

**Request for Statement of Qualifications**

**For**

**Construction Manager at Risk (CMAR)**

**Effluent & Wastewater Pipelines & SR89 Improvements**

**MAYOR AND COUNCIL:**

Phil Goode, Mayor  
Connie Cantelme, Council Member  
Lois Fruhwirth, Council Member  
Ted Gambogi, Council Member  
Patrick Grady, Council Member  
Brandon Montoya, Council Member  
Eric Moore, Council Member

**CITY CLERK:**

Sarah M. Thornhill

**PUBLIC WORKS DIRECTOR:**

Gwen Rowitsch

## **Request for Statement of Qualifications**

### **Construction Manager at Risk (CMAR) Effluent & Wastewater Pipelines & SR89 Improvements**

DESCRIPTION: The City of Prescott, Arizona solicits interest from qualified persons or firms to provide Construction Manager at Risk (CMAR) preconstruction and construction services for the Effluent & Wastewater Pipelines & SR89 Improvements Project. Only persons or firms capable of providing the requested CMAR services will receive consideration.

MANDATORY PRE-SUBMITTAL CONFERENCE: July 29, 2025, at 8:00a.m., City of Prescott Public Works Department.

PROPOSAL OPENING: Thursday, August 14, 2025, at 2:00p.m. **City Council Chambers 201 N. Montezuma Street, 1st Floor, Prescott, Arizona 86301.**

In accordance with local and State law, sealed SOQs will be received by the **Office of the City Clerk at 201 N. Montezuma Street, Suite 302, Prescott, Arizona 86301**, until 2:00p.m. on the date specified above, for the services specified herein. Statements will be opened and read aloud at the above noted date, time, and location. Any submittals received at or after 2:00p.m. on the referenced date will be returned unopened.

The City of Prescott reserves the right to accept or reject any or all submittals, and waive any minor informality or irregularity deemed in the best interest of the City and to reject the submittals of any persons who have been delinquent or unfaithful in any contract with the City.

Copies of the Request for Statement of Qualifications and Contract Documents are available free of charge on the City's website at <https://prescott-az.gov/budget-and-finance/purchasing/>.

PUBLISH: July 20 and 27, 2025

# Request for Statement of Qualifications

## Construction Manager at Risk (CMAR) Effluent & Wastewater Pipelines & SR89 Improvements

### TABLE OF CONTENTS

<b>I.</b>	<b>GENERAL INFORMATION .....</b>	<b>4</b>
	<b>A. CMAR SCOPE OF WORK .....</b>	<b>4</b>
	<b>B. MAJOR MILESTONES.....</b>	<b>6</b>
	<b>C. REQUESTS FOR INFORMATION .....</b>	<b>6</b>
	<b>D. MANDATORY PRE-SUBMITTAL CONFERENCE: .....</b>	<b>7</b>
<b>II.</b>	<b>STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA .....</b>	<b>7</b>
	<b>A. GENERAL REQUIREMENTS .....</b>	<b>7</b>
	<b>B. PROPRIETARY INFORMATION.....</b>	<b>8</b>
	<b>C. SUBMITTAL REQUIREMENTS .....</b>	<b>8</b>
	<b>D. DELIVERY OF SUBMITTALS .....</b>	<b>9</b>
	<b>E. MINIMUM TEAM QUALIFICATIONS .....</b>	<b>9</b>
<b>III.</b>	<b>EVALUATION CRITERIA.....</b>	<b>9</b>
	<b>A. GENERAL INFORMATION.....</b>	<b>10</b>
	<b>B. EXPERIENCE AND QUALIFICATIONS OF THE CONTRACTOR/TEAM.....</b>	<b>10</b>
	<b>C. EXPERIENCE OF KEY PERSONNEL ASSIGNED TO PROJECT .....</b>	<b>10</b>
	<b>D. UNDERSTANDING OF THE PROJECT AND APPROACH TO PERFORMING THE REQUIRED SERVICES.....</b>	<b>11</b>
	<b>E. PRINCIPLE OFFICE LOCATION AND LOCAL PARTNERSHIP .....</b>	<b>11</b>
	<b>F. PROJECT TEAMWORK LOAD AND AVAILABILITY .....</b>	<b>11</b>
	<b>G. OVERALL EVALUATION OF THE CONTRACTOR/TEAM AND ITS PERCEIVED ABILITY TO PROVIDE THE REQUIRED SERVICES.....</b>	<b>11</b>
<b>IV.</b>	<b>EVALUATION AND SELECTION PROCESS.....</b>	<b>12</b>
	<b>A. OVERVIEW .....</b>	<b>12</b>
	<b>B. PRESENTATION/INTERVIEW .....</b>	<b>12</b>
	<b>C. FINAL RANKING AND CONTRACT NEGOTIATION.....</b>	<b>13</b>
	<b>D. TERM OF CONTRACT.....</b>	<b>14</b>
	<b>E. TERMINATION OF CONTRACT .....</b>	<b>14</b>
	<b>F. PROTEST POLICY .....</b>	<b>14</b>
	<b>L. CONTRACTOR IMMIGRATION WARRANTY .....</b>	<b>15</b>
<b>V.</b>	<b>ATTACHMENTS.....</b>	<b>17</b>
	<b>A. CONSTRUCTION INSURANCE REQUIREMENTS.....</b>	<b>17</b>
	<b>B. SAMPLE PRECONSTRUCTION SERVICES CONTRACT.....</b>	<b>17</b>
	<b>C. SUBCONTRACTOR SELECTION PLAN .....</b>	<b>17</b>

## **I. GENERAL INFORMATION**

The City of Prescott (hereinafter “City”) invites interested and qualified persons or firms (hereinafter “firms”) to submit a written Statement of Qualifications (SOQ) for Construction Manager at Risk (CMAR) preconstruction and construction services for the Effluent & Wastewater Pipelines & SR89 Improvements Project.

Contracts shall be awarded on the basis of demonstrated competence and qualifications pursuant to A.R.S. § 34-603. To be eligible for consideration, firms must submit a single SOQ demonstrating appropriate competence, qualifications, and relevant experience.

Firms will submit an SOQ to be reviewed and evaluated by a review committee. A shortlist of up to three (3) firms, with the highest SOQ evaluations, may be invited to participate in a formal presentation and interview process to establish a final ranking. The highest-ranked firm will be invited by the City to negotiate a contract for preconstruction and construction services.

This project is an important part of the city’s centralization effort by replacing an undersized and failing effluent pipeline and adding a second wastewater pipeline in the SR89 corridor. Once complete, the project will increase pipeline capacity and centralize wastewater treatment and effluent distribution from the Airport Water Reclamation Facility. The project will also make roadway improvements to help improve safety, including cross-traffic roadway access and visibility along and at intersections, and improve and maintain efficient traffic flow.

A new 18-inch effluent force main will be installed from the Kieckhefer Ranch to Willow Lake Road to deliver effluent from the Airport Water Reclamation Facility (AWRF) to a new effluent storage tank (not part of this project scope of work) near the intersection of SR89 and Willow Lake Road on City owned land. The new effluent line will be installed in the same location as the existing effluent pipeline which will be removed as part of this project. A temporary effluent bypass pipe will be necessary.

A new 24-inch gravity sewer line will be installed from Lillian Lane to Kieckhefer Ranch. The new pipeline will parallel the existing 24-inch gravity sewer line but will be installed at a safe distance away from the existing sewer line to avoid damage to the existing sewer line because of the rocky subsurface.

SR89 roadway work will include safety, operation, and capacity improvements which shall include above grade rock removal, roadway improvements (dependent on the final recommendation from the Design Concept Report), cross-traffic intersection improvements including grade adjustments, sight visibility lines, and turn restrictions, limited turn lanes, and a frontage road on the northbound side of the roadway just north of the Willow Lake Road roundabout.

### **A. CMAR SCOPE OF WORK**

The CMAR will begin in an agency support role providing design phase preconstruction services and may hold the construction contract with the City for construction of the project. Prior to construction, the CMAR will assume the risk of delivering the project through a Guaranteed Maximum Price (GMP) contract. The CMAR will be responsible for construction means and methods, and will be required to solicit bids from pre-qualified subcontractors to perform the work using an approved subcontractor selection process. The CMAR may also compete to self-perform work.

Design phase preconstruction services by the CMAR may include the following:

1. Provide detailed cost estimating and knowledge of marketplace conditions.

2. Provide project planning and scheduling.
3. Provide construction phasing and scheduling that will minimize interruption to SR89 traffic and City wastewater operations.
4. Provide alternate systems evaluation and constructability studies.
5. Advise City of ways to gain efficiencies in project delivery.
6. Provide long-lead procurement studies and initiate procurement of long-lead items.
7. Assist in the permitting processes.
8. Select subcontractors/suppliers for this project (see Attachment A- Subcontractor Selection Plan).
9. Provide multiple GMP cost proposals for the project.

Construction services by the CMAR may include the following:

1. Construct the effluent and wastewater pipelines and SR89 roadway improvements.
2. Coordinate with various City departments, other agencies, utility companies, local businesses, etc.
3. Arrange for procurement of materials and equipment.
4. Schedule and manage site operations.
5. Bid, award, and manage all construction-related contracts.
6. Provide quality controls.
7. Bond and insure the construction.
8. Address all federal, state, and local permitting requirements.
9. Interact and resolve citizen complaints.
10. Resolve owner concerns.
11. Maintain a safe work site for all project participants.
12. Assist design team to prepare as-built drawings.
13. Provide City Staff training and O & M Manuals.
14. Coordinate Facility Start up
15. Project Warranty – 2 Years.

## **B. MAJOR MILESTONES**

<u>Milestone</u>	<u>Tentative Date</u>
Award Design Contract	November 2024
Advertise CMAR RSOQ	July 2025
Preliminary Design Report Complete	September 2025
15% Design Complete	September 2025
CMAR SOQ Evaluation and Selection	Aug-Oct 2025
Award CMAR Contract	October 2025
30% Design Complete	January 2026
60% Design Complete	April 2026
90% Design Complete	August 2026
100% Plans and Specifications Complete	December 2026
Final GMP	January 2027
Begin Construction	March 2027
Construction Complete	October 2028
Project Close-out Complete	December 2028

These milestones are earliest dates for planning purposes only. They are subject to change and shall not represent any contractual commitment whatsoever on the part of the City.

## **C. REQUESTS FOR INFORMATION**

Firms who desire clarification of the procurement terms, selection criteria or submittal requirements shall restrict their inquiries to written communications only. All communications (other than delivery of the proposal as defined below) shall be addressed to the City project representative at the following:

Jaimie Sventek  
Contracts Coordinator  
City of Prescott – Purchasing  
contracts@prescott-az.gov

Requests for information must be received by the project representative prior to 5:00p.m. on Tuesday, August 5, 2025. Responses, or addenda as required, will be issued no later than 12:00p.m. (noon) on Monday, August 11, 2025. Receipt of addenda must be acknowledged on the required form in the firm's submission. It is the submitter's sole responsibility to check the City's website for periodic updates or addenda.

All firms/contractors/teams interested in this project (including the firms/contractors/teams employees, representatives, agents, lobbyists, attorneys, subcontractors and subconsultants) will refrain, under penalty of disqualification, from direct or indirect

contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department Heads and other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified above.

**D. MANDATORY PRE-SUBMITTAL CONFERENCE:**

The pre-submittal conference is mandatory for potential submitters. Submittals will only be accepted from contractors in attendance as established on the sign-in sheet and Microsoft Teams attendance list.

The pre-submittal conference will be held on Tuesday, July 29, 2025, at 8:00a.m., at City of Prescott Public Works Department, 433 N. Virginia Street, Prescott AZ 86301.

Virtual attendance will be an option via Microsoft Teams at the same time as listed above.

Microsoft Team Meeting  
Meeting ID: 236 624 614 433 2  
Passcode: oj6fS6DM

**II. STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA**

Responses to this request must be in the form of a Statement of Qualifications (SOQ), as outlined in this document.

**A. GENERAL REQUIREMENTS**

Interested firms are required to submit information relative to their qualifications, experience, project delivery approach, ability to meet the project's goals and objectives, and other criteria as listed. All information must be provided as requested for all firm members and their key personnel to be assigned to this project.

The SOQ shall address the evaluation criteria and shall include the following:

- A cover letter indicating the firm's interest in providing CMAR preconstruction and construction services.
- Location of the firm
- Statement of the firm's understanding of the purpose and scope of the project.
- Description of the firm's specific technical capabilities, qualifications, and years of prior experience.
- Brief resume for key project team members outlining their credentials and experience.
- Description of at least three (3) but no more than five (5) similar projects in which the firm participated similarly to this project. Describe the firm's role in the project and scope of work that demonstrates the firm's expertise. Provide the name and contact information for each project.
- Description of how the firm would approach, manage, and complete related project.
- List of applicable Arizona professional licenses held, including license numbers, and note whether licenses are held by firms or individuals

- List and provide a brief description of projects currently under contract with other government agencies

The City reserves the right to cancel this request, reject in whole or in part any and all submittals, waive or decline to waive any minor informality or irregularity in any submittals, or determine not to enter into one or more of the multiple contracts as specified if determined by the City to be in the City's best interests. The City assumes no liability for the cost of preparing a response to this request.

#### **B. PROPRIETARY INFORMATION**

All materials submitted in response to the solicitation, including samples, shall become the property of the City and are therefore subject to public release, upon request, after the Contract award. Firms shall clearly mark any proprietary information contained in its submittal with the words "Proprietary Information". Firms shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a submittal as proprietary may result in rejection of the submittal.

Firms should be aware that the City is required by law to make its records available for public inspection. All firms, by submission of materials marked proprietary, acknowledge, and agree that the City will have no obligation to advocate for non-disclosure in any form nor will the City assume any liability to the firms in the event that the City must legally disclose these materials.

#### **C. SUBMITTAL REQUIREMENTS**

Statements shall be submitted as **one (1) original (not stapled or bound)** along with **one (1) flash drive** with same submittal and must conform to this request.

The SOQ shall be limited to no more than ten (10) pages to address the SOQ criteria (excluding cover letter, resumes, and organizational chart). Pages shall be letter size (8½ x 11 inches), portrait orientation, single-sided, with a minimum font size of 12. Combinations of text and graphic material may be used at the firm's discretion to appropriately communicate facts and qualifications. Five (5) additional pages of appendices are allowed which may include graphs, charts, photos, or additional resumes.

The cover letter shall not exceed one (1) page and is exclusive of the page count limitation for the SOQ. The letter shall be on the firm's company letterhead and shall be signed by an officer or principal of the firm with contracting authority. Resumes for each key team member shall be limited to a maximum length of one (1) page and should be incorporated as an appendix at the end of the SOQ.

Front and back covers, table of contents, and tabbed divider pages will not be counted against the page limit if they do not contain submittal information. The front cover may contain pictures and limited information to identify the project, purpose of the submittal, and firm. Tabbed dividers and the back cover shall contain no information or pictures.

Within the submittal package (preferably on the SOQ cover or within the cover letter), provide all contact information including the firm's name, address(es), email address(es), website address, phone, and name(s) of principals. This information will be utilized for all correspondence related to this request. Notification of the final list and assignment of contracts will be delivered to the contact information as provided in the SOQ.

**Do not** include any fees or pricing related to this project with the SOQ submittal. These materials will not be considered at this time and failure to comply with this provision may result in the rejection of the submittal.

Receipt of addenda must be acknowledged on the required form in the firm's submission. It is the submitter's sole responsibility to check the City's website for periodic updates or addenda.

**D. DELIVERY OF SUBMITTALS**

Sealed SOQs will be received **before 2:00p.m. on Thursday, August 14, 2025**, at the **City Clerk's Office, 201 N. Montezuma Street, Suite 302, Prescott, Arizona 86301**, at which time all submittals will be publicly opened in the City Council Chambers.

Any submittals received at or after 2:00p.m. on the above-stated date will be returned unopened. Firms are solely responsible for the delivery of their submittals to the above location by the time and date specified. The City is not responsible for lateness of mail, carrier, etc. The city will not accept delivery of the bid at any other city locations. The time and date stamp in the City Clerk's Office shall be the official time of receipt. Electronic or facsimile submittals will not be considered. Modifications to submittals will not be considered after the 2:00p.m. deadline.

The outside of the submittal envelope shall indicate the name and address of the respondent; shall be addressed to the City Clerk, City of Prescott, at the above address; and shall be clearly marked:

**Statement of Qualifications:  
Construction Manager at Risk (CMAR)  
Effluent & Wastewater Pipeline & SR89 Improvements  
Due before 2:00p.m. on August 14, 2025**

**E. MINIMUM TEAM QUALIFICATIONS**

Firms shall possess the qualifications and Arizona licenses as required by law, in addition to having extensive knowledge, expertise and experience for Construction Manager at Risk (CMAR) preconstruction and construction services. The selected firm will be required to execute and meet the terms of the City's standard Pre-Construction Services Agreement, including insurance requirements, in a form acceptable to the City Attorney. Approval of the City Council may also be required for the award of a contract. A sample agreement is provided with this request.

**III. EVALUATION CRITERIA**

The SOQ shall clearly and accurately display the capability, knowledge, and experience of the firm to meet the technical requirements of the request. Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the firm's ability to meet the requirements of this request. Emphasis shall be on quality, completeness, clarity of content, responsiveness to the requirements, and understanding of the City's needs.

The SOQs will be evaluated by a Review Committee appointed by the City according to the following criteria:

**A. GENERAL INFORMATION**

5 points possible

1. Provide a general description of the firm that is proposing to provide CMAR preconstruction and construction services. Explain the legal organization of the proposed firm. Provide an organizational chart showing key personnel.
2. Provide the following information:
  - a. List the Arizona professional and contractor licenses held by the firm and the key personnel who will be assigned to this project. Provide the license numbers and explain if held by an individual or the firm.
  - b. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last five (5) years. Identify any claims arising from a contract which resulted in litigation or arbitration within the last three (3) years. Briefly describe the circumstances and the outcomes.
  - c. If selected as a finalist for this project, the firm will be required to provide a statement from an A or better surety company describing the firm's bonding capacity.

**B. EXPERIENCE AND QUALIFICATIONS OF THE CONTRACTOR/TEAM**

25 points possible

1. Identify at least three (3) comparable projects (utility pipeline in trench and/or above grade rock removal for roadway construction projects) in which the firm served as either CMAR, agency construction manager during design and construction phases, or general contractor. Special consideration will be given to firms that have provided CMAR preconstruction and construction services on similar successful projects. For each project identified, provide the following:
  - a. Description of the project.
  - b. Role of the firm and specify whether CMAR, construction manager, or general contractor. If CMAR or general contractor, identify the percentage of self-performed work. Also specify preconstruction services provided during the design phase (i.e. cost estimating, scheduling, value engineering, etc.).
  - c. Project's original contracted construction cost and final construction cost.
  - d. Construction completion dates.
  - e. Project owner.
  - f. Reference information (two current names with telephone numbers per project).
2. List of other similar projects where the firm provided CMAR, agency construction management, or general construction services in the last five (5) years, either completed or ongoing.

**C. EXPERIENCE OF KEY PERSONNEL ASSIGNED TO PROJECT**

25 points possible

1. For each key person identified, list their length of time with the firm and at least two (2) comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the contractor, provide just the project name and the role of the key person. For other projects, provide the following:

- a. Description of project.
  - b. Role of the person.
  - c. Project's original contracted construction cost and final construction cost.
  - d. Construction completion dates.
  - e. Project owner.
  - f. Reference information (two current names with telephone numbers per project).
2. List any proposed consultants, including key staff names and the experience and qualifications of these individuals.

**D. UNDERSTANDING OF THE PROJECT AND APPROACH TO PERFORMING THE REQUIRED SERVICES**

30 points possible

1. Discuss the major issues the firm has identified on this project and how the firm intends to address those issues.
2. Describe how the firm intends to implement a subcontractor selection plan including the firm's recommendations for subcontractor trades to be selected by qualifications only vs. qualifications and bids; and discuss the benefit that the firm's subcontractor selection plan provides to the project.
3. Describe the firm's project management approach and team organization during preconstruction and construction services. Describe systems used for planning, scheduling, estimating, and managing construction. Briefly describe the firm's experience on quality control, dispute resolution, and safety management.

**E. PRINCIPLE OFFICE LOCATION AND LOCAL PARTNERSHIP**

5 points possible

The City desires strong local participation in this project. Describe the firm's approach to maximize utilization of local resources, to include as a minimum, local suppliers, equipment providers, subcontractors, and laborers. Identify the location of the firm's principal office and the home office location of key staff on this project. Identify local (i.e. presently living in or relocating to Yavapai County) vs. non-local staffing of your team, and the percentage of their work expected to be done locally.

**F. PROJECT TEAMWORK LOAD AND AVAILABILITY**

5 points possible

Resource loading: Describe the current and anticipated workload of the proposed project team and their availability and commitment to this project

**G. OVERALL EVALUATION OF THE CONTRACTOR/TEAM AND ITS PERCEIVED ABILITY TO PROVIDE THE REQUIRED SERVICES**

5 points possible

This is to be determined by the Review Committee. No submittal response is required.

**STATEMENT OF QUALIFICATION EVALUATION (100 POINTS TOTAL)**

General Information	5
Experience and Qualifications of Contractor/Teams	25
Experience of Key Personnel Assigned to Project	25
Understanding of Project and Approach to Performing the Required Services	30
Principal Office Location and Local Participation	5
Project Teamwork Load and Availability	5
Other Evaluation of the Contractor/Team and its Perceived Ability to Provide the Required Services	5
<b>Total Points</b>	<b>100</b>

**IV. EVALUATION AND SELECTION PROCESS**

To qualify for evaluation, the SOQ must be submitted on time and materially satisfy all requirements identified in this request. If, in the judgment of the City, a SOQ does not conform to the format specified herein, or if any section is absent or significantly incomplete, the City reserves the right to reject the submittal.

**A. OVERVIEW**

This is a qualifications-based selection process as authorized by A.R.S. § 34-604. The process will involve an evaluation and scoring of each firm’s qualifications and relevant experience, as indicated in its SOQ. A Review Committee appointed by the City for this procurement will individually evaluate the SOQs according to the criteria and weighting.

Following evaluation of the SOQs, the City may perform a due diligence process on the consultant(s) receiving the highest evaluation on these SOQs. The city may create a shortlist of the three (3) top ranked firms and invite them to participate in a presentation/interview. A final list of the highest ranked firms will be determined for the project. The final list will remain in effect for a period of up to five (5) years from the date of issuance by the City.

**B. PRESENTATION/INTERVIEW**

In the event that a firm cannot be selected based solely on the SOQ submitted, up to three (3) firms may be selected for presentations/interviews. The selected firms will be invited to participate in discussions with the Review Committee on a future date and awarded points based upon the criteria as outlined below. Firms may be given additional information for these presentations/interviews.

**PRESENTATION/INTERVIEW EVALUATION CRITERIA (100 POINTS TOTAL)**

Experience and Capabilities Constructing Underground Sewer and Effluent Pipelines, Roadways, and Below/Above Grade Rock Removal with Different Methods and Equipment	25
Project Management, Phasing, and Scheduling Approach to Roadway Construction with Active Traffic and Multiple Temporary Roadway Realignment	25
Observation of Existing Conditions and Industry Standard and Creative Approaches to Mitigate Challenges	15
Items that Need Clarification or are of Concern	15
Project Management Approach to CMAR Collaboration with city and design team	15
Overall Quality of Presentation/Interview	5
<b>Total Points</b>	<b>100</b>

**C. FINAL RANKING AND CONTRACT NEGOTIATION**

Using the Review Committee scores from the SOQ's the Review Committee shall rank the firms to determine the best-qualified, top-ranked, firm for the project. The City will notify all firms of the final rankings and enter negotiations with the top ranked firm and execute a contract upon successful completion of negotiation of fees and contract terms for City Council approval. If negotiations are unsuccessful, the City may terminate negotiations with that firm and enter negotiations with the next ranked firm and so forth in that manner until a mutual agreement is reached or the shortlisted firms are exhausted. Once a negotiation is terminated, the City cannot re-enter negotiations with that firm.

Firms should be prepared to negotiate a preconstruction services contract immediately upon notification that they are the top-ranked firm. The City would like to award the CMAR contract at the October 14, 2025, Council meeting.

The selected firm will be required to execute and meet the terms of the City's standard Preconstruction Services Contract, including insurance requirements, Exhibit A, in a form acceptable to the City Attorney. Approval of the City Council may also be required for the award of a contract.

In accordance with A.R.S. § 34-603(C)(1), the City reserves the right to:

1. Terminate the procurement process at any point prior to award of a contract.
2. If a shortlisted firm becomes disqualified or withdraws prior to the interview process; replace that firm on the shortlist with another finalist.
3. Elect to proceed with the procurement if there are two (2) or more participating responsive and responsible firms responding to the RSOQ; or if there is one (1) responsive and responsible firm as allowed by A.R.S.

**D. TERM OF CONTRACT**

The initial term of the contract will be determined during contract negotiations with the firm. If renewal results in changes of the terms or conditions, such changes shall be in writing as an amendment to the contract and such amendment shall not become effective until fully executed by both parties.

**E. TERMINATION OF CONTRACT**

The City reserves the right to terminate any part of or the entirety of any contract that may result from this proposal, without cause and at any time with thirty (30) calendar day written notice. In such case, the consultant shall be paid for services rendered through the date of the termination notice, and the results of all such work through that date shall become the property of the City.

**F. PROTEST POLICY**

Any protest against the solicitation or award must be filed with the City Clerk's Office by 4:00p.m. up to ten (10) days after issuance of the final list. All such protests shall be in writing and contain the following: 1) Name, address, email address and telephone number of the interested party; 2) Signature of the interested party or its representative; 3) Identification of the purchasing department and Project name; 4) Detailed statement of the legal and factual grounds for protest including copies of relevant documents; and 5) Form of relief requested. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the successful firms. The City will not consider any protest based on items which could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other proposer.

**G.** This Agreement shall be construed under the laws of the State of Arizona.

**H.** This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

**I.** In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

**J.** Indemnification: To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier

of subcontractors in the performance of this Contract, Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees that arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

**K.** No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding.

**L. CONTRACTOR IMMIGRATION WARRANTY**

Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any

subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

**M. Israel:** Vendor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in A.R.S. § 35-393, of Israel.

**N. Force Labor of Ethnic Uyghurs Certification:** Pursuant to A.R.S. § 35- 394, Contractor / Firm certifies that the firm does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People’s Republic of China
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
3. Any Contractor / Firm, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

If the Contractor / Firm becomes aware during the term of the Contract that the company is not in compliance with the written certification, the Firm shall notify the City of Prescott within five business days after becoming aware of the noncompliance. If the Contractor / Firm does not provide City of Prescott with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of Prescott of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.

**O. Contracting with small and minority firms, women’s business enterprise and labor surplus area firms:**

1. The company will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps shall include:
  - a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists
  - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises.
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.

- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**V. ATTACHMENTS**

- A. CONSTRUCTION INSURANCE REQUIREMENTS**
- B. SAMPLE PRECONSTRUCTION SERVICES CONTRACT**
- C. SUBCONTRACTOR SELECTION PLAN**

## **Attachment A - Construction Insurance Requirements**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

### **ADDITIONAL INSURANCE REQUIREMENTS:**

The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:  
City of Prescott  
201 N. Montezuma Street  
Prescott, AZ 86301**

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to [coi@prescott-az.gov](mailto:coi@prescott-az.gov). The City contract number and project name/description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

### **NOTICE OF CANCELLATION:**

With the exception of a ten (10) day notice of cancellation for non-payment of premium, and changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

### **ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

### **VERIFICATION OF COVERAGE:**

Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in the warranty letter. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

1. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form, contractual liability and XCU coverage.

- General Aggregate \$ 3,000,000
- Products – Completed Operations Aggregate \$ 3,000,000
- Personal and Advertising Injury \$ 1,000,000
- Each Occurrence \$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000 (if applicable)

The policy shall be endorsed to include the following additional insured language:

“The Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$ 1,000,000

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker’s Compensation and Employer’s Liability

- Workers’ Compensation Statutory
- Employer’s Liability
- Each Accident - \$1,000,000

- Disease – each employee - \$1,000,000
- Disease – policy limit - \$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

- Each Claim \$ 1,000,000
- Annual Aggregate \$ 2,000,000

1. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.
2. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

Such policy shall not exclude coverage for the following:

1. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
2. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.
3. Injury to or destruction of any property arising out of blasting or explosion.
4. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.

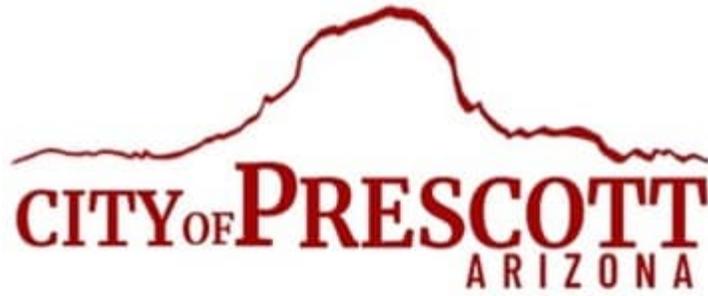
The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor’s name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).

The Contractor shall secure “all risk”-type builder’s risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage

for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

**Attachment B - Sample Preconstruction Services Contract**



**CONSTRUCTION MANAGER AT RISK**

**FOR THE**

**\*\*PROJECT\*\***

**PRECONSTRUCTION SERVICES CONTRACT**

**CIP NO. \*\*-\*\*\***

**CONTRACT NO. \*\*\*\*-\*\*\*\***

## TABLE OF CONTENTS

RECITALS .....	25
ARTICLE I – TERMS AND DEFINITIONS.....	25
ARTICLE II - BASIC DESIGN PHASE SERVICES .....	29
A. GENERAL .....	29
B. CONSTRUCTION MANAGEMENT PLAN.....	30
C. PROJECT SCHEDULE .....	31
D. DESIGN DOCUMENT REVIEWS.....	32
E. COST MODEL, COST ESTIMATES, AND SCHEDULE OF VALUES.....	34
F. GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS.....	36
G. MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS .....	38
ARTICLE III – PERIOD OF SERVICES .....	41
ARTICLE IV – CITY'S RESPONSIBILITIES .....	41
ARTICLE V – CONTRACT CONDITIONS .....	42
A. PROJECT DOCUMENTS AND COPYRIGHTS.....	42
B. COMPLETENESS AND ACCURACY OF CMAR'S WORK.....	43
C. ALTERATION IN CHARACTER OF WORK .....	43
D. DATA CONFIDENTIALITY .....	43
E. PROJECT STAFFING.....	44
ARTICLE -VI - PROFESSIONAL RESPONSIBILITY .....	45
ARTICLE VII - NON-EXCLUSIVE AGREEMENT .....	45
ARTICLE VII- CONTRACT DOCUMENTS .....	45
ARTICLE IX- TIME OF COMPLETION .....	45
ARTICLE X – CONTRACT AMOUNT .....	46
A. PAYMENTS TO CONSTRUCTION MANAGER AT RISK.....	46
B. PAYMENTS TO SUBCONTRACTORS .....	47
C. REIMBURSEABLE EXPENSES .....	48
D. ADDITIONAL DESIGN PHASE SERVICES .....	48
ARTICLE XI - NON-AVAILABILITY OF FUNDS.....	49
ARTICLE XII – INTELLECTUAL PROPERTY .....	49
ARTICLE XIII - OTHER WORK IN PROJECT AREA.....	51

<b>ARTICLE XIV - NONDISCLOSURE.....</b>	<b>51</b>
<b>ARTICLE XV - INDEPENDENT CONTRACTOR .....</b>	<b>51</b>
<b>ARTICLE XVI - NONWAIVER .....</b>	<b>51</b>
<b>ARTICLE XVII - SAVINGS CLAUSE .....</b>	<b>51</b>
<b>ARTICLE XVIII - CONFLICT-OF-INTEREST .....</b>	<b>52</b>
<b>ARTICLE XIX - COMPLIANCE WITH FEDERAL AND STATE LAWS.....</b>	<b>52</b>
<b>ARTICLE XX – GENERAL PROVISIONS .....</b>	<b>54</b>
<b>ARTICLE XXI – TERMINATION .....</b>	<b>55</b>
<b>ARTICLE XXII - DISPUTE RESOLUTION .....</b>	<b>56</b>
<b>ARTICLE XXIII - RECOVERY OF ATTORNEY FEES .....</b>	<b>56</b>
<b>ARTICLE XXIV - INDEMNIFICATION .....</b>	<b>56</b>
<b>ARTICLE XXV – RIGHT TO ASSURANCE.....</b>	<b>57</b>
<b>EXHIBITS .....</b>	<b>57</b>
<b>A. SCOPE OF SERVICES AND FEE PROPOSAL.....</b>	<b>57</b>
<b>B. INSURANCE REQUIREMENTS .....</b>	<b>57</b>
<b>C. HOURLY RATE SCHEDULE .....</b>	<b>57</b>
<b>D. SUBMITTAL REQUIREMENTS FOR THE GMP.....</b>	<b>57</b>
<b>E. CONSTRUCTION MANAGER AT RISK PROVISIONS .....</b>	<b>69</b>

## **Construction Manager at Risk – Design Phase Services**

### **\*\*Project Title**

### **Contract No. \*\*\*\*\_\*\*\***

THIS AGREEMENT, made and entered into this \*\* day of \*\*, 20\*\*, by and between \*\* of the city of \*\*, county of \*\*, state of \*\*, hereinafter designated the “Construction Manager at Risk” or “CMAR”, and the City of Prescott, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated “City”.

### **RECITALS**

- A. The City Council of the City of Prescott, Arizona, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.
- B. The City intends to construct the Water Production and Intermediate Pump Stations Project, as described in Exhibit A attached, hereinafter referred to as the “Project”.
- C. To undertake the design of said Project the City has entered into a contract with \*\*hereinafter referred to as the “Design Professional”.
- D. The CMAR has represented to the City the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the City intends to enter into a contract with the CMAR for the design phase services identified in this contract. At the end of the design phase, at the City’s discretion, the City may enter into a separate construction contract with the CMAR for construction phase services.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED it is agreed by and between the City and the CMAR as follows:

### **ARTICLE I – TERMS AND DEFINITIONS**

**Actual Cost Of Construction** - The aggregate amount of actual costs for the Construction Work in those categories of costs set forth in the GMP Schedule chargeable to the Owner under the provisions of the CMAR Contract inclusive of actual cost paid by the CMAR for permits, labor, materials, equipment, sub-contractors and other costs directly related to the work but exclusive of CMAR and Owners contingencies, CMAR’s construction fee, General Conditions, Payment, Performance and other bonds as may be required, Insurance, and Taxes.

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

Agreement (Contract) - This written document signed by the City and CMAR covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

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

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CMAR, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount, the extent of the adjustment to the Contract Time, or modifications of other contract terms.

City (Owner or OWNER) - The City of Prescott, a municipal corporation, with whom CMAR has entered into this Contract and for whom the services is to be provided pursuant to said Contract. The City as defined herein does not include the permitting entities under Development Services, Fire, or Planning Departments.

Construction Documents - The plans, specifications, and drawings prepared by the Design Professional and issued as approved for construction meaning the documents are sealed by the Design Professional, signed and acceptable for permitting.

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

Construction Manager at Risk (CMAR or Contractor) - The person, firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract.

Contingency, CMAR (Contractor's) - A fund to cover cost growth during the Project used at the discretion of the CMAR usually for costs that result from Project circumstances. The amount of the CMAR Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CMAR Contingency is described in Article II Section F.

Contingency, Owner's - 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 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 CMAR's GMP packages. Use and management of the Owner's Contingency is described in Article 2 Section F.

Contract Amount - The final approved budget for this Contract as identified in Article X.

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

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

Cost Model - A breakdown of the scope of the Project that is initially developed by the CMAR during the conceptual design phase and based on information from the Project Team and the CMAR's records of similar projects. The model will evolve as the design progresses and be maintained by the CMAR throughout the design phase and will include any assumptions and clarifications made by the CMAR. The model will support any cost estimates, Alternative Systems Evaluations and eventually any GMP Proposals, when required by the Project Team. The model will comply with the specified requirements outlined Article II Section E.

Cost of the Work - The direct costs necessarily incurred by the CMAR 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 CMAR's construction fee, general conditions fee, taxes, bond, or insurance costs.

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

Deliverables - The work products prepared by the CMAR in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CMAR during the design phase may include but are not limited to: Cost Model, Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE or SBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

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

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

General Conditions Costs - Includes, but is not limited to the following types of costs for the CMAR during the construction phase: payroll costs for project manager or construction manager but not both for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, 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 CMAR or Subcontractors, fees for permits and licenses. Certain limitations and exclusions are described in the General Conditions for the construction phase.

Guaranteed Maximum Price (GMP) - The sum of the Cost of the Work including the CMAR's construction fee, general conditions cost, tax, bonds, insurance costs, and contingency(ies).

GMP Plans and Specifications - The three sets of plans and specifications provided pursuant to Article II Section F upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CMAR submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article II of this Contract.

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

Notice to Proceed - A written notice given by City to the CMAR fixing the date on which the CMAR will start to perform the CMAR's obligations under this Contract.

Progress Payment Request - The form that is accepted by the City and used by the CMAR in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

Project - The works to be completed in the execution of this Contract as described in the Recital above and Exhibit "A" attached.

Project Team - Design phase services team consisting of the Design Professional, CMAR, City Project Manager, City representatives and other stakeholders who are responsible for making decisions regarding the Project.

Schedule of Values (SOV) – Document specified in the General Requirements for the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on if the Progress Schedule is cost-loaded or not.

Shop Drawings - All drawings, diagrams, schedules and other data specifically prepared for the Work by the CMAR or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site - The land or premises on which the Project is located.

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

Subconsultant - A person, firm or corporation having a contract with the CMAR to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor - An individual or firm having a direct contract with the CMAR or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CMAR is responsible. Subcontractors will be selected through the Subcontractor bid process described in Article 2 Section G of this Contract.

Substantial Completion - The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Design Professional and the City, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.

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

Total Float - Number of 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 Contract Time or schedule milestone in the Project Schedule.

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

Written Amendment - A written modification to the Contract Documents, signed by the City and the CMAR on or after the date this Contract was executed and normally dealing with the non-engineering or non-technical rather than strictly construction related aspects of the Contract Documents.

## **ARTICLE II - BASIC DESIGN PHASE SERVICES**

### **A. GENERAL**

- a. The CMAR, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the Public Works Director, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Prescott, Arizona would exercise at such time, under similar conditions. The CMAR will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.
- b. Program Evaluation: As a participating member of the Project Team, upon the City's request, the CMAR will provide to the City and Design Professional with a written evaluation of the City's Project Program and Project Budget, each in terms of the other, with recommendations as to the appropriateness of each.

- c. Project Meetings: The CMAR will attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.
- d. The CMAR will provide design phase services, described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CMAR will promptly notify the City in writing whenever the CMAR determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the Cost Model, cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- e. The CMAR, when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CMAR will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

## **B. CONSTRUCTION MANAGEMENT PLAN**

- a. The CMAR may prepare a Construction Management Plan (CMP), which may include the CMAR's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a commissioning program, (i) the Cost Model or cost estimate and basis of the model or estimate, and (j) a matrix summarizing each Project Team member's responsibilities and roles.
- b. The CMAR may add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

### C. PROJECT SCHEDULE

- a. The fundamental purpose of the Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all Project Team members for all phases of the project and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring the teams' compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with those Project Schedule requirements. The CMAR will, however, develop and maintain the Project Schedule on behalf of, and to be used by, the entire Project Team based on input from all Project Team members. The Project Schedule will be consistent with the most recent revised/updated Construction Management Plan. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CMAR will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for each phase as determined.
- b. The CMAR will include and integrate in the Project Schedule the services and activities required of the City, Design Professional and CMAR including all design and construction phase activities utilizing the input received from the City and the Design Professional. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design and various design phase documents, (b) separate long-lead procurements, (c) permitting requirements, (d) any real estate and right-of-way acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) interim milestones, (h) coordination with utilities and other municipalities or agencies, (i) start-up and commissioning, and (j) occupancy of the completed Work by the City including obtaining the Certificate of Occupancy.
- c. The Project Schedule shall include a Critical Path Method (CPM) diagram that shows the sequence of activities, the interdependence of each activity and indicates the Critical Path. The schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and Total Float for all activities. The CPM schedule shall include all relationships between activities.
- d. Float time shall be as prescribed below:
  - i. The Total Float within the overall schedule, is not for the exclusive use of either the City or the CMAR, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
  - ii. b) The CMAR will not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.

- e. The Project Schedule is intended to become more detailed as the design progresses, evolving from conceptual to detail. Early Project Schedules will concentrate on milestones for each design phase deliverable (i.e. 30%, 60%, 90%, 100%) design, equipment lead times and general construction durations. The Project Schedule will become the Progress Schedule referenced in the Construction Phase Agreement. The Project Schedule will be expanded, updated, and maintained by the CMAR throughout the design phase such that it will not require significant changes at the start of the construction phase to incorporate the CMAR's plan for the performance of the construction phase Work.

The CMAR will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CMAR will include with each submittal a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

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

#### **D. DESIGN DOCUMENT REVIEWS**

- a. The CMAR will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the Cost Model or cost estimate, GMP Proposals and/or the Project Schedule.
- b. The CMAR may recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CMAR to construct the Project. Prior to start of construction activity, the CMAR may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents. If approved and agreed by all members of the project team, and not a duplication of services performed under Article X, the City will direct the design professional to perform additional investigations at the City's cost.
- c. The CMAR will meet with the Project Team as required to review designs during their development. The CMAR will familiarize itself with the evolving documents through the various design phases. The CMAR will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and

methods, selected materials, equipment and building systems, and, labor and material availability. The CMAR will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CMAR will recommend cost effective alternatives.

- d. The CMAR will routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
  - iii. Constructability Reviews: The CMAR will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
  - iv. Biddability Reviews: The CMAR will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
  - v. The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CMAR will meet with the City and Design Professional to discuss any findings and review reports.
  - vi. The CMAR's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CMAR.

- e. Notification of Variance or Deficiency: It is the CMAR's responsibility to assist the Design Professional in ascertaining that, in the CMAR's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- f. Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CMAR in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CMAR will include the cost of the alternatives into the Cost Model or cost estimate and any GMP Proposals.

#### **E. COST MODEL, COST ESTIMATES, AND SCHEDULE OF VALUES**

- a. As soon as practical during the conceptual design phase, the CMAR will review all available information regarding the design and scope of the Project, the CMAR's experience in performing similar work, etc. and based upon that review will develop a Cost Model for review and approval by the City. The Cost Model should include all cost categories except Owner's Contingency included in the GMP Summary identified in Exhibit "D" attached. Once approved by the City, the Cost Model will be continually updated and kept current as the design progresses throughout the design phase until a final GMP for the entire Project is established. The Cost Model will be the best representation of the CMAR of what the complete functional Project's construction costs will be. The CMAR will communicate to the Project Team, any assumptions made in preparing the Cost Model. The Cost Model will support the CMAR's construction cost estimates and may be broken down initially as dictated by the available information, but eventually must be broken down by CSI Specification Divisions and/or other breakdowns, as required by the City. The Cost Model will also include allowances as agreed to by the Project Team, including but not limited: (a) a construction cost contingency based on an agreed upon percentage of the total estimated construction cost, (b) allowances for potential additional quantities and/or additional Work that the City may require, and (c) any costs related to investigations described in Article II Section D.
- b. After receipt of the Design Professional's most current documents from certain specified design phase milestones, the CMAR will provide a detailed written report to the Project Team regarding the impact of and changes to the Cost Model based on the CMAR's review of the design documents made available at the specified

design phase milestone. The Design Professional and the CMAR will reconcile any disagreements on the estimate to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design phase milestone. The design phase milestones applicable to this paragraph are: conceptual design completion, preliminary design completion, and detailed design completion at 30%, 60%, 90% and 100%. If no consensus is reached, the City will make the final determination. If the Project Team requires additional updates of the Cost Model beyond that specified in this paragraph, the CMAR will provide the requested information in a timely manner.

- c. If at any point the estimate submitted to the City exceeds previously accepted estimates agreed to by the Project Team or other key aspects of the Cost Model or the City's Project Budget, the CMAR will make appropriate recommendations to the City and Design Professional on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, (without altering the City's basic program) such that it is equal to or less than the established Project Team's target and/or the Project Budget.
- d. Near completion of the 60% detailed design review and included with the associated report, the CMAR will also submit to the City for review and approval a Schedule of Values which complies with the following requirements. The Schedule of Values will be based on the CSI Divisions and highlight significant variances from any previously submitted Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Project Schedule and the CMAR's Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) reconcile used and remaining CMAR Contingency allowance, (d) detail all other allowances and unit price Work shown and specified in the detailed design documents, and (e) segregate unit costs, material and equipment costs, labor costs, General Conditions costs, hourly labor rates, payment for design services and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.
- e. The CMAR will submit to the City a final Schedule of Values based on the one hundred percent (100%) detailed design set of Drawings and Specifications for the entire Project or any portion thereof, which final Schedule of Values will also be included in any proposed GMP(s).
- f. Upon request by the City, the CMAR will submit to the City a cash flow projection for the Project based on the current updated/revised Project Schedule and the anticipated level of payments for the CMAR during the design and construction phases. In addition, if requested by the City and based on information provided by the City, the CMAR will prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist the City in the financing process.

## **F. GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS**

- a. The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit “D” attached for the City’s Submittal Requirements). Due to the potential for the City to update procedures without notice, the CMAR must verify with the City the current Exhibit “D” requirements and procedures when entering into these services. The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CMAR will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- b. GMP Proposals for the entire Project will be the sum of the Cost of the Work, and include the CMAR’s Construction Fee, General Conditions Cost, CMAR Contingency, Owner’s Contingency (if applicable), and any allowances; and will reflect the MBE/WBE or SBE goals established. The CMAR guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders, and agrees that it will be responsible for any increase in the actual cost of the Work above that amount.
- c. The CMAR, in preparing any GMP Proposal, will obtain from the Design Professional, three sets of signed, sealed, and dated Drawings and Specifications (including all addenda). The CMAR will prepare its GMP in accordance with the City’s request for GMP Proposal requirements based on the most current completed Drawings and Specifications at that time. The CMAR will mark the face of each document of each set upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications. The CMAR will send one set of those documents to the City’s Project Manager, keep one set and return the third set to the Design Professional.
- d. An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of Article II Section C.
- e. In the event the CMAR elects, at its sole discretion, to maintain a CMAR Contingency allowance within the GMP, the criteria for development of that allowance must be acceptable to the City. In addition, the terms and conditions regarding use of that allowance during the construction phase will be established by the City and reflected in the contract for that phase of the Project. Re-allocation of resources or costs from any task to another task or to CMAR contingency must be approved by the City.
- f. All GMP savings resulting from a lower actual project cost than anticipated by the CMAR will revert to City.
- g. GMP Proposal(s) Review and Approval

- i. The CMAR will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of this statement of basis, the CMAR shall identify and justify any costs that are significantly different than the latest cost model provided by the CMAR. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CMAR will make adjustments as necessary to the GMP Proposal, its basis or both.
- ii. The City upon receipt of any GMP proposal from the CMAR, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
- iii. If the CMAR GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CMAR to reconfirm its GMP Proposal. The CMAR will accept the independent third party's or Design Professional's estimate for the Cost of the Work as part of the GMP or present a report within seven days of a written request to the City identifying, explaining and substantiating the differences. The CMAR may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, upon City Council approval, the City may do one of the following.
  1. Accept the CMAR original or revised GMP Proposal, if within the City's budget, without comment.
  2. Accept the CMAR original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CMAR that the Project Budget has been increased to fund the differences.
  3. Reject the CMAR's original or revised GMP Proposal because it exceeds the City's budget, the independent third party's or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CMAR for the construction phase associated with the scope of Work reflected in the GMP Proposal.
  4. If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CMAR. The CMAR will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

- h. CMAR Contingency will be a separate line item in each GMP package submitted to the City in an amount to be negotiated by the City and the CMAR with input from the Design Professional. The CMAR Contingency will be the last item in the GMP proposal table and will have no markups applied at the time of submission of the GMP proposal. CMAR Contingency will be used by the CMAR in accordance with Article II Section F and pursuant to the requirements indicated in the General Conditions of the construction phase contract.
- i. Owner's Contingency will be used at the sole discretion of the City, if applicable. At the time that the CMAR submits its GMP proposal to the City for approval, the City may add an additional amount to the sum of the GMP proposals for approval by City Council to cover any increases in project costs that result from City directed changes. The total Project cost approved by City Council will be the sum of the CMAR's GMP proposals and the Owner's Contingency, if applicable.
- j. If the City elects to establish an Owner's Contingency, the contingency amount will be included within the contract price agreed to with the CMAR. If included within the Contract Price and the City decides to utilize some its contingency funds, a contract change will be processed using the Change Order process described in the General Conditions of the construction phase contract.

#### **G. MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

- a. The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers.
  - i. The CMAR will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Article II Section G and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Article II Section G. This plan will also identify those subcontractors that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract.
- b. Selection by qualifications only - The City may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the best interest of the Project.
  - i. Qualification based selection of a Subcontractor(s)/Supplier(s) should only occur during the design phase to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP Proposal.

- ii. The CMAR shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. At the City's request, the CMAR shall provide to the City all documentation submitted to the CMAR by any subcontractor, and all documentation and information available to the CMAR regarding any subcontractor proposed by or submitting any proposals to the CMAR.
  - iii. The CMAR must receive City approval of the selected Subcontractor(s)/Supplier(s).
  - iv. The CMAR will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- c. Selection by qualifications and competitive bid - The CMAR shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major subconsultants and major suppliers shall then be competitively bid to the prequalified subcontractors unless a Subcontractor or Supplier was selected pursuant to Article II Section G above. Competitive bids may occur prior to or after the GMP Proposal(s).
  - i. The CMAR will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CMAR may request approval by the City to submit less than three names. Without prior written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.
  - ii. If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
  - iii. The CMAR will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.
  - iv. If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to insure compliance with the Project Schedule and/or cost, the CMAR may self perform Work without bidding or re-bidding the Work.
  - v. The CMAR shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit

costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CMAR will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

- d. The CMAR will be required to prepare two different reports on the subcontracting process.
  - i. Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CMAR will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each subcontractor, and (d) trade work and its cost that the CMAR intends to self-perform, if any.
  - ii. Upon completion of the Subcontractor/Supplier bidding process, the CMAR shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- e. The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- f. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CMAR's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

- g. Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CMAR and other Project Team members. At the pre-award conference, the CMAR will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

### **ARTICLE III – PERIOD OF SERVICES**

- A. The design phase services described in this Contract will be performed by CMAR in accordance with the most current update/revised Project Schedule. Failure on the part of the CMAR to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- B. Upon failure to adhere to the approved schedule, City may provide written notice to CMAR that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CMAR's receipt of such notice.
- C. If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00p.m. (Prescott time) on the day of performance.

### **ARTICLE IV – CITY'S RESPONSIBILITIES**

- A. The City, at no cost to the CMAR, will furnish the following information:
  - a. One copy of data the City determines pertinent to the work. However, the CMAR will be responsible for searching the records and requesting information it deems reasonably required for the Project.
  - b. All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
  - c. The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Project Manager has the authority to administer this Contract and will monitor the CMAR's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.

B. The City additionally will:

- a. Contract separately with one or more Design Professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CMAR for its information. The CMAR will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.
  - b. Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CMAR except for those copies whose cost has been reimbursed by the City.
  - c. Provide the CMAR with adequate information in its possession or control regarding the City's requirements for the Project.
  - d. Give prompt written notice to the CMAR when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CMAR that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CMAR's receipt of such notice.
  - e. Notify the CMAR of changes affecting the budget allocations.
- C. The City's Project Manager, will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the Project Manager deems appropriate to the CMAR.

**ARTICLE V – CONTRACT CONDITIONS**

**A. PROJECT DOCUMENTS AND COPYRIGHTS**

- a. City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CMAR. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CMAR, which consent the CMAR will not unreasonably withhold, the City agrees to hold the CMAR harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.
- b. License to City for Reasonable Use: The CMAR hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City

to alter or modify the Project Documents, then Article V Section (A)(a) applies.

- c. All documents prepared or generated by the CMAR and/or his subconsultants will comply with all requirements of local, state and federal law.

#### **B. COMPLETENESS AND ACCURACY OF CMAR'S WORK**

The CMAR will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CMAR to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Prescott, Arizona would exercise under similar conditions. The fact that the City has accepted or approved the CMAR's work or Deliverables will in no way relieve the CMAR of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City. Correction of errors, omissions and acts discovered on architectural or engineering Drawings and Specifications shall be the responsibility of the design architect.

#### **C. ALTERATION IN CHARACTER OF WORK**

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

#### **D. DATA CONFIDENTIALITY**

- a. As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CMAR in the performance of this Contract.

- b. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the CMAR's performance of this Contract is confidential and proprietary information belonging to the City.
- c. The CMAR will not divulge data to any third party without prior written consent of the City. The CMAR will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
  - i. Data which was known to the CMAR prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;
  - ii. Data which was acquired by the CMAR in its performance under this Contract and which was disclosed to the CMAR by a third party, who to the best of the CMAR's knowledge and belief, had the legal right to make such disclosure and the CMAR is not otherwise required to hold such data in confidence; or
  - iii. Data, which is required to be disclosed by the CMAR by virtue of law, regulation, or court.
- d. In the event the CMAR is required or requested to disclose data to a third party, or any other information to which the CMAR became privy as a result of any other contract with the City, the CMAR will first notify the City as set forth in this Article of the request or demand for the data. The CMAR will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.
- e. The CMAR, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.
- f. The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CMAR, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

#### **E. PROJECT STAFFING**

- a. Prior to the start of any work or Deliverable under this Contract, the CMAR will submit to the City, an organization chart for the CMAR staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to

perform such services under this Contract. In the event the CMAR desires to change such key personnel from performing such services under this Contract, the CMAR will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal in charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

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

#### **ARTICLE -VI - PROFESSIONAL RESPONSIBILITY**

The CMAR shall perform the work hereunder in accordance with the standards of care, skill, and diligence normally provided by a professional in the performance of such services with respect to work similar to that contemplated hereunder. In the event of the CMAR's failure to observe and adhere to such standards, the CMAR shall, upon notice from authorized City staff, promptly re-perform the work at the CMAR's sole expense.

#### **ARTICLE VII - NON-EXCLUSIVE AGREEMENT**

Nothing in this Agreement is to be construed as granting to the CMAR an exclusive right to perform any or all of the City's requirements of the type contemplated hereunder.

#### **ARTICLE VII- CONTRACT DOCUMENTS**

The Request for CMAR Qualifications, Scope of Work, Statement of Qualifications, Plans, Specifications, Special Provisions, Addenda (if any), the CMAR's Proposal (as accepted by the Mayor and Council per the meeting minutes of \*\*, 20\*\*), this Contract, Exhibit B - Certificates of Insurance and Required Endorsements, Contract Modifications including but not limited to, Change Orders, and Contract Amendments, are by this reference the Contract Documents and are made a part of the Contract to the same extent as if set forth herein in full.

#### **ARTICLE IX- TIME OF COMPLETION**

The Project involves the health, safety, and welfare of the general public; therefore, delivery time is of the essence. All Services shall be completed to the satisfaction of the City and shall be performed in compliance with the CMAR's approved project schedule identified in Exhibit A. Any request by the CMAR for an extension in time shall be in writing and include a revised project schedule, which will be considered for approval by the City. Neither Party shall be bound by any change in project schedule unless mutually agreed upon in writing and mutually signed by the authorized representatives of the Parties.

- A. The CMAR shall complete all Services by \*(date). Or \*(The CMAR shall complete all Services within \*\* Calendar Days from the Contract Execution Date (located just before the signature page)). If a further or more detailed schedule is set forth in Exhibit A, the CMAR shall strictly comply with said schedule and failure to do so, without the prior

written agreement of the City, shall be a material breach of this Agreement. The CMAR shall promptly respond (and in no event more than ten (10) calendar days after receiving the request) to any requests for approvals, information, or clarification within sufficient time to allow the City to timely respond to contractors or other parties involved in the Project, so as to not delay the Project.

- B. The Project Schedule shall be established, updated and maintained throughout the Work as provided by the General Conditions and Contract Documents. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the CMAR of its obligations to complete Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Failure on the part of the CMAR to adhere to the Project Schedule may be the basis for termination of this Agreement by the City.
- C. The activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CMAR's activities.
- D. The CMAR covenants and agrees at his own proper cost and expense, to do all work as aforesaid for the CMAR of said improvements and to completely design and construct the same and install the material therein, as called for by the Contract Documents, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the Contract Documents.
- E. Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.

#### **ARTICLE X – CONTRACT AMOUNT**

The CMAR shall be paid, pursuant to the provisions as set forth in the General Conditions and Contract Documents, the total sum of \*\* dollars and \*\* cents (\$\*\*), plus any approved Contract Amendments, for the full and satisfactory completion of all Work as set forth in the Project Specifications and Contract Documents. Retention shall be in accordance with A.R.S. § 34-221.

##### **A. PAYMENTS TO CONSTRUCTION MANAGER AT RISK**

For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, and in accordance with the directions of the City, the City agrees to pay the CMAR the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit CMAR price in the CMAR bid and to make such payment in accordance with applicable Arizona Revised Statutes, after final inspection and acceptance of the work.

- a. The CMAR Agrees that this Agreement, as awarded, is for the stated work, and understands that payment for the total work will be on the basis of the indicated

amount(s), as stated in the CMAR bid.

- b. Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.
- c. Prior to final payment to the CMAR, the City shall deduct therefrom any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the CMAR, and shall apply to those moneys to the appropriate account. The CMAR shall provide to the City any information necessary to determine the total amount(s) due.

## **B. PAYMENTS TO SUBCONTRACTORS**

The foregoing sum includes payment for any and all services to be rendered by the CMAR or Subcontractors, which the CMAR may employ for this Contract. It is expressly agreed by and between the parties that the CMAR is solely responsible for any and all payment to other Professionals or Subcontractors retained by the CMAR.

- a. The CMAR shall pay to his Subcontractors or material suppliers, and each Subcontractor shall pay to his Subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the CMAR or Subcontractor on account of the work performed by his Subcontractors, to the extent of each such Subcontractor's interest therein, except that no Contract for the CMAR may materially alter the rights of any Contractor, Subcontractor or material supplier to receive prompt and timely payment as provided under A.R.S. § 34-221(E). Such payments to Subcontractors or material suppliers shall be based on payments received pursuant to that Section. Any diversion by the CMAR or Subcontractor or payments for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The Subcontractor or material supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in that Section.
- b. Nothing herein prevents the CMAR or Subcontractor, at the time of application and certification to the City or CMAR, from withholding such application and certification to the City or CMAR for payment to the Subcontractor or material supplier for (a) unsatisfactory job progress, (b) defective CMAR work or materials not remedied, (c) disputed work or materials, (d) third-party claims filed or reasonable evidence that a claim will be filed, (e) failure of a Subcontractor to make timely payments for labor, (f) equipment and materials, (g) damage to the CMAR or another Subcontractor, (h) reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract sum, or (i) a reasonable

amount for retention that does not exceed the actual percentage retained by the City.

**C. REIMBURSEABLE EXPENSES**

No reimbursable expenses or costs of any kind (such as travel expenses) shall be paid by the City unless expressly approved by the City in writing as part of the accepted rates and reimbursement schedule. Any approved reimbursable expenses will be paid at the actual cost without any markup applied by the Professional and will be paid only after they are incurred.

**D. ADDITIONAL DESIGN PHASE SERVICES**

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

- i. When authorized by the City, the CMAR shall provide additional surface/subsurface investigations as the CMAR determines is necessary. The scope and cost of these services shall be negotiated as the need is identified and shall be based on the hourly rates agreed to under this contract and not a Article II Section D. The cost for these special services shall not exceed (\$\*\*,\*\*\*.\*\*).
- ii. When authorized by the City, the CMAR will be entitled to reimbursement at cost of design phase services related expenses.
  1. Reasonable charges for travel shall be reimbursed. Travel expenses shall not exceed (\$\*\*\*.\*\*\*) without further approval of the City. The Consultant shall be entitled to reimbursement and shall provide detailed receipts for the following items:
    - a. Reasonable charges for air transportation (not to exceed standard coach rates).
    - b. Ground travel for car rental, taxi, parking, etc. not to exceed \$50 per day (additional expenses for airport fees and taxes related to car rentals shall be compensated at cost).
    - c. Lodging, hotel and meal rates shall not exceed the U.S. General Services Administration (GSA) standard rate for Prescott. Hotel accommodation exceeding the GSA rates may be considered by the City when in the best interest of the project. The consultant shall submit the request to exceed GSA rates in writing to the City and obtain pre-approval of the expense. Lodging and hotels shall be located within the City of Prescott boundaries.
  2. Long-distance telephone and long-distance facsimile costs incurred on behalf of the Project will be reimbursed. These costs will not exceed (\$\*\*\*.\*\*\*) without further approval of the City.

- B. Non-overhead printing expenses incurred including the printing of Construction Documents for bidding, courier services or other Project-related services that may be requested by the City. The cost of such service will not exceed (\$\*\*,\*\*\*.\*\*\*) without further approval of the City

#### **ARTICLE XI - NON-AVAILABILITY OF FUNDS**

Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this section.

#### **ARTICLE XII – INTELLECTUAL PROPERTY**

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative services / works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, services / work product and other materials that are delivered to City under this Agreement or prepared by or on behalf of the CMAR in the course of performing the Services (collectively, the "Deliverables") shall be owned exclusively by City. The CMAR agrees and will cause its personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for City. To the extent that any of the Deliverables do not constitute a "work made for hire," the CMAR hereby irrevocably assigns and shall cause its personnel to irrevocably assign to City all Intellectual Property Rights worldwide in the Deliverables. The CMAR shall cause its personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

- A. All Intellectual Property Rights in all documents, data, know-how, methodologies, software, and other materials provided by or used by Professional in performing the Services and developed or acquired by the Professional prior to or independently of this Agreement (collectively, "Pre-Existing Materials") shall be owned exclusively by Professional and its licensors. Professional hereby grants City an irrevocable, perpetual, fully paid-up, royalty-free, worldwide, non-exclusive license to use, display, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Pre-Existing Materials to the extent incorporated in or otherwise necessary for the use of the Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Professional. The Professional understands that the Intellectual Property and Pre-Existing Materials may be used by the City for the purposes of construction and completing the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof, or for construction of the same type of project at other locations, by the City and others retained by the City for such purposes. The Professional may re-use any standard specifications and details included in the

Intellectual Property that were not developed by the Professional specifically for the Project.

- a. Requests for monthly payments by the CMAR for design phase services will be submitted on the Public Works Department's "Progress Payment Request" form and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.
  - b. The fees for the CMAR and any Subconsultants will be based upon the hourly rate schedule included as Exhibit C attached.
  - c. The CMAR will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CMAR has received payment for those services from the City. In no event will the City pay more than 90 percent of the Contract Amount until final acceptance of the all design phase services, and award of the final approved GMP for the entire Project by City Council.
  - d. The CMAR agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CMAR to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- B. If any service(s) executed by the CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CMAR, the CMAR is to be paid for the services performed prior to the abandonment or suspension.
- C. Upon completion of the Project and/or termination of the Agreement for any reason, the CMAR shall deliver to the City full sized and usable copies (including any and all CAD, BIM, and/or computer files) of all data documents, designs, drawings and specifications generated by the CMAR, including those generated by any suppliers, or Subcontractors.
- D. The City shall retain all rights and ownership of all documents, designs, drawings, maps, studies, specifications, other information and/or styles, including copies thereof, provided to the CMAR by the City in relation to this Agreement and the Project. The CMAR shall not utilize any such material in relation to any other services / work or project and such materials are to be returned to the City on request or at the completion of the Services.

- E. Should the CMAR's officers, employees, agents, or assigns (or anyone of a like nature), in the performance of the work or as a result of performing the work, develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, develop any process, or otherwise, such trade secret, copyright, improvement, invention, or process shall be the property of the CMAR. However, the CMAR shall grant or cause to be granted to the City the right and/or license to permanently use, or cause to be used for the benefit of the City any such trade secret, copyright, improvement, design, invention, or process in any manner for so long as the City desires to use the same for the City's own internal use.

### **ARTICLE XIII - OTHER WORK IN PROJECT AREA**

The City, any other contractors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The CMAR herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The CMAR's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the question and answer session in the pre-proposal process or during site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the CMAR, its agents, employees or any of the CMAR's Subcontractors. In the event that the CMAR encounters delay or disruption in the project schedule due to factors not wholly the fault of the CMAR or within the CMAR's control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of the General Conditions and Contract Documents and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

### **ARTICLE XIV - NONDISCLOSURE**

Except as otherwise required by law or this Agreement, the CMAR, its officers, employees, Subcontractors, agents, and assigns shall not divulge to third parties (without the prior consent of the City) any information obtained by it in connection with its performance under this Agreement.

### **ARTICLE XV - INDEPENDENT CONTRACTOR**

The CMAR shall perform the work hereunder as an Independent Contractor, and all persons or entities employed by or under contract with the CMAR in connection herewith shall be employees of the CMAR and are not employees of the City in any respect.

### **ARTICLE XVI - NONWAIVER**

The failure of the City to insist upon or enforce strict performance by the CMAR of any of the provisions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment to any extent of the City's right to assert or rely upon such terms or rights on any future occasion.

### **ARTICLE XVII - SAVINGS CLAUSE**

In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Contract shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Contract shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

## **ARTICLE XVIII - CONFLICT-OF-INTEREST**

Pursuant to A.R.S. § 38-511, the City may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the event of the foregoing, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this agreement on behalf of the City from any other party to the contract, arising as a result of this contract.

## **ARTICLE XIX - COMPLIANCE WITH FEDERAL AND STATE LAWS**

- A. All Services performed by the CMAR shall be performed in compliance with all applicable federal, state, county, or city laws, rules, regulations, and ordinances, including, without limitations, those set forth on the attached Exhibit C, if applicable. The CMAR, at the CMAR's expense, shall be responsible for obtaining all necessary licenses, permits and governmental authorizations required to perform the Services. The CMAR understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.
- B. **NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** Professional and any Subcontractors are required to comply with all applicable provisions of Title VII of the Civil Rights Act, Sections 501 and 505 of the Rehabilitation Act, Section 109 of the Housing and Community Development Act, the Age Discrimination Act, the Americans With Disabilities Act, the Equal Pay Act, the Genetic Information Non-Discrimination Act, the Vietnam Era Veterans Readjustment Act, and all applicable federal regulations or executive orders related to these laws. Additionally, the Professional and any Subcontractors are required to comply with Arizona law on nondiscrimination and equal employment opportunity, including the Arizona Civil Rights Act and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09, as amended. The CMAR agrees not to discriminate on the grounds of age, race, color, national origin, religion, sex, disability, pregnancy, veteran, familial status, or any other protected status in the selection and retention of employees and subcontractors, including procurement of materials and leases of equipment.
- C. The CMAR shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances in its performance under this Contract, including without limitation those governing wages, hours, employment discrimination, and safety as provided in the General Conditions. The CMAR shall also comply with equal opportunity laws and regulations to the extent they are applicable.
- D. This Agreement shall be construed under the laws of the State of Arizona.
- E. This Contract constitutes the entire Contract between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous Agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

- F. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement, this Agreement shall control over Exhibit “A”.
- G. ISRAEL: Contractor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a “boycott”, as that term is defined in A.R.S. § 35-393, of Israel.
- H. FORCE LABOR OF ETHNIC UYGHURS CERTIFICATION: Pursuant to A.R.S. § 35-394, Contractor certifies that the firm does not currently, and agrees for the duration of the contract that it will not, use:
3. The forced labor of ethnic Uyghurs in the People’s Republic of China
  4. Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
  5. Any Contractor subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.
- I. If the Contractor becomes aware during the term of the Contract that the company is not in compliance with the written certification, the Firm shall notify the City of Prescott within five business days after becoming aware of the noncompliance. If the Contractor does not provide City of Prescott with a written certification that the Company has remedied the noncompliance within 180 days after notifying the City of Prescott of the noncompliance, this Contract terminates, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date.
- J. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN’S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS:
6. The Company will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.
  7. Affirmative steps shall include:
    - f. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists
    - g. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
    - h. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
    - i. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises.
    - j. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

- K. NOTIFICATIONS: Notice shall be deemed effective five (5) business days after deposit for delivery or at time of receipt, whichever is earlier. Any notices to be given by either party to the other shall be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

City of Prescott  
201 N. Montezuma Street  
Prescott, AZ 86301  
contracts@prescott-az.gov

## **ARTICLE XX – GENERAL PROVISIONS**

- A. INTEGRATION AND AMENDMENT: This Agreement represents the entire and integrated Agreement between the City and the CMAR regarding the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. Any prior understandings, commitments, or representations, expressed or implied, written or verbal, between the Parties shall not be construed to alter or waive any part of this Agreement. This Agreement may be amended only by written instrument signed by both the City and the CMAR. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary. In the event a conflict exists between this Agreement and any other Contract Documents or Exhibits, the order of precedence, listed in descending order shall be as follows: 1) change orders or amendments, 2) this Agreement, and 3) any Exhibits.
- B. INTERPRETATION: This Contract is the result of negotiations by and between the parties. Although it has been drafted by the City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.
- C. SEVERABILITY: Any provisions of this Contract prohibited or rendered unenforceable by local, state, or federal law, or by the ruling of any court of competent jurisdiction, shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.
- D. FORCE MAJEURE: Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, epidemic, pandemic, computer virus, power outage, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

- E. **WAIVER:** No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party
- F. **ASSIGNMENT:** The Professional shall not assign or subcontract this Agreement nor any performance hereunder, in whole or in part, nor delegate any monies which shall become due to Professional under this Agreement, without the prior written consent of the City. Any assignment or delegation by Professional without City's prior written consent shall be void and not merely voidable.

#### **ARTICLE XXI – TERMINATION**

This Agreement may be terminated by either party upon ten (10) days written notice, with or without cause, or upon completion of services. If this Agreement is terminated, the CMAR shall be paid for authorized services satisfactorily performed to the date of the CMAR's receipt of such termination notice.

- A. Pursuant to A.R.S. § 38-511, the City may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the foregoing event, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the City from any other party to the Agreement arising as a result of this Agreement.
- B. Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach; (b) becomes insolvent; (c) admits its inability to pay its debts generally as they become due; (d) becomes subject to any bankruptcy proceeding which is not dismissed or vacated within 30 days after filing; (e) is dissolved or liquidated; (f) makes a general assignment for the benefit of creditors; or (g) has a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business. In case of default by the CMAR, the City may, by written notice, cancel this Agreement and repurchase from another source and may recover the excess costs by deduction from an unpaid balance due to CMAR, or may use any other remedies as provided by law.
- C. Upon receipt of a written notice of termination, the CMAR shall stop all services / work as directed in the notice, notify all Subcontractors of the effective date of the termination, and minimize all further costs to the City. The CMAR shall also promptly deliver to City all

preliminary materials, draft services / work products, or deliverables which have been completed as of the termination date or are in progress as of the termination date.

- D. All representations and warranties of CMAR made herein shall survive the termination of this Agreement.

#### **ARTICLE XXII - DISPUTE RESOLUTION**

The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The CMAR further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.

The CMAR agrees that notwithstanding the existence of any dispute, the Contractor shall continue to perform the obligations required of the CMAR during the negotiation and resolution of any such dispute unless specifically enjoined or prohibited by an Arizona Court of competent jurisdiction.

#### **ARTICLE XXIII - RECOVERY OF ATTORNEY FEES**

The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to A.R.S. § 12-341.01 (A) and (B), or pursuant to any other state or federal statute, court rule, case law or common law. The CMAR further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.

#### **ARTICLE XXIV - INDEMNIFICATION**

Subject to the limitations of A.R.S. § 34-226 and to the fullest extent permitted by law, the CMAR shall indemnify, defend, and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, damages, losses, costs, fines, judgements, expenses or lawsuits, including reasonable attorneys' fees, and court costs, arising out of or resulting from the CMAR, its agents, employees or any tier of the CMAR's Subcontractors negligent, reckless, or intentional acts, errors, or omissions, pursuant to this Agreement. The CMAR further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the City, from any and all claims which the CMAR has or may have against the City, its agents or employees, arising out of or in any way connected with the CMAR's activities under this Agreement, other than those acts which occur due to the negligence of the City or its employees.

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

The CMAR shall indemnify, defend, and hold harmless the City, its officers, employees, agents and successors, against and from all claims, demands, losses, costs, expenses, suits, settlements, judgments, and damages (including attorneys' fees), of any kind or nature whatsoever on account of infringement of any patent, copyrighted work, secret process, trade secret, un-patented

invention, article, or otherwise, including claims thereof pertaining to, or arising from the CMAR's performance under this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

**ARTICLE XXV – RIGHT TO ASSURANCE**

If the City in good faith has reason to believe that the CMAR does not intend to or is unable to perform or continue performing under this Agreement, the Director may demand in writing that the CMAR give a written assurance of intent to perform. Failure by the CMAR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement.

**EXHIBITS**

- A. Scope of Services and Fee Proposal
- B. Insurance Requirements
- C. Hourly Rate Schedule
- D. Submittal Requirements For The GMP
- E. Construction Manager at Risk Provisions

SAMPLE

DATED: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorized representatives and bind their respective entities as of the Contract Execution date above.

\*\*Company/Firm

City of Prescott, a municipal corporation

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Philip R. Goode, Mayor

By: \_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Email: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sarah M. Thornhill, City Clerk

\_\_\_\_\_  
Joseph D. Young, City Attorney

## **Preconstruction Services Contract**

### **Construction Manager at Risk – Design Phase Services**

#### **Exhibit A – Scope of Services and Fee Proposal**

Attached Scope and Fee proposal to perform Design Phase Construction Manager at Risk services with the provision for additional construction phase CMAR services as agreed upon at a later date.

SAMPLE

**Preconstruction Services Contract**  
**Construction Manager at Risk – Design Phase Services**  
**Exhibit B – Insurance Requirements**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

**ADDITIONAL INSURANCE REQUIREMENTS:**

The policies shall include, or be endorsed to include the following provisions:

3. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

**Additional Insured:**  
**City of Prescott**  
**201 N. Montezuma Street**  
**Prescott, AZ 86301**

4. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

All certificates required by this Contract shall be emailed directly to [coi@prescott-az.gov](mailto:coi@prescott-az.gov). The City contract number and project name/description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. Any Renewal of insurance certificates with endorsements will need to be emailed to the above emails at least two weeks prior to expiration.

**NOTICE OF CANCELLATION:**

With the exception of a ten (10) day notice of cancellation for non-payment of premium, and changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

**ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott. General liability, automobile liability, and worker's compensation insurance is to be placed with an insurer admitted in the state in which operations are taking place.

**VERIFICATION OF COVERAGE:**

Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project and warranty period as set forth in the warranty letter. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

MAG Specifications, Sections 103.1 through 103.8, including: Unless otherwise specifically required by the Special Conditions, the minimum limits of public liability and property damage liability shall be as follows:

2. Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.  
Commercial General Liability – Occurrence Form –

Policy shall include bodily injury, property damage, broad form, contractual liability and XCU coverage.

- General Aggregate \$ 3,000,000
- Products – Completed Operations Aggregate \$ 3,000,000
- Personal and Advertising Injury \$ 1,000,000
- Each Occurrence \$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000 (if applicable)

The policy shall be endorsed to include the following additional insured language:

“The Contractor agrees to endorse the City of Prescott as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage, the CG 2010 10 01 Additional Insured - Owners, Lessees, or Contractors, or CG2010 07 04 Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization endorsement in combination with the additional endorsement of GC2037 10 01 Additional Insured – Owners, Lessees, or Contractors – Completed Operations shall be required to provide back coverage for the contractor’s “your work” as defined in the policy and liability arising out of the products-completed operations hazard.”

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$ 1,000,000

The policy shall be endorsed to include the following additional insured language:

“The City of Prescott shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles, owned, leased, hired, or borrowed by the Contractor.”

Worker’s Compensation and Employer’s Liability

Workers’ Compensation	Statutory
Employer’s Liability	
• Each Accident -	\$1,000,000
• Disease – each employee -	\$1,000,000
• Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

Professional Liability (Errors and Omissions Liability) – *if applicable*

- Each Claim \$ 1,000,000
  - Annual Aggregate \$ 2,000,000
3. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years at the time work under this contract is completed.
  4. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

Notice of Cancellation: With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

Such policy shall not exclude coverage for the following:

5. Injury to or destruction of any property arising out of the collapse of/or structural injury to any building or structure due to grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work.
6. Injury to or destruction of wires, conduits, pipes, mains, sewers, or other similar property or any apparatus in connection therewith, below the surface of the ground, if such injury or destruction is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling; or injury to or destruction of any property at any time resulting there from.

7. Injury to or destruction of any property arising out of blasting or explosion.
8. Motor vehicle public liability and property damage insurance to cover each automobile, truck, and other vehicle used in the performance of the Contract in an amount of not less than \$1,000,000.00 for one person, and \$1,000,000.00 for more than one person, and property damage in the sum of \$1,000,000.00 resulting from any one accident which may arise from the operations of the Contractor in performing the work provided for herein.

The Contractor shall carry and maintain fire and extended coverage with an endorsement for vandalism and malicious mischief in Contractor's name and also in the name of the City in an amount of at least ONE HUNDRED PERCENT (100%) of the Contract amount (if applicable).

The Contractor shall secure "all risk:-type builder's risk insurance for work to be performed. Unless specifically authorized by the City, the amount of such insurance shall not be less than ONE HUNDRED PERCENT (100%) of the contract price. Such policy shall include coverage for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship, during the contract time and until final acceptance of work by the City (if applicable).

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. § 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

SAMPLE

## Exhibit C – Hourly Rate Schedule

The hourly labor rates for employees of the CMAR and its Subconsultants follow and are based on the approved proposal submitted to the City on December 11, 2018.

### LIST OF CLASSIFICATIONS:

Project Sponsor / Director	\$***.** per hour
Operations Manager	\$***.** per hour
Project Manager	\$***.** per hour
Estimator	\$***.** per hour
Project Engineer	\$***.** per hour
Superintendent	\$***.** per hour
Environmental Coordinator	\$***.** per hour
Pothole Crew	\$***.** per hour

SAMPLE

## **Exhibit D – Submittal Requirements For The GMP**

1. When requested and unless otherwise instructed, the CMAR shall submit eight (8) bound copies of any GMP Proposal(s) that includes the following documents, complies with the requirements specified in this Contract, and the following instructions. The GMP Proposal(s) shall be organized as follows:
  - A. Table of Contents
  - B. Project Description, Exhibit A
  - C. GMP Proposal (Section 00300) and the following attachments
    - a. Detailed Estimate upon which the GMP is based
    - b. List of Subcontractors and Suppliers (Section 00330)
    - c. Schedule of Manufacturers and Suppliers (Section 00340)
    - d. Statement of MBE/WBE or SBE Utilization (Section 00350) and letter(s) of intent
  - D. Schedule of Values (SOV)
  - E. GMP Proposal clarifications and/or assumptions
  - F. Project Schedule
  - G. GMP Plans and Specifications
2. The GMP Proposal Form (Section 00300) is included in the City's current construction phase model for CMAR Projects. The blanks indicated in that model must be fully and properly filled out by the CMAR. The CMAR shall obtain any clarifications regarding use of the proposal form from the Project Manager prior to submitting the GMP.
3. A summary breakdown of the GMP Proposal is included in Section 00300 and shown below along with instructions regarding certain line items. The definitions included in Article 1 of the General Conditions (Section 00700) apply to the line items, as appropriate, and set-forth the criteria to be used by the CMAR in providing the requested breakdown:

**PROJECT #:**

**DATE:**

**PROJECT NAME:**

<b>GMP Summary</b>				<b>AMOUNT</b>
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			\$
<b>INDIRECT COSTS</b>			<b>RATE</b>	
B.	CMAR's Contingency			% \$
C.	Construction Fee			% \$
D.	General Conditions			% \$
	D1	Payment and Performance Bond	\$	%
	D2	Insurance	\$	%
E.	Sales Tax			% \$
			<b>F. TOTAL GMP</b>	\$
<b>OTHER COSTS</b>				
G.	Owner Contingency (Optional)			\$
H.	Cash Allowance (Optional)			\$
			<b>I. CONTRACT PRICE</b>	\$

Formulas:

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

Sales Tax:  $(A+B+C+D) (\text{Sales Tax}) = E$

Sales Tax: Sales Tax shall not exceed  $(8.3\%) (65\%) = 5.395\%$

General Conditions:  $\text{General Conditions} + \text{Payment and Performance Bond} + \text{Insurance} = D$

Contract Price:  $A + B + C + D + E + F + G = H$

Rates (Percentages) are calculated by dividing each amount by F, such as C/F, D/F, and D1/F and D2/F (except sales tax)

4. Paragraph 2.6 of this Contract and the GMP Proposal Form (Section 00300) provided to the CMAR by the City specify the City's requirements related the MBE/WBE and SBE requirements for the Project or GMP.
5. Schedule of Values (SOV) - The most current version of the CMAR's Schedule of Values shall be submitted with the GMP Proposal. The SOV shall be in compliance with the General Requirements for the WSD's current standard construction phase model. Supporting documents for the SOV, including the request for bids, copies of bids received and clarification assumptions used for the particular bid item listed, must be provided in an organized manner that correlates with the SOV.
6. A list of any GMP Proposal clarifications/assumptions made by the CMAR in the preparation of the GMP Proposal shall be submitted to supplement the information contained in the GMP Proposal. However, as indicated by this Contract, the GMP Proposal shall account for the CMAR's estimated costs for any clarifications/assumptions.
7. The most current version of the CMAR's Project Schedule shall be submitted with the GMP Proposal. The Project Schedule shall be prepared as specified in paragraph 2.3 of this Contract.
8. A table listing all drawing sheets included in the GMP Plans and Specifications shall be included with the GMP package. The table shall include the following information: Sheet Number, Sheet Name, Sheet Version, and Date of issuance. GMP Plans and Specifications, as defined, shall be transmitted as specified in paragraph 2.7.3 of this contract. The plans used for the GMP must be date stamped and signed by CMAR, Design Consultant, and Project Manager using the format below.

<b>Plans Used For Preparation of GMP No.</b>	
CMAR	Date
Design Consultant	Date
Project Manager	Date

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the

reproduction of the submittal in black and white.

**Final GMP submittal will consist of the following:**

1. 8 Copies of the GMP
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Consultant, CMAR and Project Manager).

For questions regarding the submittal requirements, please contact the Project's Public Works Department Project Manager.

SAMPLE

**Exhibit E – Construction Manager at Risk Provisions**

SAMPLE

## **Attachment C – Subcontractor Selection Plan**

The firm shall submit a proposed subcontractor selection plan based on the following guidelines. The final approved subcontractor selection plan may be amended as agreed to by both the City and the CMAR.

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

- A. The selection of major subcontractors and major suppliers may occur prior to submission of a GMP proposal. Major subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major subcontractors and suppliers is the responsibility of the CMAR. In any case, the CMAR is solely responsible for the performance of the selected subcontractors and suppliers.
- B. The CMAR will prepare a subcontractor/supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per Section (C) and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with Section (H). This plan will also identify those subcontractors that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract.
- C. Selection by qualifications only: The City may approve the selection of a subcontractor(s) or suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the best interest of the Project.
- D. Qualification based selection of a subcontractor(s) or supplier(s) should only occur during the design phase to achieve maximum benefit of the subcontractors' involvement prior to the submittal of the GMP proposal.
- E. The CMAR shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a subcontractor(s) or supplier(s) and provide the City with its review and recommendation.
- F. The CMAR must receive City approval of the selected subcontractor(s) and supplier(s).
- G. The CMAR will negotiate costs for services and supplies from each subcontractor and supplier selected under this method.
- H. Selection by qualifications and competitive bid: The CMAR shall apply the subcontractor selection plan in the evaluation of the qualifications of a subcontractor(s) or supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a subcontractor or supplier was selected pursuant to paragraph (C) above. Competitive bids may occur prior to or after the GMP proposal(s).
- I. If the City objects to any nominated subcontractor or supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute subcontractor or supplier that is acceptable to the City.

- J. The CMAR will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective subcontractors and suppliers.
- K. If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, the CMAR may self-perform Work without bidding or re-bidding the Work.
- L. The CMAR shall request the prequalified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead, shall contain sufficient information (i.e. unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CMAR shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of subcontractor and supplier bids will be done with the City in attendance to observe and witness the process. The CMAR will resolve any subcontractor or supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- M. The CMAR will be required to prepare two different reports on the subcontracting process.
- N. Within fifteen (15) calendar days after each major subcontractor and supplier bid opening process, the CMAR will prepare a report for the City's review and approval identifying the recommended subcontractors or suppliers for each category of Work. The report will provide: 1) the name of the recommended subcontractor or supplier and the amount of the subcontractor or supplier bid for each sub-agreement, 2) the sum of all recommended subcontractor and supplier bids received, 3) a copy of the bids received from each subcontractor, and 4) trade work and its cost that the CMAR intends to self-perform, if any.
- O. Upon completion of the subcontractor and supplier bidding process, the CMAR shall submit a summary report to the City of the entire subcontractor and supplier selection process. The report will indicate, by bid process, all subcontractors and suppliers contacted to determine interest, the subcontractors and suppliers solicited, the bids received and costs negotiated, and the recommended subcontractors and suppliers for each category of Work.
- P. The approved subcontractors and suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- Q. If after receipt of sub-bids or after award of subcontractors and suppliers, the City objects to any nominated subcontractor or supplier or to any self-performed work for good reason, the CMAR will nominate a substitute subcontractor or supplier, preferably if such option is still available, from those who submitted subcontractor bids for the Work affected. Once such substitute subcontractor and supplier are consented to by the City, the CMAR's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect

any higher or lower costs from any such substitution.

- R. Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CMAR and other project team members. At the pre-award conference, the CMAR will (a) review the nominated slate of subcontractors and suppliers and discuss any concerns with or objections that the City has to any nominated subcontractor or supplier; (b) discuss City concerns relating to any proposed self-performed work; (c) review the CMAR's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CMAR Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of Commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.