

**CITY OF BUCKEYE, ARIZONA**

**SUNDANCE PARK PHASE II  
CONSTRUCTION MANAGER AT RISK**

**CONSTRUCTION SERVICES**

**CONTRACT NO. 2020006**

**THIS AGREEMENT**, made and entered by and between City of Buckeye, an Arizona municipal corporation, hereinafter designated the "City" and \_\_\_\_\_, an \_\_\_\_\_ corporation, hereinafter designated the "Construction Manager at Risk" or "CM@Risk".

**RECITALS**

- A.** The City of Buckeye, Arizona, is authorized and empowered by provisions of the City Charter to execute contracts for construction services.
- B.** The City intends to construct Sundance Park Phase II as more fully described in Exhibit A attached.
- C.** To undertake the construction administration of said Project the City has entered into a contract with J2 Engineering and Environmental Design, L.L.C., hereinafter referred to as the "Design Professional."
- D.** The CM@Risk has represented to the City the ability to provide construction management services and to construct the project and based on this representation the City engages the CM@Risk to provide these services and construct the project.

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

**ARTICLE 1  
DEFINITIONS**

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

"Change Directive" means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

“Change Order” means a type of contract amendment issued after execution of this Agreement or future GMP Amendments signed by City and CM@Risk, agreeing to changes to an agreement. The Change Order will state the following: the addition, deletion or revision in the scope of Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Times or other modifications to Contract terms.

“City (“Owner”) means the City of Buckeye, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contact.

“City’s Representative” means the person designated in Article 8.

“City’s Senior Representative” means the person designated in Article 8.

“CM@Risk” means the firm selected by the City to provide construction services as detailed in this Agreement.

“CM@Risk’s Contingency” means a fund to cover cost growth during the project used at the discretion of the CM@Risk usually for costs that result from project circumstances. The amount of the CM@Risk’s Contingency will be negotiated as a separate line item in each GMP package. Use and management of the CM@Risk’s Contingency is described in Article 5.

“CM@Risk’s Representative” means the person designated in Article 8.

“CM@Risk’s Senior Representative” means the person designated in Article 8.

“Contract Documents” means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

“Contract Price” means the amount or amounts set forth in Article 5.

“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” means the lump sum amount for CM@Risk’s administrative costs for branch or home office overhead, and profit.

“Contract Time” means the Days as set forth in Article 4 the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

“Cost of the Work” means the direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work 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, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the CM@Risk’s Construction Fee, General Conditions Costs, and taxes.

“Critical Path” means the sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

“Day(s)” mean calendar days unless otherwise specifically noted in the Contract Documents.

“Design Phase Contract” means the agreement between the City and the CM@Risk for Services provided by the CM@Risk during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, subcontractor bid phase services and GMP preparation.

“Design Professional” means a qualified, licensed design professional who furnishes design and/or construction administration services required for the Project.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Work as prescribed in Article 4.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extend the Substantial Completion date.

“General Conditions Costs” includes, but is not limited to the following types of costs for the CM@Risk during the construction phase: (i) payroll costs for project manager or CM@Risk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities, telephone and data services at the site, (vii) costs of liability insurance premiums not included in labor burdens for direct labor costs, (viii) costs of bond premiums, (ix) costs of consultants not in the direct employ of the CM@Risk or Subcontractors.

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, taxes, and CM@Risk’s Contingency including authorized adjustments.

“GMP Plans and Specifications” means the plans and specifications upon which the Guaranteed Maximum Price proposal is based as listed in the GMP proposal.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the CM@Risk to start Work. Such notice shall be provided to the CM@Risk at least seven days prior to the commencement date stipulated herein and shall be provided no later than 30 days after the GMP proposal and all the required documentation is received by the City.

“Owner’s Contingency” means a fund to cover cost growth during the Project used at the discretion of the Owner usually for costs that result from Owner directed changes or unforeseen site conditions. The amount of the Owner’s contingency will be set solely by the Owner and will be in addition to the Project costs included in the CM@Risk’s GMP packages. Use and management of the Owner’s Contingency is described in Article 5.

“Performance Period” means the period of time allotted in the Contract Documents to substantially complete the Work comprised within a GMP. The Performance Period shall be stated with each GMP proposal and shown on the Project Schedule.

“Payment Request” means the City form used by the CM@Risk to request progress payments for Work in accordance with Article 7.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM@Risk to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of this Agreement as amended and as described in the Recitals above.

“Project Record Documents” means the documents created pursuant to Article 2.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be evaluated.

“Shop Drawings” mean drawings, diagrams, schedules and other data specially prepared for the Work by the CM@Risk or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” means the land or premises on which the Project is located.

“Specifications” means 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 as listed in the GMP proposal.

“Subcontractor” means an individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid individual or firm at any tier, who undertakes to perform a part of the construction phase Work for which the CM@Risk is responsible.

“Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by City Fire Marshall and local authorities (Certificate of Occupancy); (ii) Elevator Permit; (iii) all systems in place, functional, and displayed to the City or its representative; (iv) all materials and equipment installed; (v) all systems reviewed and accepted by the City; (vi) draft O&M manuals and record documents reviewed and accepted by the City; (vii) City operation and maintenance training complete; (viii) HVAC test and balance completed (Provide minimum 30 days prior to projected substantial completion); (ix) landscaping and site work; and (x) final cleaning. The conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed Letter pursuant to Article 2.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CM@Risk or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

“Work” means the entire completed construction or the various separately identifiable parts thereof, required by the agreement 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.

## **ARTICLE 2 CM@RISK’S SERVICES AND RESPONSIBILITIES**

### **1. General Services and Responsibilities**

(A) The CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work required by the contract document, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner and within the care and skill of a qualified CM@Risk in Buckeye, Arizona. The Work shall be to the satisfaction of the

City and strictly pursuant to and in conformity with the Project's Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.

(B) General Services: CM@Risk's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with City but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be replaced only with the written consent of City.

(C) Government Approvals and Permits: Unless otherwise provided, CM@Risk shall obtain or assist the City to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. **The CM@Risk is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

(D) Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

(E) CM@Risk shall be responsible for obtaining, and the City shall pay for, all City of Buckeye review and permit(s) fees for building and demolition permits. City will also pay review and permit fees for grading and drainage, water, sewer right-of-way and landscaping. City shall also pay for utility design fees for permanent services.

(F) CM@Risk shall be responsible for all other permits and review fees not specifically listed above. CM@Risk is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water are the CM@Risk's responsibility.

## **2. Pre-construction Conference**

(A) Prior to the commencement of any Work, the City's Representative will schedule a Pre-construction conference.

(B) The purpose of this conference is to establish a working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required and emergency telephone numbers for all representatives involved in the course of construction.

(C) The Notice to Proceed date will be concurred to. After the meeting a Notice to Proceed letter will be issued confirming the construction start date, Performance Period and if applicable,

the Substantial Completion date.

(D) The CM@Risk shall provide a schedule of values based on the categories used in the buyout of the Work but not greater than the approved GMP and identifying the CM@Risk's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.

(E) Minimum attendance by the CM@Risk shall be the CM@Risk's Representative, who is authorized to execute and sign all construction related documents on behalf of the firm, the job superintendent, and the CM@Risk's safety officer.

### **3. Control of the Work**

(A) Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, CM@Risk shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CM@Risk to complete the Work consistent with the Contract Documents.

(B) CM@Risk shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. CM@Risk shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

(C) CM@Risk, the CM@Risk's superintendent or other authorized representative shall be present at the Site at all times that construction activities are taking place.

(D) All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

(F) In the event of noncompliance with this Section, the City may require the CM@Risk to stop or suspend the Work in whole or in part.

(G) Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.

(H) Before ordering materials or doing work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP will be allowed because of differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, which may be found, shall be submitted to the City for resolution before proceeding with the Work.

(I) The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City at once.

(J) The CM@Risk shall establish and maintain all primary building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona.

(K) Any person employed by the CM@Risk or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by CM@Risk or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. The CM@Risk or Subcontractor shall keep the City harmless from damages or claims which may occur in the enforcement of this Section.

(L) CM@Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

(M) CM@Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

#### **4. Control of the Work Site**

(A) Throughout all phases of construction, including suspension of Work, CM@Risk shall keep the Site reasonably free from debris, trash and construction wastes to permit CM@Risk to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, CM@Risk shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

(B) CM@Risk shall take all reasonable steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations.

(C) CM@Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

(D) Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@Risk.

## **5. Shop Drawings, Product Data and Samples**

(A) Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents.

(B) The CM@Risk shall review, approve, verify, and submit to the City five copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved GMP schedule as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the CM@Risk, which are not required by the Contract Documents, may be returned without action.

(C) The CM@Risk shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the City. Such Work shall be in accordance with approved submittals.

(D) By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CM@Risk represents that the CM@Risk has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(E) The CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM@Risk has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. The CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval thereof.

(F) The CM@Risk shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City

on previous submittals.

(G) Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.

(H) When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## **6. Quality Control, Testing and Inspection.**

(A) All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

(B) All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner.

(C) The procedures and methods used to sample and test material will be determined by the City.

(D) The City will select a pre-qualified City or Independent Testing Laboratory and will pay for initial City Acceptance Testing.

(E) When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CM@Risk. CM@Risk's Contingency cannot be utilized for the cost of re-testing.

(F) When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

(G) The CM@Risk will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

(H) At the option of the City, materials may be approved at the source of supply before delivery is started.

(I) Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the CM@Risk as a Cost of the Work, unless otherwise provided in the Contract Documents.

(J) CM@Risk's convenience and quality control testing and inspections shall be the sole responsibility of the CM@Risk and paid by the CM@Risk.

## **7. Trade Names and Substitutions.**

(A) Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:

(B) The substitution shall be submitted by CM@Risk in writing to the City.

(C) The CM@Risk shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

(D) The submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.

(E) The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any adjustment in the Contract Time created by the substitution.

(F) The CM@Risk if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

(G) The City will make the final decision and will notify the CM@Risk in writing as to whether the substitution has been accepted or rejected.

(H) If the City does not respond in a timely manner, the CM@Risk shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

## **8. Project Record Documents.**

(A) During the construction period, the CM@Risk shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and shop drawings for Project Record Document purposes.

(B) The CM@Risk shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Contract Drawings.

(C) Mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents location.

(D) Mark Project Record Drawings sets with red erasable colored pencil. Note RFI Numbers, ASI Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents. The CM@Risk shall as a condition of Substantial Completion, submit Project Record Drawing and Shop Drawings prints to the City or its representative for review and comment.

(E) Upon receipt of the reviewed Project Record Drawings from the City, the CM@Risk shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days: A complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with City of Buckeye Engineering and Architectural Services Department CADD technology. The Design Professional will provide files of the original Construction Documents to the CM@Risk for the use of preparing these final Project Record Drawings or the CM@Risk may contract with the Design Professional to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document." A complete set of reproducible mylars from the final AutoCAD drawings and five (5) edge-bound blueline or blackline sets reproduced from these mylars.

(F) The original copy of the Project Record Drawings (redline mark-ups).

## **9. Project Safety**

(A) CM@Risk recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

(B) CM@Risk assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

(C) CM@Risk shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CM@Risk's Safety Representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

(D) The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with CM@Risk's personnel, Subcontractors and others as applicable.

(E) CM@Risk and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.

(F) CM@Risk will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

(G) CM@Risk's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

## **10. Warranty**

(A) CM@Risk warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

(B) CM@Risk's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than CM@Risk or anyone for whose acts CM@Risk may be liable.

(C) CM@Risk's warranty obligation shall be for one year.

(D) Nothing in this warranty is intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. CM@Risk will provide City with all manufacturers' warranties upon Substantial Completion.

## **11. Correction of Defective Work**

(A) CM@Risk agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Warranty section above, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

(B) During the Work, CM@Risk shall take meaningful steps to commence correction of such nonconforming Work as notified by the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps during the Work, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City will commence correction of such nonconforming Work with its own forces.

(C) CM@Risk shall, take meaningful steps to commence correction of nonconforming Work within seven Days of receipt of written notice from City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If CM@Risk fails to commence the necessary steps within such seven Day period, City, in addition to any other remedies provided under the Contract Documents, may provide CM@Risk with written notice that City will commence correction of such nonconforming Work with its own forces.

(D) If City does perform such corrective Work, CM@Risk shall be responsible for all reasonable costs incurred by City in performing such correction.

(E) If the nonconforming Work creates an emergency requiring an immediate response, the CM@Risk will respond and initiate corrections within twenty-four hours.

(F) The one year period referenced in Warranty section above applies only to CM@Risk's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies City may have regarding CM@Risk's other obligations under the Contract Documents.

## **ARTICLE 3 CITY'S SERVICES AND RESPONSIBILITIES**

(A) **Duty to Cooperate.** City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.

(B) City shall furnish at the CM@Risk's request, at no cost to the CM@Risk, a CADD file of the Construction Documents in AutoCAD format compatible with the City of Buckeye CADD technology.

(D) City's Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill its obligations under the Contract Documents. City's Representative shall also provide CM@Risk with prompt notice if it observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.

(E) The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an inspector from a laboratory identified by City.

(F) Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.

(G) The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.

(H) The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as a foreman for the CM@Risk.

(I) The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.

(J) The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequenced or procedures or for safety precautions or programs or responsibility for the CM@Risk's failure to perform the work in accordance with Contract Documents.

(K) Design Professional Services. The City may contract separately with one or more Design Professionals to provide construction administration of the project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM@Risk. The CM@Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.

(L) The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work.

1. Provide oversight of the Work. The City and CM@Risk shall endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.

2. Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and work in progress and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work, and will endeavor to guard the City against defects and deficiencies in the Work. The Design Professional may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Article 2.

3. Review and recommend approval of Payment Requests.

4. Review and approve or take other appropriate action upon the CM@Risk's submittals such as Shop Drawings, Product Data and Samples in accordance with Article 2.

5. Interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or CM@Risk. The design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon.

6. Prepare Change Orders, and may authorize minor changes in the Work as provided in Article 6.

7. Conduct inspections to determine Substantial Completion and Final Acceptance.

8. Receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the CM@Risk.

(M) City's Separate Contractors. City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, CM@Risk in order to enable CM@Risk to timely complete the Work consistent with the Contract Documents.

(N) Permit Review and Inspections. If requested by the CM@Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.

**ARTICLE 4  
CONTRACT TIME**

(A) Contract Time. Contract Time shall start with the commencement date established in the Notice to Proceed or the dates of permit(s), whichever is later, for GMP No. 1 and end with Substantial Completion.

(B) Each GMP will establish a separate commencement date and a date of Substation Completion and a Performance Period. The Performance Periods may not be sequential and may run concurrently. The Period to achieve Substantial Completion for GMP No. 1 shall be \_\_\_\_\_ **(XXX) Calendar Days** starting with the commencement date.

(C) CM@Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.

(D) All of the times set forth in this Article 4 shall be subject to adjustment in accordance with Article 6 of this contract.

(E) Substantial Completion

1. Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1. and with the criteria set forth in the Notice to Proceed.

2. Prior to notifying the City, the CM@Risk shall inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.

3. CM@Risk shall notify City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

4. Within five (5) days of City's receipt of CM@Risk's notice, City and CM@Risk will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.

5. If such Work is substantially complete, City shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions provided in the Contract Documents establishing City's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the

date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6. City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.

(F) Final Acceptance. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM@Risk will jointly inspect to verify that the remaining items of Work have been completed as set forth above. The City will issue a Final Acceptance Letter and payment pursuant to Article 7.

(G) Liquidated Damages. CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. CM@Risk agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City One Thousand \_\_\_\_\_ **Dollars (\$XXX.00)** as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted.

(H) Project Schedule. The Project Schedule approved as part of a GMP shall be updated and maintained throughout the Work.

1. The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve CM@Risk of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

2. Updated Project Schedules shall be submitted monthly to the City as part of the Payment Request.

3. CM@Risk shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to Project Schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the GMP proposal and within the Contract Time.

4. With each Project Schedule submittal the CM@Risk shall include a transmittal letter including the following:

- a. Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate.
- b. Current and anticipated delays including; Cause of the delay, Corrective action and schedule adjustments to correct the delay, Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion.
- c. Changes in construction sequence
- d. Pending items and status thereof including but not limited to; Time Extension requests, other items
- e. Substantial Completion date status; If ahead of schedule, the number of calendar Days ahead, If behind schedule, the number of calendar Days behind, other project or scheduling concerns

(I) City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the CM@Risk from compliance with the requirements of the Contract Documents or be construed as relieving the CM@Risk of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

(J) The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.

(K) The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CMP diagram shall be presented in a time scaled graphical format for the Project as a whole.

(L) The CPM diagram schedule shall indicate all relationships between activities.

1. The activities making up the schedule shall be 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.

2. The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.

3. The CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.

4. The Project Schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.

5. The Project Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic

range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.

(M) The Project Schedule shall consider the City's and the tenants' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.

(N) Float time shall be as prescribed below;

1. The total Float within the overall Project Schedule, is not for the exclusive use of either the City or the CM@Risk, 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 contract time.

2. The CM@Risk shall 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 time within the Project 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.

3. Since Float time within the Project Schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

## **ARTICLE 5 CONTRACT PRICE**

(A) The CM@Risk agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Agreement 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 approved GMP proposal.

(B) Contract Price. The Contract Price of \_\_\_\_\_ **Dollars and \_\_\_\_ Cents (\$XXX)** has been approved as the Guaranteed Maximum Price proposal attached as Exhibit B and an amount of \_\_\_\_\_ **Dollars and \_\_\_\_ Cents (\$XXX)** for Owner's Contingency.

1. Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@Risk is at risk to cover any additional Project costs. Any amounts in excess of the actual Cost of the Work and/or CM@Risk's Contingency shall revert to the City.

2. The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.

3. The General Conditions Costs and the Construction Fee are firm fixed lump sums, but subject to adjustments as permitted in the contract Documents.

4. When the CM@Risk utilize CM@Risk's Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.

5. Taxes are deemed to include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and is a not-to-exceed reimbursable amount; (i) Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the total contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used. (ii) The GMP is subject to adjustments made in accordance with Article 6 and by GMP amendments to this Agreement.

6. If the GMP requires an adjustment due to changes in the Work or other causes as allowed in the contract Documents, the cost of such changes is determined subject to Article 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal.

**ARTICLE 6  
CHANGES TO THE CONTRACT PRICE AND TIME**

A. Delays to the Work: If CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times and/or Contract Price for performance shall be reasonably revised by Change Order.

B. The CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary. Such notice shall not be later than fourteen (14) Days after such condition or event has been encountered.

C. By way of example, events that will entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, delays by regulating

agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

D. If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and that weather conditions had an adverse effect on the scheduled Substantial Completion. (i) It is understood, however, that permitting the CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein. (ii) In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

E. Differing Site Conditions: If CM@Risk encounters a Differing Site Condition, CM@Risk will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition. Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

F. Errors, Discrepancies and Omissions. If the CM@Risk observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Design Professional and request clarification. If the CM@Risk proceeds with the Work affected by such known errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk. Adjustments involving such circumstances made by the CM@Risk prior to clarification by the Design Professional shall be at the CM@Risk's risk.

G. City Requested Change in Work. The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest. Such alterations and changes shall not invalidate this Agreement nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it has been a part of the original Contract Documents. The City will request a proposal for a change in Work from CM@Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

H. Legal Requirements. The Contract Price and/or Contract Times shall be adjusted to compensate CM@Risk for the effects of any changes in the Legal Requirements enacted after the date of the Agreement or the date of the GMP proposal, affecting the performance of the Work.

I. Change Directives and Change Orders. City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

J. Minor Changes in the Work. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly. CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

K. Contract Price Adjustments The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods: Unit prices set forth in the Agreement or as subsequently agreed to between the parties; A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by City; or Estimated cost of the Work, General conditions costs, if applicable, Construction fee and tax. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP proposal as shown on Exhibit B. If an increase or decrease cannot be agreed to, City issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to City or CM@Risk because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted. If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 8 hereof. As part of the negotiation process, CM@Risk shall furnish City with a good faith estimate of the costs to perform the disputed services in accordance with City's interpretations. If the parties are unable to agree and City expects the CM@Risk to perform the services in accordance with City's interpretations, CM@Risk shall proceed to perform the disputed services, conditioned upon City issuing a written order to CM@Risk (i) directing CM@Risk to proceed and (ii) specifying City's interpretation of the services that are to be performed.

L. Emergencies. In any emergency affecting the safety of persons and/or property, CM@Risk shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work under this Division shall be determined as provided in this Article.

**ARTICLE 7  
PROCEDURE FOR PAYMENT**

A. For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the said CM@RISK the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and the CM@Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Agreement will be made in accordance with payment provisions detailed below.

B. GMP Payment Request at the pre-construction conference prescribed in Article 2, CM@Risk shall submit for City's review and approval a schedule of values. The schedule of values will serve as the basis for monthly progress payments made to CM@Risk throughout the Work. At least five (5) working days prior to the date established for a Payment Request, the CM@Risk shall submit an updated Project Schedule and meet with the City's Representative to review the progress of the Work as it will be reflected on the Payment Request. The Payment Request shall constitute CM@Risk's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Payment Request, and that all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project and payment therefore. The Payment Request may request payment for stored equipment and materials if construction progress is in reasonable conformance with the approved Project Schedule.

1. For equipment and materials suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and City shall receive the equipment and materials free and clear of all liens and encumbrances upon payment therefore.

2. For materials and equipment stored off the Site and included in Payment Request, the City must approve the storage. The material and equipment must be stored within Maricopa County and be accessible for City's inspection. The CM@Risk must protect the City's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

3. All bonds and insurance required for stored materials shall name the City as the loss payee to the extent of its interest in the stored materials.

CM@Risk shall submit payment requests to the City on the monthly anniversary of the construction Notice to Proceed beginning with the first month after the construction Notice To Proceed, Payment Request.

C. Payment of GMP. City shall make payment in accordance with A.R.S. 34-607. Payment will be made no later than fourteen (14) Days after the Payment Request is certified and approved, but in each case less the total of payments previously made, and less amounts properly retained under section D below. City shall pay CM@Risk all amounts properly due. If

City determines that CM@Risk is not entitled to all or part of a Payment Request, it will notify CM@Risk in writing within (7) Days after the date Payment Request is received by the City. The notice shall indicate the specific amounts City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures CM@Risk must take to rectify City's concerns. CM@Risk and City will attempt to resolve City's concerns. If the parties cannot resolve such concerns, CM@Risk may pursue its rights under the Contract Documents, including those under Article 8 hereof.

D. Retention on GMP. City will retain ten percent (10%) of each Payment Request amount provided, however, that when fifty percent (50%) of the Work has been completed by CM@Risk, upon request of the CM@Risk, City may reduce the amount retained to five percent (5%) from CM@Risk's subsequent Payment Requests if the CM@Risk's performance of Work has been satisfactory.

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

F. Final Payment. After receipt of a final Payment Request, City shall make final payment 60 days after the receipt by the City, provided that CM@Risk has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City. At the time of submission of its final Payment Request, CM@Risk shall provide the following information:

1. an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;

2. a general release executed by CM@Risk waiving, upon receipt of final payment by CM@Risk, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment; and

3. Consent of CM@Risk's surety, if any, to final payment.

G. Payments to Subcontractors or Suppliers. CM@Risk shall pay its Subcontractors or Suppliers within seven (7) Days of receipt of each progress payment from the City. The CM@Risk shall pay for the amount of Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the CM@Risk shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. CM@Risk shall pay Subcontractors or suppliers the reduced retention within fourteen (14) Days of the payment of the reduction of the retention to the CM@Risk. No contract between CM@Risk and its

Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein.

If the CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may take such actions:

1. To hold the CM@Risk in default under this Agreement;
2. Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
3. Reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this Project; or
4. Terminate this Agreement.

If CM@Risk's payment to a Subcontractor or supplier is in dispute, CM@Risk and Subcontractor or supplier agree to submit the dispute to any of one of the following dispute resolution processes within fourteen (14) Days from the date either party gives notice to the other: (a) binding arbitration; (b) a form of alternative dispute resolution (ADR) agreeable to all parties or (c) a City of Buckeye facilitated mediation. When disputed claim is resolved through ADR or otherwise, the CM@Risk and Subcontractor or supplier agree to implement the resolution within seven (7) Days from the resolution date.

Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

H. Record Keeping and Finance Controls.

1. Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and CM@Risk shall be kept on a generally recognized accounting basis and shall be available for three years after Final Acceptance of the Project.

2. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

3. The City reserves the right to decrease Contract Price and/or payments made on this Agreement if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has

provided false, misleading, or inaccurate cost and pricing data.

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

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **1. Requests for Contract Adjustments and Relief**

A. If either CM@Risk or City believes that it is entitled to relief against the other for any event arising out of or related to the Contract, such party shall provide written notice to the other party of the basis for its claim for relief.

B. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Agreement.

C. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) Days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

D. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **2. Dispute Avoidance and Resolution**

A. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM@Risk and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

B. CM@Risk and City will first attempt to resolve disputes or disagreements at the field level through discussions between CM@Risk's Representative and City's Representative.

C. If a dispute or disagreement cannot be resolved through CM@Risk’s Representative and City’s Representative, CM@Risk’s Senior Representative and City’s Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

D. Duty to Continue Performance Unless provided to the contrary in the Contract Documents, CM@Risk shall continue to perform the Work and City shall continue to satisfy its payment obligations to CM@Risk, pending the final resolution of any dispute or disagreement between CM@Risk and City.

### **3. Representatives of the Parties**

#### **A. City’s Representatives**

City designates the individual listed below or his designee as its Senior Representative ("City’s Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Chris Williams, Manager  
Construction & Contracting Division  
530 E. Monroe Avenue  
Buckeye, AZ 85326  
Phone: 623.349.6225

City designates the individual listed below as its City’s Representative, which individual has the authority and responsibility set forth in Article 1:

Project Manager: Steve Riley  
Construction Project Manager  
530 E. Monroe Avenue  
Buckeye, AZ 85326  
Phone: 623.687.8442

#### **B. CM@Risk’s Representatives**

CM@Risk designates the individual listed below as its Senior Representative ("CM@Risk’s Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, AZ 85\_\_\_  
Phone: \_\_\_\_\_

CM@Risk designates the individual listed below as its CM@Risk's Representative, which individual has the authority and responsibility set forth in Article 1:

Name  
Address  
City, AZ 85\_\_  
Phone: \_\_\_\_

## **ARTICLE 9 SUSPENSION AND TERMINATION**

### **1. City's Right to Stop Work**

A. City may, at its discretion and without cause, order CM@Risk in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and eighty (180) consecutive days.

B. CM@Risk may seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of Work by City.

### **2. Termination for Convenience**

A. Upon receipt of written notice to CM@Risk, City may, at its discretion and without cause, elect to terminate this Agreement. In such event, City shall pay CM@Risk only the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination. CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead.

B. If the City suspends the Work for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.

C. Upon such termination, the CM@Risk shall proceed with the following obligations:

1. Stop Work as specified in the notice;

2. Place no further subcontracts or orders;

3. Terminate all subcontracts to the extent they relate to the Work terminated;

4. Assign to the City all right, title and interest of the CM@Risk under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations; and

5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM@Risk and which the City has or may acquire an interest.

D. The CM@Risk shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.

E. The City shall pay CM@Risk the following:

1. The direct value of its completed Work and materials supplied as of the date of termination; and

2. The reasonable costs and expenses attributable to such termination.

F. CM@Risk shall be entitled to profit and overhead on completed Work only, but shall not be entitled to anticipated profit or anticipated overhead. If it appears the

G. CM@Risk would have sustained a loss on the entire Work had it been completed, the CM@Risk shall not be allowed profit and the City shall reduce the settlement to reflect the indicated rate of loss.

H. The CM@Risk shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed in Article 7.

### **3. City's Right to Perform and Terminate for Cause**

A. If the City provides the CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@Risk fails to comply in a time frame specified, the City may have work accomplished by other sources.

B. If CM@Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth below.

C. Upon the occurrence of an event set forth above, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of CM@Risk's receipt of such notice.

D. If CM@Risk fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to CM@Risk of its intent to terminate within an additional seven (7) Day period.

E. If CM@Risk, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to CM@Risk of such declaration.

F. Upon declaring the Agreement terminated pursuant to the above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all paid for materials, scaffolds, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@Risk hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

G. In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default.

H. If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including reasonable attorneys' fees and expenses, incurred by City in connection with the procurement and defense of claims arising from CM@Risk's default.

I. If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions outline above.

## **ARTICLE 10 INSURANCE AND BONDS**

### **1. Insurance Requirements**

A. CM@Risk and Subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement 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 CM@Risk, his agents, representatives, employees or Subcontractors.

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

C. The City in no way warrants that the minimum limits contained herein are sufficient to

protect the CM@Risk from liabilities that might arise out of the performance of the Work under this Agreement by the CM@Risk, his agents, representatives, employees, or subcontractors. CM@Risk is free to purchase such additional insurance as may be determined necessary.

D. Minimum Scope And Limits Of Insurance. CM@Risk shall provide coverage with limits of liability not less than those stated below:

1. Commercial General Liability – Occurrence Form

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

General Aggregate/for this Project	\$2,000,000/\$1,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Buckeye shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk".

2. Automobile Liability - Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

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

The policy shall be endorsed to include the following additional insured language: "The City of Buckeye shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk, including automobiles owned, leased, hired or borrowed by the CM@Risk".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease – Policy Limit	\$500,000

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect’s consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Article 10 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect’s consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate

agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

4. Builders' Risk Insurance or Installation Floater. In an amount equal to the initial Contract Price plus additional coverage equal to Contract Price for all subsequent Amendments and/or Change Orders.

E. The City of Buckeye, the CM@Risk, and Subcontractors, shall be Named Insureds on the policy.

F. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for flood and earth movement.

G. Policy shall be maintained until whichever of the following shall first occur: (i) final payment has been made; or, (ii) until no person or entity, other than the City of Buckeye, has an insurable interest in the property required to be covered.

H. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

Policy must provide coverage from the time any covered property becomes the responsibility of the CM@Risk, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

Policy shall contain a waiver of subrogation against the City of Buckeye.

CM@Risk is responsible for the payment of all policy deductibles.

I. Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

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

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

3. Coverage provided by the CM@Risk shall not be limited to the liability assumed under

the indemnification provisions of this Agreement.

J. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) Days prior written notice has been given to the City. Such notice shall be sent directly to the City Senior Representative and shall be sent by certified mail, return receipt requested.

K. Acceptability of Insurers. Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

L. Verification of Coverage.

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

2. All certificates and endorsements are to be received and approved by the City before Work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of Work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the contract.

3. All certificates required by this Agreement shall be sent directly to City's Senior Representative. The City project/contract number and project 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 Agreement at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

4. If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the CM@Risk must submit a current insurance certificate (dated within 15 Days of the Payment Request submittal) with each Payment Request form. The Payment Request will be rejected if the insurance certificate is not submitted with the Payment Request.

M. Subcontractors. CM@Risks' certificate(s) shall include all Subcontractors as additional insureds under its policies or CM@Risk shall furnish to the City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements identified above.

N. Approval. Any modification or variation from the insurance requirements in this Contract shall be made by the City's Attorney, whose decision shall be final. Such action will not require a

formal Contract amendment, but may be made by administrative action.

## **2. Bonds and Other Performance Security.**

A. Prior to execution of this Agreement, the CM@Risk must provide a performance bond and a labor and materials bond, each in an amount equal to the total contract price of the GMP set forth in this Agreement.

Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the state of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued, updated, or certified within two years prior to the execution of this Agreement.

The bonds shall be made payable and acceptable to the City of Buckeye.

B. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

If one Power of Attorney is submitted, it shall be for twice the total contract price of the GMP .

If two Powers of Attorney are submitted, each shall be for the total contract price of the GMP. Personal or individual bonds are not acceptable.

C. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CM@Risk shall promptly furnish a copy of the bonds or shall permit a copy to be made.

All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of "A- or better for the prior four quarters" by the A.M. Best Company.

## **ARTICLE 11 INDEMNIFICATION**

**CM@Risk's General Indemnification.** CM@Risk agrees to indemnify and save harmless the City of Buckeye, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of the Contract Documents or on account of any act, claim or amount arising or recovered under worker's compensation law or arising out of the failure of the CM@Risk to conform to any statutes, ordinances, regulation, law or court decree. It is agreed

that the CM@Risk will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

## **ARTICLE 12 GENERAL PROVISIONS**

### **1. Contract Documents.**

A. Contract Documents are as defined in Article 1. This Agreement, Plans, Standard Specifications and Details, Special Provisions, Exhibits are used as the basis for the Guaranteed Maximum Price Proposal; GMP, Performance Bond, Payment Bond, Certificates of Insurance, Construction Documents and Change Orders (if any) are by this reference made a part of this Agreement to the same extent as if set forth herein in full.

B. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

C. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in the definition of Contract Documents in Article 1.

D. On the drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small-scale drawings.

E. Specifications take precedence over Plans.

F. In the event of any inconsistency, conflict, or ambiguity between the Contract Documents and the Design Phase Contract, the Contract Documents take precedence over the Design Phase Contract

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

H. The Contract Documents form the entire agreement between City and CM@Risk and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **2. Amendments.**

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **3. Time is of the Essence.**

City and CM@Risk mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

## **4. Mutual Obligations.**

City and CM@Risk commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

## **5. Cooperation and Further Documentation.**

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

## **6. Assignment.**

Neither CM@Risk nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents.

## **7. Successorship.**

CM@Risk and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

## **8. Third Party Beneficiary.**

Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than the City and the CM@Risk, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and the CM@Risk and not for the benefit of any other party.

## **9. Governing Law.**

The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this

Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

#### **10. Severability.**

If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

#### **11. Compliance with Federal Laws.**

CM@Risk understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these laws in performing the Contract Documents and to permit the City to verify such compliance.

#### **12. Legal Requirements.**

CM@Risk shall perform all Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements. It is not the CM@Risk's responsibility to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CM@Risk recognizes that portions of the Construction Documents are at variance therewith, the CM@Risk shall promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency.

#### **13. Fair Treatment of Workers.**

The CM@Risk shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The CM@Risk shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

#### **14. Independent Contractor.**

The CM@Risk is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct the CM@Risk as to the details of accomplishing the Work or to exercise a measure of control over the Work means that the

CM@Risk shall follow the wishes of the City as to the results of the Work only. These results shall comply with all applicable laws and ordinances.

**15. City's Right Of Cancellation.**

All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Buckeye pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

**16. Survival.**

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

**17. Covenant Against Contingent Fees.**

The CM@Risk warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Buckeye has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Buckeye shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**18. No Waiver.**

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

**19. Notice.**

A. Unless otherwise provided, any notice, request, instruction or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

**to CM@Risk:**  
Name of Person, Title  
Company  
Address  
City, AZ 85\_\_\_\_

Phone: \_\_\_\_\_

**to City of Buckeye:**

Chris Williams, Manager  
Construction & Contracting Division  
530 E. Monroe Avenue  
Buckeye, Arizona 85326  
Phone: 623.349.6225

**to Design Professional :**

Jeff Engelmann, Project Principal  
J2 Engineering and Environmental Design, L.L.C  
4649 E. Cotton Gin Loop, Suite B2  
Phoenix, AZ 8540  
Phone: 602.438-2221

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

B. Notices Related to Payment, Securities-in-lieu, and Bonds. Any notice, request, instruction or other document to be given under this Agreement by any party to any other party related to payment, securities-in-lieu, bonds or other instrument securing the performance of this Agreement, including but not limited to, bid bonds, performance bonds, payment bonds or letters of credit, shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

to CM@Risk :

Name of Person, Title  
Company  
Address  
City, AZ 85\_\_\_\_  
Phone: \_\_\_\_\_

to City of Buckeye:

Chris Williams, Manager  
Construction & Contracting Division  
530 E. Monroe Avenue  
Buckeye, Arizona 85326  
Phone: 623.349.6225

or to such other place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

## **20. Hazardous Materials.**

A. Unless included in the Work, if the CM@Risk encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he shall immediately stop work and report the condition to the City.

B. If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CM@Risk shall not resume work in the affected area until the material has been abated or rendered harmless. The CM@Risk and the City may agree, in writing, to continue work in non-affected areas onsite.

C. An extension of Contract Time may be granted in accordance with Article 6.

D. The CM@Risk will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.

## **21. Traffic Control.**

CM@Risk will comply with all provisions of the current version of the MUTCD, Part VI and any other traffic control provisions as may be provided in the technical specifications.

## **22. E-Verify Requirements.**

A. To the extent applicable under Arizona Revised Statute § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statute § 23-214(A). The Contractor or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by the City of Buckeye. The City of Buckeye retains the legal right to randomly inspect the papers and records of the Contractor or subcontractor employee who work on the Contract to ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty.

B. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to

keep such papers and records confidential.

**22. Israel.**

Pursuant to Arizona Revised Statute § 35-393.01, CM@Risk certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engaged in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[Signature Page to Follow]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this \_\_\_\_\_.

**CITY**

THE CITY OF BUCKEYE, ARIZONA  
an Arizona Municipal corporation

By: \_\_\_\_\_  
Jackie A. Meck, Mayor

ATTEST:

\_\_\_\_\_  
Lucinda Aja, City Clerk

RECOMMENDED:

\_\_\_\_\_  
Christopher A. Williams, Manager  
Construction & Contracting Division

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CONTRACTOR:**  
COMPANY

\_\_\_\_\_  
Name, Title

## **EXHIBITS**

EXHIBIT A – CONTRACTORS PROPOSAL

EXHIBIT B – GMP FEE SCHEDULE

EXHIBIT C - SCHEDULE

**EXHIBIT A  
TO  
CM@RISK SUNDANCE PARK PHASE II  
CONSTRUCTION SERVICES CONTRACT  
BETWEEN  
CITY OF BUCKEYE  
AND**

---

**CONTRACTOR'S PROPOSAL  
[SEE FOLLOWING PAGES]**

**EXHIBIT B  
TO  
CM@RISK SUNDANCE PARK PHASE II  
CONSTRUCTION SERVICES CONTRACT  
BETWEEN  
CITY OF BUCKEYE  
AND**

---

**GMP FEE SCHEDULE**  
[SEE FOLLOWING PAGES]

**EXHIBIT C  
TO  
CM@RISK SUNDANCE PARK PHASE II  
CONSTRUCTION SERVICES CONTRACT  
BETWEEN  
CITY OF BUCKEYE  
AND**

---

**SCHEDULE**  
[SEE FOLLOWING PAGES]