



CITY OF CHANDLER, ARIZONA

LOOP 101 AND 202 FREEWAY WATERLINE AND SEWER REHABILITATION

CITY PROJECT NO. WA2008.401

CONSTRUCTION SERVICES CONTRACT (CONSTRUCTION MANAGER AT RISK)

**Andrew Goh, P.E.
CIP City Engineer**

CITY OF CHANDLER, ARIZONA

**LOOP 101 AND 202 FREEWAY WATERLINE AND SEWER REHABILITATION
CITY PROJECT NO.: WA2008.401**

TABLE OF CONTENTS

ARTICLE 1 - PARTICIPANTS AND PROJECT	1
ARTICLE 2 - CONTRACT DOCUMENTS	3
ARTICLE 3 - PRE-CONSTRUCTION SERVICES	3
ARTICLE 4 - CONSTRUCTION SERVICES.....	3
ARTICLE 5 - CITY RESPONSIBILITIES.....	5
ARTICLE 6 - CONTRACT TIME	5
ARTICLE 7 - CONTRACT PRICE.....	8
EXHIBIT A – PROJECT SPECIFIC SPECIAL PROVISIONS	SP-1
EXHIBIT B – GENERAL CONDITIONS.....	GC-1
EXHIBIT C – TECHNICAL SPECIFICATIONS.....	TS-1
EXHIBIT D – ACCEPTED GMP/PRICE PROPOSAL	GMP-1
EXHIBIT E – SUBCONTRACTOR’S LIST FORM.....	SUB-1
EXHIBIT F – GIS / GPS DATA DELIVERY REQUIREMENTS (IF APPLICABLE)	GIS-1

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES CONTRACT
PROJECT NO.: WA2008.401**

THIS CONTRACT is made and entered into on the ____ day of _____, 2021, ("Effective Date") by and between City of Chandler, an Arizona municipal corporation, hereinafter called "City" and the "Construction Manager at Risk" or "CM@Risk" designated below (City and CM@Risk may individually be referred to as "Party" and collectively referred to as "Parties").

City and CM@Risk agree as follows:

ARTICLE 1 - PARTICIPANTS AND PROJECT

CITY: **CIP City Engineer:**
Andrew Goh
Public Works & Utilities Department
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008
Phone: 480-782-3343
Email: andrew.goh@chandleraz.gov

CITY: **Construction Project Manager:**

Public Works & Utilities Department
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008
Phone: 480-782-3328
Email: paul.ahlas@chandleraz.gov

CM@RISK: **Achen Gardner Construction, LLC**
550 S. 79th St., Chandler, AZ 85226
Mailing Address: (if different than mailing address)
Arizona ROC No.: **A261745, B-1 261746, B-4 261747**
Federal Tax ID No.: **27-1394157**
Business Organization: **Limited Liability Company**
State Where Organized: **Arizona**
Statutory Agent Name: **CT Corporation**
Statutory Agent Mailing Address: **3800 N Central Ave #460, Phoenix AZ 85012**
Statutory Agent Physical Address: (if different than mailing address)
CM@Risk's Authorized Project Representative:
Name: Christie Hall
Title: Project Manager
Phone: 480-940-1300 / 602-376-0356
Email: chall@achen.com

PROJECT DESCRIPTION:

The project scope of work consists of procurement of water pipe materials for waterline replacement at the Price Road and the Loop 202 Santan Freeway Interchange. The materials are being procured first due to long-lead times to meet the construction completion timeline.

PROJECT LOCATION:

Price Road and the Loop 202 Santan Freeway Interchange

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 CONTRACT DOCUMENTS

The Contract between City and CM@Risk will consist of the following Contract Documents:

1. This Construction Services Contract and all of its Exhibits, including Project Plans and Technical Specifications.
2. General Conditions and General Conditions Appendices, incorporated by reference.
3. Project Specific Special Provisions as set forth in **Exhibit A**, incorporated by reference.
4. Accepted GMP/Price Proposal as set forth in **Exhibit D**, incorporated by reference.

2.2 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence as described in Section 14.1.4 of the General Conditions.

2.3 DEFINITIONS

The definitions in Sections 2 and 15 of the General Conditions apply to all the Contract Documents, including this Agreement.

ARTICLE 3 - PRE-CONSTRUCTION SERVICES

Although CM@Risk has performed Pre-Construction Services pursuant to a separate Contract between City and CM@Risk, the completion, quality and accuracy of those services and the deliverables provided by City thereunder directly impact CM@Risk's performance of its obligations under this Contract. Therefore, all of CM@Risk's obligations, duties, and warranties in relation to Pre-Construction Services and deliverables survive completion of the Pre-Construction Services Contract and are incorporated herein. Any breach of any of CM@Risk's duties, obligations, or warranties under the Pre-Construction Services Contract will likewise be considered a breach of this Contract.

ARTICLE 4 - CONSTRUCTION SERVICES

4.1 GENERAL

4.1.1 CM@Risk agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the schedule, stated in attached **Exhibit A**.

- 4.1.2 CM@Risk must provide all of the labor and materials, and perform the Work in accordance with Section 4 of the General Conditions. Some, but not all, of the major components of the Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.
- 4.1.3 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.
- 4.1.4 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).
- 4.1.5 At all times relevant to this Contract and performance of the Work, the CM@Risk must fully comply with all Laws, Regulations, or Legal Requirements applicable to City, the Project and the Contract, including, without limitation, those set forth on attached **Exhibit A**.
- 4.1.6 CM@Risk must perform the Work under this Contract using only those firms, team members and individuals designated by CM@Risk consistent with the Statement of Qualifications dated **July 15, 2020**, the GMP Proposal, or otherwise approved by City pursuant to the General Conditions. No other entities or individuals may be used without prior approval of the Project Manager.
- 4.1.7 CM@Risk will comply with all terms and conditions of the General Conditions.
- 4.1.8 In the event of a conflict between this Contract and the General Conditions or an exhibit hereto or appendix thereto, the terms of this Contract will control.
- 4.1.9 Ownership of Work Product. Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of City. For purposes of this provision, "Work Product" will include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product will be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason, any such Work is found not to be a Work Made for Hire, CM@Risk hereby transfers and assigns ownership of the copyright in such Work to City. The rights in this Section are exclusive to City in perpetuity.

4.2 **CM@RISK'S PRE-CONTRACT AND PRE-WORK DELIVERABLES**

- 4.2.1 The CM@Risk must provide the Deliverables in accordance with Section 4.2 of the General Conditions.
- 4.3 **PRE-CONSTRUCTION CONFERENCE**
Refer to Section 4.3 of the General Conditions.
- 4.4 **PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)**
Refer to Section 4.4 of the General Conditions.
- 4.5 **CONTROL OF THE PROJECT SITE**
Refer to Section 4.5 of the General Conditions.
- 4.6 **PROJECT SAFETY**
Refer to Section 4.6 of the General Conditions.
- 4.7 **MATERIALS QUALITY, SUBSTITUTIONS AND SHOP DRAWINGS**
Refer to Section 4.7 of the General Conditions.
- 4.8 **PROJECT RECORD DOCUMENTS**
Refer to Section 4.8 of the General Conditions.
- 4.9 **WARRANTY AND CORRECTION OF DEFECTIVE WORK**
Refer to Section 4.9 of the General Conditions.

ARTICLE 5 - CITY RESPONSIBILITIES

- 5.1 City will have the responsibilities, and provide the information specified in, and subject to the conditions set forth in, Section 5 of the General Conditions.

ARTICLE 6 - CONTRACT TIME

6.1 GENERAL

- 6.1.1 The Contract Duration is **180** Calendar Days.
- 6.1.2 The Contract Time will start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth in Article 6.4 below. The Notice to Proceed cannot be issued until approval and acceptance by City of the GMP or Fixed Price.

6.1.3 The Contract Time will be as set forth in the Project Schedule. CM@Risk agrees that it will commence performance of the Work and complete the Project through Final Acceptance within the Contract Time.

6.1.4 Time is of the essence of this Contract for the Project, and for each phase and designated Milestone thereof.

6.2 PROJECT SCHEDULE

6.2.1 The Project Schedule approved as part of the GMP Proposal and incorporated herein as part of the attached **Exhibit D** must be updated and maintained throughout CM@Risk's performance under this Contract in accordance with Section 6.2 of the General Conditions.

6.2.2 Failure on the part of CM@Risk to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of this Contract by City.

6.2.3 Work must be completed to meet the following milestones after the Notice to Proceed:

<u>Milestone</u>	<u>Time</u>	<u>Liquidated damages for delay</u>
1. [REDACTED]	within [REDACTED] days	\$ [REDACTED] per calendar day

6.3 SUBSTANTIAL COMPLETION

Substantial Completion must be achieved no later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion will be determined in accordance with Section 6.3 of the General Conditions.

6.4 FINAL ACCEPTANCE

6.4.1 Final Acceptance will be obtained within the time period set forth in the Project Schedule.

6.4.2 Final Acceptance will be issued pursuant to Section 6.5 of the General Conditions.

6.5 LIQUIDATED DAMAGES

6.5.1 Substantial Completion Liquidated Damages. CM@Risk acknowledges and agrees that if CM@Risk fails to obtain Substantial Completion of the Work within the Contract Time, City will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, City and CM@Risk agree that if CM@Risk fails to achieve Substantial Completion of the Work within the Contract Time, City will be entitled to retain or recover from CM@Risk, as

liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9.

6.5.2 Final Acceptance Liquidated Damages. For the same reasons set forth in Article 6.5.1 above, City and CM@Risk further agree that if CM@Risk fails to achieve Final Acceptance of the Work within the Contract Time, City will be entitled to retain or recover from CM@Risk, as liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9 commencing from the actual date of Substantial Completion or Final Acceptance as required under the Contract.

6.5.3 MAG Liquidated Damages. If no liquidated damages are specified in Articles 6.5.1 or 6.5.2 above, then the liquidated damages provisions in MAG § 108.9 will apply.

6.5.4 City may deduct liquidated damages described in this Article 6.5 from any unpaid amounts then or thereafter due CM@Risk under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due CM@Risk will be payable to City at the demand of City, together with interest from the date of the demand at the highest lawful rate of interest payable by CM@Risk.

6.6 **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES ONLY**

6.6.1 CM@Risk and City waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

6.6.1.1 Damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

6.6.1.2 Damages incurred by CM@Risk for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

6.6.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Contract. Nothing contained in this Article 6.6 will be deemed to preclude an award of liquidated damages, when applicable, in accordance with Article 6.5 above.

6.6.3 Nothing herein will be deemed to constitute a waiver of any other remedy available to City in the event of CM@Risk's default under this Contract prior to full performance of the Work including, as applicable, specific performance or completion of the Work on behalf of CM@Risk, the cost and expense of which will be offset against any monies then or thereafter due to CM@Risk (if any) and otherwise immediately reimbursed to City by CM@Risk.

ARTICLE 7 - CONTRACT PRICE

7.1 CONTRACT PRICE

- 7.1.1 In exchange for CM@Risk's full, timely, and acceptable performances and construction of the Work under this Contract, and subject to all of the terms of this Contract, City will pay CM@Risk the "Contract Price," which:

The sum of the CM@Risk's Fee and reimbursable Cost of the Work, as defined in Section 15 of the General Conditions, which the CM@Risk guarantees will not exceed the GMP set forth in **Exhibit D** in the amount of **\$2,333,877.75**. Costs which would cause the GMP to be exceeded must be paid by CM@Risk without reimbursement from City.

- 7.1.2 The Contract Price is all-inclusive and specifically includes all fees, cost, insurance and bond premiums, allowances, construction contingency, owner's contingency, and taxes of any type necessary to fully, properly and timely perform and construct Work.

7.2 COSTS

For any portion of the Work which, either through this Contract, Change Order or otherwise, is performed and paid for on a cost, or time and materials basis, the costs which may be reimbursed to CM@Risk and chargeable against the Contract Price will be determined as set forth in MAG § 109.5.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have executed this Contract through their duly authorized representatives and bind their respective entities as of the effective date.

"CITY"

CITY OF CHANDLER

MAYOR Date

Recommended By:

Andrew Goh, P.E. Date
CIP City Engineer

APPROVED AS TO FORM:

City Attorney
ATTEST: *MMB*

City Clerk Seal

"CM@RISK"

Achen Gardner Construction, LLC

Signature Date *6-30-2021*

DANIEL J. SPITZA
Name

VICE PRESIDENT
Title

dspitza@achen.com
Signer Email Address

ATTEST: If Corporation

Secretary

STATE OF ARIZONA

County of Maricopa

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SUBSCRIBED AND SWORN TO before me, the undersigned notary public, by *DANIEL J. SPITZA* who was identified as the *VICE PRESIDENT* of *ACHEN GARDNER CONSTRUCTION, LLC* on this *30* day of *JUNE*, 20 *21*.

My commission expires:

12/20/2022

Diana M. Martinez
Notary Public