

CONTRACT FOR SERVICES  
CITY OF BISBEE  
PROJECT NO. CW 013-2013B  
SAN JOSE WWTP SITE PREPARATION FOR SOLAR POWER GENERATION

**THIS AGREEMENT**, made this 18<sup>th</sup> day of **June 2014**, by and between **The Ashton Company, Inc.** hereinafter called the "Contractor", and the **City of Bisbee, Arizona**, hereinafter called the "Owner":

**WITNESSETH:**

That the Contractor and the Owner agree as follows:

**ARTICLE 1 - SCOPE OF WORK**

As required by the Contract Documents, the Contractor shall completely furnish and install all of the materials and labor and perform all of the work in a good, workmanlike and substantial manner and to the satisfaction of the Owner for the Owner's Project known as the **San Jose WWTP Site Preparation for Solar Power Generation System**.

The Contractor shall be under the direction and supervision of the City Engineer, or his properly authorized agents, and strictly pursuant to and in conformity with the Drawings and Specifications prepared by **Pacific Advanced Civil Engineering, Inc. (PACE)** for the Owner, and with such modifications of the same and other documents that may be made by the Owner, through the City Engineer or his properly authorized agents, as provided herein.

**ARTICLE 2 - THE CONTRACT DOCUMENTS**

The following listed documents constitute the Contract Documents, and they are all as full a part of the Contract and General Conditions as if herein repeated:

This Contract and General Conditions between Owner and Contractor

WIFA Contract Package

Contract Bond

Labor & Material Payment Bond

Change Order Request Form

Contract Certification of Completion and Expressed Warranties

Unconditional Waiver

Conditional Waiver

Contractor's Bid Proposal

Bid Form

Receipt of Addendum (Including Addendum No. 1)

Bid Bond

Non-Collusion Affidavit

Project Technical Specifications

*dated 4-15-2014*

*6-19-14*

*JST 6/23/14*

*(Signature) 6-23-14*

*Accepted  
JST 6/23/14*

Drawings to this Contract (under separate cover)

In the event of any conflict in the provision of these Contract Documents, these respective documents shall prevail in the order listed.

### ARTICLE 3 - CONTRACT AMOUNT

3.1 CONTRACT AMOUNT. The Owner shall pay the Contractor the sum of three hundred twenty-two thousand, seven hundred Dollars and zero Cents (\$322,700), the Contract Amount. This sum is subject to additions or deductions made in accordance with the provisions of the Contract Documents.

3.2 SOURCE OF FUNDS. City funds.

3.3 CONTRACT TIME. The Contract Time as used and defined in Article 11 herein shall be **75 calendar days from the date of the Notice To Proceed (form in writing issued by the City). Time is of the essence in the Project. The City and its residents will incur substantial damages and inconvenience if the Project is not completed as scheduled.** If completion date occurs after the 75 calendar-day period, Liquidated Damages will be assessed as stated in the Construction Agreement.

3.3.1 This work shall be completed in conjunction with project CW 013-2013A San Jose WWTP Photovoltaic (PV) Solar Power Generation System. Contract times for scope of work are as follows (in calendar days):

Notice to Proceed (NTP) for both CW 013-2013A & CW 013-2013B will be issued on the same day. Anticipated issue date is on or before June 23, 2014

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CW 013-2013B San Jose WWTP Site Preparation for Solar Power Generation System work shall be completed in a total of 75 days from the NTP. Within the first 30 days, mass grading will be complete and access to the solar panel field area shall be made available to the contractor for CW013-2013A. Within the following 45 days, the solar panel support/parking structure shall be completed.

~~CW013-2013A San Jose WWTP Photovoltaic (PV) Solar Power Generation System work shall be completed in a total of 120 days from the NTP. This onsite work shall begin 30 days from NTP after contractor for CW 013-2013B has completed mass grading so the solar field footing and panel installation can be completed. Within 75 days from NTP, contractor for CW 013-2013B shall have completed the solar panel support/parking structure for panel installation.~~

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3.4 LIQUIDATED DAMAGES. Liquidated damages as used and defined in Article 11 herein shall be **\$570.00 per calendar day.**

3.5 OVERHEAD AND PROFIT. The limits on the amount of overhead and profit as used in Articles 15 and 17 herein shall be fifteen percent (15%) overhead and twelve percent (12%) profit for the Contractor and Subcontractors.

*m* 19-14

3.6 CASH ALLOWANCES. The Contractor agrees that he has included in the contract price all cash allowances, if any, specified in the Contract Documents, and shall cause the work so covered to be done by such contractors as the Owner may direct, the Contract Amount being adjusted in conformity therewith. The Contractor agrees that the Contract Amount includes all his expenses and such profit as he deems proper in connection with the Cash Allowance. No demand for any sum other than those included in the Contract Amount shall be allowed in connection with the Cash Allowance and only direct costs may be charged against the Cash Allowance. If the cost, when determined, is more than or less than the allowance, the Contract Amount shall be adjusted accordingly by change order.

3.7 EXPENDITURE OF CASH ALLOWANCES. The Engineer and a person designated in writing by Owner, acting jointly, are authorized to act for and on behalf of the Owner and as Special Agents of the Owner in the expenditure of the Cash Allowances, including any allowance later added to the Contract Documents pursuant to the provisions for modifying the Contract Documents. No act of such Special Agents purporting to authorize any charge against any Cash Allowance shall be valid unless in the form of a written Change Order, specifying the particular work to be done and the whole cost thereof to the Owner, and signed by both Special Agents. The cost of extra work or changes shall be determined under the provisions of Article 15 of this Contract and General Conditions.

Said Special Agents are not authorized to exceed the amount of the Cash Allowance hereinbefore listed.

The Contractor is warned of, and agrees to, these express limitations on the authority of the Owner's Special Agents.

#### **ARTICLE 4 - DEFINITIONS AND GENERAL PROVISIONS**

4.1 OWNER, CONTRACTOR, AND ENGINEER. The Owner, the Contractor, and the Engineer are those herein defined in this Contract and General Conditions. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

4.2 SUBCONTRACTOR. See Article 8.

4.3 NOTICE. See Article 10.

4.4 TIME. See Article 11.

4.5 COST. The term "Cost" shall include all charges, costs, losses, and expenditures of every kind whatsoever for the Work or portion thereof to which reference is made with respect to this term.

4.6 FINISH AND COMPLETION DATES. See Article 11.

4.7 CONTRACT DOCUMENTS. See also Article 1. A modification is:

4.7.1 A written amendment to the Contract and General Conditions signed by all parties;

4.7.2 A Change Order properly signed by all parties pursuant to Paragraph 15.1; or

4.7.3 A Field Order for a minor change in the Work issued by the Engineer pursuant to Paragraph 15.4.

A modification may be made only after execution of the Contract and General Conditions.

4.8 CONTRACT AND GENERAL CONDITIONS. The Contract and General Conditions consist of all the Contract Documents enumerated in Article 2. The Contract and General Conditions represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The Contract and General Conditions may be amended or modified only by a Modification as defined in Subparagraph 4.7.

4.9 WORK. The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated, or to be incorporated in such construction to complete the Project.

4.10 PROJECT. The Project is the total construction designed by the Engineer and depicted and described by the Contract Documents.

4.11 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS OF THE CONTRACT DOCUMENTS.

4.11.1 The Contract and General Conditions shall be signed by the Owner and the Contractor. By executing the Contract and General Conditions, each party accepts and agrees to be bound by each of the Contract Documents listed in Article 2.

4.11.2 By executing the Contract and General Conditions, the Contractor represents and warrants that he has examined closely the site and the existing structures, if any, including the materials and methods of construction utilized in and the condition of the existing structures, has familiarized himself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and correlated all of his observations with the provisions and requirements of the Contract Documents including, but not limited to, the details of demolition and construction indicated by the Plans and Specifications. Where discrepancies in quantities, materials, sizes or other conditions exist between the existing structure and the Plans and Specifications, the Contractor shall accomplish the Work required to carry out the intent of the Contract Documents and the actual requirements of the existing structure shall take precedence over the Plans and Specifications for purposes of determining the quantity and nature of the Work required herein.

4.11.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words

which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

4.11.4 The organization of the Specifications into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constituting part of the contract or having any legal or contractual significance.

4.11.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Engineer in accordance with any schedule agreed upon or with reasonable promptness in any case. Such interpretations shall be consistent with and reasonable inferable from the Contract Documents, and may be effected or memorialized later by Field Order.

#### 4.12 COPIES FURNISHED AND OWNERSHIP

4.12.1 The Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work, as determined by the Engineer.

4.12.2 All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of the Owner. They are not to be used on any other project and, with the exception of one set for each party of the Contract and General Conditions, are to be returned to the Owner upon request at the completion of the Work.

4.12.3 It shall be the responsibility of the Contractor to insure that each subcontractor and material supplier has a current set of Drawings, Specifications and Addenda, as required for proper execution of their respective portions of the Work.

### ARTICLE 5 - ENGINEER

#### 5.1 DEFINITION

5.1.1 The Engineer is the person or organization identified as such in this Contract and General Conditions and the term "Engineer" means the City Engineer of the City of Bisbee or his authorized representative.

5.1.2 Nothing contained in the contract Documents shall create any contractual relationship between the Engineer and the Contractor.

#### 5.2 ADMINISTRATION OF THE CONTRACT

5.2.1 The City's Design Engineer will not provide construction services pursuant to its separate contract with the Owner, including performance of the functions hereinafter described. Those functions will be provided by the City Engineer, Thomas Klimek.

5.2.2 The Engineer will be the Owner's representative during construction to the extent described herein, until final payment and including the guarantee period. The Engineer will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument that will be shown to the Contractor. The Engineer will advise and consult with the Owner, and the Owner may issue instructions to the Contractor either directly or through the Engineer.

5.2.3 The Engineer and Owner shall at all times have access to the Work wherever it is in preparation and progress.

5.2.4 The Engineer shall make periodic visits to the site to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. These visits shall be of the frequency necessary to apprise the Engineer of the progress and quality of the Work. On the basis of his on-site observations as an Engineer, he shall endeavor to guard the Owner against defect and deficiencies in the Work of the Contractor.

5.2.5 Based on such observations and the Contractor's Applications for Payment, the Engineer and Owner will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Subparagraph 12.4.1.

5.2.6 The Engineer will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance there under by both the Owner and the Contractor, except where otherwise provided herein. The Engineer will render interpretations necessary for the proper execution or progress of the Work within a reasonable time so as not to delay the prosecution of the Work.

5.2.7 Claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred to the Owner and the Engineer in the manner provided by Subparagraph 12.4.4, within the time limits prescribed in Subparagraph 15.2.1, for decision by the Engineer or Owner, as the subject of the matter may require, which decision will be rendered in writing within a reasonable time.

5.2.8 The interpretations and decisions of the Engineer shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge, he will exercise his best efforts to insure faithful performance by both the Owner and the Contractor.

5.2.9 The Engineer decisions in matters relating to artistic effect will be final.

5.2.10 If a decision of the Engineer or the Owner is made pursuant to the terms of Subparagraph 5.2.7 which goes directly to the Contractor in writing, and it states that it is final but subject to appeal, no claim, dispute, or other matter covered by such decision may be made later than thirty (30) days after the date on which the party making the demand received the decision. Appeal shall be to the Owner, whose decision is final, subject to any rights that the Contractor may have at law.

5.2.11 The Engineer and the Owner will each have authority to reject Work that does not conform to the Contract Documents. Whenever, in their reasonable opinion, either the Engineer or Owner considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, they will have authority to require the Contractor to stop the Work or any portion thereof, or to require special inspection or testing of the Work as provided in Subparagraph 10.8.2 whether or not such Work be then fabricated, installed or completed. However, neither the Engineer's authority to act under this Subparagraph, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty of responsibility of the Engineer to the Contractor, any subcontractor or material supplier, any of their agents or employees, or any other performing any of the Work.

5.2.12 Within a reasonable time the Engineer will review Shop Drawings, Product Data and Samples promptly as provided in Subparagraphs 7.12.1 through 7.12.8, inclusive.

5.2.13 The Engineer will prepare Change Orders in accordance with Article 15. The Engineer will have authority to order minor changes in the Work not involving extra cost or an extension of the Contract time and not inconsistent with the Contract Documents as provided in Subparagraph 15.3.1.

5.2.14 The Engineer will conduct site visits to determine the date of Final Completion, shall notify the Owner of a date for inspections, and shall issue a Certificate of Final Completion. The Engineer will receive written warranties, record drawings, maintenance manuals and related documents required by the Contract and assembled by the Contractor, and will transmit a final Certificate for Payment to the Owner.

5.2.15 The duties, responsibilities and limitations of authority of the Engineer as the Owner's representative during construction are set forth in Articles 1 through 18, inclusive, of this Contract and General Conditions. The Owner may, by agreement with the Engineer, increase or diminish the responsibilities and duties of the Engineer as he may see fit in his sole discretion.

## ARTICLE 6 - OWNER

### 6.1 DEFINITION

6.1.1 The Owner is the person or organization identified as such in the Contract and General Conditions. John A. MacKinnon, Interim City Manager/Attorney, City of Bisbee, or his designee, will be the Owner's representative on this Project.

### 6.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

6.2.1 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

6.2.2 The Owner may issue instructions directly to the Contractor or through the Engineer.

6.2.3 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the Owner, and this provision of the Contract shall take precedence over any other term hereof. *WITHIN THE LIMITS OF THE LAWS OF THE STATE OF ARIZONA. (A) 4-18-17*

6.2.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Payment and Insurance in Articles 12 and 14, respectively. *J 571*  
*6/23/14*

## ARTICLE 7 - CONTRACTOR

### 7.1 DEFINITION

7.1.1 The Contractor is the person or organization identified as such in this Contract and General Conditions and the term "Contractor" means the Contractor or his authorized representative.

7.1.2 Whenever the words "as may be directed," "suitable," "or equal," "as approved," or other words of similar intent and meaning are used implying that judgment or discretion is to be exercised or a decision is to be made, it is understood that it is the judgment, discretion, or decision of the Engineer to which reference is made.

7.1.3 All materials and articles of any kind necessary for this Work are subject to the approval of the Engineer and his judgment and decision shall be final and conclusive.

7.1.4 Except as the Specifications may be modified (prior to the opening of Bids) by addenda and/or written approvals of equal items of equipment or materials as provided for in the bid documents, the successful contractor will be held to furnish all Work as specified in the bid documents.

7.1.5 After execution of the Contract, changes of brand named, trade named, trademarked, patented articles, or any other substitutions will be allowed only by written order signed by the Engineer, in which case the Owner shall receive all benefit of the difference in cost involved, except where choice of material or method is designated "or equal" in the specifications.

### 7.2 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

7.2.1 By executing this Contract the Contractor warrants that he has carefully studied and compared the Contract and General Conditions, Drawings, Specifications, Addenda, all other Contract Documents and the existing structure and has determined that the Contract Documents describe a completely buildable and functional Project. The Contractor does not warrant the suitability or feasibility of the Owner's proposed operation of the Project. The Contractor shall at once report to the Engineer and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Engineer for any damage resulting from any such errors, inconsistencies or omissions so long as the

Engineer and the Owner are notified promptly thereof unless discovery of such error, inconsistency or omission should have been made by careful examination of the Contract Documents prior to submitting a Proposal. The Contractor shall do no Work without Drawings, Specifications or interpretations from the Engineer.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale. In the absence of figured dimensions, the Engineer shall be notified and the scale dimension verified.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present improvements, driveways, or other existing conditions, before executing any work.

7.2.4 The Contractor agrees to comply fully with all applicable state, federal and local laws. Contractor agrees to indemnify and hold harmless the Owner and Engineer from all claims or whatever nature involving failure of the Contractor or any of its Subcontractors to comply with any federal, state or local law or ordinance in connection with this Project.

7.2.5 It is the Contractor's responsibility to inspect the site of the work to identify any surface or subsurface conditions or underground facilities that can be reasonably identified and that are materially different than what may be indicated in the Contract Documents prior to beginning the Work.

7.2.6 If the Contractor believes that any surface, subsurface or physical condition at the work site that is uncovered or revealed is of such a nature as to require a Change Order, because it either differs materially from that which is specifically designated on the Contract Documents or is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character required by the Contract at this location, then the Contractor shall promptly notify the Owner and Engineer in writing prior to further disturbing the site and performing the Work. The Engineer shall promptly review such notice and the conditions and advise the Owner and the Contractor whether additional tests may be required or a revision of the plans may be appropriate. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time if the Contractor knew or should have known of the existence of such conditions at the time of the Bid was submitted; the existence of the condition could reasonably have been discovered or revealed as a result of the investigation or study of the site as required of the Contractor, or the Contractor failed to provide written notice of condition, as required in this section.

7.2.7 The information and data shown or indicated on the Contract Documents with respect to underground facilities at or around the location of the work is based upon information and data provided by the owners of these facilities. The Owner and Engineer are not responsible for the accuracy or completeness of this information. The Contractor is required to verify the location any such utilities and to comply with all applicable laws and regulation regarding the location and protection of utilities. No additional compensation shall be provided for complying with these obligations.

### 7.3 SUPERVISION AND CONSTRUCTION PROCEDURES

7.3.1 The Contractor shall supervise the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

7.3.2 Contractor shall hold periodic meetings as often as reasonably required, but at least one a week, with subcontractors to monitor the progress of the Work. A report of the results of each such meeting shall be included in the Daily Report required by Subparagraph 7.10.2 herein. Contractor shall inform the Engineer at least twenty-four (24) hours in advance of the time for each meeting.

### 7.4 LABOR AND MATERIALS

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, material, equipment, tools, construction equipment, machinery, water, heat, utilities, waste and refuse disposal, transportation and any other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

7.4.2 Any work necessary to be performed after regular working hours, on Sundays, or legal holidays, shall be performed without additional expense to the Owner.

7.4.3 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. When requested in writing by the Engineer or Owner, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Engineer or Owner, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. If the Engineer requests such a removal, he shall notify the Owner in writing of his action. The Contractor shall keep the Owner harmless from damages or claims for compensation that may occur in the enforcement of this requirement.

### 7.5 WARRANTY

7.5.1 The Contractor warrants to the Owner that all material and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. Faults or defects are considered to be any aspect of the Work that is found not to be in conformance with the Contract Documents or any aspect of the Work that deteriorates becomes non-functional or otherwise fails, in some functional or aesthetic manner, to meet the requirements of the Contract Documents, normal wear and tear excepted. All Work not so conforming to these standards may be considered defective. If required by the Engineer or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.5.2 The warranty provided in this Paragraph 7.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

## 7.6 TAXES

7.6.1 The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law arising out of construction or other business activities of the Contractor in connection with the Project and in connection with the performance of this Contract, whether in force as of the date of this Contract or later imposed.

## 7.7 PERMITS, FEES AND NOTICES

7.7.1 Unless otherwise provided in the Plans, Specifications or by Addendum, Contractor will secure all permits, fees and licenses necessary for the proper execution and completion of the Work, including, but not limited to, building, plumbing, mechanical, electrical, and fire protection permits, but excluding plan check fees, which shall be paid for by the Owner. The Contractor shall pay for water meters, fire protection, water service, sewer connection, sewer fees or assessments, gas service, and electric service to procure all necessary utilities for the Project and for temporary utility hook-ups required during the course of construction. The Contractor shall pay for electric power and water necessary for the construction of the Project.

7.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Engineer and Owner in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer and Owner, he shall assume full responsibility therefore and shall bear all costs attributable thereto, including any reasonable attorney's fees incurred by Owner in connection therewith.

## 7.8 SUPERINTENDENT

7.8.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall be satisfactory to the Engineer and Owner and shall not be changed except with the consent of the Engineer and Owner. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

## 7.9 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

7.9.1 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any nature with the Contractor.

## 7.10 PROGRESS SCHEDULE AND REPORTS

7.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Engineer's and Owner's approval an estimated Progress Schedule for the Work. The progress schedule shall be related to the entire Project and shall indicate the dates for the starting and completion of the various components and phases of construction and shall be revised as required by the conditions of the Work, upon request of and subject to the approval of the Engineer and Owner. The Contractor agrees to promptly respond to all inquiries by the Engineer or Owner concerning substantial deviation of the progress of construction from the Progress Schedule. Failure to timely respond to such request or substantial delay from the schedule may result in progress payments being withheld.

The Progress Schedule shall include projected dates of submittal of all items of material for which submittals are required and shall include delivery dates of all items of material and equipment that are considered critical or long lead time. The Contractor shall submit a biweekly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project.

~~7.10.2 The Contractor shall prepare and submit for the Owner's information, review and approval for the duration of the Work a Daily Report in a form acceptable to Owner. The Daily Report shall be completed daily and submitted to the Owner and Engineer on a weekly basis as a statement and review of the progress of the Work.~~

*Let's do weekly 3/21/14 6/23/14 6/18/14*

7.10.3 The Contractor shall furnish sufficient labor force, materials, plant, and equipment to ensure the prosecution of the Work in accordance with the approved Progress Schedule. If the Contractor's prosecution of the Work falls behind the Progress Schedule, Contractor shall take such steps as may be necessary to regain compliance with the Progress Schedule including additional labor or services or work such overtime as may be necessary to bring his operations up to schedule. Failure to maintain schedule or to take the above steps to regain the agreed Progress Schedule shall constitute default under this Contract.

## 7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE

7.11.1 The Contractor shall maintain at the site for the Owner one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully and accurately to record all changes made during construction and shall be available to the Engineer and Owner at all times. Upon completion of the Project, a clean set of Drawings shall be accurately marked to depict the as-built condition of the Project, and these Drawings along with all record drawing, shall be delivered to the Owner upon completion of the Work.

7.11.2 The Contractor shall also submit to the Engineer for his record two copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Engineer's specifications are a part thereof.

## 7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared or supplied by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work.

7.12.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

7.12.3 The Contractor shall review, stamp with his approval and submit, with promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently by the Engineer as covered by Modifications. The Contractor shall, within ten (10) days after the notice to proceed, submit to the Engineer for his approval a schedule indicating the date that each required Shop Drawing and Product Data submittal will be delivered to Engineer. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Engineer may require. At the time of submission the Contractor shall inform the Engineer in writing of any deviation of the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

7.12.4 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing, Product Data and Sample with the requirements of the Work and of the Contract Documents.

7.12.5 The Engineer will review and return Shop drawings, Product Data and Samples with reasonable promptness so as to cause no delay, but such review is only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Engineer's approval of a separate item shall not indicate approval of an assembly in which the item functions.

7.12.6 The Contractor shall make any corrections required by the Engineer to comply with the Contract Documents and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings or Product Data to revisions other than the corrections requested by the Engineer on previous submissions.

7.12.7 The Engineer's approval of Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Engineer and Owner in writing of such deviation at the time of submission and the Engineer and Owner have given written approval to the specific deviation, nor shall the Engineer's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

7.12.8 No portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been approved by the Engineer. All such portions of the Work shall be in accordance with approved Shop Drawings, Product Data and Samples.

#### 7.13 CLEANING UP

7.13.1 The Contractor at all times during the progress of the Work shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials specified to be left at the site, and shall clean all glass surfaces.

7.13.2 If the Contractor fails to satisfactorily clean up, the Owner will do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 10.6:

#### 7.14 COMMUNICATIONS

7.14.1 The Contractor shall forward all communications to the Engineer except where otherwise required herein or otherwise directed by the Owner.

#### 7.15 INDEMNIFICATION CLAUSE

7.15.1 Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its agents, employees, or any tier of Contractor's Subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, officers, officials and employees shall arise in connection with any tortuous claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by the Contractors' acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor, any tier of Contractor's Subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be in legally liable.

7.15.2 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

### ARTICLE 8 - SUBCONTRACTORS

#### 8.1 DEFINITION

8.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or to perform any of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.

8.1.3 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between the Owner or the Engineer and any Subcontractor or Sub-subcontractor.

## 8.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

8.2.1 Prior to the award of the contract, the Contractor shall supply to the Owner a complete list of subcontractors and material vendors. The Engineer shall notify the apparent successful bidder in writing if the Owner has reasonable objection to any person or organization on the list of subcontractors and material vendors. Failure of the Owner to make an objection to any person or organization on the list prior to the award shall constitute acceptance of such person or organization.

8.2.2 If, prior to the award of the Contract, the Owner has a reasonable and substantial objection to any person or organization of such list, and refuses in writing to accept such person or organization, the apparent successful bidder may prior to the award, withdraw his bid without forfeiture of bid security. If the bidder submits an acceptable substitute with an increase in his bid price to cover the difference in cost occasioned by such substitution before the award, the Owner may, at his discretion accept the increased bid price or he may disqualify the bid. If, after the award, the Owner refuses to accept any person or organization on such list, the Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Amount shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting a name with respect thereto.

8.2.3 The Contractor shall not contract with any Subcontractor proposed for portions of the Work designated in the bidding requirements or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor against whom he has a reasonable objection.

8.2.4 If the Owner, without cause, requires a change of any proposed Subcontractor previously accepted by it, the Contract Amount shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

8.2.5 The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner unless the substitution is approved in writing by the Owner.

### 8.3 SUBCONTRACTUAL RELATIONS

8.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provision that:

- .1 preserve and protect the rights of the Owner and the Engineer under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.
- .2 require that such work be performed in accordance with the requirements of the Contract Documents, including, but not limited to:
  - a. require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;
  - b. require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner pursuant to Paragraph 15.2;
  - c. obligate such Subcontractor specifically to consent to the provisions of this Paragraph 8.3;
  - d. require such Subcontractor to submit a lien waiver and release of claim in a form prescribed by the Owner along with each application for payment, which release and waiver shall in turn be given to the Owner and which shall cover all Work done prior to the date of the application for payment;
  - e. require such Subcontractor to comply with all laws, indemnify Owner and agree to the provision of Paragraphs 7.2.4 and 7.15;
  - f. require such Subcontractor to comply with all Labor Standards and other Federal regulations required by the Arizona Department of Housing, CDBG Program in accordance with Paragraph 7.2.4.
- .3 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Article 14.

### 8.4 PAYMENTS TO SUBCONTRACTORS

8.4.1 The Engineer may, on request and at this discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

8.4.2 Neither the Owner nor the Engineer shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be provided in this Contract.

## **ARTICLE 9 - SEPARATE CONTRACTS**

### **9.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS**

9.1.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract.

### **9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS**

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.

9.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Engineer any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

9.2.3 Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly settle such other contractor's claim, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises there from, the Contractor shall promptly pay or satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorney's fees and court costs which the Owner has incurred.

### **9.3 OWNER'S RIGHT TO CLEAN UP**

9.3.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 7.13, the Owner may clean up and charge the cost thereof to the several contractors as the Owner shall determine to be just.

## **ARTICLE 10 - MISCELLANEOUS PROVISION**

### **10.1 LAW OF THE PLACE**

10.1.1 The contract shall be governed by the law of Arizona and any action relating to this Contract shall be brought in an Arizona court of competent jurisdiction located in Cochise Owner.

## 10.2 SUCCESSORS AND ASSIGNS

10.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants' agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or any part hereof or sublet it as a whole or in part without the previous written consent of the Owner, nor shall the Contractor assign or pledge any monies due or to become due to him hereunder, without the previous written consent of the Owner.

## 10.3 WRITTEN NOTICE

10.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice as appropriate. Notice to the Engineer is notice to the Owner except for notice of inconsistencies, error or omission in the Contract Documents, request for extension of time, request for changes in the Contract Amount, appeal of decisions by Engineer or Owner and notice of claim or legal process. All such notices shall be given to both Engineer and Owner.

## 10.4 CLAIMS FOR DAMAGES

10.4.1 Should either party of the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. All claims made by the Contractor under this Contract are subject to the limitations set forth in Paragraph 15.2 herein.

## 10.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

10.5.1 The Contractor shall furnish performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising there under in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner.

## 10.6 OWNER'S RIGHT TO COMPLETE THE WORK

10.6.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the Contractor and his surety, and without prejudice to any

other remedy he may have, proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including the attorneys' fees and other costs incurred by Owner.

## 10.7 ROYALTIES AND PATENTS

10.7.1 The Contractor shall pay all royalties and license fees and shall defend all suits or claims from infringement of any patent right and shall save the Owner harmless from loss of account thereof, including Owner's attorneys' fees and court costs, except that Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process or products specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives information to the Engineer prior to starting the Work.

## 10.8 TESTS

10.8.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the Engineer timely notice of its readiness and of the date arranged so the Engineer may observe such inspection, testing or approval.

10.8.2 The Contractor shall be responsible that all equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended.

10.8.3 If after the commencement of the Work the Engineer determines that any of the Work requires special inspection, testing, or approval which subparagraph 10.8.1 does not include, he will, upon written authorization from the Owner, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 10.8.1.

10.8.4 If such special inspection or testing reveals a failure of the Work to comply:

- .1 with the requirements of the Contract Documents, or
- .2 with respect to the performance of the Work, with laws, ordinances, rules regulations or orders of any public authority having jurisdiction over the Work, the Contractor shall bear all costs thereof, including the Engineer's additional services made necessary by such failure, and the costs of such inspection or testing; otherwise the Owner shall bear such costs of special inspection.

10.8.5 Required certificates of re-inspections or testing to secure compliance with 10.8.4.1 or 10.8.4.2 above shall be paid for by the Contractor.

10.8.6 If the Engineer wishes to observe the inspections, tests or approvals required by this Paragraph 10.8, he will do so promptly and, where appropriate, at the source of supply.

10.8.7 Neither the observations of the Engineer in his administration of the Contract, nor inspections, tests or approvals by person other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

#### 10.9 LEGAL FEES AND COSTS

10.9.1 The party substantially prevailing shall be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred in connection with any effort undertaken to enforce any of the terms of this Contract.

#### 10.10 SEVERABILITY

10.10.1 In the event any provision in this contract is held invalid by any court of competent jurisdiction, the remaining provision in this Contract shall be deemed severable and shall remain in full force and effect.

### ARTICLE 11 - TIME

#### 11.1 TIME AND LIQUIDATED DAMAGES.

11.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the Engineer and shall be completed by the Contractor within the number of calendar days specified in Paragraph 3.3. hereof (the "Finish Date"). The Contract Time is the period of time specified in Paragraph 3.3. hereof running from (1) the date specified in the Notice to Proceed as the date upon which the Contractor is to commence the Work (the "Start Date"), through (2) the Finish Date. The date of beginning, rate of progress, and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly as such rate of progress as will insure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

11.1.2 If the Final Completion Date as defined in Subparagraph 11.1.4, occurs after the expiration of the Contract Time, the Contractor shall pay the Owner the sum specified in Paragraph 3.4 hereof as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain. It is expressly agreed that the amount of liquidated damages set forth herein is reasonable. Said amounts may be retained from time to time by the Owner from payments due the Contractor.

11.1.3 The date of Completion of the Work, or designated portion thereof, is the date certified in writing by the Engineer when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that the Owner may occupy the project, or a designated portion thereof, if he so

elects, for the use for which it is intended. Certification of a designated portion of the Work by the Engineer as being "Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse, the Contractor from his duty to complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not completing the remainder of Work within the Contract Time including liability for liquidated damages.

11.1.4 The Final Completion Date is the calendar date when all items of the Work are one hundred percent (100%) finished, with no items of any scope, large or small, outstanding and remaining to be constructed, and all known defective work has been corrected. When the Engineer certifies in writing, pursuant to the terms of paragraph 12.6.2, that the Final Completion Date is reached and it is approved by the Owner, the Contractor may make application for final payment pursuant to Subparagraph 12.6.2.

11.1.5 In any case where the terms of any other provision of the Contract may be construed to be in conflict with any term regarding time for completion of the Project, interpretation of the conflicting terms which gives precedence to the term regarding time for completion shall govern.

## 11.2 PROGRESS AND COMPLETION

11.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

11.2.2 The Contractor shall begin the Work on the Start Date as defined in Subparagraph 11.1.1 and shall carry the Work forward expeditiously, uninterruptedly and with adequate forces and shall complete it within the Contract Time.

## 11.3 DELAYS AND EXTENSION OF TIME

11.3.1 If the Contractor is delayed at any time in the progress of the Work by any cause which the Owner determines may justify the delay, including, but not limited to, acts of God, acts of the public enemy, acts of the Owner, acts of another contract in performance of a contract with the Owner, fires, floods, epidemics, quarantine restriction, freight embargoes and adverse weather detrimental to completion of the Work and, in the aggregate, materially different than weather normally experienced during the entire Contract Time, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. No extension of the Contract Time pursuant to this paragraph shall be limited to granting a time extension to the Contractor, and there is no other obligation, express or implied, on the part of the Owner to the Contractor for delay from any cause.

11.3.2 All claims for extension of time shall be made in writing to the Engineer and Owner no more than fourteen (14) days after the occurrence of the delay; otherwise, they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. The Contractor shall promptly notify the Engineer in writing of the date of the termination of the continuing cause of delay.

11.3.3 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 4.11.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for them, and not then unless such claim is reasonable.

## **ARTICLE 12 - PAYMENTS AND COMPLETION**

### **12.1 CONTRACT AMOUNT**

12.1.1 The Contract Amount is as stated in this Contract and General Conditions and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, subject to credits or increases resulting from Change Orders. In no event shall Owner be responsible for more than the Contract Amount.

### **12.2 SCHEDULE OF VALUES**

12.2.1 Before the first Application for Payment, the Contractor shall submit to the Engineer and Owner a detailed schedule of values reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the total Contract Amount, prepared in such detail and such form as the Engineer may require, and supported by such data to substantiate its correctness as the Engineer may require. Each item in the schedule of values may include its proper share of overhead and profit or such overhead and profit may be shown as separate line items and shall be billed in proportion the percent of the Project completed.

### **12.3 PROGRESS PAYMENTS**

12.3.1 On or about the twenty-fifth day of each calendar month during the course of construction, the Contractor shall submit to the Engineer and Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as the Owner or the Engineer may require. Contractor shall also submit a release of claim and lien waiver covering all work performed to date, including the work of each Subcontractor and material supplier.

12.3.2 Payments shall be based on the Work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location under such conditions agreed upon in writing by the Engineer and Owner to be transported to the site and installed at a later date.

12.3.3 Material delivered and suitably stored at the site, or at some other agreed upon location by the Contractor, subcontractors, sub-subcontractors, or material suppliers shall remain the responsibility of the Contractor until incorporated into the Work, shall be insured for the benefit of the Owner to the full value of the material and shall be suitably stored and protected. Only such material that is in accordance with the Contract Documents shall be installed into the Work. Until the final completion and acceptance of the Work by the Owner, it shall be

the Contractor's responsibility to protect all materials to be installed in or delivered to the Project.

12.3.4 The Contractor warrants and guarantees that title for all work, materials and equipment covered by an Application for Payment shall pass to the Owner either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 12 as "claims."

## 12.4 APPROVALS FOR PAYMENT

12.4.1 If the Contractor has made application for payment as above, then not later than seven (7) days after the date of submission, the Engineer shall issue his approval of the Application for Payment and forward his approval of the Application to the Owner for such amount as he determines to be properly due, or state in writing his reasons for withholding, in whole or in part the amount applied for as provided in Subparagraph 12.5.1.

12.4.2 Approval of the Application for Payment will constitute a representation by the Engineer to the Owner, based on his observations at the site as provided in Subparagraph 5.2.4, and the data comprising the Application for Payment, the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole upon Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to final completion and to any specific qualifications stated in his approval of the Application of Payment); and that the Contractor is entitled to payment in the amount approved. In addition, the Engineer final approval for payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment, as set forth in Subparagraph 12.6.2, have been fulfilled.

12.4.3 After the Engineer has approved an Application for Payment and has promptly forwarded this approval to the Owner, the Owner shall make a payment to the Contractor as soon as grant funds become available from the State CDBG Program to the Owner, or sooner, at the OWNER's discretion, and subject to compliance with labor standard requirements. Payment will be based on ninety percent (90%) of the value of the Work actually performed during the preceding calendar month in accordance with Subparagraph 12.3.3 and approved by Engineer until the contract is fifty percent (50%) completed. If the Contractor is making satisfactory progress when the contract is fifty (50%) completed, the Contractor shall be entitled to a reduction in the retention amount, as required by ARS §34-221.C. Any amounts retained by Owner shall be paid to the Contractor, as previously specified, after the Final Completion Date as specified in Paragraph 12.6.1 hereof, provided the Contractor has by that time duly furnished the Owner consent of surety, lien waivers, any and all operating manuals, wiring diagrams, control diagrams, maintenance manuals, equipment and appliance warranties, record drawings, warranties and other documents of any nature called for in the Contract Documents or required for the proper functioning of the Work as a whole and has otherwise performed all of Contractors' obligations under the Contract Documents. In lieu of

this retention, the Contractor may provide alternative security in the manner authorized by law.

12.4.4 In this Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Engineer or Owner shall require, all claims for additional compensation against the Owner arising under the Contract Documents or any covenant thereof, express or implied, or from any cause whatsoever, within the time limits prescribed in Subparagraph 15.2.1. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims, to permit the Owner to investigate claims as the same may arise. It is expressly covenanted that the Owner shall have no liability on any claim unless such claim was approved by Engineer and was submitted in writing at the time and in the manner required hereby.

12.4.5 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## 12.5 PAYMENT WITHHELD

12.5.1 The Engineer or Owner may decline to approve an Application for Payment and the Engineer may withhold his Certificate in whole or in part if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 12.4.2. The Engineer may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective work not remedied,
- .2 claims filed or reasonable evidence indicating probable filing of claims,
- .3 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount,
- .4 damage to another contractor,
- .5 reasonable indication that the Work will not be completed within the Contract Time, or
- .6 unsatisfactory prosecution of the Work by the Contractor or other material breach of this Contract.
- .7 failure to complete all Labor Standards requirements

12.5.2 When the above grounds in Subparagraph 12.5.1 are removed or in the case of 12.5.1.3 above, when the Owner is satisfied that the Contractor will complete the Project at the agreed upon price, payment shall be made for amounts withheld because of them.

## 12.6 COMPLETION AND FINAL PAYMENT

12.6.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Engineer will promptly make such inspection and, when the Engineer finds (1) the Work in accordance with and acceptable under the Contract Documents, (2) the Work

completed under the Contract fully performed and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 11.1.4, then, and only then, the Engineer shall promptly state in writing that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due the Contractor is payable. The Engineer's written notice required by this paragraph shall state the Date of Final Completion.

12.6.2 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled claims,
- .2 faulty or defective Work,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any guarantees required by the Contract Documents.

12.6.3 The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

12.6.4 No earlier than three weeks before the expiration of the warranty period for the Work specified in Subparagraph 18.1 herein, or at such other additional earlier time or times as the Owner may agree, the Owner and/or the Engineer, in company with the Contractor, shall make an inspection of the Project and certify that all defects in material and workmanship occurring during this period have been satisfactorily corrected.

## **ARTICLE 13 - PROTECTION OF PERSONS AND PROPERTY**

### **13.1 SAFETY PRECAUTIONS AND PROGRAMS**

13.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

13.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss, to:

- .1 all employees engaged in the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or

to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities and property.

13.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

13.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to faulty Drawings or Specifications or the acts or omissions of the Owner or Engineer or anyone employed by either of them or for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

13.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated in writing by the Contractor or the Engineer.

13.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

### 13.3 EMERGENCIES

13.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided by the applicable provision of the Contract Documents.

## ARTICLE 14 - INSURANCE

### 14.1 CONTRACTOR'S INSURANCE

14.2 The Contractor at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rate of A10, or approved by Owner in its sole discretion and licensed to do business in the State of Arizona with policies and forms satisfactory to the Owner.

14.3 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Owner, constitute a material breach of this Contract.

14.4 The Contractor's insurance shall be primary insurance as respects the Owner, and any insurance or self-insurance maintained by the Owner shall not contribute to it.

14.5 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Owner.

14.6 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Owner, its agents, officers, officials and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

14.7 The insurance policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Owner under such policies. The Contractor shall be solely responsible for the deductible and/or insured retention and the Owner, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

14.8 The Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The Owner shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the Owner's rights to insist on strict fulfillment of Contractor's obligations under this Contract.

14.9 The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the Owner, its agents, officers, officials and employees as Additional Insured.

#### 14.10 REQUIRED COVERAGE

##### 14.10.1 COMMERCIAL GENERAL LIABILITY

14.10.2 Contractor shall maintain Commercial General Liability insurance with a unimpaired limit of not less than **\$1,000,000.00 for each occurrence with a \$2,000,000.00 Products/Completed Operations Aggregate** and a **\$2,000,000.00 General Aggregate Limit**. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 0001 or any replacements thereof. The coverage shall not exclude X,C,U.

14.10.3 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

ASHTAR FORM  
Submitted &  
Approved  
6/18/14  
m

*Old format, Ins. Co. for Contractor says outdated file 6/23/14*  
14.10.4 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc., Additional Insured, Form B, CG ~~20101185~~, and shall include coverage for Contractor's operations and products and completed operations.

*not required by city Ins. Jg 7/16/14*  
~~14.10.5 If required by this Contract, the Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of this Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$2,000,000.00 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.~~

NOT REQUIRED  
ed. 6/18/14  
m

#### 14.11 AUTOMOBILE LIABILITY

14.11.1 Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of **not less than \$2,000,000.00 each occurrence** with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and **\$5,000,000.00 per accident limits for bodily injury and property damage** shall apply.

#### 14.12 WORKER'S COMPENSATION

14.12.1 The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of **not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease for each employee, and \$1,000,000.00 disease policy limit.**

14.12.2 In case any work is sub-contracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

#### 14.13 CERTIFICATES OF INSURANCE

14.13.1 Prior to commencing work or services under this Contract, Contractor shall furnish the Owner with Certificates of Insurance, or formal endorsements as required by

the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by the Contract are in full force and effect.

14.13.2 In the event any insurance policy(ies) required by this Contract, is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

14.13.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to the Owner fifteen (15) days prior to the expiration date.

#### 14.14 CANCELLATION AND EXPIRATION NOTICE

14.14.1 Insurance required herein shall not expire, be cancelled, or materially changed without thirty (30) days prior written notice to the Owner.

### ARTICLE 15 - CHANGES IN THE WORK AND CLAIMS

#### 15.1 CHANGE ORDERS

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Contract Amount and/or the Contract Time shall be adjusted pursuant to the terms of the Contract Documents.

15.1.2 A Change Order is a written amendment to the Contract Documents signed by the Owner, Engineer, and the Contractor, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract amount and the Contract Time may be changed only by Change Order.

15.1.3 The cost or credit, as the case may be, to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways as mutually agreed:

- .1 by a lump sum properly itemized in a form acceptable to Engineer and Owner including sufficient supporting substantiating data to permit evaluation.
- .2 by actual cost and the specified percentage fees covering overhead and profit, less applicable trade discounts, rebates, credits or other such reductions in cost made available to Contractor.
- .3 Unit price as stated in the Contract, subject to the provisions of 15.1.5 herein. Unit prices proposed on the bid form and included in the Contract are not subject to further overhead and profit adjustments. The Contract sum will be adjusted by the direct extension of the number of units and unit price.

The amount of Contractor's overhead and profit allowed for any change order, whether increase or decrease shall not exceed the percentages of overhead and profit specified in

Paragraph 3.5 hereof on work performed by Contractor; and the percentage for profit specified in Paragraph 3.5 hereof of Subcontractor's quotation on all work performed by Subcontractors for profit, with no markup for overhead. Subcontractor's markup on Change Orders shall be limited by their subcontracts with Contractor to the percentages of direct cost for overhead and for profit as specified in Paragraph 3.5. hereof.

15.1.4 If none of the methods set forth in Subparagraph 15.1.3 is agreed upon to calculate a charge or credit to Owner, the Contractor, provided he otherwise receives a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be estimated in good faith by the Engineer on the basis of the Contractor's reasonable expenditures and savings, including, an allowance for overhead and profit as provided in 15.1.3. The Engineer shall use the unit price basis if available and, if not, then the actual cost basis for this determination. The Engineer shall then submit that estimate, with all supporting information, to Owner for approval. In such case, and also under Subparagraph 15.1.3.1 above, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease, including an allowance for overhead and profit, as confirmed by the Engineer. When both additional costs and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

15.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in proposed Change Order that application of the agreed unit prices to the quantities or Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

15.1.6 If the Contractor claims that additional cost or time is involved because of:

- .1 any written interpretation issued pursuant to Paragraph 4.11.5,
- .2 any order by the Engineer or Owner to stop the Work pursuant to Paragraph 5.2.11 where the Contractor was not at fault, or
- .3 any written order for a minor change in the Work issued pursuant to Paragraph 15.3, the Contractor shall make such claim as provided in Paragraph 15.2.

15.1.7 Impact costs. No claim for impact costs resulting from performance of a Change Order will be permitted against the Owner, Engineer or any other party in privacy of Contract with the Owner with respect to the project subsequent to the time that the Change Order is signed by the Contractor.

15.1.8 Final Settlement. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum or the Contract Time. In the event a Change Order increases the Contract Sum,

the Contractor shall include the Work covered by such Change Orders in Application for Payment as if such Work were originally part of the Contract or in separate notice as provided in 12.4.4.. Agreement on any Change Order releases the Owner, and any other party in privacy of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in the connection with, or in any way associated with, such change.

## 15.2 CLAIMS FOR ADDITIONAL COST OR TIME

15.2.1 If the Contractor is entitled, under the terms of the Contract, to make a claim for an increase in the Contract Amount or any other claim, he shall give the Engineer and Owner written notice thereof within fourteen (14) days after the occurrence of the event giving rise to such claim or include such notice in the Application for Payment for the month in which the event giving rise to the claim occurred, whichever is earlier. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 12.4.4 within the time limits prescribed herein and no such claim shall be valid unless so made. Any change in the Contract Amount or Contract Time resulting from such claim to be effective shall be approved by the Owner and authorized by Change Order.

## 15.3 MINOR CHANGES IN THE WORK

15.3.1 The Engineer or Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

## 15.4 FIELD ORDERS

15.4.1 The Engineer or Owner may issue written Field Orders which interpret the Contract Documents or which order minor changes in the Work in accordance with Paragraph 15.3 without change in Contract Amount or Contract Time. The Contractor shall carry out such Field Orders promptly.

# ARTICLE 16 - UNCOVERING AND CORRECTION OF WORK

## 16.1 UNCOVERING OF WORK

16.1.1 If any Work should be covered contrary to the request of the Engineer, it must, if required by the Engineer, be uncovered for his observation and replaced all at the Contractor's expense.

16.1.2 If any other Work has been covered which the Engineer has not requested to observe prior to being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement after approval by the Owner shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with

the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 9, and in that event the Owner shall be responsible for the payment of such costs.

## 16.2 CORRECTION OF WORK

16.2.1 The Contractor shall promptly correct all Work rejected by the Engineer as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including the cost of the Engineer's additional services thereby made necessary.

16.2.2 If, within the time provided in Paragraph 18.1 herein or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, including the original conformance with the Contractor Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall, at his sole expense, correct it promptly after receipt of a written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

16.2.3 All such defective or non-conforming Work under Paragraphs 16.2.1 and 16.2.2 shall be removed from the site where necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

16.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

16.2.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Engineer, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days after receipt of a statement of charges therefore, the Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof after deducting all the costs that should have been borne by the Contractor, including compensation for additional Engineering services and any attorneys, fees incurred by Owner in connection therewith. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner, and all attorneys, fees and other costs that the Owner may incur in collecting same.

16.2.6 If the Contractor fails to correct such defective or non-conforming work, the Owner may correct it in accordance with Paragraph 10.6.

16.2.7 The obligations of the Contractor under this Paragraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

### 16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

## ARTICLE 17 - TERMINATION OF THE CONTRACT

### 17.1 TERMINATION BY THE CONTRACTOR

17.1.1 If the work is stopped for a period of One Hundred and Sixty (160) days, and the Engineer and the Owner are immediately notified of such stopping, under an order of any court or other public authority having jurisdiction through no act or fault of the Contractor or any Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, and by reason of some act or omission of Owner, then the Contractor may, upon seven day's written notice to the Owner and the Engineer as its sole remedy hereunder, terminate the Contract and recover from the Owner payment for all Work approved by Owner and for any proven loss sustained upon any materials, including reasonable profit for Work accomplished through the date the notice of termination is given and approved and accepted by Owner.

### 17.2 TERMINATION BY THE OWNER

17.2.1 If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the Contractor's obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the Contract, the Owner shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the Owner, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

17.2.2 Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

17.2.3 The Owner may terminate this Contract at any time by giving at least (10) days notice in writing to the Contractor. If the Contract is terminated by the Owner, the Contractor will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Contractor, the aforementioned clause relative to termination shall apply.

17.2.4 If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accord with the Progress Schedule and Contract Time, or he fails to make prompt payments to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to uninterruptedly complete the Work once he has the Notice to Proceed, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety seven (7) days written notice, terminate the employment of the Contractor and take possession of the site and all materials, and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. Termination of the Contract under this Paragraph shall not relieve the Contractor of any warranty obligations on Work performed hereunder, and such obligations shall survive termination of this Contract.

17.2.5 If the unpaid balance of the Contract Amount is exceeded by the costs of finishing the Work, including compensation for the Engineer's additional services, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, the Contractor shall pay the difference to the Owner. The costs incurred by the Owner as herein provided shall be certified by the Engineer.

17.2.6 Pursuant to A.R.S. § 38-511, OWNER reserves the right to cancel this Agreement, within three years after the effective date of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of OWNER is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of CONTRACTOR in any capacity or a sub-contractor to CONTRACTOR with respect to the subject matter of this Agreement. Cancellation under this section by OWNER shall be effective when written notice from the City Manager is received by CONTRACTOR. The OWNER may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the OWNER from CONTRACTOR arising as the result of the Agreement.

## **ARTICLE 18 - WARRANTY AND SITE CONDITIONS**

### **18.1 TWO-YEAR WARRANTY**

18.1.1 The Contractor shall warrant all Work under this Contract to be in accordance with the Contract Documents against defects of material and workmanship for a period of two

years from the date of Final Completion; provided, however, that those items of the Work specified as having longer warranties shall be warranted for the period specified.

18.1.1.1 The Contractor shall be responsible for the total cost of repairing and restoring any Work found not in compliance with the Contract Documents or any defective Work to a new condition, at no cost to Owner.

18.1.1.2 In any case where the subject matter of the non-compliance or defect relates to Work done under a subcontract between the Contractor and any subcontractor, it is the responsibility of the Contractor, not the Owner, to secure the Subcontractor's performance in compliance with this paragraph and, in the event of the Subcontractor's failure or refusal within a reasonable time to perform after notice, it shall be the Contractor's responsibility to repair and restore such non-complying or defective Work to a new condition, at no cost to Owner.

18.1.1.3 In any case where the failure in complying or defective Work has been brought to the attention of the Contractor by the Owner and the Contractor fails or refuses to correct it within five (5) days of such notice, the Owner may elect, without precluding any other remedy it may have available to it, to have the defective Work repaired and restored to a new condition in whatever reasonable manner it deems appropriate, regardless of the cost, and the Contractor shall be liable to the Owner for the total cost thereof, including, by way of example only, any Engineering and legal fees related to effecting the repair, plus 10% of the total costs incurred.

18.1.2 Material and workmanship made good through compliance with such warranty shall be subject to the same warranty period as the original materials and workmanship. Such warranty period shall begin on the date the replaced material and work is certified as acceptable in writing by the Engineer.

## 18.2 SANITATION

18.2.1 The Contractor shall provide temporary sanitation facilities for the use of employees on this construction. Following the period of necessity for such facilities, they shall be removed and all evidence thereof effaced.

## 18.3 JOB OFFICE

*Not Required JG 6/23/14*

*6-18-14*  
*in*  
~~18.3.1 A job office as approved by the Engineer shall be provided on the project site. The Contractor shall install at his own expense a job telephone for use of all trades in connection with the work and shall pay for all local calls. All long-distance calls and toll calls shall be paid for by the person making the call.~~

## 18.4 USE OF PREMISES

18.4.1 The Contractor shall confine his equipment and plant, the storage of materials, and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Engineer and shall not unreasonably encumber the premises with materials or equipment.

18.4.2 The Contractor shall enforce the Engineer's instructions regarding signs, advertisement, fires, and smoking.

## 18.5 SEVERABILITY

18.5.1 In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

## ARTICLE 19 - RECORDS ACCESS AND RETENTION REQUIREMENTS

19.1 Records Retention: The Contractor shall maintain and shall contractually require each subcontractor to maintain accounts and records including personnel, property and financial records adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner to assure proper accounting for all project funds both Federal and non-Federal shares. These records will be retained for five (5) years after the expiration of this Contract unless permission to destroy them is granted in writing by the Owner.

19.2 Access to Records: Legible copies of all records maintained by the Contractor shall be made available, upon request, to the Owner and any other body authorized by the Owner.

## ARTICLE 20 - COMPLIANCE WITH IMMIGRATION LAWS and E-VERIFY REQUIREMENT

20.1 As mandated by Arizona Revised Statutes ("A.R.S.") Section 41-4401, the Owner is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. Section 23-214(A). (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.) The Owner must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. Section 23-214(A). Therefore, in signing or performing any Contract (including this Agreement) for the Owner, the Contractor fully understands that:

a. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A);

b. A breach of the warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and

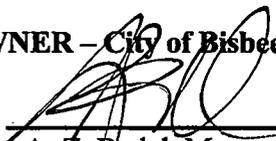
c. The Owner or its designee retains the legal right to inspect the papers or any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph (a).

**ARTICLE 21 - SCRUTINIZED BUSINESS OPERATIONS**

21.1 Pursuant to A.R.S. Section 35-391.06 and 35-393.06, the contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393 as applicable. If the Owner determines that the contractor submitted a false certification, the Owner may impose remedies as provided by law including termination of this Contract.

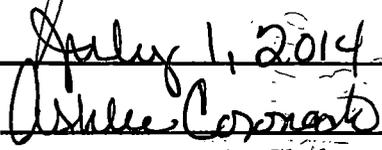
**IN WITNESS WHEREOF**, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed original thereof, have been duly executed by the Parties herein above named, on the day and year first above written.

**OWNER – City of Bisbee:**

By: 

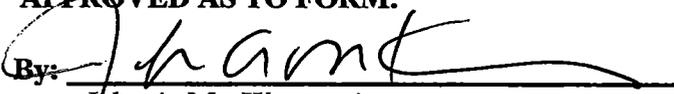
A. Z. Badal, Mayor, City of Bisbee

Date: July 1, 2014

Attest: 

Ashlee Coronado, Clerk

**APPROVED AS TO FORM:**

By: 

John A. MacKinnon, Attorney

Date: 7/1/2014

**CONTRACTOR:**

By: 

Marc J. Dotseth, Vice President, Ashton Company

Date: 6/18/2014

END OF CONTRACT

LABOR AND MATERIALS BOND  
STATUTORY PAYMENT BOND PURSUANT TO  
TITLE 34 CHAPTER 2, ARTICLE 2  
OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, The Ashton Company, Inc. Contractors & Engineers (hereinafter called the Principal), as Principal, and Liberty Mutual Insurance Company a corporation organized and existing under the laws of the State of Massachusetts, with its principal office in the City of Boston, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Bisbee, State of Arizona (hereinafter called the Obligee), in the amount of Three Hundred Twenty Two Thousand Seven Hundred and No/100 (\$ 322,700.00), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the 18th day of June, 2014, for San Jose WWTP Site Preparation for Solar, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

\*Power Generation System, Contract No. CW 013-2013B, Project No. A364

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the court.

Witness our hands this 18th day of June, 2014.

The Ashton Company, Inc. Contractors & Engineers

PRINCIPAL SEAL

By: Mara J. Detreth

Arthur J. Gallagher & Co.

AGENT OF RECORD

BY:

Betty L. Tolentino

SURETY SEAL

Liberty Mutual Insurance Company

AGENT ADDRESS 1340 Treat Blvd., Walnut Creek, CA 94597

BY:

Betty L. Tolentino Attorney-in-Fact

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

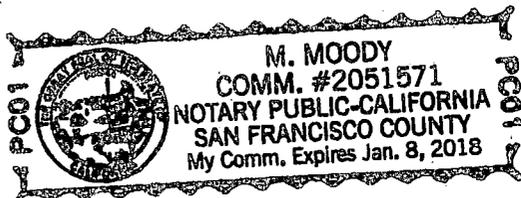
County of San Francisco

June 19, 2014 before me M. Moody, Notary Public

personally appeared Betty L. Tolentino

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

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



WITNESS my hand and official seal.

  
Signature of Notary

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6560064

American Fire and Casualty Company  
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company  
West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts; and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint: Betty L. Tolentino; Brian F. Cooper; Janet C. Rojo; K. Zerounian; Kevin R. M. Moody; Maureen O'Connell; Robert Wrixon; Susan Hecker; Virginia L. Black

all of the city of San Francisco, state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 2nd day of May 2014.

American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 2nd day of May, 2014, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notary Seal  
Teresa Pastella, Notary Public  
Plymouth Meeting, Montgomery County  
My Commission Expires March 28, 2017  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company, which resolutions are now in full force and effect reading as follows:

**ARTICLE IV - OFFICERS - Section 12. Power of Attorney.** Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article, may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII - Execution of Contracts - SECTION 5: Surety Bonds and Undertakings.** Any officer of the Company, authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 19th day of June 2014.



By: Gregory W. Davenport  
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney, call 1-610-832-8240, between 9:00 am and 4:30 pm EST on any business day.





**ADDITIONAL REMARKS SCHEDULE**

AGENCY Lovitt & Touche' Inc - Tucson		NAMED INSURED The Ashton Company Inc. Contractors & Engineers P O Box 26927 Tucson AZ 85726	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

1. UGL1175F CW 04/13: ADDITIONAL INSURED - AUTOMATIC - OWNERS, LESSEES OR CONTRACTORS - PRODUCTS/COMPLETED OPERATIONS LIABILITY AMENDMENT - any Person or Organization who the Named Insured is required to add as an Additional Insured under a written contract or agreement; This insurance is primary & non-contributory.
2. CG2404 05/09: WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US BLANKET to any Person or Organization with whom the Named Insured has agreed, in a written contract, agreement or permit to provide Additional Insured status with Waiver of Subrogation.
3. CA2048 02/99: DESIGNATED INSURED - BLANKET to any Person or Organization with whom the Named Insured has agreed, in a written contract, agreement or permit to provide primary Additional Insured coverage;
4. CA0444 03/10: AUTO LIABILITY WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US BLANKET to all Persons or Organizations that are required by written contract or agreement with the Insured that Waiver of Subrogation be provided for work performed for that person or organization.
5. WC000313: WORK COMP WAIVER OF OUR RIGHTS TO RECOVERY FROM OTHERS ENDORSEMENT BLANKET to any Person or Organization with whom the Named Insured has agreed, in a written contract or
6. Great American Excess / Umbrella Liability is Follow Form.  
San Jose WWTP Site Preparation  
For Solar Power Generating System  
Project No. CW 013-2013B  
The Ashton Co., Inc. Project No. 14-18



CARRIER CODE SCF Indemnity - 93107

**POLICY ENDORSEMENT**

**Please attach this endorsement to your policy**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

If you have any questions, please contact your local SCF Arizona office.

EFFECTIVE 12:01 AM	MO	DAY	YEAR	AMENDING POLICY NUMBER	MO	DAY	YEAR	AUTHORIZED REPRESENTATIVE
	04	01	2014	I70154	04	01	2014	

Counter signed at Phoenix, Arizona

The Ashton Company Inc.,  
Contractors & Engineers  
PO Box 26927  
Tucson, AZ 85726

**Waiver of Our Right to Recover From Others Endorsement**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule      Job Name &  
Contract Number:

Blanket      Any and all Arizona jobs. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Premium Charge:                      \$ 0.00

POLICY NUMBER: GLA 924231402

COMMERCIAL AUTO  
CA 04 44 03 10

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

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**Named Insured:** The Ashton Company Inc., Contractors & Engineers

**Endorsement Effective Date:** 04/01/2014

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### **SCHEDULE**

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**Name(s) Of Person(s) Or Organization(s):**

ALL PERSONS AND/ OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY

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Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

POLICY NUMBER: GLA924231402

COMMERCIAL GENERAL LIABILITY  
CG 24 04 05 09

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

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**Name Of Person Or Organization:**

Any Person or Organization that requires You to waive your Rights of recovery, in a written contract or agreement with the Named Insured that is executed prior to the accident or loss.

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Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



ZURICH

## Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLA924231402	04/01/2014	04/01/2015	04/01/2014	93500838	---	---

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:** The Ashton Company Inc., Contractors & Engineers  
**Address (including ZIP Code):** P O Box 26927  
Tucson, AZ 85726

This endorsement modifies insurance provided under the:

### **Commercial General Liability Coverage Part**

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:**

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – **Commercial General Liability Conditions:**

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
  - b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.
2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

POLICY NUMBER: GLA924231402

COMMERCIAL AUTO  
CA 20 48 02 99

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DESIGNATED INSURED**

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 04/01/2014

Countersigned By:

Named Insured: The Ashton Company Inc.  
Contractors & Engineers

*R. J. Mison*  
(Authorized Representative)

**SCHEDULE**

**Name of Person(s) or Organization(s):**

Any person or organization with whom you have agreed through written contract, agreement or permit, executed prior to the loss, to provide additional insured coverage.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

**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.**
- Federal Davis-Bacon prevailing wages apply to this project. Payment of the wages, fringe benefits and overtime rates is required.
- The appropriate Federal (Davis-Bacon) Prevailing Wage Decision must be physically incorporated into the bidding and contract documents.
- The construction category of Heavy (excluding dam construction) should typically be applied to all projects funded by WIFA. If you believe that a different category of wages, such as Building, should be applied to your project or portions of your project, please contact WIFA in advance.
- Weekly certified payroll submittal is required under the Federal Davis-Bacon laws.
- Compliance with the Civil Rights Act and Equal Employment Opportunity is required.
- Promotion of Small, Minority and Women-owned Businesses and participation in EPA's Disadvantaged Business Enterprise (DBE) Program is required.

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

**Required Contract Conditions**

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

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

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

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

**Davis-Bacon Contract Conditions (Federal Prevailing Wages)**

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

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

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

## **Wage Rate Requirements (Also referred to as Attachment 6)**

### **Preamble**

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

### **Requirements for Subrecipients That Are Governmental Entities:**

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

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

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

#### **2. Obtaining Wage Determinations.**

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

(i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://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](http://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](http://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](http://www.dol.gov).

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

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

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

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

#### (4) Apprentices and trainees -

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

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

## **5. Compliance Verification**

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use WIFA's interview form, Department of Labor's Standard Form 1445, or equivalent documentation to memorialize the interviews. WIFA's interview form and instructions are included with this packet.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed below and to the appropriate DOL Wage and Hour District Office listed at [www.dol.gov/whd](http://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 CWRP and DWRP project related contracts and subcontracts over \$10,000:

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

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

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

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in

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

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

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

**Disadvantaged Business Enterprises (DBE)**

**Good Faith Efforts**

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

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

**Required Contract Conditions**

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

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

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

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

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

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

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

*\*\* DBE forms can be downloaded from [http://www.epa.gov/osbp/dbe\\_fair.htm](http://www.epa.gov/osbp/dbe_fair.htm)*

## ATTACHMENTS

### DBE Forms

[http://www.epa.gov/osbp/dbe\\_fair.htm](http://www.epa.gov/osbp/dbe_fair.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



Environmental  
Protection Agency

OMB Control No: 2090-0030  
Approved: 05/01/2008  
Approval Expires: 01/31/2011

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

<b>NAME OF SUBCONTRACTOR'</b>	<b>PROJECT NAME</b>
<b>ADDRESS</b>	<b>CONTRACT NO.</b>
<b>TELEPHONE NO.</b>	<b>EMAIL ADDRESS</b>
<b>PRIME CONTRACTOR NAME</b>	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

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<b>CONTRACT ITEM NO.</b>	<b>ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR</b>	<b>AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR</b>
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Subcontractor Signature \_\_\_\_\_ Title/Date \_\_\_\_\_

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Environmental  
Protection Agency

OMB Control No: 2090-0030  
Approved: 05/01/2008  
Approval Expires: 01/31/2011

## **Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form**

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Participation Form to this address.



Environmental  
Protection Agency

OMB Control No: 2090-0030  
Approved: 05/01/2008  
Approval Expires: 01/31/2011

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

<b>NAME OF SUBCONTRACTOR<sub>1</sub></b>	<b>PROJECT NAME</b>
<b>ADDRESS</b>	<b>BID/PROPOSAL NO.</b>
<b>TELEPHONE NO.</b>	<b>E-MAIL ADDRESS</b>

<b>PRIME CONTRACTOR NAME</b>		
<b>CONTRACT ITEM NO.</b>	<b>ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME</b>	<b>PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR</b>

Currently certified as an MBE or WBE under EPA's DBE Program?  Yes  No

Signature of Prime Contractor \_\_\_\_\_  
Date \_\_\_\_\_ Print Name Title \_\_\_\_\_

Signature of Subcontractor \_\_\_\_\_  
Date \_\_\_\_\_ Print Name Title \_\_\_\_\_



Environmental  
Protection Agency

OMB Control No: 2090-0030  
Approved: 05/01/2008  
Approval Expires: 01/31/2011

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

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Performance Form to this address.



Environmental  
Protection Agency

OMB Control No: 2090-0030  
Approved: 05/01/2008  
Approval Expires: 01/31/2011

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

<b>BID/PROPOSAL NO.</b>		<b>PROJECT NAME</b>	
<b>NAME OF PRIME BIDDER/PROPOSER</b>		<b>E-MAIL ADDRESS</b>	
<b>ADDRESS</b>			
<b>TELEPHONE NO.</b>		<b>FAX NO.</b>	

**The following subcontractors<sup>1</sup> will be used on this project:**

<b>COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS</b>	<b>TYPE OF WORK TO BE PERFORMED</b>	<b>ESTIMATE DOLLAR AMOUNT</b>	<b>CURRENTLY CERTIFIED AS AN MBE OR WBE?</b>
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I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

\_\_\_\_\_  
Signature of Prime Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



Environmental  
Protection Agency

OMB Control No: 2090-0030  
Approved: 05/01/2008  
Approval Expires: 01/31/2011

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

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Utilization Form to this address.

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# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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

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THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

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**PREVAILING  
WAGES**

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

**OVERTIME**

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

**ENFORCEMENT**

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

**APPRENTICES**

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

**PROPER PAY**

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

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

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



For additional information:

**1-866-4-USWAGE**  
(1-866-487-9243) TTY: 1-877-889-5627



# DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

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

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

### **SALARIOS PREVALECIENTES**

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

### **SOBRETIEMPO**

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

### **CUMPLIMIENTO**

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

### **APRENDICES**

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

### **PAGO APROPIADO**

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

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

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



Para obtener información adicional:

**1-866-4-USWAGE**

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



## **Instructions for Completing Payroll Form, WH-347**

OMB Control No. 1235-0008, Expires 01/31/2015.

**General:** Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

**Contractor or Subcontractor:** Fill in your firm's name and check appropriate box.

**Address:** Fill in your firm's address.

**Payroll No.:** Beginning with the number "1", list the payroll number for the submission.

**For Week Ending:** List the workweek ending date.

**Project and Location:** Self-explanatory.

**Project or Contract No.:** Self-explanatory.

**Column 1 - Name and Individual Identifying Number of Worker:** Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

**Column 2 - No. of Withholding Exemptions:** This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

**Column 3 - Work Classifications:** List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If

additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown of hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

**Column 4 - Hours worked:** List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

**Column 5 - Total:** Self-explanatory

**Column 6 - Rate of Pay (Including Fringe Benefits):** In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

**Column 7 - Gross Amount Earned:** Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

**Column 8 - Deductions:** Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

**Column 9 - Net Wages Paid for Week:** Self-explanatory.

**Totals** - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

**Statement Required by Regulations, Parts 3 and 5:** While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

**Items 1 and 2:** Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

**Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits:** If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable

wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

**Contractors who pay no fringe benefits:** If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

### **Use of Section 4(c), Exceptions**

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

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

<http://www.dol.gov/whd/forms/wh347instr.htm>





## **SF 1444 Instructions**

### **Request for Additional Classification and Wage Rate Form**

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

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

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

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

**WIFA will complete the section below the heavy line TO BE COMPLETED BY CONTRACTING OFFICER and submit it to DOL and EPA. Typically DOL responds in 30**

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

CHECK APPROPRIATE BOX

- SERVICE CONTRACT  
 CONSTRUCTION CONTRACT

OMB No.: **9000-0089**  
Expires: **04/30/2005**

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

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

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

**2. FROM: (REPORTING OFFICE)**

**3. CONTRACTOR**

**4. DATE OF REQUEST**

**5. CONTRACT NUMBER**

**6. DATE BID OPENED (SEALED  
BIDDING)**

**7. DATE OF AWARD**

**8. DATE CONTRACT WORK  
STARTED**

**9. DATE OPTION EXERCISED (if  
APPLICABLE) (SCA ONLY)**

**10. SUBCONTRACTOR (IF ANY)**

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

**12. LOCATION (CITY, COUNTY AND STATE)**

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

NUMBER: \_\_\_\_\_

DATED: \_\_\_\_\_

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

**b. WAGE RATE(S)**

**c. FRINGE BENEFITS  
PAYMENTS**

*(Use reverse or attach additional sheets, if necessary)*

**14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE  
(IF ANY)**

**15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE**

**16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE**

**TITLE**

CHECK APPROPRIATE BOX-REFERENCING BLOCK 13.

**AGREE**       **DISAGREE**

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

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

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

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

**SIGNATURE OF CONTRACTING OFFICER OR  
REPRESENTATIVE**

**TITLE AND COMMERCIAL TELEPHONE NO.**

**DATE SUBMITTED**





## EMPLOYEE INTERVIEW FOR DAVIS-BACON LABOR STANDARDS INSTRUCTIONS

The Davis-Bacon Act requires interviews to determine if the contractor is complying with the Federal Davis-Bacon prevailing wages. Interviewers must use WIFA's interview form, Department of Labor's Standard Form 1445, or equivalent documentation. WIFA's form may be downloaded from WIFA's website: [http://azwifa.gov/?pageid=contract\\_packet](http://azwifa.gov/?pageid=contract_packet). See Section 5: Compliance Verification of the WIFA Contract Packet for the interview requirements.

Interviews should be conducted in the following manner:

**Interviewer:** Each borrower is required to conduct interviews. The interviewer must be someone unaffiliated with the contractors and on site regularly (i.e., project manager, or consultant, etc.).

**Purpose:** The purpose of the interview is to ensure that the work actually being done by construction workers and mechanics is consistent with the corresponding job titles and wages being reported on the certified payrolls. The payroll checker must compare the interviews to the payrolls to identify inconsistencies. Any inconsistencies must be addressed. Keep in mind that both the interview and the information on the interview form are considered confidential. Interviews should be conducted individually and in private. All employees on the work site should be available for an interview if requested by the interviewer; however, the employee's participation is voluntary.

**Number of Interviews:** A representative sample of interviews is required. The interviewer must interview at least one person from every contractor and subcontractor company on the job site.

**Timing:** Interviews should be done, at minimum, on two different occasions. One should be within the first two weeks after construction begins and whenever a new subcontractor begins work on the project. The second round should be done closer to substantial completion while workers are still on site. Additional interviews should be done when issues or discrepancies arise and should be targeted at the contractor in question.

**Records:** Interview forms should be kept by the borrower with the rest of the project records at least three years after the contract is completed. The interview forms have employee information that should be kept confidential from contractors generally, but the project folders must be available for inspection by WIFA, EPA, or Department of Labor upon request.

Item	INTERVIEW
2b. - 2c.	This information is required in case it is necessary to follow up with the employee.
3a.	The interviewer should make it clear to the employee that these items relate only to work on this project, not necessarily to other projects.
3b.	Employees should be encouraged (but not required) to produce pay stubs or pay envelopes which document the wages received.
5. - 6.	If the employee does not know where the wage rate decision and Davis-Bacon poster are posted, the interviewer should inform the person of the location(s) and encourage them to look at the documents.
8.	Many employees will not be familiar with the term "fringe benefits." The interviewer should explain to the employee that fringe can be paid as part of their hourly rate, or can be in the form of benefits such as

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11. - 13. Be certain that the employee's responses are specific. The employee may not be familiar with the classifications used on the wage determination and thus may use a term which may not be found on the determination. The answers to questions 12 and 13 should elicit enough information to identify the appropriate wage classification. Confirm the presumed wage classification with the employee.

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**INTERVIEWER'S COMMENTS**

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16. This represents some of the most important information gathered while conducting on-site interviews. Be specific about the duties the employee was observed performing. It may be easiest to make these observations before the interview. Comments in this section should include whether observed duties and tools used were the same as those described by the employee during the interview.

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19. - 20. This refers to the wage decision and date as posted on the job site. This information should be consistent with the contract documents.

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**FOR USE BY PAYROLL CHECKER**

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21. - 22. The payroll checker can be the same person as the interviewer. If not, it should be someone familiar with the wage rate decision, labor standards provisions and the construction project. This part of the form is completed *after* receipt of the payroll reports covering the week during which the interview was conducted. It is important that the payroll reports are received in a timely manner so that the payroll checker can compare and verify the interview information and investigate discrepancies. Once the corresponding payroll reports are received, the information on the interview form must be compared to the payroll reports. Specifically, the payroll checker must check that:

- the payroll report is consistent with the dates and hours the employee worked (Items 9a.-9c.).
- the payroll report indicates that the employee's job classification is the same as that indicated by the employee in Items 11 - 13.
- the payroll report indicates that the employee received the wages as s/he stated in Item 3a.
- the payroll report indicates that the employee received the fringe benefits in the amount and as stated in Item 8.
- the wages/fringes paid agree with the wage rate decision in the contract and any additional classification requests approved by DOL (SF1444).

Any discrepancies noted between the interview form and payroll reports shall be reported in Item 22. If discrepancies are noted, follow-up actions to resolve the discrepancies must be taken. For example, if the payroll indicates that the employee worked a different number of hours than the employee indicated, the payroll checker must: a) contact the employee and ask for clarification; and b) request the contractor's actual time records. This should be done without revealing the identity of the employee, e.g. by asking for all employee records for one work week.

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# EMPLOYEE INTERVIEW FOR DAVIS-BACON LABOR STANDARDS

1a. Project Name		2a. Employee Name	
1b. Contract Number	Wage Decision and Date	2b. Employee Phone Number	
1c. Name of Prime Contractor		2c. Employee Home Address and Zip Code	
1d. Name of Employer and Supervisor			

3a. Hourly rate of pay <u>on this project</u> :	4. Do you know that you are working on a federally-funded project and that you are to be paid wages set by DOL (Davis-Bacon wages)?	5. Do you know where the Davis-Bacon Wage Rate Decision for this project is posted?	6. Do you know where the "Employee Rights under the Davis-Bacon Act" poster is posted?
3b. Do you have your most recent paystub? Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
7a. Do you ever work over 8 hours per day? Y <input type="checkbox"/> N <input type="checkbox"/>	7b. Do you ever work over 40 hours per week? Y <input type="checkbox"/> N <input type="checkbox"/>	7c. Are you paid at least time and a half for overtime hours? Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>	8. Do you receive Fringe Benefits? Vacation Y <input type="checkbox"/> N <input type="checkbox"/> Medical Y <input type="checkbox"/> N <input type="checkbox"/> Pension Y <input type="checkbox"/> N <input type="checkbox"/> Cash/pay Y <input type="checkbox"/> N <input type="checkbox"/> Other:
9a. Date you began work <u>on this project</u> :	9b. Date of last work day <u>on this project</u> before interview:	9c. How many hours did you work on your last work day before this interview <u>on this job</u> ?	
10. What deductions other than taxes and social security are made from your pay?		11. Work Classification (list all <u>on this project</u> ):	
12. Your duties <u>on this project</u> :		13. Tools and equipment you use <u>on this project</u> :	

### THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

14. Employee Signature	Date	
15. Interviewer Signature	Interviewer Name	Date

### INTERVIEWER'S COMMENTS

16. Work employee was doing/tools employee was using when interviewed:	17. Is employee properly classified and paid? Y <input type="checkbox"/> N <input type="checkbox"/>	18. Are wage rate and poster displayed? Y <input type="checkbox"/> N <input type="checkbox"/>
	19. Wage Rate Decision Number:	20. Wage Rate Decision Date:

### FOR USE BY PAYROLL CHECKER

21. Is above information in agreement with payroll data? Y <input type="checkbox"/> N <input type="checkbox"/>	22. If no, provide explanation and resolution:
23. Payroll Checker Signature	Payroll Checker Name
	Date

General Decision Number: AZ140024 02/14/2014 AZ24

Superseded General Decision Number: AZ20130024

State: Arizona

Construction Type: Building  
BUILDING CONSTRUCTION, Includes Building Construction on Treatment Plants and on Industrial Sites (Chemical/Processing/Manufacturing Plants, Power Plants, Refineries, Nuclear Plants, Etc.)

County: Cochise County in Arizona.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/03/2014
1	01/17/2014
2	02/14/2014

\* BRAZ0003-009 07/01/2013

	Rates	Fringes
BRICKLAYER.....	\$ 22.83	6.37
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\* CARP1327-001 01/01/2014

	Rates	Fringes
CARPENTER (Drywall Hanging Only).....	\$ 19.75	6.46
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ELEC0570-007 12/01/2013

	Rates	Fringes
ELECTRICIAN (Including Alarm Installation and Low Voltage Wiring).....	\$ 24.20	18%+5.00

ZONE DEFINITIONS-

- Zone A: the area within a twenty-nine (29) mile radius from a basing point at the Tucson Town Hall.
- Zone B: 29 to 46 mile radius from the town hall in Tucson- an additional \$ 1.25 per hour
- Zone C: 47 mile radius from the town hall in Tucson to the outer limits of the geographic jurisdiction- an additional

POWER EQUIPMENT OPERATOR:

(CRANE)

(2) under 15 tons.....	\$ 24.26	9.34
(3) 15 tons to 100 tons, Tower Crane.....	\$ 25.34	9.34
(4) 100 tons and over.....	\$ 26.37	9.34

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IRON0075-002 01/01/2014

Rates Fringes

IRONWORKER, REINFORCING AND  
STRUCTURAL.....

\$ 26.52	21.02
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- Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson
- Zone 2: 050 to 100 miles - Add \$4.00
- Zone 3: 100 to 150 miles - Add \$5.00
- Zone 4: 150 miles & over - Add \$6.50

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LABO0383-005 11/01/2013

Rates Fringes

LABORER (MASON TENDER-BRICK).....	\$ 18.63	4.35
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PAIN0086-006 04/01/2013

Rates Fringes

DRYWALL FINISHER/TAPER

ZONE A.....	\$ 19.00	5.03
ZONE B.....	\$ 22.50	5.03

ZONE PAY:

ZONE A: Free Zone: A distance of 0 to 100 miles from the old Phoenix courthouse.

ZONE B: A distance of 101 miles and over from the old Phoenix courthouse: \$3.50 per hour over ZONE A

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ROOF0135-001 06/01/2011

Rates Fringes

ROOFER (Includes Installation of Metal Roofs).....	\$ 18.60	4.18
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SUAZ2012-012 05/30/2012

Rates Fringes

GLAZIER.....	\$ 28.00	0.00
LABORER: Common or General.....	\$ 12.50	2.76
LABORER: Landscape & Irrigation.....	\$ 9.31	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 16.05	1.49
OPERATOR: Backhoe.....	\$ 14.00	1.80
PAINTER: Brush, Roller and Spray.....	\$ 16.13	0.00
PIPEFITTER.....	\$ 22.21	6.12
PLUMBER.....	\$ 22.75	0.00
SHEET METAL WORKER.....	\$ 18.68	4.91
SPRINKLER FITTER (Fire Sprinklers).....	\$ 16.48	2.94
TILE SETTER.....	\$ 15.93	0.45

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with

an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

#### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



LABOR AND MATERIALS BOND  
STATUTORY PAYMENT BOND PURSUANT TO  
TITLE 34 CHAPTER 2, ARTICLE 2  
OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal), as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Bisbee, State of Arizona (hereinafter called the Obligee), in the amount of \_\_\_\_\_ (Dollars (\$ \_\_\_\_\_)), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for \_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the court.

Witness our hands this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SEAL

\_\_\_\_\_  
AGENT OF RECORD

BY: \_\_\_\_\_

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
SEAL

\_\_\_\_\_  
AGENT ADDRESS

BY: \_\_\_\_\_

CITY OF BISBEE  
CHANGE ORDER REQUEST

Date: \_\_\_\_\_ Request No.: \_\_\_\_\_

Project: CW 013-2013B SAN JOSE WWTP SITE PREPARATION FOR SOLAR POWER  
GENERATION SYSTEM

Contractor: \_\_\_\_\_

Description of Proposed Change Order: \_\_\_\_\_

\_\_\_\_\_

Reason for Change: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated Cost: \$ \_\_\_\_\_  
(See Attached Sheet for Detailed Cost)

Change in Contract Time: \_\_\_\_\_  
(Calendar Days)

NOTE: Unless waived in writing by the Public Works Director, contractor shall submit cost or pricing data in support of and prior to the issue of a contract modification by the City.

Submitted by: \_\_\_\_\_ Title: \_\_\_\_\_

Recommended by: \_\_\_\_\_ Title: \_\_\_\_\_

Approved by: \_\_\_\_\_ Title: \_\_\_\_\_







**NON-COLLUSION AFFIDAVIT**

*(Must be submitted with the Bid)*

**CW 013-2013B SAN JOSE WWTP SITE PREPARATION FOR  
SOLAR POWER GENERATION SYSTEM**

I certify that this bid is genuine and is not in any way collusive or sham; that the bid is not made with the intent to restrict or prohibit competition, that this firm has not revealed the contents of the bid to, or in any way colluded with, any other firm which may compete for the contract; and that no other firm which may compete for the contract has revealed the contents of a bid to, or in any way colluded with, this firm.

Name of Firm Submitting Bid The Ashton Company, Inc.

Address 2727 S. Country Club Road

Tucson, AZ 85713

Telephone Number: (520) 624-5500

Facsimile Number: (520) 791-9059

Marc J. Ostroth - VICE PRESIDENT  
Authorized Signature

This affidavit is required pursuant to Arizona Revised Statutes 34-253 and 41-2549. Failure to submit this affidavit signed at the time of bid opening is grounds for disqualification of the bid.

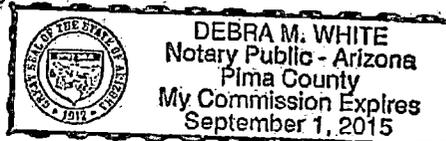
State of Arizona )  
                                  )ss  
County of Pima )

Before me a Notary Public in and for said County and State personally appeared the above named who signed the foregoing affidavit and attested that the same was his free act and deed.

Dated this 20th day of May 2014

Debra M. White  
Notary Public

My Commission expires 09.01.2015



**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6438041

American Fire and Casualty Company  
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company  
West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Betty L. Tolentino; Brian F. Cooper; Janet C. Rojo; K. Zerounian; Kevin Re; M. Moody; Maureen O'Connell; Robert Wrixon; Susan Hecker; Virginia L. Black

all of the city of San Francisco, state of CA, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 4th day of February, 2014.

American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

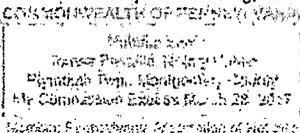
By: David M. Carey  
David M. Carey, Assistant Secretary



STATE OF PENNSYLVANIA      §§  
COUNTY OF MONTGOMERY

On this 4th day of February, 2014, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS – Section 12. Power of Attorney.** Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation –** The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization –** By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 14th day of May, 2014.



By: Gregory W. Davenport  
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

**RECEIPT OF ADDENDA**

*(Must be submitted with the Bid)*

**CW 013-2013B SAN JOSE WWTP SITE PREPARATION FOR SOLAR POWER GENERATION SYSTEM**

In compliance with the Advertisement for Bids, by the Public Works Director, the undersigned Bidder:

Having examined the contract documents, site of work, and being familiar with the conditions to be met, hereby submits the following Proposal for furnishing the material, equipment, labor and everything necessary for the completion of the work listed, and agrees to execute the contract documents and furnish the required bonds and certificates of insurance for the completion of said work at the locations and for the prices set forth on the inside pages of this form.

Understands that construction of this project shall be in accordance with all applicable Uniform Standard Specifications and Standard Details except as otherwise required by the Project Plans and Special Provisions.

Understands that his proposal shall be submitted with a proposal guarantee of cash, certified check, cashier's check or surety bond for an amount not less than ten percent (10%) of the amount bid.

Agrees that upon receipt of Notice of Award from the City of Bisbee, he shall execute the contract documents.

Agrees that all work on Project CW 013-2013B SAN JOSE WWTP SITE PREPARATION FOR SOLAR POWER GENERATION SYSTEM shall be completed by the following dates; substantially completed by 75 calendar days from NTP, with final completion by 14 calendar days following Substantial Completion. The time allowed for completion of the work includes lead time for obtaining the necessary material and/or equipment.

The Bidder hereby acknowledges receipt of and agrees his proposal is based on the following addenda:

Addendum No. One, Dated 05/13/14

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Marc J. Dotseth  
(Signature) Marc J. Dotseth

Vice President  
(Title)

ARIZONA STATUTORY BID BOND FOR CONSTRUCTION  
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES

(Penalty of this bond must not be less than 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS THAT: The Ashton Company, Inc. Contractors & Engineers  
hereinafter "Principal") as Principal, and Liberty Mutual Insurance Company  
hereinafter "Surety"), a corporation organized and existing under the laws of the State of  
Massachusetts, with its principal offices in the City of Boston, holding a  
certificate of authority to transact surety business in Arizona issued by the Director of the Department of  
Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto the City  
of Bisbee (hereinafter "Obligee") in the sum of Ten Percent (10%) of the amount of the bid of the Principal,  
submitted by Principal to the Obligee for the work described below, for the payment of which sum, the  
Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns,  
jointly and severally, firmly by these presents. WHEREAS, the Principal has submitted a bid for:  
CW 013-2013B San Jose WWTP Site Preparation Solar Power Generation System

NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the Principal shall  
enter into a contract with the Obligee in accordance with the terms of the proposal and give the bonds  
and certificates of insurance as specified in the standard specifications of Contract documents with good  
and sufficient surety for the faithful performance of the contract and for the prompt payment of labor  
and materials furnished in the prosecution of the contract, or in the event of the failure of the Principal to  
enter into the contract and give the bonds and certificates of insurance, if the Principal pays to the  
Obligee the difference not to exceed the penalty of the bond between the amount specified in the  
proposal and such larger amount for which Obligee may in good faith contract with another party to  
perform the work covered by the proposal then this obligation is void. Otherwise, it remains in full  
force and effect provided, however, that this bond is executed pursuant to the provisions of Section 34-  
201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the  
provisions of that section to the extent as if it were copied at length herein.

Witness our hands this 14th day of May, 2014.

The Ashton Company, Inc.  
Contractors & Engineers

PRINT NAME SIGNATURE

By Marc J. Detwiler

Date 5/14/2014

Liberty Mutual Insurance Company  
SIGNATURE SIGNATURE

By Betty L. Tolentino  
Arthur J. Gallagher & Co.  
City of Record

1255 Battery Street, San Francisco, CA 94111

Witness Address

n/a

Witness Residual Address

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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

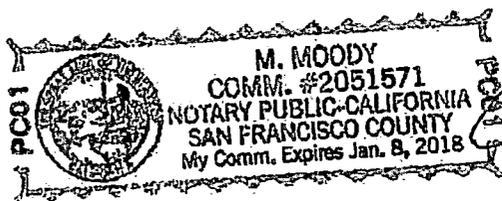
County of San Francisco

May 14, 2014 before me M. Moody, Notary Public

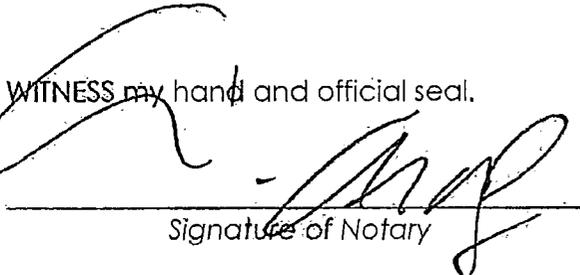
personally appeared Betty L. Tolentino

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

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



WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary

**City of Bisbee  
CW 013-2013B**

**SAN JOSE WWTP SITE PREPARATION FOR SOLAR POWER GENERATION SYSTEM**

**Proposal Form**

1. The Undersigned Bidder declares that he has read the Specifications and other Contract Documents, has examined and understands the Plans, has examined the site of the work and has determined for himself the conditions affecting the work, and he proposes and agrees if this Proposal is accepted, to provide at his own expense, all labor, insurance, superintendence, machinery, plant, equipment, tools, apparatus, appliances, and means of construction, and all materials and supplies and to complete, ready for its intended purpose, the entire work and all parts thereof described as included under the Contract herein bid upon, in the manner and items prescribed, including all work incidental thereto, according to the Plans and Specifications and such instructions as the City of Bisbee's authorized agent may give.

2. The Undersigned Bidder, in compliance with your Notice Inviting Bids dated TBD, hereby proposes to do the work called for in said Specifications and other Contract Documents and shown on said Plans for the said work at the following rates and prices:

**BID SCHEDULE**

ITEM NO.	DESCRIPTION OF ITEM	UNIT	ESTIMATED QUANTITY	UNIT BID PRICE DOLLARS & CENTS	AMOUNT BID DOLLARS & CENTS
1	Parking Structure/Solar Panel Support	LS		For \$ <u>157,000.00</u>	\$ <u>157,000.00</u>
2	Earthwork/Grading	LS		For \$ <u>165,700.00</u>	\$ <u>165,700.00</u>
<b>TOTAL Bid (Lines 1 thru 2)</b>				\$ <u>322,700.00</u>	

**Bid Alternates:**

In addition to the Required alternate below, Bidder has the opportunity to provide bid alternates to provide the opportunity to provide savings to the final bid amount. Any alternates must be detailed on separate pages and attached to this bid form. Please indicate that alternate(s) have been provided by checking the box below.

Bid Alternate(s) Provided and Attached to this Bid Schedule

		ADD OR DEDUCT AMOUNT
Roadway Bid Alternate (Required)	Grading and stone in Parking Structure Roadway	\$ <u>&lt;24,000.00 &gt;</u>

**Combined Bid Impact (Optional):**

If Bidder is selected to perform both CW 013-2013A and CW 013-2013B, Bidder shall provide below the impact (add or deduct) of this Bid amount.

ITEM	ADD OR <del>DEDUCT</del> IMPACT AMOUNT
<b>Combined Bid Impact (Optional)</b>	<b>Impact in Total Overall Project Price</b>
	\$ < 15,000.00 >

3a. PROPOSAL QUANTITIES. It is expressly understood and agreed by the parties hereto that the proposal quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated as stated in the Proposal, are only approximate and are to be used SOLELY for the purpose of comparing, on a consistent basis, the proposals offered for the work under this Contract; and the Contractor further agrees that the City of Bisbee will not be held responsible if any of the quantities shall be found incorrect; and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

3b. PROPOSAL QUANTITIES. If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the Contractor from the execution and completion of the whole or any part of the work in accordance with the Project Specifications and Contract Documents and the Plans herein mentioned, or for the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in this Contract.

4. The undersigned agrees, upon written notice of the acceptance of this bid, within ninety (90) days after the opening of the bids, that he will execute the Contract in accordance with the bid as accepted and give contract (Performance and Payment) Bonds on the forms included herein within fifteen (15) days after the prescribed forms are presented for signature.

5. The undersigned further agrees that if awarded the Contract, he will commence work within fifteen (15) calendar days after receipt of Notice to Proceed and that the work will be shall be completed according to the contract times; within 75 days of the NTP. Liquidated Damages apply if any of these completion dates are not met. The Contractor shall pay liquidated damages for each missed completion date in accordance with Paragraph 5 of the Special Provisions, in the amount of Five Hundred Seventy Dollars (\$570.00) for each calendar day the work remains uncompleted after the designated completion dates.

6. As an evidence of good faith in submitting this proposal, the undersigned encloses a certified check, cashier's check or bid bond in the amount not less than ten percent (10%) of the total amount of the bid, which, in case he refuses or fails to accept an award and to enter into a contract and file the required bonds within the prescribed time, shall be forfeited to the City of Bisbee, as liquidated damages.

7. The undersigned hereby declares that the only parties interested in this proposal are named herein, that this proposal is made without collusion with any other person, firm or corporation, that no employee of the City of Bisbee, officer or agent, is directly or indirectly financially interested in this bid.

8. The undersigned understands that this agreement may be cancelled by the City of Bisbee for conflict of interest pursuant to Arizona Revised Statutes Section 38-511.

9. The undersigned has checked carefully all the above figures and understands that the City of Bisbee, will not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

10. The undersigned understands that the City of Bisbee, reserves the right to reject any or all bids or to waive any informalities in the bid.

THIS PROPOSAL IS SUBMITTED BY The Ashton Company, Inc., a corporation organized under the laws of the State of Arizona, a partnership consisting of \_\_\_\_\_, or an individual trading as \_\_\_\_\_ of the City of Tucson and is the holder of Arizona State Contractor's License:

Classification Class A No. 070683  
Respectfully Submitted

FIRM: The Ashton Company, Inc.

BY: Marc J. Dotseth  
(signature)

ADDRESS: 2727 S. Country Club Road  
Tucson, AZ 85713

Marc J. Dotseth  
Name (print or type)  
Vice President  
Title (print or type)

DATE: 5-20-2014

ATTEST:  - PRESIDENT  
Officer and Title

Witness: If Bidder is an Individual