

C-8774  
01/17/2014



**CITY OF GLENDALE, ARIZONA  
ENGINEERING DEPARTMENT**

**CITY OF GLENDALE  
LANDFILL SCALE-HOUSE RELOCATION**

**CONSTRUCTION MANAGER AT RISK  
DESIGN PHASE SERVICES**

**PROJECT NO. 111219**

## TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
<b>RECITALS</b>	1
<b>AGREEMENT</b>	1
<b>ARTICLE 1 – TERMS AND DEFINITIONS</b>	1
<b>ARTICLE 2 – BASIC DESIGN PHASE SERVICES</b>	4
2.1    GENERAL	4
2.2    CONSTRUCTION MANAGEMENT PLAN	4
2.3    PROJECT SCHEDULE	5
2.4    DESIGN DOCUMENT REVIEWS	6
2.5    (THIS SECTION NOT USED)	7
2.6    COST ESTIMATES	7
2.7    GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS	7
2.8    SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS	9
<b>ARTICLE 3 – PERIOD OF SERVICES</b>	10
<b>ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS</b>	10
4.1    CONTRACT AMOUNT	10
4.2    PAYMENTS	11
4.3    ADDITIONAL DESIGN SERVICES	11
<b>ARTICLE 5 – CITY'S RESPONSIBILITIES</b>	12
<b>ARTICLE 6 – CONTRACT CONDITIONS</b>	13
6.1    PROJECT DOCUMENTS AND COPYRIGHTS	13
6.2    COMPLETENESS AND ACCURACY OF CM@RISK'S WORK	13
6.3    ALTERATION IN CHARACTER OF WORK	13
6.4    DATA CONFIDENTIALITY	14
6.5    PROJECT STAFFING	14
6.6    INDEPENDENT CONTRACTOR	15
6.7    SUBCONSULTANTS	15
6.8    TERMINATION	15
6.9    DISPUTES	15

6.10	WITHHOLDING PAYMENT	16
6.11	RECORDS/AUDIT	16
6.12	INDEMNIFICATION	16
6.13	NOTICES	16
6.14	(THIS SECTION NOT USED)	17
6.15	COMPLIANCE WITH FEDERAL LAWS	17
6.16	CONFLICT OF INTEREST	17
6.17	CONTRACTOR'S LICENSE AND PRIVILEGE LICENSE	17
6.18	SUCCESSORS AND ASSIGNS	18
6.19	FORCE MAJEURE	18
6.20	COVENANT AGAINST CONTINGENT FEES	18
6.21	NON-WAIVER PROVISION	18
6.22	JURISDICTION	18
6.23	SURVIVAL	18
6.24	MODIFICATION	18
6.25	SEVERABILITY	19
6.26	INTEGRATION	19
6.27	TIME IS OF THE ESSENCE	19
6.28	THIRD PARTY BENEFICIARY	19
6.29	COOPERATION AND FURTHER DOCUMENTATION	19
6.30	CONFLICT IN LANGUAGE	19
6.31	CITY'S RIGHT OF CANCELLATION	19
<b>ARTICLE 7 – INSURANCE</b>		19
7.1	MINIMUM SCOPE AND LIMITS OF INSURANCE	20
7.2	OTHER INSURANCE REQUIREMENTS	20
7.3	SUBCONSULTANT INSURANCE	21
7.4	NOTICE OF CANCELLATION	21
7.5	ACCEPTABILITY OF INSURERS	21
7.6	VERIFICATION OF COVERAGE	21
7.7	APPROVAL	21
<b>EXHIBIT A – PROJECT DESCRIPTION</b>		23
<b>EXHIBIT B – HOURLY RATE SCHEDULE</b>		23



CITY OF GLENDALE  
(LANDFILL SCALE-HOUSE RELOCATION)  
CONSTRUCTION MANAGER AT RISK  
DESIGN PHASE SERVICES  
PROJECT NO 111219

**THIS AGREEMENT** made and entered into this January 17, 2014 by and between the City of Glendale, an Arizona municipal corporation hereinafter designated the "CITY" and FCI Constructors, Inc, a Colorado corporation authorized to do business in Arizona, hereinafter designated "CONSTRUCTION MANAGER AT RISK" or "CM@Risk"

**RECITALS**

- A The City Manager of Glendale, Arizona, is authorized and empowered by provision of the City charter to execute contracts for professional services and construction services
- B The City intends to construct the CITY OF GLENDALE LANDFILL SCALE-HOUSE RELOCATION project, as described in Exhibit A attached, hereinafter referred to as the "Project".
- C To undertake the design of said Project the City has entered into a contract with Arrington / Watkins Architects, LLC, hereinafter referred to as the "Design Professional".
- D The City intends to enter into an Agreement with the CM@Risk for the design phase services identified in this Agreement. At the end of the design phase, at the City's discretion, the City may enter into a separate construction Agreement with the CM@Risk for construction phase services.

**AGREEMENT**

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

**ARTICLE 1 – TERMS AND DEFINITIONS**

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

Agreement ("Contract") – This written document signed by the City and CM@Risk covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement

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

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

City ("Owner" or "OWNER") – The City of Glendale, a public body or authority and Municipal Corporation, with whom CM@Risk has entered into this Agreement and for whom the services are to be provided under this Agreement.

CM@Risk ("CONSTRUCTION MANAGER AT RISK" OR "CONTRACTOR") – The person, firm, corporation or other approved legal entity with whom the City has entered into this Agreement

Contingency, Contractor's– An agreed upon amount, either lump sum or a percentage of the Cost of the Work, that is included in the GMP and to be used by the CM@Risk in accordance with the General Provisions in the construction contract. Generally, Contractor's Contingency recognizes that the Drawings and Specifications may still be less than 100% complete after the City's final acceptance of GMP

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

Construction Documents – The plans, specifications, and drawings prepared by the Design Professional after correcting for permit review requirements

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

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

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

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

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

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

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. Includes drawings that have reached a sufficient state of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability and biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%) but "*not for construction*". Shop drawings are not Drawings as so defined.

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

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

General Condition Costs – Includes, but is not limited to the following types of costs for the CM@Risk during the construction phase. payroll costs for project manager or construction manager but not both for Work

conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in direct employ of the CM@Risk or Subcontractors, taxes on the work and for which the CM@Risk is liable, fees for permits and licenses. Certain limitation and exclusions are described in the General Conditions for the construction phase.

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

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

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

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

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

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

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, Glendale Engineering Department Project Manager, City's Client Department's representatives and other stakeholders who are responsible for making decisions regarding the Project.

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

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

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

Subcontractor – An individual, firm or corporation having a direct contract with the CM@Risk or any other individual, firm or corporation having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.8 of this Agreement.

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

Substantial Completion – When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof of its intended purposes. This may include, but is not limited to: (a) approval by City Fire Marshall and local authorities (Certificate of Occupancy); (B) elevator permit; (c) all systems in place, functional, and displayed to the City or its representative; (d) all

materials and equipment installed, (e) all systems reviewed and accepted by the City; (f) draft O&M manuals and record documents reviewed and accepted by the City, (g) City operation and maintenance training completed, (h) HVAC test and balance completed [provide minimum 30 days prior to projected substantial completion], (i) landscaping and site work; and (j) final cleaning

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

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

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

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

## ARTICLE 2 – BASIC DESIGN PHASE SERVICES

### 2.1 GENERAL

2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Agreement, to the Satisfaction of the City Engineer, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Glendale, Arizona would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practices. The services provided under this Agreement will not alter any real property owned by the City.

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

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

2.1.4 The CM@Risk will provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the Scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposal and/or in the Contract Time for the Work, to the extent such are established.

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

### 2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which will detail but not necessarily be limited to the CM@Risk's determinations concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles
- 2.2.2 The CM@Risk will add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications, (b) the CM@Risk's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the CM@Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) a requisite number of separate bidding documents to be advertised, (f) the statuses of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

**2.3 PROJECT SCHEDULE**

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all the Project Team members and then for the Project Team to utilize the Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable by the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in paragraph 2.6
- 2.3.2 The CM@Risk will include and integrate in the Project Schedule the services and activities required of the City, Design Professional and CM@Risk including all construction phase activities. The Project Schedule will detail activities to the extent required to show (a) the coordination between conceptual design and various design phase documents, (b) separate long-lead procurements, if any, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by the City. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, Project Team, preparation and procession of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.
- 2.3.3 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but not less often than at the monthly Project Team meetings. The CM@Risk will include with such

submittals a narrative describing its analysis of the progress achieved to-date vs. the planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

**2.3.4** Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost

## **2.4 DESIGN DOCUMENT REVIEWS**

**2.4.1** The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design, and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.

**2.4.2** The CM@Risk will identify, in conjunction with the Project Team, those additional surface and subsurface investigations that are required to provide the necessary information for the CM@Risk to construct the Project. After completion of design phase services, the CM@Risk may provide additional investigation to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents. The CM@Risk may be responsible for the time and cost required to obtain such additional investigations, except if otherwise provided by specific Additional Services.

**2.4.3** The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will thoroughly familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and labor and material availability. The CM@Risk will furthermore advise the Project Team of proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.

**2.4.4** The CM@Risk will routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

**2.4.4.1** Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design 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, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

**2.4.4.2** Biddability Reviews. The CM@Risk 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 included 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 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss and review reports.
- 2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the numbers of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.
- 2.4.5 Notification of Variance or Deficiency. It is the CM@Risk responsibility to assist the Design Professional in ascertaining the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.
- 2.4.6 Alternate Systems Evaluations. The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternative and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP proposals.

## 2.5 THIS SECTION NOT USED

## 2.6 COST ESTIMATES

- 2.6.1 Within 14 days after receipt of the documents for the various phases of design, the CM@Risk shall provide a detailed cost estimate and a written review of the documents. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- 2.6.2 If any estimate submitted to the City exceeds previously accepted estimates or the City's Project Budget, the CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that he believes will bring the project back into the Project budget.
- 2.6.3 In between these milestone estimates, the CM@Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.
- 2.6.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical resources of similar type projects to assist the City in the financing process.

## 2.7 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.7.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City. The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposal submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

- 2.7.2 GMP Proposals for the entire Project will be the sum of the maximum Cost of the Work, and include the CM@Risk's Construction Fee, General Conditions Fee, and Contractor's Contingency. The CM@Risk guarantees to complete the Project at or less than the final approved GMP Proposal Amount (i.e the Contract Amount for the construction phase contract) and agrees that it will be solely responsible for any difference between the actual Cost of Work and that amount
- 2.7.3 The CM@Risk, in preparing any GMP Proposal, will obtain from the Design Professional, three sets of signed, sealed, and dated plans and specifications (including all addenda) The CM@Risk will prepare it GMP Proposal in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk will mark the face of each document of each set upon which its proposed GMP is based The CM@Risk will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Design Professional
- 2.7.4 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the scope of Work shown in the current set of design documents upon which the GMP Proposal(s) is based Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.7.5 In the event the CM@Risk elects, at its sole discretion, to maintain a Contractor's Contingency allowance within the GMP, the criteria for development of that allowance must be acceptable to the City. In addition, the terms and conditions regarding use of that allowance during the construction phase will be established by the City and reflected in the contract for that phase of the Project
- 2.7.6 If the construction contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk will revert to the City

**2.7.7 GMP PROPOSAL(S) REVIEW AND APPROVAL**

- 2.7.7.1 The CM@Risk will meet with the City and Design Professional to review any GMP Proposal(s) and the written statement of its basis. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.7.7.2 The City, upon receipt of any GMP proposal from the CM@Risk, may submit the same documents that were used by the CM@Risk in developing his GMP to an independent third party or to the Design Professional for review and verification The third party or Design Professional will develop an independent estimate of the Cost of Work and review the Project Schedule for the associated scope of the GMP Proposal
- 2.7.7.3 If the CM@Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the City identifying, explaining and substantiating the differences. The CM@Risk may be requested or at its own discretion submit a revised GMP Proposal for consideration to the City At that time the City may do one of the following.
  - (a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment
  - (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
  - (c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, the independent third party's or Design Professional's estimate, in which event, the City may

terminate this Agreement and/or elect to not enter into a separate Agreement with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal

**2.7.7.4** If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional 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 CM@Risk. The CM@Risk will promptly notify the Design Professional and City if any such revised Construction Documents are inconsistent and with the agreed-upon assumptions and clarifications

## **2.8 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

**2.8.1** There are two ways to select subcontractors and major suppliers (hereinafter referred to as Subcontractors) prior to submission of a GMP. They are qualifications-based selection and competitive bid.

**2.8.2** Selection by qualifications only – The City may approve the selection of a Subcontractor(s) based only on their qualifications when the City agrees that it is in the best interest of the Project

**2.8.2.1** Qualification based selection of a Subcontract(s) should only occur prior to the submittal of the GMP Proposal

**2.8.2.2** The CM@Risk will prepare a Subcontractor selection plan and submit the plan to the City for approval. The CM@Risk shall apply the plan in the evaluation of the qualification of a Subcontractor(s) and provide the City with its review and recommendation.

**2.8.2.3** The CM@Risk must receive City approval of the selected Subcontractor(s).

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

**2.8.3** Selection by competitive bid and qualifications – All work shall be competitively bid unless a Subcontractor was selected pursuant to Division 2.8.2 above. Competitive bids may occur prior to or after the GMP Proposal(s).

**2.8.3.1** The CM@Risk will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors for each trade in the Project for approval by the City and solicit bids from various Work categories. If there are not three qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written approval by the City, no change in the City-approved Subcontractors will be allowed

**2.8.3.2** If the City objects to any nominated Subcontractor or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor.

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

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

**2.8.3.5** The CM@Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid

proposals the CM@Risk, in addition to bid price, may consider the following factors; past performance on similar projects, qualifications, and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the work. The final evaluation of subcontractor bids will be done with the City Representative in attendance to observe and witness the process. The CM@Risk will resolve any Subcontractor bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work

- 2.8.3.6** Within fifteen days after Subcontractor bid opening, the CM@Risk will prepare a list of recommended Subcontractors for each category of work, for the City's review and approval. The list will detail (a) for each subagreement, the amount of the Subcontractor bid and the corresponding Subcontractor, (b) the sum of Subcontractor bids received for all intended subagreements, (c) trade work and its cost that the CM@Risk intends to self-perform, if any
- 2.8.4** Upon City approval of all Subcontractors, the CM@Risk shall submit a summary report to the City of the selection process. The report will indicate the Subcontractors contacted to determine interest, the Subcontractors solicited, the bids received/costs negotiated, and the recommended Subcontractors for each category of work
- 2.8.5** The approved Subcontractors will provide a schedule of values with their bid proposals, which will be used to create the overall project schedule of values
- 2.8.6** If after receipt of Sub-Bids or after award of Subcontractors, the City objects to any nominated Subcontractor or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, for those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City the CM@Risk's proposed GMP for the work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution
- 2.8.7** Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM@Risk and other Project Team members. At the pre-award conference the CM@Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM@Risk's-proposed Contract Price for the work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining Contractor's Contingency within the Contract Price for the construction phase Work, (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase of the Work, (f) schedule the pre-construction conference; and (g) discuss other matters of import

### **ARTICLE 3 – PERIOD OF SERVICES**

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

**ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS**

**4.1 CONTRACT AMOUNT**

4.1 1 Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Agreement) the City will pay the CM@Risk a fee not to exceed \$47,263.00 dollars as follows:

For the basic services described in Article 2, the CM@Risk shall receive a fee not to exceed: \$38,052.00

Additional Services and allowances, as described in subsection 4.3.

Printing / presentation Materials \$2,100.00

Total Contract Amount, not to exceed \$40,152.00

**4.2 PAYMENTS**

4.2 1 Requests for monthly payments by the CM@Risk for design phase services will be submitted on the City's "Progress Payment Request" form and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service in the preceding month.

4.2 2 The fees for the CM@Risk and any Subconsultants will be based upon the hourly rate schedule included as Exhibit B attached.

4.2 3 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 90 percent of the Contract Amount until final acceptance of all the design phase services, and award of the final approved GMP for the entire Project by City Council.

4.2 4 The CM@Risk agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may be extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.

4.2 5 No compensation to the CM@Risk will be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

4.2 6 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

**4.3 ADDITIONAL DESIGN PHASE SERVICES**

- 4.3.1 The following Additional Services will be required for the successful completion of the Project. Mark-ups are not authorized and only the reimbursables specifically identified below will be reimbursed as authorized herein:
- 4.3.1.1 ~~NA, included in basic services - If not available within the CM@Risk's staff, CM@Risk will secure services of a qualified individual or firm to provide design plan and specifications review as required. The CM@Risk will forward invoices from the individual or firm to the City for payment of costs. The cost of such services will not exceed \$XXXXXXXXXX without further written approval of the City.~~
- 4.3.1.2 ~~NA, included in basic services - If approved by the City, CM@Risk will secure the services of a qualified cost estimating person or firm to provide cost estimating services required under this agreement. The CM@Risk will forward copies of the invoices from the cost estimator to the City with the CM@Risk's payment request. The cost for such services will not exceed \$XXXXXXXXXX without further approval of the City.~~
- 4.3.1.3 ~~NA, included in basic services - If approved by the City, the CM@Risk will provide services related to evaluations of and recommendations for long lead time procurements in order to meet the Project Schedule requirements. The cost for such services will not exceed \$XXXXXXXXXX without further approval of the City.~~
- 4.3.1.4 When authorized by the City, the CM@Risk will be entitled to reimbursement at cost of design phase services related expenses incurred for the following items:
- (a) ~~NA, included in basic services - Reasonable charges for air transportation (not to exceed standard coach rates), ground travel (for automobile rental, taxi, parking, etc, not to exceed \$50 per day), and authorized expenses while traveling (not to exceed the corporate rate at major business hotels in the area and a per diem for meal and miscellaneous business expense of \$45) shall be reimbursable. The CM@Risk shall provide detailed receipts for all reimbursable charges. Travel expenses shall not exceed \$XXXXXXXXXX without further approval by the City.~~
  - (b) ~~NA - included in basic services - Long distance telephone and long distance facsimile costs incurred on behalf of the Project will be reimbursed. These costs will not exceed \$XXXXXXXXXX without further approval of the City.~~
  - (c) Non-overhead printing expenses incurred including the printing of Construction Documents for bidding, courier services or other Project-related services that may be requested by the City. The cost of such service will not exceed \$2,100.00 without further approval by the City.

## ARTICLE 5 – CITY'S RESPONSIBILITIES

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information.
- 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
- 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
- 5.1.3 The name of the City employee or City's representative who will serve as Project Manager during the term of this Agreement. The Project Manager has the authority to administer this Agreement and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the city on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will.
- 5.2.1 Contract separately with one or more Design Professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to

the CM@Risk for its information. The CM@Risk will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.

- 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.
- 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project
- 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications
- 5.2.5 Notify the CM@Risk of changes affecting the budget allocations
- 5.3 The City's Project Manager, will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the Project Manager deems appropriate to the CM@Risk

## **ARTICLE 6 – CONTRACT ADDITIONS**

### **6.1 PROJECTS DOCUMENTS AND COPYRIGHTS**

- 6.1.1 City Ownership of Project Documents All work products (electronically or manually generated) including but not limited to, cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes or drives, and other related documents which are prepared in the performance of this Agreement (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Project Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of or resulting from the City's alteration, modification or adaptation of the Project Documents
- 6.1.2 CM@Risk to Retain Copyrights. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, technique's, inventions, processes or works of authorship developed or created by the CM@Risk, its subconsultants or personnel, during the course of performing this Agreement or arising out of the Project will belong to the CM@Risk.
- 6.1.3 License to City for Reasonable Use. The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Agreement. This license will also include the making of derivative works. In the event that the derivative works require the 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 CM@Risk and its Subconsultants will endorse by an Arizona professional seal all plans, works and Deliverables prepared by them for this Agreement

### **6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK**

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

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

6.3 1 In the event an alteration or modification in the character of work of Deliverable results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the City and the CM@Risk. Such Change Order or Amendment will not be effective until approved by the City. Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties. No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

### **6.4 DATA CONFIDENTIALITY**

6.4 1 As used in the Agreement, 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 CM@Risk in the performance of this Agreement.

6.4 2 The parties agree that all data, including original, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Agreement is confidential and proprietary information belonging to the City.

6.4 3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Agreement. These prohibitions will not apply to the following data provided the CM@Risk has first given the required notice to the City.

6.4.3.1 Data which was known to the CM@Risk prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City,

6.4 3.2 Data which was acquired by the CM@Risk in its performance under this Agreement and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or

6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court.

6.4 4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other with the City, the CM@Risk will first notify the City as set forth in this article of the request or demand for data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

6.4 5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Agreement.

6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

## **6.5 PROJECT STAFFING**

6.5.1 Prior to the start of any work or Deliverable under this Agreement, the CM@Risk will submit to the City, an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Agreement. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Agreement. In the event the CM@Risk desires to change such key personnel from performing such services under this Agreement, the CM@Risk will submit the qualification of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Agreement throughout the period of those services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

## **6.6 INDEPENDENT CONTRACTOR**

6.6.1 The CM@Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Agreement will be as to the results of the work only. No provision in this Agreement will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinance.

## **6.7 SUBCONSULTANTS**

6.7.1 Prior to the beginning the work or Deliverable, the CM@Risk will furnish the City for approval, the names of all Subconsultants to be used on this Project. Subsequent changes are subject to the approval of the City.

## **6.8 TERMINATION**

6.8.1 The City and the CM@Risk hereby agree to full performance of the covenants contained herein, except the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Agreement, or abandon any portion of the Project for which services have been performed by the CM@Risk.

6.8.2 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Agreement and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

6.8.3 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially complete, together with all unused materials supplied by the City.

6.8.4 The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.

6.8.5 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination. The fee will be paid in accordance with Article 4 of this Agreement, and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty days after the CM@Risk 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 any unresolved dispute arising out of an interpretation of this Agreement or the duties required therein, the final determination at the administrative level will be made by the City Engineer.

## **6.10 WITHHOLDING PAYMENT**

6.10.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

## **6.11 RECORDS/AUDIT**

6.11.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Agreement and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Agreement if, upon audits of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading or inaccurate cost and pricing data.

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

## **6.12 INDEMNIFICATION**

6.12.1 The CM@Risk agrees to indemnify and save harmless the City of Glendale, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, herein after individually and collectively referred to as "indemnitee", from all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the work or Deliverable done in fulfilling the terms of this Agreement, or on account of any act, claim or amount arising out of or recovered under Workmen's Compensation Law, or arising out of the failure of the CM@Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the CM@Risk will be responsible for primary loss investigation, defense and judgment costs where this Agreement of indemnity applies.

**6.13 NOTICES**

6 13.1 Unless otherwise provided herein, demands under this Agreement will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City	Bill Passmore, P E., Principal Engineer Glendale City Hall 5850 W Glendale Ave 3 <sup>rd</sup> Floor – Engineering Department Glendale, Arizona 85301-2599
To CMAR	Joe Kelleher Vice President FCI Constructors, Inc PO Box 2176 Litchfield Park, AZ 85340
To Design Professional:	Michael Quinn Arrington Watkins Architects LLC 5240 N 16 <sup>th</sup> Street, Suite 101 Phoenix, AZ 85016
Copy to	Bill Passmore, Principal Engineer Glendale City Hall 5850 W Glendale Ave. 3 <sup>rd</sup> Floor – Engineering Department Glendale, Arizona 85301-2599

**6.14 THIS SECTION NOT USED**

**6.15 COMPLIANCE WITH FEDERAL LAWS**

6 15 1 The CM@Risk 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 it The CM@Risk agrees to comply with these and all laws in performing this Agreement and to permit the City to verify such compliance

**6.16 CONFLICT OF INTEREST**

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

Bill Passmore  
City of Glendale  
5850 W Glendale Ave  
3<sup>rd</sup> Floor - Engineering Department  
Glendale, Arizona 85301-2599

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

- (a) Using data as defined in the Agreement, acquired in connection with this Agreement to assist to third party in pursuing administrative or judicial action against the City;

- (b) Testifying or providing evidence on behalf of any person in connection with administrative or judicial action against the City;
- (c) Using data to produce income for the CM@Risk or its employees independently of performing the services under this Agreement, without the prior written consent of the City.

6 16.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM@Risk under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

6 16.4 The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Agreement

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

6 17 1 Prior to award of the Agreement, the CM@Risk must provide to the City's Engineering Department, its Contractor's License Classification and number, its City of Glendale Privilege License number, and its Federal Tax I.D number.

#### **6.18 SUCCESSOR AND ASSIGNS**

6 18.1 The City and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Agreement without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

#### **6.19 FORCE MAJEURE**

6.19.1 If either party is delayed or prevented from the performance of any service, in whole or part, required under this Agreement 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.

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

6 20 1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Glendale has any interest, financially, or otherwise, in the firm The City of Glendale will in the event of the breach or violation of this warranty, have the right to annul this Agreement 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**

6 21 1 The failure of either party to enforce any of the provisions of this Agreement or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

#### **6.22 JURISDICTION**

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

### **6.23 SURVIVAL**

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

### **6.24 MODIFICATION**

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

### **6.25 SEVERABILITY**

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

### **6.26 INTEGRATION**

6.26.1 This Agreement contains the full agreement of the parties. 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**

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

### **6.28 THIRD PARTY BENEFICIARY**

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

### **6.29 COOPERATION AND FURTHER DOCUMENTATION**

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

### **6.30 CONFLICT IN LANGUAGE**

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

### **6.31 CITY'S RIGHT OF CANCELTION**

6.31.1 All parties acknowledge that this Agreement is subject to cancellation by the City of Glendale under the provisions of A R S Section 38-511

## ARTICLE 7 – INSURANCE

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

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

### 7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

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

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

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

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

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
---	-------------

7.1.1.3 Workers Compensation and Employers Liability

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

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

### 7.2 OTHER INSURANCE REQUIREMENTS

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

7.2.1.1 The City of Glendale is to be named as additional insured's with respect to liability arising out of activities performed by or on behalf of the CM@Risk, including the City's general supervision of the CM@Risk; products and completed operations of the CM@Risk, and automobiles owned, leased, hired or borrowed by the CM@Risk.

7.2.1.2 The Commercial General Liability Insurance will contain broad form contractual liability coverage and will not exclude liability arising out of the explosion, collapse or under ground hazard ("EXU")

- 7.2.1.3 The City will be additional insured to the full limits of liability purchased by the CM@Risk, even if those limits of liability are in excess of those required by this Agreement. The Commercial General Liability additional insured endorsement will be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B CG 20 10 11 85.
- 7.2.2 The CM@Risk's insurance coverage will be primary insurance with respect to the City. Insurance or self-insurance maintained by the City will be in excess of the CM@Risk's insurance and will not contribute to it.
- 7.2.3 The CM@Risk's insurance will apply separately to each insured against whom claim is made or suit is brought that, except with respect to the limits of the insurer's liability. The coverage provided by the CM@Risk and its Subcontractors will not be limited to the liability assumed under the indemnification provisions of this Agreement.
- 7.2.4 The policies will contain a waiver of subrogation against the City for losses arising from Work performed for the City.
- 7.2.5 Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer will agree to waive all rights of subrogation against the City for losses arising from work performed for the City.

**7.3 SUBCONSULTANT INSURANCE**

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

**7.4 NOTICE OF CANCELLATION**

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

5850 W Glendale Ave  
 3<sup>rd</sup> Floor – Engineering Department  
 Glendale, Arizona 85301-2599

**7.5 ACCEPTABILITY OF INSURERS**

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

**7.6 VERIFICATION OF COVERAGE**

- 7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) with original endorsements effecting coverage as required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements(s) that restrict or limits coverages will be clearly noted on the certificate of insurance.
- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to the earlier of commencement of work under this Agreement or signing of this Agreement, and remain in effect for the

duration of the Project Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

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

7.7 APPROVAL

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

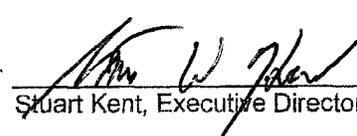
This Agreement will be in full force and effect only when it has been approved and executed by the duly authorized City officials

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on 01/21, 2013. <sup>14</sup> SK

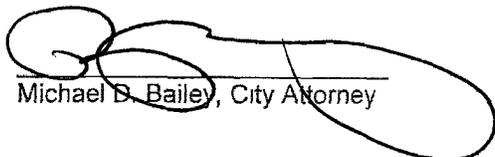
ATTEST

  
Pam Hanna, City Clerk

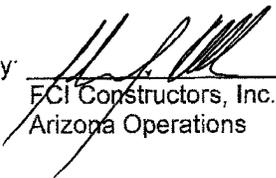
CITY OF GLENDALE

By:   
Stuart Kent, Executive Director of Public Works

REVIEWED BY

  
Michael D. Bailey, City Attorney

FCI Constructors, Inc

By:   
FCI Constructors, Inc., Vice President of Arizona Operations

ATTEST

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the design phase services specified in this Contract are to be performed:

The Glendale Landfill is located at 11480 West Glendale Avenue. The landfill is nearing completion of the south area, and needs to relocate the scale-house, administration building, and maintenance areas. The scale-house, administration building and maintenance building will be new construction. Also included is a new entrance road, which will be extended from the existing entrance off of Glendale Avenue to the new scale-house location.

A site analysis was completed in June 2013. Four site options were developed and the City selected site layout option B, as presented in the 2013 City of Glendale Landfill Scale-House Relocation study. However, site layout B has been modified moving the administration and maintenance buildings down closer to the Glendale Material Recovery Facility (MRF).

The site entry to the landfill is off Glendale Avenue and moves north to the current location of the scales, administration building, and gas-to energy plant. The maintenance area is located due north of these facilities on an elevated pad half way up the south area fill site. These areas, currently used to manage operations, will need to be relocated north. The new scale-house will be located near the intersection of 115th Avenue and Orangewood Avenue alignments where the south and north area access roads merge. The new administration and maintenance building will be located in the west bottom level nearer the Materials Recovery Facility (MRF). It will be necessary to maintain functionality in the transition stages from the south area to the north area, where dumping operations will commence when the south area is completed.

The project will include a new administration and operations building, a new scale-house with four new scales, a new maintenance facility, associated parking areas, and a road extension on the 115th Avenue alignment. The maintenance facility will be designed as part of this phase, but may be scheduled for construction in a later phase, depending on available funds.

Site Option B (approximate units):

New Entrance Road: 2,000 L.F.

New Administration and Operations Building: 3,650 s.f.

New Scale-house Building with four) new scales: 826 s.f.

New Maintenance Building (depending on available funds): 4,862 s.f.

## EXHIBIT B - HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City on \_\_\_\_\_, 2013

### LIST OF CLASSIFICATIONS:

<u>Classification</u>	<u>Total Labor Rate</u>
Principal	\$134.00
Project Manager	\$92.00
Estimator	\$76 00
Precon Assistant	\$67 20
Project Engineer	\$51.00
Admin Assistant	\$51.00