



**GOODYEAR OPERATIONS CENTER
CONSTRUCTION MANAGER AT RISK
GMP I CONSTRUCTION SERVICES AGREEMENT**

**PROJECT NO. FA1404
CON-16-3442**

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
<u>RECITALS</u>	
<u>ARTICLES</u>	
ARTICLE 1 – DEFINITIONS	2
ARTICLE 2 - CM@RISK’S SERVICES AND RESPONSIBILITIES	6
ARTICLE 3 - CITY’S SERVICES AND RESPONSIBILITIES	13
ARTICLE 4 - CONTRACT TIME	15
ARTICLE 5 - CONTRACT PRICE	18
ARTICLE 6 - CHANGES TO THE CONTRACT PRICE AND TIME	18
ARTICLE 7 - PROCEDURE FOR PAYMENT	22
ARTICLE 8 - INSURANCE	24
ARTICLE 9 - INDEMNIFICATION	26
ARTICLE 10 – NOTICES	27
ARTICLE 11 - SUSPENSION AND TERMINATION	27
ARTICLE 12 - GENERAL PROVISIONS	29
<u>SIGNATURE PAGE</u>	35
<u>EXHIBITS</u>	
EXHIBIT A – PROJECT DESCRIPTION	
EXHIBIT B – APPROVED GMP PROPOSAL AND ACCEPTANCE FORM	
EXHIBIT C – BOND AND INSURANCE FORMS	

**GOODYEAR OPERATIONS CENTER
CONSTRUCTION MANAGER AT RISK
GMP I CONSTRUCTION SERVICES AGREEMENT**

THIS CONSTRUCTION MANAGER AT RISK GMP CONSTRUCTION SERVICES AGREEMENT (“Contract” or “Agreement”), is made and entered on this twenty ninth day of October, 2015, by and between City of Goodyear, an Arizona municipal corporation (the “City”) and D. L. Withers Construction, L.C., an Arizona corporation (the “Construction Manager at Risk”, “CM@Risk”, “CM@R” or “Contractor”). The City and CM@Risk are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, after completing a competitive procurement process the City of Goodyear has selected this Contractor to perform construction administration for the construction of the Goodyear Operations Center Phase I and Phase II (the “Project”);

WHEREAS, when conducting construction administration the CM@Risk will be responsible for both Project management services and construction of the Project;

WHEREAS, the CM@Risk as the construction administrator will work cooperatively with Architekton, Inc. (“Design Professional”) to successfully complete the Project;

WHEREAS, the City and the CM@Risk desire to enter into this Contract for the construction administration of this Project and it is in the best interests of the Parties to do so.

NOW THEREFORE, , in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and any other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor agree as follows:

Article 1 - Definitions

“ADDENDA” means the written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements or the Construction Documents.

“AGREEMENT” or “CONTRACT” means this written document signed by the City and CM@Risk covering the design and construction phase of the Project, and including but not limited to the Scope of Work, and any and all other documents itemized and referenced in or attached to and made part of this Contract.

“AMENDMENT” means a written document submitted to the City Representative by the CM@Risk and authorized by the City for an addition, deletion or revision to the scope of services or Deliverables, or an adjustment in the Contract Amount or the period of services, and is issued on or after the Effective Date of this Agreement.

“ARCHITECT” means the firm (Architekton, Inc.) retained by the City to provide design and engineering, through themselves or sub consultants, of the Project.

“BONDS” means Performance and Payment bonds and other instruments of security.

“CALENDAR DAY” means every day shown on the calendar including Saturdays, Sundays and holidays.

“CHANGE DIRECTIVE” means a written order prepared and signed by City, directing a change in the Work prior to agreement on an adjustment in the Contract Price and the Contract Time.

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

“CITY” or (“OWNER”) means the City of Goodyear, with whom CM@Risk has entered into this Agreement and for whom the services are to be provided pursuant to said Agreement.

“CITY’S REPRESENTATIVE” means the person designated in Section 3.2.

“CONSTRUCTION DOCUMENTS” means a set of Drawings and Specifications upon which cost estimates and GMP Proposals will be based

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

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

“CM@RISK’S REPRESENTATIVE” means the person designated in Section 2.2.

“CONTRACT DOCUMENTS” This Agreement, Addenda (which pertain to the Contract Documents), CM@Risk’s final approved GMP Proposal (including documentation accompanying the GMP Proposal and any post GMP Proposal documentation submitted prior to the approval of the GMP Proposal) when attached as an exhibit to this Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in this Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and Engineer’s written interpretations.

“CONTRACT PRICE” means the amount or amounts set forth in Article 5.

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

“CONTRACT TIME” means the definition as set forth in Article 4.

“COST OF THE WORK” means the direct cost of work necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. Indirect Cost means cost of work incurred by the CM@Risk identified as Construction Fee, General Conditions Costs, bonds, insurance and taxes.

“CRITICAL PATH” means the sequence of activities from the start of the Work to the Substantial Completion of the Project, such that any delay in the completion of these activities will extend the Substantial Completion date.

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

“DELIVERABLES” means the work product prepared by the CM@Risk in performing the scope of work described in this Agreement. .

“DESIGN PHASE CONTRACT” means the agreement between the City and CM@Risk for services during the design phase which may have included the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, subcontractor bid phase services and GMP preparation.

“DESIGN PROFESSIONAL” OR “ENGINEER” means a qualified, licensed design professional who furnishes design and/or construction administration services required for the Project.

“DIFFERING SITE CONDITIONS” means concealed or latent physical conditions or subsurface conditions at the Site that materially differ from the conditions indicated in the Contract Documents.

“DRAWINGS” (OR “PLANS”) means 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 state of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability and biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%) but “*not for construction*”. Shop drawings are not Drawings as so defined.

“FINAL ACCEPTANCE” means the completion of the Work as prescribed in Section 4.3.

“GENERAL CONDITIONS COSTS” includes, but is not limited to the following types of costs for the CM@Risk during the construction phase: (i) payroll costs for project manager or CM@Risk for work conducted at the site, (ii) payroll costs for the superintendent and full-time general foremen, (iii) payroll costs for other management personnel resident and working at the site, (iv) workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), (v) costs of offices and temporary facilities including office materials, office supplies, office equipment and minor expenses, (vi) cost of utilities, fuel, sanitary facilities, telephone and data services at the site, , (vii) costs of consultants not in the direct employ of the CM@Risk or Subcontractors. General Conditions will be billed on a monthly basis with the progress payment request and will be based on percentage of Project complete that month.

“GOVERNMENTAL AUTHORITY” means any federal, state, local, municipal, or other governmental body or agency or subdivision thereof, including any legislative or judicial body, having or asserting jurisdiction over Owner, CM@Risk, and their respective agents and parent corporations or over any part or all of the construction of the Project on the Project Site, the performance of the Work, or the ownership or operation of the Facility.

“GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL” means 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 designated in writing by the City and delivered to the CM@Risk to be performed during the construction phase. The final approved GMP Proposal, which will be inclusive of all GMPs for the Project becomes the Contract Price for this Agreement.

“GUARANTEED MAXIMUM PRICE” or “GMP” means the sum of the maximum Cost of the Work; the Construction Fee; General Conditions Costs, Bonds, Insurance, taxes, and CM@Risk’s Contingency including authorized adjustments.

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

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

“NOTICE TO PROCEED” or “NTP” means the written notice given by the City to CM@R stating the date on which the CM@R will start performing its obligations under this Agreement. .

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

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

“PAYMENT REQUEST” means the City form, “Application and Certificate for Payment” used by the CM@Risk to request progress payments for Work in accordance with Article 7.

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

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

“PROJECT RECORD DOCUMENTS” means the documents created pursuant to Section 2.8.

“PROJECT TEAM” means the construction phase team consisting of the Architect, Consultants, CM@Risk, City’s Representative(s) and other stakeholders who are responsible for making decisions regarding the Project.

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

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

“SITE” means the land or premises on which the Project will be located, generally described as an appropriate site in the Central Planning Area of Goodyear, Arizona.

“SPECIFICATIONS” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto as listed in the GMP proposal.

“SUBCONTRACTOR” means an individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid individual or firm at any tier, who undertakes to perform a part of the construction phase Work for which the CM@Risk is responsible. Subcontractors must be selected in accordance with applicable law.

“SUBSTANTIAL COMPLETION” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) designated or required governmental inspections, certifications, and approvals have been made and posted by the Approving Authorities; (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.

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

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

Article 2 - CM@Risk’s Services and Responsibilities

2.1. General Performance

2.1.0. The CM@Risk shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work required by the contract document, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner with appropriate consideration for public safety and within the care and skill of a qualified CM@Risk in the State of Arizona. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformance with the Project's Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described

2.2. General Services

2.2.0. The name of the CM@Risk's Representative shall be provided to the City Representative prior to the commencement of the Project. CM@Risk's Representative shall be reasonably available to City's Representative and shall have the necessary expertise and experience required to supervise the Work. CM@Risk's Representative shall communicate regularly with City's Representative but not less than once a week and shall be vested with the authority to act on behalf of CM@Risk. CM@Risk's Representative may be removed and replaced only with the prior written notice to and consent of the City.

2.3. Government Approvals and Permits

2.3.0. Unless otherwise provided, CM@Risk shall assist the City to obtain where appropriate, all necessary permits, approvals, and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. City to pay for building permits and development fees.

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

2.4. Guaranteed Maximum Price (GMP) Construction Contract

2.4.0. Per this Contract, , the City intends to enter into a GMP construction contract with the CM@Risk. The proposed GMP ("GMP Proposal") for the entire Work (or portions thereof) will be presented in a format acceptable to the City.

2.4.1. The GMP Proposal for the entire Project will be the sum of the maximum Cost of the Work, and include the CM@Risk's Construction Fee, General Conditions Fee, Contractor's Contingency (for which the terms and conditions regarding use will be established by the City and reflected in the construction contract) and any allowances. The CM@Risk will guarantee to complete the Project at or less than the final approved GMP Proposal Amount (i.e. the Contract Amount for the construction phase contract) and will agree that it will be solely responsible for any difference between the actual Cost of Work and that amount.

2.4.2. A Project Schedule, per Section 2.11, will be included with the GMP Proposal.

- 2.4.3. If the construction contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk will revert to the City.
- 2.4.4. The CM@Risk will meet with the Project Team to review any GMP Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the information presented the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.4.5. 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 Project Team if any such revised Construction Documents are inconsistent and with the agreed-upon assumptions and clarifications.

2.5. Pre-Construction Conference

- 2.5.0. Prior to the commencement of any Work, the City's Representative will schedule a Pre-construction conference.
- 2.5.1. The purpose of this conference is to establish a working relationship between the CM@Risk, utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, the level of Record Project Documents required and emergency telephone numbers for all representatives involved in the course of construction.
- 2.5.2. The Notice to Proceed date will be concurred to. After the meeting a Notice to Proceed letter will be issued confirming the construction start date, Performance Period and if applicable, the Substantial Completion date. If a Substantial Completion date is established the conditions of the Substantial Completion will be listed.
- 2.5.3. The CM@Risk shall provide a schedule of values based on the categories used in the buy out of the Work but not greater than the approved GMP which identifies the CM@Risk's Contingency. The schedule of values will subdivide the Work into all items comprising the Work.
- 2.5.4. Minimum attendance by the CM@Risk shall be the CM@Risk's Representative, who is authorized to execute and sign documents on behalf of the firm, the project manager, job superintendent, and the person identified by the CM@Risk as the Project safety officer(s), who may also be the project manager and/or the job superintendent.

2.6. Control of the Work

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

- 2.6.1. CM@Risk or the CM@Risk's superintendent or other authorized representative shall be present at the Site at all times that construction activities are taking place.
- 2.6.2. All elements of the Work shall be under the direct supervision of a superintendent or foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.
- 2.6.3. In the event of noncompliance with this Article, the City may require the CM@Risk to stop or suspend the Work in whole or in part.
- 2.6.4. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the CM@Risk's responsibility to ensure the Subcontractor employed for such Work is approved by the manufacturer.
- 2.6.5. Before ordering materials or doing work, the CM@Risk and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No increase to the approved GMP will be allowed because of differences between actual dimensions and the dimensions indicated in the Contract Documents; differences, which may be found, shall be submitted to the City's Representative for resolution before proceeding with the Work.
- 2.6.6. The CM@Risk shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM@Risk with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City's Representative at once.
- 2.6.7. The CM@Risk shall establish and maintain all primary building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona.
- 2.6.8. CM@Risk assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.6.9. CM@Risk shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, CM@Risk agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7. Control of the Work Site

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

intended use.

- 2.7.1. CM@Risk shall take all reasonable steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of ADEQ as administered by Maricopa County Bureau of Air Pollution Control.
- 2.7.2. CM@Risk shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. CM@Risk shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.
- 2.7.3. CM@Risk shall obtain, at no increase in Contract Price or Contract Time, any additional lands, rights-of-way and easements that CM@RISK, in its sole discretion, requires for temporary facilities, ingress and egress, storage, disposal of spoil or waste material or any other purpose to fulfill its obligations under this Contract and applicable law. CM@Risk shall obtain (a) all required permits from the U.S. Government, the State and any Political Subdivision or public utility with jurisdiction, and (b) permission by written agreement if private property. CM@Risk shall submit copies of all permits and written agreements to City's Representative.
- 2.7.4. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the CM@Risk. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CM@Risk.

2.8. Project Record Documents

2.8.0. Project Record Documents and Copyrights

- 2.8.0.1. City Ownership of Project Documents: All work product (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Contract (collectively referred to as Project Record Documents) are to be and remain the property of the City and are to be delivered to the City Representative when the final payment is made to the CM@Risk. Nonetheless, in the event these Project Record Documents are altered, modified or adapted without the written consent of the CM@Risk, or utilized for a purpose other than this Project, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of or resulting from the City's alteration, modification or adaptation of the Project Record Documents.
- 2.8.0.2. CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its sub-consultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@Risk.

- 2.8.0.3. License to City for Reasonable Use: The CM@Risk hereby grants, and will require its Sub-consultants/Subcontractors to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Record Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Record Documents, then this paragraph applies.
- 2.8.0.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Sub-consultants/Subcontractors will endorse by an Arizona professional seal all plans, works and Deliverables prepared by them for this Contract.
- 2.8.0.5. Shop Drawings. Shop Drawings and similar submittals are not Contract Documents or Project Data. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the CM@Risk proposes to conform to the information given and the design concept expressed in the Contract Documents. The CM@Risk shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings or similar submittals unless the CM@Risk has specifically informed the City's Representative in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation. The CM@Risk shall not be relieved of responsibility for errors or omissions in Shop Drawings or similar submittals by the City's approval thereof

2.9. Data Confidentiality

- 2.9.0. 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 documents or information prepared by or obtained by the CM@Risk in the performance of this contract.
- 2.9.1. The parties agree that all data, including original, 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.
- 2.9.2. 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 provided the CM@Risk has first given the required notice to the City: 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; 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 data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court.
- 2.9.3. 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 with the City, the CM@Risk will first notify the City as set forth in this article of the request or demand for 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.

- 2.9.4. The CM@Risk, unless prohibited by law, within 15 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 provided in Article 2,, all data to the City.
- 2.9.5. 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 Sub-consultants/Subcontractors. 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.

2.10. Construction Management Plan

- 2.10.0. The CM@Risk will prepare a Construction Management Plan (CMP), which will detail but not necessarily be limited to the CM@Risk's determinations 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 sub-agreements 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 of the CM@Risk's Team member's responsibilities and roles.

2.11. Project Schedule

- 2.11.0. The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all the Project Team members and then for the Project Team to utilize the 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 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 Suretrak scheduling software to develop the Project Schedule. 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 phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in paragraph 2.53.
- 2.11.1. The CM@Risk will include and integrate in the Project Schedule the services and activities required of the City, Design Professional and CM@Risk including all construction phase activities. The Project Schedule will detail activities to the extent required to show (a) the coordination between conceptual design and various design phase documents, (b) separate long-lead procurements, if any,

(c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by the City. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, Project Team, preparation and procession of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

- 2.11.2. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, and submit this with the monthly pay application and or whenever required, but not less often than at the bi-weekly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.11.3. Project Phasing: If phased construction is deemed appropriate and the City, City's Representative 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.

Article 3 - City's Services and Responsibilities

3.1. Duty to Cooperate.

- 3.1.0. City shall, throughout the performance of the Work, cooperate with CM@Risk and perform its responsibilities, obligations and services in a timely manner to facilitate CM@Risk's timely and efficient performance of the Work and so as not to delay or interfere with CM@Risk's performance of its obligations under the Contract Documents.
- 3.1.1. City shall furnish at the CM@Risk's request, at no cost to the CM@Risk, the following information or services for this Project identified and requested by CM@Risk: a copy of its maps, records, laboratory tests, survey ties, and bench marks, or other data pertinent to the Project; available City data relative to policies, regulations, standards, criteria, studies, etc. relevant to the Project; or, where required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments to the end that the City may proceed with right-of-way acquisition. CM@Risk shall be responsible for searching the records and requesting specific drawings or information and independently verifying said information. City does not warrant, expressly or impliedly, the data supplied to CM@Risk.

3.2. City's Representative

- 3.2.0. City's Representative is Regis Reed (hereinafter "City's Representative") who shall be responsible for providing City-supplied information and approvals in a timely manner to permit CM@Risk to fulfill

its obligations under the Contract Documents. Any consent the CM@R is required to obtain from the City should not be unreasonably withheld, conditioned or delayed by the City.

- 3.2.1. City's Representative shall also provide CM@Risk with prompt notice if he observes any failure on the part of CM@Risk to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the Contract Documents.
- 3.2.2. The City may utilize field inspectors to assist the City's Representative during construction in observing performance of the CM@Risk. The inspector is for the purpose of assisting the City's Representative and should not be confused with an inspector with a City regulatory agency or with an approved inspector from a qualified laboratory.
- 3.2.3. Through onsite observation of the Work in progress and field checks of materials and equipment, the inspector shall endeavor to provide protection against defects and deficiencies in the Work.
- 3.2.4. The inspector will be authorized to inspect all Work and materials furnished. Such inspection may extend to all or part of the Work and to the preparation, fabrication or manufacture of the materials to be used.
- 3.2.5. The inspector will not be authorized to issue instructions contrary to the Construction Documents or to act as a foreman for the CM@Risk.
- 3.2.6. The inspector shall have the authority to reject work or materials until any questions at issue can be decided by the City's Representative.
- 3.2.7. The furnishing of such services for the City shall not make the City responsible for or give the City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for the CM@Risk's failure to perform the work in accordance with Contract Documents.

3.3. Design Professional Services

- 3.3.0. The City may contract separately with one or more Design Professional to provide construction administration of the Project. The Design Professional's contract as well as other firms hired by the City shall be furnished to the CM@Risk. The CM@Risk shall not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Design Professional.
- 3.3.1. The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work: provide oversight of the Work; site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and work in progress and to determine in general if the Work is being performed in accordance with the Contract Documents; review and recommend approval of Payment Requests; review and approve or take other appropriate action upon the CM@Risk's submittals such as Shop Drawings, Product Data and Samples in accordance with Section 2.9; interpret and decide matters concerning performance under any requirements of the Contract Documents upon written request of either the City or CM@Risk; conduct inspections to determine Substantial Completion and Final Acceptance; receive and forward to the City's Representative for the City's review and records written

warranties and related documents required by the Contract Documents and assembled by the CM@Risk.

3.4. City's Separate Contractors.

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

3.5. Permit Review and Inspections.

- 3.5.0. If requested by the CM@Risk, the City's Representative will provide assistance and guidance in obtaining necessary reviews, permits and inspections.

Article 4 - Contract Time

4.1. Contract Time.

- 4.1.0. Contract Time shall start with the commencement date established in the Notice to Proceed and end with Substantial Completion.
- 4.1.1. Substantial completion shall be October 21, 2016.
- 4.1.2. CM@Risk agrees that it will commence performance of the Work and achieve the Performance Periods and Contract Time.
- 4.1.3. All of the times set forth in this Article may be subject to adjustment as set forth in Article 6.

4.2. Substantial Completion

- 4.2.0. Substantial Completion shall be for the entire Project unless a partial Substantial Completion is identified in the approved schedule and stated in the Notice to Proceed letter. Substantial Completion shall be in accordance with its definition in Article 1 and with the criteria set forth in the Notice to Proceed.
- 4.2.1. CM@Risk shall notify City's Representative when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete
- 4.2.2. Prior to notifying the City's Representative as required by Section 4.2.1., the CM@Risk shall inspect the Work and prepare and submit to the City's Representative a comprehensive list of items to be completed or corrected. The CM@Risk shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CM@Risk to complete all Work in accordance with the Contract Documents.
- 4.2.3. Within five (5) days of City's receipt of CM@Risk's notice of Substantial Completion, City, City's Representative, Architect, and CM@Risk will jointly inspect such Work to verify that it is

substantially complete in accordance with the requirements of the Contract Documents. The CM@Risk along with the Architect will be responsible for preparing the project punch list summarizing all of the elements of the Project that are not completed to the City's satisfaction in accordance with the Project Documents. The CM@Risk shall complete the punch list in a timely manner such that any inconvenience to or impact the Project schedule.

- 4.2.4. If such Work is substantially complete, Architect shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed within thirty (30) calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing City's and CM@Risk's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion. The project punch list will be an official attachment to the Certificate of Substantial Completion.
- 4.2.5. City, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Division 4.1.5 above, (ii) CM@Risk and City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) City and CM@Risk agree that City's use or occupancy will not interfere with CM@Risk's completion of the remaining Work.

4.3. Final Completion and Acceptance.

- 4.3.0. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, City and CM@Risk will jointly inspect to verify that the remaining items of Work have been completed as set forth in Section 4.2.
- 4.3.1. The Date of Final Completion of the Work is the date certified by the Architect when Contractor has completed all the Work, satisfactory operation of all equipment, by means of acceptance tests, correction of all punch list items to the satisfaction of Project Team and Architect, release of all mechanics', materialmen's and like liens, delivery of all spare parts, warranties, air balance reports, equipment operation and maintenance manuals, As-Built Drawings, building certificates required prior to occupancy, mechanical, electrical and plumbing certificates, all other required approvals and acceptances by City, county and state governments, or other authority having jurisdiction, training of the Project Team's designated personnel on all building systems and removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Project Site, and delivery of Final Affidavit and Release of Claims.
- 4.3.2. Upon acceptance of the Work and completion of subsection 4.3.1, the City will issue a Final Acceptance Letter and payment pursuant to Section 7.5.

4.4. Liquidated Damages

- 4.4.0. CM@Risk understands that if Substantial Completion is not attained within the Contract Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. CM@Risk

agrees that if Substantial Completion is not attained within the Contract Time as adjusted, CM@Risk shall pay the City Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Contract Time as adjusted.

4.5. Incentive Bonuses.

4.5.0. There are no incentive bonuses for this Project.

4.6. Project Schedule

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

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

4.6.2. Updated Project Schedules shall be submitted monthly to the City's Representative as part of the Payment Request.

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

4.6.4. With each Project Schedule submittal the CM@Risk shall include a transmittal letter including the following: Description of problem tasks (referenced to field instructions, requests for information (RFI's), as appropriate); Current and anticipated delays including the cause of the delay, corrective action and schedule adjustments to correct the delay, known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion; Changes in construction sequence; Pending items and status thereof including but not limited to time extension requests; Substantial Completion date status including the number of calendar Days ahead or behind; and other Project or scheduling concerns.

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

4.6.6. 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.

- 4.6.7. 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.
- 4.6.8. The CPM diagram schedule shall indicate all relationships between activities.
- 4.6.9. The activities making up the schedule shall be sufficiently detailed to ensure 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.
- 4.6.10. The CPM diagram schedule shall be based upon activities, which would coincide with the schedule of values.
- 4.6.11. The CPM diagram schedule shall show all critical submittals associated with each work activity and the review time for each submittal.
- 4.6.12. The Project Schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the CM@Risk activities.

Article 5- Contract Price

- 5.0. The CM@Risk agrees at his own proper cost and expense, to do all Work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this Contract free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the approved GMP proposal.
- 5.1. Contract Price.**
 - 5.1.0. The Contract Price will not exceed the Guaranteed Maximum Price of the total sum of all GMPs and Owners Contingency. Estimated costs are set forth in Exhibit B which will be amended by additional GMPs as agreed upon by all parties.
 - 5.1.1. Guaranteed Maximum Price is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below. The CM@Risk is at risk to cover any additional Project costs. Any amounts in excess of the actual Cost of the Work and/or CM@Risk's Contingency shall revert to the City.
 - 5.1.2. The Cost of the Work is actual costs and is a not-to-exceed reimbursable amount.
 - 5.1.3. CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk shall inform the City of the use of any Construction Contingency.

- 5.1.4. When the CM@Risk utilizes CM@Risk's Contingency funds, the CM@Risk shall make the appropriate changes to the schedule of values with the next regular progress payment request. The CM@Risk shall deduct the amount of CM@Risk's Contingency funds used from the CM@Risk's Contingency line item and adding the same amount to the line item on the schedule of values where the funds were used. If the CM@Risk's Contingency funds are used for a new line item that was not given with the original schedule of values, that will be so indicated.
- 5.1.5. 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. 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, insurance, bonds, and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.. Upon such time the Owners Directed Contract Change Orders exceeds \$400,000.00 the CM@Risk will be entitled to General Conditions at the rate established by the GMP.

Article 6 - Changes to the Contract Price and Time

6.1 Delays to the Work

- 6.1.0. If CM@Risk is delayed in the performance of the Work that will cause a change in the date of Substantial Completion due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CM@Risk is responsible, the Contract Times for performance shall be reasonably extended by Change Order.
- 6.1.1. The CM@Risk shall request an increase in the Contract Time by written notice including an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary. Such notice shall not be later than fifteen (15) Days after such condition or event has been encountered.
- 6.1.2. By way of example, events that will entitle CM@Risk to an extension of the Contract Time include acts or omissions of City or anyone under City's control (including separate contractors), significant changes in the Work, Differing Site Conditions, hazardous conditions, delays by regulating agencies, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.
- 6.1.3. If adverse weather conditions are the basis for a request for additional Contract Time, such requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled Substantial Completion.
- 6.1.4. It is understood, however, that permitting the CM@Risk to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the City of any of its legal rights herein.
- 6.1.5. In addition to CM@Risk's right to a time extension for those events set forth in this Section, CM@Risk shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in this Section that are beyond

the control of both CM@Risk and City, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

- 6.1.6. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to the City's Representative promptly (but in no event later than ten days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty days after such occurrence (unless the City's Representative allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 6.1.0.
- 6.1.7. An extension in Contract Time will not be justified unless CM@Risk, through analysis of the Record Schedule, demonstrates delay in completing all or a specified part of the Work arising from unforeseeable causes beyond the control and without the fault or negligence of CM@Risk, and the delay is unreasonable under the circumstances. Examples of events which may justify an extension of Contract Time, subject to the requirements of the Contract Documents, include but are not limited to: acts of God, the public enemy, or City in its sovereign capacity; acts of the U.S. Government, the State or another Political Subdivision; fires, floods, epidemics, quarantine restrictions; strikes, freight embargoes, unusual weather, including storms, tornados, etc. (unusual in the sense of expectation, frequency or severity compared with the prior 5-year average; but ambient air temperature up to 120°F shall not be considered unusual); unusually severe shortages of construction materials, considering all feasible sources of supply; newly discovered Underground Utilities; an emergency; suspension of Work resulting from discovery of archaeological features; significant changes in the Work, or differing site conditions. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CM@Risk.
- 6.1.8. If CM@Risk is prevented from completing any part of the Work within the Contract Times (or Milestones) for unforeseeable causes beyond the control of both City and CM@Risk, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CM@Risk's sole and exclusive remedy for the delay. In no event shall City be liable to CM@Risk, any Subcontractor, any Manufacturer, any Supplier, any person, any firm, any corporation, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (a) delays caused by or within the control of CM@Risk, or (b) delays beyond the control of both parties as specified in paragraph 6.1.2.
- 6.1.9. No delay in completing the Work, or any specified part of the Work, for which the City is responsible, shall be unreasonable under the circumstances or justify an increase in Contract Time or Contract Price, unless, and then only to the extent that, the delay extends completion of the Work, or specified part of the Work, beyond the corresponding Contract Time.

6.2. Differing Site Conditions

6.2.0. If CM@Risk encounters a Differing Site Condition, CM@Risk will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent CM@Risk's cost and/or time of performance are adversely impacted by the Differing Site Condition.

6.2.1. Upon encountering a Differing Site Condition, CM@Risk shall provide prompt written notice to City's Representative of such condition, which notice shall not be later than fifteen (15) days after such condition has been encountered. CM@Risk shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

6.3. Errors, Discrepancies and Omissions.

6.3.1. If the CM@Risk observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Design Professional and request clarification.

6.3.2. If the CM@Risk proceeds with the Work affected by such known errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk. Adjustments involving such circumstances made by the CM@Risk prior to clarification by the Design Professional shall be at the CM@Risk's risk.

6.4. City Requested Change in Work.

6.4.0. The City reserves the right to make, at any time during the progress of the Work, such alterations as may be found necessary or in the City's best interest.

6.4.1. Such alterations and changes shall not invalidate this Contract nor release the surety and the CM@Risk agrees to perform the Work as altered, the same as if it had been a part of the original Contract Documents.

6.4.2. The City will request a proposal for a change in Work from CM@Risk, and an equitable adjustment in the Contract Price and/or Contract Times shall be made based on a mutual agreed upon cost and time.

6.5. Change Directives and Change Orders.

6.5.0. City and CM@Risk shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the adjustment.

6.5.1. All changes in Work authorized by Change Orders shall be performed under the conditions of the Contract Documents

6.6. Minor Changes in the Work

6.6.0. The City has authority to order minor changes in Work that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be affected by written order and shall be binding on the City and CM@Risk. The CM@Risk shall carry out such written orders promptly.

6.6.1. CM@Risk may make minor changes in Work, provided, however that CM@Risk shall promptly inform City, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by CM@Risk.

6.6.2. Minor changes in Work will not involve an adjustment in the Contract Price and/or Contract Times.

6.7. Contract Price Adjustments

6.7.0. The increase or decrease in Contract Price resulting from a change in the Work shall be determined as agreed to by the City and CM@R. If an increase or decrease cannot be agreed to, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. CM@Risk shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

6.7.1. If City and CM@Risk disagree upon whether CM@Risk is entitled to be paid for any services required by City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, City and CM@Risk shall resolve the disagreement pursuant to Article 12 hereof.

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

6.8. Emergencies

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

Article 7- Procedure for Payment

7.0. For and in consideration of the faithful performance of the Work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the said CM@RISK the actual Cost of the Work and any applicable General Conditions Costs including, insurance and bonding, taxes and the CM@Risk's Construction Fee, but no more than the GMP as adjusted by any Change Orders. Payment for the specific work under this Contract will be made in accordance with payment provisions detailed below and in accordance with A.R.S. 34-221.

7.1. GMP Payment Request

7.1.0. Requests for monthly payments by the CM@Risk for services will be submitted to the City's Representative on an "Application and Certificate for Payment" form and will be accompanied by an updated Progress Schedule, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants'/Subcontractors' 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 in the preceding month.

- 7.1.0.1 To insure the proper performance of the contract City shall retain ten per cent (10%) of the amount of each approved progress payment until the Work is fifty percent (50%) complete.
- 7.1.0.2 When the Work is fifty percent (50%) complete as measured by the schedule of values and approved by City, one-half of the amount retained under the ten percent (10%) retention provision, shall be paid to CM@Risk, provided CM@Risk is on schedule for Project completion and is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After fifty percent (50%) completion, City shall retain five percent (5%) of each approved progress payment providing CM@Risk is on schedule for Project completion and is making satisfactory progress on the Work, except that if at any time City determines satisfactory progress is not being made, ten percent (10%) retention shall be reinstated for all progress payments made under the contract subsequent to such determination.
- 7.1.0.3 In lieu of retention, City will, at the option of CM@Risk, accept security as provided in ARS § 34-221.
- 7.1.1. The CM@Risk will pay all sums due Subconsultants/Subcontractors for services within fourteen (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 entire Project by City Council.
- 7.1.2. 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 been extended, will in no way act as a waiver on the part of the City of any of its legal rights herein.
- 7.1.3. No compensation to the CM@Risk will be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.
- 7.1.4. If any work 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 work performed prior to the abandonment or suspension.

7.2. Payments To Subcontractors or Suppliers

- 7.2.0. CM@Risk shall pay its Subcontractors or suppliers promptly (per Section 7.11 above) and in a manner that does not interfere with the completion of the Work to be performed in accordance with this Contract.

- 7.2.1. If the CM@Risk fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and CM@Risk agrees that the City may hold the CM@Risk in default under this Contract; withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions; reject all future offers to perform work for the City from the CM@Risk for a period not to exceed one year from Substantial Completion date of this Project; or terminate this Contract.
- 7.2.2. CM@Risk shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

7.3. Record Keeping and Finance Controls

- 7.3.0. Records of the CM@Risk's direct personnel payroll and General Conditions costs pertaining to this Project and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis. 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 audits of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading or inaccurate cost and pricing data.
- 7.3.1. The CM@Risk will include a provision similar to the preceding paragraph in all of its agreements 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 Subconsultants, 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.

Article 8- Insurance

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

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the work under this contract by the CM@Risk, his agents, representatives, employees or Subcontractors, and CM@Risk is free to purchase additional insurance as may be determined necessary.

8.1. Minimum Scope and Limits of Insurance

8.1.0. Without limiting any of their obligations or liabilities, the CM@Risk, at his own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and in form reasonably satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than "A-" and a category rating of not less than "8." Use of alternative insurers requires prior approval from the City. Insurance, except Workers Compensation, Employers Liability and Professional Liability, provided by CM@Risk shall be primary.

8.2. General Clauses

8.2.0. Additional Insured. The insurance coverage, except Workers' Compensation and Professional Liability, required by this contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insured. Any insurance coverage carried by the City or its employees is excess coverage and not contributory coverage to that provided by the CM@Risk.

8.2.1. Coverage Term. All insurance required herein shall be maintained in full force and effect until Services required to be performed under the terms of the Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of the City.

8.2.2. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect City.

8.2.3. Certificates of Insurance. Prior to commencing services under this Contract, CM@Risk shall furnish City's Representative with Certificates of Insurance, or formal endorsements as required by the Contract, issued by CM@Risk's insurer(s), as evidence that policies providing the required coverage, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number and shall endeavor to provide for not less than Thirty (30) days advance Notice of Cancellation, Termination, or Material Alteration. Such certificates shall be sent directly to Dean Coughenour, Risk Management Department, City of Goodyear, 190 N Litchfield Road, PO Box 5100, Goodyear, Arizona 85338.

8.3. Workers' Compensation

8.3.0. The CM@Risk shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CM@Risk employees engaged in the performance of the Services.

8.3.1. In case services are subcontracted, the CM@Risk will require the Subcontractors to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by CM@Risk.

8.4. Automobile Liability

8.4.0. Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the CM@Risk services. Coverage will be

at least as broad as coverage Code 1 “any auto” (2001 version of the Insurance Service Office policy form CA 0001 1/87 or any replacement thereof).

8.5. Commercial General Liability

8.5.0. Commercial General Liability insurance with a limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for bodily injury, property damage, personal injury, products and contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as the 2001 version of the Insurance Service Office policy form CG 20 10 07 01 or CG 20 37 07 01 or any replacement thereof. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover CM@Risk’s obligation of indemnification required in this Contract.

8.5.1. A general liability insurance policy may not be written on a “claims made” basis.

8.6. Professional Liability

8.6.0. Any professional retained by CM@R to provide services required by the Contract will maintain Professional Liability insurance covering negligent errors and omissions arising out of the professional services performed by the professional or any person employed by him, with an limit of not less than \$1,000,000 each claim and \$2,000,000 all claims. The certificate of insurance for the Professional Liability Insurance shall evidence contractual liability which would attach by law in the absence of this Contract because of a negligent act, error or omission of the professional or any other person, entity or organization for whom the professional is legally responsible, such that liability arises out of the rendering or failure to render Professional Services. All Professional Liability Insurance shall be maintained for a period of three years after completion of this Contract.

8.6.1. In the event that services are subcontracted, the CM@Risk shall require each consultant under contract with CM@Risk to secure and maintain Professional Liability Insurance sufficient for the protection of the portion of the professional services by such consultant with a limit as determined by CM@Risk and such consultants. The compilation of the total required insurance coverage under this paragraph shall remain the responsibility of CM@Risk.

8.7. Umbrella/Excess Liability

8.7.0. Umbrella/Excess Liability insurance with an limit of not less than \$10,000,000 per occurrence combined limit Bodily Injury and Property Damage, that “follows form” and applies in excess of the Commercial General Liability, Automobile Liability, and Employer’s Liability, as required above.

8.8. Builder’s Risk Insurance

8.8.0. Unless otherwise provided, the CM@R shall purchase and maintain Builder's Risk Insurance on building construction projects in the amount of the insurable value of the work at completion. Such insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Substantial Completion of the work. The insurance shall name as insured the City, the CM@Risk, and Subcontractors. The deductible will be the responsibility of the CM@Risk.

8.9. Pollution Liability

- 8.9.0. The CM@Risk shall maintain during the performance of this contract pollution liability insurance that provides coverage for sudden and accidental pollution damage to the environment by the CM@Risk while involved in the handling of hazardous substances. The CM@Risk agrees to include the City of Goodyear as additional insured on this policy. This policy shall be on an occurrence form or claims made policy issued from an insurance company with a Best Rating of A- or better or be approved by the City Risk Manager. Pollution Liability Insurance shall be secured and maintained in an amount of \$1,000,000 Combined Single Limit (CSR) each occurrence and \$2,000,000 Combined Single Limit (CSR) in aggregate.

8.10 Hazardous Materials

- 8.10.0. CM@R agrees to comply with all applicable federal, state, and local laws concerning the reporting, handling, and containment of hazardous materials located or uncovered on-site.

Article 9 - Indemnification

- 9.1. **Personal Injury and Property Damage Claims:** (workers' compensation and employers liability, automobile liability, general liability, etc): The CM@RISK agrees to defend, indemnify, and hold harmless the City, 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 "indemnatee", from all suits, claims and actions, including attorney's fees and costs of litigation, and losses, damage, expenses, or costs resulting therefrom of any character or 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 the Workmen's Compensation Law, or arising out of the failure of the CM@RISK to conform to any statutes, ordinances, regulations, law or court decree. It is agreed that the CM@RISK will be responsible for primary loss investigation, defense and judgment costs where this Contract of indemnity applies. In all other situations, each party will be responsible for its own primary loss investigation, defense and judgment costs.
- 9.1.0 In claims against any person or entity indemnified under this Article by an employee of the CM@Risk, a consultant, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CM@Risk, a consultant or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Article 10 - Notices

- 10.0. Unless otherwise provided herein, demands under this Contract will be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City: Mr. Regis Reed
Senior Project Manager
City of Goodyear
190 N. Litchfield
Goodyear, Arizona 85338

To CM@Risk Mr. John Norbut
D. L. Withers
3220 E. Harbour Dr.
Phoenix, AZ 85034

To Design Professional: Mr. Michael Rosso
Architekton, Inc.
464 S. Farmer Ave, Suite 101
Tempe, AZ 85281

Copy to: Mr. Roric Massey
City Attorney
City of Goodyear
190 No. Litchfield Road
Goodyear, Arizona 85338

Article 11 – Suspension and Termination

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

11.1. Termination of Agreement Without Cause

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

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

11.1.2. Upon such termination, the CM@Risk shall proceed with the following obligations: stop Work as specified in the notice; place no further subcontracts or orders; terminate all subcontracts to the extent they relate to the Work terminated; assign to the City all right, title and interest of the CM@Risk under the subcontracts terminated, in which case the City shall have the right to settle or to pay any termination settlement proposal arising out of those terminations; and take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CM@Risk and which the City has or may acquire an interest.

- 11.1.3. The CM@Risk shall submit complete termination inventory schedules no later than 60 Days from the date of the notice of termination.
- 11.1.4. The City shall pay CM@Risk the direct value of its completed Work and materials supplied as of the date of termination and the reasonable costs and expenses attributable to such termination, together with reasonable overhead and profit.

11.2. City's Right to Perform and Terminate for Cause

- 11.2.0. If the City provides the CM@Risk with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CM@Risk fails to comply in a time frame specified, the City may have work accomplished by other sources.
- 11.2.1. If CM@Risk persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants and/or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Contract Times, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth below.
- 11.2.2. Upon the occurrence of an event set forth in Section 11.2.1 above, City will provide written notice to CM@Risk that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within thirty (30) Days of CM@Risk's receipt of such notice.
- 11.2.5. Upon declaring the Contract terminated pursuant to Section 11.2.2. above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which CM@Risk hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.
- 11.2.6. In the event of such termination, CM@Risk shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the CM@Risk will only be entitled to be paid for Work performed and accepted by the City prior to its default.
- 11.2.7. If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then CM@Risk shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from CM@Risk's default.

Article 12 – General Provisions

12.1. Compliance with Federal Laws

- 12.1.0. 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.

12.2. Conflict of Interest

- 12.2.0. 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:

Regis Reed, Senior Project Manager
City of Goodyear
190 N Litchfield Road
Goodyear, Arizona 85338

- 12.2.1. Actions considered to be adverse to the City under this Contract include but are not limited to: using data as defined in the Contract, acquired in connection with this Contract to assist to third party in pursuing administrative or judicial action against the City; testifying or providing evidence on behalf of any person in connection with administrative or judicial action against the City; using data to produce income for the CM@Risk or its employees independent of performing the services under this Contract, without the prior written consent of the City.
- 12.2.2. 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.
- 12.2.3. 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.

12.3. CM@Risk's License and Privilege License

- 12.3.0. Prior to award of this Contract, the CM@Risk must provide to the City Representative its Contractor's License Classification and number, its City of Goodyear Privilege License number, and its Federal Tax I.D. number.

12.4. Successors and Assigns

- 12.4.0. 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. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the

other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

12.5 Covenant Against Contingent Fees

12.5.0. 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 Goodyear has any interest, financially, or otherwise, in the firm. The City of Goodyear 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.

12.6 Non-Waiver Provision

12.6.0. 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.

12.7 Jurisdiction

12.7.0. 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.

12.8 Survival

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

12.9 Modification

12.9.0. 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 provision of this Contract, except as expressly provided herein to the contrary.

12.10 Bonds Required

12.10.0 Bonds in the following amounts will be required of the CM@R at the time of execution of this Contract and must meet the requirements of the Arizona Revised Statutes, Title 34, Chapter 6, as amended:

Performance bond for one hundred percent (100%) of the contract price.

Payment bond for one hundred percent (100%) of the contract price.

12.11 Severability

12.11.0. If any provision of this Contract or the application thereof to any person or circumstances 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.

12.12 Integration

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

12.13 Time is of the Essence

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

12.14 Third Party Beneficiary

12.14.0. 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.

12.15 Cooperation and Further Documentation

12.15.0. 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.

12.16 Disputes

12.16.1 Disputes shall be referred initially to the City's Representative for decision. An initial decision by the City's Representative shall be required as a condition precedent to mediation, arbitration or litigation. The City's Representative will only decide disputes between the Contractor and the Owner. The initial decision by the City's Representative shall be made in writing within ten (10) days of submission. The decision of the City's Representative shall be subject to mediation and arbitration. If either party fails to demand mediation or arbitration within thirty (30) days of receipt of the City's Representative's decision or within thirty (30) days of the deadline for the City's Representative's decision, then the City's Representative's decision shall become final and binding on the Owner and CM@Risk. However, if the dispute relates to or is the subject of a mechanic's lien, the party asserting the claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the City's Representative, by mediation or by arbitration.

12.16.2 Any dispute arising out of or related to this Contract shall, after initial decision by the CITY'S REPRESENTATIVE or lack thereof, be subject to mediation as a condition precedent to arbitration or the institution of legal The parties shall endeavor to resolve their dispute by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation

Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association within the time allotted in this Contract.. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Signed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

12.16.3 Disputes not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the City's Representative, within the time allotted in this Contract. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on the dispute would be barred by the applicable statute of limitations. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

12.20. Venue; Service of Process

12.20.1. CM@Risk consents and submits to jurisdiction and venue of, and will not commence any proceeding elsewhere than, the Superior Court of Arizona in and for Maricopa County only, regardless of residence or domicile and without regard to choice of law or conflict of law provisions, for any action at law or suit in equity arising out of or relating to the bidding, award, performance or completion of the Work; payment for Work performed; termination; or any other claim based on the Contract Documents. CM@Risk consents and submits to service of process at the address specified in this Contract. If the parties agree in writing to mediation, all proceedings shall be conducted in Goodyear, Arizona.

12.20.2. Sections 12.20 and .12.7 shall apply to all Subagreements and all agreements between CM@Risk and CM@Risk's sureties and insurers, altering that paragraph only to identify properly the contracting parties.

12.21 Withholding Payment

12.21.0. The City reserves the right to withhold funds from the CM@Risk'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

12.22 Conflict in Language

12.22.0. Subject to the responsibility of the Design Professional as set forth in this Contract, all work or Deliverables performed will conform to all applicable City of Goodyear 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.

12.22.1 This Contract is subject to the provisions of A.R.S. § 38-511 and may be canceled by the City, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the City is, or becomes, an employee, consultant, or agent of CM@Risk in any capacity with respect to the subject matter of the Contract during which time the Contract or any extension or amendment thereof, is in effect.

12.23 Sudan/Iran

12.23.0 CM@Risk, on behalf of itself and any subcontractor retained to perform work under this Contract certifies, to the extent applicable under A.R.S. §§ 35-391 and 35-393 *et seq.* that neither has "scrutinized" business operations, as defined in the proceeding statutes in the countries of Sudan or Iran.

12.24 City Marks/Advertising

12.24.0 CM@Risk and all subcontractors shall not use any trade name, trademark, service mark, or logo of the City (or any name, mark or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.

12.24.1 CM@Risk and all subcontractors shall not advertise or publish new releases concerning this Contract or services provided to the City without prior written consent of the City Attorney.

12.25 E-VERIFY

12.25.0 CM@Risk and all subcontractors warrant compliance with the e-verify statute, A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of this contract, and shall subject this contract to penalties up to and including termination of the contract. The City retains the right to inspect the papers and records of any of Consultant's employees or any subcontractor employees working on the contract to ensure compliance with this requirement. For this section, CM@Risk shall have the meaning of in A.R.S. § 41-4401, and subcontractor has the same meaning as found in A.R.S. § 41-4401.

12.26 NON-DISCRIMINATION

12.26.0 CM@Risk and all subcontractors will not discriminate against any person on the basis of race, color, religion, age, gender, or national origin in the performance of this Contract, and shall comply with the terms and intent of Title VI of the Civil Rights Act of 1964, P.L. 88-354 as amended.

12.26.1 Compliance: CM@Risk and all subcontractors understand and agree to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989 and Arizona Executive Order 2009-09 as amended in performing this Contract and to permit the City to verify such compliance.

12.27 WARRANTY OF AUTHORITY

12.27.0 Each Party represents and warrants to the other that they have the full right, power and authority to

enter into and fully perform this Assignment and that the person signing below has authority to bind the Party on whose behalf he or she is signing.

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date and year set forth above.

**D. L. WITHERS CONSTRUCTION, L.C.,
an Arizona corporation**

**CITY OF GOODYEAR, an Arizona municipal
corporation**

By: _____

By: _____

Its: _____

Brian Dalke

Its: City Manager

Date: _____

Date: _____

Address: 3220 East Harbour Drive
Phoenix, Arizona 85034-7226

AZ Transaction (Sales): 07-567652

AZ Contractor License Number: KB-1 ROC 149910

Privilege Tax License No. 07-567652

City of Goodyear Business Registration No: 12-00003683

APPROVED AS TO FORM

ATTEST

Roric Massey, City Attorney
City of Goodyear

Maureen Scott, City Clerk
City of Goodyear

EXHIBIT A – PROJECT DESCRIPTION

Goodyear Police Operations Facility will consist of a 20,910 square feet building on approximately 4 acres of land as identified in construction documents which consist of drawings and specifications prepared by Architekton dated September 21, 2015:

Police Operations; patrol division/squad room, traffic division, records, K9, SAU, interview rooms, meeting/conference rooms, briefing room, community room, armory/equipment room, evidence transfer facility, locker rooms, fitness center, holding cells with booking area and sally port.

Lobby/Records: lobby with 2 transaction windows, 1 for general receptionist and 1 for records request, seating for 13 people and a records area for staff with high density file storage.

Lobby/Tow Release: lobby with 2 transaction windows for conducting vehicle tow release hearings, seating for 13 people and staff work area.

Site: public and secured parking, drainage and retention, landscaping, public gathering area.

Off Site: drainage, wet and dry utilities, street improvements on 143rd Ave and 145th Ave, sidewalks and landscaping.

EXHIBIT B – APPROVED GMP PROPOSAL AND ACCEPTANCE

POLICE OPERATIONS FACILITY

GMP PROPOSAL AND ACCEPTANCE FORM

GMP #1 – FA1404

Contractor will complete the Work in accordance with the Contract Documents and accept in full payment for the Work items listed in the attached detailed estimate prepared in accordance with paragraph 2.6 in the Design Phase Agreement and upon which the GMP is based. A summary breakdown of the detailed estimate and GMP follows:

GMP Summary					AMOUNT	
A.	Direct Costs (Labor, Materials, Equipment, Warranty)				\$3,708,797	
INDIRECT COSTS					RATE	
B.	CM@Risk’s Contingency				.7%	\$ 30,000
C.	Construction Fee				5%	\$229,301
D.	General Conditions (Lump Sum Through 1/22/2014)				7.6%	\$351,405
	D1	Payment and Performance Bond			.9%	\$ 43,201
	D2	Insurance			.8%	\$ 35,707
E.	Taxes				5.4%	\$251,589
				F. TOTAL GMP		\$4,650,000
OTHER COSTS						
G.	Owner Contingency (Optional)					\$
H.	Cash Allowance (Optional)					\$
				I. CONTRACT PRICE		\$4,650,000

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

Attachments to GMP Proposal

List of Major Subcontractors and Suppliers

Schedule of Values

Included Value Engineering Items

LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS

To enable Owner to evaluate the Contractor's GMP Proposal, the Contractor shall nominate all Subcontractors, persons, firms and corporations (including those who are to furnish the principal items of material and equipment) to whom the Contractor may award a Subagreement greater than or equal to \$150,000. If Contractor has not determined the Subcontractors to whom contracts will be awarded, all Subcontractors who have been, or will be, contacted to submit a proposal should be listed. If the Contractor intends to self-perform a classification of Work for which a specialty contractor's license is required, the Contractor shall nominate itself in the spaces provided for that purpose, and the Contractor shall furnish the Contractor's license number(s) for that classification. For each nominated Subcontractor, person, firm and corporation the Contractor shall enter, if available, the nominee's telephone number and required licensing information.

WORK TO BE PERFORMED	COMPANY NAME	CONTACT PERSON	PHONE NUMBER	LICENSE NUMBER
Fence & Gate	Adams Fence	Steve Adams	602/256-7800	224210
HM Doors, Frames & Hardware	LaForce	Bruce Tinsley	480/545-4200	276052
Drywall	Sonora Drywall	Art Trautman	623/930-1805	155554
Glass/Glazing	Sierra Glass	Doug Rodgers	602/258-5000	068877
Structural Steel	Cutting Edge	Brett Dickens	520/791-3394	195341
Foam Roofing	Diversified Roofing	John Watson	602/850-8209	076746
Site Utilities	Site Utility Company	Jared Merrell	602/437-4440	225693
Earthwork & Paving	Gunsight Construction	Doug Allen	623/931-7700	218420
Concrete	L R Cowan	Larry Norman	602/271-0331	096086
Masonry	Sun Valley Masonry	David Peloke	602/943-6106	052542
HVAC	JD Sun Mechanical	Jon Haug	480/966-6400	266210
Plumbing	Universal Piping	Marlowe Snyder	623/516-1000	163653
Electrical	Echo Canyon Electric	Mario Lio	602/331-3045	068165
Access Control & Security	Electronic Security Concepts	Joe Menke	480/947-6032	157138

City of Goodyear Police Operations Facility
COG Project #FA1404
11 North 145th Avenue Guaranteed Maximum Price
November 9, 2016

DESCRIPTION OF WORK	Subcontractor	Schedule of Values
TERMITE TREATMENT	MR BUGMAN	878
FENCE AND GATE	ADAMS	129,592
EXPANDED WIRE METAL WALLS	AMERICAN	6,949
DETENTION FURNISHINGS (CUFF RING)	MGM	3,080
KNOX BOX	DLW	1,090
BIKE RACKS (POWDER COATED)	EXTERIOR SYSTEMS	460
ROOF ACCESSORIES	GRAND CANYON	4,920
HM DOORS, FRAMES & HARDWARE	LAFORCE	110,189
INSTALL DOORS	LAFORCE	14,400
OVERHEAD COILING DOORS	DH PACE	19,648
FIRE EXTINGUISHERS	P & A	1,455
FRP PANELS	SONORA	2,200
ACCESS DOORS	DALE WATKINS	667
CORNER GUARDS (25 EA REVIEW QTY)	WALLGUARD	1,750
FLAGPOLES	IISI	10,331
TUBULAR SKYLIGHTS	NORCON	5,445
DOG KENNELS	MASON	2,055
EIFS	MIRAGE	45,600
DRYWALL	SONORA	229,130
PAINTING	CROUT & HELLER	49,900
ACOUSTICAL CEILING	RNR	24,600
INSULATION	RITEWAY	9,817
JOINT SEALANTS	WESTERN	5,899
WATERPROOFING	WESTERN	4,582
TERRAZZO FLOORING (INCLUDES \$10K ALLOWANCE FOR	STX	32,460
GLASS AND GLAZING	SIERRA GLASS	154,801
MILLWORK	SIERRA WOOD WORK	43,874
METAL COUNTERTOPS	SIERRA WOOD WORK	1,560
STRUCTURAL STEEL	CUTTING EDGE	240,500
RELOCATE SHADE STRUCTURE	CUTTING EDGE	6,900
ROUGH CARPENTRY	DLW	4,500
FOAM ROOFING	DIVERSIFIED	118,860
METAL ROOFING	DIVERSIFIED	28,660
SURVEY	S & W	8,830
MATERIALS TESTING ALLOWANCE	SPEEDY	14,995
SITE UTILITIES	SITE UTILITY CO	156,966
DUST CONTROL	DLW	29,447
SWPP	DLW	6,405
EARTHWORK & PAVING	SIGNAL PEAK	246,850
PAVEMENT MARKINGS	MOYERS	3,645
CONCRETE	L R COWAN	291,500
MASONRY	SUN VALLEY	398,687
HVAC	JD SUN	229,800
PLUMBING	UNIVERSAL	212,150
FIRE SPRINKLER	A-1	38,200
ELECTRICAL	ECHO	516,524
DIGITAL FIRE ALARM	ECHO	18,120
TELEPHONE/DATA CABLING	ASPEN	41,125
ACCESS CONTROL AND SECURITY	ESC	178,801
SUB TOTAL		3,708,797

City of Goodyear Police Operations Facility
 COG Project #FA1404
 11 North 145th Avenue Guaranteed Maximum Price
 November 9, 2016

DESCRIPTION OF WORK	Subcontractor	Schedule of Values
GEN CONDITIONS		351,405
BUILDERS RISK		5,905
LIABILITY INS.		29,802
OWNERS CONTINGENCY		30,000
PERF/PAY BOND		43,200
CONST FEE		229,301
SALES TAX		251,590
PROJECT TOTAL		4,650,000

Included Value Engineering Items

Alternate	Description	Deductive	Additive
2	Delete all fixtures and finish in room 144, decon, as noted on the attached sheets AE-101, AE-102, P-101, P-102, E-100 and E-200. All plumbing sewer and water piping to remain	(\$6,890)	
4	Reroute fireline and relocate fire hydrant to the east planter as noted on attached sheet C6.1.	(\$12,389)	
6	Delete sidewalk per the attached sheet AS-101.	(\$882)	
8	Change concrete paving at sallyport to asphalt paving of the same thickness as the new parking lot per the attached sheets C3.1 and AS-101.	(\$3,361)	
9	Delete angular rock in the planter in the front of the building and replace it with decomposed granite specified for the project per the attached sheet LP-1.1.	(\$340)	
10	Delete glass windows and framing at rooms 124 and 125 and replace with metal stud framing.	(\$3,648)	
11	Change coiling & overhead door specs to a more economical door.	(\$7,025)	
12	Change tongue and groove plywood in the ceiling and replace with ¾", flattened, 9 gauge, expanded metal (does not need to be security grade) per the attached sheet AE-141.	(\$5,219)	
14	Delete Medium bronze alum. tube bench noted on the north elevation on sheet AE-203.	(\$6,206)	
15	Change wire mesh security fencing at the sallyport noted on sheets AE-201 and AE-203 and specified in section 102213 to chain-link. (Does not need to be security grade).	(\$1,577)	
17	Delete requirement for A & H masonry shapes as noted on sheets AE-201, AE-202 and ES-101. All masonry to remain 4" founders as specified	(\$34,948)	
18	Change trench drainTD-1 in the holding area as noted on the attached sheet P-101 and replace them with floor drains. Place 1 floor drain each in front of the cells in the juvenile area and 3 floor drains in the corridor of the adult holding area.	(\$9,190)	
19	Change custom exterior downspouts shown in details A3 and B3 on sheet AE-501 to standard sheet metal downspouts and collector boxes.	(\$2,836)	
22	Delete requirement for the Master-Trol Management System for plumbing fixture WC-1R.	(\$3,460)	
26	Delete EMS controls system. HVAC units to be controlled with thermostats	(\$31,768)	
27	Change dog kennel area from fabricated dog kennels specified in section 133423.16 to chain-link enclosures.	(\$13,810)	
29	Delete FCU in the electrical closet	(\$3,857)	
32	Delete sections 111900 and 111910 and provide all doors per section 081113. Change requirements for doors 130A, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145A, 145B, 145C, 149, 150, 151, 152, 153, 154, 155, 156, 157 and 158 to 18 gauge doors and frames. Delete all requirements for Southern Folger (SOU) hardware from section 087100 revise and substitute hardware from one of the other listed manufacturers.	(\$56,598)	
34	Change roof frames specified as aluminum to steel	(\$1,532)	

35	Change acoustical ceiling wall molding specified as shadow mold to a standard molding	(\$1,021)	
37	Change Kold-Draft ice maker specified to a Hoshizaki DCM-270BAH ice maker with floor stand.	(\$1,574)	
38	Delete air and water equipment and canopy at air and water station	(\$6,867)	
42	Review insulation requirements	(\$8,100)	
43	Add for water hose testing of glazing as specified in section 084413		\$2,042
44	Delete 2 auto door operators	(\$6,796)	
47	Delete 6 backpack sized plastic laminate cubbies at juvenile holding and 12 backpack sized plastic laminate cubbies at adult holding	(\$2,067)	
48	Delete shared processing stainless table (may be buy furniture vendor)	(\$2,678)	
50	Delete requirement for substrate board noted in the roofing specifications section 075700. (not required to achieve a class A rating)	(\$17,334)	
51	Delete end of road barricades per keynote 36 on sheet C5.1	(\$4,084)	
55	Add to acoustically line the HVAC return duct with 1.5"-1.5# duct liner in lieu of externally wrapping the HVAC return duct as specified		\$2,156
56	Add to increase the HVAC unit capacities due to conflicts between the cfm and unit capacities listed on the HVAC equipment schedules		\$5,786
58	Delete the water system booster pump from the plumbing	(\$23,826)	
59	Revise jail fixture WC-1R shown in the plumbing schedule to 2 ADA fixtures and 1 non ADA fixture	(\$2,269)	
60	Change trench drains and the kennel area to floor drains	(\$1,702)	
61	Delete circulating pump at the lobby restroom and hot water return piping from the sink in the community room	(\$851)	
62	Delete hot water return piping to the break room sink from the circulating pump in the locker room	(\$851)	
66	Change fixtures L9LP, L11 and L12 to LED type fixture in lieu of the standard fixture noted on the fixture schedule		\$12,371
67	Change ceiling fans to a Hampton bay model AL775-BN from the fans specified	(\$2,555)	
68	Change audio visual vendor, specifications and scope from CCS to TPI	(\$14,888)	
69	City to manage furniture vendor	(\$21,736)	
70	City to manage audio visual vendor	\$0	
71	Delete tree and irrigation located east of the sallyport	(\$1,135)	
72	Change Calcense irrigation controller to a standard Hunter model	(\$4,538)	
73	Change Sallyport to chain-link walls with carports	(\$54,473)	

EXHIBIT C – BOND AND INSURANCE FORMS

To be provided separately.

**STATUTORY BID BOND
PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 1
OF THE ARIZONA REVISED STATUTES**

(Penalty of this bond must not be less than 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
(hereinafter "Principal") as Principal, and

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

WHEREAS, the said Principal has submitted a bid for: **Project Number and Name**

NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of the proposal and give the Bonds and Certificates of Insurance as specified in the Standard Specifications with good and sufficient Surety for the faithful performance of the Contract and for the prompt payment of labor and material furnished in the prosecution of the contract, or in the event of the failure of the Principal to enter into such contract and give the Bonds and Certificates of Insurance, if the Principal pays to the Obligee the difference not to exceed the penalty of the bond between the amount specified in the Proposal and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the Proposal, then this obligation is void. Otherwise, it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

Witness our hands this _____ day of _____, 20_____.

PRINCIPAL

SEAL

By: _____

SURETY

SEAL

AGENCY OF RECORD

STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

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

WHEREAS, The Principal has entered into a certain written contract with the Obligee, dated the ____ day of _____, 20____, to construct **PROJECT NO. – NAME**, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

Witness our hands this ____ day of _____, 20____.

Principal

Seal

By _____

Surety

Seal

Agency of Record

Agency Address

INSURANCE CERTIFICATE

CERTIFICATE OF INSURANCE

ISSUE DATE 01/31/2001

SAMPLE / SAMPLE / SAMPLE

AGENT

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

INSURED

COMPANY
LETTER B

COMPANY
LETTER C

COMPANY
LETTER D

COVERAGES

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> OCCURRENCE <input type="checkbox"/> CLAIMS <input type="checkbox"/> OWNERS & CONTRACTORS PROTECT GEN'L AGG. APPLIES PER <input type="checkbox"/> PROJECT <input type="checkbox"/> LOCATION				GENERAL AGGREGATES PROD COMP/OPS AGGR PERSONAL & ADV INJURY \$ EACH OCCURRENCE FIRE DAMAGE(1 FIRE) \$ MEDICAL EXP(1 PERSON) \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				CSL \$1,000,000 BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER ACCIDENT) \$ PROPERTY DAMAGE \$

<input type="checkbox"/>						
	<input type="checkbox"/> EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRE NCE 5,000,000	AGGREGA TE \$5,000,000
					EACH OCCURRENCE AGGREGATE	
	OTHER Workers' Compensation				Statutory	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS This coverage is primary. The City of Goodyear, it's Agents, Representatives, Directors, Officials, Employees, Volunteers and Officers are additional insured's as respects:						
ADDITIONAL INSURED				CANCELLATION		
City of Goodyear 190 North Litchfield Road Goodyear, AZ 85338				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURERE WILL MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMBED TO THE LEFT.		