# Staff Summary Report

Tempe

**Council Meeting Date:** 4/09/2009 **Agenda Item Number:** _____

**SUBJECT:** Request to award a construction manager at risk (CMAR) contract with Hunter Contracting Company for construction services, award a construction management contract with CMX, and approve a project contingency all related to modifications to the Johnny G. Martinez Water Treatment Plant.

**DOCUMENT NAME:** 20090409PWTG02 JOHNNY G. MARTINEZ WATER TREATMENT PLANT (0811-03) PROJECT NO. 3201091

**COMMENTS:** Total amount for the construction services contract is $2,124,157.36, total amount for the construction management contract is $253,113.57, and the amount of the project contingency is $212,000.

**PREPARED BY:** Theresa Galindo, Acting Engineering Contract Administrator (x8518)

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

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

**LEGAL REVIEW BY:** Judi Morgan, Assistant City Attorney (x8227)

**FISCAL NOTE:** Sufficient funds are available in Capital Improvement Fund No. 3201091.

**RECOMMENDATION:** Award construction services and construction management contracts and approve project contingency.

**ADDITIONAL INFO:** The scope of work for the CMAR construction services contract includes additional work due to design revisions, site conditions and owner requested scope of work changes.

The project contingency has been established at $212,000, which is approximately ten percent (10%) of the construction services contract amount, to cover possible unforeseen conditions arising during construction.

Staff has negotiated the CMAR construction services fee and considers it reasonable for the scope of services. Hunter Contracting Company was selected by a review committee as the most qualified firm following the process set forth in A.R.S. § 34-601 through 611.

CMX will provide construction management services, which includes review of submittals, weekly meetings, site visits, resolving field issues, and assisting the City with other construction management duties. Staff negotiated the fee and considers it reasonable for the scope of services. CMX was selected from our consultant on-call list based on a process pursuant to A.R.S. § 34-103.

COPY

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

## CONTRACT DOCUMENTS

## FOR

## JOHNNY G. MARTINEZ WATER TREATMENT PLANT MODIFICATIONS GMP 4

## PROJECT NO. 3201091

EXPIRES 9/30/09

**(for Contract General Conditions and Special Provisions)**

## CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES

## CITY COUNCIL MEMBERS

Mayor – Hugh Hallman

P. Ben Arredondo
Shana Ellis
Mark Mitchell
Joel Navarro
Onnie Shekerjian
Corey D. Woods

City Manager – Charles W. Meyer
City Engineer – Andy Goh, P.E.

2009

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

# CONTRACT FOR CONSTRUCTION MANAGER AT RISK CONSTRUCTION MANAGEMENT

This Contract is made and entered into this 9th day of April, 2009, by and between the **City of Tempe**, an Arizona municipal corporation ("City" or "Owner") and **Hunter Contracting Co.**, an Arizona corporation ("Construction Manager at Risk" or "CM@Risk").

A. WHEREAS, City desires to construct Johnny G. Martinez Water Treatment Plant Modifications GMP 4 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 construction services for said improvements for payment by the City as set forth herein;

C. WHEREAS, City engages CM@Risk to perform professional construction management services and construct the Project known and described as **Johnny G. Martinez Water Treatment Plant Modifications GMP 4, Project No. 3201091** ("Project"). Work shall not start until after the date of issuance of Notice to Proceed and shall be completed within one hundred eighty (180) calendar days thereafter.

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:

## 1. TERMS AND DEFINITIONS

1.1. **"Addendum"** means a document issued by City prior to City Council award of this Contract 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 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 and conditions of this Contract signed by the parties of the Contract.

1.4. **"Business Day"** means any calendar day except Saturdays, Sundays and holidays observed by 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 CM@Risk that alters or amends the Contract.

1.7. **"Construction Fee"** means CM@Risk's total administrative costs, including home office overhead if any, and profit, whether at CM@Risk's principal or branch offices.

1.8. **"Construction Manager Professional"** means the person, firm or corporation having a contract with the City to provide construction management services for this Project.

1.9. **"CM@Risk" ("Construction Manager at Risk" or "Contractor")** means the person, firm, corporation or other approved legal entity with whom City has contracted with to provide design services or construction services.

1.10. **"Contingency"** means a fund to cover non-general conditions cost growth during the Project used by CM@Risk with City approval, for charges in material costs or availability, resource availability, production capacity or unforeseen Project circumstances. The amount of 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 City for costs resulting from City directed changes to the Work to be performed under the Contract or unforeseen site conditions. The amount of City's contingency will be set solely by City.

1.12. **"Contract"** means this written document, including all addenda, exhibits, attachments and schedules attached thereto, signed by City and CM@Risk covering the construction phase of the Project. The Contract collectively represents the entire agreement between City and 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 CM@Risk in the proper performance of the Work. 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. Cost of the Work shall not include 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 CM@Risk during the conceptual design phase and based on information from the Project Team and CM@Risk's records of similar Projects. The model will evolve as the design progresses and be maintained by CM@Risk throughout the design phase and will include any assumptions and clarifications made by CM@Risk. Cost Model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP, when required by the Project Team. Cost Model is subject to approval by City in its sole discretion.

1.16. **"Data"** means all information, whether written, electronic or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by CM@Risk in the performance of this Contract.

1.17. **"Day(s)"** means calendar day(s) unless otherwise expressly stated herein.

1.18. **"Deliverables"** means the Work products prepared by CM@Risk in performing the scope of Work described in the Contract. Some of the major Deliverables to be prepared and provided by 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, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

1.19. **"Design Professional"** means the person, firm or corporation having a contract with City to furnish design services for this Project.

1.20. **"Drawings"** means documents which visually represent the scope, extent and character of the Work and which have been prepared or approved by Design Professional and 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").

1.21. **"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.

1.22. **"Engineer"** means City Engineer acting directly or through its duly authorized representative.

1.23. **"Final Acceptance"** means a written final acceptance of the Work prepared by the Engineer, after all Work has been completed in accordance with the Contract and after inspection is completed by City.

1.24. **"General Conditions Costs"** means other than expressly limited or excluded herein, the costs of 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 CM@Risk or Subcontractors; and fees for permits and licenses.

1.25. **"Guaranteed Maximum Price (GMP)"** 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.

1.26. **"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.

1.27. **"MAG Specifications"** means the Maricopa Association of Governments Uniform Standard Specifications, Maricopa Association of Governments Standard Details for Public Works Construction, latest edition, and City of Tempe Supplement thereto. The definitions set forth in MAG Specifications shall govern unless expressly defined herein.

1.28. **"Notice to Proceed"** means written notification from City to CM@Risk establishing the date on which performance of CM@Risk's obligations under this Contract shall begin.

1.29. **"Progress Payment"** means the form accepted by City and used by 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 City.

1.30. **"Project"** means the total design and construction of improvements or services and/or Work to be performed by CM@Risk.

1.31. **"Project Manager"** means Engineer or Construction Manager Professional.

1.32. **"Project Team"** means a construction services unit consisting of a Design Professional, CM@Risk, Engineer, Construction Manager Professional and other persons who are responsible for making decisions regarding the Project, as

approved by Engineer. Any other persons to be included in the Project Team shall be identified in the preconstruction conference, and are subject to approval by Engineer.

1.33. **"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.

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

1.35. **"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.

1.36. **"Subcontractor"** means an individual, firm, entity or corporation other than CM@Risk's employees, having a contract with CM@Risk to undertake to perform a part or portion of the design phase services or construction phase Work at the site for which CM@Risk is responsible. Subcontractors shall be selected through the Subcontractor bid process described in Section 13 of this Contract.

1.37. **"Substantial Completion"** means when the Work, or when a portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. Substantial Completion shall be determined by City in its sole discretion.

1.38. **"Supplier"** means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contact with CM@Risk or with any Subcontractor to furnish materials or equipment.

1.39. **"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 City.

1.40. **"Work"** means any or all of the improvements as required by the Contract, and the construction, demolition, reconstruction 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 CM@RISK

2.1. CM@Risk shall perform in accordance with the degree of care, skill and judgment that a professional construction manager in Arizona would exercise under similar conditions. CM@Risk will, at all times, perform the required

services consistent with sound and generally accepted construction, construction management and design services practices.

2.2. CM@Risk has assigned Ken Kawamoto as its representative for this Contract. Prior written approval by the City is required in the event CM@Risk requests a personnel substitution. CM@Risk shall submit the qualifications of any proposed substituted personnel to City for approval.

2.3. CM@Risk shall provide construction administration services for this Project as described in Exhibit "A". Where applicable, the services being provided under this Contract include the following:

2.3.1. CM@Risk shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all Work for the installation of the Project.

2.3.2. The full street or physical address of the construction Work location is 255 E. Marigold Lane. CM@Risk Contractor shall list each Work location in any and all contracts with each Subcontractor at any level and each Subcontractor shall include each Work location in any and all contracts with its Subcontractors at any level.

## 3. TERM

CM@Risk shall complete all 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 issued by the City. In the event delays are experienced beyond the control of CM@Risk, the schedule may be revised as determined by City in its sole discretion.

## 4. CM@RISK'S COMPENSATION

4.1. Total compensation for the services performed shall be the sum of $2,124,157.36, which is the Guaranteed Maximum Price (GMP), as established in the attached Exhibit "A" attached hereto and incorporated herein by this reference.

4.2. City will pay CM@Risk installments based on monthly progress reports and detailed invoices submitted by CM@Risk. Such payments will be made within thirty (30) days after receipt and approval by the City.

## 5. CITY'S RESPONSIBILITIES

5.1. City may designate a Construction Manager Professional for the term of this Contract. When designated, the Construction Manager Professional 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 City on any aspect of the Work will be directed to the Construction Manager Professional.

5.2. City will review Deliverables by CM@Risk, provide prompt responses to questions and render decisions to minimize delay in the progress of CM@Risk Work. City will keep CM@Risk advised concerning the progress of the City's review of the Work. CM@Risk agrees that City's inspection, review, acceptance and/or approval of CM@Risk's Work shall not relieve CM@Risk's responsibility for errors or omissions of CM@Risk or any of its Subcontractors.

5.3. Unless included in CM@Risk's services as identified herein, City may furnish with or without charge the following to the extent it is within City's possession or control:

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, 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. City additionally may:

5.4.1. Contract separately with one or more Design Professionals to provide architectural and/or engineering design services for the Project. The scope of the services for the Design Professional will be provided to CM@Risk. CM@Risk shall have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to City.

5.4.2. Supply all necessary copies of programs and reports reasonably required by CM@Risk.

5.4.3. Provide CM@Risk with adequate information regarding the City's requirements for the Project.

5.4.4. Give prompt written notice to CM@Risk in the event City becomes aware of any default or defect in the Project or nonconformance with the Drawings and/or Specifications.

5.4.5. Notify CM@Risk of changes concerning or affecting budget allocations.

5.4.6. Authorize the Project Manager to approve the Project budget and Project schedule, render decisions and furnish information to CM@Risk.

## 6. GENERAL SCOPE OF SERVICES

6.1. CM@Risk Requirements and Conditions.

6.1.1. Licenses and Permits. The Subcontractors must carry the appropriate State of Arizona Contractor's license for the proposed Work at the time of

bid. If the Subcontractor does not have the appropriate license, the City reserves the right to reject its bid and to have the award made to the lowest bidder who has the appropriate license. Prior to execution of this Contract, CM@Risk must possess a valid City of Tempe transaction privilege license and shall provide the permit number of such for validation and must carry the appropriate State of Arizona Contractor License.

6.2. Uniform Standard Specifications

6.2.1. Unless otherwise specified herein, all Work performed under this Contract shall be accomplished in accordance with the MAG Specifications as defined in Section 1.27.

6.2.2. In the case of discrepancy or conflict, the order in which the Contract sections govern is as follows from the highest to lowest: special terms and conditions, technical specifications, plan, general terms and conditions, City of Tempe Supplement, MAG Specifications, and MAG Details.

6.2.3. All bids shall be made in accordance with the General Conditions of the MAG Specifications.

6.3. Examination of Premises.

6.3.1. CM@Risk shall visit the site of the Project and shall fully acquaint itself with the conditions as they exist, so that it may fully understand the facility, difficulties and restrictions attending the execution of the Work.

6.3.2. Subcontractor bidders shall also thoroughly examine and be familiar with the Specifications and other Contract requirements. The failure of CM@Risk to obtain, receive or examine any addenda to the proposed Contract, or to visit the site and acquaint itself with the conditions there existing, shall not relieve it from any obligation with respect to its proposal.

6.3.3. By submitting a proposal, CM@Risk agrees that it has examined the site, Specifications and the Contract and accepts, without recourse, all site conditions and the proposed Contract, except for conditions that could not have been reasonably foreseen or discovered upon examination of the site, specifications and the Contract.

6.4. Project Meetings. CM@Risk shall attend Project Team meetings and all other meetings as directed by City.

6.5. CM@Risk shall perform any and all services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. CM@Risk will promptly notify City in writing in the event that CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work.

6.6. Description of Work. The proposed Work is construct approximately 3,900 feet of new 24-inch water transmission line along the north maintenance road of the Western Canal between Rural and Price Roads. The new pipeline will enable water from four wells located along the canal to be pumped to the South Tempe Water Treatment Plant together with associated Work as described in the attached Specifications.

6.7. Traffic Control.

6.7.1. All traffic shall be regulated in accordance with MAG Standard Specifications and MAG Standard Details; the City of Phoenix Barricade Manual, latest edition, with City of Tempe revisions, available through the City of Tempe Transportation Division (Transportation) at 480-350-8219; the Manual on Uniform Traffic Control Devices (MUTCD); and any special provisions included herein.

6.7.2. At the time of the pre-construction conference, CM@Risk shall designate an American Traffic Safety Services Association (ATSSA) certified individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. At the same time, City shall designate a representative who will be responsible to see that all traffic control and traffic control alterations are implemented per these traffic control specifications.

6.7.3. CM@Risk shall have the full responsibility and liability for traffic control for this Project. CM@Risk shall submit a Traffic Control Plan to the Transportation Division for approval one week prior to beginning Work under this Contract. It shall be noted that traffic under this Contract shall include all motor vehicles, bicyclists, and pedestrians.

6.7.4. During construction it may be necessary to alter traffic control as approved by the Transportation Division. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the ADOT Traffic Control Manual; or the City of Phoenix Barricade Manual, latest edition, with City of Tempe revisions. The most restrictive manual shall apply.

6.7.5. No measurement will be made for traffic control. No payment will be made for traffic control. The cost thereof shall be included in the GMP Proposal for the construction or installation of the items to which such traffic control is incidental or appurtenant. Any revisions shall be submitted to the Transportation Division for review and approval.

6.7.6. In the event CM@Risk damages any traffic signal equipment, traffic signal conduit, and/or circuits, it shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the City. Any damage repaired by the City will be billed to CM@Risk at twice the City's cost.

6.7.7. CM@Risk shall notify all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

6.7.8. Pedestrian access shall be maintained along the length of the Project at all times per the requirements of the Americans with Disabilities Act, and as approved by the City Transportation Division.

6.7.9. Speed limits shall be strictly enforced.

6.7.10. For more information, please contact the City Transportation Division at (480) 350-8219.

6.8. Haul Permit. In any operation where more than one-tenth of an acre of surface area is disturbed and/or when unpaved onsite haul roads are used, CM@Risk will obtain a Maricopa County Earth Moving Permit as required under Rule 200 of the Maricopa County Division of Air Pollution Control Requirements. This permit will require that a Control Plan to mitigate dust and tracking problems be submitted to the County for approval prior to issuance of the Earth Moving Permit. The Control Plan should be submitted to City for review prior to County submittal to ensure that all elements of the planned operation are covered. Please contact the Maricopa County Division of Air Pollution Control at 602-506-6700 for additional details.

In addition, all Contractors hauling fill or excavation materials, where the haul exceeds five thousand (5,000) cubic yards or when the duration of the haul is more than ten (10) working days, are required to obtain a City of Tempe haul permit before the hauling operation begins. Prior to receiving a hauling permit, CM@Risk must submit the required certificate of insurance, a plan showing the proposed haul routes and a complete schedule of the hauling operation to the City Transportation Division. Prior to submittal, CM@Risk should contact Engineering Services for complete details for issuance of the City of Tempe haul permit.

6.9. Clean-Up. CM@Risk shall, upon completion of the Work, remove all temporary construction facilities, debris, and unused materials provided for in the Work, and put the site of the Work and public right-of-way in a neat and clean condition. No special payment will be made for this item.

6.10. Alteration of Work.

6.10.1. In the event that significant changes in the scope of the Work, and/or changes in the quantities due to contingencies of construction become

necessary, such changes shall be made in accordance with Section 104.2 of General Conditions in the MAG Specifications.

6.10.2. The costs associated with any extra Work as authorized by the contracting agency must be approved prior to the start of Work. Extra Work performed on an actual cost basis shall be submitted for approval within twenty-one (21) days after the completion of such Work. The final costs for additional Work shall also include any and all charges associated with extended general conditions or Contract acceleration.

6.11. Subsidiary Work. All Work called for in the Plans and Specifications shall be performed by CM@Risk and unless a specific bid item is provided for the Work, then such portion of the Work will be considered subsidiary to other Work for which payment is provided.

## 7. CONTROL OF WORK

7.1. Interpretations of Drawing and Documents. If any Subcontractor submitting a bid for the proposed Work or any part thereof is in doubt as to the true meaning of part of the Contract, or finds discrepancies in or omissions from the Contract, such Subcontractor may submit to the Engineer a written request for an interpretation or correction thereof. Subcontractor submitting the request will be responsible for its prompt delivery. Any interpretations or corrections of the proposed documents will be made by Addendum duly issued, and a copy of each addendum will be mailed or delivered to CM@Risk who shall distribute the addendum to the appropriate Subcontractor(s). City will not be responsible for any other explanation or interpretations of the documents.

7.2. CM@Risk's Representative. CM@Risk shall at all times be present at the Work in person or represented by a foreman or other properly designated agent. Instructions and information given to CM@Risk's foreman or agent on the Work shall be considered as having been given to CM@Risk.

7.3. Relocation of Utilities. All utilities in conflict with the new Work will be relocated by the utility company except as otherwise provided in the Plans and Specifications.

7.4. Supervision by CM@Risk. CM@Risk will supervise and direct the Work. It will be solely responsible for the means, methods, techniques, sequences and procedures of construction. CM@Risk will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by CM@Risk as CM@Risk's representative at the site. The supervisor shall have full authority to act on behalf of CM@Risk and all communications given to the supervisor shall be as binding as if given to CM@Risk. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the Work.

7.5. Construction Staking. Construction staking shall be provided by CM@Risk. Repair or replacement of construction stakes that have been knocked out due to

CM@Risk's Work or lack of Work, weather conditions, traffic or vandalism will be performed at CM@Risk's sole expense.

7.6. Survey Control Points. Existing survey monuments shall be protected by CM@Risk or removed and replaced under the direct supervision of the Engineer. Prior to construction, it is the responsibility of CM@Risk to notify the Engineer of any survey monuments which need to be referenced off of the monument. Any monuments which are lost and have not been referenced off due to CM@Risk's negligence and/or lack of notification to the Engineer shall be replaced at CM@Risk's expense. Lot corners shall not be disturbed without knowledge and consent of the property owner and only after such corner has been properly referenced for replacement.

7.7. Authority of the Construction Manager Professional. Construction Manager Professional shall act as the Engineer's designated representative during the construction period. Construction Manager Professional shall advise on questions concerning coordination with the City, public safety, and quality and acceptability of materials and Work performed. Construction Manager Professional or Construction Manager Professional's assigned inspector shall interpret the intent of the Contract in an unbiased manner.

Construction Manager Professional or Construction Manager Professional's assigned inspector shall be present on the site at times during construction to monitor the Work and to maintain records for Contract management. Construction Manager Professional shall promptly make decisions relative to the interpretation of the Contract so as to minimize delays in construction. Construction Manager Professional will not be responsible for directing construction, control, techniques, sequence, or procedures, or for directing job safety.

7.8. Shop Drawings, Schedules & Samples.

7.8.1. In time for each to serve its proper purpose and function, CM@Risk shall submit to Engineer such schedules, reports, drawings, lists, literature samples, instruction, directions, and guarantees as are specified or reasonably required for construction, operation, and maintenance of the facilities to be built and/or furnished under this Contract.

7.8.2. Shop drawings and Data shall be submitted to the Engineer in such number of copies as will allow Engineer to retain four (4) copies of each submittal. The submittal shall clearly indicate the specific area of the Contract for which the submittal is made. The additional copies received will be returned to CM@Risk's representative at the job site. Engineer's notations of the action taken will be noted on one (1) of these returned copies.

7.8.3. The above drawings, lists, prints, samples, and other Data shall become a part of the Contract and a copy of the same shall be kept with the jobsite Contract, and the fabrications furnished shall be in conformance with the

same. However, Engineer's review of the above drawings, lists, prints, specifications, samples, or other Data shall not release CM@Risk from its responsibility for the proper fulfillment of the requirements of this Contract nor for fulfilling the purpose of the installation nor from its liability to replace the same, should it prove defective or fail to meet the specified requirements.

7.9. As-Built Plans. CM@Risk shall provide and maintain accurate field Data on a redlined set of Contract plans, which are to be kept current and submitted as complete at the conclusion of the construction. These record plans will be used as documentation for progress payments, and upon Project completion, for the preparation of 'as-built' file plans by Design Professional. All 'as-built' information shall be on 3 ml double matte black line mylar and shall be 24" x 36" in size. Final payment will not be issued until all record Plans and as-built information are submitted by CM@Risk, and certified to be complete by the Design Professional of record.

7.10. Underground Utilities. Underground utilities indicated on the plans are in accordance with maps furnished by City and by each utility company. The locations are only approximate and require verification prior to construction as mandated by City requirements for underground street crossings and potholing.

7.11. Inspection. CM@Risk is responsible for complying with the Specifications and is hereby forewarned that final approval of any Work will not be given until the entire Project is completed and accepted. Prior to "final inspection" on any City facilities requiring a building permit, CM@Risk must call for final inspections from the Development Services and Public Works Departments of City. The final inspection must be completed prior to final acceptance and payment by Engineer.

7.12. Substantial Completion. Upon Substantial Completion of the Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the Work or completed portion of the Work, less an amount up to two and one half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in a certificate of Substantial Completion.

7.13. Beneficial Occupancy. "Beneficial occupancy" is use of a facility or Project, in whole or in part, by the owner for its intended purpose. This may occur even though some Work of the Contract remains undone. Prior to such use or occupancy, City will provide notice to the CM@Risk and complete a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

7.14. Completion of the Work. Completion of the Work is full completion of all construction associated with this Contract, including, but not limited to punch list items, close out documentation, operation and maintenance manuals, warranties, and record plans as certified by Design Professional.

7.15. Final Acceptance and Guarantee. "Final Acceptance" shall mean a written final acceptance of the Work as defined in Section 1.23.

7.16. Warranty. The Work performed under this Contract shall be guaranteed for a period of one (1) year from the date of Final Acceptance.

7.17. Emergencies. In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. MAG Specification 107.5 applies to this provision.

## 8. CONTROL OF MATERIALS

8.1. Excess Materials. Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by CM@Risk. CM@Risk shall, prior to commencement of the Work, submit a letter to the Engineer stating the location of disposal site(s) for all excess material and certifying that it has obtained the property owner's permission for the disposal of all surplus material.

8.2. Quality Control.

8.2.1. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted. All Work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from this Contract; and it shall be the duty of CM@Risk to call the Engineer's attention to apparent errors or omissions and request instruction before proceeding with the Work.

8.2.2. Engineer may, through appropriate instruction, correct errors and supply omissions, which instructions shall be as binding upon CM@Risk as though contained in the original Contract.

8.2.3. At the option of Engineer, materials to be supplied under this Contract will be tested and/or inspected either at its place of origin or at the site of the Work. CM@Risk shall give Engineer written notification well in advance of actual readiness of materials to be tested and/or inspected at point of origin. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude retesting or reinspection at the site of the Work.

## 9. ENVIRONMENTAL REQUIREMENTS

9.1. CM@Risk shall comply with all federal, state, and municipal regulations, laws, and policies relating to air, ground water quality, and water conservation. In addition, the following requirements are applicable for City construction projects.

9.1.1. Non-pick up sweepers will not be allowed except as required to make joints during chip sealing operations.

9.1.2. Water flooding of trenches with potable water will not be permitted.

9.1.3. All paints applied by sprayers shall be of a water-based type.

9.1.4. Provisions shall be made to prevent the discharge of construction silt, mud, and debris into City storm drains or streets.

9.1.5. Spills of oil, gas, chemical, or any other hazardous materials must be reported and removed by approved procedures. Mitigation measures shall be taken to prevent contamination of construction storage sites.

9.1.6. Concrete waste must be disposed of in an approved location and at least twenty-five (25) feet from established landscaping.

9.1.7. City refuse roll-off containers shall be used on City projects. Please contact the Sanitation Supervisor, at 480-350-8268 with any questions.

9.1.8. Hazardous wastes shall not be discharged into the City's sanitary sewers or storm drainage system. All waste products shall be disposed of in accordance with applicable regulations.

9.1.9. The discovery of archeological ruins or artifacts must be reported immediately, and excavation shall not resume in the identified area until approved by the Engineer.

9.1.10. All materials supplied by CM@Risk shall be one hundred percent (100%) asbestos free unless otherwise approved by the City.

9.2. No additional payment will be made for compliance with the above items.

9.3. In addition to the above, the use of new products made with reclaimed material and meeting Project Specifications is encouraged.

## 10. SAFETY REQUIREMENTS

CM@Risk shall comply with all applicable federal, state and local health and safety laws, regulations, ordinances, and requirements. In addition, the following requirements are applicable for City construction projects.

10.1. Pre-Contract Requirements.

10.1.1. CM@Risk shall submit current loss history information from all its insurance carriers before this Contract is executed. The information specific to workers' compensation insurance carriers must include a three (3) year history of both its Experience Modification Factor (EMOD) and its loss ratio.

10.1.2. CM@Risk shall provide upon request a copy of its written health and safety program and any required employee training records or certificates.

10.1.3. CM@Risk shall provide certificates of insurance and meet indemnification criteria.

10.2. Contract Requirements. CM@Risk will be required to attend a City safety briefing. The safety briefing session shall address the following issues:

10.2.1. City Safety Rules and Expectations.

10.2.2. Contractor Tailgates. CM@Risk shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.

10.2.3. Accident/Injury/Illness Procedures. Engineer and the Risk Management Division shall be contacted any time an accident, injury or illness occurs on the Project.

10.2.4. Unsafe Acts. CM@Risk employees shall be empowered to stop an unsafe act or condition at City facilities.

10.2.5. Safety Audits. City reserves the right to conduct safety audits at the job site at any time. In addition, City shall be notified should an OSHA inspection occur at a City job site.

10.2.6. Job and Site Specific Requirements. Site specific requirements such as lockout/tagout rules and evacuation plans shall be covered during the safety briefing as indicated by the Project exposures.

10.2.7. CM@Risk may have the following additional safety requirements based on the exposures of the Project:

a. CM@Risk shall implement a permit-required confined space program as required under federal and state statutes and/or regulations, and amendments thereto, for all Work that encompasses a space that 1) is large enough and so configured that an employee can bodily enter and perform assigned Work; 2) has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and 3) is not designed for continuous employee occupancy.

b. As a part of CM@Risk implementing a confined space program, it is the responsibility of CM@Risk to provide trained attendant(s) and all intrinsically safe confined space entry related equipment (example: ladders, gas detectors, safety harnesses, safety tripods, and electrical devices) as needed for safe entry of a confined space.

c. When any City employee is required to enter a confined space during the construction phase of a Project, such as for the purpose of inspection, it is the responsibility of CM@Risk to provide a trained

attendant and all necessary equipment required for safe entry of City employee.

d. Safety will be a part of the agenda for the weekly construction meetings. Items of discussion will be outstanding safety and health issues, current safety meeting topics, environmental issues and any accidents or injuries on the job. City reserves the right to request the agendas, minutes of the meetings, and documentation of any safety tailgate meetings held on the job site.

10.3. Temporary Barricades.

10.3.1. Temporary barricades shall be regulated in accordance with the City of Phoenix Traffic Control and Barricade Manual, latest edition, with City of Tempe revisions available through the City of Tempe Transportation Division at 480-350-8219.

10.3.2. No additional payment will be made for temporary barricades. Temporary barricades will be considered subsidiary items to those items for which payment is made.

10.4. Protection of Finished or Partially Finished Work.

10.4.1. CM@Risk shall properly guard and protect all finished or partially finished Work, and shall be responsible for the same until that phase is completed and accepted by the Engineer.

10.4.2. Estimate or partial payment of Work so completed shall not release CM@Risk from such responsibility but he shall turn over the entire Work in full accordance with these Specifications before final payment can be made.

10.5. Blue Stake. CM@Risk is required to notify Blue Stake at 602-263-1100 prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21-32, as amended. CM@Risk shall directly contact City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities.

10.6. Salt River Project Construction Clearance Agreement. Salt River Project requires all contractors who will be working on its facilities to sign a standard form "Construction Clearance Agreement" prior to issuance of a license. This agreement sets forth the requirements to complete the proposed Work in an allotted time frame or to pay full costs for others to complete. It also obligates the contractor to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances including, but not limited to, the OSHA Permit Required Confined Space rules, as amended. CM@Risk is responsible for executing a "Construction Clearance Agreement" with Salt River Project, if required, and furnishing a copy to City prior to proceeding with any construction on Salt River Project facilities.

10.7. Notification of Property Owners. All property owners that may be affected by the proposed construction activities shall be notified of scope and duration of the construction activities by CM@Risk prior to start of construction.

10.8. Access. Access shall be maintained to adjacent businesses at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. If only one driveway exists, then access shall be maintained to at least one-half of the driveway at a time. Access to adjacent private driveways shall be maintained during all non-working hours.

10.9. Protection of Existing Facilities. CM@Risk is to protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected and/or braced by CM@Risk. CM@Risk shall notify the appropriate utility company or agency of any construction that may affect its facilities and state the course of action which will be taken to protect same.

10.10. Storm Water Pollution Prevention Plan and AZPDES Permit.

10.10.1. This Project is subject to Arizona Pollutant Discharge Elimination System (AZPDES) General Permit requirements for discharge from construction activities to waters of the United States. Under provisions of that permit, CM@Risk shall be designated as permittee, and shall be responsible for providing necessary material and taking appropriate measures to assure that all discharges authorized by the General Permit shall be consistent with the terms and conditions of the General Permit. The AZPDES Construction General Permit requirements for construction and Storm Water Pollution Prevention Plan can be viewed at the City of Tempe Engineering Division or downloaded from www.adeq.state.az.us/environ/water/permits/links.html.

10.10.2. CM@Risk shall complete and submit the following:

a. Notice of Intent (NOI) for Coverage under AZPDES Permit No. AZG2003-001 for Construction Activity Discharges to Waters of the United States, including certification of the signature.

b. Storm Water Pollution Prevention Plan (SWPPP) for the Project.

c. Notice of Termination (NOT) of coverage under the AZPDES Construction General Permit.

10.10.3. All Subcontractors shall comply with all requirements of the AZPDES Construction General Permit and the Project SWPPP. The SWPPP shall be kept on the Project site at all times, and shall be retained by the permittee for three (3) years following Project completion.

10.10.4. CM@Risk shall submit completed and signed NOI forms **PRIOR TO THE PROJECT PRECONSTRUCTION CONFERENCE** to the following address: Stormwater Program – Water Permits Section/NOI, Arizona Department of Environmental Quality, 1110 West Washington, Phoenix 5415B-3, Arizona 85007. Copies shall be transmitted to the Engineer at the time of the preconstruction meeting. CM@Risk shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

10.10.5. Failure by CM@Risk (or any of its appropriate Subcontractors) to submit the NOI forms within this time frame (or to promptly make revisions to those forms as requested by the City) which prevents submittal of the forms to the Arizona Department of Environmental Quality within the mandated deadline of forty-eight (48) hours prior to start of construction will result in delay of the start of construction. CM@Risk will not be entitled to any claim for additional compensation for additional costs resulting from such a delay in the construction start date. The NOI shall be posted on the construction site along with the SWPPP.

10.10.6. It is CM@Risk's responsibility to perform inspections of all storm water pollution prevention control devices on the Project on a monthly basis, and following each significant rainfall (0.50 inches or more). CM@Risk is responsible for maintaining those devices in proper working order, including cleaning and/ or repair.

10.10.7. All SWPPP reports required under this Contract shall be available to the public in accordance with the requirements of the AZPDES Construction General Permit No. AZG2003-001. CM@Risk, as the permittee of construction activities with storm water discharges covered by the AZPDES Construction General Permit, shall make plans available to the public upon request through the Arizona Department of Environmental Quality.

10.10.8. No condition of the AZPDES Construction General Permit as well as the SWPPP shall release CM@Risk from any responsibilities or requirements under other environmental statutes or regulations.

10.10.9. Upon total Project completion, acceptance, and de-mobilization, CM@Risk shall submit its completed, signed Notice of Termination (NOT) form to Stormwater Program – Water Permits Section/NOT, Arizona Department of Environmental Quality, 1110 West Washington 5415B-3, Phoenix, Arizona 85007 with a copy to the City's construction Project manager thereby terminating all AZPDES Construction General Permit coverage for the Project.

10.10.10. The unit prices for the proposal items shall include all material, labor, and other incidental costs relating to the preparation and submittal of all

AZPDES Construction General Permit related forms to Arizona Department of Environmental Quality; preparation, revision and maintenance of the SWPPP; and provision, installation, operation, and maintenance of all pollution control devices. The cost of the activities and items within this provision as provided by CM@Risk is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include CM@Risk costs in order to assure proper operation of the pollution control devices installed, including all maintenance, cleaning, and disposal costs associated with clean-up and repair following storm events or other runoff or releases on the Project.

## 11. COMMENCEMENT, PROSECUTION AND PROGRESS

11.1. Start of Work. Work shall start as soon as practical, and in no case later than seven (7) calendar days after the Notice to Proceed is issued by City and shall be completed within one hundred eighty (180) calendar days thereafter.

11.2. Contract Completion Date. The date established in the Notice to Proceed is for completion of all or specified portions of the Work. This includes items of Work to be completed under an owner allowance or as part of a contingency item. The stated Contract completion date will include weather conditions that are not unusually severe for the area and time of year. This date may be expressed as a calendar date or a number of calendar days after issuance of the Notice to Proceed.

11.3. CM@Risk's Construction Schedule. Prior to the start of Work, a construction progress schedule shall be required and shall comply with the requirements of MAG Specification 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be required with the submission of each monthly pay request.

11.4. Hindrances and Delays.

11.4.1. Except as provided in Section 22, no charge shall be made by CM@Risk for hindrances or delays from any cause during the progress of any portion of the Work embraced in this Contract; but such delays, if due to no fault or neglect of CM@Risk, may entitle CM@Risk to a time extension sufficient to compensate for the delays. The amount of the delay shall be determined by the Engineer provided CM@Risk gives Engineer immediate notice in writing of the cause of such delay.

11.4.2. The parties agree to negotiate for the recovery of actual costs related to expenses incurred by CM@Risk for a delay under the following circumstance:

a. If City is solely responsible for the delay which is unreasonable under the circumstances,

b. Which delay was not within the contemplation of the parties to the Contract at the time the Contract was entered into, and

c. CM@Risk can show the impact of the delay on the critical path of the construction activity as indicated in an approved Construction Progress Management schedule.

11.4.3. Unless specifically provided for or otherwise stated herein, the maximum compensation for delays, shall not exceed CM@Risk's actual cost.

11.4.4. This section shall not be construed to void any provisions of this Contract, which require notice of delays, which provide for alternative dispute resolution or other procedures for settlement or which provide for liquidated damages.

11.5. Liquidated Damages. Unless otherwise specified, liquidated damages will be applied in accordance with MAG Specification 108.9. Completion of the Work as stated in this Contract is the same as completion of the Work as stated in MAG Specification 108.9. Damages will be applied at the amounts specified in Table 108.1.

## 12. SUBCONTRACTOR AND SUPPLIER SELECTIONS

12.1. CM@Risk will develop Subcontractor interest, submit the names of a minimum of three (3) qualified Subcontractors for each trade in the Project for approval by City and solicit bids for the various Work categories. If there are not three (3) qualified Subcontractors available for a specific trade or there are extenuating circumstances warranting such, CM@Risk may request approval by City to submit less than three (3) names. Without prior approval by City, no change in City-approved Subcontractors will be allowed.

12.2. If City objects to any nominated Subcontractor or supplier or to any self-performed Work for good reason, CM@Risk will nominate a substitute Subcontractor or supplier. This provision shall in no way be deemed to diminish CM@Risk's responsibility for Subcontractor or impose liability upon City for contracting with any Subcontractor.

12.3. 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.

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

12.5. In accordance with A.R.S. § 34-603, CM@Risk shall perform, with CM@Risk's own organization, construction work that amounts to not less than forty-five percent (45%)of the total Contract price for construction. The total Contract price for construction does not include the cost of preconstruction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation.

12.6. CM@Risk will submit a completed bid tabulation form to City within a reasonable time after the closing of the bid opening proceedings.

12.7. If after award of Subcontractors or suppliers, City objects to any nominated Subcontractor or supplier, or to any self-performed Work for good cause, CM@Risk will nominate a substitute Subcontractor or supplier, preferably if such option is still available, from those who submitted bids for the Work identified.

12.8. CM@Risk, upon opening of bids for Subcontractors will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective suppliers selected by each apparent low bidder. CM@Risk will resolve any bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

12.9. Within fifteen (15) days after Subcontractor bid opening, CM@Risk will deliver to City a written notice of intent to award, itemizing the Subcontractors and suppliers selected by CM@Risk. The notice of intent to award will detail: (a) for each Subcontractor agreement, the amount of the bid and the corresponding Subcontractor or supplier; (b) the sum of bids received for all intended Subcontractor agreements; and (c) trade work that CM@Risk intends to self-perform, if any.

## 13. WARRANTY

CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Specifications and Contract, of good quality, in conformance with the Specifications and the other CM@Risk Contract and free of defects in materials and workmanship. CM@Risk's warranty obligation excludes defects caused by abuse, alterations or unreasonable failure to maintain the construction by persons other than CM@Risk, Subcontractors or others under CM@Risk control. Nothing in this warranty shall limit any manufacturer's warranty which provides City with greater warranty rights than set forth in herein or in the Contract. CM@Risk will provide City with all manufacturers' warranties and operation and maintenance manuals upon substantial completion of the Work. CM@Risk's warranty shall be for one (1) year and will commence for all portions of the Work upon Final Acceptance of the entire Work as determined by City under the Contract. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

## 14. INSURANCE

14.1. Without limiting any of their obligations or liabilities, 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 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 City.

14.2. General Clauses.

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

14.2.2. 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 City.

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

14.2.4. Claim Reporting. 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 City.

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

14.2.6. 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. CM@Risk shall be solely responsible for deductible or self-insured retentions and City may require 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.

14.2.7. Policies and Endorsements. City reserves the right to request and to receive, within ten (10) Business Days, information on any or all of the above policies or endorsements.

14.2.8. Certificates of Insurance. Prior to commencing services under this Contract, CM@Risk shall furnish 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.

14.2.9. Subconsultants/Subcontractors. CM@Risk shall include all Subconsultants and Subcontractors as insured under its policies.

14.3. Workers' Compensation.

14.3.1. 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.

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

14.4. Automobile Liability.

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 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.

14.5. Commercial General Liability.

14.5.1. 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.

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

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

14.6. CM@Risk Professional Liability. To the extent applicable, CM@Risk shall maintain contractor professional liability insurance covering errors and omissions arising out of the services performed by CM@Risk or any person employed by 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 Work as evidenced by annual certificates of insurance.

14.7. Property Coverage - Valuable Papers. 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 CM@Risk used in the completion of this Contract.

14.8. Health Insurance Requirements.

14.8.1. All Contractors who enter into a Public Works Contract in excess of Thirty Thousand Dollars ($30,000.00) with City, after January 1, 2001, must certify that they have, and all of their major Subcontractors 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 (AFF-2). Major Subcontractors 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 City.

14.8.2. Health insurance is required for all consultant and major Subcontractors 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.

14.8.3. The health insurance requirements shall apply to all employees directly involved with this Project including support and administrative personnel.

14.8.4. 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.

14.8.5. 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.

14.8.6. All Contractors 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 City at the pre-construction conference for CM@Risk and sent with the executed Contract for contractors.

14.8.7. Each insurance policy required by this Contract shall be endorsed to state that the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been give to City.

## 15. BONDS

15.1. CM@Risk shall execute a bond for any and all Work or services performed hereto, in accordance with A.R.S. § 34-211. Personal or individual bonds are not acceptable. Bonding companies and liability and excess insurance carriers shall be "Best Rated A-VII" or better as currently listed in the most recent "Best's Key Rating Guide (Property/Casualty)" published by the A.M. Best Company.

15.2. Each such bond shall be executed by a surety company or companies duly licensed to do business in the State of Arizona. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of power of attorney of the signing official.

15.3. Prior to execution of the Contract, CM@Risk shall provide a performance bond and a payment bond, each in an amount equal to the full amount (100%) of the Contract amount. Each bond shall meet the requirements of Arizona Revised Statutes.

## 16. MEASUREMENTS AND PAYMENTS

16.1. Contract Price Adjustments. The increase or decrease in Contract price resulting from a change in City requested change in Work shall be determined by one or more of the following methods:

16.1.1. Unit prices set forth in the Contract or as subsequently agreed to between the parties;

16.1.2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating Data to permit evaluation by City; and

16.1.3. Costs, fees and any other markups.

16.2. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP as shown on Exhibit "A".

16.3. If an increase or decrease cannot be agreed to as set forth in items 16.1.1 through 16.1.3, above, and City issues a change order, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Contract. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

16.4. If unit prices are set forth in the Contract or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be adjusted, in City's discretion.

16.5. If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to MAG Specification 110.

16.6. As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations.

16.7. If the parties are unable to agree and City expects CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.

## 17. RECORD KEEPING AND FINANCE CONTROLS

17.1. Records of CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally accepted accounting basis.

17.2. City, its authorized representative, and/or the appropriate federal agency, reserve(s) the right to audit CM@Risk's records to verify the accuracy and appropriateness of all pricing Data, including Data used to negotiate Contract and any change orders.

17.3. City reserves the right to decrease Contract price and/or payments made on this Contract if, upon audit of CM@Risk's records, the audit discloses CM@Risk has provided false, misleading, or inaccurate cost and pricing Data.

17.4. CM@Risk shall include a similar provision in all of its contracts with Subconsultants and Subcontractors providing services under the Contract to ensure City, its authorized representative, and/or the appropriate federal agency, has/have access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing Data.

17.5. City reserves the right to decrease Contract Price and/or payments made on this Contract if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow City to audit it's records to verify the accuracy and appropriateness of pricing Data.

## 18. MISCELLANEOUS REMOVAL AND RELOCATIONS

Miscellaneous removals and relocations shall be construed to mean the removal of all unsuitable materials whether designated or implied by the Plans and Specifications, and shall include but not be limited to the removal of such items as pipes, concrete, asphalt, block, brick, rock, metal, and other comparable items of every nature and description, unless such items are specifically designated in a separate bid item. Also, certain items require temporary removal and reinstallation such as mail box stands, sign posts, survey monument frames and covers, and other comparable items, and are included in this category.

## 19. APPROXIMATE QUANTITIES

19.1. It is expressly understood and agreed by the parties hereto that the quantities of the various classes of Work to be done and material to be furnished under this Contract, which have been estimated, as stated in the Proposal, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the proposals offered for the Work under this Contract. CM@Risk further agrees that City will not be held responsible if any claim for damages or for loss of profits is made due to a difference between the quantities of the various classes of Work herein estimated and the Work actually performed.

19.2. If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release CM@Risk from the execution and completion of the whole or any part of the Work in accordance with the Plans and Specifications herein mentioned, and for the prices herein agreed upon and fixed therefore, or excuse CM@Risk from any of the obligations or liabilities hereunder, or entitle CM@Risk to any damages or compensation except as may be provided for in this Contract.

## 20. MISCELLANEOUS WORK AND ALLOWANCES

20.1. The following items will be included in the Work with no direct payment allowed. Payment shall be included in the payment for other items for which direct payment is made.

20.1.1. CM@Risk's expenses for, but not limited to: mobilization, job site office, storage facilities, traffic control and public safety devices, sanitary facilities, utilities and telephone.

20.1.2. Cleanup including day-to-day cleanup.

20.1.3. Notification to residents adjacent to this Project prior to start of construction which would affect them.

20.1.4. Water required for compaction or dust control.

20.1.5. Miscellaneous removals and relocations not otherwise specified in the technical specifications.

20.1.6. Power pole bracing.

20.1.7. Removal of trees twelve inches (12") or less in diameter.

20.1.8. Removal, relocation and/or modification of existing walls and fences.

20.1.9. Trimming of trees and bushes.

20.1.10. Replacement of plant material and repair of irrigation equipment to meet or exceed conditions existing prior to CM@Risk beginning Work.

## 21. SPECIAL PROVISIONS

21.1. Permits.

CM@Risk shall be required to obtain all permits and licenses for the Project and pay all applicable fees. City may charge for any of the necessary City of Tempe permits and inspections. CM@Risk shall abide by all stipulations of all license and permits issued for this Project.

21.2. Key Contacts.

| | | |
|---|---|---|
| City of Tempe Engineering (Project Manager) | Jay Gokhale | 480-350-8415 |
| Blue Stake | | 602-263-1100 |

21.3. Uniformed Police Officers.

During the course of construction, City may require a uniformed police officer present to facilitate traffic control per the Tempe Barricade Manual and the Traffic Engineer's direction. Uniformed police officers will be paid for by City.

21.4. Open Trenching and Steel Plates.

The maximum amount of open trench in any state of trenching or backfilling shall be limited to five hundred feet (500'). All trenches shall be completely backfilled or covered using steel plates at the end of each working day. The use of steel plates shall not exceed seventy-two (72) hours between completion of Work in trench and final patch. Steel plates are to be installed according to Detail T-450 of the Tempe Supplement to the MAG Details. All steel plates installed will be recessed into the existing pavement by milling until the top of the plate is flush with the top of the pavement.

21.5. Confidentiality of Plans and Specifications.

21.5.1. Any Plans or Specifications CM@Risk receives regarding this Project are for official use only. CM@Risk may not share them with others except as required to fulfill the obligations of its Contract with City.

21.5.2. All record documents, Shop Drawings and other plans or drawings prepared or submitted by CM@Risk shall include the following language: "Per City of Tempe Guidelines, these Plans are official use only and may not be shared with others except as required to fulfill the obligations of CM@Risk's Contract with the City of Tempe".

21.6. Irrigation and Landscape Repair.

CM@Risk shall repair all sprinkler and irrigation systems that are disturbed in the course of the Work. There will be no separate payment for irrigation and landscape repair, the cost of which will be incidental to other bid items. It is highly recommended that CM@Risk meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

21.7. Sequence of Construction.

CM@Risk shall submit a Project sequencing schedule to the Engineer for review at the pre-construction conference. CM@Risk is on notice that City will review the proposed schedule to insure limited community impact.

21.8. Coordination with Other Contractors.

21.8.1. Other projects located on or near the site of Work may be under construction during the Contract period. Coordination between contractors may be required.

21.8.2. Should CM@Risk cause damage to the Work or property of any separate contractor at the site, or should any claim arising out of or resulting from CM@Risk's performance of the Work at the site be made by any separate contractor against CM@Risk, Design Professional, or Construction Manager Professional or any other person, CM@Risk shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by mediation, arbitration, or at law.

21.8.3. CM@Risk shall, to the fullest extent permitted by laws and regulations, indemnify and hold City, Design Professional and Construction Manager Professional and the officers, directors, employees, agents and other consultants of each and any of them harmless from and against all claims, costs, losses and damages, (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals, and all court arbitration or other dispute resolution costs) arising directly, indirectly or consequentially out of our resulting from any action, legal or equitable, brought by a separate contractor against City, Design Professional or Construction Manager Professional of the officers, directors, employees, agents or other consultants of each and any of them to the extent based on a claim caused by, arising out of, or resulting from CM@Risk's performance of the Work.

21.8.4. Should a separate contractor cause damage to the Work or property of CM@Risk or should the performance of Work by any separate contractor at the site give rise to any other claim, CM@Risk shall not institute any action, legal or equitable against City, Design Professional, or

Construction Manager Professional or the officers, directors, employees, agents, or other consultants of each and any of them or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator or arbitrator which seeks to impose liability on or to recover damages from City, Design Professional, or Construction Manager Professional or the officers, directors, employees, agents, or other consultants of each and any of them on account of such damage or claim.

21.8.5. If CM@Risk is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and City and CM@Risk are unable to agree as to the extent of any adjustment in completion time attributed thereto, CM@Risk may make a claim for an extension of time. An extension of the completion time shall be CM@Risk's exclusive remedy with respect to City, Design Professional, or Construction Manager Professional or the officers, directors, employees, agents, or other consultants of each and any of them for activities that are its respective responsibilities.

21.8.6. Cooperation between Contractors shall be in accordance with MAG Specification 105.7.

## 22. CORRECTION OF DEFECTIVE WORK

22.1. If any portion of the Work is covered over contrary to the request of City or as required by the Contract or the applicable building standards, it must be uncovered for observation at CM@Risk's expense if requested by City in writing.

22.2. If any portion of the Work, other than those portions required to be inspected or observed by City or others, prior to being covered, has been covered over, City may request that it be uncovered for inspection or observation, as applicable. If such portion is found to be in accordance with the requirements of the Specifications and other Contract, the cost of uncovering it shall be charged to the City as a change order. If such portion is found not to be in accordance with the requirements of the Specifications and other CM@Risk Contract, CM@Risk shall bear such costs.

22.3. CM@Risk agrees to promptly correct any Work that is found not to be in conformance with the Specifications and other CM@Risk Contract, whether previously inspected or observed by City's representatives or not unless a specific written waiver of such nonconformance has been provided to CM@Risk by City. This obligation shall continue for a period of one (1) year from the date of Final Acceptance of the entire Work. Nothing in this Section 22 shall waive any rights that City may have under Arizona law.

22.4. CM@Risk, upon receipt of written notice from City that the Work is not in conformance with the Specifications or other Contract, shall, within seven (7) days (except in the case of an emergency or item on the schedule critical path,

which will require immediate response) commence correction of such nonconforming Work, including, without limitation, the other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within seven (7) days, City, in addition to any other remedies provided under the Contract, may at the end of the seven (7) day period provide CM@Risk with notice that City will commence to correct such nonconforming Work with its own or other forces. CM@Risk shall be responsible for all costs and expenses that City incurs in remedying any Work not in conformance with the Specifications or the other Contract, including, without limitation, at the City's sole discretion any of City's own staff time costs and all fees incurred by City. City will notify CM@Risk of its intent to make such corrections at or before the commencement of the corrective Work.

22.5. The one (1) year period referenced in Section 13 applies only to CM@Risk's obligation to correct Work not in conformance with the Contract and shall not constitute a period of limitations with respect to any other rights or remedies the City may have with respect to CM@Risk's other obligations under the Contract or under applicable law.

## 23. WITHHOLDING PAYMENT

City may withhold payment from any Progress Payment Application to the extent necessary to protect City from loss because of:

23.1. Unsatisfactory job progress as determined by City;

23.2. Disputed Work or materials;

23.3. Defective Work not remedied;

23.4. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors;

23.5. Failure of CM@Risk to make payment to any Subcontractors within seven (7) days after receipt of each progress payment;

23.6. CM@Risk's failure to perform any of its contractual obligations under the Contract or any other agreement with City;

23.7. Deficiencies or claims asserted by City against CM@Risk arising from any other Project;

23.8. Damage to City or a separate CM@Risk caused by the fault or neglect of CM@Risk or any Subcontractor to the extent not covered by insurance;

23.9. Reasonable evidence that the entire Work or portion of the Work that City has agreed to accept separately will not be substantially complete within the Contract time(s) due to delay for which CM@Risk is responsible, or that the unpaid balance of the Guaranteed Maximum Price will not be adequate to cover

completion of the entire Work and liquidated damages for any anticipated unexcused delay for which CM@Risk is responsible; or

23.10. Any other reason which is City's reasonable judgment disqualified CM@Risk from receiving the full amount of the application for payment.

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

If the above basis for withholding payment is remedied, payment shall be made within fourteen (14) days for amounts previously withheld. Prior to any withholding pursuant to this section, City shall meet with CM@Risk to discuss potential withholding and attempt in good faith to resolve such issue without the need for withholding.

## 24. TERMINATION

24.1. In addition to MAG Specifications 108.11 and A.R.S. §38-511, City, at its sole discretion, may terminate this Contract for convenience or abandon any portion of the Project for which services have not been performed by the Contractor.

24.2. In the event of such termination or abandonment, Contractor shall deliver to City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the Contractor under the Contract, entirely or partially completed, together with all unused materials supplied by City.

24.3. If City terminates or abandons the Contract, City shall make final payment within sixty (60) days after Contractor has delivered the last of the completed items and City has approved and determined the final fee.

## 25. PROJECT DOCUMENTS AND COPYRIGHTS

25.1. 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 City and are to be delivered to City before the final payment is made to CM@Risk.

25.2. Documents to Bear Seal. When applicable and as required by law, CM@Risk and its Subcontractors will endorse by professional seal all plans, works, and Deliverables prepared by them for this Contract.

## 26. CONFLICT OF INTEREST

26.1. 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, CM@Risk agrees to disclose any financial or economic

interest with the Project property, or any property affected by the Project, if CM@Risk gains such interest during the course of this Contract. Only if previously approved in writing by City, CM@Risk may retain originals and supply City with reproducible mylar copies of the Work.

26.2. If 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 City.

26.3. 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.

26.4. To evaluate and avoid potential conflicts of interest, CM@Risk will provide written notice to the City, as set forth in this section, of any Work or services performed by CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by City.

26.5. Actions considered to be adverse to City under this Contract include but are not limited to:

26.5.1. Using Data as defined in the Contract, acquired in connection with this Contract, to assist a third party pursuing administrative or judicial action against City.

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

26.5.3. Using Data to produce income for CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of City.

26.6. CM@Risk represents that except for those persons, entities and Projects previously identified in writing to City, the services to be performed by 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.

26.7. 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.

## 27. COVENANT AGAINST CONTINGENT FEES

CM@Risk affirms that it has not employed or retained any company or person, other than a bona fide employee working for 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, 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 CM@Risk.

## 28. INDEMNIFICATION

To the fullest extent permitted by law, CM@Risk shall defend, indemnify and hold harmless 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 CM@Risk, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the Work, services, or professional services 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.

## 29. DISPUTE RESOLUTION

In the event of a dispute between the parties to this Contract 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.

## 30. ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by CM@Risk without prior written authorization from 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 City and CM@Risk.

## 31. ALTERATION IN CHARACTER OF WORK

In the event an alteration or modification in the character of Work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, costs of performance or Project schedule, the Work or Deliverable will nonetheless be performed as directed by City. However, before any altered or modified Work begins, a Change Order or Amendment must be approved and executed by the City, and executed by 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 CM@Risk may be adjusted accordingly solely at the discretion of City. No claim for extra Work done or materials furnished by CM@Risk will be allowed by City except as provided herein, nor

will 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 City. Work or material(s) furnished by CM@Risk without such prior written authorization shall be at CM@Risk's sole jeopardy, cost and expense, and CM@Risk hereby agrees that without prior written authorization no claim for compensation for such Work or materials furnished will be made.

## 32. SUCCESSORS AND ASSIGNS

This Contract shall not be assignable except by the prior written approval of City, and it shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

## 33. COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

CM@Risk is solely responsible for the completeness and accuracy of all 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 of CM@Risk's Work or Deliverables by the City does not relieve or diminish 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 by law or in equity to City.

## 34. DISSEMINATION OF DATA

34.1. The parties agree that all Data, including originals, images and reproductions prepared by, obtained by or transmitted to CM@Risk in connection with CM@Risk's performance of this Contract is the sole property of City.

34.2. CM@Risk shall not divulge Data to any third party without prior written consent of City. CM@Risk will not use the Data for any purposes except to perform the services required under this Contract. However, these prohibitions do not apply to the following Data, provided CM@Risk first provides the required notice to City:

34.2.1. Data which was known to CM@Risk prior to its performance under this Contract unless such Data was acquired in connection with Work performed for City;

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

34.2.3. Data which is required to be disclosed by CM@Risk by law, regulation or court order.

34.3. In the event a third party requires or requests CM@Risk to disclose Data or any other information to which CM@Risk became privy as a result of any other Contract with City, CM@Risk will first notify City as set forth in this section of the request or demand for such data. CM@Risk will timely give City sufficient facts such that City has a meaningful opportunity to either first give its consent or take such action that City may deem appropriate to protect such Data from disclosure.

34.4. 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 City, will promptly deliver, as set forth in this section, a copy of all work products and Data to the City. All Data will continue to be subject to the provisions of this section.

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

## 35. PROJECT STAFFING

35.1. 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 City objects, with reasonable cause, to any of CM@Risk's staff, CM@Risk will take prompt corrective action and, if required, remove such personnel from the Project and replace with other personnel.

## 36. INDEPENDENT CONTRACTOR

CM@Risk is and shall be an independent contractor and whatever measure of control City exercises over the Work or Deliverable pursuant to the Contract will be as to the results of the Work only. No provision in this Contract will give or be construed 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 is to comply with all applicable laws and ordinances pertaining thereto.

## 37. SUBCONTRACTORS

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

## 38. LABOR

CM@Risk agrees and covenants to use only licensed Subcontractors 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.

## 39. RECORDS/AUDIT

39.1 Records of CM@Risk's direct personnel payroll and reimbursable expenses pertaining to this Project and records of accounts between City and CM@Risk will be kept following generally accepted accounting principles, or other and recognized accounting methods at City's sole discretion. City, its authorized representative and/or the appropriate federal agency, reserve the right to audit 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. City reserves the right to decrease Contract amount and/or payments made on this Contract if, *inter alia*, upon audit of CM@Risk's records, the audit discloses that CM@Risk has provided false, misleading or inaccurate cost and/or pricing Data.

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

## 40. 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:

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| To City: | Andy Goh, P.E.<br>Deputy Public Works Manager/City Engineer<br>City of Tempe Public Works<br>Engineering Division<br>31 E. 5th Street<br>Tempe, Arizona 85281 |
| To CM@Risk: | Hunter Contracting Co.<br>701 N. Cooper Road<br>Gilbert, AZ 85233 |

| | |
|---|---|
| Copy to: | Jay Gokhale<br>City of Tempe Public Work<br>Engineering Division<br>31 E. 5th Street<br>Tempe, Arizona 85281 |

## 41. COMPLIANCE WITH STATE AND FEDERAL LAWS

41.1. 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 contendre*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, CM@Risk certifies that it does not have a scrutinized business operation in either Iran or Sudan.

41.2. 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 and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment Act, and any amendments thereto, along with all attendant laws, rules and regulations. CM@Risk acknowledges that a breach of this warranty is a material breach of this Contract and CM@Risk is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, Subcontractors and sub-Subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of CM@Risk. 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.

41.3. 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.

CM@Risk further agrees to include the provisions of this section in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

## 42. CONTRACTOR'S LICENSE AND PRIVILEGE TAX LICENSE

Prior to award of the Contract, 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.

## 43. 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 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.

## 44. 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.

## 45. 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.

## 46. ATTORNEYS' FEES AND COSTS

In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in such legal action or proceeding, and such fees and costs shall be included in any judgment rendered as determined by the Court. In addition, if any person should institute a claim or action against CM@Risk in which City is made a party defendant, CM@Risk shall indemnify, defend and hold City harmless for, from and against all liability by reason thereof, including reasonable attorney's fees and all costs incurred by City in such action.

## 47. SURVIVAL

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

## 48. 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.

## 49. 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.

## 50. 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.

## 51. TIME IS OF THE ESSENCE

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

## 52. THIRD PARTY BENEFICIARY

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

## 53. COOPERATION AND FURTHER DOCUMENTATION

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

## 54. 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.

## 55. CONFLICT IN LANGUAGE

All Work and Deliverables will conform to all applicable City 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.

## 56. HEADINGS

The headings used in the Contract are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## 57. NON-APPROPRIATION

If funds either appropriated by City Council or otherwise allocated to perform the Work become unavailable for payment by City under this the Contract, City may delay the Work for a period up to six (6) months, after which date if no funds are legally available, the Contract then in effect may be terminated by City at its option. In case of any such delay by City, CM@Risk may suspend performing the design phase services or Work, as applicable. CM@Risk may not terminate the Contract.

## 58. ASSIGNMENT OF CLAIMS

City and CM@Risk recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore, CM@Risk hereby assigns City any and all claims for such overcharges. CM@Risk in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the City.

## 59. DISPUTES

Any failure of City to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of any CM@Risk claim for relief.

## 60. SEXUAL HARASSMENT

CM@Risk shall comply with the City's current policy regarding sexual harassment. City prohibits sexual harassment by any person on City's premises or at any City affiliated functions.

## 61. AMENDMENTS

The Contract may not be changed, altered, or amended in any way except in writing signed by duly authorized representatives of CM@Risk and City.

## 62. CM@RISK RECORDS

CM@Risk agrees to retain all records relating to the Contract. CM@Risk agrees to make those records available at all reasonable times for inspection and audit by City during the term of the Contract and for a period of five (5) years after the completion of the

Contract. The records shall be provided at City Public Works Department, Engineering Division, Tempe, Arizona, or another location designated by City upon reasonable notice to CM@Risk.

## 63. NO CONSTRUCTION AGAINST DRAFTING PARTY

Each party acknowledges that it has had an opportunity to review the Contract with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.

## 64. INTERPRETATION OF CONTRACT DOCUMENTS

64.1. In the event of omissions in the Contract documents, the following shall apply.

64.1.1 If the Contract is not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, pursuant to MAG Specifications or otherwise, such detail shall be deemed to be an implied requirement of the Contract in accordance with such accepted trade standard.

64.1.2. The quality and quantity of parts or materials supplied shall conform to trade standards and be compatible with the type, composition, strength, size and profile of the parts of materials otherwise specified in the Contract documents.

## 65. FORMS

LIST OF SUBCONTRACTORS ..... SB-1

STATUTORY PERFORMANCE BOND ..... PB-1

STATUTORY PAYMENT BOND ..... B-3

CERTIFICATION BY THE CONTRACTOR AUTHORIZING EMPLOYEES TO SIGN BINDING AGREEMENTS ..... B-5

CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS ..... AFF-1

AFFIDAVIT OF GENERAL CONTRACTOR/PRIME CONSULTANT REGARDING HEALTH INSURANCE ..... AFF-2

CITY OF TEMPE GUIDELINES FOR IMPLEMENTATION OF HEALTH INSURANCE ..... AFF-3

[SIGNATURE PAGE TO FOLLOW]

## SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Contract this_____ day of _____, 2009.

CITY OF TEMPE, ARIZONA

By:_____
Mayor

By:_____
Public Works Manager

ATTEST:

_____
City Clerk

Recommended By:

_____
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

_____
City Attorney

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

Hunter Contracting Co.

_____
Name

_____
Title

_____
Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

_____
Karen M. Fillmore
Records Specialist

## LIST OF SUBCONTRACTORS

In accordance with the provisions of Section 108.2 of the MAG Specifications, CM@Risk shall provide the information listed below regarding proposed Subcontractors which are subject to approval by the City.

| Subcontractor Name | Address | Type of Work | % of Total Contract |
|---|---|---|---|
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STATUTORY PERFORMANCE BOND
PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), are held and firmly bound unto _____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 9th day of April, 2009, to complete Project No. 3201091-GMP 4, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said title and chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this Contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the Contract.

DATED this _____ day of _____, 2009.

_____
PRINCIPAL SEAL

BY:_____

**
_____
SURETY SEAL

BY:_____

_____
AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

STATUTORY PAYMENT BOND
PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____(hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, (hereinafter called the Surety), as held and firmly bound unto_____(hereinafter called the Obligee) in the amount of _____ Dollars ($_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 9th day of April, 2009, to complete Project No. 3201091-GMP 4, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to the principal or the principal's Subcontractors in the prosecution of the construction provided for the Contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that this bond is executed pursuant to Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said title and chapter to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by the Court.

DATED this _____ day of _____, 2009.

_____
PRINCIPAL SEAL

BY:_____

**
_____
SURETY SEAL

BY:_____

_____
AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

**CERTIFICATION BY THE CONTRACTOR AUTHORIZING EMPLOYEES TO SIGN BINDING AGREEMENTS**

Project Title _____

Project # _____

The following employees in our organization are duly authorized to sign binding agreements for and on behalf of the owner, partner, or principal of the corporation, or the manager or member of the limited liability company including, but not limited to, pay requests, change orders, required certifications, etc.:

| Type or Print Name | Signature |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Contractor Name: _____

Signed By: _____

Printed Name: _____

Title: _____

Date: _____

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

**CONTRACTOR'S AFFIDAVIT**
**REGARDING**
**SETTLEMENT OF CLAIMS**

_____, Arizona

Date_____

**JOHNNY G. MARTINEZ WATER TREATMENT PLANT**
**MODIFICATIONS GMP 4**
**PROJECT NO. 3201091**

To the City of Tempe, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above Project, whether by subcontractor or claimant in person, have been duly discharged or will be discharged after receipt of the final payment from the City of Tempe for the above Project.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the Contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described Project against the City of Tempe. The undersigned further agrees to defend, indemnify and save harmless the City of Tempe against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances, materials, and/or equipment furnished for the performance of said installation.

Signed and dated at _____ this _____ day of_____, 2009.

_____
Construction Manager at Risk

By:_____

STATE OF ARIZONA )
) ss
COUNTY OF MARICOPA )

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 2009.

_____
Notary Public

[Notary Seal]

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

**AFFIDAVIT OF GENERAL CONTRACTOR/PRIME CONSULTANT**
**REGARDING**
**HEALTH INSURANCE**

_____, Arizona

Date_____

**JOHNNY G. MARTINEZ WATER TREATMENT PLANT**
**MODIFICATIONS GMP 4**
**PROJECT NO. 3201091**

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 _____, 2009.

_____
General Contractor/Prime Consultant

By:_____

STATE OF ARIZONA )
) ss
COUNTY OF MARICOPA )

SUBCRIBED AND SWORN to before me this _____ day of _____, 2009.

_____
Notary Public

[Notary Seal]

**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 (24) 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 120$^{th}$ 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 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 its 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

# EXHIBIT A

GMP SUMMARY

CONTRACTOR: Hunter Contracting Company
701 N. Cooper Road
Gilbert, AZ 85233
PROJECT NO.: **320109 (3201094 & 3201561)**
PROJECT NAME: JOHNNY G. MARTINEZ - WATER TREATMENT PLANT MODIFICATIONS -

DATE: 06-Feb-09

**GMP Phase 4**

| GMP SUMMARY | | | | |
|---|---|---|---|---|
| DIRECT COSTS | | | | Amount |
| A. | Cost of the Work (Labor, Materials, Equipment, Warranty) | | | $1,442,753.77 |
| INDIRECT COSTS | | | Rate | |
| B. | CM @ Risk's Allowance | | 0.00% | |
| C. | Construction Fee | | 9.39% | $199,368.09 |
| D. | General Conditions | | 18.18% | $386,097.62 |
| | D1. | Payment and Performance Bond | 1.01% | $21,409.40 |
| | D2. | Insurance | 0.10% | $2,163.58 |
| E. | Sales Taxes | | 4.52% | $95,937.88 |
| | | | F. TOTAL CO | $2,124,157.36 |
| | | | OWNER'S CONTINGENCY | $0.00 |
| | | | TOTAL PROJECT COST | $2,124,157.36 |

# City of Tempe - Project Construction Cost Summary

| | |
|---|---|
| **Project Number:** | 320109 (3201094 & 3201561) |
| **Facility:** | JGM WTP |
| **Project Title:** | JOHNNY G. MARTINEZ - WATER TREATMENT PLANT MODIFICATIONS - GMP Phase 4 |
| **Contractor:** | Hunter Contracting Co. |
| **Date:** | 06-Feb-09 |

| Division | Description | % of Total | Cost | Comments |
|---|---|---|---|---|
| | ***Construction Indirect Costs Summary*** | | | |
| 00000 | **Division 0 - Bidding and Contract Requirements** | | | |
| 00600 | Bond | 1.01% | $21,409.40 | |
| 00710 | Builders Risk, Auto Insurance etc. | 0.10% | $2,163.58 | |
| 00720 | Permits and Licenses | 0.02% | $500.00 | |
| 00730 | Project Allowance | | | |
| 00740 | Owners Contingency | | | |
| 00750 | Fee | 9.39% | $199,368.09 | |
| 00760 | Sales Tax | 4.52% | $95,937.88 | |
| | | | | |
| 00000 | ***Sub-Total Division 00000*** | ***15.0%*** | $319,378.95 | ✓ |
| 01000 | **Division 1 - General Requirements** | | | |
| 01112 | | | | |
| 01510 | | 0.97% | $20,520.00 | |
| 01511 | | 0.14% | $3,000.00 | |
| 01512 | | | | |
| 01514 | | | | |
| 01516 | | | | |
| 01521 | | | | |
| 01561 | | | | |
| 01661 | | | | |
| 01720 | | 11.54% | $245,098.88 | |
| 01782 | | | | |
| 01783 | | | | |
| 01810 | | | | |
| 01821 | | | | |
| | | 0.82% | $17,490.72 | |
| | | 3.17% | $67,415.04 | |
| | | 0.35% | $7,500.00 | |
| | | 0.05% | $1,000.00 | |
| | | | | ✓ |
| 01000 | ***Sub-Total Division 01000*** | ***17.0%*** | $362,024.64 | |
| | **Sub-Total Indirect Costs** | **32.1%** | $681,403.59 | |
| 02000 | ***Construction Direct Costs Summary*** | | | |
| | **Division 2 - Sitework** | | | |
| 02200 | | | | |
| 02220 | | | | |
| 02315 | | | | |
| 02315 | | | | |
| 02315 | | | | |
| 02400 | | | | |
| 02900 | | | | |
| | | 1.92% | $40,769.04 | |
| | | 0.2% | $3,433.02 | |
| | | 4.2% | $88,423.97 | |
| | | 3.2% | $67,574.70 | ✓ |
| 02000 | ***Sub-Total Division 02000*** | ***9.4%*** | $200,200.73 | |
| 03000 | **Division 3 - Concrete** | | | |
| 03050 | | | | |
| 03300 | | | | |
| 03300 | | | | |
| 03300 | | | | |
| 03300 | | | | |
| 03300 | | | | |
| 03300 | | | | |
| | | | | |
| 03000 | ***Sub-Total Division 03000*** | | | |
| 04000 | **Division 4 - Masonry** | | | |
| 04220 | | 0.20% | $4,210.00 | |
| 04220 | | | | |
| 04220 | | | | |
| | | 0.1% | $1,955.00 | ✓ |
| 04000 | ***Sub-Total Division 04000*** | ***0.3%*** | $6,165.00 | |
| 05000 | **Division 5 - Metals** | | | |
| 05120 | | | | |
| 05521 | | | | |
| 05531 | | | | |
| | | | | |
| 05000 | ***Sub-Total Division 05000*** | | | |
| 06000 | **Division 6 - Wood and Plastics** | | | |
| 06611 | | | | |
| | | | | |
| 06000 | ***Sub-Total Division 06000*** | | | |

| | | | | |
|---|---|---|---|---|
| 07000 | **Division 7 - Thermal and Moisture Protection** | | | |
| 07210 | | | | |
| 07400 | | | | |
| 07800 | | | | |
| 07920 | | | | |
| | | | | |
| 07000 | ***Sub-Total Division 07000*** | | | |
| 08000 | **Division 8 - Doors and Windows** | | | |
| 08105 | | | | |
| | | | | |
| 08000 | ***Sub-Total Division 08000*** | | | |
| 09000 | **Division 9 - Finishes** | | | |
| 09910 | | | | |
| | | | | |
| 09000 | ***Sub-Total Division 09000*** | | | |
| 10000 | **Division10 - Specialties** | | | |
| 10400 | | | | |
| | | | | |
| 10000 | ***Sub-Total Division 10000*** | | | |
| 11000 | **Division 11 - Equipment** | | | |
| 11214 | | | | |
| 11241 | | | | |
| 11250 | | | | |
| | | 2.7% | $57,682.78 | ✓ |
| 11000 | ***Sub-Total Division 11200*** | *2.7%* | $57,682.78 | ✓ |
| 12000 | **Division 12 - Furnishings** | | | |
| 12510 | | | | |
| | | | | |
| 12000 | ***Sub-Total Division 12000*** | | | |
| 13000 | **Division 13 - Special Construction** | | | |
| 13201 | | | | |
| | | | $161,825.39 | ✓ |
| 13000 | ***Sub-Total Division 13000*** | *7.6%* | $161,825.39 | ✓ |
| 14000 | **Division 14 - Conveying Systems** | | | |
| | | | | |
| 14000 | ***Sub-Total Division 14000*** | | | |
| 15000 | **Division 15 - Mechanical** | | | |
| 15101 | | | $571,953.27 | |
| | | | $176,873.64 | |
| 15106 | | | | |
| 15110 | | | | |
| | | | | |
| 15143 | | 1.34% | $28,417.27 | |
| 15144 | | | | |
| 15731 | | | | |
| | | 0.7% | $14,442.20 | ✓ |
| | | 0.9% | $19,485.51 | ✓ |
| 15000 | ***Sub-Total Division 15000*** | *38.2%* | $611,161.89 | ✓ |
| 16000 | **Division 16 - Electrical** | | | |
| 16061 | | | | |
| 16120 | | | | |
| 16220 | | | | |
| 16232 | | | | |
| 16520 | | | | |
| 16851 | | 9.36% | $198,888.00 | |
| | | | | ✓ |
| 16000 | ***Sub-Total Division 16000*** | *9.4%* | $198,888.00 | ✓ |
| 17000 | **Division 17 - Instrumentation and Controls** | | | |
| 17004 | | | | |
| 17900 | | | | |
| | | | $6,839.98 | ✓ |
| 17000 | ***Sub-Total Division 17000*** | *0.3%* | $6,839.98 | ✓ |
| | **Sub-Total Direct Costs** | **67.9%** | **$1,442,753.77** | |
| | **Overall Total** | | **$2,124,167.36** | |

06-Feb-09

**Johnny G. Martinez Water Treatment Plant**

**Project No.: 3201091 (3201094 & 3201561)**

**PHASE 4 GMP**

| | -1-<br>Additional Onsite Pipe Welding | -2-<br>Chemical Piping Modifications | -3-<br>60" FLE To Existing FWPS | -4-<br>Asphalt Price Escalation | -5-<br>Grout & Bond Beam @ East Gate |
|---|---|---|---|---|---|
| Subcontractors, Materials & Supplies | $10,000.00 | $13,499.00 | $10,720.48 | $40,769.04 | $1,955.00 |
| Labor & Burden | $600.00 | $1,931.84 | $14,683.68 | | |
| Equipment, Owned & Rental | $6,700.00 | $968.96 | | | |
| Sub-Total | $17,300.00 | $16,399.80 | $25,404.16 | $40,769.04 | $1,955.00 |
| Overhead @ 6.76% | $1,169.48 | $1,108.63 | $1,717.32 | $2,755.99 | $132.16 |
| Sub-Total | $18,469.48 | $17,508.43 | $27,121.48 | $43,525.03 | $2,087.16 |
| Profit @ 4% | $738.78 | $700.34 | $1,084.86 | $1,741.00 | $83.49 |
| Sub-Total | $19,208.26 | $18,208.76 | $28,206.34 | $45,266.03 | $2,170.64 |
| Sales Tax @ 65% of 8.1% | $1,078.91 | $1,022.77 | $1,584.32 | $2,542.55 | $121.92 |
| Bond @ 1% | $204.92 | $194.26 | $300.92 | $482.91 | $23.16 |
| Sub-Total | $20,492.09 | $19,425.79 | $30,091.58 | $48,291.49 | $2,315.72 |
| Tax Exempt Materials | | | | | |
| Sales Tax on Exempt Materials | | | | | |
| Total | $20,492.09 | $19,425.79 | $30,091.58 | $48,291.49 | $2,315.72 |

Johnny G. Martinez Water Treatment Plant

PHASE 4 GMP

| | -6- Spillway Modifications | -7- Additional Programming @ Marigold & Misc. Areas | -8- Existing FWPS New Floor, Walls & Deck | -9- Existing FWPS Rebar | -10- Existing Reservoir #1 Baffle Curb |
|---|---|---|---|---|---|
| Subcontractors, Materials & Supplies | $5,290.78 | $6,839.98 | SEE EXHIBIT A UNDER MODIFICATIONS TO EXISTING FWPS | SEE EXHIBIT A UNDER MODIFICATIONS TO EXISTING FWPS | SEE EXHIBIT B LINE 45 |
| Labor & Burden | $1,417.84 | | | | |
| Equipment, Owned & Rental | $324.40 | | | | |
| | -$3,600.00 | | | | |
| Sub-Total | $3,433.02 | $6,839.98 | | | |
| Overhead @ 6.76% | $232.07 | $462.38 | | | |
| Sub-Total | $3,665.09 | $7,302.36 | | | |
| Profit @ 4% | $146.60 | $292.09 | | | |
| Sub-Total | $3,811.70 | $7,594.46 | | | |
| Sales Tax @ 65% of 8.1% | $214.10 | $426.57 | | | |
| Bond @ .8% | $40.66 | $81.02 | | | |
| Sub-Total | $4,066.46 | $8,102.05 | | | |
| Tax Exempt Materials | | | | | |
| Sales Tax on Exempt Materials | | | | | |
| Total | $4,066.46 | $8,102.05 | $469,641.26 | $104,909.13 | $48,991.21 |

Hunter Contracting Company

Johnny G. Martinez Water Treatment Plant

PHASE 4 GMP

| | -11- Existing Reservoir #1 Baffle Wall Curb | -12- Existing Reservoir #1 Lining | -13- 60" Main Coated Chips | -14- Relocate Utilities for 48" Line | -15- Cooler Modifications At New FWPS |
|---|---|---|---|---|---|
| Subcontractors, Materials & Supplies | SEE EXHIBIT B LINE 46 | SEE EXHIBIT B LINE 66 | SEE EXHIBIT C LINE 16 | $27,335.16 | $19,465.51 |
| Labor & Burden | | | | $8,219.04 | |
| Equipment, Owned & Rental | | | | $7,423.60 | |
| Credits | | | | | |
| Sub-Total | | | | $42,977.80 | $19,465.51 |
| Overhead @ 6.76% | | | | $2,905.30 | $1,315.87 |
| Sub-Total | | | | $45,883.10 | $20,781.38 |
| Profit @ 4% | | | | $1,835.32 | $831.26 |
| Sub-Total | | | | $47,718.42 | $21,612.63 |
| Sales Tax @ 65% of 8.1% | | | | $2,680.30 | $1,213.96 |
| Bond @ .8% | | | | $509.08 | $230.57 |
| Sub-Total | | | | $50,907.80 | $23,057.17 |
| Tax Exempt Materials | | | | $520.70 | |
| Sales Tax on Exempt Materials | | | | -$27.41 | |
| **Total** | **$129,406.12** | **$238,914.10** | **$28,269.59** | **$50,880.38** | **$23,057.17** |

**Johnny G. Martinez Water Treatment Plant**

**PHASE 4 GMP**

| | -16- Stormwater Revisions | -17- Upgrade To South Access Dr. Security Fence & Gate | -18- Allowance For Additional Improvements & Modifications To Site Access & Drainage | -19- Additional 6 Months Of General Requirements | TOTAL |
|---|---|---|---|---|---|
| Subcontractors, Materials & Supplies | $26,470.58 | $198,888.00 | | $18,900.00 | |
| Labor & Burden | $42,993.04 | | | $246,923.84 | |
| Equipment, Owned & Rental | $18,960.35 | | | $98,864.38 | |
| Credits | | | | | |
| Sub-Total | $88,423.97 | $198,888.00 | | $364,688.22 | |
| Overhead @ 6.76% | $5,977.46 | $13,444.83 | | $24,652.92 | |
| Sub-Total | $94,401.43 | $212,332.83 | | $389,341.14 | |
| Profit @ 4% | $3,776.06 | $8,493.31 | | $15,573.65 | |
| Sub-Total | $98,177.49 | $220,826.14 | | $404,914.79 | |
| Sales Tax @ 65% of 8.1% | $5,514.53 | $12,403.58 | | $22,743.65 | |
| Bond @ .8% | $1,047.39 | $2,355.86 | | $4,319.78 | |
| Sub-Total | $104,739.41 | $235,585.58 | | $431,978.23 | |
| Tax Exempt Materials | | | | | |
| Sales Tax on Exempt Materials | | | | | |
| **Total** | **$104,739.41** | **$235,585.58** | **$125,000.00** | **$431,978.23** | **$2,124,157.35** |

Exhibit A

# CONTINUATION SHEET

AIA DOCUMENT G703



AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing
Contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar.

APPLICATION NUMBER: TWENTY-TWO (22)
APPLICATION DATE: 12/30/2008
PERIOD TO: 12/31/2008

Use Column I on Contracts where variable retainage for line items may apply.

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED FROM PREV. APPLICATION (D+E) | WORK COMPLETED THIS PERIOD | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % (G/C) | BALANCE TO FINISH (C - G) | RETAINAGE |
| | **Modifications to Existing FWPS** | | | | | | | | |
| | Barricades | 3,259.78 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 3,259.78 | 0.00 |
| | Remove/Repair Reservoir Roof | 38,668.97 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 38,668.97 | 0.00 |
| | Demo of Concrete | 121,188.75 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 121,188.75 | 0.00 |
| | Repair Exposed Rebar Ends | 36,455.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 36,455.00 | 0.00 |
| | Drill & Expoxy Dowels | 64,580.60 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 64,580.60 | 0.00 |
| | Box Culvert | 53,495.75 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 53,495.75 | 0.00 |
| | New Floor, Walls, & Deck | 469,641.26 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 469,641.26 | 0.00 |
| | Rebar | 138,819.86 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 138,819.86 | 0.00 |
| | Caulking | 4,695.39 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 4,695.39 | 0.00 |
| | Hydro Testing | 3,883.27 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 3,883.27 | 0.00 |
| | Sump/Leak Detection System | 13,415.40 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 13,415.40 | 0.00 |
| | Allow for Additional Removals & New Construction | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 100% | 0.00 | 0.00 |
| | Scottsdale & Weber Piping (Partial) | 83,084.32 | 83,084.32 | 0.00 | 0.00 | 83,084.32 | 100% | 0.00 | 0.00 |
| | 6" DIP Leak at Fire House | 47,815.74 | 47,815.74 | 0.00 | 0.00 | 47,815.74 | 100% | 0.00 | 0.00 |
| | 8" Onsite DI Waterline / Comm. & Control Ductbank | 448,962.07 | 448,962.07 | 0.00 | 0.00 | 448,962.07 | 100% | 0.00 | 0.00 |
| | Scottsdale / Curry Mill & Overlay | 89,191.23 | 89,191.23 | 0.00 | 0.00 | 89,191.23 | 100% | 0.00 | 0.00 |
| | 60" Red Valve | 141,310.61 | 141,310.61 | 0.00 | 0.00 | 141,310.61 | 100% | 0.00 | 0.00 |
| | Check Valve / Insert Valves North Zone | 96,066.95 | 96,066.95 | 0.00 | 0.00 | 96,066.95 | 100% | 0.00 | 0.00 |
| | Additional Veneer @ Ret. Wall | 42,130.79 | 42,130.79 | 0.00 | 0.00 | 42,130.79 | 100% | 0.00 | 0.00 |
| | Additional Grouting @ Ret. Wall | 7,783.72 | 7,783.72 | 0.00 | 0.00 | 7,783.72 | 100% | 0.00 | 0.00 |
| | Additional Onsite Pipe Welding | 36,994.73 | 36,994.73 | 0.00 | 0.00 | 36,994.73 | 100% | 0.00 | 0.00 |
| | Vents @ Inlet Structure | 5,515.00 | 5,515.00 | 0.00 | 0.00 | 5,515.00 | 100% | 0.00 | 0.00 |
| | FM - 200 Fire Suppression System | 143,397.24 | 71,698.62 | 0.00 | 0.00 | 71,698.62 | 50% | 0.00 | 0.00 |
| | 24" Pump Station Bypass (Balance) | 5,443.18 | 5,443.18 | 0.00 | 0.00 | 5,443.18 | 100% | 0.00 | 0.00 |
| | **Coating of Reservoir Roof #1** | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 0.00 | 0.00 |
| | **Modify Reservoir Vents** | 108,418.20 | 41,600.00 | 0.00 | 0.00 | 41,600.00 | 38% | 66,818.20 | 0.00 |
| | **Allowance-Reservoir #1 Instrumentation & Na(Oclo) Application** | 87,940.19 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 87,940.19 | 0.00 |
| | **Allowance-Reservoir #1 Instrumentation & Na(Oclo) Application** | 87,940.19 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 87,940.19 | 0.00 |
| | **General Requirements** | | | | | | | | |
| | Mobilization | 12,232.83 | 12,232.83 | 0.00 | 0.00 | 12,232.83 | 100% | 0.00 | 0.00 |
| | Builder's Risk | 14,402.26 | 14,402.26 | 0.00 | 0.00 | 14,402.26 | 100% | 0.00 | 0.00 |
| | Temporary Facilities | 87,628.39 | 87,628.39 | 0.00 | 0.00 | 87,628.39 | 100% | 0.00 | 0.00 |
| | Supervision | 459,705.73 | 459,705.73 | 0.00 | 0.00 | 459,705.73 | 100% | 0.00 | 0.00 |
| | Surveying | 4,690.14 | 4,690.14 | 0.00 | 0.00 | 4,690.14 | 100% | 0.00 | 0.00 |
| | Bond | 100,726.29 | 100,726.29 | 0.00 | 0.00 | 100,726.29 | 100% | 0.00 | 0.00 |
| | **TOTALS** | 3,059,483.89 | 1,796,982.60 | 0.00 | 0.00 | 1,796,982.60 | 0.59 | 1,262,501.29 | 0.00 |

Exhibit B

# CONTINUATION SHEET

AIA DOCUMENT G703



AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing
Contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar.

APPLICATION NUMBER: FORTY-ONE (41)
APPLICATION DATE: 12/30/2008
PERIOD TO: 12/31/2008

Use Column I on Contracts where variable retainage for line items may apply.

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED FROM PREV. APPLICATION (D+E) | WORK COMPLETED THIS PERIOD | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % (G/C) | BALANCE TO FINISH (C - G) | RETAINAGE |
| | **12MG Reservoir** | | | | | | | | |
| 38 | point & patch fwps | 18,671.02 | 18,671.02 | 0.00 | 0.00 | 18,671.02 | 100% | 0.00 | 0.00 |
| 39 | fwps discharge structure | 42,679.01 | 42,679.01 | 0.00 | 0.00 | 42,679.01 | 100% | 0.00 | 0.00 |
| 40 | cooler pad & enclosure | 19,375.92 | 19,375.92 | 0.00 | 0.00 | 19,375.92 | 100% | (0.00) | 0.00 |
| 41 | fiw meter vaults | 45,896.66 | 45,896.66 | 0.00 | 0.00 | 45,896.66 | 100% | (0.00) | 0.00 |
| 42 | sludge drying bed | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 0.00 | 0.00 |
| 43 | switchgear bldng fndtn | 39,326.40 | 39,326.40 | 0.00 | 0.00 | 39,326.40 | 100% | (0.00) | 0.00 |
| 44 | transformer pad | 1,827.90 | 1,827.90 | 0.00 | 0.00 | 1,827.90 | 100% | 0.00 | 0.00 |
| 45 | res #1 baffle curb | 48,991.21 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 48,991.21 | 0.00 |
| 46 | res #1 baffle wall | 129,406.12 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 129,406.12 | 0.00 |
| 47 | res #1 overflow | 10,994.68 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 10,994.68 | 0.00 |
| 48 | res. #1 outlet box | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 0.00 | 0.00 |
| 49 | pole bases | 2,970.85 | 1,200.00 | 1,770.85 | 0.00 | 2,970.85 | 100% | 0.00 | 0.00 |
| 50 | caulking | 23,230.17 | 23,230.17 | 0.00 | 0.00 | 23,230.17 | 100% | 0.00 | 0.00 |
| 51 | housekeeping | 19,822.22 | 19,822.22 | 0.00 | 0.00 | 19,822.22 | 100% | (0.00) | 0.00 |
| 52 | crack injection | 9,668.86 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 9,668.86 | 0.00 |
| 53 | testing / disinfection | 17,344.21 | 9,800.00 | 0.00 | 0.00 | 9,800.00 | 57% | 7,544.21 | 0.00 |
| 54 | reinforcing steel | 1,108,095.48 | 1,108,095.48 | 0.00 | 0.00 | 1,108,095.48 | 100% | 0.00 | 0.00 |
| 55 | security wall masonry | 53,732.44 | 53,732.44 | 0.00 | 0.00 | 53,732.44 | 100% | (0.00) | 0.00 |
| 56 | ret wall veneer / cap | 44,627.84 | 44,627.84 | 0.00 | 0.00 | 44,627.84 | 100% | 0.00 | 0.00 |
| 57 | west switchgear building masonry | 18,116.52 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 18,116.52 | 0.00 |
| 58 | masonry baffle wall, exist res | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 0.00 | 0.00 |
| 59 | masonry baffle wall, new res | 41,186.05 | 41,186.05 | 0.00 | 0.00 | 41,186.05 | 100% | 0.00 | 0.00 |
| 60 | masonry evap cooler screen wall | 7,547.48 | 7,547.48 | 0.00 | 0.00 | 7,547.48 | 100% | 0.00 | 0.00 |
| 61 | misc building trades | 597,519.59 | 582,900.00 | 0.00 | 0.00 | 582,900.00 | 98% | 14,619.59 | 0.00 |
| 62 | res roof / misc metals | 1,244,426.52 | 1,244,426.52 | 0.00 | 0.00 | 1,244,426.52 | 100% | 0.00 | 0.00 |
| 63 | existing res roof / misc improvements | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 0.00 | 0.00 |
| 64 | existing res baffles | 24,153.17 | 24,153.17 | 0.00 | 0.00 | 24,153.17 | 100% | 0.00 | 0.00 |
| 65 | new res baffles | 119,675.05 | 119,675.05 | 0.00 | 0.00 | 119,675.05 | 100% | 0.00 | 0.00 |
| 66 | existing res lining | 292,872.10 | 53,958.00 | 0.00 | 0.00 | 53,958.00 | 18% | 238,914.10 | 0.00 |
| 67 | baffle hoisting | 2,459.43 | 2,459.43 | 0.00 | 0.00 | 2,459.43 | 100% | 0.00 | 0.00 |
| 68 | painting / coatings | 88,206.13 | 49,700.00 | 0.00 | 0.00 | 49,700.00 | 56% | 38,506.13 | 0.00 |
| 69 | pump package | 997,429.71 | 980,995.00 | 0.00 | 0.00 | 980,995.00 | 98% | 16,434.71 | 0.00 |
| 70 | install wier gates | 71,383.07 | 71,383.07 | 0.00 | 0.00 | 71,383.07 | 100% | 0.00 | 0.00 |
| 71 | sump / misc pumps | 7,537.77 | 6,500.00 | 0.00 | 0.00 | 6,500.00 | 86% | 1,037.77 | 0.00 |
| 72 | 60" FLE, exist 36 to res | 187,076.38 | 178,071.00 | 0.00 | 0.00 | 178,071.00 | 95% | 9,005.38 | 0.00 |
| 73 | 60" FLE bypass | 30,417.46 | 30,417.46 | 0.00 | 0.00 | 30,417.46 | 100% | 0.00 | 0.00 |
| 74 | 60" FLE exst res to inle | 102,190.42 | 78,628.00 | 17,400.00 | 0.00 | 96,028.00 | 94% | 6,162.42 | 0.00 |
| | **TOTALS** | 5,468,857.85 | 4,900,285.29 | 19,170.85 | 0.00 | 4,919,456.14 | 0.90 | 549,401.71 | 0.00 |

Exhibit C

# CONTINUATION SHEET

AIA DOCUMENT G703



AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar.

APPLICATION NUMBER: FORTY-ONE (41)
APPLICATION DATE: 12/30/2008
PERIOD TO: 12/31/2008

Use Column I on Contracts where variable retainage for line items may apply.

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED FROM PREV. APPLICATION (D+E) | WORK COMPLETED THIS PERIOD | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % (G/C) | BALANCE TO FINISH (C - G) | RETAINAGE |
| | **60" Transmission Main** | | | | | | | | |
| 1 | rem chain link fence | 4,618.36 | 4,618.36 | 0.00 | 0.00 | 4,618.36 | 100% | (0.00) | 0.00 |
| 2 | remove sidewalk | 2,100.09 | 2,100.09 | 0.00 | 0.00 | 2,100.09 | 100% | 0.00 | 0.00 |
| 3 | remove curb & gutter | 2,958.16 | 2,958.16 | 0.00 | 0.00 | 2,958.16 | 100% | 0.00 | 0.00 |
| 4 | sawcut / remove ac pvmnt | 59,010.45 | 59,010.45 | 0.00 | 0.00 | 59,010.45 | 100% | 0.00 | 0.00 |
| 5 | mill 1-1/2" | 14,726.55 | 14,726.55 | 0.00 | 0.00 | 14,726.55 | 100% | (0.00) | 0.00 |
| 6 | rem sod | 3,659.60 | 3,659.60 | 0.00 | 0.00 | 3,659.60 | 100% | (0.00) | 0.00 |
| 7 | rem 30" waterline | 3,227.41 | 3,227.41 | 0.00 | 0.00 | 3,227.41 | 100% | (0.00) | 0.00 |
| 8 | rem 42" waterline | 24,651.00 | 24,651.00 | 0.00 | 0.00 | 24,651.00 | 100% | (0.00) | 0.00 |
| 9 | relocate dam stone | 4,914.97 | 4,914.97 | 0.00 | 0.00 | 4,914.97 | 100% | 0.00 | 0.00 |
| 10 | rem / replc trffc sgnl | 15,502.37 | 15,502.37 | 0.00 | 0.00 | 15,502.37 | 100% | 0.00 | 0.00 |
| 11 | replace sidewalk | 4,996.65 | 4,996.65 | 0.00 | 0.00 | 4,996.65 | 100% | (0.00) | 0.00 |
| 12 | replace single curb | 2,704.15 | 2,704.15 | 0.00 | 0.00 | 2,704.15 | 100% | (0.00) | 0.00 |
| 13 | replace vert curb/gutter | 9,381.71 | 9,381.71 | 0.00 | 0.00 | 9,381.71 | 100% | 0.00 | 0.00 |
| 14 | pave 6" | 99,050.88 | 99,050.88 | 0.00 | 0.00 | 99,050.88 | 100% | (0.00) | 0.00 |
| 15 | pave 1-1/2" | 31,046.37 | 31,046.37 | 0.00 | 0.00 | 31,046.37 | 100% | 0.00 | 0.00 |
| 16 | coated chip seal | 29,043.95 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 29,043.95 | 0.00 |
| 17 | adjust manholes | 3,230.98 | 3,230.98 | 0.00 | 0.00 | 3,230.98 | 100% | 0.00 | 0.00 |
| 18 | adjust wv / co | 8,365.94 | 8,365.94 | 0.00 | 0.00 | 8,365.94 | 100% | (0.00) | 0.00 |
| 19 | replace traffic loops | 12,693.15 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 12,693.15 | 0.00 |
| 20 | replace traffic stripes | 4,038.73 | 0.00 | 0.00 | 0.00 | 0.00 | 0% | 4,038.73 | 0.00 |
| 21 | landscaping | 153,844.10 | 153,844.10 | 0.00 | 0.00 | 153,844.10 | 100% | 0.00 | 0.00 |
| 22 | fencing | 22,028.38 | 22,028.38 | 0.00 | 0.00 | 22,028.38 | 100% | 0.00 | 0.00 |
| 23 | dust control permit | 4,197.56 | 4,197.56 | 0.00 | 0.00 | 4,197.56 | 100% | (0.00) | 0.00 |
| 24 | precast valve vaults | 106,614.75 | 106,614.75 | 0.00 | 0.00 | 106,614.75 | 100% | 0.00 | 0.00 |
| 25 | painting / coatings | 5,192.65 | 5,192.65 | 0.00 | 0.00 | 5,192.65 | 100% | 0.00 | 0.00 |
| 26 | 60" water main - park | 1,057,707.93 | 1,057,707.93 | 0.00 | 0.00 | 1,057,707.93 | 100% | (0.00) | 0.00 |
| 27 | 60" watermain - curry rd | 885,643.25 | 885,643.25 | 0.00 | 0.00 | 885,643.25 | 100% | (0.00) | 0.00 |
| 28 | 42" watermain - curry rd | 49,160.52 | 49,160.52 | 0.00 | 0.00 | 49,160.52 | 100% | 0.00 | 0.00 |
| 29 | 36" lateral - scttsdl rd | 49,955.39 | 49,955.39 | 0.00 | 0.00 | 49,955.39 | 100% | 0.00 | 0.00 |
| 30 | 12" waterline | 98,814.90 | 98,814.90 | 0.00 | 0.00 | 98,814.90 | 100% | 0.00 | 0.00 |
| 31 | 6" vault vent piping | 23,374.34 | 23,374.34 | 0.00 | 0.00 | 23,374.34 | 100% | 0.00 | 0.00 |
| 32 | cathodic protection | 19,450.52 | 19,450.52 | 0.00 | 0.00 | 19,450.52 | 100% | 0.00 | 0.00 |
| 33 | trench plates | 21,291.26 | 21,291.26 | 0.00 | 0.00 | 21,291.26 | 100% | (0.00) | 0.00 |
| 34 | steel pipe package | 1,472,234.59 | 1,472,234.59 | 0.00 | 0.00 | 1,472,234.59 | 100% | 0.00 | 0.00 |
| 35 | ductile / valve package | 262,601.65 | 262,601.65 | 0.00 | 0.00 | 262,601.65 | 100% | 0.00 | 0.00 |
| 36 | traffic cntrl barricades | 96,456.86 | 96,456.86 | 0.00 | 0.00 | 96,456.86 | 100% | 0.00 | 0.00 |
| 37 | off-duty officers | 26,137.73 | 26,137.73 | 0.00 | 0.00 | 26,137.73 | 100% | 0.00 | 0.00 |
| | **TOTALS** | 4,694,627.87 | 4,648,852.02 | 0.00 | 0.00 | 4,648,852.02 | 0.99 | 45,775.84 | 0.00 |

01

COPY

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

# CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into on the 9th day of April, 2009, by and between the City of Tempe, an Arizona municipal corporation ("City"), and **CMX, L.L.C.,** a Arizona limited liability company ("Consultant").

City engages Consultant to perform professional services for a project known and described as **Johnny G. Martinez Water Treatment Plant Modifications GMP IV**, Project No. **3201091** ("Project").

## 1. SERVICES OF CONSULTANT

Consultant shall perform the following professional services to City in conformance with applicable professional standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

1.1. Consultant shall provide construction management services, as described in Exhibit "A" attached.

1.2. Consultant has assigned Bob Barfoot as the project manager for this Contract. Prior written approval by City is required in the event Consultant needs to change the project manager. Consultant shall submit the qualifications of the proposed substituted personnel to City for approval prior to any substitution or change.

1.3. Consultant shall obtain all necessary permits and licenses required for the performance of its work. Failure of Consultant to obtain said permits prior to the commencement of its work shall constitute a breach of this Contract.

1.4. Consultant shall perform the work in a manner and at times which do not impede or delay City's operations and/or functions.

1.5. Consultant shall be solely responsible for any repair, replacement, remediation and/or clean-up of any damage done by Consultant including any impairment of access to City or other lawful invitees, by such work performed on this Project.

## 2. TERM OF CONTRACT

Consultant shall complete all services within 180 calendar days of the date appearing on the "Notice to Proceed" issued by City. In the event delays are experienced beyond the control of Consultant, the schedule may be revised as determined by City in its sole discretion.

## 3. CONSULTANT'S COMPENSATION

3.1. Payment for this Contract shall be based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference. Total compensation for the services performed shall not exceed $253,113.57, unless otherwise authorized by City in its sole discretion. This fee includes an allowance of $3,500.00 for reimbursable expenses, which in no event will ever be more than actual cost.

3.2. City shall pay Consultant by installments, each installment based upon monthly progress reports and related, detailed invoices submitted by Consultant. If detailed invoice(s) and progress report(s) are approved by City, installment payments will be made within thirty (30) days after City's approval.

## 4. CITY'S RESPONSIBILITIES

4.1. City shall designate a project manager during the term of this Contract. The project manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by City on any aspect of the work shall be directed to the project manager.

4.2. City shall review requests for information related to the Project by Consultant and will endeavor to provide a prompt response to minimize delay in the progress of Consultant's work. City will also endeavor to keep Consultant advised concerning the progress of City's review of the work. Consultant agrees that City's inspection, review, acceptance or approval of Consultant's work shall not relieve Consultant of its responsibility for errors or omissions of Consultant or its subconsultant(s).

4.3. Unless included in Consultant's services as identified in Section 1, City may furnish with or without charge, upon Consultant's reasonable request, the following information to the extent it is within City's possession or control:

4.3.1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, Consultant shall be solely responsible for searching the records and requesting specific drawings or information and independently verifying said information.

4.3.2. Available City data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.

4.3.3. When required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments.

## 5. TERMINATION AND DEFAULT

5.1. City shall be entitled to terminate this Contract at any time, in its discretion. In addition, City may terminate this Contract for default, non-performance, breach or convenience, or abandon any portion of the Project for which services have not been fully or properly performed by Consultant. Termination shall be commenced by delivery of written notice delivered to Consultant, personally or by certified mail at 3100 W. Ray Road, Suite 201, Chandler, Arizona 85226. Termination shall be effective upon fourteen (14) days of delivery of notice to Consultant. In addition, this Contract may be terminated pursuant to A.R.S. § 38-511.

5.2. Upon the occurrence of Consultant's default, non-performance or breach of the Contract, City may recover any and all damages permitted by law or in equity against Consultant, in addition to termination of the Contract, including but not limited to compensatory damages, together with all costs and expenses as set forth in Section 12 herein.

5.3. In the event of Consultant's default, non-performance or breach, City agrees to, before exercising any right or remedy available to it, give Consultant written notice of the default, non-performance or breach. For the thirty (30) days following such notice, Consultant shall have the right to cure such default, non-performance or breach.

5.4. If Consultant fails to cure, immediately after receiving such notice of termination from City, Consultant shall discontinue performance under this Contract and proceed to close said operations under this Contract. Consultant shall submit a detailed breakdown of completed work to City for evaluation. City shall have the right to inspect Consultant's work to analyze and appraise the services completed. Payment to Consultant shall be determined by City upon approval or disapproval of the services completed as of the date of delivery of notice of termination, and pursuant to Section 5.9.

5.5. Within ten (10) days of receipt of notice of termination as set forth herein, Consultant shall deliver to City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by Consultant under the Contract, entirely or partially completed, together with all unused materials supplied by City.

5.6. In the event of such termination or abandonment, Consultant shall be paid only for those services performed in a good and workmanlike manner, in accordance with all plans, specifications and governmental requirements completed prior to receipt of said notice of termination, subject to approval by City. To the extent permitted by this Contract, such payment may include reimbursable expenses then incurred by Consultant, in City's sole discretion.

5.7. 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 Consultant as determined and approved by City based upon the scope of work set forth in Exhibit "A." However, in no event shall the fee exceed that set forth in Section 3 of this Contract.

5.8. City shall make a determination as to approval or denial of any requested final payment within sixty (60) days after Consultant has delivered the last of the completed items and the final appraisal has been submitted to City.

5.9. The parties agree that in the event of any damages suffered by City as a result of any delay, default, non-performance or breach by Consultant, Consultant agrees to reimburse City ten percent (10%) of the Contract amount per Section 3.1 for damages caused by its delay. This sum may be deducted from Consultant's payment or anticipated payment for failure to deliver and/or perform as specified. No premium will be awarded to Consultant for delivery and/or performance within the Contract term. Waiver by City of any of the provisions contained in this Section 5.9, or by way of the extension of the Contract term, shall in no way be deemed to waive or diminish City's rights available by law or in equity under the Contract.

## 6. INSURANCE

Without limiting any obligations or liabilities, Consultant, at its sole 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 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 City.

6.1. General Clauses

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

6.1.2. Coverage Term. All insurance required herein shall be maintained in full force and effect until services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so shall constitute a material breach of this Contract.

6.1.3. Primary Coverage. Consultant's insurance shall be primary insurance as respects City, and any insurance or self insurance maintained by City shall be in excess of Consultant's insurance and shall not contribute to it.

6.1.4. Claim Reporting. Consultant 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 City.

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

6.1.6. Deductible/Retention. The policies may provide coverage, which contains 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. Consultant shall be solely responsible for deductible or self-insured retentions and City may require Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

6.1.7. Policies and Endorsements. 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.

6.1.8. Certificates of Insurance. Prior to commencing services under this Contract, Consultant shall furnish City with certificates of insurance, or formal endorsements as required by the Contract, issued by Consultant'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 by referencing the Project number and/or Project name and shall provide for not less than thirty (30) days advance written notice by certified mail to City of cancellation or termination of insurance.

6.1.9. Subconsultants/Contractors. Consultant shall include all subconsultants and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant and subcontractor.

6.2. Workers' Compensation. Consultant shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's 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 for each employee, and $500,000 disease policy limit.

In case services under this Contract are subcontracted, Consultant shall require all subconsultant(s) to provide workers' compensation and employer's liability to at least the same extent as provided by Consultant.

6.3. Automobile Liability. Consultant 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 Consultant 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.

6.4. Commercial General Liability. Consultant shall carry commercial general liability insurance with a combined single limit of not less than $1,000,000. The policy shall be primary and include coverage for bodily injury, 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 will be at least as broad as Insurance Service Office policy form CG 0002 1-11-88 or any replacement thereof.

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.

Such policy shall contain a "severability of interests" provision (also known as "cross liability" and "separation of insured").

6.5. Professional Liability. Consultant retained by City to provide the engineering services required by the Contract will maintain professional liability insurance covering errors and omissions arising out of the services performed by Consultant or any person employed by it, 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.

6.6. Property Coverage – Valuable Papers. Consultant 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 Consultant used in the completion of this Contract.

## 7. HEALTH INSURANCE REQUIREMENTS

7.1. Consultant must certify that it has or will offer health insurance to all eligible employees working on services set forth in this Contract prior to the performance of any work or services. An affidavit certifying such offering must be signed in a form approved by City. All required health insurance must be maintained during the entire time of the Contract with City. Health insurance pursuant to this Section 7 is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.

7.2. The health insurance requirements herein shall apply to all of Consultant's eligible employees directly involved with the services set forth in this Contract, including support and administrative personnel.

7.3. Any and all complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City's Public Works Department, within thirty (30) days from discovery of a potential 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.

7.4. Penalties for failing to comply with this Section 7 include, but are not limited to the following: Consultant may be barred from bidding on, or entering into any Public Works contract with City for a period of three (3) years from the execution of the Contract.

7.5. 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.

## 8. WORK FOR HIRE AND OWNERSHIP OF DELIVERABLES

8.1. Consultant shall ensure that all the results and proceeds of Consultant's and any and all work on the Project and any related projects, including that of all agents, employees, officers, and contractors, shall be owned by City, including the copyright thereto, as work for hire. In the event, for any reason, such results and proceeds are not deemed work for hire, Consultant shall be deemed hereby to have assigned to City all of its right, title and interest in such results and proceeds and content to City, without limitation.

8.2. All work products (electronically or manually generated), including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file

diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Contract, are the property of City and are to be delivered to City on the particular type of storage media on which they are stored (e.g. CD, thumb drive, etc.) before the final payment is made to Consultant. City shall retain ownership of these original works. If approved in writing by City, Consultant may retain the originals and supply City with reproducible copies of the work.

## 9. CONFLICT OF INTEREST

9.1. Consultant agrees to promptly disclose any and all financial and/or economic interest in the property, or any property affected by the work, or the Project itself other than as set forth herein, existing prior to the execution of this Contract. Further, Consultant agrees to promptly disclose any financial or economic interest in the Project property or any property affected by the work, if Consultant gains such interest during the course of this Contract.

9.2. If Consultant gains any 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 City.

9.3. Consultant 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.

9.4. Consultant agrees that it shall not perform services on this Project for any other contractor, subcontractor, or any supplier, other than City. In addition, Consultant shall not negotiate, contract, or make any agreement with a contractor, subcontractor, or any supplier with regard to any of the work under this Contract, or any services, equipment or facilities to be used on this Project other than with City.

## 10. COVENANT AGAINST CONTINGENT FEES

Consultant affirms that it has not employed or retained any company or person, other than a bona fide employee working for Consultant 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, City may terminate this Contract without liability, or in its discretion may deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

## 11. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless 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 Consultant, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services Consultant may be deemed legally liable in the performance of this Contract, or any breach of the Contract. Consultant's duty herein shall arise in connection with any and all claims for damage, loss, liability and/or expenses attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of any person or property including loss of use resulting therefrom. 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.

## 12. DISPUTE RESOLUTION

In the event of a dispute concerning or in any way connected to the Contract or subject Project, the parties agree that the unsuccessful party shall pay to the prevailing party a reasonable sum for attorneys' fees, including taxable and non-taxable costs, fees, costs and disbursements of experts, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. In addition, should City retain and/or utilize legal counsel as a result of a breach by Consultant of any term, covenant or provision of this Contract, in addition to paying any recovery owed to City and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, Consultant shall reimburse City for reasonable attorneys' fees, taxable and non-taxable costs and disbursements, incurred by City in enforcing Consultant's obligations, whether or not a legal action is commenced, including but not limited to the cost of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

## 13. ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by Consultant without prior written authorization from City, at City's sole discretion. Additional services, when authorized by an executed contract or an amendment to this Contract shall be compensated for by a fee mutually agreed upon between City and Consultant.

## 14. PROHIBITION ON ASSIGNMENT

This Contract and all duties and obligations of Consultant set forth in this Contract shall not be assignable except by prior written consent of City, and such prohibition shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of Consultant.

## 15. MISCELLANEOUS PROVISIONS

15.1. Equal Opportunity. Consultant covenants for itself, its employees, agents, assigns and all persons claiming under or through it, that it shall comply with all applicable federal, state, and local laws and ordinances at the time of execution of this Contract and shall not discriminate against or segregate any person or group of persons any person on account of race, color, religion, gender, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition in the performance of this Contract and shall comply with the terms and intent of all applicable federal, state and local governance concerning nondiscrimination.

15.2. Legal Compliance. Consultant 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 and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment Act, and all amendments thereto, along with all attendant laws, rules and regulations. Consultant acknowledges that a breach of this warranty is a material breach of this Contract and Consultant is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the legal right to inspect the documents of any and all Consultants, subconsultants and sub-subconsultants performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Consultant. Consultant hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

15.3. Specially Designated Nationals and Blocked Persons List. Consultant represents and warrants to City that neither Consultant nor any affiliate or representative of Consultant (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 contendre*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

Consultant further agrees to include the provisions set forth in Sections 15.1 through 15.3 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

15.4. Effective Date. This Contract shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona and when executed by the duly authorized City officials and the duly authorized agent of Consultant.

15.5. Governing Law. This Contract shall be governed and interpreted by the laws of the State of Arizona.

15.6. Exhibits. All exhibits attached to this Contract are made a part of and are incorporated into, this Contract. If any inconsistencies exist between this Contract and any exhibit hereto, the terms of this Contract shall govern.

15.7. Force Majeure. Any prevention, delay or stoppage of this Project for a cause beyond the reasonable control of Consultant due to acts of God, acts of war or terrorism, fire or other casualty, shall, notwithstanding anything to the contrary contained herein, excuse the performance of Consultant, for a period equal to such prevention, delay or stoppage. For purposes of this Section 15.7, a cause shall not be deemed beyond a party's control if it is within the control of such party's agents, employees, assigns, contractors or subcontractors.

15.8. Entire Agreement. This Contract contains all of the agreements of the parties with respect to the Project and related matters, and no prior agreement, negotiations, postings, offerings, or understanding pertaining to any such matter shall be effective for any purpose unless expressly contained herein.

15.9. Consultant's Good Standing. Consultant hereby warrants and represents that it is an Arizona limited liability company, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any agreement, instrument, contract, law, rule or regulation by which Consultant is bound.

15.10. Independent Contractor. Nothing contained in this Contract shall be deemed or construed by the parties hereto or otherwise, to create the relationship of principal and agent, partnership, joint venturer, employer and employee, or any association between City and Consultant. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to Consultant hereunder or for any and all services or materials provided by or rendered to Consultant hereunder in connection with the work set forth in this Contract.

15.11. Severability. If any provision of this Contract shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and every other term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

15.12. Time is of the Essence. Time is of the essence in this Contract and each and every provision herein, except as may expressly be provided in writing by City.

15.13. No Waiver. No breach or default hereunder shall be deemed to have been waived City, except by a writing to that effect signed on behalf of City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after written notice thereof and demand by City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of City.

15.14. Survival. Any and all representations, obligations, indemnities, warranties, covenants, conditions and agreements contained in this Contract which are expressed as surviving the expiration or earlier termination of this Contract, or by their nature, are to be performed, observed or survive, in whole or in part, after the termination or expiration of this Contract term, shall survive the termination or expiration of this Contract.

15.15. Retention of Records. City, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Contract. Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or five (5) years following termination of this Contract.

15.16. Antitrust Violations. City and Consultant recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore, Consultant assigns to City any and all claims for such overcharges. Consultant in all subcontracts shall require all subcontractors to likewise assign all claims for overcharges to City.

15.17. Headings. The heading use in this Contract is for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

15.18. No Construction Against Drafting Party. Each party acknowledges that it has had an opportunity to review the Contract with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.

15.19. Notices to Parties:

All notices pursuant to this Contract shall be made in writing and delivered or mailed by certified mail to the parties at the following addresses:

| CITY: | CONSULTANT: |
|---|---|
| Andy Goh, City Engineer | Bob Barfoot |
| City of Tempe | CMX, L.L.C. |
| Public Works/Engineering Dept. | 3100 W. Ray Road |
| P.O. Box 5002 | Suite 201 |
| Tempe, AZ 85280 | Chandler, AZ 85226 |

15.20. Non-Appropriation of Funds. If funds appropriated by the City Council or otherwise allocated to perform the work becomes unavailable for payment by City under this Contract, City may delay the work for a period up to six (6) months, after which date if no funds are legally available, City may terminate the Contract at City's sole option. In case of any such delay by City, Consultant may suspend performance of work or services as applicable. However, nothing herein shall be construed to allow termination of the Contract by Consultant for such delay.

[SIGNATURE PAGE TO FOLLOW]

**Johnny G. Martinez Water Treatment Plant Modifications GMP IV**
**Project No. 3201091**

DATED this _____ day of _____, 2009.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

By: _____
Public Works Manager

ATTEST:

_____
City Clerk

Recommended By:

_____
Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

_____
City Attorney

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

CONSULTANT
CMX, L.L.C.

_____
Name

_____
Title

_____
Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

_____
Karen M. Fillmore
Records Specialist

CMX

# EXHIBIT A

RECEIVED

NOV 24 2008

City of Tempe
Engineering Division

November 20, 2008

Mr. Vijay Gokhale
**City of Tempe Public Works Department**
31 East 5th Street
Tempe, Arizona 85280

**RE: JOHNNY G. MARTINEZ WATER TREATMENT PLANT MODIFICATIONS - SCOPE REVISIONS**
**TEMPE, ARIZONA**
**CMX Proposal Number: 208731R-1**

Dear Mr. Gokhale:

CMX, Engineering, Inc. is pleased to submit a proposal for the Project Administration for the Johnny G. Martinez Water Treatment Plant Modifications – Scope Revisions. We understand the intent is to provide extended administration duties including but not limited to conducting weekly meetings, producing weekly meeting minutes and logs, reviewing the contractor's schedule, handling RFI's, submittals and shop drawings, reviewing payment applications and change orders, construction observation, making photographs and inspections of the work on a daily basis, correspondence and documentation. We understand the Scope of Work has been revised and completion of this project has been extended. Our services, including the period after substantial completion for Start Up and Close Out are inclusive, through the end of November 2009.

Following is our proposed Scope of Services and Fee Schedule.

## 1.0 CONSTRUCTION ADMINISTRATION & INSPECTION SERVICES

CMX will provide the Project Administration as described above and in the City's Construction Administration for Capital Improvement Projects," attached to this agreement. These services will be provided to the City of Tempe for the extended completion of the Jonny G. Martinez Water Treatment Plant Modifications – Scope Revisions, for Phase II & III, per plans by others. Start-up and Close Out after Substantial Completion will be part of this project proposal.

1.1 Weekly Meetings: CMX will conduct weekly construction progress meetings with the contractor, utilities and City staff. Meeting minutes will be prepared and distributed to all attendees and other parties within 72-hours of the meeting.

1.2 Review and Approval Required Submittals: CMX will collect, review and distribute submittals accordingly, seeking approval or denial and maintain a submittal log. Where required, CMX will coordinate submittal review with City staff and/or the project designer.

1.3 Weekly Site Visits: CMX will designate a part-time Senior Construction Manager to perform site inspections and observations on a daily basis (assuming work is progressing and warrants such daily inspections and observations) to inspect the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents.

1.4 Respond to RFI's: CMX will monitor the Request for Information (RFI) process and maintain our own RFI log.

1.5 Resolve Field Issues: CMX will resolve issues that occur during construction through interpretation of the plans and specifications. As necessary, CMX will solicit the project designer's or City staff's input.

1.6 Review and Approve Pay Requests: CMX will obtain monthly pay requests based on work and materials completed and approved for payment by the City.

1.7 Review Change Order Requests: CMX will review change order requests and submit recommendations to the City for approval. If necessary, CMX will also consult with the project designer as to no cost solutions to the change order item.

1.8 Substantial Completion: CMX will conduct a pre-final walk through in conjunction with the contractor and City staff and certify substantial completion. A punch list of items to be corrected before final completion will be developed and provided to the contractor and the City.

1.9 Final Completion: CMX will conduct a final walk through in conjunction with the contractor and City staff and certify final completion.

1.10 Project Closeout: CMX will provide project closeout including assemblage of contractor supplied as-built plans, warranties and guarantees and other project records. Once assembled, all project records will be provided to the City.

## 2.0 Fee Schedule

CMX shall provide the services described above on a Time and Material, Not to Exceed (NTE) basis. Attached is a breakdown of our derived fee. Additional services may be required as the project evolves. All reimbursables will be billed at cost. Reimbursables include, but are not limited to, mylars, printing, submittal fees and costs of paying City/County records.

| Tasks | | Time and Material NTE Fee |
|---|---|---|
| 1.0 | Project Administration | $62,460.71 |
| | Construction Observation | $167,832.86 |
| | Project Closeout | $19,320.00 |
| | Reimbursable Expenses | $3,500.00 |
| | Total Time and Materials Fee | $253,113.57 |

*Time & Materials, Not to Exceed without prior Client authorization.

## 3.0 Additional Provisions

3.1 Additional services are defined as services which are not expressly written or implied in this contract. CMX will not proceed with any additional services without a negotiated fee agreement and written authorization from the Client. Services provided by time and materials will be based on the CMX rate schedule in effect at the time the services are provided.

3.2 CMX shall not be responsible for the means, methods, techniques, safety, sequences or procedures of construction selected by Contractor(s) (unless otherwise specified in the construction contract documents) or the safety precautions and programs incident to the work of Contractor(s).

3.3 CMX shall not be responsible for the acts or omissions of any Contractor, or subcontractor, of any of the Contractor(s) or subcontractor(s) agents or employees or any other persons (except CMX's own employees and agents) at the site(s) or otherwise performing any of the Contractor(s) work.

3.4 This proposal fee is based on construction being completed within a normal time frame for a project of this size and complexity. CMX and the client agree to negotiate in good faith a contract amendment for additional compensation if the project duration is significantly extended beyond the control of CMX and/or unforeseen conditions result in significant additional time being required on the project.

3.5 Specifically excluded from this proposal are:

3.5.1 Plan review fees, permits, assessments, and other fees;
3.5.2 Any and all design services;
3.5.3 Construction staking;
3.5.4 Geotechnical services;
3.5.5 Environmental assessments;
3.5.6 Any services not specifically listed and defined above.

Please indicate your acceptance of this proposal by sending us one copy of this proposal with the appropriate authorizing signature in place below.

Respectfully submitted,

CMX

Chris Bird
Manager – Construction Services Group

Darrell Wilson, P.E.
Managing Principal

CB:akg

Attachment(s)

Accepted this _____ day of _____, 2008.

By: _____

Title: _____

As Authorized Agent for City of Tempe.

# City of Tempe

## Johnny G. Martinez Water Treatment Plant Modifications

## Scope Revisions

## CMX Proposal - Revised

## COT# 3201091

JGM Phase II & III - FWPS/12MGR & UV Building

255 E. Marigold Lane, Tempe, AZ

COT# 3201091

11/20/08

R. Barfoot, CMX Engineering, Inc.

CMX Proposal # 208731R-1

February to December 2009 = 302 continuous days

The deleted work for the Existing 12MG Reservoir I, of 223 days has been deducted. -223

Additional 302 days or 43 weeks 302

| Activity | Days | Hours | Total | CMX $'s | subtotal | |
|---|---|---|---|---|---|---|
| Meeting Days (43) 5M hr Sr CM | 43 | 5.00 | 216 | $115.00 | $24,807.14 | |
| Meeting Days (43) 2M hr Inspector | 43 | 2.00 | 86 | $100.00 | $8,628.57 | |
| On Site Observations Sr CM 2-3 days / week (43X3=129) | 129 | 3.00 | 388 | $115.00 | $44,652.86 | |
| On Site Inspections - CMX Project Inspector (photos, dailies, reports) | 302 | 5.00 | 1510 | $100.00 | $151,000.00 | |
| Deduct for E12MGR I deletions, Sr CM (.5 hr/day -96 days, per schedule) | -96 | 0.50 | -48 | $115.00 | -$5,520.00 | <deduct |
| Deduct for E12MGR I deletions, Inspector (1 hr/day -223 days, per schedule) | -223 | 1.00 | -223 | $100.00 | -$22,300.00 | <deduct |
| Close Out/Punch 12MGR & UV w/ "As Built" review - Sr CM | 28 | 6.00 | 168 | $115.00 | $19,320.00 | |
| *CMX Director, Construction Services Group - 5hrs/week | 43 | 5.00 | 215 | $135.00 | $29,025.00 | |
| | | | | **Subtotal** | **$249,613.57** | |
| *In office, CMX Management supervision and oversight. | | | | **Reimbursables** | **$3,500.00** | |
| | | | | **TOTAL** | $253,113.57 | <Revised Total |

**SUMMARY:**

| | | | | | |
|---|---|---|---|---|---|
| ***Summary by Hours*** | | | | | |
| ***CMX Director, Construction Services Group*** | HRS | **215** | **$135.00** | **$29,025.00** | |
| ***Area Manager/Senior Construction Manager*** | HRS | **772** | **$115.00** | **$88,780.00** | |
| ***SR CM Deduct for E12mgr I deletions*** | HRS | **-48** | **$115.00** | **-$5,520.00** | <deduct |
| ***Project Inspector/CM*** | HRS | **1596** | **$100.00** | **$159,628.57** | |
| ***Inspector/CM Deduct for E12mgr I deletions*** | HRS | **-223** | **$100.00** | **-$22,300.00** | <deduct |
| ***Reimbursable Expenses*** | LS | **1** | **$500.00** | **$3,500.00** | |
| ***Total Budget & Reimbursables*** | | | | $253,113.57 | <Revised Total |
| | | | | | |
| ***Summary by Scope*** | | | | | |
| ***Project Administration*** | LS | **1** | | **$62,460.71** | |
| ***Construction Observation/Inspection*** | LS | **1** | | **$195,652.86** | |
| ***Construction Observation/Inspection Deduct for E12mgr I deletions*** | LS | **1** | | **-$27,820.00** | <deduct |
| ***Project Closeout & Warranty*** | LS | **1** | | **$19,320.00** | |
| ***Reimbursable Expenses*** | LS | **1** | | **$3,500.00** | |
| ***Total Budget*** | | | | $253,113.57 | <Revised Total |

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

**AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT**
**REGARDING**
**HEALTH INSURANCE**

_____,
Arizona

Date_____

**Johnny G. Martinez Water Treatment Plant Modifications GMP IV**
**Project No. 3201091**

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 _____, 2009.

_____
General Contractor/Prime Consultant

By:_____

STATE OF ARIZONA )
) ss
COUNTY OF MARICOPA )

SUBCRIBED AND SWORN to before me this _____ day of _____, 2009.

_____
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 120$^{th}$ 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