



City of  
Casa Grande

**City of Casa Grande**

**REQUEST FOR STATEMENT OF QUALIFICATIONS**

**FOR**

**CONSTRUCTION MANAGER AT RISK FOR  
FLORENCE STREET, MAIN AVENUE, AND THIRD STREET  
IMPROVEMENTS**

**CITY OF CASA GRANDE, ARIZONA**

**REQUEST FOR STATEMENT OF QUALIFICATIONS**

**Florence Street, Main Avenue, and Third Street Improvements**

The City of Casa Grande is seeking a qualified construction manager/general contractor to provide design phase assistance and complete construction services as the Construction Manager at Risk to perform the work relating to the design and construction of the Florence Street, Main Avenue, and 3rd Street Improvements.

Each response shall be per the SOQ instructions and scope of the work package on file with the City Clerk at City Hall, 510 East Florence Boulevard, Casa Grande, Arizona, 85122. Copies can be obtained by calling the City Clerk's Office (520) 421-8600, or by downloading a complete packet at the City's website: [www.casagrandeaz.gov](http://www.casagrandeaz.gov).

All responses must be submitted by 2:00 pm local time on **Tuesday, December 14, 2019**, to the City Clerk, 510 East Florence Boulevard, Casa Grande, Arizona 85122. The responses will be evaluated per Section Four (4) of the SOQ.

Address the responses to:

**Office of the City Clerk  
City of Casa Grande  
510 East Florence Boulevard  
Casa Grande, Arizona 85122**

The envelope must be boldly marked:

**STATEMENT OF QUALIFICATIONS  
Florence Street, Main Avenue, and Third Street Improvements**

The City of Casa Grande reserves the right to waive any informalities or irregularities in this Statement of Qualifications solicitation, or to reject any or all responses; to be the sole judge of the suitability of the services and materials offered, and to award a contract for the furnishing of the services it deems to be in the best interest of the City.

Larry Rains  
City Manager

CITY OF CASA GRANDE, ARIZONA

REQUEST FOR STATEMENT OF QUALIFICATIONS

**Florence Street, Main Avenue, and Third Street Improvements**

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## Section 1. PROJECT DESCRIPTION

The project will include the removal and reconstruction of the concrete roadway, installation of ADA ramps, repairs of curbs and gutters, and street lights. Work area encompasses:

- S. Florence St, from E Main Ave to Ash Ave
- Main Ave, from S Sacaton to S Florence Street
- 3rd Street that proceeds from N Florence Street to 100' West

A project assessment report (PA) is available. This report is not to be interpreted as what the final design should be. We are looking for an innovative design/construction that is also cost-effective. The report is available via e-mail. Contact Duane Eitel at [deitel@casagrandeaz.gov](mailto:deitel@casagrandeaz.gov) for a copy of the PA.

The project location is shown on the following Vicinity Map.



## **Section 2. SCOPE OF WORK**

For this project, the Construction Management at Risk (CMAR) will be responsible for engaging and managing an appropriate engineering design firm or team to provide design services required for the project. The CMAR will also serve as the general contractor during construction of the project.

Prior to construction, the CMAR will assume the risk of delivering the project through a guaranteed maximum price contract. The CMAR will be responsible for construction means and methods and will be required to solicit bids from prequalified subcontractors to perform the work. The CMAR may also self-perform work.

### **A. During the Design Phase the CMAR, at a minimum, may be required to:**

1. Develop a work plan.
2. Preparation of base drawing set of existing conditions of topography, utilities, and general environmental conditions.
3. Provide a master set of plans and specifications.
4. Prepare project phasing options.
5. Provide special provision documentation for inclusion in the contract documents.
6. Provide an engineer's estimate of probable cost.
7. Prepare visual aid and public information documents for public meeting presentations.
8. Present project concept and status to public information sessions.
9. Deliver project documentation in Microsoft Word, AutoCAD, and pdf formats.
10. Provide long-lead procurement studies and initiate procurement of long-lead items.
11. Provide complete **Guaranteed Maximum Price (GMP)** proposals with assumptions and clarifications to the City contract.

### **B. During the Construction phase services by the CMAR may, at a minimum be required to:**

1. Construct all improvements.
2. Coordinate with various City of Casa Grande departments, other agencies, utility companies, etc.
3. Arrange for procurement of materials and equipment.
4. Develop a Project Schedule.
5. Bid, award, and manage all construction-related contracts while meeting city requirements for procurement of subcontractor and supplier bids.
6. Provide quality controls.
7. Bond and ensure construction.
8. Address federal, state, and local permitting requirements.
9. Assist in the resolution of owner issues.
10. Maintain a safe work site for all project participants.

### **C. Project Management**

1. Project Management Plan – Prepare and submit for approval a project management plan that includes:
  - a. Refined scope of services
  - b. Identify and list the project deliverables

- c. Project schedule with needed project meetings identified an intermediate milestone and document delivery dates established
  - d. Contact information for key contractor and agency staff
2. Meeting Minutes – Prepare and provide notes from all meetings with public agency staff, documenting the discussions and identifying action items with assigned responsibility within five working days of each session.
  3. Project Status Reports – Prepare and provide each month a project status report that reports on the following:
    - a. Work accomplished the previous month
    - b. Work to be performed in the subsequent month
    - c. Issues resolved
    - d. Current issues to be addressed
    - e. Action items with assigned responsibility and due dates

The City of Casa Grande, in support of this project, will provide existing record documentation on file to the selected firm/team. Project coordination and the **City’s point of contact will be:**

**Duane S. Eitel, P.E., City Traffic Engineer**

**Section 3. SUBMITTAL REQUIREMENTS**

The project contractor will be selected through a qualifications-based selection process. Firms interested in providing services must submit a Statement of Qualifications (SOQ) that meets the criteria outlined in this Request for Statement of Qualifications. The information included in the SOQ response will be used to evaluate your firm as part of any requirements, regardless of where that information is found in the SOQ. Information obtained from the SOQ, and any other relevant source, including independent investigations by the City, may be used in the evaluation and selection process.

**Section 4. SELECTION PROCESS**

A selection panel made up of representatives of the City of Casa Grande, and an outside contractor, will read, review, and evaluate the submittals independently based on the evaluation criteria. A point formula system will be used to assess and rank the submittals.

Upon completion of the selection process and the identification of the best-qualified firm/team, the City shall enter into negotiations with the top-ranked firm and enter into a contract following completion of any contract terms for City Council consideration and approval. The form of contract shall be the standard form of contract prescribed by the City.

If the City is unable to negotiate a contract with the top-ranked firm, the City may then negotiate with the second (or subsequently the third) ranked firm until an agreement is reached or until the City chooses to terminate the selection process.

***The SOQ shall be prepared to address the following evaluation factors. The maximum points to be awarded will be 1000 points, and the maximum points to be awarded for each element in the initial evaluation process are set forth below.***

<u>Factor</u>	<u>Max. Points</u>
<b>Capabilities of the Project Team</b>	(100)

1. Provide a general description of the firm and/or team that is proposing to provide construction management services and general construction services. Explain the legal organization of the proposed firm or team. Provide an organization chart showing key personnel.
2. Provide the following information:
  - a. List the Arizona professional and contractor licenses held by the firm/team and the key personnel who will be assigned to this project. Provide the license number and explain if held by an individual or the firm.
  - b. Office location(s) where the work will be performed, the organizational structure of each firm, size and discipline of staff.
  - c. Percent of work to be performed within the State of Arizona.
  - d. Breakdown of work between prime and subconsultants by task and by percent of the total contract.
  - e. Identify the team and key personnel assigned to this project:
    - i. Work background.
    - ii. Availability.
    - iii. Years of experience and length of time with the firm.
    - iv. Work location of personnel during the full duration of the project.

### **Past Performance**

(200)

1. Describe similar project experience for a minimum of three, but not more than five projects, performed including information on the time frame to complete the work in relation to original contract requirements, with an explanation for significant deviation.
2. Supply at least two-owner references with contact names, email addresses, and phone numbers for each of the projects listed.
3. List of projects where the firm/team provided either CMAR, agency construction management, or general construction services in the last five years either completed or ongoing.

### **Project Schedule**

(200)

Provide a project schedule identifying major milestones and activities.

### **Project Understanding and Approach**

(500)

1. Discuss the major issues your team has identified on the project and how you intend to address those issues.
2. Describe the project management methodologies and systems used by the prime firm to ensure conformance to the schedule, fee budget, quality assurance/quality control processes, and securing stakeholder participation and buy-in.

## Subcontractor Selection Plan

(100)

1. Describe the firm's plan to select and engage major subcontractors and major suppliers to complete the project work. As a minimum, describe which tasks the firm proposed to perform with its forces and which major tasks will be executed by subcontractors.
2. Identify the proposed selection method to be used in selecting key subcontractors and suppliers. Methods available are either by qualifications-based selection only or by a combination of qualifications and price.
3. Identify which key subcontractors, if any, are proposed to be selected early in the design process to engage with the design team in a design-assist role, with justification to support those recommendations;

## Section 5. PROPOSED SCHEDULE OF EVENTS

This calendar Schedule of Events is an integral part of the Submittal Requirements and Contract Documents. The City, however, reserves the right to alter these timelines as necessary in the best interest of the City, and to accommodate scheduling difficulties relating to City Council selection of the Consultant team. All times refer to local time, as kept by the City Clerk.

<u>Event Item (Referenced Document)</u>	<u>Date and Time</u>
1. Request for Qualifications Release	10-31-2019
2. Advertisement for SOQ's	10-31-2019
3. Time and Closing Date to Receive Qualifications	2:00 pm on 11-26-2019
4. Pre-submittal Conference	N/A - None
5. Review Qualifications and Notify Top Ranked Firm	12-10-2019
6. Negotiations Completed	12-16-2019
7. City Council First Session	01-06-2020
8. City Council Second Session	01-21-2020
9. Anticipated Council Approval of Selected Firm/Team	02-21-2020
10. Notice to Proceed (NTP)	02-24-2020

## Section 6. GENERAL TERMS, CONDITIONS, AND INSTRUCTIONS

### Definition of Terms Used in These Instructions

As used in these instructions, the following terms have the following meaning:

- A. **“Attachments”** means all items required of the Submitter as a part of the submittal.
- B. **“Days”** means calendar days unless otherwise specified.
- C. **“Exhibits”** means all items attached to the solicitation.
- D. **“Submittal”** means bid, submittal, quotation, and qualifications.
- E. **“Submitter”** means a vendor or provider who responds to any solicitation.
- F. **“Contract Manager (or Project Principal)”** means the person duly authorized to enter into and administer contracts and make written determinations with respect to the contract or his or her designee. For the City Of Casa Grande, that shall mean the City Traffic Engineer.



G. **“Solicitation”** means a request for Statement of Qualifications (SOQ).

### Preparation of Submittal

- A. Copies of Submittal. To be considered responsive, one (1) original and one (1) copies of the SOQ document must be submitted in a sealed envelope or box with the SOQ description (**RE: Florence Street, Main Avenue and Third Street Improvements**) and the submitter’s name and address clearly indicated on the package, by the deadline date and time. The original copy of the submittal document must bear the original signature of an authorized representative of the submitter on the acknowledgment provided.
- B. Forms: No Facsimile or Telegraphic Submittals. A submittal shall be submitted either on the forms provided in this solicitation or their substantial equivalent. Any substitute document for the forms provided in this solicitation shall be legible and contain the same information requested on the form. A facsimile, telegraphic, or mailgram submittal shall be rejected.
- C. Typed or Ink, Corrections. The submittal must be typed or in ink. Erasures, interlineations or other modifications in the submittal must be initialed in ink by the person signing the submittal. Modifications shall not be permitted after submittals have been opened except as otherwise provided under applicable law.
- D. Duty to Examine. It is the responsibility of each submitter to examine the entire solicitation, seek clarification in writing, and check its submittal for accuracy before submitting the submittal. Lack of care in preparing a submittal shall not be grounds for withdrawing the submittal after the submittal due date and time, nor shall it give rise to any contract claim.
- E. Amendments. Each solicitation amendment, if any, shall be signed with an original signature by the person signing the submittal, and shall be submitted no later than the submittal due date and time. Failure to return a signed copy of a material solicitation amendment may result in rejection of the submittal.
- F. Submittal Amendment or Withdrawal. A submittal may not be amended or withdrawn after the submittal due date and time except as otherwise provided under the City’s Procurement Code or other applicable law.
- G. Public Record. Under applicable law, all submittals submitted and opened are public records and must be retained by the City of Casa Grande. Submittals shall be open to public inspection after contract award, except for such submittals deemed to be confidential by the City Casa Grande. If a submitter believes that information in its submittal should remain confidential, it shall stamp as confidential that information and submit a statement with its submittal detailing the reasons that information should not be disclosed. The City of Casa Grande shall make a determination pursuant to the City of Casa Grande’s Procurement Code and the Public Records laws of the State of Arizona.
- H. Exceptions to Terms and Conditions. A submittal that takes exception to a material requirement of any part of the solicitation, including a material term and condition of any proposed contract, may be rejected. Exceptions to the submittal documents shall be set forth in an attachment to the submittal.
- I. Release of Project Information. The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the City.
- J. Non-compliant Submittals to be Rejected. Submitters are advised that failure to comply with the following criteria will be grounds for disqualification and will be strictly enforced:

- Receipt of submittal by the specified cut-off date and time.
- Failure to deposit the submittal in the appropriate location.

These failures will result in disqualification, and no action of the City, including late acceptance by the City Clerk, shall act to waive or otherwise affect the elimination.

- K. City Rights. The City of Casa Grande reserves the right to reject any or all Submittals, and except as set forth in subsection (j) above, to waive any informality or irregularity in any Submittal received, to be the sole judge of the merits of the respective Submittals received, and to cancel any solicitation if deemed to be in the interest of the City to do so.
- L.
- M. Form of Final Contract. A draft form of the Construction Manager at Risk Contract is included with this RFQ. The Final Contract form will include and be consistent with, without limitation, the City General Conditions, the Insurance Requirements Appendix A hereto, all applicable provisions of this SOQ and supporting documents, and any amendments thereto, and such other terms as the City determines are in its best interest and appropriate for the Project.

### **Pre-Submittal Conference**

A pre-submittal conference will not be held.

### **Inquiries**

- A. Solicitation Contact Person; Other Contact Prohibited. Any inquiry related to a solicitation shall be directed solely to the City of Casa Grande Contract Manager (Project Manager). The submitter shall not contact or direct questions concerning this solicitation to any other employee. All firms interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and subconsultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Deputy City Manager, Department Heads and other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process.

*The Contract/Project Manager and Contact Person for this Solicitation shall be:*

Duane S. Eitel, PE  
 City Traffic Engineer  
 3181 N Lear Ave.  
 Casa Grande, AZ 85122  
 520-421-8625 Ext. 3300  
 deitel@casagrandeaz.gov

- B. Submission of Inquires. All inquiries are to be submitted via email ONLY. Each inquiry shall refer to this solicitation in the subject line of the email. A list of all questions received, and responses by the city shall be generated and be made available to all interested parties via posting on the City's website seven (7) days before the submittal deadline.
- C. Timeliness. Any inquiry should be submitted at least **seven (7) days before the submittal due date and time**. Failure to do so may result in the question not being answered.

D. No Right to Rely on Verbal Responses. Any inquiry that raises material issues and results in changes to the solicitation shall be answered solely through a written solicitation amendment. A submitter may not rely on verbal responses to its inquiries.

### **Submittal Acceptance Period**

By submitting a proposal according to this solicitation, the submitter agrees that it shall hold its submittal open for the number of days, from the submittal due date, that is stated in the solicitation. If the solicitation does not explicitly state a number of days for the submittal acceptance, the number of days shall be ninety (90).

### **Cost of Submittal Preparation**

The City of Casa Grande shall not reimburse any submitter the cost of responding to a solicitation.

### **Certifications, Disclosure, and Disqualification**

- A. Non-collusion, Employment, and Services. By signing the Submittal form, or other official contract form, the submitter certifies that:
- i) It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its submittal; and
  - ii) It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state, and local laws and executive orders.
- B. Disclosure. If the design consultant, construction contractor, business, or person submitting this submittal has previously been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Submitter must fully explain the circumstances relating to the preclusion or proposed preclusion in the submittal. If awarded, the submitter must include a letter with its submittal setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances, including the details enumerated above must be provided.
- C. Disqualification. The submittal of a submitter who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall be rejected.

### **Award of Contract**

- A. Contract Inception. Submittal does not constitute a contract, nor does it confer any rights on the submitter to the award of a contract. A contract is not created until the submittal is accepted in writing by the Casa Grande City Council, and a written contract is executed by the authorized signature of the City Manager and the Submitter.

### **Protests**

According to Section 3.04.170 of the Casa Grande City Code, all protests shall be in writing and be filed with the City Clerk of the City of Casa Grande. To be considered timely, a protest of a solicitation any protest must be filed within three (3) days after the protester knows or should have known the basis of the protest. A protest shall include:

- The name, address, and telephone number of the protester;

- The signature of the protester or its representative;
- Identification of the purchasing agency and the solicitation or contract number;
- A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- The form of relief requested.

### **Solicitation Order of Precedence**

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

- A. Solicitation;
- B. Special Terms and Conditions, if any;
- C. Uniform General Terms and Conditions;
- D. Specifications;
- E. Exhibits;
- F. Special Instructions to Submitters; and
- G. Uniform Instructions to Submitters.

### **Persons with Disabilities**

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Contracts Manager. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement, as identified on the first page of this solicitation.

**SUBMITTAL ACKNOWLEDGMENT**

To the City of Casa Grande:

The undersigned hereby submits and agrees to furnish the materials in compliance with all terms, conditions, specifications and amendments in the Solicitation. Signature also certifies understanding and compliance with the City of Casa Grande’s Standard Terms and Conditions.

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

\_\_\_\_\_

AUTHORIZED INDIVIDUAL NAME: \_\_\_\_\_

AUTHORIZED INDIVIDUAL EMAIL: \_\_\_\_\_

AUTHORIZED INDIVIDUAL SIGNATURE: \_\_\_\_\_

**THIS FORM MUST BE SIGNED AND RETURNED WITH SUBMITTAL**

**NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ ),

\_\_\_\_\_, affiant, \_\_\_\_\_  
(Name)

The \_\_\_\_\_ of \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Contractor/Bidder)

who is the person or other entity that makes the accompanying Submittal, having first been duly sworn, deposes and says:

That such Submittal is genuine and not sham or collusive, nor made in the interest of, or on behalf of, any persons not herein named, and that the Submitter has not directly or indirectly induced or solicited any other Submitter to put in a sham bid, or any other person, firm, company or corporation to refrain from making a submittal, and that the Submitter has not in any manner sought by collusion to secure for itself an advantage over any other Submitter.

\_\_\_\_\_  
(Title)

Subscribed and sworn to before me \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**AUTHORIZATION FOR RELEASE OF PERFORMANCE INFORMATION AND WAIVER**

I, \_\_\_\_\_, the undersigned, on behalf of \_\_\_\_\_ (this company), being duly authorized to do so, do hereby consent and authorize all those companies and government entities listed in my Submittal to the City of Casa Grande, and any other government entity for whom this company has performed pre-construction and/or construction services, to disclose and release to the City of Casa Grande, or its representatives, information, records and opinions concerning this company's performance. The purpose of this disclosure is to provide references and background material to the City of Casa Grande. This company hereby waives any claim it may have against the City of Casa Grande or any company or entity providing information to the City of Casa Grande by reason of any information being disclosed or opinions provided regarding the actions or performance of this company.

This authorization shall be effective for one year, and a copy of this authorization shall be as valid and effective as the original.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

## CHECKLIST FOR SUBMISSION OF SUBMITTAL RESPONSE

- \_\_\_\_\_ 1. Submittal has been submitted, checked and reviewed.
  
- \_\_\_\_\_ 2. Any addendums have been signed and are included.
  
- \_\_\_\_\_ 3. **The original submittal and acceptance form has been fully completed in ink and is included (submittals will be considered non-responsive if not included).**
  
- \_\_\_\_\_ 4. The non-collusion affidavit has been fully completed in ink and is included.
  
- \_\_\_\_\_ 5. W-9 has been fully completed and is included.
  
- \_\_\_\_\_ 6. All information requested from the questionnaire is included.
  
- \_\_\_\_\_ 7. The envelope is properly addressed and sealed.
  
- \_\_\_\_\_ 8. **The submittal will be mailed or delivered in time to be received no later than the designated due date and time (otherwise, the submittal will not be considered).**



# **APPENDIX “A”**

## **SAMPLE CONTRACT FORM**

CITY OF CASA GRANDE, ARIZONA

CONTRACT DOCUMENTS

FOR

CONSTRUCTION MANAGER AT RISK  
CONSTRUCTION SERVICES

FOR

CONSTRUCTION OF FLORENCE STREET, MAIN AVENUE, AND  
THIRD STREET IMPROVEMENTS

City Manager – Larry Rains

Contract Administrator – Duane S. Eitel, PE

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# CONTRACT

THIS CONTRACT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of Casa Grande, a Municipal Corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the "City", and \_\_\_\_\_, a(n) (designate type of entity) of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, hereinafter designated as the "CM@Risk."

## RECITALS

WHEREAS, City intends to have constructed (the) \_\_\_\_\_, hereafter "Project" as described in the Plans and Specifications and the General Provisions attached; and

WHEREAS, the Project is to be performed in two phases. Phase I includes the pre-construction phase services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase II will include the construction of the Project; and

WHEREAS, this is a CM@Risk contract for Phase II of the Project, which requires that the CM@Risk be selected on the basis of demonstrated competence and qualifications for the type of professional services to be rendered without regard to fees and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, a Pre-Construction Phase Services Agreement has been executed previously between the City and the CM@Risk to perform pre-construction services. Those services may continue throughout the duration of this contract; and

WHEREAS, CM@Risk has represented to the City that CM@Risk (i) is experienced in providing construction services for projects of similar size and complexity to the Project; (ii) is authorized and licensed, per A.R.S. § 34-603(I)(2), to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction services for the Project; and (iv) has the expertise and ability to provide construction services which will meet the City's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project; and

WHEREAS, the Mayor and City Council of the City of Casa Grande are authorized and empowered by the provisions of the City Charter to execute Agreements for Construction Services; and

NOW THEREFORE, the CM@Risk, for and in consideration of the sum to be paid to the CM@Risk by the City, in the manner, amount and at the time hereinafter provided in the "Proposal" and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds hereto attached, hereby agrees, for itself, its heirs, administrators, successors, and assigns as follows:

## SECTION 1. TERMS AND DEFINITIONS

In the event of any conflict between the terms and definitions set out below and the terms and definitions found in either the MAG Specifications or Pre-Construction Contract, the terms and definitions set out below shall prevail in interpreting these Contract Documents unless the context requires otherwise.

Addendum – A written modification of the Contract Documents after the Contract Documents have been issued by the Contract Administrator but ten (10) days prior to City Council Award of this Contract. This definition replaces the MAG Specification definition of Addendum.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while delivering a quality and functional Project that meets City requirements.

Amendment – A written modification of the terms of this Construction Services Contract.

Award – The formal action of the City Council to accept this Contract.

Business Day – Any day except Saturdays, Sundays and holidays observed by the City.

City – The City of Casa Grande, a public body or authority and municipal corporation, with whom the CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to this Contract. The City is the Agency or Owner or Contracting Agency for purposes of this contract. This definition replaces the MAG Specification definition of City.

City's Contingency – A fund to cover cost growth during the project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions.

The amount of the City's contingency will be set solely by the City and will be in addition to the project costs included in the CM@Risk's GMP packages.

Construction Allowance Items – Those items included in the GMP as allowances, which items shall be paid based on the actual cost to CM@Risk as described in the City's General Conditions for Construction Projects, provided, however, no overhead or profit shall be included in the item as these are paid separately. The actual amounts paid for Allowance items shall be included in the Contract Price Subtotal by which the percentage for the Contractor's fee for overhead and profit is multiplied.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices.

Construction Manager At Risk or “CM@Risk” – The person, firm, corporation or other approved legal entity with whom the City has entered into this Contract. The “CM@Risk” is the same entity as defined as “Contractor” in MAG Specifications.

CM@Risk’s Contingency or Contractor’s Contingency – A fund to cover non-general conditions cost growth during the Project used with the City’s approval, usually for costs that result from project circumstances.

Construction Manager Professional – The person, firm or corporation named as such in this Contract who has the rights, duties, responsibilities, and limits of authority as set forth in this Contract and in the Construction Manager Professional’s Contract with the City.

Contract – This written document, including its exhibits and attachments signed by the City and CM@Risk covering the Construction Services phase of the Project and including other documents (the “Contract Documents”) itemized and referenced in or attached to and made part of this Contract.

Contract Administrator – For the purposes of this Contract, the Contract Administrator for the City shall be Duane S. Eitel, PE.

Contract Documents – This Contract, exhibits, attachments, “General Provisions”, “Special Provisions”, “Technical Specifications”, “Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction” as amended by the City of Casa Grande, “Plans”, “Performance Bonds”, “Payment Bonds”, all Written Amendments, Addendums and Change Orders to this Contract and any other documents so designated in this Contract. In case of a discrepancy or conflict, the order in which the Contract Documents govern is as follows from the highest to lowest: Special Provisions, Technical Specifications, Plans, General Provisions, and Casa Grande Supplements to this Contract.

Cost of the Work – The direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk’s construction fee, general conditions fee, taxes, bonds, or insurance costs.

Cost Model – A breakdown of the scope of the Project that is initially developed by the CM@Risk during the conceptual design phase and based on information from the Project Team and the CM@Risk’s records of similar projects.

Critical Path – The longest continuous series of activities through the network at a given data date for the Critical Path Method Project Schedule (CPM) to a Contract Milestone or Contract Completion. Where the path to a specific Milestone has become negative the Critical Path shall be the longest continuous chain of activities with the greatest amount of negative float.

Day – Calendar day(s) unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM@Risk in performing the scope of work shall include, but are not limited to: all appropriate design services, performed by an appropriate professional registrant, required to develop and provide a complete set of construction drawings; a Construction Management Plan, Cost Model, and Project Schedule of Values; GMP Proposals, Subcontractor Procurement Plan, Subcontractor Contracts, Subcontractor Bid Packages

Effective Date of this Contract – The date specified in this Contract on which the Contract becomes effective, but if no such date is specified, the date on which the last of the two parties signs this Contract.

Fragnet – The sequence of new activities and/or activity revisions, logic or resource changes that are proposed to be added to the existing schedule to demonstrate the influence of impacts to the CPM schedule. The Fragnet shall identify the predecessors to the new activities and demonstrate the impacts to successor activities.

General Conditions Costs – Includes, but is not limited to, the following types of costs for the CM@Risk during the construction phase: payroll costs for the project manager or construction manager (but not both); payroll costs for the superintendent and full-time general foremen; payroll costs for management personnel resident and working on the site; workers not included as direct labor costs engaged in support functions ( e.g., loading/unloading, clean-up); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@Risk or subcontractors; taxes on the Work and for which the CM@Risk is liable; and fees for permits and licenses. Certain limitations and exclusions are described in the General Conditions for the construction phase.

Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of the CM@Risk which sets forth the GMPs for the entire Work or portions of the Work to be performed during the design and construction phases. The GMP Proposal(s) are to be developed pursuant to Exhibit “A” of this Contract. The “GMP Proposal” is interchangeable with the term “Bid” as it is used in the MAG Specifications.

Laws and Regulations – Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

MAG Specifications – Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction, latest edition.

Near Critical Path – Any continuous series of activities through the network to the Contract Milestone or the Contract Completion Date where the Total Float of the activity

at the data date along that path is within 11 work days of the Total Float possessed by the activity at the data date along the Critical Path.

Notice of Award – The written notice by the City to the CM@Risk stating that upon compliance by the CM@Risk with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver this Contract. This definition replaces the MAG Specification definition for Notice of Award.

Notice to Proceed – A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk’s obligations under this Contract. This definition replaces the MAG Specification definition for Notice to Proceed.

Plans – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Project Designer and the City. This definition includes Plans that have reached a sufficient stage of completion and have been released by the Project Designer solely for the purposes of review and/or use in performing constructability or bidability reviews and in preparing cost estimates (e.g., conceptual design Plans, preliminary design Plans, detailed design Plans at 30%, 60%, 90% or 100%, but “NOT FOR CONSTRUCTION”). Shop drawings are not Plans as so defined. This definition replaces the MAG Specification definition for Plans.

Project – The total design and construction of which the design phase services and construction phase Work to be provided may be the whole or a part. This definition replaces the MAG Specification definition for Project.

Project Designer – The person, firm or corporation having a contract with the City to furnish design services for this project.

Project Designer’s Consultant – A person, firm, or corporation having a contract with the Project Designer to furnish services required of the Project Designer, as the Designer’s independent professional associate or consultant with respect to the Project.

Project Team – Construction services team consisting Project Designer, CM@Risk, Contract Administrator, CITY’s representatives and other stakeholders who are responsible for making decisions regarding the Project.

Samples – Physical examples of materials, equipment or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be evaluated.

Shop Drawings – all drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CM@Risk and submitted by the CM@Risk to illustrate some portion of the Work. This definition replaces the MAG Specification definition for Shop Drawings.



Specifications – The part(s) of the Contract Documents labeled as Technical Specifications for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. This definition replaces the MAG Specification definition for Specifications.

Subcontractor – An individual, firm, entity or corporation having a direct contract with the CM@Risk who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. This definition replaces the MAG Specification definition for Subcontractor.

Substantial Completion – When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City, at the City’s discretion, can occupy and use the Project or a portion thereof for its intended purposes.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Total Float – The number of work days from the late finish date (LF) to the early finish date (EF) of an activity at a given data date for the Schedule. When the LF is later than the EF, the Total Float shall be positive. When the LF and the EF are the same, the Total Float shall be zero. When the LF is earlier than the EF, the Total Float shall be negative. Unless otherwise specified all references to “float” shall mean “Total Float.”

Work – Any or all of the improvements as required by the Contract Documents, and the construction, demolition, reconstruction, and repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto. This definition replaces the MAG Specification definition for Work.

## **SECTION 2. SCOPE OF THE WORK AND LOCATION OF WORK**

All work done under this Contract shall be accomplished in accordance with the Contract Documents defined herein and in accordance with the MAG Specifications except as may be modified in the Contract Documents. In the event of any conflict between these Contract Documents and the requirements of the MAG Specifications, these Contract Documents shall prevail.

The CM@Risk shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work for the construction of (the) Project as described in the Contract Documents for the sum of \$ \_\_\_\_\_ which is the Guaranteed Maximum Price (GMP) as shown in Exhibit A, and to construct the same and install the material therein for the City in a good and workmanlike and substantial manner and to the satisfaction of the City or his properly authorized agents and strictly pursuant to and in conformity with the Specifications and Plans for the above referenced project(s) and other documents that may be made by the

City through the Contract Administrator or his properly authorized agents, as provided herein.

Work location is: FLORENCE STREET, MAIN AVENUE, and THIRD STREET IMPROVEMENTS. The CM@Risk shall list each Work location in any and all Contract Documents with each subcontractor at any level and each subcontractor shall include each Work location in any and all Contract Documents with its subcontractors at any level.

### **SECTION 3. TIME OF COMPLETION**

The CM@Risk further covenants and agrees at its own proper cost and expense, to do all work and furnish all plant, materials, labor, construction equipment, services and transportation for performing all of the work for the construction of said improvements and to construct the same and install the material therein, as called for by this Contract free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time stated in the Notice to Proceed issued to the CM@risk.

### **SECTION 4. GENERAL PROVISIONS**

#### **I. CM@Risk Requirements and Conditions**

##### **A. FIDUCIARY DUTY**

This is a contract for complete construction services in accordance with the Construction Manager at Risk method of delivery of construction services. CM@Risk has participated in the design process and been an active member of the Project Design Team and is fully aware of any issues and constraints involved in this construction project.

CM@Risk is the City's fiduciary responsible for undertaking all necessary action contemplated under the contract documents to construct the Project and ensure timely and quality completion of the project at a cost within the Guaranteed Maximum Price (GMP).

This project is an "open book" project. City is entitled to attend any and all meetings, and City shall have access to any and all records of CM@Risk or maintained by CM@Risk relating to the Project.

##### **B. PROJECT TEAM - CM@RISK KEY PERSONNEL**

The CM@Risk will be an integral member of the Project Team, as defined herein, consisting of CM@Risk, representatives from the City, the Project Designer, and other consultants, as required.

###### **1. Key Personnel**

Key personnel may include, but are not limited to, principal-in-charge, construction manager, project manager (CM@Risk's Representative), superintendent, contract administrator, and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, procurement planning and administration of the Work. The City shall approve all key personnel.

Prior to the start of these Contract Services, the CM@Risk shall submit to the City for approval detailed résumés of key personnel, including any Sub consultants, that will be involved in performing the services described in this Agreement to be provided by CM@Risk. Unless otherwise informed, the City hereby acknowledges its acceptance of personnel to perform such services under this Contract.

## 2. Prior Approval for Change

At any time hereafter that the CM@Risk desires to change key personnel while performing under this Contract, the CM@Risk shall submit the qualifications of the proposed substituted personnel to the City for prior approval.

## 3. Competent Staff

CM@Risk will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Contract to ensure acceptable and timely completion of the scope of services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk shall take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel agreed to by the City.

## 4. Equal Employment Opportunity

CM@Risk shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity. The CM@Risk shall comply with A.R.S. Title 41, Chapter 9, Article 4, and State of Arizona Executive Order 75-5, which relate to nondiscrimination against any employee because of race, religion, color, sex or national origin and further agrees to comply with the Immigration Reform and Control Act (I.R.C.A.) of 1986, in performing under this Agreement and to permit City inspection of his/her personnel records to verify such compliance.

In connection with the performance of work under this Contract, the CM@Risk agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age or disability. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other

forms of compensation, and selection for training, including apprenticeship.

The CM@Risk agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting officer setting forth the provisions of the Non-Discrimination clause.

#### 5. Arizona Employer Sanction Statutes

E-Verify Requirements - To the extent applicable under A.R.S. § 41-4401, the CM@Risk and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). CM@Risk's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by City.

CM@Risk agrees to insert language similar to this paragraph in all contracts in which it engages with subcontractors on this project to ensure that those subcontractors are meeting the requirements of the above-mentioned statutes. City retains the legal right to randomly inspect the papers and records of the CM@Risk and its subcontractors who work on the Project to ensure that the CM@Risk and its subcontractors are complying with the above-mentioned warranty. The CM@Risk and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by City. The CM@Risk and its subcontractors shall cooperate with City's random inspections including granting City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

#### 6. Federal Immigration Reform and Control Act

CM@Risk warrants that both the CM@Risk and its Subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this Contract or any Subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the Federal Immigration and Nationality laws, including any verification and record keeping requirements. The Contractor further assures the City that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

#### 7. Health Insurance Portability and Accountability Act (HIPAA) Compliance

CM@Risk must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this Contract.

### **C. .SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

CM@Risk's selection of major Subcontractors and major Suppliers will be subject to Contract Administrator's prior approval. This may occur prior to or after submission of a GMP Proposal. Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of Subcontractors/Suppliers is the responsibility of CM@Risk. CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.

CM@Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per this Section and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with this Section. This plan will also identify those subcontractors that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract. The CM@Risk shall submit the fill Subcontractor/Supplier selection plan to Contract Administrator for his review and approval.

Selection by qualifications only - The City may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the CM@Risk can demonstrate it is in the best interest of the Project.

The CM@Risk shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation.

The CM@Risk will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

Selection by qualifications and competitive bid - The CM@Risk shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a Subcontractor or Supplier was selected pursuant to preceding paragraph.

The CM@Risk will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or

there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for any reason, the CM@Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.

The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.

If the CM@Risk desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM@Risk's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to insure compliance with the Project Schedule and/or cost, the CM@Risk may self perform Work without bidding or re-bidding the Work.

If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

Any Subcontractors submitted and approved as pre-qualified by City and any early selected Subcontractors shall not be replaced without the City's prior written approval.

#### **D. LICENSES**

Prior to award of the Contract, the CM@Risk must provide to the City's Public Works Department, its Contractor's License Classification and Number and Federal Tax I.D. Number.

Prior to execution of this contract, if required by the City of Casa Grande City Code, CM@Risk must possess a valid City of Casa Grande Transaction Privilege License and shall provide the Permit Number of such for validation and must carry the appropriate State of Arizona Contractor License.

The Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed work at the time of bid. If the subcontractor does not have the appropriate license, the City reserves the right to reject its bid and to have the award made to the lowest bidder who has the appropriate license.

**E. .EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK**

By submitting a proposal, the CM@Risk agrees that its team has examined the site, and any documentation provided by the City and accepts, without recourse, all site conditions and the proposed Contract Documents.

1. Differing Site Conditions.

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon written notification, the Contract Administrator will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Contract Administrator will notify the CM@Risk of his/her determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

**II. AWARD AND EXECUTION OF CONTRACT**

**A. .EXECUTION OF CONTRACT AND BONDS**

The form of the contract, which the CM@Risk will be required to execute and the form of bonds which it will be required to furnish, are included in the Contract Documents and should be carefully examined by the CM@Risk. The CM@Risk will be required to execute the bonds and the standard form of Contract in one (1) original counterpart within ten (10) calendar days after formal Notice of Award of Contract. Failure to execute this Contract and file satisfactory contract bonds as provided herein within 10 (ten) calendar days after the date of Notice of Award, shall be just cause for the cancellation of the award.

## **B. CM@RISK INSURANCE AND BOND RATING REQUIREMENTS**

Personal or individual bonds are not acceptable unless they are in the form of a cash bond.

Bonding companies and Liability and Excess insurance carriers shall be "Best Rated A-VII " or better as currently listed in the most recent "Best's Key Rating Guide (Property/Casualty)" published by the A.M. Best Company. This requirement does not apply to the Worker's Compensation/Employers Liability portion on the Certificate of Insurance.

Each such bond SHALL be executed by a surety company or companies duly licensed to do business in the State of Arizona. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

## **C. INSURANCE REQUIREMENTS**

### **1. Insurance Requirements**

A. Concurrently with the execution of this Agreement, the CM@Risk shall furnish the City of Casa Grande a certificate of insurance on a standard insurance industry ACORD form. The ACORD form shall be issued by an insurance company authorized to transact business in the State of Arizona, or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.

B. The insurance shall be purchased and maintained in companies duly licensed or otherwise approved by the State of Arizona, with forms acceptable to the City of Casa Grande, and shall be primary with no right of contribution. The CM@Risk's insurer shall have a minimum A.M. Best's rating of A-VIII. Use of alternative insurers requires prior approval for the City of Casa Grande.

C. The CM@Risk, Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the CM@Risk, his agents, representatives, employees, or Subcontractors.

D. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.



E. The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of this Agreement including, but not limited to, contract services under this Agreement by the CM@Risk, his agents, representatives, employees, Subcontractors or Subconsultants. CM@Risk is free to purchase such additional insurance as it deems necessary. If CM@Risk purchases additional coverage, CITY shall not be responsible for paying or reimbursing CM@Risk for that additional coverage. The CM@Risk will name the City as an additional insured on any such insurance.

**2. Minimum Scope and Limits of Insurance**

The CM@Risk shall provide coverage at least as broad and with limits of liability not less than those stated below.

**2.1 Commercial General Liability-Occurrence Form**

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$2,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expense (Any one person)	Optional

**2.2 Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles**

Combined Single Limit Per Accident For Bodily Injury and Property Damage	\$1,000,000
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**2.3 Workers Compensation and Employers Liability**

Workers Compensation	Statutory
Employers Liability (Each Accident)	\$100,000
Disease (Each Employee)	\$100,000
Disease (Policy Limit)	\$500,000

**2.4 Self-Insured Retentions**

Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

### 3. Other Insurance Requirements

The policies are to contain, or be endorsed to contain, the following provisions:

**3.1 Contractors Professional Liability:** CM@Risk shall carry Contractors Professional Liability insurance to cover the residual, contingent and passive design exposures of the CM@Risk.

A. The CITY, its officers, officials, agents, and employees, are to be named as additional insureds with respect to liability arising out of: activities performed by or on behalf of the CM@Risk, including the CITY's general supervision of the CM@Risk; products and completed operations of the CM@Risk; and automobiles owned, leased, hired or borrowed by the CM@Risk. Vehicle Liability CM@Risk shall maintain Business Automobile Liability with coverage at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof.

B. The Commercial General Liability Insurance will contain broad form contractual liability coverage and will not exclude liability arising out of the explosion, collapse or underground hazard ("XCU").

C. The CITY, its officers, officials, agents, and employees will be additional insureds to the full limits of liability purchased by the CM@Risk, even if those limits of liability are in excess of those required by this Agreement. The Commercial General Liability policy will be at least as broad as the Insurance Service Office, Inc.'s CG 0 0 01 07 98.

**3.2 Contractors Professional Limits of Liability:** CM@Risk shall carry limits of \$1,000,000 each project and \$2,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. CM@Risk, its successors and or assigns, is required to maintain this Professional Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions as required herein shall be submitted for the three-year period.

A. The CM@Risk's insurance coverage will be primary insurance with respect to the CITY, its officers, officials, agents, and employees. Insurance or self-insurance maintained by the CITY, its officers, officials, agents, and employees will be in excess of the CM@Risk's insurance and will not contribute to it.

B. The CM@Risk's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The coverage provided by the CM@Risk and its Subcontractors will not be limited to the liability assumed under the indemnification provisions of this Agreement.

C. The policies will contain a waiver of subrogation against the CITY, its officers, officials, agents, and employees for losses arising from Work performed for the CITY.

D. Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer will agree to waive all rights of subrogation against the CITY, its officers, officials, agents, and employees for losses arising from work performed for the CITY.

**3.2.1 Claims Made:** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

### **3.3 Commercial General Liability and Automobile Liability Coverages**

A. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The CITY, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CM@Risk including the City's general supervision of the CM@Risk; Products and Completed operations of the CM@Risk; and automobiles owned, leased, hired, or borrowed by the CM@Risk.

B. The CM@Risk's insurance shall contain broad form contractual liability coverage and shall not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.

C. The CITY, its officers, officials, agents, and employees shall be additional insureds to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Agreement.

D. The CM@Risk's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the CM@Risk and shall not contribute to it.

E. The CM@Risk's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

G. The policies shall contain a waiver of subrogation against the CITY, its officers, officials, agents, and employees, for losses arising from work performed by the CM@Risk for the CITY.

H. The CM@Risk, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject work. The CM@Risk shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all the insurance requirements set forth herein including naming the CITY, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

I. Workers' Compensation and Employers Liability Coverage: The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers for losses arising from work performed by the CM@Risk for the CITY.

### **3.4 Property Insurance**

3.4.1 The Contractor shall procure and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the original contract sum, plus value of subsequent modifications comprising total value for the entire Project at the site on a replacement cost basis. The insurance shall include the interest of the Owner, the Contractor, the Subcontractors and Sub-subcontractors in the Project. The policy shall insure the Project against loss from the perils of Fire (with extended coverage), and physical loss or damage including, but not limited to, theft, vandalism, malicious mischief, collapse, flood, earthquake and windstorm. The Contractor will increase limits of coverage, if necessary, to reflect estimated replacement cost and will be responsible for any deductible.

3.4.2 If the Owner finds it necessary to occupy or use a portion or portions of the Project prior to Substantial Completion, such occupancy shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement of the policy or policies. The insurance provided in Subparagraph 3.4.1 shall not be cancelled or lapsed on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

3.4.3 The Contractor shall procure and maintain such boiler and machinery insurance as may be required or that the Contractor deems necessary. The insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors on the Project.

3.4.4 The Contractor shall purchase and maintain such insurance as will protect the Owner and the Contractor against loss of use of the Owner's interest in materials in transit or off-site and not installed due to those perils insured pursuant to Subparagraph 3.4.1.

3.4.5 The Contractor shall file a copy of the policies required of the Contractor in this Subparagraph 3.4 with the Owner before an exposure to loss may occur. Copies of any subsequent endorsements will be furnished to the Owner. The Owner will be given thirty (30) days notice of cancellation, non renewal, or any endorsements restricting or reducing coverage.

#### **4. Subconsultant's and Subcontractor's Insurance**

The CM@Risk's certificates shall include all Subcontractors and Subconsultants as insureds under its policies or the CM@Risk shall maintain separate certificates and endorsements for each Subcontractor and Subconsultant. All coverages for Subcontractors and Subconsultants shall be in the amounts shown in Section 3.2.

#### **5. Notice of Cancellation**

Each insurance policy required by the insurance provisions of this Agreement will provide the required coverage and not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to the CITY's Contract Administrator named herein.

#### **6. Verification of Coverage**

A. The CM@Risk shall furnish the City Certificates of Insurance (ACORD form or equivalent approved by the CITY) and with original

endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages shall be clearly noted on the certificate of insurance.

B. All certificates and endorsements are to be received and approved by the CITY before Work commences except for Builder's Risk Insurance which Insurance, which will be received and approved as provided in this section. Each insurance policy required by this Agreement must be in effect at or prior to the earlier of commencement of Work under the Contract Documents or the signing of this Agreement except for Builder's Risk Insurance which must be in effect prior to commencement of Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

C All certificates of insurance required by this Agreement shall be sent directly to the City of Casa Grande, Capital Project Management. The project description shall be included on the Certificates of Insurance. The CITY reserves the right to require complete, certified copies of all insurance policies required by this Agreement, at any time.

## **7. Approval**

Any modification or variation from the insurance requirements in this Agreement shall be approved by the City. Such action will not require a formal contract amendment, but may be made by administrative action.

## **D. BONDS REQUIRED**

Bonds in the following amounts will be required of the CM@Risk at the time of executing the formal contract and must meet the requirements of Arizona Revised Statutes Title 34, Chapter 6, as amended:

1. Performance bond, one hundred percent (100%) of the contract price.
2. Payment bond, one hundred percent (100%) of the contract price.

## **E. INDEMNIFICATION**

To the fullest extent permitted by law, the CM@Risk, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Casa Grande, its agents, officers, officials and employees from and against all allegations, demands, proceedings, actions, claims, damages, losses, expenses, judgments, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting, relating to, arising out of, or resulting from any acts, errors, mistakes, omissions, work or services of the

CM@Risk, its agents, employees, or any tier of CM@Risk's subcontractors in the performance of this Contract.

CM@Risk's duty to defend, indemnify and hold harmless the City of Casa Grande, its agents, officers, officials and employees shall arise in connection with any allegation, demand, proceeding, action, claim, damage, loss, expense or judgment that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by CM@Risk's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the CM@Risk, any tier of CM@Risk's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the CM@Risk may be legally liable. The amount and type of insurance requirements set forth herein will not be construed as limiting the scope of the indemnity provisions of this Contract.

### **III. CONTRACT PRICE**

#### **A. .GUARANTEED MAXIMUM PRICE**

The Guaranteed Maximum Price (GMP) is the total amount payable by the City to Contractor for the complete construction of the Project. CM@Risk represents, warrants and guarantees to City that the total maximum cost to be paid by City for CM@Risk's complete performance of this Contract, including, without limitation, Final Completion of all Work, all services of CM@Risk under this Contract, and all fees, compensation and reimbursements to CM@Risk, shall not exceed the total amount of \$ \_\_\_\_\_ ("Guaranteed Maximum Price"). Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the CM@Risk without reimbursement by City.

#### **B. .GUARANTEED MAXIMUM PRICE COMPONENTS**

The Guaranteed Maximum Price is comprised of the maximum amount payable by City for:

1. Cost of the Work

The Cost of the Work for full and complete performance of the Work to complete the Project as described herein. The Cost of the Work will be referred to as the Work Item Direct Costs. No additional payments will be made for any work included in and/or necessary for completion of the Project unless specifically noted and excluded from the GMP in the assumptions and clarifications of the GMP. Progress payments will be made based on the schedule of values; however, City reserves the right to audit the books of CM@Risk, at any time, to determine actual costs and to modify the schedule of values to better reflect actual costs of the work.

2. Guaranteed Maximum Price (GMP) Line Items

The Guaranteed Maximum Price is further broken down into line items and categories on Exhibit A attached hereto.

- a. *Quantities.* The quantities set forth in the GMP are used only for the purpose of substantiating and demonstrating the basis for the GMP submitted by CM@Risk and are not a part of this Contract nor any guarantee by City. CM@Risk shall install and perform such quantities as necessary to complete the Project in accordance with the Project description and the CM@Risk agrees to perform all of the Work for costs plus fees and reimbursements described herein, not to exceed the Guaranteed Maximum Price, regardless of whether or not the items or units are decreased or increased.
- b. *Cost Overruns.* CM@Risk shall be solely liable and responsible for and shall pay any and all costs, fees and other expenditures in excess of the Guaranteed Maximum Price for and/or relating to the Work, without entitlement to reimbursement from City. CM@Risk is not entitled to any fee, payment, compensation or reimbursement under this Agreement or relating to the Work or Project other than as expressly provided in this Section.
- c. *Inferable Work (intent of the Project).* CM@Risk agrees that the scope of the Guaranteed Maximum Price includes Work not expressly indicated on the Contract Documents, but which is reasonably inferable from the Project description and/or Contract Documents, or consistent therewith, and such Work shall be performed by CM@Risk without any increase in the Guaranteed Maximum Price.
- d. *Allowances.* The GMP includes some work items with the cost listed as an allowance. Allowances are to be used specifically for the areas of work defined in the Contract Documents; provided however,
  - 1) If the designated work is completed for less than the allowance, the surplus will revert to the project construction contingency.
  - 2) If the designated work requires more than the allowance, the additional funds will be allocated by the City with assistance from CM@Risk within the GMP by transferring excess from other allowance items, value engineering or using less expensive means, methods or components or as a last resort reducing the scope of the Project.
  - 3) A running balance sheet will be kept concerning the various allowances so that monies can be floated among



the allowances to maintain the integrity of the overall GMP. Thus, savings in one area of work will be available to offset overruns in another area of work specifically associated with these allowances.

- e. *Construction Contingency*. This GMP includes a dollar amount listed as a Construction Contingency which shall be readily available for increased costs for subcontractors, material and equipment subject to prior approval of City, which approval will not be withheld unreasonably. The Construction Contingency may also be used, at the discretion of City, to reimburse CM@Risk for unexpected costs due to
  - 1) scope gaps between trade subcontractors;
  - 2) contract default by trade subcontractors;
  - 3) unforeseen field conditions but only as defined in the City's General Conditions for Construction Projects;
  - 4) work completed to meet the intent of the design, but which was not indicated on the plans;
  - 5) costs overruns not covered by allowances;
  - 6) costs of corrective work not provided for elsewhere; and
  - 7) implementation of any Recovery Plan. Cost for which CM@Risk desires to be paid from the Construction Contingency shall be documented by CM@Risk on a time and materials basis and are subject to verification by the City.

If agreed to by City, a "Use of Contingency" form shall be executed by both parties authorizing the actual cost of the work to be paid and included in the Work Item Direct Costs. The Construction Contingency is not allocated to any particular item of the Project but may be used for any portion of the work as determined above. Any amount not used in the Construction Contingency shall belong to the City and shall reduce the GMP. The amount of the CM@Risk's contingency will be negotiated as a separate line item in each GMP package and will not have markups at the time of the GMP proposal. The CM@Risk will inform the City at the time of use of the contractor's contingency funds by making the appropriate changes to the schedule of values with the next regular progress payment request by deducting the amount of contingency funds used from the contingency line item and adding the same amount to the line item on

the schedule of values where the increased funds were used. If the contingency funds are used for a new line item that was not given with the original Schedule of Values, that will be so indicated. At the time that contingency funds are used by the CM@Risk, the appropriate markups for overhead and profit will be applied at that time. When all funds in the CM@Risk's contingency are expended, the CM@Risk then is at risk to cover any additional increases in project costs for the scope of work described in the Contract Documents and GMP proposal.

- f. *City's Contingency*. This GMP also includes a dollar amount listed as the City's Contingency which may be used only by the City for upgrades and changes in scope or other changes not already included within the intent of the Project Program. City shall provide CM@Risk with a Work Change Directive authorizing CM@Risk to perform the additional work and to transfer funds from the Owner's Contingency to the Work Item Direct Costs category to be paid with such direct costs. These additional costs shall be in amount mutually agreed upon by CM@Risk and City or shall be documented by CM@Risk on a time and materials basis and are subject to verification by the City. Any amount not used in the Owner's Contingency shall belong to the City and shall reduce the GMP.

### 3. Reduction of the Work.

If City elects to have a party other than CM@Risk, or one of CM@Risk's Subcontractors, perform the Work related to an Allowance Item or other portion of the Work, or otherwise eliminates or reduces the scope of an Allowance Item or other portion of the Work, the Guaranteed Maximum Price shall be reduced by the Allowance Amount for any such Allowance Item or the budgeted amount in the Guaranteed Maximum Price for such item, and such amount shall be excluded from the Work Item Direct Costs upon which the CM@Risk's Fee is calculated.

### 4. Taxes.

CM@Risk shall pay all existing and future applicable Federal, State and local sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with the performance of the Work. In the event CM@Risk is obligated to pay any new or increased taxes or duties arising after the date hereof, the amount of such new or increased taxes shall increase the Guaranteed Maximum Price pursuant to the Change Order provisions of this Agreement as set forth in the General Conditions. In the event CM@Risk receives the benefit of a tax exemption or tax reduction taking effect after the date hereof, the amount of such exemption or reduction shall decrease the Guaranteed Maximum Price pursuant to the Change Order provisions of this Agreement.

## **IV. PAYMENT PROCEDURES**

### **A. SCHEDULE OF VALUES**

Before the first application for Payment, CM@Risk shall submit to City, and the parties shall agree upon, a Schedule of Values, setting forth the monthly payments the City shall make to CM@Risk. The monthly payment amount shall be the GMP price, less the ten percent retention held by the City pursuant to Paragraph IV (D) below, divided by the expected construction time. The Schedule shall be used as a basis for reviewing the contractor's applications for payment and as a basis for progress payments. The Schedule of values shall be updated as actual costs become known to accurately reflect the cost of the work. City reserves the right to audit the books of CM@Risk, at any time, to determine actual costs and to modify the schedule of values to better reflect actual costs of the work. At Project completion and prior to final payment the parties will reconcile the schedule of values with the actual costs in accordance with provisions herein to determine the final payment.

### **B. APPLICATIONS FOR PAYMENT**

CM@Risk shall submit completed Applications for Payment in accordance with the Contract Documents. No payment application will be considered complete unless it is accompanied by an updated Construction Progress Schedule and a certification that the on-site, red lined, as-built drawings are up to date. Completed Applications for Payment will be processed by Contract Administrator as provided in the Contract Documents.

### **C. WAIVER OF CLAIMS AT FINAL PAYMENT**

Acceptance of Final Payment by CM@Risk shall constitute a waiver of affirmative claims by CM@Risk except those previously made in writing and identified as unsettled at the time of Final Payment.

### **D. RETENTION**

To insure the proper performance of the contract City shall retain ten per cent (10%) of the GMP amount until such time that the Project is completed and approved by Contract Administrator. The entire retention amount owed to CM@Risk shall be paid by the City with the final payment to CM@Risk.

Prior to Substantial Completion, monthly payments will be made in the amount equal to the percentages indicated below, but in each case less the aggregate of payments previously made and less such amounts as City's Representative may determine, in accordance with the General Conditions or other provisions of the Contract Documents.

At the CM@Risk's request the CM@Risk may provide securities in lieu of retention as defined in A.R.S 34-221 and A.R.S 34-607.

## **E. FINAL PAYMENT**

Upon final completion and acceptance of the Work and upon compliance with all other terms and conditions of the Contract Documents, City shall pay the remainder of the Contract Price, including remaining withheld, less such deductions as may be withheld to cover claims in accordance with state law and the Contract Documents, and to cover liquidated and special damages and other charges owing to City.

## **V. SCOPE OF WORK**

### **A. DESCRIPTION OF WORK**

Creation of appropriate design and construction documents as directed for the project outlined in the SOQ and construction of those improvements as will be defined in the Final GMP scope and Fee Proposal, once plans are approved by the City Engineer.

### **B. CLEAN-UP**

The CM@Risk shall, upon completion of the Work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item.

### **C. ALTERATION OF WORK**

In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the City and the CM@Risk. Such Change Order or Amendment will not be effective until approved by Mayor and Council.

Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.

No claim for extra work done or materials furnished by the CM@Risk will be allowed by the CITY except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole responsibility, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

## **D. SUBSIDIARY WORK**

All work called for in the Plans and Specifications shall be performed by the CM@Risk and unless a specific bid item is provided for the work, then such portion of the work will be considered subsidiary to other work for which payment is provided.

## **VI. CONTROL OF WORK**

### **A. INTERPRETATIONS OF DRAWING AND DOCUMENTS**

If any Subcontractor submitting a bid for the proposed Work or any part thereof is in doubt as to the true meaning of part of the Contract Documents, or finds discrepancies in, or omissions from the Contract Documents, such Subcontractor may submit to the Contract Administrator a written request for an interpretation or correction thereof. The Subcontractor submitting the request will be responsible for its prompt delivery. Any interpretations or corrections of the proposed documents will be made by Addendum duly issued, and a copy of each addendum will be mailed or delivered to the CM@Risk who shall distribute the addendum to the appropriate Subcontractor(s). The City of Casa Grande will not be responsible for any other explanation or interpretations of the documents.

### **B. CM@RISK'S REPRESENTATIVE**

The CM@Risk shall at all times be present at the work in person or represented by a foreman or other properly designated agent. Instructions and information given by the Contract Administrator to the CM@Risk's foreman or agent on the Work shall be considered as having been given to the CM@Risk.

CM@Risk's Representative/project manager shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the contract services. CM@Risk's Representative shall communicate regularly with City and shall be vested with the authority to act on behalf of CM@Risk.

### **C. INDEPENDENT CONTRACTOR**

The CM@Risk is and will be an independent contractor and not an employee or agent of the City and whatever measure of control the City exercises over the work or Deliverable pursuant to the Agreement will be as to the results of the work only. No provision in this Agreement will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

#### **D. RELOCATION OF UTILITIES**

All utilities in conflict with the new Work will be relocated by the CM@Risk except as otherwise provided in the Plans and Specifications.

#### **E. SUPERVISION BY CM@RISK**

The CM@Risk will supervise and direct the work. CM@Risk will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CM@Risk will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the CM@Risk as the CM@Risk's representative at the site. The supervisor shall have full authority to act on behalf of the CM@Risk and all communications given to the supervisor shall be as binding as if given to the CM@Risk. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

Nothing contained in this Contract shall be construed as establishing an employer/employee relationship, partnership or joint venture between the CM@Risk and the City.

#### **F. CONSTRUCTION STAKING**

Construction staking will be provided by the CM@Risk. Replacement of construction stakes that have been knocked out due to CM@Risk's work or lack of work, weather conditions, traffic, or vandalism will be at the CM@Risk's expense.

#### **G. SURVEY CONTROL POINTS**

Existing survey monuments shall be protected by the CM@Risk or removed and replaced under the direct supervision of the Contract Administrator. Prior to construction, it is the responsibility of the CM@Risk to notify the Contract Administrator of any survey monuments which need to be referenced off of the monument. Any monuments which are lost and have not been referenced off due to the CM@Risk's negligence and/or lack of notification to the Contract Administrator shall be replaced at the CM@Risk's expense. Lot corners shall not be disturbed without knowledge and consent of the property owner and only after such corner has been properly referenced for replacement.

#### **H. SHOP DRAWINGS, SCHEDULES & SAMPLES**

In time for each to serve its proper purpose and function, the CM@Risk shall submit to the Contract Administrator such schedules, reports, drawings, lists, literature samples, instruction, directions, and guarantees as are specified or reasonably required for construction, operation, and maintenance of the facilities to be built and/or furnished under this Contract.

Shop drawings and data shall be submitted to the Contract Administrator in such number of copies as will allow him to retain four (4) copies of each submittal. The submittal shall clearly indicate the specific area of the Contract Documents for which the submittal is made. The additional copies received by him will be returned to the CM@Risk's representative at the job site. The Contract Administrator's notations of the action which he has taken will be noted on one (1) of these returned copies.

The above drawings, lists, prints, samples, and other data shall become a part of the Contract and a copy of the same shall be kept with the jobsite Contract Documents, and the fabrications furnished shall be in conformance with the same. However, the Contract Administrator's review of the above drawings, lists, prints, specifications, samples, or other data shall not release the CM@Risk from its responsibility for the proper fulfillment of the requirements of this Contract nor for fulfilling the purpose of the installation nor from its liability to replace the same, should it prove defective or fail to meet the specified requirements.

#### **I. AS-BUILT PLANS**

The CM@Risk shall provide and maintain accurate field data on a red-lined set of contract Plans, which are to be kept current and submitted as complete at the conclusion of the construction. These record Plans will be used as documentation for progress payments, and upon project completion, for the preparation of 'as built' file Plans by the Contract Administrator. All 'as-built' information shall be on 3 ml double matte black line Mylar and shall be 24" x 36" in size. Final payment will not be issued until all record Plans and as-built information are submitted by the CM@Risk, and certified to be complete by the Contract Administrator.

#### **J. COOPERATION WITH UTILITIES (INCLUDING RAILROADS)**

Underground utilities indicated on the Plans are in accordance with maps furnished by the City of Casa Grande and by each utility company. The locations are only approximate and require verification prior to construction as mandated by City of Casa Grande requirements for underground street crossings and potholing.

#### **K. INSPECTION**

Inspection: For work requiring inspection by a building code official, the Contractor shall: 1) Provide a minimum 3 days, excluding weekends and City holidays, notice to the Contract Administrator to perform such inspection; and 2) Not enclose, cover, or impair any system or component that will require inspecting, testing, or viewing for compliance with the Uniform Building Codes as adopted by the City.

The CM@Risk is responsible for complying with the Specifications and is hereby forewarned that final approval of any work will not be given until the entire project is completed and accepted. Prior to "final inspection" on any City facilities requiring a Building Permit, the CM@Risk must call for final inspections from the Development Services and Public Works Departments of the City of Casa Grande. The final inspection must be completed prior to final acceptance and payment by the Contract Administrator.

#### **L. COMPLETION OF THE WORK**

Completion of the Work is full completion of all construction associated with a contract, including, but not limited to punch list items, close out documentation, Operation and Maintenance manuals, warranties, and record Plans as certified by the Architect or Engineer of record.

#### **M. FINAL ACCEPTANCE & GUARANTEE**

"Final Acceptance" shall mean a written final acceptance of the Work. The Contract Administrator shall make the final acceptance promptly after the work has been completed in accordance with the Contract Documents and after inspection is made. The work performed under this contract shall be guaranteed for a period of one year from the date of final acceptance.

### **VII. CONTROL OF MATERIALS**

#### **A. EXCESS MATERIALS**

Excess or unsuitable material, broken asphaltic concrete and broken Portland concrete shall be disposed of by the CM@Risk. The CM@Risk shall, prior to commencement of the work, submit a letter to the Contract Administrator stating the location of disposal site(s) for all excess material and certifying that it has obtained the property owner's permission for the disposal of all surplus material.

#### **B. QUALITY CONTROL**

All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these Contract Documents; and it shall be the duty of the CM@Risk to call the Contract Administrator's attention to apparent errors or omissions and request instruction before proceeding with the work.

The Contract Administrator may, by appropriate instruction, correct errors and supply omissions, which instructions shall be as binding upon the CM@Risk as though contained in the original Contract Documents.



At the option of the Contract Administrator, materials to be supplied under this Contract will be tested and/or inspected either at its place of origin or at the site of the work. The CM@Risk shall give the Contract Administrator written notification well in advance of actual readiness of materials to be tested and/or inspected at point of origin. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude retesting or reinspection at the site of the work.

## **VIII. LEGAL REGULATIONS AND RESPONSIBILITIES TO PUBLIC**

### **A. CONFLICT OF INTEREST**

CM@Risk stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

Pursuant to A.R.S. Section 38-511, the City may cancel this contract within three (3) years after its execution without penalty or further obligation by the city if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Casa Grande is, at any time while the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the city, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven days prior to commencement of the Project by the CM@Risk for a third party or seven days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

, Deputy City Manager  
City of Casa Grande  
510 E. Florence  
Casa Grande, AZ 85122

Actions considered to be adverse to the City under this Contract include but are not limited to:

1. Using data as defined in the Contract, acquired in connection with this Contract, to assist a third party pursuing administrative or judicial action against the City;

2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
3. Using data to produce income for the CM@Risk or its employees independently of performing the Services under this Contract, without the prior written consent of the City.

The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the Services to be performed by the CM@Risk under this contract are not expected to create an interest with any person, entity or third party project that is or may be adverse to the interests of the City.

The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

## **B. SUSPENSION OR STOPPAGE OF WORK**

### 1. City's Right to Stop the Work

If CM@Risk fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails on more than one occasion to carry out Work in accordance with the Contract Documents, the City may order CM@Risk to stop the Work, or any portion thereof, until the cause for such order has been eliminated. City or its designee, acting in the capacity of a building inspection official, has the power to stop Work as may be necessary to enforce compliance with applicable codes and regulations. Work stoppage in accordance with this Subsection does not entitle CM@Risk to an extension of the Contract Time or damages for delay. If CM@Risk disagrees with the City's right to stop the Work, the CM@Risk must file a claim under the terms of this Contract as applicable or the same will be deemed to be conclusively waived.

### 2. City's Right to Suspend Work for Convenience.

City may, without cause and for its convenience, order CM@Risk in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine, subject to an appropriate adjustment in the Contract Sum, Progress Schedule or Contract Time. The CM@Risk is not entitled to profit on any adjustment to the Contract Sum due to any such stoppage, suspension, interruption or delay. If no adjustment is made in the Contract Sum as a consequence, or if the CM@Risk disagrees with any adjustment made, the Contractor must file a claim as provided herein or the same will be deemed to be conclusively waived.

### 3. Disputes Involving Non-Payment.

In the event of any dispute between the CM@Risk and City involving CM@Risk's claim to entitlement of any payment, CM@Risk must diligently proceed with the Work pending resolution of the dispute.

#### **C. TERMINATION WITHOUT CAUSE**

City may at any time and for any or no reason, at its convenience, terminate this Agreement or any part of the services to be rendered pursuant thereto by ten (10) day written notice to CM@Risk specifying the termination date. Immediately after receiving such notice, CM@Risk shall discontinue advancing the work under this Agreement and shall deliver to City all drawings, notes, calculations, sketches and other materials entirely or partially completed, together with all unused materials supplied by City.

#### **D. TERMINATION FOR CONVENIENCE**

City may terminate the Contract whenever the Contract Administrator determines that such termination is in the best interests of the City. Any such termination shall be effected by delivery to CM@Risk of a written Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which said termination shall be effective. In the case of such a termination, the City will pay CM@Risk at the Contract unit prices for the actual number of units or items of Contract work completed prior to the effective date of termination, or as may be agreed by the parties for such items of work partially completed. No claim for loss of overhead or anticipated profits shall be allowed.

When the volume of work completed is too small to compensate CM@Risk under Contract unit prices for its related expenses, the City may consider reimbursing CM@Risk for such expenses.

Materials obtained by CM@Risk for the Project, if they have been inspected, tested as required, and accepted by the Contract Administrator, but have not been incorporated into the Project construction, shall, if the Contract Administrator and the CM@Risk so agree, be purchased by the City from the CM@Risk at their actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the Contract Administrator, as shown by actual cost records. If the Contract Administrator does not agree to purchase such materials, the City shall reimburse the CM@Risk for any reasonable restocking fees and handling costs incurred by the contractor in returning said materials to the vendor.

Termination of the Contract shall not relieve the CM@Risk of its responsibilities for the completed Project, nor shall it relieve the CM@Risk's surety of its obligation concerning any claims arising out of the work performed, until the requirements of Paragraph IX(A)(4)—Prosecution of Work have been met.

## **E. EMERGENCIES**

In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. The MAG Specification 107.5 applies to this provision.

## **F. ENVIRONMENTAL REQUIREMENTS**

The CM@Risk shall comply with all Federal, State, and Municipal regulations, laws, and policies relating to air, ground water quality, and water conservation. In addition, the following requirements are applicable for City construction projects.

## **G. SAFETY REQUIREMENTS**

The CM@Risk shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements. In addition, the following requirements are applicable for City of Casa Grande construction projects.

## **H. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK**

The CM@Risk shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until that phase is completed and accepted by the Contract Administrator.

Estimate or partial payment of work so completed shall not release the CM@Risk from such responsibility but he shall turn over the entire work in full accordance with these Specifications before final payment can be made.

## **I. BLUE STAKE**

The CM@Risk is required to notify Blue Stake (602-263-1100) prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21 through 40-360.32, as amended. The CM@Risk shall directly contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities.

## **J. NOTIFICATION OF PROPERTY OWNERS**

All property owners that may be affected by the proposed construction activities shall be notified of scope and duration of the construction activities by the CM@Risk prior to start of construction.

## **K. ACCESS**

Access shall be maintained to adjacent businesses at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. If only one driveway exists, then access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained during all non-working hours.

## **L. PROTECTION OF EXISTING FACILITIES**

The CM@Risk is to protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected and/or braced by the CM@Risk. The CM@Risk shall notify the appropriate Utility Company or agency of any construction that may affect its facilities and state the course of action which will be taken to protect same.

## **M. STORM WATER POLLUTION PREVENTION PLAN AND AZPDES PERMIT**

This project is subject to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. Under provisions of that permit, the CM@Risk shall be designated as permittee, and shall be responsible for providing necessary material and taking appropriate measures to assure that all discharges authorized by the General Permit shall be consistent with the terms and conditions of the General Permit. The AZPDES Construction General Permit requirements for construction and Storm Water Pollution Prevention Plan can be downloaded from <http://www.azdeq.gov/enviro/%20water/permits/links.html> or viewed at the City of Casa Grande Engineering Division.

The contractor shall complete and submit the following if required by law:

1. **Notice of Intent (NOI) for Coverage** under AZPDES Permit No. AZG2003-001 for Construction Activity Discharges to Waters of the United States, including certification of the signature.
2. **Storm Water Pollution Prevention Plan (SWPPP)** for the project.
3. **Notice of Termination (NOT)** of coverage under the AZPDES Construction General Permit.

All subcontractors shall comply with all requirements of the AZPDES Construction General Permit and the project SWPPP. The SWPPP shall be kept on the project site at all times, and shall be retained by the permittee for three (3) years following project completion.

The contractor shall submit completed and signed NOI forms **PRIOR TO THE PROJECT PRE-CONSTRUCTION CONFERENCE** to the following address:

**Stormwater Program – Water Permits Section/ NOI**  
Arizona Department of Environmental Quality  
1110 West Washington, Phoenix 5415B-3  
Arizona 85007.

Copies shall be transmitted to the City's construction project manager at the time of the pre-construction meeting. The Contractor shall prepare a final SWPPP and submit it at the pre-construction meeting for discussion and approval.

Failure by the contractor (or any of its appropriate subcontractors) to submit the NOI forms within this time frame (or to promptly make revisions to those forms as requested by the City) which prevents submittal of the forms to the Arizona Department of Environmental Quality within the mandated deadline of forty-eight (48) hours prior to start of construction will result in delay of the start of construction. The contractor will not be entitled to any claim for additional compensation for additional costs resulting from such a delay in the construction start date. The NOI shall be posted on the construction site along with the SWPPP.

It is the permittee's responsibility to perform inspections of all storm water pollution prevention control devices on the project on a monthly basis, and following each significant rainfall (0.50 inches or more). The contractor is responsible for maintaining those devices in proper working order, including cleaning and/ or repair.

All SWPPP reports required under this contract shall be available to the public in accordance with the requirements of the AZPDES Construction General Permit No. AZG2003-001. The contractor, as the permittee of construction activities with storm water discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality.

No condition of the AZPDES Construction General Permit as well as the SWPPP shall release the contractor from any responsibilities or requirements under other environmental statutes or regulations.

Upon total project completion, acceptance, and de-mobilization, the contractor shall submit its completed, signed Notice of Termination (NOT) form to:

**Stormwater Program – Water Permits Section/ NOT**  
Arizona Department of Environmental Quality  
1110 West Washington 5415B-3, Phoenix, Arizona 85007

The form shall be submitted with a copy to the City’s construction project manager thereby terminating all AZPDES Construction General Permit coverage for the project.

The unit prices for the proposal items shall include all material, labor, and other incidental costs relating to the preparation and submittal of all AZPDES Construction General Permit related forms to Arizona Department of Environmental Quality; preparation, revision and maintenance of the SWPPP; and provision, installation, operation, and maintenance of all pollution control devices.

The cost of the activities and items within this provision as provided by the contractor is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include contractor costs in order to assure proper operation of the pollution control devices installed, including all maintenance, cleaning, and disposal costs associated with clean-up and repair following storm events or other runoff or releases on the project.

**IX. COMMENCEMENT, PROSECUTION AND PROGRESS**

**A. START OF WORK**

1. Date of Commencement and Notice to Proceed  
The City will issue a Notice to Proceed and make the Site available to the Contractor within a reasonable time after execution of the Contract. The date on which the Contract Time commences, as established in the Notice to Proceed, will not be postponed by failure to proceed with the Work by the Contractor or persons or entities for whom the Contractor is responsible.
  
2. Pre-Construction Conference  
Promptly after the Notice to Proceed has been issued but before the Work at the Site begins, City will conduct a pre-construction conference with CM@Risk and any Separate Contractors to review preliminary Submittals, schedules, Site utilization, construction operations to occur at the Site during the succeeding sixty (60) days, communications, coordination with Separate Contractors, payment procedures, and other matters.
  
3. Commencement of Work at the Site  
CM@Risk may not commence operations on the Site prior to issuance of the Notice to Proceed.

4. Prosecution of Work

CM@Risk shall commence construction operations with that part of the Project designated for such commencement in the progress schedule which it has submitted to the City, unless the Contract Administrator directs the CM@Risk to commence with a different part of the Project. The work shall be conducted in such manner and with sufficient materials, equipment and labor as are necessary to ensure completion of the Project in accordance with the Contract within the time set forth in the Contract. The CM@Risk shall notify the Contract Administrator of its intention to commence or recommence any Project operation at least 48 hours in advance of doing so. The CM@Risk shall also give the Contract Administrator such advance notice of any intent to discontinue any Project operation, unless emergency conditions make it impracticable to give such notice so far in advance. The Contract Administrator retains the right to disallow such commencement, recommencement or discontinuance of operations.

5. Project Progress

a. *Contract Time Reasonable.* By executing the Contract, the CM@Risk confirms that the Contract Time is a reasonable period for performing the Work.

b. *Time is of Essence.* The CM@Risk acknowledges that completion of the Contract by the dates specified for Substantial and final Completion is critical to the City, time being of the essence.

c. *CM@Risk to Proceed Expeditiously.* The CM@Risk must proceed expeditiously with adequate forces and maintain progress in accordance with the approved Progress Schedule.

d. *Conformance to Schedules.* The CM@Risk must conform to the most recently approved Progress Schedule. The CM@Risk must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Progress Schedule.

e. *Progress Record.* The CM@Risk must maintain at the Site, available to the Contract Administrator for their reference during the progress of the Work, a copy of the approved Progress Schedule and any approved revisions thereto. The CM@Risk must keep current records of and mark on a copy of the approved Progress Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Progress Schedule.

f. *Substantial Completion Within Contract Time.* The CM@Risk must achieve Substantial Completion within the Contract Time.



g. *Acceleration to Comply with Schedule.* If the CM@Risk's progress is not maintained in accordance with the approved Progress Schedule, or the City determines that the CM@Risk is not diligently proceeding with the Work or has evidence reasonably indicating that the CM@Risk will not be able to conform to the most recently approved Progress Schedule, the CM@Risk must, promptly and at no additional cost to the City, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the City thereof. Any extension of working hours requires approval of the City, which will not be unreasonably withheld but may be subject to reasonable conditions including payment for additional or overtime services of the Contract Administrator and any other applicable consultants, testing or regulatory agency costs.

h. *Acceleration of Schedule.* The City reserves the right to issue a written directive to accelerate the Work which may be subject to an appropriate adjustment, if any, in the Contract Sum. If the City requires an acceleration of the Project Schedule and no adjustment is made in the Contract Sum, or if the CM@Risk disagrees with any adjustment made, the CM@Risk must file a claim as provided in Paragraph IX (G) or the same will be deemed to be conclusively waived.

i. *Ownership of the Float.* The float is a shared commodity for use of the City and the CM@Risk and is not for the exclusive use or benefit of any one party. The parties have full use of the float until it is depleted.

## **B. CONTRACT COMPLETION DATE**

The date established in the Notice to Proceed is for completion of all or specified portions of the Work. This includes items of Work to be completed under an owner allowance or as part of a contingency item. The stated contract completion date will include weather conditions that are not unusually severe for the area and time of year. This date may be expressed as a calendar date or a number of calendar days after issuance of the Notice to Proceed.

## **C. CM@RISK'S CONSTRUCTION SCHEDULE**

Prior to the start of work, a construction progress schedule shall be required for all projects and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be required with the submission of each monthly pay request.

### **1. CM@Risk's Progress Schedule.**

Within fifteen (15) days after issuance of the Notice to Proceed, the CM@Risk must prepare and submit, for the the Contract Administrator's approval, a proposed initial CPM Progress Schedule for performance of the Work, which schedule may be a cost and man-loaded Progress

Schedule, if so specified in the Contract Documents. The CM@Risk will not receive any payments until such time the initial CPM Progress Schedule has been submitted and approved. The schedule must:

- a. conform to all specified time limits, including substantial, final and any interim completion dates, established by the Contract Documents;
- b. include all Work for each element of the Project as required by the Contract Documents;
- c. include the schedule for all Submittals, including all testing, inspections and punch list required by the Contract Documents; and
- d. provide for expeditious and practicable execution and completion of the Work within the Contract Time. Unless otherwise required by the Contract Documents, the Progress Schedule must include the activities of and be signed by the principal Subcontractors.

2. Requirements of the Progress Schedule.

The CPM Progress Schedule for performance of the Work must further comply with the scheduling specifications set forth in the Contract Documents, and to the extent not inconsistent therewith, must also fully comply with the following requirements.

The CM@Risk must plan, schedule, and construct the Work using a Critical Path Method Project Schedule (CPM). The CPM will be used for coordinating and monitoring all the work specified in the Contract Documents including all activities of subcontractors, vendors, suppliers, utilities, the City, Separate Contractors and all other parties associated with the construction of the Contract. All work including but not limited to submittals, major procurement, delivery, and construction activities must be included. All activities, including bid items, quantified in the Contract Documents must be included in the CPM. The CPM must be based upon the entirety of the Contract Documents. The software utilized for the CPM must generate files that are compatible with Primavera Project Planner.

The CPM utilizes float. Float is defined herein and is the amount of time between when an activity “can start or finish” and when an activity “must start or finish.” Float is a shared commodity for the use of the City and the CM@Risk and is not for the exclusive use or benefit of either party. The parties have the full use of the float until it is depleted.

The Contractor shall prepare a CPM schedule that shall incorporate the Sequence of Construction as outlined on the Plans and in the

Specifications. All other limiting factors that affect construction shall also be incorporated into the Schedules. All milestones or constrained dates within the schedule shall be clearly indicated.

All major elements of the work shall be shown (on a structure by structure basis where applicable), and also be broken out further into their minor components and sequence of assembly.

For this project, the major elements may be indicated to include, but are not limited to, the following items:

- Permit Acquisition
- Shop Drawings
- Utility Relocations
- Engineer's Office
- Construction Staking
- Clearing & Grubbing
- Maintenance & Protection of Traffic
- Erosion Control
- Adjacent Contract Work by Others
- Drainage (Breakdown into Excavation, Bedding Materials, Pipe, Manholes, Catch Basins, Fill, Riprap, etc.)
- Removal of Superstructure
- Roadway Construction (Breakdown into Excavation, Fill Subbase, Pavement, Drainage, Curbing, Guiderail, etc.)
- Signing (Breakdown Signs Individually)
- Illumination
- Pavement Markings
- Signalization
- Temporary Markings
- Clean-up

All documents, which require approval by the City, shall be clearly identified within the schedule. The City shall be allocated a minimum of thirty (30) calendar days (exclusive of weekends and holidays) for review and approval of each submittal.

Any submittals requiring approval by an outside Agency shall be allocated a minimum of sixty (60) calendar days. The City shall not be held responsible for any delay associated with the approval or rejection of any substitution or other revisions proposed by the CM@Risk.

### 3. Scheduling Representative.

The CM@Risk must designate a scheduling representative, prior to submission of the Initial Critical Path Method Project Schedule (ICPM). The scheduling representative is the person primarily responsible for development and maintenance of the CM@Risk's CPM schedule. The

scheduling representative will represent the CM@Risk in all matters regarding the schedule and must attend all schedule related meetings.

The CM@Risk must submit the qualifications of the designated scheduling representative to the City for approval. This approval is required before the ICPM will be accepted. The designated scheduling representative must have at least three years of verifiable experience for preparing and maintaining CPM project schedules on contracts of the same or similar size and complexity.

Replacement of the scheduling representative by the CM@Risk will require written approval from the City.

4. Initial Critical Path Method Project Schedule (ICPM).

The ICPM must consist of:

- a. *A Time Scaled Diagram.* The ICPM time scaled diagram will have a scale and format that is acceptable to the Contract Administrator. The activities must be labeled with the activity identification clearly shown for each activity. All relationships between activities must be shown.
- b. *Tabular reports with activities sorted as follows:*
  - i. Activity ID. This report must include predecessors and successors for each activity with leads and lags shown.
  - ii. Activity ID. This report must include resources. This report must clearly define the resources assigned to each activity.
  - iii. Early Start, Total Float
  - iv. Total Float, Early Start
  - v. Project Area (if applicable)
  - vi. Project Phase (if applicable)
  - vii. Responsibility e.g., CM@Risk, specific subcontractor, specific supplier, the City, utilities and specific third parties.

The header of each tabular report must include the project name, Contract number, data date, run date and number, and report type.

The body of each report must include the activity identification, activity description, original and remaining

duration, early/late start and finish dates, percent complete, actual start/finish dates, total float, and calendar designation for every activity.

- c. *Written Narrative (WN)*. The WN must comply with the requirements described hereinafter.
- d. *Printed Calendars*. The printed calendars must include a listing, description, and calendar form tabulation of all calendars used in the ICPM. The calendar must contain the total number of anticipated work days required to complete all the work required in the Contract. The calendars must delineate the holidays and anticipated nonwork days or periods. An explanation of the CM@Risk's basis for determining each nonwork day or period must be included in the WN.
- e. *Data disc containing all of the information contained in the CPM*. The format must be compatible with Primavera Project Planner software.

All construction activities must have durations not exceeding 10 working days, unless otherwise approved by the Contract Administrator. Activities required for review and approval of the submittals and shop drawings by the Contract Administrator must be given a duration of not less than 30 calendar days. The CM@Risk may submit a short list of highly critical approval activities to the Contract Administrator. The Contract Administrator will make every effort to expedite the approval of these submittals; however, this will not alter the requirements to include 30 calendar days for all approvals in the ICPM. Durations for procurement activities will be evaluated on a case by case basis.

The latest calculated early finish date in the ICPM shall equal the Contract calendar date for completion specified in the Contract Documents. If the CM@Risk submits an earlier completion date than specified in the Contract Documents, the City, upon approval of the ICPM, may issue a change order to adjust the Contract time to the completion date shown on the ICPM.

CM@Risk must resource load all construction activities in its schedule and schedule updates with the material, equipment, and manpower planned to be utilized by the CM@Risk and its subcontractor in accomplishing each activity. Resource loading of the CPM must be fully explained in the WN.

The Contract Administrator reserves the right to require specific activities and/or milestones to be added to the CPM (consistent with the Work).

CM@Risk must utilize activity codes to categorize activities by at least the following: project area; project phase; and responsibility, e.g. CM@Risk or specific subcontractors.

The CM@Risk must provide a WN as part of the ICPM. This WN must explain the sequence of work, the critical path, interim completion dates, project phasing, nonwork days, or periods, maintenance of traffic, and labor and equipment resources. In addition, the CM@Risk must explain how it has provided for: permit requirements, environmental requirements, coordination with other public Contractors, milestone dates (for the Contract or other related contracts), coordination with other entities, coordination with all utility companies, special nonwork days or periods, and weather in its ICPM. The WN must be used to explain the specific scope of each activity and the basis used to determine the original duration of each activity, i.e., production rate and anticipated quantities.

All activities quantified in the Contract Documents must be addressed in the WN. The CM@Risk shall utilize the WN to explain the following:

- a. Relationships between activities not obviously identified.
- b. Equipment usage and limitations.
- c. Manpower usage and limitations.
- d. Use of additional shifts and overtime.
- e. Activity codes, abbreviations, and activity identification system.
- f. All Calendars utilized in the CPM.
- g. Date or time constraints.
- h. All abbreviations in the ICPM.
- i. Use of calendars.
- j. Scheduling of weather and temperature sensitive activities.

The CM@Risk must complete and submit the proposed ICPM within 15 calendar days after issuance of the Notice to Proceed and must submit five sets of all information required to the Contract Administrator and City for review and acceptance.

The Contract Administrator will complete the review of the CM@Risk's ICPM within 30 calendar days after the submittal. If required, the Contract Administrator will convene a Joint Review Conference at which time the Contract Administrator and CM@Risk will make corrections and adjustments to the proposed ICPM. If a revision is necessary due to the Contract Administrator's review or the Joint Review Conference, the proposed revision must be submitted by the CM@Risk within seven calendar days after the CM@Risk received the Contract Administrator's review comments

or within seven calendar days after the date of the Joint Review Conference, whichever is the latest. Revisions must conform to the requirements for the ICPM. The Contract Administrator will respond to the revised ICPM within seven calendar days after the revised ICPM is received.

Any delay in starting work caused by the acceptance of the ICPM by the Contract Administrator will not be considered as a basis for any adjustments in the Contract Sum or Time.

When the Contract Administrator notifies the CM@Risk that the ICPM has been accepted, that document will become the CPM of record. The CM@Risk will be responsible for implementing and executing the work specified in the Contract in strict conformance with the CPM of record. The CPM of record will be the CM@Risk's work plan for completing the entire Contract as specified in the Contract Documents.

5. CPM Updates.

Monthly updates of the CPM of record are required. CPM update submissions must contain the activity data as specified in (a) through (e) of the ICPM. The update will be used to describe the progress of the project to date. The WN must include a description of the work performed during the update periods, current critical path, the amount of float on the critical path, any delays or disruptions experienced by the CM@Risk during the period of the update, any change in manpower or equipment, and any potential delays or disruptions.

The CM@Risk's scheduling representative and the Contract Administrator will meet to review, mutually agree to, and sign-off on the information required to update (actual start and finish dates, remaining durations and percentages complete) the schedule. The CM@Risk must use an update form acceptable to the Contract Administrator. The update shall be submitted by the CM@Risk within seven calendar days from the data date. Failure to timely submit the update may result in the Contract Administrator or City withholding payment. Upon acceptance by the Contract Administrator, the update will become the CPM of record for the period between its data date and the data date of the next approved update or revision.

Updates will not include any revision to the CPM, unless prior approval by the Contract Administrator is received for the insertion of revisions.

6. Revisions to the Schedule of Record.

Revisions are defined as one or more of the following:

- a. A change in the original duration of an activity.

- b. A change in the logic of the schedule.
- c. A change in the calendars or to the calendar to which an activity is assigned.
- d. A change to resources.
- e. A change to any actual date, previously established.
- f. The deletion or addition of an activity.
- g. A change to, addition of, or deletion of a date or time constraint.
- h. A change to, addition of, or deletion of an activity code.
- i. A change to an activity description.
- j. Any change other than updating an activity.

When the CM@Risk proposes to make a revision to the CPM, the CM@Risk must verbally discuss the proposed revision with the Contract Administrator. If the revision is minor in nature, the Contract Administrator may allow the CM@Risk to include the revision on the next Update of the CPM. If the Contract Administrator determines that the revision is not minor in nature, the CM@Risk will submit the proposed revision to the Contract Administrator for review and approval prior to deviating from the approved CPM.

The Contract Administrator may allow the CM@Risk to deviate from the approved CPM for specific mitigating activities.

The proposed revision must be submitted to the Contract Administrator in the same format and with the same requirements used for the ICPM. The proposed revision must be made to the CPM of record at the time the revision is made, i.e. the revision will include all update information and revisions previously approved and the additional progress to the date of the revision. The WN accompanying the proposed revision must describe the reason for the revision, the resulting critical path, and all particulars of the revision. These must include, but not be limited to, changes in the method or manner of the work, changes in specifications, changes in resources, addition or deletion of work, increased or decreased quantities, defective work, and acceleration of work.

The Contract Administrator will review and respond to the CM@Risk's proposed revision within a reasonable time. Resubmittal by the CM@Risk, if required, must be made within seven calendar days after receipt of the Contract Administrator's review comments. The City reserves the right to reject any proposed revision which adversely impacts the City, utilities, or other concerned parties.

When the CM@Risk fails to submit an acceptable Update or Revision within the time limits prescribed above, the Contract Administrator may withhold payment until an acceptable Update or Revision is submitted.

## 7. Coordination with Other Schedules.



The CM@Risk must revise its Progress Schedule as necessary to conform to the overall Project Progress Schedule incorporating schedules of the City and any Separate Contractors.

8. Review and Approval of Schedules.
  - A. The City shall review schedule submittals for conformance with the requirements of the Contract Documents. Schedule review comments by the City may address whether items of Work are omitted, activity durations are reasonable or that the level of labor, materials, and equipment, the means, methods, timing, and sequencing of the Work are practicable. The planning, scheduling or execution of the Work and the accuracy of any Project Schedule shall remain the sole responsibility of the CM@Risk.
  - B. During the review of any of the submissions required by this section, if any of the following conditions are discovered the submittal shall be returned by the City without further review for correction and re-submittal:
    1. The submittal is incomplete.
    2. The submittal does not comply with the specified format.
    3. A component of the submittal has not been prepared in accordance with all of the requirements of this section.
    4. The quality of the submittal indicates that the CM@Risk has failed to perform an internal quality control review prior to submission.
    5. There is an inconsistency between electronic files and printed material.
  - C. It is the Contractor's responsibility to ensure that all Project Schedules are in compliance with all of the requirements of the Contract Documents. The City's failure to return a submittal shall not be construed to mean that the submittal is in compliance with the requirements of the Contract Documents. The City, at its discretion, may choose to complete a submittal review even though the submittal fails to meet one of more of the conditions for rejection stated herein.
  - D. The acceptance of any Project Schedule by the City does not constitute acceptance or approval of any change to the requirements of the Contract Documents including but not limited to any mandated construction sequences. The City is not responsible for any erroneous assumptions or information in any Project Schedules regardless of origin.
  - E. The Contractor shall be responsible for all delays due to its failure to submit complete submittals in accordance with the requirements of the Contract Documents.

- F. The Schedule submitted will not be considered acceptable until all of the City's comments are incorporated into the schedule to the City's satisfaction.
- G. Errors in any Project Schedule accepted by the City, including but not limited to activity durations, relationships between activities, resource allocation or other float suppression techniques that do not accurately reflect the work may be identified at any time and once identified shall be corrected by the Contractor.
- H. City's acceptance of a Schedule Update shall not constitute the approval of a time extension should the Project Completion Date or Contract Milestone(s) be shown as delayed.
- I. Notwithstanding any review, review comments, acceptance, scheduling assistance or direction to change an/or revise any schedule by the City the schedules shall at all times be the Contractor's schedule for performing the Work and not be considered as any City direction constituting a change unless the Contractor gives appropriate notice and the other Contract provisions for determining merit and entitlement are met.

9. Schedule Updates.

The CM@Risk must update the Progress Schedule and submit to the City for approval on a monthly basis and at more frequent intervals as required by the issuance of Change Orders and Field Orders or other conditions of the Work and Project. The CM@Risk will not receive monthly payments until such time as the updated Progress Schedule has been submitted and approved.

The CM@Risk will attend bi-weekly progress meetings at the project site. At these meetings, the CM@Risk will provide a report on the actual status of the Work as compared to the latest approved Project Schedule.

10. Schedule of Submittals.

The CM@Risk must prepare and keep current, for the Contract Administrator's approval, a Schedule of Submittals which is part of the Progress Schedule. The Schedule of Submittals must allow at least thirty (30) days for review and approval of each Submittal by the Contract Administrator, and sufficient additional time, if required, for (i) review and approval by regulatory bodies and (ii) their correction and resubmission by the CM@Risk and any Subcontractors or Suppliers. The Schedule of Submittals must identify all schedules, Shop Drawings, Product Data, Samples, Warranties, operating manuals and other Submittals provided for review or required for approval by the Contract Administrator, which indicates the dates or times which the CM@Risk

proposes to submit each such Submittal (allowing sufficient time for review, correction and resubmission if required, and approval) and the dates or times on or within which such Submittals must be approved in order to avoid a delay in the progress of the Work.

#### **D. HINDRANCES AND DELAYS**

1. Except as provided in Paragraph 2 immediately below, no charge shall be made by the CM@Risk for hindrances or delays from any cause during the progress of any portion of the work embraced in this contract; but such delays, if due to no fault or neglect of the CM@Risk, shall entitle the CM@Risk to a time extension sufficient to compensate for the delays. The amount of the delay shall be determined by the Contract Administrator provided the CM@Risk gives the Contract Administrator immediate notice in writing of the cause of such delay.
2. The parties agree to negotiate for the recovery of damages related to expenses incurred by the CM@Risk for a delay under the following circumstances:
  - a. If the City is solely responsible for the delay which is unreasonable under the circumstances, and
  - b. Which delay was not within the contemplation of the parties to the contract at the time the contract was entered into, and
  - c. The CM@Risk can show the impact of the delay on the critical path of the construction activity as indicated in an approved Construction Progress Management schedule.
3. Unless specifically provided for in the Special Provisions, the maximum compensation for an unreasonable or unforeseen delay shall not exceed the daily amount specified for liquidated damages in MAG Specification 108.9 as based on the original contract amount.
4. This section shall not be construed to void any provisions of this contract, which require notice of delays, which provide for alternative dispute resolution or other procedures for settlement or which provide for liquidated damages.

#### **E. CONTRACT TIME EXTENSIONS**

1. Mitigation of Delays
  - A. The CM@Risk shall develop mitigation measures for all delays regardless of responsibility for the delays and identify all time and cost impacts to the work associated with those mitigation measures. Unless circumstances otherwise require, the CM@Risk shall not pursue

mitigation action for which it expects the City to be liable prior to notifying the City and receiving City authorization to proceed with the mitigation action. Any action taken by the CM@Risk prior to receiving approval from the City shall be at the CM@Risk's risk.

- B. When the need for mitigation arises to ensure timely completion, the CM@Risk shall review all uncompleted activities on the Critical and Near Critical Paths to the Contract Completion Date for errors in scope, duration, and logic and for the feasibility of performing in parallel work currently scheduled sequentially.
- C. Whenever is possible for the CM@Risk to mitigate delay without added cost, the CM@Risk shall do so. The CM@Risk shall mitigate all delays as efficiently and economically as possible, with the objective of minimizing both the time and cost impact of the delay regardless of responsibility for the delay. The City will not be liable for damages which the CM@Risk could have avoided by reasonable means such as prudent scheduling of the work and judicious handling of forces equipment or plant.
- D. The City will not be liable for damages incurred by the CM@Risk during any period of time when the CM@Risk has failed to provide notification of delay in accordance with the Contract requirements when having the notification at the specified time could have influenced the City's decision or actions.

## 2. Time Impact Analysis

- A. Time impact analysis shall be required for contested or disputed time extension requests submitted by the CM@Risk prior to the work being performed.
- B. If the CM@Risk believes that a proposed change will impact the Project Completion Date or interim Milestones the CM@Risk shall submit an analysis with its Change Order Proposal demonstrating the delay to the Critical Path. This analysis shall be in the form of a Time Impact Analysis.
- C. The Time Impact Analysis shall consist of 1) a Fragnet of the portion of the schedule that will be affected by the incorporation of the change, which shall include the new activities, revised logic and durations associated with the proposal change; 2) a narrative explanation of how the proposed change would impact the schedule; 3) an impact schedule which shall be developed by incorporating the Fragnet and required changes, including any delay mitigation measures, into the most recent accepted schedule update; and 4) electronic copies of the Fragnet and impact schedule.
- D. The CM@Risk shall submit its TIA in sufficient time to allow it to be incorporated into a Revision Schedule prior to the change order work

proceeding, allowing the City thirty (30) days after receipt of the Time Impact Analysis and all the supporting information required with the Change Order Proposal to approve or reject the analysis.

- E. Upon agreement on the schedule impact due to the proposed change and the issuance of a time extension, the CM@Risk shall incorporate the agreed upon Fragnet/schedule revisions in the next monthly update. The City reserves the right to have the CM@Risk proceed with the change order related work without agreeing on the time associated with it and to measure the actual schedule impact via Contemporaneous Period Analysis.
- F. In cases where the CM@Risk has not submitted a Time Impact Analysis with its Change Order Proposal for a particular proposed change, the CM@Risk agrees that the particular proposed change has no impact on the Contract Completion Date or interim Milestones and no time extension is required.

3. Contemporaneous Period Analysis

- A. The CM@Risk shall utilize Contemporaneous Period Analysis (CPA) to establish entitlement for all time extension requests submitted to the City after performance of the work that is the subject of the time extension request.
  - B. The CPA shall quantify the delay by comparing the completion dates and Milestone dates on an update by update basis, starting with the update just prior to the delaying event and ending with the update just after the conclusion of the delaying event. Only the accepted schedules/Schedule Updates shall be used in the CM@Risk's CPA.
  - C. The CM@Risk shall demonstrate the cause and the City's sole responsibility for critical delay by correlating slippage with relevant contract language and project documentation supporting the CM@Risk's assessment.
  - D. The CPA will consist of 1) an update by update accounting of all delay(s) during the period in question; 2) an update by update narrative explanation of how the delay(s) affected the completion date or would have affected the completion date but for other concurrent delay(s); 3) chronologies of the issues affecting the schedule period in question; 4) a day by day accounting and description of the unanticipated work/work stoppage on the Critical Path and/or path in question; and 5) a Gantt chart comparing the as-planned schedule just prior to the start of the delay to the actual as-built for the path(s) in question.
4. City may require the CM@Risk to correct errors in its TIA or CPA at anytime, whether or not the schedules have been accepted and/or time extension issued and agreed upon. Should the errors affect the outcome of

the TIA or CPA, the City reserves the right to adjust the time extension accordingly. Generally, a schedule will be found to be in error if it does not properly reflect the sequencing, timing and durations of all the work and required events as well as mitigation efforts contemplated or which should have been contemplated at the time of the data date of the schedule.

5. Time Extensions will be granted only to the extent that equitable adjustments for the activity of activities affected exceed or exceeded the total or remaining float along the Critical path or activities at the time of the actual delay. Actual delays in activities which do not affect the Critical Path work or which do not move the CM@Risk's planned completion date beyond the Contract completion date or current completion date as affected by previous delays, will not be the basis for an adjustment to the Contract time. Time Extensions shall not be granted until a delay occurs that is:
  - a. Beyond control of and without fault of or negligence of the CM@Risk and its Subcontractors or Suppliers at any time; and
  - b. Extends the actual performance of the work beyond the Contract completion date or other specified Interim Milestones.
6. Should a non-compensable excusable delay be concurrent with one or more compensable delays, the CM@Risk and City agree that the net result is a non-compensable, excusable delay to the extent the delay is caused by the non-compensable event.
7. The CM@Risk shall have no claim for damages of any kind, or extensions or increase to the Contract time(s) or Contract Milestone(s), or adjustments of Contract Price on account of any delay, interruption or suspension of the Work or any portion thereof (herein after collectively referred to as "Delay"), due to whatever cause unless the prerequisites of this Subsection are met. The requirements of this Subsection are in addition to and not in lieu of the requirements of any other applicable subsection.

## **F. LIQUIDATED DAMAGES**

Unless otherwise specified, liquidated damages will be applied in accordance with the MAG Specification 108.9. Completion of the Work as stated in this Contract is the same as completion of the work as stated in MAG Specification 108.9. Damages will be applied at the amounts specified in Table 108.1.

## **G. CLAIMS AND DISPUTES**

1. Dispute Avoidance and Resolution

- A. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and CITY each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the work.
- B. CM@Risk and CITY shall first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and Contract Administrator.
- C. If a dispute or disagreement cannot be resolved through CM@Risk's Representative and Contract Administrator, CM@Risk's Principal-in-charge and the Deputy City Manager, or his/her designee, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than five (5) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Principal-in Charge and the Deputy City Manager, or his/her designee, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- D. In any unresolved dispute arising out of an interpretation of this Agreement or the duties required therein, the final determination at the administrative level will be made by the Contract Administrator.

2. Duty to Continue Performance

CM@Risk shall continue to perform the work and CITY shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and CITY.

3. Withholding Payment

The CITY, pursuant to Title 34 of the Arizona Revised Statutes, reserves the right to withhold funds from the CITY's progress payments up to the amount equal to the claims the CITY may have against the CM@Risk, until such time as a settlement on those claims has been reached.

A. Disputed Items

CITY may temporarily delete any disputed items contained in CM@Risk's invoice, including items disputed due to lack of supporting documentation, and pay the remaining amount of the invoice. CITY shall promptly notify CM@Risk of the dispute and request clarification and/or remedial action. CITY may withhold payment on all disputed items until the issues are resolved. After any dispute has been settled, CM@Risk shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

B. Disputed Invoices

In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

4. Records/Audit

A. Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the CITY and CM@Risk will be kept on a generally recognized accounting basis. The CITY, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Agreement and any Change Orders. The CITY reserves the right to decrease the Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the completed audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data. If a completed audit in accordance with this article, discloses overcharges, of any nature, by the CM@Risk to the CITY in excess of one percent (1%) of the total contract billings, all fair and reasonable costs of the CITY's audit shall be reimbursed to the CITY by the CM@Risk. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CM@Risk's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of CITY's findings to the CM@Risk.

B. The CM@Risk will include a provision similar to the preceding subsection in all of its agreements, computed on a time and material basis, with Subconsultants, Subcontractors, and Suppliers providing services under this Agreement to ensure the CITY, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The CITY reserves the right to decrease Contract Amount and/or payments made on this Agreement if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts and one or more of those parties do not allow the CITY to audit their records to verify the accuracy and appropriateness of pricing data.

**X. MEASUREMENTS AND PAYMENTS**

**A. CONTRACT PRICE ADJUSTMENTS**

The increase or decrease in Contract Price resulting from a change in the City requested change in Work shall be determined by one or more of the following methods:



1. Unit prices set forth in the Contract or as subsequently agreed to between the parties;
2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and
3. Costs, fees and any other markups.

The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit A.

If an increase or decrease cannot be agreed to as set forth in items 1 through 3, above, and the City issues a Change Order, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Contract. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to the City or the CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

If the City and the CM@Risk disagree upon whether the CM@Risk is entitled to be paid for any services required by the City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, the City and the CM@Risk shall resolve the disagreement pursuant to MAG Specification 110.

As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations. If the parties are unable to agree and City expects the CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.

## **B. MISCELLANEOUS REMOVAL AND RELOCATIONS**

Miscellaneous removals and relocations shall be construed to mean the removal of all unsuitable materials whether designated or implied by the Plans and Specifications, and shall include but not be limited to the removal of such items as pipes, concrete, asphalt, block, brick, rock, metal, and other comparable items of every nature and description, unless such items are specifically designated in a separate bid item. Also, certain items require temporary removal

and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, and are included in this category.

### **C. APPROXIMATE QUANTITIES**

It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated, as stated in the Proposal, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the proposals offered for the work under this Contract; and the CM@Risk further agrees that the City of Casa Grande will not be held responsible if any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

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

## **SECTION 5. SPECIAL PROVISIONS**

### **I. PERMITS**

The CM@Risk shall be required to obtain all permits and licenses for the project and pay all applicable fees, unless otherwise noted on the Plans and Specifications. The CM@Risk shall be paid for the actual costs of the permits and license fees upon submitting a receipt showing the fee paid. Excluded are items such as all costs incurred by the CM@Risk in securing the permit except for the actual permit fee established by the agency, cost for all shutdowns or outages, cost for pole bracing, cost for any additional insurance requirements, and other similar type costs. There will be no charge to the CM@Risk for any of the necessary City of Casa Grande permits and inspections. The CM@Risk shall abide by all stipulations of all license and permits issued for this project.

### **II. OPEN TRENCHING AND STEEL PLATES**

The maximum amount of open trench in any state of trenching or backfilling shall be limited to five hundred feet (500'). All trenches shall be completely backfilled or covered using steel plates at the end of each working day. The use of steel plates shall not exceed seventy-two (72) hours between completion of work in trench and final patch. All steel plates installed will be recessed into the existing pavement by milling until the top of the plate is flush with the top of the pavement.

### **III. CONFIDENTIALITY OF PLANS AND SPECIFICATIONS**

Any Plans or Specifications the CM@Risk receives regarding this project are for official use only. The CM@Risk may not share them with others except as required to fulfill the obligations of its contract with the City.

All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the CM@Risk shall include the following language: "Per City of Casa Grande Guidelines, these Plans are official use only and may not be shared with others except as required to fulfill the obligations of the CM@Risk's contract with the City of Casa Grande".

### **IV. IRRIGATION AND LANDSCAPE REPAIR**

The CM@Risk shall repair all sprinkler and irrigation systems that are disturbed in the course of the work. There will be no separate payment for irrigation and landscape repair, the cost of which will be incidental to other bid items. It is highly recommended that the CM@Risk meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs. This section shall not apply to unforeseen or unknown irrigation lines.

### **V. SEQUENCE OF CONSTRUCTION**

The CM@Risk shall submit a project sequencing schedule to the Contract Administrator for review at the pre-construction conference. The CM@Risk is on notice that the City will review the proposed schedule to insure limited community impact.

### **VI. COORDINATION OF WORK BY OTHER PARTIES**

The CM@Risk shall make every effort to perform its work so as not to interfere with other work for the State or other parties. In the case of a dispute with another CM@Risk working for the City regarding their work for the State, or in the case of a conflict between their planned operations or the needs of their projects, the CM@Risk shall bring that dispute or conflict to the Contract Administrator's attention and the Contract Administrator shall decide how it shall be resolved. The Contract Administrator's decision shall be binding upon all of the CM@Risk's working for the City who are involved in the matter.

The CM@Risk shall, as far as possible, schedule and otherwise plan and arrange its work, and place and dispose of its Project materials, so as not to interfere with the operations of other CM@Risks working for the State. The CM@Risk shall, as necessary to accomplish this goal, endeavor to coordinate and schedule its work in the way which will interfere least with the work of other parties.

If the CM@Risk's work or activities under the Contract come into conflict with other activities or work for the State, any financial or other liability arising from such conflicts shall be the CM@Risk's; and the CM@Risk shall protect and save harmless

the State from any and all damages or claims, and the costs of defending same, which may arise because of inconvenience, delay, financial hardship, or injuries caused to the CM@Risk or to other CM@Risks as a result of such conflicts, unless: (a) The CM@Risk notifies the Contract Administrator of such conflicts as soon as the likelihood of such a conflict becomes apparent; or, if such likelihood could not have been foreseen earlier, then as soon as the conflict becomes apparent; (b) The CM@Risk waits for direction from the Contract Administrator as to how the conflict should be avoided or resolved, and the CM@Risk does not proceed with the provided the CM@Risk with such direction; and (c) The CM@Risk follows the directions given by the Contract Administrator for avoiding, resolving, or minimizing the conflict. The CM@Risk shall be responsible for the completion of its Contract work, regardless of any interference with, or delay of, that work which may be caused by the presence or activities of other contractors working for the State.

Should the CM@Risk cause damage to the work or property of any separate contractor at the site, or should any claim arising out of or resulting from the Contractor's performance of the work at the site be made by any separate contractor against the CM@Risk, Design Engineer, or Construction Manager or any other person, CM@Risk shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

CM@Risk shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold City, Design Engineers and Construction Manager and the officers, directors, employees, agents and other consultants of each and any of them harmless from and against all claims, costs, losses and damages, (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals, and all court arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of our resulting from any action, legal or equitable, brought by a separate contractor against City, Project Designer or Construction Manager of the officers, directors, employees, agents or other consultants of each and any of them to the extent based on a claim caused by, arising out of, or resulting from CM@Risk's performance of the work.

Should a separate contractor cause damage to the work or property of CM@Risk or should the performance of work by any separate contractor at the site give rise to any other claim, CM@Risk shall not institute any action, legal or equitable against City, Project Designer, or Construction Manager or the officers, directors, employees, agents, or other consultants of each and any of them or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator or arbitrator which seeks to impose liability on or to recover damages from City, Project Designer, or Construction Manager or the officers, directors, employees, agents, or other consultants of each and any of them on account of such damage or claim.

If CM@Risk is delayed at any time in performing or furnishing work by any act or neglect of a separate contractor and City and CM@Risk are unable to agree as to the extent of any adjustment in Completion Time attributed thereto, CM@Risk may make a claim for an extension of time. An extension of the Completion Time shall be

CM@Risk's exclusive remedy with respect to City, Design Engineer, or Construction Manager or the officers, directors, employees, agents, or other consultants of each and any of them for activities that are its respective responsibilities.

Unless otherwise provided in the contract documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or contractors hired by the Owner, the Owner and/or his contractors shall be subject to the same obligations and to have the same rights which apply to the CM@Risk. When the Owner and/or his contractors perform work on the Project site they will be required to meet the safety requirements of the CM@Risk.

Cooperation between Contractors shall be in accordance with MAG Specification 105.7.

## **SECTION 6. GENERAL CONDITIONS**

### **I. REPRESENTATIVES OF THE PARTIES**

#### **A. City Representatives**

1. CITY designates the individual listed below as the individual that has the authority and responsibility for avoiding and resolving disputes pursuant to Paragraph IX (G): \_\_\_\_\_, \_\_\_\_\_, **510 E. Florence Blvd., Casa Grande, AZ 85122**
  
2. CITY designates the individual listed below as its Contract Administrator who shall be the single point of contact for CM@Risk, and who has the authority and responsibilities set forth herein:

#### **B. CM@Risk Representatives**

1. CM@Risk designates the individual listed below as its Principal-in-charge ("CM@Risk's Principal-in-charge"), which individual has the authority and responsibility for avoiding and resolving disputes:
  
2. CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibilities set forth herein:

### **II. NOTICE**

Unless otherwise provided herein, whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given or received either (a) on the date of service if delivered in person to the individual intended to receive such notice or (b) three (3) days after the date of the postmark of deposit by first class United States mail, registered or certified mail, postage prepaid, properly addressed to the address indicated below. Notice by

facsimile or electronic (e-mail) shall not be considered adequate notice as required herein.

### **III. CONFLICT OF INTEREST**

A. To evaluate and avoid potential conflicts of interest, the CM@Risk shall provide written notice to the CITY, as set forth in this Article, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the CITY. Such notice shall be given seven (7) business days prior to commencement of the Project by the CM@Risk for a third party, or seven (7) business days prior to an adverse action as defined below. Written notice and disclosure shall be sent to the Contract Administrator identified in Article 12.

B. Actions that are considered to be adverse to the CITY under this Contract include but are not limited to:

1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the CITY;
2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the CITY; and
3. Using data to produce income for the CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of the CITY.

C. The CM@Risk represents that except for those persons, entities and projects identified to the CITY, the services to be performed by the CM@Risk under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the CITY.

D. The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this Article on Conflicts of Interest shall constitute a material breach of this Contract.

E. This Contract is subject to the cancellation provisions of A.R.S. §38-511.

### **IV. CONTRACTOR'S LICENSE**

Prior to award of the Agreement, the CM@Risk must provide to the CITY's Finance Department its Contractor's License Classification and number and its Federal Tax I.D. number and Federal W-9 Form.

## **V. SUCCESSORS AND ASSIGNS**

This Agreement shall extend to and be binding upon the CM@Risk, its successors and assigns, including any individual, company, partnership, or other entity with or into which the CM@Risk shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the CM@Risk shall sell its assets. No right covered by this agreement shall be assigned in whole or in part without the prior written consent of the CITY. In no event will any contractual relation be created or be construed to be created as between any third party and the CITY.

## **VI. FORCE MAJEURE**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

## **VII. NON-WAIVER PROVISION**

The failure of either party to enforce any of the provisions of this Agreement or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

## **VIII. JURISDICTION**

This Agreement will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Agreement or to obtain any remedy with respect hereto will be brought in the Superior Court, Pinal County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

## **IX. SURVIVAL**

All warranties, representations, and indemnifications by the CM@Risk will survive the completion or termination of this Agreement.

## **X. MODIFICATION**

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only after approval of all parties signing the original Agreement.

## **XI. SEVERABILITY**

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

## **XII. INTEGRATION**

This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

## **XIII. TIME IS OF THE ESSENCE**

Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

## **XIV. THIRD PARTY BENEFICIARY**

All duties and responsibilities undertaken pursuant to this Agreement are the sole and exclusive benefit of the CITY and the CM@Risk and not for the benefit of any other party.

## **XV. COOPERATION AND FURTHER DOCUMENTATION**

The CM@Risk agrees to provide the CITY such other duly executed documents as may be reasonably requested by the CITY to implement the intent of this Agreement.

## **XVI. CONFLICT IN LANGUAGE**

All work or Deliverables performed will conform to all applicable CITY codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and any Exhibits, the provisions in this Agreement will prevail.

## **XVII. ATTORNEY'S FEES**

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach of default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## **XVIII. HEADINGS**

The headings used in this Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

## **XIX. COMPLIANCE WITH A.R.S. 35-393 AND 35-393.01**

Contractor acknowledges and agrees that it is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel and, furthermore, Contractor acknowledges that it has signed a written certification, which is attached hereto as Exhibit B and incorporated herein, to that effect.





**EXHIBIT “A”— APPROVED GUARANTEED MAXIMUM PRICE PROPOSAL**

**EXHIBIT B – A.R.S §35-393 and 35-393.01 CERTIFICATION**

Definitions contained in A.R.S. 35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
  - (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
  - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
  - (a) together with other investors that are not subject to this section.
  - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

**All offerors must select one of the following:**

\_\_\_\_\_ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01.

\_\_\_\_\_ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.

By submitting this response, Contractor agrees to indemnify and hold the City, its agents and employees, harmless from any claims or causes of action relating to the City’s action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the City in defending such an action.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Person Authorized to Sign

\_\_\_\_\_  
Company Street Address

\_\_\_\_\_  
Printed Name of Signatory

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title of Signatory