

Staff Summary Report



Council Meeting Date: 02/21/08

Agenda Item Number: 22

SUBJECT: Request award of a Construction Manager at Risk Construction Services contract to McCarthy Building Companies, approval of a professional services design contract with Stantec Consulting, approval of a construction management contract with Bosak CPM, approval of a construction change order contingency for the City Hall Parking Garage and Retail Building Shell – Guaranteed Maximum Price (GMP) Phase 2, and approval of the funding necessary to complete the project financing.

DOCUMENT NAME: 20080221PWDR02 PARKING (0503-19) PROJECT NO. 6702971

SUPPORTING DOCS: Yes

COMMENTS: Construction Manager at Risk Construction Services contract with McCarthy Building Companies for a GMP of \$15,325,085; professional services design contract with Stantec Consulting in an amount not to exceed \$150,000 and a construction management contract with Bosak CPM in an amount not to exceed \$131,700, both subject to execution of the final written documents; a construction change order contingency of \$1,000,000; and approval of the funding necessary to complete the project financing.

PREPARED BY: DONNA RYGIEL, ENGINEERING CONTRACT ADMIN. (x8520)

REVIEWED BY: ANDY GOH, DEPUTY PW MANAGER/CITY ENGINEER (x8896)
JERRY HART, FINANCIAL SERVICES MANAGER (x8505)

LEGAL REVIEW AS TO FORM: ANDREW CHING, CITY ATTORNEY (x8575)

FISCAL NOTE: The Council approved \$7,000,000 in funding for this project in the current capital improvements budget. In addition to the construction of the parking garage (including the office/retail shell), this project encompassed the renovation of the Property/Evidence facility to house Duplicating staff; the initial lease cost and tenant improvements of Centerpoint office space for Information Technology staff; associated permitting, moving and utility relocation costs; funding for the linear park and landscaping adjacent to the parking garage. Also included are costs for the required archeological study for the site. The total estimated costs of the project now is \$21.2 million, thus requiring an additional appropriation of \$14.2 million. Sufficient funds are available in the General Fund reserve for capital improvements account to complete the financing of this project.

RECOMMENDATION: Award construction contract; approve construction contingency amount; and approve professional services contracts, authorizing the Mayor to sign all necessary documents for the contracts together with any required addenda. Approve the transfer from the reserve for capital improvements to complete project financing.

ADDITIONAL INFO: This is the second phase of construction for this project east of city hall in

coordination with the Marriott Residence Inn Hotel on the old Bandersnatch site. This phase includes construction of the parking garage and the office/retail shell. The landscaping associated with this project will be part of a later phase.

McCarthy Building Companies was selected as the Construction Manager at Risk using a qualification based process consistent with Arizona Revised Statutes. The staff has reviewed the GMP Phase 2 proposal and found it to be acceptable.

The fees for Stantec Consulting and Bosak CPM were negotiated by staff and are considered reasonable for the scope of services. Both of these firms were selected from our Consultant On-Call List consistent with Arizona Revised Statutes.

This award and approval is conditioned upon execution of final written contract documents and approved submittals of any required payment bond, performance bond, ensure to insure affidavit, insurance certificates, or other documents.

In addition, there will be an estimated fee of \$58,000 paid to Ricker Atkinson McBee Morman & Associates, Inc. through a previously approved, annual contract for materials testing costs associated with this project.

Approved by Glenn Kephart, Public Works Manager



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made and entered into on the 21st day of February, 2008, by and between the City of Tempe, hereinafter called CITY, and STANTEC CONSULTING, INC., hereinafter called the CONSULTANT.

The CITY engages the CONSULTANT to perform professional services for a project known and described as CITY HALL PARKING GARAGE & RETAIL BUILDING SHELL, Project No. 6702971, hereinafter called the "Project".

SECTION I - SERVICES OF THE CONSULTANT

The CONSULTANT shall perform the following professional services to CITY standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

- A. The CONSULTANT shall provide post design services including shop drawing review, review of requests for information (RFI's) and architectural submittal information (ASI's), attendance as needed at weekly construction meetings, site visits as needed and preparation of as-built drawings, as described in Exhibit "A" attached.
- B. The CONSULTANT has assigned Rick Harper as the Project Manager for this Contract. Prior written approval is required in the event the CONSULTANT needs to change the Project Manager. The CONSULTANT shall submit the qualifications of the proposed substituted personnel to the City for approval.
- C. The CONSULTANT shall prepare and submit a detailed opinion of probable cost of the project.
- D. The CONSULTANT shall follow and comply with the Public Improvement Project Guide as directed by the CITY.
- E. The CONSULTANT shall prepare plans and technical specifications per the requirements of the applicable chapters of the City's Engineering Design Criteria Manual, latest revision, and the Maricopa Association of Governments (MAG) Standard Specification and Details as amended by the CITY. All plans shall be prepared on CAD as required by the CITY. Final plans shall be submitted on 3 ml double matte black line mylar and shall be 24" x 36" in size.

- F. The CONSULTANT shall submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCAD compatible and all other documents shall be Microsoft Office compatible. The software version used shall be compatible to current City standards. Other support documents, for example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

SECTION II - PERIOD OF SERVICE

The CONSULTANT shall complete all services within 380 calendar days of the "Notice to Proceed" date. In the event delays are experienced beyond the control of the CONSULTANT, the schedule may be revised as mutually agreed upon by the CITY and the CONSULTANT.

SECTION III - CONSULTANT'S COMPENSATION

- A. The method of payment for this CONTRACT is payment by installments. Total compensation for the services performed shall not exceed \$150,000.00, unless otherwise authorized by the CITY. This fee includes an allowance of \$7,577.00 for reimbursable expenses, which in no event will ever be more than actual cost.
- B. The CITY shall pay the CONSULTANT in installments based upon monthly progress reports and detailed invoices submitted by the CONSULTANT subject to the following limitations:
 - 1. Payment for reimbursable expenses shall be made during all phases based on actual expenses.
- C. The CITY at its discretion may, by written notification, waive the above limitations.
- D. The CITY shall make payments to the CONSULTANT within thirty (30) days after receipt of the progress report and detailed invoice.

SECTION IV - THE CITY'S RESPONSIBILITIES

- A. The 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 the CITY on any aspect of the work shall be directed to the project manager.
- B. The CITY shall review submittals by the CONSULTANT and provide prompt response to questions and rendering of decisions pertaining thereto, to minimize delay in the progress of the CONSULTANT'S work. The CITY will keep the CONSULTANT advised concerning the progress of the CITY'S review of the work. The CONSULTANT agrees that the CITY'S inspection, review, acceptance or approval of CONSULTANT'S work shall not relieve CONSULTANT'S responsibility for errors or omissions of the CONSULTANT or it's sub-consultant(s).

- C. Unless included in the CONSULTANT'S Services as identified in Section I, the CITY shall furnish the CONSULTANT gratis, the following information or services for this Project:
1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, the CONSULTANT shall be responsible for searching the records and requesting specific drawings or information and independently verifying said information.
 2. Available CITY data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.
 3. When required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments to the end that the CITY may proceed with the right of way acquisition.

SECTION V - TERMINATION

The 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 CONSULTANT, upon fourteen (14) days written notice delivered to CONSULTANT personally or by certified mail at 1201 J Street, Studio 100, Sacramento, CA 95814. This CONTRACT may be terminated pursuant to ARS Sec. 38-511.

Immediately after receiving such notice, the CONSULTANT shall discontinue advancing the services under this CONTRACT and proceed to close said operations under this CONTRACT. The CONSULTANT shall appraise the services it has completed and submit an appraisal to the CITY for evaluation. The CITY shall have the right to inspect the CONSULTANT's work to appraise the services completed.

CONSULTANT shall deliver to the CITY all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the CONSULTANT under the CONTRACT, entirely or partially completed, together with all unused materials supplied by the CITY.

In the event of such termination or abandonment, the CONSULTANT shall be paid for services performed prior to receipt of said notice of termination including reimbursable expenses then incurred.

If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the CONSULTANT based upon the scope of work set forth in Exhibit A, and shall be agreed upon mutually by the CONSULTANT and the CITY. However, in no event shall the fee exceed that set forth in Section III of the attached CONTRACT.

The CITY shall make final payment within sixty (60) days after the CONSULTANT has delivered the last of the partially completed items and the final fee has been agreed upon.

In the event this CONTRACT is terminated, the CITY shall have the option of completing the work, or entering into a CONTRACT with another party for the completion of the work according to the provisions and agreements herein.

SECTION VI - SUPPLEMENTAL CONTRACT PROVISIONS

The supplemental contract provisions to this CONTRACT are attached hereto and incorporated herein by reference as if fully set forth.

City Hall Parking Garage & Retail Building Shell
Project No. 6702971

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

CITY OF TEMPE, ARIZONA

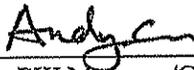
By _____
Mayor

By _____
Public Works Manager

ATTEST:

City Clerk

Recommended By:



Deputy PW Manager/City Engineer

APPROVED AS TO FORM:

City Attorney

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

CONSULTANT
Stantec Consulting, Inc.

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

Arizona

Date _____

Stantec Consulting, Inc.
Project No. 6702971

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

Name of Insurance Company: _____

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

Policy No.: _____

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

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

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

General Contractor/Prime Consultant

By: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

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

Notary Public

My commission expires:

City of Tempe

Guidelines for Implementation of Health Insurance

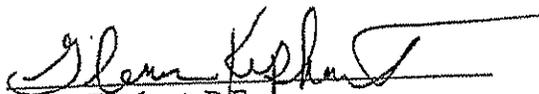
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the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

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

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

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

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


Glenn Kephart, P.E.
Public Works Manager

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

SUPPLEMENTAL CONTRACT PROVISIONS

SECTION I - INSURANCE

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

A. General Clauses

1. **Additional Insured.** The insurance coverage, except Workers' Compensation and Professional Liability, required by this CONTRACT, shall name the CITY, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded the CONSULTANT shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the CITY or its employees shall be excess coverage, and not contributory coverage to that provided by the CONSULTANT.
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 may constitute a material breach of this CONTRACT, at the sole discretion of the CITY.
3. **Primary Coverage.** The CONSULTANT's insurance shall be primary insurance as respects the CITY and any insurance or self insurance maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute to it.
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 the CITY.
5. **Waiver.** The policies for Workers' Compensation and General Liability shall contain a waiver of transfer rights of recovery (subrogation) against the CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the CONSULTANT.

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 the CITY under such policies. The CONSULTANT shall be solely responsible for deductible or self-insured retentions and the CITY may require the CONSULTANT to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
7. **Policies and Endorsements.** The CITY reserves the right to request and to receive, within 10 working days, information on any or all of the above policies or endorsements.
8. **Certificates of Insurance.** Prior to commencing services under this CONTRACT, CONSULTANT shall furnish the 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 of cancellation or termination of insurance.
9. **Sub-Consultants/Contractors.** CONSULTANT shall include all sub-consultants and sub-contractors as insured under its policies or shall furnish separate certificates and endorsements for each sub-consultant and sub-contractor.

B. Workers' Compensation

The CONSULTANT shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONSULTANT 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 are sub-contracted, the CONSULTANT shall require the sub-consultant to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by the CONSULTANT.

C. Automobile Liability

The 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 the 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.

D. Commercial General Liability

The 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 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").

E. Professional Liability

The CONSULTANT retained by the 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 the CONSULTANT or any person employed by him, 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 years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

F. Property Coverage – Valuable Papers

The 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 the CONSULTANT used in the completion of this CONTRACT.

HEALTH INSURANCE REQUIREMENTS

All Consultants who enter into a Public Works contract in excess of \$30,000.00 with the City of Tempe, after January 1, 2001, must certify that they have, and all of their major sub-consultants will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-1). Major sub-consultants are defined as entities doing work in excess of \$30,000.00 as determined at the start of each project. All required health insurance must be maintained during the entire time of the contract with the City.

Health insurance is required for all consultant and major sub-consultant employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four 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.

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

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.

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.

All Consultants 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 at the Pre-construction Conference for Contractors and sent with the executed contract for Consultants.

SECTION II - OWNERSHIP OF DOCUMENTS

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 the CITY and are to be delivered to the CITY before the final payment is made to the CONSULTANT.

The CITY shall retain ownership of these original drawings, however, if approved in writing by the CITY, the CONSULTANT may retain the original drawings and supply the CITY with reproducible mylar copies. CONSULTANT shall endorse by his/her professional seal all plans and special provisions furnished by him/her.

In the event these documents are used for another project without further consultations with the CONSULTANT, the CITY agrees to indemnify and hold the CONSULTANT harmless from any claim arising from the reuse of the documents. The CITY shall remove the CONSULTANT'S seal and title block from such documents.

The CONSULTANT shall retain full copyrights of all documents produced by the CONSULTANT on behalf of City in connection with the Services of this CONTRACT, with exception of CITY rights to use drawings for reproduction and promotional purposes.

SECTION III - CONFLICT OF INTEREST

The CONSULTANT agrees to promptly disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of this CONTRACT. Further, the CONSULTANT agrees to promptly disclose any financial or economic interest with the Project property, or any property affected by the Project, if the CONSULTANT gains such interest during the course of this CONTRACT.

If the 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 the CITY.

The 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.

The CONSULTANT agrees that it shall not perform services on this Project for the contractor, sub-contractor, or any supplier.

The CONSULTANT shall not negotiate, contract, or make any agreement with the contractor, sub-contractor, or any supplier with regard to any of the work under this Project, or any services, equipment or facilities to be used on this Project.

SECTION IV - COVENANT AGAINST CONTINGENT FEES

The CONSULTANT affirms that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT to solicit or secure this CONTRACT, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the CONTRACT. For breach or violation of this clause, the CITY 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.

SECTION V - INDEMNIFICATION

To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the CITY, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the CONSULTANT, its agents, employees, or any other person (not the CITY) for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the CONSULTANT may be legally liable in the performance of this contract. CONSULTANT'S duty to defend, hold harmless and indemnify the CITY, its agents, officers, officials, and employees shall arise in connection with any claim for damage, loss, or expenses that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by CONSULTANT or any employee of the CONSULTANT, or any other person (not the CITY) for whose negligent acts, errors, mistakes, omissions, work, or services the CONSULTANT may be legally liable. 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.

SECTION VI - DISPUTE RESOLUTION

In the event of a dispute concerning questions of fact that arise during the course of the CONTRACT, the parties will meet in good faith to attempt to resolve such questions.

SECTION VII - ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this CONTRACT shall not be performed by the CONSULTANT without prior written authorization from the CITY. 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 the CITY and the CONSULTANT.

SECTION VIII - SUCCESSORS AND ASSIGNS

This CONTRACT shall not be assignable except at the written consent of the parties hereto and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

SECTION IX- SPECIAL PROVISIONS

The CONSULTANT shall comply with all applicable Federal, State, and local laws and ordinances at the time the plans are sealed, and will not discriminate against any person on the basis of race, color, or national origin in the performance of this CONTRACT, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354.

The CONSULTANT further agrees to insert the foregoing provisions in all sub-contracts hereunder, except sub-contracts for standard commercial supplies or raw materials. Any violation of such provisions shall constitute a material breach of this CONTRACT.

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 the CONSULTANT.

EXHIBIT A

Stantec Architecture
1201 J Street Studio 100
Sacramento CA 95814
Tel: (916) 442-3230
Fax: (916) 442-3249

January 23, 2008
File: 184799000

City of Tempe
Public Works/ Engineering
31 East 5th Street, Tempe, AZ 85280

Attention: Mark A. Weber, P.E., Principal Civil Engineer

Dear Mark:

Reference: Tempe Parking Garage and Retail Building Shell Construction Administration Services

As per your request, we are pleased to present this proposal for professional design services for the above noted project. The following outlines our understanding of the scope of work and our related professional fees.

1.0 INTRODUCTION

Stantec has provided design and construction documents for the new 442-car parking garage adjacent to the Marriot Residence Inn and City Hall in Tempe, Arizona.

SCOPE OF WORK AND FEES

1.1 Schedule

Stantec will perform the services below according to the current schedule.

Construction Administration Services

Stantec will provide standard construction administration services under ~~a separate~~ ^{this TM} agreement. Services shall include reviewing contractors RFIs, shop drawings and submittals. Attending construction meetings as noted below. Site inspection and punch lists of work to be completed. Preparing record drawings by incorporating any changes as noted by the contractor. These services will be performed on a time and material basis with a maximum not to exceed of \$150,000, One hundred and fifty thousand dollars. Invoices will be submitted monthly.

2.0 GENERAL LIMITATIONS AND CONDITIONS

In addition to any limitations and conditions noted in the other parts of this proposal, the following limitations and conditions apply to this work.

- 2.1 This proposal is contingent on the Client executing City of Tempe Standard Professional Services Agreement.
- 2.2 The fees allow for the duration of the project to be such that the design will be completed in 2007 and the construction administration will be completed in 2008. If the schedule is delayed, Stantec will provide a quote for a fee revision.

For a list of our registered architects, please visit www.stantec.com/register/registerarchitects

Stantec Architecture Inc. / Stantec Architecture, a division of Stantec Consulting Inc. / Stantec Architecture P.C.

MAW

Reference: Tempe Parking Garage and Retail Building Shell Construction Administration Services

2.3 Stantec's obligation to attend meetings related to the project is limited to the following:

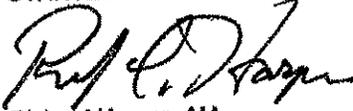
Meeting Type	Location	Stantec Attendees, number of site visits	Total Number of Meetings	Average Meeting Duration
Construction meetings And On site reviews	On site	Architects Structural Mechanical Electrical Civil	12 6 2 4 4	3 hours
Construction Meetings via Conf calls	On site	Architects Structural Mechanical Electrical Civil	28 * * * *	1
			* only as required	

2.4 The preparation of As-built Drawings or Record Drawings does not include field confirmation of the actual construction work in place.

2.5 We are prepared to commence work upon our receipt of a notice to proceed. We trust that this proposal is in order. However, please do not hesitate to contact the undersigned at 916-660-5966 if you have any questions.

Sincerely,

STANTEC ARCHITECTURE



Richard Harper, AIA
 Managing Principal Architect
 Tel: (916) 669-5966
 Fax: (916) 921-9274
 rick.harper@stantec.com

c: Tracy Anderson, Stantec Consulting Inc.

MAW

ARCHITECTURAL FEE						
DESCRIPTION	Proj Arch	Sr. Arch/Engr	Estim/Spec	CADD	Admin	
Design Development						
SUBTOTAL	0	0	0	0	0	0
Construction Documents						
SUBTOTAL	0	0	0	0	0	0
Construction Administration						
Bid Walk						
Code issues	4	8				
Shop Drawing Review	2	64				
Site Visits (12@ 8hrs)	48	0				
conf calls 28 @ 2 hrs	56	62				
RFI'S (4 hours per week(48)	4	192				
Punch lists	4	24				
Change Orders		6				
Payment requests (4hours per month)	0	0				
Project Management (4hrs / month)	24	8				
Record Drawings	16	40			80	2
SUBTOTAL	158	404	0		80	2
TOTAL	158	404	0		80	2
DRAWING LABOR ESTIMATE						
DRAWING HOUR ESTIMATES						
DWG. NUMBER	TITLE	Proj Arch	Sr Arch/Engr	Estim/Spec	Staff A/E	Admin

MRW

DESCRIPTION	# OF SETS	QTY/SET	QUANTTY	UNIT COSTS	TOTAL
BLUE PRINTS(based on \$0.60/sq. ft., 6 sf/dwg)	3	120	360	\$ 3.60	\$1,296.00
VELLUMS (CADD)			0		\$0.00
XEROXING**	54	30	1,620	\$ 0.08	\$129.60
WEBSITE			12	\$ 25.00	\$300.00
RENTAL CAR			12	\$ 75.00	\$900.00
AIRFARE			12	\$ 300.00	\$3,600.00
MILEAGE			100	\$ 0.50	\$50.00
LODGING(PER DAY)					\$0.00
PER DIUM(Per D (Per Day)					\$0.00
					\$0.00
SUB-CONSULTANTS	FEE	MARKUP-%	MARKUP		
		10	\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
		10	\$0.00		\$0.00
TOTAL(REIMBURSABLE)					\$6,276

Architectural Fee Summary					
DESCRIPTION	Proj Arch	Sr. Arch/Engr	Estim/Spec	CADD	Admin
TOTAL HOURS	158	404	0	80	2
BILLING RATES / HOUR	\$155	\$126	\$99	\$95	\$65
COSTS	\$24,490	\$50,904	\$0	\$7,600	\$130
TOTAL LABOR COSTS					\$83,124
REIMBURSABLE COSTS					\$6,276
TOTAL Architect					\$89,400
Total Structural					\$18,600
Total Mechanical					\$9,324
Total Electrical					\$8,938
Total Civil					\$21,088
Total Elevator					\$2,650
Total Fee					\$150,000

MAW

STRUCTURAL FEE						
DESCRIPTION	Proj Arch	Sr Arch/Engr	Estim/Spec	CADD	Admin	
Design Development						
SUBTOTAL	0	0	0	0	0	0
Construction Documents						
SUBTOTAL	0	0	0	0	0	0
Construction Administration						
Bid Walk						
Code issues						
Shop Drawing Review	8	40	8			
Site Visits (2@ 8hrs)		16				
conf calls						
RFIS		32				
Punch lists	4	16				
Change Orders						
Payment requests (4hours per month)						
Project Management	4					
Record Drawings			4		12	
SUBTOTAL	16	108	8		12	0
TOTAL	16	108	8		12	0
DRAWING LABOR ESTIMATE						
DRAWING HOUR ESTIMATES						
DWG NUMBER	TITLE	Proj Arch	Sr Arch/Engr	Estim/Spec	Staff A/E	Admin

MAV

MECHANICAL PLUMBING FEE						
DESCRIPTION	Proj Arch	Sr. Arch/Engr	Estim/Spec	CADD	Admin	
Design Development						
SUBTOTAL	0	0	0	0	0	0
Construction Documents						
SUBTOTAL	0	0	0	0	0	0
Construction Administration						
Bid Walk						
Code issues	4	12				
Shop Drawing Review		8	4			
Site Visits (2@ 8hrs)		16				
conf calls						
RFIS		8				
Punch lists		8				
Change Orders						
Payment requests (4hours per month)						
Project Management (4hrs / month)						
Record Drawings				4	8	
SUBTOTAL	4	52	8	8	8	0
TOTAL	4	52	8	8	8	0
DRAWING LABOR ESTIMATE						
DRAWING HOUR ESTIMATES						
DWG. NUMBER	TITLE	Proj Arch	Sr Arch/Engr	Estim/Spec	Staff A/E	Admin

MAN

ELECTRICAL FEE						
DESCRIPTION	Proj Arch	Sr. Arch/Engr	Estim/Spec	CADD	Admin	
Design Development						
SUBTOTAL	0	0	0	0	0	0
Construction Documents						
SUBTOTAL	0	0	0	0	0	0
Construction Administration						
Bid Walk	2	11				
Code issues						
Shop Drawing Review	4	8				
Site Visits (4@ 2hrs)		8				
conf calls						
RFIS	4	12				
Punch lists						
Change Orders						
Payment requests (4hours per month)						
Project Management (4hrs / month)	2	2				
Record Drawings		4			8	11
SUBTOTAL	12	45	0		8	11
TOTAL	12	45	0		8	11
DRAWING LABOR ESTIMATE						
DRAWING HOUR ESTIMATES						
DWG. NUMBER	TITLE	Proj Arch	Sr Arch/Engr	Estim/Spec	Staff A/E	Admin

WMAV

DESCRIPTION	# OF SETS	QTY/SET	QUANTITY	UNIT COSTS	TOTAL
BLUE PRINTS(based on \$0.60/sq. ft., 6 sf/dwg)			0	\$ 3.60	\$0.00
VELLUMS (CADD)			0		\$0.00
XEROXING**			0	\$ 0.08	\$0.00
WEBSITE				\$ 25.00	\$0.00
RENTAL CAR				\$ 75.00	\$0.00
AIRFARE				\$ 300.00	\$0.00
MILEAGE			74	\$ 0.50	\$37.00
LODGING(PER DAY)					\$0.00
PER DIUM(Per D (Per Day)					\$0.00
					\$0.00
SUB-CONSULTANTS	FEE	MARKUP-%	MARKUP		
		10	\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
		10	\$0.00		\$0.00
TOTAL(REIMBURSABLE)					\$37

Fee Summary					
DESCRIPTION	Proj Arch	Sr. Arch/Engr	Estim/Spec	CADD	Admin
TOTAL HOURS	12	45	0	8	11
BILLING RATES / HOUR	\$150	\$126	\$99	\$95	\$61
COSTS	\$1,800	\$5,670	\$0	\$760	\$671
TOTAL LABOR COSTS					\$8,901
REIMBURSABLE COSTS					\$37
TOTAL					\$8,938

MAN

CIVIL FEE					
DESCRIPTION	Proj Arch	Sr. Arch/Engr	Estim/Spec	CADD	Admin
Design Development					
SUBTOTAL	0	0	0	0	0
Construction Documents					
SUBTOTAL	0	0	0	0	0
Construction Administration					
Bid Walk	2	10			
Code issues					
Shop Drawing Review	4	8			
Site Visits weekly for 48 weeks		96			
conf calls					
RFIS	8	16			
Punch lists					
Change Orders					
Payment requests (4hours per month)					
Project Management (4hrs / month)	2	2			
Record Drawings		4		8	12
SUBTOTAL	16	136	0	8	12
TOTAL	16	136	0	8	12

MAJ

DESCRIPTION	# OF SETS	QTY/SET	QUANTIT	UNIT COSTS	TOTAL
BLUE PRINTS(based on \$0.60/sq. ft., 6 sf/dwg)		120	0	\$ 3.60	\$0.00
VELLUMS (CADD)			0		\$0.00
XEROXING**		30	50	\$ 0.08	\$4.00
WEBSITE				\$ 25.00	\$0.00
RENTAL CAR				\$ 75.00	\$0.00
AIRFARE			0	\$ 300.00	\$0.00
MILEAGE				\$ 0.50	\$0.00
LODGING(PER DAY)					\$0.00
PER DIUM(Per D (Per Day)					\$0.00
					\$0.00
SUB-CONSULTANTS	FEE	MARKUP-%	MARKUP		
		10	\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
		10	\$0.00		\$0.00
TOTAL(REIMBURSABLE)					\$4

Fee Summary					
DESCRIPTION	Proj Arch	Sr. Arch/Engr	Estim/Spec	CADD	Admin
TOTAL HOURS	0	21	0	0	0
BILLING RATES / HOUR	\$155	\$126	\$99	\$95	\$65
COSTS	\$0	\$2,646	\$0	\$0	\$0
TOTAL LABOR COSTS					\$2,646
REIMBURSABLE COSTS					\$4
TOTAL					\$2,650

MAN



CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR CONSTRUCTION ADMINISTRATION SERVICES

THIS CONTRACT is made and entered into on the 21st day of February, 2008, by and between the City of Tempe, hereinafter called CITY, and BOSAK CPM, hereinafter called the CONSULTANT.

The CITY engages the CONSULTANT to perform professional services for a project known and described as CITY HALL PARKING GARAGE & RETAIL BUILDING SHELL, Project No. 6702971, hereinafter called the "Project".

SECTION I - SERVICES OF THE CONSULTANT

The CONSULTANT shall perform the following professional services to CITY standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

- A. The CONSULTANT shall provide construction administration services as described in Exhibit "A" attached.
- B. The CONSULTANT has assigned David Bosak as the Project Manager for this Contract. Prior written approval is required in the event the CONSULTANT needs to change the Project Manager. The CONSULTANT shall submit the qualifications of the proposed substituted personnel to the City for approval.
- C. The CONSULTANT shall submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCAD compatible and all other documents shall be Microsoft Office compatible. The software version used shall be compatible to current City standards. Other support documents, for example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

SECTION II - PERIOD OF SERVICE

The CONSULTANT shall complete all services within 390 calendar days of the "Notice to Proceed" date. In the event delays are experienced beyond the control of the CONSULTANT, the schedule may be revised as mutually agreed upon by the CITY and the CONSULTANT.

SECTION III - CONSULTANT'S COMPENSATION

- A. Payment for this CONTRACT shall be based on hourly rates established in the attached Exhibit "A". Total compensation for the services performed shall not exceed \$131,700.00, unless otherwise authorized by the CITY. This fee includes an allowance of \$9,050.00 for reimbursable expenses, which in no event will ever be more than actual cost.
- B. The CITY shall pay the CONSULTANT installments based on monthly progress reports and detailed invoices submitted by the CONSULTANT. Such payments to be made within thirty (30) days after receipt of the progress report and detailed invoice.

SECTION IV - THE CITY'S RESPONSIBILITIES

- A. The 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 the CITY on any aspect of the work shall be directed to the project manager.
- B. The CITY shall review submittals by the CONSULTANT and provide prompt response to questions and rendering of decisions pertaining thereto, to minimize delay in the progress of the CONSULTANT'S work. The CITY will keep the CONSULTANT advised concerning the progress of the CITY'S review of the work. The CONSULTANT agrees that the CITY'S inspection, review, acceptance or approval of CONSULTANT'S work shall not relieve CONSULTANT'S responsibility for errors or omissions of the CONSULTANT or it's sub-consultant(s).
- C. Unless included in the CONSULTANT'S Services as identified in Section I, the CITY shall furnish the CONSULTANT gratis, the following information or services for this Project:
 - 1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, the CONSULTANT shall be responsible for searching the records and requesting specific drawings or information and independently verifying said information.
 - 2. Available CITY data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.

SECTION V - TERMINATION

The 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 CONSULTANT, upon fourteen (14) days written notice delivered to CONSULTANT personally or by certified mail at 7414 W. Louise Drive, Glendale, AZ 85310. This CONTRACT may be terminated pursuant to ARS Sec. 38-511.

Immediately after receiving such notice, the CONSULTANT shall discontinue advancing the services under this CONTRACT and proceed to close said operations under this CONTRACT. The CONSULTANT shall appraise the services it has completed and submit an appraisal to the CITY for evaluation. The CITY shall have the right to inspect the CONSULTANT'S work to appraise the services completed.

CONSULTANT shall deliver to the CITY all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the CONSULTANT under the CONTRACT, entirely or partially completed, together with all unused materials supplied by the CITY.

In the event of such termination or abandonment, the CONSULTANT shall be paid for services performed prior to receipt of said notice of termination including reimbursable expenses then incurred.

If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the CONSULTANT based upon the scope of work set forth in Exhibit A, and shall be agreed upon mutually by the CONSULTANT and the CITY. However, in no event shall the fee exceed that set forth in Section III of the attached CONTRACT.

The CITY shall make final payment within sixty (60) days after the CONSULTANT has delivered the last of the partially completed items and the final fee has been agreed upon.

In the event this CONTRACT is terminated, the CITY shall have the option of completing the work, or entering into a CONTRACT with another party for the completion of the work according to the provisions and agreements herein.

SECTION VI - SUPPLEMENTAL CONTRACT PROVISIONS

The supplemental contract provisions to this CONTRACT are attached hereto and incorporated herein by reference as if fully set forth.

City Hall Parking Garage & Retail Building Shell
Project No. 6702971

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

CITY OF TEMPE, ARIZONA

By _____
Mayor

By _____
Public Works Manager

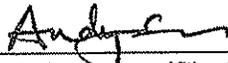
ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Recommended By:



Deputy PW Manager/City Engineer

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

CONSULTANT
Bosak CPM

Name

Title

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

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

CITY OF TEMPE
TEMPE, ARIZONA
DEPARTMENT OF PUBLIC WORKS

AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT
REGARDING
HEALTH INSURANCE

Arizona

Date _____

City Hall Parking Garage & Retail Building Shell
Project No. 6702971

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

Name of Insurance Company: _____

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

Policy No.: _____

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

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

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

General Contractor/Prime Consultant

By: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

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

Notary Public

My commission expires:

City of Tempe Guidelines for Implementation of Health Insurance

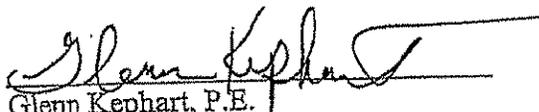
These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the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

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

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

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

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


Glenn Kephart, P.E.
Public Works Manager

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

SUPPLEMENTAL CONTRACT PROVISIONS

SECTION I - INSURANCE

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

A. General Clauses

1. **Additional Insured.** The insurance coverage, except Workers' Compensation and Professional Liability, required by this CONTRACT, shall name the CITY, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded the CONSULTANT shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the CITY or its employees shall be excess coverage, and not contributory coverage to that provided by the CONSULTANT.
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 may constitute a material breach of this CONTRACT, at the sole discretion of the CITY.
3. **Primary Coverage.** The CONSULTANT's insurance shall be primary insurance as respects the CITY and any insurance or self insurance maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute to it.
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 the CITY.
5. **Waiver.** The policies for Workers' Compensation and General Liability shall contain a waiver of transfer rights of recovery (subrogation) against the CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the CONSULTANT.

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 the CITY under such policies. The CONSULTANT shall be solely responsible for deductible or self-insured retentions and the CITY may require the CONSULTANT to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
7. **Policies and Endorsements.** The CITY reserves the right to request and to receive, within 10 working days, information on any or all of the above policies or endorsements.
8. **Certificates of Insurance.** Prior to commencing services under this CONTRACT, CONSULTANT shall furnish the 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 of cancellation or termination of insurance.
9. **Sub-Consultants/Contractors.** CONSULTANT shall include all sub-consultants and sub-contractors as insured under its policies or shall furnish separate certificates and endorsements for each sub-consultant and sub-contractor.

B. Workers' Compensation

The CONSULTANT shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONSULTANT 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 are sub-contracted, the CONSULTANT shall require the sub-consultant to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by the CONSULTANT.

C. Automobile Liability

The 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 the 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.

D. Commercial General Liability

The 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 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").

E. Professional Liability

The CONSULTANT retained by the 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 the CONSULTANT or any person employed by him, 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 years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

F. Property Coverage – Valuable Papers

The 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 the CONSULTANT used in the completion of this CONTRACT.

HEALTH INSURANCE REQUIREMENTS

All Consultants who enter into a Public Works contract in excess of \$30,000.00 with the City of Tempe, after January 1, 2001, must certify that they have, and all of their major sub-consultants will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-1). Major sub-consultants are defined as entities doing work in excess of \$30,000.00 as determined at the start of each project. All required health insurance must be maintained during the entire time of the contract with the City.

Health insurance is required for all consultant and major sub-consultant employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four 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.

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

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.

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.

All Consultants 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 at the Pre-construction Conference for Contractors and sent with the executed contract for Consultants.

SECTION II - OWNERSHIP OF DOCUMENTS

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 the CITY and are to be delivered to the CITY before the final payment is made to the CONSULTANT.

The CITY shall retain ownership of these original drawings, however, if approved in writing by the CITY, the CONSULTANT may retain the original drawings and supply the CITY with reproducible mylar copies. CONSULTANT shall endorse by his/her professional seal all plans and special provisions furnished by him/her.

In the event these documents are used for another project without further consultations with the CONSULTANT, the CITY agrees to indemnify and hold the CONSULTANT harmless from any claim arising from the reuse of the documents. The CITY shall remove the CONSULTANT'S seal and title block from such documents.

The CONSULTANT shall retain full copyrights of all documents produced by the CONSULTANT on behalf of City in connection with the Services of this CONTRACT, with exception of CITY rights to use drawings for reproduction and promotional purposes.

SECTION III - CONFLICT OF INTEREST

The CONSULTANT agrees to promptly disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of this CONTRACT. Further, the CONSULTANT agrees to promptly disclose any financial or economic interest with the Project property, or any property affected by the Project, if the CONSULTANT gains such interest during the course of this CONTRACT.

If the 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 the CITY.

The 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.

The CONSULTANT agrees that it shall not perform services on this Project for the contractor, sub-contractor, or any supplier.

The CONSULTANT shall not negotiate, contract, or make any agreement with the contractor, sub-contractor, or any supplier with regard to any of the work under this Project, or any services, equipment or facilities to be used on this Project.

SECTION IV - COVENANT AGAINST CONTINGENT FEES

The CONSULTANT affirms that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT to solicit or secure this CONTRACT, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the CONTRACT. For breach or violation of this clause, the CITY 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.

SECTION V - INDEMNIFICATION

To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the CITY, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the CONSULTANT, its agents, employees, or any other person (not the CITY) for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the CONSULTANT may be legally liable in the performance of this contract. CONSULTANT'S duty to defend, hold harmless and indemnify the CITY, its agents, officers, officials, and employees shall arise in connection with any claim for damage, loss, or expenses that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by CONSULTANT or any employee of the CONSULTANT, or any other person (not the CITY) for whose negligent acts, errors, mistakes, omissions, work, or services the CONSULTANT may be legally liable. 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.

SECTION VI - DISPUTE RESOLUTION

In the event of a dispute concerning questions of fact that arise during the course of the CONTRACT, the parties will meet in good faith to attempt to resolve such questions.

SECTION VII - ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this CONTRACT shall not be performed by the CONSULTANT without prior written authorization from the CITY. 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 the CITY and the CONSULTANT.

SECTION VIII - SUCCESSORS AND ASSIGNS

This CONTRACT shall not be assignable except at the written consent of the parties hereto and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

SECTION IX- SPECIAL PROVISIONS

The CONSULTANT shall comply with all applicable Federal, State, and local laws and ordinances at the time the plans are sealed, and will not discriminate against any person on the basis of race, color, or national origin in the performance of this CONTRACT, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354.

The CONSULTANT further agrees to insert the foregoing provisions in all sub-contracts hereunder, except sub-contracts for standard commercial supplies or raw materials. Any violation of such provisions shall constitute a material breach of this CONTRACT.

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 the CONSULTANT.

EXHIBIT A

BOSAK CPM
CAPITAL PROJECT MANAGEMENT
A DIVISION OF BOSAK ARCHITECTURAL COMPANIES LLC

January 13, 2008

Larry Fosholt.
Contracts Administrator
City of Tempe
31 E. 5th Street
Tempe, AZ 85281

RE: **Proposal of Services**
Downtown Tempe Parking Structure
City of Tempe Project No. 6702971

Mr. Fosholt:

Bosak CPM appreciates the recent opportunity to meet with you. We are pleased to present our proposal of professional services for City Staff Supplementation on the Downtown Parking Structure. We understand the significance this undertaking represents to you and the sensitivity required while operating within the Tempe Downtown area.

We are prepared to offer our professional services on an hourly, not-to-exceed fee in the amount of \$131,700.00, inclusive of reimbursable expenses, with a fully executed City of Tempe contract. We anticipate daily site visits and anticipate approximately 4 hours per week to provide the services as outlined in our Scope of Services, as well as offering our expertise to the City of Tempe for their areas of responsibility. Our proposal, as detailed in the following pages, is based on the understanding of Staff Supplementation during the ten (10) months of construction, plus minimal preconstruction services and project handoff for project Closeout. Your expectation of a quality project will be obtained through our dedication to the City of Tempe, our professional expertise and our sensitivity to the downtown Tempe environment.

We look forward to the successful completion of this project and thank you for the consideration of this proposal.

Sincerely,
Bosak CPM
A DIVISION OF BOSAK ARCHITECTURAL COMPANIES LLC



David A Bosak Sr., AIA, LEED AP
President /Principal Architect

EMAIL: BOMARKETING@BOSAK.BIZ
PHONE: 602-909-0901 FAX: 623-561-0592
7414 W. LOUISE DRIVE GLENDALE, AZ 85310

TEAM EXPERIENCE

David A Bosak Sr., AIA, LEED AP, Sr. Project Manager
Facilitator of Project insuring a Collaborative team effort



Key Individual assigned to supplement staff. Full resume in appendix. Additional Support Staff supplemented to project as applicable to the needs of the City.

▲ Overall Qualifications

Over 20 years of local Architecture/Engineering and Construction/Program Management Experience, professional Degree from Arizona State University, Licensed Architect in the State of Arizona, member of the American Institute of Architects, LEED 2.0 Accredited Professional, Member of U.S. Green Building Council. AIA Continuing education credits received thru ACE, Lorman Seminars, Online and PSMJ Resources. Perusing Certified Construction Manager certification from CMAA

▲ Current Similar Projects as Responsible Lead

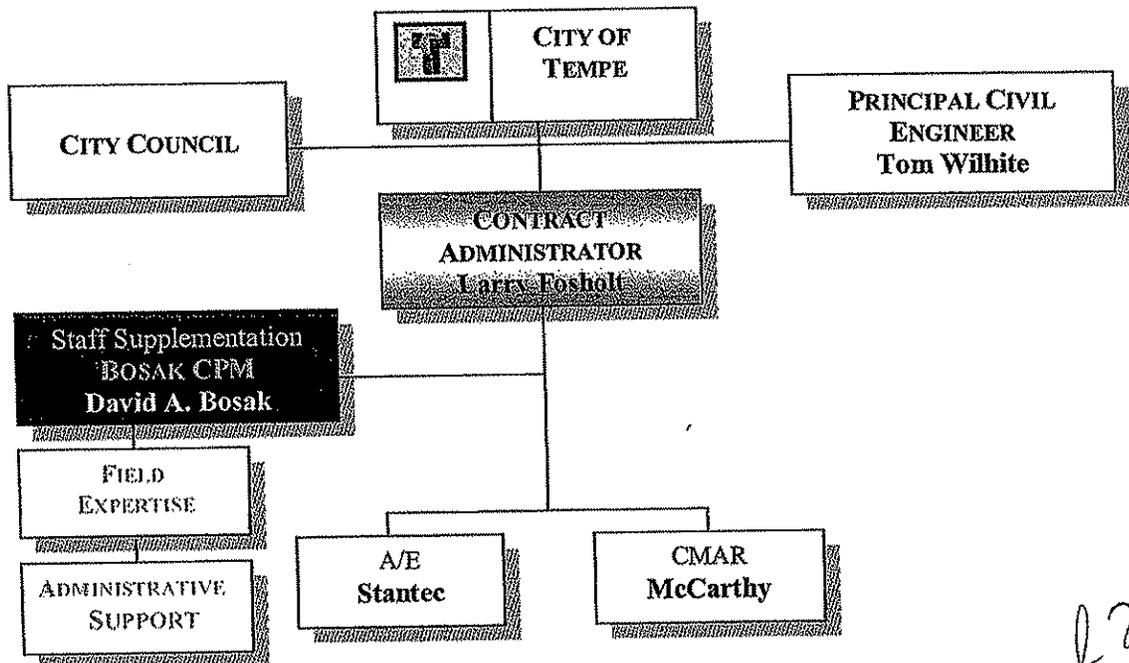
Tempe Diablo Stadium Renovation
 North Tempe Multi-Generational Facility
 Kyrene Utility Services Building

Gilbert Community Center
 Tempe Court Room Addition
 Southwater Treatment Plant Administration Addition

▲ Proposed Roles

Construction Management - Monitor construction progress and reporting, resolve issues, manage the change order process, minimize delays and costs, coordinate inspections, facilitate shop drawing reviews and requests for information between contractor and architect, oversee progress payments, coordinate punch list and close-out and other responsibilities necessary to facilitate the successful completion of the project.

ORGANIZATION CHART



JZ

PROJECT UNDERSTANDING

The City of Tempe is constructing an \$18 million Parking Structure in the Downtown area. Our approach requires special knowledge and sensitivity while working in this downtown environment. We understand the schedule requirements and constraints.

The City has selected Bosak CPM to propose on supplementation of staff on this Project. We are prepared to offer our valuable professional expertise in order to provide all the necessary support that your staff desires. Contract Documents have been prepared by Stantec. McCarthy has been selected as the CM@Risk. Drawings are currently in review for permits. Demolition will commence in January 2008. A NTP is anticipated by March 2008 with Occupancy in early January.

PROJECT STAKEHOLDERS

The following entities are considered stakeholders, as identified to date, with the understanding that others may be added as the project proceeds.

**City of Tempe, City Hall, Police Department
City Council
Public
Tempe Merchants
Stantec
McCarthy**

APPROACH SUMMARY

Bosak CPM will operate within our professional standard of care while providing our construction expertise in supplementing the services of City Staff as follows:

**Care exercised while working in Downtown area
Support Engineering Project Manager's responsibilities
Provide Project Management Expertise**

SCOPE OF SERVICES SUMMARY

BOSAK CPM will provide the general services as requested by the City of Tempe, as detailed in the Scope of Services section of this document as follows:

**Provide assistance during weekly construction meetings
Proactive with the timely flow of information
Monitor overall Construction Quality
Monitor Construction Schedule/Sequencing
Review Contractors Application of Payments
Review and Negotiate Construction Costs**



CUSTOMARY SCOPE OF SERVICES

Owner's Representative services provided by Bosak CPM are performed in conjunction with our proactive Project Approach to achieve successful project completion for the City of Tempe.

Pre-Construction Services

Owner Coordination

Provide assistance with coordination of Owner furnished equipment for proper rough-in and coordination. Coordinate Information Technology requirements with Engineer and Architect. Provide preliminary coordination with Utility Companies

Constructability Reviews

Review the Drawings and Specifications with the Design Consultant to minimize areas of conflict and overlapping in the Work to be performed by the various subs. Perform Buildings Systems analysis and Product reviews

Utility Coordination

Involve Utility Companies early in Design to help facilitate demolition, relocation and new utility requirements. Establish work plan with deliverables and establish schedule with milestone dates.

Construction Services

Project Familiarity

Develop a working understanding of the Contract Documents, including specifications, General Conditions, Special Provisions, Special Inspection and Material Testing. Be familiar with MAG specification and OSHA Safety requirements.

On site Owner's Representation

Provide onsite construction management on a part-time basis for the monitoring of the CMAR's work to verify compliance with the contract documents, assist in resolution of conflicts, monitor construction sequencing, perform quality assurance checks and provide overall owner's representation on the City of Tempe's behalf.

Field Issues

Research issues raised by the CMAR and make recommendations to the Architect. Provide ongoing value engineering. Document discussions not identified in RFIs in weekly minutes. Issue weekly field reports identifying overall progress, work in non-conformance and include items requiring attention by Architect or CMAR

Request for Information/Architects Supplemental Instructions

Establish an orderly exchange of information between the CMAR and architect. Insure logs are kept current by CMAR and Architect and brought to each progress meeting. RFIs and ASIs issued during the course of the week will be discussed at each progress meeting. Clarifications answered and prioritization of critical RFIs will be identified.

Changes in Scope/Change Orders

Confirm validity of CMAR change order requests in addition to providing an analysis of technical content and justification letter to the City of Tempe. Perform negotiations on behalf of City of Tempe. Revisions required by changed conditions, additions or deletions of scope will require a modification to the contract. Prepare Change Order with City of Tempe cover sheet and supporting documentation.

CMAR Claims

Evaluate and respond to all CMAR claims including claims for time extensions and make recommendations to the City of Tempe. Promote dispute resolution and claims avoidance.

Quality Assurance

Provide verification the CMAR's work is complying with the general intent of the contract documents. Issue letters of non-conformance to the CMAR for work in non-compliance. Request discussion of Quality Control topics from CMAR at each project meeting.

Safety

Assist in the review of the CMAR's Safety Manual. Monitor job site safety and bring all concerns to the attention of the CMAR. Safety is the responsibility of the CMAR.

Engineering Inspections

Assist with coordination of engineering inspections with municipality having jurisdiction associated with, but not limited to: sewer taps, water lines, fire lines and work within the Right-of-Way.

Schedule Review

Review monthly CPM construction schedule in conjunction with monthly pay application to verify compliance with baseline project schedule. Potential variances between monthly schedule and probable completion dates will be identified. Make recommendations to the CMAR and/or City of Tempe for remedial action if necessary to mitigate schedule variances.

Record Drawings

Review the progress of CMAR's set of as-built drawings monthly for accuracy and completeness.

Application for Payment Review

Evaluate CMAR's monthly pay applications for actual work either completed or stored in place. Insure accuracy, proper notarization, appropriate lien releases and City of Tempe cover sheet is included.

Cost Tracking Log

Monitor City of Tempe's contingency and keep a log of current PRs, CRs as well as potential costs to convey a clear understanding of overall contingency status to the City of Tempe. Include any significant changes to the contract associated with ASIs and RFIs.

Punch List/Substantial Completion

Prepare in conjunction with the architect and CMAR a punch list of deficiencies to be addressed in order to obtain substantial completion. The City of Tempe, end user, facilities personnel and plant operator will be in attendance to offer their input.

CITY STAFF SCOPE OF SERVICES
WITH MINIMAL ASSISTANCE BY BOSAK CPM

Construction Services

Conduct Pre-Construction Conference

Chair Pre-Construction Conference and discuss City of Tempe's goals and objectives, schedule requirements, time and cost control requirements, access requirements, administration requirements. A comprehensive agenda will establish procedures, expectations, responsibilities, lines of communication and roles. Act as the single point of contact for all project-related communication and correspondence and distribute minutes to all stakeholders, verify receipt of building permits, CMAR bonds and insurance.

City of Tempe Liaison

Serve as the interface between all project-related stakeholders and serve as liaison between agencies having jurisdiction. Assist CMAR with contacting Municipal personnel regarding water testing, installation of meters and sewer taps. Assist with Building Safety final inspection and issuance of the Certificate of Occupancy by Development Services. Assist in obtaining Fire Marshall Certificate.

Project Progress Meetings

Chair weekly project meetings with the stakeholders to discuss project progress and resolve any outstanding issues. Assure each team member provides logs and reports substantiating the applicable topics discussed. Identify user group critical dates and CMAR milestones and track weekly. Document pertinent weekly activities. Minutes will be detailed and comprehensive, with priorities established and action items outlining responsible parties and dates for compliance. Communicate priority issues. Minutes become project history with the ability to be used for reference in future discussions relating to questions raised, decisions made and direction given. Document the proceedings and distribute minutes to all stakeholders. Act in a time-sensitive, responsive manner, forwarding data and written communications and following up to assure prompt response and implementation of direction given.

Submittals and Shop Drawing Reviews

Assist CMAR in establishing a procedure of processing and review of submittals and shop drawings to assure that required submittals have been provided, that they conform with the design intent, and are generally complete and have been reviewed simultaneously by the appropriate Stakeholders in a timely manner. The detailed review of the submittals will be provided by the architect. Submittals issued during the course of the week will be discussed at each progress meeting. Clarifications answered and prioritization of critical Submittals will be identified.

Special Inspections and Material Testing

Scheduling of special inspections and materials testing will be coordinated by the CMAR. Insure performance by City of Tempe testing agency and compliance by CMAR, document in project meetings any areas of concern.

Utility coordination

Assist CMAR with the coordinate and installation of all utility services required for the project through a kick-off meeting with the utility providers.

Monthly Executive Summary

Update monthly executive summary and distribute to City of Tempe's Stakeholders informing them of the status, accomplishments and overall progress of the project.

JO

Monthly City of Tempe Stakeholders Meeting

Chair monthly Stakeholders meeting with Operators, End Users, Facility Personnel for coordination of owner requested design changes, shop drawing review, CMAR claims, Special Systems, Furniture delivery, Signage and Keying. The objective will be to control costs, implement the goals of the City of Tempe, coordinate and meet schedule milestones as well as identify issues and provide the City of Tempe with the information necessary to make informed project decisions in a timely manner.

City of Tempe Vendors

Coordinate City of Tempe keying, signage, special systems and FF&E vendors with the CMAR to help mitigate scheduling and installation issues.

Architect responsibilities

Involve the architect in the project to the extent expected by the basic services contract requirements, including responding to RFIs, timely Shop drawing review, generating ASIs, attending project meetings and performing site observations.

NO HOURS HAVE BEEN INCLUDED FOR CONTRACT CLOSE OUT

Staff and Furniture Move-in

Assist with occupancy by coordinating FF&E delivery dates with any CMAR activities. Move-in dates will be coordinated and planned early in the project in order to ensure proper planning and coordination for the move-in.

Final Completion

Assist the City of Tempe in the close-out of the project including:

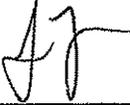
- General review and acceptance of CMAR as-builts
- Issuance of Certificate of Occupancy
- Receive completed affidavit of settlement of claims from CMAR
- Transmit Operating and Maintenance manuals to maintenance personnel
- Proper execution of all CMAR warranties and guarantees
- Process final pay application, labeled as such and release of final retention
- Verify completion of utility hook-ups
- Coordinate equipment training with applicable City of Tempe personnel
- Completion of all punch list items to the satisfaction of the City of Tempe
- Submittal of Commissioning and HVAC T&B Reports
- Receive keying for all CMAR furnished equipment
- Receive warranty form and establish procedures
- Verification of attic stock received by facilities personnel

Document Control

Maintain project records as necessary to document the activities throughout construction. At the completion of the project, submit all project documentation; meeting minutes, schedules, pay applications, RFIs, ASI, PRs, CRs, Change Orders, observation reports, record photographs and correspondence to the City of Tempe for permanent storage.

Post Occupancy

Perform one year warranty punch with the City of Tempe, plant operator, maintenance personnel and staff to document any warranty items prior to warranty expiration. These warranty punch lists will be forwarded to the CMAR for their immediate resolution.



FEE SCHEDULE
 REVISED 1/18/08



Year	Month	Construction Management Architect	Administrative Support	Field Expense	Subtotal Hours	Reimbursement	Monthly Invoice
2008	January	43Hrs	Hrs	Hrs	43Hrs	\$414.00	\$5,789.00
	February	43Hrs	Hrs	Hrs	43Hrs	\$414.00	\$5,789.00
	March	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	April	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	May	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	June	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	July	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	August	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	September	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	October	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	November	86Hrs	8Hrs	Hrs	94Hrs	\$828.00	\$12,018.00
	December	43Hrs	8Hrs	Hrs	51Hrs	\$414.00	\$6,229.00
2009	January	43Hrs	Hrs	Hrs	43Hrs	\$356.00	\$5,731.00
	February	Hrs	Hrs	Hrs	Hrs	\$0.00	\$0.00
	March	Hrs	Hrs	Hrs	Hrs	\$0.00	\$0.00
	Total Hours	946Hrs	80Hrs	Hrs			
	Hourly Rate	\$125/Hr	\$55/Hr	\$105/Hr	Prof Svcs	Reimb	
Total Fee	\$118,250.00	\$4,400.00	\$0.00	\$122,650.00	\$9,050.00	\$131,700.00	

▲ We have shown 10 months for construction and included minimum hours for reconstruction conference/project setup as well a minimal hours for project wrap up and transfer of information to City Staff for project final acceptance and Close-out

EXHIBIT A

RATE SCHEDULE

The following Personnel Rates are effective June 6, 2007 thru June 5, 2008.

▲ Personnel Rates

<u>Classification</u>	<u>Rate</u>
Senior Project Manager	\$125/Hour
Project Manager	\$115/Hour
On-Site Field Expertise	\$105/Hour
CADD Technician	\$95/Hour
Administrative Personnel	\$55/Hour

▲ Reimbursements

Project Reimbursements include:

- Laptop
- Cell Phone
- Broadband
- Printing/Reproductions
- Postage
- Mileage at \$0.485/Mile

▲ Field Office

On-site Field office is customarily provided by General Contractor, Complete with furnishings, fax and internet capabilities.

▲ Premium Charge

Premium Charge: Overtime work, Saturday, Sunday, etc:
Hourly Rate times a multiplier of 1.50.

Work required on Holidays, Depositions or court appearances:
Hourly Rate times a multiplier of 2.0.

JJ

David A. Bosak Sr., AIA, LEED AP

President/Principal Architect



▲ EDUCATION

Arizona State University, School of Architecture and Environmental Design
Bachelor of Science in Design, 1988, with a Major in Architectural Studies

▲ ASSOCIATIONS

AIA - American Institute of Architects
CMAA - Construction Management Association of America
USGBC - US Green Building Council
ACE - Alliance for Construction Excellence
AAED - Arizona Association for Economic Development
APWA - American Public Works Association
ASU - Alumni Association
GPCC - Greater Phoenix Chamber of Commerce

▲ REGISTRATION

Registered Architect, License No. 33610, State of Arizona, State Board of Technical Registration
LEED 2.0 Accredited Professional, US Green Building Council

▲ BACKGROUND

Mr. Bosak is responsible for the successful completion of medium to large-scale projects by maintaining direct contact with all stakeholders to ensure that goals are met and objectives are understood and relayed directly to the project team. Mr. Bosak brings strong management and leadership to the team through exceptional organizational skills, a firm understanding of the design and construction process and sensitivity to the client's scheduling, programming and budget requirements. Managerial responsibilities include coordinating all aspects of multiple projects including providing accounting of clients funding, schedule remediation recommendations and project updates. Mr. Bosak has proven experience with a multitude of delivery approaches including CM@Risk as well as fast-track schedules and tight budgets, endeavoring always to exceed the client's expectations.

▲ EXPERIENCE

20 years of Architectural/Engineering and Program/Construction Management Experience.

▲ SELECT PROJECT LIST

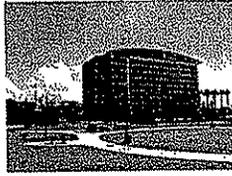


Municipal Facilities

Tempe South Water Treatment Plant Administration Renovation, \$.75 million, Tempe, AZ
Gilbert Community Center, \$5.4 million, Gilbert, AZ
Kyrene Utility Services Building and Warehouse, \$6.7 million, Tempe, AZ
Tempe Diablo Stadium, \$20 million Renovation, Los Angeles Angels of Anaheim
North Tempe Multi Generational Center, \$6 million, Tempe, AZ
Tempe Municipal Court Room Addition, \$.5 million, Tempe, AZ
Gilbert Monitor Station Rebuild, Tempe AZ
South Water Compressor Replacement, Tempe AZ
South Tempe Water Treatment Plant Environmental Services Building, Tempe, AZ
Phoenix Sky Harbor International Airport, Terminal-4, Phoenix, AZ
\$700,000, 2nd Level Fueling/Car Wash Facility, 32,000 SF, PSHIA-T4
South West Airlines, Crew Base, 13,000 SF, PSHIA-T4
Rental Car Parking Structure, \$12 million New Construction, PSHIA-T4
Host/Marriott Food and Beverage Facilities, 75,000 SF, PSHIA-T4
Phoenix Central Library, 269,000 SF, Phoenix, AZ
Saddle Brooke Village, Fire Station, 4000 SF, Tucson, AZ

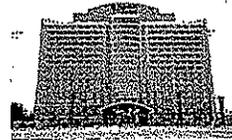


AZ



Commercial/Office

3131 Camelback, 300,000 SF Class A Office, DMB & Ryan Companies, Phoenix, AZ
 3131 Camelback, 3-level 400,000 SF, Parking Structure
 225,000 SF, 9-story, America West Airlines Corporate Headquarters, Hines, Tempe AZ
 America West Airlines 5-level 400,000 SF, Parking Structure
 150,000 SF Bank of America Data Center, Sundt Corp, Phoenix, AZ
 Anasazi Office Building, 100,000 SF Phoenix, AZ
 Walgreen's Corporate Offices, 75,000 SF, Tempe, AZ
 Swift Transportation Headquarters, New Campus, Phoenix, AZ
 Rocky Mountain Financial Center, 4000 SF Leasing Office, Chandler, AZ
 Val Vista Lakes, Office Prototype, Gilbert, AZ



Retail

Lakeview Village Shopping Center, 200,000 SF, Gilbert, AZ
 Town and Country Shopping Center, 100,000 SF, Phoenix, AZ
 Top Shelf, Restaurant, Gilbert, AZ
 Big 4 Restaurant, Kowabunga, 5400 SF T. I. Scottsdale AZ
 Bakery, T. I. Scottsdale, AZ
 Tangerine Foot, Shoe Store T. I., Chicago, IL
 Coffee Plantation, 2000 SF T. I., Tempe, AZ



Hospitality/Gaming

16-story, 280 key, Full Service Marriott Suites Hotel, Las Vegas, NV
 12-story, 275 key, Full Service Marriott Suites Hotel, CSM Corporation, Tempe, AZ
 10-story 240 key, Full Service Residence Inn high-rise Hotel, Las Vegas, NV
 100 hillside Timeshares @ Pointe/Hilton Squaw Peak Resort, Phoenix, AZ
 Scottsdale Princess Resort, 3000 SF Presidential Suite, Scottsdale, AZ
 Palacios, Presidential Suite Remodel, Pointe/Hilton Squaw Peak Resort, Phoenix, AZ
 Double Tree Hotel, Soft Goods Remodel of lobby and guest rooms, Salt Lake City, UT
 Casino AZ, \$24 million, class III gaming facility, Salt River Pima-Maricopa Indian Community



Educational Facilities

75,812 SF High School Addition, SFB, Florence Unified School District
 \$100,000 Distance Learning Lab, Florence High School
 \$325,000 TV Studio, Florence High School
 69,263 SF, Simonton Elementary School, SFB, J. O. Combs Elementary School District
 \$9 million Capital Improvement Plan, Fountain Hills Unified School District
 \$14 million Fountain Hills Middle School, Bond, Fountain Hills Unified School District
 \$443,000 Field House, Fountain Hills Middle School
 \$2 million Four Peaks Elementary School Addition, Bond, FHUSD
 227,800 SF, Higley High School, SFB, Higley Unified School District
 \$750,000 Right-of-Way Improvements, SFB, Higley High School
 \$183,000 Field House, SFB, Higley High School
 110,880 SF, Santan Elementary School, SFB, Higley Unified School District
 85,000 SF, Coronado Elementary School, SFB, Higley Unified School District
 \$4 million Higley Elementary School Addition, SFB, Higley Unified School District
 75,000 SF, Motorola University, Tempe, AZ
 North High School, \$16 million Addition, Campus Renovation, Phoenix Unified School District
 125,000 SF, Rock Point Jr./Sr. High School, Rock Point, AZ
 Backwater Community School, 45,000 SF Addition/Campus Renovations, Sacaton, AZ
 Blake Elementary School, 35,000 SF Additions, Parker Unified School District
 Portable Relocation, Paradise Valley Unified School District

AJ



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

CONTRACT DOCUMENTS

FOR

**CITY HALL PARKING GARAGE
& RETAIL BUILDING SHELL – GMP 2**

PROJECT NO. 6702971

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES**



*(FOR GENERAL AND
SPECIAL PROVISIONS)*

CITY COUNCIL MEMBERS

Mayor – Hugh Hallman

Mark Mitchell
Barbara J. Carter
Shana Ellis

P. Ben Arredondo
Onnie Shekerjian
J. Hut Hutson

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

2008

CONTRACT

THIS CONTRACT is made and entered into this 21st day of February, 2008, by and between the City of Tempe, a Municipal Corporation, organized and existing under and by virtue of the laws of the State of Arizona hereinafter designated the "City", and McCarthy Building Companies, of the City of Tempe, County of Maricopa, and State of Arizona, hereinafter designated as the "CM@RISK."

The City intends to have constructed the **City Hall Parking Garage & Retail Building Shell – GMP 2**, hereafter "Project") as described in the Plans and Specifications and the General Provisions attached.

To undertake the construction administration of said Project the City will utilize a "Construction Manager Professional". The name of the Construction Manager Professional will be provided at the preconstruction meeting.

The CM@Risk has represented to the City the ability to provide construction management services and to construct the Project and based upon this representation the City engages McCarthy Building Companies, to provide these services and construct the Project.

A Design Phase Services agreement has been executed previously between the City and the CM@Risk to perform Design Phase services. Those services may continue during the duration of this contract.

All work done under this contract shall be accomplished in accordance with the "MAG Specifications" except as may be modified in the Contract Documents. In the event of any conflict between these Contract Documents and the requirements of the MAG Specifications, these Contract Documents shall prevail.

The CM@Risk, for and in consideration of the sum to be paid to the CM@Risk by the City, in the manner, amount and at the time hereinafter provided in the "Proposal" and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds hereto attached, hereby agrees, for itself, its heirs, administrators, successors, and assigns as follows:

SECTION 1. TERMS AND DEFINITIONS

In the event of any conflict between the terms and definitions set out below and the terms and definitions found in either the "MAG Specifications" or in Contract # C2007-176, the terms and definitions set out below shall prevail in interpreting these Contract Documents unless the context requires otherwise.

Addendum – A written modification of the Contract Documents after the Contract Documents have been issued by the City Engineer but ten (10) days prior to City Council Award of this Contract. This definition replaces the MAG Specification definition of Addendum.

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

Amendment – A written modification of the terms of this Construction Services Contract.

Award – The formal action of the City Council to accept this Contract.

Business Day – Any day except Saturdays, Sundays and holidays observed by the City.

City – The City of Tempe, a public body or authority and municipal corporation, with whom the CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to this Contract. The City is the Agency or Owner or Contracting Agency for purposes of this contract. This definition replaces the MAG Specification definition of City.

City's Contingency – A fund to cover cost growth during the project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's contingency will be set solely by the City and will be in addition to the project costs included in the CM@Risk's GMP packages.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices. Examples of the administrative costs and home office costs and any limitations or exclusions are included in the General Conditions of the construction phase.

"Construction Manager At Risk" Or "CM@Risk" – The person, firm, corporation or other approved legal entity with whom the City has entered into this Contract. The "CM@Risk" is the same entity as defined as "Contractor" in MAG Specifications.

CM@Risk's Contingency or Contractor's Contingency – A fund to cover non-general conditions cost growth during the Project used with the City's approval, usually for costs that result from project circumstances. The CM@Risk Contingency or Contractor's Contingency cannot be used for General Conditions Costs. The amount of the CM@Risk's contingency will be negotiated as a separate line item in each GMP package and will not have markups at the time of the GMP proposal. The CM@Risk will inform the City at the time of use of the contractor's contingency funds by making the appropriate changes to the schedule of values with the next regular progress payment request by deducting the amount of contingency funds used from the contingency line item and adding the same amount to the line item on the schedule of values where the increased funds were used. If the contingency funds are used for a new line item that was not given with the original Schedule of Values, that will be so indicated. At the time that contingency funds are used by the CM@Risk, the appropriate markups for overhead and profit will be applied at that time. When all funds in the CM@Risk's contingency are expended, the CM@Risk then is at risk to cover any additional increases in project costs for the scope of work described in the Contract Documents and GMP proposal.

Construction Manager Professional – The person, firm or corporation named as such in this Contract who has the rights, duties, responsibilities, and limits of authority as set forth in this Contract and in the Construction Manager Professional's Contract with the City.

Contract – This written document, including its exhibits and attachments signed by the City and CM@Risk covering the Construction Services phase of the Project and including other

documents (the "Contract Documents") itemized and referenced in or attached to and made part of this Contract. This definition replaces the MAG Specification definition of Contract.

Contract Documents – This Contract, exhibits, attachments, "General Provisions", "Special Provisions", "Technical Specifications", "Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction" as amended by the City of Tempe, "Plans", "Performance Bonds", "Payment Bonds", all Written Amendments, Addendums and Change Orders to this Contract and any other documents so designated in this Contract. This definition replaces the MAG Specification of Contract Documents.

In case of a discrepancy or conflict, the order in which the Contract Documents govern is as follows from the highest to lowest: Special Provisions, Technical Specifications, Plans, General Provisions, Tempe Supplement to the M.A.G. Specifications, Tempe Supplement to the M.A.G. Details, M.A.G. Standard Specifications and Standard Details.

Cost of the Work – The direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk's construction fee, general conditions fee, taxes, bonds, or insurance costs.

Cost Model – A breakdown of the scope of the Project that is initially developed by the CM@Risk during the conceptual design phase and based on information from the Project Team and the CM@Risk's records of similar projects. The model will evolve as the design progresses and be maintained by the CM@Risk throughout the design phase and will include any assumptions and clarifications made by the CM@Risk. The model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team.

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

Deliverables – The work products prepared by the CM@Risk in performing the scope of work described in the Design Phase Services Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase include but are not limited to: Construction Management Plan, Cost Model, Project Schedule of Values, Alternative System Evaluations, Procurement Strategies and Plans, Cost Estimates, Construction Market Surveys, Cash Flow Projections, GMP Proposals, Subcontractor Procurement Plan, Subcontractor Contracts, Subcontractor Bid Packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

Design Engineer – The person, firm or corporation having a contract with the City to furnish design services for this project.

Design Engineer's Consultant – A person, firm, or corporation having a contract with the Design Engineer to furnish services required of the Design Engineer, as the Design Engineer's independent professional associate or consultant with respect to the Project.

Design Phase Contract – The Contract between the City and CM@Risk for the Services provided by the CM@Risk during the design phase which may have included the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate, GMP preparation, and subcontractor bid phase services.

Effective Date of this Contract – 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 two parties signs this Contract.

Engineer – The City Engineer acting directly or through his duly authorized representative. This definition replaces the MAG Specification definition for Engineer.

General Conditions Costs – Includes, but is not limited to, the following types of costs for the CM@Risk during the construction phase: 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 liability insurance premiums not included in labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@Risk or subcontractors; taxes on the Work and for which the CM@Risk is liable; and fees for permits and licenses. Certain limitations and exclusions are described in the General Conditions for the construction phase.

Guaranteed Maximum Price (GMP) Proposal – The offer or proposal of the CM@Risk which sets forth the GMPs for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Exhibit “A” of this Contract. The “GMP Proposal” is interchangeable with the term “Bid” as it is used in the MAG Specifications.

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

“MAG Specifications” – Maricopa Association of Governments Uniform Standard Specifications and Standard Details for Public Works Construction, latest edition, and the City of Tempe Supplement thereto.

Notice of Award – The written notice by the City to the CM@Risk stating that upon compliance by the CM@Risk with the conditions precedent enumerated therein, within the time specified, the City will sign and deliver this Contract. This definition replaces the MAG Specification definition for Notice of Award.

Notice to Proceed – A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk’s obligations under this Contract. This definition replaces the MAG Specification definition for Notice to Proceed.

Plans – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Engineer and the City.

This definition includes Plans that have reached a sufficient stage of completion and have been released by the Design 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 Plans, preliminary design Plans, detailed design Plans at 30%, 60%, 90% or 100%, but “NOT FOR CONSTRUCTION”). Shop drawings are not Plans as so defined. This definition replaces the MAG Specification definition for Plans.

Project – The total design and construction of which the design phase services and construction phase Work to be provided may be the whole or a part. This definition replaces the MAG Specification definition for Project.

Project Team – Construction services team consisting of the Design Professional, CM@Risk, the City (Water Utilities Department representatives, Design Project Manager, Construction Project Manager), and Construction Manager Professional and other stakeholders who are responsible for making decisions regarding the Project. The other stakeholders will be identified in the preconstruction conference.

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

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

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

Subcontractor – An individual, firm, entity or corporation having a direct contract with the CM@Risk who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. This definition replaces the MAG Specification definition for Subcontractor.

Substantial Completion – When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City, at the City’s discretion, can occupy and use the Project or a portion thereof for its intended purposes.

Generally, the City will not issue partial acceptance of buildings. If the City deems partial acceptance is necessary, such partial acceptance will be done at the sole discretion of the City. Partial acceptance of buildings shall include, as a minimum, (a) approval by City Fire Marshall and local authorities including issuance of the Certificate of Occupancy (b) all

systems in place, functional, and displayed to the City or its representative; (c) all materials and equipment installed; (d) all systems reviewed and accepted by the City; and (e) Heating, Ventilation and Air Conditioning test and balance completed at least 30 days prior to projected substantial completion.

For buildings and other projects, partial acceptance may also include (a) elevator permit; (b) draft Operation and Maintenance manuals and record documents reviewed and accepted by the City; (c) City operation and maintenance training completed; (d) landscaping and site work; and (e) final cleaning.

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

Total Float – Number of 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.

Work – Any or all of the improvements as required by the Contract Documents, and the construction, demolition, reconstruction, and repair of all or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto. This definition replaces the MAG Specification definition for Work.

SECTION 2. SCOPE OF THE WORK AND LOCATION OF WORK

The 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

CITY HALL PARKING GARAGE & RETAIL BUILDING SHELL – GMP 2 PROJECT NO. 6702971

as described in the Contract Documents for the sum of Fifteen Million Three Hundred Twenty Five Thousand Eighty Five and 00/100 Dollars (\$15,325,085.00), which is the Guaranteed Maximum Price (GMP) as shown in Exhibit A, and to construct the same and install the material therein for the Owner in a good and workmanlike and substantial manner and to the satisfaction of the Owner or his properly authorized agents and strictly pursuant to and in conformity with the Specifications and Plans for the above referenced project(s) and other documents that may be made by the Owner through the Engineer or his properly authorized agents, as provided herein.

The full street or physical address of the construction Work location is 117 E. Fifth Street. The CMAR Contractor shall list each Work location in any and all Contract Documents with each subcontractor at any level and each subcontractor shall include each Work location in any and all Contract Documents with its subcontractors at any level.

SECTION 3. TIME OF COMPLETION

The CM@Risk further covenants and agrees at its own proper cost and expense, to do all work and furnish all plant, materials, labor, construction equipment, services and transportation

for performing all of the work for the construction of said improvements and to construct the same and install the material therein, as called for by this Contract free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time stated in the Notice to Construction Manager at Risk. See Section 4., IV., N., Completion of the Work, below.

SECTION 4. GENERAL PROVISIONS

I. CM@RISK REQUIREMENTS AND CONDITIONS

A. LICENSES

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, the 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.

B. EXAMINATION OF PREMISES

The 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.

Subcontractor bidders shall also thoroughly examine and be familiar with the Specifications and other Contract Documents. The failure of the CM@Risk to obtain, receive or examine any addenda to the proposed Contract Documents, 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.

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

II. AWARD AND EXECUTION OF CONTRACT

A. EXECUTION OF CONTRACT AND BONDS

The form of the contract, which the CM@Risk will be required to execute and the form of bonds which it will be required to furnish, are included in the Contract Documents and should be carefully examined by the CM@Risk. The CM@Risk will be required to execute the bonds and the standard form of Contract in one (1) original counterpart within ten (10) calendar days after formal Notice of Award of Contract. Failure to execute this Contract and file satisfactory contract bonds as

provided herein within 10 (ten) calendar days after the date of Notice of Award, shall be just cause for the cancellation of the award.

B. CM@RISK INSURANCE AND BOND RATING REQUIREMENTS

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. This requirement does not apply to the Worker's Compensation/Employers Liability portion on the Certificate of Insurance.

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.

C. INSURANCE REQUIREMENTS

The CM@Risk's attention is directed to Contractor's Insurance, MAG Specification 103.6. The insurance policies required by MAG Specification 103.6 shall additionally provide full coverage of indemnity to the City, including an increase in the minimum limits to \$5,000,000 combined single limit coverage for General Liability. Prior to execution of the contract, the CM@Risk shall furnish the City with a Certificate of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall identify the Project Number and shall provide for not less than thirty (30) days advance written notice by Certified Mail of Cancellation or Termination. The Cancellation Clause shall not include the phrases "endeavor to" or "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." When the project includes construction of a new building addition to an existing building, Builders Risk Insurance shall be provided for the full amount of the contract, in accordance with MAG Specification 103.6C.

D. HEALTH INSURANCE REQUIREMENTS

All CM@Risk who enter into a contract in excess of \$30,000.00 with the City of Tempe must certify that they have, and all of its 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 (Page AFF-2). Major subcontractors are defined as entities doing work in excess of \$30,000.00 as determined at the start of each project. All required health insurance must be maintained during the entire time of the contract with the City. Health insurance is required for all contractor and major subcontractor 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 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.

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

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.

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.

All 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 at the Pre-construction Conference for Contractors and sent with the executed contract for Consultants.

E. BONDS REQUIRED

Bonds in the following amounts will be required of the CM@Risk at the time of executing the formal contract and must meet the requirements of Arizona Revised Statutes Title 34, Chapter 6, as amended:

1. Performance bond, one hundred percent (100%) of the contract price.
2. Payment bond, one hundred percent (100%) of the contract price.

F. INDEMNIFICATION

To the fullest extent permitted by law, the CM@Risk, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees from and against all allegations, demands, proceedings, actions, claims, damages, losses, expenses, judgments, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting, relating to, arising out of, or resulting from any acts, errors, mistakes, omissions, work or services of the CM@Risk, its agents, employees, or any tier of CM@Risk's subcontractors in the performance of this Contract.

CM@Risk's duty to defend, indemnify and hold harmless the City of Tempe, its agents, officers, officials and employees shall arise in connection with any allegation, demand, proceeding, action, claim, damage, loss, expense or judgment that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by CM@Risk's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the CM@Risk, any tier of CM@Risk's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the CM@Risk may be legally liable.

The amount and type of insurance requirements set forth herein will not be construed as limiting the scope of the indemnity provisions of this Contract.

III. SCOPE OF WORK

A. DESCRIPTION OF WORK

The proposed work to construct the City Hall Parking Garage & Retail Building Shell – GMP 2 will consist of construction of the parking garage and retail building shell, together with associated work as described in the attached Specifications.

B. TRAFFIC CONTROL

All traffic shall be regulated in accordance with MAG; 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.

At the time of the pre-construction conference, the 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, the 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.

The CM@Risk shall have the full responsibility and liability for traffic control for this project. The CM@Risk shall submit a Traffic Control Plan to Transportation 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.

During construction it may be necessary to alter traffic control as approved by Transportation. 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 revisions as adopted by the City of Tempe. The most restrictive manual shall apply.

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

In the event the 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 the CM@Risk at twice the City's cost.

The 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.

Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Transportation.

Speed limits shall be strictly enforced.

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

C. CLEAN-UP

The 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 work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item.

D. ALTERATION OF WORK

In the event that significant changes in the scope of the work, and/or changes in the quantities due to contingencies of construction becomes necessary, such changes shall be made in accordance with Section 104.2 of General Conditions in the MAG Specifications.

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.

E. SUBSIDIARY WORK

All work called for in the Plans and Specifications shall be performed by the 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.

IV. CONTROL OF WORK

A. 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 Documents, or finds discrepancies in or omissions from the Contract Documents, such Subcontractor may submit to the Engineer a written request for an interpretation or correction thereof. The 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 the CM@Risk who shall distribute the addendum to the appropriate Subcontractor(s). The City of Tempe will not be responsible for any other explanation or interpretations of the documents.

B. CM@RISK'S REPRESENTATIVE

The 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 by the Engineer to the CM@Risk's foreman or agent on the Work shall be considered as having been given to the CM@Risk.

C. RELOCATION OF UTILITIES

All utilities in conflict with the new Work will be relocated by the City except as otherwise provided in the Plans and Specifications,

D. SUPERVISION BY CM@RISK

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

Nothing contained in this Contract shall be construed as establishing an employer/employee relationship, partnership or joint venture between the CM@Risk and the City.

E. CONSTRUCTION STAKING

Construction staking will be provided by the CM@Risk. 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 at the CM@Risk's expense.

F. SURVEY CONTROL POINTS

Existing survey monuments shall be protected by the CM@Risk or removed and replaced under the direct supervision of the City Surveyor or the City Surveyor's authorized representatives. Prior to construction, it is the responsibility of the CM@Risk to notify the City Surveyor 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 the CM@Risk's negligence and/or lack of notification to the City Surveyor shall be replaced at the 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.

G. AUTHORITY OF THE CONSTRUCTION MANAGER PROFESSIONAL

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

The 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. The Construction Manager Professional shall promptly make decisions relative to the interpretation of the Contract Documents so as to minimize delays in construction.

The Construction Manager Professional will not be responsible for directing construction, control, techniques, sequence, or procedures, or for directing job safety.

H. SHOP DRAWINGS, SCHEDULES & SAMPLES

In time for each to serve its proper purpose and function, the CM@Risk shall submit to the 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.

Shop drawings and data shall be submitted to the Engineer in such number of copies as will allow him to retain four (4) copies of each submittal.

The submittal shall clearly indicate the specific area of the Contract Documents for which the submittal is made. The additional copies received by him will be returned to the CM@Risk's representative at the job site. The Engineer's notations of the action which he has taken will be noted on one (1) of these returned copies.

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 Documents, and the fabrications furnished shall be in conformance with the same. However, the Engineer's review of the above drawings, lists, prints, specifications, samples, or other data shall not release the 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.

I. AS-BUILT PLANS

The CM@Risk shall provide and maintain accurate field data on a red-lined 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 the architect/engineer. 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 the CM@Risk, and certified to be complete by the architect/engineer of record.

J. UNDERGROUND UTILITIES

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

K. INSPECTION

The 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, the CM@Risk must call for final inspections from the Development Services and Public Works Departments of the City of Tempe. The final inspection must be completed prior to final acceptance and payment by the City Engineer.

L. SUBSTANTIAL COMPLETION

Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, City shall release to CM@Risk all retained amounts relating, as applicable, to the entire 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.

M. 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, the owner will prepare a written agreement with the CM@Risk and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right of way projects only.

N. COMPLETION OF THE WORK

Completion of the Work is full completion of all construction associated with a contract, including, but not limited to punch list items, close out documentation, Operation and Maintenance manuals, warranties, and record Plans as certified by the Architect or Engineer of record.

O. FINAL ACCEPTANCE & GUARANTEE

"Final Acceptance" shall mean a written final acceptance of the Work. The City Engineer shall make the final acceptance promptly after the work has been completed in accordance with the Contract Documents and after inspection is made. The work performed under this contract shall be guaranteed for a period of one year from the date of final acceptance.

V. CONTROL OF MATERIALS

A. EXCESS MATERIALS

Excess or unsuitable material, broken asphaltic concrete and broken portland concrete shall be disposed of by the CM@Risk. The CM@Risk shall, prior to commencement of the work, submit a letter to the City 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.

B. QUALITY CONTROL

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 these Contract Documents; and it shall be the duty of the CM@Risk to call the Engineer's attention to apparent errors or omissions and request instruction before proceeding with the work.

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

At the option of the 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. The CM@Risk shall give the 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.

VI. LEGAL REGULATIONS AND RESPONSIBILITIES TO PUBLIC

A. CONFLICT OF INTEREST

This contract is subject to cancellation under the provisions of ARS §38-511.

B. 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. The MAG Specification 107.5 applies to this provision.

C. NON-DISCRIMINATION

In connection with the performance of work under this Contract, the CM@Risk agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age or disability. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The CM@Risk agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting officer setting forth the provisions of the Non-Discrimination clause.

D. 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, the 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 the City of Tempe 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, the 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 of Tempe Transportation Division. Prior to submittal, the CM@Risk should contact Engineering Services for complete details for issuance of the City of Tempe haul permit.

E. ENVIRONMENTAL REQUIREMENTS

The 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.

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

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

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

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

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.

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

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

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.

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.

All materials supplied by the CM@Risk shall be 100% asbestos free unless otherwise approved by the City of Tempe.

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

In addition to the above, the use of new products made with reclaimed material and meeting project Specifications are encouraged.

F. SAFETY REQUIREMENTS

The 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 of Tempe construction projects.

1. *PRE-CONTRACT REQUIREMENTS*

The 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.

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

Insurance Confirmation – The CM@Risk shall provide certificates of insurance and meet indemnification criteria.

2. *CONTRACT REQUIREMENTS*

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

- a. City Safety Rules and Expectations.
- b. Contractor Tailgates – CM@Risk shall conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
- c. Accident/Injury/Illness Procedures – The City's Construction Manager and the Risk Management Division shall be contacted any time an accident, injury or illness occurs on the project.
- d. Unsafe Acts – Contractor employees shall be empowered to stop an unsafe act or condition at City facilities.
- e. Safety Audits – The City reserves the right to conduct safety audits at the job site at any time. In addition, the City shall be notified should an OSHA inspection occur at a City job site.
- f. 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.

The CM@Risk may have the following additional safety requirements based on the exposures of the project:

The 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.

As a part of the CM@Risk implementing a confined space program, it is the responsibility of the 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.

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 the CM@Risk to provide a trained attendant and all necessary equipment required for safe entry of the City employee.

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. The City reserves the right to request the agendas, minutes of the meetings, and documentation of any safety tailgate meetings held on the job site.

G. TEMPORARY BARRICADES

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.

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

H. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

The 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 City Engineer.

Estimate or partial payment of work so completed shall not release the 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.

I. BLUE STAKE

The CM@Risk is required to notify Blue Stake (602-263-1100) prior to the excavation of any material in accordance with A.R.S. §§ 40-360.21 through 40-360.32, as amended. The CM@Risk shall directly contact the City for the marking of electrical underground apparatus for traffic signals, sprinkler and irrigation facilities.

J. 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. The CM@Risk is responsible for executing a "Construction Clearance Agreement" with Salt River Project, if required, and furnishing a copy to the City of Tempe prior to proceeding with any construction on Salt River Project facilities.

K. 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 the CM@Risk prior to start of construction.

L. 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.

M. PROTECTION OF EXISTING FACILITIES

The 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 the CM@Risk. The 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.

N. STORM WATER POLLUTION PREVENTION PLAN AND AZPDES PERMIT

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, the 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 downloaded from www.adeq.state.az.us/environ/water/permits/links.html or viewed at the City of Tempe Engineering Division.

The contractor shall complete and submit the following:

1. **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.
2. **Storm Water Pollution Prevention Plan (SWPPP)** for the project.
3. **Notice of Termination (NOT)** of coverage under the AZPDES Construction General Permit.

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.

The contractor 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 City's construction project manager at the time of the preconstruction meeting. The Contractor shall prepare a final SWPPP and submit it at the preconstruction meeting for discussion and approval.

Failure by the contractor (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. The contractor 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.

It is the permittee'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). The contractor is responsible for maintaining those devices in proper working order, including cleaning and/ or repair.

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. The contractor, 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.

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

Upon total project completion, acceptance, and de-mobilization, the contractor 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.

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 the contractor is considered incidental to other items and no extra payment will be made for these incidental costs. Such incidental costs shall include contractor 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.

VII. COMMENCEMENT, PROSECUTION AND PROGRESS

A. 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 and shall be completed by February 18, 2009 with the contractor obtaining a certificate of occupancy for the Parking Garage portion of the work by January 14, 2009.

B. 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.

C. CM@RISK'S CONSTRUCTION SCHEDULE

Prior to the start of work, a construction progress schedule shall be required for all projects 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.

D. HINDRANCES AND DELAYS

1. Except as provided in Paragraph 2 immediately below, no charge shall be made by the 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 the CM@Risk, shall entitle the CM@Risk to a time extension sufficient to compensate for the delays. The amount of the delay shall be determined by the Engineer provided the CM@Risk gives the Engineer immediate notice in writing of the cause of such delay.

2. The parties agree to negotiate for the recovery of actual costs related to expenses incurred by the CM@Risk for a delay under the following circumstance:
 - a. If the City is solely responsible for the delay which is unreasonable under the circumstances, and
 - b. Which delay was not within the contemplation of the parties to the contract at the time the contract was entered into, and
 - c. The 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.
3. Unless specifically provided for in the Special Provisions, the maximum compensation for delays, as described in Paragraph 2 above, shall not exceed Contractor's actual cost.
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.

E. LIQUIDATED DAMAGES

Unless otherwise specified, liquidated damages will be applied in accordance with the 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.

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

G. JURISDICTION

This contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior

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

H. SURVIVAL

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

I. 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.

J. 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.

K. 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.

L. TIME IS OF THE ESSENCE

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

M. THIRD PARTY BENEFICIARY

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

N. COOPERATION AND FURTHER DOCUMENTATION

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

VIII. MEASUREMENTS AND PAYMENTS

A. CONTRACT PRICE ADJUSTMENTS

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

1. Unit prices set forth in the Contract or as subsequently agreed to between the parties;
2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and
3. Costs, fees and any other markups.

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.

If an increase or decrease cannot be agreed to as set forth in items 1 through 3, above, and the 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.

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

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

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.

If the parties are unable to agree and City expects the 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.

B. RECORD KEEPING AND FINANCE CONTROLS

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

The City, its authorized representative, and/or the appropriate federal agency, reserve(s) the right to audit the CM@Risk's records to verify the accuracy and

appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders.

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

The CM@Risk shall include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the 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.

The 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 the City to audit it's records to verify the accuracy and appropriateness of pricing data.

C. 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.

D. APPROXIMATE QUANTITIES

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; and the CM@Risk further agrees that the City of Tempe will not be held responsible if any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the 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 him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in this Contract.

E. MISCELLANEOUS WORK AND ALLOWANCES

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.

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.
2. Cleanup including day-to-day cleanup.
3. Notification to residents adjacent to this project prior to start of construction which would affect them.
4. Water required for compaction or dust control.
5. Miscellaneous removals and relocations not otherwise specified in the Technical Provisions.
6. Power pole bracing.
7. Removal of trees twelve inches (12") or less in diameter.
8. Removal, relocation and/or modification of existing walls and fences.
9. Trimming of trees and bushes.
10. Replacement of plant material and repair of irrigation equipment to meet or exceed conditions existing prior to CM@Risk beginning work.

SECTION 5. SPECIAL PROVISIONS

I. PERMITS

The Contractor shall be required to obtain all permits and licenses for the project and pay all applicable fees, unless otherwise noted on the Plans and Specifications. The Contractor shall be paid for the actual costs of the permits and license fees upon submitting a receipt showing the fee paid. Excluded are items such as all costs incurred by the Contractor in securing the permit except for the actual permit fee established by the agency, cost for all shutdowns or outages, cost for pole bracing, cost for any additional insurance requirements, and other similar type costs. There will be no charge to the Contractor for any of the necessary City of Tempe permits and inspections. The Contractor shall abide by all stipulations of all license and permits issued for this project.

II. PHONE NUMBERS

City of Tempe Engineering (Project Manager)	Mark Weber	480-350-8526
Stantec	Rick Harper	916-569-2524
Stantec	Bill Peoples	916-669-5921
Blue Stake		602-263-1100

III. UNIFORMED POLICE OFFICERS

During the course of construction, it may be required to have 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 the City.

IV. 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.

V. CONFIDENTIALITY OF PLANS AND SPECIFICATIONS

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

All Record Documents, Shop Drawings and other plans or drawings prepared or submitted by the 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 the CM@Risk's contract with the City of Tempe".

VI. IRRIGATION AND LANDSCAPE REPAIR

The Contractor 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 the Contractor meet with owner(s) of irrigation systems prior to construction and note existing operating systems to minimize impact and repair costs.

VII. SEQUENCE OF CONSTRUCTION

The Contractor shall submit a project sequencing schedule to the City Engineer for review at the pre-construction conference. The Contractor is on notice that the City will review the proposed schedule to insure limited community impact.

VIII. COORDINATION WITH OTHER CONTRACTORS

There may be other construction in the area during the contract period. Coordination between contractors may be required.

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

Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner, Design Engineers and Construction Manager 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 or resulting from any action, legal or equitable, brought by a separate contractor against Owner, Design Engineer or Construction Manager 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 Contractor's performance of the work.

Should a separate contractor cause damage to the work or property of Contractor or should the performance of work by any separate contractor at the site give rise to any other claim, Contractor shall not institute any action, legal or equitable against Owner, Design Engineer, or Construction Manager 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 Owner, Design Engineer, or Construction Manager or the officers, directors, employees, agents, or other consultants of each and any of them on account of such damage or claim.

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

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

EXHIBIT A - GMP SUMMARY

CONTRACTOR: McCarthy Building Companies, Inc.
80 East Rio Salado Parkway, Suite 310
Tempe, Arizona 85281

PROJECT NO.: 6702971
PROJECT NAME: City Hall Parking Garage & Retail Building Shell GMP #2
DATE: January 21, 2008

GMP SUMMARY			
DIRECT COSTS			Amount
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)		\$ 12,596,300
INDIRECT COSTS			Rate
B.	CM @ Risk's Contingency	0.00%	\$ -
C.	Construction Fee	5.50%	\$ 842,880
D.	General Conditions	5.25%	\$ 805,232
	D1. Payment and Performance Bond	0.85%	\$ 130,263
	D2. Insurance	1.20%	\$ 183,901
E.	Sales Taxes	5.00%	\$ 766,509
F. TOTAL GMP			\$ 15,325,085
OWNER'S CONTINGENCY			\$ 1,000,000
TOTAL PROJECT COST			\$ 16,325,085

Formulas:

Total GMP: $A+B+C+D+E=F$

Rates (percentages) are calculated by dividing each amount by F, such as B/F , D/F and $D1/F$.