



**NOTICE OF A REGULAR MEETING OF THE TOWN COUNCIL
OF THE TOWN OF CLARKDALE
TUESDAY, MARCH 11, 2025 AT 6:00 PM**

In Person: Clark Memorial Clubhouse, 19 N. Ninth St., Clarkdale AZ

OR

Join Zoom Meeting

<https://us02web.zoom.us/j/88206419646>

Meeting ID: 882 0641 9646

Unless otherwise stated, the public will have physical access to the meeting place 15 minutes prior to the meeting start time.

Town of Clarkdale Vision

The Town of Clarkdale capitalizes on our unique history, proximity to the Verde River, and small-town charm. We cultivate an environment where residents and businesses can thrive.

We sustainably enhance our infrastructure, support the arts and education, and develop recreational opportunities to create a bright future for our entire community.

PURSUANT TO A.R.S. §38-431.02, NOTICE IS HEREBY GIVEN to the members of the Common Council of the Town of Clarkdale and to the general public that the Town of Clarkdale Town Council will hold a Regular Meeting open to the public on Tuesday, March 11, 2025, at 6:00 PM in a hybrid meeting via Zoom Video Conference or in person at 19 N. Ninth Street, Clarkdale, Arizona, Clark Memorial Clubhouse, Men's Lounge. Members of the Clarkdale Common Council will attend either in person or by telephone, video or internet conferencing. Pursuant to A.R.S. §38-431.03, the Council may vote to recess the meeting and move into Executive Session on any item, which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda.

Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at www.clarkdale.az.gov and the Town Clerk's Office.

ALL ITEMS ON THIS AGENDA ARE SCHEDULED FOR DISCUSSION AND POSSIBLE ACTION, UNLESS OTHERWISE NOTED.

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT

The Town Council invites the public to provide comments at this time. Members of the Town Council may not discuss items that are not specifically identified on the agenda. Therefore,

pursuant to A.R.S. §38-431.01, action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date. Persons interested in making comments on a specific agenda item are asked to complete a brief form and submit it to the Clerk or liaison during the meeting. Each speaker is asked to limit their comments to five minutes.

4. REPORTS

A. Current Events – (submitted electronically)

A brief summary of current events. The Council will not propose, discuss, deliberate, or take legal action on any matter in the summary. Reports submitted electronically:

- Mayor's Report
- Vice-Mayor's Report
- Councilmembers' Reports

B. Organizational Reports – (submitted electronically)

Reports regarding regional organizations submitted electronically:

- VVTPO – Verde Valley Transportation Planning Organization
- NACOG - Northern Arizona Council of Governments
- NAMWUA - Northern Arizona Municipal Water Users Association
- TPAC – Transportation Policy Advisory Council
- VFLC – Verde Front Leadership Council
- Sustaining Flows Committee
- Yavapai Communities for Young Children
- Cottonwood Airport Noise Working Group
- Vulnerable Road Users SHSP Emphasis Area Team
- NACOG Community Action Board (CAB)

5. CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the Town Council at a work session or during a New Business discussion. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

A. Approval of Minutes

Consider and act upon the draft minutes from the regular meeting held on Feb. 25, 2025.

6. NEW BUSINESS

A. Residential Trash Service Agreement Renewal

Discuss, consider and act upon the Residential Trash Service Agreement with Waste Management.

B. Resolution #1733 - Clean Water Revolving Fund (CWRP) Loan from the Water Infrastructure Finance Authority

Discuss, consider and act upon Resolution #1733, authorizing the execution of a loan agreement for a Clean Water Revolving Fund (CWRP) Loan from the Water

Infrastructure Finance Authority of Arizona (WIFA) in the amount of \$2,000,000 (\$600,000 forgivable) for assistance in funding the construction of the Third North Sewer Realignment Project.

C. Haskell Springs North Water Tank Rehabilitation

Discuss, consider, and act upon a proposal to repair the Haskell Springs North welded steel tank roof, support structure, valves, and appurtenances replacement for an amount not to exceed \$475,000.

D. Legislative Update

Discussion only regarding bills under consideration in the current Arizona Legislative session that have the potential to impact municipalities.

7. FUTURE AGENDA ITEMS

Town Council may propose items to be placed on a future agenda. This item is for discussion only.

8. ADJOURNMENT

Values

Values are the guiding principles that provide an organization with purpose and direction. The Town of Clarkdale's organizational values are:

COPPER

Customer focused

Open, transparent and equitable

Preserving our history, charm, and environment

Planning for a sustainable future

Economic and social resiliency

Resourceful and innovative

Mission

The Town of Clarkdale serves the community by providing amenities, infrastructure, services, and public safety to enhance quality of life. We are stewards of our history while we sustainably and resiliently plan for the future with an emphasis on community engagement and transparency.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at (928) 639-2400 (TTY: 1-800-367-8939) at least 72 hours in advance of the meeting.



From the office of Mayor Prud'homme-Bauer

February 2025 Report

Regularly Held Monthly Meetings:

- Regular weekly one-on-one meetings with Town Manager on Wednesdays.
- Agenda review meetings on Monday afternoon before the Town Council meeting.
- Host twice monthly Verde Valley Mayors/Managers Zoom meetings.
- Weekly Legislative call with LACT.

Other Meetings, Events, Emails and Phone Calls:

- Attended Verde Front All Partners and Leadership Council Meeting.
- Attended the Open House for the Strategic Plan update.
- Participant on a panel in an ASU webinar on the Yavapai-Apache Nation Water Rights Settlement Agreement.
- Attended the Council Work Session on updating the Strategic Plan.
- Virtual meeting for the LACT Executive Committee.
- Attended Coffee with the Council at the Copper Arts Museum.
- Coffee with Darin Dinsmore about several items.
- Town Manager Guthrie and I had a meeting with representatives of Green Living Magazine.
- Participated in the City of Cottonwood work session on the noise impact of repetitive flight training at Cottonwood Airport.
- Attended briefly the quarterly meeting the Tourism Working Group.
- Chaired the virtual GAMA meeting.
- Attended the ribbon cutting event for the gazebo.
- Attended the County Board of Supervisors meeting to say goodbye to Supervisor James Gregory.
- Attended an event on housing and short-term rentals discussed by eight Mayors and Managers from Northern AZ.
- Attended a Town Hall meeting held by State Senator Finchem.
- Attended a virtual meeting with Governor Hobbs' office on Federal funding status.
- Participated in the joint Council/P&Z/Citizens Committee meeting on updating the zoning code kick-off.
- Meeting with APS representatives on fire mitigation activities.
- Attended a virtual meeting with State Attorney General Kris Mayes on the status of lawsuits on Federal executive orders.
- Phone call with a representative from Senator Kelly's office on aircraft noise.
- Phone call with Yavapai-Apache Nation chairwoman regarding mutual aid agreement.

Upcoming events: Clarkdale Car Show, Plant & Garden Sale



From the office of Vice Mayor Hunseder

February 2025 Report

- 02/03/25 – Strategic Planning Public Open House.
- 02/04/25 – Board and Commission interviews (Planning and HPC).
- 02/04/25 – CDBA Meeting – Car Show coming March 8, 2025.
- 02/06/25 – Work Session for Strategic Planning.
- 02/10/25 – Coffee with the Council at The Copper Museum – Thank you!!
- 02/10/25 – One-on-one with Town Manager Guthrie.
- 02/10/25 – Airport Work Session with Cottonwood City Council.
- 02/11/25 – Town of Clarkdale Council Meeting and Executive Session.
- 02/12/25 – Call with Town Manager and Mayor.
- 02/18/25 – Gazebo ribbon cutting.
- 02/18/25 – P&Z and Council Work Session for Code Review Launch.
- 02/20/25 – NACOG Audit Committee Meeting.
- 02/20/25 – Attended “Mayors Forum for the People” hosted by Yavapai Speaks.
- 02/20/25 – Attended Town Hall Meeting – Hosted by Senator Finchem.
- 02/24/25 – One-on-one with Town Manager Guthrie.
- 02/25/25 – DISC review meeting with Council.
- 02/25/25 – Town of Clarkdale Council meeting.
- 02/27/25 – NACOG Executive Committee and Regional Council Meeting.
- 02/27/25 – Call with NACOG Executive Director.



From the office of Council Member O'Neill

February Report

- 2-3 Strategic plan open house.
- 2-4 Interviewed applicants for Boards and Commissions.
- 2-6 Strategic plan work session.
- 2-10 Airport noise meeting with Cottonwood.
- 2-11 One-on-one with Town Manager Guthrie; executive session; council meeting.
- 2-18 Ribbon cutting for the gazebo; work session with Planning Commission.
- 2-25 One-on-one with Town Manager Guthrie; DISC review; council meeting.
- 2-25 Met with Lou and Josh to discuss water issues.



From the office of Council Member Babbitt-Pierce

February Report

February 3 - Strategic Planning.

February 4 - Meeting with Town Manager Guthrie.

February 5 - Spent the day at the court with Judge Kelley.

February 6 - Morning Scoop on Housing in Arizona; Council Work Session.

February 6 - Call with NACOG.

February 10 - Meeting with Town Manager Guthrie; Cottonwood Town Council Work Session.

February 11 - Executive Session; Town Council Meeting.

February 13 - TPAC Meeting.

February 18 - Planning Code Review Kick Off Meeting.

February 24 - Meeting with Town Manager Guthrie.

February 25 - DISC Training; Town Council Meeting.



From the office of Council Member Jones

February Report

- 2/03 Attended Strategic Planning Public Open House.
- 2/06 Participated in Council Work Session for Strategic Planning.
- 2/10 Met with Susan Guthrie, Town Manager; attended Work Session with Cottonwood Council regarding Cottonwood Airport.
- 2/11 Attended Town Council Executive Session; attended Town Council Meeting.
- 2/18 Attended Town Gazebo ribbon cutting; participated in the Joint Work Session Town Council and Planning and Zoning for code rewrite kick off.
- 2/24 Attended Sustaining Flows Council Meeting; met one-on-one with Town Manager Guthrie.
- 2/25 Participated in DISC Review with Human Resources and Town Council; attended Town Council Meeting.
- 2/26 Attended NACOG CAB meeting.



Staff Report

Item Number: 5.A.

<u>Agenda Item:</u>	Approval of Minutes Consider and act upon the draft minutes from the regular meeting held on Feb. 25, 2025.
<u>Staff Contact:</u>	Charity Brooks, Town Clerk
<u>Meeting Date:</u>	March 11, 2025
<u>Strategic Goal:</u>	Not applicable.
<u>Background:</u>	Review of the draft minutes from the regular meeting held on Feb. 25, 2025.
<u>Budget Impact:</u>	No budget impact.
<u>Recommendation:</u>	Staff recommends that the Council approve the draft minutes from the regular meeting held on Feb. 25, 2025.



SUMMARIZED MINUTES OF A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CLARKDALE

TUESDAY, FEBRUARY 25, 2025, AT 3:00 PM

(To listen to the full audio of the meeting, please visit www.clarkdale.az.gov – agendas & minutes)

Members Present: Mayor Prud'homme-Bauer, Vice Mayor Debbie Hunseder, and Council Members, Lisa O'Neill, Marney Babbitt-Pierce, and Laura Jones

Other Municipal Officials Present: Susan Guthrie, Town Manager; Charity Brooks, Town Clerk; Joni Westcott, Parks and Recreation Director; Angela Benavides, Human Resources Director; D.K. Green, Grants Manager; Randy Taylor, Police Chief

Zoom: No members of the public were present.

Audience: Five members of the public were present.

1. CALL TO ORDER - *Mayor Prud'homme-Bauer called the meeting to order at 3 p.m.*

2. ROLL CALL - *All members present.*

3. PUBLIC COMMENT

Drake Meinke – Clarkdale resident. Provided Council with remodeling updates of the Copper Art Museum.

4. REPORTS

Departmental Reports (submitted with Council packet) –
Summary of written reports from Town Departments and other agencies:

- Building Permit Report
- Grants Report
- Magistrate Court Report
- Parks and Recreation Report
- Police Department Report
- Water and Wastewater Report
- Finance Report

5. MEMORANDUM TO COUNCIL

A. Special Event Liquor License Recommendations

Information provided by the Clarkdale Police Department regarding the approval of Special Event Liquor License applications for the Historic Downtown Clarkdale Criterium (Bike Race) on April 5, 2025, and Clarkd'ALE Beer Festival on May 5, 2025.

6. CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the Town Council at a work session or during a New Business discussion. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

A. Approval of Minutes of the Common Council

Consider and act upon the approval of the draft minutes for the regular meeting held on Jan. 28, 2025; the special meeting held on Feb. 11, 2025 and the regular meeting held on Feb. 11, 2025.

Action: Approve consent agenda item A as presented:

Motion: Council Member Babbitt-Pierce

Second: Vice Mayor Hunseder

Vote: Approved 5-0

Voting Member	Aye/Nay
Mayor Robyn Prud'homme-Bauer	Aye
Vice Mayor Debbie Hunseder	Aye
Council Member Lisa O'Neill	Aye
Council Member Marney Babbitt-Pierce	Aye
Council Member Laura Jones	Aye

7. NEW BUSINESS

A. Modification of Data Use Agreement with ASU

Discuss, consider and act upon the modification of the Data Use Agreement between the Town of Clarkdale and Arizona State University to extend the Arizona Violent Death Reporting System (AZ-VDRS) Research Program for 10 years.

Action: Approve the modification of the Data Use Agreement between the Town of Clarkdale and Arizona State University to extend the Arizona Violent Death Reporting System (AZ-VDRS) Research Program for 10 years and authorize the Town Manager to sign all documents:

Motion: Council Member Babbitt-Pierce

Second: Council Member Jones

Vote: Approved 5-0

Voting Member	Aye/Nay
Mayor Robyn Prud'homme-Bauer	Aye
Vice Mayor Debbie Hunseder	Aye
Council Member Lisa O'Neill	Aye
Council Member Marney Babbitt-Pierce	Aye
Council Member Laura Jones	Aye

B. Ratification of an Application for an Arizona Community Foundation of Yavapai County Grant

Discuss, consider, and act upon a request by staff to ratify the submission of an application for an Arizona Community Foundation of Yavapai County Grant, for purchase and installation of a "Music-in-the-Park" feature at Selna-Mongini Park for the amount of \$16,135.

Action: Approve the ratification of an application for an Arizona Community Foundation of Yavapai County (ACFYC) Grant, for purchase and installation of a "Music-in-the-Park" feature at Selna-Mongini Park in the amount of \$16,135, and authorize the Town Manager to sign all required documents related to this grant should it be awarded:

Motion: Vice Mayor Hunseder

Second: Council Member Babbitt-Pierce

Vote: Approved 5-0

Voting Member	Aye/Nay
Mayor Robyn Prud'homme-Bauer	Aye
Vice Mayor Debbie Hunseder	Aye
Council Member Lisa O'Neill	Aye
Council Member Marney Babbitt-Pierce	Aye
Council Member Laura Jones	Aye

C. Ratification of an Application for a Thriving Communities Grant

Discuss, consider, and act upon a request by staff to ratify the submission of an application for a Thriving Communities Grant, for purchase and installation of a FitLot Outdoor Fitness Park at Selna-Mongini Park for the amount of \$167,621.

Action: Approve the ratification of the submission of an application for a Thriving Communities Grant, for purchase and installation of a FitLot Outdoor Fitness Park at Selna-Mongini Park for the amount of \$167,621 and authorize the Town Manager to sign all required documents related to this grant should it be awarded:

Motion: Vice Mayor Hunseder

Second: Council Member Jones

Vote: Approved 5-0

Voting Member	Aye/Nay
Mayor Robyn Prud'homme-Bauer	Aye
Vice Mayor Debbie Hunseder	Aye
Council Member Lisa O'Neill	Aye
Council Member Marney Babbitt-Pierce	Aye
Council Member Laura Jones	Aye

8. FUTURE AGENDA ITEMS

Town Council did not propose items to be placed on a future agenda.

9. ADJOURNMENT

Action: Motion to Adjourn:

Motion: Vice Mayor Hunseder

Second: Council Member Babbitt-Pierce

Vote: Approved 5-0

Voting Member	Aye/Nay
Mayor Robyn Prud'homme-Bauer	Aye
Vice Mayor Debbie Hunseder	Aye
Council Member Lisa O'Neill	Aye
Council Member Marney Babbitt-Pierce	Aye
Council Member Laura Jones	Aye

Mayor Prud'homme-Bauer adjourned the meeting without objection at 3:33 p.m.

APPROVED:

ATTESTED/SUBMITTED:

Robyn Prud'homme-Bauer, Mayor

Charity Brooks, Town Clerk

CERTIFICATION AND ATTESTATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Clarkdale, Arizona held on the 25th day of February 2025. I further certify that the meeting was duly called and held and that a quorum was present.

Date approved by Town Council: March 11, 2025

Charity Brooks, Town Clerk



Staff Report

Item Number: 6.A.

<u>Agenda Item:</u>	Residential Trash Service Agreement Renewal Discuss, consider and act upon the Residential Trash Service Agreement with Waste Management.
<u>Staff Contact:</u>	Lou Andersen, Public Works Director
<u>Meeting Date:</u>	March 11, 2025
<u>Strategic Goal:</u>	This agenda item supports the following Clarkdale Strategic Goal Area: • Goal Area 2 – Enhance the quality of life for residents, businesses, and visitors to Clarkdale.
<u>Background:</u>	Waste Management was assigned the agreement from Patriot Disposal to provide residential collection and disposal services within the Town of Clarkdale. That Service Agreement was approved by the Council in February 2019 for a period of three (3) years and expired on May 16, 2022. Council extended the service agreement on May 10, 2022, for an additional three years, expiring May 16, 2025. As part of that Service Agreement, the Town has a right to extend the Service Agreement for one (1) additional three (3) year period, with no rate increase.
<u>Budget Impact:</u>	12-5-0700-9005 Sanitation Contract Services, expense is on track for the current Fiscal Year.
<u>Recommendation:</u>	Staff recommends that the Council approve the Residential Trash Service Agreement with Waste Management and authorize the Town Manager to execute all documents.

Town of Clarkdale

Post Office Box 308

Clarkdale, AZ 86324

Telephone: (928) 639-2400



March 4, 2025

VIA CERTIFIED MAIL AND EMAIL

Joe Cassin, Vice President
Waste Management of Arizona, Inc.
222 S. Mill Ave, Suite 333
Tempe, AZ 85281
[REDACTED]

With copies to:

Frank Santiago - Public Sector Solutions
Four Corners Area
222 S. Mill Ave, Suite 301
Tempe, AZ 85281
[REDACTED]

Clark Landrum II, Senior Account Executive - Public Sector Solutions
Four Corners Area
Waste Management of Arizona, Inc.
222 S. Mill Ave, Suite 301
Tempe, AZ 85281
[REDACTED]

Melodi Deaton, District Manager - Northern AZ
Waste Management of Arizona, Inc.
[REDACTED]

Jay McCutcheon, Site Supervisor
Waste Management of Arizona, Inc.
[REDACTED]

RE: NOTICE OF EXTENSION OF COLLECTION SERVICE AGREEMENT

This NOTICE OF EXTENSION OF COLLECTION SERVICE AGREEMENT is issued as of the date executed below by the Town of Clarkdale, an Arizona municipality ("Town") to Waste Management of Arizona, Inc. ("WMA").

RECITALS

WHEREAS, Patriot Disposal, Inc. ("Patriot") is the contractor under that certain Collection Services Agreement between Patriot and the Town, dated May 20, 2019, as amended by that certain Addendum dated May 17, 2022 (as amended, the "Contract"); and

WHEREAS, pursuant to that certain Assignment and Assumption of Contract ("Assignment") dated May 29, 2024, by and among the Town, WMA, and Patriot, all rights, obligations, and duties of Patriot under the Contract were assigned to WMA; and

WHEREAS, the Contract provided for an initial term of three (3) years from May 17, 2019, to May 16, 2022, with the Town having the right to extend the Contract for up to two (2) additional three-year terms; and

WHEREAS, the Town exercised its first three-year extension pursuant to the Addendum dated May 17, 2022, thereby extending the term from May 17, 2022, to May 16, 2025; and

WHEREAS, the Town now desires to exercise its second and final three-year extension under the Contract.

NOTICE

NOW, THEREFORE, the Town hereby provides notice to WMA that, pursuant to the Contract, the Town elects to extend the term of the Contract for an additional three-year period, commencing on May 17, 2025, and ending on May 16, 2028 (the "Extension Term").

Except as expressly extended by this Notice, all other terms, conditions, and provisions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Town has caused this Notice to be executed as of the date set forth below.

TOWN OF CLARKDALE

Susan Guthrie
Town Manager

Date

ACKNOWLEDGED BY:

WASTE MANAGEMENT OF ARIZONA, INC.

Joe Cassin
V.P. of Business Development

Date



Staff Report

Item Number: 6.B.

Agenda Item:**Resolution #1733 - Clean Water Revolving Fund (CWRP) Loan from the Water Infrastructure Finance Authority**

Discuss, consider and act upon Resolution #1733, authorizing the execution of a loan agreement for a Clean Water Revolving Fund (CWRP) Loan from the Water Infrastructure Finance Authority of Arizona (WIFA) in the amount of \$2,000,000 (\$600,000 forgivable) for assistance in funding the construction of the Third North Sewer Realignment Project.

Staff Contact:

Lou Andersen, Public Works Director

Meeting Date:

March 11, 2025

Strategic Goal:

This agenda item supports the following Clarkdale Strategic Goal Area:

- Goal Area 5 – Plan for the maintenance and growth of quality infrastructure that is sustainable and resilient.

Background:

The original sewer line for Third North Street is still in use and runs through the back of residential parcels, underneath structures and pools. The 100-year-old, 6-inch clay sewer line has several 45-degree turns that hinder its ability to function optimally and the line's location impedes the Staff's ability to maintain and repair the line. The realignment will include moving sewer connections for approximately 23 homes.

On Nov. 14, 2023, Council awarded design of the sewer line realignment to Ardurra in an amount not to exceed \$104,225. Notifications were mailed to residents that would be impacted by the project and a neighborhood meeting was held on Oct. 3, 2024. Ardurra engineers and Town staff met with each property owner regarding the specifics of their parcel to make the necessary final adjustments to the design.

Budget Impact:

CIP S09 was originally funded with \$750,000 (\$657,516 from Fund 24, \$92,484 from Fund 11.) To date, \$63,783 has been expended on design and required research and services related to the project. An additional \$65,000 is expected to be expended for the remainder of the design phase.

The WIFA CWRP loan in the amount of \$2,000,000 is expected to cover all construction costs with annual loan payments of approximately \$72,138 for

the duration of the 25-year loan. The Town does qualify for up to \$600,000 in loan forgiveness from WIFA.

Recommendation: Staff recommends that the Council approve Resolution #1733, authorizing the execution of a loan agreement for a Clean Water Revolving Fund (CWRF) Loan from the Water Infrastructure Finance Authority of Arizona (WIFA) in the amount of \$2,000,000 (\$600,000 forgivable) for assistance in funding the construction of the Third North Sewer Realignment Project and authorize the Mayor, Town Clerk and Town Manager to execute all documents.

RESOLUTION #1733

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA FROM ITS CLEAN WATER REVOLVING FUND PROGRAM; DELEGATING THE DETERMINATION OF CERTAIN MATTERS RELATING THERETO TO THE MANAGER AND THE FINANCE DIRECTOR OF THE TOWN; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY SUCH LOAN AGREEMENT AND THIS RESOLUTION

WHEREAS, the Mayor and Common Council of the Town of Clarkdale, Arizona (the "Town"), have heretofore applied to the Water Infrastructure Finance Authority of Arizona (the "Authority") for a loan (the "Loan") from the Authority's Clean Water Revolving Fund Program (the "Program") to provide funds for the replacement of the existing sewer main, manholes and service connections from North Broadway Road to the 5th Street Alley along North 3rd Street in the Town as well as for payment of the Town's proportionate share of expenses of administering the Program and any bonds issued by the Authority with respect thereto (the "Project"); and

WHEREAS, the terms and conditions under which the Loan will be made and the obligations of the Town with respect to the Loan will be set forth in a loan agreement to be executed and delivered by the Town and the Authority (the "Loan Agreement"); and

WHEREAS, the Loan and the loan repayments payable by the Town pursuant to the Loan Agreement (the "Loan Repayments") will be secured by a pledge of the Source of Repayment (as defined in the Loan Agreement); and

WHEREAS, the Mayor and Common Council of the Town have determined that it will be beneficial to the citizens of the Town to enter into and to perform the Loan Agreement, whereby the Town will borrow not to exceed \$2,000,000 from the Authority; and

WHEREAS, the Loan shall be repaid before or on July 1, 2049, and the Loan shall bear interest at a rate not to exceed five percent (5%) per annum; and

WHEREAS, there has been placed on file with the Clerk of the Town and presented at the meeting at which this Resolution was adopted the proposed form of the Loan Agreement;

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA, THAT:

Section 1. The form, terms and provisions of the Loan Agreement, in the form of such document (including the exhibits thereto) presented at the meeting at which this Resolution was adopted are hereby approved, with such insertions, omissions and changes, not inconsistent

with the application of the Town to the Authority or the requirements of the federal government or the Authority, as shall be approved by the Manager and/or the Finance Director of the Town, the execution of such document being conclusive evidence of such approval, and the Mayor or any other member of the Common Council of the Town, the Manager of the Town and the Clerk of the Town are hereby authorized and directed, as applicable, for and on behalf of the Town, to execute and attest and deliver, respectively, the Loan Agreement.

Section 2. For the payment of the principal of and interest on the Loan, the Town shall pay the Loan Repayments provided for in the Loan Agreement. The Town shall also pay all other amounts required to be paid by the Town pursuant to the provisions of the Loan Agreement.

Section 3. The obligation of the Town to pay the Loan Repayments provided for in the Loan Agreement as well as to make the other payments provided for in the Loan Agreement is limited to payment from the Source of Repayment which is pledged therefor pursuant to the Loan Agreement, and the obligations of the Town pursuant to the Loan Agreement shall not constitute or give rise to a general obligation of the Town or any claim against its *ad valorem* property taxing powers, or constitute an indebtedness within the meaning of any statutory or constitutional debt limitation applicable to the Town.

Section 4. The appropriate officials and officers of the Town are hereby authorized and directed to take all action necessary or reasonably required to carry out, give effect to and to consummate the transactions contemplated by the Loan Agreement, and by this Resolution, including, without limitation, the execution and delivery of any closing and other documents reasonably required to be delivered in connection therewith.

Section 5. If any section, paragraph, subdivision, sentence, clause or phrase of this Resolution is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Resolution. The Mayor and Common Council of the Town hereby declare that it would have adopted this Resolution and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the execution and delivery of the Loan Agreement pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Resolution may be held illegal, invalid or unenforceable. All ordinances, resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any ordinance or resolution or any part thereof.

Section 6. All actions of the officers and agents of the Town including the Mayor and Common Council of the Town which conform to the purposes and intent of this Resolution and which further the execution and delivery of the Loan Agreement as contemplated by this Resolution, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved. The proper officers and agents of the Town are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the Town as may be necessary to carry out the terms and intent of this Resolution.

Section 7. All acts and conditions necessary to be performed by the Town or to have been met precedent to and in the execution and delivery of the Loan Agreement in order to make it a legal, valid and binding obligation of the Town will at the time of delivery of the Loan

Agreement have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the execution and delivery of the Loan Agreement.

Section 8. All formal actions of the Mayor and Common Council of the Town concerning and relating to the passage of this Resolution were taken in an open meeting of the Mayor and Common Council of the Town, and all deliberations of the Mayor and Common Council of the Town and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 9. After the execution and delivery of the Loan Agreement and upon receipt of the Loan from the Authority, this Resolution shall be and remain irrevocable until the Loan and the Loan Agreement and the interest thereon shall have been fully paid, cancelled and discharged.

PASSED, APPROVED and ADOPTED by the Mayor and Common Council of the Town of Clarkdale, Arizona, this 11th day of March 2025.

.....
Robyn Prud'homme-Bauer, Mayor
Town of Clarkdale, Arizona

ATTEST:

.....
Charity Brooks, Town Clerk
Town of Clarkdale, Arizona

CERTIFICATION

I hereby certify that the foregoing Resolution #1733 was duly passed and adopted by the Mayor and Common Council of the Town of Clarkdale, Arizona, at a regular meeting held on the 11th day of March 2025, and the vote was ayes and nays.

.....
Charity Brooks, Town Clerk

Town of Clarkdale
and
Water Infrastructure Finance Authority of Arizona

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Loan Resolution 2025-045 – Town of Clarkdale

Water Infrastructure Finance Authority of Arizona

Section 1: Resolution

WHEREAS, the Water Infrastructure Finance Authority of Arizona (the “*Authority*”) has received from the Town of Clarkdale (the “*Local Borrower*”) a request for a loan (the “*Loan*”); and

WHEREAS, the Authority has determined that the Local Borrower has met the requirements of Arizona Revised Statutes §49-1201 et seq. (the “*Act*”) and the rules promulgated thereunder (the “*Rules*”); and

WHEREAS, the terms and conditions under which a Loan will be made and the obligations of the Local Borrower will be set forth in a loan agreement or bond purchase agreement (the “*Loan Agreement*”) to be executed by the Local Borrower and the Authority.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE AUTHORITY AS FOLLOWS:

The Director of the Authority is hereby authorized and directed to execute a Loan Agreement with the Local Borrower to evidence a Loan in accordance with the Act, the Rules, the Local Borrower’s applications to the Authority, and the Project Summary detailed in Section 2 of this Loan Resolution.

The Director and other Authority officials, as appropriate, are authorized and directed to sign any document and take such actions as necessary and appropriate to consummate the transactions contemplated by this Resolution and the Loan Agreement and to ensure that the Local Borrower has completed all requirements of the Authority as detailed in Section 3, Section 4, and Section 5 of this Loan Resolution.

This Resolution shall take effect immediately and shall terminate one year from the date of Board Action.

PASSED AND ADOPTED by the Board of Directors for the Water Infrastructure Finance Authority of Arizona on February 19, 2025.

The Chairman of the Board of Directors certifies that the above is a true and correct copy of the resolution that was duly adopted at a public meeting of the Water Infrastructure Finance Authority on the date referenced above.

By: 
Jonathan Lines (Feb 19, 2025 15:21 MST)
Chairman

Loan Resolution 2025-045 – Town of Clarkdale

Water Infrastructure Finance Authority of Arizona

Section 2: Project Summary

2.1 Project Number(s)

CW 014-2025

2.2 Project Priority Data

<u>PPL Rank*</u>	<u>Funding Cycle</u>	<u>Population Served</u>	<u>FA Index</u>
6	2025	3,800	75%

* Per the proposed PPL to be presented for approval at the February 19, 2025 WIFA Board meeting.

2.3 Project Description(s)

This loan will fund the replacement of the existing sewer main, manholes and service connections from North Broadway Road to the 5th Street Alley along North 3rd Street. Construction will consist of excavation, surface improvement removal and replacement, pipe installation, manhole installation, service connections, and sewer testing.

2.4 Previous Board Actions

No previous board action for this project.

2.5 Federal Programs Committee Review Date

February 11, 2025

Section 3: Financial Assistance Terms & Conditions (Section 7.1 of Due Diligence)

Financial Assistance Amount: \$2,000,000 with \$600,000 in forgivable principal

Primary Repayment Source: Wastewater System Revenue

Secondary Repayment Source: None

Loan Term: 25 years

Frequency of Repayment: Semi-Annual

Loan Resolution 2025-045 – Town of Clarkdale

Water Infrastructure Finance Authority of Arizona

Loan Structure: Standard Governmental-Level 1; Disadvantaged Community

Debt Service Reserve Fund Requirements: None

Repair and Replacement Fund Requirements: None

Requirements Prior to Loan Execution:

Require Legal Opinion: Yes

Other: No Requirement

Requirements Prior to Construction: No Requirement

Requirement During Construction: No Requirement

Requirements Prior to Final Disbursements: No Requirement

Loan Category: Qualified, Not Pledged

Policy Exceptions: None

Section 4: Technical Terms & Conditions (Section 7.2 of Due Diligence)

Observation Schedule B:

Observation 1: Upon borrower notification of construction commencement

Additional Observations: at least one site observation within each 12 month period

Final Observation: 80% construction budget disbursement

Withholding Percentage:

50% (released after FSP certification received)

10% (released after deliverables received)

Requirements Prior to Loan Execution: No Requirement

Requirements Prior to Construction:

Submittal of Construction Bids: Yes

Public Publicity/Signage: Yes

Loan Resolution 2025-045 – Town of Clarkdale

Water Infrastructure Finance Authority of Arizona

The Local Borrower shall erect a construction sign displaying information on the Project and the funding sources. The Authority shall provide specifications for such construction signs.

Other: No Requirement

Requirements During Construction:

Prior Review of Changes in Project Scope: Yes

The Local Borrower shall submit to the Authority, for review and approval prior to execution, any change to the plans and specifications, construction contracts, Eligible Project Costs, or any other change which will effect the performance standards or purpose of the Project.

Other: No Requirement

Requirements Prior to Releasing Withholdings:

Require Plan of Operation: Yes

Require Final Approval: Yes

Other: No Requirement

Policy Exceptions: None

Section 5: Additional Notice & Reporting Requirements (Section 7.3 of Due Diligence)

Other: Wage rate reporting requirements, Use of American Iron and Steel requirements, Build America Buy America requirements.

Loan Agreement

Water Infrastructure Finance Authority of Arizona
(the “Authority”)

and

Town of Clarkdale
(the “Local Borrower”)

Evidencing a Loan from the
Authority to the Local Borrower

Dated as of **TBD**

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Exhibit A	Financial Assistance Terms and Conditions; Borrower Payment Instructions; and Loan Repayment Schedule
Exhibit B	Technical Assistance Terms and Conditions
Exhibit C	Reporting Requirements
Exhibit D	Source of Repayment
Exhibit E	Debt Service Reserve Requirements
Exhibit F	Replacement Reserve Requirements
Exhibit G	Opinion of Counsel to Borrower
Exhibit H	Tax Compliance Certificate of Local Borrower

Loan Agreement

This Loan Agreement (this “*Loan Agreement*”) is made and entered into as of **TBD** by and between the Water Infrastructure Finance Authority of Arizona (the “*Authority*”), and Town of Clarkdale (the “*Local Borrower*”), a political subdivision of the State of Arizona.

This Loan Agreement includes the attached Exhibits and the attached Standard Terms and Conditions. Any capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Exhibits and the Standard Terms and Conditions.

The Authority and the Local Borrower agree as follows:

Article 1 Description of the Loan

Section 1.1 Name and Address of Local Borrower.

Town of Clarkdale
Attention: D.K. Green, Grants Manager
P.O. Box 308,
Clarkdale, Arizona 86324
Telephone: (928) 639-2413
Fax: (928) 639-2459

Section 1.2 Authorized Officer(s) of Local Borrower.

Town of Clarkdale
Attention: Susan Guthrie, Town Manager
P.O. Box 308
Clarkdale, Arizona 86324
Telephone: (928) 639-2415
Fax: N/A

Section 1.3 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Local Borrower at the address specified in Section 1.1 and to the Authority at the following address:

Executive Director
Water Infrastructure Finance Authority of Arizona
3300 North Central Avenue, Suite 1050
Phoenix, Arizona 85012
Telephone: (602) 364-1310
Fax: (602) 364-1327

Any of the parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 1.4 Loan Information. The terms of the Loan include the terms set forth in the Exhibits, which are part of this Loan Agreement:

- Exhibit A** Financial Assistance Terms and Conditions; Borrower Payment Instructions; and Loan Repayment Schedule
- Exhibit B** Technical Assistance Terms and Conditions
- Exhibit C** Reporting Requirements
- Exhibit D** Source of Repayment
- Exhibit E** Debt Service Reserve Requirements
- Exhibit F** Replacement Reserve Requirements
- Exhibit G** Opinion of Counsel to Borrower
- Exhibit H** Tax Compliance Certificate of Local Borrower

Prior to Loan Closing, the Local Borrower must deliver to the Authority the Opinion of Local Borrower Counsel in the form of Exhibit G and the Tax Compliance Certificate of Local Borrower in the form of Exhibit H, signed and dated the date of Loan Closing.

Article 2 Description Of The Project

Section 2.1 Description of Project. The Project is described in Project Summary attached to the Loan Resolution of the Authority, and in Exhibit B of this Loan Agreement.

Section 2.2 Description of System. The term “System” means and includes all of the properties and facilities of the complete Sewer plant and system of the Local Borrower, whether lying within or without the boundaries of the Local Borrower, as now existing and as they may hereafter be improved or extended, all improvements, additions and extensions thereto or replacements thereof hereafter constructed or acquired by purchase, contract or otherwise and all contracts, rights, agreements, leases and franchises of every nature owned by the Local Borrower and used or useful or held for use in the operation of said plant and system or any part or portion thereof.

Article 3 Loan to Local Borrower; Amounts Payable

Section 3.1 The Loan. The Authority shall loan and disburse to the Local Borrower in accordance with this Article 3 an amount listed in Exhibit A (the “Loan”), and the Local Borrower shall borrow and accept from the Authority, the Loan in the principal amount determined pursuant to this Article 3; provided, however, that (i) the Authority shall be under no obligation to disburse any amount of the Loan if an Event of Default has occurred and is continuing under this Loan Agreement, and (ii) the amount to be disbursed shall be lawfully

available for disbursement. The Local Borrower shall use the proceeds of the Loan strictly in accordance with the requirements of this Loan Agreement.

Section 3.2 Disbursements of Loan Proceeds. The Authority may disburse funds by check, by electronic means or by means of magnetic tape or other transfer medium. Except as hereinafter provided, disbursements shall be made only when (i) the request for disbursements is in substantially the form provided by the Authority and is accompanied by the necessary certifications and documentation and (ii) an Authorized Officer of the Authority has determined that such disbursement is proper. An Authorized Officer of the Authority shall approve disbursements directly to the persons or entities entitled to payment or to the Local Borrower in the case of reimbursement for costs of services already paid, and shall provide the Local Borrower with a copy of the approval and the date approved. Disbursements may be made only for Eligible Project Costs.

Section 3.3 Amounts Payable. The Local Borrower shall pay to the Authority the amounts shown in Exhibit A on or before the dates shown in Exhibit A, as the same may be adjusted as provided in the Standard Terms and Conditions, to reflect any revisions to the principal repayment schedule of the Loan. Such payments shall be made by electronic funds transfer or by direct debit to the Authority.

Section 3.4 Tax Covenants.

(a) General. The Local Borrower acknowledges that, in connection with its state revolving fund programs, the Authority issues its bonds (“Authority Bonds”) from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority’s interest for the Loan to qualify and be an obligation that bears interest that is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. Therefore, the Local Borrower represents and covenants as follows with respect to the Loan and the Authority Bonds. The Local Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Loan or the Authority Bonds under Section 103(a) of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code, and in the event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon a bond counsel opinion as may rescind or otherwise negate such action or omission. The Local Borrower will not directly or indirectly use or permit the use of any proceeds of the Loan or any other funds of the Local Borrower or take or omit to take any action that would cause the Loan or the Authority Bonds to be or become “arbitrage bonds” within the meaning of Section 148(a) of the Internal Revenue Code or to fail to meet any other applicable requirement of Sections 103, 141, 148, 149 and 150 of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. To that

end, the Local Borrower will comply with all applicable requirements of Sections 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Loan.

(b) Modification Based on Bond Counsel Opinion. Notwithstanding any provision of this Section, if the Local Borrower provides to the Authority a bond counsel opinion to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Loan or the Authority Bonds pursuant to Section 103(a) of the Internal Revenue Code, the provisions of this Section and the covenants in this Section shall be deemed to be modified to that extent.

(c) Bond Counsel Opinion. For purposes of this Section, “bond counsel opinion” means an opinion letter of a firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, and who is acceptable to the Authority.

IN WITNESS WHEREOF, the Authority and the Local Borrower have caused this Loan Agreement to be executed and delivered as of the date of execution hereof.

Water Infrastructure Finance Authority of Arizona

By: _____
Chelsea Mcguire, Director

Town of Clarkdale

By: _____
Susan Guthrie, Town Manager

LOAN AGREEMENT ADDENDUM

Wage Rate Requirements for Compliance with P.L. 111-88

Water Infrastructure Finance Authority of Arizona

This document (this "Wage Rate Addendum") sets forth additional requirements applicable to state revolving fund Loans made by the Water Infrastructure Finance Authority of Arizona ("WIFA") that are subject to the requirements of federal Public Law 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," enacted October 30, 2009 ("P.L. 111- 88"). The provisions in this Wage Rate Addendum are a part of the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

The parties acknowledge and agree that funds disbursed by WIFA to the Local Borrower will include funds made available to WIFA by the federal government under P.L. 111-88, and that the requirements of P.L. 111-88 include those set forth in this Wage Rate Addendum. The Local Borrower agrees to comply with all of those requirements and agrees that failure to do so is a breach of the provisions of the Loan Agreement which may result in a default under the Loan Agreement, termination of WIFA's obligation to make disbursements on the Loan and the Local Borrower being required to repay all amounts that have been disbursed by WIFA on the Loan, together with interest and fees as provided in the Loan Agreement.

Additional Requirement for Subrecipients that are not Governmental Entities:

Obtaining Wage Determinations - Under this Wage Rate Addendum, the non-governmental borrower must submit its proposed Davis Bacon wage determinations to WIFA for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors. **THIS PARAGRAPH DOES NOT APPLY TO GOVERNMENTAL ENTITIES.**

Section 1. Wage Rate Requirements

The following language must be included in all Davis Bacon covered construction contracts and subcontracts. (29 CFR Part 5.5)

(a) The Local Borrower 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, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, or the FFY 2010 appropriation, 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 Sec. 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. Local Borrowers may obtain wage determinations from the U. S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The Local Borrower, 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 WIFA award official shall approve 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 Local Borrower agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Local Borrower to the WIFA award official. The WIFA award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA Davis Bacon Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFA award official or will notify the WIFA 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 Local Borrower 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 questions, including the views of all interested parties and the recommendation of the WIFA award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(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 Local Borrower shall upon its own action or upon written request of WIFA, 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 (Agency) 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 Local Borrower. Such documentation shall be available on request of WIFA 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 weekly transmittals. 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 <http://www.dol.gov/whd/forms/wh347.pdf> 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 Local Borrower for transmission to WIFA or EPA, if requested by EPA, WIFA, 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 Local Borrower.

(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 Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 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 WIFA. 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 WIFA 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 the Local Borrower, WIFA, 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.

(b) Contract Work Hours and Safety Standards Act. The Local Borrower shall insert the following clauses set forth in paragraphs (b)(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 Sec. 5.5(a) or 4.6 of part 4 of this title. 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 forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible 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 (b)(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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Local Borrower, upon its own action or 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 (b)(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 (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), 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 Sec. 5.1, the Local Borrower 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 Local Borrower 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 WIFA, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Section 2. General Provisions.

(a) Binding Effect. This Wage Rate Addendum shall inure to the benefit of and shall be binding upon WIFA and the Local Borrower and their respective successors and assigns.

(b) Severability. In the event any provision of this Wage Rate Addendum shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

(c) Amendments, Supplements and Modifications. This Wage Rate Addendum may not be amended, supplemented or modified without the prior written consent of WIFA and the Local Borrower.

(d) Execution in Counterparts. This Wage Rate Addendum may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(e) Applicable Law. This Wage Rate Addendum shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) Captions. The captions or headings in this Wage Rate Addendum are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions of this Wage Rate Addendum.

(g) Further Assurances. The Local Borrower shall, at the request of WIFA, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Wage Rate Addendum.

(h) Arbitration. The parties hereto agree to use arbitration to the extent required by Section 12-1518 of the Arizona Revised Statutes.

(i) Notice Regarding A.R.S. § 38 511. To the extent applicable by provision of law, the parties acknowledge that this Wage Rate Addendum is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are hereby incorporated herein.

WIFA and the Local Borrower are signing this Wage Rate Addendum to be effective as part of the Loan Agreement.

Water Infrastructure Finance Authority of Arizona

By: _____

Chelsea Mcguire, Director

Town of Clarkdale

By: _____

Susan Guthrie, Town Manager

[Signature page to Wage Rate Addendum to Loan Agreement]

LOAN AGREEMENT ADDENDUM

American Iron and Steel Requirements for Compliance with Federal Law

Water Infrastructure Finance Authority of Arizona

This document (this "American Iron and Steel Addendum") sets forth additional requirements made applicable to state revolving fund Loans made by the Water Infrastructure Finance Authority of Arizona ("WIFA") by federal law. The provisions in this American Iron and Steel Addendum are a part of the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

The parties acknowledge and agree that funds disbursed by WIFA to the Local Borrower will include funds made available to WIFA by the federal government under federal law, and that the requirements of federal law include those set forth in this American Iron and Steel Addendum. The Local Borrower agrees to comply with all of those requirements and agrees that failure to do so is a breach of the provisions of the Loan Agreement which may result in a default under the Loan Agreement, termination of WIFA's obligation to make disbursements on the Loan and the Local Borrower being required to repay all amounts that have been disbursed by WIFA on the Loan, together with interest and fees as provided in the Loan Agreement.

Federal law requires that WIFA include in all assistance agreements, including the Loan Agreement, for the construction, alteration, maintenance, or repair of treatment works under the Clean Water State Revolving Fund and for the construction, alteration, maintenance, or repair of a public water system under the Drinking Water State Revolving Fund, a provision requiring the application of American Iron and Steel requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences. Whether or not the project has multiple sources of funding, the American Iron and Steel requirements apply to the entire project and not just to the activities funded by the money made available to WIFA by the federal government.

Section 1. American Iron and Steel Requirements. In accordance with federal law:

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

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

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

- (1) applying subsection (a) would be inconsistent with the public interest;
 - (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
- (c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

Section 2. General Provisions.

- (a) Binding Effect. This American Iron and Steel Addendum shall inure to the benefit of and shall be binding upon WIFA and the Local Borrower and their respective successors and assigns.
- (b) Severability. In the event any provision of this American Iron and Steel Addendum shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.
- (c) Amendments, Supplements and Modifications. This American Iron and Steel Addendum may not be amended, supplemented or modified without the prior written consent of WIFA and the Local Borrower.
- (d) Execution in Counterparts. This American Iron and Steel Addendum may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- (e) Applicable Law. This American Iron and Steel Addendum shall be governed by and construed in accordance with the laws of the State of Arizona and applicable federal law.
- (f) Captions. The captions or headings in this American Iron and Steel Addendum are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions of this American Iron and Steel Addendum.
- (g) Further Assurances. The Local Borrower shall, at the request of WIFA , authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this American Iron and Steel Addendum.

(h) Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order 2009-9, entitled "Prohibition of Discrimination in State Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors," which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Local Borrower shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(i) Arbitration. In the event of a dispute, the parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by Arizona Revised Statutes Section 12-1518, and the prevailing party shall be entitled to attorney's fees and costs with respect thereto.

(j) Notice of Arizona Revised Statutes Section 38-511 - Cancellation. Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to this American Iron and Steel Addendum under the law of the State of Arizona.

[SIGNATURE PAGE FOLLOWS]

WIFA and the Local Borrower are signing this American Iron and Steel Addendum to be effective as part of the Loan Agreement.

Water Infrastructure Finance Authority of Arizona

By: _____

Chelsea McGuire, Director

Town of Clarkdale

By: _____

Susan Guthrie, Town Manager

[Signature page to American Iron and Steel Addendum to Loan Agreement]

LOAN AGREEMENT ADDENDUM

Build America, Buy America Act Requirements for Compliance with Federal Law

Water Infrastructure Finance Authority of Arizona

This document (this "Build America, Buy America Addendum") sets forth additional requirements made applicable to state revolving fund Loans made by the Water Infrastructure Finance Authority of Arizona ("WIFA") by federal law. The provisions in this Build America, Buy America Addendum are a part of the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

The parties acknowledge and agree that funds disbursed by WIFA to the Local Borrower will include funds made available to WIFA by the federal government under federal law, and that the requirements of federal law include those set forth in this Build America, Buy America Addendum. The Local Borrower agrees to comply with all of those requirements and agrees that failure to do so is a breach of the provisions of the Loan Agreement which may result in a default under the Loan Agreement, termination of WIFA's obligation to make disbursements on the Loan and the Local Borrower being required to repay all amounts that have been disbursed by WIFA on the Loan, together with interest and fees as provided in the Loan Agreement.

Federal law requires that WIFA include in all assistance agreements, including the Loan Agreement, for any infrastructure project under the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund, a provision requiring the application of Build America, Buy America requirements. Whether or not the project has multiple sources of funding, the Build America, Buy America requirements apply to the entire project and not just to the activities funded by the money made available to WIFA by the federal government.

Section 1. Build America, Buy America Requirements. In accordance with federal law (including those imposed by the Infrastructure Investment and Jobs Act, Public Law No. 117-58):

(a) None of the funds made available to WIFA as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for infrastructure unless:

(1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) all construction materials¹ are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, which are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

(b) *Waivers.* When necessary, recipients may apply for, and the Environmental Protection Agency (EPA) may grant, a waiver from these requirements. The EPA has information on the process for requesting a waiver from these requirements at <https://www.epa.gov/cwsrf/build-america-buy-america-baba>.

When the EPA has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the EPA determines that:

(1) applying the domestic content procurement preference would be inconsistent with the public interest;

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

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

A request to waive the application of the domestic content procurement preference must be in writing. The EPA will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.epa.gov/cwsrf/build-america-buy-america-baba>.

(c) The Local Borrower shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or a state), such as performance indicators of program deliverables, information on costs and project progress. The Local Borrower understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities

¹ Excludes cement and cementitious materials, aggregates such as stone, sand or gravel, or aggregate binding agents or additives.

and (ii) failure to comply with the applicable legal requirements and the Loan Agreement may result in a default hereunder that results in a repayment of the Loan Agreement, termination and/or repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.

(d) *Definitions.*

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives 46—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Section 2. General Provisions.

(a) Binding Effect. This Build America, Buy America Addendum shall inure to the benefit of and shall be binding upon WIFA and the Local Borrower and their respective successors and assigns.

(b) Severability. In the event any provision of this Build America, Buy America Addendum shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

(c) Amendments, Supplements and Modifications. This Build America, Buy America Addendum may not be amended, supplemented or modified without the prior written consent of WIFA and the Local Borrower.

(d) Execution in Counterparts. This Build America, Buy America Addendum may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(e) Applicable Law. This Build America, Buy America Addendum shall be governed by and construed in accordance with the laws of the State of Arizona and applicable federal law.

(f) Captions. The captions or headings in this Build America, Buy America Addendum are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions of this Build America, Buy America Addendum.

(g) Further Assurances. The Local Borrower shall, at the request of WIFA , authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Build America, Buy America Addendum.

(h) Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order 2009-9, entitled "Prohibition of Discrimination in State Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors," which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Local Borrower shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(i) Arbitration. In the event of a dispute, the parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by Arizona Revised Statutes Section 12-1518, and the prevailing party shall be entitled to attorney's fees and costs with respect thereto.

(j) Notice of Arizona Revised Statutes Section 38-511 - Cancellation. Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to this Buy America, Build America Addendum under the law of the State of Arizona.

[SIGNATURE PAGE FOLLOWS]

WIFA and the Local Borrower are signing this Build America, Buy America Addendum to be effective as part of the Loan Agreement.

Water Infrastructure Finance Authority of Arizona

By: _____

Chelsea McGuire, Director

Town of Clarkdale

By: _____

Susan Guthrie

[Signature page to Build America, Buy America Addendum to Loan Agreement]

Exhibit A of Loan Agreement

Section 1: Financial Assistance Terms and Conditions

Town of Clarkdale

TBD

Loan Number..... 910221-25

Closing Date..... **TBD**

First Payment Period..... 07/01/25

Financial Assistance Terms and Conditions

Original Loan Amount as of the Closing Date.....	\$	2,000,000.00
Forgivable Principal Amount.....	\$	600,000.00
Intended Repayment Amount.....	\$	1,400,000.00
Loan Term.....		25
Combined Interest & Fee Rate		3.375%
Total # of Payment Periods within Loan Term.....		50

** Combined Interest and Fee Rate (CIFR) allocation: Fee = 1.5% (150 basis points); Interest = CIFR minus Fee.*

Principal Repayments

Period Principal Repayments Begin.....	2
First Principal Repayment Date.....	07/01/25
Final Principal Repayment Date.....	07/01/49

Combined Interest and Fee Payment Dates

First Combined Interest and Fee Payment Date*.....	07/01/25
Final Combined Interest and Fee Payment Date.....	07/01/49

** Actual initial Combined Interest and Fee payment calculated only on dollar amount drawn against loan as of initial payment date*

Debt Service Reserve Fund Requirements

Total Reserve Amount.....	None
Annual Amount.....	None
Reserve Funded by (Date).....	Not Applicable

Repair and Replacement Fund Requirement

Begin Funding on (Date).....	Not Applicable
Annual Amount.....	None
Semi-Annual Deposit.....	None

Annual Payment

Years 1 through 5.....	\$	83,795.31
Years 6 through 10.....	\$	83,795.31
Years 11 through 15.....	\$	83,795.31
Years 16 through 20.....	\$	83,795.31
Years 21 through 25.....	\$	83,795.31

Section 2: Loan Repayment Schedule
Town of Clarkdale
04-Mar-25

Year Period		Semi-Annual Payment Dates	Combined Interest and Fee Rate	Semi-Annual Combined Interest and Fee Payment	Annual Principal Repayment	Total Annual Payment
1	1	01/01/25	3.375%	0.00		
1	2	07/01/25	3.375%	11,943.75	36,545.31	48,489.06
2	3	01/01/26	3.375%	23,008.30		
2	4	07/01/26	3.375%	23,008.30	37,778.71	83,795.31
3	5	01/01/27	3.375%	22,370.78		
3	6	07/01/27	3.375%	22,370.78	39,053.75	83,795.31
4	7	01/01/28	3.375%	21,711.75		
4	8	07/01/28	3.375%	21,711.75	40,371.81	83,795.31
5	9	01/01/29	3.375%	21,030.48		
5	10	07/01/29	3.375%	21,030.48	41,734.35	83,795.31
6	11	01/01/30	3.375%	20,326.21		
6	12	07/01/30	3.375%	20,326.21	43,142.89	83,795.31
7	13	01/01/31	3.375%	19,598.17		
7	14	07/01/31	3.375%	19,598.17	44,598.97	83,795.31
8	15	01/01/32	3.375%	18,845.57		
8	16	07/01/32	3.375%	18,845.57	46,104.17	83,795.31
9	17	01/01/33	3.375%	18,067.56		
9	18	07/01/33	3.375%	18,067.56	47,660.19	83,795.31
10	19	01/01/34	3.375%	17,263.29		
10	20	07/01/34	3.375%	17,263.29	49,268.73	83,795.31
11	21	01/01/35	3.375%	16,431.88		
11	22	07/01/35	3.375%	16,431.88	50,931.55	83,795.31
12	23	01/01/36	3.375%	15,572.41		
12	24	07/01/36	3.375%	15,572.41	52,650.49	83,795.31
13	25	01/01/37	3.375%	14,683.93		
13	26	07/01/37	3.375%	14,683.93	54,427.45	83,795.31
14	27	01/01/38	3.375%	13,765.47		
14	28	07/01/38	3.375%	13,765.47	56,264.37	83,795.31
15	29	01/01/39	3.375%	12,816.01		
15	30	07/01/39	3.375%	12,816.01	58,163.29	83,795.31
16	31	01/01/40	3.375%	11,834.50		
16	32	07/01/40	3.375%	11,834.50	60,126.31	83,795.31
17	33	01/01/41	3.375%	10,819.87		
17	34	07/01/41	3.375%	10,819.87	62,155.57	83,795.31
18	35	01/01/42	3.375%	9,771.00		
18	36	07/01/42	3.375%	9,771.00	64,253.31	83,795.31
19	37	01/01/43	3.375%	8,686.73		
19	38	07/01/43	3.375%	8,686.73	66,421.85	83,795.31
20	39	01/01/44	3.375%	7,565.85		
20	40	07/01/44	3.375%	7,565.85	68,663.61	83,795.31
21	41	01/01/45	3.375%	6,407.15		
21	42	07/01/45	3.375%	6,407.15	70,981.01	83,795.31
22	43	01/01/46	3.375%	5,209.35		
22	44	07/01/46	3.375%	5,209.35	73,376.61	83,795.31
23	45	01/01/47	3.375%	3,971.12		
23	46	07/01/47	3.375%	3,971.12	75,853.07	83,795.31
24	47	01/01/48	3.375%	2,691.10		

Section 2: Loan Repayment Schedule
Town of Clarkdale
04-Mar-25

Year Period		Semi-Annual Payment Dates	Combined Interest and Fee Rate	Semi-Annual Combined Interest and Fee Payment	Annual Principal Repayment	Total Annual Payment
24	48	07/01/48	3.375%	2,691.10	78,413.11	83,795.31
25	49	01/01/49	3.375%	1,367.88		
25	50	07/01/49	3.375%	1,367.88	81,059.52	83,795.28
				659,576.47	1,400,000.00	2,059,576.47

Exhibit B

Technical Terms and Conditions

Section 1 Budget

Uses by Budget Item	Amount Budgeted
Planning.....	\$0.00
Design & Engineering.....	\$0.00
Legal/Debt Authorization.....	\$0.00
Financial Advisor.....	\$0.00
Land/System Acquisition.....	\$0.00
Equipment/Materials.....	\$0.00
Construction/Installation/Improvement.....	\$1,974,125.00
Inspection & Construction Management.....	\$25,875.00
Project Officer.....	\$0.00
Administration.....	\$0.00
Staff Training.....	\$0.00
Capitalized Interest.....	\$0.00
Refinance Loan.....	\$0.00
Other.....	\$0.00
Total Budget.....	\$2,000,000.00

Section 2 Project Description

This loan will fund the replacement of the existing sewer main, manholes and service connections from North Broadway Road to the 5th Street Alley along North 3rd Street. Construction will consist of excavation, surface improvement removal and replacement, pipe installation, manhole installation, service connections, and sewer testing.

Section 3 Estimated Observation and Disbursement Schedule

Observation Schedule B:

Observation 1: Upon borrower notification of construction commencement

Additional Observations: at least one site observation within each 12 month period

Final Observation: 80% construction budget disbursement

Additional Observations – A WIFA representative may perform additional observations based on information provided in the projects status reports included in each Local Borrower disbursement requisition form.

Withholding Percentage: 10% (released after deliverables received)

Section 4

Requirements Prior To Construction

Section 4.1 **Construction Bids.** The Local Borrower shall submit to the Authority for review and approval prior to execution:

- (a) engineering contracts related to the Project,
- (b) bid documents related to the Project,
- (c) construction contracts related to the Project, and
- (d) certification of positive effort for disadvantaged business enterprise participation.

Section 4.2 **User Charges.** The Local Borrower has established (or, if the System is not yet in operation, the Local Borrower will, at or before the time the System commences operation, establish) a system of user charges which, with other funds lawfully available, will at all times be sufficient to pay the costs of operation and maintenance of the System, including renewals and replacements of the System. The Local Borrower also agrees that such system of user charges will be established and maintained in compliance with any applicable requirements of state and federal law as long as the Local Borrower owes amounts under this Loan Agreement. The Local Borrower at its sole option may pay the costs of operation, maintenance, repair, replacement, extensions and additions to the System from any funds lawfully available to it for such purpose.

Section 4.3 **Interest in Project Site.** As a condition of the Loan, the Local Borrower will demonstrate to the satisfaction of the Authority that the Local Borrower has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

Section 4.4 **Federal Clean Water Act.** The Local Borrower covenants that, to the extent legally applicable, the Project will meet the requirements of the Federal Clean Water Act in effect on the date of Loan Closing and any amendments thereto that may retroactively apply to

the Loan, and the Local Borrower agrees that the Project will comply with applicable provisions of those federal laws and authorities listed in Article 9 of the Standard Terms and Conditions.

Section 4.5 **Federal Safe Drinking Water Act.** The Local Borrower covenants that, to the extent legally applicable, the Project will meet the requirements of the Federal Safe Drinking Water Act in effect on the date of Loan Closing and any amendments thereto that may retroactively apply to the Loan, and the Local Borrower agrees that the Project will comply with applicable provisions of those federal laws and authorities listed in Article 9 of the Standard Terms and Conditions.

Section 4.6 **Signs.** The Local Borrower shall erect a construction sign displaying information on the Project and the funding sources. The Authority shall provide specifications for such construction signs.

Section 5 Requirements During Construction

Section 5.1 **Changes in Project Scope.** The Local Borrower shall submit to the Authority, for review and approval prior to execution, any change to the plans and specifications, construction contracts, Eligible Project Costs, or any other change which will effect the performance standards or purpose of the Project.

Section 5.2 **Completion of Project and Provision of Moneys Therefor.** The Local Borrower covenants and agrees (a) to exercise its best efforts in accordance with prudent utility construction practice to complete the Project and (b) to the extent permitted by law, to provide from its own fiscal resources all moneys, in excess of the total amount of loan proceeds it receives hereunder and under any subsequent loan from the Authority, required to complete the Project.

Section 5.3 **Inspections; Information.** The Local Borrower shall permit the Authority and any party designated by the Authority to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith.

Section 5.4 **Adjustments for Ineligible Costs.** The Local Borrower shall promptly reimburse the Authority for any portion of the Loan which is determined to have been used for costs that are not eligible for funding under the Authority Act, the Federal Clean Water Act, as amended, or the Federal Safe Drinking Water Act, as amended, unless such matter is curable in some other manner by the Local Borrower to the satisfaction of the Authority. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority. Any such reimbursed principal amount will be applied to reduce the outstanding principal amount of the Loan.

Section 5.5 **Archaeological Artifacts.** In the event that archaeological artifacts or historical resources are discovered during construction excavation of the Project, the Local Borrower shall stop or cause to be stopped construction activities and will notify the State Historic Preservation Office and the Authority of such discovery.

Section 6

Requirements Prior To Final Disbursements

Section 6.1 **Plan of Operation.** After construction is 50% complete and prior to the release of the withholding, the Local Borrower will submit to the Authority a plan of operation which provides a concise, sequential description of an implementation schedule for those activities necessary to assure efficient and reliable start-up and continual operation of the Project.

Section 6.2 **Final Approval.** Prior to the release of the withholding, the Local Borrower will submit to the Authority (a) as-built drawings by a professional engineer that document all changes from the original plans and specifications (b) copies of all testing results performed by or under the supervision of a professional engineer as required by the specifications, and (c) Arizona Department of Environmental Quality (ADEQ) approval of construction or an engineer's Certificate of Completion certifying that all construction was completed in accordance with the plans and specifications or that any changes made are in conformance with the Arizona Revised Statutes, ADEQ and Environmental Protection Agency rules, permits and guidelines and are documented in the as-built drawings. Based on a review of the information submitted, the Authority reserves the right, prior to the release of the withholding, to request modifications to the Project, the system, or the materials submitted pursuant to this section.

Exhibit C

Reporting Requirements

Section 1. **Annual Loan Review.** The Authority's Annual Loan Review Form and annual financial statements in a format approved by the Authority, including the report of any annual audit(s) and all audit reports required by governmental auditing standards and any applicable Arizona rules, shall be provided by the Local Borrower to the Authority within one-hundred and eighty (180) days after the end of each fiscal year of the Local Borrower. The Local Borrower shall complete all audits and submit all reports required by the federal Single Audit Act within the time limits under that federal law, currently within the earlier of 30 days after receipt of the auditor's reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the federal agency that provided the funding or a different period is specified in a program-specific audit guide.

Section 2. **Records and Accounts.** The Local Borrower shall keep accurate records and accounts for the System, including records and accounts for the Project (the "*System Records*"), separate and distinct from its other records and accounts (the "*General Records*"). The Local Borrower must maintain the System Records in accordance with generally accepted accounting principles (GAAP), including standards relating to the reporting of infrastructure assets, as issued by the Governmental Accounting Standards Board (GASB) or by the Financial Accounting Standards Board (FASB), as applicable to the Local Borrower. If required by law, the Local Borrower must have the System Records audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Local Borrower. The Local Borrower must make all System Records and General Records available for inspection by the Authority at any reasonable time.

Section 3. **Notice of Change In Key Personnel.** Promptly after becoming aware thereof, the Local Borrower shall provide notice in writing to the Authority of any change to the information in Section 1 of the Loan Agreement and any other change in key personnel connected to the Project and Loan.

Section 4. **Notice of Material Adverse Change.** The Local Borrower shall promptly notify the Authority of any material adverse change in the activities, prospects or condition (financial or otherwise), of the Local Borrower relating to the System, or in the ability of the Local Borrower to make all Loan Repayments from the Source of Repayment described in this Loan Agreement and otherwise to observe and perform its duties, covenants, obligations and agreements hereunder.

Section 5. **Disadvantaged Business Enterprise (DBE) Program.** The Local Borrower must report DBE participation to the Authority based on guidance from the Authority.

Section 6. **Notice of Default.** Promptly after becoming aware thereof, Local Borrower shall give notice to the Authority of (i) the occurrence of any Event of Default under the Loan Agreement or (ii) the occurrence of any breach, default, Event of Default, or event which with the giving of notice or lapse of time, or both, could become a material breach, default, or Event of Default (a "Future Breach") under any agreement, indenture, mortgage, or other instrument

(other than the Loan Agreement) to which the Local Borrower is a party or by which it or any of its property is bound or affected. Local Borrower shall provide written notice to the Authority if the effect of such breach, default, Event of Default or Future Breach is to accelerate, or to permit the acceleration of, the maturity of any indebtedness under such agreement, indenture, mortgage, or other instrument; provided, however, that the failure of the Local Borrower to give such notice shall not affect the right and power of the Authority to exercise any and all of the remedies specified herein.

Section 7. **Notice of Construction Commencement.** The Local Borrower shall promptly notify the Authority immediately upon commencement of construction activities.

Section 8. **Notice of Non-Environmental Litigation.** Promptly after the commencement or overt threat thereof, Local Borrower shall provide the Authority with written notice of the commencement of all actions, suits, or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting Local Borrower which, if adversely determined, could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or on the ability of Local Borrower to perform its obligations under the Loan Agreement.

Section 9. **Notice of Environmental Litigation.** Without limiting the provisions of Section 8 above, promptly after receipt thereof, Local Borrower shall provide the Authority with written notice of the receipt of all pleadings, orders, complaints, indictments, or other communication alleging a condition that may require Local Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations of such laws, or which claim personal injury to any person or property damage as a result of environmental factors or conditions or which, if adversely determined, could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or on the ability of Local Borrower to perform its obligations under the Loan Agreement.

Section 10. **Regulatory and Other Notices.** Promptly after receipt or submission thereof, Local Borrower shall provide the Authority with copies of any notices or other communications received from or directed to any governmental authority with respect to any matter or proceeding which could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or the ability of Local Borrower to perform its obligations under the Loan Agreement, or which reveals a substantial non compliance with any applicable law, regulation or rule.

Section 11. **Other Information.** The Local Borrower shall submit to the Authority other information regarding the condition (financial or otherwise), or operation of the Local Borrower as the Authority may, from time to time, reasonably request.

Section 12. **Additional Reporting Requirements.** The Local Borrower shall refer to the Loan Agreement Addendum for wage rate reporting requirements.

Exhibit D Source of Repayment: System Revenues

Section 1 Certain Definitions

As used in this Loan Agreement, the following terms shall have the meanings set forth below unless the context clearly requires otherwise:

“Additional Parity Obligations” shall mean any additional obligations having a lien payable from Net Revenues of the System on a parity with the Loan Agreement which may hereafter be issued by the Local Borrower (or any financing conduit acting on behalf of the Local Borrower) in compliance with the terms in Section 3.

“Administrative Expenses” shall mean the reasonable cost or value of all services rendered by the Local Borrower and its various departments with respect to the System.

“Fund” shall mean the fund or funds into which the Local Borrower shall deposit the Revenues of the System.

“Net Revenues” shall mean that portion of the Revenues remaining after deducting sufficient funds for the Operation and Maintenance Expenses of the System.

“Operation and Maintenance Expenses” shall mean all costs reasonably incurred in connection with the operation, use and maintenance of the System, including (i) repairs necessary to keep the System in efficient and economical operating condition, (ii) the payments of premiums for insurance hereinafter required to be carried on the System, (iii) payments of reasonable Administrative Expenses and (iv) generally all expenses of the System except depreciation, interest expense related to the Loan Agreement, any Outstanding Parity Obligations, any Additional Parity Obligations, and interest expenses on any obligations subordinate to such obligations.

“Outstanding Parity Obligations” shall mean obligations issued and outstanding having a lien payable from Net Revenues of the System on a parity with the Loan Agreement.

“Revenues” shall mean and include all income, moneys and receipts to be received by the Local Borrower, directly or indirectly, from the ownership, use or operation of the System including any waste material or by-products of the System, and also including investment income.

Section 2 Source of Repayment and Rate Covenant Provisions

1. It is understood and agreed that all payments with respect to the Loan shall be made only from the Source of Repayment, which is hereby pledged to the payment of all amounts due under the Loan. The “Source of Repayment” is the Net Revenues of the System as hereinafter provided. The Net Revenues are hereby pledged by the Local Borrower to the payment of all amounts due under the Loan and the repayment of such amounts shall be secured by a lien on and pledge of the Net Revenues on parity with the pledge and lien granted by the Local Borrower for the payment and security of Outstanding Parity Obligations and Additional Parity

Obligations. The amounts due under this Loan Agreement and any Outstanding Parity Obligations and Additional Parity Obligations (exclusive of the Local Borrower's repayment obligations with respect to those reserve fund credit instruments in connection with this Loan and any Additional Parity Obligations which shall be secured on a subordinate basis), shall be equally and ratably secured by said pledge and lien without one having priority over the other. The Local Borrower intends that this pledge shall be a prior and paramount lien on and a first pledge of the Net Revenues, as will be sufficient to make all payments on the Loan, and the Local Borrower covenants to make the payments under the Loan from the Net Revenues, except to the extent that it chooses to make such payments from other legally available funds at its sole option. In no event shall the Local Borrower be required to make the payments on the Loan from any revenues, receipts or sources not derived from the Net Revenues of the System.

2. The Local Borrower covenants and agrees that it will establish and maintain schedules of rates, fees and charges for all services supplied by the System which, after making reasonable allowance for contingencies and errors in estimates, shall produce Revenues in each fiscal year that are sufficient, (a) to pay the Operation and Maintenance Expenses of the System, (b) to produce an aggregate amount of Net Revenues equal the sum of (i) one hundred twenty percent (120%) of the aggregate of the debt service or comparable payments payable on the Loan, the Outstanding Parity Obligations, and any Additional Parity Obligations in such fiscal year, and (ii) one hundred percent (100%) of the aggregate of the debt service on comparable payments, separately payable and secured on a basis subordinate to the Loan by Net Revenues, and (c) to maintain all necessary fund balances required under the resolutions or agreements of the Local Borrower authorizing the Loan, the Outstanding Parity Obligations, and Additional Parity Obligations.

Section 3 Additional Parity Obligations

The Local Borrower covenants and agrees that no other obligations of any kind will be issued that are payable from or enjoy a pledge of the Net Revenues having priority over the Loan.

It is understood and agreed that Additional Parity Obligations having a lien upon and payable from the Net Revenues may be issued on parity with the Loan, but only as provided herein and only to provide funds to make improvements and expansions to the existing System, to purchase capacity rights in sewage treatment plant facilities owned by other political subdivisions of the State, to purchase capacity rights in water treatment plant facilities owned by other political subdivisions of the State, to acquire land, rights in land or water rights for the System, to provide reasonable reserves for Outstanding Parity Obligations and Additional Parity Obligations, to refund Outstanding Parity Obligations and Additional Parity Obligations or the Loan or to refund other bonds of the Local Borrower, if any, whether revenue bonds, general obligation bonds or other bonds or obligations, issued to provide funds to construct or acquire additions, extensions, improvements, expansions or replacements to the System, subject to the following conditions:

(a) The Local Borrower will not, at the time of the issuance of such Additional Parity Obligations, be in default under any Outstanding Parity Obligations, Additional Parity Obligations, the Loan or under any resolution related thereto or providing for the issuance of Additional Parity Obligations or any related credit or reserve fund credit instrument;

(b) The issuance of Additional Parity Obligations will be duly authorized at an election, if required by law, except as to any bonds or obligations to be issued exclusively for the purpose of refunding any Outstanding Parity Obligations and Additional Parity Obligations or the Loan;

(c) The issuance of Additional Parity Obligations will be provided for by a resolution duly adopted by the Local Borrower's governing body and such Additional Parity Obligations will mature and interest will be paid on the same days of the year as Outstanding Parity Obligations and Additional Parity Obligations; and

(d) The Reserve Requirement (as defined in Exhibit E), as computed for the amount of Additional Parity Obligations to be issued, shall be available in the Reserve Fund (as defined in Exhibit E) in one of the following ways: (i) Additional Parity Obligation proceeds shall be immediately deposited to the Reserve Fund, or a separate account as may be required, in an amount equal to the increased Reserve Requirement, if any, for the Additional Parity Obligations, or a Reserve Fund surety acceptable to the Authority shall be purchased in such amount; or (ii) Additional Parity Obligations, or any other revenues of the Local Borrower lawfully available to be used for such deposit, may be deposited to the Reserve Fund in equal monthly deposits such that the Reserve Requirement for such Additional Parity Obligations shall be satisfied not more than four years from the date of delivery of such Additional Parity Obligations; or (iii) any combination of (i) and (ii). The Reserve Fund may be divided into separate and discrete subaccounts each pledged to different Additional Parity Obligations provided that each Additional Parity Obligation Reserve Requirement is satisfied in one of the foregoing manners; and

(e) the aggregate amount of the Net Revenues of the System for the last full fiscal year immediately preceding the issuance of such Additional Parity Obligation, as shown in a certificate or report of an independent public accountant or firm of such accountants presented to the Authority, has been at least equal to the sum of the following: (i) not less than one hundred twenty percent (120%) of the highest year's debt service or comparable payments on all of the Outstanding Parity Obligations, the Loan, and the Additional Parity Obligations then to be issued, and (ii) not less than one hundred percent (100%) of the aggregate of amounts payable in such fiscal year and secured on a subordinate basis by such Net Revenues and (iii) not less than one hundred percent (100%) of any additional amounts required to maintain or fund necessary fund balances under the resolutions or agreements of the Local Borrower relating to the obligations described in (i).

For the purposes of the subparagraph (e), additional amounts may be added to the Net Revenues as shown on the accountant's certificate or report in the following circumstances:

(1) If the Revenues have been increased as a result of construction of additions or acquisitions to the System made prior to the issuance of such Additional Parity Obligations but during either the fiscal year in which the Additional Parity Obligations are to be issued or in the preceding fiscal year, such increased Revenues may be treated as if such additions to the System were completed on the first day of the fiscal year used for purposes of computation. The Revenues derived from such additions and acquisitions to the System may

be converted for purposes of computation to estimated Net Revenues which would have been derived therefrom if said additions and acquisitions had actually been completed on the first day of the year used for computation purposes, such estimates to be made by a professional firm experienced in estimating future revenues and expenses of water and sewer systems and having a recognized reputation for that work.

(2) If all or part of the proceeds of the Additional Parity Obligations are to be expended for the acquisition of existing water properties or facilities, there may be added to the Net Revenues of such preceding fiscal year the Net Revenues which would have been derived from the operation of such properties or facilities if such properties or facilities had been acquired and operated by the Local Borrower under the Local Borrower's applicable rate schedule during the entire preceding fiscal year, such Net Revenues to be estimated by a professional firm experienced in estimating future revenues and expenses of water and sewer systems and having a recognized reputation for that work.

(3) If prior to the issuance of the Additional Parity Obligations and subsequent to the first day of such preceding fiscal year, the Local Borrower shall have increased its rates or charges imposed for water services, there may be added to the Net Revenues of such fiscal year the additional Net Revenues which would have been received from the operation of the System during such fiscal year had such increase been in effect throughout such fiscal year, such additional Net Revenues to be estimated by a professional firm experienced in estimating future revenues and expenses of water and sewer systems and having a recognized reputation for that work.

For purposes of calculations under this subparagraph (e), if Additional Parity Obligations are to be issued exclusively for the purpose of refunding or retiring a portion of Outstanding Parity Obligations or this Loan, for the purpose of the calculation required under this subparagraph (e), the percentage requirement on such obligations will be taken into consideration only in any future fiscal year in which any fractional part of such obligations will remain outstanding after the issuance of such Additional Parity Obligations; provided that nothing herein contained shall be construed to limit or restrict the issuance of any Additional Parity Obligations if, before or as a result of the issuance and delivery of such Additional Parity Obligations, any other obligations theretofore issued will no longer be outstanding, or full payment for any such obligations will be provided for by funds from the bond or obligation proceeds.

Exhibit E Debt Service Reserve Requirement

No Debt Service Reserve Required

The Local Borrower shall not be required to either (i) provide a Reserve Fund Surety or (ii) fund a Reserve Fund in cash in connection with this Agreement.

Exhibit F Replacement Reserve Requirements

No Replacement Reserve Required

The Local Borrower shall not be required to maintain a Replacement Reserve in connection with the Loan.

Exhibit G Form of Opinion of Local Borrower Counsel

Enter Date of Opinion

Water Infrastructure Finance Authority of Arizona
Phoenix, Arizona

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of Arizona and I have acted as counsel to the Town of Clarkdale (the “*Local Borrower*”), which has entered into a Loan Agreement (as hereinafter defined) with the Water Infrastructure Finance Authority of Arizona (the “*Authority*”), and have acted as such in connection with the authorization, execution and delivery by the Local Borrower of the Loan Agreement (as hereinafter defined). Terms used and not otherwise defined herein have the meanings given to them in the Loan Agreement.

In so acting I have examined the Constitution and laws of the State of Arizona. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(a) the Loan Agreement, dated as of **TBD** (the “*Loan Agreement*”) by and between the Authority and the Local Borrower; and

(b) proceedings of the governing board of the Local Borrower relating to the approval of the Loan Agreement and the Local Borrower Bond and the execution, issuance and delivery thereof on behalf of the Local Borrower, and the authorization of the undertaking and completion of the Project, including the proceedings relating to the election held on Enter Election Date on the question of authorizing the Local Borrower to enter into loan agreements with the Authority and/or issue the Local Borrower Bond, of which there is authorized but unissued capacity at least equal to the principal amount of the Loan.

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to render the opinions expressed below.

Based upon the foregoing, I am of the opinion that:

1. The Local Borrower is a political subdivision of the State of Arizona with the legal right to carry on the business of the System as currently being conducted and as proposed to be conducted.
2. The Local Borrower has full legal right and authority to pledge the Source of Repayment for the Loan Repayments and to execute and deliver the Loan Agreement, and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project; subject, however, to the effect of restrictions and limitations imposed by or

resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws affecting creditors rights generally (“*Creditor’s Rights Limitations*”) heretofore or hereafter enacted.

3. The Local Borrower has duly and validly pledged the Source of Repayment for the punctual payment of the principal of and interest on the Loan and all other amounts due under the Loan Agreement and the Local Borrower Bond according to their respective terms.

4. All additional debt tests and reserve and other requirements applicable to the Local Borrower with respect to the pledge of the Source of Repayment have been satisfied.

5. The authorizing proceedings of the Local Borrower’s governing body approving the Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Local Borrower, and authorizing the Local Borrower to undertake and complete the Project (hereinafter collectively called the “*Authorizing Resolutions*”) have been duly and lawfully adopted and authorized in accordance with applicable Arizona law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Arizona law, and at which quorums were present and acting throughout.

6. The Loan Agreement has been duly authorized, executed and delivered by the authorized officers of the Local Borrower; and, assuming that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered the Loan Agreement, the Loan Agreement constitutes the legal, valid and binding obligation of the Local Borrower enforceable in accordance with its terms; subject, however, to the effect of and to restrictions and limitations imposed by or resulting from Creditor’s Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual obligations generally.

7. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Loan Agreement by the Local Borrower, the observance and performance by the Local Borrower of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Local Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Local Borrower is a party or by which it, the System or its property or assets is bound.

8. To the best of my knowledge, after such investigation as I have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Local Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement, and the undertaking and completion of the Project have been obtained or made.

9. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any Court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Local Borrower or the validity, legality or enforceability of the Loan Agreement, or the undertaking or completion of the Project.

This opinion is rendered on the basis of Federal law and the laws of the State of Arizona as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Very truly yours,

Exhibit H Form of Tax Compliance Certificate of Local Borrower

Water Infrastructure Finance Authority of Arizona

\$2,000,000.00 Loan to Town of Clarkdale

The Water Infrastructure Finance Authority of Arizona (the “Authority”) and Town of Clarkdale (the “Local Borrower”) are entering into a Loan Agreement (the “Loan Agreement”) in the maximum principal amount stated above pursuant to which the Authority will make a loan (the “Loan”) to the Local Borrower. In connection with its state revolving fund programs, the Authority issues its bonds (“Authority Bonds”) from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority’s interest for the Loan to qualify and be a Tax-Exempt Obligation that is not an AMT Obligation. Therefore, in order to establish certain facts necessary for the Loan to qualify and be treated as a Tax-Exempt Obligation that is not an AMT Obligation, and as required by the provisions of the Loan Agreement, the Local Borrower by its officer signing this Certificate, certifies, represents, and covenants as follows with respect to the Loan. All statements in this Certificate are of facts or, as to events to occur in the future, reasonable expectations.

I. DEFINITIONS

1.10. Attachment A. The definitions and cross-references set forth in Attachment A apply to this Certificate and its Attachments. All terms relating to a particular issue, such as Sale Proceeds, relate to the Loan, unless indicated otherwise. (For example, “Sale Proceeds” refers to Sale Proceeds of the Loan, unless indicated otherwise.)

1.20. Special Definitions. Terms used herein, to the extent not defined in Attachment A or below, have the same meaning as defined in the Loan Agreement. In addition, the following definitions apply to this Certificate and its Attachments:

“Instructions” means the Rebate Instructions attached hereto as Attachment A-1.

“Issue” means the Loan.

“Issuer” means the Local Borrower.

“Project” means the financing of a portion of the costs of acquisition, construction and improvement of facilities to be financed by the Loan and includes Issuance Costs and interest on the Loan for up to three years from the Issuance Date or, if later, one year after the date the Project is placed in service, all of which are governmental purposes for purposes of the Code.

“Reserve Fund” is defined in 3.40(a).

1.30. References. Reference to a Section means a section of the Code. Reference by number only (for example, “2.10”) means that numbered paragraph of this Certificate. Reference to an Attachment means an attachment to this Certificate.

II. ISSUE DATA

2.10. Issuer. The Issuer is a Governmental Unit.

2.20. Purpose of Issue. The Issue is being issued to provide funds to pay costs of the Project.

2.30. Dates. The Sale Date of the Issue is the date on which the Loan Agreement is executed and delivered by the Authority and the Local Borrower, and the Issuance Date of the Issue is the first date on which the aggregate draws under the Loan exceed the lesser of \$50,000 or 5% of the principal amount of the Loan.

2.40. Issue Price. The Issue Price of the Issue is the principal amount actually advanced by the Authority to the Issuer as the Loan.

2.50. Sale Proceeds, Net Proceeds, and Net Sale Proceeds. The amount of Sale Proceeds equals the Issue Price. The amount of Net Proceeds equals the Issue Price minus the amount of Proceeds (if any) deposited in the Reserve Fund (if any). The amount of Net Sale Proceeds equals the amount of Net Proceeds minus the Minor Portion.

2.60. Disposition of Sale Proceeds. There will be no Pre-Issuance Accrued Interest with respect to the Issue. The Sale Proceeds will be used to pay costs of the Project and, if applicable, to fund the Reserve Fund (if any).

2.70. Higher Yielding Investments. Gross Proceeds will not be invested in Higher Yielding Investments except for (A) the Minor Portion to the extent provided in 3.80, (B) those Gross Proceeds identified in 3.10, 3.20, and 3.30, but only during the applicable Temporary Periods there described for those Gross Proceeds, and (C) Gross Proceeds held in the Reserve Fund (if any) to the extent set forth in 3.40(a).

2.80. Single Issue. No other obligations have been or will be sold less than 15 days before or after the Sale Date pursuant to the same plan of financing with the Issue that are expected to be paid from substantially the same source of funds as the Issue, determined without regard to guarantees from a person who is not a Related Party to the Issuer. Accordingly, no obligations other than those of the Issue are a part of a single issue with the Issue.

III. ARBITRAGE (NONREBATE) MATTERS

3.10. Use of Net Sale Proceeds and Pre-Issuance Accrued Interest; Temporary Periods.

(A) Pre-Issuance Accrued Interest. There will be no Pre-Issuance Accrued Interest with respect to the Issue.

(B) Payment of Costs of the Project.

(1) All of the Net Sale Proceeds will be used to pay costs of the Project. Such Sale Proceeds may be used to acquire or hold Higher Yielding Investments for a period ending on the third anniversary of the Issuance Date (such period being the Temporary Period for such amount) because the following three tests are reasonably expected to be satisfied:

(i) At least 85% of the Net Sale Proceeds will be allocated to expenditures on the Project by the end of the Temporary Period;

(ii) Within 6 months of the Issuance Date, the Issuer will incur substantial binding obligations to third parties to expend at least 5% of the Net Sale Proceeds on the Project; and

(iii) Completion of the Project and allocation of the Net Sale Proceeds to expenditures will proceed with due diligence.

Any Sale Proceeds that remain unspent on the third anniversary of the Issuance Date, which is the expiration date of the Temporary Period for such Proceeds, shall not be invested in Higher Yielding Investments with respect to the Issue after that date except as part of the Minor Portion. In complying with the foregoing sentence, the Issuer may take into account “yield reduction payments” (within the meaning of Regulations §1.148-5(c)) paid to the United States.

(2) Any Reimbursement Allocation will qualify as a Reimbursement of Prior Capital Expenditures and will be made by an entry in the financial records of the Issuer kept with respect to the Issue showing that Sale Proceeds of the Issue have been returned to the fund or account of the Issuer from which such amount was originally and temporarily advanced to finance Capital Expenditures paid before this date by not more than (A) 18 months after the later of the date such Capital Expenditures were paid or the date on which the property resulting from such Capital Expenditures and comprising part of the Project was placed in service or (B) three years after the original expenditures were paid.

3.20. Investment Proceeds. Any Investment Proceeds will be used to pay costs of the Project and may be invested in Higher Yielding Investments during the Temporary Period identified in 3.10(B)(1) or, if longer, one year from the date of receipt, such period being the Temporary Period for such Proceeds.

3.30. Payment Fund. Amounts deposited from time to time in the fund of the Issuer from which payments will be made on the Issue, which is a Bona Fide Debt Service Fund, will be used to pay Debt Service on the Issue within 13 months after the amounts are so deposited, such period being the Temporary Period for such amounts.

3.40. Reserve Funds.

(A) Debt Service Reserve Fund. If (and only if) the Loan Agreement requires the funding of a debt service reserve fund (“Reserve Fund”) in cash: The amount of Proceeds of the Loan deposited in the Reserve Fund shall not exceed

10% of the stated principal amount of the Loan. Amounts in the portion of the Reserve Fund allocable to the Issue may be invested in Higher Yielding Investments with respect to the Issue to the extent that such amounts do not exceed the least of (i) 10% of the principal amount of the Issue; (ii) maximum annual Debt Service; and (iii) 125% of average annual Debt Service. Any amounts in the portion of the Reserve Fund allocable to the Issue in excess of the least of these amounts will not be invested in Higher Yielding Investments with respect to the Issue. In complying with the yield restriction set forth in this Section, the Issuer may take into account “yield reduction payments” (within the meaning of Regulations § 1.148-5(c)) timely paid or to be timely paid to the United States because amounts in the Reserve Fund (other than investment earnings) are not reasonably expected to be used to pay Debt Service other than in connection with reductions in the amount required to be in the Reserve Account. The establishing and funding of the Reserve Fund was reasonably required by the Authority as a condition of making the Loan.

(B) Replacement Reserve Fund. If (and only if) the Loan Agreement requires the funding of a replacement reserve fund (“Replacement Reserve Fund”) in cash: The Replacement Reserve Fund may be used for one or more of the following purposes: (i) the acquisition of new, or the replacement of obsolete or worn out, machinery, equipment, furniture, fixtures or other personal property for the Issuer’s utility system, provided that the property is depreciable; (ii) the performance of repairs with respect to the Issuer’s utility system that are of an extraordinary and non-recurring nature, provided that the property is depreciable; (iii) the acquisition or construction of additions to or improvements, extensions or enlargements to, or remodeling of, the Issuer’s utility system, provided that the property is depreciable; and/or (iv) to make Debt Service payments to the Authority on the Issue (collectively, the “Permitted Uses”). The Issuer reasonably expects to use amounts in the Replacement Reserve Fund for Permitted Uses other than to make Debt Service payments to the Authority on the Issue, and therefore there is no reasonable assurance of the availability of those amounts to make Debt Service payments to the Authority on the Issue if the Issuer encounters financial difficulties

3.50. No Other Replacement Fund or Assured Available Funds. Except as described in 3.30 and, if and to the extent applicable, 3.40(A), , the Issuer has not established and does not expect to establish or use any sinking fund, debt service fund, redemption fund, reserve or replacement fund, or similar fund, or any other fund to pay Debt Service on the Issue. Except for money referred to in 3.30 and Proceeds of a Refunding Issue, if any, no other money or Investment Property is or will be pledged as collateral or used for the payment of Debt Service on the Issue (or for the reimbursement of any others who may provide money to pay that Debt Service), or is or will be restricted, dedicated, encumbered, or set aside in any way as to afford the holders of the Issue reasonable assurance of the availability of such money or Investment Property to pay Debt Service on the Issue.

3.60. No Overissuance. The Proceeds of the Issue are not reasonably expected to exceed the amount needed for the governmental purposes of the Issue as set forth in 2.20.

3.70. Other Uses of Proceeds Negated. Except as stated otherwise in this Certificate, none of the Proceeds of the Issue will be used:

(A) to pay principal of or interest on, refund, renew, roll over, retire, or replace any other obligations issued by or on behalf of the Issuer or any other Governmental Unit,

(B) to replace any Proceeds of another issue that were not expended on the project for which such other issue was issued,

(C) to replace any money that was or will be used directly or indirectly to acquire Higher Yielding Investments,

(D) to make a loan to any person or other Governmental Unit,

(E) to pay any Working Capital Expenditure other than expenditures identified in Regulations §1.148-6(d)(3)(ii)(A) and (B) (i.e., Issuance Costs of the Issue, Qualified Administrative Costs, reasonable charges for a Qualified Guarantee or for a Qualified Hedge, interest on the Issue for a period commencing on the Issuance Date of the Issue and ending on the date that is the later of three years from such Issuance Date or one year after the date on which the project financed or refinanced by the Issue was or will be placed in service, payments of the Rebate Amount, and costs, other than those already described, that do not exceed 5% of the Sale Proceeds and that are directly related to Capital Expenditures financed or deemed financed by the Issue, principal or interest on an issue paid from unexpected excess Sale Proceeds or Investment Proceeds, and principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a Bona Fide Debt Service Fund), or

(F) to reimburse any expenditures made prior to the Issuance Date except those that qualify as a Reimbursement of Prior Capital Expenditures.

No portion of the Issue is being issued solely for the purpose of investing Proceeds in Higher Yielding Investments.

3.80. Minor Portion. The Minor Portion is equal to the lesser of 5% of the Sale Proceeds of the Issue and \$100,000. Such Minor Portion may be invested in Higher Yielding Investments with respect to the Issue.

3.90. No Other Replacement Proceeds. That portion of the Issue that is to be used to finance Capital Expenditures has a weighted average maturity that does not exceed 120% of the weighted average reasonably expected economic life of the property resulting from such Capital Expenditures.

IV. REBATE MATTERS

4.10. Issuer Obligation Regarding Rebate. Consistently with its covenants contained in the Loan Agreement, the Issuer will calculate and make, or cause to be calculated and made,

payments of the Rebate Amount in the amounts and at the times and in the manner provided in Section 148(f) with respect to Gross Proceeds to the extent not exempted under Section 148(f)(4) and the Instructions.

4.20. No Avoidance of Rebate Amount. No amounts that are required to be paid to the United States will be used to make any payment to a party other than the United States through a transaction or a series of transactions that reduces the amount earned on any Investment Property or that results in a smaller profit or a larger loss on any Investment Property than would have resulted in an arm's length transaction in which the Yield on the Issue was not relevant to either party to the transaction.

4.30. Exceptions.

(A) Small Issuer Exception. The Issue is exempt under Section 148(f)(4)(D) from the rebate requirement **if all** of the following requirements are satisfied:

(1) The Issuer is a Governmental Unit with general taxing powers within the meaning of Section 148(f)(4)(D), and

(2) No part of the Issue is a Private Activity Bond, and

(3) All of the Net Proceeds will be used for "local governmental activities" of the Issuer within the meaning of Section 148(f)(4)(D) and none of the Net Proceeds will be used for any Private Business Use, and

(4) The aggregate principal amount of all Tax-Exempt Obligations, including the Issue, issued or to be issued by the Issuer, its subordinate entities and entities that issue any such obligations on behalf of the Issuer, or on behalf of which the Issuer issues any such obligations, during the current calendar year does not, and is not reasonably expected to, exceed \$5,000,000. The Tax-Exempt Obligations taken into account for this purpose exclude any Private Activity Bonds and any Current Refunding Portion and Current Refunding Issue to the extent that the amount of such Current Refunding Portion or Current Refunding Issue does not exceed the outstanding amount of the obligations refunded by such Current Refunding Portion or Current Refunding Issue. No entity has been or will be formed or availed of to avoid the purposes of Section 148(f)(4)(D)(i)(IV).

If, but only if, all of the above requirements are satisfied, check here: ☐

and sign here: _____

(B) General Exception. Notwithstanding the foregoing, the computations and payments of amounts to the United States referred to in IV need not be made to the extent that the Issuer will not thereby fail to comply with any requirements of Section 148(f) and the Instructions based on an opinion of bond counsel.

4.40. Election. The Issue is a Construction Issue. The Issuer hereby elects to apply the 2-year spending exception to the rebate requirements on the basis of actual facts instead of the Issuer's reasonable expectations.

V. OTHER TAX MATTERS

5.10. Not Private Activity Bonds or Pool Bonds. No obligation of the Issue will be a Private Activity Bond or a pooled financing bond (within the meaning of Section 149(f)), based on the following:

(A) Not more than 5% of the Proceeds, if any, directly or indirectly, will be used for a Private Business Use and not more than 5%, if any, of the Debt Service on the Issue, directly or indirectly, will be secured by any interest in property used or to be used for a Private Business Use or payments in respect of such property, or will be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a Private Business Use.

(B) Less than 5% of the Proceeds, if any, will be used to make or finance loans to any Private Person or Governmental Unit other than the Issuer.

(C) The lesser of the Proceeds that are being or will be used for any Private Business Use or the Proceeds with respect to which there are payments or (borrowed money) that are being or will be used for any Private Business Use does not exceed \$15,000,000 and none of the Proceeds will be used with respect to an "output facility" (other than a facility for the furnishing of water) within the meaning of Section 141(b)(4).

(D) The Issuer does not expect to sell or otherwise dispose of the Project or any portion thereof during the term of the Issue except for dispositions of property in the normal course at the end of such property's useful life to the Issuer. With respect to tangible personal property, if any, that is part of the Project, the Issuer reasonably expects that:

(1) Dispositions of such tangible personal property, if any, will be in the ordinary course of an established governmental program;

(2) The weighted average maturity of the obligations of the Issue financing such property (treating the obligations of the Issue properly allocable to such personal property as a separate issue for this purpose) will not be greater than 120% of the reasonably expected actual use of such property for governmental purposes;

(3) The fair market value of such property on the date of disposition will not be greater than 25% of its cost;

(4) The property will no longer be suitable for its governmental purposes on the date of disposition; and

(5) The amounts received from any disposition of such property are required to be, and will be, commingled with substantial tax or other governmental revenues and will be spent on governmental programs within 6 months from the date of such deposit and commingling.

5.20. Issue Not Federally Guaranteed. The Issue is not Federally Guaranteed.

5.30. Not Hedge Bonds. At least 85% of the Spendable Proceeds will be used to carry out the governmental purposes of the Issue within three years from the Issuance Date. Not more than 50%, if any, of the Proceeds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more (including but not limited to any investment contract or fixed yield investment having a maturity of four years or more). The reasonable expectations stated above are not based on and do not take into account (A) any expectations or assumptions as to the occurrence of changes in market interest rates or changes of federal tax law or regulations or rulings thereunder or (B) any prepayments of items other than items that are customarily prepaid.

5.40. Hedge Contracts. The Issuer has not entered into, and does not reasonably expect to enter into, any Hedge with respect to the Issue, or any portion thereof. The Issuer acknowledges that entering into a Hedge with respect to the Issue, or any portion thereof, may change the Yield and that Bond Counsel should be contacted prior to entering into any Hedge with respect to the Issue in order to determine whether payments/receipts pursuant to the Hedge will be taken into account in computing the Yield.

5.50. Internal Revenue Service Information Return. Within the time and on the form prescribed by the Internal Revenue Service under Section 149(e), the Issuer will file with the Internal Revenue Service an Information Return setting forth the required information relating to the Issue. The information reported on that Information Return will be true, correct, and complete to the best of the knowledge and belief of the undersigned.

5.60. Responsibility of Officer.

(A) The officer signing this Certificate is one of the officers of the Issuer responsible for issuing the Issue.

(B) To the best of the knowledge, information, and belief of the undersigned, all expectations stated in this Certificate are the expectations of the Issuer and are reasonable, all facts stated are true, and there are no other existing facts, estimates, or circumstances that would or could materially change the statements made in this Certificate. The certifications and representations made in this Certificate are intended to be relied upon as certifications described in Regulations § 1.148-2(b). The Issuer acknowledges that any change in the facts or expectations from those set forth in this Certificate may result in different requirements or a change in status of the Issue or interest thereon under the Code, and that bond counsel should be contacted if such changes are to occur or have occurred.

Town of Clarkdale

By: _____

Name: _____

Title: _____

List of Attachments

Attachment A -- Definitions for Tax Compliance Certificate

Attachment A-1 -- Rebate Instructions

Attachment A

Definitions for Tax Compliance Certificate of Local Borrower

The following terms, as used in Attachment A and in the Tax Compliance Certificate to which it is attached and in the other Attachments to the Tax Compliance Certificate, have the following meanings unless therein otherwise defined or unless a different meaning is indicated by the context in which the term is used. Capitalized terms used within these definitions that are not defined in Attachment A have the meanings ascribed to them in the Tax Compliance Certificate to which this Attachment A is attached. The word “Issue,” in lower case, refers either to the Issue or to another issue of obligations or portion thereof treated as a separate issue for the applicable purposes of Section 148, as the context requires. The word “obligation” or “obligations,” in lower case, includes any obligation, whether in the form of bonds, notes, certificates, or any other obligation that is a “bond” within the meaning of Section 150(a)(1). All capitalized terms used in this Certificate include either the singular or the plural. All terms used in this Attachment A or in the Tax Compliance Certificate to which this Attachment A is attached, including terms specifically defined, shall be interpreted in a manner consistent with Sections 103 and 141-150 and the applicable Regulations thereunder except as otherwise specified. All references to Section, unless otherwise noted, refer to the Code.

“Advance Refunding Issue” means any Refunding Issue that is not a Current Refunding Issue.

“Advance Refunding Portion” means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as an Advance Refunding Issue if it had been issued as a separate issue.

“AMT Obligation” means a Tax-Exempt Obligation the interest on which is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code.

“Available Construction Proceeds” means an amount equal to (a) the sum of (i) the Issue Price of an issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocable to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocable to the underwriter’s discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocable to the issue. “Available Construction Proceeds” does not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocable to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the project financed by the issue is substantially completed, provided, however, that such Investment Proceeds or earnings shall be excluded from “Available Construction Proceeds” if the Issuer has timely elected such exclusion. If an issue is a Multipurpose Issue that includes a New Money Portion that is a Construction Issue, this definition shall be applied by substituting “New Money Portion” for “issue” each place the latter term appears. If an issue or the New Money Portion of a Multipurpose Issue, as applicable, is

not a Construction Issue, and the Issuer makes the bifurcation election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting “Construction Portion” for “issue” each place the latter term appears.

“Bona Fide Debt Service Fund” means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more issues, the portion of that fund properly allocable to an issue), or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding Bond Year or one-twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

“Bond Year” means the annual period relevant to the application of Section 148(f) to an issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of an issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

“Capital Expenditures” means costs of a type that are properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of Placed in Service) under general federal income tax principles.

“Code” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Commingled Fund” means any fund or account of the Issuer that contains both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of the issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

“Commingled Investment Proceeds” means Investment Proceeds of an issue (other than Investment Proceeds held in a Refunding Escrow) that are deposited in a Commingled Fund with substantial tax or other revenues from governmental operations of the Issuer and that are reasonably expected to be spent for governmental purposes within 6 months from the date of deposit in the Commingled Fund, using any reasonable accounting assumptions.

“Conduit Borrower” means the obligor on a purpose investment.

“Conduit Financing Issue” means an issue the Proceeds of which are reasonably expected to be used to finance one or more Conduit Loans.

“Conduit Loan” means a purpose investment acquired by the Issuer with Proceeds of a Conduit Financing Issue, thereby effecting a loan to the Conduit Borrower.

“Construction Expenditures” means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

“Construction Issue” means an issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization. If an issue is a Multipurpose Issue that includes a New Money Portion, this definition shall be applied by substituting “New Money Portion” for “Construction Issue” each place the latter term appears. If an election under Section 148(f)(4)(C)(v) and Regulations §1.148-7(j) is made to bifurcate an issue or the New Money Portion of a Multipurpose Issue, this definition shall be applied by substituting “Construction Portion” for “Construction Issue” each place the latter term appears.

“Construction Portion” means that portion of an issue or the New Money Portion of a Multipurpose Issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization and that finances 100% of the Construction Expenditures.

“Controlled Group” means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of Regulations §1.150-1(e).

“Current Refunding Issue” means a Refunding Issue that is issued not more than 90 days before the last expenditure of any Proceeds of the Refunding Issue for the payment of Debt Service on the Refunded Bonds.

“Current Refunding Portion” means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as a Current Refunding Issue if it had been issued as a separate issue.

“Debt Service” means principal of and interest and any redemption premium on an issue.

“Excess Gross Proceeds” means all Gross Proceeds of an Advance Refunding Issue that exceed an amount equal to 1% of the Sale Proceeds of such Advance Refunding Issue, other than Gross Proceeds allocable to: (a) payment of Debt Service on the Refunded Bonds; (b) payment of Pre-Issuance Accrued Interest on the Advance Refunding Issue and interest on the Advance Refunding Issue that accrues for a period up to the completion date of any capital project financed by the Prior Issue, plus one year; (c) a reasonably required reserve or replacement fund for the

Advance Refunding Issue or Investment Proceeds of such fund; (d) payment of Issuance Costs of the Advance Refunding Issue; (e) payment of administrative costs allocable to repaying the Refunded Bonds, carrying and repaying the Advance Refunding Issue, or investments of the Advance Refunding Issue; (f) Transferred Proceeds allocable to expenditures for the governmental purpose of the Prior Issue (treating for this purpose all unspent Proceeds of the Prior Issue properly allocable to the Refunded Bonds as of the Issuance Date of the Advance Refunding Issue as Transferred Proceeds); (g) interest on purpose investments; (h) Replacement Proceeds in a sinking fund for the Advance Refunding Issue; and (i) fees for a Qualified Guarantee for the Advance Refunding Issue or the Prior Issue. If an Issue is a Multipurpose Issue that includes an Advance Refunding Portion, this definition shall be applied by substituting “Advance Refunding Portion” for “Advance Refunding Issue” each place the latter term appears.

“Federally Guaranteed” means that (a) the payment of Debt Service on an issue, or the payment of principal or interest with respect to any loans made from the Proceeds of the issue, is directly or indirectly guaranteed in whole or in part by the United States or by an agency or instrumentality of the United States, within the meaning of Section 149(b) of the Code, or (b) more than 5% of the Proceeds of an issue will be invested directly or indirectly in federally insured deposits or accounts. The preceding sentence does not apply to (a) Proceeds invested during an initial Temporary Period until such Proceeds are needed to pay costs of the project, (b) investments of a Bona Fide Debt Service Fund, (c) direct purchases from the United States of obligations issued by the United States Treasury, or (d) other investments permitted by Section 149(b) or Regulations §1.149(b)-1(b).

“501(c)(3) Organization” means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

“Fixed Yield Issue” means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

“Governmental Unit” means a state, territory or possession of the United States, the District of Columbia, or any political subdivision thereof referred to as a “State or local governmental unit” in Regulations §1.103-1(a). “Governmental Unit” does not include the United States or any agency or instrumentality of the United States.

“Gross Proceeds” means Proceeds and Replacement Proceeds of an issue.

“Hedge” means a contract entered into by the Issuer or the Conduit Borrower primarily to modify the Issuer’s or the Conduit Borrower’s risk of interest rate changes with respect to an obligation (e.g., an interest rate swap, an interest rate cap, a futures contract, a forward contract or an option).

“Higher Yielding Investments” means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.00001) higher than the Yield on the applicable issue, and (b) for all other purposes is more than one-eighth of one percentage point (.00125) higher than the Yield on the issue.

“Investment Proceeds” means any amounts actually or constructively received from investing Proceeds of an issue in Investment Property.

“Investment Property” means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment-type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax-Exempt Obligation that is a “specified private activity bond” as defined in Section 57(a)(5)(C), but does not include other Tax-Exempt Obligations.

“Issuance Costs” means costs to the extent incurred in connection with, and allocable to, the issuance of an issue, and includes underwriter’s compensation withheld from the Issue Price, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, guarantee fees other than for a Qualified Guarantee and similar costs, but does not include fees charged by the Issuer.

“Issuance Date” means the date of physical delivery of an issue by the Issuer in exchange for the purchase price of the issue.

“Issue Price” means in the circumstances applicable to an issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount), which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity was sold to the public.

(2) Private Placement. In the case of obligations sold by private placement, the aggregate of the prices (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount) paid to the

Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries).

“Minor Portion” means an amount equal to the lesser of \$100,000 or 5% of the Sale Proceeds of an issue.

“Multipurpose Issue” means an issue the bonds of which are allocable to two or more separate governmental purposes within the meaning of Regulations §1.148-9(h).

“Net Proceeds” means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue.

“Net Sale Proceeds” means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue and the portion invested as a part of a Minor Portion for the issue.

“New Money Issue” means an issue that is not a Refunding Issue.

“New Money Portion” means that portion of a Multipurpose Issue other than the Refunding Portion.

“Nonpurpose Investments” means any Investment Property that is acquired with Gross Proceeds as an investment and not in carrying out any governmental purpose of an issue. “Nonpurpose Investments” does not include any investment that is not regarded as “investment property” or a “nonpurpose investment” for the particular purposes of Section 148 (such as certain investments in U.S. Treasury obligations in the State and Local Government Series and certain temporary investments), but does include any other investment that is a “nonpurpose investment” within the applicable meaning of Section 148.

“Placed in Service” means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

“Pre-Issuance Accrued Interest” means interest on an obligation that accrued for a period not greater than one year before its Issuance Date and that will be paid within one year after such Issuance Date.

“Preliminary Expenditures” means any Capital Expenditures that are “preliminary expenditures” within the meaning of Regulations §1.150-2(f)(2), *i.e.*, architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project other than land acquisition, site preparation, and similar costs incident to commencement of construction. The aggregate amount of Preliminary Expenditures may not exceed 20% of the aggregate Issue Price of the issue or issues that financed or are reasonably expected to finance the project for which such Preliminary Expenditures are or were incurred.

“Prior Issue” means an issue of obligations all or a portion of the Debt Service on which is paid or provided for with Proceeds of a Refunding Issue. The Prior Issue may be a Refunding Issue.

“Private Activity Bond” means (a) obligations of an issue more than 10% of the Proceeds of which, directly or indirectly, are or are to be used for a Private Business Use and more than 10% of the Debt Service on which, directly or indirectly, is or is to be paid from or secured by payments with respect to property, or secured by property, used for a Private Business Use, or (b) obligations of an issue, the Proceeds of which are or are to be used to make or finance loans to any Private Person that, in the aggregate, exceed the lesser of 5% of such Proceeds or \$5,000,000. In the event of Unrelated or Disproportionate Use, the tests in (a) shall be applied by substituting 5% for 10% each place the latter term is used.

“Private Business Use” means use (directly or indirectly) in a trade or business carried on by any Private Person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a Private Person (other than a natural person) shall be treated as a trade or business. In the case of a Qualified 501(c)(3) Bond, Private Business Use excludes use by a 501(c)(3) Organization that is not an unrelated trade or business activity by such 501(c)(3) Organization within the meaning of Section 513(a).

“Private Person” means any natural person or any artificial person, including a corporation, partnership, trust or other entity, other than a Governmental Unit. “Private Person” includes the United States and any agency or instrumentality of the United States.

“Proceeds” means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue. “Proceeds” does not include Replacement Proceeds.

“Qualified Administrative Costs” means reasonable direct administrative costs (other than carrying costs) such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody and similar costs. General overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount are not Qualified Administrative Costs.

“Qualified 501(c)(3) Bonds” means an issue of obligations that satisfies the requirements of Section 145(a).

“Qualified Guarantee” means any guarantee of an obligation that constitutes a “qualified guarantee” within the meaning of Regulations §1.148-4(f).

“Qualified Hedge” means a Hedge that is a “qualified hedge” within the meaning of Regulations §1.148-4(h)(2).

“Rebate Amount” means the excess of the future value, as of any date, of all receipts on Nonpurpose Investments acquired with Gross Proceeds of an issue over the future value, as of that date, of all payments on those Nonpurpose Investments, computed in accordance with Section 148(f) and Regulations §1.148-3.

“Refunded Bonds” means obligations of a Prior Issue the Debt Service on which is or is to be paid from Proceeds of a Refunding Issue.

“Refunding Bonds” means obligations of a Refunding Issue.

“Refunding Issue” means an issue the Proceeds of which are or are to be used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs of the Refunding Issue.

“Refunding Escrow” means one or more funds established as part of a single transaction, or a series of related transactions, containing Proceeds of a Refunding Issue and any other amounts to be used to pay Debt Service on Refunded Bonds of one or more issues.

“Refunding Portion” means that portion of a Multipurpose Issue the Proceeds of which are, or are to be, used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs properly allocable to the Refunding Portion.

“Regulations” or “Reg.” means Treasury Regulations.

“Reimbursement Allocation” means an allocation of the Proceeds of an issue for the Reimbursement of Prior Capital Expenditures, other than Preliminary Expenditures, that meets each of the following requirements: (a) is evidenced on the books or records of the Issuer maintained with respect to the issue, (b) the allocation entry identifies either actual prior Capital Expenditures, or the fund or account from which the prior Capital Expenditures were paid, and (c) evidences the Issuer’s use of Proceeds of the issue to reimburse a Capital Expenditure for a governmental purpose that was originally paid from a source other than the Proceeds of the issue.

“Reimbursement of Prior Capital Expenditures” means a Reimbursement Allocation of Proceeds of the Issue to a Capital Expenditure paid prior to the Issuance Date of such Issue, that satisfies the following requirements: (a) the Capital Expenditure was paid after March 1, 1992; (b) prior to, or within 60 days after, payment of the Capital Expenditure (except Preliminary Expenditures), the Issuer adopted an official intent for the Capital Expenditure that satisfies Regulations §1.150-2(e); and (c) except for Preliminary Expenditures, the Reimbursement Allocation occurs or will occur within 18 months after the later of the date the Capital Expenditure was paid or the date the project resulting from such Capital Expenditure was Placed in Service or abandoned, but in no event more than 3 years after the Capital Expenditure was paid.

“Related Party” means, in reference to a Governmental Unit or 501(c)(3) Organization, any member of the same Controlled Group and, in reference to any person that is not a Governmental Unit or 501(c)(3) Organization, a “related person” as defined in Section 144(a)(3) of the Code.

“Replacement Proceeds” means, with respect to an issue, amounts (including any investment income, but excluding any Proceeds of any issue) replaced by Proceeds of that issue within the meaning of Section 148(a)(2). “Replacement Proceeds” includes amounts, other than Proceeds, held in a sinking fund, pledged fund or reserve or replacement fund for an issue.

“Sale Date” means, with respect to an issue, the first date on which there is a binding contract in writing with the Issuer for the sale and purchase of an issue (or of respective obligations of the issue if sold by the Issuer on different dates) on specific terms that are not later modified or adjusted in any material respect.

“Sale Proceeds” means that portion of the Issue Price actually or constructively received by the Issuer upon the sale or other disposition of an issue, including any underwriter’s compensation withheld from the Issue Price, but excluding Pre-Issuance Accrued Interest.

“Spensible Proceeds” means the Net Sale Proceeds of an issue.

“Tax-Exempt Obligation” means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidences of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150, and includes any obligation or any investment treated as a “tax-exempt bond” for the applicable purpose of Section 148.

“Tax-Exempt Organization” means a Governmental Unit or a 501(c)(3) Organization.

“Temporary Period” means the period of time, as set forth in the Tax Compliance Certificate, applicable to particular categories of Proceeds of an issue during which such category of Proceeds may be invested in Higher Yielding Investments without the issue being treated as arbitrage bonds under Section 148.

“Transferred Proceeds” means that portion of the Proceeds of an issue (including any Transferred Proceeds of that issue) that remains unexpended at the time that any portion of the principal of the Refunded Bonds of that issue is discharged with the Proceeds of a Refunding Issue and that thereupon becomes Proceeds of the Refunding Issue as provided in Regulations §1.148-9(b). “Transferred Proceeds” does not include any Replacement Proceeds.

“Unrelated or Disproportionate Use” means Private Business Use that is not related to or is disproportionate to use by a Governmental Unit within the meaning of Section 141(b)(3) and Regulations §1.141-9.

“Variable Yield Issue” means any Issue that is not a Fixed Yield Issue.

“Working Capital Expenditures” means any costs of a type that do not constitute Capital Expenditures, including current operating expenses.

“Yield” has the meaning assigned to it for purposes of Section 148 of the Code, and means that discount rate (stated as an annual percentage) that, when used in computing the present worth of all applicable unconditionally payable payments of Debt Service, all payments for a Qualified Guarantee, if any, and all payments and receipts with respect to a Qualified Hedge, if any, paid and to be paid with respect to an obligation (paid and to be paid during and attributable to the Yield Period in the case of a Variable Yield Issue), produces an amount equal to (a) the Issue Price in the case of a Fixed Yield Issue or the present value of the Issue Price at the commencement of the applicable Yield Period in the case of a Variable Yield Issue, or (b) the purchase price for yield purposes in the case of Investment Property, all subject to the applicable methods of computation provided for under Section 148, including variations from the foregoing. The Yield on Investment Property in which Proceeds or Replacement Proceeds of an issue are invested is computed on a basis consistent with the computation of Yield on that issue, including the same compounding interval of not more than one year selected by the Issuer.

“Yield Period” means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

The terms “bond”, “obligation”, “reasonably required reserve or replacement fund”, “reserve or replacement fund”, “loan”, “sinking fund”, “purpose investment”, “same plan of financing”, “other replacement proceeds”, and other terms relating to Code provisions used but not defined in this Certificate shall have the meanings given to them for purposes of Sections 103 and 141 to 150 unless the context indicates another meaning.

(End of Attachment A)

ATTACHMENT A-1
to
Tax Compliance Certificate of Local Borrower

INSTRUCTIONS FOR COMPLIANCE WITH REBATE
REQUIREMENTS OF SECTION 148(f) OF THE CODE.

The Issuer covenanted in the Loan Agreement and Tax Compliance Certificate to comply with the arbitrage rebate requirement of Section 148(f) of the Code. These Instructions provide guidance for that compliance, including the spending exceptions that free the Issue from all or part of the rebate requirements.

PART I: GENERAL

SECTION 1.01. REBATE GENERALLY.

The Rebate Amount¹ with respect to the Issue must be paid (rebated) to the United States to prevent the bonds of the Issue from being arbitrage bonds, the interest on which is subject to federal income tax. In general, the Rebate Amount is the amount by which the actual earnings on Nonpurpose Investments purchased (or deemed to have been purchased) with Gross Proceeds of the Issue exceed the amount of earnings that would have been received if those Nonpurpose Investments had a Yield equal to the Yield on the Issue.²

Stated differently, the Rebate Amount for the Issue as of any date is the excess of the Future Value, as of that date, of all Receipts on Nonpurpose Investments over the Future Value, as of that date, of all Payments on Nonpurpose Investments, computed using the Yield on the Issue as the Future Value rate.³

If the Issue is a Fixed Yield Issue, the Yield on the Issue generally is the Yield to maturity, taking into account mandatory redemptions prior to maturity. If the Issue is a Variable Yield Issue, the Yield on the Issue is computed separately for each Yield Period selected by the Issuer.

SECTION 1.02. SPECIAL DEFINITIONS.

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1. Capitalized terms that are not defined in these Instructions are defined in Attachment A to the Tax Compliance Certificate of the Issuer.
 2. Amounts earned on the Bona Fide Debt Service Fund for the Issue are not taken into account in determining the Rebate Amount since none of the obligations of the Issue are Private Activity Bonds, the rates of interest on the Issue do not vary and the average maturity of the Issue is at least 5 years.
 3. The scope of these Instructions does not permit a detailed description of the computation of the Rebate Amount with respect to the Issue. If you need assistance in computing the Rebate Amount on the Issue, please contact your bond counsel.

For purposes of these Instructions, the following terms shall have the following meanings.

“Available Construction Proceeds” means an amount equal to (a) the sum of (i) the Issue Price of the issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocated to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocated to the Underwriter’s discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocated to the issue. Available Construction Proceeds do not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocated to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the Projects financed by the issue is substantially completed. If the issue consists of a New Money Portion and a Refunding Portion and the New Money Portion is a Construction Issue, this definition shall be applied by substituting “New Money Portion” for “issue” each place the latter term appears. If the issue or the New Money Portion, as applicable, is not a Construction Issue, and the Issuer makes the election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting “Construction Portion” for “issue” each place the latter term appears.

“Bifurcated Issue” means a New Money Issue or the New Money Portion of a Multipurpose Issue that the Issuer, pursuant to Section 148(f)(4)(C)(v) and Regulations §1.148-7(j), has elected in its Tax Compliance Certificate to bifurcate into a Construction Portion and a Nonconstruction Portion.

“Bond Counsel’s Opinion” means an opinion or opinions of a nationally recognized bond counsel firm whose opinion is given with respect to the Issue when issued, or its successors or other nationally recognized bond counsel appointed by the Issuer.

“Bond Year” means the annual period relevant to the application of Section 148(f) to the issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of the issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

“Computation Date” means each date on which the Rebate Amount for an issue is required to be computed under Regulations §1.148-3(e). In the case of a Fixed Yield Issue, the first Computation Date shall not be later than 5 years after the Issuance Date of the issue. Subsequent Computation Dates shall be not later than 5 years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. In the case of a Variable Yield Issue, the first Computation Date shall be the last day of any Bond Year irrevocably selected by the Issuer ending on or before the fifth anniversary of the Issuance Date of such issue and

subsequent Computation Dates shall be the last day of each Bond Year thereafter or each fifth Bond Year thereafter, whichever is irrevocably selected by the Issuer after the first date on which any portion of the Rebate Amount is required to be paid to the United States. The final Computation Date is the date an issue is retired.

“Construction Expenditures” means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

“Construction Issue” means an issue at least 75 percent of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property which is or is to be owned by a Governmental Unit or a 501(c)(3) Organization. If an election has been made in the Issuer’s Tax Compliance Certificate to bifurcate an issue or the New Money Portion, the Construction Portion (i.e., that portion of the issue or the New Money Portion which satisfies the 75 percent test stated in the preceding sentence and which finances 100% of the Construction Expenditures) is treated as the Construction Issue and the balance of the issue or the New Money Portion is treated as the Nonconstruction Portion.

“Fixed Yield Issue” means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

“Future Value” means the value of a Payment or Receipt at the end of a period determined using the economic accrual method as the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the Issue, using the same compounding interval and financial conventions that were used to compute that Yield.

“Guaranteed Investment Contract” means any Nonpurpose Investment that has specifically negotiated withdrawal or retirement provisions and a specifically negotiated interest rate and any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

“Multipurpose Issue” means an issue that consists of a Refunding Portion and a New Money Portion.

“Payment” means payments actually or constructively made to acquire Nonpurpose Investments, as specified in Regulations §1.148-3(d)(1)i) through (v).

“Qualified Administrative Costs” means the reasonable, direct administrative costs, other than carrying costs, of purchasing or selling Nonpurpose Investments such as separately stated brokerage or selling commissions. Qualified Administrative Costs do not include legal and accounting fees, recordkeeping, custody, and similar costs, general overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount. In general, Qualified Administrative Costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or

a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

“Reasonable Retainage” means an amount, not to exceed 5% of the Net Sale Proceeds of the Issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the Issue. For example, Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

“Rebate Analyst” means an independent individual, firm or entity experienced in the computation of the Rebate Amount pursuant to Section 148(f) of the Code.

“Receipt” means amounts actually or constructively received from Nonpurpose Investments as specified in Regulations §1.148-3(d)(2)(i) through (iii).

“Variable Yield Issue” means any issue that is not a Fixed Yield Issue.

“Yield Period” means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

PART II: EXCEPTIONS TO REBATE

SECTION 2.01. SPENDING EXCEPTIONS.

The rebate requirements with respect to the Issue are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the “Spending Exceptions”) is satisfied. The Spending Exceptions are each independent exceptions. The Issue need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Issue.

The following rules apply for purposes of all of the Spending Exceptions except as otherwise noted.

Refunding Issues. The only spending exception available for a Refunding Issue⁴ is the 6-Month Spending Exception.

⁴. For purposes of these Instructions, references to “Refunding Issue” include the Refunding Portion of a Multipurpose Issue.

Special Transferred Proceeds Rules. In applying the Spending Exceptions to a Refunding Issue, unspent Proceeds of the Prior Issue that become Transferred Proceeds of the Refunding Issue are ignored. If the Prior Issue satisfies one of the rebate Spending Exceptions, the Proceeds of the Prior Issue that are excepted from rebate under that exception are not subject to rebate either as Proceeds of the Prior Issue or as Transferred Proceeds of the Refunding Issue.

However, if the Prior Issue does not satisfy any of the Spending Exceptions and is not otherwise exempt from rebate, the Transferred Proceeds from the Prior Issue will be subject to rebate, even if the Refunding Issue satisfies the 6-Month Spending Exception. The Rebate Amount will be calculated on the Transferred Proceeds on the basis of the Yield of the Prior Issue up to each transfer date and on the basis of the Yield of the Refunding Issue after each transfer date.

Application of Spending Exceptions to a Multipurpose Issue. If the Issue is a Multipurpose Issue, the Refunding Portion and the New Money Portion are treated for purposes of the rebate Spending Exceptions as separate issues. Thus, the Refunding Portion is eligible to use only the 6-Month Spending Exception. The New Money Portion is eligible to use any of the three Spending Exceptions.

Expenditures for Governmental Purposes of the Issue. Each of the spending exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Issue. These purposes include payment of interest (but not principal) on the Issue.

SECTION 2.02. 6-MONTH SPENDING EXCEPTION.

The Issue will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue within the 6-month period beginning on the Issuance Date and the Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If no bond of the Issue is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the 6-month period is extended for an additional 6 months if the unexpended Gross Proceeds of the Issue at the end of the 6-month period do not exceed the lesser of 5% of the Proceeds of the Issue or \$100,000.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within 6 months do not include amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue.

SECTION 2.03. 18-MONTH SPENDING EXCEPTION.

The Issue (or the New Money Portion if the Issue is a Multipurpose Issue) is treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

(A) All of the Gross Proceeds of the Issue (excluding amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue) are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 15% within 6 months;
- (2) at least 60% within 12 months; and
- (3) 100% within 18 months, subject to the Reasonable Retainage exception described below.

(B) The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund for the Issue, to the extent such Fund is subject to rebate (see footnote 3), is timely paid to the United States. And,

(C) The Gross Proceeds of the Issue qualify for the initial 3-year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Issue within 30 months of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Issue during the 18-month period are included in Gross Proceeds of the Issue. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Issue (or the New Money Portion, as applicable) if any portion of the Issue (or New Money Portion) is treated as meeting the rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

SECTION 2.04. 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.

(A) In general. A Construction Issue no bond of which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

- (1) at least 10% within 6 months;
- (2) at least 45% within 1 year;
- (3) at least 75% within 18 months; and
- (4) 100% within 2 years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund for the Issue are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Compliance Certificate, earnings on amounts in a reasonably required reserve or replacement fund for the Issue are treated as Available Construction Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Issue.

If the Issuer elected in the Tax Compliance Certificate to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Issue during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or 2 years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Issue does not fail to satisfy the spending requirement for the fourth spend-down period (i.e., 100% within 2 years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within 3 years of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first 3 spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the Issuance Date to earn during the 2-year period. For purposes of satisfying the final spend-down requirement,

Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the 2-year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Issue, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

(B) 1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Compliance Certificate for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semi-annual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earned during such spend-down period is not relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (e.g., amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

PART III: COMPUTATION AND PAYMENT.

SECTION 3.01. COMPUTATION AND PAYMENT OF REBATE AMOUNT.

If none of the Spending Exceptions described above is satisfied (and if the 1-1/2% penalty election for a Construction Issue or the Construction Portion of a Bifurcated Issue has not been made), then within 45 days after each Computation Date, the Issuer shall compute, or cause to be computed, the Rebate Amount as of such Computation Date. The first Computation Date is a date selected by the Issuer, but shall be not later than 5 years after the Issuance Date. Each subsequent Computation Date shall end 5 years after the previous Computation Date except that, in a Variable Yield Issue, the Issuer may select annual Yield Periods. The final Computation Date shall be the date the last obligation of the Issue matures or is finally discharged.

Within 60 days after each Computation Date (except the final Computation Date), the Issuer shall pay to the United States not less than 90% of the Rebate Amount, if any, computed as of such Computation Date. Within 60 days after the final Computation Date, the Issuer shall pay to the United States 100% of the Rebate Amount, if any, computed as of the final Computation Date. In computing the Rebate Amount, a computation credit of \$1,000 may be taken into account on the last day of each Bond Year to the Computation Date during which there are unspent Gross Proceeds that are subject to the rebate requirement, and on the final maturity date.

If the operative documents pertaining to the Issue establish a Rebate Fund and require the computation of the Rebate Amount at the end of each Bond Year, the Issuer shall calculate, or cause to be calculated, within 45 days after the end of each Bond Year the Rebate Amount, taking into account the computation credit of \$1,000 for each Bond Year. Within 50 days after the end of

each Bond Year, if the Rebate Amount is positive, the Issuer shall deposit in the Rebate Fund such amount as will cause the amount on deposit therein to equal the Rebate Amount, and may withdraw any amount on deposit in the Rebate Fund in excess of the Rebate Amount. Payments of the Rebate Amount to the Internal Revenue Service on a Computation Date shall be made first from amounts on deposit in the Rebate Fund and second from other amounts specified in the operative documents.

Each payment of the Rebate Amount or portion thereof shall be payable to the Internal Revenue Service and shall be made to the Internal Revenue Service Center, Ogden, UT 84201 by certified mail. Each payment shall be accompanied by Internal Revenue Service Form 8038-T and any other form or forms required to be submitted with such remittance.

SECTION 3.02. BOOKS AND RECORDS.

(A) The Issuer or Trustee, as applicable, shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Issue. Such records shall specify the account or fund to which each Nonpurpose Investment (or portion thereof) held by the Issuer or Trustee is to be allocated and shall set forth as to each Nonpurpose Investment (1) its purchase price, (2) identifying information, including par amount, interest rate, and payments dates, (3) the amount received at maturity or its sales price, as the case may be, including accrued interest, (4) the amounts and dates of any payments made with respect thereto, and (5) the dates of acquisition and disposition or maturity.

The Issuer, Trustee, or Rebate Analyst, as applicable, shall retain the records of all calculations and payments of the Rebate Amount until six years after the retirement of the last obligation that is a part of the Issue.

SECTION 3.03. FAIR MARKET VALUE.

No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

The fair market value of any Nonpurpose Investment shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in an arms-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this Section, a Nonpurpose Investment that is not of a type traded on an established securities market (within the meaning of Section 1273 of the Code) is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(A) Obligations purchased directly from the Treasury. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(B) Safe harbor for Guaranteed Investment Contracts. The purchase price of a Guaranteed Investment Contract shall be treated as its fair market value on the purchase date if all the following conditions are met:

(1) The Issuer or broker makes a bona fide solicitation for a specified Guaranteed Investment Contract and receives at least three bona fide bids from reasonably competitive providers (of Guaranteed Investment Contracts) that have no material financial interest in the Issue.

(2) The Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees);

(3) The Yield on the Guaranteed Investment Contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable Guaranteed Investment Contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of Tax-Exempt Obligations;

(4) The determination of the terms of the Guaranteed Investment Contract takes into account as a significant factor the Issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in a Bona Fide Debt Service Fund and a reasonably required reserve or replacement fund;

(5) The terms of the Guaranteed Investment Contract, including collateral security requirements, are reasonable; and

(6) The obligor on the Guaranteed Investment Contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the Guaranteed Investment Contract.

(C) Safe harbor for certificates of deposit. The purchase price of a certificate of deposit shall be treated as its fair market value on the purchase date if all of the following requirements are met:

(1) The certificate of deposit has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal; and

(2) The Yield on the certificate of deposit is not less than (a) the Yield on reasonably comparable direct obligations of the United States, or (b) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Certificates evidencing the foregoing requirements should be obtained before purchasing any Guaranteed Investment Contract or certificate of deposit.

SECTION 3.04. CONSTRUCTIVE SALE/PURCHASE.

- (A) Nonpurpose Investments that are held by the Issuer or Trustee as of any Computation Date (or Bond Year if the computations are required to be done annually) shall be treated for purposes of computing the Rebate Amount as of such date as having been sold for their fair market value as of such date. Investment Property which becomes allocated to Gross Proceeds of the Issue on a date after such Investment Property has actually been purchased shall be treated for purposes of the rebate requirements as having been purchased by the Issuer on such date of allocation at its fair market value on such date.
- (B) For purposes of constructive or deemed sales or purchases of Investment Property (other than Investment Property in the Escrow Fund or that is otherwise not invested for a Temporary Period or is not part of a reasonably required reserve or replacement fund for the Issue) must be valued at its fair market value on the date of constructive or deemed sale or purchase
- (C) Except as set forth in (B), fixed rate Investment Property that is (1) issued with not more than 2% of original issue discount or original issue premium, (2) issued with original issue premium that is attributable exclusively to reasonable underwriters' compensation or (3) acquired with not more than 2% of market discount or market premium, may be treated as having a fair market value equal to its outstanding stated principal amount, plus accrued interest. Fixed rate Investment Property also may be treated as having a fair market value equal to its present value.

SECTION 3.05. ADMINISTRATIVE COSTS.

- (A) Administrative costs shall not be taken into account in determining the payments for or receipts from a Nonpurpose Investment unless such administrative costs are Qualified Administrative Costs. Thus, administrative costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire Nonpurpose Investments generally do not increase the Payments for, or reduce the Receipts from, Nonpurpose Investments.
- (B) Qualified Administrative Costs are taken into account in determining the Payments and Receipts on Nonpurpose Investments and thus increase the Payments for, or decrease the Receipts from, Nonpurpose Investments. In the case of a Guaranteed Investment Contract, a broker's commission or similar fee paid on behalf of either the Issuer or the provider is an administrative cost that is not a Qualified Administrative Cost to the extent that the present value (computed using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate) of the commission, as of the date the contract is purchased, exceeds the present value of annual payments equal to 0.05 percent of the weighted average amount reasonably expected to be invested each year during the term of such contract.

PART IV: COMPLIANCE AND AMENDMENT

SECTION 4.01. COMPLIANCE.

The Issuer, Trustee or Rebate Analyst, as applicable, shall take all necessary steps to comply with the requirements of these Instructions in order to ensure that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Code. However, compliance shall not be required in the event and to the extent stated therein the Issuer and the Trustee receive a Bond Counsel's Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Issue, or (B) compliance with some other requirement in lieu of such requirement will comply with Section 148(f) of the Code, in which case compliance with the other requirement specified in the Bond Counsel's Opinion shall constitute compliance with such requirement.

SECTION 4.02. LIABILITY.

If for any reason any requirement of these Instructions is not complied with, the Issuer and the Trustee, if applicable, shall take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence. The Trustee shall have no duty or responsibility to independently verify any of the Issuer's, or the Rebate Analyst's, calculations with respect to the payments of the Rebate Amount due and owing to the United States. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any bondholder or any other person for any inclusion of the interest on the Issue in gross income for federal income tax purposes, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with these Instructions and the operative documents pertaining to the Issue.

(End of Attachment A-1)

LOAN AGREEMENT STANDARD TERMS AND CONDITIONS

Water Infrastructure Finance Authority of Arizona

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This document sets forth Standard Terms and Conditions applicable to the Loan made by the WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (the “*Authority*”) to the Local Borrower. These Standard Terms and Conditions are a part of the Loan Agreement to which this document is attached. Certain terms used herein are defined in Article 8.

Article 1 Covenants of the Local Borrower Relating to the System and the Project.

Section 1.1 **Operation and Maintenance of System.** The Local Borrower covenants and agrees that it shall, in accordance with prudent utility practice, (a) at all times operate the properties of the System and any business in connection therewith in an efficient manner, (b) maintain the System in good repair, working order and operating condition, and (c) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the System so that at all times the operations carried on in connection therewith shall be properly and advantageously conducted from revenues of the System or, if the Local Borrower so elects, from any other source of funds lawfully available.

Section 1.2 **Additions and Modifications.** The Local Borrower may make any additions, renewals, replacements, modifications or improvements to the System which it deems desirable and which do not materially reduce the operational integrity of any part of the System. All such renewals, replacements, additions, modifications and improvements shall become a part of the System.

Section 1.3 **Disposition of Project and System.**

(a) The Local Borrower shall not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System except upon compliance with the provisions of this Section; provided, however that the requirements of this Section shall not apply to transactions which are capital leases within the meaning of generally accepted accounting principles to finance expansion or improvement of the System and under which the Local Borrower maintains a purchaser’s interest or other beneficial ownership, use, possession and control of the System so long as no default exists.

(b) The Local Borrower may sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System if the Local Borrower shall give at least ninety (90) days’ prior written notice to the Authority of the proposed transaction, and the Authority gives its written consent which shall not be unreasonably withheld. The Local Borrower understands that the Authority, in determining whether or not to give its consent, must determine that the proposed transaction will not adversely affect the Authority’s ability to meet its duties, covenants, obligations and agreements or conditions of any grant received by the Authority or the State from the United States of America, which is related to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act, as amended, and the Federal Safe Drinking Water Act, as amended.

(c) Notwithstanding the provisions of subsection (b) above, the Local Borrower may sell, lease or otherwise dispose of, any of the property comprising part of the System without prior notice to or the consent of the Authority, other than the Project, in either of the following circumstances:

- (i) If the Local Borrower determines that such property is not necessary, useful or profitable to the operation of the System; or
- (ii) If the value of such property sold, leased or otherwise disposed of in any one year is equal to not more than 5% of the value of the fixed assets of the System.

Section 1.4 **Cost of Project.** The Local Borrower certifies that the estimated Eligible Project Costs as listed in Section 1 of Exhibit B is a reasonable and accurate estimation of the Eligible Project Costs and, upon the direction of the Authority the Local Borrower will supply the Authority with a certificate from its engineer stating that such estimated Eligible Project Costs is a reasonable and accurate estimation.

Article 2 Additional Covenants of the Local Borrower

Section 2.1 **Unconditional Obligations.** The obligation of the Local Borrower to make the Loan Repayments and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part described herein are payable solely from the Source of Repayment described in this Loan Agreement and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments hereunder remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or the System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement, or any rights of set-off, recoupment, abatement or counterclaim that the Local Borrower might otherwise have against the Authority or any other party or parties; provided, however, that payments under this Loan Agreement shall not constitute a waiver of any such rights. The Local Borrower shall not be obligated to make any payments required to be made by any other local borrowers under separate loan agreements or local borrower bonds. Notwithstanding any other provision of this Section 2.1, or this Loan Agreement, neither the Authority, nor any assignee of the Authority shall have the right or ability to compel the repayment of this Loan Agreement from any source other than the Source of Repayment.

Section 2.2 **Performance Under Loan Agreement.** The Local Borrower covenants and agrees (a) to maintain the System in good repair and operating condition; (b) to cooperate with the Authority to the extent it may lawfully do so, in the observance and performance of the respective duties, covenants, obligations and agreements of such Local Borrower and the Authority under this Loan Agreement; and (c) to comply with the covenants set forth in this Loan Agreement.

Section 2.3 **Disclaimer of Warranties.** The Local Borrower acknowledges and agrees that (i) the Authority makes no warranty or representation, either express or implied as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the System or the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or its respective agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the System or the Project; and (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the laws of the United States or of the State.

Section 2.4 **Loan Repayments; Prepayments; Providing for Payment of the Loan.**

(a) Loan Repayments.

(i) The Local Borrower shall pay to the Authority the amounts set forth in the Loan Repayment Schedule contained in Exhibit A on or before the due dates shown in Exhibit A.

(ii) Each payment made as a Loan Repayment as described in subsection (i) shall be applied first to the combined interest and fee payment then due and payable on the Loan and then to the principal amount of the Loan.

(iii) In addition to the other payments required by this Section, the Local Borrower shall pay a late charge for any payment that is received by the Authority later than the tenth day following its due date, in an amount equal to six percent per annum of the amount of the late payment from its due date to the date it is actually paid; provided, however, that the combined interest and fee rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law or any proceedings or resolution authorizing the execution of this Loan Agreement.

(iv) Upon the final disbursement, if the Loan amount is less than the estimated Eligible Project Costs, the amount of each Principal Installment due as set forth in the Loan Repayment Schedule contained in Exhibit A shall be adjusted to achieve substantially level debt service, and the Authority shall compute the adjusted combined interest and fee amounts to reflect the adjusted principal amounts and shall enter the results in a revised Loan Repayment Schedule delivered to the Local Borrower.

(b) Prepayments. The Loan is not subject to prepayment prior to the tenth anniversary of the final loan draw. The Local Borrower may prepay the Principal Repayment Amount of the Loan in whole or in part in advance of the due dates on or after the tenth anniversary of the final loan draw without penalty upon written notice delivered to the Authority at least 60 days prior to the prepayment date. If the Local Borrower prepays the Repayment Principal Amount in part, the amount of each Principal Installment due as set forth in the Loan Repayment Schedule contained in Exhibit A shall be adjusted to achieve substantially level debt service. Upon such adjustment, the Authority shall compute the adjusted combined interest and fees amounts to reflect the adjusted principal amounts and shall enter the results in the Loan Repayment Schedule with notice to the Local Borrower.

(c) Providing for Payment of the Loan. The Local Borrower may at any time provide for the payment and discharge of the Loan, as provided in this subsection. The Loan shall be deemed to have been paid and discharged if:

(i) the Local Borrower has delivered to the Authority proof satisfactory to the Authority that the Local Borrower has deposited with a financial institution acceptable to the Authority, in trust for and irrevocably committed to payments on the Loan, cash or non-callable direct obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) and obligations of any agency or instrumentality of the United States of America the timely payment of the principal of and interest on which are unconditionally guaranteed by the United States of America, which are of such maturities and interest payment dates, and bear such interest, as will be sufficient together with any moneys also deposited, without further investment or reinvestment of either the principal amount or the interest earnings (which earnings are to be held likewise in trust and so committed), to pay all the amounts due under the Loan, as set forth in the Loan Repayment Schedule contained in Exhibit A, as evidenced in a report of an independent firm of nationally recognized certified public accountants addressed to and delivered to the Authority; and

(ii) the Authority has received a bond counsel opinion (as described in Section 6.2(b) and (c) below) to the effect that the deposit of funds and the investment of such deposit, as described in the preceding paragraph, will not, by itself, adversely affect the exclusion from gross income of interest on the Loan or any Authority Bonds for federal income tax purposes.

Section 2.5 **Source of Repayment of Local Borrower's Obligations and Pledge.** The Local Borrower irrevocably pledges the Source of Repayment described in this Loan Agreement for the punctual payment of all amounts due under the Loan Agreement. The Authority and the Local Borrower agree that the amounts payable by the Local Borrower under this Loan Agreement are payable solely from the Source of Repayment described in this Loan Agreement and are not payable from any other source whatsoever, unless the Local Borrower chooses to pay, and pays, any amount due hereunder from any other source lawfully available to it.

Section 2.6 **Insurance.** The Local Borrower shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self-insurance programs or through membership in a risk retention pool, including, but not limited to, the Arizona Municipal Risk Retention Pool (in accordance with the Local Borrower's customary practices) providing against risk of direct physical loss, damage or destruction of the Project and the System, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining system facilities of the nature of the System, including liability coverage, all to the extent available at reasonable cost.

Section 2.7 **No Liens.** Except for:

(a) the debt service on any future bonds, notes or other evidence of indebtedness of the Local Borrower issued or contractual obligations incurred in accordance with this Loan Agreement payable from the funds pledged to the payment of this Loan Agreement which are on parity with the lien and charge on the funds so pledged to pay this Loan Agreement and

(b) as provided in Exhibit D of this Loan Agreement, the debt service on currently outstanding bonds, notes or evidences of indebtedness or contractual obligations of the Local Borrower, if any, payable from the Source of Repayment described in Exhibit D of this Loan Agreement which the Local Borrower has disclosed to the Authority in writing,

the funds so pledged as described in this Loan Agreement after the payment of all costs of operating and maintaining the System, are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto which are prior to, or of equal rank with, the obligation of the Local Borrower to pay this Loan Agreement, and all corporate or other action on the part of the Local Borrower to that end has been and will be duly and validly taken.

Section 2.8 **Disadvantaged Business Enterprises**. As applicable, the Local Borrower shall comply with 40 C.F.R. Part 33¹ including but not limited to:

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

(a) 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.

(b) 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.

(c) 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.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in sections (a) through (e) above.

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

(a) 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.

(b) The prime contractor must notify the owner in writing prior to the termination of any Disadvantage Business Enterprise subcontractor for convenience by the prime contractor.

(c) If a Disadvantage 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.

¹ See Article 9 for a full list of applicable federal laws and authorities relating to Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements.

(d) The prime contractor must continue to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

(e) 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

(f) 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 Local Borrower.

(g) The prime contractor must complete and submit EPA 6100-4 DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package to the Local Borrower.

(h) A Local 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.

Article 3 Representations of Local Borrower

The Local Borrower represents for the benefit of the Authority that the representations contained in this Loan Agreement are true at the time of execution and delivery of this Loan Agreement and, other than with respect to events outside of Local Borrower's control, will be true in all material respects at all times during the term of this Loan Agreement.

Section 3.1 Organization and Authority.

(a) The Local Borrower is a Political Subdivision or Indian Tribe as defined in the Authority Act.

(b) The Local Borrower has full legal right and authority and has, or will obtain as and when required, all necessary licenses and permits required to acquire, own, operate and maintain the Project and the System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, to pledge the Source of Repayment, and to carry out and consummate all transactions contemplated by this Loan Agreement. The Project is a project which the Local Borrower may undertake pursuant to State law and for which the Local Borrower is authorized by law to borrow money.

(c) The proceedings of the Local Borrower's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Local Borrower, and authorizing the Local Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of the State.

(d) This Loan Agreement has been duly authorized, executed and delivered by an Authorized Officer of the Local Borrower; and, assuming that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered this Loan Agreement, this Loan Agreement constitutes a legal and valid obligation of the Local Borrower enforceable in accordance with its terms, and the information contained under "Description of the Loan" in this Loan Agreement is true and accurate in all material respects.

Section 3.2 **Full Disclosure.**

(a) To the best of the Local Borrower's knowledge, there is no fact that the Local Borrower has not disclosed to the Authority in writing that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the System, or the ability of the Local Borrower to make all Loan Repayments due hereunder and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(b) The information relating to the Local Borrower (including without limitation the financial and statistical data contained therein) submitted to the Authority by the Local Borrower in connection with the Authority's approval of the Loan was at the time of the Authority's approval of the Loan and at all times subsequent thereto up to and including the Loan Closing, will be (if necessary by amendment provided by the Local Borrower) true and correct and will not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading in any adverse respect. To the extent permitted by law, and notwithstanding any other provision of this Loan Agreement, the Local Borrower will indemnify, save and hold harmless the Authority, and each of the Authority's agents, for, from and against any and all claims, damages, liability and court awards including costs, expenses and reasonable attorneys' fees incurred as a result of any omission or misstatement of material fact in the information submitted to the Authority by the Local Borrower in connection with the Authority's approval of the Loan, as it may have been supplemented and amended by the Local Borrower.

Section 3.3 **Pending Litigation.** There are no proceedings pending, or to the knowledge of the Local Borrower, threatened, against or affecting the Local Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the System, or the ability of the Local Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement that have not been disclosed in writing to the Authority in the Local Borrower's application for the Loan or otherwise.

Section 3.4 **Compliance with Existing Laws and Agreements.** The authorization, execution and delivery of this Loan Agreement by the Local Borrower, the observance and performance by the Local Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, the compliance by the Local Borrower with the provisions of this Loan Agreement and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Local Borrower pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than the lien and charge of this Loan Agreement and any ordinance or resolution or indenture which authorized outstanding obligations of the Local Borrower which are on a parity with this Loan Agreement as to a lien on, or a source and security for, payment thereon from the source of payment that is pledged to the Loan Repayments) to which the Local Borrower is a party or by which the Local Borrower, the System or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Local Borrower was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Local Borrower, the System or its properties or operations are subject.

Section 3.5 **No Defaults.** No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Local Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the ability of the Local Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.6 **Governmental Consent.** The Local Borrower has or will have obtained prior to the date of the Loan Closing all permits and approvals required to date by any governmental body or officer (and reasonably expects to receive all permits required in the future by any governmental agency) for the making, observance and performance

by the Local Borrower of its duties, obligations and agreements under this Loan Agreement or for the undertaking or completion of the Project and the financing thereof, and the Local Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Local Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing thereof; and the Local Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Local Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer, other than those already obtained or reasonably expected to be obtained, is required on the part of the Local Borrower as a condition to the authorization, execution and delivery of this Loan Agreement, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

Section 3.7 **Compliance with Law.** The Local Borrower:

(a) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject and the failure to comply with which would materially adversely affect the ability of the Local Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Local Borrower or the System; and

(b) has obtained, or will obtain as and when required, all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Local Borrower to undertake or complete the Project or the condition (financial or otherwise) of the Local Borrower or the System.

Article 4 Assignment

Section 4.1 **Assignment and Transfer by Authority.** The Local Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the Authority deems to be necessary in connection with the Clean Water Revolving Fund and Drinking Water Revolving Fund programs of the Authority.

Section 4.2 **Assignment by Local Borrower.** This Loan Agreement may not be assigned by the Local Borrower for any reason, unless the following conditions shall be satisfied: (i) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code or another entity acceptable to the Authority and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Local Borrower's duties, covenants, agreements and obligations hereunder; (ii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Local Borrower hereunder; and (iii) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority with, or condition of any grant received by the Authority from the United States of America relating to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act.

No assignment shall relieve the Local Borrower from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Local Borrower shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

Article 5 Defaults and Remedies

Section 5.1 **Events of Default.** If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "*Event of Default*":

(a) failure by the Local Borrower to pay, or cause to be paid, when due any Loan Repayment;

(b) failure by the Local Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Local Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period, the payments of which are secured by the Source of Repayment described in this Loan Agreement;

(c) failure by the Local Borrower to perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraphs (a) and (b) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Local Borrower by the Authority, unless the Authority agrees in writing to an extension of such time prior to its expiration, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Authority may not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Local Borrower and diligently pursued until the Event of Default is corrected;

(d) the institution of any proceeding, with the acquiescence of the Local Borrower, for the purpose of effecting a composition between the Local Borrower and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from the Source of Repayment described in this Loan Agreement;

(e) a determination by the Authority that any material representation made by or on behalf of the Local Borrower contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement, is false or misleading in any material respect; and

(f) the filing of a petition by or against the Local Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Local Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Local Borrower becoming insolvent or bankrupt or making an assignment for the benefit of its creditors; or the appointment of a custodian (including, without limitation, a receiver, liquidator or trustee of the Local Borrower or any of its property including the System) by court order, or possession of the Local Borrower or its property or assets is taken if such order remains in effect or such possession continues for more than thirty (30) days.

Section 5.2 **Notice of Default.** The Local Borrower shall give the Authority prompt telephone notice of the occurrence of any Event of Default referred to in Section 5.1 paragraph (c) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default, at such time as any senior administrative or financial officer of the Local Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section shall be confirmed in writing by the end of the next Business Day.

Section 5.3 **Remedies on Default.**

(a) Whenever an Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the Authority shall have the right to take any action permitted or required pursuant to this Loan Agreement and to take whatever other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due on their scheduled payment dates or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Local Borrower hereunder, including, without limitation, appointment of a receiver of the System.

(b) Nothing in this Loan Agreement shall be construed to affect the Attorney General taking action to enforce this Loan Agreement in accordance with the Authority Act.

Section 5.4 **Attorney's Fees and Other Expenses.** In the event of a default hereunder by the Local Borrower, the Local Borrower shall on demand and to the extent not prohibited by applicable law pay to the Authority the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of Loan

Repayments or any other sum due hereunder or in the enforcement of performance or observance of any other duties, covenants, obligations or agreements of the Local Borrower to the extent permitted by law.

Section 5.5 **Application of Moneys.** The parties acknowledge that: (a) all amounts coming due hereunder as Loan Repayments shall be treated as principal and combined interest and fees with respect to the Loan which amounts are secured by a pledge of the Source of Repayment in accordance with Exhibit D of this Loan Agreement; and (b) amounts coming due under Section 5.4 hereof shall be secured by the Source of Repayment on a basis subordinate to the Loan Repayments, but on a parity with comparable expenses relating to such Outstanding Parity Obligations and Additional Parity Obligations.

However, any moneys collected by the Authority pursuant to Section 5.3 in the exercise of remedies with respect to amounts due or to become due hereunder shall be applied: (a) first, to pay any attorney's fees or other fees and expenses owed by the Local Borrower pursuant to Section 5.4 hereof, (b) second, to pay delinquent combined interest fees and late charges on the Loan; (c) third, to pay combined interest and fees then due and payable on the Loan; (d) fourth, to pay delinquent principal on the Loan in order of scheduled maturity; (e) fifth, to pay principal then due and payable on the Loan; and (f) sixth, to pay any other amounts due and payable pursuant to this Loan Agreement.

Section 5.6 **No Remedy Exclusive; Waiver; Notice.** No remedy conferred upon or reserved to the Authority hereunder is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it as described in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

Section 5.7 **Retention of Authority's Rights.** Notwithstanding any assignment or transfer of this Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Local Borrower at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Local Borrower to the Authority.

Section 5.8 **Default by the Authority.** In the event of any default by the Authority in any duty, covenant, agreement or obligation described in this Agreement, the Local Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority described herein as may be necessary or appropriate. The Authority shall on demand pay to the Local Borrower the reasonable fees and expenses of attorneys and other reasonable expenses in the enforcement of such performance or observance.

Article 6 Provisions Applicable to Loans Financed by or Pledged to Secure Authority Bonds

Section 6.1 **General.** The Local Borrower acknowledges that the Authority is entering into this Loan Agreement and agreeing to make the Loan at this time for the benefit of the Local Borrower, and that the Authority may finance the Loan, along with other loans to other local borrowers, through the issuance of Authority Bonds and may pledge the Loan to secure Authority Bonds. If and for so long as the Authority's source of funds to make disbursements on, or to carry, the Loan represented by this Loan Agreement is, or becomes, the proceeds of Authority Bonds, or this Loan Agreement is assigned by the Authority as security for payment of amounts due or to become due on Authority Bonds, the Local Borrower agrees to cooperate with the Authority with respect to the issuance of Authority Bonds by furnishing and certifying information concerning the Local Borrower, the Project, the System and the Source of Repayment, and by agreeing to reasonable modifications and additions to this Loan Agreement necessary or convenient for the Authority Bond transaction. Without limiting the generality of the foregoing, the Local Borrower agrees that if the Authority at any time determines, in its discretion, that it is necessary in connection with the

issuance of Authority Bonds or the maintenance of the Authority's bond program, then the provisions set forth in this Article shall be in effect.

Section 6.2 **Tax Covenants.**

(a) **General.** The Local Borrower acknowledges that, in connection with its state revolving fund programs, the Authority issues its Authority Bonds from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority's interest for the Loan to qualify and be a Tax-Exempt Obligation that is not an AMT Obligation. Therefore, the Local Borrower represents and covenants as follows with respect to the Loan and the Authority Bonds. The Local Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Loan or the Authority Bonds under Section 103(a) of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an AMT Obligation, and in the event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon a bond counsel opinion as may rescind or otherwise negate such action or omission. The Local Borrower will not directly or indirectly use or permit the use of any proceeds of the Loan or any other funds of the Local Borrower or take or omit to take any action that would cause the Loan or the Authority Bonds to be or become "arbitrage bonds" within the meaning of Section 148(a) of the Internal Revenue Code or to fail to meet any other applicable requirement of Sections 103, 141, 148, 149 and 150 of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. To that end, the Local Borrower will comply with all applicable requirements of Sections 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Loan.

(b) **Modification Based on Bond Counsel Opinion.** Notwithstanding any provision of this Section, if the Local Borrower provides to the Authority a bond counsel opinion to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Loan or the Authority Bonds pursuant to Section 103(a) of the Internal Revenue Code, the provisions of this Section and the covenants in this Section shall be deemed to be modified to that extent.

(c) **Bond Counsel Opinion.** For purposes of this Article, "bond counsel opinion" means an opinion letter of a firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, and who is acceptable to the Authority.

Section 6.3 **Third Party Beneficiaries.** The Trustee, the owners from time to time of the Authority Bonds, any Credit Enhancer from time to time of the Authority Bonds and any underwriter of the Authority Bonds are each expressly acknowledged to be third party beneficiaries of this Loan Agreement and each representation, agreement, duty, obligation and provision of this Loan Agreement.

Section 6.4 **Additional Documents Relating to Authority Bonds.** The Local Borrower will furnish to the Authority and certify to such information and execute and deliver and cause to be executed and delivered such documents as the Authority, the underwriter or other parties to any Authority Bond transaction may reasonably require, including, without limitation:

(a) a certificate of an Authorized Officer of the Local Borrower to the effect that the information contained in the Final Official Statement (defined in Section 6.5, paragraph (a)) for the Authority Bonds concerning the Local Borrower is correct in all material respects and is an accurate summary of the information which it purports to summarize, and that nothing has come to the Authorized Officer's attention that would lead the Authorized Officer to believe that the information in the Final Official Statement relating to the Local Borrower contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(b) subject to the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 (the "Disclosure Rule"), a continuing disclosure undertaking of the Local Borrower meeting the requirements of the Disclosure Rule, and a statement of the Local Borrower as to whether it has failed to provide any information and

notices required by the provisions of previous continuing disclosure undertakings, if any, of the Local Borrower under the Disclosure Rule, and if it has not, describing the circumstances and status of such failure; and

(c) an appropriate certificate executed by Authorized Officer of the Local Borrower concerning the reasonable expectations of the Local Borrower as to the use of the proceeds of the Loan and such other matters as may be required on the part of the Local Borrower in order to ensure that the Authority Bonds are and will remain Tax-Exempt Obligations that are not AMT Obligations, and the Local Borrower covenants to comply with the provisions of such certificate; and

(d) such other certificates, documents and information, and supplemental opinions of Local Borrower's counsel, as the Authority, the underwriters of the Authority Bonds or other parties to the Authority Bonds transaction may reasonably require and as are necessary to confirm the continued truth and accuracy of information supplied by or on behalf of the Local Borrower.

Section 6.5 **Disclosure Regarding Authority Bonds.**

(a) The information, if any, relating to the Local Borrower (including without limitation the financial and statistical data contained therein) which has been furnished by the Local Borrower to be included in, and which is included in, a Preliminary Official Statement of the Authority (the "*Preliminary Official Statement*"), or a final Official Statement (the "*Final Official Statement*") of the Authority concerning any Authority Bonds, as of the respective dates of each such document and at all times subsequent thereto up to and including the Bond Closing, will be (if necessary by amendment provided by the Local Borrower) true and correct and will not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. To the extent permitted by law, and notwithstanding any other provision of this Loan Agreement, the Local Borrower will indemnify, save and hold harmless the Authority and each other local borrower, if any, included in the Final Official Statement, and each of such parties' respective agents, for, from and against any and all claims, damages, liability and court awards including costs, expenses and attorneys fees incurred as a result of any omission or misstatement of a material fact in the Local Borrower's information in the Final Official Statement, as it may have been supplemented or amended by the Local Borrower.

(b) The Local Borrower agrees that from the date of the Final Official Statement and for a period until not later than 25 days after the date of the Bond Closing if and so long as the offering of the Authority Bonds continues (i) the Local Borrower will furnish such information with respect to itself as the Authority (for itself or at the request of the underwriters of the Authority Bonds) may from time to time reasonably request and (ii) if any event shall occur as a result of which it is necessary, in the opinion of Bond Counsel to the Authority, or counsel for the underwriters of the Authority Bonds, to amend or supplement the information in the Final Official Statement relating to the Local Borrower in order to make such information not misleading in light of the circumstances then existing, the Local Borrower will forthwith prepare, and furnish to the Authority and the underwriters such information relating to the Local Borrower as may be necessary to permit the preparation of an amendment of or supplement to the Final Official Statement (in form and substance satisfactory to the Bond Counsel to the Authority and counsel for the underwriters) which will amend or supplement the Final Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances then existing, not misleading.

(c) The Local Borrower agrees that if prior to the 25th day following the end of the underwriting period of the Authority Bonds, as defined for purposes of the Disclosure Rule, any event shall occur which causes the representations contained in Section 6.4, paragraph (a) to be false in any material respect, the Local Borrower shall promptly notify the Authority of such development, and if in the opinion of the Authority and the underwriters of the Authority Bonds such development requires the preparation of a supplement or an amendment to the Preliminary Official Statement or the Final Official Statement, the Local Borrower agrees to cooperate with the Authority and the underwriters for the Authority Bonds in preparing any such supplement or amendment in a form acceptable to such parties and to pay all reasonable expenses incurred by such parties in connection with the preparation thereof.

Section 6.6 **Assignment and Transfer by Authority to Trustee.**

(a) The Local Borrower expressly acknowledges that, other than the right of the Authority to be indemnified by the Local Borrower, all right, title and interest of the Authority in, to and under this Loan Agreement will be assigned to the Trustee as security for the Authority Bonds, as applicable, as provided in the Authority's Master Trust Indenture, and that if any Event of Default shall occur the Trustee, pursuant to the Authority's Master Trust Indenture, shall be entitled to act hereunder in the place and stead of the Authority. The Local Borrower hereby acknowledges the requirements of the Authority's Master Trust Indenture applicable to the Authority Bonds and consents to such assignment and appointment. The Authority shall retain the right to compel or otherwise enforce observance and performance by the Local Borrower of its duties, covenants, obligations and to be indemnified by the Local Borrower; provided, however, that in no event shall the Authority or the Trustee have the right to accelerate the payments under this Loan Agreement.

(b) The Local Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the Authority deems to be necessary in connection with any refunding of the Authority Bonds or otherwise in connection with the Clean Water Revolving Fund and Drinking Water Revolving Fund programs of the Authority.

Section 6.7 **Conditions to Assignment by Local Borrower**. Notwithstanding Section 4.2, this Loan Agreement may not be assigned by the Local Borrower for any reason, unless the following conditions shall be satisfied: (i) the Authority, the Trustee and the Credit Enhancer, if any, of the Authority Bonds shall have approved said assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Internal Revenue Code or another entity acceptable to the Authority and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Local Borrower's duties, covenants, agreements and obligations hereunder; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Local Borrower hereunder; (iv) the Authority and the Trustee shall have received an opinion of bond counsel to the effect that such assignment will not adversely affect the exclusion of interest on the Authority Bonds from gross income for purposes of Federal income taxation under Section 103(a) of the Code or make the Authority Bonds or the Loan AMT Obligations; and (v) the Authority and the Trustee shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of the Master Trust Indenture or any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act.

No assignment shall relieve the Local Borrower from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Local Borrower shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

Section 6.8 **Sale or Other Disposition of Project or System**. The Local Borrower agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System unless (i) the transferee assumes the Local Borrower's obligations under this Loan Agreement in accordance with Section 6.6, (ii) the Authority shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations and agreements under the Bond Documents, and will not adversely affect the eligibility of interest on Authority Bonds then outstanding or which could be issued in the future for exclusion from gross income for purposes of federal income taxation or cause such Authority Bonds to be AMT Obligations, and (iii) the Credit Enhancer, if any, of the Authority Bonds shall have given its prior written consent to such disposition.

Section 6.9 **Deficiencies Under Bond Documents Caused by Failure to Make Loan Repayment**. The Local Borrower acknowledges that payment of the Authority Bonds by the Authority, including payment from moneys drawn by the Trustee from the Bond Reserves or the CWRP Financial Assistance Account and DWRP Financial Assistance Accounts established under the Bond Documents, does not constitute payment of the amounts due under this Loan Agreement. If at any time the amounts on deposit in the Bond Reserves or the CWRP Financial Assistance Account and DWRP Financial Assistance Accounts shall be less than the amounts required by the Bond Documents as the result of any transfer of moneys from the Bond Reserves or the CWRP Financial Assistance Account and DWRP Financial Assistance Accounts which in turn is the result of a failure by the Local Borrower to make any Loan Repayments required hereunder, the Local Borrower agrees to (i) replenish such moneys so transferred, and (ii) replenish any deficiency arising from losses incurred in making such transfer as the result of the

liquidation by the Authority of investment securities acquired as an investment of moneys in the Bond Reserves or the CWRP Financial Assistance Account and DWRP Financial Assistance Accounts, by making payments to the Authority in equal monthly installments for the lesser of six (6) months or the remaining term of the Loan at a combined interest and fee rate to be determined by the Authority necessary to make up any loss caused by such deficiency, provided that the combined interest and fee rate payable on the Loan including such make-up combined interest and fees shall not exceed the maximum rate permitted by the Authorizing Proceedings which authorized this Loan Agreement.

Section 6.10 **Indemnification.** To the extent permitted by law, the Local Borrower shall indemnify, save and hold harmless the Authority against any and all claims, damages, liability and court awards including costs, expenses and attorney fees to the extent incurred as a result of any gross negligence or willful misconduct by the Local Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement.

Section 6.11 **Compliance with Master Trust Indenture.** The Local Borrower covenants and agrees to take such action as it may lawfully take and as the Authority shall reasonably request so as to enable the Authority to observe and comply with, all duties, covenants, obligations and agreements contained in the Master Trust Indenture insofar as such duties, covenants, obligations and agreements relate to the obligations of the Local Borrower under this Loan Agreement.

Section 6.12 **Provisions Relating to Default.**

(a) Any notice or information which the Local Borrower is to give to the Authority pursuant to the provisions of Article 5 shall also be given by the Local Borrower to the Trustee and to any Credit Enhancer at the same time.

(b) Notwithstanding the provisions of Section 5.3, paragraph (a) and Section 5.7, so long as a Credit Enhancer is not in default of its obligations with respect to its payment guarantee of the Authority Bonds and such guarantee is in effect, the Credit Enhancer shall have the right to direct the exercise of remedies provided for herein and the Trustee and the Authority shall not pursue any remedy except with the prior written consent of the Credit Enhancer.

(c) In the event of a default hereunder by the Local Borrower, the Local Borrower shall also pay the expenses of the Trustee and of any Credit Enhancer in the same manner as provided in Section 5.4 with respect to the expenses of the Authority.

Section 6.13 **Tax Compliance Certificate.** If the Authority Bonds are issued and sold on the basis that they are Tax-Exempt Obligations, an Authorized Officer of the Local Borrower shall deliver an appropriate certificate concerning the reasonable expectations of the Local Borrower as to the use of the proceeds of the Loan and such other matters as may be required on the part of the Local Borrower in order to ensure that the Authority Bonds are and will remain Tax-Exempt Obligations that are not AMT Obligations, and the Local Borrower covenants to comply with the provisions of such certificate.

Article 7 Miscellaneous

Section 7.1 **Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority and the Local Borrower and their respective successors and assigns.

Section 7.2 **Severability.** In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any Court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 7.3 **Amendments, Supplements and Modifications.** This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority and the Local Borrower.

Section 7.4 **Execution in Counterparts.** This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.5 **Captions.** The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

Section 7.6 **Further Assurances.** The Local Borrower shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Loan Agreement.

Section 7.7 **State of Arizona Contract Provisions.**

(a) **Books and Records.** As required by the provisions of Arizona Revised Statutes Section 35-214, the Local Borrower agrees that all books, accounts, reports, files and other records relating to this Loan Agreement shall be retained and shall be subject at all reasonable times to inspection and audits by the Authority for five years after completion of this Loan Agreement, and that upon request by the Authority such records shall be produced at any of the Authority offices designated herein as the place at which notices to the Authority are to be given.

(b) **Prohibition Against Discrimination.** In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order 2009-9, entitled "Prohibition of Discrimination in State Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors," which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Local Borrower shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(c) **Governing Law and Forum.** This Loan Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of Arizona, except as such laws may be preempted by any federal rules or regulations. The parties hereto expressly acknowledge and agree and all Local Borrowers by their acceptance thereof shall be deemed to have acknowledged and agreed that any judicial action to interpret or enforce the terms of this Loan Agreement against the Authority shall be brought and maintained in the Superior Court of the State of Arizona in and for Maricopa County or in the United States District Court in and for the District of Arizona.

(d) **Arbitration.** In the event of a dispute, the parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by Arizona Revised Statutes Section 12-1518, and the prevailing party shall be entitled to attorney's fees and costs with respect thereto.

(e) **Notice of Arizona Revised Statutes Section 38-511 – Cancellation.** Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to this Loan Agreement under the law of the State of Arizona.

(f) **Additional Warranties and Certifications from the Local Borrower.** In compliance with Section 23-214(B) of the Arizona Revised Statutes, the Local Borrower warrants to the Authority that either (i) it is not an "employer" (within the meaning of Arizona Revised Statutes Section 23-214(B)) or (ii) it is registered with and is participating in the employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or any of its successor programs (the "E-Verify Program") and that the proof submitted to the Authority of that registration and participation is true and correct. The Local Borrower agrees that, until the Loan is fully paid, at all times during which it is an "employer" (within the meaning of Arizona Revised Statutes Section 23-214(B)) it will be registered with and will participate in the E-Verify Program. The breach by the Local Borrower of the foregoing shall be deemed a material breach by the Local Borrower of this Loan Agreement and may result in penalties up to and including the termination of this Loan Agreement. If the Authority determines that the Local Borrower is not so registered and participating when required, the Authority will notify the Local Borrower by certified mail of the determination of noncompliance and the Local Borrower's right to appeal the determination. On a final determination of noncompliance, the Local Borrower shall repay all monies received as an economic development incentive (within the meaning of Arizona Revised Statutes Section 23-214(B)) to the Authority within thirty days of the final determination.

Article 8 Definitions

Section 8.1 **Definitions.** The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meaning:

“*AMT Obligation*” means a Tax-Exempt Obligation the interest on which is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code.

“*Annual Loan Review Form*” means the loan compliance questionnaire circulated by the Authority to all borrowers as part of the Authority’s annual loan portfolio review.

“*Authority*” means the Water Infrastructure Finance Authority of Arizona, a body corporate and politic of the State of Arizona duly created and validly existing under and by virtue of the Authority Act.

“*Authority Act*” means Title 49, Chapter 8 (Section 49-1201 et seq.) of the Arizona Revised Statutes (“A.R.S.”).

“*Authority Bonds*” means any bonds of the Authority issued to finance the State’s revolving fund established pursuant to the Water Pollution Control Act, as amended, and the Safe Drinking Water Act, as amended.

“*Authorized Officer*” means, (i) with respect to the Local Borrower, the person whose name is set forth in this Loan Agreement or such other person or persons authorized by the Local Borrower to act as an authorized officer of the Local Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement whose name is furnished in writing to the Authority and the Trustee; and (ii) with respect to the Authority, the Chairman, Vice Chairman, Executive Director, or any other person or persons designated by the Board to act on behalf of the Authority with respect to this Loan Agreement; the designation of such person or persons shall be evidenced by a written certificate containing a specimen signature of such person or persons and signed on behalf of the Authority by its Chairman or Vice Chairman.

“*Bond Closing*” means the date of initial delivery of and payment for the Authority Bonds.

“*Bond Documents*” means and includes the Master Trust Indenture, any supplemental indenture and any comparable or related document pursuant to which the Authority Bonds are issued, and all further amendments and supplements thereto adopted in accordance with the provisions thereof.

“*Bond Reserves*” means reserves established by the Bond Documents for the Authority Bonds to secure timely payment of amounts due on the Authority Bonds even if one or more local borrowers do not make timely payments on their loans.

“*Business Day*” means any day other than a Saturday, Sunday or legal holiday or a day on which banking institutions, in the city in which the designated office of the Authority (being Phoenix, Arizona) is located, are closed.

“*Capital Grant Facility*” means the contractual arrangement established with the Authority by the United States of America Environmental Protection Agency to make capitalization grant payments pursuant to Title VI of the Federal Water Pollution Control Act, as amended (33 U.S.C. § 125 et seq.) and the Federal Safe Drinking Water Act, as amended (particularly 42 U.S.C. § 300j-12 et seq.).

“*Clean Water Act*” means the Federal Water Pollution Control Act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the Water Quality Act of 1987 (P.L. 100-4; 101 Stat. 7) and the Water Resources Reform and Development Act of 2014 (P.L. 113-21, 128 Stat. 1193).

“*Clean Water Revolving Fund*” means the fund established by A.R.S. § 49-1221.

“*Code*” means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any

official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“Combined Interest and Fee Rate” means periodic interest and fee payments made by the Borrower, see Exhibit A to this Loan Agreement.

“Construction Period” means the period from the date of the Loan Closing until the date of the final disbursement of proceeds of the Loan pursuant to this Loan Agreement, but in no event later than the third anniversary of the Loan Closing.

“Cost” means those costs that are eligible to be funded from draws under the Capital Grant Facility and are reasonable, necessary and allocable to the Project and are permitted by generally accepted government auditing standards to be costs of the Project.

“Credit Enhancer” means the entity so designated in the Bond Documents, if any, or any successor thereto, that from time to time has issued and outstanding a municipal bond insurance policy or similar payment guarantee relating to the Authority Bonds.

“CWRP Financial Assistance Account” means the account so designated in the Master Trust Indenture to which loans funded by the Clean Water Revolving Fund shall be credited.

“Debt Management Fee” means the fee component of the combined interest and fee payments made by the Borrower, see Exhibit A to this Loan Agreement.

“Department” means the Department of Environmental Quality of the State of Arizona.

“Drinking Water Facility” has the meaning given that term in the Authority Act, currently: a community water system or a non-profit noncommunity water system as defined in the Federal Safe Drinking Water Act (P.L. 93-523; 88 Stat. 1660l; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in the State. The term does not include water systems owned by federal agencies.

“Drinking Water Revolving Fund” means the fund established by A.R.S. § 49-1241.

“DWRP Financial Assistance Account” means the account so designated in the Master Trust Indenture to which loans funded by the Drinking Water Revolving Fund shall be credited.

“Eligible Project Costs” means, whether incurred before or after the date of this Loan Agreement, such portion of the Costs as is disbursed by the Authority for the benefit of the Local Borrower. The Local Borrower and the Authority acknowledge that the actual Eligible Project Costs for the Project have not been determined as of the effective date of this Loan Agreement. The final Eligible Project Costs shall be established after all disbursements have been made.

“Event of Default” means any occurrence or event specified in Section 5.1 hereof.

“Indian Tribe” has the meaning given that term by the Authority Act, currently: any Indian tribe, band, group or community that is recognized by the United States Secretary of the Interior and that exercises governmental authority within the limits of any Indian reservation under the Jurisdiction of the United States government notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

“Loan” means (a) during the Construction Period, the commitment to lend to the Local Borrower the Estimated Eligible Project Costs set forth in this Loan Agreement (as it may be amended or revised from time to time), and (b) thereafter, the amount of money equal to the Eligible Project Costs which is actually loaned to the Local Borrower pursuant to this Loan Agreement.

“*Loan Agreement*” or “*Agreement*” means this Loan Agreement, including the Exhibits and these Standard Terms and Conditions attached to this Loan Agreement, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“*Loan Closing*” means the date of execution and delivery of this Loan Agreement.

“*Loan Repayment Date*” means the payment dates commencing and ending on the dates set forth in this Loan Agreement.

“*Loan Repayments*” means the payments payable by the Local Borrower pursuant to this Loan Agreement.

“*Local Borrower*” means the Political Subdivision or Indian Tribe that is a party to and is described in the first paragraph of this Loan Agreement.

“*Master Trust Indenture*” means and includes the Master Trust Indenture dated as of August 1, 1999, as supplemented, and any comparable or related document, pursuant to which the Authority issues Authority Bonds.

“*Political Subdivision*” has the meaning given that term by the Authority Act, currently: a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities.

“*Project*” is the project described in Section 2.1 of the Loan Agreement, all or a portion of the Cost of which is financed from the proceeds of the Loan.

“*Repayment Period*” means the period over which the principal amount of the Loan will be repaid which period begins and ends on the dates set forth in this Loan Agreement.

“*Repayment Principal Amount*” means the amount the Authority agrees to loan to the Local Borrower pursuant to this Loan Agreement or such lesser amount of actual Eligible Project Costs as represents the aggregate amount of the Loan actually made pursuant to this Loan Agreement.

“*Reserve Fund Surety*” means a surety bond, insurance policy, letter of credit or similar arrangement representing the irrevocable obligation of the issuer thereof to pay to or at the direction of the Local Borrower an amount up to the Reserve Requirement as set forth in Exhibit A.

“*Safe Drinking Water Act*” means the Federal Safe Drinking Water Act (P.L. 93-523; 88 Stat. 1660; P.L. 96-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

“*Source of Repayment*” means the “source of repayment” set forth in this Loan Agreement as defined in Exhibit D.

“*State*” means the State of Arizona.

“*System*” means the “System” as defined in Section 2.2 of the Loan Agreement.

“*Tax-Exempt Obligation*” means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidences of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150 of the Code, and includes any obligation or any investment treated as a “tax-exempt bond” for the applicable purpose of Section 148 of the Code

“*Trustee*” means the Trustee appointed by the Authority pursuant to the Bond Documents and its successor or successors and any other corporation which may at any time be substituted in its place as Trustee pursuant to the Bond Documents.

Terms not otherwise defined herein shall have the meanings ascribed to them in Exhibit D to the Loan Agreement.

Section 8.2 **Rules of Interpretation**. For all purposes of this Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Words of one gender include the corresponding words of other genders; words of neuter include both genders; and words in the singular include words in the plural and vice versa.
- (b) Words indicating persons, parties, or entities (and the like) include firms, associations, partnerships (including limited partnerships), limited liability companies (and the like), corporations, trusts and other legal entities, including public and governmental bodies, as well as natural persons.
- (c) References to a statute refer to the statute, as amended, and any successor statute, and to all regulations promulgated under or implementing the statute or successor statute, as in effect at the relevant time.
- (d) References to a governmental or quasi-governmental entity or representatives thereof also refer to an entity that succeeds to the functions of the governmental or quasi-governmental entity and representatives thereof.
- (e) Headings preceding sections of text and any table of contents are solely for convenience of reference and are not part of this Loan Agreement and are not to affect its meaning, interpretation or effect.
- (f) Actions permitted under this Loan Agreement may be taken at any time and from time to time in the actor's sole discretion.
- (g) The word "including" means "including, but not limited to" and the word "include" means "include, among others."
- (h) The terms "hereby," "hereof," "herein," and "hereunder" (and the like) refer to this Loan Agreement.
- (i) Indications of time of day mean local time in Phoenix, Arizona.
- (j) This Loan Agreement shall be governed by and construed in accordance with the applicable law of the State of Arizona, except for its conflict of law rules and except as preempted by federal.

Article 9 List of Federal Laws and Authorities

By Section 5.4 and Section 5.5 of Exhibit B to the Loan Agreement, the Local Borrower agrees that the Project will comply with applicable provisions of the following federal laws and authorities:

Environmental:

1. Archaeological and Historical Preservation Act of 1974, Pub. L. 93-291; 16 U.S.C. § 469a-1.
2. Clean Air Act, Pub. L. 95-95, as amended; 42 U.S.C. § 7401 et. seq.
3. Clean Water Act, Titles II, IV, and V, Pub. L. 92-500, as amended.
4. Coastal Barrier Resources Act, Pub. L. 97-348; 16 U.S.C. § 3501 et. seq.
5. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 U.S.C. § 1451 et. seq.
6. Endangered Species Act, Pub. L. 93-205, as amended; 16 U.S.C. § 1531 et seq.
7. Environmental Justice, Executive Order 12898.
8. Farmland Protection Policy Act, Pub. L. 97-98; 7 U.S.C. § 4201 et seq.

9. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.
10. Floodplain Management, Executive Order 11988, as amended by Executive Order 12148.
11. Magnuson-Stevens Fishery Conservation and Management Act, Pub L. 94-265, as amended; 16 U.S.C. § 1801 et. seq.
12. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended; 16 U.S.C. § 470 et. seq.
13. Protection and Enhancement of the Cultural Environment, Executive Order 11593.
14. Protection of Wetlands, Executive Order 11990, as amended by Executive Order 12608; Pub. L. 99-645, as codified at 16 U.S.C. § 3901 et. seq.
15. Safe Drinking Water Act, Section 1424(e), Pub. L. 92-523, as amended; 42 U.S.C. § 300f et. seq.
16. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended; 16 U.S.C. § 1271 et. seq.
17. Migratory Bird Treaty Act of 1918, 16 U.S.C. § 703 et. seq.

Social Legislation:

1. Age Discrimination Act, Pub. L. 94-135; 42 U.S.C. § 6102.
2. Civil Rights Act of 1964, Pub. L. 88-352, Title VI; 42 U.S.C. § 2000d.
3. Equal Employment Opportunity, Executive Order 11246, as amended.
4. Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements.
 - a. Promoting the use of Small, Minority, and Women-owned Businesses, Executive Orders 11625, 12138 and 12432.
 - b. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.
 - c. Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Pub. L. 102-389; 42 U.S.C. § 4370d.
 - d. Title X Clean Air Act, Pub. L. 101-549; 42 U.S.C. § 7601 note.
5. Rehabilitation Act of 1973, Pub. L. 93-112; 29 U.S.C. § 794 (including Executive Order 11914 and 11250).
6. Section 13 of the Federal Water Pollution Control Act, Pub. L. 92-500; 33 U.S.C. § 1251.
7. The Drug Free Workplace Act Of 1988, Pub. L. 100-690.

Economic and Miscellaneous Authority:

1. Anti-Lobbying Provision (40 CFR Part 34) and New Restrictions on Lobbying, Section 319 of Pub. L. 101-121.
2. Debarment and Suspension, Executive Order 12549.

3. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended; 42 U.S.C. § 3331 et. seq.
4. Preservation of Open Competition and Government Neutrality, Executive Order 13502.
5. Prohibitions relating to violators of the Clean Air Act, Section 306 of the Clean Air Act, 42 U.S.C. § 7505; Section 508 of the Clean Water Act, 33 U.S.C. § 1368; Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans.
6. Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended; 42 U.S.C. §§ 4601-4655.

Bond Counsel's Proposed Edits - Pending WIFA approval

Exhibit D Source of Repayment: System Revenues**Section 1 Certain Definitions**

As used in this Loan Agreement, the following terms shall have the meanings set forth below unless the context clearly requires otherwise:

“Additional Parity Obligations” shall mean any additional obligations having a lien payable from Net Revenues of the System on a parity with the Loan Agreement which may hereafter be issued by the Local Borrower (or any financing conduit acting on behalf of the Local Borrower) in compliance with the terms in Section 3.

“Administrative Expenses” shall mean the reasonable cost or value of all services rendered by the Local Borrower and its various departments with respect to the System.

(not used)

“Fund” shall mean the fund or funds into which the Local Borrower shall deposit the Revenues of the System.

“Net Revenues” shall mean that portion of the Revenues remaining after deducting sufficient funds for the Operation and Maintenance Expenses of the System.

“Operation and Maintenance Expenses” shall mean all costs reasonably incurred in connection with the operation, use and maintenance of the System, including (i) repairs necessary to keep the System in efficient and economical operating condition, (ii) the payments of premiums for insurance hereinafter required to be carried on the System, (iii) payments of reasonable Administrative Expenses and (iv) generally all expenses of the System except depreciation, interest expense related to the Loan Agreement, any Outstanding Parity Obligations, any Additional Parity Obligations, and interest expenses on any obligations subordinate to such obligations.

“Outstanding Parity Obligations” shall mean obligations issued and outstanding having a lien payable from Net Revenues of the System on a parity with the Loan Agreement.

“Revenues” shall mean and include all income, moneys and receipts to be received by the Local Borrower, directly or indirectly, from the ownership, use or operation of the System including any waste material or by-products of the System, and also including investment income.

Section 2 Source of Repayment and Rate Covenant Provisions

1. It is understood and agreed that all payments with respect to the Loan shall be made only from the Source of Repayment, which is hereby pledged to the payment of all amounts due under the Loan. The “Source of Repayment” is the Net Revenues of the System as hereinafter provided. The Net Revenues are hereby pledged by the Local Borrower to the payment of all amounts due under the Loan and the repayment of such amounts shall be secured by a lien on and pledge of the Net Revenues on parity with the pledge and lien granted by the Local Borrower for the payment and security of Outstanding Parity Obligations and Additional Parity

Obligations. The amounts due under this Loan Agreement and any Outstanding Parity Obligations and Additional Parity Obligations ~~(exclusive of the Local Borrower's repayment obligations with respect to those reserve fund credit instruments in connection with this Loan and any Additional Parity Obligations which shall be secured on a subordinate basis)~~, shall be equally and ratably secured by said pledge and lien without one having priority over the other. The Local Borrower intends that this pledge shall be a prior and paramount lien on and a first pledge of the Net Revenues, as will be sufficient to make all payments on the Loan, and the Local Borrower covenants to make the payments under the Loan from the Net Revenues, except to the extent that it chooses to make such payments from other legally available funds at its sole option. In no event shall the Local Borrower be required to make the payments on the Loan from any revenues, receipts or sources not derived from the Net Revenues of the System.

2. The Local Borrower covenants and agrees that it will establish and maintain schedules of rates, fees and charges for all services supplied by the System which, after making reasonable allowance for contingencies and errors in estimates, shall produce Revenues in each fiscal year that are sufficient, (a) to pay the Operation and Maintenance Expenses of the System, (b) to produce an aggregate amount of Net Revenues equal the sum of (i) one hundred twenty percent (120%) of the aggregate of the debt service or comparable payments payable on the Loan, the Outstanding Parity Obligations, and any Additional Parity Obligations in such fiscal year, and (ii) one hundred percent (100%) of the aggregate of the debt service ^{to} or comparable payments, separately payable and secured on a basis subordinate to the Loan by Net Revenues, and (c) to maintain all necessary fund balances required under the resolutions or agreements of the Local Borrower authorizing the Loan, the Outstanding Parity Obligations, and Additional Parity Obligations.

Section 3 Additional Parity Obligations

The Local Borrower covenants and agrees that no ^{other} obligations of any kind will be issued that are payable from or enjoy a pledge of the Net Revenues having priority over the Loan.

It is understood and agreed that Additional Parity Obligations having a lien upon and payable from the Net Revenues may be issued on parity with the Loan, but only as provided herein and only to provide funds to make improvements and expansions to the existing System, to purchase capacity rights in sewage treatment plant facilities owned by other political subdivisions of the State, to purchase capacity rights in water treatment plant facilities owned by other political subdivisions of the State, to acquire land, rights in land or water rights for the System, to provide reasonable reserves for Outstanding Parity Obligations and Additional Parity Obligations, to refund Outstanding Parity Obligations and Additional Parity Obligations or the Loan or to refund other bonds of the Local Borrower, if any, whether revenue bonds, general obligation bonds or other bonds or obligations, issued to provide funds to construct or acquire additions, extensions, improvements, expansions or replacements to the System, subject to the following conditions:

(a) The Local Borrower will not, at the time of the issuance of such Additional Parity Obligations, be in default under any Outstanding Parity Obligations, Additional Parity Obligations, the Loan or under any resolution related thereto or providing for the issuance of Additional Parity Obligations or any related credit or reserve fund credit instrument;



Staff Report

Item Number: 6.C.

Agenda Item:**Haskell Springs North Water Tank Rehabilitation**

Discuss, consider, and act upon a proposal to repair the Haskell Springs North welded steel tank roof, support structure, valves, and appurtenances replacement for an amount not to exceed \$475,000.

Staff Contact:

Joshua Tomerlin, Utilities Director

Meeting Date:

March 11, 2025

Strategic Goal:

This agenda item supports the following Clarkdale Strategic Goal Area:

- Goal Area 5 – Plan for the maintenance and growth of quality infrastructure that is sustainable and resilient.

Background:

The Town's water system has two water production and storage sites, Haskell Springs and 89A. The Town's four water reservoirs store 2.4 million gallons of potable water. The Haskell Springs North Tank is a welded steel tank built in 1995 and holds 750,000 gallons, 30% of the total system's storage.

The Town's potable water reservoirs and tanks are cleaned and inspected every three years per AWWA recommendations. The last periodic inspection by Rubicon Applied Divers on July 16, 2024, found:

- Interior coating blistering on the walls and floor.
- Significant coating delamination and heavy corrosion on the roof and rafters.
- Corroded roof rafters on the floor of the tank.

They recommended further inspection of the tank's roof and removal of large debris from the tank.

On Jan. 30, 2025, the tank was drained, cleaned, and inspected by Southwest Tank and Steel. The tank's walls and floor had paint blistering, the roof had coating delamination and severe corrosion, along with additional roof rafters on the floor. During the inspection, we also found pinholes in the tank's roof. It was concluded that the tank's roof and roof structure needed to be replaced, the floor and walls were in structurally good shape and needed to be

recoated. The tank's manual liquid level system needs to be replaced. Additionally, the tank's isolation valves are leaking and should be replaced during rehab.

The scope of the project will include the replacement of the tank's roof, roof structure, liquid level system, replacement of isolation valves, sandblasting, and recoating the interior and exterior. We will be utilizing a contract through SAVE, Flagstaff Contract 2024-145 Water Storage Tank Maintenance and Painting for Southwest Tank and Steel Inc. The Valves will be purchased through Ferguson and replaced by the in-house Utilities staff.

Budget Impact:

Due to the need for these repairs, Staff recommends reallocating these funds:
CIP W19 Haskell Springs Tank Coating 13-5-0800-8007, \$250,000
CIP W28 Fisher House Warehouse, 13-5-0800-8011, \$225,000

Recommendation:

Staff recommends authorizing the Town Manager to sign all documents necessary to execute the Haskell Spring's North Tank Rehabilitation, up to \$475,000 plus 10% potential for change orders.

SOUTHWEST TANK AND STEEL, INC
AWWA & API Tanks, Foundations, Engineering, Inspections, and Painting
ROC 268351



Corporate Office:
4900 N. Hayfield Draw, Ste I Camp Verde, AZ 86322
Phone 928-646-5900 Fax 928-646-5908

February 5th, 2025

To: The Town of Clarkdale

Attn: Joshua Tomerlin

Ref: Haskell Springs Tank Roof Replacement

Southwest Tank Company submits the following tank proposal for the above referenced project. Proposal is based on information provided during a site visit.

Proposal consists of this letter and the following attachments:

- Attachment 1, Proposed Pricing and Schedule
- Attachment 2, Clarifications to Scope of Work
- Coating repair attachment

If you have any questions or require additional information, please contact me on my cell phone at **480-685-0622**.

Sincerely,

Jeremy Flores

Jeremy Flores
Technical Sales & Estimating

ATTACHMENT 1

PROPOSED PRICING

Price

STS proposes to remove and replace the roof & support structure of a 64' Diameter x 32' Tall Welded Steel tank per AWWA as described in this proposal for the following lump sum pricing:

Tank Roof & Structure replacement.....\$ 205,650.00
Coatings not included, see attached coatings proposal

Proposal is based on current materials market pricing. Pricing is subject to both increase and decrease due to current market volatility. Pricing will be revisited prior to signing of contract.

Terms of Payment

Terms for the tank would be 10% on submittal of calculations and drawings, balance on monthly estimates based on an agreed upon schedule of values. Due to volatility in steel prices, our price is only guaranteed for 30 days. Contact us for any extension.

Schedule

Should award, material vendors, approvals, deliveries or weather impede progress, additional time may be required. One (1) week approvals for design calculations and drawings are required to maintain the proposed schedule. Time frames below are “per tank”

Submit Fabrication Drawings	3-4 Wks	After subcontract is signed
Order steel (6 to 8 week turn around)		Upon receipt of subcontract
Demo existing roof	1-2 Wks	After Approval
Install new floor	2-3 Wks	Install time
Total Schedule from NTP to complete	12-16 Wks	After NTP

ATTACHMENT 2

CLARIFICATIONS TO SCOPE OF WORK

STS proposes to repair: 1 - 64' D x 32' H Welded Steel Tank floor in accordance with AWWA tank design standards.

STS has **INCLUDED** in this proposal:

- Remove and replace roof plate & support structure.
- Design Calculations and Shop fabrication drawings
- Piping supplied and installed by STS as shown below:

Piping: _____ **Terminates at:** _____ **Terminates in:** _____

To follow is the work to be done:

- Door sheet installation
- Roof replacement
- Remove and replace the entire structural system. This includes:
- Top angle, Rafter clips, Rafters
- Dollar plate, dollar plate clips, center pole, base and doubler plate.
- Remove and replace the entire roof
- New 36" roof manway
- New 24" roof vent
- New cathodic protection system
- Radiography testing will be performed in accordance to AWWA. Reports and images will be provided to the customer after conclusion of tank work and when such information is available from testing laboratory. If the customer requires additional X-ray shots beyond this standard, STS will perform this work on a time and materials basis. All additional costs incurred for this work will be added to the contract price.
- If this proposal is accepted, both parties expressly understand that this proposal shall be incorporated as an integral part of any contract, subcontract, purchase order, or any other agreement between General Contractor and STS.
- Any deviations or modifications from the above scope of work involving extra cost of materials and labor will only be executed upon written orders for the same and will become an additional charge added to the sum estimated for this proposal. All agreements on changes (change-orders) must be made in writing.

STS Tank has specifically **EXCLUDED** from this proposal the following:
Items listed below

SOUTHWEST TANK AND STEEL, INC

AWWA & API Tanks, Foundations, Engineering, Inspections, and Painting
ROC 268351

- Payment bond, performance bond, permits or permit fees, taxes and special insurance.
- Draining & cleaning of tank and piping
- Supply & installation of the foundation, steps, utility vaults, drain box and splash pads
- Any and all external piping and valves
- Grout or gasket between tank bottom and ring wall foundation including sealant.
- Electrical & Instrumentation including conduit supports unless specifically “included” above.
- Paving, landscaping, fencing, erosion control. An accessible road must be provided to tank site for a standard 40ft tractor and trailer unit, to mobilize tank structure, appurtenances and equipment for erection of tank. A minimum of 15ft around the tank foundation is required for erection and painting.
- Davis bacon wage requirements
- Non productive labor. ie. Fire watch / Hole watch
- Interior and Exterior coatings including any and all touch up. (see separate coating proposal)



FERGUSON WATERWORKS #1670
8314 EAST LONG MESA DRIVE
PRESCOTT VALLEY, AZ 86314-9347

Phone: 928-227-9710

Deliver To:

From: Alejandro Martinez
alejandro.martinez@ferguson.com

Comments:

17:09:22 FEB 06 2025

Page 1 of 2

FERGUSON WATERWORKS #3083

Price Quotation

Phone: 928-227-9710

Bid No: B444698
Bid Date: 02/06/25
Quoted By: AAM

Cust Phone: 928-639-2400
Terms: NET 10TH PROX

Customer: TOWN OF CLARKDALE
PO BOX 308
CLARKDALE, AZ 86324

Ship To: TOWN OF CLARKSDALE
39 N 9TH ST
CLARKDALE, AZ 86324

Cust PO#:

Job Name: 6-12 VALVES W/WHEEL

Item	Description	Quantity	Net Price	UM	Total
AFC2506FFORRWHW	6 DI FLG RW OR GATE VLV H/WHL	2	973.420	EA	1946.84
AFC2512FFORRW	12 DI FLG RW OR GATE VLV W/ OP NUT W/HANDWHEEL	1	2852.010	EA	2852.01

2-3 WEEKS DIRECT FROM MANUFACTURE. QUOTE IS GOOD UNTIL 2/30/24. POSSIBLE 5% INCREASE IN MARCH DUE TO MARKET CONDITIONS. VERIFY OPEN RIGHT BEFORE ORDERING.					

Net Total:					\$4798.85
Tax:					\$404.54
Freight:					\$0.00
Total:					\$5203.39



HOW ARE WE DOING? WE WANT YOUR FEEDBACK!

Scan the QR code or use the link below to
complete a survey about your bids:

<https://survey.medallia.com/?bidsorder&fc=3083&on=21214>

FERGUSON WATERWORKS #3083
Price Quotation

17:09:22 FEB 06 2025

Reference No: B444698

Quoted prices are based upon receipt of the total quantity for immediate shipment (48 hours). SHIPMENTS BEYOND 48 HOURS SHALL BE AT THE PRICE IN EFFECT AT TIME OF SHIPMENT UNLESS NOTED OTHERWISE. QUOTES FOR PRODUCTS SHIPPED FOR RESALE ARE NOT FIRM UNLESS NOTED OTHERWISE.

CONTRACTOR CUSTOMERS: IF YOU HAVE DBE/MBE/WBE/VBE/SDVBE/SBE GOOD FAITH EFFORTS DIVERSITY GOALS/ REQUIREMENTS ON A FEDERAL, STATE, LOCAL GOVERNMENT, PRIVATE SECTOR PROJECT, PLEASE CONTACT YOUR BRANCH SALES REPRESENTATIVE IMMEDIATELY PRIOR TO RECEIVING A QUOTE/ORDER.

Seller not responsible for delays, lack of product or increase of pricing due to causes beyond our control, and/or based upon Local, State and Federal laws governing type of products that can be sold or put into commerce. This Quote is offered contingent upon the Buyer's acceptance of Seller's terms and conditions, which are incorporated by reference and found either following this document, or on the web at <https://www.ferguson.com/content/website-info/terms-of-sale>

Govt Buyers: All items are open market unless noted otherwise.

LEAD LAW WARNING: It is illegal to install products that are not "lead free" in accordance with US Federal or other applicable law in potable water systems anticipated for human consumption. Products with *NP in the description are NOT lead free and can only be installed in non-potable applications. Buyer is solely responsible for product selection.

Buyer shall accept delivery of products within 60 days of Seller receiving the products at Seller's warehouse. If Buyer causes or requests a delay in delivery of the products, Buyer may be subject to storage fees and additional costs caused by such delay. Seller reserves the right to requote the products and reschedule the delivery date, subject to manufacturer's lead times and price increases, if Buyer is unable to accept delivery within 60 days.

**HOW ARE WE DOING? WE WANT YOUR FEEDBACK!**

Scan the QR code or use the link below to
complete a survey about your bids:

<https://survey.medallia.com/?bidsorder&fc=3083&on=21214>

CONTRACT FOR PURCHASE OF MATERIALS/SERVICES

Contract No. 2024-145

This Contract is entered into this 29th day of May, 2024, by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Southwest Tank and Steel, Inc., an Arizona Corporation ("Contractor").

WHEREAS the City desires to receive, and Contractor is able to provide materials and/or services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the Parties agree:

1. Scope of Work: Contractor shall provide the materials and/or services generally described as follows:

**Water Storage Tank Maintenance and Painting
(Railroad Springs Tank, Kinlani Tank, Woody Mountain Booster Tank, and Buffalo Park Tank)**

and as more specifically described in the Scope of Work attached hereto as Exhibit A.

2. Compensation: City will pay Contractor for satisfactory performance of the Contract in an amount not to exceed **three hundred fifty-three thousand five hundred eighteen dollars and zero cents (\$353,518.00)** including fees and taxes, made in accordance with the Bid Schedule. Any price adjustment must be approved by mutual written consent of the parties through a formal amendment. The City Manager or his/her designee (the Purchasing Director) may approve an amendment if the total amount of the contract as amended is less than \$100,000; otherwise, City Council approval is required.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are incorporated by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Special Terms and Conditions: The City of Flagstaff Special Terms and Conditions attached hereto as Exhibit C are incorporated by reference and shall apply to the performance of this Contract, except to the extent modified in Exhibit A. If there are conflicts between the Standard Terms and Conditions and the Special Terms and Conditions, the terms contained in the Special Terms and Conditions shall prevail.
5. Insurance: Contractor shall meet insurance requirements of the City, attached hereto as Exhibit D.
6. Contract Term:
 - A. The Contract term is for a period of three (3) years unless terminated pursuant to the Standard Terms and Conditions and/or Special Terms and Conditions.
 - B. The Scope of Work for each of the water tanks identified within this contract shall be completed within 18 months of the Notice to Proceed.

- B. The Contract will be effective as of the date signed by both parties. Performance shall commence within ten (10) days from the City's issuance of the Notice to Proceed.
7. Renewal: The Contract may be renewed for up to two (2) additional one-(1) year terms by mutual written consent of the parties. The City Manager or his designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
8. Extension or Renewal for Procurement: The City may unilaterally extend or renew this Contract for up to four additional ninety-day terms to allow for procurement processes upon the completion of the term of the Contract. The City Manager or his designee (the Purchasing Director) shall have authority to approve extension on behalf of the City.
9. Notice: Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Teddy Callan
Procurement Specialist
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
emarkel@flagstaffaz.gov

With a copy to:

Brian Huntzinger
Water Production Manager
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
Bhuntzinger@flagstaffaz.gov

To Contractor:

Brandon Bentley
Project Manager/Estimator
Southwest Tank and Steel, Inc.
4900 Hayfield Draw Dr
Camp Verde, AZ, 86322
brandon@southwesttank.com

With a copy to:

Jana L. Weldon
Beautification, Arts & Sciences Program
Manager
City of Flagstaff
6 E. Aspen Ave., Suite 200
Flagstaff, AZ 86001
Jana.Weldon@flagstaffaz.gov

(REMAINDER OF PAGE INTENTIONALLY BLANK)

10. Authority: Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR:

By: Vikki Church

Title: CEO

CITY OF FLAGSTAFF

By: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Notice to Proceed issued: _____, 20__

EXHIBIT A

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

Solicitation No. 2024-145
Procurement Specialist: Teddy Callan
PH: (928) 213-2275

CITY OF FLAGSTAFF

Water Storage Tank Maintenance and Painting

BID NUMBER 2024-145

BID FORM

PLEASE SEE THE SCOPE OF WORK ATTACHED TO THE CONTRACT AS *EXHIBIT A* FOR REQUIRED MATERIALS. ENTER THE SERVICE CHARGES/BID AMOUNTS FOR THE FOLLOWING AREAS AND ALL MATERIALS SPECIFIED IN THIS SOLICITATION.

Explanation of Bid Items

Abrasive Blast Cleaning, Coat & Paint Exterior Surface, and Disposal of waste material Railroad Springs Tank. The lump sum price shall constitute full compensation for furnishing all labor, materials, tools, and equipment necessary to complete the Work.. The lump sum bid price shall include all work related to abrasive blast cleaning, preparation, painting removal and disposal of waste material. The Bid includes costs associated with the anniversary (one year) inspection.

Additive Alternatives 1-3 (Bid Items 2-4) Kinlani Tank, Woody Mountain Booster Station Forebay, and Buffalo Park Tanks. The lump sum prices for the Additive Alternates 1-3 (Bid Items 2-4) shall constitute full compensation for furnishing all labor, materials, tools, and equipment necessary to complete the Work. The lump sum bid price shall include all work related to abrasive blast cleaning, preparation, painting removal and disposal of waste material; or surface preparation using SSPC WJ4 Low Pressure Water Jetting to remove surface contaminants as defined below for each tank. The Bid includes costs associated with the anniversary (one year) inspection.

BID ITEM #1: RATE FOR RAILROAD SPRINGS #1 TANK

	COST
<i>See Attached for Price Clarification</i>	
Project	\$133,337 ⁰⁰

BID ITEM #2: RATE FOR KINLANI TANK

	COST
<i>See Attached for Price Clarification</i>	
Additive Alternative Project	\$ 45,758 ⁰⁰

BID ITEM #3: RATE FOR WOODY MOUNTAIN BOOSTER TANK

	COST
<i>See Attached for Price Clarification</i>	
Additive Alternative Project	\$ 24,662 ⁰⁰

BID ITEM #4: RATE FOR BUFFALO PARK

	COST
<i>See Attached for Price Clarification</i>	
Additive Alternative Project	\$ 149,761 ⁰⁰

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

Solicitation No. 2024-145
Procurement Specialist: Teddy Callan
PH: (928) 213-2275

(All charges must be included; no extra charges will be considered at a later date.
Miscellaneous charges will be considered in determining the low Bid)

Brandon Bentley
Signature of Person Authorized to Sign Bid

Brandon Bentley
Printed Name

Project Manager/ Estimator
Title

5/9/24
Date

Remainder of page left intentionally blank

May 9, 2024

Re: City of Flagstaff Exterior recoat projects

Below is the pricing for the exterior coatings on the (4) projects for the City of Flagstaff

Exterior: Buffalo Park and Woody Mountain

1. Prep- WJ4 Pressure Wash
2. Spot Prime- Epoxy applied at 5-7 Mils as needed on bare metal areas.
3. Full Prime- Epoxy Applied at 5-7Mils
4. Intermediate- Polyurethane Applied at 3-5 Mils
5. Finish- Fluoropolymer applied at 2-5 Mils

Exterior: Railroad Springs and Kinlani

1. Prep- SSPC SP6 Commercial blast
2. Primer- Epoxy applied at 5-7 Mils
3. Intermediate- Polyurethane applied at 3-5 Mils
4. Finish- Fluoropolymer applied at 2-5 Mils

Buffalo Park:

Exterior coatings	\$141,874.00
New LLI	\$4,887.00
Anniversary	\$3,000.00

Woody Mountain:

Exterior coatings	\$21,687.00
LLI Re number	\$975.00
Anniversary	\$2,000.00

Railroad Springs:

Exterior Coatings	\$125,950.00
New LLI	\$4,887.00
Anniversary	\$2,500.00

Kinlani:

Exterior coatings	\$38,871.00
New LLI	\$4,887.00
Anniversary	\$2,000.00



Southwest Tank and Steel, Inc.
Office 928.646.5900 Fax 928.646.5908
AZ ROC 281376

***Prices do not include, Containment system, Permits, NACE Inspector or Prevailing wages.**

***STS requires Full payments on all Invoices no later than net 30.**

By acceptance of this bid you agree to our above terms and conditions.

Sincerely,
Brandon Bentley
Project Manager/ Estimator



STS Project References

Below you will find a list of architects/ engineers, municipal/public works projects that STS Inc., has completed over the past few years.

Arizona Water Company

Contact: Jackie Gonzales 602-240-6860
Project: Multiple Projects from 100K-2 MG completed from 2005-2024
Completed: STS Completed 100% of the contracted work.
Contracted amount:
*Interior system Plural component 100% solids Epoxy
*Exterior Hydro blast and Top Coat

Apex 2B

Contact: Brendan Rhodes 702-644-1117
Project: Apex 2B 2 MG Tank Fabrication and Painting
Completed: 1/15/24 STS Completed 100% of the Contracted work
Contract amount; \$1,725,421.00
STS has completed multiple projects for the City of North Las Vegas from 1.2MG-2.2MG.
*Interior system Plural component 100% solids Epoxy
*Exterior system Abrasive Blast and 3 coat system

Town of Queen Creek

Contact: Matthew Blake 360-241-5682
Project: Upper and Lower Hills
Completed: 4/24/24 STS Completed 100% of the Contracted work
Contract amount; \$452,304
STS has completed multiple projects for the TOQC ranging from 100K to 2MG.
*Interior system Plural component 100% solids Epoxy
*Exterior system Hydro blast and topcoat

City of Scottsdale

Contact; Bryan Forster 602-695-3652
Project: Scottsdale #42 2 MG Tank Fabrication and Painting
Completed: 12/20/2021 STS completed 100% of contracted work
Contract amount; \$1,255,267.87
STS has completed multiple tank projects for the City of Scottsdale from 250K-2MG
*Interior system No. 100% solids epoxy
*Exterior system No. 3 coat system



City of Avondale

Contact: Mike Bejarano 480-392-3133
Project: Rancho Santa Fe 2MG Tank Fabrication and Painting
Completed: 4/10/23 STS completed 100% of contracted work
Contract amount: \$342,576.71
*Interior system AWWA NSF 600 Epoxy system
*Exterior system Hydro Blast Top coat system

City of Lafayette

Contact: Matt Cain 303-912-2996
Project: Red Zone 2.5 MG Tank Fabrication and Painting
Completed: 2/4/2021 STS completed 100% of contracted work.
Contract amount: \$1,284,068.00
*Interior system 3 coat epoxy system
*Exterior system 2 coat epoxy Urethane system

City of Eloy

Contact: Jesus Angulo 480-493-8706
Project: Eloy Booster Station (2) 1 MG Tanks
Completed: 4-30-2021 STS Completed 100% of contracted work.
Contract amount: \$390,645.59
*Interior system Plural 100% solids Epoxy
*Exterior System Hydroblast and topcoat

Valley Utilities

Contact: Bryan Thomas 623-935-1100
Project: Well #9 new 500K Tank Fabrication and Coatings
Completed: 06-03-2021 STS Completed 100% of contracted work.
STS performed all contracted work
Contract amount: \$475,260.00
*Interior system 2 coat epoxy system per AWWA
*Exterior System SP6 commercial blast, prime and finish coat

City of Good Year

Contact: Justin Johnson Filanc Construction 602-544-3600
Project: Booster Station #21 2 MG Tank
Completed: 07-21-2021 STS Completed 100% of Contracted work
Contract amount: \$580,328.80
*Interior system Plural component 100% Solids



A few “Lead Removal Projects”

*City of Chandler- 1 MG water storage tank.
Ron Salas with Garney Construction 602-470-0001
*Pinetop Water Co. 3 150K gallon water storage tanks.
Dave Burks 928-367-2022
*Camp Navajo Military Base- 1 MG water storage tank
Operations Peter Espitia 928-773-3257

Note: STS Inc. Is also CFR29 Certified for removing Lead from potable water tanks.

If you have any questions feel free to give us a call.

Best Regards,

Brandon Bentley
Project Manager
brandon@southwesttank.com



EXHIBIT B

STANDARD TERMS AND CONDITIONS

(Last Updated January 19, 2023)

*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

IN GENERAL

1. **PARTIES:** The City of Flagstaff ("City") and the contractor identified in the Contract ("Contractor") may be referred to individually as "Party" or collectively as "Parties".
2. **NOTICE TO PROCEED:** Contractor shall not commence performance until after the City has issued a Notice to Proceed.
3. **LICENSES AND PERMITS:** Contractor its expense shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract and provide copies to City upon request.
4. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of the Contract.
5. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, the Contract is non-exclusive and the City reserves the right to contract with others for materials or services.
6. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

7. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
8. **QUALITY:** Contractor warrants that all materials supplied under the Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. The City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
9. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
10. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the materials.

11. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
12. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City actually receives the material at the point of delivery and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
13. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
14. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials and/or services. Delivery of nonconforming materials and/or services, or a default of any nature, shall constitute a breach of the Contract as a whole.
15. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
16. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens, other than the security interest held by Contractor, until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
17. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

18. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number and dates when goods had been shipped or work performed. Invoices shall be sent within thirty (30) days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
19. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, the City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.

20. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of the Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line-item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

21. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
22. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by the City.
23. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by the City.
24. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to the City or fees and charges owed to the City under the Contract.
25. **OFAC:** No payments may be made to any person in violation of Office of Foreign Assets Control regulations. 31 C.F.R. Part 501.

SERVICES

26. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
27. **CONTROL:** Contractor shall be responsible for the control of the work.
28. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
29. **SAFEGUARDING PROPERTY:** Contractor shall responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
30. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
31. **ACCEPTANCE:** If the City rejects Contractor's work due to noncompliance with the Contract, the City, after notifying Contractor in writing, may require Contractor to correct the

deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

32. **WARRANTY:** Contractor warrants all work for a period of one year following final acceptance by the City. Upon receipt of written notice from the City, Contractor at its own expense shall promptly correct work rejected as defective or as failing to conform to the Contract, whether observed before or after acceptance, and whether or not fabricated, installed or completed by Contractor, and shall bear all costs of correction. If Contractor does not correct deficiencies within a reasonable time specified in the written notice from the City, the City may perform the work and Contractor shall be liable for the costs. This one year warranty is in addition to and does not limit Contractor's other obligations herein. This warranty shall survive termination or expiration of the Contract.

INSPECTION, RECORDS, ADMINISTRATION

33. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five years after completion of the Contract.
34. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
35. **PUBLIC RECORDS:** The Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law. A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential", the City will endeavor to notify Contractor prior to release of such information.
36. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City's contract administration process. Contractor will be closely monitored for Contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION

37. **GENERAL INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense, arising out of the acts, errors, or omissions of Contractor, its officers, agents, employees, and subcontractors, in performing or failing to perform the responsibilities identified in the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects, and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.
38. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from and against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of the alleged infringement of any patent, trademark or copyright or other proprietary rights of any third-parties arising out of Contract performance

or use by the City of materials furnished or work performed under the Contract. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

- 39. NETWORK SECURITY AND PRIVACY LIABILITY:** Contractor shall indemnify and hold the City, and its officers, agents, employees, and subcontractors, harmless from an against any third-party claims, actions, liabilities, costs, including reasonable attorneys' fees and other costs of defense arising out of all acts, errors, omissions, negligence, infringement of intellectual property (except patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, including but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for the City. In the event any such action or claim is brought against the City, Contractor shall, if the City so elects and upon tender by the City: (a) defend the same at Contractor's sole cost and expense; and/or (b) promptly satisfy any judgment adverse to the City; or (c) reimburse the City for any loss, cost, damage, or expense, including attorneys' fees, suffered or incurred by the City. The City shall notify Contractor, within a reasonable time, of any claim, threat of claim, or legal action as it relates to the responsibilities identified in the Contract. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

- 40. PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
- 41. COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the Parties.
- 42. AMENDMENTS:** The Contract may be amended by written agreement of the Parties.
- 43. SEVERABILITY:** If any term or provision of the Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted and the remainder of the Contract shall remain in full force and effect.
- 44. NO WAIVER:** Both Parties have the right insist upon strict performance of the Contract, and the prior failure of a Party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
- 45. ASSIGNMENT:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. Any

assignment without such consent shall be null and void. No assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to the City. The Purchasing Director shall have authority to consent to an assignment on behalf of the City.

46. **BINDING EFFECT:** The Contract shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

47. **SUBCONTRACTING:** Contractor was selected for its special knowledge, skills, and expertise, and shall not assign the services/materials required in the Contract, in whole or in part, without the City's prior written consent, which may be withheld for any reason. The City reserves the right to withhold consent if the subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
48. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, any Contractor whose business is located within City of Flagstaff limits shall comply with the City Code, Chapter 14-02, *Civil Rights*, which also prohibits discrimination based on sexual orientation, or gender identity or expression.
49. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor's personnel shall abstain from use or possession of illegal drugs while engaged in performance of the Contract.
50. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and federal immigration laws and regulations shall constitute a material breach of the Contract and shall subject Contractor to penalties up to and including termination of the Contract. The City may, at its sole discretion, conduct random verification of the employment records of the employees of the Contractor and any subcontractors to ensure compliance with all state and federal immigration laws and regulations. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A).

DEFAULT AND TERMINATION

51. **TERMINATION FOR DEFAULT:** Prior to terminating the Contract for a material breach, the non-defaulting Party shall give the defaulting Party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days unless a longer period of time is granted by the non-defaulting Party in writing. In the event the breach is not timely cured,

or in the event of a series of repeated breaches the non-defaulting Party may elect to terminate Contract by written notice to Contractor, which shall be effective upon receipt. In the event of default, the Parties may execute all remedies available at law in addition to the Contract remedies provided for herein.

52. **CITY REMEDIES:** In the event of Contractor's default, the City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. The City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
53. **CONTRACTOR REMEDIES:** In the event of the City's default, Contractor may pursue all remedies available at law, except as provided for herein.
54. **TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
55. **TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, the Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice, without further penalty or liability to Contractor. If the Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by the City before the effective date of termination.
56. **TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate the Contract, and Contractor is deemed in default, at any time if the Contractor becomes insolvent, or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's ability to perform under the Contract.
57. **PAYMENT UPON TERMINATION:** Upon termination of the Contract, the City will pay Contractor for satisfactory performance up until the effective date of termination. The City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.
58. **CANCELLATION FOR GRATUITIES:** The City may cancel the Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

- 60. COOPERATIVE PURCHASE CONTRACTS:** Presuming that Contractor agreed to such during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell materials and services to any member of a cooperative group under the same pricing, terms and conditions of the contract awarded to the Contractor by the public procurement unit, following a competitive procurement process.
- 61. ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with the City without the prior written consent of the City.
- 62. NOTICES:** All notices given pursuant to the Contract shall be delivered at the addresses as specified in the Contract or updated by Notice to the other Party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four days after being sent; or (c) sent by overnight courier, with receipt deemed effective two days after being sent. Notice may be sent by email as a secondary form of notice.
- 63. THIRD PARTY BENEFICIARIES:** The Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
- 64. GOVERNING LAW:** The Contract shall be construed in accordance with the laws of Arizona.
- 65. FORUM:** In the event of litigation relating to the Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
- 66. ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
- 67. FORCE MAJUERE:**
- a. There may be events that occur during the term of the Contract that are beyond the control of both the City and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). These Events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of the Contract.
 - b. There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the City shall not pay additional costs incurred by Contractor as a result of such Events.
 - c. The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

- 68. NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if a Party has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no cents (\$100,000), the Party shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
- 69. CHANGES TO CONTRACT:** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.
- 70. FORCED LABOR OF ETHNIC UYGHURS:** If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. §35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware during the term of the contract that the company is not in compliance with the written certification, the Contractor shall notify the City within five (5) business days after becoming aware of the noncompliance. If the Contractor does not provide the City with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

EXHIBIT C

CITY OF FLAGSTAFF SPECIAL TERMS AND CONDITIONS

Working Conditions

1. No work will be performed on Saturdays, Sundays, Holidays, or after dark without previous written permission of the City.
2. Under no circumstances will any abrasive blasting or painting operation be conducted when the relative humidity is 85% or above, when the temperature is within 5 degrees of the dew point, or when the surface of the steel is wet. No work is to be done during damp, foggy weather or when it is raining.
3. Proper spray techniques, where specified, shall be followed at all times. Only competent workmen, experienced in the application of the specified coatings, shall operate spray equipment. The use of pole guns or spray gun extensions exceeding 12" is prohibited. Brushes shall be used to work paint into cracks, corners, or "blind" spots not adequately painted by spray. The rigging used in painting this tank will be left in position, in order that all surfaces may be observed after the coatings have cured.
4. The Contractor is to be aware that all cleaning operations are to conform to all Federal, State and Local regulations. If elevated lead and/or other toxin levels are discovered by any of the governing agencies, the Contractor will be solely responsible and be prepared to contain and dispose of these materials in an established fashion which meets with the written approval of these governing agencies. The Contractor shall assume all costs in meeting these governing agencies' requirements and shall not delay or suspend any abrasive blasting or painting operations in the process. The cleaning operations will also be regulated by wind velocity and/or direction. Abrasive blasting and/or painting operations may be suspended by the on-site observer or the City if in their opinion the wind is adversely affecting the quality of the work being performed. Failure to comply with the regulations stated herein shall be cause to suspend the Contractor's work at no further cost to the City, until the containment operation functions within the stipulated requirements.

Safety & Health Requirements

1. This project is subject to all the Safety and Health Regulations (29 CFR Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974, as well as 29 CFR 1910 Permit Required Confined Spaces for General Industry: Final Rule and the Contract work hours and Safety Standards Act (40 U.S.C. 327 et. Seg.) as supplemented by the Department of Labor Regulations (29 CFR Part 5). Contractors are urged to become familiar with the requirements of these regulations.
2. The Contractor shall comply with the requirements and standards of the William's-Steiger Occupational Safety and Health Act of 1970 and all other state and local laws, ordinances, codes, etc., governing all work to be provided under the Contract documents.
3. General: In accordance with requirements set forth by regulatory agencies applicable to the construction industry and manufacturer's printed instructions and appropriate technical bulletins and manuals, the Contractor shall provide and require use of personnel protective lifesaving equipment for persons working in or about the project site.

- A. Head and Face Protection and Respiratory Devices: Equipment shall include protective helmets which shall be worn by all persons while in the vicinity of the work. In addition, workers engaged in or near the work during sandblasting shall wear eye and face protection devices and air purifying, half mask or mouthpiece respirator with appropriate filter. Barrier creams shall be used on any exposed areas of skin.
- B. Ventilation: Where ventilation is used to control hazardous exposure, all equipment shall be explosion-proof. Ventilation shall reduce the concentration of air contaminant to the degree a hazard does not exist. Air circulation and exhausting of solvent vapors shall be continued until coatings have fully cured.
- C. Illumination: Adequate illumination shall be provided while work is in progress, including explosion proof lights and electrical equipment. Whenever required by the City, the Contractor shall provide additional illumination and necessary supports to cover all areas to be observed. The level of illumination for observation purposes shall be determined by the City.
- D. Temporary Ladders and Scaffolding: All temporary ladders and scaffolding shall conform to applicable safety requirements. They shall be erected where requested by the City to facilitate observation and be moved by the Contractor to locations requested by the City.

Sanitary Requirements

The Contractor and all workmen employed by him shall conduct all operations in a clean and sanitary manner. No nuisance shall be committed in a tank; the workmen shall either use proper waste receptacles or leave the tank whenever necessity arises. The Contractor shall make arrangements for portable sanitary facilities to be located onsite.

Protection of Surrounding Property

The Contractor shall be responsible for protection of all other property surrounding the tank and guarantee by use of the necessary precautions against any damage to same caused by falling materials or paint. In any case where property is damaged, the Contractor shall correct same prior to any payment.

Personnel Supervision of Contractor

The Contractor or his duly authorized and approved representative shall give personal attention to the fulfillment of the Contract. The Contractor shall have on the work site, at all times, a competent, English-speaking representative authorized to receive and execute any orders or directions of the City and/or any emergency personnel. The representative should also accept any notices given to the Contractor under the provisions of the Contract.

Application

The Contractor shall apply the paint to the tank by the method which protects surrounding property or equipment.

The Contractor should note that the paint manufacturer or the City does not assume any responsibility for damage to property or equipment. Accordingly, the Contractor is hereby given notice that he shall be required to use the utmost precaution and to take special care in the

method and manner of applying the paint to the structures and facilities of the City and nearby residents. Furthermore, by the execution of this Contract to paint the structures and facilities in question, the Contractor shall be deemed to have agreed to indemnify and save harmless the City, from and against all liability and cost, which the City may incur as the result of any damage to property of any nature in the surrounding area, attributable to and /or caused by the application of the paint to the structures and facilities of the City. Paint thickness and methods of application shall be as specified. If the thickness of the coatings is less than that specified, additional coats will be required.

Submittals

1. Schedule: Prior to ordering any coatings or doing any field work, the Contractor shall submit to the City a complete listing of all products he intends to use, indicating the surfaces and areas for each product, and stating the number of coats and the dry film thickness (DFT) of each coat. Such schedule shall be submitted sufficiently in advance of field work to allow the City to prepare a color scheme. All coatings to conform to materials outlined herein.
2. Color Cards: A minimum of 3 drawdowns of City selected color in the selected finish on 8X11 cards shall be submitted prior to the work. Contractor shall note that the project may require custom colors and the Contractor may be required to match existing site color.
3. Performance Criteria: Performance criteria indicating the proposed coating meets or exceeds ASTM test requirements for abrasion resistance, chemical resistance, adhesion, accelerated weathering, and any other pertinent test methods associated with water tank interior and exterior coating performance.
4. The Contractor is to submit a preliminary construction schedule for completion of the project and abrasive blasting procedure to be used on the project.
5. Failure to include items 1, 2, 3 and 4 will be considered an incomplete submittal.

Extra Work and Material

No claims for any extra work or materials will be allowed, unless it is ordered in writing by the City and the price to be paid is agreed upon by a written agreement before the work is done or material furnished.

Legal Requirements

The Contractor shall keep himself fully informed of, and comply with, all laws, ordinances and regulations of the Federal, State and Municipal governments, which may be in force during the life of the Contract, and in any manner affecting his employees or the conduct of the work or materials used on said work.

Subletting and Assigning Contract

The Contractor shall not sell, transfer, assign or otherwise dispose of the Contract to any third-party.

General Requirements

1. The Contractor shall examine the specifications and the drawings for the various trades, in connection with painting and finishing, and shall understand that all materials and equipment throughout the work which obviously require a painter's finish, and which are left unfinished by others, shall be painted to completion by this Contractor as a part of the work.
2. All exterior coatings are to comply with all current regulations and standards carrying the appropriate approvals from National Sanitation Foundation (N.S.F.) Standard 61 and 600 for Coatings and Linings; and meet current US EPA requirements for Volatile Organic Compounds (VOC) Compliance Level. All coatings shall meet and shall limit VOCs to the maximum allowable under the current VOC Compliant Regulations.
3. Guarantee. It will be the Contractor's obligation to guarantee his workmanship. Such guarantees shall state the products used will adhere to the surface without peeling and cracking, scaling, alligatoring, blistering, or fading for a period of at least **one year** from the date of acceptance of the painting work. Upon written notice of paint failure by any of the above, or similar reasons, the Contractor shall prepare surfaces, repaint the surface without additional cost to the City. If it is determined that the product chosen was faulty, the Contractor will still have the obligation of removing and replacing the coating without further expense to the City. Should the Contractor have any reservation that the product specified will not perform as intended, he shall so notify the City and shall not proceed with that work until agreement is reached on mutually acceptable products.

Quality Assurance

1. Quality assurance procedures and practices shall be utilized to monitor all phases of surface preparation, application, and observation throughout the duration of the project. Procedures or practices not specifically defined herein may be utilized provided they meet recognized and accepted professional standards and are approved by the City. The City reserves the right to have observation performed by an "City's Representative" during the project.
2. Competent Workers to be Employed: The Contractor shall employ only competent and skillful men to do the work, and whenever the City shall notify the Contractor in writing that any man on the work is, in his opinion, disrespectful, or otherwise unsatisfactory, the Contractor, on receiving such notice shall forthwith dismiss such person and shall not again employ him on any part of the work without the written consent of the City. The Contractor shall also employ a full-time supervisor/ foreman, who will be on-site at all times and responsible for the coordination of all activities and schedules between the Contractor and City as well as the performance of all work outlined herein.
3. Surface Preparation: Surface Preparation will be based upon comparison with "Pictorial Surface Preparation Standard for Painting Steel Surfaces" SSPC-Vis 1- (Latest Version Thereof) Visual Standard for Abrasive Blast Cleaned Steel.
4. Application: No coating or paint shall be applied when the surrounding air temperature of the surface to be coated or painted is below manufacturers printed instructions; to wet or damp surfaces or in rain, snow, fog or mist; when the surface temperature is less than 5 degrees Fahrenheit above the dewpoint; when it is expected the air temperature will drop below recommended temperatures six hours after application of coating or paint. Dewpoint shall

be measured by use of an instrument such as a Sling Psychrometer in conjunction with US Department of Commerce Weather Bureau Psychrometric Tables.

5. Thickness checking and Observation Devices: The Contractor shall furnish their own equipment for quality control, until final acceptance of coatings and painting, observation devices in good working condition for detection of holidays and measurement of dry-film thickness gauge and certified instrumentation to test accuracy. Thickness of coatings and paint shall be checked with a non-destructive, magnetic type thickness gauge, which shall be supplied by the Contractor and available for use at the site in accordance with SSPC-PA 2. Dry film measurement should be performed in accordance with SSPC-PA 2 measurement of dry paint thickness with magnetic gages. Use an instrument such as a Tooke Gage if a destructive tester is deemed necessary.

Warranty

1. The Contractor agrees to make good, without cost to the City, any defects in the work or parts of the work furnished or built by him, and any damages due to faulty workmanship, on his part, or due to faulty or imperfect materials or equipment furnished by him, which may appear within one year from the "Date of Completion" of the work agreed to under this Contract.
2. Just prior to the expiration of one year immediately following the "Date of Completion", it is agreed that a representative of the City, a representative of the Contractor and a representative of the Manufacturer, whose paint is used for the work, shall make a complete observation of the tank to determine whether the painting work has stood up satisfactorily. A majority vote of the three parties, making the observation, shall determine whether there are any defects in the Contractor's work, which he shall repair.
3. The Contractor shall re-paint the tank or otherwise make good any defects in the work agreed to under this Contract which may be discovered by the aforesaid observation.
4. THE PERFORMANCE BOND SHALL REMAIN IN FULL FORCE AND EFFECT THROUGH THE GUARANTEE PERIOD.

Imperfect Work or Materials

Any defective or any imperfect work or materials furnished by the Contractor, that may be discovered before the final acceptance of the work as established by the City's "Certificate of Completion" shall be removed immediately even though it has been overlooked by the City and estimated for payment. Any materials condemned or rejected by the City shall be marked so conspicuously and shall, on demand, be at once removed to a satisfactory distance from the work. Satisfactory work or materials shall be substituted for that rejected.

Observation

1. All cleaning and painting shall be subject to routine observation by a representative of the City.
2. The City reserves the right to observe all cleaned surfaces prior to primer application and also each coat of paint prior to subsequent paint application. It is understood that such observation shall be made available to the City at any time during the performance of work.

The Contractor will give at least (24) hour notification to the City's representative as to insure availability for observation.

3. The Contractor shall correct such work as is found defective under the specification and supply such materials required to make the repairs at his own expense. If the dry film thicknesses of the applied coatings do not comply with the specified dry film thicknesses outlined, the Contractor shall apply additional coats of paint as necessary to ensure compliance with the contract specifications, at no extra cost to the City.
4. The Contractor shall maintain adequate and secure rigging facilities for use of the City's Observer. Scaffolding, boatswain chairs, spiders, or other rigging, removed prior to observation, shall be replaced at the Contractor's expense, as required by the City for thorough observation of the work. All applicable provisions of OSHA shall be adhered to.

Final Clean Up

Before the final acceptance of the Project, the Contractor shall remove all equipment, temporary work, unused and useless materials, rubbish, and temporary buildings, shall repair or replace in an acceptable manner other private or public property which may have been damaged or destroyed on account of the prosecution of the work and shall leave the site of the project and adjacent public and private property in a neat and presentable condition wherever his operations have disturbed conditions existing at the time starting work.

Release of Final Payment

1. The payment, for the final amount due under this Contract, shall release the City and every agent or employee of the City, and the agent and employees of any such agent, from any or all claims or liabilities on account of work performed under the Contract or any alteration thereof.
2. The Contractor shall be responsible for all damages caused to the surrounding landscaping and the City shall deduct from this Contract amount any damages not compensated by insurance of Contractor. Payment for final cleaning up and restoration of property, as above provided, will be included in the prices bid for the various scheduled items.

Products

1. Acceptable manufacturers are:
 - PPG/Amercoat
 - Tnemec Company
 - Sherwin Williams
2. Coating Systems shall conform to all current regulations and standards carrying the appropriate approvals from N.S.F. (National Sanitation Foundation) Standard 61 / 600 for Coatings and Linings. All coatings, both interior and exterior, shall meet all current U.S.E.P.A Requirements for V.O.C. (Volatile Organic Compounds) Compliance Level.
3. All materials shall be brought to the jobsite in original sealed containers. They shall not be used until the City has observed contents and obtained data from information on containers

or label. Materials exceeding storage life recommended by the manufacturer shall be rejected.

4. All coatings and paint shall be stored in enclosed structures to protect them from weather and excessive heat or cold. Flammable coatings or paint must be stored to conform with City, County, State and Federal safety codes for flammable coating or paint materials. At all times, coatings and paint shall be protected from freezing.
5. Paint Coordination:
 - A. Provide finish coats which are compatible with the prime coats used.
 - B. Review other Sections of these Specifications as required, verifying the prime coats to be used and assuring compatibility of the total coating system for the various sub-strata.
 - C. Upon request, furnish information on the characteristics of the specific finish materials to assure that compatible prime coats are used.
 - D. Provide barrier coats over non-compatible primers; or remove the primer and re-prime as required.
 - E. Notify the City in writing of anticipated problems in using the specified coating system over prime coatings supplied under other Sections.
 - F. Apply paint of specified Dry Film Thickness (DFT), which thickness shall be absolute minimum coverage at any point of measurement.

Painting

1. All paints and coatings shall be applied strictly in accordance with the manufacturer's instructions regarding surface preparation, pretreatments, mixing and thinning, temperature of material and substrate, curing or drying times before recoating, and all similar recommendations. Where pretreatments or subsequent coats required for film build with the products specified are omitted by virtue of the manufacturer's recommendations, a credit will be taken by the City for each coat omitted.
2. No painting shall be done when temperatures are outside of those recommended by the manufacturer in the respective product data sheets. No coating shall be applied when environmental conditions are not within the manufactures recommended ranges as provided in the respective product data sheets.
3. Manufacturer's Product Data Sheets are to be incorporated as part of this specification and the Safety Data Sheets (SDS) on all applicable paint materials and solvents shall be available and posted prior to commencement of work.
4. All painting practices shall be in complete accordance with the normal standards of good painting practice as outlined by the Steel Structures Painting Council in the SSPC Manuals Volume 1 and 2.

5. Any areas not finished to the complete satisfaction of the City, or City's representative shall either be removed and re-applied (all coats) or shall be given extra coats at his direction, to bring the total film thickness up to a minimum of dry mils.
6. The manufacturer's recommended drying time and application procedure will be strictly adhered to.
7. The coatings are to be cured in accordance with Manufacturer's recommendations, at the end of which time a solvent rub test will be performed to test the state of cure. If the coatings are not fully cured additional cure times will be outlined.
8. The City shall select the color(s) of the finish coats from color charts submitted by the Contractor. The intermediate and finish coat colors shall have sufficient color contrast to act as an indicator of coverage.
9. Paint System:
 - A. Number of coats and thickness requirements will vary with substrate, application method and exposure. The Contractor shall comply with requirements as stated by manufacturer.
 - B. Exterior coatings will be approved based on aesthetics as well as performance, no runs, drips, or embedded material will be accepted.
 - C. The stripe coat of paint will be brush applied to all weld seams, lap seams, bolted connections, angles, and areas of pitting and pitted areas to ensure total coverage.
 - D. No excessive spray dust or solvent entrapment will be allowed in the completed paint system.

General

1. The Contractor, in submitting his bid, acknowledges that he is aware of the importance associated with the containment and disposal requirements and that he accepts the responsibility for providing environmental protection to the satisfaction of the City and the state and local governing agencies.
2. All surface preparation, coating and painting shall conform to applicable standards of the Steel Structures Painting Council, and the manufacturer's printed instructions. Materials applied prior to approval of the surface by the City shall be removed and reapplied to the satisfaction of the City at the expense of the Contractor.
3. Dust, dirt, oil, grease, or any foreign matter that will affect the adhesion or durability of the finish must be removed by washing with clean rags dipped in an approved cleaning solvent and wiped dry with clean rags.
4. Coating and painting systems include surface preparations, prime coating, and finish coatings. Unless otherwise specified, prime coating shall be field applied. Where prime coatings are shop applied, the Contractor shall instruct suppliers to provide the prime coat compatible with the finish coat specified. Any off-site work which does not conform to this specification is subject to rejection by the City.

5. The Contractor's coating and painting equipment shall be designed for application of materials specified and shall be maintained in first class working condition. Compressors shall have suitable traps and filters to remove water and oils from the air.
6. Application of the first coat shall follow immediately after surface preparation and cleaning within an eight (8) hour work-day. Any cleaned areas not receiving a first coat within an eight (8) hour period or is exhibiting "Rust Bloom" shall be re-cleaned prior to application of the first coat.

Waste Disposal

1. The Contractor is responsible for the proper and legal disposal of all cleaning particulate at the completion of the surface preparation phase of the project. The disposal of the cleaning particulate as well as all paint containers shall conform to all federal, state, and local agency regulations for disposal of such debris as outlined below.
2. On-site treatment of any hazardous material will be allowed providing it complies with acceptable methods and practices as outlined by EPA regulations.
3. The Contractor will NOT be allowed to use recyclable abrasives.

Worker Protection

1. The Contractor shall minimize exposure using engineering controls, proper protective equipment, and good work practices.
2. The Contractor will be responsible for development and implementation of a worker protection program.
3. The Contractor will also provide the City's Observer with appropriate respirators, in addition to all other safety equipment he/she might require while on the job site.

Items to be Painted

It is not the objective of this specification to name every item which will require a painter's finish. Where items are noted, it is intended that all items of a similar material shall have the same decorative or protective coating within the same space or use area of the facility. However, as a guide to the Contractor, the following is given as typical of the items and surfaces requiring painter's finish: Exterior of steel tank and all appurtenances such as ladders, hatches, level indicators, safety railings and enclosures.

EXHIBIT D

INSURANCE REQUIREMENTS

(Updated April 10, 2024)

*The term "Contractor" may substitute for the term "vendors," "consultants," or "firms," depending on the purpose of the underlying Contract.

1. **IN GENERAL:** Contractor shall maintain insurance against claims for injury to persons or damage to property arising from performance of or in connection with the Contract by Contractor, its agents, representatives, employees, and/or subcontractors.
2. **REQUIREMENT TO PROCURE AND MAINTAIN:** Each insurance policy required by the Contract shall be in effect at, or before, commencement of work under the Contract and shall remain in effect until all of Contractor's obligations under the Contract have been met, including any warranty periods. Contractor's failure to maintain the insurance policies as required by the Contract, or to provide timely evidence of renewal, will be considered a material breach of the Contract.
3. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** The following insurance requirements are minimum requirements for the Contract and in no way limit the indemnity covenants contained in the Contract. The City does not represent or warrant that the minimum limits set forth in the Contract are sufficient to protect Contractor from liabilities that might arise out of the Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Where applicable, as related to the Scope of Work, Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability

Any Automobile or Owned, Hired, and Non-owned Vehicles	\$1,000,000
Combined Single Limit Per Accident for Bodily Injury & Property Damage	

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

4. **SELF-INSURED RETENTION:** Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that Contractor reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and/or subcontractors.

Contractor shall be solely responsible for any self-insured retention amounts. The City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

6. **OTHER INSURANCE REQUIREMENTS:** The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - a. Additional Insured: In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents, employees, and/or subcontractors shall be named and endorsed as additional insureds with respect to liability arising out of the Contract and activities performed by or on behalf of Contractor, including products and completed operations of Contractor, and automobiles owned, leased, hired, or borrowed by Contractor.
 - b. Broad Form: Contractor's insurance policy shall contain broad form contractual liability coverage.
 - c. Primary Insurance: Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees, and/or subcontractors. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and/or subcontractors shall be in excess of the coverage of Contractor's insurance and shall not contribute to it.
 - d. Each Insured: Contractor's insurance policies shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Not Limited: Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the Contract.
 - f. Waiver of Subrogation: The insurance policies shall contain a waiver of subrogation against the City, its officers, officials, agents, employees, and/or subcontractors for losses arising from work performed by Contractor for the City.
7. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of the Contract shall provide the required coverage and shall not be suspended, voided, cancelled, and/or reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Procurement Agent and shall reference the Contract Number.
8. **ACCEPTABILITY OF INSURERS:** Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.
9. **CERTIFICATES OF INSURANCE:** Contractor shall furnish the City with certificates of insurance (ACORD form) as required by the Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City Contract number shall be noted on the certificates of insurance. If requested by the City, all certificates of insurance and endorsements must be received and approved by the City before the Contractor commences work.

10. **POLICIES:** The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by the Contract. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City's receipt of Contractor's policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under the Contract.
11. **MODIFICATIONS:** Any modification or variation from the insurance requirements in the Contract must have the prior approval of the City's Attorney's Office in consultation with the City's Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.



Staff Report

Item Number: 6.D.

Agenda Item:**Legislative Update**

Discussion only regarding bills under consideration in the current Arizona Legislative session that have the potential to impact municipalities.

Staff Contact:

Susan Guthrie, Town Manager

Meeting Date:

March 11, 2025

Strategic Goal:

This agenda item supports the following Clarkdale Strategic Goal Area:

- Goal Area 2 - Enhance the quality of life for residents, businesses and visitors to Clarkdale.

Background:

Annually, the Town Council has adopted a legislative priority list to enable the Mayor, Council, and Town Manager to provide input into the Arizona legislative process. Council voted in January to support the following priorities that Town should support and advocate for during the session:

- A. Preserve Shared Revenues – The Town’s budget includes revenues from several State sources, most importantly, “shared revenues” from state income, sales, and vehicle license taxes. State-shared revenue makes up approximately one-third of the Town’s general fund revenue, helping pay for critical services provided by Police, Parks and other necessities and amenities. Shared revenues are a critical component of the Town’s general fund budget. Staff recommends the Town oppose any reduction of shared revenues or locally generated revenue.
- B. Housing and Community Stability – Enable the Town to implement targeted, community-tailored solutions that can increase housing availability. Restore the ability for Towns to regulate and limit short-term rentals. Encourage State funding for programs that accelerate affordable workforce housing and allow for local control of zoning decisions.
- C. Good Governance – Strengthen governance practices and support fair, consistent processes across Arizona municipalities, such as referendum compliance enforcement.
- D. Public Safety and Community Protection – Maintain public safety as a core function of local government. Prioritize legislative actions that will

enhance safety, privacy and security for victims, witnesses and the broader community through policies such as allowing municipalities to withhold identities of crime in public records where there is a reasonable potential of harassment and retaliation. Also, pass legislation that will clarify public entity immunity and the continuation of local revenue streams that support the continuation of public safety.

- E. Oppose Unfunded Mandates – Staff recommends the Town oppose state legislative efforts to shift new responsibilities to the Town without providing accompanying funds.
- F. Protect Local Authority –The Town Code empowers Clarkdale residents to determine the structure and authority of the local government. Staff recommends the Town works to protect the ability of the Mayor and Council to set policy at the local level and oppose legislation that preempts local authority.
- G. Maintain and Support Infrastructure and Municipal Services – Staff recommends the Town oppose legislative efforts to deprive or limit its residents of reliable and necessary infrastructure, i.e., communication networks, transportation systems, water, sewer, and electric systems, or other municipal services and to support increasing grant funding for these important projects.

As the session is in progress, several bills negatively impacting the Town have been submitted for consideration, including a possible prohibition on food tax, as well as limitations on local control related to development and settlement agreements.

Budget Impact: No budget impact.

Recommendation: Staff recommends that the Council undertake discussions related to the current status of several legislative bills.