



**PRE-CONSTRUCTION SERVICES CONTRACT  
FOR CONSTRUCTION MANAGER AT RISK (CMAR) PROJECT**

**Project Name: West WWTP Improvements**  
**Project Number: BAN-2024-11**  
**Awarded to: MGC Contractors, Inc.**

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## **PRE-CONSTRUCTION SERVICES CONTRACT FOR CONSTRUCTION MANAGER AT RISK (CMAR) PROJECT**

This CONTRACT is entered into as of the Effective Date set forth below between the City of San Luis, Arizona, a municipal corporation, hereinafter referred to as “CITY” and MGC Contractors Inc., hereinafter referred to as the “CMAR.” CITY and the CMAR may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

CITY and CMAR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **1.0 TERMS AND DEFINITIONS**

- 1.1 Addenda: Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct, make additions, deletions, or revisions to the Contract Documents.
- 1.2 A/E: The design professional designated by CITY to prepare Plans and Specifications for the Work, to make interpretations of the Contract Documents, to review and approve shop drawings and to perform other duties as set forth in the Contract between CITY and A/E. May be an Architectural or Engineering firm, or CITY Staff.
- 1.3 Allowance: Those items included in the GMP as allowances, as more fully described on Exhibits B and C attached hereto and incorporated herein by reference. The basis for an Allowance cost may be a percentage of the total Project cost.
- 1.4 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. Alternatives shall be tracked using a Cost Estimate Development Log as described in Section 1.14.
- 1.5 Change Order: A document signed by CMAR and CITY that authorizes an addition, deletion, or revision in the Work or Deliverables, or an adjustment in the Contract Amount or the period of services, issued on or after the Effective Date of this Contract. The Contract Amount and/or Contract Time may be changed only by Change Order.
- 1.6 CITY: City of San Luis, Arizona, a municipal corporation with whom the CMAR has entered into the Contract, and for whom the Services and/or Work are to be provided pursuant to the Contract.



- 1.7 CITY's Project Representative: Any person or persons, designated by CITY to oversee the Project in its entirety, inclusive of CITY's Engineer, Public Works Director, Project Managers or Engineers, Inspectors, etc. If a PM/CM is retained, references to CITY's Project Representative are assigned to the PM/CM by that separate contract.
- 1.8 Construction Documents: A set of Drawings and Technical Specifications, along with the General Conditions and Supplementary Conditions, upon which cost estimates and the GMP Proposal(s) are to be based. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Construction Documents must be approved by CITY prior to incorporation into the Construction Services Contract.
- 1.9 Construction Fee: The CMAR's profit.
- 1.10 Construction Phase(s): A portion of the Project defined by a specific scope of the Work and Contract Time that is less than the entire Project. A Construction Phase shall be separately authorized by a Notice to Proceed and shall include a GMP for that Construction Phase. Each Construction Phase shall be governed by the Contract Documents.
- 1.11 Contingency: Those items included in the GMP as contingency, as more fully described on Exhibits B and C attached hereto and incorporated herein by reference. The basis for a Contingency cost shall be individually defined, and shall not be a percentage of the total Project cost.
- 1.12 Contract: This written document signed by CITY and CMAR covering the pre-construction phase of the Project, and including the Contract Documents referenced in or attached to this Contract, and all Change Orders and/or modifications hereto executed by the Parties.
- 1.13 Contract Documents: Those documents, all of which together with this Contract, form the entire integrated agreement between CITY and CMAR. Contract Documents include this Contract; CMAR final approved GMP Proposal (including documentation accompanying the GMP Proposal and any post GMP Proposal documentation submitted prior to the final approval of the GMP Proposal); Notice to Proceed for pre-construction services; Construction Services Contract; General Conditions for Construction Phase; Supplementary Conditions, Technical Specifications and the Drawings produced by the A/E; Payment and Performance Bonds; technical reports as



enumerated within the Contract; A/E's Instruction Bulletins, and all Addenda and Modifications thereto. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by A/E, or (4) a written order for a minor change in the Work issued by A/E.

- 1.14 Contract Time(s): The number of Days or dates related to the construction of the Project or a Construction Phase that, as stated in Construction Documents, applies to achievement of Substantial and/or Final Completion of the Work so that it is ready for final payment.
- 1.15 Cost Estimate: Labor, materials, and equipment costs developed by the CMAR, and updated during each of the design phases, to support the "Cost of the Work" values used to develop the Cost Model for the Guaranteed Maximum Price (GMP).
- 1.16 Cost Estimate Development Log: A document developed by the CMAR during the design phases of the Project listing design modifications in a tabular form that, if accepted, will result in additive and deductive changes to the Cost Estimate. The initial list includes design modifications for consideration that the CMAR, from past experience with similar projects, presents for consideration by the Project Team.
- 1.17 Cost of the Work: The sum of all allowable direct costs during construction, including all Specification Divisions, Allowances, and a Contingency, that would be, or actually were necessarily incurred by the CMAR, directly or through Subcontractors and/or Suppliers in properly furnishing and performing the Work required by the Contract Documents. (See Exhibits B and C)
- 1.18 Cost Model: The Cost Model is identified in Exhibit B and on the CITY's Guaranteed Maximum Price Cost Model Form. The Cost Model provides a formula for developing the Total Project Cost.
- 1.19 CPI: The United States Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average published by the U.S. Department of Labor, Bureau of Labor Statistics.
- 1.20 Day: Calendar Day unless otherwise specified.
- 1.21 Delay Costs: Those items of Cost of the Work attributable to an Excusable Delay for which CITY is responsible and which are payable by CITY to the CMAR pursuant to a Change Order.
- 1.22 Deliverables: The products prepared by the CMAR in performing the Work. Some of the major deliverables to be prepared and provided by the CMAR during the pre-



construction phase include but are not limited to: Construction Management Plan, Cost Model, 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, Sub-Bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

- 1.23 Drawings: The portion of the final construction documents submittal, which visually represents the scope, extent, and character of the Work to be furnished and performed by CMAR during construction. Drawings have been prepared or approved by the A/E, approved by CITY, and are referred to and are included in the Contract Documents. The term includes Drawings that have reached a sufficient stage of completion and released by the A/E solely for the purpose of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (e.g., conceptual design Drawings, preliminary design Drawings, detailed design Drawings at SD, DD, or CD), but “not for construction”. Shop drawings are not Drawings as so defined.
- 1.24 Engineer (A/E): CITY’s Engineer or his/her designated representative, which may include an architectural or engineering firm designated by CITY to prepare plans and specifications for the Work and perform other design or submittal services as required by CITY, or other authorized representative.
- 1.25 Final Acceptance: A written notice from CITY, or the PM/CM (if applicable), to CMAR that Final Completion has occurred. When a Project includes Construction Phases, Final Acceptance shall only be given upon Final Completion of the final Construction Phase.
- 1.26 Final Completion: The date when, in the opinion of CITY’s Project Representative, all Substantial Completion inspection punch-list items have been addressed, the Work is complete in accordance with the Contract Documents, and delivery of all “close-out documents” required by the Contract Documents and this Contract have been received. When a Project includes Construction Phases, Final Completion may be given for each separate Construction Phase.
- 1.27 Force Majeure: Labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming CMAR has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than the CMAR and Subcontractors), or any other similar act or condition, in each case only to the extent the event in question is beyond the control of



and without the fault or negligence of the CMAR. A labor shortage or material shortage is not Force Majeure.

- 1.28 General Conditions Costs: Those costs generated away from the site and that are not directly related to accomplishing the Work on site, as described in Exhibit C.
- 1.29 Guaranteed Maximum Price (“GMP”): The maximum compensation payable to the CMAR in performance of the Work for the Project or a Construction Phase as specified in the Contract Documents or subsequently adjusted by modification to the Contract through a GMP Change Order. The CMAR does not guarantee that any Allowance Item will not change, but agrees that it alone will be responsible for paying all costs of completing the Work that exceed the GMP, as adjusted, in accordance with the Contract Documents. The GMP Proposal(s) are to be delivered pursuant to Article 2 of this Contract and are described in Exhibits B and C.
- 1.30 Horizontal Construction: Features as defined by A.R.S. Section 34-101.16.
- 1.31 Indirect Costs: That portion of the GMP contract amount identified for General Conditions, Bonds, Sales Taxes, Insurance, and the Fee, as described in Exhibit C.
- 1.32 Laws and/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.
- 1.33 Liquidated Damages: Damages payable by the CMAR to CITY in the event CMAR does not achieve Substantial Completion or Final Completion of the Project as specified in the Contract Documents.
- 1.34 Notice to Proceed: A written notice given by CITY to CMAR fixing the date on which the CMAR will start to perform CMAR’s obligations to complete the Work, or a Construction Phase, under this Contract.
- 1.35 Progress Payment Application: The form that is used by CMAR, and accepted by CITY, in requesting progress payments or final payment, and which will include such supporting documentation as is required by the Contract Documents and/or CITY.
- 1.36 Project: The facility(ies), together with all on-site and off-site infrastructure, site improvements and appurtenances to be designed, constructed, and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred there from. May be the whole or a part.



- 1.37 Project/Construction Manager (PM/CM): An individual or firm retained by CITY to act as the owner's representative during design and/or construction of the Project.
- 1.38 Project Team: Pre-construction services team consisting of CITY, PM/CM (if applicable), A/E, CMAR, and other stakeholders who are responsible for making decisions regarding the Project.
- 1.39 Punch List: Items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Substantial Completion and/or Certificate of Occupancy.
- 1.40 Record Drawings: Drawings (plans) prepared after construction is complete that represent the Work accomplished under the Contract.
- 1.41 Request for Information (RFI): Written request from CMAR to the CITY and/or A/E seeking clarification, modification, or additional information necessary for CMAR to properly and accurately procure materials and/or equipment, or to complete the Services and/or Work required under the Contract.
- 1.42 Samples: Physical examples of materials, equipment, or workmanship representative of a part of the construction Work and which establish the standards by which the portion of the construction Work will be evaluated.
- 1.43 Schedule: The schedule agreed upon in the GMP proposal pursuant to which the CMAR has agreed to complete the Work. If schedule modifications are required, the Schedule shall be adjusted pursuant to the provisions of the Contract Documents.
- 1.44 Schedule of Values: A document prepared by the CMAR and accepted by the CITY which divides the Contract Price into separate pay items such that the sum of all pay items is equal to the approved Contract Price for the Work, or for any portion or phase of the Work having a separate Contract Price. The Schedule of Values serves as a basis for review of CMAR's Progress Payment Applications.
- 1.45 Shop Drawings: All drawings, diagrams, illustrations, schedules and other data or information specifically prepared or assembled by or for the CMAR and submitted by the CMAR to illustrate some portion of the Work.
- 1.46 Site: The land or premises on which the Work is located, which is more fully described in the Construction Documents.



- 1.47 Specifications: The part(s) of the Contract Documents used during construction services consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. May also be referred to as Technical Specifications.
- 1.48 Standards: Drawings, specifications, or other guidance or regulatory documents adopted by the CITY to detail, describe, or otherwise specify the minimum acceptable quality, tolerances, materials, finishes, and other components of construction on CITY projects. Includes the most current editions of the (1) Maricopa Association of Governments (“MAG”) Uniform Standard Specifications for Public Works Construction, (2) MAG Uniform Standard Details for Public Works Construction, (3) CITY Supplement to the MAG Specifications, (4) City of Yuma Construction Standard Detail Drawings, and (5) Yuma County Public Works Standards – Volume III – Storm Drainage Facilities.
- 1.49 Subcontract: Any agreement (other than one involving an employer-employee relationship) entered into by the CMAR with a Subcontractors, vendor or supplier calling for equipment, supplies or services required to perform a portion of the Work, including any modifications thereto.
- 1.50 Subcontractor: An individual, firm, or corporation having a direct contract with the CMAR, or any other individual, firm, or corporation having a contract with the aforesaid CMAR at any tier, who undertakes to perform a part of the pre-construction services or construction services Work at the site for which the CMAR is responsible. Subcontractors will be selected through the Subcontractor Selection process described in paragraph 2.7 of this Contract.
- 1.51 Submittal: Material data, shop drawings, and product data submitted by the CMAR for review and approval by A/E to verify that the correct materials, products, and equipment are procured and installed properly and in the correct location.
- 1.52 Substantial Change: A Substantial Change in the Contract is any change in the scope of service for the Project that adds an item of Work not originally included in the Project scope; that increases or decreases the cost of performance by more than \$25,000 or one percent (1%) of the original contract value, whichever is greater; that changes the Project Schedule in a manner that modifies the schedule critical path; or that modifies a quality standard more than the allowable deviations defined in the Specifications.



- 1.53 Substantial Completion: The construction services for the Work, or an agreed upon portion thereof, has progressed to the point where, in the opinion of CITY's Project Representative, as evidenced by a Certificate of Substantial Completion and/or Certificate of Occupancy, such construction services are sufficiently complete in accordance with the Contract Documents so that the Work (or specified part) can be utilized for the purposes for which it is intended, without any outstanding concurrent Work at the site, except as may be required to complete or correct Punch List items. This may include, but is not limited to: (i) approval by CITY's Fire Department; (ii) elevator permit; (iii) all systems in place, functional, and displayed to CITY or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by all consulting engineers and/or architects; (vi) draft operations and maintenance manuals and record documents reviewed and accepted by CITY; (vii) CITY staff operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); and (ix) landscaping and site work. If no such certificate is issued, Substantial Completion takes place when the construction services Work or a Construction Phase is complete and ready for final payment as evidenced by CITY's Project Representative's written recommendation of final payment. The terms "substantially complete" and "substantially completed" as applied to all or part of the construction Work refers to Substantial Completion thereof.
- 1.54 Supplier: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with CMAR or any Subcontractor to provide materials, equipment, or supplies for the Project.
- 1.55 Total Float: Number of Calendar Days by which the pre-construction services or construction services Work or any part of the same may be delayed without extending a pertinent schedule milestone in the Project Schedule or the Contract Time.
- 1.56 Total Project Cost: The Total Project Cost is the sum of the Cost of the Work (Direct Costs), Indirect Costs, and Preconstruction Services.
- 1.57 Work: The pre-construction services described in this Contract and the entire completed construction services or the various separate Construction Phases thereof, required to be furnished pursuant to the Construction Services Contract. 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.



1.58 Working Days: Days exclusive of Saturday, Sunday and CITY recognized legal holidays.

## **2.0 PRE-CONSTRUCTION SCOPE OF SERVICES**

For the fee set forth in Section 4, CMAR shall furnish professional pre-construction services during the design of the Project described in Appendix D. The CMAR accepts a relationship of trust and confidence between itself and CITY and undertakes to act as CITY's fiduciary in all matters related to the Project. The CMAR acknowledges that it has the expertise to complete the Work identified in this Contract and agrees to furnish its best skills and best judgment to cooperate with CITY and provide support to the Engineer during the design of the Project, and in all ways to further the interests of CITY and the Project.

The CMAR shall furnish cost effective recommendations to maintain Project budgets, efficient constructability reviews, business administration, field supervision and shall use its best efforts to see to it that the Work is done in the best and most expeditious, economical manner consistent with the interests of CITY, and in strict conformity with the Contract Documents, including all reasonable implications therein. Because of the CMAR's fiduciary duties to CITY, the Project will be an "open book" job whereby CITY may attend any and all meetings of the CMAR firm relating to the Project, and CITY or its designated auditors or accountants shall have access to any and all records of the CMAR or maintained by the CMAR relating to the Project.

## **2.1 GENERAL**

2.1.1 PM/CM: CITY has either designated a CITY staff member to act as CITY's Project Representative or has contracted separately with a person, firm, or corporation to act as CITY's PM/CM. If a PM/CM has been assigned, the PM/CM has no design responsibilities of any nature. None of the activities of a PM/CM supplant or conflict with the design, budget, or any other services and responsibilities furnished by CMAR or Subcontractors. All instructions by CITY relating to this Contract will be issued or made through the PM/CM. All communications and submittals of CMAR to CITY shall be issued or made through the PM/CM unless CITY or the PM/CM shall otherwise direct. The PM/CM shall not reasonably withhold approval for the CMAR to communicate directly with CITY or the A/E. The PM/CM shall have the authority to establish procedures, consistent with this Contract, to be followed by the CMAR and to call periodic conferences to be attended by the CMAR and the CMAR's Subcontractors, throughout the term of this Contract.



- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CMAR will provide to CITY, within 30 calendar days from the Notice to Proceed, a written evaluation of the project scope and project budget, each in terms of the other, with recommendations as to the appropriateness of each.
- 2.1.3 Project Management/Project Team/Progress Meetings: These meetings will present general Project progress, address design options that arise during the design process, and receive input and direction from CITY engineering and operational staff. Project progress meetings shall be conducted bi-weekly or as required throughout the design portion of the Project, to complement the Project schedule and design review meetings. The CMAR will participate in each meeting, report on the Project construction schedule and cost estimate, and provide pertinent input when required.
- 2.1.4 The CMAR will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CMAR will promptly notify CITY in writing whenever the CMAR determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of work requiring an adjustment in the Project Schedule, Project Cost, and/or the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CMAR, when requested by CITY, will attend, make presentations, and participate as may be appropriate in public agency and/or community meetings germane to the Project. The CMAR will assist the A/E and CITY's Project Representative in the preparation of exhibits, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public meetings. This Contract will require **zero (0)** such public meetings.

## 2.2 CONSTRUCTION MANAGEMENT PLAN (CMP)

- 2.2.1 Prior to the start of construction the CMAR will prepare, and submit to CITY's Project Representative, a Construction Management Plan (CMP), which will detail, but not necessarily be limited to, the CMAR'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)



separate bidding documents/packages and strategies for the early procurement of long-lead equipment and/or materials, (e) the number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction, (f) permitting strategy, (g) safety and training programs, (h) construction quality control, (i) the Cost Model and basis of the model, (j) a matrix summarizing each Project Team member's responsibilities and roles and (k) construction security.

- 2.2.2 The CMAR will add detail to its initial and subsequent versions of the CMP to keep it current throughout the pre-construction services phase, so that the CMP is ready for implementation at the start of construction of the Project or any Construction Phase. The update/revisions will take into account: (a) revisions in Drawings and Specifications; (b) the CMAR'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 CITY, PM/CM, A/E or the CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment and/or materials and (g) funding issues identified by CITY.
- 2.2.3 The CMAR will prepare a written report on the market conditions that may affect the budget or the schedule and provide the report to the CITY's Project Representative.
- 2.2.4 Cost Estimate Development Log: This log shall be developed by the CMAR at the beginning of the Project and will initially include additive and deductive cost item suggestions that the CMAR has found to be appropriate for consideration by the Project Team based on past experience on similar projects. The CMAR shall update this log on a regular basis during the design process and all additive and deductive items shall be approved by the CITY's Project Representative with input from the A/E.

## 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 then for the Project Team to utilize that deliverable as a basis for



managing and monitoring all members' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CMAR will develop a Project Schedule to be used by the Project Team based on input from other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP.

The Project Schedule shall use the Critical Path Method (CPM) technique, unless required otherwise in writing by CITY. The CMAR will use CPM based scheduling software to establish, update, and maintain the Project Schedule. The Project Schedule will be presented in graphical and tabular reports as agreed upon by the Project Team. The Project Schedule will include all tasks and deliverables required by each member of the Project Team to identify long lead items such as right-of-way transactions, utility relocation activity, permitting requirements, etc. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in section 2.5.

2.3.2 The CMAR will include and integrate into the Project Schedule the services and activities required of CITY, PM/CM, A/E and CMAR, including all pre-construction and construction services. The Project Schedule will detail activities to the extent required to show: (a) the coordination between schematic design, design development, and development of the construction documents, (b) separate long-lead procurements, (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 (h) occupancy of the completed Work by CITY. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various Construction Phases, total float for all activities, relationships between the 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 Schedule Updates: The Project Schedule will be updated and maintained by the CMAR with assistance from the Project Team throughout the pre-construction



services phase such that it will not require major changes at the start of construction services or any Construction Phase to incorporate CMAR's plan for the performance of the construction services Work. The CMAR will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but not less often than monthly. The CMAR will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions. The Project Schedule update will be submitted to the CITY's Project Representative concurrently with the monthly progress payment request.

2.3.4 Project Phasing: If phased construction is deemed appropriate and CITY approves, the CMAR will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, including any Construction Phase, with the objective of reducing the Project Schedule and/or Cost of the Work. The CMAR 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 other factors pertinent to saving time and cost.

2.3.5 Long-Lead Time Item Procurement: The CMAR will provide CITY's Project Representative with a written list of long-lead items, if any, that must be procured during the pre-construction phase to meet the Project Schedule requirements and recommend a schedule for their procurement.

2.3.5.1 CITY may procure such long-lead items on terms and conditions acceptable to the CMAR to the extent CITY determines that it is their own best interest to do so under purchase orders executed by CITY. Upon CITY's acceptance of any CMAR GMP Proposals, which includes such long-lead time items, the applicable purchase orders will be assigned by CITY to the CMAR, who will accept responsibility for such items as if they were initially procured by the CMAR. The CMAR will be entitled to receive the Construction Fee associated with the pre-purchased equipment value as compensation for accepting this responsibility.

2.3.5.2 If CITY concludes alternately, that it is in its best interest to have the CMAR procure such long-lead time items, CITY may, at its sole discretion, direct the CMAR to solicit bids, and upon approval by CITY of the terms and conditions of their purchase, CITY will



authorize in writing the CMAR to issue purchase orders for those items. Only upon approval of GMP Proposals, or upon a separate executed procurement agreement, will CITY authorize the CMAR to actually expend Project funds for such long-lead items.

2.3.5.3 If CITY chooses not to procure long-lead time items prior to acceptance of a GMP Proposal, the CMAR will list the items and a delivery schedule in the Sub-Bid Documents. The CMAR will notify the potential Suppliers, Subcontractors, and fabricators of the required delivery schedule so that it will be taken into consideration, if necessary, in their bid.

## **2.4 DESIGN DOCUMENT REVIEWS**

2.4.1 The CMAR will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact GMP Proposals and/or the Project Schedule and provide this information in a written report to CITY's Project Representative.

2.4.2 The CMAR will identify, in writing and in conjunction with the Project Team, those additional surface and subsurface investigations that are required to provide the necessary information for the CMAR to construct the Project. The CMAR will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.

2.4.3 The CMAR will meet with the Project Team as required to review designs during their development. The CMAR will thoroughly familiarize itself with the evolving documents through initial/schematic design (30%/SD), preliminary design/design development (60%/DD), final design/construction documents (90%/CD), and final documents (100%/PS&E). The CMAR 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, selected materials, equipment and building systems, and labor and material availability. The CMAR will also advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CMAR will recommend cost effective alternatives.



2.4.4 The CMAR will conduct constructability and biddability reviews of the Drawings and Specifications at each design document review submittal. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

2.4.4.1 Constructability Reviews: The CMAR 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 are 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 inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, lay-down and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

2.4.4.2 Biddability Reviews: The CMAR will check cross-references and complementary Drawings and sections within the Specifications, and in general 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 otherwise, in similar installations, (c) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, (e) and 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 made available by the design or resulting from conditions inherent to work similar to the Work.

2.4.4.3 Review comments will be provided to CITY in writing, 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 CITY, the CMAR will meet with CITY and A/E to discuss any findings and review reports.

2.4.4.4 The CMAR's reviews will be from a contractor's perspective, and though it will serve to reduce the number of RFIs and changes during construction, responsibility for the Drawings and Specifications will remain with the A/E and not the CMAR.

2.4.5 Notification of Variance of Deficiency: It is the CMAR's responsibility to assist the A/E in ascertaining that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations as they relate to the performance of the Work. If the CMAR recognizes that portions of the Construction Documents as they relate to the performance of the Work are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the A/E and CITY's Project Representative in writing, describing the apparent variance or deficiency.

2.4.6 Alternate Systems Evaluations: The Project Team, at all regularly scheduled Design Review Meetings will routinely identify and evaluate, using value engineering principles, any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CMAR in cooperation with the A/E will perform a cost-benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The A/E will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CMAR will include the cost of the alternatives into the Cost Model and any GMP Proposals.

## **2.5 COST MODEL, COST ESTIMATES AND SCHEDULE OF VALUES**

2.5.1 As soon as practical during the initial/schematic design phase, the CMAR will review all available information regarding the design and scope of the Project and, based upon that review, will develop a Cost Estimate that will serve as input to the Cost Model identified in Exhibit B. The Cost Estimate will be continually updated and kept current as the design progresses until a final GMP for the entire Project is established. The Cost Estimate will be the best representation by the CMAR of what the complete functional Project's construction costs will be. The CMAR will communicate to the Project Team any assumptions made in preparing the Cost Estimate. The Cost Model will include (a) the Cost of the Work (Cost Estimate, allowances, and contingencies), (b)



Indirect Costs, and (c) Pre-construction Services. The sum of (a) and (b) defines the GMP and the sum of (a) through (c) gives the Total Project Cost.

- 2.5.2 During the design phases the CMAR shall maintain a Cost Estimate Development Log in which the CMAR tracks the additive and/or deductive changes to the Cost Estimate based on the CMAR's review of design documents made available at the specified design phase. CITY's Project Representative, A/E and CMAR will reconcile any disagreements on the estimate to arrive at an agreed upon Cost Estimate for the construction costs based on the scope of the Project through that specified design phase. The design phases applicable to this paragraph are: initial/schematic design completion; preliminary/design development completion; and final plans, specifications, & estimate/ construction documents completion. If the Project Team requires additional updates of the Cost Estimate beyond that specified in this paragraph, the CMAR will provide the requested information in a timely manner.
- 2.5.3 If at any point the Cost Estimate submitted to CITY exceeds previously accepted estimates agreed to by the Project Team or other key aspects of the Cost Model or CITY's Project Budget, the CMAR will make appropriate recommendations to the A/E and CITY's Project Representative on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the project's basic program) such that it is equal to or less than the established Project Team's target and/or the Project Budget. These changes to the Cost Estimate shall be identified in the Cost Estimate Development Log.
- 2.5.4 Before the first Progress Payment Application, CMAR shall submit to CITY, and the Parties shall agree upon, a schedule of values, setting forth the various portions of the Work, and the portion of the GMP allocated to each. This schedule of values shall be used as a basis for payment.
- 2.5.5 CMAR will prepare a monthly cash flow projection for the Project. This projection shall be updated on a monthly basis to reflect payments to the CMAR for completed Work.

## **2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**

- 2.6.1 CITY's construction budget for this Project is approximately \$23 million. During formulation of the Project and execution of the design the CMAR shall maintain



cost controls to deliver the Project GMP within the Project budget. If at any time during the design of the Project it appears the cost of construction may exceed the Project construction budget the CMAR shall immediately notify CITY. Budgets will be developed for each phase of construction. If at any point the GMP provided by the CMAR exceeds the Project budget, the CMAR shall recommend approaches to bring the Project within budget.

- 2.6.2 The Indirect Cost percentages associated with General Conditions, CMAR's Fee, bond allowance, insurance allowance, and sales taxes of the GMP Cost Model given in Exhibit B shall be negotiated prior to the execution of the Pre-construction Services contract and shall be used in subsequent GMP Proposal development. These percentages are to be applied to the "Cost of the Work" estimates for both additive and deductive change orders, except that for deductive change orders generated due to CMAR initiated savings the CMAR's Overhead and Fee shall not be adjusted.
- 2.6.3 At the stage of design as approved by CITY, the CMAR shall, if requested by CITY, propose a GMP, which shall be the sum of the estimated Cost of the Work and the Indirect Costs as defined in the "Guaranteed Maximum Price (GMP) Cost Model" given in Exhibit B.
- 2.6.4 The Preconstruction Services shall be negotiated separately and shall include all costs, including Indirect Costs and CMAR's Fee, associated with that phase of the Work.
- 2.6.5 The Total Project Cost is the sum of the GMP Proposal, Preconstruction Services, and prior phase GMPs as defined in the Guaranteed Maximum Price Cost Model given in Exhibit B.
- 2.6.6 CMAR shall include with the GMP Proposal a written statement of its basis, which shall include:
  - 2.6.6.1 List of the Design Materials and Construction Documents, including all addenda, which were used in preparation of the GMP Proposal.
  - 2.6.6.2 List of allowances and a statement of their basis.
  - 2.6.6.3 List of the assumptions and clarifications made by the CMAR in the preparation of the GMP Proposal to supplement the information contained in the Design Materials and Construction Documents.



- 2.6.6.4 The Substantial Completion date upon which the GMP Proposal is based.
  - 2.6.6.5 The Schedule of Work upon which the Substantial Completion date is based.
  - 2.6.6.6 Schedule of applicable alternate prices.
  - 2.6.6.7 Schedule of applicable unit prices.
  - 2.6.6.8 Statement of additional services included, if any.
  - 2.6.6.9 The time limit for acceptance of the GMP Proposal.
  - 2.6.6.10 List of the proposed personnel or positions that the CMAR intends to station at the jobsite to manage the work.
- 2.6.7 The CMAR shall meet with CITY, and the PM/CM (if applicable) to review the GMP Proposal. In the event that CITY discovers any inconsistencies or inaccuracies in the information presented, CITY shall promptly give written notice to the CMAR, who shall make appropriate adjustments to the GMP Proposal, its basis or both.
- 2.6.8 Prior to CITY's acceptance of the CMAR's GMP Proposal, the CMAR shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Contract or as CITY may specifically authorize in writing.
- 2.6.9 The CMAR, in preparing any GMP Proposal, will obtain from CITY the signed, sealed, and dated Construction Documents (including all addenda). The CMAR will prepare its GMP in accordance with CITY's "Request for GMP Proposal" requirements based on the most current completed Construction Documents at that time. The CMAR will mark the face of each document of each set upon which its proposed GMP is based. The CMAR will send one set of those documents to CITY's Project Representative, keep one set and return the third set to the A/E.
- 2.6.10 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.



2.6.11 In the event the CMAR elects, in its sole discretion, to maintain a Contingency within the GMP, the Contingency must be acceptable to CITY. In addition, the terms and conditions regarding use of the Contingency during construction services will be established by CITY and reflected in the Construction Phase Notice to Proceed for that phase of the Project. The use of the Contingency will be based on these mutually agreeable terms and conditions and written approval from CITY shall be a prerequisite to the CMAR's use of the Contingency. CMAR will establish and maintain a Contingency Log and shall review the status of the Contingency with CITY's Project Representative at each progress meeting.

#### 2.6.12 GMP Proposal(s) Review and Approval

2.6.12.1 The CMAR will meet with CITY's Project Representative and A/E to review any GMP Proposal(s) and the written statement of its basis. In the event CITY's Project Representative or A/E discovers inconsistencies or inaccuracies in the information presented, the CMAR will make adjustments as necessary to the GMP Proposal, its basis or both.

2.6.12.2 Upon receipt of any GMP Proposal from the CMAR, CITY may submit the same documents that were used by CMAR in developing his GMP to an independent third-party or to the A/E for review and verification. The third-party or A/E will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.

2.6.12.3 If the CMAR's GMP Proposal is greater than the independent third party or A/E's estimate, CITY may require the CMAR to reconfirm its GMP Proposal. The CMAR will accept the independent third party or A/E estimate for the Cost of the Work as part of its GMP or present to CITY, within seven days of a written request, a report identifying, explaining and substantiating the differences. The CMAR may be requested or at its own discretion submit a revised GMP Proposal for consideration by CITY. At that time CITY may do one of the following:

- A. Accept the CMAR's original or revised GMP Proposal, if within CITY's budget, without comment.
- B. Accept the CMAR's original or revised GMP Proposal that exceeds CITY's budget, and indicate in writing to the CMAR



that the Project Budget has been increased to fund the differences.

- C. Reject the CMAR's original or revised GMP Proposal because it exceeds either or both the CITY's budget and the independent third-party's or A/E's estimate, in which event, CITY may terminate this Contract and/or elect to not enter into a separate contract with the CMAR for construction associated with the scope of Work reflected in the GMP Proposal. See Section 6.8 of this contract for termination provisions.

2.6.12.4 If design changes are required during review and negotiation of GMP Proposals, CITY will authorize and cause the A/E to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CMAR. The CMAR will promptly notify the A/E and CITY's Project Representative if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

## **2.7 COMPETITIVE BIDDING AND SUB-BIDS**

- 2.7.1 The CMAR will develop a written plan for selecting Subcontractors (the "Subcontractor Selection Plan"), for acceptance by CITY, that includes the names of a minimum of three qualified Subcontractors for each trade in the Project and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade, the CMAR will request approval from CITY's Project Representative to submit less than three names. No change in the approved Subcontractors will be allowed without prior written approval by CITY.
- 2.7.2 If prior to receipt of Sub-bids or prior to award of Subcontractors or Suppliers, CITY objects to any nominated Subcontractor or Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Sub-bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by CITY, the CMAR proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.



- 2.7.3 The CMAR will distribute Drawings and Specifications and conduct a pre-bid conference with prospective Subcontractors.
- 2.7.4 If the Work is Horizontal Construction as defined by A.R.S. § 34-101(16) the CMAR shall self-perform at least 45% of the construction Work. For roadway or pipeline Work the self-performance minimum shall increase to 50% of the construction Work in accordance with Maricopa Association of Governments requirements.
- 2.7.5 The CMAR, at the required time, will close the bidding and collect all Sub-bids received within the prescribed deadline for receipt of Sub-Bids. Promptly, after the closing of Sub-bids, the CMAR will (in the presence of CITY's Project Representative) open and read all properly and timely submitted Sub-Bids. The CMAR will submit a completed Sub-bid tabulation form to CITY's Project Representative within a reasonable time after the closing of the Sub-bid opening proceedings.
- 2.7.6 The CMAR, upon opening of Sub-bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective Suppliers selected by each apparent low Sub-Bidder. The CMAR will resolve any Sub-bid withdrawal, protest, or disqualification in connection with the award at no increase in the Cost of the Work.
- 2.7.7 If the CMAR elects to utilize a subcontractor whose bid was not lowest the CMAR shall request written approval from CITY for use of the subcontractor and shall state the reason(s) for not using the lowest bidder.
- 2.7.8 Within twenty-one (21) days after Subcontractor bid opening, the CMAR will deliver to CITY's Project Representative a written Notice of Intent to Award, itemizing the Subcontractors and Suppliers selected by the CMAR. The Notice of Intent to Award will detail (a) for each Sub-agreement the amount of the Sub-bid and the corresponding Subcontractor or Supplier, (b) the sum of Sub-bids received for all intended Sub-agreements, (c) trade work that the CMAR intends to self-perform, if any.
- 2.7.9 Early selection of Subcontractors or Suppliers will be performed in accordance with applicable State procurement laws. If the CMAR believes early selection of Subcontractors is in the best interest of the Project, he will notify CITY's Project Representative in writing outlining which Subcontractors and/or suppliers



should be considered on this basis. This procedure shall be in accordance with the Subcontractor Selection Plan. CITY's Project Representative will review this request and respond in writing within fourteen (14) days.

### **3.0 PERIOD OF SERVICES**

- 3.1 The Pre-construction Services described in Section 2 will be performed by CMAR in accordance with the most current updated/revised Project Schedule. Failure on the part of the CMAR to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by 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 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. on the day of performance.

### **4.0 CONTRACT AMOUNT AND PAYMENTS**

#### **4.1 CONTRACT AMOUNT**

Based on the final Pre-construction Services fee proposal, titled BAN-2024-11 MGC Preconstruction Services Proposal\_REV5, and dated February 19, 2025, submitted by the CMAR and accepted by CITY (which by reference is made a part of this Contract); CITY will pay the CMAR on a Time and Material basis as follows:

- 4.1.1 For the Basic Service described in Section 2, and performed to the satisfaction of CITY, the not-to-exceed amount: Three Hundred Ten Thousand, Nine Hundred Twenty-Six dollars and Eighty-Two cents (\$310,926.82).
- 4.1.2 For the additional services described in paragraph 4.3, and performed to the satisfaction of CITY, the not-to-exceed amount: One Hundred Sixty Thousand dollars and no cents (\$160,000.00).

#### **4.2 PAYMENTS**

- 4.2.1 Requests for monthly payments by the CMAR for Pre-construction Services will be submitted to CITY's Project Representative in the manner specified by CITY and will be accompanied by a progress report, detailed invoices, and receipts.



The progress report will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, copies of any Subcontractors requests for payment, an updated progress schedule, an updated cash flow report, plus similar narrative and listings of Deliverables associated with their Work. Services will be paid in accordance with the work effort expended on that service during the preceding month.

- 4.2.2 The Contract fees for CMAR and Subcontractors will be based upon the hourly rate schedule included as Exhibit A attached.
- 4.2.3 The CMAR warrants that it shall comply with A.R.S. § 34-221(G), and pay Subcontractors, design professionals, and material suppliers within seven (7) days after receipt of each progress payment. CMAR shall also require its Subcontractors to comply with A.R.S. § 34-221(G) with regard to the Subcontractors, design professionals, and material suppliers. When specifically required, as a condition precedent to CMAR's right to receive payment, with each Progress Payment Application, CMAR shall submit payrolls, petty cash accounts in excess of \$500.00, receipted invoices or invoices with check vouchers attached, and any other evidence required by the CITY's Representative to demonstrate that cash disbursements already made by CMAR on account of the Contract Sum equal or exceed (a) progress payments already received by CMAR; less (b) that portion of those payments attributable to CMAR's Fee; plus (c) payrolls for the period covered by the present Progress Payment Application Bond.
- 4.2.4 The CMAR agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances such as utility companies and outside agencies which are beyond the reasonable control of CITY during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by a non-compensable extension of time for such reasonable period as may be mutually agreed between the Parties. It is understood and agreed, however, that permitting the CMAR to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of CITY of any of its legal rights herein.
- 4.2.5 Notwithstanding any other term of the Contract, CITY's or PM/CM's approval and/or payment of any Progress Payment Application shall not constitute acceptance of any work not in accordance with the Contract Documents.



- 4.2.6 Subject to CITY's right to withhold payments in accordance with A.R.S. § 34-221 and this Contract, and provided a Progress Payment Application is received by CITY in the method, with the documentation, and to the places specified herein, not later than the last day of a month, CITY shall make payment to CMAR no later than the twenty-first (21st) day of the following month.
- 4.2.7 Pursuant to A.R.S. § 34-221(C), a Progress Payment Application submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission in accordance with the requirements of this Article 5 of this Contract, unless before that time CITY's Project Representative prepares and issues a specific written finding setting forth those items in detail in the Progress Payment Application that are not approved for payment under the Contract. In such case, CITY may retain an amount from the progress payment sufficient to pay the expenses that CITY reasonably expects to incur in order to pay or discharge the expenses set forth in the written finding regarding the items in the Progress Payment Application that are not approved for payment. CITY shall pay the progress payments on or before fourteen (14) days after the Progress Payment Application is certified and approved by CITY's Project Representative and Finance Department.
- 4.2.8 No compensation to the CMAR will be allowed contrary to Title 34, Chapter 1, Article 1, of the Arizona Revised Statutes.
- 4.2.9 If any service(s) executed by the CMAR is abandoned or suspended by the City in whole or in part, for a period of more than 180 days through no fault of the CMAR, the CMAR is to be paid for the services performed prior to the abandonment or suspension.

### 4.3 ADDITIONAL SERVICES

The following Additional Services may be required for the successful completion of this Project. Mark-ups are not authorized and only the items specifically identified below will be reimbursed as authorized herein:

- A. Subsurface Utility Locating
- B. Surveying
- C. ~~Geotechnical Investigations~~
- D. Environmental Studies
- E. Other (describe): Manufacturer's Site Visits, Direct Costs and Reimbursables



## **5.0 CITY OF SAN LUIS' RESPONSIBILITIES**

5.1 CITY, at no cost to the CMAR, will furnish the following information:

5.1.1 One copy of data CITY determines pertinent to the Work. However, the CMAR will be responsible for searching the records and requesting information it deems reasonably required for the Project.

5.1.2 Available data and information pertaining to relevant policies, standards, criteria, studies, etc.

5.2 CITY additionally will:

5.2.1 Contract separately with one or more firms to provide engineering design services for the Project. The scope of services for the A/E will be provided to the CMAR for its information. The CMAR will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to CITY and A/E.

5.2.2 Supply copies of programs, reports, drawings, and specifications reasonably required by the CMAR.

5.2.3 Provide the CMAR with adequate information in its possession or control regarding CITY's requirements for the Project.

5.2.4 Give prompt written notice to the CMAR when CITY becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.

5.2.5 Notify the CMAR of changes affecting the budget allocations.

5.3 CITY's Project Representative during the term of this Contract is **Jorge R. Perez, CPM.**

5.3.1 CITY's Project Representative has the authority to administer this Contract and will monitor CMAR's compliance with all terms and conditions stated herein.

5.3.2 All requests for information from or decisions by CITY on any aspect of the work or Deliverables will be directed to CITY's Project Representative.



5.3.3 CITY's Project Representative will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information deemed appropriate to the CMAR.

## **6.0 CONTRACT CONDITIONS**

### **6.1 PROJECT 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, and other related documents which are prepared in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of CITY and are to be delivered to CITY's Project Representative before the final payment is made to the CMAR. Nonetheless, in the event these Project Documents are used, modified, or adapted without the written consent of the CMAR, which consent the CMAR will not unreasonably withhold, CITY agrees to hold the CMAR harmless to the extent permitted by law, from the legal liability arising out of and or resulting from CITY's use, modification or adaptation of the Project Documents.

6.1.2 CMAR 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 CMAR, its Subcontractors or personnel, during the course of performing this Contract or arising out of the Project will belong to the CMAR.

6.1.3 License to CITY for Reasonable Use: The CMAR hereby grants, and will require its Subcontractors to grant, a license to CITY, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require CITY to alter or modify the Project Documents, then paragraph 6.1.1 applies.

6.1.4 Documents to Bear Seal: When applicable and required by state law, the CMAR and its Subcontractors will endorse by professional seal all plans, reports, Deliverables and other works prepared by them for this Contract.



## **6.2 COMPLETENESS AND ACCURACY OF CMAR'S WORK**

The CMAR will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other pre-construction Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. The fact that CITY has accepted or approved the CMAR's work or Deliverables will in no way relieve the CMAR of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to CITY.

## **6.3 ALTERATION IN CHARACTER OF WORK**

In the event an alteration or modification in the character of work or Deliverable results in a Substantial Change in this Contract, the work or Deliverable will nonetheless be performed as directed by CITY. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by CITY and the CMAR. Such Change Order or Amendment will not be effective until approved by CITY. Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CMAR may accordingly be adjusted by mutual agreement of the Parties.

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

## **6.4 DATA CONFIDENTIALITY**

6.4.1 As used in the Contract, data means all information, whether written or verbal, 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 CMAR in the performance of this Contract.

6.4.2 The Parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the



CMAR's performance of this Contract is confidential and proprietary information belonging to CITY.

- 6.4.3 The CMAR will not divulge data to any third party without prior written consent of CITY. The CMAR 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 CMAR has first given the required notice to CITY:
- 6.4.3.1 Data known to the CMAR prior to its performance under this Contract unless such data was acquired in connection with work performed for CITY.
  - 6.4.3.2 Data acquired by the CMAR in its performance under this Contract and which was disclosed to the CMAR by a third party, who to the best of the CMAR's knowledge and belief, had the legal right to make such disclosure and the CMAR is not otherwise required to hold such data in confidence; or
  - 6.4.3.3 Data required to be disclosed by the CMAR by virtue of law, regulation, or court.
- 6.4.4 In the event the CMAR is required or requested to disclose data to a third party, or any other information to which the CMAR became privy as a result of any other contract with CITY, the CMAR will first notify CITY as set forth in this Article of the request or demand for the data. The CMAR will timely give CITY sufficient facts, such that CITY can have a meaningful opportunity to either first give its consent or take such action that CITY may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CMAR, 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 CITY, will promptly deliver, as set forth in this section, a copy of all data to CITY. All data will continue to be subject to the confidentiality agreements of this Contract.
- 6.4.6 The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate CITY if any of the provisions of this section are violated by the CMAR, its employees, agents, or Subcontractors. 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 start of any work or Deliverable under this Contract, the CMAR will submit to CITY, an organization chart for the CMAR staff and Subcontractors, and detailed resumes of key personnel listed in its response to CITY's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, CITY hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CMAR desires to change such key personnel from performing such services under this Contract, the CMAR will submit the qualifications of the proposed substituted personnel to CITY for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project director, project manager, pre-construction manager, superintendent, or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CMAR will maintain an adequate number of competent and qualified persons, as determined by CITY, to ensure acceptable and timely completion of the scope of services described in Section 2 throughout the performance of this Contract. If CITY objects, with reasonable cause, to any of the CMAR's staff, the CMAR will take prompt corrective action acceptable to CITY and, if required, remove such personnel from the Project and replace with new personnel acceptable to CITY.

## **6.6 INDEPENDENT CONTRACTOR**

The CMAR is and will be an independent contractor and whatever measure of control CITY exercises over the work or Deliverable pursuant to the Contract will be as to the results of the Work only. No provision in this Contract will give or be construed to give CITY the right to direct the CMAR as to the details of accomplishing the Work or Deliverable. These results will comply with all applicable laws and ordinances.

## **6.7 SUBCONSULTANTS**

Prior to beginning the Work or Deliverable, the CMAR will furnish CITY for approval, the names of all Subcontractors to be used on this Project. Subsequent changes are subject to the approval of CITY.



## 6.8 TERMINATION

- 6.8.1 CITY and the CMAR hereby agree to the full performance of the covenants contained herein, except that CITY reserves the right, at its 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 performed by the CMAR.
- 6.8.2 In the event CITY abandons any or all of the services or any part of the services as herein provided, CITY will so notify the CMAR in writing, and the CMAR 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.
- 6.8.3 The CMAR, upon such termination or abandonment, will promptly deliver to CITY all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by CITY.
- 6.8.4 The CMAR will appraise the Work completed and submit an appraisal to CITY for evaluation. CITY will have the right to inspect the CMAR's work or Deliverable to appraise the Work completed.
- 6.8.5 The CMAR will receive compensation in full for services satisfactorily performed to the date of such termination. The fee will be paid in accordance with Paragraph 4 of this Contract, and will be an amount mutually agreed upon by the CMAR and CITY. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes." However, in no event will the fee exceed that set forth in Paragraph 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work." CITY will make the final payment within sixty days after the CMAR has delivered the last of the partially or otherwise completed Work items and the final fee has been agreed upon.

## 6.9 DISPUTES

- 6.9.1 In the event of any dispute arising between CITY and the CMAR regarding any part of the Contract or Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.



6.9.2 Any Party may from time to time call a special meeting for the resolution of disputes that would cause a Substantial Change to the Project. Such meeting shall be held at CITY's offices within three (3) Calendar days of written request, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by CITY's Project Representative, the CMAR's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

### 6.9.3 Mediation

6.9.3.1 If the dispute has not been resolved within seven (7) days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. If the Parties cannot agree on a mediator, each Party shall select a mediator, and those two mediators will select a third mediator who shall then preside over the dispute resolution. The cost of the mediator shall be shared by the Parties. The mediator shall be given any written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within 21 calendar days after his/her appointment, which meeting shall be attended by CITY's Project Representative, the CMAR's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such 21-calendar day period, the mediator may meet with the Parties separately.

6.9.3.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within 42 calendar days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties. If the dispute cannot be resolved through the



mediation process, the Parties may pursue resolution through other legal remedies available to them under the terms of this Contract. Notice of claim time limits will be stayed during the mediation process.

## **6.10 WITHHOLDING PAYMENT**

CITY reserves the right to withhold funds from the CMAR's progress payments up to the amount equal to the claims CITY may have against the CMAR, until such time that a settlement on those claims has been reached.

## **6.11 RECORDS/AUDIT**

6.11.1 Records of the CMAR's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between CITY and the CMAR will be kept on a generally recognized accounting basis for a period of five years after Final Completion. CITY, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CMAR'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 five years after Final Completion pursuant to this Contract. CITY reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CMAR's records, the audit discloses the CMAR has provided false, misleading, or inaccurate cost and pricing data.

6.11.2 The CMAR will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure CITY, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. CITY reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier Contracts, and one or more of those parties do not allow CITY to audit their records to verify the accuracy and appropriateness of pricing data.

## **6.12 INDEMNIFICATION**

6.12.1 To the fullest extent permitted by law, CMAR, its successors and assigns shall defend, indemnify and hold harmless CITY, its officers, officials, agents and employees from and against all liabilities, damages, penalties, fines, demands,



judgements, losses and costs (including reasonable attorney fees and court costs including any appellate proceedings to which any such Indemnified Party may become subject) to the extent caused by the negligence, recklessness or intentional wrongful conduct of CMAR or other persons employed or used by the CMAR in the performance or non-performance of this Contract. CMAR's duty to defend, indemnify and hold harmless CITY, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction or damage of property including loss of use of resulting there from, caused by CMAR's negligence, recklessness or intentional wrongful conduct in the performance or non-performance of this Contract and the negligence, recklessness or intentional wrongful conduct of any person employed by CMAR or used by CMAR in the performance of this Contract. The indemnity obligations under this Section 6.12.1 shall survive termination of this Contract.

6.12.2 Insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

## 6.13 NOTICES

Unless otherwise provided herein, all notices, demands, or other communication required or permitted to be given under this Contract shall be in writing and shall 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 US mail, registered or certified, postage prepaid, or (c) the following business day after the date given to a recognized and reputable overnight delivery service, and properly addressed as set forth below, or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection:

TO CITY:  
Eulogio Vera, PE  
Public Works Director  
City of San Luis  
1090 East Union Street  
PO Box 3750  
San Luis, AZ 85349

TO CMAR:  
Bryan Forster  
Projects Director  
MGC Contractors, Inc.  
4110 East Elwood Street  
Phoenix, AZ 85040



If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

## **6.14 COMPLIANCE WITH LAWS**

6.14.1 The CMAR understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the Contract. The CMAR agrees to comply with these laws in performing this Contract and to permit CITY to verify such compliance.

### **6.14.2 Immigration Law Compliance Warranty**

6.14.2.1 As required by A.R.S. § 41-4401, CMAR hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). CMAR further warrants that after hiring an employee, CMAR verifies the employment eligibility of the employee through the E-Verify program.

6.14.2.2 If CMAR uses any Subcontractors in performance of the Work, Subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and Subcontractors shall further warrant that after hiring an employee, such Subcontractors verifies the employment eligibility of the employee through the E-Verify program.

6.14.2.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. CMAR is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. CITY, at its option, may terminate the Contract after the third violation. CMAR shall not be deemed in material breach of this Contract if the CMAR and/or Subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).



6.14.2.4 CITY retains the legal right to inspect the papers of any CMAR or Subcontractors employee who works on the Contract to ensure that the CMAR or Subcontractors is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.

6.14.2.5 If state law is amended the Parties may modify this paragraph accordingly.

6.14.3 Equal Treatment of Workers: CMAR shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Work. CMAR shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). CMAR shall protect and indemnify CITY and its representatives against any claim or liability arising from or based on the violation of such, whether by CMAR or its employees.

6.14.4 Equal Employment Opportunity Provisions: The following provisions, contained in Section 301 of Executive Order No. 11246, dated September 24, 1965, as amended, govern performance of Work under CITY contracts, are applicable to all CITY contracts, and must be included in all contracts executed by CITY for the performance of work. In this document, the term "Contractor," means parties awarded contracts by CITY.

6.14.4.1 CMAR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability in the performance of this Contract, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and State Executive Order No. 2009-09. Such action includes the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CMAR agrees to post notices provided by CITY, setting forth the provisions of this Equal Opportunity clause, in conspicuous places available to employees and applicants for employment.



- 6.14.4.2 CMAR will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability, in all solicitations or advertisements for employees placed by or on behalf of CMAR.
- 6.14.4.3 CMAR will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement advising the labor union or workers' representative of CMAR's commitments under this Equal Opportunity Resolution, and will post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.14.4.4 CMAR will comply with all provisions of Executive Order No. 11246, dated September 24, 1965, as amended, and with all the rules, regulations, and relevant orders of the Secretary of Labor.
- 6.14.4.5 CMAR will furnish all information and reports required by Executive Order No. 11246, dated September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, and will allow CITY and the Secretary of Labor to access his books, records, and accounts in order to ascertain compliance with such rules, regulations, and orders.
- 6.14.4.6 The Contract may be canceled, terminated, or suspended, in whole or in part if the CMAR does not comply with the provisions of this document. Other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, dated September 24, 1965, as amended, under rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law. Further, CMAR may be declared ineligible for further CITY Contracts in accordance with procedures authorized in Executive Order No. 11246, dated September 24, 1965, as amended.
- 6.14.4.7 CMAR must include the provisions of subdivisions 6.14.4.1 through 6.14.4.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontract or vendor.



- 6.14.5 Boycott of Israel: The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 35-393.01. CMAR certifies that it is not engaged in a boycott of Israel as of the effective date of this Contract, and agrees for the duration of this Contract to not engage in a boycott of Israel.
- 6.14.6 Americans with Disabilities Act (ADA): CMAR shall comply with the ADA and shall indemnify CITY for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA.
- 6.14.7 International Boycotts: CMAR shall not participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law.
- 6.14.8 Laws and Regulations: CMAR shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Contract. CMAR shall include similar requirements of all sub-contractors in contracts entered for performance of CMAR's obligations under this Contract. CMAR shall keep fully informed and shall at all times during the performance of its duties under this Contract ensure that it and any person for whom the CMAR is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future CITY and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards.

## **6.15 CONFLICT OF INTEREST**

- 6.15.1 To evaluate and avoid potential conflicts of interest, the CMAR will provide written notice to CITY, as set forth in this section, of any work or services performed by the CMAR for third-parties that may involve or be associated with any real property or personal property owned or leased by CITY. Such notice will be given seven business days prior to commencement of the Project by the CMAR 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's Project Representative
- 6.15.2 Actions considered adverse to CITY under this Contract include but are not limited to:



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

6.15.2.2 Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against CITY.

6.15.2.3 Using data to produce income for the CMAR or its employees independently of performing the Services under this Contract, without prior written consent of CITY.

6.15.3 The CMAR represents that except for those persons, entities and projects previously identified in writing to CITY, the services to be performed by the CMAR under this Contract are not expected to create an interest with any person, entity, or third-party project that is or may be adverse to the interests of CIYU.

6.15.4 The CMAR'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.

## **6.16 CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE**

Prior to award of the Contract, the CMAR must provide to CITY's Finance Department its Contractor's License Classification and number, Arizona Transaction Privilege Tax License number, and Federal Tax I.D. number. A copy of the transmittal should be sent to CITY's Project Representative.

## **6.17 CMAR'S TAX LIABILITIES**

CMAR will be liable for payment of all State of Arizona and Yuma County Transaction Taxes (A.R.S. § 41-1305) and shall include its CITY Privilege Tax License number and Arizona Transaction Privilege Tax License number on construction contracting receipts. Failure to remit the proper taxes may result in the withholding of payment until all delinquent privilege taxes, interest, and penalty have been paid.

## **6.18 SUCCESSORS AND ASSIGNS**

CITY and the CMAR will each bind itself, and their 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 CITY nor the CMAR 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 CITY.

### **6.19 FORCE MAJEURE**

If either Party is delayed or prevented from the performance of any service, in whole or in part, required under this Contract by reason of 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. No increase in contract amount will be allowed. CMAR's sole compensation will be an extension of time only.

### **6.20 COVENANT AGAINST CONTINGENT FEES**

The CMAR 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's City Council, or any employee of CITY has any interest, financially, or otherwise, in the firm. CITY 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.

### **6.21 NON-WAIVER PROVISION**

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 to be 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.

### **6.22 JURISDICTION**

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, Yuma County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.



## **6.23 SURVIVAL**

All warranties, representations and indemnifications by the CMAR will survive the completion or termination of this Contract.

## **6.24 MODIFICATION**

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 provisions of this Contract, except as expressly provided herein to the contrary.

## **6.25 SEVERABILITY**

If any provision of this Contract or the application thereof to any person or circumstance 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.

## **6.26 INTEGRATION**

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.

## **6.27 TIME IS OF THE ESSENCE**

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

## **6.28 THIRD-PARTY BENEFICIARY**

The Contract will not be construed to give any rights or benefits in the Contract to anyone other than CITY and the CMAR. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of CITY and the CMAR and not for the benefit of any other party.

## **6.29 COOPERATION AND FURTHER DOCUMENTATION**

The CMAR agrees to provide CITY such other duly executed documents as may be reasonably requested by CITY to implement the intent of this Contract.



### **6.30 CONFLICT IN LANGUAGE**

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

### **6.31 CITY'S RIGHT OF CANCELLATION AND OTHER STATUTORY REQUIREMENTS**

All Parties hereto acknowledge that this Contract is subject to cancellation by the CITY pursuant to the provisions of A.R.S. § 38-511, as may be amended. Pursuant to A.R.S. § 35-394, as may be amended, unless exempt, the CMAR hereby certifies that it does not use, and agrees not to use during the term of the Contract, any of the following: forced labor of ethnic Uyghurs in the People's Republic of China; any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

## **7.0 INSURANCE**

7.1 General: CMAR agrees to comply with all CITY ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of CMAR, CMAR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A or above with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY's option.

7.2 No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect CMAR. CITY reserves the right to review any and all insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the Contract Documents or failure to identify any insurance deficiency shall not relieve CMAR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the Contract.

7.3 Additional Insured: All insurance coverage and self-insured retention or deductible portions, except Workers Compensation Insurance and Professional Liability Insurance, if applicable, shall name, to the fullest extent permitted by law for claims



arising out of the performance of the Contract, CITY, CITY's Project Representative, CITY's elected officials, PM/CM, A/E, their agents, representatives, officers, directors, officials, and employees as Additional Insured as specified under the respective coverage sections of these Contract Documents.

- 7.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until Final Acceptance of the Work or services required to be performed under the terms of this Contract, including during the warranty period.
- 7.5 Primary Insurance: CMAR's insurance shall be endorsed as primary, non-contributory insurance as respects performance of subject Contract and in the protection of CITY as an Additional Insured. Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CMAR's insurance and shall not contribute to it.
- 7.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.
- 7.7 Waiver: All policies, except for Professional Liability, but including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the Work. CMAR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- 7.8 Policy Deductibles and or Self-Insured Retentions: The policies set forth in these requirements may provide coverage which contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to CITY. CMAR shall be solely responsible for any such deductible or self-insured retention amount. CITY, at its option, may require CMAR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 7.9 Use of Subcontractors: If any Work under the Contract is subcontracted in any manner, CMAR shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and CMAR. CMAR shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.



7.10 Evidence of Insurance: Prior to commencing any Work under the Contract Documents, CMAR shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by the Contract Documents, issued by CMAR's insurer(s) as evidence that policies are placed with acceptable insurers, provide the required coverage, conditions, and limits of coverage specified in the Contract Documents, and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Contract. If a Certificate of Insurance is submitted as evidence of coverage, CITY shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. Such certificates shall identify the Project. If any of the above cited policies expire during the life of the Contract, it shall be CMAR's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

7.10.1 CITY, PM/CM, A/E, their agents, representatives, officers, directors, officials, and employees are Additional Insureds as follows:

- A. Commercial General Liability – Under ISO Form CG 20 10 04 13 and CG 20 37 04 13 or equivalent.
- B. Auto Liability – Under ISO Form CA 20 48 10 13 or equivalent.
- C. Excess Liability – Follow Form to underlying insurance as required.

7.10.2 CMAR's insurance shall be primary insurance as respects performance of Contract.

7.10.3 Certificate shall state that should any of the required policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

7.10.4 Project descriptive information including:

- A. Project Name: West WWTP Improvements
- B. Project Number: BAN-2024-11

## 7.11 Required Coverage

7.11.1 Commercial General Liability: CMAR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than



\$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$6,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. Commercial General Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Contract. The policy shall cover liability arising from premises, operations, independent CMAR's, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Offices, Inc. policy form CG 20 10 04 13 and CG 20 37 04 13 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, CITY, PM/CM, A/E, their agents, representatives, officers, directors, officials, and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form 10 04 13 and CG 20 37 04 13, or equivalent. CMAR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject Work. CMAR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three-year period containing all of the insurance requirements set forth herein including naming CITY, PM/CM, A/E, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. If any excess insurance is utilized to fulfill the requirements of this Paragraph, such excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

7.11.2 Automobile Liability: CMAR shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on CMAR's owned, hired, and non-owned vehicles assigned to or used in the performance of the Work. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. If any hazardous material, as defined by any local, state, or federal authority, is the subject, or transported, in the performance of the Work, an MCS 90 endorsement is required providing \$5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, CITY, PM/CM, A/E, their agents, representatives, officers, directors, officials, and employees shall be cited as an Additional Insured under the Insurance Service Officers, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 10 13 or equivalent. If any excess insurance is utilized to fulfill the requirements of this



Paragraph, such excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

- 7.11.3 Worker’s Compensation Insurance: CMAR shall maintain Worker’s Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction over CMAR’s employees engaged in the performance of the Work and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.
- 7.11.4 Umbrella/Excess Liability: CMAR must carry Umbrella/Excess Liability insurance with an unimpaired limit of not less than \$4,000,000.00 per occurrence combined limit Bodily Injury and Property Damage that “follows form” and applies in excess of the Commercial General Liability, Business Automobile Liability and Employer’s Liability, as required above.
- 7.11.5 Builder’s “All Risk”: CMAR shall maintain Builder’s “All Risk” Insurance in an amount not less than one hundred percent (100%) of the Contract price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of defective design, negligent workmanship or defective material during the Contract Time and until Final Acceptance of the Work by CITY. On roadway, pipeline, and similar horizontal (as defined by A.R.S. §34-101.16), Projects where fire hazard is negligible or nonexistent, CITY may waive the requirement for Builder’s “All Risk” Insurance and/or accept an installation waiver.
- 7.11.6 Railroad Protection Liability: Not Applicable
- 7.11.7 Additional Coverage: To the fullest extent permitted by law, if CMAR maintains higher insurance limits than the minimums shown above, CITY requires and shall be entitled to coverage for the higher limit maintained.

(Signatures on Following Page)



**MGC Contractors, inc.**

By: \_\_\_\_\_  
*(Signature Required)*

Name: Bryan Forster  
*(Please Print)*

Title: Projects Director

**ACKNOWLEDGMENT**

STATE OF ARIZONA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2025, Bryan Forster, as Projects Director of MGC Contractors, Inc., an Arizona corporation, personally appeared before me whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of MGC Contractors, Inc.

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

(Affix notary seal above)

**CITY OF SAN LUIS**

IN WITNESS WHEREOF, the Parties have this Contract as of this \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date").

By: \_\_\_\_\_  
Jenny Torres, Acting City Manager

ATTEST: \_\_\_\_\_  
Sonia Cornelio, City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
Kay Marion Macuil, City Attorney



## EXHIBIT A HOURLY RATE SCHEDULE (CMAR)

### HOURLY RATE REQUIREMENTS AND LIMITATIONS:

The schedule of hourly rates for employees of the CMAR and its Subcontractors follows and is based on the proposal submitted to CITY on January 30, 2025. The definitions and limits below apply to the rates as submitted.

Direct Labor Cost is defined as the total amount actually paid by CMAR in salaries for its staff for time directly expended on the Project for services rendered. The maximum labor rate will be \$133.21 per hour.

Indirect Cost (Overhead) is defined as the general and administrative overhead burden. Indirect Cost will be calculated as a percentage of the Direct Labor Cost. The maximum allowable markup for indirect costs is 115% of the direct labor costs.

Fixed Fee is defined as a fixed amount to provide an operating margin, readiness to serve, risk, and profit. The maximum allowable markup for fixed fee is 10% of the direct labor and indirect costs.

### LIST OF EMPLOYEES AND SUBCONSULTANTS:

CMAR to provide a list of key employees and Subcontractors to include position titles, names, and labor rates.

<u>Position</u>	<u>Direct Labor Rates</u>	<u>Total Labor Rate</u>
Principal	\$133.21	\$284.25
Project Director/Executive	\$100.96	\$217.07
Operations/General Manager	\$115.38	\$248.08
Sr. Project Manager	\$88.94	\$191.23
Project Manager	\$81.73	\$175.72
General Superintendent	\$76.92	\$165.38
Scheduler	\$67.31	\$144.71
Project Engineer	\$43.27	\$93.03
BIM/VDC Coordinator	\$52.88	\$113.70
Preconstruction Manager	\$100.96	\$217.07
Chief Estimator	\$84.13	\$180.89
Senior Estimator	\$62.50	\$134.38
Estimator	\$52.88	\$113.70
El&C Manager (Swain)	\$86.54	\$186.06



## **EXHIBIT B GUARANTEED MAXIMUM PRICE (GMP) Proposal**

A Guaranteed Maximum Price (GMP) proposal shall be completed at the time of submittal of the GMP for construction of the Project, and shall include associated backup information. The GMP will be separately accepted with the approval of the Construction Services Contract. If the Project will be constructed in Construction Phases, a separate GMP shall be approved for each Construction Phase, however, the Construction Services Contract will be approved with the first GMP.

The GMP Proposal shall use the GMP Cost Model form provided by CITY. A representation of the Cost Model form is shown below.

**Indirect Cost percentages as identified in sections B through D of the GMP Cost Model form shall be established prior to executing the Preconstruction Services Contract.**

Exhibit C – Total Project Cost shall be used with the Cost Model form in Exhibit B for guidance in completing the GMP Proposal.



## **EXHIBIT C TOTAL PROJECT COST (CMAR)**

**1. Cost of the Work:** The term "Cost of the Work" shall mean construction costs associated with the Construction Documents incurred by the CMAR in the performance of the Work. The following are categories of cost and expense to be paid by CITY to the CMAR as Cost of the Work and are identified in the Guaranteed Maximum Price (GMP) Form given in Exhibit B:

### **1.1 Cost of the Work (Construction Cost) Categories**

- A1 Labor and Burden
- A2 Equipment (Owned and Rented)
- A3 Materials, Supplies, and Fees
- A4 Subcontracts
- A5 Allowances and Contingencies

**1.2 Fines and Penalties:** If fines or monetary penalties are levied against the CMAR they shall not be included in the "Cost of the Work" calculation and shall not be a part of the GMP.

## **2. Construction Costs Definitions**

### **2.1 Labor and Burden Costs**

2.1.1 Wages of construction workers directly employed by the CMAR to perform the construction of the Work at the Site or, with CITY's agreement, at off-site workshops.

2.1.2 Wages or salaries of the CMAR's supervisory and administrative personnel when stationed at the Site and wages, salaries and other costs of project management, pre-construction services, form design, foundation engineering, manpower planning, purchasing, estimating and data processing, whether performed at the Site or in the CMAR's offices, including, but not limited to services rendered during the Design Phase of the Project.

2.1.3 Wages and salaries of the CMAR's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

2.1.4 Burden: Costs paid or incurred by the CMAR for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such



as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in subsections 2.1.1 through 2.1.3 above.

**2.2 Equipment (Owned and Rented):** Costs, including transportation equipment incorporated or to be incorporated in the completed construction.

**2.3 Materials, Supplies, and Fees Costs**

2.3.1 Costs of materials in excess of those actually installed which are required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to CITY at the completion of the Work, or at CITY's option, shall be sold by the CMAR, amount realized, if any, from such sales shall be credited to CITY as a deduction from the Cost of the Work.

2.3.2 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMAR at the Site and fully consumed in the performance of the Work; and cost, less salvage value, on such items if not fully consumed, whether sold to others or retained by the CMAR. Costs for items previously used by the CMAR shall mean fair market value.

2.3.3 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMAR at the Site, whether rented from the CMAR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rental charges for equipment owned by the CMAR shall be at then prevailing rates.

2.3.4 Costs of removal of debris from the Site.

2.3.5 Costs of facsimiles, telegrams and long-distance telephone calls, postage and delivery charges (whether originating at the Site or at the offices of the CMAR telephone service at the Site and reasonable petty cash expenses of the Site office.

2.3.6 That portion of the reasonable travel and subsistence expenses of the CMAR's personnel incurred while traveling in discharge of duties connected with the Work.

2.3.7 Fees and assessments for any permits, licenses and inspections required by the Contract Documents.



2.3.8 Fees of testing laboratories for tests required by the Contract Documents or governmental authorities.

2.3.9 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. The costs of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the CMAR resulting from such suits or claims and payments of settlements in connection therewith.

2.3.10 Deposits lost for cause other than the CMAR'S negligence.

**2.4 Subcontractor Costs:** Amounts due Subcontractors in accordance with the requirements of the Subcontracts.

## **2.5 Allowance and Contingency Costs**

2.5.1 Those Owner controlled costs identified as Construction Allowances associated with work items that have been specifically defined through negotiations with CITY and are identified in the Guaranteed Maximum Price (GMP) Form given in Exhibit B with associated pricing.

2.5.2 The Contingency belongs to the CMAR if it is needed but is returned to CITY if it goes unused. It reflects the incomplete nature of the drawings and specifications at the time the GMP is established and may be used to cover unanticipated costs that arise during construction. Written approval from CITY is required for CMAR use of the Contingency.

**3. Indirect Costs:** The term "Indirect Costs" shall mean costs not associated with the Construction Documents incurred off the Project site by the CMAR in the performance of the Work. Reimbursement for these categories of cost shall be at the fixed rate percentages contained in Exhibit B and the following are categories of cost and expense to be paid by CITY to the CMAR as Indirect Costs and are identified in the Guaranteed Maximum Price (GMP) Form given in Exhibit B.

### **3.1 General Conditions**

3.1.1 Salaries and other compensation of the CMAR's personnel stationed at the CMAR's principal office or offices other than the Site, except as specifically provided in subsections 2.1.2 and 2.1.3 above.

3.1.2 Expenses of the CMAR's principal office and offices, other than the Site office.



- 3.1.3 Overhead and general expenses, except as may be included in Sections 1 and 2 above.
- 3.1.4 Capital expenses of the CMAR, including interest on capital employed for the Work.
- 3.1.4 Home office profit and overhead expenses.
- 3.1.5 Any bonuses awarded by to the CMAR to its employees or Subcontractors.
- 3.2 Fee:** “Fee” means the profit payable to the CMAR, which is a part of the GMP, as more fully described on Exhibit B attached hereto.
- 3.3 Bonds:** “Bonds” refers to the Payment and Performance Bonds identified in Part III of the CMAR General Conditions that shall be furnished to CITY prior to the commencement of Construction Work on the Site.
- 3.4 Insurance:** “Insurance” to be provided is described in section 7 of the Contract.
- 3.5 Sales Taxes:** “Sales Taxes” refers to those sums to be paid as transaction privilege tax as a percentage of the GMP, or that receive a sales tax credit in accordance with the Arizona Department of Revenue guidelines.
- 3.6 Pre-construction Services:** Those services identified in this Contract that are to be performed during the design phases of the Project by the CMAR in support of the A/E and CITY.
- 3.7 Total Project Cost:** Total Project Cost is the sum total of the GMP, Pre-construction Services, and any prior phase GMPs.



## **EXHIBIT D PROJECT DESCRIPTION (CMAR)**

The West WWTP, located in the southwestern portion of San Luis, approximately 0.9 miles east of the Wellton/Mohawk Salinity Bypass Canal and immediately north of the international border, is an existing 1.5MGD plant producing Class B effluent. The treatment process is a modified sequential batch reactor (SBR) process consisting of 4 basins utilizing intermittent, continuous extended aeration system (ICEAS) batch reactors by Sanitaire / ABJ. The effluent is chlorine disinfected and discharged into the Wellton/Mohawk Salinity Bypass Canal.

This improvement project (“Project”) will increase the plant capacity to 3.0MGD. Major upgrades include a new headworks system with fine screening and grit removal, new secondary process configuration, new MBR system, new influent and return activated sludge channel, new sludge dewatering system, new odor control units, new facility operations buildings, and existing effluent pump station and disinfection system improvements. Electrical improvements include motor control center modifications, and standby generator and automatic transfer switch upgrades.

The total program budget for construction of the Project is approximately \$23 million.

Construction of the Project is estimated to begin in the summer of 2025 with a 540-calendar day duration.