



**CITY OF GLENDALE, ARIZONA
ENGINEERING DEPARTMENT**

BETHANY HOME ROAD DRAINAGE

IMPROVEMENTS

**CONSTRUCTION MANAGER AT RISK
DESIGN PHASE AND
PRECONSTRUCTION SERVICES**

PROJECT NO. 202105

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CITY OF GLENDALE
(Bethany Homes Rd. Drainage
Improvements)
CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES
PROJECT NO. 202105

THIS AGREEMENT made and entered into this _____ day of _____, 2022 by and between City of Glendale, an Arizona municipal corporation, hereinafter designated the "CITY" and Haydon Building Corp, an Arizona corporation, hereinafter designated "CONSTRUCTION MANAGER AT RISK" or "CM@Risk".

RECITALS

- A. The City Manager of Glendale, Arizona, is authorized and empowered by provision of the City charter to execute contracts for professional services and construction services.
- B. The City intends to construct the Bethany Homes Rd. Drainage Improvements as described in Exhibit A attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project the City has entered into a contract with Haydon Building Corp to provide Design Professional services during the design phase of the project.
- D. The CM@Risk has represented to the City its ability to provide pre-construction management services during the design phase and to construct the Project. The CM@Risk may serve as the general contractor during construction of the project, if it is determined to be in the City's best interest. Once the work or services required by this Agreement has been substantially completed, at the City's discretion, the City may enter into a separate construction contract with the CM@Risk for construction phase services.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM@Risk as follows:

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda – Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement ("Contract") – This written document signed by the City and CM@Risk covering the pre-construction management services performed by CMAR for the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement.

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 still delivering a quality and functional Project that meets City requirements.

Change Order – A document signed by the CM@Risk and the City that authorizes an addition, deletion or revision in the scope of services or Deliverables, or an adjustment in the Contract Amount or the period of services, or use of Owner Contingency, and is issued on or after the Effective Date of this Agreement.

City ("Owner" or "OWNER") – The City of Glendale, a public body or authority and municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract.

CM@Risk (“CONSTRUCTION MANAGER AT RISK” OR “CONTRACTOR”) – The person, firm, corporation or other approved legal entity with whom the City has entered into this Agreement. For purposes of this Agreement, the CM@Risk is Haydon Building Corp.

Contingency, Contractor’s– An agreed upon amount, either lump sum or a percentage of the Cost of the Work, that is included in the GMP and to be used by the CM@Risk in accordance with the General Provisions in the construction contract.

Contingency, Owner’s – The Owner may, at its discretion, order changes in the scope of the Project. The Owner’s Contingency is an amount to cover changes initiated by the Owner, which may be incorporated into the GMP as a contingency at the Owner’s discretion.

Construction Documents – The plans, specifications, and drawings prepared by the design professional.

Construction Fee – The CM@Risk’s administrative costs, home office overhead, and profit, whether at the CM@Risk’s principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

Contract Documents – This Agreement, exhibits, attachments, the Notice to Proceed for design phase services, all Written Amendments and Change Orders to this Contract and any other documents of designated in this Agreement.

Contract Amount – The final approved not-to-exceed budget for this Contract as identified in paragraph 4.1.

Contract Time(s) – The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion and/or completion of the construction Work so that it is ready for final payment.

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 described in this Agreement, including Exhibit A. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team.

Design Professional – The qualified, licensed person, firm or corporation who furnishes design services required under the Contract Documents.

Drawings (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 Design Professional and the City. “Drawings” includes drawings that have reached a sufficient state of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability and biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%) but “*not for construction*”. Shop drawings are not Drawings as so defined.

Effective Date of this Agreement – The date specified in this Agreement on which the Agreement becomes effective, but if no such date is so specified, the date on which the last of the two parties to sign this agreement delivers it to the other party.

General Condition Costs – Includes, but is not limited to the following types of costs for the CM@Risk during the construction phase: payroll costs for project manager or construction manager but not both for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for

management personnel resident and working directly for the project on or off the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), 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 direct employ of the CM@Risk or Subcontractors, taxes on the work and for which the CM@Risk is liable, fees for permits and licenses. Certain limitation and exclusions are described in the General Conditions for the construction phase.

GMP Plans and Specification – The three sets of plans and specifications provided pursuant to paragraph 2.7.3 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Agreement.

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

Notice to Proceed – A written notice given by the City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Agreement.

Pre-construction management services – The work to be performed by the CM@Risk under this Agreement. Such work shall include, but is not limited to, those tasks and activities detailed in Exhibit A to this Agreement.

Progress Payment Application – The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment on which will include such supporting documentation as is required by the Contract Documents and or the City.

Project – The scope of work as described in the Recital above and Exhibit “A” attached.

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, Glendale Engineering Department Project Manager, City's Client Department'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.

Specifications – The part(s) of the Contract Documents 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.

Subcontractor – An individual, firm or corporation having a direct contract with the CM@Risk or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, 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. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.8 of this agreement.

Subconsultant – A person, firm or corporation having a contract with CM@Risk to furnish services required as its independent professional associated or consultant with respect to the Project.

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 – Number of Days by which the design phase services on construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

Work – The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Written Amendment – A written modification to the Contract Documents, signed by the City and CM@Risk on or after the Effective Date of this Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the Satisfaction of the City Engineer, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Glendale, Arizona would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practices.

2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the City's Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, Contract Documents rolling reviews and partnering sessions.

2.1.4 The CM@Risk will provide pre-construction management services during the design phase of the City's Bethany Home Rd. Drainage Improvements project as described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are unacceptable for the Project and/or propose changes in the Scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposal and/or in the Contract Time for the Work, to the extent such are established.

2.1.5 The CM@Risk, when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or in the City's interest in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which will detail, but not necessarily be limited to, the CM@Risk's determinations concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project; (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (c) alternate strategies for fast tracking and/or phasing the construction; (d) the number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction; (e) permitting strategy; (f) safety and training programs; (g) construction quality control; (h) a commissioning program; (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

2.2.2 The CM@Risk will add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The

update/revisions may take into account: (a) revisions in Drawings and Specifications; (b) the CM@Risk's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the CM@Risk; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way; (d) the fast-tracking of any of the construction, or other chosen construction delivery methods; (e) a requisite number of separate bidding documents to be advertised; (f) the statuses of the procurement of long-lead time equipment (if any) and/or materials; and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

- 2.3.1** The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all Project Team members and to be utilized as a basis for managing and monitoring each Project Team member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of, and to be used by, the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most revised/updated CMP. The Project Schedule will use the Critical Path Method technique, unless required otherwise, in writing by the City. The CM@Risk will use Microsoft Project scheduling software to develop the Project Schedule that is acceptable by the City. The Project Schedule shall be presented in graphic and tabular reports, as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in paragraph 2.6.
- 2.3.2** The CM@Risk will include and integrate in the Project Schedule the services and activities required of the City, Design Professional and CM@Risk including all construction phase activities. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design and various design phase documents; (b) separate long-lead procurements, if any; (c) permitting issues; (d) land and right-of-way acquisition, if any; (e) bid packaging strategy and awards to Subcontractors and Suppliers; (f) major stages of construction; (g) start-up and commissioning; and (h) occupancy of the completed Work by the City. The Project Schedule will include, by way of example and not as a limitation, proposed activity sequences and durations for design, Project Team, preparation and procession of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.
- 2.3.3** The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase so that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but not less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. the planned progress, any concerns regarding delays or potential delays, and any recommendations regarding mitigating such delays.
- 2.3.4** Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1** The CM@Risk will evaluate and periodically assess the availability of labor, materials/equipment, building systems, and cost-sensitive aspects of the design and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2** The CM@Risk will identify, in conjunction with the Project Team, those additional surface and subsurface investigations that are required to provide the necessary information for the CM@Risk to construct the Project. After completion of design phase, the CM@Risk may provide additional investigation to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents. The CM@Risk may be responsible for the time and cost required to obtain such additional investigations, except if otherwise provided by specific Additional Services and agreed to in a written amendment to this contract.
- 2.4.3** The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will thoroughly familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods of construction, selected materials, equipment and building systems, and labor and material availability. The CM@Risk will also advise the Project Team of proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.
- 2.4.4** The CM@Risk will routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the proposed Construction Documents, especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1** Constructability Reviews: The CM@Risk will evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design is prepared to facilitate fabrication, transport and installation; (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions; (f) sequences of Work required by or can be developed from the Drawings and Specifications are capable of being implemented; and (g) the design has taken into consideration, efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar implementation issues.
- 2.4.4.2** Biddability Reviews: The CM@Risk will check cross-references and compatibility of Drawings and sections within the Specifications, to evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well or poorly; in similar installations; (c) the design provides as-built data; (d) Specifications included alternatives, in the event a requirement cannot be met in the field; and (e) the Project is likely to be subject to differing site conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities, and physical conditions of underground utilities .
- 2.4.4.3** The results of the constructability and biddability reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss and review these reports.
- 2.4.4.4** The CM@Risk's reviews will be from a contractor's perspective, and although these reviews will serve to reduce the numbers of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.

2.4.5 Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining whether the Construction Documents were developed in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles, any alternate systems, approaches, and design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk, in cooperation with the Design Professional, will perform a cost/benefit analysis of the alternative and submit such analysis and any recommended change in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. If any alternative system is incorporated into the Drawings and Specification, the CM@Risk will include the cost (savings) of that alternative into the cost estimate and any GMP proposals.

2.5 COST ESTIMATES

2.5.1 Within 14 days after receipt of the documents for the various phases of design, the CM@Risk will provide a detailed cost estimate and a written review of the documents. If the Design Professional and CM@Risk disagree on the cost to be charged to the City for a phase of design, the CM@Risk and the Design Professional will meet and confer to reconcile any disagreements on the estimate and agree on such cost. If no consensus is reached; the City will make the final determination.

2.5.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM@Risk will make appropriate recommendations on methods and materials to the City and Design Professional that it believes are consistent with the requirements and specification of the design and are consistent with the City's Project budget.

2.5.3 The CM@Risk will periodically provide a cost estimate tracking report, which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.

2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical resources of similar type projects to assist the City in the financing process.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL(S)

2.6.1 As part of the pre-construction management services provided by the CM@Risk under this contract, the CM@Risk will develop a proposed GMP for the construction phase of the Project. The proposed GMP may be presented as a single GMP for the entire Project or may be broken into a number of GMPs for portions of the Work. The single or multiple GMPs will be presented in a format acceptable to the City. The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposal submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate at the time of the proposal, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

2.6.2 A single GMP Proposal for the entire Project will be developed by providing the City the sum of the maximum Cost of the Work, including the CM@Risk's Construction Fee, General Conditions Fee, and Contractor's Contingency. Multiple GMP Proposals for portions of the Project will be developed by providing the City the sum of the maximum Cost of the Work for that portion of the Project, including the CM@Risk's Construction Fee, General Conditions Fee, and Contractor's Contingency. Once a GMP is submitted to the City, the CM@Risk guarantees it will complete the Project at or below the final GMP Proposal Amount (i.e. the GMP for the construction phase contract) approved by the City. The CM@Risk will thereafter be solely responsible for any difference between the actual Cost of Work and

the City-approved GMP Amount, unless the parties agree to an amendment of the GMP Amount in a writing signed by both parties.

- 2.6.3** In preparing any GMP Proposal, the CM@Risk will obtain three sets of signed, sealed, and dated plans and specifications (including all addenda) from the Design Professional. The CM@Risk will prepare its GMP Proposal in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk will mark the face of each document of each set upon which its proposed GMP is based. The CM@Risk will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Design Professional.
- 2.6.4** An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the scope of Work shown in the current set of design documents upon which the GMP Proposal(s) is based. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.5** In the event the CM@Risk elects, at its sole discretion, to maintain a Contractor's Contingency within the GMP, the criteria for development of that contingency must be acceptable to the City. In addition, the terms and conditions regarding use of that contingency during the construction phase will be established by the City and reflected in the contract for that phase of the Project.
- 2.6.6** If the construction contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk, will revert to the City.

2.7 GMP PROPOSAL(S) REVIEW AND APPROVAL

- 2.7.1** The CM@Risk will meet with the City and Design Professional to review any GMP Proposal(s) and the written statement of its basis. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information in the written statement of basis, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.7.2** The City, may submit any GMP and its supporting documentation to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will review the GMP for accuracy and suitability and may provide the City with a critique or an independent estimate of the Cost of Work and Project Schedule for the GMP Proposal.
- 2.7.3** If the CM@Risk GMP Amount proposed is greater than the estimate generated by the independent third party, the City may require the CM@Risk to reconfirm its GMP Proposal or ask the CM@Risk to adopt the independent third party's estimate as the GMP. If the CM@Risk will not accept the independent third party's estimate as the GMP Amount, the CM@Risk will submit a report to the City within seven days of receiving the third party's estimate identifying, explaining and substantiating the differences in the GMP amounts. The CM@Risk may, at its own discretion or upon the request of the City, submit a revised GMP Proposal for consideration by the City. After review, the City may do one of the following:
- (a) Accept the CM@Risk's original or revised GMP Proposal, if within the City's budget, without comment;
 - (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences; or
 - (c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, or the independent third party's estimate, in which event, the City may terminate this Contract and/or elect not to enter into a subsequent contract with the CM@Risk for the construction phase of the Project.
- 2.7.4** If during the review and negotiation of GMP Proposals, the City determines that design changes are required, the City may authorize and cause the Design Professional to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon changes approved in the final approved GMP Proposal.

Such revised documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City if it believes any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications and the parties will meet and confer to produce a final Construction Management Plan and GMP Proposal in accordance with Sections 2.2 and 2.6 of this Agreement.

2.8 SUBCONTRACTOR, SUBCONSULTANTS AND MAJOR SUPPLIER SELECTIONS

2.8.1.1 The CM@Risk may use subcontractors, subconsultants and suppliers to perform the pre-construction tasks and activities required by this Agreement, including its Exhibit A.

2.8.2 The CM@Risk may select subcontractors, subconsultants and major suppliers (hereinafter referred to collectively as Subcontractors) using a qualifications-based selection or competitive bid process.

2.8.3 Selection by qualifications only – The City may approve the selection of a Subcontractor based only on its qualifications when the City agrees that it is in the best interest of the Project.

2.8.3.1 Qualification based selection of a Subcontract should only occur prior to the submittal of the GMP Proposal.

2.8.3.2 The CM@Risk will prepare a Subcontractor selection plan and submit the plan to the City for approval. The CM@Risk shall use the criteria approved by the City and contained in the plan to evaluate the qualification(s) of a Subcontractor and will provide the City with its review and recommendation for selecting a Subcontractor.

2.8.3.3 The CM@Risk must receive City approval of the selected Subcontractor.

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

2.8.4 Selection by competitive bid – All work shall be competitively bid unless a Subcontractor was selected pursuant to Section 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s) and the bid process shall be consistent with the City's procurement code and ARS Title 34.

2.8.4.1 To develop Subcontractor interest, the CM@Risk will solicit bids from and submit the names of a minimum of three qualified Subcontractors for each trade required for performance of the Project to the City for approval. If three qualified Subcontractors are not available for a specific trade, or there are extenuating circumstances, the CM@Risk may request approval by the City to submit less than three names. CM@Risk may also propose self performing some or all of the work itself. Without prior written approval by the City, no change in the City-approved Subcontractors will be allowed.

2.8.4.2 Prior to GMP, the City may object to performance of all or part of the work by the CM@Risk or a Subcontractor without cause. If the City objects to any nominated Subcontractor or to any self-performed Work, the CM@Risk will nominate a substitute Subcontractor.

2.8.4.3 The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

2.8.4.4 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 portions of work or tasks and submit a bid. The CM@Risk's bid will be evaluated in accordance with the process identified below. If the City concurs, the CM@Risk may self-perform Work without bidding or re-bidding such portion of work or task.

2.8.4.5 The CM@Risk shall receive, open, record and evaluate all bids submitted in response to a bid solicitation. The responsive low bidders will be interviewed to determine the quality of their proposals. In evaluating the responsiveness of bid proposals, the CM@Risk may consider price, past performance on similar projects, qualifications, and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the work. The final evaluation of Subcontractor bids will be provided to the City Representative.

- 2.8.4.6** Within fifteen days after opening Subcontractors' bids opening, the CM@Risk will prepare a list of recommended Subcontractors for each category of work, for the City's review and approval. The list will detail: (a) for each sub-agreement, the amount of the Subcontractor bid and the corresponding Subcontractor; (b) the sum of Subcontractor bids received for all intended sub-agreements, (c) trade work and its cost that the CM@Risk intends to self-perform, if any.
- 2.8.5** The CM@Risk may make a single or multiple awards to Subcontractors as provided in City Code, and as approved by the City for this Project. Upon City approval of all Subcontractors, the CM@Risk shall submit a summary report to the City of the selection process. The report will indicate the Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received/costs negotiated, and the recommended Subcontractors for each category of work.
- 2.8.6** The approved Subcontractors will provide a schedule of values with their bid proposals, which will be used to create the overall project schedule of values.
- 2.8.7** If after receipt of bids or after award(s) have been made, the City objects to any nominated Subcontractor or to any self-performed Work to be performed by the CM@Risk, 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 to be performed. Once such substitute Subcontractors are approved by the City, the CM@Risk's proposed GMP for the work or portion thereof may be correspondingly adjusted, by the City in a signed writing, to reflect any higher or lower costs from any such substitution.
- 2.8.8** Promptly after the CM@Risk issues the Notice(s) of Intent to Award, the CM@Risk will conduct a pre-award conference with the City and other Project Team members. At the pre-award conference, the CM@Risk will: (a) review the nominated slate of Subcontractors and discuss any concerns with or objections that the City has to any nominated Subcontractor; (b) discuss any concerns the City may have relating to any proposed self-performed Work; (c) review the CM@Risk's proposed GMP Amount that includes the work to be performed during the construction phase; (d) discuss the conditions, if any, under which the City will agree to pay or include any portion of the remaining Contractor's Contingency for the construction phase Work; (e) resolve possible delays of the Date of Commencement for the construction phase of the Work; (f) schedule the pre-construction conference; and (g) discuss other matters related to payment for or performance of the work.
- 2.8.9** The CM@Risk will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work, and with no financial or legal assistance by the City.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1** The pre-construction management services for the design phase of the Project(s) described in this Contract will be performed by the CM@Risk in accordance with the most current updated/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of the Contract by the City.
- 3.2** If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Arizona time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1** The City will pay the CM@Risk a fixed fee not to exceed \$ 149,885 dollars for the pre-construction management services being provided under this Contract as follows:

For the pre-construction management services described in Article 2 and Exhibit A, the CM@Risk shall receive a fee not to exceed: \$ 149,885

Additional Services and allowances:

Early Procurement of equipment Budget Allowance	\$ <u>5,300</u>
Allowances	\$ <u>314,699</u>
Owner's Contingency:	\$ <u>0.00</u>
Total Contract Amount, not to exceed	\$ <u>469,884</u>

4.2 PAYMENTS

- 4.2.1 Requests for payments for services rendered may be made by the CM@Risk on a monthly basis and must be submitted on the City's "Progress Payment Request" form. Such requests for payment will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, at a minimum, a narrative description of tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subcontractors' requests for payment, plus similar narrative and listings of Deliverables associated with their Work.
- 4.2.2 The fees for the CM@Risk and any Subcontractors will be based upon the hourly rate schedule included as Exhibit B attached.
- 4.2.3 The CM@Risk will pay all sums due to Subcontractors for services rendered and for reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 90 percent of the Contract Amount until final acceptance of all the design phase services, and award of the final approved GMP for the entire Project by City Council.
- 4.2.4 The CM@Risk agrees that no charges or claims for costs or damages of any type will be made against the City for any delays or hindrances during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part, after the date to which the time of completion may be extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- 4.2.5 No compensation to the CM@Risk will be allowed contrary to Title 34 of the Arizona Revised Statutes.
- 4.2.6 If any service(s) performed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension and the City may seek damages for such abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 The following Additional Services may be required for the successful completion of the Project. Additional Services and the incurrence of additional costs are not authorized unless approved in advance by the City, with a written amendment executed by both of the parties to this contract. Only the Additional Services are reimbursable as specifically identified below and authorized herein:

Non-overhead printing expenses incurred, including the printing of Construction Documents for bidding, courier services or other Project-related services that may be requested by the City. The cost of such service will not exceed \$500.00 without further approval by the City.

ARTICLE 5 – CITY’S RESPONSIBILITIES

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information:
- 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
 - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
 - 5.1.3 The name of the City employee or City’s representative who will serve as Project Manager during the term of this Agreement. The Project Manager has the authority to administer this Contract and will monitor the CM@Risk’s compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will:
- 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.
 - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk.
 - 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City’s requirements for the Project.
 - 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.
 - 5.2.5 Notify the CM@Risk of changes affecting the budget allocations.
- 5.3 The City’s Project Manager may have the authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the Project Manager deems appropriate to the CM@Risk, provided such decision-making authority is not barred by the City Charter, the City Code or any internal City policy or procedure.

ARTICLE 6 – ADDITIONAL CONTRACT PROVISIONS

6.1 PROJECTS DOCUMENTS AND COPYRIGHTS

- 6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Agreement (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Project Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of or resulting from the City’s alteration, modification or adaptation of the Project Documents.
- 6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subcontractor(s) or personnel, during the course of performing this Agreement or arising out of the Project will belong to the CM@Risk.
- 6.1.3 License to City for Reasonable Use: The CM@Risk hereby grants, and will require its subconsultants to

grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate, the Project Documents, Construction Documents, Contract Documents, Specifications, Drawings or Deliverables or any other documents developed or created for the Project unless such documents are privileged, work product or proprietary. This license will also include the making of derivative works.

- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Subcontractors will have an Arizona professional endorse and/or seal all plans, works and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

- 6.2.1 The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, Construction Documents, Contract Documents, Specifications, Drawings or Deliverables and other documents prepared or compiled pursuant to its obligations under this Contract and will, at its sole and separate expense, correct its work or such deliverable or document. The fact that the City has accepted or approved the CM@Risk's work or such deliverable or document will in no way relieve the CM@Risk of any of its responsibilities under this Agreement, nor does this requirement to correct the work, deliverable or document constitute a waiver of any claims or damages otherwise available under any applicable law by the City.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of work or any Deliverable or document prepared or compiled pursuant to the CM@Risk's obligations under this contract results in a substantial change in this Agreement, and 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 written Change Order or Amendment must be approved and executed by the City and the CM@Risk. Such Change Order or Amendment will not be effective until executed by the City Manager or his designee, and, if necessary, approved by the City 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 a signed writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be undertaken by the CM@Risk's at its sole jeopardy, cost and expense. The CM@Risk further agrees that without prior written authorization, no claim for compensation for such work or materials furnished will be made against the City.

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in this Contract, "data" means all information, whether written or verbal, hard copy or electronic, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this contract.
- 6.4.2 The parties agree that all data, including original, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City.
- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the CM@Risk has first given the required notice to the City:
- (1) Data which was known to the CM@Risk prior to its performance under this contract unless such data was acquired in connection with work performed for the City;

- (2) Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or
 - (3) Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court.
- 6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, the CM@Risk will first notify the City as set forth in this article of the request or demand for data. The CM@Risk's notice will give the City sufficient facts, so the City can have a meaningful opportunity to either give its consent or take such action, including legal action, that the City may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.
- 6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

- 6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City an organization chart identifying the key personnel the CM@Risk and any Subcontractors have assigned to this Project and provide detailed resumes of such personnel. Unless the City notifies the CM@Risk of its objection to the use of any such personnel within 14 days of receiving the organizational chart and resumes, the City is deemed to have accepted and approved the use of such Team members to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel during its performance of this Contract, the CM@Risk will submit the qualification of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.
- 6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace him/her with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

- 6.6.1 The CM@Risk is and will be an independent contractor to the City, no matter what measure of control the City may exercise over the work or Deliverable or direction the City gives to CM@Risk during the performance of this Contract. No provision in this Contract 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.

6.7 TERMINATION

- 6.7.1 The City and the CM@Risk hereby agree to full performance of the covenants contained herein, except the City reserves the right, at its sole discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been or may be performed by the CM@Risk upon thirty (30) days written notice to the CMAR.

- 6.7.2 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice, discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 6.7.3 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all paid for reports, estimates and other work or Deliverable entirely or partially complete, together with all unused materials supplied by the City.
- 6.7.4 The CM@Risk may request payment for the work completed prior to receipt of the City's notice to abandon or terminate and submit an invoice to the City for evaluation and compensation. The City will have the right to inspect the CM@Risk's work or Deliverable to determine if the work has been performed and properly completed in accordance with the terms and conditions of this Contract.
- 6.7.5 The CM@Risk will receive compensation in full for services satisfactorily performed prior to the date of such termination. Such compensation will be paid in accordance with Article 4 of this Contract, an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.8, "Disputes". However, in no event will any amount requested cause the full amount of costs incurred and paid to exceed the fixed Contract Amount as set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty days of the latter of the CM@Risk's delivery of any remaining completed work item or the date the parties agree the amount is due as the CM@Risk's final payment.

6.8 DISPUTES

- 6.8.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Engineer.
- 6.8.2 **Substantial Completion Notification.** CMAR will notify City and Project Coordinator in writing when CMAR, Architect of Record, and Engineer of Record believe that CMAR has accomplished Substantial Completion of the Project.
- 6.8.2.1 Incomplete Items. If City concurs the Substantial Completion has been accomplished, City, Project Coordinator, CMAR, Architect of Record, and Engineer of Record will determine whether any items remain incomplete.
- 6.8.2.2 Certificate of Substantial Completion. If City concurs the Substantial Completion has been accomplished, Architect of Record, and Engineer of Record will then each issue a "Certificate of Substantial Completion" to City, which will:
- (a) Record the Substantial Completion date as determined by City;
 - (b) State each party's responsibility for security, maintenance, air conditioning, heat, utilities, damage to the Work and insurance;
 - (c) Include a list of items identified by City, CMAR, Architect of Record and Engineer of Record to be completed or corrected; and
 - (d) Fix a reasonable period of time for their inspection.
- 6.8.2.3 Disagreement as to Substantial Completion. Disagreements between City and CMAR regarding the Certificate of Substantial Completion will be resolved in accordance with provisions of Section 6.8.1 of this Agreement.
- 6.8.3 **Substantial Completion.** CMAR must accomplish substantial completion by 60 calendar days from Substantial Completion (the "Substantial Completion Date").
- 6.8.3.1 Extensions. The Substantial Completion and Final Completion Dates ("Contract Time") may be extended for cause, or by Change Order, as provided in Section 6.8.4 of this Agreement.
- 6.8.3.2 Failure to Meet Substantial Completion Date. City will be substantially damaged if CMAR fails to accomplish Substantial Completion of the Work by the Substantial Completion

Date, and it will be extremely difficult and impractical to ascertain the actual damages resulting from such delay; therefore:

- (a) CMAR will pay City liquidated damages ("Liquidated Damages") in the event of a delay.
- (b) Accordingly, if CMAR fails to accomplish Substantial Completion by the Substantial Completion Date, as it is extended in accordance with this Agreement, City may assess, and CMAR must pay to City as Liquidated Damages, **430.00** for each day of delay until CMAR accomplishes Substantial Completion.
- (c) CMAR acknowledges that these sums:
 - (1) Will be paid as Liquidated Damages and not as a penalty;
 - (2) Are reasonable under the circumstances existing as of the Effective Date; and
 - (3) Are based on the parties' best estimate of damages City would likely suffer in the event of a delay.
- (d) CMAR must pay City any Liquidated Damages not so deducted within ten (10) days after demand, or City may deduct these sums from any monies due or that may become due to CMAR under this Agreement.
- (e) City's collection of Liquidated Damages will not affect its rights to seek other remedies in law or at equity, including exercising its rights under the Payment and Performance Bonds.

6.8.4 **Final Completion.** Final Completion must be accomplished by March 10, 2023 (the "Final Completion Date").

6.8.4.1 Extensions. The Final Completion and Final Completion Dates may be extended for cause, by Change Order or other amendment of this Agreement, as provided by this Section.

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

- (a) City may deduct its resulting expenses plus 20% from amounts otherwise payable to CMAR.
- (b) CMAR must pay any amounts not so deducted within ten (10) days after demand.

6.9 WITHHOLDING PAYMENT

6.9.1 The City 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 that a settlement on those claims has been reached.

6.10 RECORDS/AUDIT

6.10.1 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 for a period of three years after Substantial Completion. The City, its authorized representative, and/or the appropriate state or 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 Contract and any Change Orders for a period of three years after Substantial Completion pursuant to this Contract. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audits of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading or inaccurate cost and pricing data.

The CM@Risk will include a provision similar to paragraph 6.10.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate state or 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 Contract if the above provision is not included in Subconsultants, 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.

6.11 INDEMNIFICATION

- 6.11.1 Duty to Indemnify, Defend, and Hold Harmless. To the fullest extent permitted by Law, CMAR will indemnify, defend, save and hold harmless City and its elected officials, officers, employees, agents, consultants, sub-consultants, representatives, and agents (individually, an "Indemnified Party"; collectively, the "Indemnified Parties") for, from and against any and all third-party claims, demands, causes of action, damages (including compensatory, consequential and liquidated), judgments, penalties, settlements and all other losses arising (collectively "Claim") from the performance or nonperformance of this Agreement by CMAR or of a Subcontractor, Supplier, or any other person or entity for whom CMAR is responsible and all attorneys' fees, consultants' fees, court costs, and expenses incurred by each Indemnified Party.
- 6.11.2 Extent of Indemnification.
- (a) This indemnification is comprehensive and encompassing to the maximum extent permitted by Law and includes, but is not limited to, a Claim, just or unjust, of any kind, nature or description whatsoever, whether sounding in a tort, warranty, contract (including breach of this Agreement), equity, a statute, or any other theory of liability, and whether Claim is based on an alleged death, personal injury, sickness, conversion, breach of contract, breach of warranty (express or implied), breach of representation, defective work not remedied, lien, stop notice, property damage (including property damage to the Work), patent infringement, copyright infringement, loss of use and all other economic loss, release of a petroleum byproduct or other substance regulated by applicable Law, legal violations or other claimed damage.
 - (b) This indemnity is in addition to and will not be deemed to limit any other indemnity given by CMAR.
- 6.11.3 Defense of Indemnified Party. CMAR will defend each Indemnified Party under this indemnity at CMAR's expense with counsel reasonably acceptable to the Indemnified Party, subject to the following:
- (a) The Indemnified Party has the opportunity to participate in the defense against the Claim;
 - (b) If there are potential conflicting interests that would make it inappropriate for the same counsel to represent both CMAR and the Indemnified Party, or the Indemnified Party has defenses available to it that are not available to CMAR, then the Indemnified Party may select separate counsel to represent it at CMAR's expense;
 - (c) No settlement or compromise can be effected by CMAR without the prior consent of the Indemnified Party; and
 - (d) If CMAR does not, within thirty (30) days after receipt of Notice from the Indemnified Party (or such shorter period of time as may be necessary to avoid a default on a Claim), give Notice to the Indemnified Party of CMAR's election to assume the defense of the Claim, the Indemnified Party has right to undertake, at the expense and risk of CMAR, the defense, compromise or settlement of the Claim.
- 6.11.4 Negligence of Indemnified Party. The foregoing obligations to indemnify, defend, save and hold harmless apply to the ultimate liability of CMAR only to the extent the Claim is found to have resulted from the negligence of CMAR or of any Subcontractor or Supplier; however,

- (a) In no event, however, will an Indemnified Party be indemnified for a Claim to the extent it results from the gross negligence or intentional conduct of the Indemnified Party or the Indemnified Party's agents, employees or indemnity as provided in A.R.S. § 34-226.
- (b) An Indemnified Party's acting or failing to act in reliance on promises, representations or agreements made by CMAR in the performance of the Work may not be considered gross negligence or an intentional act or failure to act by the Indemnified Party.

6.12 NOTICES

6.12.1 Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	David Beard, City Engineer
	Glendale City Hall 5850 W. Glendale Ave. 3 rd Floor – Engineering Department Glendale, Arizona 85301-2599
To CM@Risk	Haydon Building Corp
To Design Professionals:	Stantec Consulting Services, Inc.
Copy to:	Glendale City Hall 5850 W. Glendale Ave. 3 rd Floor – Engineering Department Glendale, Arizona 85301-2599

6.13 COMPLIANCE WITH FEDERAL LAWS

6.13.1 The CM@Risk understands and acknowledges it is subject to of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these Acts and all other applicable federal and state laws and City Charter and Code provisions in performing this Contract and to permit the City to verify such compliance.

6.14 CONFLICT OF INTEREST

6.14.1 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 business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Glendale
Attn: David Beard
5850 W. Glendale Ave.
3rd Floor - Engineering Department
Glendale, Arizona 85301-2599

Conflicts. Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

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

- (a) Using data as defined in the Contract, acquired in connection with this Contract to any third party contrary to section 6.4 herein;
- (b) Testifying or providing evidence on behalf of any person in connection with administrative or judicial action against the City;
- (c) 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.

6.14.3 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 will not create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

6.14.4 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.

6.15 CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE

6.15.1 The CM@Risk must provide to the City's Engineering Department, its Contractor's License Classification and number, its City of Glendale Privilege License number, and its Federal Tax I.D. number prior to the execution of this Agreement.

6.16 SUCCESSOR AND ASSIGNS

6.16.1 The City and the CM@Risk will each bind itself, and its partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.17 FORCE MAJEURE

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

- (1) Fire;
- (2) War;
- (3) Damage or disruption committed on behalf of any foreign interests to further international political objectives;
- (4) Injunction in connection with litigation, governmental action;
- (5) Severe and adverse weather conditions beyond those that can be reasonably anticipated as of the Effective Date of this Agreement.

6.17.2 If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of force majeure, acts of God, or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.

6.18 COVENANT AGAINST CONTINGENT FEES

6.18.1 In addition to those rights provided to the City pursuant to A.R.S. 38-511, the CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Glendale has any interest, financially, or otherwise, in the firm. The City of Glendale will, in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.19 NON-WAIVER PROVISION

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

6.20 JURISDICTION

6.20.1 This Contract 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 Contract or to obtain any remedy with respect hereto will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

6.21 SURVIVAL

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

6.22 MODIFICATION

6.22.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provision of this Contract, except as expressly provided herein to the contrary.

6.23 SEVERABILITY

6.23.1 If any provision of this Contract or the application thereof to any person or circumstances will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.24 INTEGRATION

6.24.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.25 TIME IS OF THE ESSENCE

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

6.26 THIRD PARTY BENEFICIARY

6.26.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

6.27 COOPERATION AND FURTHER DOCUMENTATION

6.27.1 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 Contract.

6.28 CONFLICT IN LANGUAGE

6.28.1 All work or Deliverables performed will conform to all applicable City of Glendale codes, ordinances and requirements as outlined in this Contract.

6.29 CITY'S RIGHT OF CANCELLATION

Lack of Appropriations. Nothing in this Agreement guarantees that some or all of the funds necessary to comply with all of the City's obligations under this Agreement will be appropriated or otherwise be available. The City agrees to seek such appropriations in good faith from the City Council, and agrees not to use the lack of appropriation as a substitute for termination for convenience. If sufficient funds are not appropriated or otherwise available, the City may unilaterally terminate this Agreement after providing thirty (30) days written notice. In the event the City provides such notice, the City will not be entitled to a refund or offset of any amounts previously paid, but will not pay any amounts that become due after providing such notice.

E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractor 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). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Non Discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

ARTICLE 7 – INSURANCE

The CM@Risk will procure and maintain for the duration of the Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work or Deliverables hereunder by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, and/or Suppliers. Insurance requirements related to any construction Work done during the construction phase will be defined in a separate contract associated with the construction phase. The CM@Risk will cause all Subcontracts to contain identical terms and conditions to those included in this Article.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants that might arise out of the performance of the work or Deliverables under this Contract by the CM@Risk, its agents, representatives, employees, Subconsultants, Subcontractors, or Suppliers and CM@Risk is free to purchase such additional insurance as it may determine necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

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

7.1.1.1 Commercial General Liability-Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate/per project	\$1,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$100,000

7.1.1.2 Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles
(Form CA 0001, ed. 12/93 or any replacement thereof)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$2,000,000
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7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability:	
Each Accident	\$500,000
Disease-Policy Limit	\$500,000
Disease-Each Employee	\$500,000

7.1.2 Self-Insured Retentions Any self-insured retentions and deductibles greater than \$10,000 must be declared to and approved by the City.

7.2 OTHER INSURANCE REQUIREMENTS

7.2.1 The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

7.2.1.1 Except for Professional Liability and Workers’ Compensation and Employer’s Liability coverage, the City and its agents, representatives, directors, officials, employees, and officers shall be named as additional insureds on all policies for insurance coverage required by this Contract.

7.2.1.2 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 (“EXU”).

7.2.1.3 The City will be an additional insured 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 Contract. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc.’s Additional Insured, CG 20 10 04 13 and CG 20 37 04 13.

7.2.2 The CM@Risk’s insurance coverage will be primary insurance with respect to the City. Insurance or self-insurance maintained by the City will be in excess of the CM@Risk’s insurance and will not contribute to it.

7.2.3 The CM@Risk’s insurance will apply separately to each insured against whom claim is made or suit is brought that, 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.

- 7.2.4 The policies will contain a waiver of subrogation against the City for losses arising from Work performed for the City.
- 7.2.5 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 for losses arising from work performed for the City.
- 7.2.6 Property Coverage. CMAR shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial Contract sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. This insurance shall include interests of the City, the CMAR, Subcontractors and its subcontractors in the Project, and shall include insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements.

7.3 SUBCONSULTANT INSURANCE

- 7.3.1 CM@Risk's certificate(s) shall include all subcontractors as insureds under its policies or the CM@Risk shall furnish to the City separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

7.4 NOTICE OF CANCELLATION

- 7.4.1 Each insurance policy required by the insurance provisions of this Contract 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 named Project Manager at:

5850 W. Glendale Ave.
3rd Floor – Engineering Department
Glendale, Arizona 85301-2599

7.5 ACCEPTABILITY OF INSURERS

- 7.5.1 Insurance is to be placed with insurers duly licensed or City approved unlicensed companies in the State of Arizona, and with an A.M. Best's rating of no less than A-VII. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.6 VERIFICATION OF COVERAGE

- 7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) with original endorsements effecting coverage as required by this Contract. 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 will be clearly noted on the certificate of insurance.

- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract or signing of this Contract, and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

7.6.3 All Certificates of Insurance required by this Contract will be sent directly to the Services Department Contracts Administration Section contracts officer for this Project. The Project Number and Project description will be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.

7.7 APPROVAL

7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment, but may be made by administrative action.

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

[Remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ATTEST

CITY OF GLENDALE

Julie K. Bower
City Clerk

By: _____
Kevin R. Phelps
City Manager

REVIEWED BY:

CM @ RISK
Haydon Building Corp,
an Arizona Corporation

Michael D. Bailey
City Attorney

By: _____
Mark Eklund
Its: Vice President

EXHIBIT A – PROJECT DESCRIPTION

The project intent is to provide drainage improvements near Bethany Homes Rd from 51st Ave & 43rd Ave between Maryland and Grand Avenues, and on Grand Avenue between 47th and 51st Avenues and, associated watershed. Haydon Construction (Contractor) to provide design phase assistance and construction services as the Construction Manager at Risk (CMAR).

The drainage improvements will mitigate recurring drainage issues near the intersection of Bethany Home Road, 51st Avenue and Grand Ave by intercepting and redirecting stormwater with storm drain system, and by providing additional retention and detention facilities. The project is divided into three (3) separate design packages to advance construction start dates in specific locations. Each package will be submitted and finalized on independent schedules.

EXHIBIT B - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City on 04/19/2022.

LIST OF CLASSIFICATIONS:

For all phases of design and pre-construction services (Programming/ Schematic Design, Design Development, Construction Documents):

Personnel	Hourly Rate
PreCon Manager	\$135
Estimating Manager	\$135
Estimator	\$128
Project Manager	\$128
Utilities Coordinator	\$109
Project Superintendent	\$119
Project Engineer	\$107
Agtek-(includes Takeoff Engineers)	\$101
GPS/Drone Crew	\$121
Safety Manager	\$119

For all phases of design and pre-construction services (Programming/ Schematic Design, Design Development, Construction Documents):

Phases	Total
Package 1	\$37,471.25
Package 2	\$67,448.25
Package 3	\$44,965.50