

Staff Summary Report



Council Meeting Date: 08/14/08

Agenda Item Number: _____

SUBJECT: Request approval of a construction manager at risk design phase contract with Pierson Construction Corporation for water line replacement on various city streets.

DOCUMENT NAME: 20080814PWDR02 WATERMAIN UPGRADES (0810-04)
PROJECT NO. 3202891

SUPPORTING DOCS: Yes.

COMMENTS: The amount of this contract is \$146,861.32.

PREPARED BY: Donna Rygiel, Engineering Contract Administrator (x8520)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8205)

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (x8814)

FISCAL NOTE: Sufficient funds are available in Capital Improvement Fund No. 3202891.

RECOMMENDATION: Approve construction manager at risk contracts with Pierson Construction Corporation.

ADDITIONAL INFO: The scope of work for this contract consists of preparation of construction documents for the water line replacement on Myrtle Avenue, Fifth Street, Forest Avenue, Mill Avenue, and Apache Boulevard. This project also includes excavation and potholing activities to verify location and depth of existing utilities, preparing schedules, design and construction phasing strategy development, reviewing plans and conducting value engineering.

Staff negotiated this construction manager at risk design phase contract and considers it reasonable for the scope of services. A review committee selected Pierson Construction Corporation as the most qualified firm for these services using a qualification based process set forth in A.R.S. §§ 34-601 to -611.



**CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING**

**CONTRACT FOR CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES**

THIS CONTRACT is made and entered into this 14th day of August, 2008, by and between the City of Tempe, an Arizona municipal corporation, ("City") and Pierson Construction Corporation an Arizona Corporation, ("Construction Manager at Risk" or "CM@Risk").

A. WHEREAS, the City desires to construct improvements to be located at Myrtle Avenue, Fifth Street, Forest Avenue, Mill Avenue and Apache Boulevard in Tempe, Arizona, Maricopa County, Arizona, more particularly described herein;

B. WHEREAS, City and CM@Risk have reached an agreement, memorialized in this Contract, whereby CM@Risk will perform design services for said improvements for payment by the City as set forth herein;

NOW, THEREFORE, City and CM@Risk, in consideration of the mutual representations and covenants set forth herein, and for other good and valuable consideration, do mutually agree as follows:

The City engages the CM@Risk to perform professional construction management design phase services for a project known and described as Water Line Replacement (Myrtle Avenue, Fifth Street, Forest Avenue, Mill Avenue, and Apache Boulevard), Project No. 3202891 ("Project").

1. TERMS AND DEFINITIONS

- 1.1. **"Addendum"** means a document issued by the City during the bidding period that modifies or supersedes portions of the Contract as to additional specifications, forms or other information.
- 1.2. **"Alternate Systems Evaluations"** means alternatives for design, means and methods or other scope considerations that are evaluated by the City using value engineering principles for a potential reduction of construction costs of a quality and functional Project per City requirements.
- 1.3. **"Amendment"** means a written modification of the terms of this Contract signed by an authorized agent of the City.
- 1.4. **"Business Day"** means any calendar day except Saturdays, Sundays and holidays observed by the City.
- 1.5. **"Calendar Day"** means every day shown on the calendar including Saturdays, Sundays and holidays.

- 1.6. **“Change Order”** means a written agreement entered into after the award of the CM@Risk that alters or amends the Contract.
- 1.7. **“City (“Owner”)**” means the City of Tempe, a public body or authority and municipal corporation, with whom the CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to this Contract.
- 1.8. **“Construction Fee”** means the CM@Risk’s total administrative costs, including home office overhead if any, and profit, whether at the CM@Risk’s principal or branch offices.
- 1.9. **“CM@Risk” (“Construction Manager at Risk” or “Contractor”)** means the person, firm, corporation or other approved legal entity with whom the City has contracted with to provide design services or construction services.
- 1.10. **“Contingency”** means a fund to cover cost growth during the project used at the discretion of the CM@Risk for charges in material costs or availability, resource availability, production capacity or unforeseen project circumstances. The amount of the CM@Risk’s contingency will be negotiated as a separate line item in each GMP Proposal.
- 1.11. **“City’s Contingency”** means a fund to cover cost growth during the project used at the sole discretion of the City for anticipated costs resulting from City directed changes to the Work to be performed under the Contract or unforeseen site conditions. The amount of the City’s contingency will be set solely by the City.
- 1.12. **“Contract”** means this written document, including all addenda, exhibits, attachments and schedules attached thereto, signed by the City and CM@Risk covering the design phase of the Project. The Contract collectively represents the entire agreement between the City and the CM@Risk, and which supersedes any prior negotiations, representations or agreements, either written or oral.
- 1.13. **“Contract Time(s)”** means the number of days or dates related to the construction phase, as stated in construction documents, that apply to achievement of substantial completion and/or full completion of the Work.
- 1.14. **“Cost of the Work”** means the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work may include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed Work, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk’s construction fee, general conditions fee, taxes, bonds, or insurance costs.
- 1.15. **“Cost Model”** means a breakdown of the scope of the Project that is initially developed by the CM@Risk during the conceptual design phase and based on information from the Project Team and the CM@Risk’s records of similar projects. The model will evolve as the design progresses and be maintained by

the CM@Risk throughout the design phase and will include any assumptions and clarifications made by the CM@Risk. Cost Model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team. The Cost Model is subject to approval by the City in its sole discretion.

- 1.16. **“Day(s)”** means calendar day(s) unless otherwise expressly stated herein.
- 1.17. **“Deliverables”** means the Work products prepared by the CM@Risk in performing the scope of Work described in the Contract. The major deliverables to be prepared and provided by the CM@Risk during the Design Phase include but are not limited to: construction management plan, Cost Model, Project schedule of values, Alternative System Evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.
- 1.18. **“Design Engineer” or “Design Professional”** means the person, firm or corporation having a contract with the City to furnish design services for this Project.
- 1.19. **“Drawings”** means documents which visually represent the scope, extent and character of the Work and which have been prepared or approved by the Engineer and the City. Drawings include such documents that have reached a sufficient stage of completion and are released by the Engineer solely for the purposes 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 30%, 60%, 90% or 100%, but excluding Shop Drawings and those marked “NOT FOR CONSTRUCTION”).
- 1.20. **“Effective Date of this Contract”** means the date specified in this Contract on which the Contract becomes effective, but if no such date is specified, the date on which the last of the parties signs this Contract.
- 1.21. **“General Conditions Costs”** means other than expressly limited or excluded herein, the costs of the CM@Risk during the construction phase, including but not limited to: payroll costs for the 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 functions (e.g., loading/unloading, clean-up); costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site; costs of consultants not in the direct employ of the CM@Risk or subcontractors; and fees for permits and licenses.

- 1.22. **“Guaranteed Maximum Price (GMP) Proposal”** means the offer of a proposal detailing the qualifications, assumptions, exclusions, value engineering and any and all other requirements set forth in the scope of Work for the construction phase.
- 1.23. **“Laws and Regulations; Laws or Regulations”** means any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all federal, state, and local governmental bodies, agencies, authorities and courts having jurisdiction over the subject Project, site, of this Contract, and/or any Work.
- 1.24. **“Notice of Award”** means the written notice by the City to the CM@Risk stating that upon compliance by the CM@Risk with the conditions precedent enumerated therein, within the time specified, the City anticipates the execution of this Contract.
- 1.25. **“Notice to Proceed”** means written notification from the City to the CM@Risk establishing the date on which performance of the CM@Risk’s obligations under this Contract shall begin.
- 1.26. **“Progress Payment Application”** means the form accepted by the City and used by the CM@Risk in requesting progress payments or final payment for Work performed under this Contract, which includes supporting documentation as required by the Contract or the City.
- 1.27. **“Project”** means the total design and construction of which the design phase services and construction Work to be performed may be the whole or part.
- 1.28. **“Project Team”** means a construction services unit consisting of a Design Professional, CM@Risk, the City (department representatives, design project manager, construction project manager), construction manager professional and other persons who are responsible for making decisions regarding the Project, as approved by the City. Any other persons to be included in the Project Team shall be identified in the preconstruction conference, and are subject to approval by the City.
- 1.29. **“Samples”** means physical examples of materials, equipment or workmanship representative of a part of the construction phase establishing the standards by which that portion of the construction phase Work will be evaluated.
- 1.30. **“Shop Drawings”** means 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.
- 1.31. **“Specifications”** means the technical specifications for the construction phase of this Project consisting of written technical descriptions of materials, equipment,

construction systems, standards and workmanship as applied to the Work and administrative details applicable thereto.

- 1.32. **“Subcontractor”** means an individual, firm, entity or corporation other than CM@Risk’s employees, having a contract with the CM@Risk to undertake to perform a part or portion of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors shall be selected through the Subcontractor bid process described in Section 14 of this Contract.
- 1.33. **“Substantial Completion”** means 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 for its intended purposes. This may include, but is not limited to: (a) approval by City Fire Marshall and local authorities including issuance of the 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 operation and maintenance manuals and record documents reviewed and accepted by the City; (g) City operation and maintenance training completed; (h) heating, ventilation and air conditioning test and balance completed (provide minimum at least thirty (30) days prior to projected substantial completion); (i) landscaping and site work; and (j) final cleaning.
- 1.34. **“Supplier”** means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment.
- 1.35. **“Total Float”** means number of Calendar Days by which the design phase services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project schedule, as determined by the City.
- 1.36. **“Work”** means any or all of the improvements as required by the Contract, and the construction, demolition, reconstruction, design and/or repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto.

2. SERVICES OF THE CM@RISK

- 2.1. The CM@Risk shall perform the following professional design services required by and in accordance with this Contract and in accordance with the degree of care, skill and judgment that a professional in Arizona would exercise under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and design services practices.
- 2.2. The CM@Risk has assigned Russell Moore as the design project manager for this Contract. Prior written approval by the City is required in the event the CM@Risk

requests a change of project manager. The CM@Risk shall submit the qualifications of any proposed substituted personnel to the City for approval.

- 2.3. The CM@Risk shall furnish construction administration services as described in Exhibit "A". The design phase services being provided under this Contract will not alter any real property owned by the City.

3. PERIOD OF SERVICE

The CM@Risk shall complete all design phase services per the terms of the Contract, free and clear from any and all claims, liens and changes whatsoever, within one hundred eighty (180) calendar days of the "Notice to Proceed" date by the City. In the event delays are experienced beyond the control of the CM@Risk, the schedule may be revised as determined by the City in its sole discretion.

4. CM@RISK'S COMPENSATION

- 4.1. Payment for this Contract shall be installment. Total compensation for the services performed shall not exceed \$146,861.32, unless otherwise authorized by the City. This fee includes an allowance of \$61,237.60 for preconstruction services, a potholing allowance of \$63,623.72, a public outreach allowance of \$20,000.00, and an allowance of \$2,000.00 for reimbursable expenses, which in no event will ever be more than actual cost.
- 4.2. The City will pay the CM@Risk installments based on monthly progress reports and detailed invoices submitted by the CM@Risk. Such payments will be made within thirty (30) days after receipt and approval of the progress report and detailed invoice by the City.

5. THE CITY'S RESPONSIBILITIES

- 5.1. The City will designate a project manager for the term of this Contract. The project manager has authority to administer this Contract and will monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by the City on any aspect of the Work will be directed to the project manager.
- 5.2. The City will review Deliverables by the CM@Risk, provide prompt responses to questions and render decisions to minimize delay in the progress of the Work. The City will keep the CM@Risk advised concerning the progress of the City's review of the Work. The CM@Risk agrees that the City's inspection, review, acceptance and/or approval of the CM@Risk's Work shall not relieve the CM@Risk's responsibility for errors or omissions of the CM@Risk or any of its Subcontractors.
- 5.3. Unless included in the CM@Risk's services as identified in herein, the City will furnish the CM@Risk, the following information or services for this Project:

- 5.3.1. One copy of its maps, records, laboratory tests, survey ties and benchmarks, or other data in its possession pertinent to the services. However, the CM@Risk shall be solely responsible for researching the records, requesting specific drawings or information, and independently verifying all data.
- 5.3.2. Available City data on policies, regulations, standards, criteria and studies relevant to the Project.
- 5.4. The City additionally will:
 - 5.4.1. Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project (Engineer). The scope of the services for the Engineer will be provided to the CM@Risk for informational purposes only. The CM@Risk shall have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Engineer.
 - 5.4.2. Supply all necessary copies of programs and reports in the City's custody or control and reasonably required by the CM@Risk.
 - 5.4.3. Provide the CM@Risk with adequate information regarding the City's requirements for the Project.
 - 5.4.4. Give prompt written notice to the CM@Risk in the event the City becomes aware of any default or defect in the Project or nonconformance with the Drawings and/or Specifications.
 - 5.4.5. Notify the CM@Risk of changes concerning or affecting budget allocations.
 - 5.4.6. Authorize the City's project manager to approve the Project budget and Project schedule, render decisions and furnish information to the CM@Risk.

6. TERMINATION

- 6.1. The City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, pursuant to A.R.S. § 38-511, or abandon any portion of the Project for which services have not been fully and/or properly performed by the CM@Risk. Termination shall be commenced by delivery of written notice to CM@Risk by the City personally or by certified mail, return receipt requested.
- 6.2. Immediately after receiving notice of termination, the CM@Risk shall discontinue the services under this Contract and close operations under this Contract. The CM@Risk shall appraise the services it has completed and submit

an appraisal to the City for evaluation. The City shall have the right to inspect the CM@Risk's work to appraise the services completed.

- 6.3. The CM@Risk shall deliver to the City all Drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the CM@Risk under the Contract, entirely or partially completed, together with all unused materials supplied by the City.
- 6.4. In the event of such termination, the CM@Risk shall be paid for services performed prior to receipt of notice of termination if approved by the City, including reimbursable expenses then incurred. CM@Risk shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that could reasonably have avoided.
- 6.5. If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the CM@Risk to the City's satisfaction based upon the scope of Work set forth in Exhibit "A".
- 6.6. The City will make final payment within sixty (60) days after the CM@Risk has delivered all completed design phase services and the final design phase services fee has been approved by the City.

7. GENERAL SCOPE OF SERVICES

- 7.1. Project Meetings. The CM@Risk shall attend Project Team meetings and all other meetings as directed by the City.
- 7.2. The CM@Risk shall 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 in the event that 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 Model, Project schedule, GMP Proposals and/or in the Contract Time.
- 7.3. The CM@Risk when requested by the City or at its own initiative, if previously approved by the City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings relevant 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 appropriate in any public agency meetings, as determined by the City.

8. CONSTRUCTION MANAGEMENT PLAN

- 8.1. The CM@Risk shall prepare a Construction Management Plan (CMP) which will detail but not necessarily be limited to the CM@Risk's determination concerning:
(1) Project milestone dates and the Project schedule including the broad

sequencing of the design and construction of the Project; (2) alternate strategies for fast-tracking and/or phasing the construction; (3) the number of separate sub-agreements to be awarded to Subcontractors and suppliers for the Project construction; (4) permitting strategy; (5) safety and training programs; (6) construction quality control; (7) a commissioning program, plant start-up and training; (8) the Cost Model and basis of the model; and (9) a matrix summarizing each Project Team member's responsibilities and roles.

- 8.2. 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 will 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 conditions whether obtained by the City, Engineer or the CM@Risk; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right-of-way; (d) the fast-tracking of any of the construction or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment, if any, and/or materials; and (g) funding issues identified by the City.

9. PROJECT SCHEDULE

- 9.1. The fundamental purpose of the Project schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize the schedule as a basis for managing and monitoring compliance by all Project Team members with the requirements of the Project. Each Project Team member is responsible for compliance with the schedule requirements of the Project. The CM@Risk will develop and maintain the Project schedule for the Project Team based on input received, consistent with the most recent revised/updated CMP. The Project schedule will use the critical path method (CPM) technique unless the City by written notice requires a different method. The CM@Risk will use scheduling software to develop a Project schedule acceptable to the City 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 the phases once determined. The Project schedule's activities shall correlate with the schedule of values specified herein.
- 9.2. The CM@Risk shall include and integrate in the Project schedule the services and activities required of the City, Engineer and CM@Risk, including all construction phase activities. The Project schedule will detail all activities to the extent required to show: (a) the coordination between conceptual design, preliminary design and development of the construction documents (detailed design); (b) any separate long-lead procurements; (c) permitting issues; (d) any land and right-of-way acquisition; (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, but not be limited to, 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, if any, 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 shall be ready for final acceptance.

- 9.3. The Project schedule shall be updated and maintained by the CM@Risk throughout the design phase such that it will not require major revisions 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 no less often than at the monthly Project Team meetings. The CM@Risk will include comparison of the progress achieved to that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 9.4. Project Phasing. If phased construction is deemed appropriate and the City and Engineer approve, the CM@Risk shall 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 factors such 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 decreasing costs.

10. DESIGN DOCUMENT REVIEWS

- 10.1. The CM@Risk shall periodically evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design and other factors that may impact the Cost Model, GMP Proposals and/or the Project schedule and update each accordingly.
- 10.2. The CM@Risk will identify, in conjunction with the Project Team, any additional surface and subsurface investigations that are required to provide the necessary information for the construction of the Project. After completion of design phase services, the CM@Risk may provide additional investigations to improve the adequacy and completeness of the site condition information and the data made available with the construction documents. The CM@Risk will be responsible for the time and cost required to obtain such additional investigations, except if otherwise provided by specific additional services.

- 10.3. The CM@Risk will meet with the Project Team as required, to review designs during development. The CM@Risk will thoroughly familiarize itself with the evolving documents through conceptual design, preliminary design and development of detailed design documents. 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 advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as any concerns with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.
- 10.4. As necessary to satisfy the needs of the Project Team, the CM@Risk will routinely conduct constructability and biddability reviews of the Drawings and Specifications. The reviews will attempt to identify all discrepancies and inconsistencies in the construction documents, especially those related to clarity, consistency and coordination of Subcontractors and Suppliers.
- 10.5. Constructability Reviews. The CM@Risk shall 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/pre-assembly 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.
- 10.6. Biddability Reviews. The CM@Risk will check and cross-reference complementary Drawings and Specifications, and evaluate, among other things, whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope of interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well 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; and (e) the Project is likely to be subject to differing site conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.
- 10.7. The results of these reviews as set forth in this Section 10, 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 documents. If requested by the City, the CM@Risk will meet with the City and Engineer to discuss its findings and review

the reports. Responsibility for updating the Drawings and Specifications will remain with the Engineer and not the CM@Risk.

- 10.8. Notification of Variance or Deficiency. It is the CM@Risk's sole responsibility to determine and notify the Engineer as to whether 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 or regulations, it will promptly notify the Engineer and City in writing describing the apparent variance or deficiency.
- 10.9. Alternate Systems Evaluations. The Project Team will routinely identify and evaluate, using value engineering principles, any alternate systems, approaches and/or 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 Engineer will perform a cost/benefit analysis of the alternatives and submit the analysis in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The CM@Risk will include the cost of the alternatives in the Cost Model and any GMP Proposals.

11. COST MODEL, COST ESTIMATES AND SCHEDULE OF VALUES

- 11.1. As soon as practical during the conceptual design phase, the CM@Risk shall review all available information regarding the design and scope of the Project and other pertinent factors. CM@Risk will develop a Cost Model for review and approval by the City. Once approved by the City, the Cost Model will be continually updated and kept current to the design phase by the CM@Risk until a final GMP for the entire Project is established. The Cost Model shall constitute the best representation of what the complete functional Project's estimated construction costs. The CM@Risk will communicate in writing to the Project Team any assumptions made in preparing the Cost Model. The Cost Model will support the CM@Risk's construction cost estimates shall be broken down by Construction Standard Institute (CSI) Specification Divisions 1-16 and/or otherwise, as required by the City. The Cost Model shall also include allowances set by the Project Team, including but not limited to: (a) construction cost contingency based on an agreed upon percentage of a total estimated construction cost; (b) allowances for potential additional quantities and/or additional Work that the City may require; and (c) any costs as required by the City.
- 11.2. After receipt of the Engineer's most current documents from certain specified design phase milestones, the CM@Risk will provide a detailed written report to the Project Team regarding the impact of and changes to the Cost Model based on the CM@Risk's review of the design documents. The Engineer and the CM@Risk will reconcile any disagreements on the Cost Model to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design phase milestone. The design phase milestones applicable to this paragraph are: detailed design completion at 60%, 90% and

100%. If no consensus is reached, the City will make the final determination. If the Project Team requires additional updates of the Cost Model beyond what is specified herein, the CM@Risk will timely provide the requested information.

- 11.3. If at any point the Cost Model submitted to the City exceeds previously accepted estimates agreed to by the Project Team or other key aspects of the Cost Model or the City's Project budget, the CM@Risk will make appropriate recommendations to the City and Engineer on means/methods, materials and/or other design elements to reduce the estimated construction costs, without altering the City's parameters such that it is equal to or less than the established Project Team's target and/or the Project budget.
- 11.4. Upon completion of the 90% detailed design review, included with the associated report, the CM@Risk will submit to the City for approval, a schedule of values which complies with the following requirements. The schedule of values shall be based on the 16 CSI Divisions, and highlight significant variances from any previously submitted schedule of values. The schedule of values will be directly related to the breakdowns reflected in the Project schedule and the CM@Risk's Cost Model. In addition, the schedule of values will: (a) detail unit prices and quantity take-off's; (b) segregate Work covered by any changes to construction phase Work already in progress; (c) reconcile used and remaining contractor's contingency allowance; (d) detail all other allowances and unit price Work shown and specified in the detailed design documents; and (e) segregate unit costs, material and equipment costs, labor costs, General Conditions Costs, hourly labor rates, payment for design services, and total cost. Labor costs therein will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.
- 11.5. As required herein, the CM@Risk shall submit a final schedule of values to the City, based on the one hundred percent (100%) detailed design set of Drawings and Specifications for the entire Project or any portion thereof, which final schedule of values will also be included in any proposed GMP(s).
- 11.6. Upon request by the City, the CM@Risk shall submit a cash flow projection for the Project based on the current updated/revised Project schedule and the anticipated level of payments for the CM@Risk during the design and construction phases. In addition, if requested by the City and based on information provided by the City, the CM@Risk will prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist the City in the financing process.

12. GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 12.1. The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City and consistent with the City's request for GMP Proposal. 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 Proposals submitted

by the CM@Risk will be based on and consistent with the current updated/revised Cost Model 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.

- 12.2. GMP Proposals for the entire Project shall be the sum of the maximum Cost of the Work and include the Construction Fee, General Conditions Cost and Contingency. The CM@Risk guarantees to complete the Project at or less than the final approved GMP Proposal, defined as the Contract Amount for the construction phase contract, and agrees that it will be solely responsible for any difference between the actual Cost of the Work and the Contract amount.
- 12.3. The CM@Risk, in preparing any GMP Proposal, shall obtain from the Engineer three (3) sets of signed, sealed and dated construction documents, including all addenda. The CM@Risk will prepare its GMP Proposal requirements based on the most current completed construction documents at that time. The CM@Risk will provide one (1) set of those documents to the City's project manager, retain one set and return the third set to the Engineer.
- 12.4. An updated/revised Project schedule shall be included with any GMP Proposal that reflects the scope of Work shown in the current set of design documents upon which the GMP Proposal is based. Any such Project schedule updates/revisions will continue to comply with the requirements of this Section 3.
- 12.5. In the event the CM@Risk elects 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.
- 12.6. The Construction Fee is set at eight percent (5.0%) of the combined total of the Cost of the Work, General Conditions (general expense costs) and Contractor's Contingency.

13. REVIEW AND APPROVAL OF GMP PROPOSAL(S)

- 13.1. The CM@Risk shall meet with the City and Engineer to review any GMP Proposal and the written statement of its basis. In the event the City or Engineer discovers inconsistencies or inaccuracies in the information presented, the CM@Risk shall make adjustments as necessary to the GMP Proposal its basis.
- 13.2. Upon receipt of any GMP proposal from the CM@Risk, the City may submit the same documents that were used by the CM@Risk in developing the GMP to an independent third party or to the Engineer for review and verification. The third party or Engineer shall develop an independent estimate of the Cost of the Work and review the Project schedule for the associated scope of the GMP Proposal.

- 13.3. If the CM@Risk GMP Proposal is greater than the independent third party or Engineer's estimate, the City may require the CM@Risk to reconfirm the GMP Proposal. The CM@Risk will accept the independent third party's or Engineer's estimate for the Cost of Work as part of the GMP or present a report to the City within seven (7) days of a written request by the City identifying, explaining and substantiating the differences. The CM@Risk may be requested to submit a revised GMP Proposal for consideration by the City. At that time the City may do one of the following:
 - 13.3.1. Accept the CM@Risk GMP Proposal in the City's sole discretion;
 - 13.3.2. Accept the CM@Risk GMP Proposal that exceeds the City's budget and agree to increase the Project Budget to fund the differences;
 - 13.3.3. Reject the CM@Risk's GMP Proposal. The City may terminate this Contract or elect not to enter into a contract with the CM@Risk for the construction phase of this project; or,
 - 13.3.4. Take other actions deemed appropriate by the City.
- 13.4. If during the review and negotiation of GMP Proposal, design changes are required and agreed upon, the City will authorize and cause the Engineer 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 Engineer and City if any such revised construction documents are inconsistent with the agreed upon assumptions and clarifications.

14. SUBCONTRACTOR AND SUPPLIER SELECTIONS

- 14.1. The CM@Risk shall select Subcontractors as set forth in A.R.S. § 34-603. CM@Risk hereby warrants that it has complied with the applicable provisions of A.R.S. § 34-603 in its selection of any Subcontractor and agrees to hold harmless and indemnify the City for any statutory non-compliance.
- 14.2. All Subcontractors doing work in excess of Thirty Thousand Dollars (\$30,000.00) shall maintain, during the course of the Contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees as required by the City of Tempe Guidelines for Implementation of Health Insurance, and Resolution No. 2000.73.
- 14.3. The CM@Risk will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors.
- 14.4. The City will conduct a conference with the CM@Risk and other Project Team members. At the conference, the CM@Risk will: (a) discuss City concerns relating to any proposed self-performed Work; (b) review the CM@Risk's

proposed contract price for the Work during the construction phase; (c) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining City's Contingency within the Contract price for the construction phase Work; (d) resolve possible scheduling issues with the commencement date of the Contract for the construction phase Work; (e) schedule the design conference; and, (f) discuss other matters as needed.

15. INSURANCE

15.1. Without limiting any of their obligations or liabilities, the "CM@Risk", at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

15.2. General Clauses.

15.2.1. Additional Insured. Insurance coverage, except workers' compensation and professional liability, required by this Contract, shall name the City, its agents, representatives, directors, officials, and employees, as additional insureds, and shall specify that insurance afforded the CM@Risk shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the City or its employees shall be excess coverage, and not contributory coverage to that provided by the CM@Risk.

15.2.2. Coverage Term. All insurance required herein shall be maintained in full force and effect until the Services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of the City.

15.2.3. Primary Coverage. The CM@Risk's insurance shall be primary insurance as respects the City and any insurance or self insurance maintained by the City shall be in excess of the CM@Risk's insurance and shall not contribute to it.

15.2.4. Claim Reporting. The CM@Risk shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect the City.

15.2.5. Waiver. The policies for workers' compensation and general liability shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the CM@Risk.

15.2.6. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. The CM@Risk shall be solely responsible for deductible or self-insured retentions and the City may require the CM@Risk to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

15.2.7. Policies and Endorsements. The City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.

15.2.8. Certificates of Insurance. Prior to commencing Services under this Contract, the CM@Risk shall furnish the City with Certificates of Insurance or formal endorsements as required by the Contract issued by CM@Risk's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number and shall provide for not less than thirty (30) days advance written notice by certified mail of cancellation or termination.

15.2.9. Subconsultants/Subcontractors. The CM@Risk shall include all subconsultants and Subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant and Subcontractor.

15.3. Workers' Compensation.

15.3.1. The CM@Risk shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CM@Risk employees engaged in the performance of the services and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease coverage for each employee, and \$500,000 disease policy limits.

15.3.2. In case services are subcontracted, the CM@Risk will require the subconsultant to provide workers' compensation and employer's liability to at least the same extent as provided by the CM@Risk.

15.4. Automobile Liability.

The CM@Risk shall carry commercial/business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, each occurrence, regarding any owned, hired and non-owned vehicles assigned to or used in performance of the CM@Risk's services.

Coverage will be at least as broad as coverage Code 1 “any auto” (Insurance Service Office policy form CA 0001 1/87 or any replacements thereof). Such coverage shall include coverage for loading and unloading hazards.

15.5. Commercial General Liability.

15.5.1. The CM@Risk shall carry commercial general liability insurance with unimpaired limit of not less than \$1,000,000 for each claim with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the Services under this Contract or the general aggregate shall be twice the required per claim limit. The policy shall be primary and include coverage for bodily injury including death, property damage, personal injury, products, completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage shall be at least as broad as Insurance Service Office policy form CG 0001 7/98 or any replacement thereof.

15.5.2. In the event the general liability insurance policy is written on a claims made basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

15.5.3. Such policy shall contain a severability of interest provision (also known as cross-liability and separation of insured).

15.6. Contractor Professional Liability.

The CM@Risk retained by the City to provide the Services required by the Contract shall maintain contractor professional liability insurance covering errors and omissions arising out of the services performed by the CM@Risk or any person employed by the CM@Risk with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims or 10% of the construction budget, whichever is larger. In the event the insurance policy is written on a claims made basis, coverage shall extend for two (2) years past completion and acceptance of Services as evidenced by annual certificates of insurance.

15.7. Property Coverage – Valuable Papers.

The CM@Risk shall carry property coverage on all-risk, replacement cost, agreed amount form with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports or other similar data relating to the services of the CM@Risk used in the completion of this Contract.

15.8. Health Insurance Requirements.

- 15.8.1. All Consultants who enter into a Public Works contract in excess of Thirty Thousand Dollars (\$30,000.00) with the City of Tempe, after January 1, 2001, must certify that they have, and all of their major subconsultants will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-1). Major subconsultants are defined as entities doing work in excess of Thirty Thousand Dollars (\$30,000.00) as determined at the start of each project. All required health insurance must be maintained during the entire time of the Contract with the City.
- 15.8.2. Health insurance is required for all consultant and major sub-consultant employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four (24) hour period, regardless of number of hours that the individual is paid. At this time, health insurance is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.
- 15.8.3. The health insurance requirements shall apply to all employees directly involved with this City project including support and administrative personnel.
- 15.8.4. All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.
- 15.8.5. In the event of a finding of violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any Public Works contract with the City for a period of three (3) years from the execution of the Contract.
- 15.8.6. All Consultants subject to the health insurance requirements shall post, in English, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City at the pre-construction conference for Contractors and sent with the executed contract for Consultants.

16. PROJECT DOCUMENTS AND COPYRIGHTS

- 16.1. City Ownership of Project Documents. All work products (electronically or manually generated) prepared in the performance of this Contract including but not limited to, plans, drawings, specifications, cost estimates, tracings, studies, design, analysis, CADD files and related products, are the property of the City and are to be delivered to the City before the final payment is made to the CM@Risk. Only if previously approved in writing by the City, the CM@Risk may retain originals and supply the City with reproducible mylar copies of the work.
- 16.2. Documents to Bear Seal. When applicable and as required by law, the CM@Risk and its Subcontractors will endorse by professional seal all plans, works, and Deliverables prepared by them pursuant to this Contract.

17. CONFLICT OF INTEREST

- 17.1. The CM@Risk agrees to disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of this Contract. Further, the CM@Risk agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, if the CM@Risk gains such interest during the course of this Contract.
- 17.2. If the CM@Risk gains financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of the City.
- 17.3. The CM@Risk shall not engage the services on this Contract of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.
- 17.4. 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.
- 17.5. Actions considered to be adverse to the City under this Contract include but are not limited to:
 - 17.5.1. Using data as defined in the Contract, acquired in connection with this Contract, to assist a third party in any manner.
 - 17.5.2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City.
 - 17.5.3. Using data to produce income for the CM@Risk or its employees independently of performing under this Contract, without the prior written consent of the City.

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

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

18. COVENANT AGAINST CONTINGENT FEES

The CM@Risk affirms that it has not employed or retained any company or person, other than a bona fide employee working for the CM@Risk, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of the Contract. For breach or violation of this clause, the City shall terminate this Contract or in its discretion may deduct from the Contract price or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift or contingent fee from the CM@Risk.

19. INDEMNIFICATION

To the fullest extent permitted by law, the CM@Risk shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the CM@Risk, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the CM@Risk may be legally liable in the performance of or any breach of this Contract, including failure to comply with applicable laws. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. This provision shall survive the term of the Contract.

20. DISPUTE RESOLUTION

In the event of a dispute between the parties regarding a provision of this Contract, a party's performance of its obligations as stated in this Contract or any other matter governed by the terms of this Contract, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the City may pursue any and all remedies provided by law or in equity. The exercise of any one of City's remedies shall not preclude subsequent or concurrent exercise of further or additional remedies.

21. ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by the CM@Risk without prior written authorization from the City. Additional services, when authorized by an agreement or an amendment to this Contract shall be compensated for by a fee mutually agreed upon between the City and the CM@Risk.

22. ALTERATION IN CHARACTER OF WORK

In the event an alteration or modification in the character of Work or Deliverables results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, costs of performance or Project schedule, the Work or Deliverables will nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a Change Order or Amendment must be approved and executed by the City, and executed by the CM@Risk. Such Change Order or Amendment will not be effective unless 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 be adjusted accordingly solely at the discretion of the City. No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is previously authorized in writing by the City. Work or material(s) furnished by the CM@Risk without such prior written authorization shall be at 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.

23. SUCCESSORS AND ASSIGNS

This Contract shall not be assignable except by the prior written approval of the City, any assignment made in violation of this section shall be void. It shall extend to and be binding upon the heirs, executors, administrators, successors and authorized assigns of the parties hereto.

24. SPECIAL PROVISIONS

24.1. This Contract shall be in full force and effect only upon approval by the City Council of the City of Tempe, Arizona, and after execution by the duly authorized City official and duly authorized agent of the CM@Risk.

25. COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

The CM@Risk is solely 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 Contract, and will at its sole expense correct its Work or Deliverables. Acceptance or approval by the City of the CM@Risk's Work or Deliverables does not relieve or diminish the CM@Risk's responsibilities under the Contract nor does this requirement to correct the Work or Deliverable constitute a waiver of any claims or damages otherwise available in law or in equity to the City.

26. RESTRICTED DISSEMINATION OF CITY PROPERTY

- 26.1. As used in the Contract, data means all information, whether written, electronic 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 Contract.
- 26.2. The parties agree that all work products and data, including originals, images and reproductions prepared by, obtained by or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract are the sole property of the City.
- 26.3. The CM@Risk shall not divulge work products or data to any third party without prior written consent of the City. The CM@Risk will not use the work products or data for any purposes except to perform the services required under this Contract. However, these prohibitions do not apply to the following work products or data, provided the CM@Risk first provides the required notice to the City:
- 26.3.1. Work products or data which were known to the CM@Risk prior to its performance under this Contract unless such work products or data were acquired in connection with work performed for the City;
- 26.3.2. Work products or data which were acquired by the CM@Risk in its performance under this Contract and which were 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 work products or data in confidence; or
- 26.3.3. Work products or data which are required to be disclosed by the CM@Risk by law, regulation or court order.
- 26.4. In the event a third party requires or requests the CM@Risk to disclose work products or data or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this section of the request or demand for such data. The CM@Risk will timely give the City sufficient facts such that the City has 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.
- 26.5. The CM@Risk, unless prohibited by law, within ten (10) 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 work products or data to the City. All work products and data will continue to be subject to the provisions of this section.

26.6. The CM@Risk assumes all liability for maintaining the work products and data in its possession and agrees to compensate and indemnify the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents, authorized assigns, subconsultants or Subcontractors. A breach of this section shall be deemed to cause irreparable harm to the City that justifies injunctive relief.

27. PROJECT STAFFING

27.1. Prior to the start of any Work or deliverable under this Contract, the CM@Risk will submit to the City, an organizational 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 and revisions thereto, to involved in performing the services prescribed in the Contract. Unless otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such Services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel includes, 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.

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

28. INDEPENDENT CONTRACTOR

The CM@Risk is and shall be an independent contractor and whatever measure of control the City exercises over the Work or Deliverables pursuant to the Contract will be as to the results of the Work only. No provision in this Contract will give or be construed as establishing an employer/employee relationship, partnership or joint venture, between City and CM@Risk, or cause City to be responsible in any way for the debts or obligations of CM@Risk. CM@Risk must comply with all applicable laws and ordinances pertaining thereto.

29. SUBCONSULTANTS

Prior to beginning any Work or Deliverables, the CM@Risk will furnish to the City the names of all subconsultants to be used on this Project. Subsequent changes are subject to the approval by the City. This provision shall in no way be deemed to diminish CM@Risk's responsibility for subconsultant or impose liability upon the City for the contracting with any subconsultant.

30. LABOR

CM@Risk agrees and covenants to use only licensed CM@Risks and subCM@Risk(s) in the making and/or installation of any and all repairs, alterations, improvements or other work of CM@Risk on the Project. CM@Risk shall be liable to City for any losses and liabilities associated with any violation of this provision, and the Contract shall immediately be terminated upon any violation hereof by CM@Risk.

31. WITHOLDING PAYMENT

The City, pursuant to and in accordance with A.R.S. § 34-601 *et seq.*, as they may be amended from time to time, reserves the right to withhold funds from the City's progress payments up to the amount equal to resolve claims the City may have against the CM@Risk, until such time as the settlement on those claims is reached.

32. RECORDS/AUDIT

32.1. Records of the CM@Risk's direct personnel payroll and reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk will be kept following generally accepted accounting principles, or other and recognized accounting methods at the City's sole discretion. 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 Contract and any attendant Change Orders. The City reserves the right to decrease Contract amount and/or payments made on this Contract if, *inter alia*, upon audit of the CM@Risk's records, the audit discloses that CM@Risk has provided false, misleading or inaccurate cost and/or pricing data.

32.2. The CM@Risk will include a provision in all of its agreements with subconsultants, Subcontractors and Suppliers providing services under this Contract to ensure the City, its authorized representative and/or the appropriate governmental agency, has access to the subconsultants', Subcontractors' and Suppliers' records. The 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 the City to audit their records to verify the accuracy and appropriateness of pricing data.

33. NOTICES

Unless otherwise provided herein, notices and/or demands under this Contract shall 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:	Andy Goh, P.E. Deputy Public Works Manager/ City Engineer City of Tempe Public Works Engineering Division 31 East 5 th Street Tempe, Arizona 85281
To CM@Risk:	Russell Moore Pierson Construction Corporation 222 S. 52 nd Street Tempe, Arizona 85281
To Engineer:	Mike Valentine Valentine Environmental Engineers, Inc. 4530 E. Muirwood Drive, Suite 113 Phoenix, Arizona 85048
Copy to:	Phil Brown City of Tempe Public Works Engineering Division 31 E. 5 th Street Tempe, Arizona 85281

34. COMPLIANCE WITH STATE AND FEDERAL LAWS

- 34.1. Specially Designated Nationals and Blocked Persons List. CM@Risk represents and warrants to City that neither CM@Risk nor any affiliate or representative of CM@Risk (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
- 34.2. Employment Laws. CM@Risk agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the Work and services pursuant to the Contract, and all applicable safety laws, rules and regulations, which may include but is not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, the Arizona Fair and Legal Employment Act and the Drug Free Workplace Act of 1989 along with all laws, rules and regulations attendant thereto. CM@Risk hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

34.3. The CM@Risk expressly warrants that it has and will continue to comply in all respects with federal and Arizona law concerning employment practices and working conditions especially pursuant to A.R.S. § 22-211, *et seq.*, the Immigration Reform and Control Act of 1986 and all related laws, regulations, requirements and duties. Contractor further warrants that to the extent permitted by law, it will fully indemnify City for any and all losses arising from or relating to any violation thereof.

34.4. Equal Opportunity: City is an equal opportunity, affirmative action employer. CM@Risk hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. CM@Risk covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.

35. CONTRACTOR'S LICENSE AND PRIVILEGE TAX LICENSE

Prior to award of the Contract, the CM@Risk must provide to the City's Public Works/Engineering Department, its Contractor's license classification and number, its City of Tempe privilege tax license number and its federal tax I.D. number.

36. FORCE MAJEURE

If either party is delayed or prevented from the performance of any service, in whole or 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 may be excused at the City's discretion, 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.

37. 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 of this Contract shall not be construed as a waiver of such provisions nor will it affect the validity of this Contract or any part thereof or the right of either party to thereafter enforce each and every provision.

38. JURISDICTION

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

39. SURVIVAL

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

40. 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.

41. SEVERABILITY

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

42. 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.

43. TIME IS OF THE ESSENCE

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

44. THIRD PARTY BENEFICIARY

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

45. COOPERATION AND FURTHER DOCUMENTATION

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

46. EXHIBITS

The parties agree that all references to this Contract include all Exhibits designated in and attached to this Contract, such Exhibits being incorporated into and made an integral part of this Contract for all purposes.

47. CONFLICT IN LANGUAGE

All Work and Deliverables will conform to all applicable City of Tempe codes, ordinances and requirements. If there is a conflict in interpretation between provisions in this Contract and any Exhibits thereto, the provisions in this Contract will prevail.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Contract this _____ day of _____, 2008.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

By: _____
Public Works Manager

ATTEST:

Recommended By:

City Clerk

Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

City Attorney

The CM@Risk warrants that the person who is signing this Contract on behalf of the CM@Risk is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

CONSTRUCTION MANAGER AT RISK

Pierson Construction Corporation

By: _____
Name

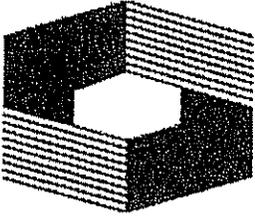
Its: _____
Title

Federal I.D. No. / Social Security No.
Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT A

PRECON SERVICES COST PROPOSAL NORTH AREA



Pierson Construction Corporation

222 S. 52nd St.
 Tempe, AZ 85281
 From: Russell E. Moore P.E.
 Phone: 480 966 4424
 Fax: 480 894 1086

Quote To: CITY OF TEMPE
Attention: PHIL BROWN
Address: 31 EAST 5TH STREET
City: TEMPE
State & Zip: AZ 85281
Phone: 480-350-8200
Fax: 4810-350-8591

Job Name: WATER LINE REPLACEMENT
Owner: CITY OF TEMPE
Address: 31 EAST 5TH STREET
City: TEMPE
State & Zip: AZ 85281
Date: JULY 7, 2008

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	PRECONSTRUCTION SERVICES GMP (Hourly N.T.E.)	1.00	N.T.E.	61,237.60	61,237.60 ①
100	VACUUM POTHOLE ALLOWANCE (N.T.E.)	50.00	EA	781.66	39,083.00 ②
103	POTHOLE TIE IN LOCATION (N.T.E.)	6.00	EA	3,504.60	21,027.60 ②
105	POTHOLE VIA SURVEY (N.T.E.)	26.00	EA	135.12	3,513.12 ②
107	PUBLIC OUTREACH (Hourly N.T.E.)	1.00	N.T.E.	20,000.00	20,000.00 ②
110	PRINTING (REPRODUCTION)	1.00	N.T.E.	2,000.00	2,000.00 ③
GRAND TOTAL					\$146,861.32

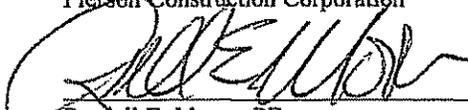
① PROFESSIONAL SERVICES \$ 61,237.60
 ② ALLOWANCES \$ 83,623.72
 ③ REIMBURSIBLE EXPENSES \$ 2,000.00
146,861.32

NOTES:

Items included:

1. Preconstruction services labor for design participation and GMP preparation.
2. Existing utility verification/locating using the following methods for the area north of University Dr. Plans by Valentine Engineering, plan sheets C7 - C11.
 - a. Vacuum potholing by subcontractor to identify existing utilities
 - b. Survey by subcontractor to identify existing utilities
 - c. Potholing by Pierson to identify connections to existing piping and valves
3. Public Outreach subconsultant ACS/Conaid, Inc. to execute our public outreach program.

Respectfully submitted,
 Pierson Construction Corporation



 Russell E. Moore, PE
 Date: 7/7/08

Accepted By: _____

 Company: _____
 Date: _____

AMB

Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pes	Quantity Unit	Unit Cost	Takeoff Quan:	LS	HR	Hrs/Shift:	Cal:	8	WC:	NONE	Engr Quan:	1.000	Engr Quan:	0.000	Trucking	Materials	Aggregate	Sub	Total
PARENT ITEM = 10																					
Description = PRECONSTRUCTION SERVICES GMP																					
Listing of Sub-Biditems of Parent Item 10:																					
BID ITEM = 20																					
Description = PROJECT ADMINISTRATION																					
11010	Director Preconstruction Services	1.00	40.00 MH		40.00	HR	8.00	4,087	8	8	WC:	NONE									4,087
DIRECTOR	Director		40.0000 MH		[102.17]			4,087													4,087
\$4,086.80	1.0000 MH/HR				102.17																102.17
11011																					
Description = ESTIMATOR PRECONSTRUCTION SERVICES																					
ESTIMATOR	Estimator	1.00	2.00 MH		2.00	HR	8.00	194	8	8	WC:	NONE									194
\$194.26	1.0000 MH/HR		2.0000 MH		[97.13]			194													194
					97.13																97.13
11013																					
Description = GENERAL SUPER PRECONSTRUCTION																					
GENERALSUPT	General Superintendent	1.00	0.00 MH		0.00	HR	8.00	82.570	8	8	WC:	NONE									
\$8.00					[]																
11015																					
Description = CLERICAL PRECONSTRUCTION SERVICES																					
CLERICAL	Clerical	1.00	24.00 MH		24.00	HR	8.00	1,020	8	8	WC:	NONE									1,020
\$1,020.00	1.0000 MH/HR		24.0000 MH		[42.5]			1,020													1,020
					42.50																42.50
Item Totals:																					
\$5,301.06	20		66.0000 MH/LS		[5301.06]			5,301													5,301
5,301.060	1 LS							5,301.06													5,301.06
BID ITEM = 30																					
Description = PROJECT MEETINGS																					
11010	Director Preconstruction Services	1.00	40.00 MH		40.00	HR	8.00	4,087	8	8	WC:	NONE									4,087
DIRECTOR	Director		40.0000 MH		102.170			4,087													4,087

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Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	Unit =	LS	Takeoff Quan:	Labor Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 30	PROJECT MEETINGS												
\$4,086.80	1.0000 MH/HR		40.0000 MH	[102.17]			4,087 102.17		1.000	Engr Quan:			4,087 102.17
11011 ESTIMATOR	Estimator Preconstruction Services	1.00	40.00 MH		Quan:				Cal: 8	WC: NONE			3,885
\$3,885.20	1.0000 MH/HR		40.0000 MH	[97.13]			3,885 97.13						3,885 97.13
11013 GENERALSUPT	GENERAL SUPER PRECONSTRUCTION	1.00	8.00 MH		Quan:				Cal: 8	WC: NONE			661
\$660.56	1.0000 MH/HR		8.0000 MH	[82.57]			661 82.57						661 82.57
11015 CLERICAL	Clerical Preconstruction Services	1.00	18.00 MH		Quan:				Cal: 8	WC: NONE			765
\$765.00	1.0000 MH/HR		18.0000 MH	[42.5]			765 42.50						765 42.50
Item Totals: 30 - PROJECT MEETINGS													
\$9,397.56	106.0000 MH/LS		106.00 MH	[9397.56]			9,398 9,397.56		1.000	Engr Quan:			9,398 9,397.56
\$9,397.560	1 LS												
BID ITEM = 40	CONSTRUCTION MANAGEMENT PLAN												
11010 DIRECTOR	Director Preconstruction Services	1.00	4.00 MH		Quan:				Cal: 8	WC: NONE			409
\$408.68	1.0000 MH/HR		4.0000 MH	[102.17]			409 102.17						409 102.17
11011 ESTIMATOR	Estimator Preconstruction Services	1.00	2.00 MH		Quan:				Cal: 8	WC: NONE			194
\$194.26	1.0000 MH/HR		2.0000 MH	[97.13]			194 97.13						194 97.13
11013 GENERALSUPT	GENERAL SUPER PRECONSTRUCTION	1.00	2.00 MH		Quan:				Cal: 8	WC: NONE			165
	General Superintendent		2.0000 MH	82.570			165						165

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Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	LS	Takeoff Quan:	Labor Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 40	CONSTRUCTION MANAGEMENT PLAN											
\$165.14	1.0000 MH/HR		2.0000 MH	[82.57]		165 82.57	1.000			0.000		165 82.57
11015 CLERICAL \$340.00	Clerical Preconstruction Services	1.00	8.00 MH			340	8.00	Cal: 8	WC: NONE			340
	Clerical		8.0000 MH	[42.5]		340 42.50						340 42.50
Item Totals: 40 - CONSTRUCTION MANAGEMENT PLAN [1108.08]												
\$1,108.08	16.0000 MH/LS		16.00 MH			1,108						1,108
1,108.080	1 LS					1,108.08						1,108.08
BID ITEM = 50 CONSTRUCTION SCHEDULE												
11010 DIRECTOR \$2,043.40	Director Preconstruction Services	1.00	20.00 MH			2,043	8.00	Cal: 8	WC: NONE			2,043
	Director		20.0000 MH	[102.17]		2,043 102.17						2,043 102.17
11011 ESTIMATOR \$582.78	Estimator Preconstruction Services	1.00	6.00 MH			583	8.00	Cal: 8	WC: NONE			583
	Estimator		6.0000 MH	[97.13]		583 97.13						583 97.13
11013 GENERALSUPT \$495.42	GENERAL SUPER PRECONSTRUCTION	1.00	6.00 MH			495	8.00	Cal: 8	WC: NONE			495
	General Superintendent		6.0000 MH	[82.57]		495 82.57						495 82.57
11015 CLERICAL \$85.00	Clerical Preconstruction Services	1.00	2.00 MH			85	8.00	Cal: 8	WC: NONE			85
	Clerical		2.0000 MH	[42.5]		85 42.50						85 42.50
Item Totals: 50 - CONSTRUCTION SCHEDULE [3206.6]												
\$3,206.60	34.0000 MH/LS		34.00 MH			3,207						3,207

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Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pes	Quantity Unit	Unit Cost	Takeoff Quan:	Labor Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 50											
Description = CONSTRUCTION SCHEDULE											
3,206.600	1 LS			Unit = LS	3,206.60		1.000				3,206.60
BID ITEM = 60											
Description = DESIGN DOCUMENT REVIEWS											
11010	Director Preconstruction Services	1.00	56.00 MH	Unit = LS	56.00	8.00	Cal: 8	WC: NONE			5,722
DIRECTOR	Director		56.0000 MH	Quan: 102.170	5,722						5,722
\$5,721.52	1.0000 MH/HR			[102.17]	102.17						102.17
11011	Estimator Preconstruction Services	1.00	40.00 MH	Unit = LS	40.00	8.00	Cal: 8	WC: NONE			3,885
ESTIMATOR	Estimator		40.0000 MH	Quan: 97.130	3,885						3,885
\$3,885.20	1.0000 MH/HR			[97.13]	97.13						97.13
11013	GENERAL SUPER PRECONSTRUCTION	1.00	28.00 MH	Unit = LS	28.00	8.00	Cal: 8	WC: NONE			2,312
GENERALSUPT	General Superintendent		28.0000 MH	Quan: 82.570	2,312						2,312
\$2,311.96	1.0000 MH/HR			[82.57]	82.57						82.57
11015	Clerical Preconstruction Services	1.00	16.00 MH	Unit = LS	16.00	8.00	Cal: 8	WC: NONE			680
CLERICAL	Clerical		16.0000 MH	Quan: 42.500	680						680
\$680.00	1.0000 MH/HR			[42.5]	42.50						42.50
Item Totals: 60 - DESIGN DOCUMENT REVIEWS											
\$12,598.68	140.0000 MH/LS		140.00 MH	Unit = LS	12,599		1.000				12,599
12,598.680	1 LS			[12598.68]	12,598.68						12,598.68
BID ITEM = 65											
Description = ALT SYSTEM EVALUATION											
11010	Director Preconstruction Services	1.00	8.00 MH	Unit = LS	8.00	8.00	Cal: 8	WC: NONE			817
DIRECTOR	Director		8.0000 MH	Quan: 102.170	817						817

PM

Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	Takeoff Quan:	Engr Quan:	Materials	Equipment	Aggregate	Trucking	Sub	Total
BID ITEM = 65	ALT SYSTEM EVALUATION			LS								
\$817.36	1.0000 MH/HR		8.0000 MH	[102.17]	817 102.17	1.000						817 102.17
11011 ESTIMATOR \$1,554.08	Estimator Preconstruction Services Estimator 1.0000 MH/HR	1.00	16.00 MH 16.0000 MH	97.130 [97.13]	Hrs/Shift: 1,554 1,554 97.13	8.00	Cal: 8		WC: NONE			1,554 1,554 97.13
11013 GENERALSUPT \$330.28	GENERAL SUPER PRECONSTRUCTION General Superintendent 1.0000 MH/HR	1.00	4.00 MH 4.0000 MH	82.570 [82.57]	Hrs/Shift: 330 330 82.57	8.00	Cal: 8		WC: NONE			330 330 82.57
11015 CLERICAL \$170.00	Clerical Preconstruction Services Clerical 1.0000 MH/HR	1.00	4.00 MH 4.0000 MH	42.500 [42.5]	Hrs/Shift: 170 170 42.50	8.00	Cal: 8		WC: NONE			170 170 42.50
Item Totals: 65 - ALT SYSTEM EVALUATION												
\$2,871.72	32.0000 MH/LS		32.00 MH	[2871.72]	2,872 2,871.72							2,872 2,871.72
2,871.720	1 LS											
BID ITEM = 70	CON COST ESTIMATE AND MODELS			LS								
\$3,269.44	Director Preconstruction Services Director 1.0000 MH/HR	1.00	32.00 MH 32.0000 MH	102.170 [102.17]	Hrs/Shift: 3,269 3,269 102.17	8.00	Cal: 8		WC: NONE			3,269 3,269 102.17
11011 ESTIMATOR \$9,130.22	Estimator Preconstruction Services Estimator 1.0000 MH/HR	1.00	94.00 MH 94.0000 MH	97.130 [97.13]	Hrs/Shift: 9,130 9,130 97.13	8.00	Cal: 8		WC: NONE			9,130 9,130 97.13
11013 GENERALSUPT	GENERAL SUPER PRECONSTRUCTION General Superintendent 1.00	1.00	24.00 MH	82.570	Hrs/Shift: 1,982	8.00	Cal: 8		WC: NONE			1,982

PM

Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pos	Quantity Unit	Unit Cost	Labor	Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 70	CON COST ESTIMATE AND MODELS			Unit =	Takeoff Quan:	1.000	Engr Quan:	0.000			
\$1,981.68	1.0000 MH/HR		24.0000 MH	[82.57]	1,982						1,982
					82.57						82.57
11015	Clerical Preconstruction Services			Quan:	Hrs/Shift:	8.00	Cal:	8	WC:	NONE	
CLERICAL	Clerical	1.00	24.00 MH	42.500	1,020						1,020
\$1,020.00	1.0000 MH/HR		24.0000 MH	[42.5]	1,020						1,020
					42.50						42.50
Item Totals: 70 - CON COST ESTIMATE AND MODELS											
\$15,401.34	174.0000 MH/LS		174.00 MH	[15401.34]	15,401						15,401
15,401.340	1 LS				15,401.34						15,401.34
BID ITEM = 75	CONS SCHEDULE OF VALUES			Unit =	Takeoff Quan:	1.000	Engr Quan:	0.000			
11010	Director Preconstruction Services			Quan:	Hrs/Shift:	8.00	Cal:	8	WC:	NONE	
DIRECTOR	Director	1.00	8.00 MH	102.170	817						817
\$817.36	1.0000 MH/HR		8.0000 MH	[102.17]	817						817
					102.17						102.17
11011	Estimator Preconstruction Services			Quan:	Hrs/Shift:	8.00	Cal:	8	WC:	NONE	
ESTIMATOR	Estimator	1.00	16.00 MH	97.130	1,554						1,554
\$1,554.08	1.0000 MH/HR		16.0000 MH	[97.13]	1,554						1,554
					97.13						97.13
11013	GENERAL SUPER PRECONSTRUCTION			Quan:	Hrs/Shift:	8.00	Cal:	8	WC:	NONE	
GENERSUPT	General Superintendent	1.00	0.00 MH	82.570							82.570
\$0.00				[]							
11015	Clerical Preconstruction Services			Quan:	Hrs/Shift:	8.00	Cal:	8	WC:	NONE	
CLERICAL	Clerical	1.00	8.00 MH	42.500	340						340
\$340.00	1.0000 MH/HR		8.0000 MH	[42.5]	340						340
					42.50						42.50
Item Totals: 75 - CONS SCHEDULE OF VALUES											
\$2,711.44	32.0000 MH/LS		32.00 MH	[2711.44]	2,711						2,711

Dana

Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	Takeoff Quan:	Engr Quan:	Cal:	Hrs/Shift:	WC:	Trucking	Aggregate	Materials	Labor Equipment	Sub	Total
BID ITEM = 75															
Description = CONS SCHEDULE OF VALUES															
2,711.440	1 LS			Unit = LS	2,711.44	1.000									2,711.44
BID ITEM = 80															
Description = GMP PROPOSALS															
11010	Director Preconstruction Services	1.00	8.00 MH	Quan: 102.170	817	8.00	8	817	NONE						817
\$817.36	Director		8.0000 MH	[102.17]	817			817							817
					102.17										102.17
11011	Estimator Preconstruction Services	1.00	16.00 MH	Quan: 97.130	1,554	8.00	8	1,554	NONE						1,554
\$1,554.08	Estimator		16.0000 MH	[97.13]	1,554			1,554							1,554
					97.13			97.13							97.13
11013	GENERAL SUPER PRECONSTRUCTION	1.00	4.00 MH	Quan: 82.570	330	8.00	8	330	NONE						330
GENERALSUPT	General Superintendent		4.0000 MH	[82.57]	330			330							330
\$330.28					82.57			82.57							82.57
11015	Clerical Preconstruction Services	1.00	24.00 MH	Quan: 42.500	1,020	8.00	8	1,020	NONE						1,020
\$1,020.00	Clerical		24.0000 MH	[42.5]	1,020			1,020							1,020
					42.50			42.50							42.50
Item Totals: 80 - GMP PROPOSALS															
\$3,721.72			52.00 MH	[3721.72]	3,722			3,722							3,722
3,721.720	1 LS				3,721.72										3,721.72
BID ITEM = 90															
Description = SUBCONTRACTOR SELECTION PROCESS															
11010	Director Preconstruction Services	1.00	24.00 MH	Quan: 102.170	2,452	8.00	8	2,452	NONE						2,452
DIRECTOR	Director		24.0000 MH		2,452			2,452							2,452

PUR

Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	Takeoff Quan:	Labor Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 90	SUBCONTRACTOR SELECTION PROCESS			LS							
\$2,452.08	1.0000 MH/HR		24.0000 MH	[102.17]	2.452 102.17		1.000	Engr Quan:	0.000		2.452 102.17
11011 ESTIMATOR \$777.04	Estimator Preconstruction Services										
	Estimator 1.00		8.00 MH	Quan: 97.130 [97.13]	777		8.00	Cal: 8	WC: NONE		777
	1.0000 MH/HR		8.0000 MH		777						777
					97.13						97.13
11013 GENERALSUPT \$330.28	GENERAL SUPER PRECONSTRUCTION										
	General Superintendent 1.00		4.00 MH	Quan: 82.570 [82.57]	330		8.00	Cal: 8	WC: NONE		330
	1.0000 MH/HR		4.0000 MH		330						330
					82.57						82.57
11015 CLERICAL \$1,360.00	Clerical Preconstruction Services										
	Clerical 1.00		32.00 MH	Quan: 42.500 [42.5]	1,360		8.00	Cal: 8	WC: NONE		1,360
	1.0000 MH/HR		32.0000 MH		1,360						1,360
					42.50						42.50
Item Totals:	90 - SUBCONTRACTOR SELECTION PROCESS										
\$4,919.40	68.0000 MH/LS		68.00 MH	[4919.4]	4,919						4,919
4,919.400	1 LS				4,919.40						4,919.40
Total of Above Sub-Biditems											
Item Totals:	10 - PRECONSTRUCTION SERVICES GMP										
\$61,237.60	720.0000 MH/LS		720.00 MH	[61237.6]	61,238						61,238
61,237.600	1 LS				61,237.60						61,237.60
BID ITEM = 100	VACUUM POTHOLE ALLOWANCE										
				EA			50.000	Engr Quan:	50.000		50.000
11014 SUPERINTENDA	SUPERINTENDENT PRECONSTRUCTION										
	Superintendent 1.00		53.33 MH	Quan: 70.000	3,733		8.00	Cal: 8	WC: NONE		3,733
	1.0000 MH/HR		53.33 MH		3,733						3,733

AMB

Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
TEM24PCN1
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	Engr Quan:	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 100										
Description = VACUUM POTHOLE ALLOWANCE										
\$3,733.10	1.0000 MH/HR		53.3300 MH	[70]	EA	50.000		50.000		3,733 70.00
11017										
Description = Potholing Preconstruction Services										
\$25,849.90	POTHOLE SUB		50.00 EA	[]	EA	8.00	8	WC: NONE	25,850 25,850 517.00	25,850 25,850 517.00
11091										
Description = TRAFFIC CONTROL PRECONSTRUCTIO										
\$4,300.00	TRAFFIC CONTROL		50.00 HR	[]	EA	8.00	8	WC: NONE	4,300 4,300 86.00	4,300 4,300 86.00
11092										
Description = SURVEY PRECONSTRUCTION										
\$5,200.00	SURVEY		50.00 EA	[]	EA	8.00	8	WC: NONE	5,200 5,200 104.00	5,200 5,200 104.00
Item Totals:										
\$39,083.00	100 - VACUUM POTHOLE ALLOWANCE		53.33 MH	[74.662]	EA	6.000		Engr Quan:	35,350 707.00	39,083 781.66
781.660	1.0666 MH/EA 50 EA			[]						
BID ITEM = 103										
Description = POTHOLE TIE IN LOCATION										
11014										
Description = SUPERINTENDENT PRECONSTRUCTION										
\$3,360.00	SUPERINTENDENT	1.00	48.00 MH	[70]	EA	8.00	8	WC: NONE	3,360 3,360 70.00	3,360 3,360 70.00
\$3,360.00	1.0000 MH/HR		48.0000 MH	[]	EA	8.00	8	WC: NONE		
11091										
Description = TRAFFIC CONTROL PRECONSTRUCTIO										
\$2,415.01	TRAFFIC CONTROL@11		6.00 DA	[]	EA	8.00	8	WC: NONE	2,415 2,415 402.50	2,415 2,415 402.50
60040										
Description = POTHOLE FOR TIE IN										
\$MPIPE	SMALL PIPE CREW		48.00 CH	Prod: 0.0000	EA	8.00	8	WC: NONE	3.45	11.00

AWB

Pierson Construction Corporation
TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	EA	Takeoff Quan:	Labor	Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 103	POTHOLE TIE IN LOCATION												
2MAG1CLSM	MAG 1 SK CLSM@115%		30.00 CY	65.000						6.000			2,243
8BH	590 Case Backhoe	1.00	48.00 HR	45.200		2,495			2,243				2,495
8RENT10WHL	RENTAL 10 WHL DUMP	1.00	48.00 HR	78.000		4,306							4,306
8ZSHORE	SHORING	3.00	144.00 HR	2.500		414							414
8ZSMALLTOOLS	SMALL TOOLS	2.00	96.00 HR	5.000		552							552
8ZTRPLATE	TRENCH PLATES	4.00	192.00 HR	0.500		110							110
LP	Pipe Layer	2.30	110.40 MH	19.500									3,336
O	Operator	1.15	55.20 MH	21.000		1,797							1,797
\$15,252.59	27.6000 MH/EA		165.6000 MH	[552]		855.51	7,877	1,312.84	2,243	373.75			15,253
271.0435	\$/CrewHr		2,542.0983 \$/Shift										2,542.10
Item Totals:	103 - POTHOLE TIE IN LOCATION			[1112]		8,493	7,877	2,415	2,243				21,028
\$21,027.60	35.6000 MH/EA		213.60 MH			1,415.51	1,312.84	402.50	373.75				3,504.60
3,504.600	6 EA												

BID ITEM	Description	Unit =	EA	Takeoff Quan:	Labor	Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 105	POTHOLE VIA SURVEY										
11014	SUPERINTENDENT PRECONSTRUCTION	Quan:	11.56 HR		8.00						809
SUPERINTENDA	Superintendent		70.000		809						809
\$809.20	1.0000 MH/HR		[70]		70.00						70.00
11092	POTHOLE VIA SURVEY	Quan:	26.00 EA		8.00						2,704
4SURVEY	SURVEY		103.997		8.00						2,704
\$2,703.92			[]		104.00						104.00
Item Totals:	105 - POTHOLE VIA SURVEY		[31.123]		809						3,513
\$3,513.12	0.4446 MH/EA				31.12						135.12
135.120	26 EA										

BID ITEM	Description	Unit =	LS	Takeoff Quan:	Labor	Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 107	PUBLIC OUTREACH										
											1,000

PMS

Pierson Construction Corporation
TEM24PCN1 TEMPE 24 PRECON NORTH AREA 7/7/08
DANA

COST REPORT

Activity Resource	Description	Pcs	Quantity Unit	Unit Cost	Labor	Equipment	Materials	Aggregate	Trucking	Sub	Total
BID ITEM = 107 Description = PUBLIC OUTREACH Unit = LS Takeoff Quan: 1.000 Engr Quan: 1.000											
11052	PUBLIC OUTREACH									20,000	20,000
4PUBLICRELAT	PUBLIC RELATIONS		200.00 HR	100.000	160.00 HR	8.00	8.00	Cal: 8	WC: NONE	20,000	20,000
\$20,000.00			[]							125.00	125.00
BID ITEM = 110 Description = PRINTING (REPRODUCTION) Unit = LS Takeoff Quan: 1.000 Engr Quan: 1.000											
11016	Office Supplies Preconstruction Services		1.00 LS	2,000.000	1.00 LS	8.00	8.00	Cal: 8	WC: NONE	2,000	2,000
2	Permanent Matl.			[]						2,000	2,000
\$2,000.00			[]							2,000.00	2,000.00
Item Totals: 110 - PRINTING (REPRODUCTION) [] 2,000.00 2,000.000 1 LS											
\$146,861.32	*** Report Totals ***				74,273	7,877	4,243			60,469	146,861

>>> indicates Non Additive Activity
 -----Report Notes:-----
 The estimate was prepared with TAKEOFF Quantities.
 This report shows TAKEOFF Quantities with the resources.

Bid Date: 07/07/08 Owner: Engineering Firm:
 Estimator-In-Charge:

JOB NOTES

Estimate created on: 06/17/2008 by User#: 2 - DANA
 Source estimate used: F:\HEAVYBID\EST\CM&REST
 *****Estimate created on: 07/07/2008 by User#: 2 - DANA
 Source estimate used: F:\HEAVYBID\EST\TEM24PC

POB

COST REPORT

Activity Resource	Description	Pes	Quantity Unit	Unit Cost	Labor Equipment	Materials	Aggregate	Trucking	Sub	Total
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BID ITEM = 110
 Description = PRINTING (REPRODUCTION) Unit = LS Takeoff Quan: 1.000 Engr Quan: 1.000

* on units of MH indicate average labor unit cost was used rather than base rate.
 [] in the Unit Cost Column = Labor Unit Cost Without Labor Burdens
 In equipment resources, rent % and operating % not = 100% are represented as XXX%YYY where XXX=Rent% and YYY=Operating%

-----Calendar Codes-----

Calendars are found in crew and labor codes and have the format XXXdY where
 XXX = The Calendar and Y = The Starting Day of the Week with Day 1 = Monday, etc.

- 510 Five ten hour days
- 8 8 hour days
- SAT Saturday and Sunday work

RMS

**CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS**

**AFFIDAVIT OF CONSTRUCTION MANAGER AT RISK
REGARDING
HEALTH INSURANCE**

_____,
Arizona

Date _____

**Water Line Replacement (Myrtle Avenue, Fifth Street, Forest Avenue, Mill Avenue, and Apache Boulevard)
Project No. 3202891**

I hereby certify that _____ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of \$30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company: _____

Type of Insurance (PPO, HMO, POS, INDEMNITY): _____

Policy No.: _____

Policy Effective Date (MM/DD/YY): _____

Policy Expiration Date (MM/DD/YY): _____

Signed and dated at _____, this _____ day of _____, 2008.

Construction Manager at Risk

By: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2008.

Notary Public

My commission expires:

City of Tempe

Guidelines for Implementation of Health Insurance

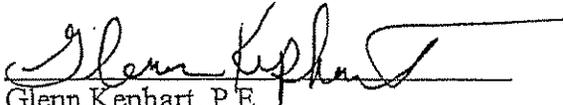
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of \$30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of \$30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.
2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours, that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120th day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.
3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.
4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.
5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.
6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.
8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.


Glenn Kephart, P.E.
Public Works Manager