramid Peak Water Treatment Plant Improvements Project**
Client: **City of Glendale, AZ**
Location: **28101 N. 63rd Avenue, Phoenix, AZ**
City Job #

Work Category	DESCRIPTION	Total	Subcontractor / Supplier
A. DIRECT COSTS			
01A	General Requirements & Conditions	$379,253.23	McCarthy
11Z	Equipment Procurement & Installation (Filters)	$2,655,753.42	McCarthy/Leopold
15A	Process Mechanical (Gates and Valves)	$413,534.58	McCarthy/Fontaine/Val-Matic
	Direct Cost Total	***$3,448,541***	

EXHIBIT D

PROJECT SCHEDULE

SCHEDULE UPDATES

(See Attached)

Pyramid Peak Water Treatment Plant Expansion Project

Exhibit D – Project Schedule

9/17/2021

(See Attached)

Filter Replacement Schedule

Pyramid Peak WTP

ACTIVITY	Week 8/9	Week 8/16	Week 8/23	Week 8/30	Week 9/6	Week 9/13	Week 9/20	Week 9/27	Week 10/4	Week 10/11	Week 10/18	Week 10/25	Week 11/1	Week 11/8	Week 11/15	Week 11/22	Week 11/29	Week 12/6	Week 12/13	Week 12/20	Week 12/27	Week 1/3	Week 1/10	Week 1/17	Week 1/24	Week 1/31	Week 2/7	Week 2/14	Week 2/21	Week 2/28	Week 3/7	Week 3/14	Week 3/21	Week 3/28	Week 4/4	Week 4/11	Week 4/18	Week 4/25
Filter Replacement																																						
Submit GMP 3							X																															
NTP GMP 3													X																									
Filters 5, 6 & 13																																						
Filter Demo	X	X																																				
Filter Layout and Anchor Installation			X																																		
Filter Block Installation				X	X	X	X																															
Filter Grouting								X																														
Filter Media Loading									X																													
Filter Startup										X																												
Filters 7, 11 & 12																																						
Filter Demo											X	X																										
Filter Layout and Anchor Installation													X																									
Filter Block Installation														X	X																							
Filter Grouting																X																						
Filter Media Loading																	X																					
Filter Startup																		X																				
Filters 8, 9, 10 & 14																																						
Filter Demo																			X	X																		
Filter Layout and Anchor Installation																					X																	
Filter Block Installation																						X	X															
Filter Grouting																								X														
Filter Media Loading																									X													
Filter Startup																										X												
Filters 1, 2, 3 & 4 and Gate/Valve Repalcement																																						
Filter Demo (Scoper TBD)																											X	X										
Filter Layout and Anchor Installation (Scope TBD)																													X									
Filter Block Installation (Scope TBD)																														X	X							
Filter Grouting (Scope TBD)																																X						
Filter Media Loading (Scope TBD)																																	X					
Filter Startup (Scope TBD)																																		X				
Demo Existing Gates and Valves																											X	X	X	X								
Install New Gates and Valves																															X	X	X	X	X	X	X	X

EXHIBIT E

CMAR'S INSURANCE REQUIREMENTS

CMAR must, as a material obligation to City and a condition precedent to any payment otherwise due to CMAR, furnish and maintain, and cause its Subcontractors and Suppliers to furnish and maintain, insurance in accordance with the provisions of this Exhibit.

CMAR must secure and maintain without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, policies of commercial general liability, commercial auto, umbrella/excess, workers compensation and employers liability insurance, providing the following coverage, limits and endorsements:

1. Commercial General Liability Insurance.

1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU, and products and completed operations, with a combined single limit of liability of not less than $5,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than $5,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.

1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.

1.3 Each general liability policy must be endorsed or written to:

(A) Include the per project aggregate endorsement;

(B) Name as additional insureds the following: City of Glendale and its employees, representatives and agents (collectively, the "Additional Insureds");

(C) Stipulate that the insurance afforded by the policies furnished by CMAR will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by CMAR and by its Subcontractors;

(D) Includes a severability of interest clause; and

(E) Waive all rights of recovery against the Additional Insureds.

2. Workers' Compensation Insurance.

2.1 The Workers' Compensation policy must meet all Arizona statutory requirements, and Employers' Liability Insurance, with limits of at least $500,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

2.2 CMAR must provide, at CMAR's expense, Voluntary Compensation insurance for the protection of employees engaged in the Work who are exempt from the coverage provided under the Workers' Compensation statutes with coverage equivalent or better than the coverage required in the preceding sentence, for the duration of the project.

3. **Auto Liability Insurance**

3.1 Auto Liability must be carried with minimum combined single limits of $1,000,000 per occurrence for bodily injury and property damage.

3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.

3.3 This policy must be endorsed to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.

4. **Equipment Property Insurance.**

4.1 CMAR must secure, pay for, and maintain all-risk insurance as necessary to protect City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by CMAR, its Subcontractors or Supplier and any construction material in transit or stored in any location other than the Site.

4.2 This policy must have a waiver of subrogation in favor of the Additional Insureds.

5. **Commercial Crime Insurance.** This policy must cover employees responsible to disburse funds to pay project costs against employee dishonesty, forgery or alteration, or computer fraud.

6. **Professional Liability.** Contractor, its sub-contractor and consultants performing design and other engineering work for the project, such as sheeting and shoring design, shall obtain and maintain Professional Liability Insurance covering errors and omissions arising out of the work or services performed by Contractor's consultant, or anyone employed by Contractor's consultant **necessitating an engineer's seal of documents by a registrant of any state.**.

7. **Waiver of Subrogation.** CMAR hereby waives, and will require each of its Subcontractors and Suppliers to waive, all rights of subrogation against the Additional Insureds to the extent of all losses or damages covered by any policy of insurance.

8. **Term of Coverage.**

8.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

8.2 If at any time prior to the conclusion of time limit described in Section 7.1 above, CMAR cannot obtain equivalent coverage by replacement or renewal, CMAR must acquire a tail policy prior to expiration of the existing policy not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").

8.3 CMAR will furnish certificates of insurance and other evidence that City may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.

8.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

9. **Subcontractor and Supplier Insurance Requirements.**

9.1 CMAR must require all of CMAR's Subcontractors and Suppliers, as a condition of working on the Project, and of receiving payment, to:

(A) Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverage, endorsements, terms of coverage and other provisions as are required of CMAR under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Supplier must be $1,000,000 per occurrence, and $1,000,000 as the annual aggregate limit); and

(B) Timely furnish to City proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.

(C) The Supplier's general liability policy must also be endorsed to provide the same coverage as the primary insurance, the general liability insurance furnished by CMAR must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by CMAR and Subcontractor.

(D) City has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

10. Other Policy Provisions. Each policy to be furnished by CMAR, each Subcontractor and Supplier must:

10.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;

10.2 Have a deductible not exceeding $10,000 unless otherwise agreed upon by City;

10.3 Provide that attorneys' fees shall be outside of the policy's limits and shall be unlimited;

10.4 Include the Facility per aggregate endorsement;

10.5 Waive all rights of subrogation against City;

10.6 Contain a provision that coverage afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days prior written notice has been given to City; and

10.7 Be otherwise satisfactory to City. City agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that City is satisfied the insurance is not commercially available to the insured. In such event, City shall have the right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that City shall be a loss-payee under the policy.

11. Certificates and Endorsements.

11.1 Within ten (10) days after the execution of this Agreement, CMAR must provide City with all certificates and endorsements evidencing that all insurance requirements have been met;

11.2 Within ten (10) days after execution of each subcontract (but in all events prior to such Subcontractor or Supplier commencing Services), CMAR must provide City with certificates and endorsements from each of its Subcontractors and Suppliers, in all cases evidencing compliance by CMAR, and each Subcontractor and Supplier, with the requirements of this Exhibit. CMAR must also submit letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no

known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to City under the policy and that available coverage has not been reduced because of revised limits or payments made. In the event such representations cannot be given, CMAR, its Subcontractors and Suppliers must furnish the particulars thereof to City.

11.3 If any of the foregoing insurance coverage is required to remain in force after Final Payment, CMAR must submit an additional certificate evidencing continuation of such coverage with the Application for Final Payment.

12. Reduction in Coverage. CMAR, each of its Subcontractors and Suppliers must promptly inform City of any reduction of coverage resulting from revised limits, claims paid, or both. City shall have the right to require CMAR or the applicable Subcontractor or Supplier to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of CMAR or the applicable Subcontractor or Supplier.

13. Suppliers and Materialmen Coverages.

13.1 CMAR will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.

13.2 With respect to any equipment, machinery or other goods for which City or CMAR has paid a deposit, CMAR will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming City and CMAR as loss payee as their interests appear.

14. Condition Precedent to Starting Work.

14.1 Prior to, and as a condition of its right to begin performing any Work on the Site, CMAR and each Subcontractor and Supplier must deliver to City certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to City that the required insurance is in place; together with the original of each bond required under this Agreement. CMAR and each Subcontractor and Supplier hereby authorize City to communicate directly with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

14.2 City shall be under no obligation or duty to make any such inquiry and City shall be entitled to rely on any proofs of insurance tendered by CMAR and its Subcontractors and Suppliers. City's acceptance of any proof of insurance and bonds offered by CMAR or any Subcontractor or Supplier will not be deemed a waiver of the obligations of CMAR and Subcontractors and Suppliers to furnish the insurance and bonds required by this Exhibit.

15. Additional Proofs of Insurance. CMAR must, within ten (10) days after request, provide City with certified copies of all policies and endorsements obtained in compliance with this Agreement.

16. Indemnity. The fact that CMAR and its Subcontractors and Suppliers are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties CMAR and its Subcontractors and Suppliers may have to indemnify, defend or hold harmless City and the other Additional Insureds from and against any and all Demands, Liabilities, Losses or Expenses of whatever kind or nature.

17. Interpretation. In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

EXHIBIT F

FORMS OF PAYMENT AND PERFORMANCE BONDS

(See Attached)

PAYMENT BOND

A.R.S. § 34-608

Penal Sum: $_____

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____, as Surety, hereinafter called Surety, jointly and severally, bind themselves to the City of Glendale, a municipal corporation of the State of Arizona ("Obligee") and its assigns, solely for the protections of claimants supplying labor or materials to CMAR or to CMAR's Subcontractors in the prosecution of construction and not for the protection of persons providing any design services, preconstruction or other non-construction services as provided in A.R.S. § 34-608(A)(2).

WHEREAS Principal has by written agreement dated _____entered into that certain "CMAR Agreement" ("Contract") with Obligee (referred to therein as "City") for the design and construction of that certain _____, as provided therein. In accordance with A.R.S. § 34-608(A)(2)(C), the Obligee estimates the price of the Construction Services the Obligee believes is likely to be furnished as of the date hereof $_____ (the "Penal Sum").

NOW, THEREFORE, the condition of this obligation is 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 construction 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 Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Arizona Revised Statutes, to the same extent as if they were copied at length in this Agreement. The Surety hereby consents in advance to, and waives notice of any change directive or change order, extension of time or any other material alteration or modification of the Contract, or of the Work to be performed thereunder. The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the court.

Witness our hands this _____ day of _____, 200____.

_____	_____
PRINCIPAL SEAL	SURETY SEAL
By: _____	By: _____
	(Attorney-in-Fact)
Title: _____	_____
	Agency of Record
	_____
	Agency Address
	_____
	Arizona Resident Agent Countersignature
	Bond Number _____

PERFORMANCE BOND

A.R.S. § 34-608

Penal Sum: $_____

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____, as Surety, hereinafter called Surety, jointly and severally bind themselves to the City of Glendale, a municipal corporation of the State of Arizona ("Obligee") and its assigns solely for the protection of Obligee as provided in A.R.S.§ 34-608(A)(1).

WHEREAS Principal has entered into that certain "CMAR Agreement" ("Contract") with Obligee (referred to therein as "City"), dated _____, for the design and construction of that certain _____, as described therein, which Contract, together with all Change Orders and amendments thereto, is by reference made a part hereof, providing for a cumulative amount to be paid to Contractor for all design services, construction and other work (collectively, "Work" as described in the Contract) not to exceed guaranteed maximum price of $_____ dollars. In accordance with A.R.S. § 34-608(A)(1)(A), the Obligee estimates the price of the Construction Services the Obligee believes is likely to be furnished as of the date hereof $_____ (the "Penal Sum").

NOW, THEREFORE, the condition of this obligation is 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 change, extension, alteration or modification of the Contract, with or without notice to 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 changes, extensions, alterations or modifications of the Contract that may hereafter be made, notice of which changes, extensions, alterations or 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 Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with Title 34, Chapter 6, Arizona Revised Statutes, to the 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 the court.

The performance under this bond is limited to the construction to be performed under the Contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the Contract.

Signed and sealed this _____ day of _____, 200____.

_____	_____
PRINCIPAL SEAL	SURETY SEAL
By: _____	By: _____
	(Attorney-in-Fact)
Title: _____	_____
	Agency of Record
	_____
	Agency Address
	_____
	Arizona Resident Agent Countersignature

Bond Number _____

EXHIBIT G

DISPUTE RESOLUTION PROCEDURES

1. Disputes.

1.1 Each Dispute arising out of or related to this Agreement (including Disputes regarding any alleged breaches of this Agreement) shall be initiated and decided under the provisions of this Exhibit.

1.2 CMAR and City shall each designate in writing to the other party, from time to time, a member of senior management who shall be authorized to attempt to expeditiously resolve any Dispute relating to the subject matter of this Agreement in an equitable manner.

1.3 A party shall initiate a Dispute by delivery of written notice to the members of management designated by the respective parties under Section 1.2 of this Exhibit.

1.4 The parties must:

(A) Attempt to resolve all Disputes promptly, equitably and in a good faith manner; and

(B) Provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

1.5 With respect to matters concerning modification of the GMP or any schedule, CMAR must first follow the provisions of any Claim procedure established by the Design-Build Agreement before seeking relief under these Procedures.

2. Emergency Arbitration.

2.1 If the parties are unable to accomplish resolution of a Dispute, the expedited resolution of which either party considers necessary to prevent or mitigate a material delay to the critical path of the Services (a "Time Sensitive Dispute") within two days after the Time Sensitive Dispute has been initiated by a party, either party may thereafter seek emergency relief before an emergency arbitrator (the "Emergency Arbitrator") appointed as follows:

(A) The parties will exercise best efforts to pre-select an Emergency Arbitrator within 20 days after entering into this Agreement;

(B) If the Emergency Arbitrator has not been selected at the time a party delivers Notice of a Time Sensitive Dispute, the parties will each select a representative within one day after the Notice is delivered and the two representatives will then select the Emergency Arbitrator by the third day following delivery of the Notice.

(C) The Emergency Arbitrator shall be an attorney with at least ten (10) years' experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either party for at least ten (10) years.

2.2 The Emergency Arbitrator will conduct a hearing and render a written determination on the Dispute to both parties within five business days of the matter being referred to him or her, all in accordance with Rules O-1 to O-8 of the American Arbitration

Association ("AAA") Commercial Rules-Optional Rules for Emergency Protection Commercial Rules ("AAA Emergency Rules").

2.3 Although the hearing will be conducted using AAA rules, unless both parties agree otherwise, this dispute process will not be administered by the AAA but will be conducted by the parties in accordance with these procedures.

2.4 If, however, an Emergency Arbitrator has not selected within three days after delivery of the Notice, either party may upon three days additional notice, thereafter seek emergency relief before the AAA, in accordance with the AAA Emergency Rules, provided that the Emergency Arbitrator meets the qualifications set forth above.

2.5 All proceedings to arbitrate Time Sensitive Disputes shall be conducted in Glendale, Arizona.

2.6 Presentation, request for determination (*i.e.*, a party's prayer), and the Emergency Arbitrators decision will adhere to the procedures required in Section 3.6 of this Exhibit.

2.7 The finding of the Emergency Arbitrator with respect to any Time Sensitive Dispute will be binding upon the parties on an interim basis during progress of the Services, subject to review *de novo* by arbitration after the Project Substantial Completion Date.

2.8 The time and extent of discovery will be as determined by the Emergency Arbitrator.

(A) Discovery orders of the Emergency Arbitrator will consider the time sensitivity of the matter and the parties desire to resolve the issue in the most time and costs efficient manner;

(B) The parties are obligated to cooperate fully and completely in the provision of documents and other information, including joint interviews of individuals with knowledge such that the matter moves toward resolution in the most time and costs efficient manner and the Emergency Arbitrator is empowered to fashion any equitable penalty against a party that fail to meet this obligation.

3. Non-Emergency Arbitration.

3.1 Except as provided in Section 5 of this Exhibit, any Dispute that is either a non-emergency Dispute that has not been resolved by negotiation, or a *de novo* review of an AAA emergency arbitration will be decided by binding arbitration by a panel of three arbitrators in accordance with, but not necessarily administered by, the Construction Industry Rules of the AAA.

(A) The parties shall each select an arbitrator within 15 days after notice that a party desires to resolve a dispute by arbitration.

(B) The two arbitrators shall then each select a third arbitrator. If an arbitrator is not selected within any such 15 day period, then the arbitrator shall be appointed by the AAA.

3.2 The arbitrator(s) shall meet the qualifications of Emergency Arbitrators as provided in Section 2 of this Exhibit.

3.3 The arbitrators do not have the authority to consider or award punitive damages as part of the arbitrators' award.

3.4 In connection with such arbitration, each party shall be entitled to conduct up to five depositions, and, no less than 90 days prior to the date of the arbitration hearing, each

party shall deliver to the other party copies of all documents in the delivering party's possession that are relevant to the dispute.

3.5 The arbitration hearing shall be held within 150 days of the appointment of the arbitrators.

3.6 At the arbitration hearing, each party will argue its position to the arbitrators in support of one proposed resolution to the dispute (a "Proposed Resolution").

(A) Each party's Proposed Resolution must be fully dispositive of the dispute.

(B) The arbitrators must select one Proposed Resolution by majority consent and are not free to fashion any alternative resolutions.

(C) The parties must submit their proposed resolution of the matter to the arbitrators and the other party 15 days prior to the date set for commencement of the arbitration proceeding.

(D) The decision of the arbitrators will be forwarded to the parties within 15 days after the conclusion of the arbitration hearing.

(E) The decision of the arbitration panel is final and binding on the parties and may be entered in any court of competent jurisdiction for the purpose of securing an enforceable judgment.

(F) All costs and expenses associated with the arbitration, including the reasonable legal fees and costs incurred by the prevailing party, must be paid by the party whose position was not selected by the arbitrators.

4. **Continuing Work.** Unless otherwise agreed to in writing, CMAR must continue to perform and maintain progress of the Work during any Dispute Resolution or arbitration proceedings, and City will continue to make payment to CMAR in accordance with the Agreement.

5. **Exceptions.**

5.1 Neither City nor CMAR are required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with City and CMAR.

5.2 City or CMAR may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the party seeks to enforce is enforceable under Arizona law), including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

5.3 This Exhibit does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Glendale Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of City acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

5.4 In connection with any arbitration, the arbitrators do not have the authority to, and may not enforce, any provision of the Federal or Arizona Rules of Civil Procedure.

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

CONTRACT PACKET for Governmental Borrowers

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

PLEASE NOTE

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

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

Required Contract Conditions

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

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

2. Equal Employment Opportunity (Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations). Prohibits employment discrimination on the basis of race, color, religion, sex or national origin. Inclusion of the seven clauses in Section 202 of Executive Order 11246 as amended by Executive Orders 11375 and 12086 are required in all project related contracts and subcontracts over $10,000.

3. (i) Promoting the use of Small, Minority, and Women-owned Businesses (Executive Orders 11625, 12138 and 12432), (ii) Small Businesses Reauthorization & Amendment Act of 1988 (Section 129 of Pub. L. 100-590), (iii) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102-389, 42 U.S.C. Sec. 437d), and (iv) Title X of the Clean Air Acts Amendments of 1990 (Pub. L. 101-549, 42 U.S.C. Sec. 7601 note) ("EPA's 10% statute"). Encourages recipients to award construction, supply and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement.

4. Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements (40 C.F.R. Part 33).

5. Debarment and Suspension (Executive Order 12549). Prohibits entering into contracts or sub-contracts with individuals or businesses who are debarred or suspended. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over $25,000 via this Internet address: https://beta.SAM.gov.

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

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

Use of American Iron and Steel

Public Law 113-76, enacted January 17, 2014

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

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

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

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

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

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

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

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

Highlights from EPA Guidance on Use of American Iron and Steel

Complete document available at http://water.epa.gov/grants_funding/aisrequirement.cfm

What is considered American Iron and Steel?

What is an iron or steel product?

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

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

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

What is NOT considered American Iron and Steel?

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

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

Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
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Use of American Iron and Steel - De Minimis Waiver

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

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

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

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

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

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

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

Davis-Bacon Contract Conditions (Federal Prevailing Wages)

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

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

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

Wage Rate Requirements
(Also referred to as Attachment 6)

Preamble

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

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

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

2. Obtaining Wage Determinations.

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

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

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

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

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

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

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

3. Contract and Subcontract provisions.

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

(1) Minimum wages.

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

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

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

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees -

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

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

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

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

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

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use WIFA's interview form, Department of Labor's Standard Form 1445, or equivalent documentation to memorialize the interviews. WIFA's interview form and instructions are included with this packet.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate

wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed below and to the appropriate DOL Wage and Hour District Office listed at www.dol.gov/whd.

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

Clean Water Revolving Fund
Drinking Water Revolving Fund

Equal Employment

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

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

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

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

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in

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

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

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

Disadvantaged Business Enterprises (DBE)

Good Faith Efforts

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

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

Required Contract Conditions

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

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

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

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

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

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

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

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

ATTACHMENTS

DBE Forms
http://www.epa.gov/osbp/dbe_contract_admin.htm
6100-2 - DBE Program Subcontractor Participation Form
6100-3 - DBE Program Subcontractor Performance Form
6100-4 - DBE Program Subcontractor Utilization Form

Davis-Bacon Forms
WH-1321 - Davis-Bacon poster
WH-347 - Payroll and certification form
SF1444 - Wage Determination Request form
Employee Interview form

American Iron and Steel
Sample Step Certification Letter (Processed/Manufactured)
Sample Step Certification Letter (Shipped/Provided)