

# CITY COUNCIL REPORT



Meeting Date: February 23, 2016  
 General Plan Element: *Public Services and Facilities*  
 General Plan Goal: *Provide city service facilities to meet the needs of the Community*

## ACTION

**Construction Manager at Risk Contract in the Amount of \$1,916,120.00 for construction phase services related to the Indian School Park Lake Rehabilitation Project.** Adopt Resolution 10325 authorizing construction manager at risk construction services contract 2016-011-COS in the amount of \$1,916,120.00 with Valley Rain Construction Corporation for the Indian School Park Lake Rehabilitation Project.

## BACKGROUND

The purpose of this action is to authorize CMAR construction phase services for the Indian School Park Lake Project. Valley Rain Construction Corporation will assume the risk of delivering complete construction services through a Guaranteed Maximum Price (GMP) contract, and develop construction means and methods to deliver the project.

Proposed improvements to Indian School Park Lake include:

- Preservation of portions of the existing multi-use pathway
- New lake boundary and lake edge
- New lake design including deeper lake for water quality and new lake liner system
- New lake fill mechanism and lake draw down infrastructure
- Re-grading of park site with some emphasis to minimize any standing and or ponding water in areas outside of the lake
- Renovation limited to overlay and restriping of the existing parking lot off of Hayden Road
- New turf spray and drip irrigation system for the park and landscape
- General Landscape and Irrigation improvements to park site
- Utilities (potable water backup water supply to wet well)
- Upgrades to the existing Irrigation Pump Station

The Indian Bend wash greenbelt is a world-class multi-purpose drainage facility designed to convey flow from the 100-year storm event but also to provide numerous recreational activities with

interlinked parks, golf courses, lakes, ramadas, tennis courts, basketball courts, baseball fields, playgrounds, open space, and more. The greenbelt runs through the heart of Scottsdale extending from Indian Bend Road to the Salt River, over eleven miles in length. Many of the parks and lakes within the City were constructed in the middle 1970's or early 1980's and thus elements within the parks, such as the lakes and irrigations systems, are in need of upgrades and improvements.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

Staff prepared and publicly advertised a Request for Qualifications (RFQ) for a CMAR to provide pre-construction phase services for the Indian School Park Lake Rehabilitation. CMAR preconstruction phase services Contract 2015-164-COS was awarded to Valley Rain Construction Corporation on July 1, 2015.

### **Significant Issues to be Addressed**

Key issues to be addressed on the project include phasing construction to minimizing conflicts with park users and utilities.

### **Community Involvement**

Design phase outreach communication process included an open house meeting on June 25, 2015. The project will be presented to the Parks and Recreation Commission on February 17<sup>th</sup> and a second open house meeting will occur at Indian School Lake near the end of February 2016. Community outreach will continue during the construction phase.

## **RESOURCE IMPACTS**

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### **Available funding**

Funding is currently available in CIP Project PB63A, Indian Bend Wash Lakes Phase 1 to fund the project for construction services. \$13,526.00 is available in operating center 25404 for a new fertigation system and \$30,000.00 is available in WB76B for improvements to the irrigation pump station.

### **Staffing, Workload Impact**

The contract administrator responsible for enforcing all contract provisions will be Christopher Perkins, Senior Project Manager, Capital Project Management Department.

## **OPTIONS & STAFF RECOMMENDATION**

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### **Recommended Approach**

Adopt Resolution 10325 authorizing construction manager at risk construction services contract 2016-011-COS in the amount of \$1,916,120.00 with Valley Rain Construction Corporation for the Indian School Park Lake Rehabilitation Project.

### **Proposed Next Steps:**

Upon Council approval, construction is expected to start April 1, 2016 and be complete within 5

months.

**RESPONSIBLE DEPARTMENT(S)**

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Capital Project Management, Parks and Recreation Department

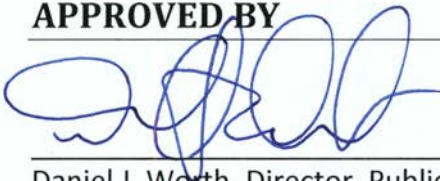
**STAFF CONTACTS (S)**

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Christopher Perkins, Senior Project Manager, [cperkins@scottsdaleaz.gov](mailto:cperkins@scottsdaleaz.gov)

**APPROVED BY**

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Daniel J. Worth, Director, Public Works

(480) 312-5555, [DWorth@scottsdaleaz.gov](mailto:DWorth@scottsdaleaz.gov)

2-9-16

Date

**ATTACHMENTS**

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1. Resolution 10325
2. Location Map
3. Contract 2016-011-COS

**RESOLUTION NO. 10325**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING CONSTRUCTION MANAGER AT RISK CONTRACT NO. 2016-011-COS WITH VALLEY RAIN CONSTRUCTION CORPORATION. FOR CONSTRUCTION PHASE SERVICES FOR THE INDIAN SCHOOL PARK LAKE REHABILITATION PROJECT.

The City wishes to rehabilitate parks and lakes within the Indian Bend wash; and

The City selected Valley Rain Construction Corporation by means of a competitive, qualifications-based process to provide the construction manager at risk design and construction services that the City seeks.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute Construction Manager at Risk (CMAR) Contract No. 2016-011-COS with Valley Rain Construction Corporation for construction phase services for the Indian School Park Lake Rehabilitation Project.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 23<sup>rd</sup> day of February, 2016.

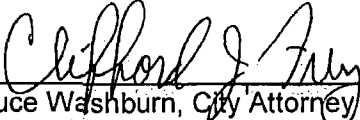
ATTEST:

CITY OF SCOTTSDALE, an  
Arizona Municipal Corporation

By: \_\_\_\_\_  
Carolyn Jagger,  
City Clerk

By: \_\_\_\_\_  
W. J. "Jim" Lane,  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney



PROJECT  
LOCATION

INDIAN SCHOOL ROAD

HAYDEN ROAD

<b>ATTACHMENT 2</b>						 <b>CITY OF SCOTTSDALE</b>
PROJECT TITLE						
LOCATION MAP						
DEPT.	CP	DRAWN	DATE	SCALE	SHT.	
	CPM	RAH	06/15	NTS	1 OF 1	



**CITY OF SCOTTSDALE**

**CONSTRUCTION MANAGER AT RISK**

**CONSTRUCTION SERVICES**

**INDIAN SCHOOL PARK LAKE REHABILITATION**

**PROJECT NO PB63A**

**CONTRACT NO. 2016-011-COS**

**ATTACHMENT 3**

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**CONTRACTOR’S NOTICE OF FINAL ACCEPTANCE**

**CITY OF SCOTTSDALE  
CONSTRUCTION MANAGER AT RISK  
CONSTRUCTION SERVICES**

**PROJECT NO. PB63A  
CONTRACT NO. 2016-011-COS**

**THIS CONTRACT**, entered into this 9th day of February, 2016, between the City of Scottsdale, an Arizona municipal corporation, the "CITY" and Valley Rain Construction, an Arizona Corporation, the "CONSTRUCTION MANAGER AT RISK" or "CMAR."

**RECITALS**

- A. The Mayor of the City of Scottsdale is authorized by provisions of the City Charter to execute contracts for construction services.
- B. The City intends to construct Indian School Lake Rehabilitation as described in the Scope of Work, attached as Exhibit A, and by reference made a part of this Contract.

The CMAR has represented to the City the ability to provide construction management services and to construct the Project. Based on this representation the City desires to engage Valley Rain Construction, to provide these services and construct the Project.

- C. Contract No. 2015-164-COS has been executed previously between the City and CMAR for Preconstruction Design services. Those services may continue during the duration of this Contract.

**FOR AND IN CONSIDERATION** of the parties' mutual covenants and conditions, it is agreed between the City and the CMAR as follows:

**ARTICLE 1 – CMAR'S SERVICES AND RESPONSIBILITIES**

- 1.0 The CMAR will furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Indian School Lake Rehabilitation Project, and to totally construct the Project and install the material in the Project for the City. The Work must be to the satisfaction of the City and strictly in accordance with all legal requirements and Project Contract Documents as modified. It is not required that the services be performed in the sequence in which they are described.

**1.1. GENERAL SERVICES**

The CMAR's Representative must be reasonably available to the City and must have the necessary expertise and experience required to supervise the Work. CMAR's Representative must communicate regularly with the City but not less than once a week and must be vested with the authority to act on behalf of the CMAR. The CMAR's Representative may be replaced only with the written consent of the City.

**1.2. GOVERNMENT APPROVALS AND PERMITS**



- 1.2.1. Unless otherwise provided, the CMAR will make application for and obtain or assist the City and the Design Team in obtaining all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The CMAR is specifically required to obtain the necessary environmental permits or file the necessary environmental notices. Any environmental permits and licenses will be paid by the City in accordance with the provisions of Article 2.4.
- 1.2.2. Copies of all necessary permits and notices must be provided to the Construction Coordinator and Contract Administrator before starting the permitted activity. This provision is not an assumption by the City of an obligation of any kind for violation of the permit or notice requirements.
- 1.2.3. The CMAR is responsible for making application for and obtaining permit(s) for building and demolition, but the fees will be paid by the City in accordance with Article 2.4. The CMAR will also obtain any necessary regulatory or permitting, reviews for grading and drainage, water, sewer and landscaping, but the fees for the permitting will be paid by the City in accordance with Article 2.4.
- 1.2.4. The CMAR is responsible for all other review and permit fees not specifically listed in Article 2.4 below or as qualified in Exhibit B.
- 1.2.5. The CMAR is responsible for the cost of construction-related water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangement for construction water is the CMAR's responsibility. Construction water does not include "test water" required to complete new water line pressure tests.
- 1.2.6. For purposes of this Contract, the Maricopa Association of Governments (M.A.G.) Standard Specification 107.12 is modified to read as follows: The CMAR, at his own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage, maintenance, and refuge haul-off as indicated upon the plans, which are required in addition to existing easements and right-of-way secured by the City.

**1.3. PRECONSTRUCTION CONFERENCE**

- 1.3.1. Before beginning any Work, the Contract Administrator will schedule a Preconstruction Conference. The City and the CMAR have entered into a separate written contract for Design Phase services establishing the fee the City will pay the CMAR for all Preconstruction services. The City will not request or obtain from the CMAR a fixed price or Guaranteed Maximum Price (GMP) until after the City has entered into a written contract with the CMAR for Preconstruction services and a Preconstruction fee.
- 1.3.2. The purpose of this conference is to establish a working relationship between the CMAR, utility firms, and various City agencies and staff. The agenda will include critical elements of the work schedule, submittal

schedule, cost breakdown of major lump sum items, CMAR Payment Requests and processing, coordination with the involved utility firms and/or utility companies (i.e. APS, SRP, SW Gas, etc.), and emergency telephone numbers for all representatives involved in the construction.

- 1.3.3. The construction Notice to Proceed (NTP) date will be established at the Preconstruction conference.
- 1.3.4. The CMAR will provide a Baseline Project Schedule indicating duration, manpower and equipment resources required to complete all major work activities. The City and Design Team will review and comment on the Baseline Project Schedule. The CMAR will revise the Baseline Project Schedule to the satisfaction of the Construction Coordinator and Contract Administrator. No Work will begin until the City accepts the Baseline Project Schedule.
- 1.3.5. The CMAR will submit a Schedule of Values based on the work and bids accepted from selected Subcontractors. These Values must reflect the actual labor time, materials, profit and overhead for the Work.
- 1.3.6. At a minimum, CMAR attendees must include CMAR's Representative, who is authorized to sign documents on behalf of the firm, the job superintendent, and the CMAR's safety officer.

**1.4. CONTROL OF THE WORK**

- 1.4.1. The CMAR must properly secure and protect all finished or partially finished Work, and is responsible for the Work until the entire contract is completed and accepted by the City. Any payment for completed portions of the Work will not release the CMAR from this responsibility; however, he must turn over the entire Work in full accordance with these specifications before final settlement will be made. In case of suspension of the Work for any cause, the CMAR is responsible for the Project and will take all precautions as necessary to prevent damage to the Project and will erect any necessary temporary structures, signs, or other facilities at no cost to the City.
- 1.4.2. After all Work under the Contract is completed, the CMAR will remove all loose concrete, lumber, wire, reinforcing, debris and other materials not included in the final Work from the Work site.
- 1.4.3. The CMAR must provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit the CMAR to complete the Work consistent with the Contract Documents, unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate contractor.
- 1.4.4. The CMAR must perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The CMAR will at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

- 1.4.5. Survey stakes and marks required for the completion of the construction shown on the plans and as described in the specifications will be furnished by the CMAR.
- 1.4.6. The CMAR or the CMAR's Superintendent must be present at the Work at all times that construction activities are taking place.
  - 1. All elements of the Work, such as concrete work, pipe work, etc., are under the direct supervision of a foreman or his designated representative on the Site who must have the authority to take actions required to properly carry out that particular element of the Work.
  - 2. In the event of noncompliance with this Contract as defined in Article 8 the City may require the CMAR to stop or suspend the Work in whole or in part.
- 1.4.7. Where the Contract Documents require that a particular product be installed and applied by an applicator approved by the manufacturer, it is the CMAR's responsibility to ensure the Subcontractor employed for this work is approved.
- 1.4.8. The CMAR will take field measurements and verify field conditions and will carefully compare all field measurements and conditions and other information known to the CMAR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered will be immediately reported to the City.
- 1.4.9. Before ordering materials or conducting work, the CMAR and each Subcontractor must verify measurements at the Site and are responsible for the correctness and accuracy of these measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, will be submitted to the City for resolution before proceeding with the Work.
- 1.4.10. The CMAR must establish and maintain all building and construction grades, lines, levels, and bench marks, and is responsible for their accuracy and protection. This work will be performed or supervised by an Arizona licensed Civil Engineer or Surveyor.
- 1.4.11. Any person employed by the CMAR or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly will, at the written request of the City, be removed from the Work by the CMAR or the Subcontractor employing the person, and will not be employed again in any portion of Work without the written approval of the City. The CMAR or Subcontractor will hold the City harmless from damages or claims that may occur in the enforcement of this Article.
- 1.4.12. The CMAR assumes responsibility for the proper performance of the Work of Subcontractors and any acts and omissions in connection with this performance. Nothing in the Contract Documents creates any legal or contractual relationship between the City and any Subcontractor or

Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

- 1.4.13. The CMAR must coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, the CMAR agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 1.4.14. On a daily basis, the CMAR will prepare a Contractor's Daily Report. The City's Construction Coordinator or their Capital Project Management (CPM) Inspector will provide a sample report format to the CMAR. The report must detail the activities that occurred during the course of the day, all equipment utilized and the number of hours operated and all personnel on the site inclusive of Subcontractors. The Daily Reports must be submitted to the Construction Inspector on a daily basis, unless otherwise arranged. The Daily Reports must also be made available to the Contract Administrator upon request. Failure to provide Daily Reports as arranged or requested above will result in the retention of monthly progress payments until the Reports are brought up to date.
- 1.4.15. In the event of noncompliance with this Article 1.4, the City may require the CMAR to stop or suspend the construction in whole or in part. Any suspension, due to the CMAR's noncompliance will not be considered a basis for an increase in the Contract Price or extension of the Contract Time.

**1.5. CONTROL OF THE WORK SITE**

- 1.5.1. Throughout all phases of construction, including suspension of the Work, the CMAR must keep the Site reasonably free from debris, trash and construction wastes to permit the CMAR 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, the CMAR will remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work to permit the City to occupy the Project or a portion of the Project for its intended use.
- 1.5.2. **Dust Control.** The CMAR will take appropriate steps, procedures or means required to prevent abnormal dust conditions due to his construction operations in connection with this Contract. The dust control measures will be maintained at all times during construction of the Project to the satisfaction of the City, in accordance with the requirements of the Maricopa County Health Department Air Pollution Control Regulations and City of Scottsdale Supplement to M.A.G. Standard Specifications together with applicable provisions of Federal and State Law.
- 1.5.3. **Dust Control Coordinator.** At any City construction site of 5 acres or more of disturbed surface area, as defined in A.R.S. §49-474(B) (5), that is required to have a Dust Generation Permit, the CMAR must have at all times at the Site, at least one Dust Control Coordinator trained in

accordance with the requirements of A.R.S. §49-474.05 during primary dust generating operations that is related to the purposes for which the Dust Control Permit was issued. The Dust Control Coordinator must have full authority to ensure that dust control measures are implemented at the Site, including authority to conduct inspections, deploy dust suppression resources, and modify or shutdown activities as needed to control dust. The Dust Control Coordinator must be responsible for managing dust prevention and dust control on the Site, including the use of leaf blowers and street sweeping equipment. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator.

The requirements described in the above paragraph do not apply if all of the following circumstances are present:

1. The area of disturbed surface area is less than 5 acres.
2. The previously disturbed areas are stabilized in accordance with the requirements of any applicable County rules.
3. The CMAR with the Dust Control Permit provides notice of the acreage stabilized to the County Control Officer.

On sites with greater than 1 acre of disturbed surface area, any CMAR holding a Dust Control permit issued by a County Control Officer, who is required to obtain a single permit for multiple noncontiguous sites that is required to control PM-10 emissions from dust generating operations must have, at least 1 individual who is designated as a Dust Control Coordinator. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator. The Dust Control Coordinator must be present on Site at all times during primary dust generating activities that are related to the purposes for which the permit was issued.

A Subcontractor who is engaged in dust generating operations at a Site that is subject to a Dust Control Permit issued by a County Control Officer and that requires the control of PM-10 emissions from dust generating operations must register with the County Control Officer. The Subcontractor must have its registration number readily accessible on the Site while conducting any dust generating operations.

- 1.5.4. If applicable, the CMAR will maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements must include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. The CMAR is responsible for the coordination of all Work to minimize disruption to building occupants and facilities.
- 1.5.5. Only materials and equipment used directly in the Work will be brought to and stored on the Site by the CMAR. When equipment is no longer

required for the Work, it will 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 CMAR.

- 1.5.6. The CMAR is responsible for the cost to dispose of all waste products including excess earth material that will not be incorporated into the Work under this Contract. The waste product will become the property of the CMAR. The CMAR will provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and will make necessary arrangements for its disposal. Any disposal/dumping of waste products or unused materials will conform to applicable Federal, State and Local Regulations.
- 1.5.7. The CMAR will supervise and direct the Work. The CMAR is solely responsible for the means, methods, techniques, sequences and procedures of construction. The CMAR will employ and maintain on the Work a qualified supervisor or superintendent who has been designated in writing by the CMAR as the CMAR's representative at the Site. The representative must have full authority to act on behalf of the CMAR and all communications given to the representative will be as binding as if given to the CMAR. The representative must be present on the Site at all times as required to perform adequate supervision and coordination of the Work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.
- 1.5.8. In the event of abnormal weather conditions, such as windstorms, rainstorms, etc., the CMAR will immediately inspect the Work Site and take all necessary actions to insure public access and safety are maintained.
- 1.5.9. **Damage to Property at the Site.** The CMAR is responsible for any damage or loss to property at the Site, except to the extent caused by the acts or omissions of the City or its representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the CMAR under this Article will be paid as a Cost of the Work to the extent that the costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, but will not increase the GMP.
- 1.5.10. **Damage to Property of Others.** The CMAR will avoid damage, as a result of the CMAR's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the City. The CMAR will repair any damage caused by the operations of the CMAR, which costs will be paid as a Cost of the Work to the extent that these costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible, but will not increase the GMP.
- 1.5.11. **Failure of CMAR to Repair Damage.** If the CMAR fails to begin the repair of damage to property as required in Articles 1.5.9, and 1.5.10 and diligently pursue the repair, the City will give the CMAR 10-days written notice to begin repairs. If the CMAR fails to begin the repairs within the

10-day notice period, the City may elect to repair the damages with its own forces and to deduct from payments due or to become due to the CMAR amounts paid or incurred by the City in correcting the damage.

- 1.5.12. If applicable, the CMAR will maintain American with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements must include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. The CMAR is responsible for the coordination of all Work to minimize disruption to building occupants and facilities.

## 1.6. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 1.6.1. Shop Drawings, Product Data, Samples and similar submittals are to be forwarded to the Construction Coordinator for review. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required, the way in which the CMAR proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 1.6.2. The CMAR will review, approve, and verify that all submittals meet the intent of the Contract documents. Six (6) copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents will be delivered to the Construction Coordinator for review. Submittals made by the CMAR, which are not required by the Contract Documents, may be returned without action.
- 1.6.3. The CMAR will perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the necessary submittal has been approved by the City. All Work will be in accordance with approved submittals. The CMAR will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval.
- 1.6.4. By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CMAR represents that the CMAR has determined and verified materials, field measurements and related field construction criteria, or will do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.
- 1.6.5. The CMAR will not be relieved of responsibility for deviations from requirements of the Contract Documents by City approval of Shop Drawings, Product Data, Samples or similar submittals unless the CMAR has specifically informed the City in writing of the deviation at the time of submittal and the City has given written approval to the specific deviation.
- 1.6.6. Informational submittals upon which the City is not expected to take responsive action may be identified as informational submittals in the Contract Documents.

- 1.6.7. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City will be entitled to rely upon the accuracy and completeness of the calculations and certifications.

**1.7. QUALITY CONTROL, TESTING AND INSPECTION**

1.7.1. **Inspection.** The City's CPM Inspectors may be stationed on the Work Site and report to the Construction Coordinators the progress of the Work, the manner in which Work is being performed, and also to report whenever it appears that material furnished or Work performed by the CMAR fails to fulfill the requirements of the specifications and this Contract. The Construction Inspector may direct the attention of the CMAR to any such failure as described above, but the inspection will not relieve the CMAR from any obligation to furnish acceptable materials or to provide completed construction that is in compliance with the Contract Documents in every particular. The Construction Inspector's purpose is to assist the City's Representative and should not be confused with an inspector associated with a City regulatory agency or with an inspector from a City Laboratory under Article 1.8.

1.7.2. In case of any dispute arising between the Construction Coordinator or Construction Inspector and the CMAR as to material furnished or the manner of performing the Work, the Construction Inspector will have the authority to reject materials or suspend the Work until the question and issue can be referred to and decided by the City. CPM Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Construction Inspectors will in no case act as foremen or perform other duties for the CMAR or interfere with the management of the Work by the CMAR.

1.7.3. Inspection or supervision by the Construction Coordinator or Construction Inspector will not be considered as direct control of the individual workman and his work. Direct control is solely the responsibility of the CMAR.

1.7.4. The furnishing of any services for the City will not make the City responsible for or give the City control over construction means, methods, techniques, sequenced procedures or for safety precautions or programs or responsibility for the CMAR's failure to perform the Work in accordance with Contract Documents.

**1.8. MATERIALS TESTING**

1.8.1. All materials used in the Work must be new and unused, unless otherwise noted, and must meet all quality requirements of the Contract Documents.

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



- 1.8.3. The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and tests will be made in accordance with the following: The City of Scottsdale Material Testing Manual and the standard methods of American Association of State and Highway Transportation Off Roads (AASHTO) or American Society for Testing and Materials (ASTM), and Maricopa Association of Governments (MAG) supplements.
- 1.8.4. The City will select a pre-qualified Independent Testing Laboratory and will pay for initial City Acceptance Testing.
  - 1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the CMAR. Construction contingency cannot be utilized for the cost of re-testing.
  - 2. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting will be performed by the same testing agency.
- 1.8.5. The CMAR will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and will provide them access to the Work at all times upon reasonable notice.
- 1.8.6. All soils and materials testing will be performed by the City's designated agent and payment for testing shall be paid for as outlined below. In coordination with the CMAR, the City will order tests and distribute test results for all construction areas. The City will distribute test results within 24 hours of receipt.
  - 1. The City will pay for soils or materials testing through a separate contract.
  - 2. Other material testing: When the first or subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid by the CMAR. The City's Project Contingency cannot be utilized for the cost of re-testing.
- 1.8.7. At the option of the City, materials may be approved at the source of supply before delivery is started.
- 1.8.8. Code compliance testing and inspections required by codes or ordinances or by a plan approval authority, and which are made by a legally constituted authority is the responsibility of and will be paid by the CMAR, unless otherwise provided in the Contract Documents.
- 1.8.9. The CMAR's quality control testing and inspections are the sole responsibility of the CMAR and paid by the CMAR.

**1.9 PROJECT RECORD DOCUMENTS/AS-BUILTS**

14262859v1

PROJECT NAME – INDIAN SCHOOL PARK LAKE REHABILITATION  
9626760v8 (Rev Nov. 2015)

PROJECT No. PB63A

1.9.1 During the construction period, the CMAR will maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.

1. The CMAR will mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. The CMAR will give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

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

2. The CMAR will mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference locations on the Construction Documents.
3. The CMAR will mark Project Record Drawing sets with red erasable colored pencil.
4. The CMAR will note Requests for Information (RFI) Numbers, Architects' Supplemental Information (ASI) Numbers and Contract Amendment Proposal Numbers, etc., as required to identify the source of the change to the Construction Documents.
5. The CMAR will at the time of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.

1.9.2 Immediately upon receipt of the reviewed Project Record Drawings from the City, the CMAR will correct any deficiencies or omissions to the drawings and prepare the following for resubmission to the City:

1. A complete set of PDF electronic files of all Project Record Drawings will be prepared by the CMAR in electronic format. Each drawing will be clearly marked with "As-Built Document." Files will be named consistent with the Plan Set Index.

2. A complete set of As-Built Documents will be made by the CMAR and delivered to the City as part of the Project closeout.
3. The CMAR's original redlined mark-up prints of the Project Record Drawings.

## 1.10 PROJECT SAFETY

**1.10.1 CMAR Safety Program.** The site environment in which the CMAR operates may on occasion present a potential safety and health hazard to any who may be on the job site. All Work will be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including Arizona Division of Occupational Safety and Health (ADOSH) policies and procedures. The CMAR is required to attend a City safety briefing session at the Preconstruction meeting. The Contract Administrator, the designated Risk Management staff and a CMAR's representative will attend the session.

The CMAR will provide a safe jobsite and work environment for the safety and health of employees and members of the general public and will comply with all legal requirements including but not limited to the following:

- Occupational Safety and Health Act (OSHA)
- Electrical Safe Work Practices Standards
- OSHA Personal Protective Equipment Standards
- National Fire Protection Association (NFPA) 70E Standard for Electrical Safety in the Workplace
- OSHA Fall Protection Standards
- OSHA Confined Space Entry

All other applicable requirements of OSHA and local codes and agencies having jurisdiction.

Contractors that violate these rules and regulations may be subject to job shutdown or removal from City facilities.

**1.10.2 City Safety Rules and Expectations.** Risk Management Division makes available a packet that contains the City's OSHA compliance guidelines, emergency evacuation, the City's safety and health plan, and other safety information.

**1.10.3 Contractor Safety Tailgate Meetings.** The CMAR will conduct tailgate safety meetings regularly to ensure that safety on the job is given priority. The Sign-in sheet of the tailgate meeting must be given to the City Inspector within 48 hours after the meeting.

**1.10.4 Accident/Injury Procedure.** The CMAR will contact the Contract Administrator and Risk Management Department within 24 hours of the

occurrence of an accident or injury arising out of the CMAR's work under this Contract.

- 1.10.5 Unsafe Acts.** The CMAR employees are encouraged to abate or remedy any unsafe act or condition which may arise in the course of CMAR's work under this Contract.
- 1.10.6 Safety Audits.** The City reserves the right to conduct safety audits at the job site and stop unsafe acts at any time. In addition, the Construction Coordinator or CPM Inspector must be notified should any OSHA inspection occur at a City job site.
- 1.10.7** The CMAR recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-site or off-site, and (iii) all other property at the Site or adjacent to the Site.
- 1.10.8** The CMAR assumes responsibility for implementing, monitoring, and documenting all safety precautions and programs related to the performance of the Work.
- 1.10.9** The CMAR will, before beginning construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, the CMAR's Safety Representative will be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.
- 1.10.10** The CMAR must provide OSHA 300A Summary log information including total recordable cases, total case rates, and lost workday incident rates for the past 2 calendar years. This information can be compared to Bureau of Labor Statistics (BLS) rates to determine whether a contractor has below average or above average accident/injury rates. Bureau of Labor Statistics information can be obtained through Risk Management. The Safety Representative will make routine daily inspections of the Site and will hold weekly safety meetings with CMAR's personnel, Subcontractors and others as applicable.
- 1.10.11** The CMAR and Subcontractors will comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements found in the Contract Documents, provided that the City-specific requirements do not violate any applicable Legal Requirement.
- 1.10.12** The CMAR will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to the Contract Administrator and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work.

- 1.10.13** The CMAR's responsibility for safety under this Article 1.10 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- 1.10.14** The CMAR and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the City, that come under the OSHA Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200, Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

The CMAR and all Subcontractors using chemicals on City property must use only the safest chemicals, with the least harmful ingredients. These chemicals must be approved for use by a City of Scottsdale representative before bringing them on the property.

The CMAR and all Subcontractors will make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation must be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, the CMAR and Subcontractors are informed of the presence of (or possible presence of) chemicals in the area where the work requested will be performed. It is the responsibility of all selected Contractors to contact the City for specific information relative to the type of chemicals present and location of appropriate Material Safety Data Sheets.

Unless included in the Work, if the CMAR encounters on-site material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he will immediately stop work and report the condition to the City.

If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CMAR will not resume work in the affected area until the material has been abated or rendered harmless. The CMAR and the City may agree, in writing, to continue work in non-affected areas on-site. An extension of Contract Time may be granted in accordance with Article 5.

Upon discovery of hazardous materials the CMAR will comply with all

applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

## **1.11 WARRANTY**

**1.11.1** The provisions of M.A.G. Section 108.8 apply with the following additional requirements:

1. Should the CMAR fail to begin repairs or corrective work within 14 calendar days after receipt of written notice from the City, the City may perform the necessary work and the CMAR agrees to reimburse the City for the actual cost.
2. The warranty period on any part of the work repaired or replaced is extended for a period of 1 year from the date of the repair or replacement.
3. This warranty does not apply to damage caused by normal wear and tear or by acts beyond the CMAR's control.

**1.11.2** The CMAR's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than the CMAR or anyone for whose acts the CMAR may be liable.

**1.11.3** Nothing in this warranty is intended to limit any manufacturer's warranty which provides the City with greater warranty rights than provided in this Article 1.11 or the Contract Documents. The CMAR will provide the City with all manufacturers' warranties upon Substantial Completion.

**1.11.4** The CMAR's warranty obligation will be the maximum allowed by the Arizona Registrar of Contractors

## **1.12 CORRECTION OF DEFECTIVE WORK**

**1.12.1** The CMAR agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Article 1.11 above within a period of 1 year from the date of Substantial Completion of the Work or any portion of the Work, or within any longer period, to the extent required by the Contract Documents. A Progress Payment, or partial or entire use or occupancy of the Project by the City will not constitute acceptance of the Work if not in accordance with the Contract Documents.

**1.12.2** The CMAR will take meaningful steps to begin correction of nonconforming Work subject to this Article 1.12. These measures include but are not limited to timely correction of the Work. If the CMAR fails to initiate necessary measures for this Work within 7 days of receipt of written notice from the City, the City, in addition to any other remedies

provided under the Contract Documents, may provide CMAR with written notice that the City will commence correction of the nonconforming Work with its own forces.

**1.12.3** If the City does perform this corrective Work, the CMAR will be responsible for all reasonable costs incurred by the City in performing this correction.

**1.12.4** The CMAR will immediately respond to any nonconforming Work that creates an emergency.

**1.12.5** The 1 year period referenced in this Article 1.12 applies only to the CMAR's obligation to correct nonconforming Work and is not intended to be a period of limitations for any other rights or remedies the City may have regarding the CMAR's other obligations under the Contract Documents.

### **1.13 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTION**

The Parties have entered into a Preconstruction Agreement that contains Subcontractor and Major Supplier provisions. In selecting Subcontractors and Major Suppliers, the CMAR will comply with the provisions in the Preconstruction Agreement. [For horizontal construction, as defined in A.R.S. §34-101(15), the CMAR must self perform not less than 45% of the Work as required by A.R.S. §34-605(G).]

## **ARTICLE 2 – CITY'S SERVICES AND RESPONSIBILITIES**

**2.0 DUTY TO COOPERATE.** The City will, throughout the performance of the Work, cooperate with the CMAR and perform its responsibilities, obligations and services in a timely manner to facilitate the CMAR's timely and efficient performance of the Work and so as not to delay or interfere with the CMAR's performance of its obligations under the Contract Documents. The City will furnish the CMAR a CADD file or electronic format acceptable to the City of the Construction Documents, at no cost to the CMAR.

### **2.1 CONTRACT ADMINISTRATOR/CONSTRUCTION COORDINATOR**

**2.1.1** The Construction Coordinator is responsible for providing City-supplied information and approvals in a timely manner to permit the CMAR to fulfill its obligations under the Contract Documents.

**2.1.2** The Construction Coordinator will also provide the CMAR with prompt notice if the Construction Coordinator observes any failure on the part of the CMAR to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the drawings and specifications.

**2.1.3** The City may contract separately with the Design Team, and may include partial construction administration services for the Project. The Design Team's contract will be furnished to the CMAR.

- 2.1.4** Both the Contract Administrator and Construction Coordinator are responsible for construction administration of the Work. The Design Team, if authorized by the City, will review, approve or take other appropriate action upon the CMAR's submittals such as Shop Drawings, Product Data and Samples in accordance with Article 1.6. Communications by and with the Design Team will be through the Contract Administrator and Construction Coordinator.
- 2.1.5** The Contract Administrator or Construction Coordinator and the Design Professional will interpret and decide matters concerning performance under the requirements of the Contract Documents. The Design Professional's response to these requests will be made to the City with reasonable promptness. The City will forward response to the CMAR and within the time limits agreed upon.
- 2.1.6** The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the Procurement Code.
- 2.2 CITY'S SEPARATE CONTRACTORS.** The City is responsible for all Work performed on the Project or at the Site by separate contractors under the City's control. The City will contractually require its separate contractors to cooperate with, and coordinate their activities, so as not to interfere with the CMAR, in order to enable timely completion of Work consistent with the Contract Documents. The CMAR agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.3 PERMIT REVIEW AND INSPECTIONS.** Approving specific parts of the Building Permit is the responsibility of the City's Capital Project Management. The City of Scottsdale Plan Review Division issues Certificates of Occupancy.
- 2.4 FURNISHING OF SERVICES AND INFORMATION**
- 2.4.1** The City will be responsible for the payment or waiver of the following:
1. City review and permit(s) fees for building, encroachment, and demolition permits.
  2. City review fees for grading and drainage, water, sewer and landscaping.
  3. Utility design fees for permanent services.
  4. Obtaining Clean Water Act Nationwide 404 Permits and 408 Permits.
  5. City Development Fees.
  6. Environmental Permits and Licenses.
- 2.4.2** Unless expressly stated to the contrary in the Contract Documents, the City will provide (at its own cost and expense) to the CMAR, the following information:



1. To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
2. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable the CMAR to perform the Work;
3. A legal description and Street or Physical address of the Site;
4. To the extent available, as-built record and historical drawings of any existing structures at the Site;
5. To the extent available, environmental studies, environmental impact statements, reports and impact statements describing the environmental conditions (including hazardous materials) known to exist at the site;
6. The City will provide all City standards and guidelines, supplementary conditions and special provisions that will be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality control testing and termite treatment requirements.

The City is responsible for securing and executing all necessary Contracts with adjacent land or property owners that are necessary to enable the CMAR to perform the construction. The City is further responsible for all costs, including attorneys' fees, incurred in securing these necessary Contracts.

## **2.5 PROJECT MANAGEMENT SERVICES**

- 2.5.1 The City may contract separately with one or more Technical Consultants to provide project management assistance to the Project. The Technical Consultant's contract as well as the contracts of other firms hired by the City will be furnished to the CMAR. The CMAR will not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the City and Technical Consultant.
- 2.5.2 The Technical Consultant services will augment the City staffing resources to effectively manage the objectives of the City and this Project with the goal of managing the key project communication, cost and time parameters.
- 2.5.3 The Technical Consultant may provide preprogramming and design standards.
- 2.5.4 The City may contract with the Technical Consultant to provide some or all of the following services during the performance of the construction:

1. Oversight of the Construction. The City may hire Technical Consultants to assist it in oversight of the Construction Project. The Technical Consultants will:
2. Conduct Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed construction and to determine in general if the construction is being performed in accordance with the Construction Documents. The Technical Consultant will keep the City informed of progress of the construction and will endeavor to guard the City against defects and deficiencies in the construction. The Technical Consultant may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Articles 1.7 and 1.8;
3. Review and recommend approval of the CMAR's Payment Requests;
4. Interpret matters concerning performance under and requirements of the Contract Documents on written request of the City. The Technical Consultant's response to these requests will be made with reasonable promptness and within any time limits agreed upon;
5. Analyze, recommend and assist in negotiations of Change Orders;
6. Conduct inspections to determine Substantial Completion and Final Acceptance;
7. Receive and forward to the City for the City's review and records, written warranties and related documents required by the Contract Documents and assembled by the CMAR.

### ARTICLE 3 – CONTRACT TIME

#### 3.0 CONTRACT TIME

- 3.1 Contract Time will be 150 Calendar days as indicated in the Notice to Proceed (NTP).
  - 3.1.1 Contract Time will start with the Notice to Proceed (NTP) and end with Substantial Completion. The City will issue a NTP letter establishing the mutually agreed upon NTP date for this Contract.
  - 3.1.2 Failure on the part of the CMAR to adhere to the Project Schedule may be the basis for termination of this Contract by the City.
  - 3.1.3 Each GMP amendment to this Contract will establish a separate construction NTP date, Performance Period and Substantial Completion date for the entire Project. The Performance Period(s) may be sequential or may run concurrently.
  - 3.1.4 The CMAR agrees to commence performance of the Work and achieve Performance Periods and the Contract Time.

3.1.5 All of the times stated in this Article 3 are subject to adjustment in accordance with Article 5.

3.2 **CONSTRUCTION SCHEDULE.** Each approved GMP proposal will include a Project Schedule as prescribed in Article 3.7 with a Critical Path Method diagram construction schedule that will indicate the path of critical activities and establish the Performance Period encompassed by the GMP. The CMAR will maintain the construction schedule throughout the construction.

3.3 **PUNCH LIST PREPARATION**

A minimum of 30 days before Substantial Completion the CMAR, in conjunction with the City, will prepare a comprehensive list of Punch List items, which the City may edit and supplement. The CMAR will proceed promptly to complete and correct the Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents will not commence until the date of Final Acceptance unless otherwise provided in the Contract Documents. Seven (7) days before the City issues its Final Acceptance Letter, the CMAR will deliver to the City all Operation and Maintenance Manuals necessary for the City to assume responsibility for the operation and maintenance of that portion of the Work.

3.4 **LIQUIDATED DAMAGES**

The CMAR understands that if Substantial Completion is not attained within the Contract Time as adjusted, the City will suffer damages, which are difficult to determine and accurately specify. The CMAR agrees that if Substantial Completion is not attained within the Contract Time as adjusted, the CMAR will pay as liquidated damages the amounts specified in Section 108.9 of the M.A.G. Standard Specifications, incorporated in this Contract by reference. **(Amount may need to be adjusted depending on size of contract.)**

3.5 **PROJECT SCHEDULE**

3.5.1 The Project Schedule will be initially submitted at the start of this Contract as required by Article 1 and updated and maintained throughout the Contract Services. An updated Project Schedule will be part of the GMP amendment.

3.5.2 The Project Schedule will be revised as required by conditions and progress of the Contract Services, but any revisions will not relieve the CMAR of its obligations to complete the Contract Services within the Contract Time(s), as these dates may be adjusted in accordance with the Contract Documents.

3.5.3 An Updated Project Schedule will be submitted monthly to the City, 5 days before the CMAR's monthly Payment Request.

1. The CMAR will provide the City with a monthly status report with each Project Schedule detailing the progress of Construction, including whether (i) the construction is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract

Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize the ability to complete the construction as presented in the GMP and within the Contract Time(s).

2. With each Project Schedule submitted, the CMAR will include a transmittal letter including the following:
  - Description of problem tasks (referenced to field instructions, Requests for Information (RFIs), Change Order or claim numbers) as appropriate.
  - Current and anticipated delays not resolved by approved change orders, including:
    - Cause of the delay.
    - Corrective action and schedule adjustments to correct the delay.
    - Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion.
    - Changes in construction sequence.
  - Pending items and status including but not limited to:
    - Pending Change Orders.
    - Time extension requests.
    - Other items.
  - Substantial Completion date status:
    - If ahead of schedule, the number of days ahead.
    - If behind schedule, the number of days behind.
  - Other project or scheduling concerns.

**3.5.4** The 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 will not relieve the CMAR from compliance with the requirements of the Contract Documents or be construed as relieving the CMAR of its complete and exclusive control over the means, methods, sequences and techniques for executing the Contract Services.

**3.5.5** The Project Schedule will include a Critical Path Method diagram schedule that will show the sequence of activities, the interdependence of each activity and indicate the path of critical activities.

The Critical Path Method diagram schedule will be in days and indicate duration, earliest and latest start and finish dates, and will be presented in a time scaled graphical format for the Project as a whole.

1. The activities making up the schedule will be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and provide an appropriate basis for monitoring and evaluating the progress of the Work.

2. The Critical Path Method diagram construction schedule will be based upon activities which would coincide with the Schedule of Values.
3. The Critical Path Method diagram schedule will show all submittals associated with each Work activity and the review time for each submittal.
4. The schedule will show milestones, including milestones for City-furnished information, and will include activities for City-furnished equipment and furniture, if any, when those activities are interrelated with the CMAR's activities.
5. The schedule will include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration will reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data will be based on information provided by the National Weather Service or other approved source.

### **3.6 COST ESTIMATES**

Provisions pertaining to cost estimates may be found in the GMP Proposal, attached as Exhibit C.

### **3.7 CONSTRUCTION MANAGEMENT PLAN**

As a part of the Preconstruction Agreement, the City has required the CMAR to prepare a Construction Management Plan.

## **ARTICLE 4 – CONTRACT PRICE**

**4.0** The CMAR agrees to do all Work for the construction of the improvements and to completely construct the improvements and install the material, 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 GMP, as may be amended from time to time, as set forth in the GMP Proposal, attached as Exhibit C, and by reference made a part of this Contract.

### **4.1 CONTRACT PRICE**

- 4.1.1** The Contract Price is the Guaranteed Maximum Price of **\$1,916,120.00**, as stated in detail in the GMP Proposal, attached as Exhibit C.
- 4.1.2** The Contract Price is subject to adjustments made in accordance with Article 5.
- 4.1.3** The CMAR is responsible for payment of all State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income, whether or not these taxes are specifically separated in the bid amount.
- 4.1.4** Unless otherwise provided in the Contract Documents, the Contract Price is to include all sales, use, consumer and other taxes throughout the term

of this Contract, whether or not yet effective or merely scheduled to go into effect.

**4.1.5** Any Contingencies and Allowances as agreed upon between the City and the CMAR will be in the GMP.

**4.2** **MARKUPS FOR CHANGES.** If the GMP requires an adjustment due to changes in the Work, the cost of any changes will be determined under Article 5. The markups that will be allowed on any changes will be no greater than the markups as stated in the approved GMP as provided in the Preconstruction Agreement, attached as Exhibit B.

**4.3** **GUARANTEED MAXIMUM PRICE (GMP)**

**4.3.1** At the end of the design phase or at a time determined by the City, and as a part of the Work done under the Preconstruction Agreement, the City will request the CMAR to provide a GMP, or series of GMP's if the CMAR determines phased construction would be in the City's best interest. The approved GMP(s) is set forth in Exhibit C, attached to this Contract.

**4.3.2** The CMAR guarantees to bring the completion of the construction of the Project within the GMP or the CMAR alone will be required to pay the difference between the actual cost and the GMP.

1. Any buy out savings of the CMAR's GMP at the conclusion of the selection of Subcontractors may be used during construction by the City as a City Project construction contingency.
2. Any savings realized during construction must be incorporated into the construction of the Project to fund additional scope items or will be returned to the City.

**4.3.3** The GMP is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined as:

1. The Sub-Contractor's Cost of the Work is a negotiated cost and is a not-to-exceed amount defined by the individual work items and their associated negotiated unit prices.
2. Project Requirements cost are non-permanent construction work that is necessary to support the CMAR and sub-contractor's work. Examples are temporary power, security guard traffic control rental equipment (paid for by the CMAR) and signage. It is an Allowance to be verified by billed expenses at the end of construction.
3. CMAR Construction Fee is the agreed upon percent charged to Sub-Contractor's Cost of Work and Project Requirements. It is for additional services and management of the CMAR project.
4. The CMAR Cost of Work, labor, materials, equipment and warranty of the work, self-performed work that the CMAR established in the Sub-contractor Selection Plan.

5. The Sub-Contractor's Cost of Work plus Project Requirements, CMAR Construction Fee plus CMAR Cost of Work equals the Total Cost of Work.
6. The General Conditions Costs are a negotiated amount of project supervision and other direct costs according to construction terms. These costs are not reflected in other GMP Items. Costs may include, but are not limited to, the following: Project Manager, Superintendent, Full-time General Foremen, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.) and administrative office personnel. Other costs may include: temporary office, fencing and other facilities, office supplies, office equipment, minor expenses, utilities, vehicles, fuel, sanitary facilities, and telephone services at the site.
7. Bonds and Insurance are fixed percentages that will be applied to Cost of Work, General Condition Costs and the CMAR Construction Fee as detailed in the GMP Proposal.
8. Taxes include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.
9. Permitting Fees are all fees necessary for Project Permitting and are included in Indirect Costs.
10. The General Conditions, Payment and Performance Bonds, Insurance, Taxes, and Permitting Fees equal the CMAR Indirect Costs.
11. The Total cost of work plus the CMAR Indirect Costs plus the Project Contingency equals the Total GMP.
12. The City's Project Contingency are funds to be used at the sole discretion of the City to cover any increases in Project costs that result from City directed changes or unforeseen site conditions. The City's Project Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full contract price for construction. Markups for the Construction Fee and taxes will be applied by the CMAR at the time that the City's Project Contingency is used.

4.3.4 The GMP is cumulative. The amount of any GMP amendment will be negotiated separately and will reflect the CMAR's risk from that point forward in the Project.

4.4 **GMP PROPOSAL.** The GMP Proposal will be that as provided in the Preconstruction Agreement, and the GMP Proposal is attached as Exhibit C.

4.5 **GMP APPROVAL.** The approval of the GMP will be in accordance with the provisions of the Preconstruction Agreement, attached to this Contract as Exhibit B.

**4.6 TAX/LICENSE**

The CMAR must secure and maintain, during the life of the Contract, State of Arizona and City of Scottsdale Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website: [http://www.revenue.state.az.us/ADOR\\_Forms/70-79/74-4002\\_fillable.pdf](http://www.revenue.state.az.us/ADOR_Forms/70-79/74-4002_fillable.pdf)

To obtain a City of Scottsdale Transaction (Sales) Tax License Application, please go to the following website:  
<http://www.scottsdaleaz.gov/taxes/salestax.asp>

**4.7 RESPONSIBILITY FOR PRIVILEGE (SALES) TAXES**

The CMAR is responsible for payment of all applicable State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income whether or not these taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

City Privilege (sales) tax exemptions/deductions may be applicable to certain projects. The CMAR is advised to consider this as it prepares its bid. Please review, in detail, Sections 415, 465, and 110 of the Scottsdale Revised City Code, Appendix C to determine if exemptions/ deductions are applicable. For tax guidance, please reference the City Code and other tax resources at the following website: <http://www.scottsdaleaz.gov/taxes/>

The State of Arizona has similar exemptions, please reference A.R.S. Title 42 at the following website:  
<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

For further questions regarding tax treatment, please contact the Arizona Department of Revenue at (602) 255-2060 and the City of Scottsdale Tax & Audit Section at (480) 312-2625.

**ARTICLE 5 – CHANGES TO THE CONTRACT PRICE AND TIME**

**5.0 DELAYS TO THE WORK**

**5.1 DELAYS TO THE WORK**

5.1.1 Delays may be compensable, concurrent, excusable or non-excusable as defined in Article 12.

5.1.2 If the CMAR is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CMAR is responsible, the



Contract Times for performance may be reasonably extended by Change Order.

- 5.1.3** The CMAR must request an increase in the Contract Time by written notice including an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary.
1. Written notice will be received within 14 days of the commencement of the cause of the delay.
  2. If written notice is received more than 14 days after commencement of the cause of the delay, the period of delay will be considered to commence 14 days before the giving of the notice.
- 5.1.4** By way of example and subject to Article 11.7, events that may entitle the CMAR to an extension of the Contract Time include acts or omissions of the City or anyone under the City's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, unusual delay in transportation, and adverse weather conditions not reasonably anticipated.
- 5.1.5** If adverse weather conditions are the basis for a request for additional Contract Time, these requests will 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 construction.
- 5.1.6** It is understood, however, that permitting the CMAR 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, will in no way act as a waiver on the part of the City of any of its legal rights under this Contract.
- 5.1.7** In the event that the CMAR sustains damages as a result of expenses incurred by a delay for which the City is responsible, the CMAR and the City will negotiate to determine the amount of these damages. This provision is made in compliance with Arizona Revised Statutes Section 34-609 (E) and is effective only if the delay caused by the City is unreasonable under the circumstances and was not within the contemplation of the parties. This provision will not be construed to void any provision of this Contract pertaining to notice of delays, arbitration or other settlement provisions applicable to disputes, or provisions relating to liquidated damages.
1. In addition to the CMAR's right to a time extension for those events stated in this Article 5.0, the CMAR may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price will not be adjusted for those events described in this Article that are beyond the control of both the CMAR and the City, including the events of war, acts of terrorism, floods, labor disputes (but not including CMAR's own work force and those of its subcontractors), earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**5.2 DIFFERING SITE CONDITIONS**

- 5.2.1 If the CMAR encounters a Differing Site Condition(s), the CMAR may be entitled to an adjustment in the Contract Price or Contract Time(s) to the extent the CMAR's cost or time of performance are the direct result of a Differing Site Condition(s).
- 5.2.2 Upon encountering a Differing Site Condition, the CMAR will provide prompt written notice to the City of the condition, which notice will not be later than 7 days after the condition has been encountered. The CMAR will, to the extent reasonably possible, provide notice before the Differing Site Condition has been substantially disturbed or altered.
- 5.2.3 In order for the CMAR to obtain any additional compensation or time extensions for Differing Site Conditions, the CMAR must demonstrate that it encountered a material difference at the Site, as defined in Article 12, that required it to expend additional cost or time. The CMAR will also establish that it actually and reasonably relied upon the representations found in the Contract Documents concerning the Site conditions.

**5.3 ERRORS, DISCREPANCIES AND OMISSIONS**

- 5.3.1 If the CMAR observes errors, discrepancies or omissions in the Contract Documents, it will promptly notify the City and request clarification. The CMAR will provide a copy of any notice to the City Contract Administrator.
- 5.3.2 If the CMAR proceeds with the Work affected by any errors, discrepancies or omissions, without receiving clarifications, it does so at its own risk. Adjustments involving these circumstances made by the CMAR before clarification by the Design Professional are at the CMAR's risk.

**5.4 CITY REQUESTED CHANGE IN WORK.** The City reserves the right to make, at any time during the progress of the Work, any alterations as may be found necessary or desirable.

- 5.4.1 Any alterations and changes will not invalidate this Contract nor release the surety, and the CMAR agrees to perform the Work as altered, the same as if it had been a part of the original Contract Documents.
- 5.4.2 Upon receipt of a request for Change in Work, the CMAR will prepare a proposal in significant detail, using the rates and markups established in the contract documents as a basis of the Contract Price adjustment. The CMAR's proposal will include a detailed description of any schedule impact.
- 5.4.3 Legal Requirements. The Contract Price or Contract Times will be adjusted to compensate the CMAR for the effects of any changes in the Legal Requirements enacted after the date of the Contract or the date of the GMP, affecting the performance of the Work.

**5.5 CHANGE ORDERS**

**5.5.1** In accordance with Scottsdale Revised Code Section 2-200 and any related Rules and Procedures, the City and the CMAR will negotiate in good faith and as expeditiously as possible the appropriate adjustments for a Change Order. Upon reaching an agreement, the parties will prepare and execute an appropriate Change Order reflecting the terms of the adjustment. The change in the Work may or may not include an adjustment in the Contract Price or Contract Time.

**5.5.2** All changes in the Work authorized by Change Orders will be performed under the conditions of the Contract Documents. The decision to issue Change Orders rests solely with the City and any decision to issue a Change Order must be promptly complied with by the CMAR, subject to the provisions of Article 5.4. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the City's Procurement Code.

**5.6 FIELD ORDERS**

**5.6.1** The City has authority to initiate Field Orders that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Field Orders will be imposed by written order and will be binding on the City and the CMAR. The CMAR will carry out any written orders promptly.

**5.6.2** Field Orders will not involve an adjustment in the Contract Price or Contract Times unless or until an adjustment becomes a Change Order.

**5.6.3** The CMAR may make minor changes in the Work, but the CMAR will promptly inform the City, in writing, of any changes and record the changes, if appropriate, on the Project Record Documents maintained by the CMAR.

**5.7 CONTRACT PRICE ADJUSTMENTS**

**5.7.1** The increase or decrease in Contract Price resulting from a change in the Work will be determined by the following method:

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

**5.7.2** The markups that will be allowed on these changes will be no greater than the markups outlined in the approved GMP as shown on Exhibit C.

**5.7.3** If an increase or decrease cannot be agreed to as provided in Articles 5.7.1 (1) through 5.7.1 (3), the cost of the Change of the Work will 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 previously agreed in the Contract. The CMAR will maintain a documented, itemized accounting evidencing the expenses and savings associated with the changes.

- 5.7.4** If unit prices are included in the Contract Documents or are subsequently agreed to by the parties, but application of the unit prices will cause substantial inequity to the City or the CMAR because of differences in the character or quantity of the unit items as originally contemplated, the unit prices will be equitably adjusted.
- 5.7.5** If the City and the CMAR disagree upon whether the CMAR is entitled to be paid for any services required by the City, or if there are any other Contracts over the Scope of Work or proposed changes to the Work, the City and the CMAR will resolve the dispute in accordance with Article 7.
1. As part of the negotiation process, the CMAR will furnish the City with a good faith estimate of the costs to perform the disputed services in accordance with the City's interpretations.
  2. If the parties are unable to agree and the City expects the CMAR to perform the services in accordance with the City's interpretations, the CMAR will proceed to perform the disputed services, conditioned upon the City issuing a written order to the CMAR (i) directing the CMAR to proceed and (ii) specifying the City's interpretation of the services that are to be performed.
- 5.7.6 Emergencies.** In any emergency affecting the safety of persons or property, or both, the CMAR will act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price or Contract Time(s), or both, resulting from emergency work will be determined as provided in this Article 5.

## ARTICLE 6 – PROCEDURE FOR PAYMENT

**6.0** For and in consideration of the faithful performance of the Work required to be done by the Contract Documents, and in accordance with the directions of the City and to its satisfaction, the City agrees to pay the CMAR the actual Cost of the Work and any applicable costs for general conditions, insurance, bonding, and taxes, 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 of this Article 6.0.

### 6.1 GMP PAYMENT REQUEST

- 6.1.1** At the Preconstruction conference described in Article 1.3, the CMAR will submit for the City's review and approval a Schedule of Values. The Schedule of Values will (i) be based on the bids accepted from the successful Subcontractors (ii) include values for all items comprising the GMP including any City allowances, and (iii) serve as the basis for monthly progress payments made to the CMAR throughout the Work.
- 6.1.2** At least 5 working days before the date established for a Payment Request, the CMAR will meet with the Contract Administrator to review the progress of the Work, as it will be reflected on the CMAR Payment

Request. The CMAR Payment Request will constitute the CMAR's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the CMAR Payment Request, and that title to all the Work will pass to the City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

- 6.1.3** The CMAR's Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.
1. For equipment and materials properly stored at the Site, the equipment and materials will be protected by suitable insurance and the City will receive the equipment and materials free and clear of all liens and encumbrances.
  2. For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Maricopa County and be accessible for the City's inspection. Title to the materials and equipment will protect the City's interest and will include applicable insurance, bonding, storage and transportation to the Site.
  3. The City will be named as an Additional Insured on all insurance required for all stored materials or equipment.
- 6.1.4** The CMAR will submit a Payment Request in a format acceptable to the City on a date established by the City and the CMAR. The Payment Request will be submitted to the Contract Administrator as identified in Article 7.3. This submittal will include, at a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and the Subcontractors' actual request for payment plus similar narrative and listing of their work.
- 6.1.5** Payments for these services negotiated as a fixed unit price will be made in accordance with actual measured quantities completed during the preceding month as itemized on the Schedule of Values and stated in Exhibit C. Payment for services negotiated as a lump sum will be made in accordance with the percentage of the services completed during the preceding month as itemized on the Schedule of Values in Exhibit C. Those services negotiated, as a not-to-exceed reimbursable sum will be paid in accordance with the actual costs of the service expended during the preceding month. The City will review Payment Requests and make recommendations for approval or denial within 7 days after the City's receipt of each properly submitted and accurate Construction Payment Request, but in each case less the total of payments previously made, and less amounts properly withheld as retention under Article 6.3. Payment Requests will be considered approved and certified for payment after 7 days unless before that time, the Contract Administrator issues a specific finding setting forth in detail those items in the Request for Payment that are not approved for payment.

- 6.1.6 The CMAR agrees at its own proper cost and expense, to do all construction, 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 this Contract.
- 6.1.7 The Schedule of Values will be submitted as prescribed in this Contract, and subject to adjustment in accordance to this Contract and will serve as the basis for monthly progress payments made to the CMAR throughout the construction.
- 6.1.8 The CMAR will submit to the City on the monthly anniversary of the construction NTP date beginning with the first month after the construction NTP date the "Construction Payment Request".

## 6.2 PAYMENT OF GMP

- 6.2.1 The City will make payment in accordance with A.R.S. §34-609. Payment will be made no later than 14 days after the CMAR Payment Request is certified and approved by the City's Contract Administrator, less amounts properly retained under Article 6.3. The CMAR will pay all sums due to the subcontractors and suppliers for services and materials within 7 days after the CMAR has received payment from the City.
- 6.2.2 The City will pay the CMAR all amounts properly due. If the City determines that the CMAR is not entitled to all or part of a CMAR Payment Request, it will notify the CMAR in writing within 7 days after the date the CMAR Payment Request is received by the City. The notice will indicate the specific amounts the City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the CMAR must take to rectify the City's concerns. The CMAR and the City will attempt to resolve the City's concerns. If the parties cannot resolve these concerns, the CMAR may pursue its rights under the Contract Documents, including those under Article 7.

## 6.3 RETENTION OF GMP

- 6.3.1 The City will retain 10% of each CMAR Payment Request amount, provided, however, that when 50% of the Work has been completed by the CMAR, on CMAR's request one-half of the amount retained, including any substituted securities, will be paid to the CMAR if the CMAR is making satisfactory progress on the Contract, and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is 50% completed, no more than 5% of the amount of any subsequent progress payments may be retained if the CMAR is making satisfactory progress on the Contract. If, however, the City determines that satisfactory progress is not being made on the Contract, the City may reinstate the 10% retention for all remaining progress payments.

**6.3.2** In lieu of retention, the CMAR may provide an assignment of time certificates of deposit (CDs) from a bank licensed by the State of Arizona, securities guaranteed by the United States, securities of the United States, the State of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.

1. Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the City of Scottsdale.
2. CDs and Securities will be assigned exclusively for the benefit of the City of Scottsdale in accordance with the City's form of Retainage Escrow Contract.

**6.4 SUBSTANTIAL COMPLETION**

**6.4.1** Substantial Completion will be for the entire Project unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion will be in accordance with its definition in Article 12, and with the criteria in the Notice to Proceed.

**6.4.2** Before notifying the City as required in Article 6.4.3 below, the CMAR must inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. The CMAR will proceed promptly to complete and correct items on the list. Failure to include an item on the list does not alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents.

**6.4.3** The CMAR will notify the City when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

**6.4.4** Within 5 days of the City's receipt of the CMAR's notice, the City and the CMAR will jointly inspect the Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.

**6.4.5** If the Work is substantially complete, the City will prepare and issue a Certificate of Substantial Completion that will establish (i) the date of Substantial Completion of the Work or portion of the Work, (ii) the remaining items of Work that have to be completed within 30 calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing the City's and the CMAR's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.4.6** The 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 in Article 6.4.5 above, (ii) the CMAR and the 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) the City and the CMAR agree that the City's use or occupancy will not interfere with the CMAR's completion of the remaining Work.

**6.4.7 Substantial Completion.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, the City may release to the CMAR all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, not to exceed two and one half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.5 FINAL ACCEPTANCE**

Upon receipt of written notice that the Work or identified portions of the Work are ready for final inspection and acceptance, the City and the CMAR will jointly inspect to verify that the remaining items of Work have been completed as described in Article 6.4. Upon verification that the items have been satisfactorily completed, the City will issue a Final Acceptance Letter.

**6.6 FINAL PAYMENT**

**6.6.1** After receipt of a final CMAR Payment Request, and provided that the CMAR has completed all of the Work in conformance with the Contract Documents, the City will make final payment 14 days after the City has issued its Final Acceptance Letter.

**6.6.2** At the time of submission of its final CMAR Payment Request, the CMAR will provide the following information:

1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect the City's interests;
2. An affidavit regarding settlement of claims executed by the CMAR waiving, upon receipt of final payment by the CMAR, all claims, except those claims previously made in writing to the City and remaining unsettled at the time of final payment; and
3. Consent of the CMAR's surety, if any, to final payment.

**6.7 PAYMENTS TO SUBCONTRACTORS OR SUPPLIER**

**6.7.1** The CMAR will pay its Subcontractors or suppliers within 7 calendar days after receipt of each progress payment from the City, unless otherwise agreed in writing by the CMAR and Subcontractor or supplier. The CMAR will pay for the amount of the Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of



retention by the City to the CMAR will result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. The CMAR will pay Subcontractors or suppliers the reduced retention within 7 calendar days of the payment of the reduction of the retention to the CMAR. No Contract between the CMAR and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided in this Contract.

**6.7.2** If the CMAR fails to make payments in accordance with these provisions, the City may take any of one or more of the following actions and the CMAR agrees that the City may take these actions:

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

**6.7.3** If the CMAR's payment to a Subcontractor or supplier is in dispute, the CMAR and Subcontractor or supplier agree to submit the dispute to any one of the following dispute resolution processes within 14 calendar days from the date any party gives notice to the other: (a) binding arbitration; (b) a form of alternative dispute resolution (ADR) agreeable to all parties, or (c) a City of Scottsdale facilitated mediation. When a disputed claim is resolved through ADR or otherwise, the CMAR and Subcontractor or supplier agrees to implement the resolution within 7 calendar days after the resolution date.

**6.7.4** Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Article, this failure or delay will not be considered a waiver, release or modification of the requirements of this Article or of any of the terms or provisions of this Contract.

**6.7.5** The CMAR will include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

## **6.8 RECORD KEEPING AND FINANCE CONTROLS**

**6.8.1** Records of the CMAR's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and the CMAR will be kept on a generally recognized accounting basis.

From the effective date of this Contract and until 3 years after the date of final payment by the City of Scottsdale to the CMAR, the City, its authorized representative, and the appropriate federal or state agencies,

reserve the right to audit the CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders or Contract Modifications. The City of Scottsdale or its authorized representative will have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and will be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Article. The City of Scottsdale will give the Contractor or Subcontractor reasonable advance notice of intended audits.

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

- 6.8.2 The CMAR will include similar provisions in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and the appropriate Federal and State agencies, have access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 6.8.3 The City reserves the right to decrease Contract Price or payments, or both, made on this Contract if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants or Subcontractors, or both, do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.
- 6.8.4 If an audit discloses overcharges, of any nature, by the CMAR to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by the CMAR. Any adjustments or payments, or both, which must be made as a result of any audit or inspection of the CMAR's invoices and records will be made within a reasonable amount of time (not to exceed 90 days) after presentation of the City's findings to the CMAR.
- 6.8.5 This audit provision includes the right to inspect personnel records as required by Section 11.34.

## ARTICLE 7 – CLAIMS AND DISPUTES

### 7.0 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF

#### 7.1 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF

- 7.1.1 If either the CMAR or the City believes that it is entitled to relief against the other for any event arising out of or related to the Work, that party will provide written notice to the other party of the basis for its claim for relief.
- 7.1.2 That notice will, if possible, be made before incurring any cost or expense and in accordance with any specific notice requirements contained in applicable Articles of the Contract.

- 7.1.3 In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed 10 days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 7.1.4 Notice must include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of the request.

**7.2 DISPUTE AVOIDANCE AND RESOLUTION**

- 7.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the CMAR and the City each commit to resolving any disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 7.2.2 The CMAR and the City will first attempt to resolve disputes or disagreements at the field level through discussions between the CMAR's Representative, the Project Manager and the Construction Coordinator.
- 7.2.3 If a dispute or disagreement cannot be resolved through the CMAR's Representative, and the City's Contract Administrator, the CMAR's Senior Representative and the City's Senior Representative, upon the request of either party, will meet as soon as conveniently possible, but in no case later than 30 days after the request is made, to attempt to resolve the dispute or disagreements. Before any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreements. Should the Parties' Senior Representatives be unable to resolve the dispute or disagreement, either party may file an action in the Maricopa County Superior Court.
- 7.2.4 Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, the CMAR will continue to perform the Work and the City will continue to satisfy its payment obligations to the CMAR pending the final resolution of any dispute or disagreement between the CMAR and the City.

**7.3 REPRESENTATIVES OF THE PARTIES**

**7.3.1 Contract Administrators**

The City designates the individual listed below as its Senior Representative ("City's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2:

City of Scottsdale

Capital Project Management  
Daniel J. Worth, Public Works Director  
7447 E. Indian School Road, Suite 205  
Scottsdale, Arizona 85251  
(480) 312-5555

The City designates the individual listed below as its Contract Administrator:

City of Scottsdale  
Capital Project Management  
Christopher Perkins, Contract Administrator  
7447 E. Indian School Road, Suite 205  
Scottsdale, Arizona 85251  
(480) 312-7845

The City designates the individual listed below as its Construction Coordinator:

City of Scottsdale  
Capital Project Management  
Jon Hughes, Construction Administration Supervisor  
7447 E. Indian School Road, Suite 205  
Scottsdale, Arizona 85251  
(480) 312-2393

### 7.3.2 CMAR's Representatives

The CMAR designates the individual listed below as its Senior Representative ("CMAR's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2:

CMAR Representative  
Daniel K. Kuwitzky, Vice President  
1614 E. Curry Road  
Tempe, AZ 85281  
(480) 894-2835

## ARTICLE 8 – SUSPENSION AND TERMINATION

### 8.0 CITY'S RIGHT TO STOP WORK

The City may, at its discretion and without cause, order the CMAR in writing to stop and suspend the Work. Immediately after receiving this notice, the CMAR must discontinue advancing the Work specified in this Contract. The suspension may not exceed 180 consecutive days. If the City suspends the Work for 181 consecutive Days or more, the suspension will be a Contract termination for convenience.

The CMAR may seek an adjustment of the Contract Price or Contract Time, or both, if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by the City.

## **8.1 TERMINATION FOR CONVENIENCE**

**8.1.1** Upon receipt of written notice to the CMAR, the City has the right to terminate this Contract or abandon any portion of the Project for which services have not been performed by the CMAR.

1. The CMAR will estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City will have the right to inspect the Work to appraise the Work completed.
2. The CMAR will receive compensation for services performed to the date of termination as provided in Article 6.5 of this Contract and the fee will be paid in accordance with Article 6.5.2, and will be an amount mutually agreed upon by the CMAR and the City. If there is no mutual agreement, the final determination will be made in accordance with Article 7.
3. The CMAR will not be entitled to anticipated profit or anticipated overhead, but is entitled to recover apportioned profit and overhead proportional to the amount of the Work completed. In no event will the fee exceed that stated in Article 8.1.4 of this Contract or as may be subsequently amended.
4. The City will make the final payment within 60 days after the CMAR has delivered the last of the partially completed items and the final fee has been agreed upon.
5. If the City terminates this Contract in accordance with the provisions of this Article and proceeds to construct the Project through its employees, agents or third parties, the City's rights to use the work product will be as provided in Article 8.3.

**8.1.2** Upon any termination during construction services, the CMAR will proceed with the following obligations:

1. Stop Work as specified in the notice.
2. Place no further subcontracts or orders.
3. Terminate all subcontracts to the extent they relate to the Work terminated.
4. Assign to the City all right, title and interest of the CMAR under the subcontracts terminated, in which case the City will have the right to settle or to pay any termination settlement proposal arising out of those terminations.
5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the

possession of the CMAR and to which the City has or may acquire an interest.

6. Comply with the requirements of Article 6.6.2 (1), (2) and (3).
- 8.1.3 The CMAR will submit complete termination inventory schedules no later than 60 days from the date of the notice of termination.
- 8.1.4 The City will pay CMAR the following:
  1. The direct value of its completed Work and materials supplied as of the date of termination;
  2. The reasonable costs and expenses attributable to any termination; and
  3. The CMAR will be entitled to profit and overhead on completed Work only, but will not be entitled to anticipated profit or anticipated overhead. If it appears the CMAR would have sustained a loss on the entire Work had the Project been completed, the CMAR will not be allowed profit and the City will reduce the settlement to reflect the indicated rate of loss.
- 8.1.5 The CMAR will maintain all records and documents for 3 years after final settlement. These records will be maintained and subject to auditing as prescribed in Article 6.8.

## 8.2 CANCELLATION FOR CAUSE

The City may also cancel this Contract or any part of this Contract with 7 days notice for cause in the event of any default by the CMAR, or if the CMAR fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance despite a reasonable opportunity to cure as judged by the Contract Administrator, and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to cancel this Contract for cause. In the event of cancellation for cause, the City will not be liable to the CMAR for any amount, and the CMAR will be liable to the City for any and all damages sustained by reason of the default that gave rise to the cancellation.

## 8.3 CITY'S RIGHT TO PERFORM AND CANCEL FOR CAUSE

- 8.3.1 If the CMAR 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 or Subcontractors, or both, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as these times may be adjusted, or (vi) perform material obligations under the Contract Documents, then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, has the rights stated in Articles 8.3.3, 8.3.4 and 8.3.5.

- 8.3.2** In the event the CMAR is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this Contract immediately upon giving notice to the CMAR. In the event the City cancels this Contract or any part of the services, the City will notify the CMAR in writing, and immediately upon receiving notice, the CMAR will discontinue advancing the Work under this Contract and proceed to close all operations.
- 8.3.3** If the City provides the CMAR with a written order to correct deficiencies, to provide adequate maintenance of traffic, adequate cleanup, adequate dust control, or to repair damage resulting from abnormal weather conditions, and the CMAR fails to comply within the time frame specified, the City may have work accomplished by other sources at the CMAR's expense.
- 8.3.4** Upon the occurrence of an event as stated in Article 8.3, the City may provide written notice to the CMAR that it intends to cancel the Contract unless the problem cited is cured, or commenced to be cured, within 7 days of the CMAR's receipt of notice.
- 8.3.5** If the CMAR fails to cure, or undertake reasonable efforts to cure the problem, then the City may give a second written notice to the CMAR of its intent to cancel within an additional 7 day period.
- 8.3.6** If the CMAR, within this second 7 day period, fails to cure, or undertake reasonable efforts to cure the problem, then the City may declare the Contract canceled for cause by providing written notice to the CMAR of this declaration.
- 8.3.7** Upon declaring the Contract canceled in accordance with Article 8.3.6, the City may enter upon the premises and take possession of all materials and equipment, for the purposes of completing the Work.
- 8.3.8** Upon cancellation or abandonment, the CMAR will deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be the City's sole responsibility.
- 8.3.9** The CMAR will appraise the Work it has completed and submit its appraisal to the City for evaluation.
- 8.3.10** If through any cause, the CMAR fails to fulfill in a timely and proper manner its obligations under this Contract, or if the CMAR violates any of the covenants, agreements, or stipulations of this Contract, the City may withhold any payments to the CMAR for the purpose of setoff until such time as the exact amount of damages due the City from the CMAR is determined by a court of competent jurisdiction.
- 8.3.11** In the event of cancellation for cause, the CMAR will not be entitled to receive any further payments under the Contract Documents until the Work is finally completed in accordance with the Contract Documents. At

that time, the CMAR will only be entitled to be paid for Work performed and accepted by the City before its default.

**8.3.12** If the City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then the CMAR will be obligated to pay the difference to the City. These costs and expense will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the procurement and defense of claims arising from the CMAR's default.

**8.3.13** If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of Article 8.1.

## ARTICLE 9 – INSURANCE AND BONDS

### 9.0 INSURANCE REQUIREMENTS

#### 9.1 INSURANCE REQUIREMENTS

**9.1.1** At the same time as execution of this Contract, the CMAR will furnish the City of Scottsdale a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona.

**9.1.2** The CMAR, Subcontractors and Subconsultants must 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 by the CMAR, his agents, representatives, employees, or Subcontractors.

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

**9.1.4** The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect the CMAR from liabilities that might arise out of the performance of the Contract services under this Contract by the CMAR, his agents, representatives, employees, Subcontractors or Subconsultants and the CMAR is free to purchase any additional insurance as may be determined necessary.

**9.1.5** Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract, and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through



purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

**9.2 MINIMUM SCOPE AND LIMITS OF INSURANCE.** The CMAR will provide coverage and with limits of liability not less than those stated below.

**9.2.1 Commercial General Liability - Occurrence Form**

**Commercial General Liability:** CMAR must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 operations, independent contractors, products completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

**9.2.2 Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles**

**Vehicle Liability:** CMAR must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CMAR owned, hired, and non-owned vehicles assigned to or used in the performance of the CMAR's work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

**9.2.3 Workers Compensation and Employers Liability**

**Insurance:** CMAR must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CMAR employees engaged in the performance of work or services under this Contract and must also maintain Employers' Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

**9.2.4 Professional Liability**

**Professional Liability:** If the Contract is the subject of any professional services or work performed by the CMAR, or if the CMAR engages in any professional services or work adjunct or residual to performing the work under this Contract, the CMAR must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CMAR, or anyone employed by the CMAR, or anyone whose acts, mistakes, errors and omissions the CMAR is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage will extend for 3 years past

completion and acceptance of the work or services, and the CMAR, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

If there is no Professional Liability work or service as a part of this Contract, the City will waive the Professional Liability insurance requirement in writing.

**9.2.5 Builders' Risk Insurance (Course of Construction).** The CMAR bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City of Scottsdale, the CMAR will purchase and maintain in force Builders' Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss policy form, (minimally including perils of fire, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, and collapse), completed value, replacement cost policy form equal to the GMP and all subsequent modifications. The CMAR's Builders' Risk-Installation insurance must be primary and not contributory.

1. Builders' Risk-Installation insurance must name the City of Scottsdale, the CMAR and all tiers of Subcontractors as Additional Insureds and must contain a provision that this insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under Builders' Risk-Installation coverage.
2. Builders' Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and engineers' services and expenses and other "soft costs" made necessary by an insured loss. Builders' Risk-Installation insurance must provide coverage from the time any covered property comes under the CMAR's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.
3. The CMAR must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders' Risk-Installation insurance cited above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law or testing requirements in the performance of this Contract.

The CMAR will be responsible for any and all deductibles under these policies and the CMAR waives all rights of recovery and subrogation against the City under the CMAR-provided Builders' Risk-Installation insurance described above.

**9.2.6 Builders' Risk Insurance** must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

1. The Builders' Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City.
2. This insurance must include as named insureds, the City, the CMAR, Subcontractors, Subconsultants and others with an insurable interest in the Work who will be named as additional insureds unless they are able to provide some level of coverage with the City and CMAR named as additional insureds. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under the Builders' Risk-Installation coverage.
3. This insurance must be written using the Special Causes of Loss policy form, replacement cost basis.
4. All rights of subrogation are, by this Contract, waived against the City of Scottsdale, its officers, officials, agents and employees.
5. The CMAR is responsible for payment of all deductibles under the Builders' Risk policy.

**9.3 SELF-INSURED RETENTIONS.** Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

**9.4 OTHER INSURANCE REQUIREMENTS.** The policies are to contain, or be endorsed to contain, the following provisions:

**9.4.1 Commercial General Liability and Automobile Liability Coverages**

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CMAR including the City's general supervision of the CMAR; Products and Completed operations of the CMAR; and automobiles owned, leased, hired, or borrowed by the CMAR.
2. The CMAR's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion,

collapse, or underground property damage hazards ("XCU") coverage.

3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CMAR even if those limits of liability are in excess of those required by this Contract.
4. The CMAR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees must be in excess of the coverage provided by the CMAR and must not contribute to it.
5. The CMAR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Coverage provided by the CMAR must not be limited to the liability assumed under the indemnification provisions of this Contract.
7. The policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CMAR for the City.
8. The CMAR, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. The CMAR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Contract insurance requirements, including naming the City of Scottsdale, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

**9.4.2 Workers' Compensation and Employers Liability Coverage:** The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by the CMAR for the City.

**9.5 SUBCONSULTANT'S AND SUBCONTRACTOR'S INSURANCE.** Unless the CMAR's Subconsultants and Subcontractors can provide the same level of coverage as detailed in Article 9.2 and name the City and the CMAR as Additional Insureds, the CMAR's certificates must include all Subcontractors and Subconsultants as insureds under its policies or the CMAR must maintain separate certificates and endorsements for each Subcontractor and Subconsultant. All coverages for Subcontractors and Subconsultants must be in the amounts shown in Article 9.2. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under the Builders' Risk-Installation coverage.

**9.6 NOTICE OF CANCELLATION.** Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be

suspended, voided, canceled by either party, reduced in coverage or in limits except until after 30 days written notice has first been given, by certified mail, return receipt requested to:

City of Scottsdale  
Risk Management Office  
7447 East Indian School Road, Suite 225  
Scottsdale, Arizona 85251

**9.7 ACCEPTABILITY OF INSURERS.** Without limiting any obligations or liabilities of the CMAR, the CMAR must purchase and maintain, at its own expense, the required minimum insurance with duly licensed or approved non-admitted insurers in the State of Arizona with an A.M. Best rating of not less than B++6 with policies and forms satisfactory to City. Failure to maintain insurance as required may result in termination of this Contract at the City's option.

**9.8 VERIFICATION OF COVERAGE**

**9.8.1** The CMAR must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

**9.8.2** All certificates and endorsements are to be received and approved by the City before Work commences except for Builders' Risk Insurance, which must be received and approved as provided in Article 9.2.5. Each insurance policy required by this Contract must be in effect at or before the earlier of commencement of Work under the Contract Documents or the signing of this Contract except for Builders' Risk Insurance which must be in effect before commencement of Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

**9.8.3** All certificates of insurance required by this Contract must be sent directly to the City of Scottsdale, Capital Project Management. **The project number and project description must be included on the Certificates of Insurance.** The City reserves the right to require complete certified copies of all insurance policies required by this Contract, at any time.

**9.9 APPROVAL.** Any modification or variation from the insurance requirements in this Contract must be approved by the Risk Management Division, whose decision is final. This action will not require a formal contract amendment, but may be made by administrative action.

**9.10 BONDS AND OTHER PERFORMANCE SECURITY**

**9.10.1** Before execution of this Contract, the CMAR must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP. Bonds must be submitted in accordance with Title 34, Chapter 6 of the Arizona Revised Statutes and will be in substantially the same form as Exhibits C and D attached to this Contract.

- 9.10.2** Each bond must be executed by a surety company or companies holding a *Certificate of Authority to transact surety business in the State of Arizona*, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority must accompany the bonds. The Certificate must have been issued or updated within 2 years before the execution of this Contract.
- 9.10.3** The bonds must be made payable and acceptable to the City of Scottsdale.
- 9.10.4** The bonds must be written or countersigned by an authorized representative of the surety and the bonds must have attached a certified copy of the Power of Attorney of the signing official.
1. If one Power of Attorney is submitted, it must be for twice the total GMP amount.
  2. If two Powers of Attorney are submitted; each must be for the total GMP amount. Personal or individual bonds are not acceptable.
- 9.10.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CMAR must promptly furnish a copy of the bonds or permit a copy to be made.
- 9.10.6** All bonds submitted for this Project must be provided by a company which has been rated "A- or better" by the A.M. Best Company.

#### **ARTICLE 10 – INDEMNIFICATION**

- 10.0 CMAR'S GENERAL INDEMNIFICATION.** To the fullest extent permitted by law, the CMAR, its successors, assigns and guarantors, must defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any negligence, recklessness, or intentional wrongful conduct to the extent caused by the CMAR or any of its owners, officers, directors, agents, or employees performing work or services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of the CMAR employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of the CMAR to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by the CMAR from and against any and all claims. It is agreed that the CMAR will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the CMAR agrees to waive all rights of

subrogation against the City, its officers, agents, representatives, directors, officials, and employees for losses arising from the work performed by the CMAR for the City.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

#### **10.1 INTELLECTUAL PROPERTY**

**10.1.1** The CMAR must pay all royalties and license fees associated with its performance of services.

**10.1.2** The CMAR must defend any action or proceeding brought against the City based on any claim that the Work, or any part of it, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, now or subsequently issued. The City will give prompt written notice to the CMAR of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. The CMAR will indemnify and hold harmless the City from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the City or the CMAR in any action or proceeding. The CMAR agrees to keep the City informed of all developments in the defense of these actions. The City may be represented by and actively participate through its own counsel in any suit or proceedings if it so desires.

**10.1.3** If the City is enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, the CMAR must at its sole expense take reasonable steps to procure the right to operate or use the Work. If the CMAR cannot procure the right within a reasonable time, the CMAR must promptly, at the CMAR's option and at the CMAR's expense, (i) modify the Work so as to avoid infringement of any patent or copyright or (ii) replace the Work with Work that does not infringe or violate any patent or copyright.

**10.1.4** Articles 10.1.2 and 10.1.3 above will not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by the CMAR to the City or (ii) arising from modifications to the Work by the City or its agents after acceptance of the Work.

**10.1.5** The obligations contained in this Article 10.1 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

#### **ARTICLE 11 – GENERAL PROVISIONS**

**11.0** The CMAR is advised to contact the City of Scottsdale Development Services to determine the requirements for obtaining a permit for marshaling areas it proposes to use. Marshaling areas must be fenced. The CMAR must obtain written approval from

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9626760v8 (Rev Nov. 2015)

PROJECT NO. PB63A

the property owner for marshaling area use. This approval must contain any requirements which are a condition of this approval. Marshaling yard requirements according to M.A.G. Subsection 107.6.1 and the City of Scottsdale Supplemental Specifications will apply.

## 11.1 CONTRACT DOCUMENTS

11.1.1 Contract Documents are as defined in Article 12.

11.1.2 The Contract Documents form the entire Contract between the City and the CMAR. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents.

11.1.3 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence in the order in which they are listed in the definition of Contract Documents in Article 12. As to drawings and plans, given dimensions will take precedence over scaled measurements, and large scale plans over small-scale plans. Contract specifications will take precedence over Contract plans.

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

11.1.5 This Contract, the Plans, Standard Specifications and Details, Special Provisions, Performance Bond, Payment Bond, Certificates of Insurance, and Change Orders (if any) are by reference made a part of this Contract.

### 11.1.6 Work Product

1. All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared or procured in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to the CMAR. In the event these documents are altered, modified or adapted without the written consent of the CMAR or the Subconsultants, which consent the CMAR or the Subconsultants will not unreasonably withhold, the City agrees to hold the CMAR and the Subconsultants harmless to the extent permitted by law from the legal liability arising out of the City's alteration, modification or adoption of the documents.
2. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed, created by the CMAR, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CMAR.



- 11.2 **AMENDMENTS.** The Contract Documents may not be changed, altered, modified, or amended in any way except in writing signed by a duly authorized representative of each party.
- 11.3 **Time Is of the Essence.** The City and the CMAR mutually agree that time is of the essence with respect to the dates and times contained in the Contract Documents.
- 11.4 **MUTUAL OBLIGATIONS.** The City and the CMAR commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 11.5 **COOPERATION AND FURTHER DOCUMENTATION.** The CMAR agrees to provide the documents, as the City will reasonably request to implement the intent of the Contract Documents.
- 11.6 **ASSIGNMENT.** Neither the CMAR nor the City will, without the written consent of the other assign, transfer or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents.
- 11.7 **FORCE MAJEURE.** Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, acts of God, riots, acts of war, acts of terrorism, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.
- 11.8 **FUNDS APPROPRIATION.** If the City Council does not appropriate funds to continue this Contract and pay for required charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to the CMAR at least 30 days before the end of its current fiscal period and will pay the CMAR for all approved charges incurred through the end of this period.
- 11.9 **CONSTRUCTION METHODS.** If the City provides the CMAR with a written order to provide adequate maintenance of traffic, clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CMAR fails to comply in the time frame specified, the City may have work accomplished by other sources at the CMAR's expense.
- 11.10 **UTILITY RELOCATIONS FOR CONSTRUCTION METHODS.** If any utility is relocated or rebuilt to accommodate the CMAR's construction methods and available equipment, the expense will be borne by the CMAR.
- 11.11 **DAMAGED UTILITIES DURING CONSTRUCTION.** Any utilities damaged during construction will be replaced at the CMAR's expense as required by the M.A.G. Standard Specifications.
- 11.12 **THIRD PARTY BENEFICIARY.** The Contract Documents will not be construed to give any rights or benefits to anyone other than the City and the CMAR, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and the CMAR and not for the benefit of any other party.

- 11.13 GOVERNING LAW.** The Contract and all Contract Documents are considered 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. Any action to enforce any provision of this Contract or to obtain any remedy under this Contract will be brought in the Superior Court, Maricopa County, Arizona. Such action must be filed, tried, and remain in this Court for any and all proceedings. For this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of this Court, and the CMAR hereby waives the right to have such action removed to Federal District Court.
- 11.14 SEVERABILITY.** If any provision of the Contract Documents or the application of them to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and their application will not be affected and are enforceable to the fullest extent permitted by law.
- 11.15 LEGAL REQUIREMENTS.** The CMAR will perform all Work in accordance with all Legal Requirements and will provide all notices applicable to the Work as required by the Legal Requirements.
- 11.16 INDEPENDENT CONTRACTOR.** The CMAR is and will be an independent contractor and not an employee or agent of the City.
- 11.17 CITY'S RIGHT OF CANCELLATION.** All parties to this Contract acknowledge that it is subject to cancellation by the City of Scottsdale as provided by Section 38-511, Arizona Revised Statutes.
- 11.18 SURVIVAL.** All warranties, representations and indemnifications by the CMAR will survive the completion or termination of this Contract.
- 11.19 COVENANTS AGAINST CONTINGENT FEES.** The CMAR warrants that no person other than a bona fide employee working solely for the CMAR has been employed or retained to solicit or secure this Contract or any Contract or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this covenant, the City will have the right to annul this Contract without liability or at its discretion to deduct from the Contract Price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, together with costs and attorney's fees.
- 11.20 SUCCESSORSHIP.** The CMAR and the City agree that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs and assigns. This Contract extends to and is binding upon the CMAR, its successors and assigns, including any individual, company, partnership or other entity with or into which the CMAR merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which the CMAR sells its assets.
- 11.21 ATTORNEY'S FEES.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and is enforceable whether or not the action is prosecuted to judgment.

- 11.22 HEADINGS.** The headings used in this Contract, or any other Contract Documents, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.
- 11.23 NO WAIVER.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions of this Contract will not be construed to be a waiver of those provisions, nor will it affect the validity of the Contract Documents, or the right of either party to enforce each and every provision.
- 11.24 COOPERATIVE USE OF CONTRACT.** In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies, and governing bodies, including the Arizona Board of Regents, and political subdivisions of this State. Any such usage by other entities must be in accord with the ordinances, charter, and/or rules and regulations of the respective entity and the approval of the Contractor.
- 11.25 NOTICE.** All notices or demands required to be given, in accordance with the terms of this Contract, will be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this paragraph. Notice given by facsimile or electronic mail (email) will not be considered adequate notice.

<b>To City:</b>	City of Scottsdale Capital Project Management Daniel J. Worth, Public Works Director 7447 E. Indian School Road, Suite 205 Scottsdale, Arizona 85251
<b>To CMAR:</b>	Valley Rain Construction Daniel K. Kuwitzky, Vice President 1614 E. Curry Road Tempe, AZ 85281 (480) 894-2835

**11.26 EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract the CMAR will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sexual orientation, gender identity, or national origin. The CMAR must include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight. The CMAR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CMAR agrees to post in conspicuous places, available to

employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

**11.27 NO PREFERENTIAL TREATMENT OR DISCRIMINATION:** In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin. **Additional City Rights Regarding Security Inquiries.** In addition to the foregoing, the City reserves the right to: (1) have an employee/prospective employee of the CMAR be required to provide fingerprints and execute other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. §41-1750(G)(4); (2) act on newly acquired information whether or not the information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of the CMAR's employees or prospective employees, or both; and, (4) object, at any time and for any reason, to an employee of the CMAR performing Work (including supervision and oversight) under this Contract.

**11.27.1** Terms of this Provision Applicable to all of CMAR's Contracts and Subcontracts. The CMAR will include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

**11.27.2 Materiality of Security Inquiry Provisions.** The Security Inquiry provisions of this Contract are material to the City's entry into this Contract and any breach by the CMAR may, at the City's sole option and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Contract. Termination will subject the CMAR to liability for its breach of contract.

**11.28 HAZARDOUS MATERIALS.** Upon discovery of hazardous materials the CMAR will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

**11.28.1** Unless included in the Work, if the CMAR encounters onsite or as material to be incorporated in the Work, any material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, he will immediately stop work and report the condition to the City.

**11.28.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, the CMAR will not resume work in the affected area until the material has been abated or rendered harmless. The CMAR and the City may agree, in writing, to continue Work in non-affected areas onsite.

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

- 11.28.4 The CMAR will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- 11.28.5 Despite the provisions of this Article 11.27, the City is not responsible for Hazardous Conditions introduced to the Site by the CMAR, Subcontractors or anyone for whose acts they may be liable. The CMAR will indemnify, defend and hold harmless the City and the City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by the CMAR, Subcontractors or anyone for whose acts they may be liable.

#### 11.29 TRAFFIC CONTROL

- 11.29.1 Complete street closures will not be permitted unless specified in the Special Provisions. The Traffic Engineering Director or designee must approve the timing and sequence of street closures at least 2 weeks before the closure. This approval is necessary to provide coordination with other roadway projects and special events.
- 11.29.2 Adequate barricades and lighted warning signs must be installed and maintained by the CMAR throughout the duration of the Project. All traffic control must be in accordance with the City of Phoenix Traffic Control Manual or the approved barricade plan unless otherwise specified in the Special Provisions.
- 11.29.3 The CMAR must submit a construction schedule and a barricade plan to the Construction Coordinator for approval or modification at least 72 hours before construction is initiated. After review, the Construction Coordinator will forward the construction schedule and barricade plan to the Right of Way Manager (Traffic Engineering). The Construction Coordinator will return the approved barricade plan to the Contractor or ask for additional information.
- 11.29.4 The CMAR will comply with all provisions of the City of Phoenix Traffic Barricade Manual and any other traffic control provisions as may be provided in the technical specifications or in the approved barricade plan.
- 11.29.5 The CMAR must insure that placement and maintenance of all temporary traffic control adheres to the City's Barricade Ordinance. Violations of the Ordinance are subject to fines set forth in the Ordinance.

**11.30 MATERIAL SOURCE.** No material source has been designated by the City for use on this Project. MAG Specification, Section 106 will apply as will 2008 ADOT Standard Specifications, Section 106.1, 106.2, 106.7 & 106.8, which outline controls and Section 1001-1, -2, & -4, concerning approval of Contractor furnished material source and supplemental Contracts in regards to environmental analysis and the liability for materials testing costs.

- 11.30.1** A CMAR and Subcontractor furnished source will be defined as a material source, which is neither an A.D.O.T. furnished source nor a commercial source, as defined in this Contract.
- 11.30.2** A commercial source will be defined as a material source in which the owner or producer has been for at least one year regularly engaged during regular business hours on a continuous basis in the processing and selling of sand, rock, ready mixed Portland cement concrete, asphaltic concrete and other similar products normally produced and sold to all parties. The company will have an Arizona retail sales tax license.
- 11.30.3** The CMAR and Subcontractor furnished material sources situated in the 100-year flood plain of any stream or watercourse, and located within 1.0 mile upstream and 2.0 miles downstream of any highway structure or surfaced roadway crossing will not be allowed.
- 11.30.4** The location of any new material source or existing non-commercial material source proposed for use on this Project will be reviewed by the appropriate agency having flood plain management jurisdiction over the area of proposed source location. The CMAR and Subcontractor will obtain a letter from the agency addressed to the Contract Administrator certifying that the proposed source location conforms to the requirements of this Contract and applicable Standard Specifications as referenced.
- 11.31** The CMAR will familiarize itself with the nature and extent of the Contract documents, work to be performed, all local conditions, and Federal, State and Local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.
- 11.32** The CMAR will take whatever steps, procedures or means necessary to remove, move, displace and save all native plants within the contract work area in accordance with the City of Scottsdale's Ordinance No. 1438, Native Plants, and all applicable state and county statutes, ordinances, codes and other policy requirements and recognized methods, procedures, techniques and equipment for protection, salvage, and handling of all plants to be moved from the construction area. This is not a pay item unless specified upon the Schedule of Bid Items.
- 11.33** **ENDANGERED HARDWOODS.** Any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions will not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration. The Director will only grant an exemption if the use of endangered tropical hardwood is considered necessary for historical restoration or to repair existing facilities and the use of any substitute material is not practical. Any lease-purchase Contract entered into by this state or its political subdivisions for construction will specify that no endangered tropical hardwood may be used in the construction unless an exemption is granted by the Director. As used in this subsection, "endangered tropical hardwood" includes ebony, lauan, mahogany or teak hardwood.

**11.34 HOURS OF WORK.**

14262859v1

PROJECT NAME – INDIAN SCHOOL PARK LAKE REHABILITATION  
9626760v8 (Rev Nov. 2015)

PROJECT No. PB63A

**11.34.1** All building construction and associated work will be restricted to the applicable summer or winter hours. Construction activity will include any work requiring the use of manually operated or power assisted tools or equipment and vehicles used to excavate, erect or deliver materials associated with construction. Summer hours begin April 1 and end on October 31. No work may begin before 6:00 a.m. or continue after 7:00 p.m., Monday through Friday. No work will begin on Saturday or Sunday before 7:00 a.m. or continue after 7:00 p.m. Sunday work may be conducted only if the CMAR demonstrates, in writing to the building official, justifiable cause for the Sunday work.

**11.34.2** Winter hours begin November 1 and end on March 31. No work will begin before 7:00 a.m. or continue after 5:00 p.m., Monday through Friday. No work may begin on Saturday or Sunday before 8:00 a.m. or continue after 5:00 p.m. Sunday work may be conducted only if the CMAR demonstrates, in writing to the building official, justifiable cause for the Sunday work.

**11.34.3** The City may establish other times of work as necessary based on the geographical location of the jobsite in relation to surrounding occupancies, buildings and structures.

**11.34.4** The CMAR must submit a written request to the Building Official for a variance from the required work hours at least 7 days before the date for which the variance is desired. Variances will not be granted for more than 30 days at a time. A new application must be made for each additional variance. The CMAR must notify adjacent property owners of the intended work and the duration of the requested variance. Proof of notification must be presented to the building official before the variance can be granted.

1. The application for the variance must demonstrate justifiable cause why the work must be done outside the prescribed time period (e.g. pouring concrete during "summer hours"). A variance will not be granted based solely on convenience or for work that can be completed during daytime construction hours.

2. The application for a variance must state the construction permit number, the address of the work, type of work, time period of the work, and the duration of the variance.

**11.35 COMPLIANCE WITH FEDERAL AND STATE LAWS.** The CMAR understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The CMAR agrees to comply with these laws in performing this Contract and to permit the City to verify compliance. The CMAR will also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. §34-302, as amended, "Residence Requirements for Employees". The CMAR will include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

**Under the provisions of A.R.S. §41-4401, the CMAR warrants to the City that the CMAR and all its subcontractors will comply with all Federal**

**Immigration laws and regulations that relate to their employees and that the CMAR and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).**

A breach of this warranty by the CMAR or any of its subcontractors will be considered a material breach of this Contract and may subject the CMAR or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the CMAR or any subcontractor who works on this Contract to ensure that the CMAR or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the CMAR and any of its subcontractors to ensure compliance with this warranty. The CMAR agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the CMAR or any of its subcontractors in material breach of this Contract if the CMAR and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the CMAR enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The CMAR will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The CMAR's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

#### **11.35.1 Compliance with Americans with Disabilities Act**

The CMAR acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The CMAR will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The CMAR agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of the CMAR, its employees, agents or assigns will constitute a material breach of this Contract.

#### **11.36 DATA CONFIDENTIALITY**

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PROJECT NAME – INDIAN SCHOOL PARK LAKE REHABILITATION

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PROJECT No. PB63A



- 11.36.1** As used in this Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CMAR in the performance of this Contract.
- 11.36.2** The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the CMAR's performance of this Contract is confidential and proprietary information belonging to the City.
- 11.36.3** The CMAR will not divulge data to any third party without first obtaining the written consent of the City. The CMAR will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the CMAR has first given the required notice to the City:
1. Data, which was known to the CMAR before its performance under this Contract unless the data was acquired in connection with the Work performed for the City;
  2. Data which was acquired by the CMAR in its performance under this Contract and which was disclosed to the CMAR by a third party, who to the best of the CMAR's knowledge and belief, had the legal right to make any disclosure and the CMAR is not otherwise required to hold the data in confidence; or
  3. Data, which is required to be disclosed by virtue of law, regulation, or court order to which the CMAR is subject.
- 11.36.4** In the event the CMAR is required or requested to disclose data to a third party, or any other information to which the CMAR became privy as a result of any other contract with the City, the CMAR will first notify the City as required in this Article of the request or demand for the data. The CMAR will give the City sufficient facts so that the City can be given an opportunity to first give its consent or take the action that the City may consider appropriate to protect the data or other information from disclosure.
- 11.36.5** Unless prohibited by law, within 10 days after completion of services for a third party on real or personal property owned or leased by the City, the CMAR will promptly deliver, as required in this Article, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Contract.
- 11.36.6** The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Article are violated by the CMAR, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will cause irreparable harm that justifies injunctive relief in court.

**11.37 TAXES AND INDEMNIFICATION**

The fee listed in this Contract includes any and all taxes applicable to the activities authorized by this Contract. The City will have no obligation to pay additional amounts for taxes of any type. CMAR and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the CMAR. CMAR shall, and require all subcontractors to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

**11.38 CONFLICT OF INTEREST**

**11.38.1** To evaluate and avoid potential conflicts of interest, the CMAR will provide written notice to the City, as stated in this Article, of any work or services performed by the CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the City. The notice will be given 7 business days before commencement of the Project by the CMAR for a third party, or 7 business days before an adverse action as defined below. Written notice and disclosure will be sent to the City's Senior Representative identified in Article 7.3.

**11.38.2** Actions that are considered to be adverse to the City under this Contract include but are not limited to:

1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
3. Using data to produce income for the CMAR or its employees independently of performing the services under this Contract, without first obtaining the written consent of the City.

**11.38.3** The CMAR represents that except for those persons, entities and projects identified to the City, the services to be performed by the CMAR 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.

**11.38.4** The CMAR's failure to provide a written notice and disclosure of the information as required in this Article on Conflicts of Interest will constitute a material breach of this Contract.

**11.39 COMMENCEMENT OF STATUTORY LIMITATION PERIOD AND STATUTE OF REPOSE**

14262859v1

PROJECT NAME – INDIAN SCHOOL PARK LAKE REHABILITATION  
9626760v8 (Rev Nov. 2015)

PROJECT No. PB63A

- 11.39.1 Before Final Completion.** As to acts or failures to act occurring before the relevant date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will have accrued in any and all events not later than the date of Final Completion.
- 11.39.2 Between Punch List Preparation and Final Completion.** As to acts or failures to act occurring between the relevant date of Punch List Preparation and before Final Completion, any applicable statute of limitation will begin to run and any alleged cause of action will have accrued in any events not later than the date of Final Completion.
- 11.39.3 After Completion.** As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will have accrued in any and all events not later than the date of any correction of the Work or failure to correct the Work by the CMAR, or the date of actual commission of any other act or failure to perform any duty or obligation by the CMAR or the City, whichever occurs last.
- 11.39.4 Statute of Repose.** The time period for the applicable Statute of Repose will begin to run at the time specified in A.R.S §12-552 as it is amended or renumbered from time to time.

**11.40 EXISTING WORK OCCURRING NEAR TRAFFIC SIGNAL EQUIPMENT**

The CMAR will use due care when excavating at or near intersections where traffic signal underground conduit is located. The CMAR will notify the CPM Inspector, 48 hours in advance, of any work at the intersections. The CMAR will be responsible for the installation and maintenance of temporary overhead traffic signal cable as specified by the Streets Department when underground conduit is to be severed by excavations at the intersection. The Traffic Signals Supervisor will have all underground traffic conduit located and will provide the necessary City Traffic Signal Technicians to assist the CMAR in identifying wiring phases and direction of conduit runs upon 24 hours notice from the CMAR and at least 1 day before the CMAR's scheduled wiring and installation of temporary cables. The CMAR will be responsible for the wiring and connection of all temporary cable within the pull boxes and terminal compartments. The Traffic Signals Supervisor will provide a City Traffic Signal Technician to assist the CMAR with connecting field wiring within the traffic signal control cabinet. The CMAR will provide, at his expense, 2 off-duty uniformed Police Officers to direct traffic while the traffic signal is turned off and the wiring is transferred. The CMAR will be responsible as specified by the Streets Department for the repair and restoration of all traffic signal overhead and underground items that have been damaged or modified. Intersections with communications or CCTV cameras will be restored to full functionality within 24 hours, if they are disturbed during construction. The CPM Inspector will contact the Traffic Management Center (TMC) (480) 312-7777, 24 hours in advance, to coordinate the outage. The City does not allow the splicing of Magnetic Detector Loops.

**11.41 TEMPORARY TRAFFIC SIGNALS**

The CMAR will provide and install temporary traffic signals if at any time during construction the alignment of the traffic lanes is such that two traffic signal indications for any movement are not within a 20 degree cone of vision from the driver's eye located ten feet behind the stop bar position as specified in Section 4D.15 of the MUTCD. The CMAR will submit a temporary traffic signal plan to the Construction Coordinator for approval at least 14 days in advance of installation of the temporary traffic signal equipment. For short durations, the CMAR may obtain approval from the Construction Coordinator to utilize a uniformed Police Officer to direct traffic through the intersection when the above criteria are not met. The Construction Coordinator shall be responsible for notifying the City of Scottsdale Intelligent Transportation Systems (ITS) division of any and all changes that will have an effect on the normal flow of traffic operation. (See TMC note above)

#### **11.42 TEMPORARY VEHICLE DETECTION**

For all construction projects in the City of Scottsdale within duration of 15 days or more, temporary vehicle detection will be required for all approaches at signalized intersections that currently have loop detection which will be disturbed by the construction. In addition, traffic signal communications (telephone or other) to the central signal computer and CCTV (if present) will be maintained continuously during the course of the project. Work under this item will consist of furnishing all labor, equipment and materials necessary to install temporary traffic signal detection, and maintain signal communications. The CMAR or sub-contractor through the life of the project will maintain the detection zones and communications by ensuring full functionality 24 hours a day, 7 days a week. The CMAR will be responsible for the ongoing operation of the detection equipment, which may require redeployment of detection zones as traffic barricading and lane use changes require.

The work will be performed as specified in Sections 11.38 – 11.40, herein and as directed by the Construction Coordinator, Traffic Engineering and Signal Maintenance Departments.

### **ARTICLE 12 – DEFINITIONS**

"Allowance" means an agreed amount by the City and the CMAR for items which may be required to complete the scope of work.

"As-built Document" – "As-built in construction is equivalent to "as-is." Drawings deemed "as-built" are final drawings that include all changes made during the actual construction process. These drawings represent the actual existing constructed conditions as opposed to designs or a proposed condition. The As-built Documents should be per Arizona Revised Statute 32-152.

"Blueline or Blackline Prints" – Prints that allows comparison of document versions to show what has been revised.

"Change Order" means a written order signed by an authorized representative of the City and which approves changes in the total compensation or time allowed for completion of services consistent with S.R.C. Sec. 2-200.

"City" means the City of Scottsdale, Arizona, an Arizona municipal corporation. Regulatory activities handled by the City of Scottsdale Development Services, Planning and Fire Departments or any other City department are not subject to the responsibilities of the City under this Contract.

"City's Senior Representative" means the person designated in Article 7.3.

"Clarifications and Assumptions List" means a list prepared by the CMAR and accepted by the Contract Administrator. Generally the List identifies the CMAR's means and methods used in developing the GMP and identifies unresolved construction or site issues that may impact construction progress. The List of Clarifications and Assumptions may need additional confirmation or study by the project design team to avoid cost impact to the GMP.

"Construction Coordinator" means a City employee who coordinates the daily construction activities with the contractor, and with their inspection staff that performs quality control inspections, enforces project plans and specifications and adopted City codes and ordinances.

"Construction Documents" means the plans; specifications and drawings prepared by the Design Professional after correcting for permit review requirements and incorporating addenda and approved change orders.

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

"Construction Manager at Risk" or "CMAR" means the firm selected by the City to provide construction services as detailed in this Contract.

"Contract" means this fully executed Contract between the City and CMAR.

"Contract Administrator" means the person designated in Article 7.3.

"CMAR's Representative" means the person designated in Article 7.3.2.

"CMAR's Senior Representative" means the person designated in Article 7.3.2.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and the CMAR: (i) all written modifications, addenda and Change Orders; (ii) this Contract, including all exhibits and attachments; (iii) written Supplementary Conditions; (iv) Construction Documents; (v) GMP Plans and Specifications; (vi) the Preconstruction Agreement.

"Contract Time(s)" means the Day(s) set forth in Article 3 subject to adjustment in accordance with this Contract.

"Cost of the Work" means the direct costs necessarily incurred by the CMAR in the proper performance of the Work. The Cost of the Work must include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work will not include the general conditions fee, taxes, bonds, or insurance costs.

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

"Delay" means an unanticipated event or interference with the progress of a critical path work activity being performed at the time that causes the completion date of the Project to be extended. Delays may be caused by the City, the CMAR, third parties or Force Majeure events. Delays may be excusable, compensable, non-compensable or concurrent.

"Delay, Compensable" means delay that results from the City's actions or inactions that entitle the CMAR to both a time extension and delay damages.

"Delay, Concurrent" means two or more delays, within the same timeframe, both of which would independently impact the Project's critical path. If one delay is caused by the City and the other by the CMAR, the CMAR will generally be entitled to an excusable, non-compensable time extension, to the degree the delays may "overlap."

"Delay, Excusable" means an unforeseeable delay caused by an event beyond the control and without the fault or negligence of the CMAR (including its suppliers and subcontractors). Excusable delays may be compensable or non-compensable, depending upon whether the terms of the Contract or the law allows recovery of delay costs. Unless otherwise shown, it will generally be presumed that these delays are non-compensable.

"Delay, Non-Excusable" means a delay within the control of the CMAR, its suppliers and subcontractors, or a delay resulting from a risk taken by the CMAR under the terms of the Contract. The CMAR will not be due any time extension or delay damages, and may be responsible for paying to the City, actual or liquidated damages for the delay.

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

"Design Team" refers to licensed design professionals that have been selected to work on the Project by the City.

"Design Phase Services Agreement" means the Preconstruction Agreement entered into between the CMAR and the City as referenced in this Contract. This Agreement will contain the provisions associated with the development of the GMP Proposal by the CMAR. Wherever a conflict exists between this Contract and the Preconstruction Agreement, the terms of this Contract will control.

"Differing Site Conditions" - Comply with M.A.G Standard Specifications Subsection 102.4.

"Field Order" means a written field directive prepared and signed by the City, directing a change in work that may or may not include an adjustment in contract price or contract time.

"Final Acceptance" means the completion of all the Work as prescribed in Article 3.3.8.

"General Conditions" - General Conditions are negotiated amounts of project supervision and other direct costs according to construction term. These costs are not reflected in other GMP items. Costs may include, but are not limited to, the following: Project Manager, Superintendent, Full-time General Foremen, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.) and administrative office personnel. Other costs may include: temporary office, fencing and other facilities, office supplies, office equipment, minor expenses, utilities, vehicles, fuel, sanitary facilities, and telephone services at the site.

"Guaranteed Maximum Price (GMP) Plans and Specifications" means the documents used to establish the GMP and made part of this Contract by reference.

"Guaranteed Maximum Price" or "GMP" means the sum of the maximum cost of the Work as given in the GMP proposal; the CMAR's Construction Fee; General Conditions, Taxes, Bonds, Insurance and Project Contingency.

"Guaranteed Maximum Price (GMP) Proposal" - The offer or proposal of the CMAR submitted on the prescribed form stating the GMP prices for the entire Work or portions of the Work to be performed during the construction phase.

"Informational Submittals" – Submittals are required (common with construction projects) for the architect and engineer to verify that the correct products and quantities will be installed on a project.

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

"Liquidated Damages" means an amount the CMAR will pay as required in Article 3.4.

"Must" and "will" as used in this Contract are mandatory.

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

"Owner Agent," "City's Agent" or "Owner Representative" see "City's Senior Representative."

"Payment Request" means a monthly progress payment request that is based on a monthly estimate of the dollar value of the Work completed.

"Preconstruction Services" means advice given during the design phase. Preconstruction Services will be contracted for between the City and the CMAR in accordance with the provisions of Article 1.3.1, as required by A.R.S. §34-603(C) (1) (c). Services may include the following: design review, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, GMP preparation, and subcontractor bid phase services.

"Preconstruction Agreement" means the Contract between the City and the CMAR for the services provided by the CMAR during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate, GMP preparation, and subcontractor bid phase services.

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

"Project Contingency" means the City may, at its discretion, order changes in the scope of the Project. The amount of the Project Contingency is set solely by the City and will be in addition to the Project costs included in the CMAR's GMP packages. Use and management of the Project Contingency is described in Article 4.3.4. The Project Contingency is an amount to cover changes initiated by the City, which may be incorporated into the GMP as an allowance at the City's discretion.

"Professional Certification" -- Professional certification is a designation which indicates that a person is qualified to perform a job or task. Professional certification can be trade certification or professional designation.

"Project" means the Work to be completed in the execution of this Contract as described in the Recitals and in Exhibit A attached.

"Project Record Documents" means the documents created pursuant to Article 1.6.

"Project Record Drawing Prints" -- Set of current design drawings used by construction contractor for reference during construction. These drawings are typically marked up during the construction process, and are used to develop the subsequent "as-built" drawings.

"Punch List" means those minor items of Work to be completed before Final Acceptance which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Occupancy.

"Samples" means physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Savings" means the difference between the Guaranteed Maximum Price and the Final Cost of the Work (including CMAR's Fee). One Hundred Percent (100%) of savings will accrue to the City, unless otherwise agreed in the itemization of the Guaranteed Maximum Price.

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

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

"Site" means the land or premises on which the Project is located generally described as (insert address). The CMAR will require all subcontractors to include the street address of the Project Site in their contracts.

"Specifications" means those sections 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 applicable administrative details.

"Subcontractor" means any person or entity retained by the CMAR as an Independent contractor to perform a portion of the Work and must include material men and suppliers. All subcontractors must be selected in accordance with the selection plan stated in Article 1.12.

"Substantial Completion" means when the Work, or when an agreed upon portion of the Work is sufficiently complete so that the City can occupy and use the Project or a portion of it for its intended purposes. This may include, but is not limited to: (a) approval by the City Fire Marshall and local authorities (Certificate of Occupancy); (b) issuance of elevator permit; (c) demonstration to the City that all systems are in place, functional, and displayed to the City or its representative; (d) installation of all materials and equipment; (e) City review and acceptance of all systems; (f) City review and acceptance of draft O&M manuals and record documents; (g) City operation and maintenance training completed; (h) HVAC test and balance completed (provide minimum 30 days before projected substantial completion); (i) completed landscaping and site work; and (j) final cleaning.

"Supplier" means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with the CMAR or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase work by the CMAR or any Subcontractor.

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

END OF CONTRACT - SIGNATURES ON NEXT PAGE.

THE CITY OF SCOTTSDALE

PROJECT NO. PB63A, CONTRACT NO. 2016-011-COS

This Contract has been executed by the parties above named on the date and year written above, to be retained by the City Clerk.

The CMAR agrees that this Contract, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), under the terms and conditions of the Contract.

CONSTRUCTION MANAGER AT RISK:  
Valley Rain Construction

\_\_\_\_\_  
Daniel K. Kuwitzky, Vice President

THE CITY OF SCOTTSDALE, an  
Arizona Municipal Corporation

ATTEST:

\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

\_\_\_\_\_  
Carolyn Jagger, City Clerk

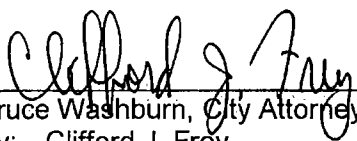
RECOMMENDED:

\_\_\_\_\_  
Daniel J. Worth  
Public Works Director

\_\_\_\_\_  
Katherine Callaway  
Risk Management Director

\_\_\_\_\_  
Christopher Perkins  
Contract Administrator

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Clifford J. Frey  
Senior Assistant City Attorney

**EXHIBIT A  
PROJECT DESCRIPTION  
SCOPE OF WORK**

**Project Name:** Indian School Park and Lake Rehabilitation

**Scope of Work:** This project will rehabilitate the lake and park irrigation system at the Indian School Park site, west of Hayden and north of Indian School Road. The project includes a total reconstruction of the lake system including a new lake lining and shoreline. A new irrigation pumping system will be constructed inside the existing pump station enclosure and will include a new intake line, wet well and power to the pump station. The pump station will also be connected to existing irrigation systems feeding the ballfields and existing park areas east of Hayden. The existing park irrigation system will be modified, as required, to conform to the revised shoreline. Additional drip irrigation will be added to existing trees along the shoreline that were previously dependent on lake water. The scope is further established by the Schedule of Values, Assumptions and Clarifications and other documents incorporated by reference into this GMP.

**EXHIBIT B  
PRECONSTRUCTION AGREEMENT**

**(CONTRACT 2015-164-COS IS ON FILE AT  
THE SCOTTSDALE CITY CLERK'S OFFICE)**

**EXHIBIT C  
SUBMITTAL REQUIREMENTS FOR THE GMP**

**GMP submittal, one copy for review.**

Two (2) copies will be requested by Capital Project Management prior to contract execution.

Exhibit Contents:

1. Scope of Work
  2. Summary of the GMP
  3. Schedule of Values – summary spreadsheet and backup documents
  4. List of Plans and Specifications used for GMP Proposal
  5. List of clarification and assumptions
  6. Subcontractor Bids on Subcontractor Letterhead
  7. Project Schedule
- A. Scope of Work will consist of a brief description of the work to be performed by CMAR and major points that the CMAR and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
- B. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:
- B1. The Project Requirements cost are for non-permanent construction work that is necessary to support CMAR and sub-contractor's work. Examples are temporary power, security guard traffic control rental equipment (paid for by CMAR) and signage. It is an Allowance to be verified by expenses at end of construction. Submittal for Project Requirements costs should be itemized.
- B2. The General Conditions are costs incurred by the CMAR during the construction phase. General conditions includes, but is not limited to the following types of costs; payroll costs for project manager or construction manager, but not both, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the CMAR or Subcontractors, fees for permits and licenses allowed in the contract. Charges for some home office administrative personnel may be included in General Conditions if agreed upon by both CMAR and City.
- C. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CMAR's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.

EXHIBIT C - GMP SUMMARY		
DIRECT COSTS		AMOUNT
A	Sub-Contractors Cost of Work (Labor, Materials, Equipment, Warranty)	\$410,448.79
B	CMAR Cost of Work (Labor, Materials, Equipment, Warranty)	\$977,928.95
<b>C</b>	<b>Subtotal Direct Cost</b>	<b>\$1,388,377.74</b>
INDIRECT COSTS		RATE
D	General Conditions (% of C)	11.29% \$156,784.96
E	CMAR Construction Fee (% of C)	8.84% \$122,685.92
F	Payment and Performance Bond (% of K)	0.96% \$14,833.56
G	Insurance (% of K)	1.27% \$19,623.57
<b>H</b>	<b>Subtotal Indirect Cost (D+E+F+G)</b>	<b>\$313,928.01</b>
I	Direct Cost + Indirect Cost (C+H)	\$1,702,305.75
J	Sales Taxes ( 5.1675% of I)	\$87,966.65
K	Total GMP Less Contingency (I+J)	\$1,790,272.40
L	PROJECT CONTINGENCY	\$125,847.60
<b>M</b>	<b>TOTAL GMP (K+L)</b>	<b>\$1,916,120.00</b>

- D. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CMAR, Design Consultant, and Project Manager using the format below.

Plans Used for Preparation of GMP No. 1	
CMAR	Date
Design Consultant	Date
Project Manager	Date

Exhibit C

- E. A list of the clarifications and assumptions made by the CMAR in the preparation of the GMP proposal, to supplement the information contained in the documents.
- F. A Critical Path Method diagram construction schedule.

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

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

1. Two (2) copies of the GMP (perforated as requested by Bids & Specifications) Velo or 3-hole punched.
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Consultant, CMAR and Project Manager).

Refer to List of Clarification and Assumptions in the:

**Indian School Park and Lake Rehabilitation 2016  
Construction Manager at Risk  
GMP  
January 15, 2016**

**EXHIBIT D  
STATUTORY PERFORMANCE BOND**

PURSUANT TO TITLE 34, CHAPTER 6,  
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 Scottsdale, County of Maricopa, State of Arizona in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale, dated the \_\_\_\_ day of \_\_\_\_\_, 2016, for Bid No. (bid number), Project No. (project number), (project 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 Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts of the contract during the original term of the contract and any extension of the contract, with or without notice to the surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 6, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Contract. The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a Judge of the Court. The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, Preconstruction services, financial services, maintenance services, operations services or any other related services included in the contract.

WITNESS our hands the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
BY:

\_\_\_\_\_  
SURETY (SEAL)

\_\_\_\_\_  
AGENCY OF RECORD

\_\_\_\_\_  
AGENCY ADDRESS



**EXHIBIT E  
STATUTORY PAYMENT BOND**

PURSUANT TO TITLE 34, CHAPTER 6,  
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 Scottsdale, County of Maricopa, State of Arizona, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the City of Scottsdale dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016, for Bid No. (bid number), Project No. (project number), (project 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 Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Arizona Revised Statutes, to the same extent as if they were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a Judge of the Court.

WITNESS our hands the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
BY:

\_\_\_\_\_  
SURETY (SEAL)

\_\_\_\_\_  
AGENCY OF RECORD

\_\_\_\_\_  
AGENCY ADDRESS





**CONTRACTOR'S NOTICE OF  
FINAL ACCEPTANCE**

CONTRACT NUMBER: 2016-011-COS

PROJECT NUMBER: PB63A

PROJECT NAME: Indian School Lake Rehabilitation

CONTRACTOR NAME: Valley Rain Construcion

FINAL CONTRACT AMOUNT:

Construction on the above project was completed on \_\_\_\_\_ and on \_\_\_\_\_ a final inspection was made of the subject improvements by this office. The work substantially conforms to the approved plans and specifications. We, therefore, accept those portions within the public right-of-way into our system for maintenance.

Approved By:

\_\_\_\_\_  
Contract Administrator

\_\_\_\_\_  
Construction Coordinator

cc: City Clerk  
Accounting Director  
Risk Management Director  
Tax Audit Manager