

NOTICE OF REQUEST FOR QUALIFICATIONS (RFQ)

CITY OF TOLLESON WASTEWATER TREATMENT PLANT
AMMONIA REMOVAL IMPROVEMENTS
CONSTRUCTION MANAGER AT RISK

NOTICE IS HEREBY GIVEN that Statements of Qualifications will be received by the Clerk of the City of Tolleson for furnishing the following items or services to City of Tolleson (City) as follows:

UNTIL: October 10, 2013, 2:00 p.m. for

ITEM: Construction Manager at Risk Pre-Construction and Construction Phase Services for the Tolleson Wastewater Treatment Plant, Ammonia Removal Improvements

City of Tolleson (City) is seeking Statements of Qualifications (SOQs) for Construction Manager at Risk (CMAR) services for the Tolleson WWTP, Ammonia Removal Improvements. The City intends to award one contract to the highest qualified firm after all SOQs are evaluated and negotiations completed. The major elements of the Work are pre-construction and construction for the modification of the aeration basins (new sludge recycle piping, re-directing basin flows, new diffused aeration grid), conversion of two primary clarifiers into dewatering filtrate equalization basins (new sludge collector, pumps, piping), new nitrified effluent recycle pump station, and a new caustic storage and dosing facility. A new electrical building, housing a new MCC and PLC will be constructed. The proposed start of construction is approximately April 22, 2014, and the duration of construction will be 12 months. Construction activities must be planned and executed so that the plant can remain in operation and in compliance with existing permit requirements. The WWTP must achieve compliance with the Arizona Pollutant Discharge Elimination System permit requirements which go into effect on February 15, 2015. The CMAR will be required to complete the construction and commissioning portion of the project to allow permit compliance by that date. The preliminary project construction budget is approximately \$5.8 million.

Request for Qualification (RFQ) packets are available upon request by contacting Mr. Craig Tweed at Brown and Caldwell, 201 East Washington Street, Suite 500, Phoenix, Arizona 85004. Telephone: (602) 567-3962.

Statements of Qualifications shall be received by the Owner, the City of Tolleson, by the City Clerk until October 10, 2013, at 2:00 p.m. at the City of Tolleson, 9555 West Van Buren, Tolleson, Arizona 85353. As soon thereafter as possible the submitting firms' names will be announced. This is a one-step qualifications based selection process as authorized by ARS 34-601 through 34-612. An evaluation committee shall select, in order of preference based on the criteria established, a short list of three to five firms deemed to be the most qualified to provide the services required. The selection of the short list will be based on demonstrated competence and qualifications for the type of work included in this project. Fees, price, person-hours or any

other cost information will not be considered in the selection of the successful submitter. After a short list determination is made, the selection committee may choose to interview the three to five top ranked firms or proceed directly into negotiations for a contract with the highest rated firm for the required services. The negotiations shall include consideration of compensation and other contract terms and conditions the City determines to be fair and reasonable. In making this determination, the City shall take into account the estimated value, the scope, complexity and nature of the required services. If a satisfactory contract cannot be negotiated with the highest rated firm at a price or on other contract terms, negotiations shall be formally terminated. Negotiations would then be started with the next highest rated firm, in sequence, until an agreement is reached or a determination is made to reject all SOQs.

A pre-proposal meeting will be held on September 26, 2013 at 1:00 p.m. at the City of Tolleson Wastewater Treatment Plant 9501 W. Pima Road Tolleson, AZ 85353. Although this meeting is not mandatory, it is highly recommended that all interested firms attend. Access to the site at other times will be prohibited.

Notice Given By: Crystal Zamora
Deputy City Clerk
Thursday, September 12, 2013

Published in the: Arizona Business Gazette
Thursday, September 12, 2013
Thursday, September 19, 2013

**CITY OF TOLLESON
WASTEWATER TREATMENT PLANT**



**AMMONIA REMOVAL IMPROVEMENTS
CONSTRUCTION MANAGER AT RISK
PROCUREMENT**

SEPTEMBER 2013

Prepared by



**201 East Washington Street, Suite 500
Phoenix, Arizona 85004**

SECTION 00002

GENERAL INSTRUCTIONS TO PROPOSERS

1. SIX (6) COPIES OF THE STATEMENT OF QUALIFICATIONS SHALL BE SUBMITTED. In submitting SOQs, please reference the serial RFQ number for the purpose of identification on the outside of the envelope submitted. All SOQs shall have original ink signatures by authorized persons only.
2. SOQs shall be delivered to the City Clerk Office, City of Tolleson, 9555 West Van Buren, Tolleson, Arizona 85353, on or before the day and hour set for the opening in the published notice. SOQs shall be enclosed in a sealed envelope bearing the title and the name of the entity submitting the SOQ. It is the sole responsibility of the entity submitting the SOQ to see that his/her SOQ is received at the proper time and proper location. SOQs “faxed” to the City shall not be accepted.
3. The authorized person signing the SOQ shall initial erasures, interlineations or other modifications in the SOQ in original ink.
4. A pre-RFQ conference is scheduled and all prospective proposers are urged to have a representative present. In any case where this is not possible, it is the proposers responsibility to make certain that any information disclosed at the conference is considered when preparing a SOQ. Access to the site at any other time than the conference will be prohibited.
5. SOQs received after the scheduled closing time for receipt of SOQs will be returned unopened, to the proposer(s).
6. All SOQs may be rejected if the City determines that rejection is in the public interest.
7. The City reserves the right to waive any informality in accepting and evaluating SOQs.
8. If a person contemplating a SOQ for a proposed contract is in doubt as to the true meaning of any part of the RFQ documents, or finds discrepancies in or omissions from said documents, he/she shall submit to Brown and Caldwell a written request for an interpretation or correction thereof. The person submitting the request shall be responsible for its prompt delivery.
9. It is the responsibility of all proposers to examine the entire set of RFQ documents and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy prior to submitting a SOQ. Negligence in preparing a SOQ confers no right of withdrawal after due date and time.
10. Questions received less than forty eight (48) hours before the SOQ opening shall not be answered. Any interpretation or correction of the proposed documents will be made only

by addendum, duly issued. City is not responsible for any other explanations or interpretations of the documents.

11. Any addenda will be mailed or delivered to all who are known by the City to have received a set of RFQ documents, and to offices where RFQ documents have been filed for review purposes. Each proposer may ascertain prior to submitting his/her SOQ that he/she is in receipt of all addenda issued by verification with Mr. Craig Tweed at (602) 567-3962.
12. Proposers shall acknowledge all addenda in accordance with the instructions on the RFQ.
13. Pursuant to A.R.S. §32-1102, contractors, architects and engineers for the City shall be licensed by the state of Arizona.
14. Failure on the part of the proposer to comply with all of these instructions may result in rejection of their SOQ. No contract is formed with the City upon the submittal of an SOQ.
15. SOQs will be evaluated based on qualifications and demonstrated experience and other factors listed in the evaluation criteria.
16. All proposers shall complete the attached Disclosure of Responsibility Statement. Failure to do so shall result in rejection of that SOQ.
17. Pursuant to City of Tolleson Ordinances, the successful firm will be required to obtain a City of Tolleson Business License.
18. Any protest submitted shall be handled pursuant to the procurement protest policy and procedures of the State of Arizona, Department of Administration, in accordance with A.R.S. §34-603(K).

****END OF SECTION****

SECTION 00003

EXECUTIVE SUMMARY

1.01 BACKGROUND / SCOPE

A. Project construction is currently planned to begin in April 2014 with an estimated construction period of approximately 12 months. The preliminary project construction budget is estimated at approximately \$5.8 million.

B. The major elements of the Work are construction for the modification of the aeration basins (new sludge recycle piping, re-directing basin flows, new diffused aeration grid), conversion of two primary clarifiers into dewatering filtrate equalization basins (new sludge collector, pumps, piping), new nitrified effluent recycle pump station, and a new caustic storage and dosing facility. A new electrical building, housing a new MCC and PLC will be constructed. The plant must remain in operation and in compliance with existing permit requirements. Improvements must be achieving compliance with the new permit which goes into effect on February 15, 2015.

C. The City's Utilities Department in conjunction with Brown and Caldwell, the prime consultant for the Project, are currently working through the detailed design concepts.

1.02 CMAR METHODOLOGY

A. GENERAL

The intent is to establish a relationship of trust and confidence between the CMAR, the Designers and the City. The Project will be an "Open Book" job, whereby the City may attend any and all meetings and bid openings relating to the project and have access to any and all books, accounts, and records of the CMAR relating to the Project.

The City will contract for the CMAR services in phases. The City anticipates at minimum two phases with agreements and fee negotiations for each. For Phase I, the CMAR will start by providing pre-construction services during the design phase of the project. It is anticipated that design will be 30 percent complete at the beginning of Phase I. At the completion of the design or at any point in Phase I prior to construction, as may be required by the City, the CMAR will be requested to provide a Guaranteed Maximum Price (GMP) to act as General Contractor for the construction and assume the risk of delivering the project on schedule at or under the GMP. Acceptance of the GMP by the City will initiate Phase II, which will include complete construction services for the actual completion of the project. The City reserves the right to phase work and/or use a fast track approach requiring multiple GMPs of the CMAR if deemed appropriate in Phase II. It is possible that the phases may overlap. Acceptance of the GMP will be reflected in the contract in an amendment that incorporates the construction provisions and scope limits of the contract.

The City reserves the right to end the CMAR's services at the completion of Phase I, and continue with another procurement if deemed in the best interests of the City. If this occurs, the CMAR shall be paid at the agreed upon fee for services rendered for Phase I.

B. PHASE I – PRE-CONSTRUCTION SERVICES

The CMAR will be responsible during Phase I for working with the Project Team including the Designer and the City. Phase I services will generally proceed concurrently with finalization of detailed design of the project elements, and may include but is not limited to the following:

- Team building/partnering (meetings)
- Project scheduling/management
- Construction sequencing
- Value analysis/engineering at 30% and 60% design milestones
- Constructability reviews at 30% and 60% design milestones
- Cost model/budgeting at 30% and 60% design milestones
- Estimating/price guarantees (Development of Phase II GMP's)
- Assistance with permitting
- Bid package coordination/strategy (subcontracting)
- Identification and ordering strategy of long lead-time materials
- Subcontractor pre-qualifications
- Change order mitigation review
- Continuity of plant operations planning.

C. PHASE II – CONSTRUCTION SERVICES

If selected to continue as the General Contractor in Phase II, the CMAR shall be responsible for construction means, methods, sequencing, scheduling and coordination, and shall solicit bids from pre-qualified subcontractors to perform the work. For the purposes of this paragraph, the total contract price for construction does not include the cost of pre-construction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation. Note: construction work in Phase II may be completed in multiple GMP packages. Services may include but not limited to the following:

- Team management/coordination
- Construction
- Scheduling/submittal process
- Cost control/change order management
- Subcontracting

- Equipment/materials procurement
- Field management
- Safety/QC programs
- Project commissioning/close out/warranty period services.

****END OF SECTION****

SECTION 00004

GENERAL INFORMATION AND REQUIREMENTS

1.01 GENERAL INFORMATION

City of Tolleson is soliciting statements of qualifications (SOQs) for selection of a Construction Manager at Risk for the Tolleson WWTP, Ammonia Removal Improvements, (Project), in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications.

This RFQ provides the information necessary to prepare and submit SOQs for consideration and initial ranking by the selection committee. The selection committee may choose to interview the three to five top ranked respondents or to proceed directly into contract negotiations with the highest ranked firm.

1.02 PUBLIC INFORMATION

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure upon award and execution of a contract with the highest ranked firm. Until that time, pursuant to A.R.S. §34-603(H), only the names of the firms on the short list may be disclosed.

1.03 PRE-PROPOSAL MEETING

A pre-proposal meeting will be held at the time and location described in the Notice of Request for Qualifications. The purpose of this meeting will be to clarify the contents of this RFQ and provide an opportunity for questions regarding the RFQ or the project and a brief site tour. Note this will be the only opportunity to have access to the site.

1.04 NOTICE OF INTENT TO SUBMIT

Firms that intend to submit SOQs should notify the Point of Contact listed below.

1.05 CMAR CONTRACT

The contract resulting from this solicitation will be in the form of the City's Standard Construction Management at Risk Agreement that the successful firm will enter into with the City for Phase I, the design phase, a copy of which is attached to this RFQ. By submission of a proposal, each firm will be certifying to the City that the contract is acceptable as written, unless exceptions are taken and specific alternate language proposed. The City may consider proposed changes and negotiate terms or conditions if deemed in the interest of the City. However, City reserves the right to reject any SOQ that takes exceptions or proposes alternate language unacceptable to the City.

1.06 QUESTIONS

Questions outside of the pre-proposal meeting must be written and may be submitted by fax or email to the Point of Contact listed below. While the City will make every effort to respond to all questions, those received less than forty-eight (48) hours in advance of the submittal due date will not be answered.

1.07 CLARIFICATIONS AND INTERPRETATIONS

Any clarifications or interpretations of this RFQ that materially affect or change the scope or intent will be issued via written addenda and distributed by Brown and Caldwell. Oral statements or clarifications shall be non-binding and without legal effect. The City will make an effort to notify respondent of the posting of addenda; however, it cannot guarantee that every potential respondent will be notified each time. Therefore, it is the responsibility of all respondents to check with Brown and Caldwell periodically for addenda and to obtain this information in a timely manner. Failure to include acknowledgment of all addenda may be cause for rejection of the proposal.

1.08 SUBMISSION OF SOQS

A. **DEADLINE AND LOCATION:** The City will receive SOQs at the time and location indicated on the Notice page of this solicitation. SOQs must be received and stamped by the receptionist prior to stated time. Late submittals will be returned unopened, without exception.

B. **SUBMISSION PACKAGE:** Proposers shall submit one (1) original and five (5) identical copies of their SOQs in the format described in the Required Submittal Information and Evaluation Criteria Section, in a clearly marked sealed envelope or box addressed to the City Clerk; the package must clearly identify the submittal deadline, the RFQ number, and the name and return address of the respondent. The "Introductory Letter" submitted with the original copy must bear an original signature in ink.

C. SOQs received at the wrong location or after the due date and time will be returned unopened.

D. The City will not acknowledge or accept SOQs that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).

E. Properly submitted SOQs will not be returned to respondents.

1.09 POINT-OF-CONTACT

The City designates the following person as its Point-of-Contact for this RFQ. Respondents shall restrict all contact with the City and direct all questions regarding this RFQ, including questions regarding terms and conditions, to the Point-of-Contact person:

Mr. Craig Tweed
Tolleson Ammonia Removal Improvements Project
Brown and Caldwell
201 E. Washington Street, Suite 500
Phoenix, Arizona 85004
Phone: (602) 567-3962, Fax: (602) 567-4001
Email: ctweed@brwncald.com

1.10 EVALUATION AND SELECTION

The evaluation of the SOQs shall be based on the criteria described in this RFQ. All properly submitted SOQs will be reviewed, evaluated, and ranked by the selection committee. Three to five of the top-ranked respondents (or fewer, if there are less than three respondents), may be short-listed based upon the evaluation of the SOQs submitted. SOQs shall not include any information regarding respondent's fees, pricing, person-hours or other cost information.

The selection committee may choose to interview the shortlisted firms or to proceed directly into contract negotiations with the highest ranked firm. Should the selection committee recommend interviews, the City will coordinate with the short-listed firms for an appropriate meeting time and place. Interviews are not anticipated to last longer than 1-2 hours per firm. The City may provide an agenda or outline and any additional evaluation criteria to be provided to the short-listed firms in advance of the interview.

Upon completion of interviews, the short-listed firms will be re-scored based on information provided during the interview to determine the final ranking of the final list of three firms.

The City intends, but is not obligated, to negotiate fees for the Phase I services with the highest-ranked firm. If an agreement cannot be reached with the highest-ranked firm, the City intends to enter into negotiation with the next lower-ranked firm, or firms, or reject all SOQs. The selection of the firm shall be at the discretion of the City, and the City reserves the right to reject any or all SOQs. Upon completion of negotiations, a contract will be prepared for the selected firm and presented for approval by the City Council. A contract with the successful submitter is formed only after City Council approval of the contract.

The following tentative schedule has been prepared for this project. Firms interested in this project must comply with the schedule and be available on the interview/presentation date.

RFQ Pre-Proposal Meeting	September 26, 2013 at 1:00 p.m.
RFQ opening	October 10, 2013 at 2:00 p.m.
Short List notification	October 11, 2013
Short List Interviews	Approx October 24, 2013
Recommendation for Award	Approx October 31, 2013
Award of Contract	Approx November 19, 2013
City approves Design Development Documents	Approx March 11, 2014

City requests Guaranteed Maximum Price Proposal Approx March 11, 2014
City issues Notice to Proceed for Construction Approx March 28, 2014
Construction Manager achieves Substantial Completion of Construction: Approx
February 14, 2015

1.11 CITY'S RESERVATION OF RIGHTS

The City may evaluate the SOQs based on the anticipated completion of all or any portion of the Project. The City reserves the right to divide the Project into multiple parts, to reject any and all SOQs and re-solicit for new SOQs, or to reject any and all SOQs and temporarily or permanently abandon the Project. City makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

1.12 ACCEPTANCE OF EVALUATION METHODOLOGY

By submitting its SOQs in response to this RFQ, respondent accepts the evaluation process and acknowledges and accepts that determination of the "most qualified" firm(s) will require subjective judgments by the City.

1.13 NO REIMBURSEMENT FOR COSTS

Respondent acknowledges and accepts that any costs incurred from the respondent's participation in this RFQ process shall be at the sole risk and responsibility of the respondent.

1.14 WAIVER OF CLAIMS

Each Respondent, in submitting a proposal is deemed to have waived any claims for damage by reason of the higher ranking of another entity and/or the rejection of their SOQ.

1.15 ELIGIBLE RESPONDENTS

Only individual firms or lawfully formed business organizations may apply (this does not preclude a respondent from using consultants.) The City will contract only with the firm or formal organization that submits an SOQ. Respondents who submit as Joint Ventures must submit a copy of the joint venture agreement and a letter of authorization bearing the original signature of all members of the joint venture authorizing the signatory of the "Respondent's Statement of Qualifications and Ability To Undertake The Project" document to execute documents on behalf of the joint venture. With regard to these latter documents, the original letter of authorization and copy of the joint venture agreement may be submitted in a separate envelope marked as above with the additional notation "Joint Venture Documents."

****END OF SECTION****

SECTION 00005

REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS (SOQ)

Respondents shall carefully read the information contained in the following criteria and submit a complete SOQ to all questions in paragraphs 1.01, 1.02, 1.03, 1.04 and 1.05 of this section, including executed Exhibits A through I, formatted as directed in Section 00006. Incomplete SOQs will be considered non-responsive and may be subject to rejection.

1.01 INTRODUCTORY LETTER

Respondent's Statement of Interest and Availability to Undertake The Project (1-2 pages, not included in total page count – no points).

A. The introductory letter should not exceed two (2) pages, 8½" X 11". The letter shall be on company letterhead including the company name, address, phone number and fax number. The letter should be addressed to the Point of Contact referencing the RFQ. The letter shall be signed, in original ink signature, by an authorized officer of the firm and should contain the following:

1. A statement of interest for the Project including a summary of key points describing the respondent's unique qualifications as they pertain to this particular Project;
2. The availability and commitment of the respondent;
3. The respondent's city and state of its corporate headquarters; and
4. A statement regarding acknowledgement of all issued addenda, if any, and agreement or exception to the Attachment 1 – Sample Contract or in Attachment 2 – CMAR Pre-Construction Services.

1.02 SUPPLEMENTARY MATERIAL

Respondent is required to submit supplementary material as part of the SOQ. Supplementary material will be considered on a pass/fail basis. Respondents should note that a "fail" to these items can preclude any further review of the SOQ if it is determined to be in the best interest of the City. Supplementary material includes:

- A. Disclosure of Responsibility Statement of the CMAR firm. SOQ must include a completed Exhibit A for the firm, firm's officers, and those individuals proposed in the SOQ.
- B. CMAR Statement of Bonding Capacity from their payment and performance bond provider stating they will bond this project for the budgeted amount listed in the RFQ (plus a 15 percent contingency).

1.03 APPROACH

Respondent shall provide a narrative to be included as part of the overall page count discussing the respondents approach to Phase I services as described, including involvement/evaluation by subcontractors. (30 points) Additionally, respondent shall provide discussion of their experience and planning for the following:

- A. Cost modeling/budgeting for scope packaging: This project may require division of the total project into multiple GMP packages. As a result, the CMAR will need to define cost/scope packages per available funding limits of the City.
- B. Maintenance of plant operations: The Tolleson WWTP will remain operational and at full capacity throughout the duration of the project.
- C. Startup and commissioning: Successfully bringing ammonia removal processes online and supporting the Plant Staff in the initial operation will be imperative.
- D. Other pertinent considerations: Respondent shall add any additional feature or services that will be beneficial to the project with justifications.

1.04 QUALIFICATIONS AND EXPERIENCE OF THE PROJECT TEAM AND THE FIRM

The CMAR will be selected through a qualifications-based selection process. Firms interested in providing CMAR services shall submit a Statement of Qualifications (SOQ) that addresses the following:

- A. Experience of the Firm on \$4 - \$8+ million dollar municipal water and wastewater projects in the last 6 years (20 points). SOQ must include a completed Exhibit B – Experience of the Firm for at least five projects, one of which is in Arizona.
- B. Proposed Project Team (30 points). SOQ must include an Exhibit C – Candidate Summary for each of the following:
 - 1. Proposed Project Manager
 - 2. Proposed Construction Superintendent
 - 3. Proposed Cost Estimator
 - 4. Proposed Scheduler
 - 5. Other Pertinent Staff
- C. CMAR experience preferred on municipal water and wastewater projects (20 points). SOQ must include a completed Exhibit D – CMAR Experience for at least two projects with at least one in Arizona.
- D. Financial Capability (5 points). SOQ must include a completed Exhibit E, Financial Capability to help determine the Firm's ability to finance the project as presented in this RFQ.

- E. Litigation history over the last 5 years (10 points). SOQ must include a completed Exhibit F – Litigation History for consideration by the City.
- F. Subcontractors Selection Plan for Construction Services (5 points). Firm submitting SOQ is required to provide a proposed Subcontractors Selection Plan for consideration by City, in compliance with A.R.S. 34-603(C)(7).
- G. Current Workload Commitments (5 points). Firm submitting SOQ must complete Exhibit G – Current Workload Commitments throughout anticipated construction period and include the completed exhibit as part of the SOQ for consideration by the City.
- H. Safety History (20 points). Firm submitting SOQ must complete Exhibit H – Safety History for last 5 years and submit as part of the SOQ along with summary information regarding the Firm’s safety program for City’s consideration.
- I. Overall Team Assessment (20 points). This is to be determined by the selection panel members. No submittal response is required.

1.05 PRESENTATIONS / INTERVIEWS

In the event the City determines interviews are necessary for selection, the date for interviews with the short-listed firm(s) will be as stated in paragraph 1.10 of Section 00004. Brown and Caldwell will advise the short-listed firms of the time and place. Presentation/ Interviews are not anticipated to last longer than 1-2 hours per firm. The City may provide an agenda or outline in advance of the interview covering any additional evaluation criteria to be addressed by the short-listed firms.

In addition to a presentation and response to interview questions, short-listed firms may be required to provide additional materials, responses to additional follow up questions or provide examples of the Professional quality of the firm’s previous work for similar projects. If required, additional material will be requested formally in writing by the City.

****END OF SECTION****

SECTION 00006

FORMAT FOR STATEMENT OF QUALIFICATIONS (SOQ)

1.01 GENERAL INSTRUCTIONS

- A. SOQs shall be prepared simply and economically, providing a straightforward, concise description of the respondent's ability to meet the requirements of this RFQ. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of the City's needs.
- B. SOQs shall be a **MAXIMUM OF TWENTY (20) PRINTED PAGES**. The cover, table of contents, divider sheets, introductory letter, exhibits, and resumes do not count as printed pages. The City reserves the right to accept or reject SOQs that deviate from the preferred page count. Individual resumes should not be more than two (2) pages in length. Pages larger than 8 ½ by 11-inches will be considered as two pages in length.
- C. All pages shall be printed on one side only. For typewritten pages, the minimum font size is 12 point, and black ink is preferred.
- D. Respondents shall carefully read the information contained in this RFQ and submit a complete response to all requirements and questions as directed. Incomplete SOQs will be considered non-responsive and subject to rejection.
- E. SOQs and any other information submitted by respondents in response to this RFQ shall become the property of the City.
- F. SOQs that are qualified with conditional clauses, alterations, items not called for in the RFQ documents, or irregularities of any kind are subject to rejection by the City, in its complete discretion.
- G. The City makes no representations of any kind that a contract will be entered into as a result of this RFQ. The City reserves the right to accept or reject any or all SOQs, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ when deemed to be in City's best interest.
- H. SOQs shall respond to all items in Section 00005 of the RFQ. It is not necessary to repeat the questions or topics in the SOQ; however, it is essential to reference the topic (e.g. approach, project team, etc.).
- I. Failure to comply with all requirements contained in this RFQ may result in the rejection of the SOQs.

1.02 PAGE SIZE, BINDING, DIVIDERS AND TABS

- A. SOQs shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral type bindings. DO NOT USE METAL-RING HARD COVER BINDERS.
- B. Additional attachments or material not requested shall NOT be included with the SOQs. Only the responses provided by the respondent to the questions and topics identified in Section 00005 of this RFQ will be used by the City for evaluation.
- C. Separate and identify each criteria response to Section 00005 of this RFQ by use of a divider sheet with an integral tab for ready reference.

1.03 TABLE OF CONTENTS

- A. Submittals shall include a "Table of Contents" and give page numbers for each part of the SOQ.

1.04 PAGINATION

- A. Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.)

****END OF SECTION****

SECTION 00007

ATTACHMENTS TO THE REQUEST FOR QUALIFICATIONS (RFQ)

EXHIBIT A: DISCLOSURE OF RESPONSIBILITY STATEMENT

EXHIBIT B: EXPERIENCE OF THE FIRM

EXHIBIT C: CANDIDATE SUMMARY

EXHIBIT D: CMAR EXPERIENCE

EXHIBIT E: FINANCIAL CAPABILITY

EXHIBIT F: LITIGATION HISTORY

EXHIBIT G: CURRENT WORKLOAD COMMITMENTS

EXHIBIT H: SAFETY HISTORY

ATTACHMENT NO. 1 SAMPLE CONTRACT

ATTACHMENT NO. 2 APPENDIX A – CMAR PRE-CONSTRUCTION SERVICES –
SCOPE OF SERVICES

ATTACHMENT NO. 3 APPENDIX B – SUBMITTAL REQUIREMENTS FOR
THE GMP

ATTACHMENT NO. 4 PROPOSED COMPENSATION SCHEDULE

EXHIBIT A

DISCLOSURE OF RESPONSIBILITY STATEMENT

AMMONIA REMOVAL IMPROVEMENTS
CONSTRUCTION MANAGER AT RISK PROCUREMENT

This disclosure statement shall be executed with regard to the proposers firm, firm's officers and those individuals proposed in the SOQ. Evaluation of material contained in response to this disclosure will be considered as stated in Section 00005, Paragraph 1.02. Proposer shall attach additional pages as necessary to document their response(s).

1. List any convictions of any person, subsidiary, or affiliate of the company, arising out of obtaining, or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

2. List any convictions of any person, subsidiary, or affiliate of this company for offenses such as embezzlement, theft, fraudulent schemes, etc. or any other offenses indicating a lack of business integrity or business honesty which affects the responsibility of the contractor.

3. List any convictions or civil judgments under state or federal antitrust statutes.

4. List any violations of contract provisions such as knowingly (without good cause) to perform, or unsatisfactory performance, in accordance with the specifications of a contract.

5. List any prior suspensions or debarments by any governmental agency.

EXHIBIT A

(Continued)

I, _____, as _____
Name of individual Title & Authority

of _____, declare under oath that
Company Name

the above statements, including any supplemental responses
attached hereto, are true.

Signature

State of _____

City of _____

Subscribed and sworn to before me on this _____ day of _____

by _____ representing him/herself to be

_____ of the company named herein.

Notary public

My Commission expires:

Residing at:

EXHIBIT B
EXPERIENCE OF THE FIRM

CITY OF TOLLESON, ARIZONA
REQUEST FOR QUALIFICATIONS
TOLLESON WWTP, AMMONIA REMOVAL IMPROVEMENTS

CONSTRUCTION MANAGER AT RISK

Name of Firm:

Use a separate sheet for each contract.

1.	Contract Number:
	Contract Name:
2.	Name of Project Owner:
3.	Address of Project Owner:
4.	Contact Name, Title and Phone Number:
5.	Contract role (check one): <input type="checkbox"/> Sole/Prime Contractor <input type="checkbox"/> Subcontractor
6.	Value of the Total Contract/Subcontract:
7.	Date of Award:
8.	Date of Completion:
9.	Contract/Subcontract Duration (years and months): _____ years _____ months
10.	For sole/prime contractors, indicate the approximate US\$ amount and nature of substantial work (more than 20% in contract value) undertaken by subcontract, if any.

**EXHIBIT B
EXPERIENCE OF THE FIRM**

(Continued)

11.	Nature of works and special features relevant to the contract for which the Applicant wishes to qualify:

EXHIBIT C
CANDIDATE SUMMARY

CITY OF TOLLESON, ARIZONA
REQUEST FOR QUALIFICATIONS
TOLLESON WWTP, AMMONIA REMOVAL IMPROVEMENTS

CONSTRUCTION MANAGER AT RISK

Candidate Name:

Position:	Candidate: <input type="checkbox"/> Prime <input type="checkbox"/> Alternate	
<i>Candidate Information</i>	1. Name of Candidate:	2. Certifications/Licenses:
	3. Professional Qualifications (that apply to this project):	

EXHIBIT C
CANDIDATE SUMMARY

(Continued)

<i>Present Employment</i>	4. Name of Employer:	
	Address of Employer:	
	Telephone:	Contact (manager/personnel officer):
	Fax:	E-mail:
	Job Title of Candidate:	Years with Present Employer:

Summarize professional experience over the last 10 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the Project. Attach candidate's resume up to 2-pages in length to this form.

<i>From</i>	<i>To</i>	<i>Company / Project / Position / Relevant technical and management experience</i>

EXHIBIT D
CONSTRUCTION MANAGER AT RISK EXPERIENCE

CITY OF TOLLESON, ARIZONA
REQUEST FOR QUALIFICATIONS
TOLLESON WWTP, AMMONIA REMOVAL IMPROVEMENTS

CONSTRUCTION MANAGER AT RISK

Firm Name:

Use a separate sheet for each contract.

1.	CMAR Contract Number:
	CMAR Contract Name:
2.	Name of Project Owner:
3.	Address and Phone Number of Project Owner:
4.	Contact Name, Title and Phone Number:
5.	Contract Role (check one): <input type="checkbox"/> Sole/Prime CMAR <input type="checkbox"/> CMAR Subcontractor
6.	Value of the total CMAR contract/subcontract:
7.	Date of Award:
8.	Date of Completion:
9.	CMAR Contract/subcontract duration (years and months): _____ years _____ months
10.	For sole/prime CMAR contractors, indicate the approximate US\$ amount and nature of substantial work (more than 20% in contract value) undertaken by subcontract, if any.

EXHIBIT D
CONSTRUCTION MANAGER AT RISK EXPERIENCE

(Continued)

11.	Nature of works and special features relevant to the contract for which the Applicant wishes to qualify:

EXHIBIT E
FINANCIAL CAPABILITY

CITY OF TOLLESON, ARIZONA
REQUEST FOR QUALIFICATIONS
TOLLESON WWTP, AMMONIA REMOVAL IMPROVEMENTS

CONSTRUCTION MANAGER AT RISK

Firm Name:

Applicants should provide financial information to demonstrate that they meet the requirements stated in the RFQ. If necessary, use separate sheets to provide complete banker information. A copy of the audited balance sheets should be attached.

<i>Banker</i>	Name of Banker:		
	Address of Banker:		
	Telephone:	Contact Name and Title:	
	Fax:	Telex:	

Summarize actual assets and liabilities in US\$ for the previous five years. Based upon known commitments, summarize projected assets and liabilities in US\$ for the next two years.

Financial information US\$	Actual: previous five years					Projected: next two years	
	1	2	3	4	5	6	7
1. Total assets							
2. Current assets							
3. Total liabilities							
4. Current liabilities							
5. Profits before taxes							
6. Profits after taxes							

EXHIBIT E
FINANCIAL CAPABILITY

(Continued)

Specify proposed sources of financing to meet the cash flow demands of the Project, net of current commitments specified in the RFQ.

Source of Financing	Amount (US\$)
1.	
2.	
3.	
4.	

Attach audited financial statements for the last five years.

Firms owned by individuals and partnerships may submit their balance sheets certified by a registered accountant and supported by copies of tax returns, if audits are not required by the laws of their states of origin.

EXHIBIT G
CURRENT WORKLOAD COMMITMENTS

CITY OF TOLLESON, ARIZONA
REQUEST FOR QUALIFICATIONS
TOLLESON WWTP, AMMONIA REMOVAL IMPROVEMENTS

CONSTRUCTION MANAGER AT RISK

Firm Name:

Applicants should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued throughout construction period.

Name of Contract	Value of Outstanding Work (current US\$)	Estimated Completion Date
1.		
2.		
3.		
4.		
5.		
6.		

EXHIBIT H
SAFETY HISTORY

CITY OF TOLLESON, ARIZONA
REQUEST FOR QUALIFICATIONS
TOLLESON WWTP, AMMONIA REMOVAL IMPROVEMENTS
CONSTRUCTION MANAGER AT RISK

Firm Name:

Applicants shall complete this form with the requested statistics as well as attach summary information regarding the applicant's safety program.

Year	Overall Experience Rate	Lost Time Accident (LTA) Rate	Number of Federal & State Safety Citations
Industry Average			

ATTACHMENT NO. 1

SAMPLE CONTRACT

CONSTRUCTION MANAGER AT RISK

THIS AGREEMENT made and entered by and between the **City of Tolleson**, an Arizona municipal corporation, hereinafter designated the “City” and _____ hereinafter designated the “Construction Manager at Risk” or “CM@Risk.”

RECITALS

- A. This Contract has been procured pursuant to the applicable requirements of the City of Tolleson Code and State law.
- B. The City intends to construct a _____ Project as more fully described in Exhibit A attached, hereafter referred to as the “Project.”
- C. To undertake the design of said Project the City has entered into a contract with _____, hereafter referred to as the “Design Professional.”
- D. The CM@Risk has represented to the City the ability to provide design phase services and, if approved by the City, to enter into a contract or amendment to construct the Project.
- E. Based on this representation, the City intends to enter into a contract with the CM@R for the design phase services identified in this contract. At the end of the design phase, at the City’s discretion, the City may enter into a separate construction contract or amendment to this Agreement with the CM@R for construction phase services.

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**

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

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

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

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

City (Owner) - The City of Tolleson, an Arizona municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services is to be provided pursuant to said Contract.

Construction Contract Time(s) - The number of days or the dates related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CM@Risk’s administrative costs, home office overhead, and profit, whether at the CM@Risk’s principal or branch offices.

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

Contingency, CM@Risk’s - 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 2.

Contingency, Owner’s – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner’s Contingency will be set by the City 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 2.

Contract Amount - The cost for services for this Contract as identified in Article 4.

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.

Cost of the Work - The direct costs necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee, General Conditions Cost, or taxes.

Critical Path Schedule - 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 - Calendar day unless otherwise specifically noted in the Contract Documents.

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

Design Professional - The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project.

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

Float - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending 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: job office personnel, job officer and temporary facilities and office materials, supplies and equipment, including payroll costs for project manager or construction manager for Work conducted for the project; payroll costs for the superintendent and full-time general foremen for work conducted at the site; payroll costs for other management personnel resident and working on the site; workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.); costs of offices and temporary facilities including office materials, office supplies, office equipment utilized at the site; utilities, fuel, sanitary facilities and telephone services at the site; costs of liability insurance premiums not included in

labor burdens for direct labor costs; costs of bond premiums; costs of consultants not in the direct employ of the CM@Risk or Subcontractors; and fees for licenses.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the Work including the CM@Risk’s Construction Fee, General Conditions Costs, sales tax, and CM@Risk Contingency.

GMP Plans and Specifications – The three sets of plans and specifications provided pursuant to Article 2 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

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

Notice to Proceed (NTP) - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk’s obligations under this Contract.

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

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

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, Project Manager, City’s representatives and other stakeholders who are responsible for making decisions regarding the Project.

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

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

Site – The land or premises on which the Project is located, _____.

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

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

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

Substantial Completion - 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 Chief 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 the Construction Phase contract.

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

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

**ARTICLE 2
BASIC DESIGN PHASE SERVICES**

GENERAL

A. The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City Engineer, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Tolleson, Arizona would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.

B. Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the City's Project Program and Project Budget, and conceptual site design plan each in terms of the other, with recommendations as to the appropriateness of each.

C. Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

D. The CM@Risk will provide design phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

E. The CM@Risk, when requested by the City, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

CONSTRUCTION MANAGEMENT PLAN

A. If requested by the City, the CM@Risk will prepare a Construction Management Plan (CMP), which may include the CM@Risk's professional opinions concerning: (a) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (c) alternate strategies for fast-tracking and/or phasing the construction, (d) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction, (e) permitting strategy, (f) safety and training programs, (g) construction quality control, (h) a

commissioning program, (i) the cost estimate and basis of the model, and (j) a matrix summarizing each Project Team member's responsibilities and roles.

B. The CM@Risk may add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the CM@Risk, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking if any of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) and/or materials, and (g) funding issues identified by the City.

PROJECT SCHEDULE

A. The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.

B. 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.

C. 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.

D. The CPM diagram schedule shall indicate all relationships between activities.

E. 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.

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

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

H. The 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.

I. The 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.

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

K. Float time shall be as prescribed below:

1. The total Float within the overall 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 completion date.

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 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 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.

L. The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

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

DESIGN DOCUMENT REVIEWS

A. The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.

B. The CM@Risk will recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. Before initiating construction operations, the CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the site condition information and data made available with the Construction Documents.

C. The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.

D. The CM@Risk will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

1. Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration,

efficiency issues concerning; access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.

2. Bidability Reviews: The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) Specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.

3. The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.

4. The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.

E. Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.

F. Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.

COST ESTIMATES

A. Unless otherwise agreed by both parties, within 14 days after receipt of the documents for the various phases of design, the CM@Risk shall provide a complete and detailed cost estimate and a

written review of the documents. The cost estimate should include all cost categories included in the GMP Summary identified in Exhibit "B" attached. The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.

B. If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the CM@Risk shall make appropriate recommendations on methods and materials to the City and Design Professional that he believes will bring the project back into the Project budget.

C. In between these milestone estimates, the CM@Risk shall periodically provide a tracking report which identifies the upward or downward movements of costs due to value engineering or scope changes. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the major trend changes in costs relative to the City's budget.

D. If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

A. The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit "B" attached). Due to the potential for the City to update procedures without notice, CM@Risk must verify with the City the current Exhibit "B" requirements and procedures when entering into these services.

B. The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the current update/revised cost estimate at the time of the request, the associated estimates for construction costs and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

C. Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

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

2. The General Conditions Costs are a firm fixed lump sum amount which will include bonds and insurance premiums based on the full contract price for construction.

3. The Construction Fee is a firm fixed lump sum.

4. CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.

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 are a not-to-exceed reimbursable amount.

D. 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 full 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.

E. GMPs are cumulative except for CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward. CM@Risk Contingency may not be moved from one GMP to another without written approval of the City.

F. The CM@Risk, in preparing any GMP Proposal, will obtain from the Design Professional, three sets of signed, sealed, and dated plans and specifications (including all addenda). The CM@Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk will mark the face of each document of each set upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications. The CM@Risk will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Design Professional.

G. An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of Article 2.

H. GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk remaining at the end of the project will revert to City.

GMP PROPOSAL(S) REVIEW AND APPROVAL

A. The CM@Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM@Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM@Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.

B. The City upon receipt of any GMP proposal from the CM@Risk, will have 14 calendar days to either accept or reject the GMP, or enter into negotiations with the CM@Risk on the GMP. The City will notify the CM@Risk in writing whether it accepts or rejects the GMP Proposal.

C. If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

SUBCONTRACTOR AND SUPPLIER SELECTIONS

A. The selection of Subcontractors and Suppliers may occur prior to submission of a GMP Proposal. Subcontractors shall be selected based on qualifications or a combination of qualifications and price, in accordance with the Subcontractor Selection Plan submitted by the CM@Risk. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of Subcontractors/Suppliers is the responsibility of the CM@Risk. In any case, the CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers. All Subcontractor/Supplier Selections must comply with the Selection Plan, the City Code and State law.

B. The CM@Risk shall apply the approved Subcontractor Selection Plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. The CM@Risk must receive City approval of the selected Subcontractor(s)/Supplier(s).

C. The CM@Risk will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

D. The CM@Risk may self-perform portions of the Work, subject to the approval of the City, and if not in conflict with the Subcontractor Selection Plan. The CM@Risk will be required to prepare two different reports on the subcontracting process.

1. Within fifteen Days after each Subcontractor/Supplier selection, the CM@Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name and qualifications of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each subcontractor, and (d) trade work and its cost that the CM@Risk intends to self-perform, if any.

2. Upon completion of the Subcontractor/Supplier selection process, the CM@Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.

E. The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.

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

ARTICLE 3 PERIOD OF SERVICES

A. The design phase services described in this Contract will be performed by CM@Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.

B. Upon failure to adhere to the approved schedule, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.

ARTICLE 4 CONTRACT AMOUNT AND PAYMENTS

CONTRACT AMOUNT

A. Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM@Risk a fee not to exceed \$_____.

PAYMENTS

A. Requests for monthly payments by the CM@Risk for design phase services will be submitted on the City's "Contract Payment Request" form and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated

as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.

B. The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 14 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 90 percent of the Contract Amount until final acceptance of the all design phase services, and award of the final approved GMP for the entire Project by City Council. In the event that the City rejects the GMP, City shall pay to the CM@Risk the remaining amounts due under this Contract within 30 days of the final rejection of the GMP.

C. The CM@Risk agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM@Risk to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.

D. If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

ARTICLE 5 CITY'S RESPONSIBILITIES

A. The City, at no cost to the CM@Risk, will furnish the following information:

1. One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.

2. All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

3. The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Contracts Manager has the authority to administer this Contract. The Project Manager has the authority to monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.

B. The City additionally will:

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

2. Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.

3. Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.

4. Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.

5. Notify the CM@Risk of changes affecting the budget allocations or schedule.

C. The City's Project Manager will have authority to approve the Project Schedule, and render decisions and furnish information the Project Manager deems appropriate to the CM@Risk.

ARTICLE 6 CONTRACT CONDITIONS

PROJECT DOCUMENTS AND COPYRIGHTS

A. City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents), including all intellectual property rights thereto, are to be and remain the property of the City and all Project Documents are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted, the City agrees that any CM@Risk warranties or responsibilities, if any, with regard to the Project Documents and their use for other projects are void and that the CM@Risk is not responsible for such use.

B. Documents to Bear Seal: When applicable and required by State law, the CM@Risk and its Subconsultants will endorse by an Arizona professional seal all plans, works, and Deliverables prepared by them for this Contract.

COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

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

ALTERATION IN CHARACTER OF WORK

In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the City and the CM@Risk. Such Change Order or Amendment will not be effective until approved by the City.

Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.

No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

DATA CONFIDENTIALITY

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

B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City, subject to the requirements of Arizona law.

C. The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:

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

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

3. Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court.

4. In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

D. The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.

E. The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

e-VERIFY REQUIREMENTS

To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Consultant's or its subcontractor's failure to comply with such warranty shall be deemed a

material breach of this Agreement and may result in the termination of this Agreement by the City.

APPROPRIATION CONTINGENCY

The CM@Risk acknowledges that the continuation of the Contract beyond the existing City fiscal year is contingent upon the City appropriating funds necessary to provide the funds to pay the City's obligations herein. This Contract shall continue without action by either party from the beginning of the next fiscal year until completion, unless terminated prior to the end of the current fiscal year. Should the City fail to appropriate the necessary funds to continue this Contract, the City will notify the CM@Risk of the lack of funds, and this Contract shall terminate on the date of said notification. Upon such termination, the CM@Risk shall be paid for all services provided the City to the date of termination, subject to review and approval of the City, and subject to the availability of funds.

PROJECT STAFFING

A. Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City, an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

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

INDEPENDENT CONTRACTOR

The CM@Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

TERMINATION

A. The City and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@Risk.

B. In the event the City terminates or abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.

C. The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.

D. The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.

E. The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract, and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with Article 6, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended. The City will make the final payment within thirty days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

DISPUTES

In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the Director of Public Works. Any claims made under this Contract shall be resolved by the City Manager, pursuant to the applicable provisions of the City procurement code and state law.

WITHHOLDING PAYMENT

The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

RECORDS/AUDIT

A. 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 will be kept on a generally recognized accounting basis and shall be available for up to five years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.

B. The CM@Risk will include a provision similar to that found in Article 6 "Records/Audits" in all of its agreements, except lump sum contracts, with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

INDEMNIFICATION

To the fullest extent permitted by law, the CM@Risk agrees to defend, indemnify and hold harmless the City of Tolleson, 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 individually and collectively referred to as "Indemnitees", for, from and against all suits and claims, including attorney's fees and cost of litigation, actions, losses, damage, expenses, costs or claims of any character or any nature arising out of the work or Deliverable done in fulfilling the terms of this Contract, or on account of any act, claim or amount arising out of or recovered under Workmen'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.

NOTICES

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 City:	City Engineer Paul R. Gilmore, PE 9555 W. Van Buren Tolleson, AZ 85353
With Copy to	GUST ROSENFELD, P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Facsimile: (602) 254-4878 Attn: Scott W. Ruby, Esq.
To CM@ Risk:	
Copy to: Design Professional	

Or to other such 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.

COMPLIANCE WITH FEDERAL LAWS

The CM@Risk understands and acknowledges the applicability of the Americans 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 and all laws in performing this Contract and to permit the City to verify such compliance.

CONFLICT OF INTEREST

A. To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City Engineer
Paul R. Gilmore - PE
9555 W. Van Buren
Tolleson, AZ 85353

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

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

2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and

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

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

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

CONTRACTOR'S LICENSE

The CM@Risk must provide to the Contracts Manager CM@Risk's Contractor's License Classification and number and its Federal Tax I.D. number.

SUCCESSORS AND ASSIGNS

The City and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. The CM@Risk may not assign, sublet, or transfer its interest in this Contract without the written consent of the City. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

FORCE MAJEURE

If either party is delayed or prevented from the performance of any service, in whole or part, required under this Contract by reason of acts of God or other cause beyond the control and without fault of that party (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay or as reasonably agreed to by both parties.

COVENANT AGAINST CONTINGENT FEES

The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract 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 Tolleson has any interest, financially, or otherwise, in the firm. The City of Tolleson will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

NON-WAIVER PROVISION

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

JURISDICTION

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

SURVIVAL

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

MODIFICATION

No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

SEVERABILITY

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

INTEGRATION

This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

TIME IS OF THE ESSENCE

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

THIRD PARTY BENEFICIARY

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

COOPERATION AND FURTHER DOCUMENTATION

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

CONFLICT IN LANGUAGE

All work or Deliverables performed will conform to all applicable City of Tolleson codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

CITY'S RIGHT OF CANCELLATION

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

ARTICLE 7 INSURANCE REQUIREMENTS

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

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

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

MINIMUM SCOPE AND LIMITS OF INSURANCE

A. CM@Risk will provide coverage at least as broad and 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	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: “The City of Tolleson 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”.
- b. Policy shall contain waiver of subrogation against the City of Tolleson.

2. Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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- a. The policy shall be endorsed to include the following additional insured language: “The City of Tolleson 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 or hired or borrowed by the CM@Risk”.
- b. Policy shall contain waiver of subrogation against the City of Tolleson.

3. Workers Compensation and Employers Liability

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

- a. Policy shall contain waiver of subrogation against the City of Tolleson.

ADDITIONAL INSURANCE REQUIREMENTS

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

B. On insurance policies where the City of Tolleson is named as additional insured, the City of Tolleson 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 Contract.

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

D. Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

SUBCONTRACTORS INSURANCE

CM@Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the CM@Risk, however, subcontractors insurance limits of liability shall not be less than \$1,000,000 per occurrence/\$2,000,000 aggregate.

NOTICE OF CANCELLATION

Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and 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 by certified mail, return receipt requested and sent directly to the City's named Project Manager at:

City Engineer
Paul R. Gilmore, PE
9555 W. Van Buren
Tolleson, AZ 85353

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.

VERIFICATION OF COVERAGE

A. The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

C. All certificates required by this Contract will be sent directly to the City Engineer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the City of Tolleson by its Mayor and City Clerk have hereunto subscribed their names this _____ day of _____, 2013.

CITY OF TOLLESON

Adolfo Gamez, Mayor

ATTEST:

Chris Hagen, City Clerk

APPROVED AS TO FORM:

Scott Ruby, City Attorney

------(CONTRACTOR)-----

By: _____

Its: _____
(Title)

**EXHIBIT A
TO
CONSTRUCTION MANAGER AT RISK AGREEMENT**

PROJECT DESCRIPTION

**HIBIT B
TO
CONSTRUCTION MANAGER AT RISK AGREEMENT**

AL REQUIREMENTS FOR THE GMP

GMP submittal.

Table of Contents:

1. Scope of Work
 2. Summary of the GMP
 3. Schedule of Values - summary spreadsheet and backup documents
 4. List of Plans and Specifications used for GMP Proposal
 5. List of clarification and assumptions
 6. Project Schedule
-
1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the City must be aware of pertaining to the scope. (one paragraph is sufficient.)
 2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below: The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #: _____ **DATE:** _____
PROJECT NAME: _____

GMP SUMMARY				AMOUNT	
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)			\$	
B.	CM@Risk's Contingency			\$	
INDIRECT COSTS				RATE	
C.	Construction Fee			%	
D.	General Conditions			%	
	D1	Payment and Performance Bond	\$	%	
	D2	Insurance	\$	%	
E.	Sales Taxes			%	
				F. TOTAL GMP	
				\$	
				G. Owner's Contingency	
				\$	

Formulas:

$$\text{Total GMP: } A+B+C+D+E = F$$

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

3. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@Risk's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.
4. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM@Risk, Design Consultant, and Project Manager using the format below.

Plans Used For Preparation of GMP No.	
CM@Risk	Date
Design Consultant	Date
Project Manager	Date

5. A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
6. A Critical Path Method (CPM) diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. 8 Copies of the GMP (perforated as requested by the City) Velo or 3-hole punched.
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Consultant, CM@Risk and Project Manager).

For questions regarding the submittal requirements, please contact Mr. Craig Tweed

**EXHIBIT C
TO
CONSTRUCTION MANAGER AT RISK AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND**

[RFQ]

See following pages.

**EXHIBIT D
TO
CONSTRUCTION MANAGER AT RISK AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND**

[Consultant's SOQ]

See following pages.

EXHIBIT E
TO
CONSTRUCTION MANAGER AT RISK AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND

[Scope of Work]

See following pages.

**EXHIBIT F
TO
CONSTRUCTION MANAGER AT RISK AGREEMENT
BETWEEN
THE CITY OF TOLLESON
AND**

[Fee Proposal]

See following page(s).

****END OF SECTION**